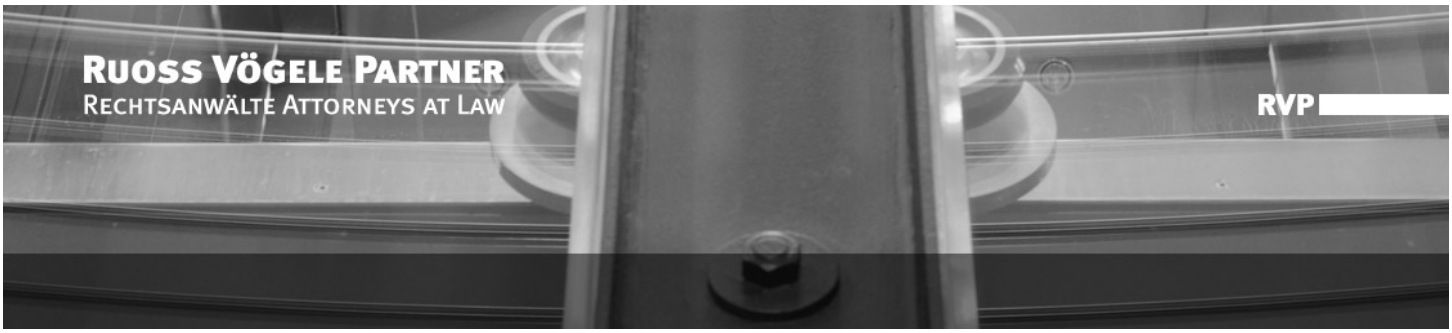

RVP Bulletin

Swiss Transaction Law Update 1/2010

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Corporate Law

Senior executive compensation

Under a glaring media spotlight, the House of Representatives (Nationalrat) debated the so-called "Initiative Against Rip-offs" in March of 2010. The House of Representatives reconciled the initiative at a constitutional level with a direct counterproposal, the content of which does not go as far as the wording of the initiative. The counterproposal tightens the rules for about 300 publicly listed companies in Switzerland as follows: mandatory shareholder voting on the compensation systems for senior executives (excluding actual figures), mandatory annual shareholder voting on benefits of the board of directors (unless the company articles provide otherwise), general prohibition of severance payments and signing bonuses (exceptions allowed), prohibition of granting proxies to custodian banks and corporate bodies, sustainability clause for bonus payments, repayment obligations

where clearly excessive benefits have been provided, and one-year terms of office for members of the board of directors (unless the company articles provide otherwise).

The bill has been returned for final reconciliation to the House of States (Ständerat), which in June 2009 was still following the indirect counterproposal made by the Federal Council (Bundesrat) (BBl 2009, 299). Its sponsor announced that he would not withdraw his initiative in light of the approved counterproposal of the House of Representatives.

Responsibility under corporate law and calculation of damage in the case of bankruptcy obstruction (Decision)

According to the prevailing case law of the Federal Supreme Court, the calculation of damage in the case of bankruptcy obstruction that is made the subject matter of a directors' liability suit is equal to the loss of value in the assets of the company between the date on which the notice of overindebtedness should have been filed (but was not) and the date on which the bankruptcy proceedings commenced. In a new decision, the Federal Supreme Court has now reaffirmed its opinion that *all liabilities*, including *subordinated loans,* must be taken into account when determining the net assets at the beginning of bankruptcy. This applies even if the relevant creditors have not submitted their claims in bankruptcy proceedings. The Federal Supreme Court has based its opinion on the reasoning that during bankruptcy the assignees are enforcing the damage of all creditors and not the damage of the company. Neither the objection of the company nor the objection of individual creditors may be asserted against that claim. For this reason, the argument may not be raised that creditors who have consented to a subordination will have presumably consented in advance to their own impairment, and that their claims therefore should not be included in the calculation of damages (Decision of the Federal Supreme Court of December 16, 2008, 4A_478/2008).

Although this case law may be consistent, it will probably result in a decline in the willingness to grant claim subordinations under these circumstances.

