

COMPETITION – LAW – HISTORY

*The Hungarian cartel legislation
is 85 years old*

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Presidential opening*



Ladies and Gentlemen,
Dear Guests,

The Hungarian Competition Act was enacted in November 1990 and nearly two months later, the Hungarian Competition Authority (GVH) began its operation. This year we celebrate this momentous event in the form of the 25th anniversary of the establishment of the GVH.

8 However, this did not mark the very beginning of Hungarian competition law enforcement, which in fact can be traced back to events preceding 1990. In 1923 the Parliament enacted Act V of 1923 on unfair competition. This Act was based on Austrian and German acts, and it was followed, in 1931, by Act XX of 1931 on the Cartel Commission and Cartel Court, on the strength of which the cartel supervision system was set up. At the time the operation of this system was explicitly modern and unique in Europe.

As far as we know, in this era in Europe, Scandinavian countries were aiming at establishing a system against cartels; organs like this did not operate in other European countries. For example the German Bundeskartellamt was set up in 1958, and in France cartel activity was only legislated after the Second World War.

We decided that on the occasion of the 25th anniversary, we would take a wider look at the Hungarian competition legislation and review its history. With

this in mind, we launched a tender. This is a field of law which has not been the focus of interest for many decades and which is not well-known by the general public or most lawyers. The Pázmány Péter Catholic University and the University of Szeged won the right to research this area of law from a legal history and competition law perspective.

On the basis of the highly professional materials we received on the completion of the research, it is evident that the Cartel Commission and the Cartel Court were organs which had quite high prestige. The Cartel Commission operated as an expert body, with the Act specifically stating that the members had to be experts in cartel cases both practically and theoretically. The chairman and vice-chairman of the 11-head body were appointed by the Head of State, while nine members of it were appointed by the Ministry (Government). The Ministry nominated the chairman and vice-chairman, while seven of the nine members were nominated by the Minister of Economy, with the remaining two members being nominated by the Minister of Welfare and Labour.

It is stated in the Act that “The Cartel Court is a special court within the Curia.” The Cartel Court had five members, it consisted of three judges and two assessors. The professional prestige of the Court is shown in the fact that it was chaired by the president of the Curia. These organs had well-known and acknowledged legal experts and academic members such as Ödön Kuncz, Endre Nizsalovszky and Farkas Heller. It is not a coincidence that they applied instruments that were ahead of their time and which are still used in today’s enforcement practice, to give one example - position statements. Looking at the polemical

essay of the Commission on the publication of these statements, it is shown that the considerations of the members were the same as they are today: predictability, establishing a standard for the market players and transparent functioning.

While studying the historical development we often have the feeling that we return to the solutions of the 1930s. For instance, very strong efforts are also being made nowadays in order to help the spread of private enforcement in Europe. In the legislation of that period, a natural coexistence could be observed between private actions and public interest litigations, since the legislator envisioned the combined enforcement of these two branches of law.

It is also a recurring topic and it is gaining more and more ground that, similarly to the idea of the Act 1931, a specialised cartel court ought to deal with cases involving such professional issues. The latest European ideas include the setting up of courts specialised in competition matters, or choosing arbitration courts in non-public matters.

The typical behaviours that were examined at the time were price setting, market sharing profit sharing and resale price restrictions. These behaviours are very similar to the bans that exist on hardcore restrictions today.

The reports on the cases dealt with by the Cartel Commission contain a lot of useful information for us. The reports suggest that certain topics, such as fuel pricing and professional organisations, have constantly been in focus in competition law. For instance, the Cartel Commission investigated the export of fruit and vegetables based on a unified trade plan,

and the petroleum cartel the subject of which was the ‘dumping carried out by domestic refineries against the cheap petroleum imported from Austria to Sopron’. This exhibition presents the whole procedure from its initiation to its closure that was carried out due to the restricted agreement of bakers, the so called Protection Convention of Bakers. Many aspects of the procedure may seem to be astonishing by today’s standards, but a number of elements in the procedure can be discovered which are very similar to today’s ones.

Based on the very extensive background material, we tried to create an exhibition which represents the contemporary atmosphere of that period, and which also highlights the analogies linking the past approach and the current approach to competition law enforcement. In addition to admiring the past, it is also possible and worthwhile to learn from it. Moreover, we believe that the available material can serve as a good basis for further research.

By creating the Acts in 1923 and in 1931, our national competition law legislation became one of the best in Europe. Hungary returned to the stage of competition law in 1990 after a long break, and after its accession to the European Union it integrated into the European Competition Network.

Through this exhibition we wish to pay homage to the very beginnings of Hungarian competition law. It is at this point that I would like to conclude my introductory speech and open the exhibition.

Dr. Miklós Juhász
President of the GVH

* Presidential opening speech on the occasion of the official opening of the Exhibition on 18 September, 2015.

International outlook - the roots

The course of development of competition law in the second half of the 19th century and the first half of the 20th century showed both similarities and differences between the United States and Europe. The role and history of competition goes back a long way, even to antiquity, but modern competition law has essentially emerged in the past 130 years, while developments in the late 19th century exhibit a number of similarities with later eras in terms of their approach to social issues. The attitude to competition developed cyclically, just as the global economy did. There are regularly recurring cycles of weakening and strengthening of unharnessed free competition, the promotion of small and medium-sized undertakings and the suppression of large corporations commonly referred to as monopolies. The different course of development in various countries is attributable to economic, social and, of course, political reasons; however, the different models of state organisation also had an effect on the attitude of countries to competition.

Still, the homeland of classic competition law – the so-called antitrust law – can undoubtedly be traced back to the American continent as a result of the advanced economic and social systems of the United States and Canada; consequently, this is where competition law also first emerged.

1. The first modern competition law: Canada

Legal literature tends to consider the United States' Sherman Act of 1890 as the origin of modern competition law; however, Canada had already adopted a law in 1889 that was very similar to the subsequent US rules. The Canadian act entered into force on 2 May 1889, and specifically prohibited price fixing and the establishment of monopolies. In the event of a violation of the prohibition, the law provided for the imposition of a fine or, in more severe cases, imprisonment of up to two years.

"Everyone is guilty of an indictable offence... who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company, unlawfully (...) to unduly prevent, limit, or lessen the manufacture or production of any article or commodity, or to unreasonably increase the price thereof."

2. The foundations of modern competition law: the United States

Even though the Canadian law was enacted first, it was the US regulation that eventually conquered the world. However, for a long time the United States was the only industrial country that rejected cartels – at least as a matter of principle. The adoption of the Sherman Act in 1890 was preceded by two years

2. The foundations of modern competition law: the United States



Source: Daily Graphic, 19 July 1880.



Source: Puck magazine, 23 May 1906: Roosevelt battling with the Standard Oil trust.

4. The first European legislation: Germany

3. Pioneer of European legislation: Austria

1. The first modern competition law: Canada



of debate in the Senate and the Act continued to be the bone of contention even thereafter. The Act was more succinct than its Canadian counterpart from one year before, but it relied on similar principles: it contained a blanket prohibition of any form of collusion or monopolisation.

Senator Sherman, who lent his name to the act, submitted the bill to appease the public uproar against trusts, which emerged in the second half of the 19th century, and to facilitate action against them. By the second half of the 19th century several industries had witnessed notable consolidation in the US; as a result, cooperation or cross-ownership among sector participants became wide-spread. It was at this time that modern cartels first appeared, simultaneously with trusts.

The cartoons of the time reflect the prevailing public sentiment. Large trusts were generally regarded not only as ruining small retailers but also as having significant influence on the economy and on the government.

The first major case based on the Sherman Act was initiated against Standard Oil, the company of oil tycoon John D. Rockefeller. Initially Rockefeller organised cartels among producers in the oil fields of Pennsylvania, then he focused on the acquisition of producers. He set up the first secret cartel in the US in 1879, which was unknown to the US government even at the time of the proceeding initiated against Standard Oil. The company first drew the wrath of some states and, at the pressure of President Roosevelt, proceedings were started, but the first breakthrough was the federal proceeding started in 1906 by the US Department of Justice. At the end of the proceeding, the Court unanimously ruled for the Government, which decision was upheld by the Supreme Court.

In 1914, in the wake of developments in case law and regulatory changes, the US set up a separate, independent organisation to enforce anti-monopoly and antitrust rules. This was the Federal Trade Commission, which has been responsible for the enforcement of federal competition rules since 16 March 1915 to this day.

3. Pioneer of European legislation: Austria

European competition law is rooted in the history of the Austro-Hungarian Monarchy. By the second half of the 19th century Austria had become disenchanted with the notion of liberalism. In response, liberals came up with the idea of creating competition law. By the 1890s cartels had become widespread and powerful, and Austrian cartels were typically secret, while at that time the general public viewed even known cartels as stabilising forces rather than as harmful entities.

