

# Fixed Book Price in Germany – Effects and Experiences

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## Fixed Book Price law in Germany

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## Background and goals of the German Fixed Book Price law

- Fixed Book Price in existence since 1888
  - Agreement-based system
  - Replaced by statute due requirements of European Law
- Law of 2002
  - Small modifications in 2006
  - Review in 2015
- Goals (§ 1)
  - Support of the book as culturally valuable good
  - Maintaining a strong market for published works and a dense network of retailers

## The rules

- Scope (§ 2): books, ebooks, music scores, maps, globes – not audio books!
- Books in German language / products destined for the German market
- Not applicable to temporary access!
- Mechanism (§ 5): **Publisher or importer must set retail price**
  - prices may be changed by publisher at any time
  - prices may be cancelled after 18 months (but usually are not)
  - different editions of same work may vary in price

## The rules

- Specific types of reductions only (§ 5 IV): bulk, series, subscription, institutions
- Optional reductions for certain types of library (§ 7 II)
- Mandatory fixed reductions for schools (§ 7 III)
- Limits on discounts (§ 6):
  - Dealers outside book sector
  - Wholesalers / retailers
  - Criteria for calculation of discount other than turnover
- Giveaways: max. 2 % of value (§ 7 IV No. 1)

## Enforcement

- Injunctive relief
    - Cease and desist letter / court
  - Damages
  - Disclosure of documents in cases of reasonable suspicion
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- Lawyers with collective mandate
  - BÖV: Advice; litigation for members in certain cases

## Effects on the industry

- Best-selling books allow publishers to “cross-subsidise” other works.
  - Revenues from best sellers/long sellers allow promotion of new authors or experiments with new ideas
  - Publishers can offer a **wider variety** of titles
  - Smaller print runs are sustainable
  - **Prices** can stay at a reasonable level even for niche products and specialist literature
- Authors benefit, as **royalties** are based on percentage of net retail price.
- Booksellers profit from guaranteed margin on best sellers, allowing them to **stock more specialised titles and cater to special interests.**
- Wholesalers may calculate on basis of secure margins, allowing them to invest in efficient logistics.

## Benefits from a cultural perspective

### Dissemination of Culture

- Wide variety of books: > 1.4 million books, > 500,000 ebooks and > 45,000 audio books available (listed in VIB)
- Large range of small and large publishing houses
  - ~ 20,000 publishers in Germany of which ~ 3,000 commercial
    - 60% have less than 10 titles available
    - Only ~ 200 publishing houses have > 500 titles in print
- Efficient logistics system
  - Wholesalers have ~ 400,000 titles on site
    - > 97% of all orders can be filled by the following morning
- Strong network of ~ 6000 book shops promoting diverse and colourful range of books



## Fixed Book Prices applied to ebooks

- Application since existence of ebooks (§ 2: “... *products which reproduce or substitute books...*”)
- Review of Fixed Book Price law in 2015:
  - express inclusion of electronic products directly substituting a (paper) book (§ 2 I No. 3)
  - **Cross-border application**
    - Essential for ebooks
    - Previous rule: non-circumvention

## Cross-border effect and EU law

- Freedom of Establishment (Art. 49 TFEU): no proven effects
- Free Movement of Services (Art. 56 TFEU): no discrimination, **justified** by legitimate aim of **Cultural Diversity**
  - as mandatory requirement recognised under Art. 36 TFEU
  - Art. 22 Charter of Fundamental Rights of the EU
  - Art. 167 s. 4 TFEU
  - Recital 63 E-Commerce Directive (2000/31/EC)
  - CJEU has upheld UNESCO Universal Declaration on Cultural Diversity in Art. 36 TFEU context (*cf.* also ECJ C-531/07)
- Pro-competitive effect: avoidance of market dominance of few players

## Ebooks in Germany

- Ebook share of **trade** consumer market in 2016: **4.6%**
- 2016: 2/3 of brick and mortar book shops operating web shops
- 2016: > 80% of brick and mortar book shops offering their customers ebooks and/or reading devices
- In 2013, 65% of all publishers were producing e-books
- Tolino Alliance: as strong as Amazon Kindle

## The Tolino Alliance as an alternative to Amazon Kindle

- Alliance launched in March 2013
- Range of reading devices (Tolino page, Tolino shine 2 HD, Tolino vision 4 HD, Tolino epos)
- **Open Ecosystem:** interoperability, consumer choice!
- Participation of individual booksellers via participating wholesaler
- Estimated 40% market share in GAS in 2016, with Amazon/Kindle also at 40% of the market
- > 1,500 book shops in Germany
- Launched in Belgium and Flanders in summer 2014; Italy: November 2014; Poland

## Areas for improvement of the German Fixed Book Price law

- Bonus points and „miles“
  - 2 % rule applies to bonus points to be redeemed against other goods
  - Points awarded for the purchase of books may not be redeemed when buying books
  - But: Legal dispute over whether points awarded for purchase of other goods may be redeemed when purchasing books
  
- Vouchers
  - Retailer gives out free vouchers and redeems them for books: infringement (similar: Amazon Trade In case)
  - Third party pays for gift voucher and gives it to consumer: ok
  - Deals between „two“ business partners sometimes problematic

## Areas for improvement of the German Fixed Book Price law

- Middlemen
  - May non-commercial intermediaries to the book sale earn a commission?
  
- Donations to charities, etc.
  - Advertising: purchase of book will trigger donation to certain charity or cause (change to the law planned)
  
- School books
  - Not much point in applying public procurement rules
  - Circumvention attempts

# D kuji!

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