International Report

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*"Man can do nothing good or bad except by associating"*

Pierre Waldeck-Rousseau

1. **Introduction**

The International League of Competition Law has chosen to focus on the subject of purchasing groups reflecting the LIDC’s desire to get as close as possible to the news or even to anticipate it. Indeed, if the subject of the submission of groupings to purchase is not new and has been examined by many jurisdictions. The recent COVID-19 crisis, the consequences of the war in Ukraine have contributed to the resurgence of inflation. It led to questioning the advantages and disadvantages of this form of buyers’ association when faced with suppliers forced to consider the grip of the power thus created to fight against their influence. The interest clash between suppliers and buyers is well known. Depending on where one stands, the view of the power balance can seem totally contradictory.

This dual approach is reflected in the authorities’ ambiguity when faced with a technique that can be idealized as the best tool for stimulating competition by exerting pressure on suppliers' prices which will be passed on to the downstream market. This efficiency against inflation may justify a benevolent approach while suppliers will portray a fictitious accumulation of turnover of competing buyers who will use any means (delisting, boycott ...) to obtain a reduction in prices and margins.

The update is underlined by the adoption in June 2023 of the European Union guidelines and in August 2023 of the UK guidance which deal specifically with group purchasing issues.

Nevertheless, the duality of approaches (positive and negative) is still topical. Positive for those who see it as a good tool for stimulating competition, negative for those who do not understand that the authorities let competitors join forces raises very understandable competition questions. What rules should be implemented to provide a framework for purchasing agreements and anticipate with sufficient legal certainty prohibited practices by those authorized or at least to know the conditions for choosing between good and evil?

To enlighten us, 10 National Reports have been prepared. Their quality should be highlighted. Especially as the timetable for the National and International Reports was very tight:

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| --- | --- |
| **Country** | **National Rapporteur** |
| **Austria** | Stefan Wartinger, Gerhard Fussenegger |
| **Brasil** | João Marcelo de Lima Assafim |
| **France** | Guillaume Melot, Maud Boukhris, Mathilde Boudou, Nizar Lajnef, Lauren Mechri |
| **Hong Kong** | Catrina Lam, Joshua Yeung |
| **Hungary** | Márton Kocsis |
| **Italy** | Mrs. Elisa Teti, Alessandro Raffaelli |
| **Nordic Group** | Per Karlsson, Dr. Robert Moldén, Henrik Nilsson |
| **Romania** | Anca Buta-Mușat |
| **Switzerland** | Johana Cau |
| **UK** | Sima Ostrovsky |

Two additional reports and/or comments have been sent to the international rapporteurs after the LIDC congress one for Belgium from Carmen Verdonck and Nina Methens and one for Poland by Joanna Affre and Mateusz Restel.

All the reports were very useful and detailed on the last developments in each national law and allow the International Rapporteur to give a synthetic summary of the legal framework of buying power.

This International Report will be supplemented by information collected on other countries particularly in OECD documents.

Therefore, predictability is crucial for companies, their board of directors and managers on the understanding of purchasing groups (I) Adequacy of control and sanction procedures are also necessary (II)

1. **Purchasing groups: an anti-competitive or pro-competitive agreement?**

The nature of the buying group has obviously a link with the applicable law. Therefore, it is necessary to clarify what is a purchasing group.

* 1. **What is behind the concept of a purchasing group?**

Each national reporter has used various understanding of Joint purchasing group. Some pointed out the various forms that could be noticed.

Hungary mentioned to focus "on buying groups in the sense of a company / association / other entity that centralizes purchases for its members or affiliates". It covers structural rather than informal representation/mandate, but the same report quote a definition in the Act on Trade: “*an agreement between two or more undertakings to implement their purchasing or sales strategy, to carry out or coordinate a part or all of their purchasing or sales activities*” including more informal implementation.

The French report makes a great difference "between central purchasing bodies and service centers, which are less well known". This distinction is then insisting on the range of activities more than on the purchasing group’s organization.

The Brazilian report even refers to "so-called purchasing groups". The various form/level of purchasing groups explain the difficulty to harmonize the understanding of a purchasing group. The national reports have not given a common definition and notice the lack of definition in some national law[[1]](#footnote-2).

