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

of 6 October 1995 (Status as of 1 July 2023)

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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; BBI 2002 2022 5506).

<sup>5</sup> BBI 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; BBI 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;
- c. agreements granting exclusive rights to purchase or sell certain goods or services;

<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).

- 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.

**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

<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).

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.

### Art. 10 Assessment of concentrations

<sup>1</sup> Concentrations that have to be notified shall be investigated by the Competition Commission if a preliminary assessment (Art. 32 para. 1) reveals that they create or strengthen a dominant position.

<sup>2</sup> The Competition Commission may prohibit a concentration or authorise it subject to conditions and obligations if the investigation indicates that the concentration:

<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).

- a. creates or strengthens a dominant position liable to eliminate effective competition; and
- b. does not improve the conditions of competition in another market such that the harmful effects of the dominant position can be outweighed.

<sup>3</sup> If a concentration of banks within the meaning of the Banking Act<sup>19</sup> is deemed necessary by the Swiss Financial Market Supervisory Authority (FINMA) for reasons related to creditor protection, the interests of creditors may be given priority. In these cases, FINMA takes the place of the Competition Commission, which it shall invite to submit an opinion.<sup>20</sup>

<sup>4</sup> In assessing the effects of a concentration on the effectiveness of competition, the Competition Commission also takes account of any market developments and the position of the undertakings in relation to international competition.

#### **Art. 11** Exceptional authorisation for compelling public reasons

A concentration of undertakings that has been prohibited in accordance with Article 10 may be authorised by the Federal Council at the request of the undertakings involved if, in exceptional cases, it is necessary for compelling public interest reasons.

### **Chapter 3 Civil Procedure**

#### **Art. 12** Rights arising from a hindrance of competition

<sup>1</sup> A person hindered by an unlawful restraint of competition from entering or competing in a market is entitled to request:

- a. the elimination of or desistance from the hindrance;
- b. damages and satisfaction in accordance with the Code of Obligations<sup>21</sup>;
- c. surrender of unlawfully earned profits in accordance with the provisions on agency without authority.

<sup>2</sup> Hindrances of competition include in particular the refusal to deal and discriminatory measures.

<sup>3</sup> The rights set out in paragraph 1 above are also accorded to persons who are hindered by a lawful restraint of competition more than is necessary for the implementation of that restraint.

#### **Art. 13** Enforcement of the right to elimination and desistance

In order to enforce the right to elimination and desistance, the courts may, at the plaintiff's request, rule that:

<sup>19</sup> SR 952.0

<sup>20</sup> Amended by Annex No 8 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207; BBL 2006 2829).

<sup>21</sup> SR 220

- a. any contracts are null and void in whole or in part;
- b. the person responsible for the hindrance of competition must conclude contracts with the person so hindered on terms that are in line with the market or the industry standard.

**Art. 14<sup>22</sup>****Art. 15**            Assessment of the legality of a restraint of competition

<sup>1</sup> If the legality of a restraint of competition is questioned in the course of civil proceedings, the case shall be referred to the Competition Commission for an expert report.

<sup>2</sup> If a restraint of competition that is as such unlawful is claimed to be necessary for compelling public interest reasons, the matter shall be decided by the Federal Council.

**Art. 16 and 17<sup>23</sup>****Chapter 4    Administrative Procedure****Section 1    Competition Authorities****Art. 18**            Competition Commission

<sup>1</sup> The Federal Council appoints the Competition Commission and designates the members of the presiding body.<sup>24</sup>

<sup>2</sup> The Competition Commission comprises between eleven and fifteen members, the majority of whom are independent experts.

<sup>2bis</sup> The members of the Competition Commission disclose their interests in a register of interests.<sup>25</sup>

<sup>3</sup> The Competition Commission takes the decisions and issues the rulings that are not expressly reserved to another authority. It submits recommendations (Art. 45, para. 2) and opinions (Art. 46 para. 2) to the political authorities and prepares expert reports (Art. 47 para. 1).

<sup>22</sup> Repealed by Annex 1 No II 16 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>23</sup> Repealed by Annex 1 No II 16 of the Civil Procedure Code of 19 Dec. 2008, with effect from 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>24</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>25</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).

