

## Competition - Switzerland

### Supreme Court Upholds Right to Free Market Access

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On September 24 2008 the Supreme Court upheld the right to free market access under the Swiss Domestic Market Act for the first time. An attorney-at-law had settled in the canton of Vaud after a number of years of practice in the canton of Geneva. The attorney's attempt to hire a trainee was refused on the grounds that Vaud's legislation required a practitioner to have practised in the canton for at least five years. The cantonal courts rejected an appeal by the attorney against the refusal. On a further appeal the Supreme Court decided that the refusal violated the right to free market access granted by the Domestic Market Act. The court argued that the attorney fulfilled the criteria set by Geneva's legislation for the appointment of a trainee and that Vaud's legislation had violated the principle of proportionality.

In its revised version, which came into force on July 1 2006, the act ensures that all persons with headquarters or an establishment in Switzerland have free and non-discriminatory market access to do business throughout Switzerland. The act ensures, in particular, that an entity with its head office or facility in a canton has the right to establish itself in another canton to pursue its economic activity. According to the principle of the place of origin, the entity can validly rely on the market access conditions in force in its home canton, notably with respect to diplomas or permits issued by that canton. People affected by a restriction on market access, as well as the Competition Commission, are entitled to file an appeal against the restriction. Furthermore, the act makes the commission responsible for monitoring enforcement of the law by the Confederation, the cantons and the communes, empowering the commission to carry out investigations and make recommendations to the relevant authorities on planned or existing legislation.

The Supreme Court has given a broad scope to the act. The ruling also shows that the commission - through its right of appeal - contributes significantly to ensuring free market access.

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