

# The European Antitrust Review

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GLOBAL COMPETITION REVIEW

# Switzerland

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## Legal and organisational developments

The second half of 2010 and the first half of 2011 were marked by the ongoing discussion on the proposed revision of the Swiss Act on Cartels.

Public consultation regarding draft of revised Act on Cartels (first part)

On 30 June 2010, the Swiss federal government published a draft bill for an amendment of the Act on Cartels along with an explanatory report. The government submitted this draft for public consultation until 19 November 2010 (cf *The European Antitrust Review 2011*).

In November 2010, the Swiss Competition Commission (the ComCo) filed its comments on the draft. The ComCo notably took a critical stance on the government's proposal to establish an independent Federal Competition Court, which would be completely separate from the investigating competition authority. The ComCo instead expressed its preference for a better separation of investigating and decision-making functions within the existing institutional framework. At present, the ComCo and its Secretariat constitute a uniform authority which performs investigating, prosecuting and decision-making functions at the same time. The ComCo and its Secretariat usually interact intensely at every stage of the procedure. In its comments, the ComCo questioned the need for a complete system change and doubted the compatibility of such a change with an effective leniency programme and with the possibility of amicable settlements. Instead, the ComCo suggested that it should be provided with specific clerking staff separate from the investigating staff of the Secretariat, and that its independence vis-à-vis the Federal Government and administration should be strengthened. By contrast, the ComCo supported the government's proposal to improve the so-called objection procedure. As regards the proposed replacement of the so-called 'dominance-plus test' under the current merger control regime, the ComCo favours an SIEC (Significant Impediment to Effective Competition) test over a simple dominance test.

Public consultation regarding draft of revised Act on Cartels (second part)

In September 2010, the Swiss Federal Parliament commissioned the government to prepare an amendment to the Act on Cartels which would, on the one hand, allow for a reduction of sanctions against undertakings that have implemented compliance programmes and, on the other hand, introduce criminal sanctions against individuals who have taken active part in horizontal cartel agreements. The government published a respective draft bill along with an explanatory report on 30 March 2011 and submitted this draft, which complements the former draft of 30 June 2010, for public consultation until 6 July 2011.

While the government supports a reduction of sanctions against undertakings that have implemented an appropriate and effective compliance programme, it is opposed to the idea of sanctions against individuals. The government first argues that cartel infringements typically benefit undertakings, not their employees. Second, the gov-

ernment fears that sanctions against individuals could undermine the effectiveness of the ComCo's leniency programme. Third, the government points out that the introduction of sanctions against individuals would entail a need for additional resources and that a possible unavailability of such resources could weaken competition law enforcement as a whole. Fourth, the government fears that deviations from EU law, such as the proposed sanctions against individuals, might complicate the conclusion of a cooperation agreement between Switzerland and the EU.

Nevertheless, in performance of its mandate, the government proposed two possible models for sanctions against individuals.

According to the first model, individuals taking part in an unlawful horizontal agreement concerning the fixing of prices or quantities or the allocation of territories or customers could be barred from exercising their professional activity in the undertakings involved in the infringement. Such a ban could be partial or total and could be ordered for a period of up to five years. Furthermore, benefits obtained by individuals through such a conduct could be confiscated; if need be, their amount could be estimated for that purpose. In any such case, the competition authority would lead the investigation, whereas the new Federal Competition Court (to be established pursuant to the draft bill of 30 June 2010) would be responsible for the decision. As the case may be, the proceedings against the undertaking could be joined with those against the individuals responsible.

According to the second model, individuals taking part in an unlawful horizontal agreement concerning the fixing of prices or quantities or the allocation of territories or customers would face a fine of up to 1.08 million Swiss francs, or imprisonment for a term of up to three years. In case of a successful leniency application of the undertaking, the criminal prosecution of the individuals would be waived as well. In any event, individuals would be prosecuted by the Federal Prosecutor's Office and sentenced by the Federal Criminal Court.

Although the government opposes sanctions against individuals as a matter of principle, it expressed its preference for the first model provided that sanctions against individuals were to be introduced at all.

The ComCo filed its comments on the government's draft bill in June 2011. The ComCo is opposed to the introduction of sanctions against individuals for similar reasons as the government. In addition, the ComCo fears that sanctions against individuals could undermine the willingness of undertakings to cooperate, delay proceedings and increase their costs while being of limited use or difficult to implement. The ComCo further believes that the introduction of sanctions against individuals might be premature at the present stage, as its experience with sanctions against undertakings is yet limited. Unlike the government, the ComCo also opposes the proposed amendment to the Act on Cartels regarding the reduction of sanctions against undertakings that have implemented compliance programmes. In the ComCo's view, such an amendment is unnecessary because the envisaged reduction of sanctions is possible under the existing Ordinance on Sanctions already.

