



Law Department

October 2023

Revision of the Cartel Act

Current Status & Outlook

Antitrust Law Revision

On November 24, 2021, the Federal Council opened a consultation on the partial revision of the Cartel Act (KG). The corresponding preliminary draft proposed various changes regarding merger control. Specifically, it involved a change from the current Qualified Market Dominance test to the Significant Impediment to Effective Competition test (SIEC test). Additionally, regulations in the area of Civil Antitrust Law were added, and the preliminary draft included changes in the area of opposition proceedings. The Federal Council also incorporated two demands from the current Qualified Market Dominance test to the Significant Impediment to Effective Competition test (SIEC test). One of these demands was Motion 16.4094 Fournier, which aimed to improve the situation of SMEs in competition proceedings by introducing deadlines and party compensation for the first instance proceedings before the Competition Commission. Finally, the preliminary draft included a proposal for implementing the Motion Français, adopted in June 2021: “the revision of the Cartel Act must consider both qualitative and quantitative criteria to assess the inadmissibility of a competition agreement.” ([link media release and consultation documents](#)).

SwissHoldings participated in the consultation ([link consultation response](#)) and positioned itself as follows:

- The bill needs to be substantially revised because important elements, namely the inclusion of an institutional reform and the consideration of compliance efforts in the assessment of sanctions were missing. These must find their way into the revision work.
- Regarding institutional reform, the goals of the institutional reform considered in 2012 are to be pursued. This relates in particular to a necessary improvement in the rule of law through the separation of investigation and decision-making.
- The consideration of compliance efforts in the assessment of sanctions could, for example, be included in the Cartel Act by way of an addition to Art. 49a para. 5 VE-KG and be structured similarly to the regulation in Germany.
- The introduction of the elements proposed in the preliminary draft are proposed in the preliminary draft - with the exception of the important implementation of the Motion Français - which have, in our view, a subordinate role compared to the inclusion of institutional reform and the consideration of compliance efforts.

A Proposal for Institutional Reform and a Bill for a Minor Revision of the Antitrust Law:

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, which was completed on May 24, 2023 (see [link to media release incl. dispatch and draft](#)). Furthermore, the Federal Council has instructed the EAER to submit a concrete proposal for institutional reform to the Federal Council in parallel





in the first quarter of 2024 ([link to media release and documents](#)). A group of experts has been set up for this purpose.

SwissHoldings very much welcomes the fact that institutional reform, as one of our central concerns, will now become part of the revision work.

SwissHoldings was approached by the group of experts during the summer months for a written statement on the proposed revision and was subsequently consulted by the group.

At the same time, the WAK-S decided in August to accept the bill for the partial revision: It will begin its deliberations in mid-October. SwissHoldings has sent its concerns to the members of the WAK-S in the run-up to the debate for the bill to be entered into force, and will now once again intensify its efforts to introduce these concerns before the actual debate.