The beginnings of Austrian legislation at the end of the 19th century are linked with the name of Adolf Menzel, who stated that cartels were harmful as they eliminated competition; however, they could also be beneficial if their benefits exceeded their costs. This controversial assessment of cartels affected the attitude of Europeans for a long time. Menzel considered that legislation was needed to set aside and differentiate between harmful and useful cartels. He defined two principles to facilitate administrative action: a) the state needs to be able to collect information about cartels, therefore he proposed that each cartel would need to apply for authorisation and obtain state registration; b) cartels must be independent entities governed by dedicated legal rules. Eventually, the Austrian legislator

proposed similar standards in 1897, focusing on the freedom of competition and propounding ideas that are even modern by today's standards. In the end the draft was not enacted, but both the proposal and the practical and theoretical debate it engendered had a significant effect on subsequent legislation.

4. The first European legislation: Germany

Before World War I Germany had undergone significant industrialisation, mostly in the direction of large-scale production and corporations. German companies were typically export-oriented, which considerably strengthened their bargaining position vis-a-vis the Government because any restriction would have compromised their international competitiveness. By 1900 there were some 400 cartels in Germany – it became a “land of cartels”, as it were. By this time there was general consensus, just as in other countries, that too much or too little competition was equally harmful, and that cartels were natural responses to overproduction, and they would inevitably emerge and would be impossible to eliminate.

Legal problems relating to cartels appeared in Germany as early as in the 1880s. The most important case that went to the court was the Saxon wood pulp case. In 1893 the producers of wood pulp in Saxony entered into a cartel agreement to sell their products through a common distributor; the violation of that agreement triggered financial sanctions. One cartel member violated the provision and the parties to the agreement attempted to enforce the financial penalty in court; in this case, the proceeding court concluded that the cartel agreement was not against the public good nor did it violate person-

al liberties, therefore it was found to be legal. Thus cartel agreements became enforceable contracts in Germany.

Legislation was not enacted until 1923, even though Adolf Menzel had already proposed a general legal act to regulate cartels in 1894. Although the governing party set up a cartel bureau due to the pressure exerted by Parliament, it never became operational because of the world war that erupted in 1914. Just as the cartel bureau before the war, the Act of 1923 was also created as a result of the pressure exerted by the Reichstag (the legislator). In 1923 the German Parliament enacted a law against the abuse of economic power. This was the first law in Europe to establish a comprehensive - albeit loose - legal framework to combat restrictions of competition. The Act of 1923 empowered the Minister of Economy to take action against cartels or similar organisations endangering social welfare or the economy as a whole. The Act also set up a cartel court, which was not part of the regular court system; rather, it worked as a quasi-administrative body. Few decisions were adopted relying on the Act of 1923, partly because the Minister rarely made use of this power and partly because, as a consequence, the Cartel Court was rarely able to pass judgment.

Thus in the 1920s German corporations gained considerable strength and played a major role in the global economy. Simultaneously, cartelisation also gained momentum: by 1929 there were more than 3000 cartels, a marked increase from 400 in the 1900s.

Background to the adoption of the Act

14 The economic boom in the second half of the 19th century facilitated the almost unhindered creation of commercial companies in the environment of free competition. Capital intensive sectors and the drive to maximise profits favoured companies limited by shares, which promised higher profits through the combination of funds. However, this was often not enough, and to increase returns, trade companies operating in the same field entered into 'cooperation agreements', partly to better exploit the market and partly to keep their clientèle and maintain product prices at the highest possible level. The constraints of the organisational form led corporations to achieve their objectives through so-called ad hoc associations for the short term, or to lay the ground for longer-term cooperation in agreements, either without forming a separate organisation or by setting up an entity to direct cooperation, which was conducive to the emergence of trusts. Ad-associations were formed by the parties for mutual gain or loss; this temporary association was similar to private law corporations in a number of respects while it can also be regarded as the forerunner of classic cartels. When traders set up cartels, their primary objective is to prevent or at least limit competition. This objective is contrary to free competition as it restricts the activities of cartel members to safeguard the market and the client base.

Case law had a decisive role in the assessment of cartel activities in Hungary. In the pre-war era Hungarian courts considered all agreements aimed at precluding free competition, which is in the interest of consumers, to be contrary to public policy and the

accepted principles of morality. Over time, however, a discrepancy developed between real life and the courts' approach as sanctioned by the Curia. Cartels have always strived to eliminate or limit competition, but this did not always cause harm to the general public, particularly as cartels came in a number of variants, some of which were set up to prevent overproduction, reduce production costs or prevent price reductions, rather than to raise prices. Meanwhile it was questioned whether price increases were economically detrimental and thus against public policy. It was generally controversial that cartels mushroomed while the courts considered them to be agreements aimed at causing harm to the public.

In the wake of the economic crisis following the world war, **Act XV of 1920 on abusive price increases** was adopted in an attempt to prevent abuses through criminal sanctions. Accordingly, collusion or association for the purposes of abusive price increases became punishable. However, the practical application of the Act was rendered rather difficult by the fact that there was no official standard for the level or computation of the 'right price'.

Act V of 1923 on unfair competition punished commercial procedures and economic methods that restricted free competition unfairly. Section 1 of the Act stated that "*commercial competition shall not be conducted in a manner contrary to fair business practices or the accepted principles of morality*". In addition, the Act, even though it provided no exhaustive listing, defined groups of conduct that were contrary to the principles of fair trade, which offered guidance

to economic actors as well as the courts. These included so-called fraudulent advertising, misuse and imitation, slander and libel, 'snowball agreements', disclosure or unauthorised use of commercial or trade secrets.

However, courts still had no instruments to help them discover the objective truth in cartel cases: they had to rely on the statements of the parties and of their experts to assess cartels. Also, these cases required special expertise, which the majority of judges did not have. These causes led to the adoption of Act XX of 1931 on restrictive agreements, referred to in literature as the 'cartel act'.

Act XX of 1931 had two major sources. Zoltán Ráth analysed the cartel issue from the aspects of dogmatics, legal history and comparative law. In his three-volume work he described the theoretical foundations, defined and classified cartels for the first time in Hungary and specified the legislative work that he considered necessary. This included the registration of and appropriate state control over economic associations and agreements, the regulation of cartels in private law and the prevention of abuses. The new law showed similarities with Zoltán Ráth's concepts in a number of its elements. It provided for state registration, obligation for presentation, and the regulation of state supervision. It did differ, however, in its failure to define the concept of cartel, thus providing greater discretion to the state in supervising the work of economic actors. **Another important inspiration for the Act was the Bill drafted by Pál Mandel, which contained not only the proposed text of the law but also general guidelines and a justification section.** As an important element of the draft, cartel agreements would need to be in writing, recorded and registered to make them effective and enforceable vis-a-vis third parties. **Another cartel concept of the**

time, that of Richárd Árkövy, is also worth noting. It contained proposals focusing on the interest of production from an economic angle. Accordingly, the establishment of cartels in Hungary would require mandatory notification, and only properly registered and recorded agreements would enjoy state protection. Associations failing to comply with the notification requirement and thus avoiding surveillance by the courts would operate at their own risk, but they could not be fined for their failure to notify.

The first draft of the Ministry of Justice was significantly different from the joint proposal that was submitted for official debate. The first draft mentioned agreements covering the commodities of entrepreneurs while the Bill extended state supervision to a wide scope of products. According to the first draft, the notification would have to be submitted to the Patent Court, while the draft designated the Minister of the Economy for this purpose. The

Draft:

- notification to the Patent Court
- 6 of the 26 Cartel Commission members to be delegated by the Government
- possibility to seek a legal remedy under private law
- the Cartel Court to be part of the regional high court, appeal to the Curia possible
- action for annulment at the Cartel Court

Proposal:

- notification to the Minister of the Economy
- all the members of the Cartel Commissions to be delegated by the Government/Ministry
- no legal remedy under private law
- The Cartel Court to be part of the Curia, no possibility of appeal
- ordinary courts and courts of arbitration also retain their jurisdiction

composition of the Cartel Commission also changed: the Bill gave a greater role to the Government. In the draft only six of the 26 members were to be appointed by the Government, while in the Bill all members were to be delegated by the Government or the Ministry. The most important change: the Bill abandoned the private law action featured in the draft: only the Minister of the Economy could initiate ac-

tion against cartels. Unlike in the draft, the Cartel Court was eventually set up under the Curia rather than in a regional high court, therefore its judgments could not be appealed. In the draft, actions for the annulment of cartel agreements would have fallen under the jurisdiction of the Cartel Court; in the Bill, ordinary courts and courts of arbitration also retained their jurisdiction.



View from the Buda Castle; on the left side there is the Ministry of Trade in which the meetings of the Cartel Commission were held. From 1st August 1935, the date from which cartel cases were handled by the Ministry of Industry, the Cartel Commission held its meetings at the conference room of the building of the Ministry of Industry



Adoption of the act in the light of the press of the time

Enactment of the law

12-19 January 1931:

Debate on the Minister's proposal in the committees of the House of Representatives; disagreement arose concerning the legitimacy of the Cartel Act as well as the efficiency of the methods described in the Bill. The opposition objected to the omission of parts missing from the second draft discussed by the committee, in particular the right of private parties to file direct action and the fact that the sessions of the Cartel Court would not be public. According to the Social Democratic Party, even though cartels were to blame for the deepening of the recession, high prices and low wages, they were impossible to prohibit by law; at best, their activities could be channelled in a direction where the public good and production would suffer no harm. To this end, the Party would submit its own bill. At the end of the debate, conflicting positions remained on whether, in addition to the Government, entities with nationwide interest, in particular major bodies representing the interests of agriculture (e.g. OMGE, Chamber of Agriculture, Chamber of Industry) should be entitled to file public interest actions against illegitimate agreements. Eventually the motion failed to secure sufficient support in the joint committee: the minority consisted of agriculture-oriented representatives, irrespective of their party affiliation, while the representatives of large industrial undertakings voted together, also on a non-partisan basis.

