C.E.D.R.

European Council for Agricultural Law
Comité Européen de Droit Rural (C.E.D.R.)
Europäisches Agrarrechtskomitee

XXII European Congress and Colloquium of Agricultural Law – Almerimar-El Ejido (Spain) – 21-25 October 2003

XXII Congrès et Colloque Européens de Droit Rural – Almerimar-El Ejido (Espagne) – 21-25 octobre 2003

XXII Europäischer Agrarrechtskongress mit Kolloquium – Almerimar-El Ejido (Spanien) – 21-25 Oktober 2003

Commission II – Kommission II

THE EFFECT OF EUROPEAN AND NATIONAL COMPETITION LAW ON THE AGRICULTURAL SECTOR

L'ECONOMIE AGRICOLE FACE AU DROIT DE LA CONCURRENCE EUROPEEN ET NATIONAL

DIE AGRARWIRTSCHAFT IM LICHTE DES EUROPÄISCHEN UND NATIONALEN WETTBEWERBSRECHTS

National Report – Rapport national – Landesbericht

Hungary – la Hongrie – Ungarn

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Hungarian report – Rapport hongrois – Ungarischer Bericht

Regular Report on the Competition Law of Hungary

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1. National Competition Law

1.1) Legal foundation of national Competition Law[1]

1.1.1) Which legal basis has your legislation for Competition Law?

– In respect to practices concerning the **trade between the European Communities and Hungary** the governing law is basically the competition law of the Communities on the basis of the European Agreement promulgated by the Act I of 1994.

– **In other cases** the Hungarian domestic regulation is principally governing. The Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter **Tptv**.) serves as a basis for the natural competition law and every single additional government decree of block exemption and certain parts of the Act LVIII of 1997 on Business Advertising Activity are linked with it.

We have to point out that our domestic regulation is about to entirely comply with the EU requirements. During its preparation certain considerations of the EU drawn up by the Treaty of Rome (See Articles 81 and 82), by the EC regulations on block exemption from the vertical cartel and by EC directive on the misleading advertising activity have been taken into account, as well as viewpoints formulated by the case-law of the European Comission and the European Court of Justice (e.g.: Woodpulp, Dyestuffs, ICI, United Brands, Hoffmann-La Roche, Sea Containers, Continental Can, Nestle/Perrier cases).

– Comparing our regulation with the EU competition law the main difference (i.e. a difference which is still not contrary to the EU law) lies in the material scope. That is to say the Hungarian Act of Competition is essentially **sector neutral**. While in the competition law of the EU special rules apply to the coal-and steel products, the agriculture and the transport, in the Hungarian Competition Act do not exist such sectorial distinction. The other field of differences resulting from the material scope is of the **practices regulated** therein. Namely besides the anti-trust law, the prohibition of the abuse of a dominant position and the control of mergers the scope of the Hungarian Competition law applies also to rules prohibiting the unfair competition and protecting the consumers' interest. At the same time the Hungarian regulation (opposite to the Union norms) does not contain any rules either concerning the role of the state in the competition law or about the position of public undertakings (i.e.: undertakings which perform public duties).

[1] This part of the report based on: Péter Miskolci-Bodnár: *Versenyjog*,(Competition Law) Novotni Kiadó, Miskolc, (2003.)

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1.1.2 Which instruments exist in your legislation for the control of restrictions on competition: Principle of prohibition and / or principle of malpractice (state controlled intervention againist improper restraint of competition?[2]

What does the principle of prohibition and/or malpractice mean in terms of the Hungarian Competition Law, more explicitly in relation to the cartel rules?

Principle of prohibition : upon this principle – after having established the natural exceptions – cartel qualifies as prohibited automatically. In the Member States of the Union that principle is mainly enforced at the moment.

Principle of malpractice : this principle does not prohibit the cartel itself, but the abusive practice thereof, by which the competition will be damaged.

Almost every legislation following the latter principle generally require the registration of the cartels, i.e. the 1) voluntary notification and the 2) registration.

To the best of our knowledge such countries are today: Denmark, the Netherlands and Luxembourg.

Based on the principle of prohibition the Hungarian Competition law extensively regulates that which shall qualify as a cartel and also prohibits it universally.

