Recent developments in Swiss competition law

ALBERINI, Adrien, BOVET, Christian

Abstract
Chronique des plus importantes affaires, décisions de la COMCO et autres développements en droit de la concurrence en 2020.

Reference

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Recent developments in Swiss competition law
Adrien Alberini | Christian Bovet*

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I. Introduction

1. In economic theory, transparency of information is usually seen as a positive condition, which contributes to effective competition. When one turns to competition law, however, it seems that parties are often reluctant for the decisions or judgments relating to their activities and transactions to be published. This sensitivity may sometimes seem rather surprising, especially when one takes into account the rather well-established jurisprudence in this field. In addition, the decisions taken by the Competition Commission1 in some of these cases may seem a priori trivial and causing no harm to the parties. For instance, undertakings always consider the lack of objection on the part of Comco in a merger control procedure during the first phase of this examination as a piece of good news.2 However, the information contained within the authority’s decision may constitute business secrets and thus need to be protected.3 This would lead to a detailed anonymization and redaction process, which might entail litigation before the Federal Administrative Tribunal4 and, eventually, the Federal Tribunal.5

2. Therefore, the principles reaffirmed by the Federal Tribunal in its judgment of 11 February 20206 should guide the authorities in their practice and the parties in their claims:

- The publication of sanctions before the decision is legally binding does not violate the undertakings’ presumption of innocence as protected by European Convention on Human Rights,7 Article 6(2) and Federal Constitution,8 Article 32(1). In particular, these rules do not constitute obstacles to the publicity given by authorities to ongoing proceedings.9 The explicit mention of the identity of the parties in the published decision is neither contrary to the principle of legality nor arbitrary.10

- Comco has discretionary powers to decide whether and how it will publish a decision. Its conduct should be considered as abusive when, for instance, its reasoning is based on grounds unrelated to the purpose of the provisions granting it these powers.11 An excessive or an insuffi-

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1 Hereinafter “Comco”. In this chronicle, this abbreviation refers both to the Commission and to its Secretariat.
3 On the concept of business secrets, see Bovet C./Alberini A., “Recent developments in Swiss competition law”, RSDA/SZW 2020/1, p. 73 § 19.
4 E.g. Federal Administrative Tribunal, case B-2548/2019 (n. 2), § 9. In this judgment, the court qualified as a “decision” within the meaning of Federal Law on Cartels and other Competition Restraints (LCart/KG; RS/SR 251), Article 48(1), the positive determination reached by Comco in phase I. On the other hand, it left open the question whether this determination should also be considered as a decision under Federal Law on Administrative Procedure (PA/VwVG; RS/SR 172.021), Article 5. Idem, § 7.
5 Federal Tribunal, case 2C_250/2019, judgment of 17 July 2020, § 2.4 (appeal rejected from the outset on procedural grounds, since the Federal Administrative Tribunal had sent back the case to Comco for a new decision taking into account the instructions given in its judgment [application of Law on the Federal Tribunal (LTF/BGG; RS/ SR 173.110), Article 93[1][b]]).
7 ECHR; RS/SR 0.101.
8 Cst./BV; RS/SR 101.
9 Federal Administrative Tribunal, case 2C_690/2019 (n. 6), § 4.2. Also Federal Administrative Tribunal, case B-5607/2019, judgment of 27 February 2020, § 4.2 (publication of an intermediary decision).
10 Idem, § 4.6.
cient use of such powers is also unlawful. This was not the case in this judgment.\textsuperscript{12}  
 Since the procedure before Comco is an administrative one, the parties may not invoke the private law provisions of Civil Code, Article 28.\textsuperscript{13} Moreover, as pointed out in ATF/BGE 142 II 268, Article 25(4) of LCart/KG constitutes a special rule constitutes a special rule, which prevails over general data protection law with respect to business secrets. The authority should first analyse this specific aspect and then apply general rules to other data.\textsuperscript{14}

