

## **Federal Act on Improvement of Local Supply and Competitive Conditions, as amended on 21 September 2017<sup>1</sup>**

### **Full title**

Federal Act of 29 June 1977 on Improvement of Local Supply and Competitive Conditions<sup>2</sup>  
Original version: Federal Law Gazette No. 392/1977 (NR: GP XIV IA 4/A and 12/A AB 565 p. 61. BR: AB 1689 p. 366.)

### **Amendments**

Federal Law Gazette No. 121/1980 (NR: GP XV IA 38/A AB 262 p. 27. BR: AB 2126 p. 394.)  
Federal Law Gazette No. 424/1988 (NR: GP XVII IA 175/A AB 694 p. 69. BR: AB 3539 p. 505.)  
Federal Law Gazette No. 590a/1990 (Constitutional Court)  
Federal Law Gazette No. 693/1993 (NR: GP XVIII RV 1096 AB 1202 p. 131. BR: 4635 AB 4626 p. 574.)  
Federal Law Gazette I No. 131/2001 (NR: GP XXI RV 759 AB 788 p. 81. BR: AB 6482 p. 681.)  
Federal Law Gazette I No. 136/2001 (NR: GP XXI RV 742 AB 824 p. 81. BR: 6458 AB 6459 p. 681.)  
Federal Law Gazette I No. 151/2004 (NR: GP XXII RV 643 AB 723 p. 89. BR: 7156 AB 7164 p. 717.)  
Federal Law Gazette I No. 62/2005 (NR: GP XXII RV 942 AB 991 p. 112. BR: AB 7310 p. 723.)  
Federal Law Gazette I No. 50/2012 (NR: GP XXIV RV 1726 AB 1757 p. 153. BR: AB 8715 p. 808.)  
Federal Law Gazette I No. 56/2017 (NR: GP XXV RV 1522 AB 1529 p. 173. BR: AB 9765 p. 866.)  
[CELEX-No.: 32014L0104]

### **Other text components**

The National Council has adopted:

### **Text**

#### **Good business conduct**

**§ 1.** (1) Business practices of any undertakings in commercial transactions among each other may be prohibited if they are likely to jeopardise performance-related competition.

(2) Such practices include, but are not limited to offering or requesting, granting or accepting money or other benefits, also discounts, special conditions, special product features, take-back obligations or assumption of liability among suppliers and resellers, which are not objectively justified, especially if the additional benefits are not offset by appropriate compensation.

**§ 2.** (1) A supplier who grants or offers different conditions to authorised resellers in the same circumstances without objective justification may be sued for a cease-and-desist order.

(2) Similarly, a reseller may be sued for requesting or accepting objectively unjustified conditions from suppliers.

**§ 3.** The opposing party shall not take any proceedings pursuant to §§ 1 and 2 as a reason to exclude the undertaking affected by a conduct as defined hereunder from further supply or purchase on reasonable conditions.

#### **Ensuring local supply and competitiveness**

**§ 4.** (1) Unless otherwise specified in other legal provisions, undertakings shall be free, particularly in choosing their final sellers. Undertakings which usually deliver to final sellers may be obliged to conclude a contract if non-supply to a final seller threatens local supply or significantly affects the final seller's competitiveness in the goods not supplied.

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1 ) Translator's note: Only the German version of this Federal Act is authentic.

2 ) Bundesgesetz vom 29. Juni 1977 zur Verbesserung der Nahversorgung und der Wettbewerbsbedingungen (Nahversorgungsgesetz)

(2) Local supply is deemed to be threatened if a substantial number of consumers is not able to purchase the goods necessary to satisfy needs of daily life at reasonable costs and time without using a motor vehicle or public transport.

(3) The obligation to supply shall be conditional upon counterperformance, taking into account the terms and conditions granted to comparable final sellers as well as the supplier's ability to deliver.

