

**COMPETITION LAW REGULATION OF
HUNGAROPHARMA GYÓGYSZERKERESKEDELMI
ZÁRTKÖRŰEN MŰKÖDŐ RÉSZVÉNYTÁRSASÁG**

EXTRACT FOR EXTERNAL USE

Effective as of 15 January 2017

I. Preamble

1. The aim of this Regulation is to draw the attention of the managers, employees, agents and other contributors of Hungaropharma Gyógyszerkereskedelmi Zártkörűen Működő Részvénytársaság (hereinafter referred to as: Hungaropharma Zrt., company, undertaking) to the importance of competition rules as well as to provide guidance as to the direction of compliance with those rules and to serve as a starting point for encouraging the managers and staff members in the course of their daily decision-making and daily works.
2. The detailed version of the Regulation is for internal use only in order to achieve the objectives set out in paragraph 1.
3. This version is for external use and is publicly available in an easily accessible form on the website of Hungaropharma Zrt. to the trading parties and third parties.

II. SCOPE OF THE REGULATION

1. All managers, employees and other contributors employed or commissioned by Hungaropharma Zrt. are obliged to familiarise and comply with this Regulation.
2. This Regulation must be applied properly, following the adoption of a proper legal measure by the companies that are majority-owned by Hungaropharma Zrt.
3. This Regulation includes the competition facts covered by the Hungarian and EU competition law, setting out general and, for certain cases, specific provisions. The Regulation highlights the procedural rights of the competition authority and the expected conducts pertaining thereto.
4. This Regulation shall apply as of the first working day after its publication. The rules are subject to regular revision from time to time but at least once in two (2) years.

III. GENERAL ACTIONS TO BE DONE

1. The managers, staff members, agents and other contributors of Hungaropharma Zrt. are obliged to act as follows:
 - a) To know the competition facts and their main characteristics in order to recognise them in the shortest possible time.
 - b) To know the risky areas and behaviours that can be identified by the application of the rules and the recognisably characteristics of the infringement of competition law.
 - c) To pay continuous attention to the possibility of the occurrence of risks concerning competition law, including the possible risks which can be identified in connection with starting a new business.
 - d) To be aware and to recognise the situations bearing the risk of an infringement.

- e) To immediately report the occurring and/or identified competition law infringement to the superior or contact person.
- f) To suspect the respective behaviour until receiving a response.
- g) To adjust the future behaviours to the terms of the response.
- h) To subsequently analyse and evaluate the situations, giving priority to the business actions.

IV. DEFINITIONS

- a) Competition Act: Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, which contains Hungarian competition law rules, including material and procedures rules as well (abbreviation of the Act: "Tpvt.")
- b) Hungarian legal regulations: in addition to the Competition Act, there are further acts which set forth special provisions of competition law concerning certain markets, and government decrees which contain the set of conditions of block exemption which, if satisfied, provides exemption from the prohibition to certain agreements; and the group covering all these are defined by this definition.
- c) Legal practice: the decisions adopted by the competition authority and by the courts in certain cases of competition supervision which, by containing material findings with regard to competition law provide assistance to the interpretation of the law and to the modification of legal practices.
- d) EU Regulations: Article 101 and Article 102 of the Treaty on the Functioning of the European Union (TFEU), the former specifying the rules on the prohibition of agreements restricting competition while the latter specifying the basic rules on the prohibition of abuse of a dominant position.
- e) EU secondary legislation: in addition to the Articles of TFEU, there are further secondary legislation adopted by EU bodies that contain material and procedural rules (one of the most important regulations is Regulation (EC) No. 1/2003 on the on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.¹
- f) GVH: Hungarian Competition Authority, the authority established to enforce competition rules, including the rules relating to consumer protection in competition law; the Hungarian competition authority.
- g) Case handler: an employee of the GVH who contributes in revealing the fact of the case in the first phase of the competition supervision proceeding and who carries out interviews and participate in the scene inspection, etc.
- h) Competition Council: the decision-making body of the GVH.
- i) Competition supervision proceeding: a special public administration proceeding pursued by the competition authority; during the first phase the facts of the case are revealed and evidencing is taken place (inspection phase), and in the second phase (decision-making)

¹ The competition law "facts" were specified under Article 81 and 82 in the Treaty of Rome. The TFEU entailed renumbering: Articles 101 and 102 are identical of substance with mentioned articles of the Treaty of Rome

the decision against the undertakings/other market participants subjected to the proceeding is given in a public administration decision.

