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Law Department

Competition Law

Partial Revision of the Cartel Act

Current Status & Outlook	On November 24, 2021, the Federal Council launched a consultation on the partial revision of the Cartel Act (KG). According to the Federal Council the modernization of Swiss merger control is a key aspect of the proposed revision.This would involve changing from the current qualified market dominance test to the Significant Impediment to Effective Competition test (SIEC test), whereby bringing the standard of review by the Competition Commission (WEKO) in alignment with international practice. The proposed revision also aims to improve Civil Antitrust Law and the opposition procedure. Moreover, the Federal Council has incorporated two demands from motion 16.4094 Fournier, "Improvement of the situation of SMEs in competition proceedings," into the partial revision. These demands relate to administrative proceedings under Antitrust Law, with the introduction of time limits to accelerate the proceedings and the introduction of compensation for parties in the first instance proceedings before the Competition Commission. Lastly, the Federal Council will make a proposal for the implementation of the motion Français adopted in June 2021: "The revision of the Cartel Act must take into account both qualitative and quantitative criteria in order to assess the inadmissibility of a competition agreement" (link media release and consultation documents). SwissHoldings participated in the consultation (link consultation response) and positions itself as follows: - The bill requires significant revisions before adoption as it lacks two crucial elements: institutional reform and consideration of compliance efforts in the sanction assessment. To address this, a working group with various stakeholders under the Federal Government's leadership may be established. SwissHoldings believes it is central to represent the interests of large companies, particularly through its inclusion in the working group. - Regarding institutional reform, it is necessary to pursue the goals of the institutional reform considered in 2012, which aim to improve the rule of law by separating investigation and decision-making. - To include compliance efforts in the assessment of sanctions, an addition to Art. 49a para. 5 VE-KG may be included in the Cartel Act, structured similarly to the regulation in Germany. - In SwissHoldings' view, the introduction of the proposed elements in the preliminary draft, except for the implementation of Motion

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	Français, has a subordinate role compared to the inclusion of institutional reform and the consideration of compliance efforts. On March 17, 2023, the Federal Council instructed the Federal Department of Economic Affairs, Education and Research (EAER) to submit a dispatch on the partial revision of the Cartel Act (KG) by mid-2023. Additionally, the EAER has been tasked with submitting a concrete proposal for an institutional reform to the Federal Council in the first quarter of 2024, running parallel to the revision work (link media release and documents). SwissHoldings is pleased to note that institutional reform, one of its key concerns, will be incorporated into the revision process. The organization intends to closely monitor the ongoing revision work and will actively advocate for the interests of its members.

Foreign Subsidies Regulation (FSR).

Current Status & Outlook	On January 12, 2023, the new EU Foreign Subsidies Regulation (FSR) entered into force and will have a retroactive effect from July 12, 2023. From early February to early March, the European Commission published its draft implementing regulation and conducted a public consultation. The final implementing regulation is expected to be adopted in the summer of 2023. The primary objective for the regulation is to prevent distortions in the EU market resulting from public subsidies granted by third countries. The regulation aims to transfer the existing state aid control, which applies solely to subsidies from EU member states, to subsidies from non-EU countries. Whereby empowering the European Commission as the sole enforcer with investigative tools such as new reporting obligations and investigative powers. However, the current formulation of the regulation is highly problematic for companies. As currently constituted, it is practically impossible to implement. In particular, it should be noted that the information that may fall within the scope of the regulation goes beyond the information required for any other regulatory investigation. Therefore, SwissHoldings, in collaboration with other associations and organizations at the European level, is striving to ensure that a better and more practical solution is swiftly found.

Corporate and Capital Markets Law

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Regulation of Loyalty Shares

Current Status & Outlook	During the revision of the Stock Corporation Law, the implementation of loyalty shares was discussed, but ultimately, it was not included in the revised law. Instead, the Council of States presented a postulate that instructed the Federal Council to prepare a report on the proposed regulation, including its possible advantages, disadvantages, and effects. The report was also requested to present a comparative legal analysis of the possible implementation variants and to determine if there is a need for action in Swiss Stock Corporation Law. (cf. in detail link postulate). In response to the postulate, the Federal Council published its report on February 15, 2023, recommending against the introduction of loyalty shares (link media release and documents). The Federal Council based its opinion on the reports of two experts, whom it commissioned to prepare a legal clarification and a regulatory impact assessment to fulfill the postulate. The experts concluded that the introduction of loyalty shares is not recommended, or not without reservation. During one of the expert clarifications, SwissHoldings was asked about the possible introduction of loyalty shares and responded that there is hardly any need for it on the part of companies, and therefore no action is necessary. In light of this, we support the Federal Council's position to maintain the status quo and refrain from introducing the possibility to create loyalty shares.

