



# MORE FLEXIBILITY FOR DESIRABLE COOPERATION BETWEEN COMPETITORS

The revised Cartel Act introduces various improvements, such as the modernization of merger control, the strengthening of civil antitrust law and the notification procedure for planned cooperation projects, and a departure from a purely formalistic approach to antitrust enforcement.

The partial revision of the Cartel Act (CartA) provides greater flexibility for cooperation between competitors. In the future, the formal classification of an agreement by the Competition Commission (ComCo) will no longer be sufficient on its own to presume a harmful and therefore generally sanctionable anti-competitive agreement; instead, the concrete expected effects on competition will be decisive. In doing so, the legislator is correcting the Federal Supreme Court's previous practice (the so-called "Gaba case") and returning Swiss law to the "effects-based approach." Consequently, the risk of sanctions for undertakings is reduced in the case of cooperation that is desirable from an economic perspective.

#### Focus on market impact rather than mere form

The partial revision of the CartA, adopted by Parliament on 19 December 2025, introduces various improvements as well as a readjustment of the intervention thresholds under antitrust law. Parliament decided to move away from a purely formal, qualitative assessment of restrictions on competition. In the future, when reviewing agreements, as is already the case in matters involving the abuse of market power, competition authorities must consider both qualitative and quantitative effects.

Previously, horizontal cooperation that was desirable from a competition perspective – such as purchasing groups, research collaborations, licensing, sustainability agreements, agreements on standards, joint production, and marketing agreements – has had to be justified by undertakings on grounds of economic efficiency. The importance of such collaborations is growing in light of the increasing market power of individual providers, such as those in the IT sector, as well as strong competitive pressure from abroad. Collaborations between smaller market participants can also reduce dependencies and promote the resilience of companies.

In practice, however, this justification has often been difficult to establish, as ComCo applies a strict standard when assessing the necessity of such cooperation for creating the corresponding efficiencies. Consequently, legal certainty for such collaborations has been low – and the risk high. Unlike in the EU, Switzerland has neither legal exemptions (so-called "safe harbors") nor a consistent practice in these matters.

The revision aims to prevent regulatory intervention where no harm to the market or competition is apparent or expected. Justification remains possible but is only required if a negative effect is likely. This increases legal certainty for cooperation models.

#### The new approach to horizontal cooperation

Previously, classification as a "hard agreement" (including not only agreements on quantities or territories but also those with merely indirect effects on prices) almost automatically led to sanctions, as harm was conclusively presumed. The revision now differentiates in this regard by requiring a comprehensive assessment in each individual case based on experience and the circumstances in the relevant market (qualitative and quantitative analysis).

In the case of hard-core cartels, where, for example, excessive retail prices are set at the expense of end customers through direct price agreements, the examination of quantitative elements in the relevant market will be limited to an absolute minimum in the overall assessment, given the clear qualitative criteria. We assume that in such clear-cut cases, a plausibility check of the negative effects expected based on the form will suffice, and no proof of concrete or potential harm will be required. However, arguments must now also be heard and examined if the companies concerned can demonstrate that neither significant negative effects have occurred nor are expected.

Special market conditions, e.g., involving expensive, exclusive products, overly narrowly defined markets, or low market shares (e.g., among SMEs), must now also be taken into account. ComCo must now also justify interventions and penalties based on market conditions. Where there is no or minimal potential for harm, intervention in the market is not justified. If, on the other hand, there is potential for harm, companies can and must, as before, justify their actions on grounds of economic efficiency (art. 5(2) CartA). The chances of successfully justifying conduct on efficiency grounds increase if this is documented in advance and does not have to be developed as part of the defense in a disputed case. If the justification for significant agreements fails, the threat of sanctions amounting to 10% of turnover in Switzerland over the last three years applies. In addition, victims of cartels may assert claims for damages, the enforcement of which is facilitated by the revision through civil proceedings.

# «LESS FORMALISM, MORE FOCUS ON MARKET IMPACT – AN IMPORTANT SIGNAL FOR A MODERN AND ECONOMICALLY SOUND ANTITRUST LAW.»

## Cooperation as an opportunity – not a free pass for cartels

The legislator makes it clear: Innocent cooperation is not prohibited. But caution is advised: These new freedoms must not be used as a pretext or cover for cartel-like behavior. Particular caution is warranted when exchanging information. Even a unilateral exchange of information regarding trade secrets can be interpreted as the starting point for a cartel, especially if this information concerns prices, customers, territories, or quantities. Accordingly, compliance efforts are warranted if an exchange of such information with competitors cannot be ruled out. In the context of M&A, appropriate protective measures – such as redacting sensitive documents or forming so-called “clean teams” – have become established practice. Such compliance measures are now explicitly mentioned in the law as mitigating factors for sanctions, provided they are appropriate to the company’s size, business activities, and industry. Regular training on antitrust risks remains an important tool for raising employee awareness, as well as for highlighting opportunities. Opportunities exist not only in terms of permissible cooperation but also in negotiations with relatively market-powerful or dominant companies, although little is expected to change here in comparison with current practice. Furthermore, in addition to avoiding cartels, every company should also consider how to protect itself from cartels in the procurement market.

## Further adjustments relevant to cooperation

The Swiss Parliament deemed the practices of the Swiss competition authorities to be excessive. Accordingly, the direct sanctioning of agreements on gross prices – which have little noticeable effect in the market due to notorious price competition at the discount level – have been repealed (art. 5(3)(a) revCartA). However, agreements on gross prices remain a slippery slope and may still be prohibited in the future – and are likely to be sanctioned if they demonstrate a sufficient connection to minimum or fixed prices.

Furthermore, the notification procedure for planned cooperation projects is being amended (art. 49a(4) revCartA). Under the objection procedure, companies can notify ComCo in advance of planned projects that could

potentially be classified as impermissible restrictions on competition. Under the previous legal framework, the risk of sanctions for the reported conduct ceased if the authority did not initiate proceedings against the company within five months. This deadline is reduced to two months under the revision. Furthermore, only the initiation of a formal investigation – and not, as was previously the case, the mere initiation of a preliminary inquiry – will result in the risk of sanctions being reinstated. It is expected that this will force the authorities to take a position more quickly.

## Conclusion and outlook

The revision introduces a long-awaited, appropriate distinction. The focus on market effects in agreements creates a modern environment for joint ventures and strategic alliances. Companies gain valuable leeway but bear greater responsibility for the economic justification of their projects. The “effects-based approach” requires proactive documentation: those who can demonstrate their efficiency gains and anticipate or avoid negative effects will be able to cooperate with greater certainty in the future. This by no means constitutes a free pass for agreements that restrict competition.

The referendum period expired unused on 17 April 2026. Since the relevant ordinance must also be amended, particularly with regard to the change in merger control, the law is not expected to enter into force until early 2027 at the earliest. However, it is expected that the “effects-based approach” will already be taken into account by competition authorities when opening investigations, even before the law enters into force.

## Keyfacts

- 01 Focus on effects: Insignificant agreements will no longer be sanctioned; the expected market impact is decisive.
- 02 In the case of hard-core cartels, ComCo only needs to establish the plausibility of harm; exact proof of harm is not required. Strict compliance remains crucial to avoid high fines.
- 03 Cooperation check: desirable forms of cooperation, such as purchasing groups, gain more leeway and greater legal certainty.



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