II. Agreements

3. It is rather unusual for parties to appeal up to the Federal Tribunal on the merits in horizontal cartel cases. In the case relating to the cartel in the construction sector in Canton Aargau, however,\textsuperscript{15} one party took its chance and challenged the judgment rendered by the Federal Administrative Tribunal on one specific count. According to the appellant, the factual background of the case had been arbitrarily established by the Federal Administrative Tribunal; more specifically, the court was wrong to hold that the appellant had taken certain measures and submitted supporting offers which contributed to the successful manipulation of several procurement procedures. Indeed, according to the appellant, the pieces of evidence used by the Federal Administrative Tribunal were not sufficiently strong to support the conclusion reached by that Court. Also, it was wrong for the tribunal to consider that the statements contained in the leniency application were correct as such. In other words, the establishment of the factual background had led to a situation in which the appellant had to demonstrate that it was not guilty of breaching competition law, which qualifies as a violation of the presumption of innocence.\textsuperscript{16} Facing these claims, the Federal Tribunal held that the lower court had dealt concretely with the value of the pieces of evidence available in the file, including with the value of the statements in the leniency application. The Federal Tribunal further held that, according to the judgment rendered by the Federal Administrative Tribunal, this lower court had assessed all the pieces of evidence available and based its judgment thereon. Therefore, the appeal was rejected as no sign of arbitrary establishment of the factual situation had been demonstrated by the appellant.\textsuperscript{17}

4. Further to a significant number of investigations against various types of unlawful coordination in the construction sector, Comco sanctioned for the first time several undertakings for their participation in a submission cartel in the IT sector.\textsuperscript{18} This particular case concerned the Swiss National Bank, which operates its own optical network infrastructure for the transmission of data. To this end, the Swiss National Bank acquires various network infrastructure components from IT companies.\textsuperscript{19} In the case in question, the IT providers set up a system of horizontal and vertical agreements which, taken as a whole, qualified as an unlawful agreement within the meaning of LCart/KG, Article 5(3) and (4).\textsuperscript{20} While this case shows no particular feature on the merits, it is quite interesting from a timing perspective: Comco was informed of the potentially unlawful agreement in October 2019. Thanks to the parties’ cooperation in the investigation, the case was closed and the final decision rendered in November 2020, i.e. barely two years later.

5. AdBlue\textsuperscript{21} demonstrates that it is not always easy to distinguish horizontal and vertical agreements. In this case, Comco dealt with an agreement between Brenntag and Bucher, according to which the former is the supplier of the latter with respect to AdBlue chemicals. That said, Bucher could have been able to source AdBlue from another supplier when it entered

\textsuperscript{12} Federal Tribunal, case 2C_690/2019 (n. 6), § 5.2.  
\textsuperscript{13} Idem, § 6.1.  
\textsuperscript{14} ATF/BGE 142 II 268, § 6.4. Also Federal Tribunal, case 2C_690/2019 (n. 6), § 6.2–6.3.  
\textsuperscript{15} Federal Tribunal, case 2C_845/2018, judgment of 3 August 2020. With respect to the judgment of the Federal Administrative Tribunal, see Bovet C./Alberini A., "Recent developments in Swiss competition law", RSDA/SZW 2019/1, p. 73 § 4.  
\textsuperscript{16} Federal Tribunal, case 2C_845/2018 (n. 15), § 3.  
\textsuperscript{17} Idem, § 5.  
\textsuperscript{18} Comco, case 22-0503, decision of 16 November 2020 (Optische Netzwerke), available on the authority’s website at: <https://www.weko.admin.ch/weko/fr/home/actualites/dernieres-decisions.html>.  
\textsuperscript{19} Idem, § 1.  
\textsuperscript{20} Idem, § 40 et seq.  
\textsuperscript{21} DPC/RPW 2020/2, p. 626 AdBlue.
into the supply agreement with Brenntag (Brenntag being only the importer and not the producer), so that the relationship would not qualify as dual distribution within the meaning of the Notice on Vertical Restraints, Para. 8(2)(a). Since the agreement between Brenntag and Bucher contained provisions allocating customers between the parties, Comco concluded that the parties had entered into an unlawful horizontal agreement. 22

6. Bucher Landtechnik 23 recalls once again that the Swiss general importer of products of a specific brand—in the case at hand tractors of the brand “New Holland”—cannot force its local dealers to source spare parts exclusively from it, to the exclusion of sourcing from foreign providers of this same brand. The same applies to similar indirect restraints, such as a scheme aiming to incentivize local dealers to purchase spare parts parts mostly from the Swiss importer based on trade discounts for the purchase of New Holland tractors bundled with a determined quantity of spare parts to be purchased from such Swiss importer. 24 Such vertical restraints qualify as a restriction of passive sales and fall under the presumption of LCart/KG, Article 5(4). 25 In the case at hand, the fine imposed on Bucher Landtechnik, the general importer, amounted to approximately CHF 150 000, thanks to a leniency application and amicable settlement. 26