The EU Guidelines give a wide definition of joint purchasing covering all national reports approach as it “involves the pooling of purchasing activities and can be carried out in various ways, including through a jointly controlled company, through a company in which undertakings hold non-controlling stakes, through a cooperative, by a contractual arrangement or more flexible forms of cooperation, for example where a representative negotiates or concludes purchases on behalf of several undertakings (collectively referred to as 'joint' purchasing arrangements)”. [[2]](#footnote-3) This very large definition could include all kind of cooperation with all type of buyers even public/state entities as the French report mentions[[3]](#footnote-4). Many reports highlighted that the EU definition will be a good help to understand purchasing agreement[[4]](#footnote-5)

The EU definition could also include vertical agreement. Some usual agreements as franchise can include a purchasers group but in others fields it can be very binding structural relationship between members ([cooperative](https://www.linguee.fr/anglais-francais/traduction/cooperative.html) [society](https://www.linguee.fr/anglais-francais/traduction/society.html), joint venture …).

As concluded by the Italian Report the « structural and organizational characteristics of the chain itself can vary considerably » and “the structure of the buying groups does not appear to influence the Authority’s analysis”. [[5]](#footnote-6). Then the regime can also vary, and the scope of the control could be light without looking at the ancillary clauses or more rigorous.

But the investigation will also be determined by the sector and the market affected.

* + 1. **A much wider variety than just the field of mass distribution**

Purchasing groups are not a recent topic, but all countries do not have the same level and field of influence. The British report points out that « Buying groups and cooperatives have been operating in the UK since at least the mid-twentieth century; organizing, negotiating and purchasing on behalf of constituent businesses, across sectors up and down the supply chain".

This observation can be found in most reports although some agreed that buying groups did not play major role on the enforcement level over the last 15 years [[6]](#footnote-7). For Romania, « The creation of buying groups in Romania has taken place rather rarely and randomly over the last 15 years » but the first case had to deal with ship owner and port operators (very specific market different to food retail)[[7]](#footnote-8).

For many countries the mass retailer sector (food and non-food) is one of the main sectors where purchasing groups have been successful[[8]](#footnote-9) both on domestic level but also international for many years (association of national retailers in European alliances as Coopernic, Eurauchan, BIGS and METSPA and more recently Agecore, Interdis, Eurelec….)[[9]](#footnote-10).

Almost 30 years ago, an OECD report was published on « Purchasing Power of Multiproduct Retailers »[[10]](#footnote-11). It confirms that retail and food sectors were a key sector for cooperation. This study shows that many OECD countries’ competition agencies have been under pressure to act against the exercise of buyer power by large multiproduct retailers. In several countries, such pressure has been accompanied by the adoption of legal provisions designed to counter abuses of "economic dependence" or to strengthen prohibitions attaching to price discrimination and loss leading. Although there may be valid efficiency justifications for prohibiting the exercise of buyer power by multiproduct retailers, there are also significant risks in doing so. A misguided application could amount to protecting inefficient distributors at the expense of consumers.

However, others sectors are developing purchasing groups in other field than retail: health, newspapers, timber[[11]](#footnote-12) furniture for public hospital, insurance company[[12]](#footnote-13) ,medical fees[[13]](#footnote-14), media[[14]](#footnote-15), energy[[15]](#footnote-16), technology and construction [[16]](#footnote-17) as brick market[[17]](#footnote-18) textile and kitchen furniture[[18]](#footnote-19).

More recently online platform allows companies to gather their volume of purchase in various sectors. This new activity could aim to a “more rigorous analysis”[[19]](#footnote-20).

* 1. **Effect or Object prohibition for true purchasing groups?**

It is commonly recognized that to be caught by a prohibition an agreement must have as its ‘object or effect’ the prevention, restriction, or distortion of competition on the market. The essential criterion for ascertaining whether an agreement involves a restriction of competition ‘by object’ is the finding that such an agreement reveals in itself a sufficient degree of harm to competition for it to be considered that it is not necessary to assess its effects. Horizontal price-fixing by cartels, may be considered so likely to have negative effects and then this comment should be applied or not to the purchasing agreement.

Some National reports explained the difference between « true » purchasing groups and « purchasing cartels »[[20]](#footnote-21). It suggested that “true purchasing groups” generally do not amount to a competition restriction by object if they genuinely refer to joint purchasing and have a pro-competitive efficiency: “small buyers concluding group purchasing agreements could also benefit from cost reductions that they can then pass on to consumers by lowering their prices and thereby establishing economic efficiency.”[[21]](#footnote-22)

On the other hand, purchasing cartels should be prohibited despite the effect on competition. EU competition law has already condemned purchasing cartels as a per object restriction and more easily illegal[[22]](#footnote-23). The Belgium report gave the example of the Carrefour Provera alliance being analyzed the BCA mainly on the effects caused by the association on retailers[[23]](#footnote-24). The exchange of sensitive information between competitors could have a significant impact on both upstream and downstream markets. Carrefour and Provera decided to change the framework of the alliance reducing the uncompetitive effects to get an BCA’s approval.