(4) Such an obligation to supply shall not be ordered particularly in those cases in which a delivery

- a) is economically unreasonable for the supplier, or
- b) violated a statutory provision or were contra bonos mores.

(5) An ordered obligation to supply shall be revoked upon application if reasons that were decisive for ordering such obligation cease to exist. Upon application, the obligation to supply shall be restricted or revoked if the competitors' economic existence is substantially jeopardised by such obligation.

### **Statutory duty to supply**

§ 5. (1) Commercial final sellers shall not conceal their stocks of goods necessary to satisfy needs of daily life. They shall be obliged to sell such quantities of their stocks of goods to consumers which are customarily sold to consumers.

(2) Final sellers pursuant to para. 1 shall grant officials of the district administrative authorities access to and inspection of their premises and store rooms during the business hours in order to allow for examination of an obligation pursuant to para. 1. They shall also provide the required information to such officials, submit all necessary documents and if required enable them to inspect stock inventories as well as records on incoming and outgoing goods.

(3) When performing their official actions pursuant to para. 2, the officials of the district administrative authorities shall inform the owner of the business or his deputy when entering the business premises or store rooms and shall avoid any disturbance or disruption of business that is not absolutely necessary. Any information obtained during such inspections shall only be used for enforcing para. 1.

### **Procedural rules**

§ 6. The Cartel Court shall be the competent authority for the prohibition of practices pursuant to §§ 1 and 3, of unjustified terms and conditions pursuant to § 2 as well as for ordering, restricting or revoking an obligation to supply pursuant to § 4, provided that claims are based solely on this Federal Act. The provisions on the organisation of the courts as set forth in the Cartel Act shall apply accordingly.

§ 7. (1) For proceedings before the Cartel Court and the Supreme Cartel Court, the general provisions laid down in the Non-Contentious Proceedings Act<sup>3</sup> shall apply, including the principle that legal expenses shall not be reimbursed, taking into account the particularities set forth in §§ 47 and 49 of the Cartels Act 2005<sup>4</sup>, unless otherwise stated in the following.

(2) Applications pursuant to §§ 1 to 4 may be filed by:

1. the Federal Competition Authority, the Federal Cartel Prosecutor, the Federal Economic Chamber, the Federal Chamber of Labour and the Standing Committee of Presidents of the Chamber of Agriculture; these entities shall be party to the proceedings, even if they are not applicants;
2. associations that represent economic interests of undertakings if these interests are affected by the subject of the proceedings;
3. any undertaking whose legal or economic interests are affected by the subject of the proceedings.

(3) All deadlines shall be set by the presiding judge of the competent court division, except for the four-week statutory period of time to lodge an appeal against a final decision and for submitting the reply to such appeal. The period of time to be set by the presiding judge shall be at least eight days, except for proceedings pursuant to para. 4.

(4) In order to prevent imminent irreparable damage, the Cartel Court may, upon application, issue a prohibitory injunction or an interlocutory order. Before the decision, the opposing party shall be heard. Any appeal against such a decision by the Cartel Court shall not have any suspensive effects.

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3) Außerstreitgesetz (AußStrG)

4) Kartellgesetz 2005 (KartG 2005)

(5) Any facts or evidence which according to the contents of the files were not submitted to the Cartel Court, may only be submitted in the appeal proceedings in the event that it is credibly shown (§ 274 Code of Civil Procedure)<sup>5</sup> that these facts only occurred after the decision had been taken by the Cartel Court or that without the party's fault such facts and evidence, in the same way as the newly requested evidence, had become known only after that time, or that the party without fault of its own had not been able to submit such facts or evidence in good time.

(6) Settlement agreements shall be permissible; they shall not be subject to any fees.

