

## Law Department

### Competition Law

#### Revision of the Cartel Act

<p><b>Current status</b></p>	<p>On 12 February 2020, the Federal Council instructed the Federal Department of Economic Affairs, Education and Research (WBF) to prepare a draft for public consultation. The Federal Council's <b>main aim is to modernize merger control</b>. It states in detail that the change from the current qualified market dominance test to the Significant Impediment to Effective Competition Test (SIEC test) will adjust the test standard of the Competition Commission (COMCO) to international experience. The fundamental difference between the market dominance test applied in Switzerland and the SIEC test to be introduced is the level of the intervention hurdle. The SIEC test could prohibit mergers or impose appropriate conditions if they led to a significant obstacle for competition. Under the current test standard, this would only be possible to completely eliminated effective competition through a merger. Two studies commissioned by the State Secretariat for Economic Affairs (SECO) would show that positive effects on competition in Switzerland could be expected from such a change.</p> <p>Additionally, in accordance with the parliamentary decision of 5 March 2018, the Federal Council intends to include two requests of Motion Fournier 16.4094 "Improving the situation for SMEs in competitive processes" in the revision. The Federal Council states that, on the one hand, regulatory deadlines would be introduced for the competition authorities and courts in order to speed up administrative procedures. On the other hand, the Motion Fournier demands compensation for parties in all phases of the administrative procedure under competition law, and now also for proceedings before the Competition Commission (WEKO).</p> <p>According to the Federal Council, two further technical elements from the 2012 revision of the Cartel Act, which was rejected by parliament, are also to be dealt with. On the one hand, the civil anti-trust law should be strengthened and, on the other hand, the opposition procedure should be improved (see the media release including the mentioned studies in detail under the following <a href="#">link</a>).</p>
<p><b>Outlook</b></p>	<p>The <b>consultation period is still scheduled to open in the fourth quarter of 2020 (as was planned when the press release was issued)</b>, although a slight delay is to be expected due to Covid-19. SwissHoldings will participate in the consultation process and continue to promote the interests of its member companies.</p>



## Popular initiative "Stop the high-price island - for fair prices" and indirect counter-proposal by the Federal Council

<p><b>Current status</b></p>	<p>The <b>federal popular initiative "Stop the high-price island - for fair prices"</b> was formally launched in January 2018. It aims to incorporate various elements of previous parliamentary proposals to combat the so-called "price island of Switzerland" by means of competition law (KG and UWG) into the Constitution. These are to include measures to ensure the non-discriminatory procurement of goods and services abroad and to prevent restrictions of competition caused by unilateral behaviour by companies with strong market power. Broad sections of the business community, but also the WEKO, reject the initiative as <b>system threatening</b> and <b>not useful</b>. Critical voices can also be heard from the WBF.</p> <p>In August 2018, the <b>Federal Council proposed that the "fair price" initiative be</b> confronted with <b>an indirect counter-proposal</b> and opened a consultation procedure on this. With the concept of "relative market power", both aim to facilitate purchasing opportunities for Swiss companies abroad and thus reduce production costs.</p> <p>SwissHoldings took part in the consultation process and submitted <b>a consultation response at the</b> end of November 2018, which was <b>clearly negative towards both the initiative and the indirect counter-proposal</b>. From an economic point of view, it is unlikely that the initiative or the counterproposal will lower the general price level. Eliminating customs duties and removing trade barriers will have a more direct (and probably a more tangible) effect. By focusing on sealing off foreign markets and being compatible with international trade commitments, the counterproposal is less harmful than the initiative. However, where prices are not administered, it too stands in the way of price differentiation.</p> <p>Even after the review process, the Federal Council maintained its decision in favour of the indirect counterproposal already presented and adopted a corresponding <b>dispatch</b> on 29.5.2019.</p> <p>The National Council was then the first consultative body. The preliminary commission of the National Council (Commission for Economic Affairs and Taxes of the National Council; WAK-N) rejected the initiative. However, it agreed to the Federal Council's indirect counter-proposal and tightened the counter-proposal last year, which we regret. In the same direction, the National Council recommended the initiative for rejection this year but accepted the counter-proposal and tightened it.</p> <p>The proposal was then submitted to the Council of States (Commission for Economic Affairs and Taxation of the Council of States WAK-S) preliminary commission. On the 19<sup>th</sup> of May, 2020, this commission submitted a request to the Council of States to extend the deadline for discussion of the initiative in parliament until the 23<sup>rd</sup> of August, 2021 due to the standstill in connection with Covid-19. The Council of States also decided to do so.</p>
<p><b>Outlook</b></p>	<p>The next meeting of the WAK-S will probably take place on August 20th (and possibly additionally on the 27th) 2020. SwissHoldings will continue to lobby against the bill.</p>