7. Musik Hug challenged the sanction of CHF 445 000 imposed a few years ago by Comco in the Flügel und Klaviere case 27 on the ground that the company is not capable of paying such fine. 28 After recalling that only the first leniency applicant may benefit from a full exemption from a sanction and considering that Musik Hug did not qualify as such, 29 the Federal Administrative Tribunal assessed whether the sanction in question could be reasonably borne by the appellant. In this connection, the Federal Administrative Tribunal observed that a sanction should neither lead to the bankruptcy of the undertaking concerned nor impair its ability to participate in the competition process. This Court went on to say that Comco had taken into account the financial situation of Musik Hug and had already reduced the fine, which was initially set at over CHF 1.3 million. 30 In conclusion, the appeal made by Musik Hug was rejected.

III. Dominant positions

8. The Hallenstadion saga is full of surprises and not over yet! One may recall that following a judgment of the Federal Tribunal, in 2016 the Federal Administrative Tribunal confirmed the competitors’ right to appeal and, on the merits, considered that there were sufficient elements demonstrating the defendants’—Hallenstadion and Ticketcorner—likely anticompetitive behavior in light of LCart/KG, Article 7. Furthermore, the Federal Administrative Tribunal sent back the case to Comco for re-examination. 31 Unwilling to go back to square one, Hallenstadion and Ticketcorner in turn appealed to the Federal Tribunal, which held the following: 32

– With respect to a possible abuse of a dominant position by Hallenstadion, the Federal Tribunal first examined/considered in detail the question of the definition of the relevant market, finally reaching the conclusion that the relevant market encompasses Hallenstadion (in its Layout Arena), the St. Jakobshalle and the PostFinance Arena Bern. 33 Furthermore, the Federal Tribunal concluded to the dominant position of Hallenstadion, particularly in view of its extraordinarily good location in the middle of the German-speaking part of Switzerland. 34 As to a possible abuse of a dominant position, after stating general principles governing the application of LCart/KG, Article 7, and more specifically the principles applicable to the bundling of products, the Federal Tribunal considered that Hallenstadion had abused its dominant position by using the ticketing clause as a bundle. When renting space in the Hallenstadion, event or-

22 Idem, § 40 et seq.
23 DPC/RPW 2019/4, p. 1155 Bucher Landtechnik.
24 Idem, 41 et seq.
25 Idem, 58 et seq.
26 Idem, 86 et seq.
27 See Bovet C./Alberini A., “Recent developments in Swiss competition law”, RSADA/SZW 2017/1, p. 102 § 3.
29 Idem, § 4.
31 See Bovet/Alberini (n. 27), p. 102 § 18.
33 Idem, § 5.1–5.4.
34 Idem, § 5.5.
ganizers were forced to sell 50% of all tickets through Ticketcorner (as the partner of Hallenstadion).

- Regarding a possible unlawful agreement between Hallenstadion and Ticketcorner, the Federal Tribunal excluded any qualification within the meaning of LCart/KG, Article 5(3) or (4). The question was rather whether the agreement impaired competition to a notable extent according to LCart/KG, Article 5(1), without being justified on economic grounds pursuant to LCart/KG, Article 5(1). In light particularly of the position of the parties on the market, the Federal Tribunal answered in the affirmative in respect of both the market for event locations for major rock and pop concerts and the market for the sale of event tickets.

- As to the question whether Ticketcorner had abused its dominant position, the Federal Tribunal considered that Comco had not investigated the case from this perspective and, therefore, the Federal Administrative Tribunal was wrong to reach that conclusion based on the factual elements related thereto available in the file. The case is thus sent back once again to Comco...

9. The Netzzugang EGZ und ewl case may seem like déjà vu; in reading the decision handed down by Comco in this case, most competition lawyers in Switzerland will indeed (fondly) remember the EEF case in the early 2000s. In a rather short decision (which nonetheless provides a good description of the functioning of the still unregulated gas market), Comco has now fully opened the market for natural gas in the central part of Switzerland. More specifically, Comco considered that two natural gas suppliers had abused their dominant position by refusing to grant access to their network to a third party willing to use that infrastructure in order to supply its customers. Thanks to an amicable settlement, the customers of the dominant suppliers under scrutiny will have the choice in the future to switch to another supplier.

