The International Comparative Legal Guide to:

Competition Litigation 2016

8th Edition

A practical cross-border insight into competition litigation work

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EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Competition Litigation.*

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of competition litigation.

It is divided into two main sections:

Four general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting competition litigation, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in competition litigation in 36 jurisdictions.

All chapters are written by leading competition litigation lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Euan Burrows and Mark Clarke of Ashurst LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 General

1.1 Please identify the scope of claims that may be brought in Switzerland for breach of competition law.

Under the Swiss Federal Act on Cartels and other Restraints of Competition (LCart), civil competition actions can be brought before Swiss civil courts by undertakings which are impeded by an unlawful restraint of competition. Such unlawful restraint of competition may consist either:

- in unlawful horizontal or vertical agreements that significantly affect competition without being justified by economic efficiency or that lead to the suppression of effective competition (article 5 LCart); or
- in an abuse of a dominant position (article 7 LCart).

The action is aimed at the undertaking restraining competition. In case of unlawful agreements, the adverse party is one or several undertakings involved in such unlawful agreements; in case of abuse of a dominant position, the adverse party is the undertaking having a dominant position in the market. It is not mandatory to sue several parties liable for the restraint together as these have joint and several liability.

1.2 What is the legal basis for bringing an action for breach of competition law?

Civil competition actions for breach of the LCart are based on article 5 LCart (unlawful agreements) or on article 7 LCart (abuse of a dominant position).

Articles 12 to 13 and 15 LCart provide some special procedural rules for civil proceedings. To the majority of the procedural rules, the Swiss Code of Civil Procedure (CCP) applies.

1.3 Is the legal basis for competition law claims derived from international, national or regional law?

The legal basis for competition law claims is Swiss federal law. However, at the first instance, the claims are brought before a Cantonal court whose organisation is governed by Cantonal law.

1.4 Are there specialist courts in Switzerland to which competition law cases are assigned?

Civil competition actions are assigned to the normal civil courts and commercial courts, respectively (if any). As every Swiss Canton is competent to establish the organisational structure of its courts, the court before which civil competition actions have to be brought is assigned by Cantonal law. However, federal law requires that there is only one single court in each Canton which handles competition cases (article 5 (1) (b) CCP). Usually, the Cantonal rules assign civil competition actions to a higher Cantonal court.

Some Cantons (Zurich, Berne, Aargau, and St. Gall) have established special courts for commercial matters, whose judges have special knowledge with respect to commercial matters. These commercial courts are also the competent courts for civil competition actions. However, they are not specialised only in competition law cases, but also more generally in commercial matters, including intellectual property.

1.5 Who has standing to bring an action for breach of competition law and what are the available mechanisms for multiple claimants? For instance, is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation? If collective claims or class actions are permitted, are these permitted on an "opt-in" or "opt-out" basis?

In order to have standing for a claim, it suffices for the claimant to be affected by the restraint of competition. It is neither necessary for the claimant to be a competitor nor does the restraint have to be directly aimed at the claimant. However, according to the prevailing doctrine, consumers are not authorised to bring claims based on the LCart.

Collective actions or actions brought by associations do not exist in Swiss competition law. Class actions are completely unknown in Swiss law. In connection with the preliminary work for the CCP, the introduction of class actions was discussed, but rejected. Class actions were considered as being contrary to the principle that only the holder of a right can assert it. Political discussions about class actions have recently restarted, but their outcome is uncertain.

However, it is possible that several claimants form a simple dispute association (*einfache Streitgenossenschaft,* article 71 CCP). Furthermore, there is nothing to be said against several parties assigning their claims for damages or profit remittance to a third party. Such third party will then bring all claims together as a claimant in its own name.

1.6 What jurisdictional factors will determine whether a court is entitled to take on a competition law claim?

In international cases, jurisdiction for civil competition actions in Switzerland is given if the defendant has its seat or domicile or – for

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lack of domicile – its habitual residence in Switzerland. Jurisdiction is also given at the place where the damaging event occurred or where it had its effects if this place lies in Switzerland (article 129 of the Swiss Federal Act on International Private Law). If the Lugano Convention applies, the defendant can be sued at its seat or its domicile, respectively (article 2 of the Lugano Convention). Alternatively, the defendant may be sued at the court at the place where the damaging event occurred or where it had its effects has jurisdiction (article 5 (3) of the Lugano Convention). The nationality or residence of the claimant is of no significance. The wording of the Lugano Convention is similar to the wording of the 2012 Brussels Ia Regulation (Council Regulation [EC] No 1215/2012).