**Art. 19** Organisation

<sup>1</sup> The Competition Commission is independent of the administrative authorities. It may organise itself into chambers, each with independent decision-making powers. It may, in individual cases, authorise a member of the presiding body to settle any urgent business or matters of minor importance.

<sup>2</sup> Administratively the Competition Commission is part of the Federal Department of Economic Affairs, Education and Research (EAER)<sup>26</sup>.

**Art. 20** Internal rules of procedure

<sup>1</sup> The Competition Commission issues internal rules of procedure, primarily setting out the details of its organisation, and in particular the responsibilities of its presiding body, each chamber and the Competition Commission as a whole.

<sup>2</sup> The internal rules of procedure are subject to approval by the Federal Council.

**Art. 21** Decisions

<sup>1</sup> The Competition Commission and the chambers are quorate if at least half the members, but in no case fewer than three members, are present.

<sup>2</sup> Decisions are taken by a simple majority of the members present; in the event of a tie, the president shall have the casting vote.

**Art. 22** Recusal of members of the Competition Commission

<sup>1</sup> Members of the Competition Commission must recuse themselves if there are grounds for recusal under Article 10 of the Administrative Procedure Act of 20 December 1968<sup>27</sup>.

<sup>2</sup> As a general rule, the fact that a member of the Commission represents an umbrella organisation does not constitute a personal interest or any other ground for recusal.

<sup>3</sup> If recusal is disputed, the Competition Commission or the relevant chamber shall decide in the absence of the member concerned.

**Art. 23** Duties of the Secretariat

<sup>1</sup> The Secretariat prepares the Competition Commission's business, conducts any investigations and, together with a member of the presiding body, issues any necessary procedural rulings. It proposes motions to the Competition Commission and implement the latter's decisions. It deals with the parties involved, third parties and any authorities directly.

<sup>2</sup> The Secretariat provides opinions (Art. 46 para. 1) and advises governmental offices and undertakings on matters relating to this Act.

<sup>26</sup> Term in accordance with No I 6 of the O of 15 June 2012 (Reorganisation of the Departments), in force since 1 Jan. 2013 (AS **2012** 3655). This amendment has been made throughout the text.

<sup>27</sup> SR **172.021**



**Art. 24** Secretariat's staff

<sup>1</sup> The Federal Council appoints the executive management of the Secretariat and the Competition Commission appoints the remainder of the Secretariat's staff.

<sup>2</sup> The terms and conditions of employment are governed by the legislation applicable to federal government employees.

**Art. 25** Official and business secrets

<sup>1</sup> The competition authorities are bound by the rules on official secrecy.

<sup>2</sup> They use information obtained in the performance of their duties only for the purpose for which it was obtained or for the purpose of the investigation.

<sup>3</sup> The competition authorities may provide the Price Supervisor with any information required for the accomplishment of the latter's duties.

<sup>4</sup> The competition authorities' publications may not reveal any business secrets.

**Section 2 Investigation of Restraints of Competition****Art. 26** Preliminary investigation

<sup>1</sup> The Secretariat may conduct preliminary investigations ex officio, at the request of undertakings involved or in response to a complaint from third parties.

<sup>2</sup> The Secretariat may propose measures to eliminate or prevent restraints of competition.

<sup>3</sup> During the preliminary investigation procedure, there is no right to inspect the files.

**Art. 27** Opening an investigation

<sup>1</sup> If there are indications of an unlawful restraint of competition, the Secretariat shall, in consultation with a member of the presiding body, open an investigation. It shall in any event open an investigation whenever asked to do so by the Competition Commission or by the EAER.<sup>28</sup>

<sup>2</sup> The Competition Commission determines the order of priority with which the investigations that have been opened are dealt with.

**Art. 28** Publication

<sup>1</sup> The Secretariat gives notice of the opening of an investigation by way of official publication.

<sup>2</sup> The notice states the purpose of and the parties to the investigation. It further contains an invitation to third parties to come forward within 30 days if they wish to participate in the investigation.

<sup>28</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).

<sup>3</sup> Failure to give notice does not prevent any investigative measures.

#### **Art. 29** Amicable settlement

<sup>1</sup> If the Secretariat considers that a restraint of competition is unlawful, it may propose an amicable settlement to the undertakings involved concerning ways to eliminate the restraint.

