

SWITZERLAND

COMPETITION FRAMEWORK

Competition Law	Federal Act of 6 October 1995 on Cartels and other Restraints of Competition ("Cartel Act") In 2003 a revised version of the Cartel Act was adopted with full application commencing in April 2005 following a transition period. Other pieces of legislation completing Switzerland's competition policy are the 1986 Unfair Competition Act, the 1995 Internal Market Act instituting the principle of mutual recognition for goods and services in Switzerland, and the 1985 Price Supervision Act.
Competition Authority	The Switzerland Competition Commission (Comco), which started functioning in 1995. http://www.weko.admin.ch/index.html?lang=en&PHPSESSID=697d1571abc9018a20906bc134dd68e

STATUS OF THE COMPETITION AUTHORITY

Accountability			
The Competition Authority has obligations before the Executive Branch	Yes	✓	Obligations to report to the Executive Branch on on-going investigations, upon request.
		✗	The Executive Branch can veto the decisions of the Competition Authority.
		✓	The Competition Authority has to report on an annual basis to the Executive Branch.
		Other obligations/comments: The NCA has to provide opinion and information to the governmental offices (Chapter 4 of the Act).	
The Competition Authority has obligations before the Legislative Branch	Yes	✓	Obligation to publish an annual report on its activities.
		✗	Obligation to stand before the Legislative Branch and respond to Congressmen on an annual basis.
		✓	Its activities are monitored by an independent auditor or by oversight committees.
		Other obligations/comments: The NCA has to provide opinion and information to the governmental offices (Chapter 4 of the Act). It also has to respond during the year to congressmen's questions.	
The Competition Authority	Yes	✓	Decisions of the Competition Authority

has obligations before the Judicial Branch		are subject to judicial review Other obligations/comments: The NCA has to transmit the file to the Courts (appeals). Appeals under administrative law against the decisions of the Competition Appeals Commission have to be addressed to the Federal Supreme Court.
Independence		
The criteria for appointment and removal of the Head/Board Members is clear and transparent	No	Cartel Act, Chapter 4, Section 1, Article 18 states that the Federal Council shall appoint the Competition Commission and designate the members of the presiding body, but there are no specific criteria for the appointment.
The Executive Branch has powers to decide on specific cases based on public interest	Yes	According to Article 8 Cartel Act, the Federal Council (Government) may authorize upon request of the undertakings an illicit agreement or an illicit behavior that was prohibited by the NCA for public compelling interests. A prohibited merger can also be authorized by the Ministry (Cartel Act, Article 11).
The Executive Branch retains decision making powers over the Competition Authority	Yes	The Ministry (Department) shall ask the Secretariat of the Competition Commission to open an investigation (Cartel Act, article 27).
The Competition Authority is obliged to publish its reasoned decisions to ensure transparency	No	Pursuant to Cartel Act, article 48, the Competition Authorities may publish their decisions, but there is no obligation. However, in practice, the COMCO publish all reasoned decisions.
There is a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning	Yes	For 2012, approximately CHF 10.7 million
The Competition Authority can be financed by its own means (notification fees, fines, etc.)	No	Fines imposed by the NCA go the general budget of the Federal State.
GOVERNANCE OF THE COMPETITION AUTHORITY		
The Competition Authority is governed by a chairman appointed independently or by a collegiate body (which might have a chairman chosen among the members)	Collegiate Body	Ch. 4, Sec. 1, Art. 18 of the Cartel Act. The Commission is a collegiate body which has a president independently chosen by the Federal Council. The Competition Commission has between eleven and fifteen members.
The heads are appointed by the Executive Branch	Yes	According to Ch. 4, Sec. 1, Art. 18 of the Cartel Act, "The Federal Council shall appoint the Competition Commission and designate the members of the

		presiding body."	
The heads are appointed by representatives of more than one government branch	No		
There is a fixed period during which removal is prohibited, except for specific causes	No		
The tenure of the heads is renewable	Yes	The tenure of the Commissioners is renewable more than once. There is no maximum of years stipulated.	
The heads are required to have certain minimum qualifications (degree in law or economics, age, experience)	Yes	The Federal Act on Cartels demands that the majority of the members of the Competition Commission are independent experts - usually law and economics professors.	
ARCHITECTURE			
The Competition Authority is a stand-alone agency with an independent physical location or it is part of a bigger entity such as a Minister	Stand-alone agency	The Competition Authority is an independent entity, but administratively it is part of the Federal Department of Economic Affairs. It is located in Monbijoustrasse 43 CH-3003 Bern.	
POLICY MAKING AGENTS-DIVERSIFICATION			
There is only one agency or more than one agency responsible for competition enforcement	One agency		
The Competition Authority and other agencies have signed protocols or memoranda of understanding with sector regulators	Telecommunications Regulator	No	
	Energy Regulator	No	
	Transport Regulator	No	
	Other	Regulatory authorities are in the following sectors: telecommunication (Bakom), electricity (Elcom), postal services (PostReg), Rail (Arbitral Commission for Rail Transport), Banks and insurances (Finma). The Competition Authority regularly gives expert advice on competition issues to regulatory bodies.	
POLICY DUTIES			
The Competition Authority	Exclusive	X	Concurrent Consumer Protection

has exclusive mandate on competition or multiple mandates	competition mandate		mandate
		X	Concurrent IP mandate
		Other Mandates: The Competition Commission is an independent federal authority. The tasks of the Competition Commission are combating harmful cartels, monitoring dominant companies for signs of anti-competitive conduct, enforcing merger control legislation and preventing the imposition of restraints of competition by the state.	
PORTFOLIO INSTRUMENTS			
LAW ENFORCEMENT			
The Competition Authority has powers to investigate cartels	Yes	Chapter 2, Section 1, Art. 5 of the Cartel Act.	
The Competition Authority has powers to dawn raid premises	Yes	Chapter 4, Section 4, Art. 42 of the Cartel Act.	
The Competition Authority can investigate cases <i>ex officio</i>	Yes	Chapter 4, Section 3, Art. 32 of the Cartel Act.	
The Competition Authority has powers to accept leniency applications	Yes	Chapter 4, Section 5, Art. 49a of the Cartel Act.	
The Competition Authority has powers to seek criminal punishment	No	Chapter 5 of the Cartel Act. Although it talks about criminal sanctions, it refers only to administrative sanctions (fines) and not prison.	
ADVOCACY			
The Competition Authority can issue opinions on draft legislation	Yes	Chapter 4, Section 5, Art. 46 of the Cartel Act. The opinions are not binding.	
The Executive and/or Legislative Branch is obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition	Yes	Chapter 4, Section 5, Art. 46 of the Cartel Act.	
RULEMAKING			
The Competition Authority can issue guidelines or other type of secondary legislation	Yes	✓	Guidelines on the calculation of fines
		X	Guidelines on merger control
		X	Guidelines on the economic analysis of dominant cases
RESEARCH & REPORTING			
The Competition Authority can carry out market studies	Yes		

The Competition Authority can report to the Legislative Branch on the results of market studies	Yes	Besides the competence to decide, the Competition Commission might address recommendations and opinions to the political authorities and give expert advice on important matters concerning competition. This gives the Competition Commission the possibility to focus on concern of competition policy already in the policy making process.
DECISION MAKING FUNCTIONS		
The body that carries out investigations and decides the cases are the same	No	The Competition Commission is supported by a full-time Secretariat. It examines the suspected cartels and prepares the decisions for the Competition Commission.
The body that carries out investigations and imposes fines are the same	No	The investigations are carried out by the Secretariat.
The investigatory body has standing before the body that makes the decisions	Yes	