Merger Control 2026

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Key features of the Swiss merger control regime

The Swiss merger control regime is predominantly distinct from others in three key aspects: (1) high thresholds regarding filing obligations, which leads to a relatively small number of merger control cases; (2) high thresholds for the intervention of the Competition Commission ("ComCo"), which is the reason why only a few mergers have been prohibited to date; and (3) its relationship with the EU merger control regime.

Thresholds for filings

Art. 9 Cartel Act ("CartA") provides for the mandatory notification of a merger or, more broadly speaking, a concentration, if certain thresholds are met. There are two alternative sets of thresholds:

a. Turnover thresholds: an aggregate turnover of all undertakings concerned of at least 2 billion Swiss francs worldwide, or an aggregate turnover in Switzerland of at least 500 million Swiss francs; and, additionally, individual turnover in Switzerland each of at least two of the undertakings concerned, of a minimum of 100 million Swiss francs.

b. Dominance threshold: if, in a previous investigation, ComCo found that a specific undertaking holds a dominant position in a certain market, every concentration involving that undertaking in that market, or in a neighbouring, upstream or downstream market, is subject to the notification requirement. The Federal Administrative Court specified, in a decision in April 2014, that a neighbouring market includes: (i) markets concerning products that are to some extent substitutes; or (ii) markets concerning products with parallel demand.

Substantive test

The substantive merger test that allows ComCo to fully prohibit a transaction or to approve a transaction on certain conditions is rather limited. The merger review is based on a dominance test. ComCo may prohibit a transaction that:

a. creates or strengthens a dominant position, which could eliminate effective competition; and

b. does not strengthen competition in another market, which outweighs the negative effects of the dominant position.

This limited test is interpreted by the courts in a narrow way. For example, the Federal Supreme Court found that ComCo must demonstrate a causal link between a notified transaction and the elimination of effective competition. This means that in a situation of pre-existing dominance (in which effective competition has already been eliminated), the merger control regime does not provide for the possibility of intervention. This limited test is subject to a current revision project and will be replaced by the "significant impediment to effective competition" ("SIEC") test shortly (see the section below on "Reform proposals").

Three of ComCo's prohibition decisions are worth mentioning. In 2010, ComCo prohibited the planned concentration between Orange and Sunrise, which would have reduced the number of competitors from three to two in the mobile telecommunications market. According to ComCo, the merger between Orange and Sunrise would have created a collectively dominant position with Swisscom in the mobile telecommunications market. The parties' argument, that the merger was needed to challenge the dominant position of Swisscom (the former monopolist in the market, whereas the Swiss Federal State is still the majority shareholder), did not convince ComCo.

In a ruling dated 22 May 2017, ComCo refused to clear the planned merger between Ticketcorner and Starticket. These companies sell tickets for the promoters of concerts, shows, etc. Their services include the physical and online sale of tickets (primary ticketing) and the marketing of events (such as advertising in the media and a presence on social networks). In addition, Ticketcorner and Starticket provide promoters with software that allows them to sell tickets themselves (direct sales). The detailed review carried out by ComCo revealed that although the market for direct sales did not present any problems, there was evidence in the market for primary ticketing that Ticketcorner already had a dominant position. The merger would have allowed the two companies to control the Swiss market for primary ticketing and to eliminate effective competition. Ticketcorner has appealed ComCo's decision. In its decision of 12 December 2023, the Federal Administrative Court did not uphold Ticketcorner's appeal on the grounds that there was no current and practical interest in legal protection. The former owner of Starticket withdrew from the transaction agreement in 2020 and Starticket was already sold to See Tickets in 2020.

In 2024, ComCo prohibited the planned merger between Swiss Post and Quickmail Holding AG, as the merger would have resulted in the elimination of competition in a specific market and would have created a *de facto* monopoly of Swiss Post.

