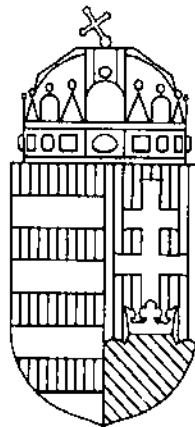

Hungarian Competition Authority

THE COMPETITION ACT



2006

Parliament passed this Act on 25 June 1996. Subsequently, it was amended by Act CXXXII of 1997 on Branches and Sales Agencies in Hungary of Undertakings Domiciled Abroad, Act LVIII of 1997 on Advertising Activities, Act LXXIX of 1997 on the Legal Status and Responsibility of the Members of the Government and of State Secretaries, Act XXVII of 1997 on the Amendment of Act II of 1991 on Bankruptcy Proceedings, Dissolution Proceedings and Final Settlements, Act LXXXIII of 2000 on the Amendment of Certain Statutes in Connection with Passing on Certain Responsibilities of the Chambers of Commerce, Act CXXXVIII of 2000 on the Amendment of Act LVII on the Prohibition of Unfair and Restrictive Market Practices, Act XXXVI of 2001 on the Amendment of Act XXIII of 1992 on the Legal Status of Civil Servants and of Other Acts, Act CII of 2001 on the Incompatibility Concerning, and the Obligation to Make Property Declarations upon, Persons Performing Responsibilities which Arise from the Exercise of State Executive Power or from Holding Office in Public Property Management, Act XVI of 2003 on the Regulation of the Market for Agricultural Products, Act XXIV of 2003 on the Amendment of Certain Statutes Related to the Utilization of Public Funds, the Publicity, the Improvement of Transparency and the Extension of Control, of the Utilization of Public Property, Act XXXI of 2003 on the Amendment of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services, Act LXVIII of 2005 on the Amendment of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices and Act CIX of 2006 on the Amendment of Certain Statutes in Connection with Changes in the Branch of Government.

[Consolidated version effective as of 1 January 2007]

The structure of the Competition Act

PREAMBLE

PART ONE (Articles 1 to 32)

Chapter I Scope of the Act (Article 1)

Chapter II Prohibition of Unfair Competition (Articles 2 to 7)

Chapter III Prohibition of Unfair Manipulation of Consumer Choice (Articles 8 to 10)

Chapter IV Prohibition of Agreements Restricting Economic Competition (Articles 11 to 20)

Chapter V Prohibition of Abuse of a Dominant Position (Articles 21 and 22)

Chapter VI Control of Concentration of Undertakings (Articles 23 to 32)

PART TWO (Articles 33 to 43/A)

Chapter VII The Hungarian Competition Authority (Articles 33 to 43/A)

PART THREE (Articles 43/B to 91/H)

Chapter VIII Sectoral inquiries (Articles 43/B to 43/F)

Chapter IX Complaints and informal complaints (Articles 43/G to 43/I)

Chapter X General Rules Governing the Competition Supervision Proceedings of the Hungarian Competition Authority (Articles 44 to 66)

Application of the general rules of public administrative procedures

Competence

Phases of the competition supervision proceedings; composition of the proceeding body; exclusion

The party

Representation

Access to the files, business secrets

Justification for the negligence

International legal assistance

Service performed abroad

Stay of proceedings

Procedural fines

Procedural fees and costs

Time limits for settlement

Clarification of the facts of the case

Chapter XI Performance of the Competition Supervision Proceedings of the Hungarian Competition Authority (Articles 67 to 80)

Commencement of competition supervision proceedings

Commencement of investigation on application

Opening an investigation ex officio

The report of the investigator

The proceedings of the competition council

The trial of the competition council

Commitments

Post-investigation

Decisions

Publication of the resolution

Chapter XII Legal Remedy in the Competition Supervision Proceedings of the Hungarian Competition Authority (Articles 81 to 84)

Objections to the investigation

Legal remedy against injunctions made in the course of the proceedings

Administrative lawsuits

Chapter XIII Litigation Initiated by the Hungarian Competition Authority (Article 85)

Chapter XIV The Competition Supervision Proceedings of the Court (Articles 86 to 88/B)

Chapter XV Enforcement of the Resolutions of the Hungarian Competition Authority (Articles 89 to 91)

Chapter XVI Procedure for the Application of European Community Competition Rules (Articles 91/A to 91/H)

General rules

The proceedings of the Hungarian Competition Authority

Rules relating to the proceedings of the court

PART FOUR (Articles 92 to 98)

Chapter XVII Closing Provisions (Articles 92 to 98)

ACT LVII OF 1996
ON THE PROHIBITION OF UNFAIR AND RESTRICTIVE
MARKET PRACTICES

preamble

The public interest attached to the maintenance of competition on the market ensuring economic efficiency and social progress, the interests of undertakings complying with the requirements of business fairness and the interests of consumers require the state to protect by law fairness and freedom of economic competition. To this end it is necessary to adopt competition rules prohibiting market practices that are contrary to the requirements of fair competition or restrict economic competition and preventing concentrations of undertakings that are disadvantageous to competition, at the same time providing for the necessary institutional and procedural background. In order to attain these objectives - also taking into consideration the requirements of the approximation to the law of the European Community and the conventions of domestic competition law - Parliament passed the following Act.

PART ONE

Chapter I

Scope of the Act

Article 1

scope of the Act

(1) This Act shall apply to market practices carried out on the territory of the Republic of Hungary by natural and legal persons and companies with no legal personality, including branches in Hungary of undertakings domiciled abroad with the exception for practices regulated in Chapter VI (hereinafter together: undertakings), except where otherwise regulated by statute. With the exception of practices regulated in Chapter II and III, this Act shall also apply to market practices of undertakings carried out abroad if they may have effects on the territory of the Republic of Hungary.

(2) In any proceedings for the application of Articles 81 and 82 of the Treaty establishing the European Community (hereinafter: the EC Treaty) the procedural rules laid down in this Act shall also apply to market practices falling under those Articles where under Council Regulation (EC) No 1/2003 on the implementation of the competition rules laid down in Articles 81 and 82 of the Treaty (hereinafter: Regulation (EC) No 1/2003) the Hungarian Competition Authority or a Hungarian court may proceed.

Chapter II

Prohibition of Unfair Competition

Article 2

**general prohibition
of unfair competition**

It shall be prohibited to engage in unfair economic activities, particularly in a manner that infringes or jeopardises the legitimate interests of competitors or consumers or is contrary to the requirements of business fairness.

Article 3

**disparagement of
competitors**

It shall be prohibited to injure or jeopardise the reputation or credibility of competitors by making or spreading false allegations, or by falsifying facts or by other practices.

Article 4

(1) It shall be prohibited to acquire or make use of business secrets in an unfair manner or disclose them in an unauthorised way to third parties or the public.

(2) The manner of acquiring a business secret shall also be deemed unfair if access to it was obtained without the consent of the holder and with the assistance of a person who was, at the time of the acquisition of the business secret, or in a period prior to it, in a confidential relationship or business relationship with him.

business secrets

(3) For the purposes of this Act:

a) the term „business secret” means the concept defined in Article 81(2) of the Civil Code;

b) the term „confidential relationship” particularly includes employment, labour and membership related relations;

c) the term „business relationship” means the provision of information, negotiations and the submission of offers anticipating the conclusion of a contract even if no contract ensues.

Article 5

boycott appeals

It shall be prohibited to make unfair appeals to other persons with the intention to disrupt existing economic relationships with third parties or to prevent the creation of such relationships.

