

**Study on Suggested Retail Price (SRP):  
Nature, Implementation and Effects**

29 June 2015



## *Introduction*

In two recent studies conducted by the Department of Justice - Office for Competition (OFC) on 01 September 2014 and 06 January 2015 on the garlic and onion supply markets, it found that prices were fixed and manipulated. Consumers endured a year of escalating garlic prices, which increased at least 74 percent from a base price of ₱164.59/kilo in June 2013 to about ₱287.06/kilo in June 2014.<sup>1</sup>

Both garlic and onion are listed among the prime commodities regularly monitored by the Department of Agriculture (DA). However, the studies found that the DA failed to accurately monitor stock inventory and determine when imports should be allowed, despite full knowledge that the local supply is insufficient to cover demand. This negligence resulted in the inability of the agency to determine price trends, and issue timely the Suggested Retail Price (SRP) for the said commodity.

Under the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No.7581, otherwise known as the Price Act of 1992, the DA may issue SRP for any or all basic necessities and prime commodities under its jurisdiction for the information and guidance of producers, retailers, and consumers. Thus, one of the OFC recommendations in the reports was the inclusion of garlic and onion in the list of basic necessities in which prices should be regularly monitored.

As a follow through to these studies and in furtherance of the OFC's mandate to supervise competition in markets and ensure competition laws are adhered to, this paper aims to examine the nature and efficacy of the SRP mechanism. This study is divided into the following sections:

- I. Origins and development of the Price Act and SRP
- II. Implementation of SRP
- III. Issues and effects of SRP
- IV. OFC's findings and recommendations
- V. Conclusion

The study finds that while public welfare justifies government intervention against deceitful business practices, the misapplication of the SRP creates unintended consequences. As a form of price regulating mechanism by some government agencies, the SRP amounts to undue interference in the market and restricts competition.

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<sup>1</sup> All currency references are in Philippine Peso or unless otherwise stated.

Thus, this study recommends three approaches that seek to strike a balance between improving market competition and providing protection to the public, *i.e.*, (a) implementation of the SRP only during emergency situations and similar occurrences; (b) explore alternatives to SRP; and (c) removal of any requirement to seek the agency's approval prior to price increase and any penalties for violation of the SRP.

## **I. Origins and development of the Price Act and SRP**

The 1987 Constitution provides that the State shall protect consumers from trade malpractices and from substandard or hazardous products.<sup>2</sup> Pursuant to this policy, R.A. 7581<sup>3</sup>(The Price Act) was promulgated to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate businesses a fair return on investment. The law also emphasizes the declared policy of the State to provide effective and sufficient protection to consumers against hoarding, profiteering, and cartels with respect to supply, distribution, marketing, and pricing of basic necessities and prime commodities during periods of calamity, emergency, widespread illegal price manipulation and other similar situations.<sup>4</sup> It includes a provision on automatic price control to ensure that prices will remain stable and reasonable during emergency situations.

In times of calamity and conflict when there is a likely shortage of basic goods and prices are expected to increase, there is greater imperative to monitor and prevent hoarding, price manipulation, and other unscrupulous business practices. To illustrate, when Typhoon *Yolanda* struck in November 2013, food prices immediately went up in December and reached double digit inflation in areas hardest hit by the typhoon. In Eastern Visayas, prices of vegetables jumped from 5.8 percent to 11.3 percent; in Central Visayas, price of rice rose from 9.4 to 12.2 percent, fruits from 7.8 to 11.2 percent, and vegetables from 6.6 to 11.3 percent.<sup>5</sup> Such is the time when the public requires greater protection from abusive practices of suppliers, manufacturers, and retailers.

In these emergency situations, the Price Act effectively sets price controls on basic necessities and prime commodities. The law defines *basic necessities* as goods vital to the needs of consumers for their sustenance and existence,

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<sup>2</sup> Article XVI, Section 9.

<sup>3</sup> As amended by R.A. No 10623 (An Act Amending Certain Provisions of Republic Act No. 7581, September 6, 2013)

<sup>4</sup> Republic Act No. 7581, An Act Providing Protection to Consumers by Stabilizing the Prices of Basic Necessities and Prime Commodities and by Prescribing Measures Against Undue Price Increases During Emergency Situations and Like Occasions, otherwise known as the Price Act, (hereinafter the "Price Act") May 27, 1992

<sup>5</sup> "Typhoon *Yolanda* propels inflation to 2-year high in December 2013", Retrieved from [www.neda.gov.ph](http://www.neda.gov.ph)

while *prime commodities* are goods not considered as basic necessities but are essential to consumers.<sup>6</sup> (See Annex A for the complete list of covered items.)

Section 6 of the Price Act provides the instances when prices of basic necessities can be automatically frozen or placed under automatic price control, unless otherwise declared by the President. This automatic price freeze is conditioned on the occurrence of the following:

1. the area is proclaimed or declared a disaster area under a state of calamity;
2. the area is declared under an emergency;
3. the privilege of the writ of *habeas corpus* is suspended in that area;
4. the area is placed under martial law;
5. the area is declared to be in a state of rebellion; or
6. a state of war is declared in the area.

Section 7 enumerates the instances when the President, upon the recommendation of the implementing agency or the National Price Coordinating Council (NPCC), may impose a price ceiling on any basic necessity or prime commodity. This mandated price ceiling requires the existence of certain circumstances as follows:

1. there is imminence, existence, or effects of a calamity;
2. there is a threat, existence, or effects of an emergency;
3. the prevalence or widespread acts of illegal price manipulation;
4. the imminence, existence, or effect of any event that causes artificial and unreasonable increase in the price of the basic necessity or prime commodity;
5. whenever the prevailing price of any basic necessity or prime commodity has risen to unreasonable levels.

In sum, price control may be enforced under the Price Act through either the automatic price freeze under Section 6 which applies exclusively to basic necessities or the imposition of mandated price ceiling under Section 7 which applies to both basic necessities and prime commodities.

More importantly, these current price control mechanisms distinguish between basic necessities and prime commodities. This classification expedites

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<sup>6</sup> Section 1(4, 5) Rule 1 of JAO 1, s. 193

the regulation of goods and commodities, particularly in determining which product is subject to either automatic price control or to mandated price ceiling.

