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# Kluwer Competition Law Blog

## New Agreement Boosts Cooperation Between Swiss and German Competition Authorities

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### New Cooperation Agreement

On November 1, 2022, Switzerland and Germany signed an [administrative agreement on cooperation between their competition authorities](#) (“Agreement”). The Agreement is expected to enter into force in September 2023 at the earliest because the Swiss Federal Assembly still has to approve the Agreement. The ratifying German Federal Ministry of Economics and Climate Protection, on the other hand, was authorized in advance in [§187\(10\) GWB](#) to conclude the Agreement without the consent of the German Federal Council.

### Purpose of the Agreement

The Agreement aims to ensure efficient enforcement of competition law in cross-border situations. For this purpose, the Agreement will enable future cooperation between the Swiss Competition Commission and the German Federal Cartel Office (together “the Authorities”).

The Agreement has been modelled after the [agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws](#), which entered into force in 2014. In terms of content, there are strong parallels between both agreements. The Agreement does, however, allow for greater cooperation with the German Federal Cartel Office, which is particularly active among the European competition authorities.

### Procedural Aspects

In the future, the Authorities will be able to take coordinated enforcement actions as set forth in Arts. 8-10 of the Agreement. They may exchange views and information on the application of their respective competition laws including information obtained in an investigation. Subject to certain conditions, either authority may transmit the information it already possesses to the other for use as evidence.

In addition to the service of the broadly defined sovereign acts, the Agreement also allows for the direct service of notices, requests for information and other letters that do not constitute sovereign

acts in the respective other contracting states.

Furthermore, the German Federal Cartel Office is entitled to disclose information obtained under Art. 8 of the Agreement to the EU Commission. Disclosure of such information to the competition authorities of other EU states, on the other hand, requires the prior consent of the Competition Commission.

## Outlook and Conclusion

After the Agreement enters into force, an increase in parallel proceedings in cross-border cases in Switzerland and Germany is likely, e.g. coordinated dawn raids or exchange of confidential information and evidence. A typical use case of the bilateral agreement could be coordinated investigations of narrow price parity clauses in online sales, such as those conducted separately in 2015 for hotel booking portals in both countries.

Information may also be exchanged in merger proceedings. Since the thresholds for a merger control notification in Switzerland are higher than those in Germany, the exchange of information in the area of merger control is likely to have less effect from a Swiss perspective than that on competition agreements, abuse of a dominant position and conduct by companies with relative market power.

Incidentally, the agreement is related in time to the new regulations on relative market power applicable in Switzerland as of 2022. A topic on which the German Federal Cartel Office has many years of experience. The agreement could also promote an exchange of experience in this regard.

In cross-border proceedings, a uniform and coordinated procedural strategy for both countries will become more important. As the German Federal Cartel Office is particularly active in the data economy, the Agreement could become more significant than the cooperation agreement with the EU already in force for companies, especially in this particular sector.

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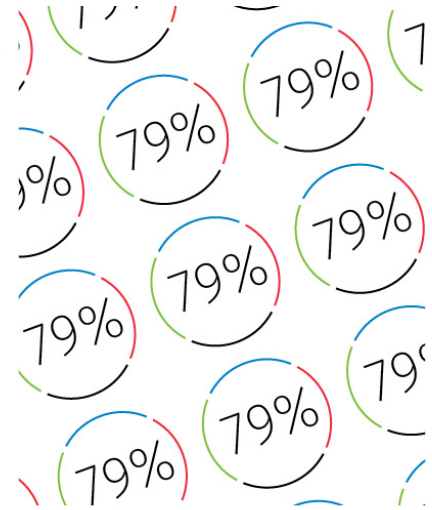
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