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Price Supervision Act (PrSA)

of 20 December 1985 (Status as of 1 January 2013)

The Federal Assembly of the Swiss Confederation,
based on Articles 31^{septies} and 64^{bis} of the Federal Constitution¹,
after considering the Federal Council Dispatch dated 30 May 1984²,
decrees:

Section 1 Scope of Application

Art. 1³ Material scope of application

This Act applies to prices of goods and services, including credit. Salaries and other benefits from employment as well as the lending activities of the Swiss National Bank are excluded.

Art. 2⁴ Personal scope of application

This Act applies to agreements affecting competition as defined in the Cartel Act of 6 October 1995⁵ and to undertakings under private and public law with market power.

Section 2 Commissioner for Price Supervision

Art. 3 Appointment

¹ The Federal Council shall appoint a commissioner for price supervision (the Price Supervisor).

AS 1986 895

1 [BS 1 3; AS 1983 240]

2 BBl 1984 II 755

3 Amended by No I of the Federal Act of 22 March 1991, in force since 1 Oct. 1991 (AS 1991 2092; BBl 1990 I 97).

4 Amended by Annex No 3 of the Cartel Act of 6 Oct. 1995, in force since 1 July 1996 (AS 1996 546, 1805; BBl 1995 I 468).

5 SR 251

² The Price Supervisor is subordinate to the Federal Department of Economic Affairs, Education and Research⁶. He or she shall be assigned members of staff.

Art. 4 Tasks

¹ The Price Supervisor shall monitor price developments.

² He or she shall prevent or eliminate any abusive increase in or maintenance of prices. The monitoring of specific prices by other authorities remains reserved (Art. 15).

³ He or she shall inform the public about his or her activities.

Art. 5 Co-operation

¹ Price supervision is carried out in co-operation with interested groups. In the case of lending rates, the Price Supervisor shall in particular act after detailed consultation with the SNB and the Swiss Financial Market Supervisory Authority^{7,8}

² The Price Supervisor shall work with the Competition Commission⁹. He or she shall attend their meetings in an advisory capacity.

³ The Price Supervisor and the Competition Commission shall inform each other of important decisions.

⁴ If questions of personal scope (Art. 2) and effective competition (Art. 12) are to be assessed, the Price Supervisor or the competent authority (Art. 15) must consult the Competition Commission before taking a decision. The Competition Commission may publish its opinions.¹⁰

Section 3

Measures to Prevent or Eliminate Abusive Increases in or Maintenance of Prices

Art. 6 Advance notification

If parties to agreements affecting competition or undertakings with market power intend to increase prices, they may submit their plans to the Price Supervisor.¹¹ The

⁶ Term in accordance with No I 33 of the O of 15 June 2012 (Restructuring of the Departments), in force since 1 Jan. 2013 (AS **2012** 3655). This amendment has been taken into account throughout the decree.

⁷ The name of the administrative unit was adapted in application of Art. 16 para. 3 of the Publication Ordinance of 17 Nov. 2004 (AS **2004** 4937).

⁸ Amended by No I of the FA of 22 March 1991, in force since 1 Oct. 1991 (AS **1991** 2092; BBl **1990** I 97).

⁹ Term in accordance with Annex No 3 of the Cartel Act of 6 Oct. 1995, in force since 1 July 1996 (AS **1996** 546, 1805; BBl **1995** I 468). This amendment has been made throughout the text.

¹⁰ Amended by No I of the Federal Act of 22 March 1991, in force since 1 Oct. 1991 (AS **1991** 2092; BBl **1990** I 97).

¹¹ Amended by Annex No 3 of the Cartel Act of 6 Oct. 1995, in force since 1 July 1996 (AS **1996** 546, 1805; BBl **1995** I 468).

Price Supervisor shall declare within 30 days whether he or she considers the price increase to be unobjectionable.

Art. 7 Reports

Any person who suspects that the increase in or maintenance of a price is abusive may report this in writing to the Price Supervisor.

Art. 8 Enquiries

Based on the reports or his or her own observations, the Price Supervisor shall establish whether there are any indications of an abusive price increase or of abusive price maintenance.

Art. 9 Amicable settlement

If the Price Supervisor identifies abuse, he or she shall endeavour to reach an amicable settlement with the parties concerned; This does not require any special form.

Art. 10 Decision

If no amicable settlement can be reached, the Price Supervisor shall prohibit the increase in whole or in part or order a price reduction.

Art. 11 Change in circumstances

¹ The validity of the amicable settlement or the decision must be limited in time.

² At the request of the person or undertaking concerned, the Price Supervisor shall declare the settlement or decision invalid before the expiry of the deadline if the actual circumstances have changed significantly in the meantime.

Section 4 Price Abuse

Art. 12 Competition policy principle

¹ Price abuse within the meaning of this Act can only occur if the prices in the relevant market are not the result of effective competition.

² Effective competition exists in particular if customers have the opportunity to switch to comparable offers without unreasonable effort.

Art. 13 Matters requiring assessment

¹ When examining whether a price has been abusively increased or maintained, the Price Supervisor must take particular account of the following:

- a. the development of prices in comparable markets;
- b. the need to make reasonable profits;

- c. the development of costs;
- d. special services provided by the businesses concerned;
- e. special market conditions.

² When reviewing the costs, the Price Supervisor may also take account of the initial price.

