

Protection of Competition Act

UNFAIR TRADING PRACTICES IN THE AGRICULTURAL AND FOOD SUPPLY CHAIN

Absolute Prohibitions

Article 37b. (New, SG No. 17/2021, effective 1.11.2021) (1) Unfair trading practices shall be prohibited in the relationship between buyers and suppliers in the supply chain of agricultural products and foodstuffs such as:

1. payment from a buyer to a supplier:

a) later than 30 days after the expiry of the agreed delivery period in which the deliveries were made, or later than 30 days after the date of determination of the amount payable for this delivery period, depending on the later date - under contracts for the regular supply of perishable agricultural products and foodstuffs and other agricultural products and foodstuffs;

b) later than 30 days after the date of delivery or later than 30 days after the date of determination of the amount payable, depending on the later date - under contracts which do not provide conditions for regular delivery of non-perishable agricultural products and foodstuffs and other agricultural products and foodstuffs;

2. buyer's cancellation of an order for perishable agricultural products and foodstuffs with less than 30 days' notice so that the supplier cannot reasonably be expected to find another way to market or use these products;

3. unilateral change by the buyer of terms of the delivery contract relating to the frequency, method, place, time or volume of delivery or supply, quality standards, payment terms or prices, time, and the provision of the services specified in Article 37c;

4. demand from the buyer to the supplier concerning payments that are not related to the sale of agricultural products and foodstuffs of the supplier;

5. demand from the buyer for payment from the supplier in case of deterioration of the quality, scrapping and/or shortages of agricultural products and foodstuffs that have occurred on the buyer's premises or after the ownership has been transferred to the buyer, when this is not due to reasons, for which the supplier is liable;

6. refusal by the buyer to confirm in writing the terms of the contract for which the supplier has requested written confirmation, except where the supply contract relates to the supply of products by a member of a producer organisation, including a cooperative, to the producer organisation, of which the supplier is a member, if the articles of association of that producer organisation or the rules and decisions laid down in or deriving from the articles of association contain provisions with effect similar to the effect of the terms of the supply contract;

7. unlawful acquisition, use or disclosure by the buyer of a trade secret of the supplier within the meaning of the Trade Secret Protection Act;

8. warning by the buyer concerning retaliatory commercial action against the supplier or undertaking such action if the supplier exercises his contractual or legal rights, including by lodging a complaint or cooperating in an inquiry under this chapter;

9. a request from the buyer to the supplier for compensation of the costs of dealing with customer complaints related to the sale of the supplier's products, despite the absence of grounds for engaging the supplier's liability;

10. prohibition or restriction by the buyer to the supplier under the contract to offer or to purchase goods and services of or from third persons;

11. prohibition, restriction or imposition of sanctions by the buyer on the supplier under the contract for providing the same or better trading conditions to third parties;

12. unilateral and unjustified termination of the contract by the buyer or termination without notice within a reasonable time sufficient for the supplier to cover its investment costs and in view of the previous commercial relations of the parties to the contract.

(2) For the purposes of the payment deadlines, the agreed delivery periods under paragraph 1, item 1 (a) shall in any case not exceed one month.

(3) In the hypotheses under paragraph 1, item 1, the date of determining the payable sum shall be the date of issuing of the invoice or the date of its receipt by the buyer. Where the payable sum is determined by the buyer, the payment periods specified in paragraph 1, item 1 (a) shall start running as of the expiration of the agreed delivery date, in which the deliveries were made and the payment deadlines under paragraph 1, item 1 (b) shall start running as of the delivery date.

Conditional Prohibitions

Article 37c. (New, SG No. 17/2021, effective 1.11.2021) (1) Trading practices such as the following shall be prohibited, except where they have been agreed in advance between the parties on clear and unambiguous terms in the contract for the supply of agricultural products and foodstuffs or in a subsequent agreement between the supplier and the buyer:

1. return by the buyer of unsold products where the latter has not paid for the, and/or their disposal;

2. payment by the supplier to the buyer as a condition for the storage, display or inclusion in the product range of his products or the marketing of such products;

3. request from the buyer for payment by the supplier of all or part of the costs for reduced prices of agricultural products and foodstuffs sold by the buyer within the promotion, unless before the promotion, which is made at the initiative of the buyer, the buyer specifies the term of the promotion and expected quantities of agricultural products and foodstuffs that will be ordered at reduced prices;

4. request by the buyer for payment by the supplier of advertising activities of the buyer;

5. request by the buyer for payment by the supplier of marketing activities of the buyer;

6. payment by the supplier to the buyer for equipment and/or maintenance of premises used for the sale of the products;

7. request by the buyer for payment by the supplier of transportation and/or logistical costs;
8. request from the buyer to reduce the prices of products retroactively directly or by applying unjustified discounts, bonuses and fees or services provided.