19 January 1931:

The report of the committee of the House of Representatives was completed. The report was signed by György Platthy, chairman of the joint committee and Károly Csák, clerk of the committee. The opinion of the committee was dominated by economic aspects. Accordingly, free competition 'has not proved to be a regulator of the economy that would ensure the satisfaction of the public interest and of the legitimate and fair economic interests of all social classes – until the limits of the possibilities determined by the state and social circumstances – in the best way.' On the subject of cartels the report states: *"these economic organisations are to be subjected to state supervision and need to be covered by legal regulation; their formation and operation is to be regulated with a view to the public interest, in the framework appropriate for the legal system and economic position of the country concerned, with due respect for the international situation."*

The joint committee considered that legal intervention in the economy was justified and allowed as long as this was necessitated by the public interest and considerations of public policy. As the committee found that the Bill did not exceed the limits of necessity, expediency and reasonableness, "it does not hinder economic progress, exhibits no tendencies and contains no provisions that would harm production or investment while it sets out effective provisions to combat abuses of economic dominance and to prevent excesses, the committee found the Bill to be acceptable from the angle of universal economic interests as well." Consequently, the committee requested that the Bill was placed on the agenda and submitted that, in view of its urgency, that it was discussed before the end of the three-day statutory waiting period.

18-19 May 1931:

The committees of the Upper House for public law and legislation and for economic and transportation issues discussed the Bill. The two committees held a joint session to arrive at their position. The committees did not attach a new bill to their detailed opinion; instead, they accepted the changes and amendments introduced by the House of Representatives without any changes. "Considering that, as explained above, the committee is of the opinion that the Bill strives to eliminate abuses with a view to the requirements of the economy and within the limits of expediency and reasonableness, the committee finds the Bill to be acceptable from the aspects of the universal interests of the economy, the public good, public policy and the protection of the legal system and recommends that the Upper House accepts it in its entirety and in all its details."

1-3 June 1931:

Debate in the Upper House. The large weight of economic actors in the Upper House lent particular significance to this stage: the composition of the House reflected the structure of Hungarian productive sectors. Nevertheless, their interests were not markedly reflected: none of the representatives of the financial sectors spoke, the opposition of the manufacturing industry was voiced by Jenő Vida but his intervention had no effect on the content of the Act.

Some of the speakers objected to the fact that representatives of the industry were not among the members of the Cartel Commission. The conclusion was that the Act should not include an exclusive list; instead, fundamental principles should be stated in the Act and the Government should be responsible for setting up the body, striving *"to appoint the most outstanding professionals and that every production sector and consumers are also represented"*.

In response to criticism that the Minister was not bound by the opinion of the Cartel Commission, the ruling party argued that the Minister still had constitutional responsibility as "the Cartel Act sets out to assure that there can be only one economic policy in Hungary that is enforced at all times, which brings all threads together in the hands of the competent, legal and constitutionally liable entities. If we were to remove the Cartel Commission from this realm and give them special powers, we would be making the same mistake as if, in the interest of the public good, we gave powers to private entities and introduced *actio popularis* instead of *actio publica*, and then everybody in Hungary, particularly incompetent persons, would start devising their own economic policies, which would lead to utter chaos and no one could be held liable."

After the last intervention, made by the Minister for Trade, the Upper House voted on whether to accept the Bill in general as the basis for detailed discussion. The affirmative decision was followed by the detailed debate, but no one spoke at this stage. This was followed by the standing vote on the final structure. The chairman of the meeting concluded that **"the Upper House approved the Bill on agreements regulating economic competition with the text submitted by the House of Representatives unchanged. The House of Representatives will be informed to this effect."**

27 January – 3 March 1931:

Debate of the Bill in the House of Representatives. No significant amendment was introduced to the Bill during the general debate or the detailed debate in the House of Representatives, considering that its opponents had explained their positions at the committee stage, thus all controversial issues had been faced and the position of the ministers who had submitted the Bill had also been revealed.



Organisation and structure of the Cartel Court

The concept and rules of cartel-related so-called 'public interest actions' were introduced by Act XXX of 1931. The Cartel Court was set up after the entry into force of the Act. It was established as a special court within the Curia, the entity at the top of the ordinary court hierarchy. The composition of the Cartel Court was regulated in the Cartel Act itself (Section 8). The Court consisted of a chairman, two judges and two assessors. It was chaired by the president of the Curia or a person designated by the president: the vice-president of the Curia or the chair of one of its departments. The two judges were invited by the chairman of the proceeding department from among the designated department president and his judges. The assessors were selected by the chairman of the proceeding department from among the ten experts chosen by the Minister of Justice every three years from a list containing 30 experts that was compiled by the Minister of the Economy.

If an agreement or decision fell under the scope of Section 1 of the Act, His Majesty's Legal Directorate could file an action at the Cartel Court acting upon the instructions of the competent minister. Public interest actions could be initiated by any authority or private entity by submitting the available evidence to His Majesty's Minister of Trade, but the claimant in the public interest action was always the Legal Director of the Treasury, who represented the interest of the state and of the public. Private persons could not act as claimants. The respondents of public interest actions could be any of the parties involved: if the cartel was established as a legal person, the respondent was generally the cartel through its

representative. Cartel members could also be joined as respondents, in the capacity of stakeholders. If, on the other hand, the cartel was not a legal person, cartel members had to be sued. The Minister could consult the Cartel Commission before filing the action, but this was not compulsory.

In the proceeding launched in response to the public interest action, the court could order the dissolution of the cartel or the termination of its operation, prohibit the implementation of an agreement or decision or order the termination of a certain activity or conduct. In order to coerce compliance with its judgments, the Court could impose fines, when *"it was necessary to take into account the amount of the financial gain achieved or intended by the conduct as well as the financial position of the entity fined; there is no other limitation as to the amount of the fine"*. If someone had participated in a cartel which had been subjected to a second penalty or if he had been involved in a second public interest action, the Cartel Court could ban him from engaging in trade or business. In the course of its proceeding the Cartel Court could also impose interim measures. If the protection of the public interest required immediate action, a prohibition of the implementation of an agreement or decision, or an injunction to abandon an activity or conduct could already be imposed during the proceeding, or even in the absence of a public interest action. For the withdrawal of these interim measures the Cartel Court was not required to receive an application to this effect and could act on its own initiative. The judgments of the Cartel Court were binding on ordinary courts and also on courts of arbitration.

Considering that the commencement of proceedings were subject to the instruction of the Minister, who used this power only to a limited extent, the Cartel

Court only heard 3 cases on their merits during its entire existence.



Parliament (today Kossuth Lajos) Square, building of the Curia where the meetings of the Cartel Court took place (today Museum of Ethnography)

Structure and operation of the Cartel Commission

The Cartel Commission, a body of nationwide competence with its seat in Budapest, was set up to scrutinise agreements falling under Act XX of 1931 and to form an opinion on matters arising in the course of the enforcement of the Act. The Commission was meant to be an expert body. The Act specifically stated that members must be practitioners or academics well versed in cartel matters. Public interest actions, which were introduced by the Act, could be initiated by any authority or private entity by submitting the available evidence to the His Majesty's Minister of the Economy. If the action was initiated by a public body or authority, the Ministry generally also sought the opinion of the Cartel Commission, which was followed, where appropriate, by filing a public interest action with the Cartel Court, which operated under the auspices of the Curia. The Cartel Court was also entitled to approach the Cartel Commission on its own initiative to request its opinion or for the review of an expert testimony.

The principal rules governing the organisation and procedure of the Cartel Commission and the Cartel Court were laid down in the Act. Accordingly, the Cartel Commission had 11 members; its chairman and vice-chairman were appointed by the Governor, its nine members by the Government. The Government nominated the chairman and vice-chairman, while seven of the Government-appointed 9 members were nominated by His Majesty's Minister of the Economy and one each by the Minister of Welfare and Minister of Labour. Additional members could be added to the Cartel Commission from among practitioners or academics working in the

sector concerned if any of the Commission members were excluded from the case due to a conflict of interest.

