

PANORAMIC **VERTICAL AGREEMENTS**

Switzerland



LEXOLOGY

Vertical Agreements

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LEGAL FRAMEWORK

Antitrust law

What are the legal sources that set out the antitrust law applicable to vertical restraints?

Vertical restraints are regulated in the Federal Act on Cartels and other Restraints of Competition (CartA). Additionally, the Competition Commission (COMCO) issued a Vertical Notice (VN) and published explanatory notes on it. Both were amended on 12 December 2022. They are available on the COMCO website: [Notices / Explanatory notes](#).

Law stated - 6 November 2025

Types of vertical restraint

List and describe the types of vertical restraints that are subject to antitrust law. Is the concept of vertical restraint defined in the antitrust law?

Article 5 CartA contains provisions for agreements that significantly restrict competition and for agreements that are presumed to eliminate competition. There are two types of vertical agreements that trigger this presumption, known as 'hardcore agreements':

- minimum or fixed price agreements; and
- agreements in distribution contracts on the allocation of territories to the extent that sales by other distributors into these territories are not permitted.

Even if this presumption can be rebutted, such agreements are considered substantial and may be sanctioned (unless there are sufficient grounds for justification).

Law stated - 6 November 2025

Legal objective

Is the only objective pursued by the law on vertical restraints economic, or does it also seek to promote or protect other interests?

The purpose of the Cartel Act is to prevent the harmful economic or social effects of cartels and other restraints of competition and thereby to promote competition in the interests of a liberal market economy. This objective also applies to the legislation on vertical restraints

Law stated - 6 November 2025

Responsible authorities

Which authority is responsible for enforcing prohibitions on anticompetitive vertical restraints? Where there are multiple responsible

authorities, how are cases allocated? Do governments or ministers have a role?

COMCO and its Secretariat are responsible for enforcing the prohibition of anticompetitive vertical restraints.

The Secretariat prepares COMCO's decisions, conducts investigations and issues any necessary procedural rulings together with a member of the presiding body. The Secretariat proposes motions to COMCO and implements its decisions. It liaises directly with the parties involved, third parties and any relevant authorities. The Secretariat also provides opinions and advises governmental offices and undertakings on matters relating to the Cartel Act.

COMCO is independent of the administrative authorities and is responsible for making decisions and issuing rulings (article 19 paragraph 1 CartA and article 18 paragraph 3 CartA). COMCO's decisions can be appealed to the Federal Administrative Court and, ultimately, to the Federal Supreme Court.

Additionally, any competent civil court may rule on anticompetitive vertical restraints if the parties submit this issue as part of a civil litigation case.

Law stated - 6 November 2025

Jurisdiction

What is the test for determining whether a vertical restraint will be subject to antitrust law in your jurisdiction? Has the law in your jurisdiction regarding vertical restraints been applied extraterritorially? Has it been applied in a pure internet context and if so, what factors were deemed relevant when considering jurisdiction?

In geographical terms, according to the effects doctrine the Cartel Act applies to practices that have an effect in Switzerland, even if they originate in another country (article 2 paragraph 2 CartA). In this regard, COMCO has applied the law on vertical restraints extraterritorially in several cases including *BMW*, *Gaba*, *Harley Davidson* and *GE-Healthcare*. Furthermore, the Cartel Act has been applied in pure internet context in the *Booking.com* case. In determining jurisdiction, it was relevant that Swiss undertakings (in this case, hotels) were impacted by the contracts with *Booking.com*.

Law stated - 6 November 2025

Agreements concluded by public entities

To what extent does antitrust law apply to vertical restraints in agreements concluded by public entities?

The scope of application of the Cartel Act is defined in article 2 CartA. It applies to private or public undertakings that are parties to agreements affecting competition. According to the Cartel Act, undertakings are all consumers or suppliers of goods or services that are active in commerce regardless of their legal or organisational form. However, statutory provisions that do not permit competition in a market for certain goods or services take precedence over the Cartel Act. These include provisions that establish an official market or

price system (article 3 paragraph 1 let. a CartA); and provisions that grant special rights to specific undertakings to enable them to fulfil public duties (article 3 paragraph 1 let. b CartA).

Law stated - 6 November 2025

Sector-specific rules

Do particular laws or regulations apply to the assessment of vertical restraints in specific sectors of industry (motor cars, insurance, etc)? Please identify the rules and the sectors they cover.

Aside from the Cartel Act and the VN, there are also:

- a regulation on the competition treatment of vertical agreements in the motor vehicle sector (Motor Vehicle Regulation); and
- notice on the homologation and sponsorship of sports equipment.