Relationship with the EU regime

The Swiss competition authorities may communicate with the EU authorities based on the agreement between Switzerland and the EU on cooperation and exchange of information between their respective competition authorities. This agreement allows them to mutually exchange specific case-related confidential information. The scope of this information exchange agreement is broader than in previous EU cooperation agreements with non-EU Member States and is therefore called a "Second Generation Agreement" in the EU. The crucial point in this new generation of agreements is that confidential information can be transmitted without the parties' consent, subject to exceptions. ComCo frequently makes use of the opportunity to informally exchange information on specific cases, such as merger control cases.

This information exchange enables the authorities to make a faster evaluation of the concentration, as well as to coordinate with the proceedings of the EU. Generally, a simplified notification procedure may be discussed with the authorities if the EU filing form is attached to the Swiss filing form. ComCo is committed to avoiding inconsistencies in relation to EU merger proceedings, which are conducted in parallel.

On 1 November 2022, Switzerland and Germany signed an agreement on cooperation and coordination of the competition authorities. This agreement entered into force on 1 September 2023. The agreement aims to ensure efficient cross-border enforcement of competition law, to facilitate the service of official notices and orders, and allows the parties to exchange confidential information subject to strict conditions for the protection of business secrets and personal data.

Overview of merger control activity during the last 12 months

Statistics

The number of notified mergers remains high. In the past year, 34 merger projects were notified to ComCo (total number of filings in 2024: 43). Of these, 33 mergers were cleared in Phase I (one-month review after confirmation of completion of the draft filing), and in one case an in-depth Phase II investigation (four-month review after service of the decision by ComCo to open an investigation in accordance with art. 10 CartA (Phase II)) was carried out and, ultimately, the merger was approved unconditionally. ComCo did not request any conditions in a clearing decision in the year under review.

Important Phase II investigations

In January 2024, ComCo prohibited the planned merger between Swiss Post (the national postal service of Switzerland) and Quickmail Holding AG, a private Swiss service provider responsible for delivering letters, unaddressed items and parcels throughout Switzerland, in a Phase II investigation. This case has already been discussed in detail in *GLI Merger Control 2024*, 13th edition. Apart from the *Swiss Post/Quickmail* case, no Phase II investigations were conducted by ComCo in 2024.

In August 2025, ComCo cleared DERTOUR's acquisition of Hotelplan unconditionally following an in-depth Phase II review. The investigation was initiated because initial findings indicated potential concerns regarding market dominance, as the two parties are among the largest tour operators in Switzerland and together operate more than 150 travel agencies. ComCo assessed whether sufficient alternative booking options – such as direct bookings with airlines and hotels or online platforms – would remain available to constrain price increases. Although the merger leads to increased concentration in certain markets, ComCo concluded that effective competition would not be eliminated due to the wide range of booking alternatives actively used by travellers and therefore cleared the merger.

Particular Phase I investigations

In May 2025, ComCo cleared, in Phase I, the concentration under which Rolex Holding SA intended to acquire Bucherer Holding AG as well as Bucherer Immobilien AG. What is noteworthy in this case is that, together with the notification, the Rolex Group submitted a letter containing commitment undertakings relating to the distribution of watches under the Rolex and Tudor brands, the Bucherer Group's multi-brand strategy, the after-sales service (Services Après-Vente, SAV) network, and access to spare parts. According to ComCo, these commitments – by which the Rolex Group reaffirmed, in the notification, its statements regarding the orientation of its future distribution policy and the structuring of its SAV – were of decisive importance for the assessment of the concentration.

In the first half of 2025, the proposed concentration concerning the acquisition of control by Frutiger Unternehmungen AG ("Frutiger") over Blumer-Lehmann Holding AG ("Blumer-Lehmann") was notified to ComCo. The concentration was planned to be implemented in two transactions (Closing 1 and Closing 2), whereby A, as the current majority shareholder of Blumer-Lehmann, was to remain the majority shareholder after Closing 1 until the remaining shares were to be acquired by Frutiger as part of Closing 2.

