

**Ordinance regarding the Sanctions for Unlawful Restrictions of Competition
(LCart Ordinance on Sanctions)¹
(AS 2004 1397)**

of 12 March 2004
(position as at 23 March 2004)

The Swiss Federal Council

having regard to Article 60 of the Cartel Act of 6 October 1995² (LCart),
hereby orders:

1. General

Art. 1

This Ordinance governs:

- a. the assessment criteria for the imposition of sanctions under Article 49a para 1 LCart;
- b. the conditions and procedure for total or partial waiver of a sanction under Article 49a para 2 LCart;
- c. the conditions and procedures for notification under Article 49a para 3 littera a LCart.

2. Assessment of Sanctions

Art. 2 Principles

¹ The sanction is calculated with reference to the duration and severity of the unlawful behaviour. The profit that the enterprise is thereby presumed to have achieved is to be given appropriate consideration.

² In determining the sanction, the principle of proportionality is to be observed.

Art. 3 Basic Amount

Depending on the severity and type of the violation, the base amount of the sanction is up to 10 per cent of turnover achieved by the relevant enterprise on the relevant markets in Switzerland in the last three business years.

Art. 4 Duration

If the competition violation lasts for between one and five years, the base amount will be increased by up to 50 per cent. If the competition violation lasts longer than five years, the

¹ Diese Übersetzung wurde von Herrn Dr. iur. Alessandro Celli und Frau Nicola Benz zur Verfügung gestellt.

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base amount for each additional year will be increased by a supplement of up to 10 per cent per year.

Art. 5 Aggravating Circumstances

¹ Where there are aggravating circumstances, the amount under Articles 3 and 4 will be increased, in particular when an enterprise:

- a. repeatedly breaches the Cartel Act;
- b. has achieved, objectively reckoned, a particularly high profit through a violation;
- c. refuses to co-operate with the authorities or otherwise attempts to obstruct the investigation.

² For restrictions of competition under Article 5 para 3 and 4 LCart the base amount will be additionally increased if the enterprise:

- a. has instigated the restriction of competition or played a leading role;
- b. has instructed or carried out retaliatory measures against other participants to the restriction of competition in order to implement the anti-competitive agreement.

Art. 6 Attenuating Circumstances

¹ Where there are attenuating circumstances, in particular when the enterprise terminates the restriction of competition after the first involvement of the Secretariat of the Competition Commission, at latest however before the opening of a procedure under Article 26-30 LCart, the amount under Articles 3 and 4 will be reduced.

² With regard to restrictions of competition under Article 5 para 3 and 4 LCart, the amount under Articles 3 and 4 will be reduced if the enterprise:

- a. has played an exclusively passive role;
- b. has not carried out measures of retaliation which have been agreed for the implementation of the anti-competitive agreement.

Art. 7 Maximum Sanction

The sanction will amount in no case to more than 10 per cent of the turnover achieved by the enterprise in the last three business years in Switzerland (Article 49a para 1 LCart).

3. Complete Exemption from Sanctions

Art. 8 Conditions

¹ The Competition Commission exempts an enterprise completely from sanctions when it acknowledges its involvement in a restriction of competition within the meaning of Article 5 para 3 and 4 LCart and is the first to:

- a. deliver information which enables the competition authorities to open a competition law procedure under Article 27 LCart; or
- b. provides evidence which enables the competition authorities to establish a competition violation under Article 5 para 3 or 4 LCart.

² It waives the sanction only if the enterprise:

- a. has not persuaded any other enterprise to take part in the competition violation and has not taken the instigating or leading role in the relevant competition violation;
- b. provides the competition authorities unasked with all of the information and evidence regarding the competition violation that lies within its field of influence;
- c. during the entire duration of the procedure without break or limitation and without delay co-operates with the competition authorities;
- d. ceases its involvement in the competition violation at the latest at the time of the self notification or at the first instruction from the competition authorities.

³ The waiver of sanctions under para 1 littera a is only granted insofar as the competition authorities do not already possess sufficient information to open a procedure under Articles 26 and 27 LCart regarding the notified competition restriction.