Law stated - 6 November 2025

General exceptions

Are there any general exceptions from antitrust law for certain types of agreement containing vertical restraints? If so, please describe.

Swiss antitrust law does not provide any general exceptions for certain types of agreements. However, vertical agreements involving undertakings with a market share below 15 per cent in any of the relevant markets are usually qualified as non-significant unless they are listed in sections 12 and 15 b-f of the VN.

Law stated - 6 November 2025

TYPES OF AGREEMENT

Agreements

Is there a definition of 'agreement' – or its equivalent – in the antitrust law of your jurisdiction?

The Cartel Act defines agreements as follows (article 4 paragraph 1 Federal Act on Cartels and other Restraints of Competition (CartA)): 'Agreements affecting competition are binding or non-binding agreements and concerted practices between undertakings operating at the same or at different levels of production that have a restraint of competition as their object or effect.'

Law stated - 6 November 2025

Agreements

In order to engage the antitrust law in relation to vertical restraints, is it necessary for there to be a formal written agreement or can the relevant rules be engaged by an informal or unwritten understanding?

No, a formal written agreement is not necessary; an informal understanding or unwritten agreement suffices. It is not even necessary to have an informal agreement; a concerted practice can be qualified as an agreement under Swiss antitrust law. This means that the parties involved must be aware of each other and be willing to cooperate. A simple parallel conduct does not meet this requirement.

Law stated - 6 November 2025

Parent and related-company agreements

In what circumstances do the vertical restraints rules apply to agreements between a parent company and a related company (or between related companies of the same parent company)?

According to Swiss antitrust law, an agreement must involve at least two undertakings. In the case of a group, though, there is only one undertaking, and the so-called group privilege applies. However, this privilege does not apply if an undertaking has concluded an agreement with a third party based on an intra-group agreement.

Law stated - 6 November 2025

Agent–principal agreements

In what circumstances does antitrust law on vertical restraints apply to agent–principal agreements in which an undertaking agrees to perform certain services on a supplier’s behalf for a sales-based commission payment?

In this regard, Switzerland adheres to European antitrust law. A genuine commercial agent does not constitute an undertaking within the meaning of antitrust law regarding the marketing of the principal’s products as it does not act as an independent market participant. Whether an agent fulfils this requirement is determined by whether the agent bears no or only minimal financial and commercial risks in relation to the activities entrusted to it by the principal.

Law stated - 6 November 2025

Agent–principal agreements

Where antitrust rules do not apply (or apply differently) to agent–principal relationships, is there guidance (or are there recent authority decisions) on what constitutes an agent–principal relationship for these purposes?

The EU Vertical Guidelines set out the financial and commercial risks that are relevant to qualifying as a (genuine) agency contract. COMCO has confirmed this approach in various

cases, recently the case *Y-agency contracts*. In this case, the Secretariat concluded that the Y agency model did not fully meet the requirements of a genuine agency relationship as defined in the EU Vertical Guidelines. Therefore, there are indications that the Y agency model constitutes a competition agreement that could be classified as an unlawful and sanctionable resale price maintenance. However, the principal has accepted the measures suggested by the Secretariat. If the principal implements these suggestions, the Y agency model will fulfil the requirements of a genuine agency under the EU Vertical Guidelines and will not be considered an unlawful agreement under article 5 paragraph 4 CartA.

Law stated - 6 November 2025

Intellectual property rights

Is antitrust law applied differently when the agreement containing the vertical restraint also contains provisions granting intellectual property rights (IPRs)?

It depends. The Vertical Notice does not apply to vertical agreements containing provisions concerning the transfer of intellectual property rights to the purchaser or the purchaser's use of such rights, provided that these provisions form the primary focus of the competition agreement and are not directly related to the use, sale or resale of goods or services by the purchaser or its customers.

Law stated - 6 November 2025

ANALYTICAL FRAMEWORK FOR ASSESSMENT

Framework

Explain the analytical framework that applies when assessing vertical restraints under antitrust law.

Under Swiss antitrust law, the analytical framework for assessing vertical restraints is primarily governed by the Cartel Act and the Vertical Notice (VN). Explanatory notes serve as interpretation aids and reflect case law.

Law stated - 6 November 2025

Market shares

To what extent are supplier market shares relevant when assessing the legality of individual restraints? Are the market positions and conduct of other suppliers relevant? Is it relevant whether certain types of restriction are widely used by suppliers in the market?

