

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – Hungary

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Abstract

This report outlines key developments in Hungarian competition law and policy in 2024, including legislative changes, enforcement actions, and market inquiries. Highlights include exemptions for joint venture agreements, stricter *de minimis* rules, increased fines, and clarified statutes of limitations.

Major enforcement cases targeted unfair commercial practices and procurement cartels, with significant fines imposed on companies like Wizz Air and Booking.com. The Hungarian Competition Authority (HCA) also launched inquiries into single-bid procurements and AI markets, emphasizing SME support, consumer protection, and Hungarian-language AI development. These efforts underline a commitment to fair competition and responsive regulation in evolving markets.

Legislative Changes

New Exemption from the Prohibition of Anticompetitive Agreements

As of May 10, 2024, under Hungarian competition law, agreements between parent company(ies) and their joint venture (JV) will not be deemed anticompetitive if they pertain to the behavior of the JV in the markets in which it operates. This means that agreements necessary for the operation of the joint venture—such as non-compete clauses, exclusive purchasing agreements, or arrangements for information sharing—are generally not subject to the prohibition on anticompetitive practices.

Previously, such agreements were only exempt if they were part of a merger clearance process. Under the recent amendment, these restrictions now apply independently of a merger notification, provided they exclusively concern the activities of the joint venture.

This legislative change is based on the European Commission’s Horizontal Guidelines (2023/C 259/01), specifically paragraph 12, which states that the Commission “generally does not apply” Article 101 of the TFEU to agreements between parent companies and their joint ventures if these agreements are limited to the markets where the JV operates. For the sake of legal certainty, the

Hungarian legislator omitted the term “generally” and extended the exemption to all such agreements relating to the JV’s affected markets.

It is important to note that jointly controlled enterprises and their parent companies remain distinct undertakings. As a result, changes of control involving such entities must still be notified to the HCA if the relevant thresholds are met.

Stricter Application of the De Minimis Rule

The legislative amendment clarifies that the de minimis rule, which exempts minor restrictions on competition, cannot be applied to anti-competitive association decisions, such as pricing agreements by trade associations or unions, even if the combined market share of the involved companies does not exceed 10%.

This change stems from a prior Hungarian Supreme Court decision, which had allowed such association decisions to be exempted under the *de minimis* rule. This interpretation contradicted the European Commission’s *de minimis* notice, which states that association decisions should be treated the same as other anti-competitive agreements.

Clarification of Statute of Limitations for Damages Claims

The statute of limitations for initiating claims for damages now begins on the date when the full, non-confidential text of the competition authority’s infringement decision is published. From this point, the five-year limitation period is calculated.

This amendment aligns with the CJEU’s ruling in the Volvo and DAF case (C-267/20), which held that limitation rules should reflect the specificities of competition law, including the informational asymmetry between injured parties and offenders. The new rule ensures that claimants have sufficient time to prepare their claims, particularly given the complexity and delays often associated with publishing competition authority decisions.

Increase in Maximum Fines

The maximum fines that can be imposed by the HCA have been significantly increased, reflecting a tougher stance on competition law violations.

Previously, the Competition Act limited fines to 10% of the net turnover of the infringing company or group. An amendment effective from September 1, 2023, raised this ceiling to 13%, with the legislator citing the need to enhance the deterrent effect of penalties.

Subsequently, Government Decree No. 184/2024 (VII. 8.) further increased the maximum fine to 15% of group-level net turnover for infringements committed after August 1, 2024. This regulation applies during the state of emergency declared due to the war in Ukraine, currently set to last until May 18, 2025, but is likely to remain in effect until the conflict’s resolution.

A Special Powers Draft Bill introduced. And Then Withdrawn?

In April 2024, a bill proposing the expansion of the HCA's powers and a comprehensive amendment of the Competition Act was submitted to the Hungarian Parliament. A central feature of the proposal was the introduction of a category for "undertakings of paramount significance," modeled on Section 19a of the German Competition Act (GWB). This designation would enable the HCA to identify enterprises with significant cross-market influence that could critically impact market competition.

The proposed framework aimed to allow the HCA to impose preventative obligations on such undertakings to preemptively mitigate risks of competition distortions or supply chain disruptions. The primary objective was to empower the HCA to act proactively in cases where an enterprise's dominant position could potentially harm the market. This could be particularly relevant in situations where the enterprise's operations are jeopardized by external factors, such as geopolitical challenges or internal financial difficulties.

Under the proposal, designated enterprises would be subject to oversight of their business decisions by the HCA to ensure they do not harm competition. At the same time, any imposed obligations would need to adhere to the principles of the rule of law. Affected enterprises would have the right to challenge the HCA's designation and decisions through administrative litigation, providing an additional layer of legal protection.

