



GAZDASÁGI  
VERSENYHIVATAL

## The GVH suggests enforceable ethical rules to the agricultural sector

The Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) proposes the withdrawal of the Act on the Food Production Chain. Enforceable ethical rules are preferred by the GVH instead, in order to regulate the asymmetric business relations between suppliers and dealers. The authority has formulated some practical proposals based on its study prepared for the Agricultural Committee of the Hungarian Parliament.

Mr. László Sólyom, the President of the Republic of Hungary, returned the **Act on the Prohibition of Trade Practices With Respect to Agricultural and Food Products that Are Unfair to Suppliers** to the Parliament for consideration. According to recent press releases a new act is being drafted in this subject, thus the GVH has prepared a study on the possible solutions to the problems between food production and commerce, supporting the legislation works.

The study of the GVH established that **there is a huge asymmetry in the bargaining power of the great retail chains and their suppliers; however, none of the retailers is in a dominant position in Hungary**. The reason for this asymmetry is that the marketing of one particular product covers only a tiny part of the sales of a retail chain, while a possible “delisting” of a particular product may jeopardize the existence of small and medium sized suppliers.

**Most of the disadvantages causing difficulties to inefficient undertakings** – stemming from the lack of sufficient market shares, size and competitiveness – **cannot be solved by the state**. According to the GVH, regulations focusing on contractual relations and particular contractual terms cannot solve these problems either, however outstanding they may be. This must not be a goal either. The state always trying to lend a helping hand to inefficient undertakings in order to keep them on the market would eliminate the engine of development and adaptation. On the competitive markets **disputes between dealers and suppliers relating to the allocation of incomes are usually resolved by market mechanisms**.

The law refrains from intervening into the price-disputes between sellers and purchasers, state regulation of prices and incomes, on sufficiently competitive markets is not an accepted tool. In the law of contracts the state provides extra protection for the weaker party. Rules serving this purpose may improve the predictability and transparency of the contracts, though they are not able to directly influence the allocation of incomes.

The proposals of the GVH based on the study are as follows:

1. The improvement of the transparency and predictability of contractual terms.

2. The prohibition of obviously unfair conditions and the forcing the other party to waive its right to demand contractual – especially payment – security.
3. In order to resolve disputes between the contracting parties more effectively, the GVH recommends the parties to bring their debates before forums that are able to make decisions more quickly at lower costs than the authorities and the courts.

In general, **the GVH would greet the withdrawal of the proposal on the Act on the Food Production Chain.** Instead, the adoption of a resolution is recommended about the directions the government should follow while revising the provisions of the Act on Trade, and when to prepare its report and proposal on the revision of the act after studying the possible effects.

The GVH has formulated several proposals contributing to a successful solution:

1. According to the GVH, since the rules on significant market and buying power are **already included in the Act on Trade, it would be practical to carry out the necessary changes by amending that act.** For instance, **further provisions could be added** to the listing parts of the rules in the Act on Trade applying for undertakings with significant market power (eg. prohibition of imposing unfair conditions on suppliers that result in a distribution of risks one-sidedly beneficial for the dealer, disproportionately shifting costs, charging fees to suppliers for putting them on the dealer's suppliers-list or allowing their goods to become part of the dealer's product range).
2. The provisions of the Act on Trade applying for the **ethical rules of dealers with significant market power could be completed with provisions establishing a minimum level of material and procedural requirements.** In this case, instead of completing the list of abuses, provisions prescribing what minimum requirements the ethical rules must fulfil should be incorporated to the Act on Trade. Suppliers may be provided the opportunity to express their opinion on the content of the new provisions.
3. In order to increase the transparency of contracts concluded between suppliers and dealers, **special information obligations could be imposed on dealers with significant market power** to detail the content of the services they are providing – in particular those that suppliers must buy – and to disclose in advance the maximum amount of the fees charged for these services.
4. As a harsher solution, **the Act may prohibit the price setting for the so called "essential services"**, that are obligatory for the suppliers in order to get access to the "services" of the dealers. Whereas commercial activity and the distribution of products is not possible without the running of stores, accounting, opening of new stores and their management, the reception of goods, heating of stores, lighting, refrigeration of goods etc., charging fees for them may be prohibited.

In the case a new act will be passed after all, the **GVH suggests to avoid parallel, overlapping provisions and legal inconsistencies.** In order to support their survival on the market, small commercial undertakings and retail chains uniting exclusively small dealers should be exempted from the application of the new act.

Creating a well-founded legal background to support the ethical rules is advisable, in order to promote the settlement of disputes between undertakings among themselves. **Only as an ultimate solution is it justified for the state to interfere by authority into individual**

**cases.** Maintaining the controlling role of the GVH over the framing and enforcement of ethical rules is recommended as well.

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