Some Competition Authority as the French one, rather seeks to assess, on a case-by-case basis, whether a shift in the sharing of margins would be on balance pro- or anti-competitive given the nature of the agreement and the position of its members[[24]](#footnote-25). But Swedish report mentioned that “competition law enforcement is inherently more conspicuous within the terrain of sales compared to joint purchasing collaboration”.

The Hong Kong report based on national guidelines states that joint purchasing agreements “*frequently allows SME undertakings to achieve purchasing efficiencies similar to their larger competitors. This may result in lower prices in the market where the joint buying takes place, lower transaction costs, and/or distribution efficiencies for the SMEs. Joint buying of this kind seldom gives rise to competition concerns*.”[[25]](#footnote-26) Thus, a “*joint buying arrangement would typically not be considered by the Commission to have the object of harming competition unless it is a disguised buyers’ cartel*.”[[26]](#footnote-27)

The Hungarian Competition Authority established that joint purchasing agreements are not considered to be anti-competitive by object, as their goal is not exclusively the setting of prices by the parties to the joint purchasing agreement. Consequently, the HCA stated that joint purchasing agreements are not excluded from the category of *de minimis* agreements.[[27]](#footnote-28)

In this way, the purchasing group can “disguise” a purchasing cartel. The difference is somewhat difficult to understand and operationalize. The disguised consequences can be very severe (fine, damages claim, litigation, press release…) for the undertaking.

The UK report showed the same caution with this peculiarity: “the Draft Horizontal Guidance expressly clarifies that joint purchasing arrangements do not “normally” amount to a restriction of competition by object if they “truly” concern joint purchasing.[[28]](#footnote-29) As commented the UK guidelines sets out a list of non-exhaustive factors which will indicate that a buying group or a purchasing arrangement is less likely to be a buyer cartel. Specifically: **Joint negotiation with the supplier** through a *common or member organization;*[[29]](#footnote-30) **Secrecy (**disclosure to suppliers can indicate that a buying group is likely *not* a buyer cartel) ; **Written agreement** between members.[[30]](#footnote-31)

The EU guidelines have tried to make it clearer: *“Purchasers cartels are agreements or concerted practices between two or more purchasers which, without engaging in joint negotiations with the supplier:*

*coordinate those purchasers’ individual competitive behavior on the purchasing market or influencing the relevant parameters of competition between them through practices such as, but not limited to, the fixing or coordination of purchase prices or components thereof (including, for example, agreements to fix wages or not to pay a certain price for a product); the allocation of purchase quotas or the sharing of markets and suppliers; or*

*influence those purchasers’ individual negotiations with suppliers or their individual purchases from suppliers, for example through coordination of the purchasers’ negotiation strategies or exchanges on the status of such negotiations with suppliers »[[31]](#footnote-32).*

This distinction is not a clear-cut and does not cover completely the by object prohibition. Even in this case the competition authority could not fine the members without a study of the context and the certainty of a sufficient degree of harm to competition. It has been repeatedly decided by the court that a “restriction of competition by object must be interpreted restrictively and *“within the meaning of Article 101(1) TFEU, account must be taken of the content of its provisions, its objectives and the economic and legal context in which it operates. When determining that context, it is also necessary to take into consideration the nature of the products or services affected, as well as the real conditions of the functioning and structure of the market or markets in question* (judgment of 11 September 2014, *CB* v *Commission*, C‑67/13 P, EU:C:2014:2204, paragraph 53)”[[32]](#footnote-33).

It can then be concluded on the description of a buying group that there is no « regular/typical joint purchasing agreement » neither by a market, structure, size of the members, market power etc. The Chile Authority quoted its ruling in TV plasma case on the effect of the behavior “This purchasing power will be exploited with greater intensity as the exit barriers increase for suppliers”[[33]](#footnote-34). It should be added that the precedents and controls applied locally are also very different from one place of the world to the other. Chinese Tapei underlined the complex analysis that should be done in downstream markets: “In some situations, the superior bargaining power may occur in the form of buyers’ cartel, substantial purchasing power or joint procurement that will directly bring out anti-competitive effects on the relevant upstream market. However, for downstream businesses and end consumers, these effects are not as noticeable as those resulting from abuse of monopoly (or cartels among sellers/suppliers), which can pose challenges to the CTFTC’s law enforcement activities”[[34]](#footnote-35).