Article 6

imitation

It shall be prohibited to manufacture, distribute or advertise goods and services (hereinafter together: goods) without the consent of competitors if such goods have a characteristic presentation, packaging or labelling (including designation of origin), or to use a name, mark or designation, by which a competitor or its goods are usually recognised.

Article 7

bidding

It shall be prohibited to infringe in any manner the fairness of any bidding process - in particular in respect of competitive tenders - and that of auctions or stock exchange deals. This prohibition applies only to practices not regulated by any other provision of this Act or by other statutes.

Chapter III

Prohibition of Unfair Manipulation of Consumer Choice

Article 8

(1) It shall be prohibited to deceive consumers in economic competition. For the purposes of this Act, the term „consumer” means customer, purchaser or user.

(2) Deception of consumers shall be presumed, in particular, if

**misleading
consumers**

a) false declarations are made or facts are declared in a manner which is likely to deceive with respect to prices or essential features of the goods, including, in particular, the composition, use, effects on health or the environment, as well as their handling, origin or place of origin, source or method of the procurement; if the designation of goods is likely to deceive, or if any other information which is likely to deceive pertaining to the essential features of the goods is disseminated;

b) it is concealed that the goods fail to meet legal or other usual requirements for such goods, or that the use of the goods requires conditions which are significantly different from what is customary;

c) information that is deceptive or may possibly be deceptive is given about factors related to the sale and distribution of the goods influencing the decision of consumers, in particular, about the method of distribution, terms of payment, gifts associated with the goods, discounts, or the chance of winning;

d) a false impression of especially advantageous purchase is created.

Article 9

The meaning of terms customarily accepted in daily life or in the respective trade shall be taken as a guide when establishing whether the information is likely to deceive consumers.

Article 10

**restricting the
freedom of choice of
consumers**

It shall be prohibited to apply business methods that restrict, without justification, the freedom of choice of consumers. Making the objective appraisal of goods or offers more difficult, or the objective comparison between them and other goods or offers shall be deemed, in particular, to be such a method.

Chapter IV

Prohibition of Agreements Restricting Economic Competition

Article 11

(1) Agreements or concerted practices between undertakings and decisions by social organisations of undertakings, public corporations, associations or other similar organisations (hereinafter together: agreements), which have as their object or potential or actual effect the prevention, restriction or distortion of competition, shall be prohibited. Agreements concluded between undertakings, which are not independent of each other do not qualify as such kind of agreements.

restrictive agreements

(2) This prohibition applies, in particular, to

- a) the direct or indirect fixing of purchase or selling prices or other business terms and conditions;
- b) the limitation or control of production, distribution, technical development or investment;
- c) the allocation of sources of supply, or the restriction of their choice as well as the exclusion of a specified group of consumers from purchasing certain goods;
- d) the allocation of markets, exclusion from sales, or restriction of the choice of marketing possibilities;
- e) [Repealed by Act LXVIII of 2005]
- f) the hindering of market entry;
- g) cases, where, given transactions of the same value or character, there is discrimination between trading parties, including the application of prices, periods of payment, discriminatory selling or purchase terms and conditions or methods placing certain trading parties at a competitive disadvantage;
- h) making the conclusion of contracts subject to the acceptance of obligations which, by their nature or according to commercial usage do not belong to the subject of such contracts.

(3) Legal consequences attached by this Act to the infringement of Section (1) of this Article shall be applied together with those attached by the Civil Code to contracts infringing the law.

Article 12

[Repealed by Act CXXXVIII of 2000]

Article 13

- (1) Agreements, which are of minor importance, shall not be prohibited.
- (2) An agreement shall be deemed to be of minor importance if the joint share of the participating undertakings and undertakings which are not independent of them does not exceed ten per cent on the relevant market unless its object is
 - a) to fix, directly or indirectly, purchase or selling prices between competitors, or
 - b) to share markets between competitors.

agreements of minor importance

(3) The market share must not exceed ten per cent for as long as the agreement is in force, or should it be in force for more than one year, in the particular calendar year.

(4) Notwithstanding the provisions set out in Sections (1) to (3), agreements shall be caught by the prohibition where competition is significantly prevented, restricted or distorted by the cumulative effect of those agreements and similar other agreements on the relevant market. The Hungarian Competition Authority may establish during the course of its proceedings that such an agreement falls under the prohibition. In such cases no fines may be imposed.

Article 14

- (1) The relevant market shall be defined by taking into account the goods that are subject to the agreement and the geographical area concerned.

relevant market	<p>(2) In addition to the goods, which are subject to the agreement any goods that can reasonably be substituted for them, in view of their intended use, price and quality and the terms and conditions of the fulfilment (demand-side substitutability) and the aspects of supply-side substitutability shall be taken into account.</p> <p>(3) The term „geographical area” means the territory outside which:</p> <ul style="list-style-type: none"> a) a consumer is unable to purchase goods or is able to purchase them only under considerably less favourable conditions; or b) the seller of goods is unable to sell goods or is able to sell them only under considerably less favourable conditions.
Article 15	
undertakings not independent of each other	<p>(1) Undertakings shall be deemed not to be independent of each other, where they belong to the same group of undertakings or they are controlled by the same undertakings.</p> <p>(2) An undertaking belongs to the same group as do undertakings which</p> <ul style="list-style-type: none"> a) are under the sole control, as referred to in Section (2) or (3) of Article 23, of it, b) have control, as referred to in point a), of it, c) are under the control, as referred to in point a) above, of the undertakings referred to in point b), d) are under the joint control of two or more of the undertakings referred to in points a)-c) and it.
group of undertakings	
public undertakings	<p>(3) The undertakings referred to in Article 25 and those in majority state or municipality ownership and with autonomous decision-making powers in determining their market conduct (Article 27(3)) shall be deemed to be independent of each other.</p>
Article 16	
block exemption	<p>Certain categories of agreements may be exempted from the prohibition of Article 11 by Government regulations. The Government may adopt regulations about the group exemption of agreements taking into account the provisions of Article 17 of this Act.</p>
Article 16/A	
cumulative effects	<p>(1) The group exemption from the prohibition on the restriction of competition does not apply to agreements where, by the cumulative effect of those agreements and similar other agreements on the relevant market, the requirements provided for by Article 17 are not satisfied.</p>
withdrawal of the benefit of block exemption	<p>(2) The Hungarian Competition Authority may establish in the course of its proceedings that, with regard to the provision of Section (1) above, the benefit of the application of the group exemption shall not apply to such an agreement for the future. In such cases no fines may be imposed.</p>

Article 17

exception

Agreements caught by Article 11 shall not be prohibited, provided that

a) they contribute to a more reasonable organisation of production or distribution, the promotion of technical or economic progress, or the improvement of competitiveness or of the protection of the environment;

b) they allow consumers a fair share of the resulting benefit;

c) the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified common goals;

d) they do not create the possibility of excluding competition in respect of a substantial part of the products concerned.

Article 18

[Repealed by Act LXVIII of 2005]

Article 19

[Repealed by Act LXVIII of 2005]

Article 20

burden of proof

The burden of proving that an agreement is exempted pursuant to Article 16 or Article 17 from the prohibition shall rest on the person claiming the benefit of exemption.

