

Contents – summary

Introduction (<i>Anna Piszcz, Dominik Wolski</i>)	13
Regulating unfair trading practices in selected West European EU member states – in search of equilibrium (<i>Dominik Wolski</i>)	25
National reports	
BULGARIA (<i>Anton Dinev</i>)	41
CROATIA (<i>Jasminka Pecotic Kaufman, Vesna Patrlj</i>)	63
CZECH REPUBLIC (<i>Josef Bejček, Michal Petr, Petra Pipková</i>)	85
ESTONIA (<i>Evelin Pärn-Lee</i>)	125
HUNGARY (<i>Mónika Papp</i>)	147
LITHUANIA (<i>Raimundas Moisejevas, Valentinas Mikelėnas and Rasa Zaščiurinskaitė</i>)	171
POLAND (<i>Monika Namysłowska, Anna Piszcz</i>)	215
SLOVAKIA (<i>Ondrej Blažo, Hana Kováčiková, Mária T. Patakyová</i>)	243
Summary (<i>Anna Piszcz, Adam Jasser</i>)	271

Contents

Introduction (<i>Anna Piszcz, Dominik Wolski</i>)	13
Regulating unfair trading practices in selected West European EU member states – in search of equilibrium (<i>Dominik Wolski</i>)	25
I. Introduction	25
II. Between the free market and the need of protection.....	26
III. The various ways of dealing with UTPs.....	27
1. France	28
2. The UK.....	29
3. Germany	30
4. Italy	31
5. Portugal.....	32
6. The Netherlands.....	32
IV. The recent EU initiative – what is it for?.....	33
V. Summary and conclusions	38
Literature	39
 National reports	
BULGARIA (<i>Anton Dinev</i>)	41
I. Introduction	41
1. Preliminary remarks.....	41
2. Overview of the food supply chain in Bulgaria	42
3. Map of relevant laws.....	44
II. Detailed description of national legislation.....	47
1. Privately enforced law.....	47
2. Publicly enforced law.....	50
3. The relationship between public enforcement law and other acts ..	50
4. Key enforcement decisions and case law.....	51
III. Nature of infringement and scope of public enforcement	54
1. Nature of the prohibited abuse	54
2. Assessment of superior bargaining position	55
3. Conditions for applying the prohibition of ASBP	56
4. Economic agents covered by the law (<i>ratione personae</i>).....	57

IV. Public enforcement institution and proceedings.....	58
1. Institution in charge of public enforcement	58
2. Type and principles of proceedings	58
3. Fines and other sanctions	59
V. Conclusions.....	59
Literature	61
 CROATIA (<i>Jasminka Pecotić Kaufman, Vesna Patrlj</i>)	63
I. Introduction	63
II. Detailed description of national legislation	66
III. Nature of infringement and scope of public enforcement	69
1. Strong bargaining power and unfair trading practices	70
2. List of unfair trading practices	70
3. Other unfair trading practices – buyers and/or processors.....	71
4. Other unfair trading practices – re-sellers	72
5. Rules relating to the form of a contract and mandatory content ...	75
6. Nullity	76
IV. Public enforcement institution and proceedings.....	76
1. Institution	76
2. Proceedings.....	77
3. Commitments	77
4. Procedure	78
4.1. Collection of written evidence.....	78
4.2. Oral hearing	79
4.3. The Council's decision on the established facts in the proceedings	79
4.4. Statement of facts and main hearing	79
4.5. Fines.....	80
5. Duration of the administrative proceeding (investigation) and Agency decisions	80
6. Fines.....	80
7. Judicial control.....	82
V. Conclusions.....	82
Literature	83
 CZECH REPUBLIC (<i>Josef Bejček, Michal Petr, Petra Pipková</i>)	85
I. Introduction	85
1. Food supply chain in Czech Republic	85
2. Map of relevant Czech laws	87
2.1. Private law.....	87
2.2. Public law	88
II. Description of the Czech national legislation on significant market power.....	90
1. Public law regulation in the SMPA.....	90