Finding support in the Constitutional policy and the Price Act, the implementing agencies<sup>7</sup> issue SRP as the list price or recommended retail price of a basic necessity or prime commodity at which the government recommends that the retailer sells the product. Section 10(5) of the Price Act provides that the head of the implementing agency may issue *from time to time* the *suggested reasonable retail prices* for any or all basic necessities and prime commodities under his jurisdiction for the information and guidance of producers, manufacturers, traders, dealers, sellers, retailers, and consumers.

The implementing agencies regularly issue SRP even during non-emergency and comparable situations. For instance, the DA has published SRPs for fresh chicken and pork.<sup>8</sup> Similarly, the DOH issues the Maximum Drug Retail Price (MDRP) to make medicines affordable and accessible to Filipinos. Unlike the automatic price freeze and mandated price ceiling, the SRP is issued even during non-emergency situations.

A government-recommended price, or any other form of price control, is not intrinsically anti-competitive. This can be gleaned from the government's history of imposing price control for consumer protection. However, the manner with which such measures were implemented conformed to the spirit of the times. (See Annex B – Brief History of Price Control in the Philippines)

Prior to the 1970s, price control measures were generally prescribed for a short duration and vary according to the needs of the times and presidential disposition. They were handled by administrative agencies that were primarily mandated to supply commodities to the general public at fair prices and procure commodities for distribution at reasonable prices to Filipino retailers and businessmen. During the martial law period, price controls were applied to goods beyond basic necessities and maximum selling prices were set by a council of agency heads.

The present governing law, the Price Act of 1992, also mandates price control during specific exigencies only. Policies for the protection of consumers are developed by a council who recommends to the President. The Price Act also distinguishes basic necessities from prime commodities to expedite the regulation of goods and commodities.

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<sup>7</sup> Department of Trade and Industry (DTI), Department of Agriculture (DA), Department of Environment and Natural Resources (DENR), Department of Health (DOH), and Department of Energy (DOE)

<sup>8</sup> Lorenciana, Carlo S., "DA: Suggested retail price is "site specific", The Freeman, 01 October 2014, accessed thru <http://www.philstar.com:8080/cebu-business/2014/10/01/1375162/>

## II. Implementation of the SRP in relation to the Price Act

The implementing agencies of the Price Act namely, the DTI, DA, DOH, and Department of Environment and Natural Resources (DENR) formulated the Joint Administrative Order (JAO) No. 1, s.1993, to serve as the IRR of the Price Act. The DOE subsequently joined the said agencies via the JAO No. 13-1.<sup>9</sup>

Rule II (Sec 4) of the IRR provides that the “implementing agency may, *whenever necessary*, issue *suggested retail prices*.” This was reiterated in Rule IX (Sec 1) which states that “the implementing agency may whenever necessary issue suggested retail prices (SRP) for certain basic necessities and/or prime commodities for the *information and guidance* of concerned trade, industry and consumer sectors.” (*Emphases supplied*)

Under the IRR, each implementing agency shall conduct regular monitoring of basic necessity or prime commodity, or both, in order to (a) identify and investigate causes of market and price irregularities; (b) determine price trends; (c) provide basis for establishing SRP and ceiling prices up to three (3) months prior;<sup>10</sup> and (d) develop database system on prices.<sup>11</sup>

The IRR further states in Rule IV (Sec 4) that the implementing agency may monitor commodities based on the following factors: (a) basic needs of consumers, (b) critical commodities that experience erratic movement, and (c) product brand selection which shall be based on availability/regularity of supply of the brand in the market.

Any person found violating the price ceiling (automatic or mandated) shall suffer the penalty of imprisonment for a period of one year to 10 years, or a fine of ₱5,000 to ₱1 million, or both, at the discretion of the court.<sup>12</sup> Acts of illegal price manipulation are penalized by imprisonment for a period of five to 15 years, or a fine of ₱5,000 to ₱2 million.

To aid the implementing agencies with their task, the NPCC<sup>13</sup> was created with the mandate of protecting consumers from inadequate supply and

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<sup>9</sup> Joint Administrative Order No. 13-1 Series of 2013 signed on December 16, 2013

<sup>10</sup> This takes into consideration external factors ( *i.e.* acquisition costs, increase in demand or shortage of supply, *etc.*) that can lead to price fluctuations

<sup>11</sup> The IRR states that the monitoring reports shall contain comparative price analysis (as deemed applicable) between the prevailing price vs. prevailing price three (3) months ago, a month ago, a week ago and the suggested retail price.

<sup>12</sup> Section 16, R.A. No. 7581

<sup>13</sup> The Council is composed of the following members: the Secretaries of DTI, DA, DOH, DENR, DILG, DOTC, DOJ, DOE; the Director General of the National Economic and Development Authority (NEDA); and one representative each from the consumers, agricultural producers, trading sector, and manufacturers sectors.

unreasonable price increases on occasions of calamities, emergencies and like occurrences.<sup>14</sup> It is tasked to coordinate productivity, distribution and price stabilization programs, projects, and measures of the government and develop comprehensive strategies for the general stabilization of prices of basic necessities and prime commodities at affordable levels. The Council also advises the President on general policy matters aimed at promoting and improving the productivity, distribution, and stabilization of prices of basic necessities and prime commodities.<sup>15</sup>

### *DTI and DA*

The DTI and the DA regularly monitor the prices of basic commodities as these are transferred from their places of origin and into markets, and especially when prices are automatically frozen after a locality has been declared a disaster area or is under a state of calamity or an emergency. The Price Monitoring Unit (PMU) of the DTI, aside from acting as the Secretariat of the NPCC, is responsible for reviewing SRPs and developing strategies in maintaining price stability and supply sufficiency of covered products. The unit also consolidates and analyzes nationwide price monitoring reports. The DTI's Consumer Protection and Advocacy Bureau (CPAB) maintains an SRP verification program to check if product prices in the market are reasonable.

The DTI also calls the attention of manufacturers to review their prices when there are adjustments in the cost of raw materials and other production inputs.

The DTI regularly publishes its monitoring reports in its website.<sup>16</sup> The weekly and monthly reports list prices of basic commodities, as monitored by both the DTI and the DA. The latter sets an SRP on livestock and is the primary agency in charge of monitoring agricultural and market products such as poultry, beef, and pork prices.