Determining the value of assets during the dissolution of a simple partnership (Decision)

Pursuant to a partnership agreement dated April 24, 1993, three parties formed a construction company for the purpose of developing two properties based on an existing building permit. The owner of the land parcels contributed the properties and the building permit to the company for its use. The construction company was dissolved before the construction project was ever realized.

In connection with the financial settlement during the dissolution of the construction company, the parties were in agreement that at the time of the dissolution the claimant had acquired sole control and responsibility of the project, including all the assets and liabilities that existed at that time, because the contribution of the assets was not made in the form of title conveyance but only for the purpose of use ("*quoad sortem*"), and because there were no other company assets or liabilities besides these assets and liabilities. What was in dispute, on the other hand, was the nature of the asset calculation in the construction company's closing balance sheet.

In this context, the Federal Supreme Court affirmed its view that only those actual changes in the value of assets that are tied to the company's output should be included in the company's income statement and that any changes in value of a mere economic nature should not be included, unless otherwise agreed upon by contract. Thus, a fluctuation in value based on a new or different valuation of land parcels must be borne by the owner of the land parcels and not by the company, and the land parcels must be recognized in the closing balance sheet on the basis of the same values as previously entered in the opening balance sheet (Decision of the Federal Supreme Court of 12 August 2009, 4A_230/2009).

Creditor non-discrimination (Decision)

In a recent decision, the Federal Supreme Court appears to have loosened its rigid practice for avoiding unfair preferences under the *actio pauliana* (clawing back debtor payments made shortly before the commencement of bankruptcy). The court holds that the non-discrimination of creditors *prior to the commencement of bankruptcy* is neither an absolute maxim nor an end in itself. In this respect, an action for

avoidance should qualify as an *exceptional situation*, which by its very nature should be handled restrictively, inasmuch as such actions affect the faith in the continued enforceability of contracts that were validly executed under private law, and therefore also the legal certainty. The actual wording of the Federal Supreme Court's holding is as follows:

"On this note, the institution of the action for avoidance or *actio pauliana* is not intended to rob the debtor of his actual ability to act and to immobilize him, particularly since it would trigger immediate technical bankruptcy, which is rarely in the interest of the entire group of creditors. The debtor must, in other words, be able to engage in normal business activities even in difficult times or in a financially distressed situation (Decision 5A_386/2008, E. 4.3), and even reasonably motivated decisions by the debtor in the course of such activities could of course include unequal treatment of the creditors. The action for avoidance (voidable preference) should apply in situations of unlawful schemes, in particular if subject-matter assets, which in the ordinary course of business would have become part of the bankruptcy estate, are stashed away."

The subject matter of the voidable preference in that case was an interest payment made by Swissair Schweizerische Luftverkehr-Aktiengesellschaft to a creditor bank only a few days prior to the filing of the application for a moratorium of debt enforcement. The Federal Supreme Court refused to view the payment as a voidable unfair preference on the grounds that the interest payment merely represented the consideration for the provision of funds. Evidence of any interest payment schemes (for example, early interest payments or higher interest payments), which by definition could have been indicia of unlawful intent and which generally served to benefit only certain creditors, did not exist. Rather, the facts in this case involved a long-term loan agreement, under which the interest was paid to a certain extent routinely or automatically and always immediately after the due date in the amount agreed upon by the parties. Thus, the interest servicing payments should be classified as ordinary business activities, which the debtor should be able to make even in a difficult economic environment or when facing a distressed financial situation (Decision of the Federal Supreme Court of February 24, 2010, 5A_758/2008).

In the interests of legal certainty, one can only hope that this decision will create new case law in connection with voidable unfair preferences.

Bankruptcy of an arbitration party

The Federal Supreme Court upheld a decision of an arbitration tribunal according to which the commencement of bankruptcy over an arbitration party who is domiciled in Poland leads to the termination of the arbitration proceedings. The Court's reasoning was based on the fact that Polish law expressly provides that the commencement of bankruptcy over a company deprives that company of its capacity to be a party to an arbitration proceeding. This holding does not apply in general, but only if the law of the party's domicile expressly prescribes such a rule. It may be assumed that this rule applies only in very few jurisdictions (Decision of the Federal Supreme Court, 4A_428/2008).