Similar rules apply in domestic cases without any international dimension. The court at the seat or domicile of the damaged undertaking or of the defendant has jurisdiction. Jurisdiction is also given at the place where the damaging event occurred or where it had its effects (article 36 CCP).

1.7 Does Switzerland have a reputation for attracting claimants or, on the contrary, defendant applications to seize jurisdiction and if so, why?

So far, Switzerland has neither attracted claimants nor defendant applications to seize jurisdiction to a large extent. This applies to litigation in general, but in particular to competition litigation, where actions are very rare in Switzerland. From the claimant's perspective, Swiss courts are not particularly attractive as the standard of proof is relatively high and the possibilities to gain evidence are limited. It mainly falls to the claimant to gain evidence. From the defendant's perspective, Swiss courts are not particularly attractive as they do not have a reputation for being exceedingly slow in deciding their cases.

1.8 Is the judicial process adversarial or inquisitorial?

The civil judicial process in Switzerland is adversarial.

2 Interim Remedies

2.1 Are interim remedies available in competition law cases?

Interim remedies are available (articles 261 to 269 CCP).

2.2 What interim remedies are available and under what conditions will a court grant them?

Interim remedies focus on avoiding or terminating the restraint of competition. All appropriate and reversible measures for such interim execution are available (article 262 CCP), e.g. the interim obligation to supply, to enter into a contract or to grant admission to a trade fair.

The claimant has to show credibly, by *prima facie* evidence, that its main action for removal or cessation of the unlawful restraint of competition is presumably justified, and that the claimant is likely to incur a hardly reparable disadvantage during the course of the civil proceeding if no interim remedies are granted (see article 261 CCP).

In case of high urgency, interim remedies may be granted to the claimant without having heard the defendant in advance (*ex parte* remedies). In such cases, the defendant will be heard after the first decision only and the court will then reconsider the interim remedies (article 265 CCP).

3 Final Remedies

3.1 Please identify the final remedies which may be available and describe in each case the tests which a court will apply in deciding whether to grant such a remedy.

Article 12 LCart rules that the impeded undertaking may sue for removal or cessation of the restraint of competition, for damages and reparations and for remittance of the illicitly earned profits. Regarding damages, reparations and profit remittance, article 12 LCart refers to articles 41 *et seq.* and article 423 of the CO. Additionally, unlawful contracts are void in whole or in part. The impeded undertaking may bring before the courts an action for a declaratory judgment regarding such voidness.

The court will assess for each claim whether all prerequisites have sufficiently been proven by the party that bears the burden of proof. The prerequisites for a claim for damages are: occurrence of loss; unlawful restraint of competition; causal link between such restraint and the occurrence of loss; and fault.

In case of a claim for remittance of the illicitly earned profits, the claimant has to prove that the defendant made net profits for which the unlawful restraint of competition was causal and that the defendant acted in bad faith.

3.2 If damages are an available remedy, on what bases can a court determine the amount of the award? Are exemplary damages available? Are there any examples of damages being awarded by the courts in competition cases which are in the public domain? If so, please identify any notable examples and provide details of the amounts awarded.

The court will mainly determine the amount of the award based on the incurred loss that the claimant was able to prove. However, quantifying and even evidencing the damages may pose a severe problem in the context of a claim. If the exact amount of damages cannot be established, the judge shall assess them at his discretion (article 42 (2) CO). This provision is also applicable if it is not possible to provide any strict proof that an actual damage even occurred.

If an exact quantification of the claim is impossible or unreasonable at the beginning of the court proceedings, the claimant can initially submit an action for an unspecified amount and not specify the exact amount until the procedure of taking evidence has been concluded (article 85 CCP). However, a minimal amount has to be specified from the beginning. Under certain circumstances, an action for an unspecified amount can be submitted to the defendant together with a request for information (*Stufenklage*).

Exemplary or punitive damages do not exist in Switzerland. Under Swiss law, damages are only granted in order to compensate the claimant for incurred loss.

