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Answer given by Executive Vice-President Ribera
on behalf of the European Commission
(10.12.2025)

In EU competition law, Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) prohibits agreements having either the object or the effect of preventing, restricting, distorting competition within the internal market which may affect trade between Member States. Restrictions by object are types of coordination between undertakings which are, by their very nature, harmful to the proper functioning of normal competition. Such is the case of cartels, whereby competitors aim at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition, for instance fixing prices or rigging bids. For this category of restrictions, while it is necessary to examine the legal and economic context of the agreement, the Court of Justice of the European Union has consistently held that it is not necessary to examine or prove effects on the market. As regards the category of restrictions by effect, it is in general sufficient to show potential effects. Once a competition authority establishes a restriction of competition (by object or by effect) under Article 101(1) TFEU, the undertakings concerned bear the burden of invoking and proving that the agreement produces efficiencies that meet the conditions of Article 101(3) TFEU.

There is no basis to require the harmonisation of Swiss law with EU competition law, as Switzerland is a third country. In any event, as noted in recital 3 of the Competition Cooperation Agreement between the EU and Switzerland[1], 'the competition enforcement systems of the EU and of Switzerland are based on the same principles and provide for similar rules'. EU companies operating in Switzerland must ensure that their agreements as far as they affect competition in Switzerland comply with Swiss competition law, just as Swiss companies whose activities affect competition in the internal market must comply with EU competition law.

The *Gaba* judgment[2] was delivered in 2016; the Commission is not aware of any significant evolution in the application of Swiss competition law such as to call into question the basis of the EU-Switzerland Cooperation Agreement.

[1] Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws, OJ L 347, 3.12.2014, pp. 3–9.

[2] https://search.bger.ch/ext/eurospider/live/de/php/clir/http/index.php?lang=de&type=highlight_simple_query&page=1&from_date=&to_date=&from_year=2016&to_year=2016&sort=relevance&insertion_date=&from_date_push=&top_subcollection_clir=bge&query_words=Gaba&part=all&de_fr=&de_it=&fr_de=&fr_it=&it_de=&it_fr=&orig=&translation=&rank=1&highlight_docid=atf%3A%2F%2F143-II-297%3Ade&number_of_ranks=1&azaclir=clir.