Law on Mergers and Acquisitions of Companies

Appraisal action under the Swiss Merger Act (Decision)

After consummating a public tender offer made by X-AG to the shareholders of Y-AG, the former had acquired approximately 93% of the outstanding shares of Y-AG. In connection with a subsequent merger of Y-AG with Z-AG (a subsidiary of X-AG), Z-AG offered the minority shareholders of Y-AG a compensatory payment of CHF 150 per share. The merger (in this case, a merger by absorption) was published in the SOGC (Swiss Official Gazette of Commerce) on February 1, 2007. Following the publication of the merger decision and the settlement offer, two persons acquired a number of Y-AG shares and then filed a lawsuit before the Cantonal Court of Schaffhausen seeking a reasonable increase in the compensation pursuant to art. 105 of the Swiss Merger Act ("MerA"). The plaintiffs filed an appeal with the Federal Supreme Court challenging the litigation cost advance payment of CHF 4,000 per person, which had been demanded by the Cantonal Court of Schaffhausen, and argued that the cost advance was a violation of art. 105 para. 3 MerA.

Art. 105 para. 3 MerA contains a special cost sharing arrangement and imposes the costs of an appraisal action on the acquiring company, regardless of the outcome of the lawsuit, unless special circumstances exist. This rule deviates from the general principle under Swiss civil procedure law that the losing party bears the costs of the lawsuit. Art. 105 para. 3 MerA covers the court costs and the party compensation. The purpose of this rule is to grant to smaller shareholders, who lose their shareholder rights during a squeeze-out, the possibility of having the reasonableness of the compensation payments appraised without having to bear the risk of the litigation costs.

In the case at hand, the Federal Supreme Court dismissed the appeal. It held that the condition of "special circumstances" had been satisfied and it ruled that the appellants, because of the timing of their acquisition of the shares following the publication of the merger decision, had the right only to a compensation payment and not to a shareholder position. This line of reasoning was strongly criticized by legal scholars, even though the result was generally appreciated. Probably more tellingly, the Cantonal Court referenced the fact that the plaintiffs had systematically and for a long time acquired shares from minority shareholders in companies whose shares had become the subject of a squeeze-out proceeding. Using the acquired shares, the plaintiffs had regularly (and often successfully) attempted to improve the compensation payments by threatening to pursue an appraisal action pursuant to art. 105 MerA. According to the Cantonal Court of Schaffhausen such professional litigants should not benefit from the protective purpose of the cost related rule under art. 105 para. 3 MerA (BGE 135 III 603).

Contract Law and Structuring of a Contract

No duty of disclosure of insiders in stock purchases (Decision)

The Zurich Commercial Court recently had to decide on the issues of *liability based on breach of trust, liability under the concept of culpa in contrahendo and liability based on legitimate trust*. The subject matter of the decision was a stock purchase. Customer A had sold 90,000 shares of Bank B to Bank B, after the share price had continuously declined over a long period of time. Bank B bought back its own shares on August 25/26, 2005 at a price of CHF 55 per share. On September 9, 2005, representatives of Bank B together with Bank C signed an agreement in principle concerning the possible merger of their two enterprises. After notice of the merger was published, the B share price climbed from CHF 55 to CHF 80, and then later jumped to approximately CHF 120.

A asserted before the Commercial Court that he had been motivated to engage in the transaction while *material information had been withheld*, and that this was valid grounds for a claim against Bank B for the difference between the actual sales proceeds he had received per share (CHF 55) and the subsequent highest share price (CHF 120). A reasoned that Bank B had accepted a selling mandate for the placement of the shares from him and had thereby assumed a special, contractually protected position of trust. Bank B had breached this position of trust by having withheld price-relevant information.

Bank B disputed the existence of a selling mandate. According to Bank B, the parties concluded a purchase agreement within the meaning of art. 184 *et seq.* CO, according to which there were generally no contractual duties of disclosure or trust.