Tptv. Section 11, Subsections (1)-(2):

- (1) Agreements between undertakings and co-ordinated practices, as well as the decisions of the social organisations of undertakings, public corporations, unions and other similar organisations of undertakings, unions (hereinafter collectively “agreements”), which are aimed at the prevention, restriction or distortion of economic competition, or which may display or do display such an effect, are prohibited. An agreement concluded between undertakings that are not unrelated shall not be construed as such.
- (2) This prohibition shall in particular apply to the following:
  - a) fixing the purchase or sales prices, and defining other business conditions directly or indirectly;
  - b) restricting or keeping manufacture, distribution, technical development or investment under control;
  - c) dividing the sources of purchases and restricting the freedom of choosing from among them, as well as excluding a set circle of consumers from the purchase of certain goods;
  - d) dividing the market, excluding anybody from selling, and restricting the choice of sales opportunities;
  - e) collusion between competitors in connection with a bidding process;
  - f) preventing anybody from entering the market;
  - g) the case where, in respect of transactions to an identical value or of the same nature, certain partners are discriminated against, including the use of prices, payment deadlines, discriminatory sales or purchase conditions or the employment of methods which cause disadvantage to certain business partners in the competition;

[2] The principles set forth below are used in connection with the provisions of cartels in the Hungarian competition law. These principles do not apply to the two other fields of the law of the restriction of competition in a broader meaning, i.e. to the abuse of a dominant position and to the merger. This little remark may help during the interpretation of this report.

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- h) rendering the conclusion of a contract dependent upon the assumption of obligations which, due to their nature or with regard to the usual contractual practice, do not form part of the subject of the contract.

1.1.3) Does your legislation contain provision for notifying or registering restrains of competition? – Please indicate the cases , relevant for the agro-business, in which the principle of prohibition respectively the principle of prohibition respectively the principle of malpractice is applicable and which restrains of competition have to be notified or registered.

The Hungarian cartel law, as such does not contain these legal institutions, however they can be found in the law of the restriction of competition used in a broader meaning. Namely there is a compulsory authorisation by the merger, as well as a notification required in the cartel law.

- 1. Merger (concentration of companies): **Tptv.** Section 24 Subsection (1) (See more: Section 23, Subsections (1)-(3), Section 14, Subsections (1)-(2.))
- 2. Concern law (Act on the Business Associations)
- 3. Which sanctions are provided for illegal restrains of competition and malpractice (ban for restraint of competition; instructions for price regulation by governmental agency? Imposed fine by governmental agency; penal sanctions? Invalidity of restraint of competitions; compensations and/or injunctive relief by private persons or associations?

Legal consequences of cartel are laid down by two acts: **Ptk**.(Civil Code) and the **Tptv.**

- 3.1 Nullity: its critera are stipulated in the Civil Code. This a typical civil law consequence.
- 3.2 Legal consequences of the prohibition of cartel are established in resolutions adopted by the Office of Economic Competition (as a budgetary agency). The Office :
  - may declare a conduct illegal,
  - may order the termination of any illegal conduct,
  - may prohibit the continuation of any illegal conduct,
  - may impose a fine for any violation of the provisions and/or
  - may prescribe certain obligations in connection with illegal conduct.

1.1.4) Does your legislation differentiate between horizontal and vertical restrains if competition? [3]

Yes, it does. The **Tptv**. (the Hungarian Competition Act) has introduced a general anti-trust provision, which also applies to the vertical cartels, while in the system of block exemptions the vertical cartels are exempted from the scope of the anti-trust law.

1.1.5) Are there any exceptions or exemptions to illegality of horizontal and vertical restrains of competition?

As it can be seen above there are exceptions and circumstances of exemption.

Exceptions can be classified into three groups:

- 1. Exceptions conferred by law:
  - bagatell cartel (Tptv. Sections 13-14),
  - an agreement concluded between undertakings that are not unrelated (Tptv. Section 11, Subsection (1), last sentence, Section 15, Subsection (1)).

[3] Similar to the Question 1.2. the answer is confined to the cartel.

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- 2. Governmental decrees of block exemption (Tptv. Sections 16-16/A and the relating decrees: 50/1997., 247/1997.,84-85-86/1999.,53-54-55/2002.)
- 3. Exemption upon an individual application by the Office of Economic Competition (Tptv. Sections 17-20.)

