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**Ordinance  
on Sanctions imposed for  
Unlawful Restraints of Competition  
(Cartel Act Sanctions Ordinance, CASO)**

of 12 March 2004 (Status as of 1 January 2013)

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*The Swiss Federal Council,*

based on Article 60 of the Cartel Act of 6 October 1995<sup>1</sup> (Cartel Act),

*ordains:*

**Section 1: General Provisions**

**Art. 1**

This Ordinance regulates:

- a. the assessment criteria for the imposition of sanctions in accordance with Article 49a paragraph 1 Cartel Act;
- b. the conditions and the procedure for obtaining complete or partial immunity from sanctions in accordance with Article 49a paragraph 2 Cartel Act;
- c. the conditions and the procedure for notifications under Article 49a paragraph 3 letter a Cartel Act.

**Section 2: Calculation of Sanctions**

**Art. 2 Principles**

<sup>1</sup> The sanction shall be assessed on the basis of the duration and the seriousness of the unlawful conduct. Appropriate account shall be taken of the probable profit that the undertaking has achieved as a result of its conduct.

<sup>2</sup> In determining the sanction, the principle of proportionality shall be observed.

AS 51 117 und BS 10 337

<sup>1</sup> SR 251

**Art. 3** Basic amount

Depending on the seriousness and nature of the infringement, the basic sanction shall amount to a maximum of 10 per cent of the turnover achieved by the undertaking concerned in the relevant markets in Switzerland during the preceding three financial years.

**Art. 4** Duration

If the infringement of competition has lasted for one to five years, the basic amount shall be increased by up to 50 per cent. If the infringement has lasted for longer than five years, the basic amount shall be increased by an additional sanction of up to 10 per cent for each additional year.

**Art. 5** Aggravating circumstances

<sup>1</sup> In the case of aggravating circumstances, the amount under Articles 3 and 4 shall be increased, in particular if the undertaking:

- a. has repeatedly infringed the Cartel Act;
- b. has, due to the infringement, achieved a profit that is particularly high by objective standards;
- c. has refused to cooperate with the authorities or has attempted to obstruct the investigations in any other manner.

<sup>2</sup> In the case of restraints of competition under Article 5 paragraphs 3 and 4 Cartel Act, the amount in accordance with Articles 3 and 4 shall be further increased if the undertaking:

- a. played an instigating or leading role in the restraint of competition;
- b. instructed or carried out retaliatory measures against other undertakings that participated in the restraint of competition in order to enforce the agreement affecting competition.

**Art. 6** Mitigating circumstances

<sup>1</sup> If there are mitigating circumstances, and in particular if the undertaking terminates the restraint of competition after the first intervention of the Secretariat of the Competition Commission but at the latest before proceedings under Articles 26–30 Cartel Act are opened, the amount under Articles 3 and 4 shall be reduced.

<sup>2</sup> In the case of restraints of competition in accordance with Article 5 paragraphs 3 and 4 Cartel Act, the amount under Articles 3 and 4 shall be reduced if the undertaking:

- a. played a strictly passive role in the restraint of competition;
- b. did not carry out retaliatory measures that had been agreed in order to enforce the agreement affecting competition.

**Art. 7** Maximum sanction

In no case shall the sanction exceed 10 per cent of the turnover achieved by the undertaking in Switzerland during the preceding three financial years (Art. 49a para. 1 Cartel Act).

**Section 3: Complete Immunity from a Sanction****Art. 8** Requirements

<sup>1</sup> The Competition Commission shall grant an undertaking complete immunity from a sanction if the undertaking reports its own participation in a restraint of competition within the meaning of Article 5 paragraphs 3 and 4 Cartel Act and if it is the first undertaking to:

- a. provide information that enables the competition authority to open competition law proceedings under Article 27 Cartel Act; or
- b. provide evidence that enables the competition authority to establish an infringement of competition in accordance with Article 5 paragraphs 3 or 4 Cartel Act.

<sup>2</sup> Immunity from a sanction shall be granted only if the undertaking:

- a. has not coerced any other undertaking into participating in the infringement of competition and has not played the instigating or leading role in the relevant infringement of competition;
- b. voluntarily submits to the competition authority all available information and evidence relating to the infringement of competition that lies within its sphere of influence;
- c. continuously cooperates with the competition authority throughout the procedure without restrictions and without delay;
- d. ceases its participation in the infringement of competition upon submitting its voluntary report or upon being ordered to do by the competition authority.

<sup>3</sup> Immunity from a sanction in accordance with paragraph 1 letter a shall only be granted if the competition authority does not already possess sufficient information to open proceedings under Articles 26 and 27 Cartel Act in relation to the reported restraint of competition.

<sup>4</sup> Immunity from a sanction in accordance with paragraph 1 letter b shall only be granted if:

- a. no other undertaking already fulfils the requirements for complete immunity in accordance with paragraph 1 letter a, and
- b. the competition authority does not already possess sufficient evidence to prove the infringement of competition.