



# **Legal Protection of Competition**

## ***Economic Dependence***

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## *Unilateral Conduct*

### **Standard Competition Law Regulates:**

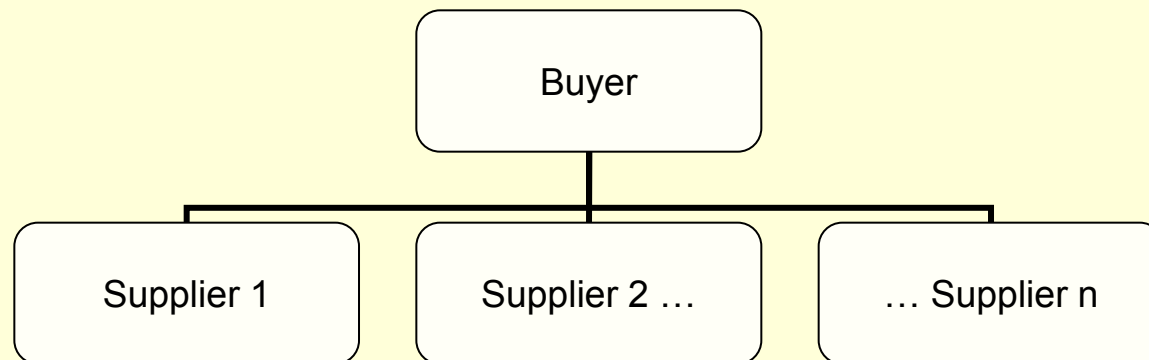
- Multilateral Conduct - Collusion
- Unilateral Conduct – Market Power
  - Abuse of Dominance / Monopolisation
  - „absolute“ power within the Market – independence on other undertakings / consumers



## *ad Unilateral Conduct*

¿¿ „relative“ Market Power ??

- independence on suppliers
- suppliers are „economically dependant“





## *Economic Dependence*

- Is the Competition „sufficiently“ distorted?
- Is unfair-competition regulation enough?
- Is there a need for specific regulation?



## *Economic Dependence in the EU Law*

- Not covered by Competition Law
- Relevance acknowledged by the EP
- Wider concept of unilateral conduct on national level endorsed by Regulation 1/2003



## *Economic Dependence in the EU*

- 1973 Germany
- „Robust“ Regulation (France, Germany, Italy, Portugal, Spain)
- Market Chains Abuse (Great Britain – food sector, Hungary, Slovakia)



## ***(i) Portugal***

*Insofar as it may affect the functioning of the market or the structure of the competition, one or more undertakings shall not engage in the abusive exploitation of the economic dependence on it or them of any supplier or client on account of the absence of an equivalent alternative*



## *ad Portugal*

*The following in particular may be considered abusive:*

- a) Any of the forms of behaviour laid out in Article 4 (1)*
- b) The unjustified cessation, total or partial, of an established commercial relationship, with due consideration being given to prior commercial relations, the recognised usage in that area of economic activity and the contractual conditions established.*





## *(ii) Hungary - törvény a kereskedelemről*

- Specifically for supermarket chains
- Significant market power - *jelentős piaci erő*
  - *refers to a market situation as a consequence of which the dealer becomes or has become a contracting partner for the supplier which the latter is unable to reasonably evade at forwarding its goods and services to the customers and which is able... to influence ... market access of a product or a group of products*
  - turnover 100 bil. HUF



## *(ii) Hungary - törvény a kereskedelemről*

- Prohibited abuse of SMP, e.g.
  - Unjustifiably discriminating against suppliers
  - Unjustifiably restricting suppliers access to sales opportunities
  - Imposing unfair conditions on suppliers, which result in a distribution of risks one-sidedly benefiting the dealer
  - Unjustifiably altering contract terms to the detriment of suppliers
  - Charging fees for listing, services not demanded by supplier
- Ethical Codex



## *Is it a Problem of Farmers?*

Most discussions concerned with supermarket chains and their suppliers of agricultural products

- Can this „dependence“ be solved by relaxing antitrust rules?



## *Agriculture in EU Competition Law*

- Art. 42 TFEU: *rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council, taking into account the objectives*
  - Increased agricultural production
  - Fair standard of living for agricultural community
  - Stabilized markets
  - Reasonable price for consumers
- Reg. 1184/2006 (26/26):
  - *Articles 81 to 86 of the Treaty ... shall ... apply to practices referred to in Articles 81(1) and 82 of the Treaty*



## *Ad Regulation 1184/2006*

- *Article 81(1) of the Treaty shall not apply to such of the agreements ...*
  - *as form an integral part of a national market organisation*
  - *or are necessary for attainment of the objectives of CAP*
- *In particular ... production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, and under which there is **no obligation to charge identical prices***



## *T – 217/03 „French Beef“*

- drop of beef consumption due to „mad cows disease“
- protests of farmers – demands to reduce import, increase prices
- government-supported agreement
- CFI: prohibited agreement; penalty 60 % reduced



## *Czech Republic*

- History: Specific „agricultural“ exemptions
- *New economic dependence Act*



## *1. The „Parliamentary“ Amendment*

\* Art. 1 (8) CA

- *This Act shall not apply to actions of undertakings in the field of production of and trade in agricultural products provided they act in compliance with the law of the European Communities*
- *Does it mean: The Act does not apply when EU Competition Law is not breached?*





## *ad The „Parliamentary“ Amendment*

\* Art. 6 (1) (c) CA

- *The prohibition of agreements pursuant to Article 3(1) shall not apply to ... agreements of sales organizations and associations of agricultural producers on sale of unprocessed agricultural commodities*
- BUT Art. 6 (2) CA: not agreements on prices



## *„Agricultural Exemption“*

Art. 4 (2) CA

- same regime as BER
- can it be used in practice?



## *2. Economic Dependence*

### The Never Ending Story

- 1999 the Office
- 1999 – 2006 MPs
- 2005 the Office – „enhanced quantification“
  - Supplier supplies at least 1/3 of its production
  - Buyer buys at the most 1% of its demand



### *3. Significant Market Power*

2007 MP proposal, separate act

- Hungarian inspiration
- SMP if 2 bil. CZK turnover (rebuttable)
- Prohibited to abuse, but what does it mean?
- Obligatory Ethical Codex, but what should be inside?



## *SMP enacted*

- In force from: 1 February 2010
- Agricultural products only
- No ethical codex
- Abuse prohibited, if systematic and susceptible to have as its object or effect distortion of competition
- „typical“ prohibited conduct: Annexes
- will it be abandoned?



*Thank you for your attention ...*



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