The market shares of suppliers are relevant because, aside from certain types of agreements (such as RPM, absolute territorial protection and qualitatively severe agreements), there will be no significant impairment of competition if no undertaking involved in the agreement has a market share exceeding 15 per cent in any relevant market.

However, according to the VN, if competition in a relevant market is restricted by the cumulative effect of vertical agreements concluded by different suppliers or distributors for the sale of goods or services, the market share threshold of 15 per cent shall be reduced to 5 per cent. Suppliers or distributors with a market share of less than 5 per cent are not usually considered to contribute significantly to the cumulative foreclosure effect. A cumulative foreclosure effect is unlikely to exist if less than 30 per cent of the relevant market is covered by coexisting networks of vertical agreements that have similar effects on the market.

The widespread use of a certain type of restriction by suppliers does not make it permissible.

Law stated - 6 November 2025

Market shares

To what extent are buyer market shares relevant when assessing the legality of individual restraints? Are the market positions and conduct of other buyers relevant? Is it relevant whether certain types of restriction are widely used by buyers in the market?

The market shares of buyers are relevant because, aside from certain types of agreements (such as RPM, absolute territorial protection and qualitatively severe agreements), there will be no significant impairment of competition if no undertaking participating in the agreement has a market share exceeding 15 per cent in the relevant affected market.

The fact that a certain type of restriction is widely used by buyers does not mean that it is permissible.

Law stated - 6 November 2025

BLOCK EXEMPTION AND SAFE HARBOUR

Function

Is there a block exemption or safe harbour that provides certainty to companies as to the legality of vertical restraints under certain conditions? If so, please explain how this block exemption or safe harbour functions.

There will be no significant restriction of competition if no undertaking participating in the agreement has a market share exceeding 15 per cent in the relevant affected markets. However, certain types of agreements, such as retail price maintenance, absolute territorial protection and qualitatively severe agreements, are exempt from this rule.

Furthermore, the 15 per cent threshold is lowered to 5 per cent if there is a cumulative effect from vertical agreements concluded by different suppliers or distributors for the sale of goods or services. It is unlikely that a cumulative foreclosure effect will exist if less than 30 per cent of the relevant market is covered by coexisting vertical agreements that have similar effects on the market.

Law stated - 6 November 2025

TYPES OF RESTRAINT

Assessment of restrictions

How is restricting the buyer's ability to determine its resale price assessed under antitrust law?

Article 5 paragraph 4 Federal Act on Cartels and other Restraints of Competition (CartA) establishes a presumption that vertical agreements regarding minimum or fixed prices lead to an elimination of competition (one type of hardcore restrictions). Even if this presumption can be rebutted, such agreements are considered to significantly restrict competition and may be sanctioned unless there are sufficient grounds for justification.

Case law has enlarged the scope of hardcore restrictions relating to minimum or fixed prices. Both direct and indirect resale price maintenance qualify as a hardcore price agreement.

Law stated - 6 November 2025

Assessment of restrictions

Have the authorities considered in their decisions or guidelines resale price maintenance restrictions that apply for a limited period to the launch of a new product or brand, or to a specific promotion or sales campaign; or specifically to prevent a retailer using a brand as a 'loss leader'?

When launching new products, justification based on the efficiency ground of the improvement of products or production processes can be relevant. In its final report regarding the introduction of a Domestic Multilateral Interchange Fee for the Visa V PAY debit card system the Secretariat considered that a price agreement may be justified when a new product is launched on the market, as this increases competitive pressure on the relevant market; innovation and efficiency are promoted, which ideally leads to a price reduction.

In the *Husquvarna* case, the Competition Commission (COMCO) has stated that a manufacturer who wants to launch a new product on the market can use vertical price maintenance to incentivise retailers not only to offer the new product but also to intensify their sales efforts. Such price maintenance may only be justified for a certain initial period, in practice a maximum of two years.

Regarding the use of a brand as loss leader, repeated loss leader offers that lead to a deception of the customer as to the performance of the offering undertaking or its competitors are considered unfair and thus unlawful under article 3 let. f of the Act on Unfair Competition. Deception is presumed if the sale price is less than the cost price of comparable purchases of similar goods, works or services.

Law stated - 6 November 2025

Relevant decisions

Have decisions or guidelines relating to resale price maintenance addressed the possible links between such conduct and other forms of restraint?

In general, decisions tend to focus on the resale price maintenance itself, rather than examining possible links to other restraints. While the Vertical Notice (VN) does not expressly address these possible links, it does highlight that resale price maintenance agreements are considered particularly harmful and are generally regarded as a significant impediment to competition.