The DTI requires suppliers of basic necessities and prime commodities to submit their product SRPs on a regular basis to determine price movements. If there is a change, the DTI asks manufacturers to explain the modification but does not impose any penalty. In case of price drops, the agency follows the same procedure in determining the SRP. Reducing the recommended price, however, seems a slower process as noted by various sectors.<sup>17</sup>

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<sup>14</sup> Section 11, R.A. No. 7581

<sup>15</sup> Section 12, R.A. No. 7581

<sup>16</sup> Monitored Prices of Basic Commodities, [www.dti.gov.ph/dti/index.php/price-watch](http://www.dti.gov.ph/dti/index.php/price-watch)

<sup>17</sup> Remo, Amy R. and DJ Yap, *Aquino, DTI asked to explain high prices despite cheaper oil*, Philippine Daily Inquirer, accessed thru <http://newsinfo.inquirer.net/662720/>

The DTI considers SRP as a public advisory and is used as a tool to ensure that there is no profiteering. It has maintained that its issuance is neither a price control nor a price capping mechanism noting that the non-imposition of price ceilings is a consensus among members of the Association of Southeast Asian Nations (ASEAN).<sup>18</sup> However, the majority of ASEAN Member States regulate prices of basic commodities through diverse ways according to their respective legislations (see Annex C).

According to the DTI, the imposition of SRPs also fosters free and fair competition among manufacturers, supermarket, and grocery owners. It added that, for example, when the manufacturer of a leading brand of milk and coffee announced price rollbacks, other manufacturers followed suit. The agency mentioned as well that market forces and the competition of brands in the retail sector continue to dictate the prices even with the imposition of SRP. Likewise, its historical data would prove that the monitored prices of basic necessities and prime commodities remain lower than the SRPs.

### *DENR*

The DENR confirmed that it may whenever necessary issue suggested retail price.<sup>19</sup> It may also determine, recommend and enforce price ceiling for wood and other products. Further to the mandate of the Price Act and its IRR, the DENR issued Memorandum Circular No. 1993-19,<sup>20</sup> stating that the DENR will monitor the supply and prices of forest products classified as basic necessities to ensure availability and sufficiency of these products in the market and to prevent price increases beyond the limits set by law.

In addition, DENR Administrative Order No. 2000-55,<sup>21</sup> also states that the agency shall monitor prices in order to generate updated price statistics and trends to comply with the requirements of the Price Act. The DENR shall also develop and maintain a database on prices of forest products at their different office levels for policy development and planning purposes.

### *DOH*

The DOH stated that they do not have specific guidelines on setting the SRP of pharmaceutical products under the Price Act. However, the Cheaper

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<sup>18</sup> According to DTI Secretary Gregory Domingo in a hearing conducted by the Senate Committee on Food and Agriculture and as cited in *"Price control not a govt priority, says DTI chief"*, GMA News Online, 07 March 2011, accessed thru <http://www.gmanetwork.com/news/story/214699>

<sup>19</sup> Letter reply addressed to Assistant Secretary Geronimo L.Sy, dated 23 September 2014

<sup>20</sup> Monitoring of Selected Forest Products Pursuant to R.A. 7181 otherwise known as the "Price Act"

<sup>21</sup> DENR Administrative Order No. 2000-55 also known as the Revised Price Monitoring System for Forest Products, 12 July 2000

Medicines Act of 2008 provides that the DOH has the power to recommend to the President the setting of maximum retail prices of drugs and medicines.<sup>22</sup>

E.O. 821, s. 2009 mandates the setting of MDRP to make medicines affordable and accessible to Filipinos. The MDRP is a form of government intervention to the pharmaceutical industry and is required on drugs that reduce the incidence of morbidity and mortality. It is imposed on all public or private retail outlets.

Noteworthy is the Government Mediated Access Price (GMAP), a mediated action by the government to convince drug companies to lower the prices of their products to a level acceptable to the consumers. The DOH has also institutionalized e-EDPMS, a system and procedure for data collection on prices of selected critical drugs.

DOH A.O. 2006-0009 provides for preventive measures on price manipulation by requiring wholesalers of essential drugs to quarterly submit their wholesale price and inventories sold to retail outlets of the Bureau of Food and Drugs (BFAD). All manufacturers, importers and distributors of essential drugs are likewise required quarterly to submit their factory gate prices and sales information to the BFAD. All approved reports on drug prices and inventories must be posted and updated regularly in the DOH website. The A.O. further provides for the annual conduct of drug price surveillance of essential drugs classified as basic necessities using the drug prices of equivalent medicines available in the international market as bases of comparison.

Accordingly, the drugs and medicines covered by or subject of the MDRP shall not exceed the maximum retail price imposed by law wherever they are sold. This also applies to government and private health facilities regardless of the established room rates.<sup>23</sup>

### *DOE*

The DOE focuses on the price movements of household LPG and kerosene since these items were included in the amended Price Act. According to DOE Secretary Jericho L. Petilla,<sup>24</sup> when a state of calamity is declared, the prevailing retail prices at the time of the proclamation shall be the basis of the price freeze. He added the necessity of regularly monitoring retail prices of

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<sup>22</sup> Section 17 of Republic Act No. 9502, An Act providing for cheaper and quality medicines, amending for the purpose of Republic Act No. 8293 or the Intellectual Property Code, Republic Act-No. 6675 or the Generic Act of 1988 and Republic Act No. 5921 or the Pharmacy Law, and for other purpose, June 6, 2008.

<sup>23</sup> Item 9(a), VI, A.O. No. 2011-0012

<sup>24</sup> Letter reply addressed to Assistant Secretary Geronimo L. Sy, dated 14 October 2014.

household LPG and kerosene not only in key cities currently being monitored, but also in all towns in the country for the DOE to establish the applicable price ceiling.

The lack of manpower at the DOE, however, hampers regular and detailed monitoring of prices in every municipality. To address this, the DOE drafted a Memorandum of Agreement with the League of Municipalities for an efficient, fast and thorough means of monitoring, communication, coordination and cooperation.

