



Efficiency of the Act on Significant Market Power

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Supplier-retailer relationship

- Big tension in relationship between retailers and their suppliers
- Suppliers are the weaker party in the relationship (SMEs x big TNCs)
- Disadvantageous contract conditions, retrospective changes in contracts, payments for imaginary services etc.

Supplier-retailer relationship and the EU

- 2009 A better functioning food supply chain in Europe
- 2010 Retail market monitoring report “Towards more efficient and fairer retail services in the internal market for 2020”
- 2010 A more efficient and fairer retail market
- 2013 Green paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe
- 2014 Tackling unfair trading practices in the business-to-business food supply chain
- 2016 On unfair business-to-business trading practices in the food supply chain

Retailer-supplier relationship in the Czech Republic

- Act No. 395/2009 on Significant Market Power (SMP) in the Sale of Agricultural and Food Products and Abuse thereof (February 2010)
 - 5 billion turnover for SMP
 - Banning various practices done by retailers with SMP
 - Amendment in March 2016
- = > how efficient was the former version?

Theory

- Low juristic quality
 - Missing definitions
 - Unclear geographic area
- Unclear formulations
 - Using non-existing terms etc.
- Discrimination of retailers?
 - One-sided restrictions

Practice

1. Real legal effect
2. Suppliers' opinion

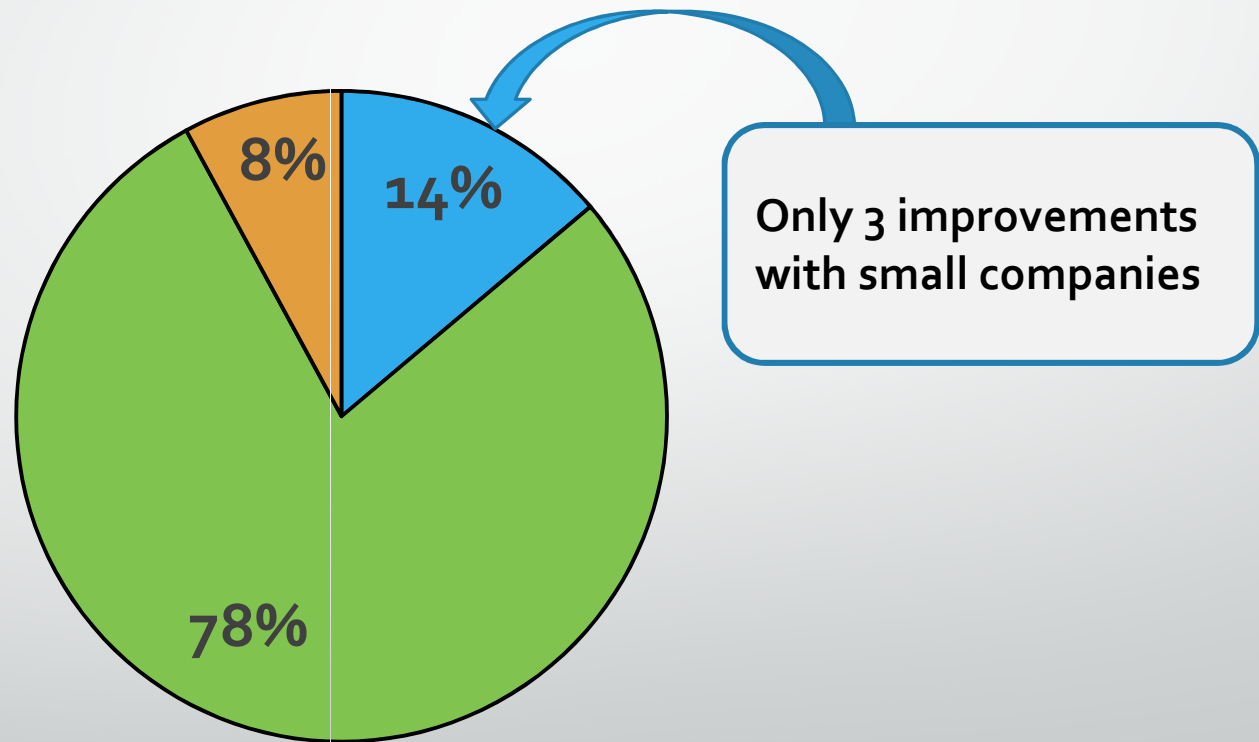
Practice (1) Real legal effect

- 106 complaints sent to the supervising authority – Office for the Protection of Competition
 - 2 final decisions
 - A promise to improve
 - Decision cancelled by a court and sent back to be investigated the supervising authority
- **Efficient prevention or no punishment of delicts?**