Regulation of Beneficial Owners of Legal Entities

Current Status & Outlook	In the future, as has been the case in the past, regulatory efforts related to the recommendations of the "Global Forum on Transparency and Exchange of Information for Tax Purposes" and the "Financial Action Task Force on Money Laundering (FATF)" are likely to emerge in the field of company law. Switzerland regulates this area through its national laws to comply with these recommendations, and adjusts its legislation accordingly if the international entities mentioned significantly revise their recommendations. SwissHoldings is primarily concerned with ensuring that Switzerland is not blacklisted by these entities for not adequately implementing their recommendations. Additionally, unnecessary limitations on the freedom of action and bureaucracy for listed companies must be avoided. Currently, the following two developments should be noted in particular: - Postulate 19.3634 and status report Global Forum (link Postulate)*:* The postulate requires the Federal Council to submit a status report by the end of 2021 on the implementation of Bill 18.082, which is focused on implementing the recommendations of the "Global Forum on transparency and exchange of information for tax purposes." If

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	necessary, the Federal Council must provide proposals for amendments. The Federal Council has now published the status report on December 3, 2021 (link status report). The report notes that international developments at the FATF, EU, and OECD levels indicate a trend towards further tightening of corporate transparency obligations. In light of this, Switzerland will analyze its national legislative bases and their effectiveness to implement appropriate options in line with the objective of the Federal Council's financial market policy in the area of integrity and international positioning. - Revision of FATF Recommendation 24 on transparency and beneficial owners of legal entities: This mainly concerns the topic of beneficial owners and the introduction of a central register or an alternative mechanism for beneficial owners, as well as possible tightening of bearer shares. The revision of Recommendation 24 at the international level has been ongoing for some time. The FATF officially adopted the revised Recommendation on March 4, 2022 and held two public consultations on it in the summer and winter of 2021, in each of which SwissHoldings participated (for our position, see detailed link Opinion). It also updated its guidance in March 2023, which is intended to help countries implement the revised Recommendation 24 (link Guidance). The update was preceded by many months of intensive consultations with the private sector and external stakeholders, in which SwissHoldings was always involved. - Following the adoption of Recommendation 24 at the international level, work is now underway at the national level to implement the recommendations. In the fall of 2022, the Federal Council instructed the Federal Department of Finance (FDF), in collaboration with the Federal Department of Justice and Police (FDJP), to draft a bill by the end of June 2023 to facilitate the identification of beneficial owners of legal entities (link media release). The bill will introduce a central register for the identification of beneficial owners and impose new obligations for risk-based updates on information regarding effective beneficial owners. The register will be accessible to relevant authorities, but not to the public. According to the media release, the objective is to achieve the most efficient and effective solution possible. SwissHoldings is involved in the legislative process from an early stage to achieve the most efficient and administratively simple implementation possible, particularly for listed companies.

Financial Market Infrastructure Act - Recognition of Foreign Trading Venues for Trading in Equity Securities of Companies Domiciled in Switzerland

Current Status & Outlook	On November 30, 2018, the Federal Council took action under Article 184 of the Federal Constitution to issue a safeguard measure to protect the Swiss stock exchange infrastructure. This was in response to the European Commission's failure to extend stock exchange equivalence for Switzerland, as required by EU law. The safeguard measure ensures that EU securities firms can continue to trade Swiss equities on Swiss trading venues, even

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	without EU stock exchange equivalence. To prevent the protective measure from expiring without a replacement, the Federal Council submitted the transfer of the protective measure to the Financial Market Infrastructure Act (FMIA) to parliament for approval in the summer of 2022. SwissHoldings previously participated in the consultation (link Opinion) and essentially stated: – Welcome extension for the exchange protection measure and transfer to ordinary law: SwissHoldings welcomed the extension of the exchange protection measure and its transfer to ordinary law. While SwissHoldings preferred Plan A, stock exchange equivalence, and believed that Switzerland should actively seek to obtain recognition of equivalence. In particular, it is important to note that the disadvantages of not obtaining recognition of equivalence could increase in the near future. However, as long as equivalence is not possible, our members are clearly in favor of extending Plan B, the exchange protection measure. – Sensible transfer to ordinary law without changing the content of the measure: As a tried and tested instrument and in order to maintain the balance of the bill, we believe that the measure should be transferred to ordinary law as unchanged as possible. Accordingly, we welcome the fact that the bill essentially corresponds to the previous ordinance. – Time limit to be supported: Furthermore, we are also in favor of the time limit of five years provided for in the final provisions. We welcome the fact that this takes into account the exceptional and temporary nature of the recognition obligation. In the summer of 2022, the Federal Council then adopted the dispatch on the transfer of the measure to protect the Swiss stock exchange infrastructure into the Financial Infrastructure Act (FinfraG) (link media release and documents). The bill then went to parliament. After the Council of States had already unanimously approved the transfer of the exchange protection measure to ordinary law in the winter session 2022, the National Council now also unanimously followed this decision in the spring session 2023. In the final votes, the bill was also unanimously approved by both Councils. In accordance with the above, SwissHoldings welcomes this decision.