Law stated - 6 November 2025

Relevant decisions

Have decisions or guidelines relating to resale price maintenance addressed the efficiencies that can arguably arise out of such restrictions?

The VN contains clarifications on how undertakings can argue in practice to justify agreements based on efficiency grounds. In the context of resale price maintenance, undertakings may raise the temporary protection of investments for the development of new geographic markets or new products (article 18 paragraph 4 VN). Another relevant efficiency ground is the elimination of the 'double marginalisation', which can occur when both the manufacturer and the retailer have market power (the problem of double marginalisation as set out in article 18 paragraph 4 let. e VN).

Law stated - 6 November 2025

Relevant decisions

Explain how a buyer agreeing to set its retail price for supplier A's products by reference to its retail price for supplier B's equivalent products is assessed.

In our view, such an agreement could be considered a price-fixing agreement, since the buyer would no longer be free to set its own retail price. Therefore, it would be considered an unlawful resale price maintenance under article 5 paragraph 4 CartA and could be sanctioned.

Law stated - 6 November 2025

Suppliers

Explain how a supplier warranting to the buyer that it will supply the contract products on the terms applied to the supplier's most-favoured customer, or that it will not supply the contract products on more favourable terms to other buyers, is assessed.

The supplier's obligations are not covered by the VN but are instead assessed according to general principles. This means that the agreement will be examined to see if it leads to a significant restriction of competition when its qualitative and quantitative elements are considered.

Law stated - 6 November 2025

Suppliers

Explain how a supplier agreeing to sell a product via internet platform A at the same price as it sells the product via internet platform B is assessed.

The supplier's obligations are not covered by the VN but are instead assessed according to general principles.

Law stated - 6 November 2025

Suppliers

Explain how a supplier preventing a buyer from advertising its products for sale below a certain price (but allowing that buyer subsequently to offer discounts to its customers) is assessed.

According to the explanatory notes to the VN, the imposition of minimum advertised prices, whereby retailers are prohibited from advertising prices below a certain price level set by the supplier, is considered an indirect means of unlawful RPM.

Law stated - 6 November 2025

Suppliers

Explain how a buyer's warranting to the supplier that it will purchase the contract products on terms applied to the buyer's most-favoured supplier, or that it will not purchase the contract products on more favourable terms from other suppliers, is assessed.

As far as we are aware, COMCO has not addressed such a provision. In our opinion, it should be noted that, according to the VN, the buyer may agree not to purchase any competing products. In this respect, this clause imposes a less far-reaching obligation.

Law stated - 6 November 2025

Restrictions on territory

How is restricting the territory into which a buyer may resell contract products assessed? In what circumstances may a supplier require a buyer of its products not to resell the products in certain territories?

The allocation of territories, where sales by other distribution partners in these territories are excluded, constitutes a sanctionable hardcore agreement if it cannot be justified on grounds of efficiency (absolute territorial protection). This includes restricting the territory in which the buyer can sell the contract goods or services passively, unless an exception applies under article 15(b) to (d) (article 14 paragraph 1 VN). These exceptions mainly refer to sole and selective distribution systems.

Restrictions on territory

Have decisions or guidance on vertical restraints dealt in any way with restrictions on the territory into which a buyer selling via the internet may resell contract products?

Vertical competition agreements relating to online trade may constitute a vertical agreement on absolute territorial protection if they are accompanied by qualifying circumstances. Whether qualifying circumstances exist and the conditions of article 5 paragraph 4 CartA are met requires an assessment based on the specific circumstances of the individual case. The following are examples of qualifying circumstances for a vertical competition agreement involving absolute territorial protection:

- Agreements obliging the buyer to prevent customers from other territories from viewing the retailer's website, or setting up a redirect to the manufacturer's or another seller's online shop. However, the obligation to set up links to the supplier's or other sellers' online shops is not a qualifying circumstance.
- Agreements obliging the retailer to terminate online transactions by end customers as soon as their credit card details reveal an address outside the retailer's territory.

Law stated - 6 November 2025

Restrictions on customers

Explain how restricting the customers to whom a buyer may resell contract products is assessed. In what circumstances may a supplier require a buyer not to resell products to certain resellers or end consumers?

As a general rule, the restriction of customers to whom a buyer may resell the contract products is considered to be qualitatively serious. This applies regardless of the distribution system used (sole or selective distribution system, etc). Article 15 let. b-d of the VN defines exceptions to restrictions regarding the sale to certain customers or trading partners.