The EU competition law and the recent guidelines “provide a useful guidance”[[35]](#footnote-36) and is a good way to control purchasing groups within the members states. However, it is difficult to state that all buying groups even disguising a purchaser cartel, could be analyzed as a by object prohibition without considering the context (market, market power, legal framework, etc.) and more frequently the effect and the efficiency. It underlines the “difficulties in distinguishing between legitimate purchasing alliance and their practices, as opposed to illegitimate purchasing cartel and their anticompetitive behavior”[[36]](#footnote-37) .

1. **Appropriate but diversified control procedures**
	1. **Application of the usual rules of competition law**

Most national reporters informed the league that no specific substantive law was applicable to buying groups and that the general provisions on anti-competitive practices would be the main way of control. The two main prohibitions would be unlawful agreement and abuse of dominant position. These two rules are ex post control. The Hong Kong report seemed to regret that “the empirical effectiveness of competition law in regulating purchasing groups is therefore unclear at this stage”. Some countries have also specific regulations and have introduced the definition of “significant market power” as *“a market position that makes the trader a reasonably indispensable or irreplaceable contractual partner for suppliers in the delivery of their products to final consumers.”*[[37]](#footnote-38)

* + 1. **Agreement**

The ambiguity of the buying group is recalled by all national reporters. Brazil recognized that “buying groups have different configurations, with different types of participants, structures, rules and forms of activity, factors that can impact competitive analysis. Furthermore, there is no clear and uniform definition of the nature of buying groups, which has led to economic and doctrinal divergence, **the main discussion being whether the agreement constitutes lawful cooperation or collusion**”.

The buying power of a joint purchasing arrangement can in accordance with EU guidelines “lead to lower prices, more variety, or better-quality products for consumers. It may also allow the members, in particular smaller undertakings, to obtain better purchasing terms and thereby remain competitive on the downstream selling market(s) when faced with strong competitors. Undertakings may also engage in joint purchasing in order to prevent shortages or address interruptions in the production of certain products, thus avoiding disruption to the supply chain. However, in certain circumstances, joint purchasing may also give rise to competition concerns.”[[38]](#footnote-39).

Some practices are looked at by national reporters to decide whether it could be efficient or restrictive; good or bad!

One of the best examples of uncertainty is the threat of delisting or refusal to buy. The UK report mentioned that the draft of the national guidelines referred to the distinction between delisting and order stops but this was removed in the final version[[39]](#footnote-40). Switzerland quoted the Comco consultation in 2022. The reporter l add “it remains unclear which specific measures to pressure suppliers, such as collective letters, discussions at management level, or delisting of products or whether ‘mandatory passage’ may already qualify as unlawful practices. The to be issued decision in the MARKANT case is expected to bring clarification for future cases”. The Hungarian report recalled the Act on trade prohibiting calls for boycott and passing-off. “Although, there is no case law for this”.

The EU guidelines consider that *“an agreement between purchasers to no longer buy products from certain suppliers due to particular product characteristics, production processes or working conditions, for example because the products offered are unsustainable whereas the purchasers want to buy only sustainable products, does not have the object of restricting competition. Vertical boycotts must therefore be considered in their legal and economic context to assess their actual or likely effects on competition”.*

An economic study based on empirical comparison on prices to consumers before and after alliance of buyer shows evidence of a countervailing buyer power effect that reduces retail prices by roughly 7%. By exploring determinants of buyer power, the results find that changes in retailers’ bargaining ability play an important role in the countervailing force exerted by the alliances which, otherwise, would have not been profitable[[40]](#footnote-41). The same working group in 2022 stated that “this price drop was accompanied by a substantial reduction in producers' profits as well as the value generated by the industry”[[41]](#footnote-42).

In a different sector (drugs procurement), another study based on empirical analysis and exhaustive data on drug sales quantities and expenditures over several years for forty important molecules showed the efficiency of buying groups. The conclusion was that “Centralized procurement of drugs by the public sector allows much lower prices but that the induced price reduction is smaller when the supply side is more concentrated”[[42]](#footnote-43) so the power of each side is the key point for reducing the price.