1.1.6) Are there any rules concerning recommendations (e.g. price recommendations)?

- Act LXXXVII of 1990 on Pricing (see Section 1, Subsection (2))
- Act LVIII of 1997 on Business Advertising Activity
- Decrees of Block Exemption (see listed under question 5)
- Act CXLIV of 1997 on Business Associations
- Act XVI of 2003 on Agricultural Market Rules
- Act CII of 1994 on Local Appellation Council
- Decrees of Subvention (e.g.:No. 26/2003.(III.11.) of the Minister of Agriculture)

1.1.7) Are there special provisions concerning abuse of dominant market position?

Yes, there are. See the following provisions of the Competition Act (**Tptv**.Chapter V.)

Chapter V

Prohibition of Abuse of Dominant Position

Section 21

It is prohibited to abuse dominant position, in particular:

a) to establish purchase or sales prices unfairly in business relations, including the case of the use of general contractual conditions, or to stipulate unjustified advantages in another manner, or to force the acceptance of disadvantageous terms and conditions on another party;

b) to restrict production, distribution or technical development to the detriment of the consumers;

c) to refuse to establish or maintain business relations adequate for the nature of the transaction without any justification;

d) to influence the other party's economic decisions for the purpose of gaining unjustified advantages;

e) to withdraw goods from general circulation or to withhold goods without justification prior to price rises or for the purpose of causing prices to rise, or in a way otherwise capable of securing unjustified advantages or causing a disadvantage in competition;

f) to render the supply and acceptance of goods dependent upon the supply or acceptance of other goods, or to render the conclusion of a contract dependent upon the assumption of obligations which, due to their nature, or with regard to the usual contractual practice, do not form part of the subject of the contract;

g) in the case of transactions to an identical value or of the same nature, to discriminate against certain business partners without justification, including the use of prices, payment deadlines, discriminatory sales or purchase conditions and the employment of methods which cause disadvantage to certain business partners in the competition;

h) to force competitors off the market concerned, or to use overly low prices based not upon greater efficiency compared with the competitors which are capable of preventing competitors from entering the market;

i) to hinder competitors from entering the market in any other unjustified manner; or

j) to create an undue disadvantageous market situation for the competitors or to influence their economic decisions for the purpose of gaining unjustified benefits.

Section 22

(1) Dominant position shall mean when an undertaking is in a position to conduct its economic activities in a given market in a manner largely independent of others, without having to consider the market behavior of its competitors, suppliers, buyers or other business partners in so far as to eliminate effective competition.

(2) The following shall, in particular, be examined in assessing dominant position:

a) the costs and risks entailed by entry into the market concerned and exit therefrom, and the realization of the technical, economic or legal conditions that it requires;

b) the assets, financial strength and revenue situation of the undertaking, and/or the development thereof;

c) the structure of the market concerned, the ratios of market shares, the conduct of the participants of the market, and the economic influence exercised by the undertaking over the development of the market.

(3) A single undertaking or several undertakings together can be in an dominant position.

1.1.8) Are there any rules referring to discriminatory measures or obstructive competition practices?

Yes, there are plenty of these rules throughout the whole Competition Act. (In connection with the law of limitation of competition see answers under questions 2,7,9.)

1.1.9 Are there any rules concerning mergers of companies (e.g. mergers of co-operatives)?

Yes, there is. The whole chapter VI of Act LVII of 1997 (**Tptv**.) is concerned with this issue.

Chapter VI

Controlling the Interlocking of Undertakings

Section 23

(1) Undertakings become interlocked (concentrated) if

a) two or more previously independent (unrelated) companies merge, or one merges into another, or a part of an undertaking becomes a part of another undertaking which is independent of the first undertaking,

b) where one or more undertakings acquire direct or indirect control of the whole or parts of one or more other, previously independent undertakings, or

c) several independent (unrelated) undertakings jointly set up an undertaking to be controlled by them in which they unite their identical or complementary activities pursued earlier, provided that this does not qualify as an agreement restricting competition as defined in Section 11.

(2) For the purposes of this Act, one or more undertakings acting jointly shall be deemed to have direct control if

a) it holds over fifty per cent of the shares, stocks or voting rights in the controlled undertaking, or

b) has the power to designate, appoint or dismiss the majority of the executive officers of the other undertaking, or

c) has the power, by contract, to assert major influence over the decisions of the other undertaking, or

d) acquires the ability to assert major influence over the decisions of the other undertaking.