10. Eishockey im Pay-TV deserves attention at least from the following twofold perspective: first, this case shows that Comco intends to continue to intervene in situations in which powerful undertakings refuse to grant access to products or services; Comco has most likely been empowered in particular by the judgment rendered quite recently in the SIX case by the Federal Administrative Tribunal fully confirming Comco’s approach towards refusal to supply. Second, and with respect more specifically to the electronic communication markets, things go both ways. While Swisscom, which had acquired long-term global rights over major sport events in soccer and ice hockey, had been fined in 2016 for preventing competing TV platforms from accessing such premium content, this time Comco sanctioned UPC for refusing to grant Swisscom access to TV rights relating to the Swiss ice hockey championship. One should note that Comco did not accept UPC’s argument according to which UPC did not grant Swisscom access to the rights on ice hockey because Swisscom did not grant UPC full access to the rights on soccer in the first place, as the parties were not in the situation addressed in the Swiss Code of Obligations, Article 82. 11. In the highly regulated context of drug distribution, drug-related information and data play a key role since they are at the heart of the decisions of hospitals, doctors and pharmacists when they prescribe drugs. Over the years, the Galenica Group managed to obtain a dominant position on the market for digital drug-related information and, as a Comco decision published in 2020 demonstrates, to abuse it in several ways. More specifically, Comco considered that Galenica had entered into agreements with software companies comprising a combination of exclusive supply provisions and rights of first refusal, thus preventing other information providers from entering into agreements with such software companies or, in other words, from accessing distribution channels. Also, while it excluded data bundling, Comco held...
that Galenica had unlawfully bundled the access to drug-related information with other services (so-called module bundling).\textsuperscript{47} Moreover, it is worth noting that, according to Comco, Galenica may have implemented a predatory pricing strategy. Unfortunately, however, Comco left this question open because settling it would have required disproportionate efforts from the authority;\textsuperscript{48} Swiss competition lawyers will thus have to wait a little longer before having access to a recent and comprehensive predation case. Similarly, Comco addressed the case from the perspective of unfair trading conditions but considered that, due to various market conditions and particular features of the case, it was not possible to apply the tests aiming to determine whether the prices charged by Galenica are fair or not. Therefore, in compliance with the in dubio pro reo principle, Galenica could not be considered as having exploited counterparties by imposing unfair prices.\textsuperscript{49}

12. Everyone remembers Comco’s intervention back in 2013 when the authority entered into an amicable settlement with Swatch Group for the progressive phasing out of the supply of mechanical movements, through its subsidiary ETA SA Manufacture Horlogère Suisse, to third-party watchmakers.\textsuperscript{50} While Comco worried over the past years that the market may not have adapted as expected and that watchmakers may still be dependent on ETA, Comco considered in 2020\textsuperscript{51} that ETA’s customers were finally able to develop other sourcing solutions; also, the need for movements was not as high anymore because of the decrease in demand for mechanical watches. Therefore, it was no longer justified to impose supply obligations on ETA,\textsuperscript{52} even though Comco still considered that this undertaking held a dominant position on the market for Swiss-made mechanical movements.\textsuperscript{53} Comco’s decision, which is more than 140 pages long, is certainly of interest to a broader audience than competition lawyers as it provides the outcome of Comco’s consultation of the players in the Swiss watch industry and how the behavior of these players has evolved over the past seven years.\textsuperscript{54}

IV. Merger control

13. Over the past ten to fifteen years, Comco has interpreted LCarta/KG, Article 9(4), quite broadly, thus requiring undertakings participating in a merger control procedure to give notice of the transaction – regardless of the legal thresholds defined by LCarta/KG, Article 9(1) and (3) – if a prior and final decision rendered by Comco established a dominant position in a related market in Switzerland (i.e. if the transaction concerns a market which is in an upstream, downstream or neighbouring relationship).\textsuperscript{55} In Tamedia/A dextra, Tamedia (now TX Group) challenged such broad interpretation before the Federal Administrative Tribunal. After carrying out an in-depth analysis of the provision under scrutiny, in particular from a historical and teleological perspective, the Federal Administrative Tribunal confirmed the broad interpretation by Comco.\textsuperscript{56}

14. Private players in the Swiss telecommunication sector keep trying to compete against Swicoom. A major step to this effect has been achieved with the takeover of Sunrise by UPC, which led to the creation of the second-largest telecom provider in Switzerland.\textsuperscript{57} The main purpose of this transaction was to enable Sunrise/UPC to have its own infrastructure with respect to both mobile and landline infrastructures. From a single dominance perspective, Comco assessed the market for IP interconnection access and the market for the provision of sport events in Pay TV, and eventually held that the parties had a strong position before the transaction and that said transaction

