**Chapter A:** *Is the concept of the abuse of relative market power beyond market*

*dominance necessary to ensure a functioning competition and what criteria*

*should be used to assess it?*

**Hungary**

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**List of abbreviations**

|  |  |
| --- | --- |
| Act on Accounting | Act C of 2000 on accounting |
| Act on Electric Energy | Act LXXXVI of 2007 on Electric Energy |
| Act on Electronic Communications | Act C of 2003 on Electronic Communications |
| Act on Natural Gas | Act XL of 2008 on Natural Gas |
| Act on Trade | Act CLXIV of 2005 on Trade |
| Civil Code | Act V of 2013 on the Civil Code |
| Competition Act | Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices  |
| Curia | The Hungarian Curia (high court of Hungary) |
| HCA | Hungarian Competition Authority (*Gazdasági Versenyhivatal*)  |
| HEPURA | Hungarian Energy and Public Utility Regulatory Authority |
| Implementing Decree of the Act on Electric Energy | Government Decree 273/2007 (X. 19.) on the implementation of certain provisions of Act LXXXVI of 2007 on Electricity |
| Implementing Decree of the Act on Natural Gas | Government Decree No 19/2009 (I. 30.) on the implementation of the provisions of Act XL of 2008 on the Supply of Natural Gas |
| Media Act | Act CLXXXV of 2010 on Media Services and Mass Communication |
| NATCP | National Authority for Trade and Consumer Protection |
| NFCSO | National Food Chain Safety Office |
| NMIA | National Media and Infocommunications Authority |
| SMP | Significant market power |
| UTP Act | Act XCV of 2009 on the prohibition of unfair distribution practices against suppliers of agricultural and food products |

# 1. Introduction: Origin and Development of the Rules in your Jurisdiction

## 1.1. Competition law

The concept of "relative market power" or similar notions are not explicitly recognized by the Competition Act. Section 21 of the Competition Act sets out the prohibition of abuse of dominant position equivalent to Article 102 TFEU, with Section 22(1) defining dominant position as economic independence on a respective market.[[2]](#footnote-2) Relative market power is not mentioned or referred to in these provisions.

Although the vast majority of the case-law on the enforcement of the prohibition of the abuse of dominant position rules concern abuse of dominance cases in the traditional competition law sense (i.e. "absolute" dominance), relative dominance is not entirely unknown to the Hungarian competition law enforcement. It was mentioned in 3 competition cases (please see details under Section 2).

## 1.2. Sectoral legislation - introduction

As explained above, the Competition Act does not explicitly refer to relative market power, and the notion only appears in a few isolated decisions. On the other hand, significant market power ("SMP") and its abuse is regulated in sectoral legislation in various industries, presented in the below table.

|  |  |  |  |
| --- | --- | --- | --- |
| **Legislation** | **Substantive and personal scope** | **"Functioning" of sectoral legislation** | **Competent authority** |
| Act on Trade | Covers the non-food and the beer sector. Undertakings pursuing a commercial economic activity consisting in the distribution of products, the sale of goods and the provision of directly related services to the end user, including catering | Legislation prohibits certain types of conduct, may investigate and sanction undertakings that violate the prohibition | HCA |
| Act on Electronic Communications | Covers electronic communications services.Electronic communications service providers (electronic communications network operators and entities providing electronic communications services) that qualify as having SMP pursuant to sectoral legislation | *Ex ante* regulation. Designated enforcement agency may carry out a "significant market power procedure" to determine undertaking with SMP, agency may impose obligations if required | NMIA |
| Act on Electric Energy | Covers the electric energy market.Licensees or system operators on the electricity market that qualify as having SMP pursuant to sectoral legislation | *Ex ante* regulation. Designated enforcement agency may carry out a "significant market power procedure" to determine undertaking with SMP, agency may impose obligations if required | HEPURA |
| Act on Natural Gas | Covers natural gas market.Licensees or system operators on the natural gas market that qualify as having SMP pursuant to sectoral legislation | *Ex ante* regulation. Designated enforcement agency may carry out a "significant market power procedure" to determine undertaking with SMP, agency may impose obligations if required | HEPURA |

In addition to the above, the UTP Act also merits mention. While its application is not tied to significant market power, its introduction was prompted by the imbalance in the bargaining positions of the parties. The UTP Act generally governs the relationship between traders and suppliers in the food sector. Its personal scope covers undertakings engaged in economic activities involving the resale of agricultural or food products—purchased directly or indirectly from a supplier—without transformation. The UTP Act prohibits certain types of conduct, and the designated enforcement agency, the National Authority for Trade and Consumer Protection (NATCP), may investigate and sanction undertakings that violate these prohibitions.

## 1.3. Act on Trade - General Trade (Non-Food and Beer)

In Hungary, the first attempt to address power imbalances outside traditional antitrust law was the Act on Trade, effective from June 1, 2006. It introduced the concept of significant market power (SMP), distinct from dominance under the Competition Act, [[3]](#footnote-3) and prohibited large retailers with SMP from abusing their power over suppliers.

Initially, the Act applied to all sectors and products, but from August 1, 2012, it was limited to non-food products. In 2020, specific rules on beer distribution were added.

The accompanying explanatory memorandum[[4]](#footnote-4) justified the Act by noting that general competition rules, including the abuse of dominance prohibition under the Competition Act and Article 102 TFEU, were inadequate to address the unequal bargaining power between traders and suppliers. Even without legal dominance, traders can exert SMP, especially over SMEs, whose sales often depend heavily on these retailers. As a result, suppliers lack equal negotiating power, which can undermine their innovation and long-term competitiveness.

## 1.4. UTP Act - Agricultural and Food Products

The Act on Trade’s SMP rules do not apply to agricultural and food products.[[5]](#footnote-5) Instead, these are governed by the UTP Act, which promotes fair practices between food chain actors. Enforcement was handled by the NFCSO until the end of 2024 and is carried out by the NATCP from January 1, 2025.

Adopted in 2009 and in force since January 1, 2010, the UTP Act aims to foster trust, ethical conduct, and balanced bargaining power in the food chain, while supporting food security and consumer confidence.

The UTP Act lists very similar reasons to those underlying the Act on Trade in order to justify the introduction of the special legislation. This may indicate that the legislature did not find Section 7 of the Trade Act and/or its enforcement appropriate and efficient. The reasoning again emphasizes that suppliers are in a weaker position than traders for three reasons: firstly, in most of the cases, traders can easily substitute the products of a certain supplier, meaning that it is the supplier who is dependent on the trader, not the other way around. Secondly, traders may compete with suppliers when creating private label products. Finally, traders sell a number of services to the supplier (listing, merchandising, logistics, etc.) which, in most of the cases, suppliers are not in a position to reject, or what is more, are forced to use. Some of the services do not even represent added value and suppliers are threatened by «delisting», termination of contract and similar measures if they do not accept the trader’s offers.

## 1.5. Electronic Communications

In line with EU requirements[[6]](#footnote-6), the Act on Electronic Communications introduced an *ex ante* market regulation procedure in relation to significant market power.[[7]](#footnote-7) The enforcing authority is the NMIA, which defines relevant markets, analyses the competition and the effectiveness of competition on these markets, identifies the service providers with significant market power and imposes obligations on service providers with significant market power.[[8]](#footnote-8) The NMIA monitors compliance and has the competence to act in relation to the fulfilment or violation of the obligations established and in case of disputes concerning the violation or non-compliance with the obligations.[[9]](#footnote-9) The NMIA also closely cooperates with the HCA on questions regarding the electronic communications market, especially in identifying the service providers with significant market power.[[10]](#footnote-10)

## 1.6. Electricity and gas sector

The Hungarian legislation is based on *ex ante* regulatory intervention in the electric energy and natural gas markets, aimed at preventing potential anti-competitive behaviour. In essence, the regulatory authority periodically analyses certain defined segments of the sectors and, if it finds that certain distortions of competition can be established, it imposes additional obligations on the affected market participants to eliminate or at least reduce distortions.[[11]](#footnote-11)

Both the Act on Electric Energy and the Act on Natural Gas aim to promote competition in the electricity and gas market through introducing the significant market power procedures. The competent authority in both market is the HEPURA.