Revision of the Financial Market Infrastructure Act

Current Status & Outlook	The Financial Market Infrastructure Act FinfraG regulates the licensing and obligations of financial infrastructures. In addition to the conduct obligations of financial market participants in securities and derivatives trading. Even before it came into effect in January 2016, the Federal Council announced

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	that the Federal Department of Finance (FDF) was to subject the FinfraG to a general review and draw up a report. Based on this report, the Federal Council instructed the FDF at the end of September 2022 to prepare a consultation draft on the revision of the FMIA by mid-2024 (link media release and documents). In its report, the FDF concludes that the FinfraG has largely proven its worth since it was ushered into effect. However, transparency and legal certainty are to be further strengthened in certain regulatory areas. Furthermore, the Federal Council has decided to implement the reporting obligation of small non-financial counterparties regarding derivatives transactions as of the 1st of January 2028. SwissHoldings positions itself as follows: The proposed adjustments to derivatives regulation are fundamentally an improvement and therefore are to be welcomed. However, we clearly reject the idea that ad hoc notifications of shareholdings should be transferred from self-regulation to state regulation under the supervision of FINMA. Self-regulation has proven its worth, it should not be abandoned without good cause and should instead be retained as a locational advantage. With this in mind, SwissHoldings is involved in the legislative process at an early stage and will advocate for the interests of its members.

Future Proxy Advisor Regulation Legislative Proposal

Current Status & Outlook	In the course of the deliberations on the revision of the Stock Corporation Act (and also already in the course of the revision of the SIX Directive on Information Relating to Corporate Governance), parliamentarians repeatedly discussed a provision that wanted to regulate proxy advisors. The regulation under discussion wanted to regulate proxy advisors via transparency obligations for issuers. SwissHoldings opposed the regulation under discussion at that time because it would have meant that one wanted to regulate (definitely existing problems in connection with proxy advisors) via a selective regulation "on the hump of the issuers/companies". In the end, the provision was not included in the revision of the Stock Corporation Act, which we very much welcome. In response, a motion 19.4122 (cf. link) was adopted with the following wording: "The Federal Council is instructed to submit an amendment to the law (e.g. the Financial Market Infrastructure Act) in order to disclose and avoid conflicts of interest with proxy advisors at listed stock corporations. In doing so, it takes into account international developments." It contains no

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	reference, or at least no explicit reference, to regulating via duties of issuers. We welcome this missing reference. The corresponding revision of the law is likely to come soon. SwissHoldings is monitoring the international developments and will closely accompany the revision work in Switzerland.

Civil Procedure Law

Revision of the Code of Civil Procedure (Bill 20.026): Professional Secrecy Protection for In-house Counsel

Current Status & Outlook	In 2018, a consultation was carried out on the amendment of the Code of Civil Procedure. The consultation focused on implementing the parliamentary initiative Markwalder (16.409) for a right to refuse to testify and disclose for employees regarding in-house legal services and proposals for the introduction of instruments for collective legal protection. SwissHoldings participated in the consultation process and spoke in favor of professional secrecy protection for in-house counsel and against the proposed instruments for collective legal protection in the bill (link consultation response). Subsequently, the Federal Council adopted a dispatch containing the protection of professional secrecy for in-house counsel (Bill 20.026) and, in parallel, another dispatch dealing with the instruments of collective legal protection. Reference is made here to Bill 20.026, which contains the professional secrecy protection for in-house counsel. For the separate bill on collective legal protection, please refer to the comments below in the business section. The bill containing professional secrecy protection for in-house counsel has been debated by the two chambers of parliament and a provision on professional secrecy protection for in-house counsel has been adopted. Initially, the Council of States intended to narrow down the Federal Council's convincing version of professional secrecy protection for in-house counsel to a significant extent and introduce a problematic requirement of reciprocity. However, the National Council subsequently reworded the provision more broadly and eliminated the problematic requirement of reciprocity. Ultimately, both councils adopted a provision that does not contain the problematic requirement of reciprocity. SwissHoldings welcomes the decision to introduce a provision on the protection of professional secrecy for in-house counsel in civil procedure law as a crucial step in the right direction. Swiss law grants lawyers and their assistants protection of secrecy for profession-specific activities in civil

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	proceedings. It is evident that this protection should also extend to in-house lawyers with a license to practice law and their subordinates if they perform the same activities. The lack of secrecy protection makes Swiss companies vulnerable to international attack, particularly in proceedings in the United States. In so-called discovery proceedings, Swiss companies can be compelled to disclose the correspondence of their in-house lawyers or corporate attorneys employed in Switzerland. Meanwhile, the correspondence of American companies is protected. Finally, it should also be noted that many other countries provide professional secrecy protection for in-house counsel. Therefore, it was time for parliament to take this crucial step in the right direction towards professional secrecy protection for in-house counsel.