

EXPERT OPINION

Settlement: a New Tool to Simplify Antitrust Proceedings



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A specific procedure will be implemented by the Hungarian Competition Act from 1 July 2014: undertakings under antitrust investigation may settle the case with the Hungarian Competition Authority if an agreement is reached as to the infringement, the undertaking's liability for it and the maximum amount of fine to be imposed. This new procedural instrument aims at increasing efficiency, simplifying the procedure and optimizing the enforcement of antitrust rules by the Hungarian Competition Authority in order to free up resources to deal with more cases.

A EUROPEAN MODEL

As with many other specific procedural features we know from competition law (dawn raids, leniency policy, etc.), the settlement process also finds its origins in EU law. Settlement was introduced at EU level in 2008, and since its introduction several cartel cases have been settled between the European Commission and undertakings. The most important benefits that can be obtained from settlement are twofold: crucial procedural economies for the European Commission and lower fines for the undertakings. It can be concluded that settlement has been reached in various types of cases; however, there are specific factors that can be identified as elements for a successful settlement. These factors include number of parties involved, potential conflicting positions, and contestation of facts. Based on the experience gained by the European Commission, and taking into account the encouraging fact that settlement became a well-established instrument for cartel enforcement within a relatively short period of time, in European Commission Vice-President Joaquín Almunia's opinion, as many as half of the cases may be resolved by settlement in the future.

HOW TO SETTLE?

The new instrument will be fairly identical to the one already successfully tested at European level. The possibility for settlement will be available under the Hungarian Competition Act in cartel and abuse of dominance cases and will depend mainly on the intent of the Competition Council (the Hungarian Competition Authority's decision-making body). Based on the investigation report and taking into account the factual background of the case and key evidence, the Competition Council may invite each party to confirm its interest in the settlement process in order to terminate the proceeding in a more efficient and quick manner.

It is important to note that settlement cannot be seen as an investigative shortcut. Before the settlement process starts, the Hungarian Competition Authority shall have all sufficient elements to proceed with the case in a standard procedure. Moreover, settlement does not replace leniency, as settlement is not an investigative tool, and unlike leniency programs, settlement rewards all settling parties in the same manner.

A settlement discussion will be started between the Competition Council and the parties having confirmed interest to engage in settlement. The Competition Council will present its assessment of the case (infringement and legal qualification) as well as key evidence and will indicate the amount of fine to be imposed. If an agreement may be reached on these elements between the Competition Council and the interested parties during such discussions, a settlement declaration shall be filed by the interested party, which can be considered as a formal request to settle the case. As the settlement declaration is the backbone of further procedural steps, it must contain specific elements agreed upon during the settlement discussions such as: acknowledgement of the liability for infringement and involvement; summary of the infringing behavior and its legal qualification; indication of the maximum amount of fine the party would accept to be imposed; and confirmation that it has been duly informed of the Competition Council's objections and it has had sufficient opportunity to make its view known. Furthermore, the settling party shall waive its right to request further access to the file or oral hearing and its right to launch an appeal against the final decision.

The settlement declaration can only be revoked if the preliminary opinion (statement of objections) issued by the Competition Council materially differs from the settlement declaration (e.g. the fine to be imposed would be higher than agreed). In this event, the case will again follow the standard way of procedure and the settlement declaration cannot be used as evidence in the proceeding. Otherwise, if the party confirms that the preliminary opinion corresponds to its settlement declaration, the Competition Council will proceed with the adoption of a final decision. In return for settling, the undertakings receive a 10% reduction of the fine that would normally be imposed in a standard procedure.

The new rules of the Hungarian Competition Act only draw up the main conditions of the settlement process and all additional details will be further elaborated by the practice of the Hungarian Competition Authority.

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From Hunglish to Legalese: Terminologists in Action

The EU Law Department of the Hungarian Ministry of Public Administration and Justice (KIM) and OFFI have launched a new pilot project together: a special team organized specifically for the continuous translation of new laws and other pieces of legislation. Its first big project will be the translation of the new Hungarian Civil Code.

