

**Price transparency and its assessment from competition policy point of view
May 2001**

I. General effects of the enhanced price transparency

1. The experiences of the Hungarian competition law enforcement are relatively modest in the field of competition effects of the price transparency. In its point of view the competition effects vary case by case. Though no general conclusion can be drawn, it is obvious that on markets where the competition is strong, mainly the positive and efficiency effects of the transparent prices emerge, while on markets where the competition is more limited situations are more likely to exist where the price transparency can help even the co-ordinated price increase of the competitors. In addition to this, transparent prices may promote concerted practice and make it more difficult for the competition authorities to distinguish between concerted practice and parallel action.

II. Government price transparency enhancement policies

1. Legal norms

2. The most important Hungarian statutes to mention relating to price transparency are the following:
 - ‘Act No. CLV of 1997 on the Protection of the Consumers’ says that the trader must inform the consumer about the prices and unit prices of goods, and about the prices of services. The price (fee) must be announced in the currency which is valid in Hungary. The detailed regulation – modifying two previous decrees – is contained in Decree No. 7 of 2001 on the Indication of the prices of goods getting to the trade and the services. The provisions of the decree are to be applied from 1 September 2001. According to the EU regulations, at the points of sale and in advertisements where the consumer prices are shown, also the unit prices must be indicated.
 - Due to the modifications in 2000, ‘Act No. LVIII of 1997 on Advertising Activities’ contains rules on publishing special offers (including special price offers limited product range). Accordingly, special offers must tell the number of the product it relates and the period of validity.
 - ‘Act No. CXII of 1996 on Credit Institutions and Financial Undertakings’ and the regulation of the contents, the compulsory communication and the indication of the total credit fee and deposit interest rate in ‘Act No. CLV of 1997 on the Protection of the Consumers’, aim in the same way at informing consumers.

2. Governmental actions

3. Examples of the practical experiences of the governmentally supported price transparency and of the use of compulsory price labels that can be mentioned in the Hungarian practice, are the publishing petrol retail prices, the listing of the school-books that can be ordered by schools and the regulation of the tobacco product price indication.
4. On the homepage of the Ministry of Economy since summer of 2000, information have been shown about the international crude oil prices and the national petrol retail prices. Because of the price movements of the previous year, the idea of development of the energy price statistical system has been raised, so the Ministry of Economy asked for the opinion of the Office of Economic Competition (OEC) about the petrol price monitoring system, about its possible competition effects. The monitoring had two targets: to inform the consumers and to increase the competition between the petrol distributing companies.
5. The basic question from the competition point of view is whether such a monitoring system could help to create some kind of price cartel or not. The planned price monitoring system will probably make the market more transparent, not only for consumers but for the competitors as well. The competitors are likely to use the information received (without cost, from reliable source) very effectively for their own purposes, they can co-operate more easily with each other, they can agree with each other, even in order to limit competition. Moreover, the price following practice becomes easier even without agreement.
6. Though in general the publication of accurate and detailed price information and statistics may be problematic from a competition policy and competition law aspect as well, and it is inadvisable to support or to strengthen any kind of equalisation process, nevertheless, because the special features of the market in question, and the importance of informing the consumers, the OEC did not raise any objection against the planned, non discriminatory price monitoring and informing system. In every case it is the real conduct that is of importance, so the future conduct, possibly limiting competition, may raise competition policy concerns.
7. The experience drawn from the textbook-list case showed similar effects, namely the intention of undertakings to adjust the own prices to the others'. According to the Hungarian practice, the institutions of public education are provided with the list of textbooks, authorised for the following educational year, by the Ministry of Education at the beginning of each calendar year, displaying the selling prices, that the parents have to pay when the school decides to use a particular textbook. Some years ago, it was observable that after the publication of list-prices, the publishers intended to modify in large numbers their prices submitted to the Ministry referring to typing errors, however their effort to adjust their prices to the prices of competitors, both in positive and negative sense, was recognisable. After consultations with the Ministry, a system has been elaborated, which arranged that the undertakings submitted their offers at the same time, in this way the price transparency did not allow to some undertakings to make their offers later, reaching in this way an advantage over their competitors. In addition, except of the obviously mistaken price communication, there is no possibility to correct the submitted list prices. The system was refined through a bill, recently discussed by the Parliament, by securing the possibility for undertakings to deviate from the list prices but prohibiting to exceed them. This solution would protect the consumers' interests against the raise of

prices, on the other hand it would make possible a price-competition, in which the prices submitted would not be exceeded.