Thanks to the international documentation, the positive benefit for the economy of some buying groups can be confirmed. In Australia, in the energy sector, the ACCC decided to grant authorization to undertake the pooling of their demand and collectively tender for and negotiate a Power Purchase Agreement for a duration of 12,5 years. The ACCC considered the following public benefits: transaction cost savings, environmental benefits through a reduction in greenhouse gas emissions, greater investment in and competition for the supply of electricity. The aggregated demands of undertaking was, for the ACCC, unlikely to be large enough to create competition concerns[[43]](#footnote-44).

The general interest of buying groups had also been explained in the health care market in the USA. GAO considered that increases in healthcare expenditures in recent years have intensified congressional scrutiny of the costs of medical care. Federal spending for healthcare services was expected to continue to rise. The increase in federal spending for healthcare services can be attributed, in part, to the growth in healthcare costs, and a significant component of those costs is the cost of products that hospitals and other healthcare providers purchase to provide care[[44]](#footnote-45).

* + 1. **Abuse of domination and economic dependency**

On the abuse of dominant position, in fact few judgments or cases have been reported because a company in a dominant position has less interest to be part of a buying group. Nevertheless, the analysis would be similar on the efficiency proof. The disparity between seller and buyer could be more important and the power on downstream market probably higher too.

The Hungarian report mentioned the Act on trade prohibiting as a general rule that the abuse of significant market power against a supplier is prohibited.[[45]](#footnote-46) The commercial judge can cancel any agreement in violation of this prohibition.

In France, three cumulative criteria are necessary to characterize an abuse of economic dependence under Article L.420-2 of the French Commercial Code: (i) the existence of a situation of economic dependence, (ii) abusive exploitation of this situation and (iii) an actual or potential effect on the operation or structure of competition on the market. The jurisprudence of the competition authority and the Paris Court of Appeal assess an abuse of economic dependence when the supplier does not have an equivalent solution, which makes it difficult to prove the state of dependence.[[46]](#footnote-47) So in fact very rare condemnation have been published.

In Belgium since March 2019 and similarly to the French law, the victims of buying power have been protected. A new Article I.6, 4° CEL defined economic dependence as “an undertaking’s position of submissiveness towards one or more other undertakings that is characterised by the absence of a reasonable equivalent alternative, available within a reasonable period of time, and under reasonable conditions and costs, allowing this or each of these undertakings to impose obligations or conditions that cannot be obtained under normal market circumstances.” The Act did not contain further indications on how such a position of economic dependence should be assessed. Elements that can be relevant to this regard could possibly include: the relative market power of an undertaking, the share of the other undertaking in one’s own turnover, the technology or know-how held by an undertaking, the strong reputation of a brand or the scarcity of a product, the purchasing loyalty of consumers, and the access to essential resources or infrastructure by the economically dependent undertaking. “The finding of a position of economic dependence must, however, just like the finding of a dominant position, be determined on a case-by-case basis” and the abusive behaviour will be probably in line with abuse of dominant position[[47]](#footnote-48) .

* 1. **Possible application of merger law and ex ante control**

A buying group could be controlled if the Joint venture and/or the long-term agreement gives rises to a full-function enterprise. The full-function requirement is fulfilled when *(i)* the joint venture has sufficient financial resources and tangible and intangible assets to be able to engage in an economic activity on a lasting basis; *(ii)* it has the capacity to direct the undertaking with its own, independent management; *(iii)* it is capable of performing all the functions normally performed by the other undertakings active on the same market independently of the parent companies; *(iv)* the economic activity undertaken is of a stable and lasting nature[[48]](#footnote-49).

The analysis will in such case mainly focus on the market power of the entity. In a recent decision, the Italian Antitrust Authority decided that “*the market power of a* buying *group in the supply markets must also be assessed by taking into account the market shares that the member companies jointly hold in the local markets of the large-scale retail trade: the distribution of sales quotas over the territory may in fact influence the purchasing power of the group*”[[49]](#footnote-50).

France made some development on the *ex-ante* control of large purchasing group.