Law stated - 6 November 2025

Restrictions on use

How is restricting the uses to which a buyer puts the contract products assessed?

A supplier may prohibit a buyer from enabling a third party to use an intermediate product to manufacture a competing product by reselling it to this third party. Any other restrictions on use are not governed by the VN and will be assessed on a case-by-case basis. This takes into account the quantitative effects of the agreement as well as any possible grounds for efficiency, to determine whether it is unlawful under article 5 paragraph 1 CartA.

Law stated - 6 November 2025

Restrictions on online sales

How is restricting the buyer's ability to generate or effect sales via the internet assessed?

With regard to online distribution, preventing the effective use of the internet for the selling of contract goods and services by the buyer or its customer is considered a qualitatively serious agreement (article 15 let. e CartA). However, there are two exceptions: (1) other restrictions on online sales or (2) restrictions on online advertising that do not aim to prevent the use of an entire online advertising channel are permissible. In general, these exceptions are not considered to significantly restrict competition if the undertakings participating in the agreement have market shares below the thresholds of article 16 VN.

Law stated - 6 November 2025

Restrictions on online sales

Have decisions or guidelines on vertical restraints dealt in any way with the differential treatment of different types of internet sales channel? In particular, have there been any developments in relation to 'platform bans'?

Yes. Across-platform retail parity obligations imposed by online intermediation services are considered qualitatively serious under the VN. Consequently, if they are found to significantly restrict competition on a case-by-case basis and cannot be justified on efficiency grounds, they are considered to be unlawful agreements under article 5 paragraph 1 CartA.

Parity obligations regarding online intermediation services are defined as direct or indirect obligations that prevent a buyer of such services from offering, selling or reselling goods or services to end consumers on more favourable terms by using competing intermediation services.

So-called narrow retail parity obligations (relating to direct sales channels) as well as other parity obligations are not considered qualitatively serious under the VN. Wide retail parity obligations are permissible if the market share thresholds pursuant to article 16 VN are observed. In particular, undertakings may directly or indirectly prohibit resellers from using online marketplaces, provided the aforementioned thresholds are observed.

Finally, the Unfair Competition Act states in article 8a that a person acts unfairly in particular if, as the operator of an online platform for booking accommodation services, they apply general terms and conditions of business that restrict, directly or indirectly, the ability of accommodation businesses to fix prices and make offers by means of parity clauses, in particular in relation to prices, availability or conditions.

Law stated - 6 November 2025

Selective distribution systems

Briefly explain how agreements establishing 'selective' distribution systems are assessed. Must the criteria for selection be published?

The VN contains conditions under which a safe harbour is granted for purely qualitative selective distribution systems (article 17 VN). Selective distribution systems are not considered significant if they cumulatively meet the following three conditions:

- The nature of the products in question must necessitate a selective distribution system.
- The resellers must be selected based on objective qualitative criteria; these must be established uniformly, made available to all potential resellers and applied indiscriminately.
- The established criteria must not exceed what is necessary.

If these conditions are not met, the corresponding distribution contract is not automatically considered unlawful, but it must be evaluated according to the general criteria pursuant to article 5 CartA.

Quantitative selective distribution systems do not fall under the safe harbour provision of the VN. Thus, no legal certainty can be derived from the VN when assessing such systems.

Selective distribution systems must not contain agreements eliminating competition pursuant to article 5 paragraph 4 CartA. If the rules mentioned in article 15 of the VN are adhered to and the market shares are not above the thresholds defined in article 16 VN, it will not be assumed in practice that there is a significant restriction of competition.

Law stated - 6 November 2025

Selective distribution systems

Are selective distribution systems more likely to be lawful where they relate to certain types of product? If so, which types of product and why?

Yes. The safe harbour relating to qualitative selective distribution systems (article 17 VN) can only apply if the nature of the goods or services in question necessitates a selective distribution system. This means that, having regard to the nature of the product concerned, such a system must constitute a legitimate requirement to preserve its quality and ensure its proper use (ie, high-quality or high-technology products or luxury goods).

Law stated - 6 November 2025

Selective distribution systems

In selective distribution systems, what kinds of restrictions on internet sales by approved distributors are permitted and in what circumstances? To what extent must internet sales criteria mirror offline sales criteria?

In general, preventing the effective use of the internet for selling contract goods and services by the buyer or its customers is considered qualitatively serious and may thus constitute an

unlawful agreement (articles 14 and 15 let. e VN). However, there are two exceptions that are not considered as qualitatively serious: (1) other restrictions on online sales or (2) restrictions on online advertising that are not aimed at preventing the use of an entire online advertising channel are permissible.