Overall, at this point, it is open to what extent and by when the government's proposals for a revised Act on Cartels will be implemented. Should the legislative process run smoothly, the earliest possible implementation would likely be in January 2013.

#### New Explanatory Remarks on the Motor Vehicles Notice

In February 2010, the ComCo decided to leave its current Notice on Vertical Agreements in the Motor Vehicles Sector (dating from 2002) unchanged despite the major legal developments in the EU (cf *The European Antitrust Review 2011*). In September 2010, however, the ComCo slightly amended its Explanatory Remarks on the Notice. In doing so, the ComCo's declared intention was to take account of its own practice of the past few years and of the new legal framework in the EU. The ComCo's amendments mainly relate to the delimitation of manufacturers' and vendors' warranties; the disclosure of selection criteria in selective distribution systems; the status of intermediaries and purchasing agents authorised by end users; the supply of spare parts to independent repairers; access to technical information; and the modalities of the termination of dealer and repairer agreements.

#### Amended notice on merger control issues

In May 2011, the ComCo published an amended version of its notice entitled 'New practice in merger control proceedings', which it had first published in March 2009 and which deals with select issues that have emerged in the ComCo's merger control practice. In the first version of that notice, the ComCo had clarified, inter alia, that cases of the creation of a joint venture where the notification thresholds of the Swiss Act on Cartels are exceeded are, as an exception, not subject to the statutory notification duty if:

- the joint venture is neither active nor achieves any turnover in Switzerland (ie, particularly does not supply any customers in Switzerland); and
- such activities or turnover in Switzerland are neither planned nor to be expected in the future.

The amended version now includes a new section on the admissibility of simplified notifications in the case of 'notifiable markets without market share additions', ie, affected markets where a single undertaking concerned has a market share in Switzerland of 30 per cent or more. According to this new section, the ComCo will 'regularly' require detailed information on such markets pursuant to article 11(1)(d-f) Ordinance on Merger Control if another undertaking concerned:

- is active in a closely related upstream or downstream or neighbouring market;
- plans to enter the affected market or has pursued this aim in the preceding two years;
- holds intellectual property rights in the affected market; or
- is active in the affected product market but not in the affected geographic market.

If these criteria are not met, the notifying undertakings are required to file respective confirmations (while designating the affected markets). In such a case, no further information on these markets shall be required 'as a rule' unless the Secretariat of the ComCo explicitly otherwise requests.

#### New deputy chairman and member of ComCo

In October 2010, the federal government appointed Professor Martial Pasquier to serve as one of the ComCo's two deputy chairmen

as from 1 November 2010. This position had been vacant since its former holder, Professor Vincent Martenet, had been appointed as the ComCo's chairman as of 1 July 2010 (cf *The European Antitrust Review 2011*). Professor Pasquier has been a member of the ComCo since 1998. He is currently a full professor of public management and public marketing at the Swiss Graduate School of Public Administration (IDHEAP) in Lausanne.

At the same time, the federal government appointed Professor Andreas Heinemann as a new member of the ComCo as of 1 January 2011. Professor Heinemann is currently a full professor of commercial law, business law and European law at the University of Zurich. He also contributed a study on private enforcement to the evaluation of the Act on Cartels which had been commissioned by the federal government in view of the projected revision of the Act.

#### Recent cases – horizontal agreements

##### Fibre optic cable networks

One of the ComCo's main fields of activity in the second half of 2010 and in the first half of 2011 related to projects for fibre optic cable networks. Swisscom, Switzerland's incumbent telecoms provider, and certain regional energy supply companies are currently planning to construct such networks jointly in various Swiss cities. In six cases, individual clauses of cooperation agreements have been notified to the ComCo in so-called objection procedures. The ComCo has, in the meantime, opened a preliminary investigation in each of these cases as it could not rule out competition law concerns. According to one of its public statements, the ComCo 'supports in principle' the cooperation between Swisscom and the regional energy supply companies, as an inefficient construction of parallel networks can be avoided thereby and as the cooperation partners are willing to create the basic preconditions for competition. However, the ComCo has also indicated that, according to a first assessment, certain clauses of the cooperation agreements could restrict or even eliminate competition at the expense of end users. In a seventh case, the cooperation involved the creation of a joint venture. The cooperation was, therefore, notified to the ComCo in a merger control procedure. The ComCo, however, decided that the planned joint venture was not independent enough to be subject to the merger control regime. Its Secretariat subsequently opened a preliminary investigation under the applicable behaviour control rules as it had done in the other six cases.