Given the disagreement regarding the content of the contract, the court thereupon interpreted the contract. In the absence of any agreed form of compensation, the existence of a commission was ruled out. Nor, in the Court's opinion, did a mandate exist. The Court qualified the contractual relationship between A and Bank B as a purchase contract within the meaning of art. 184 *et seq.* CO and then proceeded to analyze the arguments made by A:

- *Liability based on breach of trust:* This form of liability is applied only if no contract exists. Since a purchase contract was in fact entered into, however, this basis of liability did not need to be examined any further according to the court.
- *Liability under the concept of culpa in contrahendo:* This liability standard protects the parties during the contract negotiations or the contract formation process and imposes good faith duties upon them to engage in mutually truthful disclosure and clarification of the material facts, which the other party does not know and which could impact its

decision to enter into the contract as well as the terms and conditions of such contract. In particular, if a relationship of trust as described above exists, a clarification of such facts could be reasonable. The details of such a duty of disclosure depend on the circumstances of each case, the nature of the contract, the type of negotiations, and the intent and knowledge of the parties. Thus, for example, for contracts with longer terms or which involve personal services, the requirements for the duty of disclosure are higher than for one-time exchange contracts. Under purchase contracts, the parties are generally not obligated to inform one another unbidden about all the facts and circumstances related to the price determination.

As a result, the Court did not find the existence of a preexisting relationship of trust. One major consideration was that A had been the party who initiated the stock sale. Indeed, A had for a long time been interested in unloading his package of shares and appeared so committed in his decision to sell that he did not even bother to inquire with Bank B about the most favorable timing. Moreover, the contract negotiations were brief and uncomplicated. Only the purchase price was negotiated. The fact that Bank B had more information than A and therefore had an informational advantage was quite obvious in the Court's opinion. However, A had assumed this disparity of information, given that he approached Bank B: He knew that he was dealing with an insider. He failed to recognize in the grounds of his statement of claim that under art. 161 para. 1 SCC directors or executives are prohibited from disclosing to third parties any confidential fact whose disclosure could in a foreseeable manner materially influence the price of shares or any other securities that are traded on an exchange or pre-exchange in Switzerland. No good-faith obligation would have entitled Bank B to disclose unlawful insider information to A in a criminally relevant manner (see full decision in ZR 108 (2009) No. 48).

Real Estate

New debt instrument law finally approved

In December 2009, the Parliament enacted the most important amendment to property law since the Civil Code entered into force. On April 1, the referendum period expired unused. Together with the revised Land Register Ordinance, the Federal Council is expected to implement the new law in early 2012.

Under the amendment, important aspects of the debt instrument will be subject to new rules. Accordingly, the third part of the title relating to real security under today's applicable articles 842 - 874 CC will be completely redrafted. In addition to the documented debt instrument (“*Papierschuldbrief”)*, which will continue to exist, there will be a new registered debt instrument (“*Registerschuldbrief”)*. This form of debt instrument is already created once it is recorded in the ground register.

The documented debt instrument was originally introduced in 1912 with the goal of making mortgage-backed receivables more marketable as negotiable instruments. This vision never really became a reality. Instead, the objectionable side effects had become more and more apparent; namely, the custodial and transport problems that hinder administration and security as well as the widely experienced frustration when the debt instruments were physically misplaced. The registered debt instrument should remedy these disadvantages once and for all. One hopes that the introduction of the registered debt instrument will be a resounding success in the interest of all parties involved in real-estate transactions.

The banks engaged in mortgage transactions must in the future waive the possibility of enforcing outstanding interest claims during compulsory sales that exceed the statutory maximum aging (three lapsed annual interest payments and the current annual interest payment). Under current law and the practices of the Federal Supreme Court, the bank can enforce all unsatisfied claims arising from the credit relationship up to the principal amount including the maximum interest rate. The typical excess coverage of the credit claim, which is achieved by using debt instruments with high maximum interest rates, currently facilitates the circumvention of the statutory limitation on the maximum aging of outstanding interest receivables. This loophole will now be closed. The limitation of the maximum aging of interest receivables now relates to the actual credit interest, which is contractually owed in the three years before and in the current year until the application to sell the collateral or the opening of

bankruptcy (amended art. 118 para. 1, item 3 of the CC).