Furthermore, if a supplier imposes criteria for online sales on its approved retailers that are not equivalent to those for sales in physical outlets, there is no qualitatively serious restriction of competition, provided the requirements imposed for online sales do not indirectly prevent the buyer from effectively using the internet to sell the goods or services covered by the contract to certain customers.

Law stated - 6 November 2025

Selective distribution systems

Has the authority taken any decisions in relation to actions by suppliers to enforce the terms of selective distribution agreements where such actions are aimed at preventing sales by unauthorised buyers or sales by authorised buyers in an unauthorised manner?

According to the explanatory notes VN, restrictions on sales to unauthorised dealers by members of a selective distribution system within the territory designated by the supplier for the operation of that system are not qualitatively serious (article 15 let. c (i) 2 VN). Such restrictions serve to protect selective distribution systems from distribution by dealers outside the system. Consequently, for example, there is no qualitatively serious restriction of competition even if a supplier limits its warranty services to products purchased from authorised dealers. This has been confirmed in the case *Jura Elektroapparate*.

Law stated - 6 November 2025

Selective distribution systems

Does the relevant authority take into account the possible cumulative restrictive effects of multiple selective distribution systems operating in the same market?

If an agreement in the context of a selective distribution system is not considered qualitatively serious pursuant to article 15 let. c VN it is in general not considered significantly restricting competition if none of the undertakings involved has a market share of 15 per cent or more in the relevant market affected by the agreement. The same applies in the case of cumulative foreclosure effects through co-existing networks of vertical agreements, if none of the undertakings involved has a market share of 5 per cent or more and less than 30 per cent of the relevant market is covered by co-existing networks of vertical agreements (article 16 VN).

Law stated - 6 November 2025

Selective distribution systems

Has the authority taken decisions (or is there guidance) concerning distribution arrangements that combine selective distribution with restrictions on the territory into which approved buyers may resell the contract products?

Combining selective and exclusive distribution within the same territory leads to qualitatively serious restrictions on competition. The same applies if the supplier uses exclusive distribution at the wholesale level and selective distribution at the retail level (N 19 of the explanatory notes VN).

Law stated - 6 November 2025

Other restrictions

How is restricting the buyer's ability to obtain the supplier's products from alternative sources assessed?

Article 5 paragraph 4 CartA also covers vertical agreements that indirectly result in absolute territorial protection. Contractual purchasing restrictions, whereby distribution partners in Switzerland agree to purchase the goods specified in the contract only within their own territory, result in the indirect exclusion of passive sales to customers in Switzerland (N 12 of the explanatory notes VN).

Law stated - 6 November 2025

Other restrictions

How is restricting the buyer's ability to sell non-competing products that the supplier deems 'inappropriate' assessed?

This restriction does not fall under the VN because it does not involve restrictions on the sale of competing products. It is therefore assessed in accordance with the general principles set out in article 5 paragraph 1 CartA.

Law stated - 6 November 2025

Other restrictions

Explain how restricting the buyer's ability to stock products competing with those supplied by the supplier under the agreement is assessed.

In our opinion, this restriction could be perceived as indirectly limiting the buyer's ability to sell competing products. However, such a non-competition clause would be permissible if it did not exceed a period of five years, or if the agreement could tacitly be prolonged over five years but be renegotiated with reasonable notice and at reasonable cost.

Law stated - 6 November 2025

Other restrictions

How is requiring the buyer to purchase from the supplier a certain amount or minimum percentage of the contract products or a full range of the supplier's products assessed?

The VN defines a non-competition agreement as an obligation, whether direct or indirect, for the buyer to purchase more than 80 per cent of its total purchases of contract goods or services, and their substitutes, from the supplier or another undertaking designated by the supplier. This obligation is calculated based on the value or volume of purchases in the previous calendar year.

This clause would be permissible if it did not exceed a period of five years, or if the agreement could tacitly be prolonged over five years but be renegotiated with reasonable notice and at reasonable cost.

Law stated - 6 November 2025

Other restrictions

Explain how restricting the supplier's ability to supply to other buyers is assessed.

Such a restriction does not fall under the VN and is examined in accordance with the general principles set out in article 5 and, in the case of a dominant position, article 7 CartA.

Law stated - 6 November 2025

Other restrictions

Explain how restricting the supplier's ability to sell directly to end-consumers is assessed.