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(3) For the purposes of this Act, an undertaking shall be deemed to have indirect control over another undertaking when the latter is controlled, whether independently or jointly, by one or more undertakings under the control of the former.

(4) The activities of a liquidator or receiver shall not be considered as control.

(5) For the purposes of this Act, 'business unit' shall mean the assets or rights, including clients and customers, that, if acquired, enable the acquiring undertaking to enter a market by itself or together with the assets and rights at its disposal.

Section 24

(1) Authorization from the Office of Economic Competition shall be required for any interlocking directorates of undertakings if the combined net sales revenue of the undertakings involved (Section 26) in the previous financial year exceeded HUF ten (10) billion and

a) the previous year's net sales revenue of the business unit, the merging or the acquired undertaking or - in respect of fusion - of at least two of the undertakings directly involved [Subsection (2) of Section 26] - together with the indirect participants that are affiliated with the undertaking [Subsection (3) of Section 26] -is in excess of HUF five hundred (500) million, or

b) together with the previous year's net sales revenue of the business unit, calculated as per paragraph a) the merging or the acquired undertaking or of the directly involved undertakings with net sales revenue below HUF five hundred (500) million, the merging or acquiring undertaking or undertakings with interlocking directorates with net sales revenue in excess of HUF five hundred (500) million and their affiliated direct participants [Subsection (3) of Section 26] have established interlocking directorates with an undertaking within the two preceding years for a combined total of net sales revenue in excess of HUF five hundred (500) million.

(2) For credit institutions with interlocking directorates, ten (10) percent of the balance sheet total shall be taken into account instead of the net sales revenue. For insurance companies with interlocking directorates, the value of the secured (contracted) gross insurance premiums shall be taken into account instead of the net sales revenue. For investment firms and funds with interlocking directorates, the revenue from investment services and membership fees, respectively, shall be taken into account.

Section 25

The temporary (not to exceed one year) acquisition of control or assets by an insurance company, credit institution, financial holding company, mixed-activity holding company, investment firm or property management organization shall not be deemed interlocking directorates, if such acquisition is made in preparation of resale, and if control is not exercised, or it is limited to an extent that is absolutely necessary. The Office of Economic Competition may authorize the extension of said one-year period if the undertaking in question provides proof that alienation could not be accomplished within one year.

Section 26

(1) The undertakings concerned are the undertakings involved directly and indirectly in the interlocking.

(2) Direct participants are the ones between whom the interlocking takes place.

(3) Indirect participants are those

who are controlled by a direct participant as defined in Subsection (2) or (3) of

Section 23;

b) who control a direct participant as defined in paragraph a);

c) who are controlled by an indirect participant as defined in paragraph b), in addition to a direct participant, in accordance with paragraph a);

d) who are controlled by two or more participants jointly, regardless of whether they are direct participants or indirect participants as listed in paragraphs a) to c).

(4) In the course of determining the circle of direct participants, those whose right of control expires as a result of the interlocking shall be disregarded.

Section 27

(1) For the purposes of Subsections (1) of Section 24, in the course of calculating the net sales revenues, the turnover between the undertakings concerned (Section 26) or between the parts thereof shall be disregarded.

(2) In the course of calculating the net sales revenues of (non-resident) undertakings whose corporate domicile is abroad, the net sales revenues generated in the previous business year from the goods sold in the territory of the Republic of Hungary shall be taken into account.

(3) In calculating the net sales revenues of the undertakings concerned, majority owned by the State or by local governments, that undertaking comprising an economic unit shall be taken into account which has an independent right of decision-making in respect of defining its market attitude.

(4) In respect of the alienation of business units, the net revenue received by the undertaking from the utilization of assets and rights shall be taken into consideration.

Section 28

(1) In the case of merger or fusion, the direct participant or, in all other cases, the party acquiring the business unit or direct control must - as prescribed under Section 24 - apply for authorization for interlocking directorates.

(2) The application for permission shall be submitted within thirty (30) days reckoned from the earliest of the following dates: the publication of the public invitation to tender, the conclusion of the contract or the acquisition of the right of control.

