Swiss Commercial Law Series edited by Nedim Peter Vogt

Volume 7

Merger Control in Switzerland

by
Urs Lehmann
RolfWatter

Merger Control in Switzerland

Table of Contents

| A. | General Considerations | 7 |
|------|---|----|
| I. | Old and New Cartel Law | 7 |
| II. | Justification for Merger Control | 9 |
| III. | Fundamentals about the Revision | 10 |
| | 1. Constitutional Foundations | 10 |
| | 2. From the Requirement for Authorization to the | |
| | Requirement to Notify | 10 |
| | 3. Preventive Merger Control | 11 |
| IV. | The significance of the Community Law | 11 |
| | 1. The Legal Situation in the Community | 11 |
| | 2. The Significance of the Community Law | |
| | for Switzerland | 13 |
| | 3. Limits of the Effect of the Community Law | |
| | on Swiss Law | 15 |
| B. | Which Mergers are Subject to the Notification | |
| | Requirement? | 17 |
| I. | Geographical Scope of the CL: Effects Doctrine | 17 |
| II. | Application of the CL | 19 |
| | 1. Concentrations (Art. 4 (3) CL) | 19 |
| | 2. Turnover Thresholds | 26 |
| | 3. Mergers of Dominant Undertakings | 31 |
| | 4. Statistics - Notifications Anticipated | 31 |
| C. | Appraisal of Concentrations (Art. 10 (1) CL) | 33 |
| I. | Creating or Strengthening of a Dominant Position as | |
| | a Result of which Effective Competition can be Eliminated | |
| | (Art. 10 (2) (a) CL) | 33 |
| | 1. Dominant Position in the Relevant Market | 33 |
| | 2. Creating or Strengthening of a Dominant Position | 39 |
| | 3. Elimination of Effective Competition | 45 |
| II. | No Improvement of the Conditions of Competition in | |
| | another Market | 46 |
| III. | Legal Consequences of Approval or Prohibition | 47 |

Merger Control in Switzerland

| D. | Procedu | re | 48 |
|-------------|--------------|--|-----|
| I. | Notification | | |
| II. | Introduct | 49 | |
| III. | Examinat | tion Procedure (Art. 33 CL) | 50 |
| | 1. Prelin | ninary Measures | 50 |
| | 2. Proceed | dural Aspects | 51 |
| | 3. Conte | nt and Conclusion of the Procedure | 51 |
| | 4. Excep | tional Approval (Art. 11 CL) | 51 |
| IV. | Restorati | on of Effective Competition (Art. 37 CL) | 52 |
| V. | Legal Re | medies | 53 |
| E. | Summar | у | 54 |
| F. | Bibliogr | aphy ' | 55 |
| Apj | pendix A: | Table of Merger Decisions according to | |
| | | the file numbers of DG IV | 75 |
| Appendix B: | | Alphabetical Table of Merger Decisions | 107 |
| Appendix C: | | Relevant Product Markets | 117 |
| Appendix D: | | Possible Form of a Notification of a | |
| | | Concentration pursuant to Art. 9 CL | 141 |