B2B Relations: Voluntary Initiatives vs. Regulation

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Content

• Unbalanced relation of retailer chains and food suppliers in Hungary – experiences of voluntary and regulatory solutions.

• The EU initiative – High Level Forum for a Better Functioning Food Supply Chain – expected outcome of the B2B platform activities.
Retail Chains in Hungary

• ‘Modern chains’ (hypermarkets, cash and carry, supermarkets, discount chains) make up about two thirds of the share of the FMCG retail market; hypermarkets alone have about a quarter share (GfK 2008)
• Due to the extreme competition among chains there is a constraint to reduce prices/costs (price driven market)
• The results are unfair business practices deteriorating quality of goods and services
• Need of government actions
Government Actions

- New trade act (2005)
- Unsuccessful initiatives of Ministry of Agriculture
  - Food Supply Chain Code (2009)
- Act XCV. of 2009 on prohibition of unfair commercial practices by distributors over against suppliers of agricultural and food products
Act XCV. of 2009 - Unfair Business Practices

- Conditions ensuring unilateral advantages for the retailer;
- Mandatory redemption, except for default fulfilment; to pass costs serving retailer’s interests;
- Listing fees;
- Charges regarding services that were either not provided or not required by the supplier;
- Clause regarding supplier’s contribution higher then the discount given to the consumer by the retailer;
- Charging logistic costs between the retailer’s own premises;
- To devolve fines;
- Payment over 30 days;
- Exclusion of interests or penalty in case of late payment;
- Clause on exclusive selling rights (excluding retail brands);
- Unilateral modification of contracts;
- Sale below the purchasing price or the production costs in case of own production;
- Etc.
Act XCV. of 2009 – Enforcement

• Authority: National Food Chain Safety Office (“NÉbiH”).
• Procedures/investigations of the Authority are based on
  • claims of suppliers (anonymity!)
  • reports of suppliers’ associations
  • ‘ex officio’ initiations of NÉbiH
• Consequences of breach of provisions
  • product chain fine based on the extent of breaches and the net revenue of the distributor
  • taking written commitment of harmonising attitude with the provisions
Act XCV. of 2009 – Results

• Some positive changes in the business practice of retail chains that indicates that the provisions of the Act are effective and can be observed.

• The Ministry regularly surveys the results, and takes the necessary amendments, e.g.:
  • extended definition of distributor of food and agricultural products
  • prohibition of discriminative pricing (margin)
High Level Forum

• High Level Group on the Competitiveness of the agro-Food Industry (2008) – „Recommendations”

• High Level Forum for a Better Functioning Food Supply Chain (2010) – ’...shall assist the Commission with the development of industrial policy in the agro-food sector.’

• Structure:
  • High Level Forum
  • Sherpa Group
  • Expert Platforms (WG-s)
    • Expert Platform on Competitiveness
    • Expert Platform on B2B Contractual practices
    • Expert Platform on Food Prices
B2B Platform

• Objectives:
  • to agree on a list of practices which can be deemed unfair;
  • to identify relevant best practices in commercial relations;
  • to propose actions when necessary

• Stakeholders:
  • Retailers and their organizations
  • Agricultural producers and organizations
  • Food processing organizations
  • Representatives of certain MS-s

• Disputes:
  • between trading organizations and suppliers
  • on voluntary vs. regulatory solutions
B2B Platform – Outcome

• Principles of good practices
• Voluntary framework to offer complement to (other) EU and national measures
  • Web based system
  • Voluntary registration of stakeholders
• Solving disputes by
  • internal disputes
  • mediation
  • arbitration
• Governance group composed by the interest groups
Voluntary Framework – HU opinion

• Anonimity is not ensured
• Enforcement is not ensured (lack of hard sanctions)
• Hungarian SME-s participation is unlikely
B2B Platform – HU position

• To those States that are more affected with this problem it would be important to have a common European solution that is acceptable for all Member States.

• Hungary would welcome the development of a detailed community guidance that would lay out the framework of considerations of fair business practices for retailers.

• Each Member State – in accordance with this framework – could establish within their competence the actions they deem necessary according to their peculiarities.
Thank you for your kind attention!