

BRIEFING SEPTEMBER 2022

# SWISS COMPETITION COMMISSION LAUNCHES FIRST INVESTIGATION UNDER NEW GEOGRAPHIC PRICE DIFFERENTIATION PROHIBITION

The Swiss Competition Commission (ComCo) has launched its first investigation into a potential abuse according to the new [Article 7\(2\)\(g\) of the Act on Cartels](#) that entered into force on 1 January 2022. This new provision prohibits dominant companies and companies with relative market power from refusing to supply Swiss customers abroad at the conditions applicable in the respective foreign country unless there is a justification for such refusal.<sup>1</sup>

## COMPLAINT OF GALEXIS AGAINST FRESENIUS

The pharmaceutical wholesaler Galexis AG (Galexis) has filed a complaint alleging that Fresenius Kabi Group (Fresenius) would have relative market power in relation to „drinkable- and special-food as well as supplements“. Such products are consumed by diabetics and other chronically ill people. Galexis alleges that Fresenius sold these products at higher prices in Switzerland and had refused to sell these products to Galexis in the Netherlands and in Germany at the applicable local Dutch and German prices and conditions.<sup>2</sup>

ComCo will now investigate whether such refusal would constitute an abuse of relative market power according to Article 7(2)(g) of the Act on Cartels.

## BACKGROUND OF GEOGRAPHIC PRICE DIFFERENTIATION PROHIBITION

The objective of Article 7(2)(g) of the Act on Cartels was to compel foreign suppliers to supply Swiss customers abroad at the applicable (lower) local prices and conditions. In other words, dominant companies and companies with relative market power can no longer unilaterally refuse to supply Swiss customers abroad at the local prices and conditions unless there is a justification for such refusal. This amendment of the Act on Cartels aims to fight higher prices in Switzerland.

It was expected that ComCo would take up a case under this new geographic price differentiation prohibition to establish a leading case and to provide guidance on this new provision.

<sup>1</sup> See our Briefing of 22 March 2021 (<https://www.baerkarrer.ch/en/publications/switzerland-extends-prohibition-of-abuse-of-market-position>)

<sup>2</sup> BBI 2022 2039 (<https://www.fedlex.admin.ch/eli/fga/2022/2039/de>); Finanz und Wirtschaft vom 30.08.2022 (<https://www.fuw.ch/article/fresenius-tochter-zockt-schweizer-ab-weko-ermittelt>); „Fresenius-Tochter zockt Schweizer ab, Weko ermittelt“; NZZ vom 16.08.2022: „Kranke zahlen überrissene Preise für Spezialnahrung: Wettbewerbskommission ermittelt gegen Pharmakonzern“ (<https://www.nzz.ch/wirtschaft/ueberrissene-preise-fuer-sondernahrung-wettbewerbskommission-ermittelt-gegen-pharmakonzern-ld.1698166>).



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