

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Purchasing Power and Buyers' Cartels – Note by Hungary

22 June 2022

This document reproduces a written contribution from Hungary submitted for Item 4 of the 138th OECD Competition Committee meeting on 22-24 June 2022.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/purchasing-power-and-buyers-cartels.htm>

Antonio CAPOBIANCO
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

JT03495491

Hungary

1. In Hungary there are two main regimes when investigating significant purchasing power and buyer's cartels; one is based on the Hungarian Competition Act, the other is based on the Act on Trade. In the context of the Competition Act, the Hungarian Competition Authority (GVH) deals with buyer power in cases of abuse of dominance, mergers, and anti-competitive agreements. The Act on Trade aims to protect small suppliers against retailers with significant bargaining power and in order to do that, imposes additional obligations on them.
2. This contribution reports recent developments in purchasing power and buyer's cartel in the application of the Competition Act and the Act on Trade.
3. The *Hungarian Competition Act* prohibits both fixing purchasing and selling prices, there is no difference in regulation in regard of buyers' cartel and sellers' cartel; the GVH enforces them on the ground of section 11 of the Hungarian Competition Act and Article 101 of the TFEU. The GVH did so, when it recently investigated the conducts of HR consultants¹.
4. The Hungarian Association of HR Consultants had been fixing minimum fees and other conditions with respect to the labour-hire and recruitment services provided by its members for a period of seven years starting in 2011. By introducing a no-poach clause in its code of ethics, the Association shared the market between members and prevented the free movement of employees on the market. The Association also – with the intent of sharing the market – applied internal rules which prohibited members from recruiting employees who had previously worked with another member of the Association (no-touch agreement).
5. The Competition Council defined two relevant markets: the market of labour-hire service and the market of recruitment service. The seats of the undertakings involved (23 members of the Association) in this case were mostly in Budapest, but they were active on the whole territory of the country, therefore the relevant geographical market was identified as Hungary. By defining the relevant market, the Competition Council took the view that in case of cartels the definition of relevant market is usually based on the services and products affected by the agreement under investigation.
6. Since the conduct of the Association aimed to fix the prices and share the market, it classified as a hardcore cartel, and therefore the effects of conduct were not considered.
7. In the case concerning gardening products² the GVH fined Husqvarna Hungary because the undertaking, in collaboration with several distributors, unlawfully set the online retail prices of Husqvarna, Gardena and McCulloch brands.
8. During the investigation Husqvarna filed a leniency application stating, that the undertaking was part of the conduct as a facilitator, because an agreement to fix the prices was reached between the distributors of its products. By the evaluation of the application the Competition Council set out in detail the reason why the conduct of Husqvarna could not classify as a conduct of a facilitator, and why the agreement did not qualify as a horizontal one on the downstream level. According to the final decision, Husqvarna played

¹ VJ/61/2017.

² VJ/103/2014.

an active role in the price fixing, it monitored the prices applied, planned to introduce mandatory pricing even before the problems caused by internet sales were recognized and played an active role in building consensus among traders on internet prices.

9. The market definition in the case is based on the demand side substitutability of the products concerned. In a still pending RPM case, where in contrast, the buyers were eager to have the manufacturer introduce an RPM policy (to reach their goal, the most significant retailers once tried to boycott the brand), the GVH considered a market definition based more on the similarity in terms of resale, and contract clauses, than the specifics of various products concerned in the investigation.

10. The *Act on Trade* prohibits the abuse of significant bargaining power against a supplier. A retailer has significant bargaining power if its consolidated turnover derived from its retail activities in the previous year was higher than 100 billion HUF. A retailer or a group of retailers also has significant bargaining power when it, or the purchasing association it belongs to, is in a one-sidedly favourable bargaining position vis-à-vis its suppliers', based on the structure of the market, the existence of entry barriers, the market share and the financial strength of the undertaking and its other resources, the size of its trading network, the size and location of its outlets and all of its trading and other activities.

11. The Act on Trade prohibits, among others, the unjustified discrimination of the suppliers, threatening them with dissolution of contract in order to achieve one-sidedly favourable conditions, the unjustified restraint of the access of suppliers to sales opportunities, the unjustified alteration of the terms of contracting to the detriment of the suppliers or reserving such option for the retailer, charging fees one-sidedly to suppliers for services not demanded by them, or forcing them to avail themselves of designated third parties.

12. The GVH investigates the listed infringements in competition supervision proceedings, regarding only non-food product groups.

13. In 2020 the highest court of Hungary (Curia of Hungary) upheld the GVH's decision to impose a fine on Auchan³, a French owned supermarket chain, on the ground of abusing its significant bargaining power. Between 2006 and 2014, Auchan unilaterally charged its suppliers a fee for the suppliers' products to be stocked, thus violated the Act on Trade. The legislation prohibits imposing similar fees, and retailers may not charge a fee for other services not required by the supplier. The conduct concerned about three-quarters of suppliers of non-food products and was independent of the suppliers' turnover.

14. In 2020, the GVH concluded another proceeding based on the rules of Act on Trade, concerning Spar⁴, an international retail chain. The GVH found that although Spar had discontinued the ex-post supplier fee, which was established to be infringing the law in 2012⁵, it had also introduced a new fee with an identical effect. The new fee was charged between 2014 and 2015 and applied as a mandatory contractual term. Suppliers were unable to get their products stocked on the shelves of the retail chain without paying the fee.

15. Besides establishing the infringement of the Act on Trade, the GVH resolved the undertaking to fulfil certain obligations aiming to provide an opportunity to local small producers and improve the market access of Hungarian products.

³ VJ/60/2012.

⁴ VJ/43/2016.

⁵ VJ/47/2010.