The French commercial code has a specific provision that made compulsory to notify the Competition authority of "any agreement to negotiate the purchase or listing of products or the sale of services to suppliers on a group basis",[[50]](#footnote-51) without this notification subsequently requiring authorisation. In addition, this obligation to provide prior information is subject to a two-fold turnover threshold being exceeded: on the one hand, the total worldwide turnover excluding tax of all the companies or groups of individuals or legal entities party to the agreements must exceed €10 billion, and on the other, the total turnover excluding tax achieved on purchases in France under these agreements by all the companies or groups of individuals or legal entities party to the agreements must exceed €3 billion.[[51]](#footnote-52) This kind of ex-ante control shows that the investigation delay could be inadequate with a change of alliance.

The EU opens the box of specific regulation in the directive on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. The EU considers that “Unfair trading practices are particularly harmful for small and medium-sized enterprises (SMEs) in the agricultural and food supply chain. Enterprises larger than SMEs, but with an annual turnover not exceeding EUR 350 000 000, should also be protected against unfair trading practices to avoid the costs of such practices being passed on to agricultural producers. The cascading effect on agricultural producers appears to be particularly significant for enterprises with an annual turnover of up to EUR 350 000 000. The protection of intermediary suppliers of agricultural and food products, including processed products, can also serve to avoid the diversion of trade away from agricultural producers and their associations which produce processed products to non-protected suppliers”. Therefore, a list of forbidden practices has been adopted and implemented by the member states.

In Belgium, contrary to the Directive’s text, in order not to give even more bargaining power to the “big players”, the Belgian legislator has chosen to protect only those suppliers whose annual turnover is less than EUR 350 million. For suppliers, whose consolidated turnover exceeds EUR 350 million, the protection of the law does not apply. Although the law aims at protecting SME’s suppliers, which are considered to be more vulnerable than larger suppliers. This turnover threshold can be deplorable, because even bigger suppliers are nowadays faced with the enormous pressure exerted by purchasing groups. The balance of power between large (international) suppliers and buying groups is indeed growing to be more and more unequal in favor of the purchasing groups[[52]](#footnote-53).

In Poland, the implementation of the EU directive allowed the Office of Competition and Consumer Protection (OCCP) to fine buyers using unfair practices towards suppliers. Applying additional discount at the end of the contract, [[53]](#footnote-54) or unjustified fees[[54]](#footnote-55) and other cases are under proceedings.

1. **Conclusion: some improvements but can we do better?**

Many reports recognized that there are very few legal and/or the lack of academic economic comments on purchasing groups [[55]](#footnote-56). For Hong Kong, the foreseeability is rather unclear, “due to the dearth of jurisprudence or guidance”. Other reports are more optimistic on the communication on this subject and some economic studies are available even if they should be updated[[56]](#footnote-57). The LIDC could be a useful help by explaining the rules.

Guidelines from various countries (EU, UK, Hong Kong) are a good way to understand the approach of competition authorities but could be understood as non-evolutive and dated. Some reporters require specific guidelines on purchasing groups[[57]](#footnote-58). During the COVID crisis, many competition authorities have admitted purchasing groups and some practical application of the competition law by letters guidelines. Could security be improved to offer more certainty to companies?

Some ways could be inspired by national practice or advice and ordered in two categories.

* 1. **First one would be on developing soft law guidance.**

One way could be public opinion on various cases[[58]](#footnote-59). National competition authority could maybe collect various information and make official market studies, guidelines and advocacy on competition law applied specifically to buying groups[[59]](#footnote-60). Allowing and/or encouraging code of conduct could also be of some help for the undertakings[[60]](#footnote-61). Australian competition & consumer Commission noticed that “industry codes (like the Dairy Code, the Horticulture Code, and the Food & Grocery Code) provide sector-specific protections that focus on particular problems that arise from significant purchasing power in those sectors”[[61]](#footnote-62). This could be a way to apply without condemnation competition to purchasing groups and differentiate the genuine ones from the cartels[[62]](#footnote-63). This solution could be a smart way. However, it is also an informal regulation.

In the same way, a specific threshold based on the market share on the purchase market and offering a security for small size businesses as proposed in the EU guidelines.

* 1. **The second category is attached to a regulation.**

One way could be as the French approach to introduce in national laws method of notifying the competition authority for large purchasing groups.

Would a per se specific regulation for B2B relationships (and similar laws allowing to control unfair contract terms[[63]](#footnote-64) for all sectors or limited to food supply chain[[64]](#footnote-65)) to reduce the effect of purchasing power could be a way to prevent unfair effect as some countries have tried ? [[65]](#footnote-66). However, the effectiveness of those texts was discussed. This last approach underlines the difficulty of an *ex-post* regulation and the delay to apply prohibition. However, the EU has already made some changes on digital market.