A number of stakeholders raised concerns with the proposal and pointed out issues such as:

- **Lack of Clear Criteria:** The absence of precise criteria for designation could lead to subjective interpretations.
- **Potential for Overreach:** The regulation might allow the HCA to excessively interfere in market autonomy if its powers are broadly interpreted.
- **Administrative Burdens:** The designation and related obligations could impose disproportionate administrative and operational burdens on the affected enterprises.

In light of these concerns, the government and the HCA decided to postpone the adoption of the amendments and initiate broader professional consultations. This delay reflects a commitment to addressing stakeholder concerns and ensuring that the regulatory framework aligns with both market needs and legal safeguards.

Enforcement Trends

In recent years, enforcement trends in Hungary have aligned with global patterns, shifting focus from traditional competition law infringements to prioritizing behaviour related to unfair commercial practices. A significant proportion of the HCA's decisions are now centered on combating unfair commercial practices. While cases related to bid-rigging and cartel practices in public procurement do arise, they represent a minority of the authority's overall caseload.

Antitrust cases

Road Salter Cartel

In early 2024, the HCA concluded one of its most significant cases against procurement cartels, imposing nearly HUF 400 million (approximately EUR 970,000) in fines on six companies. Between 2011 and 2014, these firms colluded on pricing, divided tenders, and manipulated the selection of winners in public procurements for road salt. The violations involved public funds, with active participation from several senior executives.

The HCA considered the long-term and systemic nature of the violations as aggravating factors but acknowledged mitigating circumstances, such as four companies admitting to the violations and committing to compliance programs. The investigation was complicated by concurrent criminal proceedings, which ultimately confirmed the infringements. The fines ranged from HUF 8 million (approximately EUR 19,000) to HUF 139 million (approximately EUR 335,000). The case underscores the severe sanctioning of procurement cartels and the HCA's commitment to eliminating restrictions on public funds.

Truck Cartel

The HCA conducted a competition supervision procedure regarding public procurements for Iveco vehicles, investigating anticompetitive conduct by multiple companies. The firms engaged in illegal bid coordination, price-fixing, and customer allocation agreements, distorting fair competition in the procurement process and undermining the efficient use of public funds.

Several companies participated in the HCA's settlement process, admitting to the violations, waiving their right to appeal, and committing to compliance programs to prevent future infringements. This cooperation expedited the resolution of the case. Nonetheless, the HCA imposed significant fines to reflect the seriousness of the violations and the importance of fair competition in public procurement. The basic amount of the fine was 11.5% of the relevant turnover for the primary participants, 11% for certain others, and 10% for the remaining undertakings?.

Railway Procurement Cartel

The HCA concluded an investigation into a major procurement cartel related to a multi-billion-forint railway infrastructure project. The inquiry revealed that several companies engaged in collusive practices, including price coordination and bid manipulation, to influence the outcome of a public tender. The cartel members agreed in advance to coordinate their bids in a way that ensured one of them would secure the contract.

The companies involved exchanged detailed information on pricing and aligned their tender documents before submission. In fact, both companies' bids were prepared by the same procurement consultancy, which operated under the direct control of a single group. Additionally, budget calculations for both bidders were prepared by the same employee, further ensuring that the bids were aligned to achieve the agreed-upon outcome. The close cooperation continued even after

bid submission, with the companies coordinating their procedural steps and supporting each other's bids throughout the process.

The HCA's Competition Council imposed total fines of **HUF 1.2 billion** (approximately EUR 2,880,000) due to the large value of the public contract and the substantial turnover of the companies involved. Furthermore, the companies attempted to obstruct the HCA's investigation by requesting multiple delays in the proceedings and failing to submit their observations by the agreed deadlines. They also requested a postponement of the hearing, which was initially granted, but they then submitted another last-minute request to delay the hearing the day before it was scheduled. The HCA found these tactics to be deliberate efforts to delay the investigation and imposed an additional HUF 25 million (approximately EUR 60,000) procedural fine.

In contrast, one of the implicated companies cooperated with the investigation, submitting a leniency application, participating in a settlement procedure, and committing to a compliance program. This cooperation resulted in a significant reduction of its fine to HUF 30 million (approximately EUR 70,000).

The case highlights the serious consequences of procurement cartels, which are among the most severe antitrust violations due to their impact on public funds. The HCA remains committed to eliminating such practices, as they undermine fair competition and inflate public spending by artificially raising prices through illegal agreements between bidders

Merger Control

GLS Group and iLogistic Merger Approval

The HCA approved the merger between the GLS Group and iLogistic subject to GLS undertaking behavioural commitments.