- j) DG Competition of the Commission of the European Communities: the EU authority established to enforce EU competition legislation (the equivalent of the GVH in the EU, EU competition authority).
- k) Cartel: a narrow group of agreement restricting competition, consisting of horizontal agreements concluded by and between competitor undertakings.
- l) Mergers: concentration of corporation and of parts of corporations, corporation transaction
- m) Onsite inspection without prior notice or dawn (unexpected) raid: a procedural right of the competition authority to be exercised by the authority in the course of an investigation for a suspected behaviour that violates the prohibition of agreements restricting competition or to be exercised upon a notification of concentration. In this case onsite inspection without a prior notice is the first procedural measure in the first phase of the competition supervision proceeding. In the course thereof, the case handler of the GVH as the representative of the authority appearing at the undertaking is entitled to inspect files, to make copies, including electronic records, and is entitled to enter and search the premises and to hear the witnesses and to take their statements.
- n) GVH decision/decisions of the Competition Council: public administration decisions containing the decision adopted by the GVH in the respective proceeding. The decisions are available to the public and can be found, in addition to many other documents and information materials, on the website of GVH: www.gvh.hu. Legal remedy against the GVH decisions is available.

V. COMPETITION LAW FACTS

The basic rules of competition law are specified in the Hungarian Competition Act and the TFEU which must be complied with by all participants.

1) Agreements

1.1. The starting point of the regulation is that agreements between competitors aiming to eliminate all risks of competition or to reduce such risks or to have such effects are prohibited on the ground of the presumption that the market participants shall not know of the strategic consideration and decisions of other participants and shall adopt their own strategies and decisions alone, independently of others.

1.2. This behaviour can be realised by two or more undertakings that are independent of each other, therefore agreements made between the members of corporate groups which can be deemed as a single economic entity are not considered to restrict competition (thus a parent company and its subsidiary, a principal and its agent do not fall under this prohibition).

1.3. The managers, employees, agents and contributors of Hungaropharma Zrt. are obliged to avoid all risky situations threatening with the possibility of an agreement restricting competition.

A) The most representative cases of the violation of the prohibition of restricting competition

a) Price maintenance

How to avoid falling under suspicion.

1. The decision on prices and on establishing prices shall be made alone, independently of others.
2. The process for establishing prices shall be an internal and independent business decision in which the information and data publicly available to Hungaropharma Zrt. may be taken into account, inter alia, the data published by the competitors upon their independent decisions. However, it is preferable not to search or consult such information and data. These pieces of information must not be obtained either directly from the respective competitors via requests to them or indirectly by observing the decision of the competitors.
3. It is possible that certain circumstances have the same effect on the pricing strategies of market participants, however, such strategies must be independent of the others. It is not possible to harmonise these decisions or to consult in this regard.
4. It is forbidden to engage in consultation or to conclude any agreement with the competitors and, accordingly, with their employees concerning the fixing of prices or the mechanism for establishing prices, including price discounts, price changes or the methods used for fixing prices.
5. It is forbidden to take part in negotiations attended by the competitors (including technical works carried out in the framework of technical associations) in which the recommended prices or price elements, strategies for fixing prices (e.g. price discounts or promotions) are discussed.
6. It is forbidden to agree on the exchange of information related to prices or on recommended prices with competitors or technical associations.
7. It is forbidden to notify the competitors in advance of the price changes.

b) Allocation of markets

How to avoid falling under suspicion.

1. Possible situations that may result in the allocation of markets must be identified and, on the one hand, future negotiations must be suspended, and on the other hand, the conclusion of any agreement that might result in the allocation of markets must be avoided.
2. In every case where there could be a risk that such an agreement is under preparation, a preliminary consultation in accordance with the internal rules of procedure must be carried out in order to ascertain of the compliance of the agreement to be concluded with competition law provisions since agreements aiming to allocate the market in any way (product scope, period or geographical area) or to exclude a certain group of costumers from the provision of certain products or services are invalid. Even if no

competition supervision proceeding sanction is applied, the respective contract provision in breach of the law is null and void pursuant to civil law rules.

c) Collusion between competitors in connection with tenders/public procurement proceedings

How to avoid falling under suspicion.