So far, civil competition actions have been very rare in Switzerland. One of the very few cases in the public domain in which damages have been awarded dates back to 2003. It is a case concerning anticompetitive foreclosure. The Commercial Court of the Canton of Aargau awarded an unknown amount of damages to an undertaker. The court came to the conclusion that the undertaker suffered a competitive disadvantage due to the fact that a hospital exclusively collaborated with a competing undertaker. The court stated that the collaboration agreement between the hospital and the competing undertaker was unlawful and that the hospital had abused its dominant position.

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In the Swiss asphalt cartel case, 17 road building companies reached an out-of-court settlement with two damaged parties, the Canton of Ticino and the city of Lugano. They agreed to pay an indemnity of 4.9 million Swiss francs. The parties involved declared that they preferred this out-of-court settlement in order to avoid costly and long-lasting court proceedings with uncertain outcomes.

3.3 Are fines imposed by competition authorities and/or any redress scheme already offered to those harmed by the infringement taken into account by the court when calculating the award?

There is no legal provision allowing the court to take imposed fines into account when calculating the award. Fines imposed by the competition authorities are administrative sanctions. Their purpose is to prevent unlawful behaviour of market participants and, by their preventive effect, they primarily serve the protection of public interests in an effective competition instead of private interests in compensation. As the claimant does not receive any compensation from the fines imposed by the competition authorities, the court is not allowed to take such fines into account when calculating the amount of damages.

There are no particular rules on redress schemes in Switzerland. As far as we know regarding Switzerland, redress schemes as an alternative to private litigation in court have never been offered by infringers to those who have suffered harm due to an infringement of competition law. However, we would expect the court to take into account the compensation which the claimant has already received from the defendant under a redress scheme.

4 Evidence

4.1 What is the standard of proof?

The court is free to weigh and evaluate the evidence provided by the parties. Basically, the parties need to provide evidence for all relevant and disputed facts for which they bear the burden of proof, and fully convince the judge that such facts took place just as the party alleges.

4.2 Who bears the evidential burden of proof?

The basic rule regarding the burden of proof is laid down in article 8 of the Civil Code. Each party bears the burden of proof regarding all alleged and disputed facts on which it is basing its claim. The parties do not only have the burden of proof in the sense that they have to bear the consequences of the lack of proof, but also have to bring the evidence into court. The parties shall collect and submit the evidence to the court. The court is neither authorised to collect evidence on its own nor to base its judgment on evidence not submitted by the parties.

An undertaking that intends to bring a claim according to article 12 LCart must prove all legal prerequisites for the pursued claim (for example, the occurrence of a loss in case of a claim for damages). In addition, the undertaking must prove that unlawful restraints of competition according to articles 5 or 7 LCart exist and that, therefore, the claimant is impeded in the exercise of competition.

4.3 Do evidential presumptions play an important role in damages claims, including any presumptions of loss in cartel cases that have been applied in Switzerland?

Owing to statutory presumptions, there are substantial mitigations of the burden of proof in the following cases: according to article 5 (3) and (4) LCart, it is assumed for certain types of agreement that they eliminate competition. The claimant must only prove the basis of the legal presumption, i.e. the existence of the respective type of agreement (e.g. horizontal price agreements, resale price maintenance in distribution agreements). In this case, the claimant does not have to prove that effective competition has been eliminated. In order to refute the presumption, the defendant must evidence the opposite, namely that in spite of the agreement there is still sufficient internal and external competition.

No presumption of loss applies in cartel cases in Switzerland. However, if the exact amount of damages cannot be proven, the judge shall assess them at his discretion (article 42 (2) CO). A similar approach is also adopted if a strict proof of the causal link between the restraint of competition and the occurrence of loss is not feasible.

4.4 Are there limitations on the forms of evidence which may be put forward by either side? Is expert evidence accepted by the courts?

The admissible forms of evidence are limited by article 168 CCP. The following are admissible: witnesses; documents; inspection by the court; expert evidence; written statements; and interrogation of the parties. The strict limitation of the admissible forms of evidence is mitigated by a wide range of types of documents which qualify as evidence. Documents include, apart from written papers, *inter alia*, drawings, photographs, films, sound recordings, and electronic data.

4.5 What are the rules on disclosure? What, if any, documents can be obtained: (i) before proceedings have begun; (ii) during proceedings from the other party; and (iii) from third parties (including competition authorities)?