The primary issue revolved around concerns related to the flow of information. The merger could have enabled GLS Hungary, a leading parcel delivery company, to access iLogistic's customer database and sensitive business information. This access could have disadvantaged competitors in the market while granting GLS Hungary a significant competitive edge. To address this, the HCA made binding commitments offered by GLS that restricted GLS Hungary's access to iLogistic's business data related to parcel delivery for three years and required internal procedures to prevent information flow. These measures aimed to maintain market balance and safeguard the business secrets of iLogistic's customers.

The HCA also emphasized the rapid growth of the fulfillment sector, where iLogistic had become a dominant player. To avoid market foreclosure and barriers to entry for smaller players, the HCA focused on ensuring iLogistic's autonomy, particularly regarding data management, and preventing structural changes that could close the market.

Unfair Commercial Practices

Wizz Air

On August 3, 2024, the HCA concluded an investigation into Wizz Air Hungary Zrt., imposing a fine of over HUF 307 million (approximately EUR 745,000). The Competition Council found that the airline engaged in unfair commercial practices by failing to adequately inform consumers about the possibility of purchasing certain “additional services” individually, thereby steering them towards more expensive service packages. Additionally, Wizz Air provided insufficient communication regarding the essential features of its automatic check-in service, breaching professional diligence requirements. Despite Wizz Air offering commitments, such as IT improvements and consumer compensation, the HCA rejected these proposals, doubting their feasibility and effectiveness in achieving the procedure’s objectives.

The HCA has ongoing investigations into Wizz Air. One, launched on August 6, 2024, examines the airline’s reservation system, which allegedly violates professional diligence requirements. The system reportedly displays inconsistent pricing across devices, such as mobile phones and desktop computers, creating unpredictability for consumers. Another investigation, initiated on January 31, 2024, scrutinizes whether Wizz Air withheld essential information about free online check-in. It is alleged that passengers with return tickets could not complete free check-in via certain mobile platforms, incurring a €40 airport check-in fee. Both investigations aim to clarify the suspected violations and were launched with an initial three-month deadline, extendable twice by two months each.

Booking.com

The HCA launched a competition supervision procedure against Booking.com B.V. in 2018 for suspected unfair commercial practices. The investigation revealed that the company emphasized “free cancellation” in its advertisements, even though this option was often time-limited and came at higher prices. Booking.com also applied urgency tactics, such as “Similar rooms not available” or “Few rooms left,” creating psychological pressure on consumers. Furthermore, the company failed to adequately present SZÉP card payment (*most popular fringe benefit in Hungary*) options. As a result, the HCA imposed a HUF 2.5 billion (approximately EUR 6 million) fine in April 2020, one of the highest in its history. The decision required Booking.com to cease the infringing practices and provide compliance evidence, later upheld by the courts.

On July 15, 2024, the HCA announced the conclusion of a follow-up investigation, finding that Booking.com had not fully complied with the 2020 decision. Although the company reduced its use of urgency messages, it continued using some pressure-inducing tactics until February 26, 2024, and maintained the “free cancellation” slogan while removing cheaper non-refundable options for Hungarian consumers until April 26, 2024. Following these findings, the HCA imposed a record HUF 382.5 million (approximately EUR 925,000) fine during the follow-up procedure, considering Booking.com’s waiver of its right to appeal, despite its denial of wrongdoing.

Eventim

In May 2023, the HCA initiated an investigation into the Eventim ticketing platform for allegedly influencing consumers through hidden costs. The HCA found that Eventim employed “drip pricing,” revealing fees such as handling, delivery, and collection charges only at the later stages of the purchasing process. This practice, classified as a “dark pattern,” psychologically pressured

consumers to accept higher final prices after investing time in the process. Eventim admitted to the infringement, waived its right to appeal, and cooperated fully with the HCA. It committed to compensating affected consumers by refunding HUF 700 per purchase for tickets bought between January 1, 2022, and February 2, 2023, amounting to over HUF 70 million (approximately EUR 175,000) for more than 80,000 consumers. Additionally, Eventim pledged to restructure its pricing system to eliminate hidden fees and provide transparent pricing during the purchasing process. In light of the company's cooperation and compensation measures, the HCA refrained from imposing a fine, provided the commitments are fully implemented. Should Eventim fail to fulfill these obligations, the HCA will impose the remaining amount as a fine.