### **III. Issues and effects of SRP implementation**

The rationale behind setting SRP is to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate businesses a fair return on investment. SRP is the government's avenue to provide effective and sufficient protection to consumers against profiteering, especially during periods of calamity, emergency, widespread illegal price manipulation and other similar situations.

#### *Ambiguous guidelines in setting SRP*

To achieve the objectives of the Price Act, implementing agencies are empowered to issue "suggested reasonable retail prices" from time to time of basic necessities and prime commodities for the purpose of giving information and guidance to consumers and suppliers. Rule II (Sections 4 and 5) of the IRR, however, provides that the implementing agency may issue SRP and enforce price ceilings "when necessary" without defining the circumstances that necessitate such imposition.

For instance, the DA and DTI issue SRP for basic necessities and prime commodities under their jurisdiction, with emphasis on the critical seasons when prices of certain goods are sure to increase. Noche Buena items,<sup>25</sup> which are not listed in the Price Act or cannot be practically classified as essential, are in the DTI's watch list. The issued SRP is usually applicable nationwide unless otherwise provided.

The DTI said that some manufacturers, supermarkets, and grocery owners of Noche Buena products and school supplies actually request for the inclusion of the products in the agency's price guide.

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<sup>25</sup> The DTI considers the following as Noche Buena items: ham, fruit cocktail, cheese, sandwich spread, mayonnaise, queso de bola, pasta spaghetti, elbow and salad macaroni, spaghetti sauce, tomato sauce, and, cream.

Additionally, the Cheaper Medicines Act was meant to ensure the affordability of medicines, but a study proved that medicines in the Philippines are more expensive than other countries in the region.<sup>26</sup> The imposition of the MDRP for medicines had become a measure of government price control that deterred competitive pricing.

### *Compulsory declaration and justification of price increase*

According to the DTI, the SRP is actually set by manufacturers. The DTI evaluates the reasonableness of any change or increase in the SRP based on the changes in the prices of raw materials and other production costs.<sup>27</sup> The DTI's published SRP is simply the modal price value of a product in a sampled market. In formulating the SRP, reference is made to the regular price monitoring report on basic necessities and prime commodities which may be collected by regional and provincial price monitoring units through inspection of price tags, interviews of stakeholders and surveys. Moreover, when warranted, the causes of price changes must also be indicated. Thus, suppliers and retailers can also be compelled to provide production and inventory reports.

Under the DTI's current setup,<sup>28</sup> the supplier of the specific basic necessity and/or prime commodity is required to submit supporting documents as a preventive measure for price manipulation and to determine price trends at least one (1) month prior to the effectivity of a proposed price increase. Generally, the requirement pertains to the invoice of the raw material when such is the attributed cause of the price adjustment. The information is then validated against data available in the industry (local and international) and in other government agencies, and becomes the basis to determine whether the proposed hike is justified or not. The increase, when justified, corresponds only to the particular affected component of the commodity. The rest, including the unspecified margins of the suppliers and sellers, shall remain constant.

With this process, the DTI could technically deny, reduce, or modify the proposed price increase, or even set constant the unspecified margins of suppliers and sellers. Aside from a show-cause order, the DTI may also issue a Notice of Violation (NOV) to owners of businesses whose retail prices are more than the government recommended rates. These establishments are directed to

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<sup>26</sup> Picazo, Oscar F., Review of the Cheaper Medicines Program of the Philippines: Botikang Barangay, Botikang Bayan, P100 Treatment Pack, and the Role of PITC Pharma, Inc. in Government Drug Procurement, Philippine Institute for Development Studies, p. 9-11

<sup>27</sup> Dimagiba, Victorio M., "Backgrounder on the Consumer Act of the Philippines (R.A. 7394)", delivered during 8th ECOP MGM

<sup>28</sup> The DTI provided copies of the Price Act and the IRR in response to DOJ OFC's letter request for compilation of rules and regulations, guidelines, and/or issuances or any other information relating to SRP.

comply and adjust their rates and submit a written explanation within 48 hours upon receipt of the NOV.

The DA has also stated in several media interviews that violators of the SRP may be charged with profiteering or “find their shops closed down as well.”<sup>29</sup> The Price Act defines profiteering as “the sale or offering for sale... at a price grossly in excess of its true worth”. There shall be *prima facie* evidence of profiteering whenever a basic necessity or prime commodity being sold (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; (d) or whenever a person raises the price of basic necessity or prime commodity he sells or offers for sale to the general public by more than 10 percent of its price in the immediately preceding month. The *prima facie* evidence provision shall not apply in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products.

### *Market intervention*

Setting price control measures is one of the ways a government can directly maintain price levels.<sup>30</sup> It is a form of market intervention on prices of essential commodities and services that are necessary to the survival and well-being of the population or to the continuance of economic activity.<sup>31</sup>

To regulate prices, governments can impose a price ceiling or a price floor. A price ceiling limits suppliers from selling above a mandated rate and guarantees that poorer consumers can buy the regulated goods or service at a lower price. The price floor is the lowest price that can be charged and ensures that the seller’s incomes will be higher than in a deregulated market.

Generally, most price ceilings are less than the free-market equilibrium price. Their imposition often results in supply shortages and the following scenarios: (a) buyers will need to spend more time and money to acquire goods and services; (b) buyers will purchase from other sources such as black markets; or (c) sellers could be tempted to hoard products, refuse to sell, and prolong the shortage.

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<sup>29</sup> GMA News Online, “Vendors complain of bare profits from DTI’s SRP”; “DTI joins DA in monitoring chicken price and supply”, accessed thru [www.dti.gov.ph/dti/index.php/2014-04-02-03-40-26/news-room/](http://www.dti.gov.ph/dti/index.php/2014-04-02-03-40-26/news-room/)

<sup>30</sup> Price stability can be achieved in several ways: (1) non-price control measures (*i.e.*, productivity improvement programs and increased investments in infrastructure and other supporting services; (2) monetary policies (*i.e.*, increasing reserve requirement for banks to siphon off excess liquidity to control inflation); or (3) setting price control measures.