8. In 1998 a regulation concerning the retail prices of tobacco products came into force, which granted the right for producers and importers to determine retail prices. The reason for the modification was the harmonisation of tax law. At the same time, while the related EU directive allows resale price maintenance only in the form of price ceiling, which is a back step from the formerly liberalised tobacco prices, the Hungarian regulation went further by eliminating price competition on the retail level. The OEC tried to intervene several times and opposed the price regulation introducing quasi-fixed retail prices. The OEC investigated agreements concluded by wholesalers and concentrations between wholesalers. Due to the new conditions, the tobacco industry became more transparent, producers can easier observe each other, can easier predict each other's reaction and it is easier to control retail prices. Given the oligopoly structure of the market, and the transparent conditions, the formation of parallel behaviour having similar effects like co-operations is likely without agreements too. The possibilities of competition law to intervene are restricted, the price competition between retailers is eliminated. The OEC proposed annually the abolishment of the fixed retail prices and the introduction of a price ceiling, serving as a basis for the tax payment, however by now without success. (It is to be noted that retailers invented several methods of evading the application of fixed prices (e.g. providing reimbursements), but the new regulation definitely makes more difficult to have price competition.).

3. Professional organisations

9. The OEC's standpoint concerning the behaviour of professional associations regarding advertisement of prices, and price transparency in general is the following:
10. Basically there are two types of professional organisations in Hungary:
 - professional organisations created by acts (professional chambers), functioning with compulsory membership, and
 - privately established professional organisations (associations) based on voluntary membership
11. Chambers comprise the totality of practitioners of certain professions. The number of members in chambers depends on the size of the market, and goes typically from a few hundred (patent agents, notaries, court bailiffs) up to several thousands, or ten thousands (advocates, doctors, architects). The markets of professional services, apart from exemptions like the territorial exclusivity of notaries regarding certain cases, are competitive, therefore the consumers can freely choose between the different service providers. Therefore the publication of individual service prices, due to the above mentioned market structure, does not raise any competition policy concern. It should be mentioned that some of the chambers has the legal authorisation to publish recommended prices (engineers, architects) or recommended minimum prices (doctors, veterinary surgeons, bodyguards and property protectors). On the other hand, certain acts declare that the service price is subject to a free agreement (advocates, patent attorneys). The professional chambers typically made efforts to obtain wider spheres of authority (their main effort was to obtain the right to determine a compulsory minimum price). The strong

powers of the Member State's professional chambers served as an example for these efforts. The OEC, within the scope of competition advocacy, strove to reduce the radius of this authorisation, by supporting the application of recommended prices, as the less anticompetitive price regulation. So far it succeeded in having these efforts rejected by the Parliament, which considered also the OEC's opinion. Recently some changes could be observed, since informing the consumers became a strong argument of the chambers. A compromise was reached lately (architects, engineers) in determining recommended prices together with the content of the connected service, however chambers renewed their efforts to strengthen their own powers concerning price regulation. Sometimes it is difficult to resist the pressure, since even today the chambers of Member States, regarded as an example possess wide range of regulatory powers. These professional lobbies have great respect in Hungary too, and MPs often feel sympathy towards them.

12. The OEC does not share the view that price-lists in the advertisements of the members of professional associations would be means of unfair competition in general. In the opinion of the OEC knowledge of prices plays an important role in consumers' decision-making, and it cannot be treated as a competition concern if competitors can get information about each others' prices on competitive markets. There is another aspect of theoretical character. Since to a greater or smaller extent, professional services have a confidential nature, information about prices has a more limited importance than in the case of other products. In spite of this fact it can be stated that the role of information about prices cannot be neglected when consumers make their decision about consumption of professional services.
13. In 1999-2000 the OEC investigated the Ethic Codes of 11 self-governing organisations (chambers, associations, product councils). Out of these there were very few ones, where advertisement was prohibited (e.g. physicians), or special rules existed in connection with publishing or advertising prices (e.g. patent attorneys: making comparisons in the advertisements with professional services of competitors was prohibited, including the prohibition on comparing prices, or auditors: the chamber prohibited making service fees public by their members in advertisements). In the case of professional organisations investigated by the OEC every rule which prohibited making prices public in the advertisements (patent attorneys, auditors) was found to be an infringement and as such was prohibited by the OEC. However, in view of the psychologically defenceless position of "consumers" of physicians' services and the strongly confidential nature of this service the Ethic Code of the Chamber of Physicians got exemption. Since the Chamber of Physicians allows for its members advertisement to a very limited extent (publication of mere facts only) physicians cannot give information in their advertisement about the prices of their service either. Nevertheless, it does not exempt private physicians from the obligation to hang their price-list in the waiting room or on the scene where they provide the service.

III. Private Price Transparency Measures

14. Actually there had not been yet conducted any special study on the effects of the comparative pricing search engines or in general on the price transparency of the electronic commerce. The competition policy approach towards electronic commerce – as the market is in continuous change – is still developing in Hungary, and therefore it is only possible to give a general overview of the present situation.