ComCo found that Frutiger would be able to block strategic decisions by means of veto rights and that, upon Closing 1, Frutiger would acquire negative control over Blumer-Lehmann. In the notification, the parties argued that A is not an undertaking, and that, therefore, joint control between Frutiger and A between Closing 1 and Closing 2 was excluded, with the result that Frutiger would acquire sole control over Blumer-Lehmann already upon Closing 1.

ComCo concluded that, in line with the practice of the European Commission, natural persons qualify as undertakings only if they carry out additional economic activities for their own account or if they control at least one other undertaking. These conditions were not met by A, who therefore did not qualify as an

undertaking for the purposes of the proposed concentration. However, according to ComCo, this does not preclude the existence of joint control between Frutiger and A.

Joint control exercised by undertakings together with natural persons is not expressly regulated in the Merger Control Ordinance ("MCO"). According to ComCo, however, there are no indications that art. 2(1) MCO was intended to exclude joint control between undertakings and natural persons. Rather, it must be assumed that the legislator overlooked this (in practice uncommon) constellation. Accordingly, ComCo considered there to be a regulatory gap, which must be filled by the authority.

ComCo therefore concluded that art. 2(1) MCO is to be applied by analogy to constellations in which undertakings and natural persons jointly acquire control over an undertaking that was previously not jointly controlled. Since A remained the majority shareholder after Closing 1 and Frutiger was able to block strategic business policy decisions by means of veto rights, ComCo concluded that joint control between Frutiger and A existed after Closing 1. With Closing 2, a change from joint to sole control would then occur, which is subject to notification requirements.

New developments in jurisdictional assessment or procedure

Mergers involving banks

UBS Group AG/Credit Suisse Group AG

In March 2023, the Swiss Financial Market Supervisory Authority ("FINMA") approved the acquisition of Credit Suisse Group AG by UBS Group AG on the basis of art. 10 para. 3 CartA. Art. 10 para. 3 CartA provides for a special regime for mergers in the banking sector. This provision allows FINMA, in the event of a concentration of banks within the meaning of the Banking Act and where it is deemed necessary for reasons related to creditor protection, to take the place of ComCo and to be responsible for the assessment of the merger. In these cases, FINMA invites ComCo to submit an opinion.

FINMA exercised this power and assumed responsibility for the merger based on art. 10 para. 3 CartA. Upon invite of FINMA, ComCo submitted a detailed opinion on the case in September 2023, which was published in June 2024, highlighting different concerns regarding the merger.

In its statement, ComCo recommends that FINMA initiate a Phase II investigation in accordance with art. 33 in conjunction with art. 10 paras 2 and 4 CartA. ComCo further states specific recommendations for the retail banking, asset management, corporate banking and joint ventures sectors. With regard to retail banking, ComCo concludes that after the merger there will be sufficient competition in retail banking due to Switzerland's very diverse and competitive banking landscape. However, as the merger will create the largest retail bank in Switzerland, ComCo recommends continuingly monitoring the development of the retail banking sector. Regarding asset management, ComCo concludes that the merger will weaken competition. ComCo recommends that prices and fees for services in the Global Custody market be monitored. With regard to corporate banking, ComCo states that there are no fully-fledged alternatives to the merged UBS Group AG for various customer segments. Also in this sector, ComCo recommends monitoring the prices, fees and margins for services. With regard to the regulatory framework, ComCo maintains that the rapid granting of licences to foreign banks would be conducive to effective competition. ComCo also highlights the need for legislative action, in particular a more precise definition of the term "creditor protection" and the application of the two-stage procedure for FINMA in the event of a merger of banks within the meaning of art. 10 para. 3 CartA and art. 17 MCO.[1]

FINMA had approved the merger early on 19 March 2023, and authorised at the request of the involved undertakings the immediate implementation of the concentration for good cause based on art. 32 para. 2 CartA. According to FINMA, this measure was in the interest of creditor protection and necessary to prevent greater damage to the Swiss financial ecosystem and the international financial markets. After

the investigation, FINMA concludes that the acquisition of Credit Suisse Group AG by UBS Group AG will not eliminate effective competition in any market segment, even if UBS Group AG has been able to strengthen its market position in certain sub-segments. FINMA has closed the merger control without any conditions, obligations or further investigations.