Pre-trial discovery is not available in Switzerland. Thus, the possibilities of obtaining any documents before the start of the proceedings are very limited. However, it has to be kept in mind that potential claimants are often in a position to gain access to the file of the Swiss Competition Commission by requesting to be treated as a party in the administrative procedure. In practice, the Competition Commission is relatively generous in granting party status. As a party in the administrative procedure, the damaged party has access to the entire file, but with two important restrictions. Firstly, documents are off-limits insofar as they contain business secrets. Secondly, access to leniency applications is only granted on the premises of the Competition Commission and without the possibility of making copies. Based on the Federal Act on Freedom of Information in the Administration, any person may gain limited access to the file of a closed administrative procedure before the Competition Commission. The damaged party can then use copies from the file to support its civil claim. This may result in a considerable facilitation of proof for civil competition actions in cases where an administrative procedure is pending or has already been terminated (follow-on actions). Important information may, however, qualify as business secrets and remain inaccessible. Nevertheless, a potential claimant might be inclined to initiate an administrative proceeding first by filing a request with the Competition Commission.

During proceedings, a party can request from the court the issuance of those documents which are in the possession of the counterparty or of a third party (article 160 (1) (b) CCP). However, this possibility may be of limited use only since it presupposes an adequately substantiated description of the documents by the claimant. Furthermore, it must be pointed out that third parties – and to a limited extent also the counterparty – can refuse the

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issuance of documents to the court, provided that they have the right to refuse to provide information (see articles 163, 165 and 166 CCP). In addition, there are neither direct sanctions nor compulsory measures available against the reluctant counterparty, but only against reluctant third parties. Hence, the real content of the documents may often remain concealed. At most, the court is allowed to interpret uncooperative behaviour of the counterparty to its disadvantage when assessing the evidence.

In general, an exchange of information between the Competition Commission and the civil courts does not take place.

4.6 Can witnesses be forced to appear? To what extent, if any, is cross-examination of witnesses possible?

Witnesses are usually obligated to appear personally before the court even if they have the right to refuse to give evidence based on articles 165-166 CCP. They have to refer to such right personally before the court. Witnesses who fail to appear without adequate justification may be sentenced to pay a fine and to bear the costs. Witnesses can even be summoned with the aid of the police.

Cross-examination is not possible in Switzerland. Usually, the witnesses will be interrogated directly by the judge and not by the parties or the parties' legal counsels. The parties may request the judge to ask the witness specific questions. The judge can allow follow-up questions to be addressed by the parties directly to the witness (article 173 CCP).

4.7 Does an infringement decision by a national or international competition authority, or an authority from another country, have probative value as to liability and enable claimants to pursue follow-on claims for damages in the courts?

According to existing doctrine, the Competition Commission's decisions are not binding for civil courts. In practice, however, civil judges will hardly deviate from the Competition Commission's opinion so that such decision facilitates follow-on claims. As a consequence of the principle of unfettered consideration of evidence (article 157 CCP), it rests with the judge to decide how he considers the evidence produced by the parties. Therefore, it cannot be excluded that he will also consider an infringement decision of a foreign competition authority if the legal and factual situation is comparable.

4.8 How would courts deal with issues of commercial confidentiality that may arise in competition proceedings?

According to article 156 CCP, the courts will take appropriate measures required to keep manufacturing and business secrets of the parties or of any third party. The party which asks for protection measures for a piece of evidence has to prove the sensitive content of that piece of evidence. Evidence submitted by one party whose sensitive content has been proven will only be disclosed to the other party as far as such disclosure will not affect these secrets. For example, the court has to decide whether some parts of documents should be redacted. However, it is controversial whether the court is entitled to base its decision on evidence not disclosed to the counterparty if the counterparty had limited or no possibility to comment on this evidence.

4.9 Is there provision for the national competition authority in Switzerland (and/or the European Commission, in EU Member States) to express its views or analysis in relation to the case? If so, how common is it for the competition authority (or European Commission) to do so?

The civil court which has to assess the legality of a restraint of competition is obliged by law to refer the case to the Competition Commission for an expert opinion, provided that the legal assessment is ambiguous (article 15 LCart). The Competition Commission's opinion is limited to a legal assessment based on the facts as described by the court in its submission to the Competition Commission.

5 Justification / Defences

5.1 Is a defence of justification/public interest available?

Restraints of competition might be justified by proving grounds of economic efficiency (article 5 (2) LCart). This might, for example, be the case if agreements are necessary to reduce costs, improve production processes or exploit resources more rationally. The defendant referring to such grounds of efficiency bears the burden of proof in this respect.