The LIDC congress in Gotheborg gave the opportunity to all members, reporters and attendance to give their preference on those options in a specific period where inflation is back and threaten the consumer in many countries. A common view was to develop soft laws and make sure that all competition authorities could explain their understanding of uncompetitive buying groups. Nevertheless, B2B legislations on unfair practices should not be left in the dark. National regulations adopted in European member's states in the agricultural and food supply chain gave the opportunity to sanction in a quick and efficient way unfair behavior.

1. Belgium [↑](#footnote-ref-2)
2. *Pt 273* [↑](#footnote-ref-3)
3. *Dictionnaire droit de la concurrence « centrales d’achats » Stéphane de La Rosa edition Concurrences* [*https://www.concurrences.com/fr/dictionnaire/centrale-d-achat#part-biblio*](https://www.concurrences.com/fr/dictionnaire/centrale-d-achat#part-biblio) [↑](#footnote-ref-4)
4. Belgium [↑](#footnote-ref-5)
5. *Italy* [↑](#footnote-ref-6)
6. *Austrian report* [↑](#footnote-ref-7)
7. *AOPFR 2005* [↑](#footnote-ref-8)
8. *Swiss, Hungary, Swedish, Brazil, France, Belgium* [↑](#footnote-ref-9)
9. Hungarian report & Belgium Report, French Report [↑](#footnote-ref-10)
10. *DAFFE/CLP(99)21* [↑](#footnote-ref-11)
11. *Swedish* [↑](#footnote-ref-12)
12. *Switzerland* [↑](#footnote-ref-13)
13. *Brazil* [↑](#footnote-ref-14)
14. *Swedish* [↑](#footnote-ref-15)
15. *Romania* [↑](#footnote-ref-16)
16. *UK* [↑](#footnote-ref-17)
17. Report on the accelerated sector inquiry on the Hungarian brick market. <https://www.gvh.hu/pfile/file?path=/dontesek/agazati_vizsgalatok_piacelemzesek/agazati_vizsgalatok/Agazati_vizsgalat_Magyarorszagi_keramia-falazoelemek_piacan_lefolytatott_gyorsitott_agazati_vizsgalat_-_Jelentes_vegleges_210923.pdf1&inline=true> [↑](#footnote-ref-18)
18. Belgium [↑](#footnote-ref-19)
19. *Brazil* [↑](#footnote-ref-20)
20. *Swedish, UK, France* [↑](#footnote-ref-21)
21. *Swizz report and footnote DIKE Kommentar Kartellgesetz, 2018 – Zirlick/Bangerter, Art. 5 N 561; OECD, DAF/COMP(2022)4, Puissance d’achat et ententes entre acheteurs, 22 June 2022, p. 5, retrievable (in French) under:* [*https://one.oecd.org/document/DAF/COMP(2022)4/fr/pdf*](https://one.oecd.org/document/DAF/COMP%282022%294/fr/pdf) [↑](#footnote-ref-22)
22. *By exemple Judgment of 7 November 2019, Campine, T-240/17, EU:T:2019:778, paragraph 297; see also judgment of 4 June 2009, T-Mobile Netherlands and Others, C-8/08, EU:C:2009:343, paragraph 37; judgment of 13 December 2006, French Beef, joined cases T-217/03 and T-245/03, EU:T:2006:391, paragraph 83 and following. And scenario proposed by Hungary report* [↑](#footnote-ref-23)
23. Belgian Competition Authority case CONC I/0-19/0013 of 28 April 2021 [↑](#footnote-ref-24)
24. French Report [↑](#footnote-ref-25)
25. *FCR Guideline, para. 6.33.* [↑](#footnote-ref-26)
26. *FCR Guideline, para. 6.34.* [↑](#footnote-ref-27)
27. Case No. VJ-176/2003/8 of the Hungarian Competition Authority, paragraph 26. [↑](#footnote-ref-28)
28. *Draft Horizontal Guidance at para 6.8.*  [↑](#footnote-ref-29)
29. *Horizontal Guidance at para 6.13(a).* [↑](#footnote-ref-30)
30. *Horizontal Guidance at para 6.13(c).* [↑](#footnote-ref-31)
31. *LD pt 279* [↑](#footnote-ref-32)
32. *Judgement 2 April 2020 C‑228/18, Gazdasági Versenyhivatal* [↑](#footnote-ref-33)
33. https://one.oecd.org/document/DAF/COMP/WD(2022)6/en/pdf [↑](#footnote-ref-34)
34. https://one.oecd.org/document/DAF/COMP/WD(2022)19/en/pdf [↑](#footnote-ref-35)