Chapter V
Prohibition of Abuse of a Dominant Position

Article 21

It shall be prohibited to abuse a dominant position, particularly:

- a) in business relations, including the application of standard contractual terms, to set unfair purchase or selling prices or to stipulate in any other manner unjustified advantages or to force the other party to accept disadvantageous conditions;
- b) to limit production, distribution or technical development to the prejudice of consumers;
- c) to refuse, without justification, to create or maintain business relations appropriate for the type of transaction;
- d) to influence the business decisions of the other party in order to gain unjustified advantages;
- e) to withdraw, without justification, goods from circulation or withhold them from trade prior to a price increase or with the purpose of causing a price increase or in any other manner which may possibly produce unjustified advantages or to cause competitive disadvantages;
- f) to make the supply or acceptance of goods subject to the supply or acceptance of other goods, furthermore to make the conclusion of contracts subject to the acceptance of obligations which, by their nature or according to commercial usage, do not belong to the subject of such contracts;
- g) in the case of transactions which are equivalent in terms of their value or character to discriminate, without justification, against trading parties including in relation to the application of prices, periods of payment, discriminatory selling or purchase terms and conditions or methods thereby placing certain trading parties at a competitive disadvantage;
- h) to set extremely low prices which are not based on greater efficiency in comparison with that of competitors and which are likely to drive out competitors from the relevant market or to hinder their market entry;
- i) to hinder, without justification, market entry in any other manner; or
- j) to create, without justification, disadvantageous market conditions for competitors, or to influence their business decisions in order to obtain unjustified advantages.

abuse of a dominant position

Article 22

(1) A dominant position shall be deemed to be held on the relevant market (Article 14) by persons who are able to pursue their business activities to a large extent independently of other market participants substantially without the need to take into account the market reactions of their suppliers, competitors, customers and other trading parties when deciding their market conduct.

(2) In assessing whether a dominant position exists, the following factors shall be considered, in particular:

- a) the costs and risks of entry to and exit from the relevant market, and the technical, economic and legal conditions that have to be met;

dominant position

- b) the property status, financial strength and profitability of the undertaking or the group of undertakings (Article 15(2)), and the trends in their development;
- c) the structure of the relevant market, the comparative market shares, the conduct of market participants and the economic influence of the undertaking or the group of undertakings on the development of the market.
- joint dominance** (3) Dominant positions may be held by individual undertakings or group of undertakings or jointly by more than one undertaking or more than one group of undertakings.

Chapter VI Control of Concentration of Undertakings

Article 23

- (1) A concentration of undertakings is effected, where
- concentration**
- a) two or more previously independent undertakings merge or an undertaking is integrated with another or a part of an undertaking becomes part of another undertaking which is independent of the first one; or
 - b) a sole undertaking or more than one undertaking jointly acquire direct or indirect control of the whole or parts of one or more than one other undertaking which have been independent of them; or
 - c) more than one undertaking, which are independent of each other, jointly create an undertaking controlled by them, which is able to perform on a lasting basis all the functions of an independent undertaking.
- (2) For the purposes of this Act, direct control is exercised by a sole undertaking, or more than one undertaking jointly, which
- direct control**
- a) have the ownership of the interests or shares of another undertaking entitling them to exercise majority voting rights, or are holders of more than fifty per cent of the voting rights; or
 - b) are entitled to appoint, elect or recall the majority of the executive officials of another undertaking; or
 - c) are entitled by contracts to exercise decisive influence on the decisions of another undertaking; or
 - d) acquire the ability on a factual basis to exercise decisive influence on the decisions of another undertaking.
- (3) For the purposes of this Act, indirect control is exercised by one undertaking over another undertaking which is controlled, solely or together with it, by a third undertaking under its control or is jointly controlled by third undertakings under its control.
- indirect control**
- (4) For the purposes of this Act, activities of an office-holder relating to winding up and dissolution of undertakings do not qualify as the exercise of control.
- bankruptcy**
- (5) The term “part of an undertaking” is to be understood as assets or rights, including the clientele of an undertaking, the acquisition of which, solely or together with assets and rights which are at the disposal of the acquiring undertaking, is sufficient for enabling market activities to be pursued.
- part of an undertaking**

Article 24

**application
thresholds**

(1) For a concentration of undertakings, the authorisation of the Hungarian Competition Authority shall be sought in cases where the aggregate net turnover of all the groups of undertakings concerned (Article 26(5)) and the undertakings jointly controlled by undertakings that are members of the groups of undertakings concerned and by other undertakings exceeded HUF fifteen billion in the preceding business year, and the net turnover of each of at least two of the groups of undertakings concerned in the preceding business year combined with the net turnover of the undertakings jointly controlled by undertakings members of the respective group of undertakings and other undertakings was more than HUF five hundred million.

(2) In assessing whether the HUF five-hundred-million threshold is met, concentrations not subject to authorisation which took place within a two-year period preceding the concentration concerned between the group of undertakings acquiring control and undertakings of the group of undertakings, the controlling powers of which relinquish as a conclusion of the concentration, shall also be taken into account.

(3) For insurance undertakings, the value of gross premiums shall be taken into account in place of net turnover. For investment service providers and funds, the incomes from those services and the contributions, respectively, shall be taken into account. For credit institutions and financial undertakings, the sum of the following income items shall be taken into account in place of net turnover:

- a) interest income and similar income,
- b) income from securities:
 - ba) income from shares and other variable yield securities,
 - bb) income from participating interests,
 - bc) income from shares in affiliated undertakings,
- c) commission receivable,
- d) net profit on financial operations,
- e) income from other business activities.

Article 25

**acquisitions not
qualifying as
concentrations**

Temporary acquisitions of control or ownership for a one-year period at the longest by insurance undertakings, credit institutions, financial holding companies, investment companies or property managing organisations for the purposes of preparing a resale do not qualify as concentrations provided that they do not exercise their controlling rights, or exercise them only to an extent which is indispensable to the attainment of these objectives. The Hungarian Competition Authority on request where such undertakings can show that it was not possible to carry out the disposal within one year may extend that period.

Article 26

**direct and indirect
participants**

(1) Undertakings concerned are undertakings participating directly and indirectly in concentrations.

(2) Direct participants are the undertakings with the participation of which the concentration is effected.

(3) Indirect participants are the other members of the group of undertakings (Article 15(2)) to which a direct participant belongs.

(4) Undertakings which relinquish their controlling powers as a conclusion of the concentration shall be left out of account when identifying the range of the indirect participants.

(5) Groups of undertakings concerned are groups of undertakings which consists of a direct participant pursuant to Section (2) and the indirect participants connected to it pursuant to Sections (3) and (4).

Article 27

calculation of turnover

(1) When applying Article 24(1), in calculating net turnover, the turnover of the undertakings concerned (Article 26) or parts of them shall be reduced by the sales between themselves.

(2) In calculating the net turnover of undertakings of foreign nationality, the net turnover realised from sales in the preceding business year in the territory of the Republic of Hungary shall be taken into account.

(3) In calculating the net turnover of undertakings concerned of majority state or municipality ownership, economic units with autonomous decision-making powers in determining their market conduct shall be taken into account.

(4) For parts of undertakings, the net turnover realised in the preceding year by the use of the assets and rights by the undertaking which sold them shall be taken into account.

(5) The net turnover of undertakings jointly controlled by two or more undertakings shall be apportioned equally to each undertaking having control of them. For the purposes of such apportioning, controlling undertakings, which belong to the same group of undertakings shall be deemed to be one single undertaking.

Article 28

application for authorisation

(1) For a concentration to take place, it is the obligation of the direct participants or the acquirers of a part of the seller-undertaking or direct control, in merger and integration cases or in any other cases respectively, to apply for authorisation pursuant to Article 24.

(2) An application for authorisation shall be submitted within thirty days of the date of the publication of the invitation to tender, the conclusion of the contract or the acquisition of the controlling rights, whichever of them is the earliest.