(3) In the case of the interlocking of credit institutions as well as of insurance companies, the application for permission shall be submitted to the Office of Economic Competition at the same date as the application for the permit of the supervisory agency defined in a separate legal rule.

Section 29

The permission of the Office of Economic Competition is required for the conclusion of a contract resulting in an interlocking as defined in Section 24.

Section 30

(1) When assessing an application for permission, the advantages and disadvantages resulting from the interlocking shall be assessed. In the course of this, the following shall be examined in particular:

a) the structure of the markets concerned; the existing or potential competition, the purchase and sales opportunities on the markets concerned; the costs and risks, as well as the technical, economic and legal conditions, of entry into the market and exit therefrom; the expected effect of the interlocking upon the competition on the markets concerned;

b) the market situation and strategy of the undertakings concerned, their economic and financial capability, their business attitude, their competitiveness on domestic and foreign markets, and any expected changes therein;

c) the effect of the interlocking upon the suppliers, the intermediate and final consumers.

(2) The Office of Economic Competition may not refuse to grant authorization if, with regard to the contents of Subsection (1), the interlocking directorates do not create or intensify dominant position in so far as to prevent the development, maintenance or expansion of effective competition in the given market (Section 14) or in a considerable fraction thereof.

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(3) In the interest of reducing the disadvantageous effects of interlocking directorates, the Office of Economic Competition may make its authorization contingent upon prior or subsequent conditions; certain obligations, such as having to alienate certain business units or other assets within a prescribed deadline; or termination of control over an undertaking that is indirectly involved.

(4) If authorization is granted as contingent on any prior condition, it shall become operative once the condition has been satisfied. An authorization contingent on any subsequent condition shall become operative when it is granted; however, it shall be cancelled if the condition is not satisfied.

(5) The scope of authorization granted for interlocking directorates shall include the restrictive market practices necessary for carrying out such interlocking directorates.

Section 31

If, in the course of a competition control procedure, it is established that unauthorized interlocking directorates (which, according to Section 24, require authorization) could not have been authorized, the Office of Economic Competition, in order to restore effective competition, may prescribe the separation or alienation of the merged undertakings or assets and business units; termination of joint control; or some other obligation, and it shall set an appropriate deadline for doing so.

Section 32

(1) The Office of Economic Competition shall withdraw its decision passed on the basis of Section 30, if

a) granting of the permission in a decision not reviewed by the court is based upon the misleading communication of a fact important from the respect of making the decision, or

b) the obliged undertaking has failed to perform any of the obligations stipulated in the decision.

(2) The Office of Economic Competition may amend its decisions passed on the basis of Section 30 if the obligor has failed to perform any of the obligations or is unable to satisfy any of the conditions laid down in the decision for reasons beyond his control.

1.1.10) Are Competition Law based decisions of governmental agancies or courts solely focused on aspects of competitions, or do they equally account aspects of economic and social policy?

Decision-making bodies clearly put the emphasis on the aspects of competition.

- Tptv. Section 17, Subsection (1)
- Agreements or planned agreements shall be exempted from the prohibition declared by Article 11 on individual application by the decision of the Hungarian competition authority, provided that
- they contribute to a more reasonable organisation of production or distribution, the promotion of technical or economic progress, or the improvement of competitiveness or of the protection of the environment;
- they allow consumers a fair share of the resulting benefit;
- the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified common goals;
- they do not create the possibility of excluding competition in respect of a substantial part of the products concerned.
- Tptv. Section 22, Subsection (2)
- (2) The following shall, in particular, be examined in assessing dominant position:

- a) the costs and risks entailed by entry into the market concerned and exit therefrom, and the realisation of the technical, economic or legal conditions that it requires;
- b) the assets, financial strength and revenue situation of the undertaking, and/or the development thereof;
- c) the structure of the market concerned, the ratios of market shares, the conduct of the participants of the market, and the economic influence exercised by the undertaking over the development of the market.