\textsuperscript{47} Idem, 390 et seq.
\textsuperscript{48} Idem, 456 et seq.
\textsuperscript{49} Idem, 311 et seq.
\textsuperscript{50} See Bovet C./Alberini A., “Recent developments in Swiss competition law”, RSDA/SZW 2015/1, p. 42 § 7.
\textsuperscript{51} Comco, case 32-0224, decision of 13 July 2020 (Swatch Group Lieferstopp/Ablauf Lieferverpflichtung), available on the authority’s website at: <https://www.weko.admin.ch/weko/fr/home/actualites/derannies-decisions.html>.
\textsuperscript{52} Idem, § 371 et seq.
\textsuperscript{53} Idem, § 393 et seq.
\textsuperscript{54} Idem, § 117 et seq.
\textsuperscript{55} See for instance Bovet/Alberini (n. 3), p. 73 § 16, and Bovet C./Alberini A., “Recent developments in Swiss competition law”, RSDA/SZW 2014/4, p. 435 § 15. For an example of the opposite, see Bovet/Alberini (n. 27), p. 102 § 14.
\textsuperscript{56} To be further noted that the Federal Administrative Tribunal clarified, as a preliminary question, that the decision by Comco to charge CHF 5,000 for the assessment of the transaction in question is a formal decision subject to appeal.
\textsuperscript{57} DPC/RPW 2020/2, p. 759 Sunrise/Liberty Global.
would have only a limited impact on competition.\textsuperscript{58} Most of Comco’s efforts related to the assessment of a possible situation of collective dominance between the new entity and Swisscom. In this respect, the decision is detailed and provides a thorough analysis of the functioning of various telecommunication markets.\textsuperscript{59} Comco concluded that Sunrise/UPC and Swisscom together would be holding shares of between 70–80% and 90–100% in the markets for broadband internet, fixed telephone lines and TV markets.\textsuperscript{60} That said, even though these parties would be more symmetrical, Sunrise/UPC would become stronger and less dependent on Swisscom, and thus capable of offering more competitive quadruple play solutions.\textsuperscript{61} From a strategic perspective, Sunrise has demonstrated its intent over the past years to compete fiercely against Swisscom, which means that a coordination with Swisscom in the future is rather unlikely. Sunrise’s growth strategy, which is based on price decreases, seems to have finally convinced Comco, which cleared the transaction without charges or conditions.\textsuperscript{62}

15. In the transportation sector, Comco has carried out an in-depth assessment of the concentration of SBB, Hupac and Rethmann in relation to the Gateway Basel Nord terminal (GBN).\textsuperscript{63} Interestingly, although it considered that GBN could partially eliminate effective competition on the market for the loading and unloading of containers, exchanging bodies (coachwork) and trailers for importation and exportation by railway and by boat/railway in the Rhein area,\textsuperscript{64} Comco cleared the transaction based on outweighing efficiency gains. Indeed, GBN would significantly improve competing conditions in the field of railway freight in terms of cost and time savings.\textsuperscript{65} Importantly, Comco also relied on the legal requirements according to which access to GBN should be on a non-discriminatory basis and on other charges imposed by the Federal Office of Transport, both of which would allow other undertakings offering combined transportation services to benefit from the cost and time savings relating to the gateway functionality of the new terminal.\textsuperscript{66}

V. Procedure

16. Consistently with its jurisprudence,\textsuperscript{67} the Federal Administrative Tribunal rejected objections pertaining to the hearing of individual employees possibly involved in the anticompetitive behaviour of their employer.\textsuperscript{68} Concretely, business responsibilities attributed to an employee are generally not sufficient to qualify that person as a so-called “factual corporate body” of an undertaking; therefore, the employee in question should be heard as a witness and not as a representative of a party to the procedure.\textsuperscript{69} In another case, the same jurisdiction reaffirmed the limits it had set forth in its jurisprudence with respect to former corporate bodies of a party,\textsuperscript{70} i.e. such a witness should testify only on “purely factual points”, which would not have a direct negative bearing on the sanctioning process of the relevant undertaking.\textsuperscript{71} The Federal Tribunal rejected appeals against these two judgments on procedural grounds.\textsuperscript{72}

17. The agreement reached between the Secretariat and the parties within the framework of an amicable settlement procedure is an administrative contract subject to a suspensive condition, i.e. the Commission’s approval. Once the latter is granted through a decision of the competition authority, this agreement

\textsuperscript{58} Idem, § 292 et seq., it being specified that Comco recalled the principles and tests to be applied to the assessment of the possible elimination of effective competition in light of the most recent case law of the Federal Administrative Tribunal.