One unnecessary complication of real estate transactions is the new notarization duty when creating ownership debt instruments (revised art. 799 para. 2 CC). Supported by the argument that it promotes legal certainty, the new law eliminates the prior practice under which the purchaser or the seller would allow debt instruments required by the financing banks to be created by making a simple land register filing. Under the new amendment, such transactions can no longer be executed without the involvement of a notary public.

Construction-cost calculation of large-scale projects: Beware of neighbor claims!

The purchaser of a property on which he hopes to realize a major construction project would be well advised to set aside a sufficient reserve in his construction-cost estimate to cover any indemnity claims filed by neighbors because of disruptions or other nuisances associated with the construction work. The Federal Supreme Court has recognized since 1989 that neighbors of a major construction site are generally entitled to a right of indemnity in the event of any excessive disruptions caused by the construction-site work (BGE 114 II 230). Nevertheless, to this day, neighbor litigation in connection with major construction sites remains the exception rather than the rule.

This situation should now change according to the stated goals of the legislator. As part of the amendments of the real estate property law (see above regarding the new debt security), the Federal Supreme Court decision of 1989 will now become statutory law. According to the new art. 679a CC, each neighbor of a construction site may demand damages from a land owner engaged in the construction if he suffers excessive detriment as a result of the construction-site operation and thereby incurs a loss.

The constructor of a major construction site will therefore need to pay special attention to multi-family rental apartment complexes in the neighborhood. Under art. 259a CO, a tenant may enforce a rent-abatement claim against a landlord if the tenant's quality of home life is disrupted by the major construction site. As a result of the rent abatement, the landlord – who is the owner of the multi-family apartment building – will lose rental income and will be entitled therefore to ask for damages in accordance with this new law. The loss may be significant if the construction work continues for a number of years.

The Federal Supreme Court decision of 1989 and the planned landowner responsibility law afford the landlords of multi-family apartment buildings the opportunity to shift any loss resulting from the rent abatement to the builder-owner of the construction site. The constructor will need to quantify this shifting risk in his investment calculation already at the time of the land purchase, an endeavor which – in the absence of any valuation parameters – will likely often present a very significant challenge: If for cautionary reasons he creates a reserve that is too extensive, he will be compelled to reduce the land purchase price and thereby risk losing the deal. If the reserve set aside is too small, the real estate project could turn into a losing deal.

Purchaser of historic buildings: Beware of asbestos contamination! (Decision)

Until well into the 1980s, asbestos construction materials were still used in residential and commercial building projects. The insulating and heat resistant qualities of these materials were highly prized in construction. In 1989, the use of asbestos as a building material was banned. In its bound form, asbestos poses no danger, but diffused asbestos fibers from the construction material, which are emitted into the immediate air environment and then inhaled by humans, are highly carcinogenic. Renovation or demolition of an asbestos-contaminated building may lead to significantly higher costs for the purchaser, since building materials containing asbestos must be removed using extreme safety precautions and disposed of as special waste.

The purchaser of a building in Geneva originally constructed in 1958 learned about an asbestos problem with the building during some reconstruction work in 2004, two years after the purchase. As a result of this problem, the purchaser had to incur an additional unbudgeted CHF 1 million in costs in order to remove the asbestos.

The purchaser approached the competent municipal department of the City of Geneva and requested an order for a cost-sharing arrangement. Under the

amendment of the contamination remediation law, the legislator had introduced a cost-sharing arrangement which grants any party facing remediation costs an opportunity of shifting the total costs of the renovation or at least a portion of it to the government, which would then pass on some of the shifted costs to the generators of the contamination.