## Corporate and capital market law

### Coronavirus - ban on events and general meetings

<b>Current status / outlook</b>	<p>Amid the developments around Corona, the Federal Council had issued event bans. The first ban on events enforced a limit of 1000 persons, then a limit of 100 persons and finally it was stated that <b>public and private events were prohibited</b>.</p> <p>This led to a conflict with the need for companies to hold their general meetings in the spring, in particular to allow the payment of dividends.</p> <p>In order to solve the problem, the Federal Council then <b>issued the regulation according to which the organizer can order that participants can exercise their rights exclusively: a) in writing or in electronic form; or b) through the independent proxy appointed by the organizer</b> (cf. Art. 6f of the <a href="#">Ordinance 2 on Measures to Combat Coronavirus</a>; in previous versions of Articles 6a and 6b), which we very much welcome. In addition, a Q&amp;A on the subject has also been published on the Federal Office of Justice's website (see <a href="#">link</a>).</p>
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### Coronavirus - no ban on dividend payments in the event of short-time working

<b>Current status / outlook</b>	<p>The parliamentary discussions during the extraordinary session on Corona, a motion was discussed which would have prohibited dividend distributions in the event of short-time working compensation being paid as part of the Covid crisis (see <a href="#">link to the motion</a>). SwissHoldings had already strongly opposed the motion at an early stage (see our <a href="#">submission to the SGK-S</a> for our <b>arguments</b>). We <b>welcome the fact that the Federal Council then also rejected the motion and that the Council of States also rejected the motion</b>, although it had still found a majority in the National Council. <b>Therefore, it should be off the table.</b></p>
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### Coronavirus - Measures against bankruptcies - in particular, relief from the obligation to notify over-indebtedness and Covid 19 deferral

<b>Current status / outlook</b>	<p>On the 8th of April, 2020, the Federal Council instructed the Federal Department of Justice and Police (FDJP) to propose suitable instruments in the law on capital protection (OR) and the law on restructuring and deferral (SchKG). The Federal Office of Justice (FOJ) had carried out a public consultation on this in advance.</p> <p>As a result, the Federal Council adopted the corresponding ordinance at its meeting on the 16<sup>th</sup> of April, 2020 and it entered into force on the 20<sup>th</sup> of April, 2020. Both the consultation draft and the ordinance provide for temporary relief from the obligation to notify over-indebtedness (in deviation from Art. 725 para. 2 of the Swiss Code of Obligations) and the possibility of a temporary, unbureaucratic COVID 19 deferral, particularly for SMEs (see <a href="#">link</a> to the</p>
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	<p>media release including links to the ordinance and the explanations on the ordinance).</p> <p>SwissHoldings was also invited to the public consultation and submitted a consultation response (see <a href="#">link</a>). It stated - although it also raised critical points - that it supported the efforts of the Confederation to support SMEs as an important part of the Swiss economy; from this point of view, the proposals would make sense as temporary measures. Accordingly, SwissHoldings welcomes the adoption of the ordinance in its present form.</p>
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## Coronavirus - Consultation for the Covid-19 law

<b>Current status</b>	Last Friday the Federal Council <b>opened the consultation process on the Covid-19 law</b> . The bill intends to enact an urgent and temporary federal law for the emergency measures that are still necessary to deal with the Covid-19 epidemic (see <a href="#">link</a> to the media release and consultation documents).
<b>Outlook</b>	The <b>consultation period will last until the 10<sup>th</sup> of June, 2020</b> and SwissHoldings will study the documents in detail and <b>will participate in the consultation</b> .

