SwissHoldings

Law Department

Competition Law

Revision of the Cartel Act

Current status	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. As far as it is known, several elements of the 2014 failed revision of the Cartel Act will be taken up again. The Federal Council's **main aim is to modernize merger control.** 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 if effective competition would completely be elimitated 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. 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 (COMCO). 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 link). However, the elements mentioned by the Federal Council do not include the following elements in particular, which were expected in the 2014 revision: institutional reform, compliance defense, individual sanctions.
Outlook	The **consultation process is expected to** open **in the first quarter 2021**. SwissHoldings is currently reviewing the positioning and will participate in

	the upcoming consultation with the member companies.

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

Current status	The federal popular initiative "Stop the high-price island - for fair prices" 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 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 COMCO, reject the initiative as **system threatening** and **not useful.** Critical voices can also be heard from the WBF. In August 2018, the **Federal Council proposed that the "fair price" initiative be** confronted with an indirect counter-proposal 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. SwissHoldings took part in the consultation process and submitted a consultation response at the end of November 2018, which was **clearly negative towards both the initiative and the indirect counter-proposal**. 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. Even after the review process, the Federal Council maintained its decision in favour of the indirect counterproposal already presented and adopted a corresponding dispatch on 29.5.2019. The National Council was then the first consultative body. The preparatory 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. The proposal was then submitted to the preparatory commission of the Council of States, which has so far (in a meeting on 20 August) consulted experts from the scientific community on the subject.
Outlook	The next meeting of the preparatory commission of the Council of States, will now take place on October 26, 2020 where a decision will be made on whether we enter the deal, or not. SwissHoldings continues to advocate the rejection of the initiative and the non-admission of the counter-proposal (see our recommendations to the preparatory commission of the Council of States in particular").

SwissHoldings

Corporate and capital market law

Covid 19 and General Assemblies

Current status / outlook	**General Assemblies 2020**: This year the Federal Council issued a ban on events due to the developments regarding Corona. This led to a conflict with the need for companies to hold their general meetings in the spring, namely, to allow the payment of dividends. In order to resolve the conflict, the Federal Council then **issued a regulation** for this year's General Meetings **by way of emergency law, according to which the organizer can order that the participants can exercise their rights exclusively: a) in writing or in electronic form; or b) through an independent proxy appointed by the organizer**. In addition, Q& A on the subject have been published on the website of the Federal Office of Justice. **General Assemblies 2021**: For the year 2021, the members of SwissHoldings depend on clear regulations and legal certainty. The General Assemblies require early planning. The first chargeable decisions will be made at the respective General Assemblies of various companies in the summer/end of the previous year. Accordingly, this summer the Federal Council extended the regulation of the 2020 General Assemblies to 2021 and the Covid 19 Act (see the section below) also created the basis for the Federal Council to have the authority to do so. We welcome this important decision.

Covid-19 law

Current status / outlook	The Covid-19 Act, which is time limited until December 31, 2022, was passed with haste. The purpose of the law is to allow the Federal Council's emergency legal measures, which are necessary to cope with the Covid-19 epidemic, to be extended. The Federal Council's measures package is to be legally supported by a parliamentary resolution. As a general framework, it is essential for SwissHoldings that the law is time limited and that the principles of proportionality and necessity limit the measures. Concerning the content of the law in detail, it is particularly important for the Association that Art. 8 regarding the General Assemblies has been adopted (see on the subject of General Assemblies and Covid-19 above under "Covid-19 and General Assemblies"; on our position on the Covid law in detail, see link to our consultation response. The federal law is still subject to an optional referendum; opponents of the law are currently collecting signatures. Nevertheless, the law is already in force: it was declared urgent by the Parliament (Art. 165 Para. 1 Constitution) and came into force (accordingly) one day after the final vote in Parliament, on 26 September 2020 (cf. Art. 21 Para. 2 of the Covid 19 Law).

