Cross-border investments and investment controls

Report in fulfilment of the postulates 18.3376 Bischof of 16 March 2018 and 18.3233 Stöckli of 15 March 2018

Executive Summary

<u>Background</u>

In recent years, both private companies and companies with government links from large emerging markets have increasingly made cross-border investments. Their focus has at least partially fallen on companies from developed countries, including Switzerland. This trend has sparked a public debate as to whether this results in a loss of jobs and company-specific knowledge (know-how) as well as a threat to national security due to the sale of critical infrastructures. Another concern put forward is that investments by companies with government links lead to distortions to competition.

This report fulfils the postulates 18.3376 Bischof of 16 March 2018 ("Foreign company takeovers in Switzerland. Is the current barrier-free status still tenable?") and 18.3233 Stöckli of 15 March 2018 ("Investment review for foreign investments").

<u>Main messages of the report</u>

Switzerland's open policy towards investments from abroad is of key importance to Switzerland as a business location. It can be described as a real model for success. This policy ensures a sufficient influx of capital and knowledge for Swiss companies and thus contributes to the generation of value as well as to the preservation and creation of jobs. Switzerland is one of the world's largest recipients of direct investments and one of the world's largest direct investors. According to the latest available figures, foreign direct investments in Switzerland in 2017 amounted to around CHF 1,088 billion, while Swiss direct investments abroad amounted to CHF 1,228 billion.

In other countries, too, there has been increased discussion in recent years about foreign influence through direct investments. A number of countries therefore apply various forms of investment controls. However, like Switzerland, half of the EU countries, especially smaller countries such as Belgium, Ireland and Sweden, refrain from controlling investments for good reason. The Swiss economy is already well protected by the current rules and regulations.

With the existing legislation in Switzerland, the threat to national security posed by the acquisition of companies by hostile foreign players can be practically ruled out. The vast majority of companies that provide critical infrastructure are already owned by the state (Confederation, cantons, municipalities). This is the strongest protection against foreign influence. Only the legislator itself could lay the groundwork for a sale.

If, however, domestic-controlled private or foreign-controlled (both private and state-owned) companies offer critical infrastructures, the question of systemic importance arises. As long as a company is not systemically important, meaning that its products or services can also be offered by other companies (substitutability), a foreign acquisition cannot lead to a risk.

Nevertheless, in the case of systemically important companies, a threat to national security posed by a sale or domestic private or foreign (both state and private) ownership cannot be ruled out immediately. This category only includes systemically important banks and systemically important financial market infrastructures. In this respect, however, possible implications are already being addressed today with sector-specific regulation. For example, the systemically important banks and systemically important financial market infrastructures are supervised by the Swiss Financial Market Supervisory Authority (FINMA). The systemically important financial market infrastructures are also overseen by the Swiss National Bank. If FINMA receives indications of breaches of supervisory law, it will investigate them and take the necessary measures to restore compliance. It can thus also be assumed with regard to systemi-

cally important companies that a risk to national security is adequately addressed by the existing regulations. Consequently, there are no known takeovers that would have threatened national security or the long-term functioning of the economy in the past.

The Federal Council's new 2018–2022 strategy on protecting critical infrastructures also defines specific measures with which the Federal Council intends to maintain security of supply in Switzerland and improve it in key areas. For example, it has charged the relevant supervisory and regulatory authorities with examining all sectors of critical infrastructure for any significant risk of major supply disruption.

In addition, there are further regulations regarding foreign investments for companies operating in a non-critical sector. This means that, even in the case of these companies, it is not possible to speak of unlimited takeover opportunities. Other regulations include the Lex Koller on the acquisition of property and financial market law, based on which, for example, banks that are foreign controlled after their incorporation require an additional authorisation.

Nor is there any compelling need for action with regard to the possible loss of jobs and the feared withdrawal of know-how. The most effective way to guarantee jobs and a technological lead is to create conditions that are conducive to innovation and competition, implement an education and research policy that takes account of the needs of the economy and ensure adequate protection of intellectual property. Switzerland has always been able to offer an excellent environment in this respect. Therefore, no investment controls to systematically review planned investments are required to prevent the loss of jobs and company-specific knowledge. Instead, there would be a danger that an industrial policy measure would be introduced to generally shield the domestic economy in a protectionist sense, which would have a detrimental effect on the economy in the medium and long term. The Federal Council has so far expressly refrained from such measures.

Conclusions

As Switzerland already has a comprehensive and effective set of rules to prevent unwanted takeovers, the extra benefit of an additional control authority would not be felt in the existing system. National and international experience to date regarding investments and takeovers also does not provide any clear findings to suggest that foreign takeovers of companies pose a fundamental threat to national security or economic performance.

However, the introduction of investment controls would entail considerable administrative burden for the companies concerned and would reduce Switzerland's attractiveness as a business location. Sales restrictions on private companies would also constitute a serious encroachment on economic freedom.

The Federal Council is therefore of the opinion that the introduction of investment controls cannot be justified at this point in time and on the basis of the current facts. However, the Federal Council is aware of the possible risks. It therefore recommends option b) described in the report – status quo with further monitoring. This stipulates monitoring based on currently available data and an update of this report to be submitted to Parliament within the next four years. The Federal Council is thus introducing a tool which can point out any future need for action with reasonable administrative outlay.