<sup>2</sup> The amicable settlement is formulated in writing and approved by the Competition Commission.

#### **Art. 30** Decision

<sup>1</sup> In response to a motion from the Secretariat, the Competition Commission decides on the appropriate measures or on the approval of the amicable settlement in a ruling.

<sup>2</sup> The parties involved in the investigation may comment on the Secretariat's proposed motion in writing. The Competition Commission may decide to conduct hearings and instruct the Secretariat to carry out additional investigative measures.

<sup>3</sup> If a significant change in the legal or factual circumstances has occurred, the Competition Commission may, in response to a motion proposed by the Secretariat or at the request of the parties involved, revoke or amend its decision.

#### **Art. 31** Exceptional authorisation

<sup>1</sup> If the Competition Commission has decided that a restraint of competition is unlawful, the parties involved may, within 30 days, submit to the EAER an application for exceptional authorisation from the Federal Council for compelling public interest reasons. If such an application is submitted, the period in which an appeal may be filed with the Federal Administrative Court begins to run only after notification of the parties of the Federal Council's decision.<sup>29</sup>

<sup>2</sup> Applications for exceptional authorisation by the Federal Council may also be submitted within 30 days of the entry into effect of a judgment of the Federal Administrative Court or the Federal Supreme Court.<sup>30</sup>

<sup>3</sup> The authorisation is of limited duration and may be subject to conditions and obligations.

<sup>4</sup> The Federal Council may on request extend an authorisation if the conditions for granting it continue to be met.

<sup>29</sup> Sentence amended by Annex No 27 of the Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS **2006** 2197 1069; BBL **2001** 4202).

<sup>30</sup> Amended by Annex No 27 of the Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS **2006** 2197 1069; BBL **2001** 4202).

### **Section 3      Review of Concentrations of Undertakings**

#### **Art. 32            Opening an investigation**

<sup>1</sup> On receiving a notification of a planned concentration of undertakings (Art. 9), the Competition Commission decides if there are grounds for conducting an investigation. The Competition Commission notifies the undertakings concerned of the opening of an investigation within one month of receiving the notification. If no such notice is given within that time period, the concentration may be implemented without reservation.

<sup>2</sup> The undertakings concerned must refrain from implementing the concentration for one month following the notification unless the Competition Commission has at their request authorised them to do so for good cause.

#### **Art. 33            Investigation procedure**

<sup>1</sup> If the Competition Commission decides to conduct an investigation, the Secretariat publishes the principal terms of the notification of the concentration and states the time frame within which third parties may comment on the notified concentration.

<sup>2</sup> At the outset of the investigation the Competition Commission decides whether the concentration may exceptionally be implemented provisionally or whether it should remain suspended.

<sup>3</sup> The Competition Commission shall complete its investigation within four months unless prevented from doing so for reasons attributable to the undertakings concerned.

#### **Art. 34            Legal effect**

The legal effect of a concentration that has to be notified is suspended, subject to the expiry of the deadline set out in Article 32 paragraph 1 and any provisional authorisation to implement the concentration. If the Competition Commission does not take a decision before the expiry of the deadline set out in Article 33 paragraph 3, the concentration is deemed authorised, unless the Competition Commission asserts by way of ruling that it has been prevented from conducting the investigation for reasons attributable to the undertakings concerned.

#### **Art. 35            Failure to comply with the notification requirement**

If a concentration that should have been notified has been implemented without due notification, the procedure set out in Articles 32 to 38 is initiated ex officio. In this case, the time period set out in Article 32 paragraph 1 begins to run as soon as the authority possesses all the information that would have to be provided in a notification of a concentration.

#### **Art. 36            Exceptional authorisation procedure**

<sup>1</sup> If the Competition Commission has prohibited a concentration, the undertakings concerned may, within 30 days, submit to the EAER an application for exceptional

authorisation by the Federal Council for compelling public interest reasons. If such an application is submitted, the period in which an appeal may be filed with the Federal Administrative Court begins to run only after the parties have been notified of the Federal Council's decision.<sup>31</sup>

<sup>2</sup> Applications for exceptional authorisation by the Federal Council may also be submitted within 30 days of the entry into effect of a judgment of the Federal Administrative Court or the Federal Supreme Court.<sup>32</sup>

<sup>3</sup> If possible, the Federal Council takes its decision within four months of receipt of the application.