Section 107 of the Act on Electric Energy states that the HEPURA conducts a significant market power procedure if it becomes aware of indications that competition in a market is not sufficiently effective because one or more market players are, or are likely to be, in a position of market power as a result of market developments, and which is capable of hindering, restricting or distorting competition. As a result of the procedure, the HEPURA may impose a fine on the abusing undertaking along with certain obligations, including price formulating and price capping obligations.[[12]](#footnote-12) Cooperation between the HEPURA and the HCA in significant market power cases is enshrined in Section 107(3) of the Act on Electric Energy.

As regards the gas market, HEPURA acts in accordance with Section 56 of the Act on Natural Gas, which reflects the exact scope of powers of the authority on the electricity market. The current form of significant market power procedure was introduced in both acts in 2019, to better reflect the particularities of the energy markets.[[13]](#footnote-13)

## 1.7. Significant Influence under the Media Act

In addition to the sectoral frameworks already discussed, it is worth noting that the Hungarian Media Act also contains a concept similar to relative market power. Section 70 of the Media Act introduces the notion of "significant influence" (“*jelentős befolyásoló erő”*), which applies to media service providers and media enterprises. This designation may be established when an undertaking has such a degree of influence over the media market – due to its reach, economic resources, or ownership structure – that it is capable of distorting media pluralism.

The Media Council of the NMIA may, based on this designation, impose certain obligations or restrictions to preserve the diversity of information and opinions in the media. This may include restrictions on market consolidation, content obligations, or other measures to prevent undue influence.

That said, this regulatory regime does not directly concern market relationships or bargaining imbalances between private parties, and therefore, is only tangentially related to the concept of relative market power. For this reason, we do not examine the notion of significant influence under the Media Act in further detail in this report.

# 2. Criteria for the Definition of Relative Market Power or of Similar Concepts

## 2.1. Criteria for the Definition of Relative Market Power under the Competition Act

As mentioned above, the Competition Act is silent on relative market power. However, there are three competition cases which mention this concept – although they do not explore it in much detail.

The earliest example is a competition supervision procedure initiated by the HCA in 2001 to investigate the alleged abuse of dominance of an undertaking that refused to supply deep-sea sludge to a customer failing to show a permission to operate a cosmetics saloon. Although the 2002 decision[[14]](#footnote-14) of the HCA terminated the procedure, the reasoning also dealt with the concept of relative market power. The decision states that the fact that the Competition Act does not specify the notion and thus the prohibition of the abuse of relative market power, does not exclude finding its existence. The decision finds that relative market power qualifies as dominance under the Competition Act and describes it as of a temporal nature and applicable only to a group of customers at one time. The HCA finds that an undertaking with relative market power may be capable of all the types of conduct prohibited by Section 21 of the Competition Act.[[15]](#footnote-15)

In the decision, the HCA deems relative market power possible on a market where supplementary products are connected in a form of primary and secondary markets. The decision states that if the demand for the primary and secondary products can be independent of each other, the buyers of the secondary product may find themselves in a situation where they are forced to purchase the secondary product even under clearly disadvantageous conditions. However, the seller of the secondary product may only find itself in a position—vis-à-vis certain buyers—where they can set the product's price without regard to the expected reactions of competitors and other market participants. In such cases, the seller attains a position of relative economic dominance on the secondary market.[[16]](#footnote-16) This is illustrated by the example of a seller of locks that may later on also sell spare keys to their customers.[[17]](#footnote-17) According to the HCA, abuse of relative dominance may occur if the purchase conditions for the secondary product (the spare key) were not clear and fixed at the time of buying the primary product (the lock).

In a 2003 decision, the HCA once again touched upon the existence of relative market power. Similarly to the above case, the HCA defined such power as a position arising within a contractual relationship between two undertakings, where one undertaking could only withdraw from the contract on disproportionately disadvantageous terms for a reason unforeseeable at the time of the conclusion of the contract and attributable to the conduct of the other undertaking.[[18]](#footnote-18)

In a 2017 merger decision, when assessing whether the remedies offered by the buyer are capable of eliminating the competition concerns, the HCA highlighted that abuse of relative market power is capable of infringing Section 21 of the Competition Act, thus reaffirming its position established in 2002.[[19]](#footnote-19) We are not aware of any other HCA decision dealing with relative market power.

To sum up, it seems that according to the HCA, relative market power exists when a company, although not dominant in the traditional sense, holds a strong negotiating position over specific partners due to their dependence—typically in a secondary market linked to a primary product or service. This seems to occur when

1. The buyer has already made significant investments in the primary product.
2. The secondary product (e.g. refill, maintenance, or complementary input) has no substitutes or alternative suppliers.
3. The supplier can act largely independently of other market players in that secondary market.

It can be inferred from the above that the HCA dealt with relative market power in merely a handful of decisions and, although found no abuse thereof, acknowledged that the prohibition of the Competition Act on abuse of dominant position may also cover undertakings with relative market power.

In addition to the above, it is worth noting that, in 2024, a draft bill intended to introduce the concept of “*undertakings with fundamental significance*” but it did not specify any definition or criteria for the applicability of this concept.

The draft bill merely defined the circumstances to be taken into account when determining whether a company is an undertaking with fundamental significance.

According to the draft bill, the HCA may find that an undertaking has fundamental significance across several markets from the perspective of competition and of consumers based on

1. its market share;
2. its financial strength or access to other resources;
3. its vertical integration, and/or its activities on otherwise related markets;
4. its access to data with relevance from the perspective of competition;
5. the fundamental significance, from the perspective of consumers or the economy, of the services it supplies, and/or the goods it produces or sells; and
6. all of its activities that have significance from the perspective of third parties’ or consumers’ access to purchasing markets and selling markets and that enable it to influence the business activities of third parties.

The draft bill would have granted the HCA significant powers over undertakings of fundamental significance. For example, it would have allowed the HCA to prohibit such undertakings from self-preferencing their own services (including within their corporate group) or using customer data without consent. The HCA could also have required disclosure of service performance and quality, or even compelled operational changes if supply security was at risk.

In extreme cases, the HCA would have had the power to impose strict remedies, such as mandating the (partial or full) sale of an undertaking, forcing the transfer of key assets to approved third parties, or appointing an additional executive to the board.

The draft legislation faced considerable resistance from the professional community, market players and even from the European Union. Notably, the Hungarian Competition Authority initially supported the bill, but later changed its position. The draft bill was subsequently withdrawn and has not been reintroduced to date.

## 2.2 Criteria for the Definition of Relative Market Power under the Act on Trade

### 2.2.1 Definition of Significant Market Power

Under the Act on Trade, SMP is defined as a market situation in which the trader becomes or has become a reasonably indispensable contractual partner for the supplier in the supply of its products or services to customers and is able to influence the market penetration of a product or group of products on a regional or national basis due to its supply share.[[20]](#footnote-20)

Significant market power is deemed to exist vis-à-vis a supplier if the trader group's (or in case of purchasing alliances, the members’) consolidated net turnover from trading activities in the previous year exceeds HUF 100 billion (approx. EUR 250 million[[21]](#footnote-21)).[[22]](#footnote-22) This is an irrebuttable presumption regarding significant market power.

It is important to note that the HUF 100 billion threshold has remained unchanged since its introduction, despite significant inflation and HUF depreciation. This stagnation has led to unintended consequences. Due to rising nominal revenues – driven more by price increases than real economic growth – more companies now meet the threshold, even if their actual market influence has not proportionally increased. The original legislative intent, which aimed to regulate only the largest and most dominant market players, is thus being undermined.