The purchaser's applications in the first instance failed. He thereupon appealed to the Federal Supreme Court, where he once again lost. The Federal Supreme Court argued that the cost sharing order was available only for the remediation of contaminated sites and that buildings contaminated with asbestos did not qualify as contaminated sites within the meaning of art. 2 para. 1 of the Contamination Ordinance (BGE 1C_178/2009 of 4 November 2009).

After this decision of the Federal Supreme Court, purchasers of historic buildings are strongly urged to make asbestos contamination a key issue during real-estate transactions. Sellers of a historic building will typically insist on a complete warranty disclaimer in the purchase agreement. There are indeed opinions that do not accept a general disclaimer of warranties if asbestos-contaminated buildings are involved. A purchaser would anyway be well advised either to exclude the asbestos contamination expressly from the warranty disclaimer or retain professional inspectors to conduct a thorough investigation of the building structures with a view towards uncovering any asbestos materials.

Financial Market Law

Revision of stock market offences

The Federal Council is seeking to provide more stringent rules in the area of stock market offences and market abuse. In January of 2010, the Council began consulting on making relevant revisions to the Stock Exchange Act. These consultations ended on April 30, 2010.

Voting rights suspension

In its ruling of August 13, 2009, the Appeals Court for the Canton of Zurich denied a petition seeking the issuance of a highly provisional order related to the suspension of voting rights in the matter of Sulzer. The retroactive application of art. 20 para. 4bis of the Stock Exchanges and Securities Trading Act was unlawful irrespective of its legal nature according to the Court (Order NL090126/Z2).

New real-estate index

As of December 1, 2009, the SIX Swiss Exchange added the real-estate sector to its existing SXI family of indexes. In addition to its existing benchmarks – the SWX Real-Estate Fund Index and the SWX Swiss Real-Estate Index – the Swiss Stock Exchange launched new indicators for real estate stocks and real estate funds, in particular the SXI Swiss Real-Estate Shares, which combine the five largest and most liquid real-estate shares traded on the stock exchange, and the SXI Swiss Real-Estate Funds, which combine the ten largest and most liquid real-estate funds on the stock exchange.

eGRIS

In December 2009, the Federal Ministry of Justice and SIX Group agreed to work closely together in the development of a central electronic real-estate information system known as eGRIS. The goal of the project is to facilitate the electronic search and processing of land register data.

Disclosure platform

Pursuant to the provisions on maintaining the listing, issuers are obligated to transmit defined information to SIX Exchange Regulation. In order to simplify the transmission of data for the companies impacted, a new electronic disclosure platform was developed. The use of the disclosure platform is currently not mandatory for issuers. In order to regulate the technical modalities of using the electronic disclosure platform as well as the liability issues related thereto, a directive relating to the use of the electronic disclosure platform to meet the duties of disclosure was issued as of January 1, 2010.

Takeover Board practices

Since September 2009, the decisions taken by the Takeover Board have primarily referred to the following legal issues: Best-Price Rule, voluntary submis-

sion to the takeover laws, mandatory offers, exceptions to mandatory offers, formation of groups (draft PS 880, see www.takeover.ch/news).

Auditing standard

In October 2009, the Swiss Institute of Certified Accountants and Tax Consultants (*Treuhandkammer*) submitted for official consultation a draft of the new Swiss auditing standards for the review of public tender offers (see www.treuhand-kammer.ch).

Intellectual Property Law

No trademark rights for descriptive information

Persons who advertise tend to use marks or designations that describe their goods and services. In many cases, this leads to a denial of trademark protection. The Federal Administrative Court qualified the designation "IPHONE" as directly descriptive of computers, mobile phones and software and therefore did not grant the designation any trademark status (Decision of the Federal Administrative Court of December 24, 2009, B-6430/2008).

The same line of argument has been used by the Federal Administrative Court for the designation BABYRUB, which is used for skin care products to describe their purpose (Decision of the Federal Administrative Court of February 23, 2010, B-8186/2008).

From a legal perspective, the following applies: Marks with strongly individualized elements lead to strong trademarks. Thus, in connection with corporate acquisitions, the parties should review whether a mark has sufficient trademark protection in Switzerland and in other foreign countries. The legal scope of protection is an important price-determining factor in corporate acquisitions.

