

**Question for written answer E-003788/2025
to the Commission**
Rule 144
Andreas Schwab (PPE)

Subject: Consistency between EU and Swiss competition law – legal certainty and a level playing field for EU companies

Since a landmark ruling by the Swiss Federal Supreme Court on 28 June 2016 (the Gaba case), the Swiss Competition Commission (WEKO) has assumed that the agreements listed in Article 5 of the Cartel Act generally constitute a significant restriction of competition. No actual impediment to competition is required for this to be deemed as such.

The EU Court of Justice has, however, consistently ruled that each individual case must be examined carefully to determine whether a particular behaviour actually undermines competition. A purely doctrinal approach without a case-by-case analysis of the overall context is not permitted under EU law.

The *Motion Française* currently being discussed in the Swiss Parliament calls for Article 5 of the Cartel Act to be amended to include qualitative and quantitative criteria in the assessment of relevance. This is to ensure that the reasons why a specific behaviour impedes competition must always be justified in the relevant context and on the basis of economic damage theories.

1. What view does the Commission take of the mooted introduction of an overall qualitative and quantitative evaluation as part of the relevance assessment for agreements under Article 5(3) and (4), and could this harmonise EU and Swiss competition law?
2. Can introducing an overall qualitative and quantitative evaluation in Article 5 of the Cartel Act, as proposed in the *Motion Française*, harmonise EU and Swiss competition law?
3. If a revision of the Cartel Act is not agreed, can a level playing field be guaranteed for companies from the EU?

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