Alternatively, a trader is also deemed to have significant market power if, based on the market structure, the market entry barriers, the trader’s market share, its financial strength and other resources, the extension of its trading network, the size and location of its stores and its trading and other activities, the trader enjoys an advantageous bargaining position vis-à-vis its suppliers.[[23]](#footnote-23)

The prohibition on abusing SMP under the Act on Trade is principally applied to ongoing business relationships between traders and their suppliers. It addresses conduct “vis‑à‑vis suppliers” – for example, imposing unjustified contract terms on a current supplier or exploiting an existing dependency. In practice, a case will typically involve an established supplier who is reliant on the trader’s outlets, but it can also extend to situations of a supplier being dropped or threatened with delisting if they refuse unfair terms (i.e. the termination or renegotiation of an existing relationship). Thus, the focus is on current commercial dealings and any abuse therein. That said, the statutory definition of SMP is somewhat forward-looking: a trader is deemed powerful if it “is or will be in a unilaterally favourable negotiating position” relative to the supplier. This suggests that the law can consider an impending or future imbalance (for instance, at the point of entering a new contract) as part of the analysis. In effect, if a trader’s market position is such that any future contract with a supplier would likely be imbalanced, the law already treats the trader as having SMP. This, however, applies only if the HCA assesses the trader’s market power in line with Section 7(4) of the Act on Trade. If Section 7(3) is met; *i.e.,* a trader is presumed to have significant market power if its consolidated net turnover from commercial activities exceeds HUF 100 billion in the previous year; no further criteria are assessed.

Section 7/B of the Act on Trade contains specific provisions concerning beers which were introduced at the end of 2020. In this context, larger beer manufacturers may enjoy an asymmetric bargaining position vis-à-vis horeca[[24]](#footnote-24) retailers, and thus may be seen as having significant market power. In other words, in the case of beer markets, the prohibitions apply to suppliers (major beer producers) and their customers (undertakings in the horeca sector).

The Act on Trade sets out a lower turnover threshold for beer manufacturers: a beer manufacturer shall be considered having significant market power if the group's consolidated net turnover in the previous year exceeds HUF 30 billion (approx. EUR 75 million). It stipulates that horeca retailers cannot purchase more than 80% of their beer supply from the same manufacturer, while they must offer at least two different manufacturers' products per product for the sale of beer, excluding draft beer.[[25]](#footnote-25) It is noteworthy that such rules originally extended also to various types of non-alcoholic beverages (soft- and fruit drinks, juices, sparkling water, etc.), but the Constitutional Court excluded them from the rule, stating that their legal definition was unclear.[[26]](#footnote-26) Therefore, the current provision only applies to beers.

### 2.2.2 Enforcement of the Act on Trade – finding SMP

The HCA is empowered to enforce the Act on Trade’s prohibition of abuse of SMP, and it enjoys significant discretion akin to that in competition law cases as for the establishment of SMP. However, this discretion exists only if the clear turnover threshold related statutory condition, that is the consolidated net turnover of the trader from commercial activities in the preceding year exceeds HUF 100 billion (approx. EUR 250 million), is not applicable. In the latter case, the HCA has no discretion regarding the establishment of SMP.

Since the HCA mostly enforces these rules against companies which meet the above-mentioned turnover thresholds,[[27]](#footnote-27) in most cases, it has not been necessary for the HCA to analyse the characteristics of the market in order to find SMP. The HCA has noted in its decisions that once a turnover threshold is met, the relevant undertaking cannot argue that it does not have SMP, and the HCA may only examine the characteristics of the market when assessing the gravity of the infringement.[[28]](#footnote-28)

This also means that when assessing SMP based on the turnover, the source of turnover—i.e. whether it is derived from food or non-food trade—is irrelevant. The decisive factor is the undertaking’s total annual turnover, not its breakdown by product category[[29]](#footnote-29). This was confirmed in another case where the HCA has noted that when assessing SMP under Section 7(3) of the Act on Trade, it is not relevant whether the turnover, and what portion of it, was earned from trade in food or in other goods.[[30]](#footnote-30)

Consequently, a company may be found to possess SMP even if its non-food turnover alone remains below the HUF 100 billion threshold.

There is a single case before the HCA in which the application of Section 7(4) was shortly discussed.[[31]](#footnote-31) In that particular case, the trader’s net turnover did not reach HUF 100 billion and, therefore, Section 7 (4) should have been analysed if the HCA had found abusive behaviour – which it did not. Thus, the decision only very shortly discussed that

1. the determination of whether an undertaking possesses significant market power can only be made following a thorough and detailed analysis and assessment;
2. it is essential to carefully examine —among other factors—the bargaining power of the market players concerned.

In that particular case, the conduct under investigation concerned the Hungarian retail market for building materials, DIY, home improvement and hardware products, as well as gardening supplies.

The HCA presumed that, in the relevant market, a substantial portion of the turnover is generated through specialist retail chains. For supplier (producer) undertakings, gaining access to these distribution channels is important. Therefore, large-scale retail chains are capable of concentrating considerable purchasing power, which renders sales through these channels economically attractive to suppliers. In contrast, concluding contracts with a large number of small-scale retailers would likely be economically inefficient. This is supported by the competition observed among suppliers for shelf space in such large retail stores.

The HCA set forth that it is possible that the undertaking subject to the investigation is in a position to make “unilateral” or seemingly unilateral offers to all its suppliers who do not sell unique (i.e. less substitutable) products that are in significant demand among consumers. Noting that in the large-volume retail segment, the number of intermediary traders is smaller than the number of suppliers. In that particular case, however, no evidence has been found to support this.

Such asymmetry may be further reinforced if the buyer has a significant market share, if market entry is difficult, and if the buyer has considerable financial strength and other economic resources or capabilities.

The HCA furthermore noted that, in its view, due to the economic benefits arising from large-volume sales as described above, the likelihood of establishing abuse of significant market power is limited to a narrow scope. This is because, by its nature, sales through these distribution channels also provide advantages to suppliers. According to the HCA, in order to establish the infringement, it must be demonstrated that the supplier does not share in these benefits.

To sum up, the HCA has not analysed, or developed any criterion for, the definition of SMP in its practice. Consequently, neither have the courts been required to develop such a criterion through case law.

In general, we assume that the HCA would heavily rely on competition-law style economic assessment with respect to Section 7(3) of the Act on Trade. The definition of SMP embeds economic criteria: whether the trader’s share in trade enables it to influence the market entry of products. Proving this may entail expert studies on how the absence of that trader would affect a supplier’s ability to reach consumers. Likewise, the law’s qualitative factors (barriers to entry, financial strength, etc.) require evidence. Therefore, the HCA may consider market data to determine if the trader indeed holds a structurally advantaged position over suppliers. This may involve market share analysis, calculation of concentration indices, and studying supplier dependence. Such metrics help measure how much choice suppliers have besides the trader in question.

### 2.2.3 Interplay between dominance and SMP

Under the Competition Act and under the Act on Trade, the definition and the assessment of the relevant market does not differ from those applied in “classic” competition law (antitrust and dominance) cases.

As mentioned, the Act on Trade delegates enforcement of the rules on SMP to the competence of the HCA. The potential similarity between the conducts found in the Act on Trade and those in the Competition Act are underlined by the fact that the HCA enforces the rules on SMP based on the rules on abuse of dominance.[[32]](#footnote-32)

While the relevant case-law on relative market power is very limited, there are several published HCA and court decisions dealing with SMP.

In these decisions (see: e.g. Vj/60/2012 and VJ/43/2016) the HCA clearly explained that SMP and dominance are different legal concepts, which require different preconditions to be assessed. Therefore, in general, the existence of significant market power of an undertaking does not automatically result in a finding that the undertaking is dominant on the relevant market.

However, pursuant to Section 7/A (1) of the Act of Trade in the application of Competition Act, a dominant position in the retail market of consumable goods - as the relevant market[[33]](#footnote-33) - shall be considered to exist, if the previous year’s (consolidated) net turnover from the retail supply of consumable goods of the company and the affiliated companies combined exceed HUF 100 billion; the same threshold that is applies to establish SMP. This practically means that the Act on Trade lowers the threshold for the finding of dominance on the market of consumable goods under the Competition Act as well.

The HCA has the flexibility to choose the most appropriate legal basis — generally, competition proceedings will take priority if the dominance threshold is clearly met, to avoid double sanctions. In short, the HCA’s enforcement of the Act on Trade involves considerable discretion in how it interprets and applies the rules.

We are not aware of any published decision where the existence of both significant market power and dominant position was established in relation to an undertaking (or group of undertakings) or where two-sided or multi-sided markets were analysed by the proceeding HCA or court(s).

## 2.3. Criteria for the Definition of Relative Market Power under the UTP Act

Section 3(1) of the UTP Act prohibits unfair trading practices and imposes obligations and prohibitions on the customers of suppliers (i.e. traders) in the food sector in general.