#### **Art. 37** Restoration of effective competition

<sup>1</sup> If a prohibited concentration has been implemented or if a concentration is prohibited after its implementation and exceptional authorisation for the concentration has not been requested or granted, the undertakings concerned are required to take the necessary steps to restore effective competition.

<sup>2</sup> The Competition Commission may require the undertakings concerned to make binding proposals as to how effective competition may be restored. It shall set them a deadline within which to do so.

<sup>3</sup> If the Competition Commission accepts the proposed measures, it may decide how and by when the undertakings concerned must implement them.

<sup>4</sup> If the undertakings concerned do not make any proposals despite being required to do so by the Competition Commission, or if the proposals are not accepted by the Competition Commission, the Competition Commission may order the following measures by way of a ruling:

- a. the separation of any combined undertakings or assets;
- b. the cessation of the controlling influence;
- c. other measures to restore effective competition.

#### **Art. 38** Revocation and revision

<sup>1</sup> The Competition Commission may revoke an authorisation or decide to investigate a concentration despite the expiry of the deadline set out in Article 32 paragraph 1 if:

- a. the undertakings concerned have provided inaccurate information;
- b. the authorisation was obtained fraudulently; or
- c. the undertakings concerned are in serious breach of a condition attached to the authorisation.

<sup>2</sup> The Federal Council may revoke an exceptional authorisation on the same grounds.

<sup>31</sup> Sentence amended by Annex No 27 of the Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS **2006** 2197 1069; BBL **2001** 4202).

<sup>32</sup> Amended by Annex No 27 of the Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS **2006** 2197 1069; BBL **2001** 4202).

## Section 4 Procedure and Rights of Appeal

### Art. 39 Principle

The Administrative Procedure Act of 20 December 1968<sup>33</sup> applies to all procedures under this Act unless this Act stipulates otherwise.

### Art. 40 Duty to provide information

Parties to agreements, undertakings with market power, undertakings concerned in concentrations and affected third parties shall provide the competition authorities with all the information required for their investigations and produce the necessary documents. The right to refuse to provide information is governed by Articles 16 and 17 of the Administrative Procedure Act of 20 December 1968<sup>34,35</sup>

### Art. 41 Administrative assistance

Federal and cantonal government offices are required to co-operate with the competition authorities in their enquiries and to make any necessary documents available to them.

### Art. 42<sup>36</sup> Investigative measures

<sup>1</sup> The competition authorities may hear third parties as witnesses and require the parties to an investigation to give evidence. Article 64 of the Federal Act of 4 December 1947<sup>37</sup> on Federal Civil Procedure applies by analogy.

<sup>2</sup> The competition authorities may order searches and seize any evidence. Articles 45–50 of the Federal Act of 22 March 1974<sup>38</sup> on Administrative Criminal Law apply by analogy to these coercive measures. Searches and seizures are ordered by a member of the presiding body in response to a motion from the Secretariat.

### Art. 42a<sup>39</sup> Investigations in proceedings under the Swiss/EC Air Transport Agreement

<sup>1</sup> The Competition Commission is the Swiss authority responsible for co-operation with the institutions of the European Community under Article 11 of the Agreement

<sup>33</sup> SR 172.021

<sup>34</sup> SR 172.021

<sup>35</sup> Second sentence amended by No I 3 of the FA of 28 Sept. 2012 on the Amendment of Procedural Provisions on Lawyers' Professional Secrecy, in force since 1 May 2013 (AS 2013 847; BBl 2011 8181).

<sup>36</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>37</sup> SR 273

<sup>38</sup> SR 313.0

<sup>39</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).

between the European Community and the Swiss Confederation of 21 June 1999<sup>40</sup> on Air Transport.

<sup>2</sup> If an undertaking opposes a review in proceedings under Article 11 of the Agreement, investigative measures pursuant to Article 42 may be undertaken at the request of the European Commission. Article 44 applies.

**Art. 42<sup>b41</sup>** Disclosure of data to foreign competition authorities

<sup>1</sup> Data may only be disclosed to a foreign competition authority based on an act, an international agreement or with the consent of the undertaking concerned.