## Corporate Law Revision

<b>Current status/</b>	<p>Preliminary remark: "Draft 1" and "Draft 2": In the area of stock corporation law, two bills were debated in parliament. They were referred to as "Draft 1" and "Draft 2". The former (Draft 1) concerned the content of company law in accordance with the Federal Council's dispatch to parliament on the 23<sup>rd</sup> of November, 2016, while the latter (Draft 2) concerned the counter-proposal to the Corporate Responsibility Initiative. The present comments refer to "Draft 1".</p> <p><b>Message:</b> On the 23<sup>rd</sup> of November, 2016, the Federal Council approved the <a href="#">proposal</a> for the revision of the stock corporation law to the parliament. The aim of the revision of the company law was in particular to transpose the Ordinance against Excessive Remuneration - which the Federal Council had to enact five years ago as a result of the "rip-off" initiative ("Abzockerinitiative") - into law and the Swiss Code of Obligations.</p> <p><b>Discussions in the National Council:</b> The National Council <b>discussed the bill in a business-friendly manner</b>. In particular, it passed its resolutions relatively close to the ordinance against excessive remuneration, which is an extremely important concern for the member companies. We were also able to bring SwissHoldings other concerns practically in their entirety into the parliamentary process. One exception was the Comply or Explain gender guidelines for the Board of Directors and the Executive Board, which SwissHoldings opposed. The National Council, like the Federal Council, was in favor of these values.</p> <p><b>Discussions in the Council of States:</b> The bill was then submitted to the preliminary commission of the Council of States and the Council of States from summer 2018. Initially, the preliminary commission of the Council of States discussed the bill in a way that was extremely problematic from an</p>
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economic perspective. However, intensive lobbying by SwissHoldings in coordination with the other business associations was able to get the bill back on track. **After the deliberations in the Council of States, it then looked far more favorable for businesses than what would have been expected after deliberations of the preliminary commission of the Council of States in 2018.** In line with our position, the decisions of the Council of States were made relatively close to the decisions of the National Council. In line with our recommendations, the deliberations were also - with exceptions - reasonably close to the ordinance against excessive remuneration. Finally, the Council of States improved the draft submitted to the National Council also in certain points (e.g. elimination of a guarantee obligation of the Board of Directors for the solvency of the company). However, there were also negative points from SwissHoldings perspective. It regretted that the Council of States - like the Federal Council and the National Council before it - also spoke in favor of the Comply or Explain gender guidelines. As a result, since the National Council and the Council of States were in agreement, this decision could no longer be rectified in the differential settlement procedure (“Differenzbereinigungsverfahren”). In addition to the point concerning the gender guidelines, there were other aspects of the version of the Council of States that needed to be amended.

**Difference settlement procedure (“Differenzbereinigungsverfahren”) and final vote:** As of the 5<sup>th</sup> of July, 2019, the proposal was then subject to the difference settlement procedure. In this stage of the procedure, we again strongly advocated for our position - again in coordination with other associations (see also our various submissions under the following [link](#)). The National Council continued to discuss the differences in an economically acceptable manner. However, the Council of States largely adhered to its decisions. Finally, various compromises were proposed and found. The proposal was then adopted in the final vote.