There is a single exception to this rule—related to the reporting of a specific abuse by the supplier to the competent authority—which applies only if certain turnover thresholds are met, and not as a general rule.

Section 3(2)(d) of the UTP Act provides that, if a supplier reports that a trader has unilaterally reduced the purchase price against the supplier’s objection or has attempted to enforce a price reduction by threatening to terminate the business relationship, cancel or reduce orders, withdraw sales promotion activities—such as discounts or promotions—or use any other means likely to cause the supplier financial or reputational harm, thereby triggering an investigation, the burden of proof shifts to the trader, who must demonstrate that the price reduction was not achieved through prohibited means. This rule applies based on four turnover thresholds. For the burden of proof to shift, the trader’s annual turnover must exceed:

1. HUF 1 billion (approx. EUR 2.5 million) if the supplier’s annual revenue does not exceed HUF 500 million (approx. EUR 1.25 million);
2. HUF 20 billion (approx. EUR 50 million) if the supplier’s annual revenue is more than HUF 500 million (approx. EUR 1,25 million) but does not exceed HUF 5 billion (approx. EUR 12.5 million);
3. HUF 100 billion (approx. EUR 250 million) if the supplier’s annual revenue is more than HUF 5 billion (approx. EUR 12,5 million) but does not exceed HUF 75 billion (approx. EUR 187.5 million), and
4. HUF 200 billion (approx. EUR 500 million) if the supplier’s annual revenue is more than HUF 75 billion (approx. EUR 187.4 million).

Based on its definitions, the UTP Act does not consider market power since any and all traders fall under its scope irrespective of their characteristics, such as bargaining power, etc.

In one case, the Metropolitan Administrative and Labor Court confirmed that the market position of the supplier bore no relevance to finding an infringement.[[34]](#footnote-34) Therefore, finding a supplier-trader relationship was sufficient for the assessment of whether the particular practice was illegal, without further analysis of the bargaining power of the parties or the characteristics of the particular market.

Accordingly, in the context of unfair trading practices, neither the authorities nor the courts have developed any criterion concerning relative market power or any similar concept.

NFCSO’s role is thus primarily factual: it verifies whether the buyer engaged in a prohibited practice, such as late payments, unilateral contract amendments, or coercive fees. There is no need for separate evidence or analysis of the parties’ economic weight, market shares, or dependency; the presumption arises from the nature of the conduct itself.

With regard to the prohibition of UTPs, no presumption applies, and, accordingly, traders cannot rebut any presumption in this context.

There is also case law that demonstrates the presumptions as irrebuttable. ALDI and Coca-Cola agreed on rebates for ALDI without providing for any sales incentives in the form of reasonable sales targets for ALDI. Such agreements are considered as illegal fixed-bonus-agreements.[[35]](#footnote-35) Therefore, the authority did not accept the commitments offered by ALDI to remedy the infringement and imposed fines on the company. ALDI challenged the decision in court, which resulted in several judgments over the course of a long dispute. Once in this dispute, the court of first instance took Coca-Cola’s testimony into account. Coca-Cola testified that it had defined the terms of the rebate and that these terms and conditions had been advantageous for Coca-Cola. For this reason, the court of first instance concluded that there was room for remedying the infringement through commitments made by ALDI.

In subsequent judgments, however, this testimony was disregarded. The courts stressed that there was no room for commitments in the case of serious infringements. The courts found that fixed-bonus-agreements were serious infringements and the testimony of the supplier was irrelevant, and therefore the authority’s decision of not accepting the commitments offered by ALDI had been in compliance with the UTP Act. However, in the setting of fines, the fact that the infringement does not result in any additional burden for the supplier can be a mitigating circumstance.[[36]](#footnote-36)

## 2.4. Criteria for the Definition of Relative Market Power under the Act on Electronic Communications

Under the Hungarian Electronic Communications Act, the concept of SMP mirrors the EU competition law notion of dominance. It refers to a provider’s ability to act independently of competitors, customers, and consumers, and is based on market structure rather than bilateral dependency.

While the SMP designation is structural, regulatory obligations—such as access, pricing, and transparency—aim to mitigate competitive risks and dependencies. The NMIA conducts detailed market analyses based on EU guidelines, considering economic, geographic, and infrastructure factors, with input from expert studies, public consultations, and the HCA.

SMP assessments are forward-looking, focusing on both current and anticipated market positions. Obligations apply to existing and future contractual relationships and are regularly reviewed. The NMIA must cooperate with the HCA and notify the European Commission, BEREC, and other national regulators of proposed SMP decisions, which are subject to a standstill period and potential revision based on EU feedback. In urgent cases, interim measures may be adopted but must also follow EU notification requirements.

## 2.5. Criteria for the Definition of Relative Market Power under the Act on Electric Energy and Act on Natural Gas

Under the Act on Electric Energy and the Act on Natural Gas, the concept of significant market power (SMP) is primarily market-structure based but includes relational aspects, such as vertical integration and supply chain dependencies. While no fixed thresholds apply, HEPURA assesses SMP using sector-specific criteria, including market share, infrastructure control, entry barriers (e.g., import limits, network bottlenecks), and the position of vertically integrated firms.

The analysis is mostly grounded in current market conditions but may consider foreseeable developments, such as new capacity or regulatory changes, though speculative scenarios are excluded. HEPURA often cooperates with the HCA, as required by law, and draws on economic tools, market data, and EU-aligned guidelines to evaluate whether an undertaking can influence prices or restrict competition.

SMP findings are made on a case-by-case basis, with HEPURA holding broad discretion to define markets, assess dominance, and impose regulatory measures if needed.

# 3. Abuse of Relative Market Power

## 3.1. Abuse of Relative Market Power Under the Competition Act

Based on the HCA cases cited in Section 2.1 above, the abuse of relative market power involves exploiting the asymmetric dependence, e.g. through unjustified refusals to deal, excessive pricing, or tying.

According to the HCA’s assessment, abuse is not established if:

1. The conditions of future purchases (e.g. pricing, availability) were clearly communicated at the time of the initial sale.
2. The buyer could reasonably assess their long-term obligations and risks.

In both cases (VJ-122/2001 and VJ-57/2003), the HCA did not find abuse, as either the supplier had clearly communicated future terms (mud refill case), or the buyer had viable alternatives or had accepted the setup with full awareness (utility service case).

## 3.2. Abuse of Relative Market Power under the Act on Trade and the UTP Act

Hungarian law does not require the demonstration of abusive behaviour in the classical antitrust sense – i.e. conduct falling under Section 21 of the Competition Act – for the application of the Trade Act or the UTP Act. These two Acts are intended to operate independently from the general rules on abuse of dominance and are designed to address specific forms of power imbalance in vertical business relationships.

Instead of an effects-based or dominance test, both the Act on Trade and the UTP Act prohibit certain unilateral practices that are listed in the respective laws. Section 7(2) of the Trade Act provides a non-exhaustive list of prohibited practices—such as unjustified cost transfers or retroactive changes to contract terms—that may be unlawful if carried out by a trader holding SMP.

An example of such investigations concerned a supermarket chain introducing infringing *ex post* supplier fees and bonus scheme, thereby committing the conduct prohibited by Section 7(2)e-f) of the Act on Trade.[[37]](#footnote-37) In a follow-up decision, the HCA found that although the trader had discontinued the infringing conduct, it introduced a new fee with an identical effect. The HCA found that the new fee, applied as a mandatory contractual term between 2014 and 2015, violated the Act on Trade just as its predecessor did, amounting to the abuse of significant market power. This was due to the fact that the bonus system implemented by the trader unilaterally required the payment of unwarranted fees by suppliers in order to get their products stocked on the shelves of the supermarket chain.[[38]](#footnote-38)

Examples of the enforcement of specific regulations concerning beverages are two 2022 decisions, where the HCA found that two Hungarian operators of fast-food chains committed the conduct prohibited by Section 7/B(1) of the Act on Trade by not providing alternatives to the products of the significant beverage manufacturers in juice and fruit nectar categories[[39]](#footnote-39) and in mineral water and sparkling water categories.[[40]](#footnote-40)

A 2023 decision of the HCA is an example of the enforcement of the significant market power rules concerning the beer market. The HCA found that a leading European beer manufacturer established an almost exclusive supplier cooperation with a restaurant, infringing Section 7/B(1) of the Act on Trade. Besides imposing a fine, the HCA required the supplier to adopt an internal control program regarding all of its horeca trading partners.[[41]](#footnote-41)

Similarly, the UTP Act contains an exhaustive list of unfair trading practices applicable in the agri-food sector. Section 3(2) of the UTP Act enumerates over twenty specific forms of conduct (e.g. coercive pricing, unjustified unilateral amendments, passing on marketing or logistics costs, selling below purchase costs, charging any fee to the supplier for being admitted to the trader’s list of suppliers) that are considered unlawful *per se*, without any requirement to demonstrate economic dominance or market harm.