15. With regard to electronic commerce between undertakings and consumers (B2C e-commerce), two decrees are in force: government decree – 17/1999. (II.5.) – on distance selling and a decree – 15/1989. (IX.7.) – of the Ministry of Commerce on certain commercial activities concerning – among others – the commercial activity of mail ordering. The distance selling decree contains rules which correspond to the rules of the relevant EU directive. Furthermore, the Act on Electronic Signature is before the Parliament, and it will assist the transactions concluded through the internet. Thereby, internet commerce in general could be escalated, too.
16. Regarding electronic commerce between undertakings (B2B e-commerce), the new forms of internet based business, which may raise antitrust concerns in the future (i.e. joint ventures, B2B exchanges), are also in an evolutionary stage.
17. The OEC has not yet decided in cases related directly to electronic commerce, though there were some consultations regarding price portal plans. However, since the competition policy approach towards e-commerce highly resembles the approach towards traditional businesses, the general practice of the OEC is used as a basis for the future cases.
18. Until April 2000 the OEC has neither received any notification or complaint concerning direct e-commerce markets, nor has it taken any ex officio action.
19. While implementing the Competition Act, the OEC assesses firstly the trend of prices and, secondly, the conditions under which consumers can acquire the relevant product. Price dispersion might be different in relation to the different products or product groups, but the OEC has not so far received complaints making a grievance of price discrimination. With regard to the term 'same conditions', the legal and customary rules relating to mail ordering and distance selling services must be applied, since sales on the internet must be also regarded as distance selling.
20. Sometimes the press publishes news about plans which might raise some competition concerns (e.g. news about the planned development of a vertical B2B portal by a consulting firm, which would be established by producers and wholesalers of pharmaceuticals. In the framework of this portal the market players of the pharmaceutical industry would share information on stock and sales data in order to decrease substantial inventory costs in the first step, and to extend the co-operation to further fields later – like joint purchasing, offering excessive capacities for each other, however, concrete information is not available about the operation of this system).
21. With no practical experiences the issue of price transparency in the field of electronic commerce can be approached only theoretically, nevertheless it is generally acknowledged that on the present stage of development it would be a failure to precede the formation internet-based commerce by a strict or lenient regulation, since openness, availability for everyone, shaping of new markets and innovation are essential features of this new phenomenon.
22. The OEC can impose conditions and obligations upon the undertakings in order to prevent the possible restrictive effects. When applying this alternative, measures that could deter undertakings from investment must be avoided, but it must be also secured that none of

the B2B electronic market places restricts other competitors in their market actions. Consequently, it cannot be stated in general that the operator and participants of a B2B market place must be separated, though the eventual exclusive clauses would face close scrutiny. By assuring transparent operation and reducing exclusive clauses to the necessary level, the possibility of abuse may probably become limited. In other cases, by the application of rules relating to the abuse of dominant position, the OEC might be able to restrict the practices distorting competition.

23. The situation is different when a B2B portal is established by undertakings that are independent from each other.
24. The exchange of information between businesses can only be restricted by the competition authority if the risk of collusion is high, that is, only in a later stage when the Competition Act will have been infringed by the operation of B2B market places.
25. In order to reduce the foreseeable challenges (entry barriers for smaller firms, agreement on the fees of access to the market place, agreement on selling/purchase prices etc.), it would be helpful to elaborate a system of monitoring the market by the OEC. Instead of the prohibition of chatrooms – which can play a decisive role in collusive practices – it is more reasonable to determine the frames for their operation. The characteristics of the internet – and hereby that of e-commerce – let prognosticate that self-regulation will retain its importance also in the future. A code of conduct drawn up by the internet service providers would constitute an important element of this self-regulation.)

IV. Cases

26. In Hungary it is getting more and more common that in respect of goods which can be measured by weight or volume shopkeepers indicate the unit prices as well. This makes the price comparison of goods and that of the shops easier. Although in some cases the widely interpreted and doubtfully applied price comparison results in consumer fraud when shopkeepers indicate their competitors' prices as well.
 27. In December 2000 the OEC initiated two closely related proceedings against Tesco-Globál Áruházak Rt and against Auchan Magyarország Kft because of their allegedly misleading advertisements. The subject of the investigation was their fierce advertising campaign initiated against each other. The Competition Council did not take up a position on the parties behaviour between them, as the reparation of the injuries caused to each other did not fall in the competence of the OEC.
 28. The OEC established that the use of throwaways and hoardings comparing goods sold by Auchan and Tesco, while the parties were not in a position to provide exact information about each other's prices, was suitable for misleading consumers.(Vj-209/2000, Vj-217/2000)
-