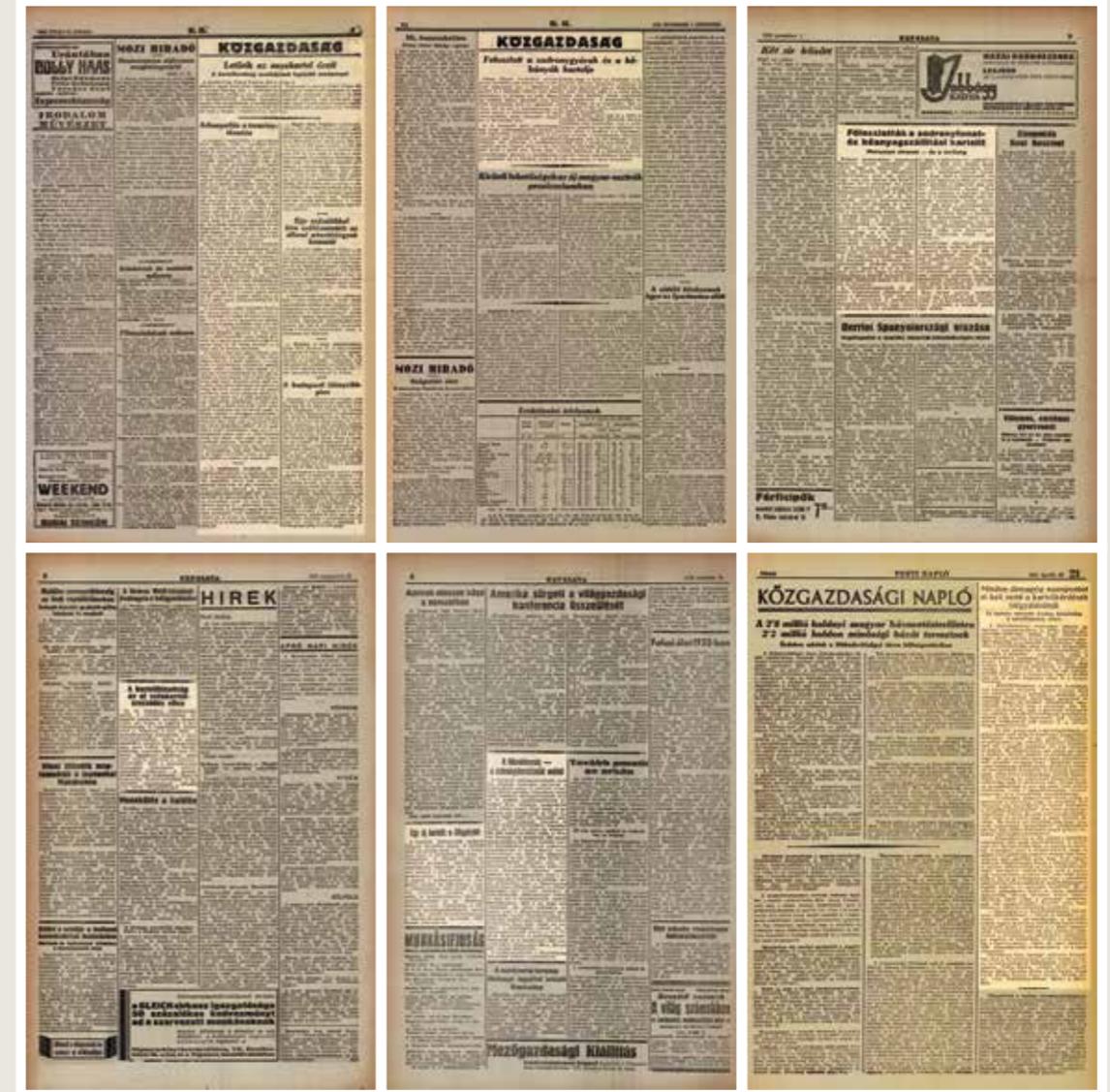
The Act authorised the Government to establish, in a decree, the detailed rules of the organisation and operation of the Cartel Commission. The Decree stated that the mandate of the chairman, vice-chairman and members of the Cartel Commission was for three years. In contrast, any new members appointed to positions that became vacant were appointed for the remaining term of the member they replaced, that is, not for a three-year term. The chairman and vice-chairman could be dismissed before the end of their mandate by the Governor, and members by the Government. Members held honorary positions, which means that they received no remuneration for their work in the Cartel Commission.

The Cartel Commission formed its expert opinions at the request of His Majesty's Minister of the Economy or of public authorities. Furthermore, the Commission could also voice its opinions on its own initiative. His Majesty's Minister of the Economy could instruct the Cartel Commission to express its views on a certain matter, but the instruction did not extend to the contents of those views, thus the Commission was independent in forming its opinions.

The meetings of the Cartel Commission were not public; members were expressly bound by secrecy and they were allowed to disclose their expert opinions on a particular case only to the cartel concerned. They were not allowed to make any disclosure

to parties outside the Commission concerning the agendas of their meetings or the course of their discussions. However, from 1933 onwards the Cartel

Commission was allowed to publish its opinions of theoretical significance if His Majesty's Minister of the Economy agreed.



Articles about cartels in the press of the time

Decree 5382/1931 M.E. of His Majesty's Ministry on the organisation and operation of the Cartel Commission

Pursuant to the authorisation received in the last paragraph of Article 5 of Act XX of 1931 on agreements regulating economic competition, His Majesty's Ministry issues the following decree:

CHAPTER I Structure of the Cartel Commission

Article 1 The chairman and vice-chairman of the Cartel Commission shall be appointed by the Head of State on the proposal of His Majesty's Ministry for a term of three years.

At the end of the three-year term the same persons may be re-appointed.

Article 2 His Majesty's Minister of the Economy (Trade) shall nominate seven of the members of the Cartel Commission so that one expert each in the fields of manufacturing, small crafts, trade and agriculture is included in his proposal.

For two additional members of the Cartel Commission, His Majesty's Minister of Welfare and Labour shall nominate one person from among those who represent the general interests of consumers and one person from among labourers.

The members of the Cartel Commission shall be appointed by His Majesty's Ministry for a term of three years. At the end of the three-year term the same persons may be

re-appointed on the proposals of His Majesty's Minister of the Economy (Trade) or His Majesty's Minister of Welfare and Labour.

Article 3 The chairman and vice-chairman of the Cartel Commission can be dismissed by the Head of state, and members of the Commission by His Majesty's Ministry before the end of their mandate.

Vacant positions of the chairman, vice-chairman and members shall be filled for the term remaining from the initial three-year period, in accordance with Articles 1 and 2.

CHAPTER II Operation of the Cartel Commission

Article 4 The Cartel Commission shall express its opinion on matters arising in the course of the enforcement of the Act upon the request of His Majesty's Minister of the Economy (Trade) or another public authority or on its own initiative.

When the Commission is requested to express its opinion on matters submitted to it, the chairman shall appoint a rapporteur from among the members of the Commission, as required.

Article 5 The Commission shall be convened by its chairman or, where he is incapacitated, by the vice-chairman. If the vice-chairman is also incapacitated, the meeting

shall be convened by the Commission member entrusted with the temporary performance of the duties of the chairman by His Majesty's Minister of the Economy (Trade).

When requested by His Majesty's Minister of the Economy (Trade), the Commission shall be convened and the matter delegated to the Commission shall be discussed within a set time limit. In other instances the times and agendas of the meetings shall be determined by the chairman.

The members of the Commission, the affected Ministers as well as His Majesty's Treasury Legal Directorate shall be notified of the convention of the Commission, with the agenda attached, at the latest on the day before the meeting is due to take place.

Article 6 The chairman shall preside over the meetings of the Commission.

The matters to be discussed shall generally be introduced by the rapporteur, who shall also present his opinion. Subsequently, the members of the Commission and the delegates of the Ministers and of His Majesty's Treasury Legal Directorate may address the meeting.

After the end of the discussion the Commission shall express its opinion in the form of a resolution. In the event of a difference of opinions, the resolution shall be adopted by voting.

The chairman, vice-chairman and members of the Commission shall have votes. The delegates of the Ministers and of His Majesty's Treasury Legal Directorate shall have no vote.

In the event of a tie vote, the opinion for which the chairman cast his vote shall be adopted as the resolution of the Commission.

Article 7 Minutes shall be kept of the meetings of the Commission, containing a brief description of the matters discussed and the course of the discussion as well as the adopted resolution.

The minutes shall be kept by the designated official of His Majesty's Ministry of Trade. The minutes shall be signed by the chairman and clerk of the meeting as well as two members designated by the chairman from among the members in attendance.

Article 8 The chairman shall communicate the resolution of the Commission in writing to His Majesty's Minister of the Economy (Trade) or to the other authority which requested its opinion.

Article 9 The meetings of the Commission shall not be public. No disclosure shall be allowed to persons outside the Commission concerning the agendas of the meetings and the course of the discussions.

Article 10 The administrative and clerical functions of the Commission shall be performed by the designated personnel of His Majesty's Ministry of Trade.

Any expenditure related to the operation of the Commission shall be charged to the Ministry of Trade.

CHAPTER III Final Provisions

Article 11 If the post of Minister of the Economy is vacant, the powers entrusted in this Decree to the Minister of the Economy shall be exercised by His Majesty's Minister of Trade.

Article 12 This Decree shall enter into force on 15 October 1931, concurrently with Act XX of 1931.

Budapest, 6 October 1931.

COUNT GYULA KÁROLYI M.P.
His Majesty's Prime Minister

Decisions of principle

The so-called decisions of principle issued by the Cartel Commission represented significant progress in the efficiency of cartel supervision. These decisions stated with general effect whether a certain conduct was compatible with the Cartel Act. The Commission adopted its first decision of principle on the subject of economic isolation (boycott) at its meeting of 20 October 1933.