2. Evolution of the SMPA.....	91
3. The relationship between public enforcement law and other acts ..	94
4. Key enforcement decisions and case law.....	95
4.1. Decision-making practice before the Amendment 2016	95
4.2. Decision-making practice after the Amendment 2016.....	98
III. Nature of infringement and scope of public enforcement	98
1. Economic agents covered by the law (<i>ratione personae</i>)	98
1.1. Buyers	99
1.2. Suppliers	101
1.3. Conclusions to the addressees of the SMPA.....	102
2. Nature of prohibited practices.....	102
3. Scope <i>rationae materiae</i> of the law	103
4. Subjective scope of enforcement – ‘excessive bargaining power’, general prohibition and enumerative list of prohibited practices ...	105
4.1. Obligatory elements of a buyer-supplier contract.....	105
4.2. Prohibition of the abuse of significant market power	108
5. Further conditions for the application of the SMPA.....	115
IV. Public enforcement institution and proceedings	116
1. Institution in charge of public enforcement	116
2. Type and principles of proceedings (administrative, decision-making, due process, judicial review)	118
2.1. Administrative proceedings.....	118
2.2. Judicial review	119
2.3. Due process	120
3. Fines and other sanctions.....	120
V. Conclusions.....	121
Literature	122
ESTONIA (<i>Evelin Pärn-Lee</i>).....	125
I. Introduction	125
1. Food supply chain in Estonia	127
2. Map of laws	130
3. Evolution of legislation and significance in political discourse	132
II. National legislation of Estonia on bargaining power.....	134
1. Publicly enforced law	134
2. Privately enforced law	137
III. Nature of infringement and scope of public enforcement	138
1. Economic agents covered by the law (<i>ratione personae</i>) and nature of prohibited practices	138
2. Nature of prohibited practices in ETA guidelines on food supply chain and UTP Draft Law.....	139
IV. Public enforcement institution and proceedings.....	144
Literature	145

HUNGARY (<i>Mónika Papp</i>).....	147
I. Introduction	147
1. Food supply chain in Hungary.....	147
2. Map of laws	148
3. Modification of national provisions and the opinion of the Hungarian Government on the draft EU legislation.....	151
II. Detailed description of national legislation.....	153
III. Nature of infringement and scope of public enforcement	156
1. Nature of prohibited practices.....	156
2. The most common types of infringements.....	160
3. Subjective scope of enforcement.....	161
4. Conditions for the application of the law	161
5. Economic agents covered by the law (<i>ratione personae</i>)	161
IV. Public enforcement institution and proceedings.....	162
1. Institution in charge of public enforcement	162
2. Type and principles of proceedings.....	163
3. Fines and other sanctions.....	164
3.1. Infringement decisions and fines.....	164
3.2. Fining policy	165
3.3. Commitment decisions	165
3.4. Prohibition of the application of standard contract terms	166
3.5. Publication of decisions.....	166
V. Conclusions	166
Literature	168
LITHUANIA (<i>Raimundas Moisejevas, Valentinas Mikelėnas,</i> <i>Rasa Zaščurinskaitė</i>).....	171
I. Introduction	171
1. Short historical background	171
2. Present situation.....	172
2.1. Food producers.....	172
2.2. Food processors	174
2.3. Retailers.....	174
2.4. The problem of unfair trading.....	175
2.5. The status of relevant legislation.....	177
II. Detailed description of national legislation in Lithuania	181
1. Privately enforced law	181
2. Application of the principles of the Directive on unfair trading practices in business-to-business relationships in the food supply chain in Lithuania	181
3. Publicly enforced law	183