35. *Swedish,*  [↑](#footnote-ref-36)
36. Belgium [↑](#footnote-ref-37)
37. Hungarian Act on Trade [↑](#footnote-ref-38)
38. *EU Guidelines pt 275* [↑](#footnote-ref-39)
39. “The Horizontal Guidance expressly distinguishes order stops from horizontal boycotts but interestingly, the distinction from “delisting” was removed following consultation on the Draft Horizontal Guidance.” [↑](#footnote-ref-40)
40. [*Hugo Molina*](https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=3367512) *French National Institute for Agriculture, Food and Environment (INRAE); Paris-Saclay Applied Economics, September 12, 2019,* [*https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3452497*](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3452497) [↑](#footnote-ref-41)
41. *Marie-Laure Allain, Rémi Avignon, Claire Chambolle, Hugo Molina Nopte IPP february 2022* [↑](#footnote-ref-42)
42. *Pooled Procurement of Drugs in Low and Middle Income Countries, Pierre Dubois, Yassine Lefouili, and Stéphane Straub, www.cgdev.org*  [↑](#footnote-ref-43)
43. *Application for authorisation AA1000561 lodged by Barwon Water and Ors in respect of establishing a joint renewable energy purchasing group (the ‘Barwon Region Renewable Energy Project’) Authorisation number: AA1000561 26 August 2021* [↑](#footnote-ref-44)
44. *United States Government Accountability Office Washington, DC 20548, GAO -12-339 Group Purchasing Organizations: Federal Oversight and Self-Regulation* [↑](#footnote-ref-45)
45. *Section 7 (1) of Trade on Act* [↑](#footnote-ref-46)
46. *Cass. com., 9 April 2002, n° 00-13.921; Cass. Com., 12 February 2013, n°12-13.603; CA Paris, 30 September 2021, n°20/07846; Report on the situation and practices of large retailers and their groupings in their commercial relations with suppliers, 25 sept. 2019.* [*https://www.assemblee-nationale.fr/dyn/15/rapports/cegrdist/l15b2268-t1\_rapport-enquete*](https://www.assemblee-nationale.fr/dyn/15/rapports/cegrdist/l15b2268-t1_rapport-enquete)*.* [↑](#footnote-ref-47)
47. Belgium report [↑](#footnote-ref-48)
48. *Italian report*  [↑](#footnote-ref-49)
49. *See C12247B - BDC Italia-Conad/Auchan, decision No. 28064b, 4 January 2020.*  [↑](#footnote-ref-50)
50. *Art. 37 Law no. 2015-990 of 6 August 2015 for growth, activity and equal economic opportunities, creating article L.462-10 of the French Commercial Code.* [↑](#footnote-ref-51)
51. *Art. R.462-5 of the French Commercial Code French National report.* [↑](#footnote-ref-52)
52. Belgium [↑](#footnote-ref-53)
53. Jeronimo Martin Polska [↑](#footnote-ref-54)
54. Eurocash [↑](#footnote-ref-55)
55. Austria, Romania, Italy [↑](#footnote-ref-56)
56. Brazil [↑](#footnote-ref-57)
57. Hungary, [↑](#footnote-ref-58)
58. *Switzerland* [↑](#footnote-ref-59)
59. *UK notice market studies as a powerful tool* [↑](#footnote-ref-60)
60. Hungarian, [↑](#footnote-ref-61)
61. https://one.oecd.org/document/DAF/COMP/WD(2022)5/en/pdf [↑](#footnote-ref-62)
62. Brazil insists on the qualification of the buying group [↑](#footnote-ref-63)
63. Australia [https://one.oecd.org/document/DAF/COMP/WD(2022)5/en/pdf](https://one.oecd.org/document/DAF/COMP/WD%282022%295/en/pdf) , [↑](#footnote-ref-64)
64. UE Directive 2019 April 17, on unfair trading practices in business-to-business relationships in the agricultural and food supply chain and its transposition in members states regulation: Swedish : Lag (2021:579) om förbud mot otillbörliga handelsmetoder vid köp av jordbruks- och livsmedelsprodukter. [↑](#footnote-ref-65)
65. French and Hungarian method [↑](#footnote-ref-66)