(2) When the buyer requires payment in the cases under paragraph 1, items 2, 3, 4, 5, 6 and 7, he shall submit to the supplier, at his request, a breakdown in writing for the payments per unit of goods or the total amount of the payments, as the case may be. In the hypotheses under paragraph 1, items 2, 4, 5, 6 and 7, the buyer shall submit in writing a breakdown of the supplier's costs, as well as information what this breakdown is based on.

Scope of the prohibitions of unfair trading practices

Article 37d. (New, SG No. 17/2021, effective 1.11.2021) (1) The prohibitions under Articles 37b and 37c shall apply to unfair trading practices related to the sale of agricultural products and foodstuffs by:

1. a supplier who has a maximum annual turnover of BGN 3 911 000 to a buyer who has a maximum annual turnover greater than BGN 3,911,000;
2. a supplier who has an annual turnover greater than BGN 3,911,000 and less than BGN 19,558,000 to a buyer who has an annual turnover greater than BGN 19,558,000;
3. a supplier who has an annual turnover greater than BGN 19,558,000 and less than BGN 97,791,000 to a buyer who has an annual turnover greater than BGN 97,791,000;
4. a supplier who has an annual turnover greater than BGN 97,791,000 and less than BGN 293,374,000 to a buyer who has an annual turnover greater than BGN 293,374,000;
5. a supplier who has an annual turnover greater than BGN 293,374,000 and less than BGN 684,540,000 to a buyer who has an annual turnover greater than BGN 684,540,000;
6. a supplier whose annual turnover does not exceed BGN 684, 540,000 to a buyer, which is a public authority.

(2) The annual turnover under paragraph 1 shall be determined in accordance with Article 4, 4b and 4d of the Small and Medium-Sized Enterprises Act, including according to the definitions for independent undertaking, for partner undertakings and related undertakings and other applicable provisions related to the annual turnover contained in the same Act.

(3) The annual turnover of an undertaking - supplier and buyer, shall include the net amount of the revenue from the regular activities of the undertaking over the preceding financial year.

Exclusions

Article 37e. (New, SG No. 17/2021, effective 1.11.2021) (1) The prohibition under item 1 of Article 37b (1) shall not affect:

1. the consequences of overdue payments and the costs for legal defence pursuant to Articles 303a and 309a of the Commerce Act;

2. agreement between the buyer and the seller of a value sharing clause within the meaning of Article 172a of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007 (OJ, L 347/671 from 20 December 2013), hereinafter referred to as "Regulation (EU) 1308/2013".

(2) The prohibition under Article 37b (1) item 1 shall not apply with respect to payments:

1. from a buyer to suppliers in the framework of the School fruit and vegetables scheme pursuant to Article 23 of Regulation (EU) No. 1308/2013;

2. by medical treatment facilities under Article 5 (1) of the Medical-Treatment Facilities Act and state treatment facilities - commercial companies, with respect to which the payment deadlines under Article 3 (6) of the Medical-Treatment Facilities Act apply;

3. under contracts between suppliers of grapes or grape must for the production of wine and their direct purchasers, provided that:

a) the specific terms of payment are included in the standard contracts, which are declared binding pursuant to Article 164 of Regulation (EU) No. 1308/2013 and that this extension of standard contracts to other operators is renewed from that date without significant changes in the terms of payment to the detriment of suppliers of grapes or grape must, and

a) the contracts are multiannual or become multiannual.

(3) The prohibitions under Articles 37b and 37c shall not apply with respect to the contracts between supplier and consumers.

Protection under other Procedures

Article 37f. (New, SG No. 17/2021, effective 1.11.2021) The initiation of proceedings under this Chapter shall not prevent each of the parties to the supply contract from defending their rights under another established procedure.