Following a merger control proceeding, ComCo has various investigative options. Swiss competition law is based on three pillars: (1) unlawful agreements (arts 5 and 6 CartA, first pillar); (2) abusive conduct of dominant undertakings (art. 7 CartA, second pillar); and (3) merger control (art. 9 CartA, third pillar). The first two pillars of competition law represent ComCo's instruments for taking action against potentially anti-competitive conduct after a merger. ComCo therefore retains the possibility, subsequent to the merger of Credit Suisse Group AG by UBS Group AG, to take action against potentially abusive conduct.

Conclusion of the European Commission

The proposed concentration of UBS Group AG and Credit Suisse Group AG was also notified to the European Commission. On the basis of its market investigation, the European Commission concluded that the merger would not significantly impede competition in the markets where the activities of the two companies overlap in the European Economic Area ("EEA"). In particular, the European Commission found that the merged entity would continue to face significant competitive pressure from a large number of competitors in all these markets, including several large global banks as well as specialised providers and strong local players. The European Commission therefore concluded that the proposed merger would not raise competition concerns in any of the EEA markets examined, and cleared the transaction without conditions.

Key industry sectors reviewed and approach adopted to market definition, barriers to entry, nature of international competition, etc.

ComCo has no specific focus in relation to its enforcement policy in merger cases.

In relation to mergers in the digital economy, there have been no changes to law, process or guidance. However, in ComCo's 2016 annual report, it was stated that the turnover-based thresholds in merger control could lead to a situation wherein mergers are not controlled, even though in relation to customer data a dominant position exists. Following this statement, the Swiss government explained, in the 2017 report on the legal framework of the digital economy, that it may be necessary and useful to adapt the merger notification criteria so that the authorities can examine mergers or acquisitions of young internet platforms that could possibly impact competition. The introduction of a SIEC test when examining mergers could also help to consider the improved efficiency of merged platforms, according to the government (see section below on "Reform proposals").

While various legal tests and reform proposals are discussed in legal commentaries on the digital economy, the Swiss government is generally reluctant to take the lead in relation to new legal concepts. Generally, the approach is to leave it up to the authorities and courts to concretise the existing legal provisions in view of new technological developments.

Key economic appraisal techniques applied, e.g., as regards unilateral effects and co-ordinated effects, and the assessment of vertical and conglomerate mergers

In its assessment of the effects of a concentration, ComCo generally relies on well-established concepts. However, economic appraisal techniques are not always used in a detailed way. For example, when reviewing coordinated effects, ComCo relies on the following factors: number of companies involved; market shares of the companies involved; market concentration; symmetries; market growth; market

transparency; multimarket relations; market position of the demand side; and potential competition. Often symmetries between the merging undertakings are of particular interest, i.e., characteristics of the companies, which ultimately lead to extensive symmetry with regard to the market appearance and the available market parameters concerning the offered products and services. For example: technology; number of products in the product portfolio; market shares; capacities; or costs are considered. However, these factors are generally not reviewed and balanced in a systematic economic framework, but rather in a legal assessment based on various factual assumptions.

Approach to remedies (i) to avoid second stage investigation, and (ii) following second stage investigation

Parties may propose remedies for potential competition issues at any stage of the merger control proceedings. The most appropriate moment for the commencement of remedy negotiations should be assessed case by case, depending on the specific circumstances at hand.

Should parties want to discuss remedies in Phase I, corresponding proposals should be included in the draft filing; otherwise, the risk is that ComCo may enter into a Phase II investigation to gain more time to assess the likely effects of such remedies. Then again, by including remedies in the draft filing, ComCo would most likely ask for further information in relation to the effects of remedies proposed before confirming the completeness of the draft filing. Therefore, starting negotiations in a Phase I investigation involves the risk that the Phase I investigation may be delayed, while the opening of a Phase II investigation may not be avoided for certain. Consequently, to date, proposals for remedies have only rarely been offered by the parties in a Phase I investigation.