BBJ ANDRÁS ZSÁBOKI

"The Ministry of Public Administration and Justice wishes to offer a new service to those segments of the Hungarian public administration which apply Hungarian law to foreigners and foreign clients," Endre Gáspár, senior officer at the EU Law Department of KIM told the *Budapest Business Journal*. "We think that foreign companies operating in Hungary will benefit greatly from the new service; those who wish to start new enterprises here will also feel greater confidence toward the country if the current Hungarian laws are accessible in English."

The first result of this effort is a revised and consolidated English translation of the Fundamental Law of Hungary, the terms of which has been brought in line with EU-terminology, and which is already available on the website of the Hungarian Government (www.kormany.hu/en). The novelty in the project lies in the fact that Hungarian legislation will be translated by one team of translators, whose joint work will ensure consistency in legal terminology. "So far, Hungarian laws have been translated mainly on an individual basis whenever it was necessary. The work was always done by outside teams of translators, non-affiliated with the public administration; it remained

the ministry's task to harmonize their diverse terminologies with one another in the end," Gáspár explained.

Due to the differences between the British common law system and continental legal systems like that of Hungary, translating Hungarian laws into English is a rather complex challenge requiring thorough terminology research. "In the EU's own translation practice, the aim has been the creation of a so-called neutral terminology in English. This is reasonable as the terminology of the EU-legislation must be suitable to equally include and cover the traditional legal terms of every Member State of the EU," Gáspár said, educating the *BBJ* in the intricacies of European legal translation.

The team of the Hungarian pilot project is, therefore, consciously building upon the foundations of already existing legal terminologies used in the EU and in the English translations of other national laws. "French and German comparative legal studies in particular have been very helpful to Hungarian terminologists," Gáspár pointed out. As a by-product of the translation project, an extensive glossary is being developed as well, which is going to be included into the terminology database Termin, maintained by KIM on the internet: <http://external.kim.gov.hu/eu-terminologia>

What on Earth is Jogképesség?

The comparative approach is a common method for translating legal terms. It means that the translator tries to find a term having the same function in the legal system of the target language. However, certain legal institutions of the Hungarian legal system might be unknown in common law (or, indeed, in EU law), and thus there might not be a proper English denotation. In such cases, the English translations of the laws of other countries can be consulted for accepted equivalents. An ultimate solution for translating legal expressions can be to create artificial terms. However, this method may only be applied if the meaning of the newly created term is precisely defined and clear.

Basic terms in Hungarian law are for example, include "jogképesség, the capacity of every natural person (human beings) and legal person (such as companies) to have rights and obligations, and "cselekvőképesség", the ability of human beings to acquire rights and incur obligations with their own acts. Such terminological distinction is not established in common law. Capacity in legal English can refer to both terms. However, these terms exist in German law ("Rechtsfähigkeit" and "Geschäftsfähigkeit") with similar meaning. The English translation of the German Civil Code uses the literal translations "legal capacity" and "capacity to contract", respectively. Based on this, "legal capacity" has been taken over for the translation of the Hungarian Civil Code as the equivalent for "jogképesség". Since "cselekvőképesség" implies not only *contracting* as in the German term, but also *acting*, the term "capacity to act" has been established as its English translation.

Legal systems are coherent and consistent systems, the parts of which (the pieces of legislation) can only be construed with regard and in relation to each other. These interrelations must be closely reflected in translations, otherwise logical connections within the legal system may be shifted or broken, resulting in misleading interpretations.

Legal texts, and especially authoritative legal texts like laws, are very different from ordinary texts. Their main features are the strict structural format and the usage of the so-called "legalese", a style with often-archaic phrases and a specific technical vocabulary. Translating legal texts requires, beside a thorough knowledge of the law, appropriate familiarity with these features. However, even this is not always enough.