

## The Belgian Competition Authority receives price control powers

Today, 12 December 2013, sees the entry into force of the new price control procedure that is provided by Title I of Book V of the newly consolidated Code of Economic Law (the “**Act**”). The Act was published in the Belgian State Gazette of 26 April 2013 but the Royal Decree announcing today's entry into force was published only yesterday. More information on Book IV of the same Code, which created the new Belgian Competition Authority and significantly reformed the procedures governing competition law investigations, can be found in our April and September alerts [here](#) and [here](#).

The roots of the new Belgian framework for price monitoring were set in 2009 with the creation of an advisory administrative body called the Price Observatory (“**PO**”). With the Act, the Belgian legislator has now gone a step further by enabling the Belgian Competition Authority (“**BCA**”) to intervene in problematic price evolutions.

### **The new roles of the authorities regarding price evolutions**

The Act gives the BCA an atypical role for a competition authority. When the PO detects potential problems regarding prices or margins, abnormal price evolutions or structural market problems, it will file a report with the BCA, either at its own initiative or at the request of the Minister for Economy. When it is urgent to prevent a situation that can cause serious, immediate and not easily repairable harm to the undertakings or consumers whose interests are being affected, or to prevent a situation which can be detrimental to the general economic interest, the Competition College of the BCA will be able to impose interim measures. This competency of the BCA extends to the prices of all goods and services that are taken into account in the index of consumer prices, except the prices that are already subject to sector-specific price regulation, such as pharmaceutical products and tariffs in newly liberalised network industries.

The Act does not define what a “problem” is regarding prices, margins, price evolutions or market structures, and the preparatory works provide little guidance in this regard. It is, however, clear that measures can be ordered regardless of whether the proof or the probability of a competition law infringement such as a cartel or an abuse of dominant position, in the sense of Articles 101 and 102 TFEU and their counterparts in Belgian law, can be established.

### **Contents**

The new roles of the authorities regarding price evolutions	1
How can undertakings and business federations prepare themselves?	2
Some provisions of the previous regime remain in place	3

The Act does not define the possible measures that can be imposed, but there is a general understanding that one of the measures that the legislator had in mind is the imposition of maximum prices in a given sector. The Minister of Economy has also referred to other potential measures such as price freeze, abolishment of indexation clauses, reduction of the number of tariff options, mandatory information of consumers and third-party access to infrastructure. The measures will be temporary, with a maximum duration of six months. The decisions of the BCA will be subject to appeal before the Court of Appeal of Brussels.

If measures are ordered by the BCA and/or the Court of Appeal, criminal penalties can be imposed on those who do not comply or do not cooperate with the execution of these measures. The same penalties apply to the producers and the retailers who refuse to meet the reasonable orders of retailers or consumers for products or services that are subject to these measures. Such criminal offences can be investigated and reported by both police officers and agents commissioned by the Minister for Economy.

When interim measures are ordered by the BCA, the Minister for Economy is required to draw up a plan to structurally improve the functioning of the market in the sector concerned, and to submit such plan to the Federal Government within a six-month period.

### **How can undertakings and business federations prepare themselves?**

It remains to be seen how this new framework will work out in practice. While it is difficult to anticipate the attitude of authorities, the PO is likely to see its new task of reporting problematic price evolutions as a development of its current mission of monitoring the evolution of the harmonised index of consumer prices and of its components. The PO publishes quarterly and annual reports in this regard, which are available on the website of the Federal Public Service for Economy. The PO is therefore likely to keep benchmarking the price evolutions in Belgium against the price evolutions in the neighbouring countries, and to perform more in-depth analyses in sectors where significant variations are observed.

Business federations are also meant to play an important role under the new rules. Indeed, if the PO reports a “problem” to the BCA and does not mention which undertakings are concerned, the BCA will only hear the observations of the organisations representing the sectors concerned in the Central Economic Council. In view of the short deadline for the filing of observations before the BCA (1 to 3 weeks), business federations and undertakings have a clear incentive in trying to be informed about the investigations of the PO as early as possible. The federations are therefore encouraged to build good channels of communication with the PO for the benefit of their members.

Finally, undertakings and business federations may try to anticipate the potential issues that the authorities might raise with regard to price evolutions in their sectors. If any lesson can be drawn from the practice of the PO in recent years it is that the analysis of underlying economic data such as the structure of the costs of production, the margin between these costs and the

selling price, and the comparison of prices among the neighbouring countries will be key aspects in any observation to be submitted during price control proceedings before the BCA.

## Some provisions of the previous regime remain in place

For the sake of completeness, some parts of the previous Belgian regime of price control remain in place.

First, the Act has not modified the mechanisms of price regulation that can be provided by or pursuant to other legislative acts, such as the “safety net” that has progressively been implemented for retail electricity and gas prices since last year.

Second, the Act has upheld the institution of the “programme contracts” through which the Minister for Economy and one or several undertakings can make commitments on prices. A special regime of programme contracts is applicable in the sector of oil products.

Third, the provisions of the Decree-Law of 22 January 1945 relating to potential maximum prices, notifications of price increase and requisitions of products currently remain in force. These provisions might soon be replaced by the upcoming Book XIV of the Code of Economic Law relating to public interventions in crisis situations.

**If you have questions, please contact Bernard van de Walle de Ghelcke, Xavier Taton, Thomas Franchoo or Niels Baeten.**

Authors: Bernard van de Walle de Ghelcke, Xavier Taton, Thomas Franchoo or Niels Baeten.

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts at Linklaters.

© Linklaters LLP. All Rights Reserved 2013.

Please refer to [www.linklaters.com/regulation](http://www.linklaters.com/regulation) for important information on the regulatory position of the firm.

We currently hold your contact details, which we use to send you special reports such as this and for other marketing and business communications. We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms. If your details are incorrect or have recently changed, or if you no longer wish to receive this newflash or other marketing communications, please let us know by e-mailing [marketing.belgium@linklaters.com](mailto:marketing.belgium@linklaters.com)

## Contacts

For further information please contact:

### **Bernard van de Walle de Ghelcke**

Partner, Competition

+32 2 505 03 02

[bernard.van.de\\_walle@linklaters.com](mailto:bernard.van.de_walle@linklaters.com)

### **Xavier Taton**

Counsel, Litigation

+32 2 501 94 72

[xavier.taton@linklaters.com](mailto:xavier.taton@linklaters.com)

### **Thomas Franchoo**

Counsel, Competition

+32 2 505 03 30

[thomas.franchoo@linklaters.com](mailto:thomas.franchoo@linklaters.com)

### **Niels Baeten**

Associate, Competition

+32 2 501 91 71

[niels.baeten@linklaters.com](mailto:niels.baeten@linklaters.com)

Rue Brederode 13  
B - 1000 Brussels

Telephone (+32) 2 501 94 11  
Facsimile (+32) 2 501 94 94

[Linklaters.com](http://Linklaters.com)