<sup>2</sup> Without the consent of the undertaking concerned, the competition authorities may disclose confidential data, in particular business secrets, to a foreign competition authority on the basis of an international agreement only if:

- a. the behaviour under investigation in the recipient state is also unlawful under Swiss law;
- b. both competition authorities are investigating the same or related behaviour or transactions;
- c. foreign competition authority uses the data only for the purpose of applying provisions of competition law or as evidence in relation to the subject matter of the investigation for which the competition authority requested the information;
- d. the data is not used in criminal or civil proceedings;
- e. the foreign procedural law safeguards party rights and official secrecy; and
- f. the confidential data is not disclosed to the foreign competition authority in the context of an amicable settlement (Art. 29) or when assisting in the discovery and elimination of the restraint of competition (Art. 49a para. 2).

<sup>3</sup> The competition authorities shall notify the undertaking concerned and invite it to state its views before transmitting the data to the foreign competition authority.

**Art. 43** Participation of third parties in the investigation

<sup>1</sup> The following may come forward in order to take part in an investigation concerning a restraint of competition:

- a. persons who as a result of a restraint of competition are hindered from starting or continuing to compete;
- b. professional or trade associations whose bylaws authorise them to safeguard their members' economic interests, provided members of the association or of one of its sections may also take part in the investigation;

<sup>40</sup> SR 0.748.127.192.68

<sup>41</sup> Inserted by the Annex to the FD of 20 June 2014 on the Approval of the Agreement between Switzerland and the EU concerning Cooperation on the Application and Implementation of their Competition Laws, in force since 1 Dec. 2014 (AS 2014 3711; BBl 2013 3959).

- c. organisations of national or regional importance whose work is dedicated to consumer protection under the terms of their bylaws.

<sup>2</sup> The Secretariat may require in a procedure that groups of more than five participants who have identical interests appoint a common representative if otherwise the investigation would be unduly complicated. It may in any event limit participation to a hearing only; the rights of parties under the Administrative Procedure Act of 20 December 1968<sup>42</sup> are reserved.

<sup>3</sup> Paragraphs 1 and 2 above apply by analogy to the procedure for granting an exceptional authorisation for an unlawful restraint of competition by the Federal Council (Art. 8).

<sup>4</sup> In proceedings for the review of concentrations of undertakings, only the undertakings concerned have the rights of parties.

#### **Art. 44<sup>43</sup>**

### **Section 5      Other Duties and Powers of the Competition Authorities**

#### **Art. 45            Recommendations to authorities**

<sup>1</sup> The Competition Commission shall constantly monitor the status of competition.

<sup>2</sup> The Competition Commission may submit to the authorities recommendations on how to promote effective competition, especially with regard to the creation and implementation of regulations relating to commercial matters.

#### **Art. 46            Opinions**

<sup>1</sup> Federal bills relating to commercial matters that are likely to influence competition shall be submitted to the Secretariat. It determines whether such legislation may cause distortions or undue restraints of competition.

<sup>2</sup> The Competition Commission shall in a consultation procedure provide its opinion on federal bills that restrain or otherwise influence competition. It may submit its opinion on cantonal bills.

#### **Art. 47            Expert reports**

<sup>1</sup> The Competition Commission shall provide other authorities with expert reports on competition law issues of general importance. It may instruct the Secretariat to carry out this task in less important matters.

<sup>2</sup> ...<sup>44</sup>

<sup>42</sup> SR **172.021**

<sup>43</sup> Repealed by Annex No 27 of the Administrative Court Act of 17 June 2005, with effect from 1 Jan. 2007 (AS **2006** 2197 1069; BBl **2001** 4202).

<sup>44</sup> Repealed by No I of the FA of 20 June 2003, with effect from 1 April 2004 (AS **2004** 1385 1390; BBl **2002** 2022 5506).

**Art. 48** Publication of decisions and judgments

<sup>1</sup> The competition authorities may publish their decisions.

<sup>2</sup> The courts shall, without being asked to do so, furnish the Secretariat with complete copies of any judgments they may render in the application of this Act. The Secretariat shall collect these judgments and may publish them periodically.

**Art. 49** Duty to provide information

<sup>1</sup> The Secretariat and the Competition Commission shall inform the public of their activities.

<sup>2</sup> The Competition Commission shall submit an annual report to the Federal Council.