In addition, exceptional authorisation on the grounds of prevailing public interest might be granted by the Swiss Federal Council upon request. Neither the Competition Commission nor the civil courts are competent for such authorisation.

5.2 Is the "passing on defence" available and do indirect purchasers have legal standing to sue?

The question whether a "passing on defence" is admissible has not yet been decided by the Swiss courts. However, since the purpose of Swiss tort law only consists in compensating the victim for the injuries sustained, the "passing on defence" should be admissible. If the victim is able to successfully pass on the damages to the next market level (e.g. by charging higher prices), it can substantially reduce its losses. However, it will probably still incur some losses from reduced demand due to the higher prices. If the defendant is able to successfully invoke the "passing on defence", the claimant will only be entitled to compensation for its remaining losses. Fundamental principles of Swiss tort law (such as the prohibition of overcompensation in favour of the victim; and the principle that a victim has to deduce from the damages the advantages and savings that it is able to achieve) also lead to this conclusion.

The defendant has to prove that the claimant was in a position to pass on at least part of the damages to third parties. In practice, this would be rather hard to prove. In return, the claimant can try to evidence that passing on was only possible by incurring additional expenses. If successful, the claimant has a claim for compensation for these expenses.

Therefore, even if the "passing on defence" is basically available in Switzerland, it might be quite difficult to successfully invoke such a defence in practice.

A person impeded by an unlawful restraint of competition cannot only request damages but also remittance of the illicitly earned profits. It seems that the "passing on defence" is excluded with respect to this claim.

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Indirect purchasers have legal standing to sue if they are affected by the restraint of competition.

5.3 Are defendants able to join other cartel participants to the claim as co-defendants? If so, on what basis may they be joined?

The defendant may notify another cartel participant of the dispute if the defendant intends to take recourse against this other cartel participant in case the defendant is ordered by the court to pay damages (*Streitverkündung*; third-party notice; article 78 (I) CCP). Third-party notice may be a relevant option for the defendant because several cartel participants are jointly and severally liable to those who have suffered harm from a cartel. Hence, the claimant has the possibility to claim the full amount of damages from one selected cartel participant who subrogates against the other cartel participants.

The notified cartel participant has the possibility to intervene in favour of the notifying defendant and to carry out any procedural acts in support of the notifying defendant. Alternatively, he may even continue the proceedings in place of the notifying defendant, with the consent of the latter.

In case of third-party notice, the recourse of the notifying defendant against the other cartel participant itself is not subject of the ongoing proceeding, but will be assessed in a separate follow-on lawsuit. Nevertheless, there is an important benefit for the notifying defendant: thanks to the third-party notice, the possibilities of the notified cartel participant to challenge the award against the notifying defendant in the follow-on lawsuit are very limited.

Alternatively, the defendant may assert a third-party action (*Streitverkündungsklage*) against another cartel participant. In this case, the lawsuit about the defendant's recourse against the other cartel participant will be conducted simultaneously with the initial lawsuit. No follow-on lawsuit for the notifying defendant's recourse will be required.

6 Timing

6.1 Is there a limitation period for bringing a claim for breach of competition law, and if so how long is it and when does it start to run?

There is no specific limitation period regarding the claim for removal or cessation of the unlawful restraint of competition. Such claim can be brought before the court as long as the restraint exists or is imminent.

The limitation period for a claim for damages or reparations expires one year after the claimant is aware of both the complete damage and the identity of the injuring party, but in any case at the latest ten years after the restraint of competition has ended (article 60 CO). The same rules apply regarding the claim for remittance of illicitly earned profits.

6.2 Broadly speaking, how long does a typical breach of competition law claim take to bring to trial and final judgment? Is it possible to expedite proceedings?

An estimation of the duration of the proceedings is very difficult. The duration depends on many individual factors (e.g. complexity, organisational structure of the court which varies from Canton to Canton, extensions of deadlines granted to the parties, quantity of pending proceedings, and allocation of staff in courts) and varies from case to case.

Civil competition actions are very rare in Switzerland, which makes it impossible to give an estimation of the typical duration. Generally speaking, civil competition actions tend to be complex and extensive proceedings. They might take more time than other civil proceedings.