Such a restriction does not fall under the VN. The explanatory notes VN state that passive sales bans at the expense of suppliers do not constitute grounds for presumption. However, if such restrictions impose obligations on suppliers other than the manufacturer (eg, the manufacturer's European distribution partner), they may constitute exclusive territory agreements.

They will be examined in accordance with the general principles.

Law stated - 6 November 2025

Other restrictions

Have guidelines or agency decisions in your jurisdiction dealt with the antitrust assessment of restrictions on suppliers? If so, what were the restrictions in question and how were they assessed?

Case law concerning French books addressed restrictions on suppliers. In the *Dargaud* and *Flammarion* cases, the FSC concluded that there is no absolute territorial protection

in the case of supplier restrictions. The FSC ruled that exclusivity agreements binding the manufacturer do not fall under article 5 paragraph 4 CartA, provided the customer is free to purchase products from suppliers of their own choosing. However, it should be noted that exclusivity agreements binding suppliers who do not manufacture the products themselves fall under article 5 paragraph 4 CartA.

Law stated - 6 November 2025

NOTIFICATION

Notifying agreements

Outline any formal procedure for notifying agreements containing vertical restraints to the authority responsible for antitrust enforcement.

There is no formal procedure for notifying the Competition Commission (COMCO) of agreements containing vertical restraints.

Law stated - 6 November 2025

Authority guidance

If there is no formal procedure for notification, is it possible to obtain guidance from the authority responsible for antitrust enforcement or a declaratory judgment from a court as to the assessment of a particular agreement in certain circumstances?

It is possible to request the Secretariat's advice on vertical agreements according to article 23 paragraph 2 Cartel Act. Advice is provided upon request and against payment of a service fee. The Secretariat provides advice based on the documents submitted and does not conduct its own fact-finding. This advice is provided on the understanding that COMCO is not bound by it.

Law stated - 6 November 2025

ENFORCEMENT

Complaints procedure for private parties

Is there a procedure whereby private parties can complain to the authority responsible for antitrust enforcement about alleged unlawful vertical restraints?

Private parties can submit information about alleged unlawful vertical restraints to the Competition Commission (COMCO) by using the contact form 'Information about unlawful practices' on the COMCO's [website](#). Alternatively, they may report such practices to COMCO by post or email. There are no formal requirements for such reports. The more substantiated and evidenced an alleged unlawful vertical restraint is, the more likely it is that COMCO will take action.

Law stated - 6 November 2025

Regulatory enforcement

How frequently is antitrust law applied to vertical restraints by the authority responsible for antitrust enforcement? What are the main enforcement priorities regarding vertical restraints?

For many years, the prosecution of vertical restraints, in particular resale price maintenance (RPM) agreements and the prevention of parallel imports have been among the Competition Authority's top priorities.

Law stated - 6 November 2025

Regulatory enforcement

What are the consequences of an infringement of antitrust law for the validity or enforceability of a contract containing prohibited vertical restraints?

Contracts or contractual clauses containing unlawful vertical restraints are null and void. They have no binding effect and are not legally enforceable.

Law stated - 6 November 2025

Regulatory enforcement

May the authority responsible for antitrust enforcement directly impose penalties or must it petition another entity? What sanctions and remedies can the authorities impose? What notable sanctions or remedies have been imposed? Can any trends be identified in this regard?

COMCO may impose sanctions directly on companies participating in an unlawful agreement. The sanction may amount to up to 10 per cent of the turnover achieved in Switzerland in the preceding three financial years (article 49a paragraph 1 Federal Act on Cartels and other Restraints of Competition (CartA)). In addition, COMCO may order measures that oblige the undertakings involved in an unlawful vertical agreement to perform or refrain from performing a certain act (article 30 paragraph 1 CartA). In the *BMW* case, COMCO imposed a sanction of 157 million Swiss francs for unlawful territorial foreclosure. This was confirmed by the Federal Supreme Court (FSC). In the *Hors-list medications* case, COMCO has fined three pharmaceutical companies a total of 5.7 million francs for resale price maintenance. After the Federal Administrative Court initially overturned the fines on the basis that the Cartel Act was not applicable, the FSC ultimately upheld the 5.7 million franc fine.

In this regard, there is no clear trend.

Law stated - 6 November 2025

Investigative powers of the authority

What investigative powers does the authority responsible for antitrust enforcement have when enforcing the prohibition of vertical restraints?

Parties to agreements and affected third parties are obliged to provide the competition authorities with information. They must provide all the information and documents required by the competition authorities for their investigations (article 40 CartA). Furthermore, the competition authorities may hear third parties as witnesses and require the parties to give evidence (article 42 paragraph 1 CartA). Finally, the competition authorities may order the search of premises and the seizure of evidence (article 42 paragraph 2 CartA).