#### **Overall view of the parliamentary deliberations**

- **SwissHoldings welcomes the fact that the revision has now been concluded in the interest of legal security.** After the now very long history - which goes back far beyond the issuance of the message in 2016 - it is important that the revision has now finally come to an end. This will allow calm to the stock corporation law. The reform does now not contain many sensational changes but causing excitement need not be the goal of a revision of stock corporation law.
- **On the whole, the Parliament has deliberated relatively close to the ordinance against excessive remunerations.** This is important and notable because during the parliamentary process, very substantial tightening of the VegüV had been discussed (led by parliamentarian Minder who is a member of the Council of States' preliminary commission).
- **The Parliament has also improved the bill in a number of technical, but practically relevant points.** For example, the Federal Council's draft contained a provision which would have forced companies to hold general meetings earlier in the year, which would have led to significant practical problems. Also, a provision was originally envisaged according to which the calculation of the voting results in the general meeting should have been based on the votes cast instead of the votes represented. This could have led to distorted voting



	<p>results.</p> <ul style="list-style-type: none"> <li>- <b>However, the bill also contains problematic decisions by the Parliament.</b> For example, the Parliament has also decided in favor of a provision on the secrecy of the independent shareholders' representative; although it has at least been attenuated in the procedure for settling differences ("Differenzbereinigungsverfahren"), it has not been completely disposed.</li> </ul>
<b>Outlook</b>	The ordinances are now being prepared. SwissHoldings will continue to lobby for the interests of the member companies also at this stage.

## Proposal for improving the framework conditions for blockchain/DLT

<b>Current status</b>	<p>In December 2018, the Federal Council adopted a report on the blockchain-legal framework and distributed ledger technology in the financial sector. On the 22nd of March 2019, it then opened the review process on the adaptation of federal law to developments in the technology of distributed electronic registers. The aim is to increase legal certainty, remove obstacles to applications based on the distributed ledger technology (DLT) and limit the risk of abuse. The proposal serves to further improve the regulatory framework for DLT in Switzerland, particularly in the financial sector. SwissHoldings took part in the <b>consultation procedure</b> and submitted a corresponding <b>statement</b> - practically identical to <i>economiesuisse</i>. To summarize, SwissHoldings has taken the following position:</p> <p>Distributed Ledger Technology (DLT) and blockchain technologies are among the potentially promising developments in digitization. SwissHoldings has a fundamentally positive attitude towards the proposal. It will enable Switzerland to improve and, above all, more legally secure use of the opportunities offered by these technologies. Therefore, it is not necessary to fundamentally adapt the legal framework on the basis of a specific technology which is still under development or to introduce a comprehensive, specific law. The Swiss legal framework already offers much flexibility and opportunities. Nevertheless, there are specific areas in the law where targeted adjustments are necessary to increase legal certainty, remove obstacles to DLT/blockchain-based applications and limit new risks. The Federal Council then issued its dispatch, in which it essentially met the concerns expressed by the business community. The preliminary commission of the National Council (WAK-N) and the National Council then spoke out in favor of the proposal and only made few adjustments.</p>
<b>Outlook</b>	The preliminary advisory commission of the Council of States (WAK-S) is expected to discuss the bill further on the 2 <sup>nd</sup> of July, 2020. SwissHoldings will continue to advocate the interests of its member companies in this draft.





## Amendment of the Money Laundering Act

<p><b>Current status/ Outlook</b></p>	<p>On the 1st of June, 2018, the Federal Council opened the consultation procedure on the amendment of the Anti-Money Laundering Act (see <a href="#">link</a> to the media release and consultation documents). On the 26<sup>th</sup> of July, 2019, it then issued the statement (see <a href="#">link</a> to the media release and the relevant documents). Afterwards, the preliminary commission of the National Council (Commission for Legal Affairs of the National Council, RK-N) as well as the National Council decided to reject the bill. The preliminary commission of the Council of States (RK-S) has now instructed the administration to submit three options to it which take account of the National Council's main points of criticism, and it will conduct the debate on admission or rejection of the bill ("Eintretensdebatte") at one of its next meetings - probably on the 11<sup>th</sup> of August, 2020.</p> <p>The aim of the proposal is to take the Federal Council's financial market policy strategy into account for a competitive Swiss financial center and the most important recommendations of the country report of the Financial Action Task Force (FATF). The SwissHoldings member firms are only marginally affected by the proposal. Accordingly, SwissHoldings had submitted only a brief <a href="#">response</a>, whose selective concerns relating to the Federal Council's proposal were taken into account by the Federal Council and is now accompanying the proposal from a distance.</p>
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## The SIX consultation on the regulations of ad hoc publicity and further adjustments