##### MasterCard debit cards

In June 2011, the Secretariat of the ComCo closed a preliminary investigation regarding the planned introduction of an interchange fee for the two debit cards of MasterCard. With regard to the 'Maestro' card, the most widely used debit card in Switzerland, the Secretariat concluded that an interchange fee could violate the Act on Cartels. By contrast, the Secretariat held that an interchange fee for the new 'Debit MasterCard' might be possible within certain limits. Concretely, the Secretariat declared that it would not request the ComCo to open an investigation during the introduction phase of the new Debit MasterCard provided that this card does not exceed a market share of 15 per cent and that its interchange fee, on average, amounts to no more than 0.20 Swiss francs per payment transaction. MasterCard undertook to comply with these conditions, which correspond to the conditions imposed on VISA in 2009 for its debit card 'V PAY'.

**Credit cards (DMIF)**

In July 2009, the ComCo opened a formal investigation regarding the Domestic Multilateral Interchange Fees (DMIF) of Visa and MasterCard (cf *The European Antitrust Review 2011*). A first investigation of this matter had been closed in December 2005 with an amicable settlement that was concluded for a period of four years. In January 2010, the ComCo issued provisional measures with the objective of renewing the solution of 2005 in a modified form, particularly, with a stronger focus on the most cost-efficient market participants. These measures will lead to a reduction of the DMIF and to an alignment with the European average. They were based on an amicable settlement with the most important market players and are to stay in force until the ComCo issues its final decision.

The ComCo's provisional measures of 2010 were appealed before the Federal Administrative Court by Jelmoli, an issuer which had not participated in the amicable settlement that formed the basis of these measures. Jelmoli requested that the Court cancel the measures, prohibit the application of the DMIF calculation fixed therein and reinstate the rules of the amicable settlement of 2005 by means of a provisional measure of its own. The Federal Administrative Court, however, refused to consider the merits of this case. The Court first regarded itself as unable to reinstate the amicable settlement of 2005. It pointed out that the ComCo's approval of that settlement had never been appealed, that it had meanwhile expired and that the parties had deliberately refrained from it by concluding a new amicable settlement. Under these circumstances, the Court regarded a cancellation of the provisional measures of 2010 and a prohibition of their application as pointless, as this would not prevent the parties from agreeing on a DMIF practically identical to the one fixed in these provisional measures. In this connection, the Court saw no indication for any unlawful pressure exerted by the ComCo on the parties of the amicable settlement of 2010. The Court therefore concluded that Jelmoli lacked the requisite 'interest deserving protection' for filing an appeal.

**Hardware for windows and window doors**

In November 2010, the ComCo fined four undertakings active in the field of hardware for windows and window doors for having coordinated the time and amount of price increases. The individual fines ranged from approximately 235,000 Swiss francs to approximately 3.9 million Swiss francs and amounted to a total of approximately 7.6 million Swiss francs. The respective investigation had been opened on the basis of a report by an involved undertaking. This undertaking subsequently obtained a full waiver of its sanction. A further undertaking obtained a reduction of its sanction by 60 per cent for reporting additional competition law infringements. This was the first case of a so-called 'bonus plus'.

**Road and underground construction companies in Argovia**

In June 2011, the Secretariat of the ComCo closed its formal investigation against several road and underground construction companies in the Canton of Argovia and submitted a proposal for a decision to the ComCo and the parties involved. According to the Secretariat's proposal, the ComCo is asked to impose fines for unlawful agreements on prices and allocations of customers in public and private tenders. The proposed individual fines range from approximately 5,000 Swiss francs to approximately 2.3 million Swiss francs and amount to a total of approximately 7 million Swiss francs. Five undertakings are to benefit from a reduction of their sanction, whereas one undertaking is to obtain a full waiver of its sanction under the ComCo's leniency programme. The parties involved may

now submit their comments on the Secretariat's proposal. In the meantime, the parallel investigation against road and underground construction companies in the Canton of Zurich has been extended to additional undertakings.