1. The decisions on tender must be made irrespective of the competitors. The bid shall be compiled and prepared by Hungaropharma Zrt. itself or by its independent agent/expert.
2. Should Hungaropharma Zrt. wish to participate as part of a consortium in a tender, the decision thereon must be subject to careful consideration to establish whether such decision is economically justifiable. If so, cooperation with others in the consortium and the exchange of information must be reduced to a minimum and shall apply to a single procedure, furthermore, a preliminary consultation shall in every case be carried out to establish whether the set up of the consortium is considered to restrict competition.
3. It is forbidden to inform in advance the competitors or the trade association of the decision of Hungaropharma Zrt. to submit its tender or not. In addition it is also forbidden to share any information about the performance or non-performance of the tender either via the expert of the contracting authority or via the corporate or political decision-makers concerned.
4. It is forbidden to discuss the intended content of the application to be submitted with the competitors, including those otherwise engaged in a contractual relationship with Hungaropharma Zrt.
5. It is forbidden to conclude any agreements or to act in concert with others if it may result in the preliminary allocation of tenders between those involved. The preliminary allocation of tenders means for example that it is decided which market participant is to submit a valid/invalid application to the tender or is to submit the most favourable/or least favourable application or is to contribute to another undertaking in certain tenders.

d) Exchange of information

How to avoid falling under suspicion.

1. When exchanging data or information, special attention must be paid to the nature of the data exchange, to the frequency of the data exchange and to that who and how have access to the data. In case of doubt, a consultation in accordance with the internal rules must be held. However, the fact that the respective information is available from other sources as well does not exclude the unlawfulness of the information exchange per se.
2. In case of questions arising in connection with the exchange of sensitive business information (e.g. marketing information, data on price evolution, information on market

shares, information on investments), a consultation in accordance with the internal rules must be held for reviewing the nature of the information to be shared.

e) Participation on trade associations and organisations

How to avoid falling under suspicion.

1. When participating in trade and/or professional associations, competition law provisions must be taken into account since technical associations provide for a platform for competitors to meet.
2. Depending on the circumstances of the certain case, an agreement concluded by the professional association may be deemed approved by Hungaropharma Zrt. even if the member did not sign it itself, but it neither objected expressively to the conclusion of the agreement. For the clarity of competition legal facts, the negotiations must be recorded in writing in all cases. If a person acting on behalf of Hungaropharma Zrt. objects to the conclusion of the agreement, they shall request that their opposing opinion be recorded in the minutes and then shall leave the negotiation. *Inter alia*, the accuracy of the minutes of the negotiations must always be verified.
3. Should the other participants of the negotiation engage in the discussion of matters other than those subject to the negotiation (e.g. prices, market strategies, etc.), the presiding member shall be requested to interrupt the negotiations and the participants shall be reminded of competition law rules. Should the discussion of the matters above continue, the negotiations shall be left and it shall be recorded in the minutes.
4. Undertakings that have no connection with the professional association shall not be forced to join the association in order to be able to enter the market. The rules on becoming a member shall be subject to objective conditions which, however, may be subject to the fulfilment of certain requirements. Requirements for membership requests are unlawful as long as it makes difficult for certain undertaking to become a member of the association.

The managers, employees, agents and contributors of Hungaropharma Zrt. are obliged to familiarise and comply with the rules above and to refrain from behaviours and acts which infringe these competition law rules and the pertaining internal regulations.

2) Abuse of a dominant position

2.1. In the present competition law regulation system this prohibition means that an undertaking of dominant position must not abuse its dominant position in its market conduct. It follows on the one hand that it is not unlawful for a market participant to be in a dominant position. On the other hand, it shall be emphasised that such undertakings must pay special attention to their market operations. The authorities also pay particular attention to the market operations of these companies.

2.2. The legal regulation reads as follows: “A dominant position shall be deemed to be held on the relevant market by entities who are able to pursue their economic activities to a large extent independently of other market participants without the need to substantively take into account the market reactions of their suppliers, competitors, customers and other trading parties when deciding their market conduct.”

2.3. It is prohibited

“a) to set unfair purchase or selling prices or to stipulate in any other manner unjustified advantages or to force another party to accept disadvantageous conditions in business relations, including the application of standard contractual terms;
 b) to limit production, distribution or technical developments to the prejudice of final trading parties;
 c) to refuse, without justification, to create or maintain business relations appropriate for the type of transaction in question;
 d) to influence the economic decisions of another party in order to gain unjustified advantages;
 e) to withdraw, without justification, goods from circulation or withhold them from trade prior to a price increase or with the purpose of causing a price increase or in any other manner which is likely to produce unjustified advantages or to cause competitive disadvantages;
 f) to make the supply or acceptance of goods subject to the supply or acceptance of other goods, furthermore to make the conclusion of contracts subject to the acceptance of obligations which, by their nature or according to commercial usage, are unrelated to the subject matter of such contracts;
 g) in the case of transactions which are equivalent in terms of their value or character, to discriminate, without justification, against trading parties including in relation to the application of prices, periods of payment, discriminatory selling or purchase terms or methods, thereby placing certain trading parties at a competitive disadvantage;
 h) to set extremely low (predatory) prices which are not based on greater efficiency in comparison with that of competitors and which are likely to drive out competitors from the relevant market or to hinder their market entry;
 i) to hinder, without justification, market entry in any other manner; or
 j) to create, without justification, disadvantageous market conditions for competitors or to influence their economic decisions in order to obtain unjustified advantages.”