(3) In cases of concentrations of credit institutions or insurance undertakings, the application for authorisation shall be submitted to the Hungarian Competition Authority on the same date as the application for permission to be submitted to the branch supervisory authority as provided for under separate legislation.

Article 29

validity of the contract

For a contract resulting in the concentration of undertakings pursuant to Article 24 to come into existence, the authorisation of the Hungarian Competition Authority shall be required.

Article 30

(1) When assessing an application for authorisation of a concentration, both concomitant advantages and disadvantages shall be considered. In the course of this consideration, the following aspects shall be examined, in particular:

**balancing
advantages against
disadvantages**

a) the structure of the relevant markets, existing or potential competition on the relevant markets, procurement and marketing possibilities, the costs, risks and technical, economic and legal conditions of market entry and exit, the prospective effects of the concentration on competition on the relevant markets;

b) the market position and strategy, economic and financial capacity, business conduct, internal and external competitiveness of the undertakings concerned and likely changes in them;

c) the effect of the concentration on suppliers and on intermediate and final consumers.

authorisation

(2) The Hungarian Competition Authority may not refuse to grant authorisation for a concentration where, with a view to the provisions of Section (1), the concentration does not create or strengthen a dominant position, which would impede the formation, development or continuation of effective competition on the relevant market (Article 14) or on a substantial part of it. To the extent that the creation of a joint venture pursuant to point c) of Article 23(1) has as its object or effect the coordination of the market conduct of the creating groups of undertakings, such coordination shall be assessed in accordance with the criteria of Article 17.

**authorisation with
conditions and
obligations**

(3) In order to reduce the detrimental effects of a concentration, the Hungarian Competition Authority may attach to its decision pre- or post-conditions and obligations. It may, in particular, demand by its decision the divestiture of certain parts of the undertakings or certain assets or the relinquishment of control over an indirect participant, setting an appropriate time limit for the carrying out of these requirements.

(4) A preconditioned authorisation shall take effect from the date of the fulfilment of the conditions. A post-conditioned authorisation shall take effect from the date of it being granted. It shall cease to have effect should any of the conditions not be satisfied.

ancillary restraints

(5) The authorisation, which has been granted for a concentration shall also cover restrictions necessary to the implementation of the concentration.

Article 31

**failure to apply for
authorisation**

If it is established in the course of the proceedings of the competition supervision that a concentration which is subject to authorisation pursuant to Article 24, has been carried out without obtaining such an authorisation and may not have been capable of authorisation, the Hungarian Competition Authority may require by its decision, setting an appropriate time limit, the separation or divestiture of the merged undertakings or assets or interests or the relinquishment of joint control or it may attach other obligations to its decision in order to restore effective competition.

Article 32

(1) The Hungarian Competition Authority shall revoke its decision made pursuant to Article 30 where:

- a) the grant of the authorisation by the decision, which has not yet been reviewed by the court, has been based on misleading information concerning a fact which was fundamental to the making of the decision; or
- b) the undertaking subject to the decision is in breach of any obligation attached to the decision.

**withdrawal or
amendment of the
authorisation
decision**

(2) The Hungarian Competition Authority may amend its decision made pursuant to Article 30 where the obligee is in breach of any obligation, or unable to satisfy any of the conditions, attached to the decision but where the obligee has not been found negligent.

PART TWO

Chapter VII

The Hungarian Competition Authority

Article 33

(1) The Hungarian Competition Authority is a public, budgetary institution which constitutes a separate chapter in the central budget, the sums of total expenditure and total income of which may be reduced only by Parliament.

(2) Except where this Act provides otherwise, the responsibilities concerning the supervision of competition defined in this Act and in the Act on Price Setting are performed by the Hungarian Competition Authority. All the duties of the Hungarian Competition Authority must be prescribed by law.

(3) The duties assigned to the competition authority of a member state by the competition rules of the European Community are carried out by the Hungarian Competition Authority.

Article 34

Except where otherwise provided in this Act, all civil servants employed by the Hungarian Competition Authority are subject to the provisions of Act XXIII of 1992 on the Legal Status of Civil Servants.

Article 35

(1) The Hungarian Competition Authority is headed by the President.

(2) The President of the Hungarian Competition Authority is nominated by the Prime Minister and appointed by the President of the Republic. The two Vice Presidents of the Hungarian Competition Authority are nominated by the President of the Hungarian Competition Authority to the Prime Minister who, in agreement with the nomination, submits the nomination to the President of the Republic. The Vice Presidents are appointed by the President of the Republic, who, at the same time, charges one of the two Vice Presidents with the responsibilities of the Chair of the Competition Council. The appointments of the President and the Vice Presidents are for a period of six years. After the expiry of the six-year period the appointed persons may be reappointed. The Chair of the Competition Council may be reappointed once only.

(3) Prior to nomination by the Prime Minister, the candidates, at the initiative of the Prime Minister, will attend a public hearing by the competent committee of Parliament.

(4) The mandate of the President and the Vice Presidents of the Hungarian Competition Authority comes to an end if:

a) the term of the appointment expires; or

b) the President (Vice President) resigns his position; or

c) the President (Vice President) dies; or

d) the President (Vice President) is relieved of his position by the President of the Republic acting upon a proposal by the Prime Minister.

President and Vice Presidents

(5) The President (Vice President) will be relieved of his position, if he has:

- a) become unworthy of fulfilling it; or
- b) become incapable of fulfilling it; or
- c) failed to report or put an end to any grounds for incompatibility (Article 40); or
- d) failed intentionally to fulfil his obligation to make a property declaration or intentionally supplied false information in respect of any important fact or data in his property declaration.

(6) An official shall be deemed unworthy of fulfilling his position where he has a criminal record, or where a court has convicted him or applied another sanction, and he has not yet been deleted from the criminal record.

(7) An official shall be deemed incapable of fulfilling his position where he has become permanently incapable of performing the attached duties, or where the performance of such duties by him does not meet the appropriate professional standards.

(8) The President and the Vice Presidents of the Hungarian Competition Authority must be nominated within the three-month period preceding the date of expiry of the term of appointment of their predecessors, and the procedure required for their appointment must be concluded as early as one month before the date of expiry of the preceding appointment.

Article 36

(1) The President of the Hungarian Competition Authority:

- a) directs the activities of the Hungarian Competition Authority;
- b) represents the Hungarian Competition Authority;
- c) establishes the organisational and operational rules of the Hungarian Competition Authority and approves the organisational and operational rules of the Competition Council;
- d) exercises the rights of employer, except for the appointment and dismissal of the members of the Competition Council, and records and controls the property-declarations of investigators and other civil servants who are obliged to make property declarations;
- e) appoints the persons representing the Hungarian Competition Authority in the Advisory Committee of Restrictive Practices and Dominant Positions of Regulation (EC) No 1/2003, and in the Advisory Committee on Concentrations set up by Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (hereinafter: Regulation (EC) No 139/2004); and
- f) is responsible for the development of competition culture, particularly:
 - fa) in order to raise public awareness of competition, for the dissemination of knowledge about competition policy, including the provision of information about the benefits resulting from competition or with the aim of assisting compliance and the creation of a competitive regulatory environment, and
 - fb) for the contribution to the development of competition-related legal and economic activities of public interest.