- (3) A single undertaking or several undertakings together can be in an dominant position.
- Tptv. Section 30, subsections (1)-(2).
- (1) When assessing an application for permission, the advantages and disadvantages resulting from the interlocking shall be assessed. In the course of this, the following shall be examined in particular:
  - a) the structure of the markets concerned; the existing or potential competition, the purchase and sales opportunities on the markets concerned; the costs and risks, as well as the technical, economic and legal conditions, of entry into the market and exit therefrom; the expected effect of the interlocking upon the competition on the markets concerned;
  - b) the market situation and strategy of the undertakings concerned, their economic and financial capability, their business attitude, their competitiveness on domestic and foreign markets, and any expected changes therein;
  - c) the effect of the interlocking upon the suppliers, the intermediate and final consumers.
- (2) The Office of Economic Competition may not refuse to grant authorization if, with regard to the contents of Subsection (1), the interlocking directorates do not create or intensify dominant position in so far as to prevent the development, maintenance or expansion of effective competition in the given market (Section 14) or in a considerable fraction thereof.

1.2) Special provisions for agriculture in Competition Law?

Pre remark: Competition Law has two possible functions in the agriculture sector. On the one hand Competition Law can broaden the possibilties of farmers comparision to commercial companies. On the other hand farmers can protected by the Competition Law in a special way.

1.2.1) Extension of farmers possibilties due to Competition Law?

a) Does your legislation contain special provisions for farmers or general provisions, which also farmers can invoke?

The relevant legal regulation for farmers determines only the framework of the production and does not contain any particular rules of competition since the scope of the **Tptv**. also applies to the agriculture. Particular rules of competition arrived at the Hungarian legal system as a result of the re-regulation of the Act on the agricultural market rules (**Act XVI of 2003).**

b) If yes, to which business and products are these special provisions applied?

Special rules apply to the viniculture, the activities of forestry, hunting and fishing. Though a few of these statutory instruments have competition law effects, they still not qualify as laws of competition.

c) Are there exceptions for horizontal restrains of competition in agro-sector?

In the Hungarian national law doesn't contain special competition rules in agro-sector. The any exceptions we are mentioned in the A/I.5 point.

d) Does your legislation feature special provisions for co-operative producer organisations?

In respect to producers' organisations (associations) particular rules are laid down in the **Act CXLI of 2000** on the new co-operatives. However, these rules are of corporate law nature

rather than of competition law. In case of the dissolution without succession of co-operatives the association of co-operatives inherits the assets which can not be distributed, provided that there is no other co-operative whose objectives are corresponding to the educational, cultural and social objectives specified by the former co-operative.

e) Are there any special provisions for co-operatives in the forest sector?

Since 1994 one special association has operated in the Hungarian forestry sector, the so-called "forest management association". This organisation integrates forest farmers whose land does not reach the 1500 square meter limit, therefore it is not suitable for an individual forest management. Should two-third of the proprietors initiate the foundation of such organisation on a given territory, the rest one-third automatically becomes the membership.

f) Are there exceptions for vertical restraints of competition in the agro-sector?

We are rather acquainted with horizontal limits of competition.

g) Does your legislation accept organisation for special branches of trade (Organisations of producing, processing and marketing business of same agricultural product) and if yes, which practical impact has such a declaration in your country?

There are such organisations, but their activity does not fall directly within the scope of the restriction of competition. Namely in the gardening sector and in other producing sectors the competent minister may recognise an organisation as a Marketing Organisation of Producers (Termelői Értékesítő Szervezet) or a Producers' Group irrespective of their legal form. In the first year of their activity this is only a provisional recognition, but in case the income of such organisations reaches 150 million forints they are entitled to the permanent qualification. Up to 150 million forints 20 % of their actually confirmed income and additional 6% of their revenue above 150 million they receive as a state subsidy, which must be used for purchasing instruments needed for the cultivation.

h) Does your legislation know special provisions concerning leasing agreements for contacts in the area of plant breeding and seed?

We are not familiar with it.

i) Does your legislation feature the possibility of declaring horizontal or vertical restraints of competition by organisations and associations as generally binding? If yes, which practical impact has such a declaration your country?

Does not, since the principle of prohibition applies to cartels in Hungary. (See 1.12.)

j) Are there any restrictions on exemptions for the agro-sector by supervisory body combating the abuse of exemptions?

Does not.

1.2.2) Protection of farmers by Competition law

a) Does your legislation know special provisions protecting farmers from discriminatory or obstructive practices?