<sup>31</sup> “The Janus Face of Price Controls”, Economic Issue of the Day, Philippine Institute for Development Studies, Vol. X No. 2 (March 2010), p1

As an example, the prices of petroleum products in Tacloban, Palo and Ormoc in Leyte increased to extortionate levels days after Typhoon *Yolanda* hit Eastern Visayas. In a memorandum issued on 14 November 2013, DOE Secretary Petilla directed oil companies operating in typhoon *Yolanda*-stricken areas to ensure adequate supply and execute fair pricing of petroleum products such as gasoline, diesel, kerosene, and LPG.

Despite the DOE's order, the price of gasoline, pegged at about ₱60.00 per liter before the storm, more than tripled in the black market, rendering any price freeze useless.<sup>32</sup> Further, Proclamation No. 682—declaring a state of calamity over Samar, Leyte, Cebu, Iloilo, Capiz, Aklan, and Palawan—was issued three (3) days after the typhoon landfall and only then was the automatic price freeze put in place.<sup>33</sup>

### *Manufacturer-imposed prices*

Suppliers could also initiate their own price limits called “resale price maintenance” or RPM. Distinct from the government's SRP, the RPM is a form of a vertical restraint and is generally prohibited in most jurisdictions.

RPM is prohibited under Article 186 of the Revised Penal Code, which makes it unlawful for “any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market” among others. As further explained in Section 2(a) of DOJ Department Circular No. 005 (Guidelines in the Enforcement of Competition Laws), vertical agreements to maintain a resale price are anti-competitive.

Many manufacturers in the Philippines normally recommend a retailer's price. They also use the term SRP which they affix uninhibitedly on packaging and use in related promotional efforts. There has been no study conducted yet on whether or not such practice can negatively impact the government's version or can be considered as an anti-competitive vertical agreement.

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<sup>32</sup> Luces, Kim, “Fuel supplies in Leyte and Samar predicted to stabilize by next week – DOE”, GMA News Online, accessed thru <http://www.gmanetwork.com/news/story/335785/news/regions/>

<sup>33</sup> Philippine Gazette, “RescuePH: A detailed list of government rescue and relief efforts before and immediately after *Yolanda*”, accessed thru <http://www.gov.ph/rescueph-a-detailed-list-of-government-rescue-and-relief-efforts-before-and-immediately-after-Yolanda/>

## IV. Findings and Recommendations

Understanding price controls helps in characterizing SRP and promotes a better comprehension of its objective and rationale. Historically, price controls were used in certain stringent situations only in answer to an impending or actual crisis. However, a review of the laws, rules, and current implementation of the SRP shows that a *de facto* price control is exercised even in the absence of an impending or actual crisis, calamity, or exigency.

This study finds that:

1. There are no adequate rules or guidelines on the imposition of SRP, *i.e.*, no prescribed period, process, standards, bases or conditions to guide an agency in determining SRP, defining reasonable price increase or decrease that is acceptable to the agency.

While the Price Act and Rule II (Sections 4 and 5) of its IRR give implementing agencies discretion to issue SRPs *anytime*, the practice of government agencies have gone beyond the scope of the Price Act by impliedly prescribing SRPs as a *de facto* price ceiling with corresponding penalties.

2. In the case of DTI, there is an enforcement procedure against non-compliance with SRP, such as the 30-day advance notice to the agency to increase prices, denial or modification of the proposed price increase, and the issuance of a notice to explain served to business establishments with prices above the government-recommended rates.

To effectively monitor market prices as mandated in the Price Act, the DTI may require retailers to provide a 30-day advance notice for their proposed price increases. However, the DTI's requirement for retailers to seek clearance for planned price increases negates the recommendatory nature of the SRP. Business agents are discouraged, if not effectively deterred, to set the price they deem appropriate for their product.

3. The DA has publicly stated that it may charge producers, sellers, distributors, and retailers who violate the SRP with profiteering, without qualifying the elements involved in such practice.

Such declarations may effectively prevent small retailers such as *sari-sari* store owners and ambulant vendors from determining reasonable prices for their products.

The above findings could result in over-regulation of market prices which prevents natural supply-demand correction, promotes black markets, and inhibits industry growth and product development.

In a free market, prices are mainly dictated by movement in supply and demand. Players in the industry can compete with each other and the freedom to seek higher profits through increased efficiency and greater production, which leads to more supply and lower prices. Producers are free to find ways to cut production costs and offer goods and services that cater to the changing needs and wants. Over regulation and intervention by the government, however, may lead to allocative and productive inefficiency.

When government controls prices and sets the ceiling low, it could increase demand which may lead to a shortage of supply. Likewise, since retailers cannot set their own prices, they could be tempted to hoard products, refuse to sell, and create an artificial shortage which could lead to an even higher and prolonged increase in the price of the current supply.

New investors could also be discouraged from venturing into an industry where SRP for a product is imposed, thus restraining effective competition in the market. A free price system informs sellers and buyers the actual state of the scarcity or surplus of the supply market. Price possesses a signaling function that indicates supply and demand equilibrium and essentially helps businesses and consumers make decisions in an open market. When prices are controlled or manipulated, these signals are not detected, making it harder for market players to gauge when to enter or leave a particular market.

A case can also be made that by enforcing SRP, regulatory bodies may become more important than the market. This may shift the focus of business leaders into regulatory mechanisms rather than actual market dynamics. Price caps masquerading as SRPs may also inadvertently draw attention away from the real causes of inflation.

The bottom line is that most investments are drawn organically toward profitable endeavors. Restraining businesses' profitability undermines the idea of a free market and causes dislocations in capital formation and investment.

Thus, OFC recommends the following:

**1. Emphasize the recommendatory nature of the “suggested reasonable retail price”, use an appropriate phrase/term to reflect this, e.g. Reference Retail Price (RRP), and distinguish it from the manufacturer-issued SRP.**

To emphasize the recommendatory nature of the SRP, implementing agencies should consider employing a different terminology for the “suggested reasonable retail price” as mandated by the Price Act. An example is to use

*Reference Retail Price* instead of SRP, since the latter has already acquired various connotations on its random usage by both public and private sectors.

**2. Impose price controls only (a) during calamities, disasters and similar situations, and (b) over basic necessities and prime commodities.**

Implementing agencies should refrain from using SRP as a form of *de facto price control* that can be applied even during non-emergency situations. The law provides for the issuance of a *suggested reasonable retail price* mainly for the information and guidance of the general public, manufacturers, and retailers.