duties of the President

-
- (2) The President of the Hungarian Competition Authority:
- a) may take part in the sessions of Parliament;
 - b) will, when requested, give expert advice to Parliament on issues relating to economic competition;
 - c) submits annual reports to Parliament and, upon request, to the competent parliamentary committee on the activities of the Hungarian Competition Authority and, on the basis of his law enforcement experience, on how fairness and freedom of competition are observed; and
 - d) attends, with consultative rights, the meetings of the Government where issues relating to the scope of duties of the Hungarian Competition Authority are discussed.
- (3) The President of the Hungarian Competition Authority, except for the provisions of Section (4) below, shall be solicited for his opinion concerning all measures drafted, and legislation in conception or drafted that have a bearing on the responsibilities of the Authority, in particular if such planned measures or legislation restrict competition (performance of some activity or entry into the market), grant exclusive rights or contain provisions pertaining to prices or terms of sale.
- (4) The notary of a municipality may solicit the President of the Hungarian Competition Authority for his opinion concerning draft municipality regulations, which have, as set out in Section (3) above, a bearing on the responsibilities of the Hungarian Competition Authority.
- (5) At the request of the Government or ministers or international organisations, the President of the Hungarian Competition Authority shall report on experience gained in the course of his activities relating to economic competition and on issues relating to economic competition. For this purpose, the President of the Hungarian Competition Authority may, on a voluntary response basis, collect data and request information.
- (6) The President of the Hungarian Competition Authority may issue, together with the Chair of the Competition Council, notices, which describe the basic principles of the law enforcement practice of the Hungarian Competition Authority. Notices have no binding force, their function is to increase the predictability of law enforcement.
- (7) The President of the Hungarian Competition Authority may vest, by the decision on foundation, separate legal personality in the unit of the Hungarian Competition Authority created for the purposes of the development of competition culture in Hungary and of the promotion of the development of the institutional system of competition law enforcement in the region.
- Article 36/A
- [Repealed by Act LXVIII of 2005]
- Article 37
- Competition Council**
- (1) The Competition Council consists of a Chair and members. The Competition Council performs duties defined by this Act.
- (2) The Chair of the Competition Council:
- a) organises the activities of the Competition Council;
 - b) supervises compliance with procedural deadlines;
 - c) prepares and submits for approval (point c) of Article 36(1)) the organisational and operational rules of the Competition Council;
- reports to Parliament and its committee**
- competition advocacy**
- collecting data outside proceedings**
- notices**
- competition culture**
-

- d) ensures publication of the resolutions of the Competition Council (Article 80); and
- e) may act as a member of the competition council bringing proceedings.

Article 38

**members of the
Competition Council**

- (1) Following a nomination by the President of the Hungarian Competition Authority, the members of the Competition Council are appointed and dismissed by the President of the Republic of Hungary. The appointment is made for a period of six years. After the expiry of the six-year period, the appointed persons may be reappointed on one occasion.
- (2) In the course of the competition supervision proceedings, the members of the Competition Council are subject only to the law; otherwise they are civil servants of the Hungarian Competition Authority.
- (3) A member of the Competition Council will be relieved of his position if he has:
 - a) become unworthy of fulfilling it (Article 35(6)); or
 - b) become incapable of fulfilling it (Article 35(7)); or
 - c) failed to report or put an end to any grounds for incompatibility (Article 40); or
 - d) been subject to the disciplinary punishment of dismissal; or
 - e) failed to fulfil, or has fulfilled inappropriately, his obligation to make a property declaration.

Article 39

investigators

Civil servant staff of the Hungarian Competition Authority performing investigations or duties aimed at promoting investigations (hereinafter: investigator) are appointed by the President of the Hungarian Competition Authority.

Article 40

incompatibility

(1) The President and Vice Presidents of the Hungarian Competition Authority, members of the Competition Council and the investigators shall not undertake any other assignment, shall not take up other gainful employment and may not be executive officials or members of the supervisory boards of companies or cooperatives, except for legal relations established for the performance of scientific, educational, artistic activities, activities falling under the protection of copyright or industrial property rights and literary advisory or editorial activities (incompatibility).

(2) Such persons shall, without delay, report the occurrence of any reason for incompatibility to the person exercising the right of employer. The person exercising the right of employer shall set a short period of time for the elimination of the grounds for incompatibility.

(3) Where the person obliged to report incompatibility has failed to carry out that obligation, or to eliminate incompatibility within the time limit specified for this purpose, he shall be relieved of his duties.

**property
declarations**

(4) The President and Vice Presidents of the Hungarian Competition Authority shall make property-declarations at the time of their appointment and thereafter annually; the members of the Competition Council and the investigators shall make property declarations at the time of their appointment and thereafter biennially, as determined by the rules relating to civil servants.

Article 41

[Repealed by Act LXXIX of 1997]

Article 42

(1) The President and the Vice Presidents of the Hungarian Competition Authority are entitled to a salary and to benefits equal to those of ministers and state secretaries respectively; furthermore, the President and the Vice Presidents are entitled to a leader allowance which amounts to 110 per cent and 100 per cent of their basic salary respectively; furthermore, the President and the Vice Presidents are entitled to a salary bonus which amounts to 80 per cent of their basic salary. The members of the Competition Council are entitled to a basic salary, which is ten times as high as the basic remuneration of civil servants.

(2) The President and the Vice Presidents of the Hungarian Competition Authority, who have held their position for three years and whose mandate comes to an end as a result of the expiry of the term of the appointment, the reaching of an age limit set by a separate statute or the pensioning, are entitled for further three months to benefits corresponding to the amount of their monthly salary. Where the mandate comes to an end due to death, the heir is entitled to the benefits.

(3) Where the mandate comes to an end in more than three years, the annual increase in the benefits pursuant to Section (2) above shall equal, by each of the additional years during which the position is held, to the monthly amount of the salary but the additional benefits may not exceed the amount of twelve months' salary.

Article 42/A

(1) The investigators shall be categorised as junior investigator, investigator, investigator-adviser, principal investigator-adviser and leading principal investigator-adviser.

(2) The President may charge the investigator to work as bureauhead-investigator or deputy bureauhead-investigator, assuming the responsibilities of, or acting as deputy for, the leader of a separate unit respectively.

(3) Junior investigators, investigators, investigator-advisers and principal investigator-advisers are entitled to an additional leave of five, ten, eleven and twelve workdays, respectively; leading investigator-advisers, deputy bureauhead-investigators and bureauhead-investigators (as leaders) are entitled to an additional leave of thirteen workdays.

(4) The basic salary of the investigator shall be

- a) 4 times, for junior investigators,
- b) 7 times, for investigators,
- c) 7,5 times, for investigator-advisers,
- d) 8 times, for principal investigator-advisers,
- e) 8,25 times, for leading principal investigator-advisers,
- f) 8,5 times, for deputy bureauhead-investigators,
- g) 9 times, for bureauhead-investigators,

as high as the basic remuneration established by a separate statute.

**grading and
advancement of the
investigators**

(5) The extent of the leader allowance shall amount to 20 per cent, for principal investigator-advisers, 30 per cent, for leading principal investigator-advisers, 40 per cent, for deputy bureauhead-investigators and 90 per cent, for bureauhead-investigators, of their respective basic salaries.

(6) The investigators shall be included in the category:

a) junior investigator, if they are career-starting civil servants or, for a period of probation, if they are not career-starting civil servants;

b) investigator, if they have worked as junior investigators for at least two years for the Hungarian Competition Authority and have got an assessment of at least "eligible" or they have had at least three years' work experience in their special fields and took a primary examination in public administrative knowledge or have been equivalently qualified.

(7) The investigators

a) shall be included in the category of investigator-adviser, if they have had two years' work experience as investigators, have got an assessment of "eligible" and have undertaken a specialist examination in public administrative knowledge or have obtained equivalent qualifications;

b) may be included in the category of principal investigator-adviser, if they have received an assessment of "excellently suitable" and have undertaken a specialist examination in public administrative knowledge or have obtained equivalent qualifications;

c) principal investigator-advisers, to whom special responsibilities have been granted, may be included in the category of leading principal investigator-adviser, if the performance of their work is at an outstanding level.