Viber

On May 17, 2024, the HCA announced a comprehensive package of measures for Viber Media to improve consumer awareness and decision-making in line with the latest data protection standards. The investigation targeted Viber, a messaging service with a significant Hungarian user base, for failing to provide complete Hungarian-language information on its service's free nature, safety, and data handling practices. The HCA concluded the case without finding a violation, as the company voluntarily committed to improvements. These included creating and regularly updating Hungarian-language data protection notices and providing pre-registration data-handling information. Additionally, Viber introduced the "Viber Plus" subscription in Hungary, offering an ad-free experience and ensuring that subscribers' data would not be used for advertisements. The free version of Viber also underwent improvements, increasing consumer control over data use and enhancing transparency on privacy and security.

Viber also committed to developing a Hungarian-language "Privacy Bot" to educate users about online privacy and security through concise, visual messages and relevant links. The bot will be operational for at least two years, helping users make informed decisions about their data.

Lottoland

On March 20, 2024, the HCA fined Deutsche Lotto- und Sportwetten Limited, the operator of the "Lottoland" platform, HUF 345 million (approximately EUR 835,000) for intentionally misleading Hungarian consumers. The company copied or slightly modified games offered by Hungary's national lottery operator, Szerencsejáték Zrt., and even used identical names for some games, such as EUROJACKPOT. Lottoland's advertisements created the impression that Szerencsejáték Zrt. provided the services, while the company either did not disclose or ambiguously presented its identity and contact information. This deprived consumers of the ability to enforce their rights or identify the actual service provider.

The HCA considered several aggravating factors in determining the fine, including the long duration and intensity of the infringement, its impact on vulnerable groups such as gambling addicts, and the simultaneous use of multiple deceptive practices. The fine also reflected the company's waiver of its right to appeal the decision.

Sectoral Inquiries

In the context of sector-specific investigations, the HCA is aligning itself with both international and domestic trends. Given that both of the antitrust decisions in 2024 were related to public procurement cases, the HCA is placing particular emphasis on competition law infringements associated with public procurement processes. Under Hungarian legislation, criminal liability can only arise if the agreement in restraint of competition occurs within the framework of public procurement and concession procedures. Reflecting this legal framework, the HCA has initially targeted certain segments of single-bid public procurements, bringing them under closer scrutiny. However, it is anticipated that more of these accelerated sectoral investigations will be conducted in the future.

Single-Bid Public Procurements

In September 2024, the HCA launched an accelerated sectoral inquiry into the causes of single-bid public procurements, focusing initially on the market for medical imaging diagnostic equipment. The inquiry aims to uncover why single-bid procedures are disproportionately high in this sector and identify factors restricting competition. According to the HCA, the lack of competition undermines the efficient use of public funds and harms public interest.

The HCA conducted on-site inspections under judicial authorization, collecting substantial data, particularly concerning procurements for MRI, CT, ultrasound, and radiology equipment. Given their high acquisition costs and critical role in healthcare, ensuring robust competition is essential to maintaining affordable prices and high-quality healthcare services.

Artificial Intelligence

In its market analysis on artificial intelligence (AI), the HCA identified four key findings and recommendations to promote the development of the domestic AI market and optimize its socio-economic impact:

1. **Support for Small and Medium-Sized Enterprises (SMEs):** The HCA highlighted the need to enhance SMEs' access to AI technologies, which are crucial for competitiveness. This includes improving SMEs' technological knowledge, ensuring adequate funding, and enhancing access to technological infrastructure, such as supercomputing capacities.
2. **Improving Consumer Information:** The HCA recommended that businesses using AI provide clear and comprehensible information to consumers about the technology. This includes essential features, risks, and the necessary controls that consumers should be aware of when using AI-based systems.
3. **National Strategic Development:** The HCA emphasized the importance of advancing specialized AI-related education, improving research coordination, and developing a national AI strategy. Additionally, expanding IT infrastructure, particularly supercomputing capacities, is crucial for technological progress.
4. **Development of Hungarian Language Models:** Due to the unique characteristics of the Hungarian language and limitations in international AI technologies, the HCA stressed the need to support Hungarian language AI models. This would ensure equal opportunities for Hungarian

users, expand product offerings, and enhance consumer welfare in the long term.

The HCA's analysis comprehensively examined the domestic and international AI market, addressing challenges, opportunities, and competitive dynamics. The study aims to support regulatory development and help market participants adopt AI technologies more effectively.

Legislative Changes in Early 2025

The HCA is set to increase its merger notification fees with effect from **20 January 2025**. The notification fee will rise to **HUF 1.3 million**, compared to the previous **HUF 1 million**, while the **first-phase investigation** fee will increase to **HUF 5 million**, compared to the previous **HUF 4 million**. For a **full investigation**, the fee will be **HUF 21 million**, compared to the previous **HUF 19 million**.

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