**3. Remove the requirement for manufacturers and retailers to seek approval for price increases**

Implementing agencies should continue to monitor the prices of basic necessities and prime commodities by requesting manufacturers and retailers to regularly submit their retail prices. However, relevant agencies should eliminate any requirement to seek approval prior to price increase since this will discourage manufacturers from freely setting prices according to market dynamics. Rather, they should expand proactive market monitoring actions and also encourage reporting by the public of exorbitant prices and anomalous price increases. Mechanisms for reporting and public access to agencies could be improved or created.

**4. Develop pricing practices guidelines in coordination with manufacturers and retailers**

Since manufacturers also issue their own SRP, a *pricing practice guide* should be developed by the implementing agencies as a means to assist retailers in applying manufacturer's SRP appropriately, including in advertisements and product packaging, and to protect the public from misleading information.

**5. Tap, expand and promote existing government retail and distribution outlets**

The Price Act directs implementing agencies to allocate a buffer fund for the purpose of procuring, purchasing, importing or stockpiling any basic necessities and prime commodities and to devise ways of distributing them at reasonable prices. Agencies should fully utilize the services of registered or accredited retail and distribution stores similar to the *Bantay Bilihin Tindahan, Kadiwa* stores, or the DOH-managed *Botika ng Bayan*.

## **6. Expand existing reward and recognition programs for outstanding suppliers**

Expansion of existing reward and recognition programs similar to the *Bagwis* Seal of Excellence Award by the DTI should be undertaken. Incentives should be widely given to establishments that conduct fair market practices through voluntary self-regulation. Aside from assessing general consumer-friendliness, recognition should also explicitly inform and direct buyers to where basic necessities and prime commodities are consistently priced lower.

## **V. Conclusion**

While the Price Act sufficiently addresses the need for price control in an impending or real emergency, its rationale has been applied by government agencies through the SRP to cover non-emergency situations and a broader range of goods. While the intent of the SRP is laudable, it could also prevent free competition and improvement in the quality of products. Thus, to balance the need for public protection and a more competitive market, **price control should be enforced only during emergency situations, and the SRP should remain a mere recommendation of prices and without any mandatory requirements on the producer or seller during non-emergency situations.**

As a mere suggestion of prices, the SRP could serve as sufficient deterrent to price spikes if the public is well-informed of the prevailing market rates. Thus, public information and education must be enhanced. On the other hand, the supply chain should also be strengthened to prevent artificial price increases.

## ANNEX A

### *List of Basic necessities and prime commodities per implementing agency*

<b>Agency</b>	<b>Basic Necessities</b>	<b>Prime Commodities</b>
<b>DTI</b>	<ol style="list-style-type: none"> <li>1. bread</li> <li>2. canned fish and other marine products</li> <li>3. potable water in water bottles and containers</li> <li>4. processed milk</li> <li>5. locally manufactured instant noodle</li> <li>6. coffee</li> <li>7. salt</li> <li>8. laundry soap</li> <li>9. detergent</li> <li>10. candles</li> </ol>	<ol style="list-style-type: none"> <li>1. flour</li> <li>2. processed and canned pork</li> <li>3. processed and canned beef and poultry meat</li> <li>4. vinegar, patis, soy sauce</li> <li>5. toilet soap</li> <li>6. paper, school supplies</li> <li>7. cement, clinker, G.I. sheets</li> <li>8. hollow blocks</li> <li>9. construction nails</li> <li>10. batteries, electrical supplies, light bulbs</li> <li>11. steel wires</li> </ol>
<b>DA</b>	<ol style="list-style-type: none"> <li>1. rice</li> <li>2. corn</li> <li>3. root crops</li> <li>4. fresh, dried fish and other marine products</li> <li>5. fresh pork, beef and poultry meat</li> <li>6. fresh eggs</li> <li>7. fresh milk</li> <li>8. fresh vegetables</li> <li>9. fresh fruits</li> <li>10. sugar</li> <li>11. cooking oil</li> </ol>	<ol style="list-style-type: none"> <li>1. dried pork</li> <li>2. dried beef and poultry meat</li> <li>3. fresh dairy products not falling under basic commodities</li> <li>4. onions, garlic</li> <li>5. fertilizer, pesticides and herbicides</li> <li>6. poultry, livestock and fishery feeds</li> <li>7. veterinary products</li> </ol>
<b>DENR</b>	<ol style="list-style-type: none"> <li>1. firewood</li> <li>2. charcoal</li> </ol>	<ol style="list-style-type: none"> <li>1. nipa shingles</li> <li>2. sawali</li> <li>3. plywood</li> <li>4. plyboard</li> </ol>
<b>DOH</b>	Drugs and medicines that are included in the current edition of the Philippine National Drug Formulary (PNDF) Essential Drug List (EDL)	All other drugs and medicines that are not in the current edition of the Philippine National Drug Formulary (PNDF) Essential Drug List (EDL)
<b>DOE</b>	<ol style="list-style-type: none"> <li>1. household liquefied petroleum gas (LPG)</li> <li>2. kerosene</li> </ol>	