Google-AdWords

The European Court of Justice, in a leading decision, held that Google is not violating European trademark law when the company saves for its referencing service, AdWords, a mark that is identical to a trademark (Decision of the ECJ of March 23, 2010, C.236/08). Because Google's involvement was purely technical, automated and passive, Google was not held jointly responsible.

On the other hand, the trademark holder can proscribe a third party who relies on Google's AdWords service from using marks that are identical to the trademark and from promoting identical goods and services if it would not be easy for the average Internet user to recognize that such goods and services do not originate from the trademark holder.

Domain Names

For disputes regarding domain names, Switch provides for a special dispute-resolution procedure. In clear-cut cases, the dispute-resolution procedure is a cost-effective and expedient tool for retrieving domain names from unauthorized third parties. In 2009, 34 dispute-resolution proceedings were carried out. Where the parties were unable to reach a settlement in the proceedings, a transfer of the claimed domain name was achieved in 16 cases. This was the means by which Comparis AG was able to obtain the domain names “comparis.ch” and “compare.ch.” The bases for the claim in each case were the trademark rights held by Comparis AG. Domain names are best protected using trademarks.

Merger Control / Competition Law

Dominant market position / merger control

At the end of April, the Swiss Competition Commission ("Comco") prohibited the merger of the telecommunication service providers Sunrise and Orange (France Télécom) on the grounds that only two remaining providers would thereby collectively secure a dominant market position which could impair effective competition. Since there was also no expectation that a new provider would enter the market with its own network infrastructure, it would be advantageous for both the providers to maintain a high price level. The decision has not yet been finally adjudicated.

Horizontal restriction of competition

A new agreement concluded between AG Hallenstadion Zurch ("Hallenstadion AG") and the company Ticketcorner, according to which event organizers in the Zurich Hallenstadion would be compelled to pur-

chase 50% of their tickets through Ticketcorner, became the subject matter of a Comco investigation. The object of the investigation is to determine whether a dominant market position is being abused and whether competitors are being excluded in violation of the competition laws.

Coordinated submissions, specifically those for issuing government contracts, will also be the subject matter of future Comco investigations. In this context, reference should again be made to the rule on principal witnesses. The first electronics company in Bern, which had admitted to being a member of a cartel and had agreed to cooperate fully with the Comco, was ultimately acquitted without penalty.

Vertical arrangements

The Comco levied a CHF 4.8 million fine on Gaba, the manufacturer of Elmex toothpaste, for imposing an export ban on its Austrian licensee. Gaba used a vertical arrangement to ban the parallel import of Elmex toothpaste from Austria into Switzerland unlawfully.

The establishment of resale prices led to a CHF 5.7 million fine. The manufacturers of Viagra, Cialis, and Levitra established their earnings potential by using public price recommendations. The prices were integrated into industry-specific information systems, from which doctors and pharmacies then retrieved them.

The Comco also remains active in reviewing vertical competition arrangements. In early March 2010, the Comco commenced an investigation against Nikon based on possible hindrance of parallel imports. The Comco conducted an onsite search at Nikon's offices.

In early May, Comco commenced a consultation regarding the revision of vertical arrangement disclosure. Comco is taking the most recent practice into account and is seeking to harmonize it with EU competition law. It is thereby seeking to avoid isolating the Swiss markets and to promote greater legal certainty. The consultation period continued through June 8, 2010. At the European level, the new block-exemption regulation entered into effect on June 1, 2010.

Accounting, Audit

Amendment to the Audit Supervisory Ordinance

The Audit Supervisory Ordinance requires that auditing firms maintain an internal quality-assurance system and employ to that end at least two professionals who hold the requisite qualifications for providing auditing services. Auditing firms in which only one person has such a qualification must join a system for the regular assessment of their auditing work. The original accession period, which was set to run through August 31, 2010, has now been extended to August 31, 2013.