While these practices may be referred to as “abuses” in the context of sector-specific enforcement, they are not necessarily abusive behaviours in the antitrust sense. However, many of the prohibited practices – particularly those concerning unjustified contractual impositions, discriminatory treatment, or refusal to deal – closely resemble the types of abuse listed in Section 21 of the Competition Act.[[42]](#footnote-42) This indicates that, although the legal basis and objectives differ, there is substantial substantive overlap between the regulatory logic of these statutes and traditional abuse of dominance concepts.

The unfair trading practices rules apply to actual B2B relationships in the agricultural and food sector, especially ongoing supply contracts. The statute explicitly voids unfair terms in contracts and prohibits certain actions by traders, which inherently presumes a contract either exists or is being formed. For example, late payment, unilateral retroactive changes, or requiring a supplier to buy back unsold stock are all abuses that occur during the life of a supply agreement.

The UTP Act can also cover the negotiation phase or renewal of a contract – *e.g.* if a powerful trader threatens not to conclude/extend a contract unless the supplier concedes certain benefits that would fall under the prohibited practices (such threats are explicitly listed as unfair in the Trade Act and mirrored in the UTP Act context).

However, purely hypothetical future relationships (where no dealing has yet been initiated) are not within the law’s scope – there must be at least an attempt to trade or an established trading relationship. In practice, enforcement is reactive to real transactions and contract terms. The law’s purpose is to shield suppliers from unfair treatment in their current dealings with buyers; it does not, for instance, regulate a trader’s general market strategy or potential future conduct in the absence of any supplier interaction. Thus, current contracts and recently executed transactions are the primary focus, though the law certainly aims to deter traders from imposing unfair conditions in any future contracts as well. In essence, the UTP Act is about policing present contractual relationships (and any immediate negotiations) for unfairness, rather than speculative future market scenarios.

In 2024, the NFCSO initiated several proceedings against major supermarket chains. They found that the supermarkets infringed the Section 3(2)q) of the UTP Act by offering products as traders to final consumers at prices below purchase price invoiced price by the supplier or, below cost if produced by the trader.[[43]](#footnote-43)

As mentioned, as of 2025, the NATCP took over NFCSO's competence to enforce the UTP Act.[[44]](#footnote-44) Due to the lack of available cases since the change of the authorities' competence, it is too early to comment on any change in enforcement trends.

## 3.3. Remarks on the Other Sector-Specific Acts

The other sector-specific Acts mentioned – namely, the Act on Electronic Communications, the Act on Electric Energy and the Act on Natural Gas Supply – do not define or prohibit "abuse" of SMP. Instead, all three Acts adopt an *ex ante* regulatory model, aligned with relevant EU directives, that allows sectoral regulators to impose obligations on undertakings designated as having SMP, based on structural market assessments.

These SMP designations are not intended to penalise specific abusive behaviours, but rather to prevent distortions of competition by imposing regulatory duties – such as access obligations, price regulation, and transparency requirements – on operators with the ability to act independently of competitors or customers. The identification of SMP is grounded in forward-looking market analysis and economic assessments conducted by the relevant authorities.

This preventive, *ex ante* regime stands in contrast to the *ex post* prohibition-based logic of the Act on Trade and the UTP Act, where specific conduct is prohibited and sanctioned based on its effects and the relational imbalance between the parties.

If a company fails to comply with the obligations imposed in the context of a SMP procedure in the electricity or gas sector, the HEPURA is entitled to initiate enforcement measures under the relevant sectoral laws. First, HEPURA may impose a fine in accordance with the applicable implementing decree. If the obligated party continues to disregard the imposed obligations, the fine may be re-imposed. In cases of persistent non-compliance, HEPURA has the power to revoke the service provider’s license, effectively excluding the undertaking from the regulated market. These enforcement tools ensure the credibility and effectiveness of the *ex ante* regulatory regime. The law also provides that such enforcement proceedings may not be initiated more than five years after the breach of the regulatory obligation occurred.[[45]](#footnote-45)

In the electronic communications sector, the Act on Electronic Communications similarly empowers the NMIA to enforce compliance with obligations imposed on undertakings with SMP. If such a service provider breaches the regulatory obligations, the NMIA may initiate administrative proceedings and impose sanctions, including fines.[[46]](#footnote-46)

## 3.4. Differences between abuse of dominance and abuse of SMP

Under the Competition Act, abuse of a dominant position must meet specific conditions: the undertaking must hold a dominant position on a defined relevant market, and the conduct must amount to an abuse (e.g. exclusionary pricing, discrimination, refusal to deal). The analysis is effects-based, involving market definition, market shares and potential harm to competition.

In contrast, the Act on Trade and the UTP Act define unlawful conduct based on SMP or economic dependence, respectively, without requiring the existence of a dominant position or a market definition. These statutes include non-exhaustive (Act on Trade, Section 7(2)) and exhaustive (UTP Act, Section 3(2)) lists of prohibited practices that are unlawful per se. The laws label these practices as “abuses”, and several of them – such as coercive contract amendments, unjustified charges, or cost transfers – bear strong resemblance to the forms of abuse listed in Section 21 of the Competition Act.

Therefore, while the legal classification and analytical approach differ, the substantive overlap between these regimes reflects a similar concern with protecting weaker market participants from unilateral exploitative conduct.

Under the Competition Act, a finding of abuse of dominance under Section 21 of the Competition Act typically requires demonstrating that the conduct in question restricts, distorts, or eliminates competition, or otherwise harms consumers or trading partners.

In contrast, under the Act on Trade and the UTP Act, no such requirement exists. These Acts prohibit certain practices by traders with significant market power (in the case of the Act on Trade) towards suppliers in the non-food sector or in supplier–buyer relationships in the food sector (in the case of the UTP Act) without requiring any showing that competition is restricted. The unlawfulness of conduct is assessed by reference to whether it falls under the listed categories in the relevant sections—Section 7(1) and (2) of the Act on Trade and Section 3(2) of the UTP Act.

The underlying policy rationale is that the imbalance in bargaining power or economic dependence is, in and of itself, sufficient to justify regulatory intervention – independently of whether market-wide competitive harm exists.

Accordingly, a restriction of competition is only required under the Competition Act. The Act on Trade and the UTP Act reflect a separate policy logic, grounded in contractual fairness and structural asymmetry.

## 3.5. Enforcement

The HCA investigated various types of conduct under Section 7 of the Act on Trade. The investigations were typically launched against international supermarket chains. Only one case was launched against an international chain of DIY products, however that investigation was terminated ultimately finding the investigated conduct lawful.[[47]](#footnote-47)

Most frequently, the investigations revolve around Sections 7(2)(c), 7(2)(e) and 7(2) (f) of the Act on Trade, i.e. around measures (i) prescribing undue risk pooling contract conditions resulting in one-sided advantages to the trader as against the supplier, meaning in particular the charging of expenses serving also the business interest of the trader, such as storage, advertising, marketing and other costs to the supplier; (ii) imposing unfair conditions upon the supplier in connection with his business relations with the trader or with another trader, such as demanding the best available terms and conditions as obligatory, and enforcing such terms and conditions with retroactive effect, i.e. compelling the supplier to provide discounts during a specific period for a specific product only to the trader in question; and (iii) applying various charges upon the supplier, such as for services not otherwise requested by the supplier, as a precondition for being admitted to the trader's list of suppliers or products.

Additionally, the HCA also investigated several companies under Section 7/B of the Act on Trade relating to the horeca sector. The HCA imposed fines ranging from HUF 12 to HUF 15 million (approx. EUR 30 to EUR 37 thousand) in two cases on beer manufacturers for forcing certain horeca units to source more than 80% of their beer palette exclusively from them.[[48]](#footnote-48) The HCA also issued a warning to the respective horeca units in both cases for not complying with the Act on Trade, but did not impose fines on those undertakings.