## ANNEX B

### Brief history of Price Control in the Philippines

Presidential Issuances	Salient Points
<b>Sergio Osmena, Sr.</b>  Executive Order (E.O.) 24	<ul style="list-style-type: none"> <li>fixed the maximum selling prices of prime commodities “in view of the shortage of food, other articles of prime necessity, and services caused by war”<sup>34</sup></li> </ul>
<b>Manuel A. Roxas</b>  E.O. 90	<ul style="list-style-type: none"> <li>established the Philippine Relief and Trade Rehabilitation Administration (PRATRA) to: (a) prevent monopolization, hoarding, injurious speculation, manipulation, private control, and profiteering; (b) encourage and assist Filipino retailers and businessmen by supplying them with merchantable goods at prices that will enable them to compete successfully in the open market; (c) acquire commodities of prime necessity (local and imported) for sale at prices determined by the Board of Directors</li> </ul> <p>President Roxas’ “free but guided enterprise” vision even included regulation of ticket rates in movie houses<sup>35</sup></p>
<b>Elpidio R. Quirino</b>  Republic Act (R.A.) 509 (Price Control Act)	<ul style="list-style-type: none"> <li>authorized the president to fix, for a limited period, ceiling prices of commodities and to promulgate pricing rules and regulations of such commodities</li> <li>provided for criminal liabilities and penalties to those who sell such commodities in excess of the fixed prices</li> <li>created the Price Administration Board</li> </ul>
E.O. 350 <sup>36</sup>	<ul style="list-style-type: none"> <li>created the Price Stabilization Corporation (PRISCO) to: (a) prevent scarcity, monopolization, hoarding, injurious speculation, manipulation, private control, and profiteering . . . and, if and when necessary . . . to commandeer, requisition and ration said commodities; and (b) aid in the promotion of the rice and corn industry of the Philippines through the maintenance of stable prices.<sup>37</sup></li> </ul>
<b>Ramon D. Magsaysay,</b>	<ul style="list-style-type: none"> <li>established the National Marketing Corporation</li> </ul>

<sup>34</sup> The order did not result to lower prices since, according to historian Teodoro Agoncillo, “there was money in circulation, the people purchased whatever was offered in the markets. There was much grumbling, of course, but the people had no alternative than to acquiesce to the whims of the profiteers.” Teodoro A. Agoncillo. History of the Filipino People 8th ed., Quezon City: Garotech Publishing, 1990, p. 429.

<sup>35</sup> Manuel Roxas, First State of the Nation Address, June 3, 1946 accessed thru <http://www.gov.ph/1946/06/03/manuel-roxas-first-state-of-the-nation-address-june-3-1946/>

<sup>36</sup> The Act also dissolves PRATRA and the National Rice and Corn Corporation.

<sup>37</sup> *Id* at sections 2a and 2b.

<p><b>Sr</b> R.A. 1345<sup>38</sup></p>	<p>(NAMARCO) and dissolved PRISCO</p> <ul style="list-style-type: none"> <li>• NAMARCO was tasked to (a) procure and buy commodities for distribution at reasonable prices to Filipino retailers and businessmen to promote their participation in the distribution system of the national economy; and (b) stabilize the prices of commodities in short reserve by supplying them to the general public at fair prices through Filipino businessmen</li> </ul> <p>The Act’s intention was to have NAMARCO and the Rice and Corn Administration (RCA) prevent Chinese businessmen from hoarding and selling commodities at higher prices.</p>
<p><b>Ferdinand E. Marcos</b> R.A. 6124<sup>39</sup></p>	<ul style="list-style-type: none"> <li>• to prevent monopoly, hoarding, injurious speculation, manipulation and profiteering regarding the supply, distribution and marketing of selected imported or locally produced or manufactured commodities</li> <li>• fixed the maximum prices of commodities</li> <li>• covered wide range of items such as clothing and sewing materials, educational supplies, construction materials, and automotive products.</li> <li>• unlike previous price control laws, it did not create a new agency but instead established a council made up of the heads of key agencies</li> </ul>
<p>R.A. 6361<sup>40</sup> (Price Control Law)</p>	<ul style="list-style-type: none"> <li>• fixed the maximum selling price of essential commodities</li> <li>• listed the factors that the Price Control Council should consider in regulating prices including percentage increases in manufacturing costs of covered commodities.</li> </ul> <p>Several presidential decrees<sup>41</sup> were later issued to extend the effectivity of R.A. 6361. President Marcos also issued P. D. 1674<sup>42</sup>, which provided for price regulation mechanisms and created a Price Stabilization Council.</p>

<sup>38</sup> Republic Act No. 1345 “An Act Creating the National Marketing Corporation and Dissolving the Price Stabilization Appropriating Funds Therefor, and for Other Purposes,” 17 June 1955

<sup>39</sup> Republic Act No. 6124, “An Act Providing for the Fixing of the Maximum Selling Price of Essential Articles or Commodities, Creating the Price Control Council, and for Other Purposes,” 2 April 1970

<sup>40</sup> Republic Act No. 6361, An Act Providing for the Fixing of the Maximum Selling Price of Essential Articles or Commodities, Creating the Price Control Council, and for Other Purposes, 27 July 1971

<sup>41</sup> Presidential Decree No. 234, s. 1973, 5 July 1973; PD No. 737, s.1975, 30 June 1975; and PD 1164,s. 1977, 23 June 1977

<sup>42</sup> Presidential Decree No. 1674 , Providing a Mechanism for Price Regulation, Creating a Price Stabilization Council, Prescribing its Powers and Responsibilities and for Other Purposes, 16 February 1980

<p><b>Corazon C. Aquino</b></p> <p>- removed price controls which she distinguished as “almost permanent fixture of the past regime.”</p>	<ul style="list-style-type: none"> <li>• E.O. 133 reorganized the DTI and abolished the Price Stabilization Council created under P. D. 1674.<sup>43</sup></li> <li>• short term price controls were implemented as responses to several crises, for example: <ul style="list-style-type: none"> <li>○ E.O. 423 - issued when prices of essential commodities reacted upward<sup>44</sup> after fuel prices in the global market skyrocketed.</li> <li>○ E.O. 467 - issued and capped prices for seven essential commodities during the Mt. Pinatubo eruption<sup>45</sup></li> </ul> </li> </ul> <p>President Aquino signed the Price Act of 1992 repealing P.D. 1674. The IRR was completed shortly after President Fidel V. Ramos assumed office in 1992.</p>
<p><b>Gloria Macapagal-Arroyo</b> R.A. 9502 (Universally Accessible Cheaper and Quality Medicines Act of 2008)<sup>46</sup></p>	<ul style="list-style-type: none"> <li>• enabled the DOH to recommend to the President the setting of maximum retail prices of drugs and medicines</li> </ul>
<p>R.A. 10121 (Philippine Disaster Risk Reduction and Management Act of 2010)<sup>47</sup></p>	<ul style="list-style-type: none"> <li>• after the declaration of a state of calamity, the following shall be mandatory remedial measures by relevant agencies: (a) impose price ceiling on basic necessities and prime commodities by the President upon the recommendation of the implementing agency as provided for under R.A.7581; and (b) monitor, prevent and control by the Local Price Coordination Council of overpricing/profitteering and hoarding of prime commodities, medicines and petroleum products</li> </ul>