Concerning this question there are two provisions of the above mentioned Act XVI of 2003 on the agricultural market rules. One of them prohibits retail chains disposing of a dominant customer power to sale their products under purchase price. The other provision requires to perform payments to producers at least in 30 days after the receipt of goods. In the interest of the discipline of payment longer terms are prohibited.

b) If no, to what extent are farmers protected against discriminatory measures (e.g. concerning distribution of sugar quotas to producer companies) or obstructive practices (e.g. sale of agricultural products below purchase price) by the generally applicable provisions?

The main problem in Hungary lies in the situation that there has not been developed the practice nor the legal instruments according to which farmers shall to be provided with economical protection. Our Act on the agricultural market rules, which promises an EU-conform regulation, entered into force in 2003. According to this act the regulation of the product scales still remains in the hand of the Ministry of Agriculture and Rural Development and persons taking part in the production only have the right of the expression of opinion during the determination of their own market. It was the Office of Economic Competition itself who protested sharply the provisions of the agricultural market rules regulating the selling under prefixed purchase price.

In his view legal actions against the abuse of constumer's power will result in an unnecessary profiteering and is not an effective instrument for breaking down the dominant position of retailers' chains.

In Hungary the sugar market did not fall within the scope of the directly regulated agricultural market which controls the strategical products, therefore aquisition at a guaranteed price and quota were not be enforced. Only on the milk market exists a quota in the Western European sense, but there has not been any corrupt practice during its distribution. Examples rather can be mentioned, in connection with such practices of aquisition companies having a dominant consumer's power, e.g. no performance for the delivered goods (Civil proceedings of MIZO Pécs Rt in 2001).

2. National Law and EC law

2.1) Which conflicts arose until now between EC law and your national legislation's because of supremacy of Community Law (proceedings before the European Commission or the European Court Justice) ?

In respect to the agrarian competition law I have not met a case where proceedings were brought against a resolution of the court or of the Office of Economic Competition.

2.2) Has your national legislation been modified due to EC Law or will modifications become necessary in the future?

In this regard an essential amendment is justified. The judicial harmonisation has now reached a certain level at which we are able to apply the relevant means of market of the Common Agricultural Policy. In this respect the **Act XVI of 2003 on the agricultural market rules** is regarded as only a provisional one, because after 2004 the provisions of the common market organisations will be directly effective. In relation to the competition law Hungary does not apply the clause included in the Treaty of Rome, which takes the competition rules of the agricultural sector out of the scope of the Common Trade Policy and the European Competition Law. It is not sure whether this article needs to be amended seeing that there has been an effort to approach the market rules of the Common Agricultural Policy to the competition law since 2000. As an exception to the competition rules the regulation concerning this area might remain, but there is a little chance for the harmonisation of this issue in Hungary.

3. Assessment of the effective Competition Law concerning agriculture

3.1) Are the operational possibilities under Competition Law of agricultural companies sufficient in order to establish agricultural co-operation and to realise vertical integration in to agriculture respectively under special provisions for the agriculture?

1990 onwards the Hungarian agricultural policy has pushed into the background the historical interdependence between the chains of the big farms and the small farms constructed on big farms. The breaking up of this chain has led to a drastic decline of the Hungarian agricultural output. The buyer's market has changed and other qualities are required. The property relations has moved towards the small enterprise, but most of the new owners' sphere was not interested in the agricultural production. Therefore a dominant part of the production was left to the former co-operatives which have reorganised as trade associations for the sake of a better profit. Owing to the political rotation the agriculture has lost its economical power, and at the same time its policy-making importance, too. Thus the agricultural policies realised in the last third of the political cycle had focused on problems of less economical importance (e.g.: a arable land purchase, National Land Reserve and the problem of the so-called 'pocket contracts') As a result of the approximation of laws preferred agricultural associations have been set up which may assist the integration. The regulation of subvention referring to the above mentioned associations changes year by year and the granting is bound to a bureaucratic state recognition. Preferential loans, tax law and other legal instruments are not associated with it.

3.2) Is agriculture adequately protected by Competition Law or should these provisions be enlarged (e.g. sale below purchase price)?

Before widening the particular rules of competition in Hungary dividing lines should be clarified between agricultural and trade law activities. One should see the European expectation which requires the harmonisation of this area. Pursuant to commercial lawyers the disintegration of the uniform competition law would make this regulation incomprehensive. Some of them, however, would deem it conceivable to remove the agricultural activities from the scope of the Act of competition in the framework of the block exemption.