4. The relationship between public enforcement law and other acts ..	185
4.1. The relationship between the Law on Competition, the Law on the Prohibition of Unfair Practices of Retailers and the Law on the Prohibition of Unfair Activities of Business Entities Buying-Selling Raw Milk and Trading in Dairy Products.....	185
4.2. Inconsistency between the concepts used in the Law on Competition, the Law on the Prohibition of Unfair Practices of Retailers and the Law on the Prohibition of Unfair Activities of Business Entities Buying-Selling Raw Milk and Trading in Dairy Products.....	189
4.3. Potential contradiction of the part 1 of the Article 5 of the Law on the Prohibition of Unfair Activities of Business Entities Buying-Selling Raw Milk and Trading in Dairy Products to the Constitution of the Republic of Lithuania	190
5. Key enforcement decisions and case law.....	191
III. Nature of infringement and scope of public enforcement	193
1. Nature of prohibited practices.....	193
2. Subjective scope of enforcement	193
3. Conditions for the application of the law	195
4. Economic agents covered by the law (<i>ratione personae</i>).....	196
IV. Public enforcement institution and proceedings.....	197
1. Institution in charge of public enforcement	197
1.1. Practice of infringement investigations under the Law on the Prohibition of Unfair Practices of Retailers.....	199
1.2. Practice of monitoring of the Law on the Prohibition of Unfair Practices of Retailers.....	199
2. Type and principles of proceedings.....	200
2.1. Proceedings under the Law on Competition.....	200
2.2. Proceedings under the Law on the Prohibition of Unfair Practices of Retailers.....	200
2.3. Proceedings under the Law on the Prohibition of Unfair Activities of Business Entities Buying-Selling Raw Milk and Trading in Dairy Product	204
3. Fines and other sanctions.....	204
3.1. Sanctions under the Law on Competition.....	204
3.2. Sanctions under the Law on the Prohibition of Unfair Practices of Retailers.....	205
3.3. Sanctions under the Law on the Prohibition of Business Entities Buying-Selling Raw Milk and Trading in Dairy Products.....	209
3.4. Other sanctions.....	211
V. Conclusions.....	212
Literature	213

POLAND (<i>Monika Namysłowska, Anna Piszcz</i>)	215
I. Introduction	215
1. Food supply chain in Poland	215
2. Map of Polish laws	218
II. Detailed description of Polish legislation	221
1. Privately enforced law	221
2. Publicly enforced law	223
3. Relationship between public enforcement law and other acts	224
4. Enforcement decisions and case law	226
III. Nature of infringement and scope of the publicly enforced law	228
1. Economic agents covered by the law (<i>ratione personae</i>)	228
2. Nature of prohibited practices	230
3. Scope <i>rationae materiae</i> of the law	231
3.1. Definition of contractual advantage	231
3.2. Unfair use of contractual advantage	232
3.3. Examples of unfair use of contractual advantage	233
4. Conditions for the application of the law	234
IV. Public enforcement institution and proceedings	235
1. Institution in charge of public enforcement	235
2. Type and principles of proceedings	236
3. Fines and other sanctions	239
V. Conclusions	240
Literature	240
SLOVAKIA (<i>Ondrej Blažo, Hana Kováčiková, Mária T. Patakyová</i>)	243
I. Introduction	243
1. Description of the food sector in Slovakia	243
2. Map of relevant laws	246
II. Detailed description of Slovak legislation	250
1. Privately enforced law	250
2. Publicly enforced law	252
3. Codes of conduct	254
III. Nature of infringement and scope of public enforcement	255
1. <i>Ratione materiae</i> of public enforcement	255
2. <i>Ratione personae</i> of public enforcement	259
IV. The relationship between public enforcement law and other acts	259
V. Public enforcement institution and proceedings	261
1. Institution in charge of public enforcement	261
2. Type and principles of proceedings	264
3. Fines and other sanctions	265
4. Key enforcement decisions and case law	267
VI. Conclusions	268
Literature	269
Summary (<i>Adam Jasser, Anna Piszcz</i>)	271