(8) Civil servants who have undertaken a specialist examination in public administrative knowledge or have obtained equivalent qualifications are eligible to be appointed as bureauhead-investigators or deputy bureauhead-investigators.

(9) In each calendar year, subject to the existence of their legal relations to the Hungarian Competition Authority on the date of payment and the non-suspension of the work they actually performed during the six months' period in question, staff members employed as civil servants by, or in employment in, the Hungarian Competition Authority are entitled to two times one month's salary paid on two occasions as additional benefits. The additional benefits shall be paid in two parts until the end of the month following the six months' period in question.

(10) Civil servants who are not university or college graduates and who are employed in positions promoting the basic activities of the Hungarian Competition Authority are entitled to a salary bonus the extent of which amounts to 50 per cent of their basic salary.

**civil servants not
university or college
graduates**

Article 43

**university or college
graduates**

(1) Members of the Competition Council must be university or college graduates in their specialist fields. Law officer members of the Competition Council must have taken a specialist examination in law.

(2) Investigators of the Hungarian Competition Authority must be university or college graduates in their specialist fields.

Article 43/A

competition culture

The Hungarian Competition Authority shall be authorised to use for the development of competition culture and for the covering of expenses of performing responsibilities concerning the competition supervision proceedings and the sectoral inquiries five per cent as a maximum of the total amount of the fines collected and the total amount of the procedural fees and procedural fines paid, respectively, in the previous year.

PART THREE
Chapter VII
Sectoral inquiries

Article 43/B

In the course of the sectoral inquiries of the Hungarian Competition Authority the provisions of Articles 49 to 51 and Article 58(2) shall be applied *mutatis mutandis*. The sectoral inquiries shall otherwise be governed *mutatis mutandis*, except where this Chapter provides otherwise, by the provisions of Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services (hereinafter: PAPA).

Article 43/C

(1) Where price movements or other market circumstances suggest that competition is being distorted or restricted in a market belonging to the sector in question, the President of the Hungarian Competition Authority starts, by injunction, inquiry into the sector in order to understand and appraise the functioning of the market. The reasoning to the injunction, which orders the opening of an inquiry into the sector, shall specify the market circumstances that necessitated the opening of the sectoral inquiry. The injunction opening the inquiry shall be published in an announcement on the Internet homepage of the Hungarian Competition Authority. The sectoral inquiry shall be conducted by civil servants appointed by the President of the Hungarian Competition Authority to proceed in such capacity.

(2) In the course of the sectoral inquiry, the President of the Hungarian Competition Authority may require, setting a time limit for compliance, the undertakings in the relevant economic sector to provide information. The President of the Hungarian Competition Authority may impose, by injunction, fine on undertakings that do not observe, or not observe within the specified time limit the request for information, or supply incorrect or false information. The minimum fine shall be HUF fifty thousand; the maximum shall be one per cent of the undertaking's net turnover in the preceding business year. Undertakings exceeding the specified time limit may be fined on a daily basis. The maximum amount of this fine shall be one per cent of the undertaking's per-day net turnover in the preceding business year.

sectoral inquiries

(3) In the case specified in Section (1) above, the President of the Hungarian Competition Authority may also request central state bodies or the National Bank of Hungary, which have in their possession individual data, and combined data allowing the identification of data-suppliers, of which the Hungarian Competition Authority acting in the scope of its duties is entitled to acquire knowledge, to supply those data to the Authority. No fines may be imposed on the organisations specified in this Section.

Article 43/D

(1) The undertakings and the organisations mentioned in Article 43/C(3) shall be obliged to supply the information requested pursuant to Sections (2) and (3) of Article 43/C including business secrets, to the Hungarian Competition Authority.

(2) The expert may have access in the course of the sectoral inquiries to the documents which are necessary to perform his duties, including those which contain business secrets, bank secrets, insurance secrets or secrets defined by separate statutes and relating to the treatment of securities or the operation of funds.

(3) Persons obliged to supply information may request information containing business secrets not to be disclosed, with regard to the need of protection of business secrets (point a) of Article 4(3)). When deciding about this request, the President of the Hungarian Competition Authority may oblige, by injunction, the requesting persons, except the organisations specified in Article 43/C(3), to prepare a version of the document concerned which does not contain business secrets.

Article 43/E

(1) The Hungarian Competition Authority shall prepare a report on the results of its sectoral inquiries within a reasonable period of time. The President of the Hungarian Competition Authority may publish a version of the report which does not contain state or trade secrets, bank secrets, insurance secrets, secrets defined by separate statutes and relating to the treatment of securities or the operation of funds or business secrets.

(2) Before publishing the report the Hungarian Competition Authority shall give the opportunity to the persons concerned to submit written observations about the content of the report and it may also hold hearings for this purpose. The version of the report which does not contain business secrets shall be sent to the persons concerned at a time early enough to afford them at least thirty days for submitting their written observations or preparing themselves for the hearing. Concurrently with publishing the report and at the same place, the Hungarian Competition Authority will, when requested, publish a summary of the written observations or of the statements made at the hearings or the documents, which contain observations on the substance of the report.

(3) Subject to the content of the report defined in Section (1) above, the President of the Hungarian Competition Authority

- a) may order the commencement of competition supervision proceedings pursuant to Article 70 against an undertaking;
- b) will inform the responsible committee of Parliament or the responsible ministry or authority of market failures detected by the sectoral investigation which cannot be remedied in competition supervision proceedings.

Article 43/F

Legal remedies may be sought against the injunctions ordering the commencement of an inquiry, imposing fines or refusing to treat the contents of the documents as business secrets pursuant to Article 43/C(1), 43/C(2) or 43/D(3) respectively, within fifteen days of the conveyance of the injunction. The claim for remedy has no suspensive effect on the implementation of injunctions ordering the commencement of an inquiry pursuant to Article 43/C(1). Applications for a legal remedy shall be considered immediately by the Municipal Court of Budapest in administrative proceedings out of lawsuit.

Chapter IX Complaints and informal complaints

Article 43/G

(1) On observation of a conduct falling within the competence of the Hungarian Competition Authority and infringing Article 8, 10, 11, 21 or 24 of this Act or Article 81 or 82 of the EC Treaty, any person may make a complaint or an informal complaint to the Hungarian Competition Authority.

(2) The procedure relating to complaints or informal complaints is not part of the competition supervision proceedings; except for those in Article 54, the provisions of Chapters X to XII are not applicable in procedures relating to complaints or informal complaints.

Article 43/H

(1) Complaints can be made by the submission to the Hungarian Competition Authority of a properly completed form issued by the Hungarian Competition Authority. The form shall contain the important facts required for the assessment of the complaint, including, in particular, the data necessary for the identification of the complainant and the undertaking(s) complained of, a description of the particular conduct through which the alleged infringement was committed, the basic information required to define the relevant market, an indication of the duration of the alleged infringement, furthermore facts and evidence supporting the statements made on the alleged infringement.

(2) Of the provisions of PAPA, only those of Article 17, Article 26, Article 40, Articles 58 and 59, Articles 72 and 73, Articles 78 and 79, Article 81, Article 122 and Article 153 shall be applied in procedures relating to complaints except that the term party used by PAPA means the complainant.

(3) Where the Hungarian Competition Authority is not entitled to proceed in respect of the statements made in a complaint, it must refer the complaint within 15 days to the body competent to proceed in the case and inform the complainant of this measure.