(7) Interlocutory injunctions of the Cartel Court, final decisions of the Cartel Court and the Supreme Cartel Court as well as any settlements reached by them constitute enforcement titles. In cases of §§ 1 to 3, the enforcing creditor is the affected undertaking, in case of § 4 the final seller affected by non-supply. If no such affected party exists, the applicant may enforce execution. Requests to approve and enforce execution, based on enforcement titles pursuant to §§ 1 to 3, may be filed at the district court of the legal district in which the party obliged has its general place of jurisdiction in case of any legal disputes (§§ 66, 75 Court Jurisdiction Act<sup>6</sup>), otherwise at the district court specified in § 18 of the Enforcement Act<sup>7</sup>.

(8) The court fee shall be set on a sliding-scale between EUR 70 and EUR 3,500. In case of non-success, the sued party shall be liable to pay. §§ 51 to 57 Cartel Act 2005 shall apply.

(9) Upon application by a party, the presiding judge may authorise such party to publish the final decision on a conduct pursuant to §§ 1 and 2 at the expense of the opposing party within a specified period of time. The scope and form of publication shall be specified in the decision. Upon application, the presiding judge shall by order of the court fix the costs of publication and impose their reimbursement on the opposing party.

#### **Penal provisions**

**§ 8.** (1) Anyone who infringes provisions set forth in § 5 para. 1 or 2, shall be deemed to commit an administrative offence and shall be punished by a fine of up to EUR 2,180 imposed by the district administrative authorities. § 370 of the Trade Regulations 1973<sup>8</sup> shall apply.

(2) Repeated infringements of § 5 para. 1 and 2 shall be deemed to be offences pursuant to § 87 para. 1 subpara. 2 (a) of the Trade Regulations 1973.

(3) Law enforcement officials shall assist in the enforcement of § 5 as officials of the district administrative authorities by taking actions to prevent imminent administrative offences pursuant to § 8 para. 1, as well as any actions necessary to initiate and implement the respective administrative penal proceedings.

#### **Final and transitional provisions**

**§ 9.** Provisions on unfair competitions shall remain unaffected by this Federal Act.

**§ 10.** The Federal Minister for Economy and Labour shall be responsible for the implementation of §§ 5 and 8 hereof; otherwise the Federal Minister of Justice shall be responsible.

**§ 11.** (1) This Federal Act shall enter into force as of 01 October 1977.

(2) § 8 para. 1 as amended in Federal Law Gazette I No. 136/2001 shall enter into force as of 01 January 2002.

(3) § 8 para. 3 as amended in Federal Law Gazette I No. 50/2012 shall enter into force as of 01 September 2012.

#### **Entry into force**

**§ 12.** This Federal Act as amended in Federal Law Gazette I No. 62/2005 shall enter into force as of 01 January 2006.

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5) Zivilprozessordnung (ZPO)

6) Jurisdiktionsnorm (JN)

7) Exekutionsordnung (EO)

8) Gewerbeordnung 1973

## Article 13

### Entry into force, repeal, transitional provisions

*(Note: from Federal Law Gazette I No. 131/2001, ad § 7, Federal Law Gazette No. 392/1977)*

1. This Federal Act shall enter into force as of 01 January 2002.

*(Note: Subparas. 2 and 3 refer to other legal provisions)*

4. By 30 June 2002, any court fee stamps not used before the expiry of 31 December 2001 may be sold back to the respective court accounting division against an equivalent amount in Euros.

5. By 30 June 2002, court fee franking machines with prepaid credit shall be presented to the deposit department of the Higher Regional Court for final accounts; any excess credit shall be paid back in Euros; any corrective payments shall be levied and collected in Euros. Pre-paid cards shall be returned for examination to the deposit department in charge by 30 June 2002.

*(Note: Subpara. 6 refers to other legal provisions)*

7. § 7 para. 8 of the Federal Act on Improvement of Local Supply and Competitive Conditions as amended in this Federal Act shall apply if a complaint is received by the courts after 31 December 2001. § 7 para. 9 of the Federal Act on Improvement of Local Supply and Competitive Conditions as amended in this Federal Act shall apply to all documents and official acts on which a justified claim for such fee is based after 31 December 2001.