**Recent cases – vertical agreements****Online sales of household appliances**

In September 2010, the ComCo opened a formal investigation against Electrolux AG and V-Zug AG. While Electrolux AG had prohibited its dealers to sell products through online shops entirely, V-Zug AG had imposed certain conditions upon its dealers in this respect. In its preliminary investigation, the ComCo's Secretariat had found indications that acts hindering product sales through online shops could constitute unlawful anti-competitive agreements. The ComCo pointed out that according to its new Notice on Vertical Agreements (cf *The European Antitrust Review 2011*), dealers must principally be free to use the internet and to fulfil online orders of customers.

This investigation is the ComCo's first investigation relating to restrictions on online sales. The ComCo does not rule out that this investigation could be extended to further undertakings in the so-called white goods sector. Furthermore, it intends to define general criteria for online sales. Electrolux AG and V-Zug AG have expressed their willingness to develop such criteria in cooperation with the ComCo's Secretariat.

**BMW**

In October 2010, the ComCo opened a formal investigation against the BMW Group. The ComCo suspects the BMW Group of possibly having prevented sales of new BMW and MINI vehicles by distribution partners in the European Economic Area to customers in Switzerland. This raises issues of a possible absolute territorial protection.

**Distribution of music**

In June 2011, the ComCo opened a formal investigation against the Swiss branch of the International Federation of the Phonographic Industry (IFPI Switzerland) and its members. In its preliminary investigation, the ComCo's Secretariat had found signs that IFPI Switzerland and its members had hindered parallel imports of certain sound recording media (eg, CDs), that certain undertakings had been refused admission to IFPI Switzerland as members, and that the establishment of representative music charts had been prevented. In addition, the ComCo will also look into the terms and conditions of a promotion system which is widely used by radio stations.

**Recent cases – dominance****SIX Multipay**

In December 2010, the ComCo fined SIX Multipay AG with an amount of approximately 7 million Swiss francs for having abused its dominant position as a supplier of acceptance contracts for the credit cards Visa and MasterCard and the debit card Maestro by privileging the card terminals of its sister company SIX Card Solutions AG.

A manufacturer of card terminals had complained that the so-called Dynamic Currency Conversion (DCC) function offered by SIX Multipay AG was available only on the terminals of its sister company SIX Card Solutions AG and that SIX Multipay AG refused access to the required interface information. As a consequence, the manufacturer's own terminals were not compatible with the DCC function. This function allows holders of foreign credit or debit cards to choose whether they wish to pay the amount due in Swiss francs

or in their home currency right at the card terminal. The ComCo held that SIX Multipay AG's refusal to disclose the requested interface information was unlawful. In the meantime, SIX Multipay AG had disclosed this information (in 2006, at the stage of the preliminary investigation).

#### Swisscom mobile termination fees

In March 2010, the Federal Administrative Court (FAC) largely overturned the ComCo's decision of February 2007, whereby the ComCo had fined Swisscom with a record fine in the amount of approximately 333 million Swiss francs for an alleged abuse of a dominant position (cf *The European Antitrust Review 2011*). The ComCo had accused Swisscom of imposing unfair mobile termination rates upon competitors. Based on an appeal by Swisscom, the FAC annulled the ComCo's finding of an abusive conduct and, consequently, the fine. The FAC found that Swisscom had not been in a position to impose any specific mobile termination rates. It argued that, according to the Telecommunications Act, any competing provider of telecommunications services could have applied for a reduction of such rates in a so-called interconnection procedure before the Federal Communications Commission. The FAC, however, confirmed the ComCo's finding that Swisscom had a dominant position in the market for the termination of calls into its own mobile network. Furthermore, the FAC rejected some procedural arguments which had been brought forward by Swisscom. In particular, it held that the procedure had neither violated the principle *nulla poena sine lege certa* (ie, the rule of certainty of law) nor Swisscom's right to an independent tribunal. Both Swisscom and the Federal Department of Economic Affairs (on behalf of the ComCo) filed appeals against the FAC's decision before the Federal Supreme Court (FSC).

In April 2011, the FSC confirmed the FAC's finding that Swisscom's conduct was not abusive and that Swisscom could therefore not be fined. Moreover, it annulled the FAC's finding of a dominant position, arguing that such an isolated finding was not justified by any interest deserving protection. The FSC was, consequently, able to leave the above-mentioned procedural issues open. The FSC's decision is final and binding.

#### Swatch group

In June 2011, the ComCo opened a formal investigation against the Swatch group after the Swatch group had announced to discontinue the supply of certain components for mechanical movements. The investigation is now supposed to show whether this conduct constitutes an abuse of a dominant position or not. The Swatch group expressed its willingness to conclude an amicable settlement involving a gradual phase-out of the supplies in question. The ComCo has issued provisional measures for the duration of its investigation. According to these measures, the Swatch group is obliged to continue its supply to its full extent for the time being; in 2012, it may reduce the supply by a specified percentage.