Law stated - 6 November 2025

Private enforcement

To what extent is private enforcement possible? Can non-parties to agreements containing vertical restraints obtain declaratory judgments or injunctions and bring damages claims? Can the parties to agreements themselves bring damages claims? What remedies are available? How long should a company expect a private enforcement action to take?

Private enforcement is possible. However, claims can only be brought forward by an undertaking within the meaning of the Cartel Act that is hindered by an unlawful restraint of competition. Consumers and consumer organisations are not undertakings within the meaning of the Cartel Act and therefore not entitled to bring such claims. This is intended to be changed with the upcoming revision of the Cartel Act.

In theory, non-contracting parties to an agreement can use private enforcement. However, they must prove that they are being hindered from entering or engaging in competition by an unlawful restraint of competition. They can request: (1) the elimination of or desistance from the hindrance; (2) damages and satisfaction in accordance with the Swiss Code of Obligations; and (3) surrender of unlawfully earned profits in accordance with the provision on agency without authority.

A party to an agreement may claim damages if it can prove that it was hindered by the agreement. However, it can constitute an abuse of rights if cartel members invoke illegal conduct in which they were involved themselves when claiming compensation. Exceptions are conceivable if an agreement has been imposed on a participating undertaking.

Depending on the circumstances, private enforcement proceedings may take more than a year.

Law stated - 6 November 2025

OTHER ISSUES

Other issues

Is there any unique point relating to the assessment of vertical restraints in your jurisdiction?

Yes, there is a Swiss Finish relating to price recommendations. In the *Hors-list medications* case, the Federal Supreme Court (FSC) ruled that price recommendations from pharmaceutical companies to pharmacies were unlawful, despite the fact that the pharmaceutical companies were not pressuring or incentivising the pharmacies. In this case, the FSC had argued that the automatic daily integration of the price recommendations into the pharmacies' cashier software constituted an agreement between the pharmaceutical companies and the pharmacies.

Furthermore, contractual purchase restrictions, whereby distribution partners in Switzerland undertake to purchase the contract goods only within their territory, indirectly prevent passive sales to Swiss customers and thus constitute unlawful absolute territorial protection.

Law stated - 6 November 2025

UPDATE AND TRENDS

Recent developments

What were the most significant two or three decisions or developments in this area in the past 12 months?

The Secretariat confirmed its previous practice concerning agency agreements in two recent cases:

- Several motor vehicle suppliers in Europe are considering introducing an agency model. In its preliminary investigation into *Y. agency agreements*, the Secretariat established a procedure for evaluating these agency models under competition law. The Secretariat examined whether the motor vehicle supplier bore all of the agents' essential costs and risks and was therefore entitled to set the resale prices itself. If this were not the case, there would be a risk of an unlawful price-fixing agreement, which could result in sanctions being imposed.
- On 22 October 2024, the Secretariat concluded its preliminary investigation into fire protection products. During this investigation, it analysed the distribution system operated by a supplier of fire protection products (including fire extinguishers) and related services. The investigation revealed indications of unauthorised vertical territorial protection and price-fixing agreements. This was primarily due to the distribution model incorporating elements of various distribution systems, with no genuine agency model in place where the supplier of the fire protection products would bear all costs and risks. The Secretariat recommended changes to dispel competition concerns.

In the case *dealer and service agreements X*, the Secretariat advised on the conditions that must be met by selective distribution agreements to comply with the requirements of the Cartel Act and the Motor Vehicle Regulation. The Secretariat summarised the general provisions of the Vertical Notice once again, particularly those relating to selective distribution systems. Additionally, it explicitly recalled the Federal Supreme Court's ruling in *the Hors-list medications* case relating to price recommendations. Furthermore, the

Secretariat stated that in the motor vehicle sector, the Motor Vehicle Regulation and the explanatory notes to the Motor Vehicle Regulation must also be observed regarding vertical competition agreements.

Law stated - 6 November 2025

Anticipated developments

Are important decisions, changes to the legislation or other measures that will have an impact on this area expected in the near future? If so, what are they?

Yes, the Swiss Parliament is currently discussing a partial revision of the Cartel Act. The revision aims to encourage private enforcement, but it could also result in changes to the current case law, which states that hardcore agreements such as resale price maintenance and absolute territorial protection are, per se, significant (without the need to consider quantitative elements).

Law stated - 6 November 2025