

Communication concerning the decision of the Curia of Hungary
in administrative case n° Kfv.II.37.100/2017

In its important decision delivered in a competition case, the Curia stated that the lack of evidence on the actual anti-competitive effect of a company's business practices should be regarded in the latter's favour, and in that case there is no possibility to examine the potential effect of such practices.

An agreement on the exchange of information concluded between the second plaintiff and his partners was deemed by the competition authority to be against competition law, consequently the authority imposed a sanction on them. The Curia agreed with the second plaintiff's arguments and found that, after the examination of the agreement – having an effect also on the structure of the common market –, carried out on the basis of section 11 of the Act on the Prohibition of Unfair and Restrictive Market Practices, the competition authority had not established any “purposeful” infringement and could not prove the existence of any actual anti-competitive effect, and launched its investigation without any legal basis on the potential effects of the impugned business practices that had been conducted for seven years but had since been discontinued, in addition, despite the burden of proof having been on it, the authority could not prove the existence of any potential effect either. The business practices in question should have been assessed by taking into account the converging Hungarian and European Union pieces of legislation, as well as the relevant decision of the Constitutional Court of Hungary [decision no. 30/2014 (of 30 September 2014) AB]. With regard to the above, the competition authority had no legal grounds to examine the potential effects of a company's business practices and establish the commission of an infringement without abiding by the rules of the burden of proof incumbent on it and without regarding its failure to provide evidence in the company's favour. The assessment of potential effects also necessitates the conduct of specific analyses in order to make a company's ability to restrict competition probable.

Budapest, the 7th of February 2018

Administrative and Labour Department of the Curia of Hungary