Requests for interim remedies are usually decided within a few days or weeks, depending on whether the counterparty will be heard by the court in advance or not.

7 Settlement

7.1 Do parties require the permission of the court to discontinue breach of competition law claims (for example if a settlement is reached)?

No permission of the court is required to discontinue an action brought before the court. Under Swiss law, withdrawal or acknowledgment of the claim or settlement is possible during every stage of the pending proceedings.

7.2 If collective claims, class actions and/or representative actions are permitted, is collective settlement/settlement by the representative body on behalf of the claimants also permitted and if so on what basis?

Collective claims, class actions and/or representative actions are not available in Switzerland.

8 Costs

8.1 Can the claimant/defendant recover its legal costs from the unsuccessful party?

Generally, the losing party bears the court costs and has to pay compensation for the expenses of the prevailing party (article 106 CCP). Usually, the judge has a certain amount of discretion. The compensation is calculated based on Cantonal fee schedules and does not usually cover all incurred expenses.

8.2 Are lawyers permitted to act on a contingency fee basis?

Lawyers are not permitted to act on a fully fledged contingency fee basis. However, the outcome of the court proceedings can be the criteria for an additional premium (*pactum de palmario*), provided that the lawyer receives a cost-covering compensation for his services that includes an adequate profit, irrespective of whether the court proceedings are successful or not. However, the lawyer participating in the financial outcome of the court proceedings, instead of a compensation for his work (*pactum de quota litis*), is excluded.

8.3 Is third party funding of competition law claims permitted? If so, has this option been used in many cases to date?

The Swiss Federal Supreme Court decided in 2004 that third party funding is permitted in Switzerland and that a Cantonal ban of third party funding is against federal law. However, the court also pointed out that under certain circumstances third party funding might affect the legally required independence of the respective lawyer.

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There are a few undertakings which offer third party funding for civil litigation in Switzerland. However, we are not aware of third party funding in any of the rare civil competition actions in Switzerland.

9 Appeal

9.1 Can decisions of the court be appealed?

A decision of the Cantonal court can be appealed before the Swiss Federal Supreme Court.

10 Leniency

10.1 Is leniency offered by a national competition authority in Switzerland? If so, is (a) a successful and (b) an unsuccessful applicant for leniency given immunity from civil claims?

Leniency is offered by the Swiss Competition Commission. However, there is no direct link between leniency applications and civil procedures. A leniency application might fully or partly release the applicant from administrative sanctions, but not from the duty to pay damages or to remit illicitly earned profits.

10.2 Is (a) a successful and (b) an unsuccessful applicant for leniency permitted to withhold evidence disclosed by it when obtaining leniency in any subsequent court proceedings?

There are no special rules in Swiss law permitting the applicant for leniency to withhold evidence disclosed in the leniency application. If the applicant refuses to produce such evidence upon request of the court, the court might interpret such behaviour to the disadvantage of the "non-cooperative" party when assessing the evidence, e.g. by assuming that the content of a non-disclosed document is in favour of the counterparty's position (article 164 CCP).

11 Anticipated Reforms

11.1 For EU Member States, highlight the anticipated impact of the EU Directive on Antitrust Damages Actions at the national level and any amendments to national procedure that are likely to be required.

The EU Directive on Antitrust Damages Actions has no direct impact on Switzerland as Switzerland is not a Member State of the EU.

11.2 Have any steps been taken yet to implement the EU Directive on Antitrust Damages Actions in Switzerland?

As Switzerland is not a Member State of the EU, the EU Directive will not be implemented in Switzerland.

11.3 Are there any other proposed reforms in Switzerland relating to competition litigation?

However, as part of the 2012 revision of the LCart, the Swiss Federal Council had proposed certain improvements which aimed at removing some obstacles for competition litigation.

The planned improvements were the following: consumers should have standing to bring all actions for breach of competition law which are available based on article 12 LCart. Furthermore, the limitation period for bringing a claim for breach of competition law should not start during an ongoing investigation by the Swiss Competition Commission or be discontinued if it has already started before.

However, the 2012 revision of the LCart was dismissed completely. The breakdown of the legislation project was not caused by the planned improvements in the area of competition litigation, which were almost undisputed. Other important parts of the comprehensive legislative project were highly controversial. Currently, no further revisions of the LCart are pending in the field of competition litigation, but similar improvements may be part of a future legislation project.

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