Excerpts from the minutes of the meeting:

DR FARKAS HELLER
vice chairman

26 “(...) I would look at this issue from a different angle. Allow me to refer to the statements of certain honourable members of the Commission in the Cartel Commission to the effect that we should not limit ourselves to looking at minor complaints but should also address major issues of principle. At the July meeting of the Commission His Excellency Magyar complained that the Cartel Commission was once again dealing with minor issues, whereas its real responsibility would be to clarify principles, and His Excellency Fenyő agreed. At that time I had the fortune to chair the meeting and I said that these matters needed to be dealt with as specific complaints must be addressed; however, I share the view of the honourable members of the Commission that it is even more important for the Commission to tackle significant issues of principle and to take a firm theoretical position on these, so that they can serve as a yardstick when assessing specific cases. I believe that the Ministry of Trade and the Hungarian public as a whole also expects our Commission to formulate positions on principles (...)”

“(...) Having heard the contributions, I would still not abandon hope of gaining His Excellency Fenyő’s support for my proposition. Please accept that if we always make do with the generalities of Section 6, we shall never make any progress on the cartel issue and we shall always handle individual cases only instead of setting theoretical guidelines within the constraints of the law. Nevertheless, this is what businesses need because they must be certain of the limits within which they are safe to move without getting into conflict with the interpretation of the law. Consequently, I hold that the decision on principle to be adopted on the subject of exclusions should not be hidden. Firstly, because I consider it important to disclose the decision to assure the safety of the industry and of cartels. Secondly, and please do not resent this, the general public will be unsettled if it is never informed about anything that happens here. (...)”

Decision of principle No. 1 of the Cartel Commission on the subject of commercial isolation, boycott or exclusion

“Exclusion from business relations, isolation or boycott is a very sharp weapon in the economic war, which interferes with the financial success or, indeed, existence of some actors.

Consequently, the Cartel Commission, relying on Section 6 of Act XX of 1931, finds that this instrument is compatible with the consideration of the economy and the public good only if its use is justified by particularly grave reasons that are relevant for public policy. The Cartel Commission considers that it is against the interest of the economy and the public good if the isolation not only punishes the party with economically justified disadvan-

tages but is also capable of destroying its economic existence. For the time being, the Commission intends to as-

sess on a case-by-case basis whether such endangerment is present under the specific circumstances.

Budapest, 27 November 1933



Ministry of Trade, the first place where the meetings of the Cartel Commission were held

Cartel Commission meeting of 13 June 1932

The Cartel Commission will hold a meeting at 5 p.m. on 13 June 1932 in the meeting hall on the 1st floor of the Ministry of Trade

BARON ZSIGMOND PERÉNYI M.P.
President

Agenda

1. Report to His Excellency the Minister on the decision on the cooperation between the Cartel Commission and the Price Analysis Committee
2. Current matters
3. Report of Commission member Emil Muttschenbacher on the investigation of the seed cartel
4. Rapporteur's report on the contractual provision of the rubber cartel infringing Act XXX of 1931
5. Rapporteur's report on the contractual provision of the electric articles cartel infringing Act XXX of 1931

6. Rapporteur's report on the contractual provision of the mineral oil cartel infringing Act XXX of 1931
7. Rapporteur's report on the agreement of the Wender Pharmaceutical and Infant Formula Inc. and Kőbányai Brewery and St. Stephen Infant Formula Inc. regarding liquid malt extracts (textmalt, pekmalt).
8. Rapporteur's report on the raw skin purchasing cartel
9. Rapporteur's report on the leather conditioning cartel
10. Rapporteur's report on the harness oil and grease cartel
11. Rapporteur's report on the waterglass cartel
12. Rapporteur's report on the contract painting agreement
13. Report on matters transferred to the Price Analysis Committee for investigation

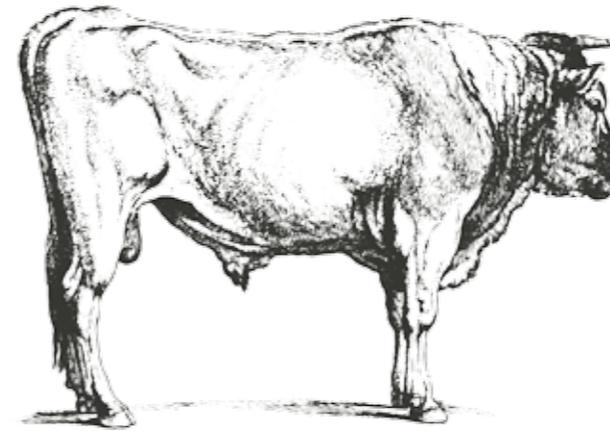
Memorandum of the meeting

"The following elements of the agenda are significant for the purposes of agriculture.

RAW SKIN PURCHASING CARTEL.

The three largest tanneries formed a cartel for the purchasing of calf skin. Exclusive purchasers. As a result of the operation of the cartel, the price of skin fell from 1 pengő 40 fillérs per kg to 80 fillérs. The cartel could not be any more harmful: it exercises a purchasing monopoly.

At present there are some 20 000 unsold salted cowhides in Budapest. This cartel has gone to the extreme of not processing this excess inventory but importing inferior quality leather. This conduct has helped the cartel to suppress the price of skin to 35-40 fillérs per kg., and it



is able to maintain that price. As tanneries have a right to compensation in foreign trade, they have been able to import skins under the compensation regime. They claim that exports would also be covered by the compensation regime and that the leather is to be exported. Supposedly, the exportation of a few wagons of leather would be sufficient to equalise prices. The skin cartel fears this development. Last year, calfskin cost 9-10 pengős, today its price is 3 pengős 60 fillérs, but 1 pengő 20 fillérs of this goes to the agent, therefore the farmer receives only 2 pengős 40 fillérs for the skin of a calf. The cartel eliminates competition between traders who purchase skin by paying a monthly 400-1000 pengő fee to traders to refrain from buying skin. The cartel also has agreements with large slaughterhouses so they cannot increase prices either.

MINERAL OIL CARTEL

There have been complaints about price and quality. The price control committee will establish the prices and define the required quality. Uniform quality testing methods must be established. Supposedly, the cartel has no monopoly as they have a sufficient number of 'out-

The following figures also highlight that the operation of the cartel is against the public interest: Today an ox weighing 600 kg costs approximately 300 pengős. Of this amount, in December last year the skin was worth 53 pengős, the tallow 52 pengős, totalling 135 pengős. To date, the cartel has lowered the price of skin to 26 pengős and the tallow pays only 27 pengős. This adds up to 53 pengős, representing a significant price drop of 8 fillérs in live weight for farmers.

Skin prices changed as follows:

If we assume that in 1913 the price of shoe upper leather was 100, this leather cost 93 in 1926, 102 in 1929 and 158 today (in percentage terms). These are wholesale leather prices expressed in terms of calfskin prices. These figures mean that the price of calfskin dropped by 58% more than the price of shoe upper leather. That is, the cartel buys the skin much cheaper and produces it at a much higher price than in 1913.

According to the cartel, Hungarian leather is suitable only for the production of special articles, for which there is no market in Hungary. This is paradoxical because if Hungarian skin is so cheap, fine finished articles can also be produced cheaply, and fine goods at a low price would have a market in Hungary.

The Commission was unable to establish whether tanneries received foreign currencies at favourable rates through official channels for the purchase of skin from abroad.

siders'. According to the cartel agreement, the cartel refuses to supply petroleum to merchants who do not pay. The rapporteur of the Ministry of Trade wanted to have this contractual clause annulled, but the Commission dismissed the proposal. This is a matter of law and is therefore outside the remit of the Cartel Commission."

Meeting of the Cartel Commission on 12 August 1932

Hungarian National Archives:
K-184 (Ministry of Agriculture)

Year: 1932

Item: 41.

Reference number: 51.140

File Number: 88.831

(the archive number refers to the entire Section 3)

3.1. Invitation to the meeting (agenda)

No invitation to the meeting (agenda) is found.

3.2. Memorandum of the meeting

"The subject of the meeting is the coal merchant cartel.

There are two agreements: one between coal merchants and mines, and one between coal wholesalers and medium-sized coal merchants. There is also a third agreement between MÁK and Salgó. These agreements have the objective of circumventing the Cartel Act. The agreement between MÁK and Salgó creates a monopolistic situation in the supply of coal to Budapest. The 10 wholesalers undertook to take over 37 500 wagons of coal from the two mines. This volume covers almost the entire annual coal consumption of Budapest. The 10 merchants are not allowed to sell other coal, on pain of penalty. They may participate in public supplies only with the prior consent of the mines. Mines are under no restrictions, not even in the event of late delivery. Under the agreement, wholesalers sell 7500 wagons of coal to medium-sized merchants with a margin of 20-40 fillérs.

These agreements place mines not covered by the agreement in a difficult position, just as merchants (10%) that

are not party to the agreement. The leaders of interest representation bodies have been given positions, therefore they support these cartels, while merchants themselves do not. The cartel has a head office to manage shipments; consequently, merchants have dismissed approx. 500 clerical employees and salesmen have also lost their positions.