(4) The investigator may collect data which are needed to assess the complaint and hold hearings with the participation of the interested persons; he clarifies with the involvement of other authorities or with expert assistance the facts which are needed to assess the complaint. Neither procedural fines may be imposed on persons concerned refusing to cooperate in the course of the procedure, nor coercive measures may be applied against them. Repeated complaints having the same content as a complaint previously made by the same complainant do not need to be considered.

(5) Persons supplying data to the Hungarian Competition Authority during the examination of a complaint may request limitation of access to the documents or to the making of copies thereof, with reference to the need of protection of business secrets. Only complainants, after the date when an injunction on the assessment of the complaint was made and only in cases to which point b) of Section (8) applies, may have access to the documents of the procedure in order to exercise their right to resort to legal remedy except in cases where the investigator ordered limitation of access to the documents, with regard to the need of protection of business secrets.

(6) The costs of the procedure are advanced and born by the state. If in the course of the competition supervision proceedings an infringement committed by the conduct specified in a complaint is established, the costs of the procedure relating to the complaint must be borne by the parties whose conduct was found to infringe the law.

(7) The complainant may request non-disclosure of his identity or of the fact that he made a complaint to the Hungarian Competition Authority.

(8) Within sixty days of receipt of the complaint, the investigator shall issue an injunction:

a) to open an investigation pursuant to Article 70(1), or

b) to state, based on the data supplied by, or obtained in the procedure conducted on the basis of, the complaint that the conditions for the opening of an investigation set out in Article 70(1) are not fulfilled.

complaints

(9) The time limit defined in Section (8) may be extended by sixty days where justified.

(10) Complainants shall be informed of the injunction made pursuant to point b) of Section (8) in all cases, undertakings complained of only in cases where they participated in the procedure.

(11) The complainant may seek legal remedy against an injunction made pursuant to point b) of Section (8) above, within eight days of the conveyance of the injunction. Applications for a legal remedy shall be considered by the Municipal Court of Budapest in administrative proceedings out of lawsuit. If the court considers point a) of Section (8) to be applicable, it will oblige the investigator to order the opening of an investigation within thirty days.

Article 43/I (1)

(1) The Hungarian Competition Authority must treat complaining documents other than complaints within the meaning of Article 43/H(1), as informal complaints. The procedure relating to informal complaints is governed by the provisions of this Article.

(2) Where the Hungarian Competition Authority is not entitled to proceed in respect of the statements made in an informal complaint, it must refer the informal complaint within fifteen days to the body competent to proceed in the case and notify the person making the informal complaint of this measure.

(3) Informal complaints shall be assessed within thirty days of the date of receipt of them. Where laying the foundations for the assessment of an informal complaint is expected to take more than thirty days, the investigator shall notify this fact to the person making the informal complaint before the expiry of the original time limit for settlement, indicating at the same time the likely date for settlement.

(4) The investigator may hear the person making the informal complaint and may request him to provide further clarification and information. The person making the informal complaint may request non-disclosure of his identity or the fact that he made an informal complaint to the Hungarian Competition Authority.

(5) Repeated informal complaints having the same content as an informal complaint previously made by the same person or informal complaints made by anonymous persons do not need to be considered.

(6) On the basis of the informal complaint, where the informal complaint is proved to be well-founded, the investigator shall decide on taking the necessary measure and notify the person making the informal complaint on his resolution.

**informal
complaints**

Chapter X
General Rules Governing the Competition Supervision Proceedings of the Hungarian
Competition Authority

Application of the general rules of public administrative procedures

Article 44

Unless otherwise provided in this Act, competition supervision proceedings shall be governed by the provisions of PAPA, with the exception of Article 12(2), Article 15, Article 16(1)-(2), Article 18, Article 20, Article 22(3)-(5), Article 27(2), Article 29, Article 30, points a), b), d) and e) of Section (1), furthermore Sections (2)-(4) of Article 31, Article 32(5), Sections (1)-(2), points b), d) and f) of Section (3) and Sections (4)-(9) of Article 33, phrase two of Section (1), furthermore Section (2) of Article 34, Article 36(2)-(4), Article 37, Article 38(1), Article 39(5), Articles 42 and 43, Article 46(2), Article 47, Sections (1) and (6) of Article 51, Article 61(1)-(2), Article 64, Articles 66, Article 67(2)-(3), Sections (1) and (4) of Article 68, Sections (1), (2), (4) and (6) of Article 69, Article 70, Article 72(3)-(4), Article 74(2)-(5), Article 75, Article 88(1), Article 94, points a), c) and d) of Section 2, point b) of Section (3), furthermore Section (5) of Article 97, Articles 98-108, Article 109(2)-(4), Articles 112 and 113, Article 115(1)-(4), Article 116, Article 117(3)-(4), second sentence of Article 123(2), points b) and c) of Article 125, Articles 127-129, point b) of Article 138(1), points b)-d) of Article 140(1), Article 141, Article 148(6), point d) of Section (1), furthermore Section (4) of Article 149, Article 154, Article 157(2)-(3), Article 158(3), Article 159 and Article 171(2) of PAPA.

Competence

Article 45

competence

The Hungarian Competition Authority shall have competence in all cases relating to competition supervision, which do not belong to the competence of the courts (Article 86).

Article 46

The competence of the Hungarian Competition Authority covers the whole territory of the country.

Phases of the competition supervision proceedings; composition of the proceeding body; exclusion

Article 47

phases of the proceedings

(1) The competition supervision proceedings consist of the following phases:

- a) the procedure of the investigator;
- b) the procedure of the competition council;
- c) post-investigation; and
- d) enforcement.

(2) In the course of the proceedings, the investigator and the competition council bringing proceedings in the case may make injunctions, but a decision on the substance of the case may be made only by the competition council bringing proceedings in the case.

**proceeding
competition council**

Article 48

- (1) The resolutions of the competition council bringing proceedings shall be made by a panel of three or five members.
- (2) Where this law speaks of competition council bringing proceedings in the case, this term means the board defined in the above Section (1). In other cases, the investigator or a member of the competition council bringing proceedings in the case may proceed alone.

Article 49

- (1) The following persons must be excluded from dealing with a particular case:
- a) the parties, persons jointly authorised or sharing obligations with the parties, and persons whose rights or obligations may be affected by the result of the proceedings;
 - b) representatives of the persons defined in the above point a);
 - c) relatives and former spouses of the persons defined in the above points a) and b);
 - d) persons who have been heard in the course of the proceedings as witnesses or experts, or the hearing of whom as witnesses or experts has been ordered; or
 - e) persons who cannot be expected to form an objective opinion of the case (prejudice).

exclusion

(2)

[Repealed by Act CXXXVIII of 2000]

Article 50

- (1) Investigators and members of the competition council bringing proceedings in the case shall, without delay, notify the President of the Hungarian Competition Authority and the Chair of the Competition Council respectively, if any of the above reasons for their exclusion from the proceedings exists. Investigators and members of the competition council bringing proceedings in the case shall bear disciplinary responsibility and financial liability for failure to make such notification or for any delay in making such a notification.
- (2) Reasons for exclusion may be reported by a party at any phase of the proceedings; however, in the course of the procedure of the competition council, he may enforce them only in cases where he makes it probable at the same time that he has just acquired knowledge of the fact, which serves as a basis for exclusion.
- (3) Where a party makes an obviously unfounded notification of a reason for exclusion, or where a party repeatedly makes unfounded notifications against the same person in the same proceedings, a procedural fine may be imposed on him in the injunction refusing the exclusion (Article 61).

