

FTC news

Federal Trade Commission Washington, D.C. 20580 (202) 326-2180

FOR RELEASE: SEPTEMBER 8, 1993

**SWISS BUSINESSMAN TO PAY NEARLY \$415,000
TO SETTLE FEDERAL CHARGES OF FAILING TO NOTIFY FTC
BEFORE ACQUISITIONS**

Stephan Schmidheiny, a Swiss businessman, has agreed to pay a \$414,650 civil penalty to settle charges in connection with his failure to notify U.S. antitrust agencies before acquiring, in separate transactions, two Swiss firms that do business in the United States, the Federal Trade Commission announced today. Once the error was found, Schmidheiny failed to file a corrective notification for an unreasonable length of time, the government charged.

Pre-merger notification filings of certain large transactions are required under the federal Hart-Scott-Rodino Improvements Act of 1976. The HSR Act prescribes waiting periods that then must be observed, and during which transactions are reviewed to determine -- before they take place -- whether they would violate the antitrust laws. In this case, once Schmidheiny filed, the antitrust agencies raised no objections to the acquisitions.

According to the complaint detailing the charges against Schmidheiny, he was required to file under the HSR Act prior to acquiring control of each of the two European companies because he met the thresholds for filing. Foreign persons who acquire the voting securities of foreign corporations are required to file under the act if the acquirer controlled, or obtained control of, businesses with more than \$110 million in U.S. assets or annual sales, and if the acquisition will give the acquirer control of a company that has annual U.S. sales or assets in excess of specified limits.

The complaint alleges that Schmidheiny acquired control of Landis & Gyr AG in January 1988, and of Wild Leitz Holding AG in June 1989, without filing the pre-merger notifications. (Landis & Gyr manufactures various types of electric and electronic

(Schmidheiny--09/08/93)

equipment in the United States. Wild Leitz Holding AG manufactures and sells surveying and drafting instruments and photographic equipment and supplies in the United States.) In August 1989, the complaint alleges, Schmidheiny notified the FTC that he had discovered the violations, but then did not submit filings for the transactions until Feb. 4, 1991, more than 17 months after the discovery. The complaint does not allege that the original failures to file were willful, or that the acquisitions themselves violated the antitrust laws.

The Commission has made clear through public speeches and otherwise that parties must file quickly after discovering an inadvertent violation of the HSR Act, stressing that quick filings allow the government to review transactions quickly and, thus, minimize the potential for competitive injury to the public. If a corrective filing is not made promptly, the failure to file is likely to be treated as willful rather than inadvertent and the Commission is likely to seek a civil penalty.

The proposed consent judgment to settle the charges in this case would compel Schmidheiny to pay the civil penalty to the U.S. Treasury within 30 days of the date of approval. The settlement requires the court's approval to become binding.

The complaint and proposed consent judgment were filed by FTC attorneys acting as special attorneys to the U.S. Attorney General, in U.S. District Court for the District of Columbia, yesterday. The Commission vote to file the complaint and consent judgment was 5-0.

NOTE: This consent judgment is for settlement purposes only and does not constitute an admission by the defendant of a law violation. Consent judgments have the force of law when signed by the judge.

Copies of the complaint and proposed consent judgment will be available shortly from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 202-326-2502.

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(FTC File No. 911 0106)
(Civil Action No. 93 1852)
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