How to avoid falling under suspicion.

1. The fact of a dominant position is required to be under continuous monitoring given that the competition law assessment of market participants cannot be permanent due to changes in market mechanisms. The obligation to pay special attention and the increased responsibility falls on the undertakings of dominant position. For ensuring that the market position of Hungaropharma Zrt. is correctly assessed, the role of the company in the market in terms of competition law must constantly be born in mind.
2. Due to its market role in certain market segments, Hungaropharma Zrt. must pay particular attention to its business decisions affecting its market conduct and determining its business decisions. Considering the composition of market participants,

it must be borne in mind that a quasi-dominant position places further responsibility on the respective companies, such as Hungaropharma Zrt.

The managers, employees, agents and contributors of Hungaropharma Zrt. are obliged to familiarise and comply with the rules above and to refrain from behaviours and acts which infringe these competition law rules and in case of employees the pertaining internal regulations. In this context they are obliged to adopt and/or prepare business decision which takes into consideration the competition law classification of and competition law aspects of the market position of Hungaropharma Zrt.

3) Concentration

3.1. According to wording of the legal regulation a concentration of undertakings shall be deemed to arise where two or more previously independent undertakings merge or an undertaking is absorbed by another undertaking or a part of an undertaking becomes part of another undertaking which is independent of the first one; or a sole undertaking acquires, or more than one undertaking jointly acquire direct or indirect control over an undertaking which is independent of it or them, or over more than one other undertaking which are independent of it or them but not of each other; or more than one independent undertaking jointly create an undertaking controlled by them which is able to perform on a lasting basis all the functions of an independent undertaking (joint venture).

3.2. The legal regulation stipulates an obligation of notification for the undertakings/groups of undertakings if certain conditions are met. One of the highlighted conditions for the transactions of undertakings as set out in the competition law is the existence of a double ceiling referring to the size of the company. With this, the regulation introduces the first filter for the transaction to be examined. With regard to these ceilings, the aggregate net turnover of all the groups of undertakings concerned and the undertakings jointly controlled by undertakings that are members of the groups of undertakings concerned and by other undertakings shall exceed the amount of fifteen billion forints in the preceding business year. This condition shall be deemed met in the case of Hungaropharma Zrt., therefore its examination is not required. However, there must be at least two groups of undertakings which in the preceding business year combined with the net turnover of the undertakings jointly controlled by undertakings that are member of the respective group of undertakings and other undertakings shall exceed the amount of one billion forints. Namely, the net turnover of the company concerned indicated in the balance sheet of the preceding year shall exceed the amount of one billion forints and it shall be examined in all cases.

Besides the 'rule of thumb', the legal regulation lays down an obligation of notification for the cases of concertation which, although does not reach the ceilings which give ground for the obligation of notification, but it is not obvious that the concentration may not result in a large reduction in competition. In this case the net turnover of the undertakings of groups of undertakings shall exceed the amount of five billion forints. In practise, in regard to Hungaropharma Zrt. this supplementary rule may result in that for each transaction irrespective of how insignificant it may seem the obligation of notifications shall be carefully considered. In

case of a concentration not having been reported, the GVH may initiate a competition supervision proceeding ex officio if it is not obvious that the effect of concentration does not result in a significant reduction in competition. The Act provides for a period of six months.

The competition authority shall be entitled to perform raids in the course of the competition supervising proceeding.

How to avoid violating the legal regulations, when to apply for an authorisation.

1. Given that it is mandatory to apply for the authorisation of the GVH for such transaction in certain cases, there is a threat of the legal consequences for failure to comply with this obligation. The failure to apply may entail the invalidity of the transaction. In all cases when purchasing an undertaking or a part of undertaking comes up or the formation of a joint venture with an undertaking outside the group of undertakings is involved in planning, the possibility of that the prior decision of the GVH is required for the transaction shall come to mind since, in the lack thereof the transaction cannot be performed.

The managers, employees, agents and contributors of Hungaropharma Zrt. must have in mind that they shall initiate a notification procedure toward GVH. For this purpose, at any time when the possibility of it arises all those concerned shall immediately conciliate in accordance with the internal rules.