**Section 6** Administrative Sanctions<sup>45</sup>**Art. 49a<sup>46</sup>** Sanction for unlawful restraints of competition

<sup>1</sup> Any undertaking that participates in an unlawful agreement pursuant to Article 5 paragraphs 3 and 4 or that is dominant and behaves unlawfully pursuant to Article 7 shall be charged up to 10 per cent of the turnover that it achieved in Switzerland in the preceding three financial years.<sup>47</sup> Article 9 paragraph 3 applies by analogy. The amount is dependent on the duration and severity of the unlawful behaviour. Due account shall be taken of the likely profit that resulted from the unlawful behaviour.

<sup>2</sup> If the undertaking assists in the discovery and elimination of the restraint of competition, a charge may be waived in whole or in part.

<sup>3</sup> The charge is waived if:

- a. the undertaking submits notification of the restraint of competition before it takes effect. If the undertaking is informed of the opening of a procedure under Articles 26–30 within five months of submitting its notification but continues to implement the restraint of competition, the charge is not waived;
- b. the restraint of competition has not been exercised for more than five years by the time an investigation is opened;
- c. the Federal Council has authorised a restraint of competition under Article 8.

<sup>45</sup> Originally before Art. 50.

<sup>46</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). See also the Final Provisions at the end of this Act.

<sup>47</sup> Amended by No I of the FA of 19 March 2021, in force since 1 Jan. 2022 (AS **2021** 576; BBl **2019** 4877).



**Art. 50<sup>48</sup>** Breaches of amicable settlements and administrative decisions

Any undertaking that to its advantage breaches an amicable settlement, a final and non-appealable ruling of the competition authorities, or a decision of an appellate body shall be charged up to 10 per cent of the turnover it achieved in Switzerland in the preceding three financial years. Article 9 paragraph 3 applies by analogy. In assessing the amount, due account shall be taken of the likely profit that resulted from the unlawful behaviour.

**Art. 51** Breaches in the context of concentrations of undertakings

<sup>1</sup> Any undertaking that implements a concentration that should have been notified without filing a notification, fails to observe the suspension obligation, fails to comply with a condition attached to the authorisation, implements a prohibited concentration, or fails to implement a measure intended to restore effective competition shall be charged up to one million Swiss francs.

<sup>2</sup> In case of repeated failure to comply with a condition attached to the authorisation, the undertaking shall be charged up to 10 per cent of the total turnover in Switzerland achieved by all the undertakings concerned. Article 9 paragraph 3 applies by analogy.

**Art. 52** Other breaches

Any undertaking that does not, or does not fully fulfil its obligation to provide information or produce documents shall be charged up to 100 000 Swiss francs.

**Art. 53** Procedure<sup>49</sup>

<sup>1</sup> Breaches are investigated by the Secretariat in consultation with a member of the presiding body. They are judged by the Competition Commission.

<sup>2</sup> ...<sup>50</sup>

**Section 7<sup>51</sup>** Fees**Art. 53a**

<sup>1</sup> The competition authorities charge fees for:

- a. rulings relating to the investigation of restraints of competition pursuant to Articles 26–31;

<sup>48</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>49</sup> Amended by Annex No 27 of the Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS **2006** 2197 1069; BBl **2001** 4202).

<sup>50</sup> Repealed by Annex No 27 of the Administrative Court Act of 17 June 2005, with effect from 1 Jan. 2007 (AS **2006** 2197 1069; BBl **2001** 4202).

<sup>51</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).

- b. reviews of concentrations of undertakings pursuant to Articles 32–38;
- c. expert reports and other services.

<sup>2</sup> The fee is determined by the time spent on the work.

<sup>3</sup> The Federal Council determines the fee rates and regulates the imposition of fees. It may provide that no fees be charged for certain procedures or services, in particular where procedures are discontinued.

## Chapter 5 Criminal Sanctions

### Art. 54 Violations of amicable settlements and administrative orders

Any person who wilfully violates an amicable settlement, a final and non-appealable ruling of the competition authorities or a decision of an appellate body is liable to a fine not exceeding 100,000 Swiss francs.

### Art. 55 Other violations

Any person who wilfully does not, or does not fully comply with a ruling of the competition authorities concerning the obligation to provide information (Art. 40), who implements a concentration that should have been notified without filing a notification, or who violates rulings relating to concentrations of undertakings is liable to a fine not exceeding 20,000 Swiss francs.