⁴ The waiver of sanctions under para 1 littera b is only granted insofar as:

- a. there is not already another enterprise which fulfils the conditions for a waiver under para 1 littera a; and
- b. the competition authorities do not already possess sufficient evidence to prove the competition violation.

Art. 9 Form and Contents of the Self Notification

¹ The self notification contains the necessary information on the notifying enterprise, on the type of competition violation being notified, on the enterprises involved in the violation and on the affected or relevant markets. The self notification may also be provided orally for the record.

² The enterprise may give the self notification by filing the information in an anonymised form. The Secretariat will determine the modalities in individual cases in consultation with a member of the governing council of the Competition Commission.

³ The Secretariat confirms receipt of the self notification and gives the time of receipt. In consultation with a member of the governing council, it informs the notifying enterprise:

- a. to what extent the conditions for a complete waiver of sanctions under Article 8 para 1 are considered to exist;
- b. what information the notifying enterprise must additionally provide, in particular in order to fulfil the conditions of Article 8 para 1; and
- c. in the case of an anonymous self notification, within which deadline the enterprise must disclose its identity.

Art. 10 Procedure for Several Self Notifications

The competition authorities will only review self notifications later received once they have reached a decision on earlier self notifications according to the requirements of Article 9 para 3.

Art. 11 Decision on the Complete Waiver of Sanctions

¹ The Competition Commission will decide on the granting of a complete waiver of sanctions.

² The Competition Commission can only deviate from a communication from the Secretariat pursuant to Article 9 para 3 littera a if it is aware of additional circumstances that oppose the waiver of sanctions.

4. Reduction of Sanctions

Art. 12 Conditions

¹ The Competition Commission reduces the sanction when an enterprise assists unasked in a procedure and at the time of providing the evidence it has ceased its participation in the competition violation concerned.

² The reduction amounts to up to 50 per cent of the amount of the sanction calculated under Articles 3-7. The importance of the contribution of the enterprise to the success of the procedure is decisive.

³ The reduction amounts to up to 80 per cent of the amount of the sanction calculated under Articles 3-7 when an enterprise provides information or evidence unasked regarding further competition violations pursuant to Article 5 para 3 or 4 LCart.

Art. 13 Form and Contents of Co-operation

¹ The enterprise provides the competition authorities with the necessary information on the notifying enterprise, on the type of competition violation being notified, on the enterprises involved in the violation and on the affected or relevant markets.

² The Secretariat confirms receipt of the evidence and gives the time of receipt.

Art. 14 Decision on Reduction

¹ The Competition Commission decides by how much the sanction for the co-operating enterprise will be reduced.

² If the co-operating enterprise provides evidence on the duration of the competition violation of which the Commission had no knowledge, the sanction is calculated without reference to this time period.

5. Notification Procedure

Art. 15 Notification of a Potentially Unlawful Restriction of Competition

Notification under Article 49a para 3 littera a LCart is to be filed with the Secretariat in threefold in one of the official languages of Switzerland.

Art. 16 Notification Forms and Explanations

¹ The Competition Commission sets out the required information for a notification in a notification form. It makes known to what extent a notification filed with a foreign authority may be used for notification in Switzerland.

² It arranges for publication of the notification form and explanations in the Federal Bulletin.

Art. 17 Simplified Notification

The Secretariat and the notifying enterprise may mutually determine the details of the content of the notification in advance. The Secretariat may excuse the enterprise from the provision of individual information or documents if it is of the view that these are not necessary for deciding the case.

Art. 18 Confirmation of Receipt of Notification

The Secretariat confirms to the notifying enterprise that it has received the notification. If the information or documents are incomplete in a material point, the Secretariat requires the notifying enterprise to supplement the notification.

Art. 19 Opposition Proceedings

If the enterprise is not informed of the opening of a procedure pursuant to Articles 26-30 LCart within five months from receipt of the notification, any sanction pursuant to Article 49a para 1 LCart is waived for the notified fact situation.

6. Final Provisions

Art. 20 Entry into Force

This Regulation enters into force on 1 April 2004.