Section 5

Measures for Officially Set or Approved Prices

Art. 14

¹ If the legislature or the executive of the Confederation, a canton or a commune is responsible for setting or approving a price increase requested by the parties to a competition agreement or a company with market power, it shall first consult the Price Supervisor.¹² The Price Supervisor may request that a price should not be increased at all or to the extent intended or that an abusively maintained price be reduced.

² The authority shall cite the Price Supervisor's opinion in its decision. If it does not follow it, it shall give reasons for this.

³ When examining whether a price abuse has occurred, the Price Supervisor shall take account of any overriding public interests.

Section 6

Measures for Other Federal Price Controls

Art. 15

¹ If agreed prices or prices set by a undertaking with market power are already monitored on the basis of other provisions of federal law, the competent authority shall assess them and not the Price Supervisor.¹³

² The authority shall be guided by this Act insofar as this is compatible with the objectives of its supervision.

^{2bis} The authority shall inform the Price Supervisor of the price assessments it carries out. The Price Supervisor may request that a price increase not be made in whole or in part or that an abusively maintained price be reduced.¹⁴

¹² Amended by Annex No 3 of the Cartel Act of 6 Oct. 1995, in force since 1 July 1996 (AS 1996 546, 1805; BBl 1995 I 468).

¹³ Amended by Annex No 3 of the Cartel Act of 6 Oct. 1995, in force since 1 July 1996 (AS 1996 546, 1805; BBl 1995 I 468).

¹⁴ Inserted by No I of the Federal Act of 22 March 1991, in force since 1 Oct. 1991 (AS 1991 2092; BBl 1990 I 97).

^{2ter} The authority shall cite the Price Supervisor's opinion in its decision. If it does not follow it, it shall give reasons for this.¹⁵

³ Proceedings, rights of appeal and criminal penalties are governed by the relevant federal legislation.

Section 7

Relationship between Investigations by the Competition Commission and Decisions of the Price Supervisor

Art. 16¹⁶

¹ The Competition Commission may initiate investigations into agreements affecting competition or undertakings with market power, even if the Price Supervisor has reduced the price or discontinued the proceedings.

² The Price Supervisor is reserved the right to review the abusive nature of agreed prices or prices of undertakings with market power.

Section 8

Duty to Provide Information, Cooperation and Confidentiality

Art. 17 Duty to provide information

Parties to agreements affecting competition, undertakings with market power and third parties involved in the market must provide the Price Supervisor with all the information required and make the necessary documents available.¹⁷ Third parties are not obliged to disclose manufacturing or business secrets.

Art. 18 Cooperation

The Price Supervisor may request federal, cantonal and communal offices and supervisory authorities as well as business organisations to cooperate in his or her investigations and to provide the necessary documents.

Art. 19 Official and business secrets

¹ The Price Supervisor shall maintain official secrecy.

² He or she may not disclose any business secrets.

15 Inserted by No I of the Federal Act of 22 March 1991, in force since 1 Oct. 1991 (AS 1991 2092; BBl 1990 I 97).

16 Amended by Annex No 3 of the Cartel Act of 6 Oct. 1995, in force since 1 July 1996 (AS 1996 546, 1805; BBl 1995 I 468).

17 Amended by Annex No 3 of the Cartel Act of 6 Oct. 1995, in force since 1 July 1996 (AS 1996 546, 1805; BBl 1995 I 468).

Section 9 Rights of Appeal

Art. 20¹⁸ Principle

Rights of appeal are governed by the general provisions on the administration of federal justice.

Art. 21 Right of consumer organisations to appeal

Organisations of national or regional importance that are dedicated to consumer protection in accordance with their statutes have a right of appeal.

Art. 22¹⁹

Section 10 Criminal Provisions

Art. 23 Use of abusive pricing

¹ Any person who wilfully:

- a. does not implement an ordered price reduction;
- b. increases a price despite that being prohibited; or
- c. exceeds mutually agreed prices,

shall be liable to a fine not exceeding 100,000 francs.

² An attempt is a criminal offence.

Art. 24 Violation of the obligation to provide information

Any person who wilfully:

- a. fails to fulfil the duty to provide information (Art. 17); or
- b. provides incorrect or incomplete information,

shall be liable to a fine not exceeding 20,000 francs.

Art. 25 Applicability of administrative criminal law

¹ The Administrative Criminal Law Act of 22 March 1974²⁰ applies to the prosecution and adjudication of offences.

² The Federal Department of Economic Affairs, Education and Research is the prosecuting and adjudicating administrative authority.

18 Amended by Annex No 137 of the Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS **2006** 2197, 1069; BBI **2001** 4202).

19 Repealed by Annex No 137 of the Administrative Court Act of 17 June 2005, with effect from 1 Jan. 2007 (AS **2006** 2197, 1069; BBI **2001** 4202).

20 SR **313.0**

Section 11 Final Provisions

Art. 26 Enforcement

¹ The Price Supervisor and the competent authorities (Art. 15) shall enforce this Act.

² The Federal Council shall issue the implementing provisions. In particular, it may issue provisions on the coordination of the activities of the Price Supervisor and the competent authorities (Art. 15).²¹

Art. 27 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council shall determine the commencement date.

Commencement date: 1 July 1986²²

21 Amended by No I of the Federal Act of 22 March 1991, in force since 1 Oct. 1991 (AS 1991 2092; BBl 1990 I 97).

22 FCD of 16 April 1986.