Another reason why parties generally wait until Phase II for introducing proposals for remedies is that ComCo's report outlining the reasons for the opening of a Phase II investigation may be specifically addressed by the proposed remedies. ComCo sends its Phase I report within the one-month deadline of Phase I to the parties involved. Issues that are not raised in the report do not need to be addressed by remedies. Moreover, the parties may invest more time and energy in the reasoning for the remedies, addressing the specific arguments outlined by ComCo in its Phase I report.

Key policy developments

According to the CartA, ComCo is obliged to refrain from considering public policy arguments. Corresponding arguments may be heard by the Swiss government, which may clear a proposed merger after a prohibition decision by ComCo, should public interest be considered more important than the negative effects on competition. ComCo's understanding of its role is focused on the economic effects of a merger. Non-industrial economic reasons, such as the protection of jobs or the easing of the negative effects of structural changes, are therefore not taken into account.

An exception to this rule may be the merger case regarding the infrastructure project Gateway Basel North, decided in 2019. In this case, it seems that public policy consideration might have influenced the clearance decision, because ComCo apparently was not intending to prevent a large infrastructure project of national significance of the state-owned railway company SBB.

Reform proposals

SIEC test

The partial revision of the CartA was passed by the Parliament on 19 December 2025. The bill aims to improve the effectiveness of the CartA by modernising merger control, civil antitrust law, and the objection procedure. The revised CartA is expected to take effect in the first half of 2027.

An important part of the revision is the introduction of the SIEC test as the relevant standard for merger control proceedings. This revision aims to align the Swiss intervention threshold with the international standard in merger control. The current revision project is based on two studies conducted by economists showing that positive effects on competition in Switzerland are to be expected from such a change. ComCo welcomed the new possibility to exclude mergers with at least EEA-wide markets from the obligation to notify ComCo, as well as the extension of deadlines for international mergers in order to harmonise them with the deadlines of the European competition authorities, as this will reduce the administrative burden for companies and the authorities in the relevant case.

Merger fees

On 6 November 2024, the Federal Council amended the Ordinance on Fees under the CartA. Therefore, all proceedings before ComCo and the Secretariat are charged on a time and material basis as of 1 January 2025. The preliminary assessment of mergers previously provided for a flat fee of 5,000 Swiss francs. Since 2016, the difference between the flat fee and the actual costs incurred has become more accentuated due to the increasing complexity of the cases. In 2023 (with 38 cases), the difference between the actual costs generated and the fees charged according to the flat rate amounted to nearly 700,000 Swiss francs (2016 with 25 cases: 125,000 Swiss francs).

Due to this underfunding, the flat-rate fee for the preliminary review of a merger was dropped without replacement. The fees for such procedures are now – as for all other procedures – charged on a time and material basis. The fees represent a negligible fraction of the costs of mergers, which is why the Federal Council does not expect any significant economic impact despite this increase.

Competition authority reform

On 15 March 2024, the Federal Council instructed the Federal Department of Economic Affairs, Education and Research ("EAER") to submit a consultation draft for a reform of the competition authorities by mid-2025. Currently, ComCo makes administrative decisions in the first instance in cases of violations of the CartA. However, investigations are carried out by the Secretariat of ComCo. In the future, the Federal Council intends to make the separation between investigation and decision more effective, and strengthen the independence of ComCo in its decision-making. The number of ComCo members is to be reduced from the current 11–15 to five–seven members. In addition, specialised judges are to be appointed to the Federal Administrative Court, which is responsible for appeals in antitrust cases. This should speed up proceedings and strengthen the economic expertise of the Federal Administrative Court. The draft bill and the accompanying message are expected to be submitted by the Federal Council in the course of 2026.

Endnote

1 ComCo's statement dated 25 September 2023: https://www.weko.admin.ch/dam/de/sd-web/LwrDNMeHdUJA/zusammenschlussvorhaben_ubs_cs_stellungnahme_vom_25_september_2023.pdf

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- Key policy developments
- Reform proposals

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