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## **Federal Act on Cartels and other Restraints of Competition (Cartel Act, CartA)**

of 6 October 1995 (Status as of 1 January 2022)

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*The Federal Assembly of the Swiss Confederation*

based on Articles 27 paragraph 1, 96<sup>1</sup>, 97 paragraph 2 and 122<sup>2</sup> of the Federal Constitution<sup>3,4</sup>  
in implementation of the competition law provisions contained in international agreements,  
and having considered the Federal Council Dispatch of 23 November 1994<sup>5</sup>,  
*decrees:*

### **Chapter 1    General Provisions**

#### **Art. 1            Purpose**

The purpose of this Act is to prevent the harmful economic or social effects of cartels and other restraints of competition and, by doing so, to promote competition in the interests of a liberal market economy.

#### **Art. 2            Scope**

<sup>1</sup> This Act applies to private or public undertakings that are parties to cartels or to other agreements affecting competition, which exercise market power or which participate in concentrations of undertakings.

<sup>1bis</sup> Undertakings are all consumers or suppliers of goods or services active in commerce regardless of their legal or organisational form.<sup>6</sup>

AS 1996 546

<sup>1</sup> This provision corresponds to Art. 31<sup>bis</sup> of the Federal Constitution of 29 May 1874 [BS 1 3].

<sup>2</sup> This provision corresponds to Art. 64 of the Federal Constitution of 29 May 1874 [BS 1 3].

<sup>3</sup> SR 101

<sup>4</sup> Amended by No I of the FA of 20 June 2003, in force since 1 April 2004 (AS 2004 1385 1390; BBl 2002 2022 5506).  
BBl 1995 I 468

<sup>6</sup> Inserted by No I of the FA of 20 June 2003, in force since 1 April 2004 (AS 2004 1385 1390; BBl 2002 2022 5506).

<sup>2</sup> This Act applies to practices that have an effect in Switzerland, even if they originate in another country.

### Art. 3 Relationship to other statutory provisions

<sup>1</sup> Statutory provisions that do not allow for competition in a market for certain goods or services take precedence over the provisions of this Act. Such statutory provisions include in particular:

- a. provisions that establish an official market or price system; and
- b. provisions that grant special rights to specific undertakings to enable them to fulfil public duties.

<sup>2</sup> This Act does not apply to effects on competition that result exclusively from the legislation governing intellectual property. However, import restrictions based on intellectual property rights shall be assessed under this Act.<sup>7</sup>

<sup>3</sup> The procedures to assess restraints of competition under this Act shall take precedence over procedures under the Price Supervision Act of 20 December 1985<sup>8</sup> unless the Competition Commission and the Price Supervisor jointly decide otherwise.

### Art. 4 Definitions

<sup>1</sup> Agreements affecting competition are binding or non-binding agreements and concerted practices between undertakings operating at the same or at different levels of production which have a restraint of competition as their object or effect.

<sup>2</sup> Dominant undertakings are one or more undertakings in a specific market that are able, as suppliers or consumers, to behave to an appreciable extent independently of the other participants (competitors, suppliers or consumers) in the market.<sup>9</sup>

<sup>2bis</sup> An undertaking with relative market power is an undertaking on which other undertakings are dependent for the supply of or demand for goods or services in such a way that there are no adequate and reasonable opportunities for switching to other undertakings.<sup>10</sup>

<sup>3</sup> Concentration of undertakings are:

- a. the merger of two or more previously independent undertakings;
- b. any transaction, in particular the acquisition of an equity interest or the conclusion of an agreement, by which one or more undertakings acquire direct or indirect control of one or more previously independent undertakings or parts thereof.

<sup>7</sup> Sentence inserted by No I of the FA of 20 June 2003, in force since 1 April 2004 (AS **2004** 1385 1390; BBl **2002** 2022 5506).

<sup>8</sup> SR **942.20**

<sup>9</sup> Amended by No I of the FA of 20 June 2003, in force since 1 April 2004 (AS **2004** 1385 1390; BBl **2002** 2022 5506).

<sup>10</sup> Inserted by No I of the FA of 19 March 2021, in force since 1 Jan. 2022 (AS **2021** 576; BBl **2019** 4877).

## **Chapter 2 Substantive Provisions**

### **Section 1 Unlawful Restraints of Competition**

#### **Art. 5 Unlawful agreements affecting competition**

<sup>1</sup> Agreements that significantly restrict competition in a market for specific goods or services and are not justified on grounds of economic efficiency, and all agreements that eliminate effective competition are unlawful.

<sup>2</sup> Agreements affecting competition are deemed to be justified on grounds of economic efficiency if:

- a. they are necessary in order to reduce production or distribution costs, improve products or production processes, promote research into or dissemination of technical or professional know-how, or exploit resources more rationally; and
- b. they will under no circumstances enable the parties involved to eliminate effective competition.

<sup>3</sup> The following agreements between actual or potential competitors are presumed to lead to the elimination of effective competition:

- a. agreements to directly or indirectly fix prices;
- b. agreements to limit the quantities of goods or services to be produced, purchased or supplied;
- c. agreements to allocate markets geographically or according to trading partners.