The cartel is harmful to consumers because they will be forced to buy coal bricks; the primary objective of the cartel is to sell the coal dust that had accumulated over the years. The quality of the coal brick is not specified; consequently, they will supply poor-quality, crumbling bricks, which is tantamount to a price increase. The price analysis committee has rejected the calculations of the mines, whereupon the mines volunteered new prices. For instance: Tata brick: old price 5.20, new price 4.65; Dorog brick: old price 5.25, new price 4.95, etc. The price reduction is by 50-60 fillérs; however, this is not a real price cut because the higher prices set by the cartel were simply lowered to the old price level. The cartel gets coal from the mines for 20 fillérs less, but it sells it on to merchants at 70 fillérs more and wants to deliver poor-quality coal.

As the importation of coal is not allowed, the cartel is economically dangerous and also provides an economic monopoly to the two mines, in addition to the legal monopoly. The largest mine left out of the cartel is the one in Pécs, but under the terms of the cartel it is allowed to supply coal only outside Budapest. The two mines cover 70% of the total consumption in Hungary. The cartel is backed by financial institutions, therefore it can exert pressure. The purpose of the cartel is not rationalisation but illegitimate price increases. The Commission established that there was no reason for coal prices to be at a

higher level than before the war. Today miners work on a jobbing basis and bring to the surface the same amount of coal working 8 hours a day, 3 days a week, for the same hourly wages, as they did before the war working 12 hours a day, 6 days a week. This is due to the jobbing work and better technical equipment. Material prices have not increased, raw materials are imported duty-free and the price of manufactured articles abroad is 40-50% lower than it was in the time of peace. Mines blame high social costs but these costs represent on 13 fillérs per 1 quintal of coal. Nevertheless, coal prices have increased by 250% relative to pre-war levels.

Hungary has no need for a raw material cartel. The coal cartel is the most dangerous type of cartel, the so-called submission cartel, which creates a monopoly. The two mines sell only to the 10 wholesalers, who many not purchase coal from anyone else on pain of severe penalties, while the mines are free to sell to anyone. Competition from abroad does not exist and is not possible, therefore the Government may not combat the cartel with the weapon of importation. The cartel puts more middlemen between producers and consumers. The power of the cartel is indicated by this figure: before the bank embargo coal worth 60-80 million pengős a year was imported into Hungary.



Coal Miners Source: Fortepan

Decision of the Cartel Commission:

The Commission looked at the cartel and established that it was capable of jeopardising the public good and the universal interest of the economy on several counts; therefore, pursuant to Section 6(1)(2) of Act XX of 1931, it requests the Minister of Trade to take measures, as provided in the aforesaid section,

- 1/ to prevent price increases by the cartel
- 2/ to terminate the uncertain and dependant position of merchants that are part of the cartel
- 3/ to prevent the dismissal of a large number of officials resulting from the concentration induced by the cartel,
- 4/ to prevent the cartel from obtaining undue advantages for itself in public procurements, which is an infringement of public procurement rules,
- 5/ to terminate the practice of placing mine companies outside the cartel at an unreasonable disadvantage.

Finally, the Commission requests the Ministry to inform the Commission about its discussions with the cartel so that additional recommendations can be put forth."

Members



ANDOR JUHÁSZ
(1864-1941)
President of the Curia,
chairman of the Cartel Court

Andor Juhász was born in Kosice in 1864. He commenced his studies in his home city, where he read law at the Royal Academy of Law of Kosice, before also reading law at the University of Budapest. He was appointed as a district judge at the District Court of Miskolc in 1891. In 1893 he was appointed as a department clerk at His Majesty's Court of Appeal in Kosice, before being appointed as a judge in 1901. In 1911 he was appointed as the chairman of His Majesty's Regional Court of Budapest, and in 1915 he became the chairman of His Majesty's Court of Appeal of Budapest. He held the position of chairman in the latter court for a decade. By virtue of his position he became a member of the Upper House. In 1919, during the Hungarian Soviet Republic, he was ousted from his office, and was detained for two weeks in Gyűjtőfogház (central detention facility). He became the president of the Curia in 1925. As head of the supreme judicial court, he considered the preservation of the independence of the judiciary to be his top priority. He headed the three civil-law uniformity panels and, between 1932 and 1934, also the Cartel Court. He died in 1941.

The National Judicial Council established the Andor Juhász award, which is presented to judges and judicial employees as recognition for their outstanding judicial work and exemplary careers.

His outstanding abilities and diligence assured his progress..." "[...] his professional capabilities and constant attention to the developments in all branches of the judiciary, [...] his fairly frequent articles and papers published in legal journals make him first among his contemporaries [...] – wrote Elemér Balás in issue 1925/9 of the official journal Miskolci Jogászélet.



BÉLA IVÁDY
(1873–1962)
Politician, minister, **chairman of the Cartel Commission**

Béla Ivády was born in Fólya in 1873. In 1896 he joined the Ministry of Agriculture as an assistant clerk, before becoming an imperial and royal chamberlain in 1907. During World War I he was appointed as the deputy head of the National Economic Committee, and later as the head of department at the Public Nutrition Authority. From 1916 onwards he worked as the government commissioner for public nutrition in the counties of Pest-Szolnok and Bács. He was elected as a member of parliament for the Pásztó electoral district in 1922. Between 1931 and 1932 he was the minister of Agriculture in the government of Gyula Károlyi. In 1933 he became the chairman of the Price Analysis and Cartel Commission, and served as the acting president of the Party for National Unity (Nemzeti Egység Pártja, NEP). From 1933 he was the chairman of the Cartel Commission.

He died in 1962 in Budapest.



FARKAS HELLER
(1877-1955)
Economist, university professor, member of the Hungarian Academy of Sciences, assessor at the Cartel Court, **president of the Cartel Commission**

Farkas Heller was born in 1877 in Budapest. He completed his legal studies at the Faculty of Law and Political Sciences of the University of Budapest in 1899. He held a clerical position at the Budapest Chamber of Commerce and Industry, then from 1901 to 1914, at the economic department of the Ministry of Agriculture. In 1907 he became a lecturer at the Technical University of Budapest, teaching customs policy. In 1914 the Economic Division of the University was set up and he was appointed as the head of the Social Economy and Finance Department in 1917. He headed the department for 31 years, teaching economics, economic history and finances. His most notable works on economics were used as course-books at German universities as well. He held the position of dean of the Faculty of Economics (1934-1935) and rector of the Technical University of Budapest (1945-1946). In total, he published 40 books and more than 200 articles. He became a correspondent member of the Hungarian Academy of Sciences in 1921 and a full member in 1934. Between 1917 and 1948 he was the editor of *Közgazdasági Szemle* (Journal of Economics) and as recognition of this work, he was awarded the Corvin wreath in 1930. He was an assessor at the Cartel Court from 1932 until the end of 1934. He was appointed as the vice-chairman of the Cartel Commission in 1935 and as the chairman in 1937. He died in Budapest in 1955, at the age of 78.

"Fate has allowed me to work in a profession which is after my heart and which has been the object of my dreams since my childhood." – Farkas Heller, 9 May 1937.



EMIL MUTSCHENBACHER
(1880-??)
Member of the Upper House, director of the Hungarian National Economic Association (HNEA), high counsellor for economy and trade, member, then vice-chairman of the Cartel Commission

He was born in 1880 in Budapest as the son of Béla Mutschenbacher, royal high counsellor for health. He studied at the Piarist Grammar School of Budapest and at the Faculty of Law and Political Sciences of the University of Budapest, before reading agriculture and agricultural policy at the universities of Vienna and Berlin. After his return to Hungary, he was elected as the assistant secretary to the HNEA in 1907. He was promoted to secretary in 1909, managing secretary in 1912, secretary general in 1921 and managing director of the HNEA in 1926. From 1925 he was the government commissioner for agricultural credit, as a result of his appointment by the Minister of Finance.

He was an associate member in the National Chamber of Agriculture and a member of the financial committee of the Chamber of Trade and Commerce of Budapest. He published numerous papers and articles in Hungarian and international economic and agricultural journals and in newspapers; furthermore, he published ten books on economics and agriculture. He received the title of high counsellor for economics in 1923 and high counsellor for trade in 1927.

Nominated by the National Hungarian Economic Association, he was elected to the Upper house of Parliament in 1931. He was a member of the Cartel Commission from its establishment, before becoming its vice-chairman.



MIKSA FENYŐ
(1877-1972)

Literary man, member of parliament, member of the Cartel Commission

He was born in Mélykút, in the county of Bács-Bodrog in 1877. He completed his secondary school studies in Budapest, before reading law and becoming a member of the Bar. From 1903 he worked as the secretary for the National Association of Industrialists, becoming the acting director of the Association in 1917.

At the parliamentary election of 1931 he won a mandate at the Nagykapocs district as an independent candidate.

In 1909 he played a key role in the establishment of the Nyugat publishing house, where he was both a shareholder and the editor-in-chief of the house's journal entitled "Nyugat". He was a friend of poet Endre Ady, who actively participated in the operation and management of the above-mentioned journal. He was succeeded in the post of editor-in-chief by poet Mihály Babits.