### Art. 56<sup>52</sup> Limitation period

<sup>1</sup> The power to prosecute violations of amicable settlements and administrative orders (Art. 54) is subject to a limitation period of seven years.

<sup>2</sup> The power to prosecute other offences (Art. 55) is subject to a limitation period of four years.

### Art. 57 Procedure and legal remedies

<sup>1</sup> The prosecution and adjudication of criminal offences is governed by the Federal Act of 22 March 1974<sup>53</sup> on Administrative Criminal Law.

<sup>2</sup> The prosecuting authority is the Secretariat in consultation with a member of the presiding body. The decision-making authority is the Competition Commission.

<sup>52</sup> Amended by No 13 of the FA of 17 Dec. 2021 on the Harmonisation of Secondary Criminal Law with the Amended Law of Criminal Sanctions, in force since 1 July 2023 (AS 2023 254; BBl 2018 2827).

<sup>53</sup> SR 313.0

## Chapter 6 Implementation of International Agreements

### Art. 58 Ascertainment of the facts

<sup>1</sup> If a party to an international agreement asserts that a restraint of competition is incompatible with that agreement, the EAER may instruct the Secretariat to conduct a preliminary investigation.

<sup>2</sup> In response to a motion proposed by the Secretariat, the EAER decides what, if any, further action to take; before that, it shall hear the parties involved.

### Art. 59 Elimination of incompatibilities

<sup>1</sup> If in implementing an international agreement, it is found that a restraint of competition is incompatible with that agreement, the EAER may in consultation with the Federal Department of Foreign Affairs propose an amicable settlement to the parties involved so as to eliminate the incompatibility.

<sup>2</sup> If an amicable settlement cannot be reached in time and one party to the agreement threatens to take protective measures against Switzerland, the EAER may in consultation with the Federal Department of Foreign Affairs determine the measures necessary to eliminate the restraint of competition in a ruling.

## Chapter 6a<sup>54</sup> Evaluation

### Art. 59a

<sup>1</sup> The Federal Council shall arrange for the evaluation of the effectiveness of the measures and the application of this Act.

<sup>2</sup> After conclusion of the evaluation and at the latest five years after this provision has come into force, the Federal Council shall report to Parliament and submit proposals for further action.

## Chapter 7 Final Provisions

### Art. 60 Implementation

The Federal Council issues the implementing provisions.

### Art. 61 Repeal of current legislation

The Cartel Act of 20 December 1985<sup>55</sup> is repealed.

<sup>54</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>55</sup> [AS **1986** 874, **1992** 288 Annex No 12]

**Art. 62** Transitional provisions

<sup>1</sup> Ongoing procedures before the Cartel Commission relating to agreements affecting competition shall be suspended on the commencement of this Act; if necessary, they shall be continued in accordance with the new law after the expiry of a period of six months.

<sup>2</sup> New procedures before the Competition Commission relating to agreements affecting competition may at the earliest be started six months after the commencement of this Act, unless the potential addressees of a ruling have asked for an investigation to be conducted sooner. Preliminary investigations may be conducted at any time.

<sup>3</sup> Final and non-appealable rulings and recommendations accepted in accordance with the Cartel Act of 20 December 1985<sup>56</sup>, including matters relating to sanctions, shall continue to be governed by the previous law.

**Art. 63** Referendum and commencement

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council determines the commencement date.

**Final provision to the amendment of 20 June 2003<sup>57</sup>**

If an existing restraint of competition is reported or terminated within one year of Article 49a coming into force, any charge in accordance with that provision shall be waived.

Commencement date:

Articles 18–25 on 1 February 1996<sup>58</sup>

all other provisions on 1 July 1996<sup>59</sup>

<sup>56</sup> [AS 1986 874, 1992 288 Annex No 12]

<sup>57</sup> AS 2004 1385; BBl 2002 2022 5506

<sup>58</sup> FCD of 24 Jan. 1996.

<sup>59</sup> O of 17 June 1996 (AS 1996 1805).

## **Amendment of Federal Acts**

....<sup>60</sup>

<sup>60</sup> The amendments may be consulted under AS **1996** 546.