The ComCo has provisionally suspended its investigation against ETA Manufacture Horlogère Suisse SA (a subsidiary of the Swatch group), which it had opened in September 2009 (cf *The European Antitrust Review 2011*), as the present investigation could have a substantial impact on that former investigation.

#### Switch

In June 2010, the Secretariat of the ComCo opened a preliminary investigation against Switch, the internet domain name registry for the top level domains .ch (Switzerland) and .li (Liechtenstein), and its subsidiary Switchplus. Switchplus provides domain name registra-

tion services and further internet services for end customers in competition with several other providers. Several of these competitors had filed a complaint, accusing Switch of privileging its subsidiary Switchplus in a discriminatory manner through an abuse of its dominant position in the market for the registration of domain names of the type ".ch" and ".li". Inter alia, the competitors asserted that Switch was privileging Switchplus by means of advertising, setting of hyperlinks, transfer of goodwill, etc, on terms that were neither transparent nor at arm's length and that Switch did not offer the same terms to Switchplus's competitors.

The Secretariat had initially refused to open a preliminary investigation, as the matter was pending before the Commercial Court of the Canton of Zurich, where Switchplus's competitors had filed a request for interim relief (cf *The European Antitrust Review 2011*). The Secretariat thereby intended to avoid conflicting findings in parallel proceedings. Indeed, unlike the Commercial Court, the Secretariat eventually found no evidence of any abusive behaviour of Switch and closed its preliminary investigation in February 2011. The Secretariat left open the questions whether the telecommunications legislation had any impact on the matter and whether Switch had a dominant position. Its main argument was that there was no evidence that Switchplus's competitors had ever requested any of the services that Switch performed for its subsidiary Switchplus. As a consequence, the Secretariat found no evidence of any refusal to deal or discriminatory treatment. The Secretariat suggested that even if Switch had in fact refused such requests made by Switchplus's competitors, it would be difficult to see any abusive conduct. Also, the Secretariat found no evidence of any unlawful cross-subsidisation of Switchplus by Switch.

#### Recent cases – merger control

After the ComCo's spectacular decision of April 2010 regarding the Swiss mobile telecommunications market, whereby it had prohibited the planned acquisition of Sunrise Communications AG (Sunrise) by France Télécom SA and the subsequent merger of Sunrise with France Télécom SA's Swiss subsidiary Orange Communications SA (Orange) (cf *The European Antitrust Review 2011*), the second half of 2010 and the first half of 2011 were marked by a series of concentrations which raised no competition law concerns.

Inter alia, the ComCo approved the acquisition of Sunrise by the investment company CVC Capital Partners. The ComCo pointed out that this acquisition had no impact on the current market structure since three large network providers continued to be active in the Swiss telecommunications market, whereby 'a certain competitive dynamic' continued to exist and the market remained open for further innovations.

#### Recent cases – private enforcement

The ComCo's recent official bulletins have, inter alia, included two examples of civil competition litigation in the motor vehicles sector.

In the first case, the defendant terminated a VW repairer agreement, to which the defendant and the applicant were parties, as of 31 July 2010. On 29 July 2010, the applicant filed a request for interim relief before the Commercial Court of the Canton of Zurich. The applicant requested, inter alia, that the defendant be obliged to fulfil the VW repairer agreement until further notice. The applicant later modified this motion by requesting, inter alia, that the defendant be obliged to fulfil or uphold the VW repairer agreement until further notice or for the duration of the proceedings or until the conclusion of these proceedings with final and binding effect, respectively.

The applicant based this request on the ComCo's Notice on Vertical Agreements in the Motor Vehicles Sector. According to that Notice, termination clauses that do not include a requirement to give one's reasons for termination in writing are, as a rule, deemed to constitute unlawful restraints of competition. The applicant argued that the VW repairer agreement in question did not contain any such requirement, that the defendant had not given any reasons for the termination of the agreement in writing and that the termination had, hence, not been rightful. The Commercial Court, however, held that the termination of the agreement had occurred in conformity with its provisions, that the question whether the agreement had conformed to competition law or not did not affect the effectivity of that termination, and that the termination was, therefore, effective. As a consequence, the Commercial Court saw no basis for ordering the defendant to fulfil or uphold the agreement since it was no longer in existence, and dismissed the applicant's request.

