



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

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ROUNDTABLE ON RESALE BELOW COST LAWS AND REGULATIONS

-- Note by Hungary --

This note is submitted by the Hungarian Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2005.

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1. Current Resale-Below-Cost Laws and Regulations

1. As a direct consequence of the market entry of new hypermarket chains retail concentration in Hungary has significantly increased since the early 90's. This development together with the emergence of procurement associations has adversely affected the interests of food processors in the first place, the negotiating power of whom has substantially suffered as a result. Intention to regulate practices of large retail chains has frequently arisen in Hungary mostly upon the initiation of trade associations. In this context, two different legislative solutions have been suggested, namely the ban on below cost selling and the limitation on deadlines for payment. In 2003, when the current regulation on below cost selling has been introduced, a Herfindahl-Hirschmann index of as low as 1000 was measured on the market. During the legislative process, the draft provisions were constantly opposed by the Hungarian Competition Authority for being highly anti-competitive and inappropriate to protect weaker suppliers and small-size retailers.

2. The information below has been mainly provided by the Ministry of Agriculture the responsible authority to enforce the provisions on below cost pricing.

3. The prohibition of sales below cost is included in the Agricultural Regime. The amended Agricultural Regime, which has entered into force in 2003, introduced a prohibition on sales below cost, however, merely in respect of agricultural products. Though the provisions of the Competition Act on abuse of dominance can be applied to below cost pricing situations supposing that the behaviour also constitutes an abuse of dominance it can be said, that no legal provisions other than the Agricultural Regime contain such a general prohibition.

4. According to Act No. XVI of 2003 on the Agricultural Regime in contracts of agricultural and food industry product sales concluded between the producer, the retailer and the distributor, time allowed for payment determined by the parties cannot exceed 30 days from the receipt of the goods, and the retail trade price of the agricultural and food industry products - falling under the scope of the Act - can not be lower than the invoiced purchase price determined in the contract. Legal exemptions from the rule include sales concluded because of the bankruptcy of the retailer's business or change in his activity, sale of products of reduced value, value saving sales concluded after the date of expiry, sale of products with damaged package or other products of incomplete value.

5. As to the knowledge of the Ministry of Agriculture the introduction and abolition of below cost pricing regulation in neighbouring countries did not have appreciable effect on cross-border retail shopping patterns or the location of resale businesses.

2. Economic and Other Rationales for Current Laws and Regulations Pertaining to Below Cost Sales at the Retail Level

6. According to the Agricultural Regime the current provisions are aiming to protect small- and medium-size manufacturers of food industry products with weaker negotiating power and also small size retailers against large-scale retailers.

7. There have been no recent studies about the effects of this regulation.

3. Changes in Resale-Below-Cost Laws and Regulations

8. Since the introduction of the relevant provisions of the Agricultural Regime, no amendments were introduced in the legislation.

9. During the current legislative process in Hungary connected to the new Hungarian Trade Act, views supporting the introduction of provisions regulating below cost selling have been expressed. However, according to the current state of proceedings, the ban on below cost selling would not be contained therein and the provisions of the Agricultural Regime would remain untouched as well.

10. Policy makers supporting the introduction of the ban on sales below cost in Hungary argue that small and medium size undertakings must be legally protected against large-scale retailers. In their view, the negative horizontal and vertical effects of the emergence of large retail chains could be eliminated, or at least lessened by such provisions. Thereby they are aiming to protect both suppliers and smaller-size retailers against their larger competitors. As evidence these policy makers usually refer to bankrupt suppliers or small- and medium-size retailers.

4. Enforcement of Resale-Below-Cost Laws and Regulations

11. According to the Agricultural Regime public administrative procedures can be initiated by filing complaints by those persons who are adversely affected by the practice of selling below cost. These include manufacturers, trade associations, individuals, buyers or parties. Problems usually arise as to the submission of these complaints, as the fear of being de-listed often prevails.

12. Outlining a rather decentralised system, the Act further provides that complaints at first instance can be made to the County Agricultural Office. The forum for appeal is the Ministry of Agriculture.

13. Court review of the decision of the Ministry can then be initiated in the frames of an administrative lawsuit.

14. There have been no comparative studies about enforcement practices in Hungary and in other countries.

15. For the infringement of the relevant provisions of the Agricultural Regime, the authority can charge a fine up to twice the difference between the actual resale price and the procurement costs in respect of the amount of products actually sold.

<i>Annual amount of fines</i>	<i>HUF</i>	<i>EUR</i>
2003	0	0
2004	66.019.958	262.317*
2005 (January to August)	10.925.786	44.399

* Calculated on a yearly average rate.

16. Few information is available on recent cases and only the product ranges involved in the violations can be identified. These include noodles, watermelon, beer and cabbage.

17. According to the information from trade associations, retail chains usually threaten suppliers with delisting in case they make complaints. These chains lower their procurement costs based on different titles such as slotting allowances, contribution to their marketing costs, listing fees...etc.

18. Mail or internet sales of food and agricultural products merely represent a smaller part of sales within the trade sector in Hungary.

5. Determination of Resale-Below-Cost Prices and of Business Justification Exemptions

19. In order to determine whether the relevant provisions of the Agricultural Regime are violated, authorities use “the invoiced purchase price” as a benchmark as prescribed by the Act. Exemptions from the ban on below-cost-selling include sales concluded because of the bankruptcy of the retailer’s business or change in his activity, sale of products of reduced value, value saving sales concluded after the date of expiry, sale of products with damaged package or other products of incomplete value as already mentioned earlier.

6. Relationship of Resale-Below-Cost Laws and Regulations to Other Laws and Regulations Affecting Resellers

20. There is no sector specific regulation in force in Hungary containing other restrictions on business behaviour. However, according to the current state of the drafting process, the new Hungarian Trade Act might contain restrictive provisions applicable to retailers with buyer power.