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Capital Market Law

Draft Register of Beneficial Owners



Executive Summary

The draft for a Federal Law on the Transparency of Legal Entities seeks to enhance the integrity of Switzerland as a financial and business hub. The proposed measures include the establishment of a Federal Register of Beneficial Owners and other specific interventions to enhance the effectiveness of combating money laundering and white-collar crime. These measures are designed to align with the international standards set forth by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes.



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The proposed [legislation](#) has two primary objectives. Firstly, it aims to enhance the transparency of legal entities to facilitate more efficient identification of Beneficial Owners by the authorities. This involves the introduction of a Federal Register of Beneficial Owners and the imposition of Anti-Money Laundering Act obligations, including corresponding due diligence requirements, on specific activities within advisory business. Secondly, the bill encompasses amendments to existing laws that aim to bolster the effectiveness of the Anti-Money Laundering efforts. This includes the revision of supervisory regulations and the implementation of additional measures in specific sectors such as real estate and precious metals trading.



Stance

On May 22, 2024, the Federal Council adopted the dispatch on strengthening the fight against money laundering (see press [release](#)). According to the press release, the bill aims in particular to introduce a central register for the Identification of Beneficial Owners and due diligence obligations for particularly high-risk activities in the legal professions.



Outlook

The Legal Affairs Committee of the Council of States (RK-S) is expected to discuss the matter at the end of August.



Position

SwissHoldings is generally in favour of approving the transaction. We see a significant need for adjustment in the following points:

- Full exemptions for Listed Companies and their Subsidiaries: The Association is committed to ensuring that listed companies and their subsidiaries receive full exemptions in relation to specific regulations. These companies already have effective reporting and disclosure obligations for Shareholders and Beneficial Owners, which begin to apply when a threshold of 3

percent of the share capital or voting rights is reached. In addition, the accounting standards and reporting obligations of the SIX Swiss Exchange applicable to listed companies stipulate a disclosure obligation for subsidiaries, which already leads to increased transparency.

- **Limitation of Access to BO Information:** SwissHoldings demands that access to information on Beneficial Owners be reserved for the relevant authorities whose activities serve to combat money laundering and terrorist financing, and that the register, therefore, not be publicly accessible.
- **Negligent Breach of the Duty to Report and Provide Information:** A negligent breach of the duty to report and provide information must not be subject to the criminal provisions set out in Art. 41 of the AMLA. In our view, it is also crucial that negligence in the event of a breach of the reporting obligation in Art. 37 AMLA is not subject to criminal prosecution. The submitted dispatch dispenses with the sanctioning of negligent violations.

Revision of the Financial Market Infrastructure Act (FMIA)



Executive Summary

As per a report from the Federal Department of Finance (FDF), the Financial Market Infrastructure Act (FMIA) has, by and large, demonstrated its efficacy thus far. The Federal Council is presently undertaking a routine and comprehensive assessment, with a specific focus on enhancing transparency and legal certainty in designated regulatory domains. The consultation on this was opened on June 19 and will last until October 11, 2024.



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The Financial Market Infrastructure Act (FMIA) regulates the licensing and obligations of financial infrastructures, as well as 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 that the Federal Department of Finance (FDF) would subject the FMIA to a general review and compile a report.



Stance

In this [report](#), the FDF concludes that the FMIA has largely proved its worth since coming into effect. However, it is necessary to further strengthen transparency and legal certainty in specific regulatory areas. Additionally, the Federal Council has determined to enact the reporting obligation for small non-financial counterparties concerning derivatives transactions, which will be made effective on January 1, 2028.



Outlook

The Federal Council's explanatory report was published on June 19 and the consultation process will run until October 11, 2024.



Position

The proposed amendments to derivatives regulation represent a principled improvement and are, therefore, commendable. However, we emphatically oppose the notion of transferring ad hoc notifications of shareholdings from self-regulation to state regulation under the



supervision of FINMA. Self-regulation has demonstrated its efficacy, and its abandonment should only occur when deemed absolutely necessary; it should be preserved as a locational advantage. SwissHoldings will position itself accordingly in the consultation process.

Competition Law & Policy

Amendment of the Cartel Act: Partial Revision



Executive Summary

On May 24, 2023, the Federal Council adopted the [dispatch concerning the partial revision of the Cartel Act \(23.047\)](#). The primary objective of this partial revision is to modernize Swiss Merger Control, aligning it with international standards. Additionally, the revision seeks to enhance Civil Antitrust Law and streamline the objection procedure for practicality. In connection with these goals, the Federal Council has directed the Federal Department of Economic Affairs, Education, and Research (EAER) to present a proposal for Institutional Reform in the first quarter of 2024. The Council of States completed its deliberations on the partial revision of the Cartel Act in the second quarter of 2024. The National Council's Economic Affairs and Taxation Committee is expected to discuss the partial revision at the beginning of October 2024. SwissHoldings expressly appreciates the fact that the long-requested Institutional Reform is now part of the revision.