The anti-Jewish laws made the life of Miksa Fenyő and his family very difficult, threatening their lives from 1943 onwards. Consequently, he was forced into hiding for a long time and it was during this period that he wrote his war journal 'A county adrift'. After World War II he moved to Rome in 1949, then to Paris before eventually settling in New York with his family in 1953, where he lived until 1969. He died in 1972 in Vienna at the age of 95.



ÖDÖN KUNCZ
(1884-1965)

Lawyer, economist, university professor, member of the Hungarian Academy of Sciences

He was born in Oradea in 1884. He completed his law studies in Cluj-Napoca and obtained his teaching qualification in commercial law in 1911. He held the position of a junior clerk, then from 1909 of a senior clerk, at the Commercial and Exchange Court of Budapest. From 1910 onwards he was a department clerk at His Majesty's Court of Appeal in Budapest. Between 1914-1915 he fought in World War I. From 1920 he taught at the Faculty of Economics of the Technical University of Budapest for eight years, before teaching at the department of commercial and exchange law of the Péter Pázmány University between 1928 to 1949. He held the position of dean of the Faculty of Law and Political Science at this university in the academic years 1933-1934 and 1943-1944. In his academic work he focused on commercial and bill of exchange law; his voluminous books "Outline of Hungarian commercial and exchange law" and "A course-book for Hungarian commercial and exchange law" were published in several editions. He also worked in the fields of the law of cooperatives, competition law, certain fields of insurance law and on important economic issues.

From 1930 he was a correspondent member of the Hungarian Academy of Sciences, before falling from political grace and being downgraded to a consultative member at the end of 1949. His membership was only restored in 1989, when the change in political system took place.

He was the vice president of the Industrial Property Association from 1925 and co-president between

1935 and 1939. He died in 1965 in Budapest at the age of 81. The professor with a degree both in law and in economics received the recognition of the Governor for his role in the preparation of the code of private law, and in 1940 the cross of merit of Hungary for his educational and academic work.



GYULA KORNIS
(1885-1958)

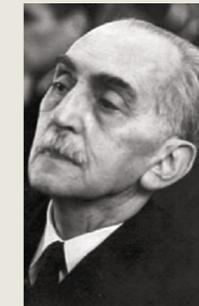
Professor, philosopher, member and president of the Hungarian Academy of Sciences, state secretary, deputy speaker of the House of Representatives

He was born in Vác in 1885. He obtained a teaching degree from the University of Budapest in 1907. He spent seven years teaching in a grammar school before teaching at the universities of Bratislava and Budapest from 1914, and then at the Faculty of Arts of the Péter Pázmány University from 1920 onwards. In 1917 he set up the faculty of arts at the University of Bratislava and acted as the first dean of the faculty. In 1927 he was appointed as the state secretary for Religion and Public Education. He was the acting vice president of the National Public Education Council, a member of parliament for the United Party between 1931-1939, and a Speaker of Parliament between 1938 and 1939. He was a member of the Upper House between 1942 and 1944.

He was a correspondent member of the the Hungarian Academy of Sciences from 1916, a full member from 1927, chairman of the Philosophy Committee between 1933 and 1945 and president of the Academy between 1945-46.

After World War II he was forcefully relocated, before moving to Hajdúszoboszló, where he lived for

the rest of his life. He died in 1958 in Budapest, after a brief stay in hospital.



ENDRE NIZSALOVSZKY
(1894-1976)

Legal scholar, professor, member of the Hungarian Academy of Sciences, assessor at the Cartel Court, member of the Cartel Commission

He was born in Békéscsaba in 1894. He studied at the Law Academy of Oradea and at the University of Debrecen. He started working as a court clerk, before working for the legislative department of the Ministry of Justice as a private law officer, then as a ministerial secretary, and finally, from 1928, as a ministerial departmental counsellor. In 1929 he was one of the authors of the Civil Code. He was a professor of three different subjects of law in the course of his career: commercial and exchange law, civil procedure, and private law. In 1929 he qualified as a lecturer in private law in Debrecen and he started teaching there in the same year, lecturing on commercial and exchange law until 1934, when he was invited to the Faculty of Economics of the Technical and Economic University of Budapest to be a full professor of commercial and private law. From 1938 he was a full professor of civil procedure, and from 1943 of Hungarian private law at the Péter Pázmány University of Budapest. In 1943 he succeeded Károly Szladits as the head of the civil law department, which position he retained until 1957. He was a corresponding member, and then from 1954, a full member of the Hungarian Academy of Sciences.

In 1956 he was elected as the chair of the Committee for Political Science and Law of the Hungarian Academy of Sciences and as the secretary general of

the organisation; Zoltán Kodály was elected as the president. Due to a speech he gave at a committee meeting during the revolution he was dismissed from his teaching position and ousted from his positions at the Academy. After this, he lived on his modest pension and his honorarium from the Academy, but he was never allowed to return to the university. In the sixties he was allowed to gradually resume his publications: in the course of his long life he wrote more than 300 articles, papers, books and reviews, most of them in the journals *Kereskedelmi Jog*, *Polgári Jog*, *Jogállam*, *Jogtudományi Közlöny*, *Magyar Jogi Szemle*, *Magyar Jog* and *Állam és Jog*.

On his hundredth birthday in 1994, the Eötvös Loránd University and the Hungarian Academy of Sciences organised a ceremony with the purpose of rehabilitating Nizsalovszky as a scientist.



Peyer Károly
(1881-1956)

Minister, politician, member of parliament, member of the Cartel Commission.

He was born in Városlőd, in the county of Veszprém in 1881. He completed four years of secondary school, before becoming an apprentice to an engine fitter. He worked on several engineering projects in Budapest between 1899 and 1906, became a member of the Praesidium, and then the secretary of the Association of Iron and Metalworkers. In 1911 he was elected as the secretary of the Council of Trade Unions.

He was a member of the Praesidium of the Social Democratic Party, briefly held the positions of minister of the interior and minister of welfare and

labour. Between 1922 and 1944 he was a member of parliament as a social democratic candidate, spokesman for his party, and party group leader from 1931. He was a permanent representative of Hungary at the Labour Organisation of the League of Nations. Between 1925 and 1925 he was a member of the Budapest Assembly as leader of his party group. From 1927 he held the position of secretary general of the Council of Trade Unions.

After World War II he was against the merging of the Social Democratic Party with the Hungarian Communist Party and as a consequence was expelled from his party in the summer of 1947. He emigrated from Hungary to the US and in his absence he was sentenced to 8 years of imprisonment for spying by the people's court, his assessment was restored at the time of the change of the political regime. He died in New York in 1956.

Bakers' Protectionist Agreement – presentation of the bakers' cartel

The Cartel Commission discussed the investigation of the protectionist agreement of bakers, the so-called bakers' cartel, at its meeting of 21 September 1934.

The members established an elaborate cartel; the agreement of the parties resembled a set of organisational and operational rules rather than a legal transaction under private law. The cartel had seven bodies as well as a standing court of arbitration, which imposed a penalty on infringing members. The agreement covered the entire territory of the capital city of Budapest and even extended beyond the city to areas that were subject to the same laws governing the start of the working day and deliveries. Bakers of towns in the vicinity of Budapest, for instance Budakeszi, Kerepes or Pesthidegkút, were also involved in the cartel. Some 600 tradesmen were members of the cartel. The agreement was a cartel for the "protection of prices, conditions and customers", that is, a classic market sharing cartel – this latter element was the most prominent one in the agreement. Customers could be referred from one member to another only with the consent of the customer protection committee of the agreement, otherwise other members were not allowed to serve them. However, according to the agreement, *"the member from whom the customer is taken away either receives appropriate compensation for this amicably or, in the absence of an amicable settlement, the court of arbitration awards appropriate compensation"*.

The objectives of the agreement included the rationalisation of the industry, which process was started by acquiring the bakeries of weak owners and, having settled with creditors, closing them down. **According to the leader of the agreement, they wished to reduce the number of bakery locations in Budapest by 70-80 units. The agreement also harmonised the procurement of flour: they agreed with mills that they would give a half-percent bonification to bakers, who in turn would assigned this sum to the agreement.** Thus mills got rid of the risk of trade credit as they were able to collect their outstanding claims as a result of the agreement. Under the agreement, smaller bakeries received financial support or flour.

In order to maintain the uniform price regulation, the agreement excluded almost all elements of competition. **In addition, prices and business terms were also standardised; and if someone found a loophole and could as a result have enticed a new customer, he was prevented from doing so because of the customer protection measures in place.** Naturally, if a customer was insistent on buying from another baker, it was very difficult to prevent him from doing so because you cannot keep rejecting someone saying that you have no bread to sell. However, the cartel agreement contained a mechanism to address this issue as well. At the request of the customer, the customer protection com-

mittee would re-assign him to another cartel member; however, for one year this member had to give 5% of his turnover from this customer to the cartel member from whom the customer was taken.

The agreement did not specify the price of products; instead, prices were set from time to time by the general committee on the proposal of the price setting committee of the cartel.