4) Notifications

For the purpose of achieving its business goals, Hungaropharma Zrt. provides information for different target groups, in different forms. In addition to the special rules on distribution of pharmaceuticals, there are general provisions related to competition law which shall be kept in mind and be complied with by all market participants.

1. With regard to trading parties the fundamental rule says that 'It shall be prohibited to deceive trading parties in economic competition.' This prohibition may manifest in different ways. According to the legal regulation, the content of information relating to the sale, provision or promotion of goods by an undertaking, or by any person acting in the name or on behalf of an undertaking may qualify as deception of trading parties. Any communication of information may qualify so irrespective of the manner or means of its publication. Thus the business practice, which in respect of material information, contains incorrect facts or presents facts in a manner which in the light of all the circumstances of their presentation is deceptive or is likely to deceive the trading parties to whom it is addressed or to whom it reaches.
2. Also with regard to trading parties, it shall be prohibited to employ a business practice that unduly restricts the trading party's freedom of choice, in particular the creation of circumstances which make the realistic appraisal of the good or offer, or its objective

comparison with another good or offer difficult, if this affects or is likely affect the economic behaviour of trading parties or potential trading parties.

3. Comparative advertising shall be permitted only if it exclusively compares goods intended for the same purpose or meeting the same needs; it compares relevant, determinant, representative and verifiable features of the goods, and it must be objective, including in respect of price where that is also an element of the comparison; for products with designation of origin, it relates exclusively to products with the same designation.
4. Particular attention must be paid when providing information to consumers. Consumer shall mean 'any natural person who is acting for the purposes beyond his/her self-employment activity.' The competition authority has the power to proceed in such cases by virtue of law. The relevant rules are laid down in Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers.
5. For ensuring compliance with the rules, the competent employees of Hungaropharma Zrt. shall on a regular basis monitor the advertisement publication published under the responsibility of Hungaropharma Zrt.

The managers, employees, agents and contributors of Hungaropharma Zrt. are obliged to familiarise and comply with the rules above and to refrain from behaviours and acts which infringe these competition law rules and the pertaining internal regulations.

VI. POSSIBLE CONSEQUENCES OF THE INFRINGEMENT OF COMPETITION LAW.

1. Given that the competition authority publishes the fact that a competition supervision proceeding has been launched and its decision and that includes the former in its analysis and publications, the trading parties, competitors and 'stakeholders' learn about the infringement and of the possibility that the infringement is going to be established. The competition supervision proceeding or decision may raise questions in the 'stakeholders' (e.g. owners) of Hungaropharma Zrt. which may result in the crisis of confidence. This may cause significant disruption in the operation of the company.
2. Agreements that are in breach of competition law are null and void, and they cannot be enforced. It may be established even subsequently which may affect the opinion of third parties on business credibility. Not to mention the trading loss that could occur in such cases.
3. In addition to the establishment of the infringement, the competition authority can prohibit the undertaking from the infringing conduct.
4. The competition authority, following the commencement of the investigation may order Hungaropharma Zrt. in an interim measure to suspend a market activity or the implementation of an agreement until the investigation is closed.

5. As a result of the competition supervision proceeding, Hungaropharma Zrt. may be ordered to discontinue its competition restricting activity and/or to amend the provisions of its effective contracts.
6. Third parties who believe that they suffered damage as a result of an unlawful agreement or conduct may file a suit for damages against Hungaropharma Zrt. The detailed rules on the material and procedural rules of claims for damages are laid down in the Competition Act to ensure that those who suffered damage can enforce their claims in the easiest way, directly and effectively.
7. Hungaropharma Zrt. may be excluded as bidder from public procurement proceedings.
8. The responsible manager concerned may be subjected to criminal proceedings on the basis the relevant provisions of the Criminal Code
9. Besides the establishment of infringement, the most frequent sanction is the public administration fine imposed by the competition authority. The amount of the fine shall not exceed the 10% of the net turnover of the undertaking in the preceding year. This, however, can reach a significant amount and thus is capable of hindering the operation of Hungaropharma Zrt.

The consequences specified in this paragraph qualify as threats which justify and render it compulsory to get familiarised with the rules laid down in this Regulation.

VII. THE RULES OF THE INVESTIGATION TO BE CARRIED OUT BY THE COMPETITION AUTHORITY

7.1. The competition authority avails of powerful procedural entitlement, and may carry out numerous procedural measures that are not available to other public administration organs. In the course of the competition supervision proceeding, the competition authority may have access to documents that can be associated with the presumably unlawful conduct.

7.2. All employees of Hungaropharma Zrt. are obliged to actively cooperate with the representatives of the competition authority. It is prohibited to hinder the proceeding or to deny contribution.

Budapest, 15 January 2017