

Proposal to tighten up the Swiss Cartel Act

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The Federal Council aims at tightening up the Cartel Act in order to combat the foreclosure of the Swiss market and the price discrimination against Swiss corporate customers. For this purpose, the Federal Council has adopted a draft bill and a dispatch to Parliament addressing the people's initiative "stop Switzerland's high prices – the fair price initiative" on 29 May 2019.

Abuse of relative market power

According to the proposal of the Federal Council, the concept of "relative market power" based on the German model shall be enshrined in the Swiss Cartel Act (CartA) and companies with such relative market power shall be prohibited from price discrimination against Swiss companies.

A company is considered to have relative market power, according to the Federal Council's proposal, *if other companies are depending on it with respect to the demand for a product or service in such a way that there are no sufficient and reasonable opportunities to switch to other companies. According to the proposal, a position of relative market power may only exist between two companies. Consumers are not covered.*

According to the Federal Council's proposal a company with relative market power behaves unlawful and abuses its position on the market, if it *impedes dependent companies from taking up or exercising competition, by refusing these companies the purchase of a product or service abroad at the prices, terms and conditions, which it usually demands, without any objective reasons. According to the people's initiative, companies with relative market power should additionally be prohibited from discriminating the opposite market side.*

Scope of the proposals

The Federal Council has limited the scope of application of the provisions to the *foreclosure of the Swiss market* and has intended to cover only the selling restrictions *outside of Switzerland*; under certain specific circumstances, domestic and foreign companies would be obliged to supply companies from Switzerland also via delivery channels abroad.

At the same time, the Federal Council has limited the concept of relative market power to *suppliers*. In contrast to the people's initiative, *buyers* with relative market power shall not be covered by the new rules.

Enforcement

The people's initiative as well as the Federal Council's indirect counterproposal provide for the unlawfulness of an abuse of relative market power, however, they *do not* provide for direct sanctions in cases of such conduct (art. 49a para. 1 CartA). However, in the event of a repeated violation, a company with relative market power could be sanctioned pursuant to art. 50 CartA.

Prohibition of geoblocking

The people's initiative demands a general ban on the regional blocking of internet content by a supplier, so-called private geoblocking, along the lines of the regulation in the European Union. The Federal Council has rejected this proposal since it prefers a coordinated approach on an international level against geoblocking. In this regard, Parliament will decide whether a prohibition of geoblocking should also be introduced in Switzerland.

Implementation of the proposals

Parliament is expected to address these proposals in autumn. The new rules in the CartA would therefore enter into force at the earliest next year.