The HCA also investigated cases relating to alleged abuses regarding the distribution of soft drinks, sodas and fruit juices, i.e. the provisions that were found unconstitutional and were repealed. Both investigations were launched against international fast-food chains for their alleged non-compliance with the obligation to supply soda and sparkling water from various manufacturers. Notably, the HCA did not impose a fine in either case, referring to *inter alia* the novelty of the provisions of the Act on Trade as a reason not to impose a fine.[[49]](#footnote-49)

Section 7 of the Act on Trade is inspired by abuse of dominance theories under EU and Hungarian competition law (Article 102 TFEU and Section 21 of the Competition Act). It captures both exploitative (e.g. unfair unilateral terms) and exclusionary (e.g. forced exclusivity) practices.

It seems that most investigations concern exploitative conduct, such as unilaterally imposed conditions unfavourable to suppliers (e.g. return rights, unjustified cost transfers), charges for services not requested by suppliers (e.g. marketing or listing fees), risk-shifting contract clauses benefiting the trader.

In one notable exclusionary case, a retailer restricted suppliers to contract only with a few designated intermediaries, excluding dozens of potential partners. [[50]](#footnote-50)

Investigations typically involve both price-related and non-price-related abuses. While early cases included non-transparent contract terms (e.g. small print), the focus is largely on pricing-related practices, including discount schemes and supplier fees. [[51]](#footnote-51) Notably, the HCA investigated in most cases whether the measures were (i) prescribing undue risk pooling contract conditions resulting in one-sided advantages to the trader as against the supplier, meaning in particular the charging of expenses serving also the business interest of the trader, such as storage, advertising, marketing and other costs to the supplier; or whether those were (ii) applying various charges upon the supplier, such as for services not otherwise requested by the supplier, as a precondition for being admitted to the trader's list of suppliers or products. [[52]](#footnote-52)

Under Section 7/B, the HCA examined non-price abuses such as horeca units being forced to source over 80% of beer from a single producer.

Abuse may concern either existing or potential business relationships; the HCA does not differentiate between the two in its assessments. The key question is whether the trader leveraged its significant market power to impose unfair terms.

Both the Act on Trade and the UTP Act aim to prevent unfair practices—even if contractually agreed—recognizing that weaker parties may consent under pressure or lack alternatives.

## 3.6. Remedies, Fines, Reshaping of Commercial Relationships

Fines applicable in case of abuse of SMP

The HCA may impose a fine on any person who engages in unlawful conduct falling within its competence[[53]](#footnote-53) – including violations of the rules relating to significant market power as previously outlined. Maximum amount of the fine may not exceed 15% of the net turnover achieved by the infringing undertaking (or group of undertakings) in the financial year preceding the issuance of the HCA decision.[[54]](#footnote-54)

This cap was temporarily raised from 13% to 15% with effect from 1 August 2024 pursuant to Government Decree No. 184/2024. (VII. 8.) on the application of derogations from certain competition rules in the context of the state of emergency. Unless the underlying state of emergency is extended, the application of the 15% cap will revert to 13% after 31 October 2025.

Within this statutory cap, the HCA determines the fine at its discretion, based on all the circumstances of the case, with particular regard to the gravity of the infringement, its duration, the gain obtained through the conduct, the market position of the undertaking, the degree of fault, the extent of cooperation during the proceedings, the recurrence or frequency of the conduct, and the impact on effective competition and end customers.[[55]](#footnote-55)

The HCA sets fines in accordance with its internal fine-setting notice[[56]](#footnote-56), which provides guidance on how fines are calculated in practice. While this document is not legally binding, it is routinely applied to ensure consistency and predictability. It considers the gravity, duration, and recurrence of the infringement, the undertaking’s market position, the gain obtained, the level of cooperation, and other relevant factors.

Suppliers who suffer harm due to unfair trading practices listed in the UTP Act or the Act on Trade may also pursue civil law remedies under the Civil Code as described below. These remedies are rooted in general contract and tort law.

Declaration of invalidity of unfair contract terms

Under Sections 6:95 and 6:96 of the Civil Code, contractual terms that are contrary to a statutory prohibition or good morals are null and void. If a contractual provision reflects a practice prohibited under the UTP Act, it may be declared invalid.

Damages for breach of contract or tort

If the trader’s conduct breaches the contract or amounts to an unlawful act causing harm, the supplier may seek damages under Sections 6:142–6:143 of the Civil Code.

Hungarian courts and authorities have very limited discretion to reshape contractual relationships. The general principle under Hungarian private law is that contracts are binding as agreed by the parties (*pacta sunt servanda* principle) and may only be modified under exceptional statutory grounds.

The main exception is found in Section 6:192 of the Civil Code, which incorporates the *clausula rebus sic stantibus* principle. Under this provision, a party may request the court to modify or terminate a contract if all of the following criteria are met:

* the contract establishes a long-term legal relationship;
* circumstances have changed significantly after the conclusion of the contract;
* the change was unforeseeable, and not attributable to the party requesting the modification;
* maintaining the contract unchanged would endanger the party's essential legal interest.

This remedy is exceptional and applied restrictively, especially in commercial relationships where the risk of economic shifts is typically borne by the parties.

Apart from the above, courts may declare specific contract terms invalid, particularly where they violate a statutory prohibition (e.g. a practice listed under the UTP Act or the Act on Trade). However, this does not allow courts to impose substitute terms – only to eliminate the unfair provision.

Administrative authorities such as the HCA or NFCSO have no competence to modify contractual terms or regulate the substance of the commercial agreement. Their role is confined to identifying unlawful conduct and imposing sanctions.

Since the entry into force of the Act on Trade, the HCA launched 11 investigations under Section 7. The HCA found the investigated practices lawful in three cases[[57]](#footnote-57) and closed six cases with commitments.[[58]](#footnote-58) In two instances, the HCA imposed fines (between HUF 3 and 5 million[[59]](#footnote-59)) during the follow-up investigations for failure to comply with the commitments by the companies.[[60]](#footnote-60) In a recent case, although the HCA did not impose a fine, the investigated undertaking offered commitments in the value of ca. HUF 1.7 billion (approx. EUR 4 million).[[61]](#footnote-61) Therefore, even if cases may be closed with the authority making the commitments offered by the company binding, compliance with the Act on Trade may be very costly depending on the gravity of the alleged infringement.

The HCA imposed fines in two instances for the violation of Section 7 of the Act on Trade. The HCA first imposed a HUF 50 million (approx. EUR 125 thousand) fine on a large international supermarket chain for unilaterally prescribing a progressive bonus scheme and charging that scheme to its suppliers.[[62]](#footnote-62) The second fine imposed was significantly larger in magnitude, amounting to HUF 1 billion (approx. EUR 2.5 million), and was imposed on another international supermarket chain for practices related to incorporating a price discount as a fee into the business relationship with its suppliers and unilaterally charging it to the suppliers.[[63]](#footnote-63)

The sanctions based on public enforcement do not exclude the (simultaneous) application of private enforcement remedies. This was confirmed by the Curia as well, which essentially held that parts of the agreement that contain the conduct in violation of the Act on Trade's prohibition of abuse of significant market power constitute as contractual provisions prohibited by law. Therefore, the underlying agreement that contains those provisions may be held (partially) invalid during private enforcement proceedings, on top of the authority having imposed public law sanctions (fines) for the conduct in question.[[64]](#footnote-64)

## 3.7. Mandatory contract law provisions introduced under *ex ante* regulation to deal with relative market power and economic dependence?

In Hungary, there are sectoral *ex ante* market regulation procedures in place for the electronic communications sector, the electricity sector and the natural gas sector. Obligations may be mandated on companies that are designated as having significant market power in the sense of the applicable sectoral regulation.