\textsuperscript{59} Idem, § 346 et seq.

\textsuperscript{60} Idem, § 576.

\textsuperscript{61} Idem, § 576. To be further noted that, according to Comco, it is hard to anticipate the competitive impact that 5G technology will have in the future on the markets for wired broadband internet.

\textsuperscript{62} Comco, case 41-0853, decision of 27 May 2019 (SBB/Hupac/Rethmann/GBN), available on the authority’s website at: <https://www.weko.admin.ch/weko/fr/home/actualites/dernieres-decisions.html>.

\textsuperscript{63} Idem, § 410 et seq., in particular § 653.

\textsuperscript{64} Idem, § 654 et seq.

\textsuperscript{65} Idem, § 710 et seq.

\textsuperscript{66} In addition to the case summarized in Bovet/Alberini (n. 3), p. 73 § 18, see ATAF/BVGE 2018 IV/12.

\textsuperscript{67} Federal Administrative Tribunal, case B-7017/2018, judgment of 13 March 2020.

\textsuperscript{68} Idem, § 4.

\textsuperscript{69} Also Federal Administrative Tribunal, case B-6483/2018, judgment of 3 December 2019, esp. § 5.1.

\textsuperscript{70} Federal Administrative Tribunal, case B-6863/2018, judgment of 6 March 2020, esp. § 5.2.

\textsuperscript{71} Federal Tribunal, respectively, cases 2C_342/2020 and 2C_343/2020, judgments of 2 June 2020.
no longer has a legal function. Indeed, the measures agreed upon are encompassed in a decision issued by the competent authority and, from then on, only this decision should be deemed relevant.\textsuperscript{73}

18. A Swiss company and an Italian one entered into a letter of intent (LOI) containing a jurisdiction clause designating Italian courts to decide on disputes arising therefrom; the clause mentioned not only that this jurisdiction was “exclusive” but also that it was “with exclusion of any other alternative jurisdictions”.\textsuperscript{74} About two years later, the Swiss company filed a claim based on LCart/KG, Articles 7 and 5, before the Court of Appeals (“Obergericht”) of its corporate seat, in the Canton of Solothurn. In particular, the claimant requested the execution of an agreement on terms consistent with usual market conditions. However, the cantonal court declined its jurisdiction, considering in substance that the claim was a matter “relating to tort, delict or quasi-delict” under Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,\textsuperscript{75} Article 5(3), but that this provision was not mandatory. Therefore, the parties could contractually agree on another jurisdiction, as they had in this case.\textsuperscript{76} The Federal Tribunal rejected the Swiss company’s appeal considering, amongst others, that some of the arguments presented by it were either introduced too late or were not supported by the facts duly established by the cantonal court. It also recalled that, according to Swiss jurisprudence and legal authors, contractual jurisdiction clauses also cover tort claims linked to this relationship, provided that these acts constitute at the same time a violation of the contract or when there is a relationship between these acts and the contractual context (“Vertragsgegenstand”).\textsuperscript{77}

\textsuperscript{73} Federal Administrative Tribunal, judgment of 13 October 2020, § 5.3.1.

\textsuperscript{74} Federal Tribunal, case 4A_433/2019, judgment of 14 April 2020, Factual background, § A.

\textsuperscript{75} CL/LugÜ; RS/SR 0.275.12.

\textsuperscript{76} Federal Tribunal, case 4A_433/2019 (n. 74), § 3. The cantonal judgment is published in DPC/RPW 2019/4, p. 1370.

\textsuperscript{77} Idem, § 4.2.4. In another case pertaining to a request for conservatory measures further to the termination of agreements in the motor vehicle sector, the Luzern Court of Appeals (“Kantonsgericht”) concluded, after a detailed review of the jurisprudence and of the specific jurisdiction clause, that claims aiming to obtain new agreements based on competition law grounds would not fall within the scope of such a clause (DPC/RPW 2019/4, p. 1375). The court granted the measures (idem, § 6 et seq.).