<sup>4</sup> The elimination of effective competition is also presumed in the case of agreements between undertakings at different levels of the production and distribution chain regarding fixed or minimum prices, and in the case of agreements contained in distribution contracts regarding the allocation of territories to the extent that sales by other distributors into these territories are not permitted.<sup>11</sup>

#### **Art. 6 Categories of agreements affecting competition that are deemed justified**

<sup>1</sup> The conditions under which agreements affecting competition are as a general rule deemed justified on grounds of economic efficiency may be set out in ordinances or general notices. In doing so the following agreements will be taken into consideration in particular:

- a. co-operation agreements relating to research and development;
- b. specialisation and rationalisation agreements, including agreements concerning the use of tools for calculating costs;

<sup>11</sup> Inserted by No I of the FA of 20 June 2003, in force since 1 April 2004 (AS **2004** 1385 1390; BBI **2002** 2022 5506).

- c. agreements granting exclusive rights to purchase or sell certain goods or services;
- d. agreements granting exclusive licences for intellectual property rights;
- e.<sup>12</sup> agreements that have the purpose of improving the competitiveness of small and medium-sized undertakings, provided their effect on the market is limited.

<sup>2</sup> Such ordinances and general notices may also recognise particular forms of co-operation specific to certain sectors of the economy as being generally justified, in particular agreements concerning the effective implementation of public law provisions on the protection of customers or investors in the field of financial services.

<sup>3</sup> General notices are published by the Competition Commission in the Federal Gazette. Ordinances within the meaning of paragraphs. 1 and 2 above shall be issued by the Federal Council.

**Art. 7** Unlawful practices by dominant undertakings and undertakings with relative market power<sup>13</sup>

<sup>1</sup> Dominant undertakings and undertakings with relative market power behave unlawfully if, by abusing their position in the market, they hinder other undertakings from starting or continuing to compete, or disadvantage trading partners.<sup>14</sup>

<sup>2</sup> The following behaviour is in particular considered unlawful:

- a. any refusal to deal (e.g. refusal to supply or to purchase goods);
- b. any discrimination between trading partners in relation to prices or other conditions of trade;
- c. any imposition of unfair prices or other unfair conditions of trade;
- d. any under-cutting of prices or other conditions directed against a specific competitor;
- e. any limitation of production, supply or technical development;
- f. any conclusion of contracts on the condition that the other contracting party agrees to accept or deliver additional goods or services;
- g.<sup>15</sup> the restriction of the opportunity for buyers to purchase goods or services offered both in Switzerland and abroad at the market prices and conditions customary in the industry in the foreign country concerned.

<sup>12</sup> Inserted by No I of the FA of 20 June 2003, in force since 1 April 2004 (AS **2004** 1385 1390; BBl **2002** 2022 5506).

<sup>13</sup> Amended by No I of the FA of 19 March 2021, in force since 1 Jan. 2022 (AS **2021** 576; BBl **2019** 4877).

<sup>14</sup> Amended by No I of the FA of 19 March 2021, in force since 1 Jan. 2022 (AS **2021** 576; BBl **2019** 4877).

<sup>15</sup> Inserted by No I of the FA of 19 March 2021, in force since 1 Jan. 2022 (AS **2021** 576; BBl **2019** 4877).

**Art. 8** Exceptional authorisation for compelling public interest reasons

Agreements affecting competition and behaviour by dominant undertakings that have been declared unlawful by the competent authority may be authorised by the Federal Council at the request of the undertakings involved if, in exceptional cases, they are necessary for compelling public interest reasons.

**Section 2 Concentrations of Undertakings****Art. 9** Notification of planned concentrations

<sup>1</sup> Planned concentrations of undertakings must be notified to the Competition Commission before their implementation if in the financial year preceding the concentration:

- a. the undertakings concerned together reported a turnover of at least 2 billion Swiss francs, or a turnover in Switzerland of at least 500 million Swiss francs, and
- b. at least two of the undertakings concerned each reported a turnover in Switzerland of at least 100 million Swiss francs.

<sup>2</sup> ...<sup>16</sup>

<sup>3</sup> In the case of insurance companies, «turnover» is replaced by «annual gross insurance premium income», and in the case of banks and other financial intermediaries that are subject to the accounting regulations set out in the Banking Act of 8 November 1934<sup>17</sup> by «gross income».<sup>18</sup>

<sup>4</sup> Notwithstanding anything set out in paragraphs 1 to 3 above, notification is mandatory if one of the undertakings concerned has in proceedings under this Act in a final and non-appealable decision been held to be dominant in a market in Switzerland, and if the concentration concerns either that market or an adjacent market or a market upstream or downstream thereof.

<sup>5</sup> The Federal Assembly may by general federal decree not subject to a referendum:

- a. adjust the amounts set forth in paragraphs 1 to 3 above, taking account of any change in circumstances;
- b. establish special criteria for the notification of concentrations in certain sectors of the economy.

<sup>16</sup> Repealed by No I of the FA of 20 June 2003, with effect from 1 April 2004 (AS **2004** 1385 1390; BBI **2002** 2022 5506).

<sup>17</sup> SR **952.0**

<sup>18</sup> Amended by No I of the FA of 20 June 2003, in force since 1 April 2004 (AS **2004** 1385 1390; BBI **2002** 2022 5506).