

Competition - Switzerland

New legislation introduced to allow publishers to fix book prices

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Introduction

On March 18 2011 Parliament adopted new legislation through which book prices are to be fixed. The act, which also applies to online book sales, requires in particular the publisher or importer to set the final retail price of books that it publishes in, or imports into, Switzerland, with retailers being compelled to resell the books at the price so determined.

Given that the act is subject to an optional referendum, on March 24 2011 the Competition Commission decided to suspend temporarily the investigation that it had opened in parallel to the legislative process. The purpose of the investigation is to determine whether distributors and marketers of French-language books in Switzerland hold a dominant position and, if so, whether they set their prices at an excessively high level.

Investigation

In France, the retail price of books is set by publishers; booksellers cannot deviate from it by more than 5%, by virtue of the Lang Law. When a publisher decides to sell a French-language book in Switzerland, it generally employs the services of a distributor or marketer, which distributes or markets the books of the relevant publisher on an exclusive basis. The distributor applies a conversion rate (which it sets freely) to the French price, with the price resulting therefrom being the gross price applied to the distributors and marketers (also called the 'Swiss recommended public price'). Such a mark-up is supposed to cover the expenses of distribution and marketing in Switzerland. The distributor then grants a discount on the Swiss public recommended price to booksellers. On contrast to French booksellers, Swiss booksellers are free to depart from retail prices determined by publishers or distributors.

In July 2007 the Secretariat of the Competition Commission opened a preliminary investigation into the French-language book market in Switzerland. This preliminary investigation was intended to determine whether the retail price differences observed between books sold in Switzerland and those sold in France (which amounted to between 25% and 35% at the time) was the consequence of a possible restriction on competition, as defined in the Federal Act on Cartels and other Restraints of Competition.

On March 13 2008 the commission decided to open an investigation into distributors of French-language books operating in Switzerland. Distributors obtain exclusive rights to publishers' books and therefore any given book can be purchased only from its respective distributor or marketer in Switzerland. In view of this exclusivity, the commission considered that there were indications that the distributors of French-language books might hold, on an individual basis, a dominant position on the Swiss market, and that the level of prices charged for distribution services might be regarded as abusive pursuant to Article 7(2) of the cartel act. Subsequently, the commission widened its investigation to include Swiss recommended public prices set by distributors, in order to examine whether such practices (as well as the juxtaposition of vertical agreements between distributors and booksellers) could be regarded as illegal within the meaning of Article 5 of the cartel act.

New act

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The investigation was opened after a parliamentary initiative had been lodged in 2004 which asked the Federal Council (ie, the government) to prepare a draft federal act regulating book prices. On March 18 2011 this parliamentary initiative resulted in the adoption of the Federal Act regulating book prices. The purpose of the act is to promote the variety and quality of books, which are considered as cultural assets. For that purpose, the act provides that the publisher or importer has the right to determine the final retail price of the books that it publishes or imports. Booksellers are then compelled to sell the books at the final retail price so determined. However, the act allows booksellers to grant a general discount of up to 5% on the final retail price; the act also authorises booksellers to grant discounts in a number of specific cases (eg, sales to public libraries, bulk sales and sales by book clubs).

The act entrusts the price supervisor with observing the evolution of book prices, conferring upon him the power to propose that the Federal Council, by way of ordinance, set the maximum authorised price differences compared to prices charged abroad, taking into account the specificities of the different Swiss linguistic regions (ie, German-speaking, French-speaking or Italian-speaking). Further, the act provides that publishers, importers and wholesalers will not be allowed to supply retailers whose product range does not consist mainly of books at lower prices or under more favourable terms than those offered to the booksellers. The act also applies to the sale of books on the Internet (but not to digital books).

Comment

The act is subject to optional referendum and has not yet entered into force. It has been reported in the media that a referendum committee has been created with a view to putting the project to a public vote. Noting this, on March 24 2011 the Secretariat of the commission decided to suspend the investigation procedure until the referendum deadline has passed. Thus, it cannot be ruled out that the commission will take the regime introduced by the new act on book prices into account when reaching the conclusions of its investigation.

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