Regarding the electronic communications sector, the president of the NMIA service providers with significant market power on relevant markets and may impose certain obligations contained in Chapters XI-XIV of the Act on electronic Communications upon that service provider.[[65]](#footnote-65) Such obligations may require service providers inter alia to ensure interconnection between subscriber access points (if required the President may order such service provider to interconnect its network with the network of another service provider to achieve connection between subscriber access points); to provide end-to-end connectivity in justified cases for the interoperability of services to the extent necessary to provide access to APIs, EPGs for other service providers, business entities, under fair, reasonable and non-discriminatory terms to the extent that is necessary to ensure accessibility for end-users to digital radio and television broadcasting services and related complementary services.[[66]](#footnote-66)

Regarding the electricity sector, the HEPURA, the authority responsible for the enforcement of the Act on Electric Energy may conduct a significant market power procedure. If the HEPURA concludes that a market player has significant market power, it may impose certain obligations on that player. Such obligation may, in particular, include (a) to effect supplies in an open and transparent way; (b) the use of price limits; (c) the use of cost-based pricing mechanisms; (d) the obligation of making offers; and (e) the use of non-discriminatory contract terms.[[67]](#footnote-67)

The legal provisions applicable in the natural gas sector are essentially identical to those applicable in the electricity sector, with the enforcing agency (HEPURA) also being identical.[[68]](#footnote-68)

# 4. General Assessment and Conclusion

## 4.1. Conclusions – Relative Market Power under the Competition Act

The HCA recognizes relative market power as a legal concept distinct from dominance. It applies in cases where one party, though not dominant in the overall market, holds a stronger bargaining position in a specific contractual relationship, particularly due to economic dependency or lack of viable alternatives on the part of the weaker party.

In its enforcement practice, the HCA has taken a fact-specific and cautious approach. It examines whether the stronger party's conduct goes beyond normal commercial behaviour, the weaker party is genuinely dependent and lacks realistic alternative partners; the terms imposed are unilateral, unjustified, and disproportionately favour the stronger party.

The authority does not presume abuse merely from the existence of dependency. Instead, it requires evidence of exploitative or exclusionary conduct, such as unjustified charges, unilateral modifications, or restrictions on commercial freedom.

In past cases, the HCA has declined to establish abuse where the terms were clearly communicated, foreseeable, and part of a commercial strategy known to the other party. It also considers whether the allegedly weaker party had access to alternatives or could have foreseen the consequences of the contractual setup.

Overall, the HCA applies the concept of relative market power with restraint, intervening only when clear harm or unfair advantage is demonstrated in the relationship between the contracting parties.

In our view, relative market power provisions may be justified in specific vertical relationships, especially where dependency is systemic (e.g. food retail, telecom access). To improve clarity and legal certainty, the Competition Act could benefit from either expressly including relative market power or reaffirming its exclusion, alongside detailed guidance or case examples, since clear definitions and careful enforcement is required to avoid legal uncertainty or overregulation.

## 4.2. Conclusions – SMP under the Act on Trade and the application of the UTP Act

As for the Act on Trade, the HCA has only enforced the prohibition of the abuse of significant market power where it was possible to find that a company had significant market power on the basis of meeting the relevant turnover threshold. Moreover, the HCA has only found an abuse if the conduct was expressly included in the non-exhaustive list of abuses under Section 7(2) of the Act on Trade.

In other words, the HCA has limited decision-making practice in enforcing the prohibition of the abuse of significant market power. It is, therefore, difficult to foresee how the HCA would interpret and apply rules requiring a detailed analysis beyond turnover thresholds. It is also difficult to predict how the HCA would apply such rules for a conduct not specified in the non-exhaustive list of abuses. On the other hand, market players might reasonably expect that the HCA would limit itself to pursuing cases where the turnover thresholds for finding significant market power are met and where the relevant conduct is specified in the non-exhaustive list of abuses or otherwise qualifies as a breach of Section 7b(1) or (2) of the Act on Trade.

In this respect, it is, however, important to emphasize that over-reliance on formal turnover tests may misidentify firms as powerful when they are not, undermining proportionality. In addition, recalibrating the HUF 100 billion (approx. EUR 250 million) turnover threshold appears increasingly necessary, given that inflation and nominal revenue growth have led to the inclusion of companies that do not possess significant structural market power.

Under the UTP Act, the existence of a supplier-trader relationship is sufficient for assessing whether a particular conduct is an unfair trading practice. UTPs are defined in an exhaustive list of prohibited practices under Section 3(2) of the UTP Act. Therefore, neither the authorities nor the courts have had to assess the relative market power of the parties or the characteristics of the affected markets in order to find an infringement.

In general, the rules of the Act on Trade and the UTP Act may be useful to protect the interests of SMEs (especially smaller, local suppliers employing local people), but due care should be taken not to interfere too much with the private interests and business processes in the market that naturally result from a fair competitive process. Those practices (e.g. fixed bonus schemes in certain circumstances) which are mutually beneficial to both suppliers and traders alike should not be prohibited at all costs, as this could damage the competitive process.

Also, we are of the opinion that under the UTP Act, at least the market position of the suppliers (see e.g. the case of Coca Cola and ALDI mentioned above) should be taken into account when assessing whether there is relative market power vis-à-vis the suppliers. However, we do not expect a legislative change to this effect in the near future and the case law seems to accept the strict approach of the public authorities in this respect; i.e. that there is no room for assessing the market position of the supplier, which the legislation is supposed to "defend" against the trader with relative market power.

## 4.3. Conclusions – Other Sector-Specific Legislation

In regulated sectors (e.g. electricity, gas, electronic communications), SMP assessments are based on forward-looking, structural market analyses aligned with EU frameworks. These *ex ante* regulations do not prohibit abuse *per se* but impose preventive obligations on undertakings with SMP. Enforcement is more predictable and guided by objective market and technical criteria, rather than bilateral dependency.

This model provides a balanced framework. However, to ensure coherence, coordination between the HCA and sector regulators is crucial.

1. The members of the working group preparing the chapter were: Anikó Keller, Sam MacMahon Baldwin, Benedek Attila Ádám (Szecskay Attorneys at Law); Zoltán Bánki, Anna Pintér, Boglárka Priskin, Márton Kocsis, Máté Baumgartner (CERHA HEMPEL Dezső & Partners Law Firm); Andor Cserép, Tamás Simon (Hegymegi-Barakonyi és Fehérváry Baker & McKenzie); Dávid B. Nagy (Lakatos, Köves and Partners); Máté Borbás (SBGK Attorneys at Law and Patent Attorneys); Pál Szilágyi (DENTAL-PANNONIA). [↑](#footnote-ref-1)
2. Section 22(1) of the Competition Act states that a dominant undertaking is one which is in a position of economic strength on the relevant market if it can carry out its economic activity largely independently of other market participants, without having to have material regard to the market conduct of its competitors, suppliers and customers in relation to it when determining its market conduct.