In the second case, the first defendant (a Renault 'main dealer'), after consultation with the second defendant (the Swiss general importer for Renault and Dacia), terminated a Renault dealer agreement with the applicant as of 30 September 2010. On 28 September 2010, the applicant filed a request for interim relief before the District Court of Lucerne-Countryside. The applicant requested,

inter alia, that the defendants be prohibited to inform any Renault customers that the applicant was no longer able to perform any maintenance and repair services (including work under warranty), to block the applicant's access to RenaultNet and to remove the applicant's Renault signage. The applicant further requested that the defendants be ordered to supply original spare parts (or qualitatively equivalent spare parts) to the applicant under the previously existing terms and conditions. The applicant based these requests, inter alia, on the ComCo's Notice on Vertical Agreements in the Motor Vehicles Sector. The ComCo asserts in its Explanatory Remarks on this Notice that any repairer who fulfils the qualitative criteria of a selective distribution system must be admitted to that system. The District Court, however, rejected the existence of such an obligation to contract in the case at hand. It clarified that any admission to a selective distribution system required a prior application, but that the applicant in question had never filed such an application for (continued) membership. The District Court could, thus, leave open the question whether the provisions of the ComCo's Notice on Vertical Agreements in the Motor Vehicles Sector are binding upon civil courts at all. As a result, the District Court dismissed the applicant's request for interim relief. This decision has, in the meantime, been confirmed by the Court of Appeals of the Canton of Lucerne.

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Homburger is a major Swiss business law firm. Since its establishment in 1957, Homburger has advised and represented Swiss and international corporate clients and individual entrepreneurs on key aspects of business law. We offer our clients expert legal advice, support them in business negotiations, represent them before arbitral tribunals and in court, and protect their interests in civil and administrative proceedings.

Homburger is organised into six practice teams and five working groups, integrating the skills and experience of around 120 lawyers and tax experts focusing on specific areas. Our practice teams include litigation/arbitration, corporate/M&A, financial services, tax, IP/IT and competition. The working groups cover employment law, insolvency/restructuring, insurance, private clients and white-collar investigations.

Homburger's competition practice, established as one of the first in Switzerland after the first Swiss Federal Act on Cartels entered into force in the early 1960s, has recently been involved in the first ever Swiss cases of leniency applications, dawn raids and sanction procedures. It advises domestic and foreign multinational as well as small and mid-sized companies in Swiss and European competition law, and represents them before the Swiss Competition Commission and the European Commission as well as before national and international courts and administrative bodies. Services include domestic and EU merger control notifications and the handling of multinational merger control filings, administrative and civil antitrust litigation, and investigations concerning horizontal and vertical restraints of competition and abuses of market power, counselling, antitrust audits and tailored compliance programmes. Other areas of practice include specific advice on public procurement and regulated industries, in particular telecommunications, energy and media.

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**Franz Hoffet**

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Franz Hoffet heads Homburger's competition law practice group. He has extensive experience in all areas of Swiss and European competition law, ranging from merger control to administrative and civil antitrust litigation. He has represented a wide range of companies and trade associations in proceedings before the Swiss competition authorities, the European Commission and in civil courts and arbitration proceedings.

Franz Hoffet also advises clients on compliance matters of Swiss and European competition law. Other areas of practice include regulated markets and public procurement.



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Alexander Bürgi is an associate in Homburger's competition law practice group. He is experienced in Swiss and European competition law, contract law (particularly distribution agreements) as well as administrative law and administrative procedure. His practice involves both advisory and litigation work.



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Marcel Dietrich is a partner in Homburger's competition law practice group. He has extensive experience in all areas of Swiss and European competition and antitrust law; in particular, administrative and civil antitrust litigation and national and multinational merger control. He also advises on compliance matters and regulated markets; in particular, telecommunication, energy, media and transport, as well as public procurement.

Marcel Dietrich's practice also includes corporate and contract law, mergers and acquisitions, and domestic and international litigation and arbitration.



**Gerald Brei**

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Gerald Brei is a partner in Homburger's competition law practice group. His practice focuses on antitrust law with a special emphasis on European, Swiss and German law.

Gerald Brei is experienced in all aspects of antitrust law, eg, merger control, restraints of competition (particularly in distribution agreements and technology transfer agreements), infringement procedures and preliminary investigations of antitrust authorities. Gerald Brei also advises companies on antitrust compliance programmes.

Due to his extensive experience as in-house counsel in the industry (former head of the antitrust group of the legal department of Siemens), Gerald Brei is well suited to advise corporate clients on antitrust matters.



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