Practice (2) Suppliers' opinion

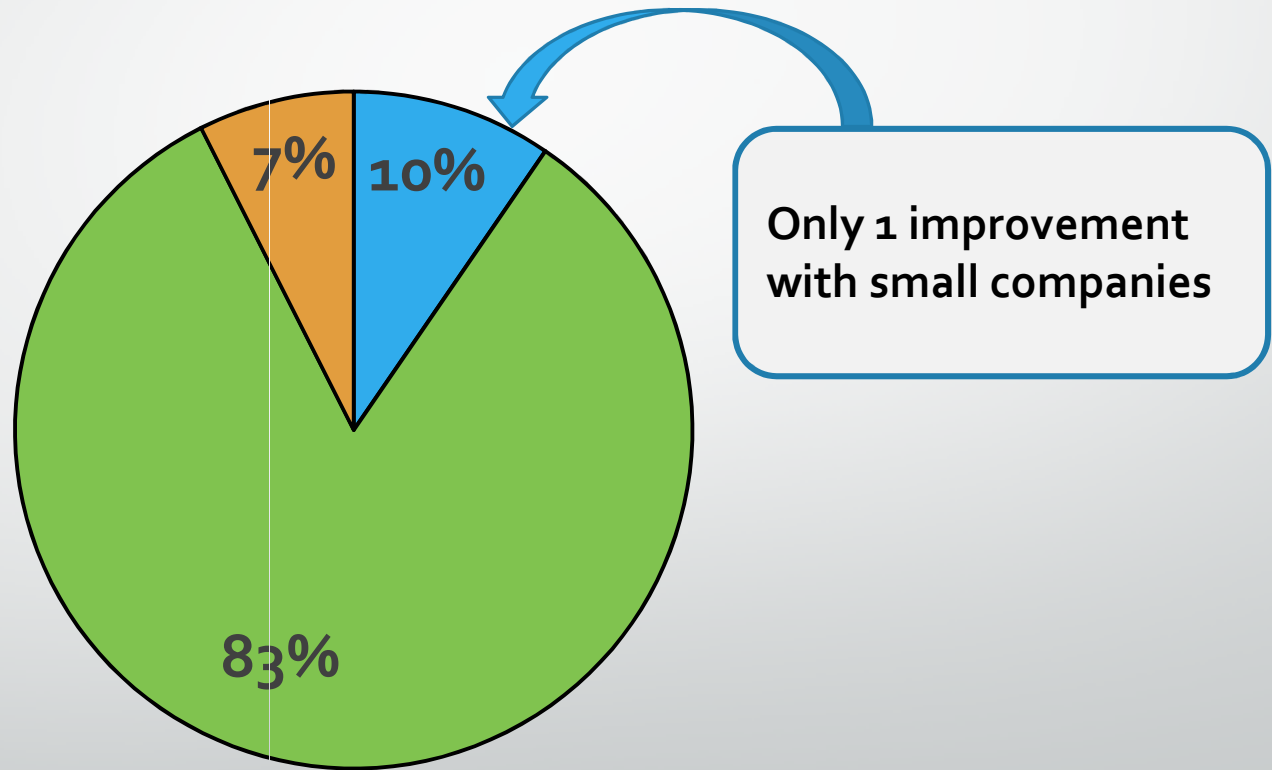
- Primary research with 500 suppliers to retailers (food producers)
 - 85 relevant answers
 - + 16 answers from farmers supplying directly retailers
 - = 101 respondents

Change in the quality of the retailer-supplier relationship after the Act came into force



■ Improved ■ Did not change ■ Deteriorated

Change in the negotiation position after the Act came into force



■ Improved ■ Did not change ■ Deteriorated

Practices still used?

- Depending on the type of the practice, **24 – 47 per cent** of the respondents **have met particular practice** even **after the Act came into force**
- Strategies of compensation of practices defined in the Act
 - Shorter payment period? => lower price
 - No returns of non-sold food? => more frequent supplies

Conclusion

The Act was not very efficient

XXX

Food chamber claims, it helps

Amendment – key changes

- Defining the scope of the Act
 - Impact of behaviour in the Czech Republic
 - Also suppliers of services
 - No need of systematic violation of the Act
- Definitions of some terms
 - “ Buyer” extended also to purchasing alliances
 - SMP relates to buyer in all cases, not to certain suppliers (SMEs)
 - More precise definition of “food”

Amendment – key changes

- Definitions of the banned practices
 - banned practices were embodied directly to the Act (formerly in attachments)
 - generalisation of their definition
 - Higher enforceability of the law x higher legal uncertainty?
- Contract requirements
 - all the payments from suppliers to retailers **must not cross the border of 3 per cent** from the supplier's turnover of food towards the certain retailer from the last year