SwissHoldings

Completed revision to corporate law and upcoming minor revisions in corporate law

Current status/	**Adoption of the revision of the company law:** After a lengthy history, the parliament passed the revision of the corporate law in the final vote on 19.6.2020. SwissHoldings welcomes the fact that the revision has been compledet in the interest of legal certainty. After the now very extensive development period - which goes far back before the delivery of the message in 2016 - it is important that the bill has finally come to an end. This will allow for a calm return to the corporate law. The reform now contains few exciting changes; but creating a stir does not need to be the goal of a revision of company law. A central and very welcome aspect of this is that Parliament has deliberated relatively close to the regulation against excessive renumerations. This is important and it is noteworthy, because at some point in the deliberations of the parliament, a very substantial tightening of the regulation against excessive renumerations was discussed. This was led by Council Member Minder, a member of the preparatory commission of the Council of States. Another very welcome aspect is that it has been possible to improve the bill in various technical but practically relevant points. For example, the Federal Council's draft contained originally a provision that would have forced companies to hold general assemblies earlier in the year, which would have led to significant practical problems. In addition, a problematic provision was originally planned regarding the voting results in the General Assembly, which stated that the results should have been calculated based on the votes casted instead of the votes represented. This could have led to distorted voting results. However, the bill also contains problematic parliamentary resolutions**.** For example, the parliament also decided in favor of a provision for the secrecy of the independent proxy; although this was at least in the context of the procedure for settling differences in the sense of a compromise watered down and formulated in a more practical manner, it was not completely dispensed with. **Effective Date:** Most of the provisions of the revision of the company law are expected to come into force in 2022. Art. 293a of the Debt collection and Bankruptcy Act included in the Corporate Law revision, which extends the provisional debt-restructuring moratorium from four to eight months, has already come into force (on 20 October 2020). In addition, the Federal Council has put the gender guidelines (with long transition periods) and the transparency provisions in the raw materials sector into force on January 1, 2021.
Outlook	Now that the corporate law revision has been completed, various other corporate law revisions are on the horizon. - **Commercial Register Ordinance:** Now that the revision of the law has been completed, the ordinances on the revision of the company law will be tackled. The focus here is on the Commercial Register Ordinance. - **Regulation on Proxy Advisors**: In the deliberations regarding the corporate law revision (and also already in the course of the revision of the SIX Directive on Information Relating to Corporate Governance), parliamentarians have repeatedly discussed a provision that wanted to regulate proxy advisors. The regulation under discussion wanted to regulate proxy advisors through transparency obligations for issuers. SwissHoldings opposed the regulation under discussion at the time, in particular because it would have meant that problems in connection with proxy advisors would have been regulated by a

	selective regulation, which would have been "on the back of the issuers/companies". In the end, the provision was not included in the revision of the stock corporation law, which we very much welcome. As a reaction to this, Motion 19.4122 (see link) was adopted, with the following wording: The Federal Council is instructed to present an amendment to the law (e.g. to the Financial Market Infrastructure Act) in order to disclose and avoid any conflicts of interest of proxy advisors in listed stock corporations. International developments are to be taken into account. A corresponding revision of the law can be expected accordingly. - **Possible regulation on loyalty shares**: Within the scope of the revision of Corporate law, a regulation was further discussed that would introduce so-called loyalty shares. In the end, it was not adopted. Instead, the Council of States submitted a postulate, according to which the Federal Council is instructed to present a report on the possible advantages and disadvantages as well as the effects of the proposed regulation discussed in the revision of the company law. According to the postulate, the report should also include a comparative legal analysis of the possible implementation options under Swiss company law and the extent to which action is required in this area (see the link to the postulate for details) This could lead to regulation in the future. - **Regulations in connection with the submission against bankruptcy abuse:** The aim of the law is to use various measures in the Code of Obligations, debt collection and bankruptcy law and criminal law to prevent the bankruptcy proceedings from being abused by debtors to discharge their obligations (see link to the documents on curiavista). Within this context, measures under stock corporation law are also under discussion. In particular, the Federal Council proposes to codify the decisions of the Federal Court on the trade in shell companies "Mantelhandel". Further proposals on stock corporation law could be incorporated into the bill: So far, only the preliminary commission of the Council of States has discussed the transaction and decided to examine in more detail whether the measures proposed by the Federal Council are sufficient enough to put a stop to bankruptcy abuse. The administration will now carry out the necessary clarifications and the commission will then continue its deliberations (only) in spring 2021. SwissHoldings follows the developments in these areas and continues to actively promote the interests of its member companies in the area of corporate law.

Proposal for improving the framework conditions for blockchain/DLT

Current status / outlook	In December 2018, the Federal Council adopted a report on the blockchainlegal 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 participated in

	the consultation process and submitted a statement . In summary, the association has positioned itself as follows: 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 National Council and the Council of States then discussed the draft, made a few changes and approved the draft in the final vote on the 25th of September. SwissHoldings welcomes this.