The Cartel Commission discussed the investigation of the bakers' cartel at its meeting of 21 September 1934.

At the meeting it was proposed that "similarly to the 22-fillér brown bread, it would be desirable to set the price of a cheaper type of roll. This would be in the

interest of agriculture as well because it is desirable that wheat flour is taken up by more Hungarian consumers. At present, white pastry is made from a mixture of grade 1 and grade 4 flour, that is, from cheap flour, while it is sold at too high prices. It is probable that a price analysis would compel us to lower the prices of pastry." Consequently, the Commission decided to examine complaints against the Protectionist Agreement of Bakers in a special committee, which would cooperate with the Price Analysis Committee.

The case was initiated by the complaint of Mrs. Gyula Balássy, food merchant at Kálvária square, which read as follows:



Tableau at a bakery, 1926 Source: Fortepan

"Honourable Minister, Your Grace!

In the past week or so, newspapers have been discussing the extraordinary event that occurred in Kispest, in József Károly's store, on 27 August 1934.

I, the undersigned Mrs. Gyula Balássy, have an agreement with the Kispest firm for the supply of bread and pastry.

To facilitate the understanding of my plea and show its legitimacy, it is necessary that I explain the background to this matter to Your Excellency.

In my store I sell mostly bread, pastry and dairy products, and this so-called grocery store is the sole source of my livelihood. My clientèle comes from the poorest working classes, as it is well known that the overwhelming majority of the inhabitants of the Kálvária square vicinity are workers, day labourers, belonging in general to the lowest-income class.

At this location it is not irrelevant, but vital, whether a person living on the unemployment benefit or at best on meagre wages can buy a bread roll to go with his daily cheap coffee for 3 and a half fillérs or whether he needs to pay 5 fillérs.

Until May 1934, that is, this current year, in Budapest, or at least in the vicinity of my store I was able to procure pastry for a uniform 3 fillérs per piece from various sources, thus I was able to serve my customers for 3 fillérs. Unrestrained free competition led to the evolution of the 3-fillér purchase price and 3.5 fillér resale price.

A decent commercial profit could still be made on such articles at this price level; this is clear from the fact that there were a few bakers within Budapest who sold two rolls for 5 fillérs.

Until the month of May of the current year there was no disturbance or attempt to raise the established consumer price of 3.5 fillérs. It was only in May 1934 that some mysterious commotion started to steal this cheap bite from the mouths of consumers.

This is when the representatives of the baker cartel showed up in my store and stated, as a fact, that I would need to sell pastry for 4 fillérs from then on because I would not be able to purchase it cheaper than 3.5 fillérs.

It was before the end of another two weeks that the high representatives of the cartel – that is how they referred to themselves – showed up to tell me that I would have to ask 5 fillérs for each piece of pastry, because I would not be able to get it for less than 4 fillérs.

To prove the legitimacy of their measure, they handed over a printed poster to be displayed in my store. The response of customers was crushing. To put it simply, while I had sold 300–400 pieces of cheap pastry per day without any problem, I was able to sell only 30 pieces of the 5-fillér pastry in the end.

The same ratio applied to bread as well as other articles sold in my store, because it is well known that customers do not split their purchases: if they are unable to find an article they seek in a particular store, they will not buy anything else there either.

Apparently other merchants were also deserted by customers; this is evidenced by the fact that certain bakers secretly visited their customers at around half past six in the morning with their baskets, selling pastry for 4 fillérs a piece.

It became clear to me that I would be bankrupted unless the situation changed rapidly.

Through our mutual acquaintance József Tóth, I contacted the Sinkovits firm and managed to enter into a secret agreement with them to the effect that they would serve me at the price of 3 fillérs.

I was delighted to see that the menace was averted and my delight was even greater when the A. Klein bakery volunteered to also supply pastry to me at the price of 3 fillérs.

Having seen that I would not dance to their strings and they would not be able to order me around like a few months before, the cartel resorted to open violence.

On the Saturday before St. Stephen's day Mr Vogel, the secretary of the craftsmen's trade association suddenly visited my store and asked for the names

of my suppliers. After my truthful answer he stated haughtily that I would feel their power before long.

He stood by his threat, because he ordered both the Sinkovits and the Klein firms to stop serving me, with the result that the next day, the Sunday before St. Stephen's day, I was left without bread or pastry.

Eventually I managed to agree with the firm of József Károly in Kispest on 24 August, to the effect that they would make available to me the pasty required for my store's daily turnover at 3 fillérs a piece, on the condition that I provided the means of transportation to collect the goods.

This arrangement represented extra costs and required additional time, but I preferred to forego some of my

already meagre profits so that I could continue to serve my clientèle, consisting of members of the poorest classes, at the price of 3.5 fillérs.

I was left in peace for only 3 days and received the bread and pastry as agreed from the Károlyi firm for only 3 days.

It was at this point, at about a quarter to seven in the morning of 27 August 1934, that the preposterous event occurred, which goes against all sense of legality and humanity and which has been covered in great detail in the press in the past week.

I am describing the events to Your Excellency faithfully, as faithfully as I explained them in my complaint filed with the Kispest police constabulary, accompanied by the evidence available to me.

Sándor Kolozsi, my brother-in-law and business employee would go every morning, carrying a basket closed on all sides, to pick up the goods and would then leave for home at a quarter to seven, with the basket filled and, for additional security, tied with a string.

Since then, the turnover of my shop has fallen to one fifth of the old level.

With this turnover, I unavoidably make losses each day and I am heading towards inevitable financial ruin.

With reference to the relevant provisions of Act XX of 1931, which provisions will not allow either a group united by a formal agreement or a companionship cooperating without such an agreement to neglect the interests of the economy and public good and promote only its own financial objectives.

Furthermore, with reference to the fact that the economic situation clearly does not justify a 5-fillér price for rolls, when, in the absence of violence and intimidation, pastry could be marketed in unlimited volumes at the price of 3.5-4 fillérs.

Finally, having regard to the interests on hand, in particular that the distribution of essential articles is at stake, articles that are vital to daily life – and furthermore, it is the daily consumer articles of the poorest of the public that are in jeopardy –, I implore Your Excellency with the greatest respect:

to make use of your powers set out in Section 6 of the Act with urgency, to implement the retaliatory measures available to you at your discretion without delay, to immediately instruct His Majesty's Treasury Legal Directorate to initiate a so-called public interest action described in Section 6(6) of the Act, however, before the filing of the public interest action, which is a slow procedure, in view of the public interest nature and importance of the action, to directly contact the Cartel Court pursuant to Section 10 of the Act, so that the Cartel Court immediately suspends the agreement that may exist between bakers either in the form of a contract or existing in effect without a formal contract, and to annul, by way of an interim resolution, all their measures taken to hinder free trade.

Please find the power of attorney of my legal representative attached as A./.. I wish to note that I am at your service at all times to supply evidence as necessary.

Yours faithfully,
Mrs. Gyula Balássy"



Tableau at a bakery, 1930 Source: Fortepan

*“His Majesty's Minister of Trade
Budapest.*

The Cartel Commission, which works under the authority of the Ministry under Your Excellency's wise leadership decided, at its meeting of 21 September of the current year, to have a special committee examine the complaints submitted against the protectionist agreement of bakers.

In addition to the specific complaint subject to the investigation, a number of other complaints were received stating that pastry made from wheat flour was expensive and therefore the poorer classes, which would be pleased to consume this type of product, are hardly able to afford it. Both for social reasons and to increase the consumption of wheat flour I would consider it desirable for the committee investigating the bakers' cartel to also look into the possibility of establishing the price of a cheaper type of roll that bakeries would produce from grade 1 and grade 4 flour, the price of which would be appropriate for the purchasing power of the poor urban classes.

I respectfully implore Your Excellency to instruct the aforementioned committee and the Price Analysis Committee to submit to Your Excellency a proposal for setting the price of a cheaper pastry type with quality standards to be determined.

Budapest, 1 October 1934.”

It was also noted off the record that the production of cheaper pastry was also hindered by the fact that the Ministry of Agriculture had increased the price of wood to be used for baking bread when it set up the Wood Distribution Organisation. Furthermore, bread is made more expensive by the so-called milk cartel because bakers in Budapest had to work with expensive milk. Finally, the cost of bread production was increased by the Potato Distribution Co-operative, the so-called potato cartel, which raised the price of potatoes to consumers. Several participants noted off the record that when establishing the wood, milk and potato distribution organisations, the Ministry of Agriculture did not act in a manner that would be reassuring for the general public, because during the negotiations preceding the establishment of these entities it failed to take into consideration the views of the official authorities that monitor the pricing of the various products and where needed, officially set the wholesale or retail prices of certain articles or produce, and in the case of manufactured goods also the production prices. They claimed that in this manner the Ministry established or promoted cartel-like arrangements that increased the excessive and harmful difference between the producer price and consumer price even further.

The decision of the Minister is reflected in the 31 October 1934 edition of the daily '8 órai Ujság', which carried the headline:

“Two rolls: nine fillérs. Minister Fabinyi does not authorise the increase of bread and pastry prices.”



 Hungarian
Competition
Authority