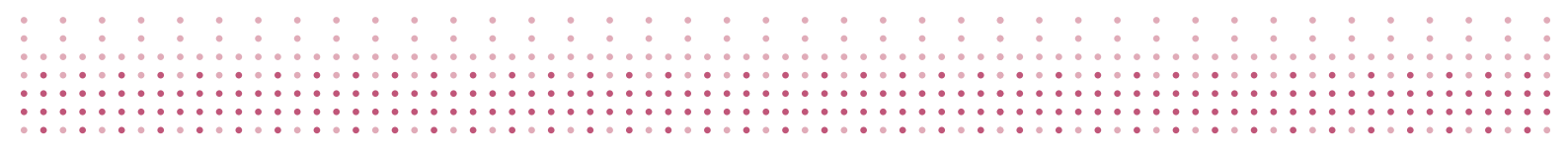
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The transition from the Qualified Market Dominance Test to the Significant Impediment to Effective Competition Test (SIEC test) is undertaken with the objective of aligning the practices of the Competition Commission (COMCO) with international standards. According to [the report by the State Secretariat for Economic Affairs \(SECO\)](#), the proposed amendments are designed to empower the imposition of targeted prohibitions or the approval of mergers in cases where a significant impairment of competition is identified. The proposition encompasses a streamlined notification obligation for mergers at the European level and a regulation pertaining to the extension of deadlines within the examination procedure. Another integral aspect of the legislative amendment involves the reinforcement of Civil Antitrust Law, with an anticipated extension for the right to institute legal proceedings. Furthermore, the objection procedure is slated for enhancement to render it more practicable by avoiding the immediate risk of sanctions in the event that an investigation is not initiated within the stipulated shortened deadline.



Stance

As part of the preparation of the dispatch on the partial revision of the Cartel Act (Cartel Act), the Federal Council integrated two demands from [Motion 16.4094 Fournier](#) to improve small and medium-sized enterprises (SMEs) in competition proceedings. These include the introduction of time limits and party compensation for first-instance proceedings before COMCO. Furthermore, the preliminary draft contains a proposal for the implementation of [Motion 18.4282 Français](#), which



was adopted in June 2021 and takes qualitative and quantitative criteria into account. Finally, rules on the principle of investigation, the presumption of innocence and the burden of proof are included in order to implement the requirements of Motion [21.4189 Wicki](#). Further information can be found [in the press release and the consultation documents](#).

The Council of States discussed the matter in the summer session and rejected the obligation for the competition authorities to demonstrate harmfulness.



Outlook

The WAK-N is expected to continue discussions at the beginning of October.



Position

In particular, SwissHoldings expects the Français and Wicki Motions to be strictly implemented. Both Motions demand that authorities and courts must (once again) deal with the actual effects of an agreement or conduct and demonstrate its harmfulness to competition. The WAK-S proposal meets these expectations and also introduces the required compliance defense (see the [SwissHoldings position paper to the WAK-S](#)). On the other hand, the Council of States rejects the idea that the competition authority should have to deal with the actual impact of an agreement or practice.

Amendment of the Cartel Act: Institutional reform



Executive Summary

As part of the revision of the Cartel Act, the reform of the competition authorities will be addressed in a separate procedure, as requested by various parties during the consultation process. This approach should ensure that the revision of the Cartel Act does not once again fail due to obstacles. The EAER, which was entrusted with this task by the Federal Council, prepared more concrete implementation proposals for the reform on March 15, 2024. Based on the final report of the commission of experts, the Federal Council has instructed the EAER to submit a consultation draft by mid-2025.



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Concurrently with the ongoing partial revision of the Cartel Act, the Federal Council is advancing a distinct overhaul [revision of the competition authorities](#) (hereinafter referred to as Institutional Reform). This aspect is no longer integrated into the suggested Cartel Act revision but is being addressed as a separate initiative. This approach draws on insights derived from the unsuccessful 2012 revision of the Cartel Act, which faced rejection twice in the National Council. The Institutional Reform primarily targets rectifying issues within administrative proceedings, particularly concerning the separation of decision-making and investigative functions. In 2012, the Federal Council advocated for the establishment of a Competition Authorities Act (CAA) in its dispatch on the Cartel Act revision. This proposal entails a restructuring of the prosecution process: a competition authority would conduct investigations



and subsequently file an application with a first-instance competition court. This constitutes the central tenet of the proposed Institutional Reform.



Stance

An independent commission of experts was set up to make proposals for implementation. The [final report of the commission of experts](#), chaired by former Federal Judge Hansjörg Seiler, came to the conclusion that COMCO basically functions well and does not exhibit any constitutional deficiencies. A change of system is therefore not warranted.



Outlook

[On March 15, 2024](#), the Federal Council instructed the EAER to submit a consultation draft on the reform by mid-2025 based on the final report. The separation is now to be made more effective by having the Secretariat conduct investigations consistently without the involvement of COMCO, with COMCO remaining a militia authority. Furthermore, it is being examined whether COMCO could be relieved by appointing a person in charge of the proceedings. Finally, the Federal Council would also like to strengthen the appeals procedure of the Federal Administrative Court by appointing part-time specialist judges. The Federal Council is thus following the recommendations of the Expert Commission overall.



Position

SwissHoldings welcomes the fact that the much-demanded Institutional Reform has now been taken up in parallel with the ongoing revision of the Cartel Act. The intended changes show a clear commitment to modernizing and strengthening the existing institutional structures in the area of Antitrust Law. However, it will be necessary to examine whether the proposed changes, particularly the change of system, are expedient. SwissHoldings will position itself accordingly during the consultation process and is in favor of a separation between the investigative and decision-making authorities.