Amendment of the Money Laundering Act

Current status/ Outlook	On June 1, 2018, the Federal Council opened the consultation process on the amendment of the Money Laundering Act. On 26 July 2019, it then issued the dispatch (see link to media release and the relevant documents). Afterwards, the preparatory commission of the National Council as well as the National Council decided to reject the bill in the beginning (“Nichteintreten”). The preparatory commission of the Council of States and the Council of States agreed on the bill and discussed it. On October 9, the preparatory commission of the National Council then discussed the matter again; it has now accepted the bill and discussed the matter. In the end, however, it rejected the bill in the overall vote (“Ablehung in der Gesamtabstimmung”). The rejection in the overall vote is procedurally equivalent to rejecting the bill in the beginning (“Nichteintreten”). The question now is whether the National Council will follow its preparatory committee in the winter session. The aim of the proposal is to take into account the Federal Council's financial market policy strategy for a competitive Swiss financial center and the most important recommendations of the country report of the Financial Action Task Force (FATF)The part of the bill that is controversial in parliament concerns above all the point that various advisory service providers (e.g. lawyers) should also be covered by this law. The member companies of SwissHoldings are only marginally affected by the content of the bill. Accordingly, SwissHoldings had only submitted a brief consultation response as a part of the consultation process, whose specific concerns related to the Federal Council bill were largely taken into account by the Federal Council, and is now accompanying the bill from a distance

The SIX consultation on the regulations of ad hoc publicity and further adjustments

Current status / outlook	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. 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. 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 link to the detailed opinion). The upcoming regulation remains to be seen.

Compliance

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

Current status	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 **Compliance Management Systems** of the different member companies are presented and an exchange about them takes place (most recently the one from Novartis). **Other topics relevant to the member companies are** also discussed (e.g. in the most recent meeting the topics Compliance and Artificial Intelligence, or Whistleblower Hotlines and Data Protection).
Outlook	SwissHoldings will continue to promote the mutual exchange between the member companies.

SwissHoldings

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

Current status	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 **collective redress** and the implementation of the parliamentary initiative Markwalder (16,409) for a **legal professional privilege for in-house counsel.** The **Federal Council** then presented its dispatch on the revision of the Code of Civil Procedure on the 26th of February 2020 (see link to the media release as well as to the message and the Federal Council draft). It decided to remove the collective legal protection from the draft and to treat it separately. He also decided to retain the provision on the protection of professional secrecy for in-house counsel in the Federal Council's draft. Afterwards, the bill was submitted to the **preparatory commission of the Council of States**; this commission has decided to start the deliberations on the bill ("Eintreten auf die Vorlage") and welcomes the Federal Council's approach to address the issue of collective redress at a later date with a separate bill. SwissHoldings is **against the instruments of collective redress** and **explicitly and emphatically supports the** explicitly and emphatically supports the intended provision regarding the legal professional privilege for in-house counsel**.** SwissHoldings represented this position within the framework of the consultation process (see in detail the link to our response to the consultation) and is now also actively representing it within the framework of the parliamentary process as well as in a possible separate revision of the Code of Civil Procedure on collective redress at a later date.
Outlook	The preparatory commission of the Council of States will now continue the detailed discussion at its next meeting. SwissHoldings will continue to promote the interests of its member companies in line with our positioning.

SwissHoldings

Data protection

Data protection law, ordinance law, the equivalence decision, and Schrems II

Current status	**Data Protection Act:** In view of European developments, Switzerland too had to revise its data protection law. This was done on the one hand to meet international expectations in accordance with the future revised Council of Europe Convention 108, and on the other hand, to maintain the equivalence with the GDPR, which is very important for the economy. The revision was now adopted in the final vote in the last autumn session. We very much welcome this speedy conclusion because it paves the way for maintaining the recognition of equivalence. **Decree right:** The adopted law is now followed by the enactment of the ordinance(s). **Equivalence decision by the EU**: The equivalence decision by the EU originally announced for the summer has not yet been made. It had announced that it wanted to wait for the Schrems II ruling of the European Court of Justice. However, the European Court of Justice has now delivered its ruling on 16 July 2020 (see also the following). The decision on equivalence by the EU now remains to be awaited. **Schrems II decision**: The decision mainly determines the following: - EU-US Privacy Shield is void with immediate effect; - Standard contract clauses are still valid under increased conditions.
Outlook	SwissHoldings follows the developments around the above mentioned topics and continues to promote the interests of the member firms in all these areas, in particular the maintenance of equivalence.