Planned statutory amendments

At the end of 2009, the Commission for Legal Issues of the Council of State completed consultations on the second part of the revision of the Swiss stock corporation law (revision of the accounting rules) and furnished its draft resolution to the Council of States. This draft resolution deviates from the Federal Council report on two points: First, the annual turnover threshold for an accounting obligation is expected to be increased from CHF 100,000 to CHF 250,000. Another legislative goal is to allow for the delegation of the duty to prepare consolidated accounts to a group company.

Currently, the National Council is working on the revision. It is not yet foreseeable whether this recommendation will be confirmed and when the new provisions will enter into force.

Taxes

Exemption from the stamp-duty tax

In December of 2009, the Federal Council recommended exempting foreign members of the stock exchange ("remote members") from the stamp-duty tax. This exemption is intended to protect the liquidity and therefore the attractiveness of Switzerland as a financial market center.

More deductions from withholding tax (Decision)

Employers deduct the tax amount owed from the withholding tax prior to paying the net wages of foreign employees who reside in Switzerland without a residence permit (Permit C) and of employees who reside outside of Switzerland but whose place of work is within Switzerland.

The question posed to the Federal Supreme Court was whether the taxpayers who owe withholding tax may also file amended returns for deductions which were already included in the rates as standard deductions. This relates above all to employees whose professional expenditures are significantly higher than the rate factored into the standard deduction of approximately 10% of the gross wages. In rendering its decision, the Federal Supreme Court referenced the prohibition against discrimination as codified in the Freedom of Movement Agreement, which states that employees residing outside of Switzerland but working within Switzerland have the right to the same deductions as Swiss citizens residing in Switzerland (Decision of the Federal Supreme Court of January 26, 2010). The decision of the Federal Supreme Court is expected to lead to significant tax-revenue losses in various cantons.

Abbreviations

AltlV:	Regulation on the Remediation of Contaminated Sites of 1998 (Contamination Ordinancen)
BGE:	Federal Supreme Court Decisions
CC:	Swiss Civil Code of 1907
CO:	Swiss Code of Obligations of 1911
Comco:	Swiss Competition Commission
ECJ	European Court of Justice
EU:	European Union
IPRG	Federal Act on Private International Law of 1987
MerA:	Act on Mergers, Demergers, Reorganization and Asset Transfers of 2003
SCC:	Swiss Criminal Code of 1937

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- Entwicklungen im Unternehmens-Datenschutzrecht der Schweiz und der EU 1/2010
  (Dr. Alois Rimle, LL.M.)
- Entwicklungen im schweizerischen Banken- und Kapitalmarktrecht 2010/1 / Swiss Banking and Capital Market Law Update 2010/1
  (Dr. Alois Rimle, LL.M.)
- Entwicklungen im schweizerischen Versicherungsrecht 2010/1 / Swiss Insurance Law Update 2010/1
  (Dr. Alois Rimle, LL.M.)
- Rechtliche Rahmenbedingungen der Unternehmenssanierung

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- Entwicklungen im schweizerischen Versicherungs-, Banken- und Kapitalmarktrecht 2009/2 / Swiss Insurance, Banking and Capital Market Law Update 2009/2
  (Dr. Alois Rimle, LL.M.)
- Unternehmensleitung in Krisenzeiten Worauf es zu achten gilt
  (Dr. Franziska Buob)
- Entwicklungen im schweizerischen Versicherungs-, Banken- und Kapitalmarktrecht 2009/1 / Swiss Insurance, Banking and Capital Market Law Update 2009/1
  (Dr. Alois Rimle, LL.M.)
- Entwicklungen im Datenschutzrecht für Unternehmen in der Schweiz und der EU 2009/1 / Update on Data Protection Law for Companies in Switzerland and the EU 2009/1
  (Dr. Alois Rimle, LL.M.)
- Entwicklungen im schweizerischen Transaktionsrecht 2009/1
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- Revision des Revisionsrechtes: Eine Übersicht über die wichtigsten Neuerungen
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- Entwicklung im schweizerischen Versicherungs-, Banken- und Kapitalmarktrecht 2008/2 / Swiss Insurance, Banking and Capital Market Law Update 2008/2
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