<sup>43</sup> Executive Order 133, s. 1987, Reorganizing the Department of Trade and Industry, Its Attached Agencies and, and for Other Purposes, 27 January 1987

<sup>44</sup> Executive Order No. 423, s. 1990, Directing Measures to Prevent Excessive Increases in the Prices of Certain Commodities in the National Capital Region

<sup>45</sup> Executive Order No. 467, s. 1991, Directing Measures to Prevent Unreasonable Increases in the Prices of Certain Prime and Essential Commodities in Areas Affected by the Eruption and Other Volcanic Activities of Mt. Pinatubo

<sup>46</sup> Republic Act No. 9502, An Act Providing for Cheaper and Quality Medicines, Amending for the Purpose Republic Act No. 8293 or The Intellectual Property Code, Republic Act No. 6675 or the Generics Act of 1988, and Republic Act No. 5921 or The Pharmacy Law and for Other Purposes, Also Known as Universally Accessible Cheaper and Quality Medicines Act of 2008

<sup>47</sup> Republic Act No. 10121, An Act Strengthening the Philippine Disaster Risk Reduction and Management System, Providing for the National Disaster Risk Reduction and Management Plan, Appropriating Funds Therefor and for Other Purposes, 27 July 2009

## ANNEX C

### Price regulation on consumer products/ services among ASEAN Member States<sup>48</sup>

AMS	Relevant Statute/s	Mechanisms
Brunei	Price Control Act (Chapter 142), as amended by S 88/12	Price controls apply to imports and domestically-produced basic commodities and selected goods. The price regulating agency is responsible for fixing the maximum and minimum retail prices, and may also prohibit or restrict trade in price-controlled goods.
Cambodia	Law on Investment	The Royal Government shall not impose price control on the products or services of investors who have received prior approval from the Government.
Indonesia		The Government stabilizes rice prices through Perum BULOG (Bureau of Logistics) which sets a guaranteed purchase price from domestic producers and through import activities. When market prices increase by more than 10 percent the normal price at the consumer level, Perum BULOG is instructed by the Minister of Trade to import. Perum BULOG includes soybean and sugar in its watch list.
Lao PDR	Prime Minister's Decree on a control of Goods Price No.207/PM	The New Economic Mechanism (NEM) in 1986 limits government intervention in the market. The Prime Minister's Decree on Goods Price Control in October 2001 states that the Ministry of Commerce is responsible for the control of the prices of some consumer goods and raw materials. The Ministry of Commerce produces lists of the average prices of goods in each period and is charged with coordinating with other agencies to ensure that there is an adequate supply of domestic goods to meet consumer demand. In principle, on the production side, the Government of Lao PDR sets the minimum farm-gate price to keep prices stable in conjunction with the Ministry of Commerce and Trade's Notification No. 1021 of November 8 2000. It is unclear how and whether this is enforced in practice.

<sup>48</sup> Gathered from various Trade Policy Review issues by the World Bank Group.

Malaysia	Control of Supplies Act 1961; Price Control and Anti-Profiteering Act 2011; Rice (Grade and Price Control) Order 1992 (revised in 2008)	The Ministry of Domestic Trade, Cooperative and Consumerism (MDTCC) enforces price controls by setting maximum, minimum or fixed prices for manufacturing, producing, wholesaling or retailing of any essential goods and services. Petrol, diesel, LPG, cooking oil, wheat flour, sugar and face masks are subject to maximum wholesale and retail prices. Under the 2011 Act, the 2000 Festive Season Price Controlled scheme requires producers to provide an adequate supply of essential food items up to a ceiling price during six specified festive seasons. Price ceilings appear to differ on occasion, depending on the origin of goods and/or the states/areas/districts. The price of rice is controlled by law and is administered by the Ministry of Agriculture and Agro-Based Industry under the Rice (Grade and Price Control) Order 1992 (revised in 2008).
Myanmar	Essential Supplies and Services Act 1947; Resources (Development Regulation) Act 1957; the Law Amending the Petroleum Resources Act 1969; Electricity Law 1984	Price controls are in place on coal, oil and oil products, natural gas, and electric utilities.
Singapore		Price regulation may be imposed on dominant telecommunication and postal licensees. These dominant licensees must seek IDA approval prior to offering, modifying or withdrawing services. Fares for essential public transport services (bus and railway) that are provided by a private sector duopoly require approval from the regulator (Public Transport Council); taxi fares were deregulated in 1998. Following corporatization of the airport operations on 1 July 2009, involving the separation of the commercial airport operations from the regulatory functions, the reconstituted Civil Aviation Authority of Singapore (CAAS) has put in place a pricing regulatory framework to regulate charges for airport facilities and services provided by monopoly airport operators

Thailand	Prices of Goods and Services Act B.E. 2542 (1999)	<p>The Central Commission on Prices of Goods and Services (CCP) in the Department of Internal Trade (DIT) in the Ministry of Commerce has the authority to set out the goods and services subject to price controls, and to set controls for the sale or purchase prices on these goods and services. It is required to ensure that there is a sufficient supply of goods and services subject to price controls to meet domestic demand, to consider complaints about unfair price practices, and to set out procedures and conditions relating to the display of prices for goods and services.</p> <p>The CCP monitors prices of 205 goods and 20 services divided into three categories: the Sensitive List (monitored daily), the Priority Watch List (monitored twice a week), and the Watch List of goods and services (monitored twice a month).The CCP maintains three lists of products subject to varying degrees of price control: the Controlled List of 39 goods and 2 services for which the CCP imposes maximum prices; the Administered List of 205 goods and 20 services for which manufacturers must have approval from the Commission before raising prices or give advance notice of a change in prices; and the Price Display List of 232 goods and 47 services for which retailers must display the price of goods and services.</p>
Vietnam	Law on Price No. 11/2012/QH12	<p>The State may exercise price regulation to stabilize prices or to protect the legitimate interests of business entities, consumers, or the State. The Law on Price identifies four forms of price regulation, <i>i.e.</i>, price "valorization", prices for goods and services determined by the State, price consultation, and the examination of "price constituents".</p>