We note that such definition of dominant position was introduced in 2000 by Act CXXXVIII of 2000, and amended in 2008 by Act XLVII of 2008. [↑](#footnote-ref-2)
3. See decision no. VJ-60/2012/350., paragraph 147. [↑](#footnote-ref-3)
4. In Hungary, bills adopted by the Hungarian Parliament do not have an official reasoning adopted by the Hungarian Parliament. Instead, the reasoning drafted by the proponents of the bill are published and used as guidelines for interpretation. [↑](#footnote-ref-4)
5. Section 7(6) of the Act on Trade [↑](#footnote-ref-5)
6. Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, OJ L 321, 17.12.2018, p. 36–214 [↑](#footnote-ref-6)
7. [András Lapsányszky: A hírközlési piacszabályozás hazai alapintézményei és uniós szabályozási reformja, in In Medias Res 2021/2., pp. 237-238.](https://szakcikkadatbazis.hu/doc/4806553) [↑](#footnote-ref-7)
8. Section 10(1) point 5 of the Act on Electronic Communications [↑](#footnote-ref-8)
9. Section 10(1) points 6-7 of the Act on Electronic Communications [↑](#footnote-ref-9)
10. Section 20(1)c) of the Act on Electronic Communications [↑](#footnote-ref-10)
11. [Gábor Fejes, Zoltán Marosi: Versenyjog és versenyszabályozás a földgázpiacon, in *A magyar földgázszektor működése és szabályozása I.* (ed. Fazekas Orsolya), Complex, Budapest, 2014., p. 214.](https://kti.krtk.hu/wp-content/uploads/2023/05/verseny2022_7_Fejes_Marosi.pdf) [↑](#footnote-ref-11)
12. Section 107(1)-(2) of the Act on Electric Energy [↑](#footnote-ref-12)
13. Sections 52-53 and 70-71 of Act XCIX of 2018 [↑](#footnote-ref-13)
14. Decision no. Vj-122/2001/15 of the HCA of 9 January 2002 [↑](#footnote-ref-14)
15. Point 28 of Decision no. Vj-122/2001/15 of the HCA of 9 January 2002 [↑](#footnote-ref-15)
16. Point 22 of Decision no. Vj-122/2001/15 of the HCA of 9 January 2002 [↑](#footnote-ref-16)
17. Point 29 of Decision no. Vj-122/2001/15 of the HCA of 9 January 2002 [↑](#footnote-ref-17)
18. Point 46 of Decision no. Vj-57/2003/67 of the HCA of 10 December 2003 [↑](#footnote-ref-18)
19. Point 104 of Decision no. Vj/37-14/2017 of the HCA of 3 October 2017 [↑](#footnote-ref-19)
20. Section 2 point 7 of the Act on Trade [↑](#footnote-ref-20)
21. The EUR amounts in this report were calculated at the official daily exchange rate (1 EUR = 399.02) published by the Hungarian National Bank on 18 July 2025. [↑](#footnote-ref-21)
22. Section 7(3) of the Act on Trade [↑](#footnote-ref-22)
23. Section 7(4) of the Act on Trade [↑](#footnote-ref-23)
24. Hotels, Restaurants, Cafés. [↑](#footnote-ref-24)
25. Section 7/B(1)-(2) of the Act on Trade [↑](#footnote-ref-25)
26. The Constitutional Court found in its decision no. 14/2024 (VII.8.) AB that there was either no clear legal definition for these products or that the legal provisions pertaining to these product categories were divergent across several acts, thereby resulting in a lack of norm clarity. [↑](#footnote-ref-26)
27. For reference, see Case No. VJ/49/2021 (Burger King).; VJ/50/2021 (Dreher) or VJ-90/2009 (Auchan). [↑](#footnote-ref-27)
28. For reference, see para. 75(d) of the HCA’s decision in Case No. VJ/47/2010 (SPAR), and para. 174 in Case No. VJ/43/2016 (SPAR) [↑](#footnote-ref-28)
29. For reference, see para. 150 of the HCA’s decision in Case No. Vj/60/2012 (Auchan) [↑](#footnote-ref-29)
30. For reference, see para. 176 of the HCA’s decision in Case No. VJ/43/2016 (SPAR) [↑](#footnote-ref-30)
31. Decision VJ/149/2007/58. [↑](#footnote-ref-31)
32. Section 9(3) of the Act on Trade [↑](#footnote-ref-32)
33. Consumable goods shall mean, with the exception of products sold within the framework of hospitality services, products that consumers by recurrently for their daily needs, such as foods, perfumery and other similar preparations, household cleaning agents and chemicals, sanitary goods and toilet requisites, that consumers usually consume, use or replace within one year (See Point 18a of Section 2 of the Act on Trade). [↑](#footnote-ref-33)
34. Judgment of the Metropolitan Administrative and Labor Court of 12 May 2012 in Case No 23.K.32.477/2016 [↑](#footnote-ref-34)
35. It is remarkable that concluding fixed-bonus agreements also regarding non-food products can be risky. If a trader with significant market power concludes fixed-bonus-agreements with its suppliers regarding non-food products, the HCA may find an abuse of significant market power under the Act on Trade. Under Sections 7(2)(e) and (f) of the Act on Trade, imposing unreasonable terms on the business relationship between the supplier and the trader *vis-à-vis* the supplier, and charging fees for services not provided amount to an abuse of significant market power. According to the practice of the HCA [case No. VJ/47/2010 (SPAR) and VJ/60/2012 (Auchan)], a quantity-based discount or rebate system can be acceptable only if it acknowledges the trader’s efforts exceeding their core activity (i.e., mere distribution or sales), thereby establishing a true incentive for actual sales growth. Citing the policy paper of the OECD on Monopsony and Buyer Power, the HCA stressed that the fixed-bonus does not contribute to efficiency on the supplier’s side but it reduces the profit of the supplier and it can lead to reduced output and increase in consumer prices. [↑](#footnote-ref-35)
36. Judgment of the Metropolitan Administrative and Labor Court of 12 May 2017 in Case No 17.K.32.511/2016; judgment of the Curia of 30 October 2018 in Case No Kfv.III.37.603/2017; judgment of the Metropolitan Administrative and Labor Court of 26 June 2019 in Case 10.K.31.266/2019; judgment of the Curia of 3 June 2020 in Case No Kfv.II.38.107/2019 [↑](#footnote-ref-36)
37. Decision no. VJ/047-274/2010 of 19 June 2012 [↑](#footnote-ref-37)
38. Decision no. VJ/43-398/2016 of the HCA of 10 December 2020. [↑](#footnote-ref-38)
39. Decision no. VJ/49-38/2021 of the HCA of 7 December 2022 [↑](#footnote-ref-39)
40. Decision no. VJ/52-58/2021 of the HCA of 7 December 2022 [↑](#footnote-ref-40)
41. Decision no. VJ/51-95/2021 of the HCA of 8 September 2023 [↑](#footnote-ref-41)
42. See Section 21(a), (b), (c), (d), (e) of Act LVII of 1996 (e.g. unjustified exclusion, discriminatory pricing, coercive contract terms), which parallel practices listed in Section 7(2) of Trade Act and Section 3(2) of UTP Act [↑](#footnote-ref-42)
43. See "2024" in <https://portal.nebih.gov.hu/tisztessegtelen-forgalmazoi-magatartas> [↑](#footnote-ref-43)
44. Section 23 of Government Decree no. 328/2024. (XI. 14.) [↑](#footnote-ref-44)
45. Sections 107-108 of the Act on Electric Energy and Sections 56-57 of the Act on Natural Gas [↑](#footnote-ref-45)
46. Section 49(d) of the Act on Electronic Communications [↑](#footnote-ref-46)
47. VJ-149/2007. [↑](#footnote-ref-47)
48. VJ-50/2021, VJ-51/2021. [↑](#footnote-ref-48)
49. VJ-49/2021, VJ-52/2021. [↑](#footnote-ref-49)
50. VJ-92/2006. [↑](#footnote-ref-50)
51. VJ-23/2008, VJ-91/2008, VJ-149/2007. [↑](#footnote-ref-51)
52. The HCA expressly investigated whether at least one of these conducts was carried out thereby violation the Act on Trade in 9 of 11 cases launched. In the two cases, the specific investigated conduct is not publicly disclosed. [↑](#footnote-ref-52)
53. Section 78(1) a) of the Competition Act [↑](#footnote-ref-53)
54. Section 78(1b) of the Competition Act [↑](#footnote-ref-54)
55. Section 78(3) of the Competition Act [↑](#footnote-ref-55)
56. Notice No. 11/2017 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the determination of fines for infringements of the prohibitions on anti-competitive agreements and concerted practices, abuse of dominant position, and abuse of significant market power [↑](#footnote-ref-56)
57. VJ-149/2007, VJ-90/2008 and VJ-92/2008. In VJ-92/2008, the investigated company complied with the Act on Trade during the investigation, and therefore the procedure was terminated. [↑](#footnote-ref-57)
58. VJ-43/2016, VJ-94/2008, VJ-93/2008, VJ-91/2008, VJ-23/2008, VJ-92/2006. [↑](#footnote-ref-58)
59. Approx. [↑](#footnote-ref-59)
60. VJ-93/2008, VJ-94/2008. [↑](#footnote-ref-60)
61. VJ-43/2016. [↑](#footnote-ref-61)
62. VJ-47/2017. [↑](#footnote-ref-62)
63. VJ-60/2012. [↑](#footnote-ref-63)
64. BH2018.178. [↑](#footnote-ref-64)
65. Section 62 of the Act on Electronic Communications. [↑](#footnote-ref-65)
66. Section 100 of the Act on Electronic Communications [↑](#footnote-ref-66)
67. Section 107 of the Act on Electric Energy [↑](#footnote-ref-67)
68. See Section 56 of the Act on Natural Gas [↑](#footnote-ref-68)