<p><b>Current status / outlook</b></p>	<p>In 2016, the SIX had already conducted a consultation on the revision of the regulations on ad hoc publicity, in which SwissHoldings had participated at the time.</p> <p>The SIX then contacted the participants in the consultation process at the time and provided the following information: "Due to political negotiations (i.a. regarding exchange equivalence with the EU), dialogues with a range of regulatory bodies (mainly FINMA), and also, in particular, the complex legal and regulatory environment surrounding the ad hoc publicity regulations, further discussions and analyses have been taking place since that time, some of which pertain to recognized international standards" The participants in the consultation process at the time were consulted accordingly on various amendments to the Listing Rules, the Directive on Information Relating to Corporate Governance and the Directive on Ad Hoc Publicity.</p> <p>In our statement, we voiced that we continue to support the direction of the approach, which largely refrains from the concept of certain "per se" facts. We have also stated that the proposal still requires various adjustments and what these adjustments consist of (see <a href="#">link</a> to the detailed opinion).</p>
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## Compliance

### Compliance Specialist Group as a platform for the exchange of experience among the member companies - in particular on compliance management systems

<b>Current status</b>	The ever-increasing compliance burden, also for non-financial companies, forces them to constantly expand their company-wide compliance systems and check their efficiency. In Working Group Meetings in the English language the various <b>Compliance Management Systems</b> of the different member companies are presented and an exchange about them takes place. Current topics, such as Covid-19 and the new situation after the pandemic, are also discussed in these meetings.
<b>Outlook</b>	SwissHoldings will continue to promote the mutual exchange between the member companies

### Revision of the Code of Civil Procedure - Collective redress – Legal professional privilege for in-house counsel

<b>Current status</b>	<p>In 2018, a consultation on the amendment of the Code of Civil Procedure was held. It particularly concerned the dismantling of cost barriers, the introduction of instruments of <b>collective redress</b> and the implementation of the parliamentary initiative Markwalder (16,409) for a <b>legal professional privilege for in-house counsel</b> .</p> <p>SwissHoldings submitted a <b>response to the consultation</b> on the 11<sup>th</sup> of June, 2018 and also supported our concerns through presentations and discussions and in coordination with the other associations. Essentially, SwissHoldings is <b>opposed to the instruments of collective redress</b> and <b>explicitly and emphatically supports the intended provision regarding the legal professional privilege for in-house counsel</b> (see <a href="#">link</a> to the consultation response on the amendment of the Code of Civil Procedure of the 11<sup>th</sup> of June, 2018).</p> <p>On the <b>26<sup>th</sup> of February, 2020</b>, the Federal Council <b>presented its statement on the Code of Civil Procedure</b> revision (see <a href="#">link</a> to the press release, the dispatch and the Federal Council draft). It has <b>decided to remove the instruments of collective redress from the draft and to treat this topic separately. It also decided to retain the provision on legal professional privilege for in-house counsel in the Federal Council's draft</b>, which we very much welcome.</p>
<b>Outlook</b>	<p>Now the parliamentary process will begin. The bill will first be discussed by the Council of States and then by the National Council. As a first step, the preliminary commission of the Council of States will discuss the bill. Its first meeting about the bill is expected to take place on the 3<sup>rd</sup> of September, 2020.</p> <p>SwissHoldings will closely follow and supervise the deliberations and will</p>





	continue to support the interests of its member companies in this area as well.
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## Deferred prosecution agreement (DPA)

<p><b>Current status</b> <b>/Outlook</b></p>	<p>The Swiss Attorney General's Office would like to allow deals between the prosecuting authorities and the accused companies to follow the American model. The purpose would be to be able to prosecute the companies more effectively in the future and to counter the accusations of excessively heavy fines and excessively long proceedings in Switzerland, which are often voiced in the international arena. In its message on the revision of the law of criminal procedure of 28 August 2019, the Federal Council rejected the introduction of DPAs in Switzerland for the time being.</p> <p>SwissHoldings is tracking the current movements. While it would occasionally be useful for companies to be able to eliminate unwanted criminal proceedings at an early stage, the granting of new powers to the Public Prosecutor's Office would open up a dynamic that could rapidly increase the pressure on companies and would often be outside the usual judicial system.</p>
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## Whistleblowing

<p><b>Current status / outlook</b></p>	<p>In 2015, a whistleblowing regulation in labour law (OR), which was quite limited in content, had been approved by parliament but then returned to the Federal Office of Justice for a "more readable reformulation". On 21.9.2018, the Federal Council adopted the new wording together with an additional message (essentially new Art. 321a to 321a septies OR). On 3.6.2019 and, unlike the subsequent Council of States, also on 5.3.2020, the National Council repeatedly rejected the bill and confirmed its rejection in its entirety (cf. transaction <a href="#">13.094</a>). The bill is thus buried.</p> <p>SwissHoldings is monitoring further developments of the topic of whistleblowing and will accompany any new Swiss proposals on the topic of whistleblowing which may arise from European and international developments.</p>
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## Data protection

### Revision of the data protection law

<p><b>Current status</b></p>	<p>In light of European developments, Switzerland must also revise its data protection law. On the one hand, to meet international expectations in accordance with the future revised Council of Europe Convention 108. On the other hand, to maintain the equivalence with the EU-DSGVO, which is very important for the economy.</p> <p>In September 2017, the Federal Council adopted a corresponding message to parliament, which is based on the level of protection provided by the DPA. First Council was the National Council. Although the SPK-N commission decided to intervene in January 2018, it proposed splitting the bill into a Schengen section to be discussed first then the rest later. The National Council and the State Council followed this approach and in June 2018 passed an interim "<i>Federal Act on the implementation of Directive (EU) 2016/680 on the protection of individuals with regard to the processing of personal data for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of sentences (further development of the Schengen acquis)</i>". With completing this first stage, Parliament only then started discussing the actual "large" DPA revision with the aim of comprehensive adaptation to the Council of Europe standard, namely the DSGVO.</p> <p>The deliberations on the second part in the SPK-N took another year and did not end until mid-August 2019. Currently, the revision in the settlement of differences is once again pending before the National Council. The SPK-N will probably continue with the settlement of differences on the 2<sup>nd</sup> or 3<sup>rd</sup> of July.</p>
<p><b>Outlook</b></p>	<p>After the meeting of the Council of States on the 2<sup>nd</sup> of June, three differences still remain:</p> <ul style="list-style-type: none"> <li>• Specification of genetic data in Art. 4(3);</li> <li>• Period of use of data in credit assessments (Art. 27 para. 2 lit. C para. 3)</li> <li>• And the last big issue, profiling. It is still hoped that the compromise solution formerly decided by the National Council will finally prevail. The outcome on this issue has no influence on the EU adequacy assessment. However, it is important for our member companies that this law is passed quickly so that the conditions for the recognition of equivalence are improved. It is not yet entirely clear when the equivalence decision will be taken. The equivalence decision announced by the EU for 24 June 2020 has again been postponed for all third countries: the Commission would like to wait for the "Schrems 2" judgment of the European Court of Justice of 16 July 2020.</li> </ul>