Article 51

- (1) In respect of the exclusion of an investigator or a member of the competition council bringing proceedings in the case, the resolution shall be made by the President of the Hungarian Competition Authority or the Chair of the Competition Council respectively, who will appoint at the same time the new investigator or the new member of the competition council bringing proceedings in the case, if necessary.

(2) Where the investigator or a member of the competition council bringing proceedings in the case has reported the reason for exclusion, he shall not take further part in the proceedings until the issue is settled. In any other case he may continue but shall not make resolutions resulting in the conclusion of the case. In the case of a notification made by a party repeatedly against the same person, such a limitation shall not apply.

(3) Where the reason for exclusion was reported by a party, legal remedy (Article 77) against the injunction on the refusal of exclusion may be sought by request for a review, by the court, of the decision made by the competition council bringing proceedings in the case.

(4)

[Repealed by Act LXVIII of 2005]

(5) Where the Chair of the Competition Council acts as a member of a competition council bringing proceedings the rules relating to the procedure of his exclusion shall be the same as those governing the exclusion of the investigator.

The party

Article 52

For the purposes of this Act, the term “party” means a person against whom proceedings were started ex officio, as well as an applicant (Article 68) and a person who is the subject of the application.

Article 53

(1) Where there is a legal successor to a party which has been wound up, such a legal successor may enter, on a voluntary basis, the proceedings commenced upon an application, within thirty days of the setting in of the legal succession. If no voluntary entry is effected the proceedings are terminated by the investigator or the competition council bringing proceedings in the case.

party

(2) Where, in the course of proceedings started ex officio, a party has been wound up, its legal successor may be drawn into the proceedings. Where inclusion of the legal successor in the proceedings is not justified - with respect to the provisions in Article 70(1) - or where there is no legal successor to the party, the proceedings shall be terminated by the investigator or the competition council bringing proceedings in the case.

(3) Where it is established from the available information that the proceedings started ex officio are directed at an inappropriate party, the appropriate party may be called into the proceedings and the previously involved party simultaneously released. Otherwise the proceedings shall be terminated by the investigator or the competition council bringing proceedings in the case.

(4) Where it is established from the available information that other undertakings are also engaged in the conduct under review, the investigator shall draw those undertakings into the proceedings.

(5) Where granting authorisation in proceedings commenced upon an application would require an obligation to be imposed on an undertaking, which is not a party to the proceedings that undertaking may enter as a party the proceedings, following such a request of the investigator. The undertaking entering the proceedings may not withdraw the application.

Representation

Article 54

(1) The party is represented in the proceedings by its legal representative or proxy.

(2) The following persons may proceed as proxy:

- a) a fellow party or his legal representative or proxy;
- b) a relative of the party;
- c) a lawyer or a law firm;
- d) an official in charge of a state body in cases relating to the activities of such a state body;
- e) a member or an employee of an economic organisation authorised to perform management responsibilities in cases related to the activities of such an economic organisation;
- f) organisations representing the interests of persons with an interest in the economic activity concerned; and
- g) persons authorised by law to proceed in such capacity.

(3) In the case of a proxy defined in point f) of Section (2) the investigator or the competition council bringing proceedings in the case may oblige the party to appoint another proxy, where he or it is expected to order in the case the hearing of the interest representation organisation.

(4) Authorisations to act as proxy must be in writing. The issuance and termination of such authorisations are governed by the provisions in Articles 68 to 71 of Act III of 1952 on the Code of Civil Procedures.

representation

Access to the files, business secrets

Article 55

(1) The party and its representative may have access to the documents after the completion of the investigation, following the date set by the competition council bringing proceedings in the case and they may make copies or take notes thereof. The starting date for the access shall be set early enough so as to enable the party to prepare for making a statement. Specifying the documents concerned, the competition council bringing proceedings in the case may give its consent to the party or its representative having access to the documents before the completion of the investigation where this does not jeopardise the effectiveness of the proceedings.

(2) At any time in the course of the proceedings, the public prosecutor or, with the consent of the public prosecutor, the investigating authority may have access to all the documents of the proceedings and the expert may have access to the documents which are necessary to perform his duties, including those which contain business secrets, bank secrets, insurance secrets or secrets defined by separate statutes and relating to the treatment of securities or the operation of funds; they may make copies or take notes of the respective documents.

access to the files

business secrets

(3) The party and other persons participating in the proceedings may request limitation of access to the documents or to the making of copies or to the taking of notes of the documents, with reference to the need of protection of business secrets. A separate legal remedy (Article 82) may be sought against an injunction made by the investigator or the competition council bringing proceedings in the case, which rejects the request. When deciding about this request, the investigator or the competition council bringing proceedings in the case may oblige the party or the other persons participating in the proceedings to prepare a version of the document concerned which does not contain business secrets.

(4) A foreign authority may request that a part or the whole of the content of their response to a request for information be treated as a business secret. The treatment of business secrets is governed by the rules defined in Section (3).

internal documents

(5) In the course of the proceedings of the Hungarian Competition Authority, the party and other persons participating in the proceedings may not have access to internal documents of the Hungarian Competition Authority, the European Commission, or the competition authorities of the member states, including documents drawn up pursuant to Articles 11 and 14 of Regulation (EC) No 1/2003, furthermore, to correspondence between the Hungarian Competition Authority and other authorities, or between the latter, unless those internal documents are used in evidence when establishing the facts of the case.

Justification for negligence

Article 56

[Repealed by Act LXVIII of 2005]

Article 57

omission

(1) No application for justification may be submitted after sixty days of the specified date missed or of the last day of the time limit exceeded.

(2) In respect of an application for justification, the resolution is made by the investigator during the investigation, or by the competition council bringing proceedings in the case during the procedure of the competition council. A separate legal remedy (Article 82) may be sought against an injunction made by the investigator, which rejects the application for justification. An injunction rejecting the application for justification by the competition council bringing proceedings in the case may be contested by the request for a review, by the court, of the decision made on the substance of the case.

International legal assistance

Article 58

(1) [Repealed by Act LXVIII of 2005]

(2) [Repealed by Act LXVIII of 2005]

international legal assistance

(3) Documents generated in the course of the proceedings may be made available on request to a foreign authority. Documents containing business secrets may only be made available if this is provided for in an international agreement. Where the requested documents contain business secrets, a condition for disclosure is a commitment by the foreign authority to treat the contents of the documents as business secrets.

(4) In order to contribute to the mutual promotion of the ability of the parties to perform their duties, the Hungarian Competition Authority may enter into cooperation agreements with foreign competition authorities.

Service performed abroad

Article 59

service performed abroad

(1) [Repealed by Act LXVIII of 2005]

(2) Service performed abroad shall be deemed valid if it meets the requirements laid down either in domestic law or the law of the country where the service is performed.

Stay of proceedings

Article 60

stay of proceedings

In the case of a stay of the proceedings started upon an application, a separate legal remedy (Article 82) may be sought against the injunction of the investigator or the competition council bringing proceedings in the case.

Procedural fines

Article 61

procedural fines

(1) A procedural fine may be imposed on the party or other persons participating in the proceedings, furthermore on persons obliged to provide assistance in clarifying the facts of the case if they engage in an act or display behaviour which is aimed at protracting the proceedings or preventing the disclosure of facts, or which has such an effect.

(2) A person who disrupts the trial may be called to order by the chairman of the trial. In the case of repeated or grave disruption, such a person shall be expelled from the room, and a procedural fine may be imposed.

(3) The minimum procedural fine imposed pursuant to the above Sections (1) and (2) shall be HUF fifty thousand, the maximum shall be one per cent of the undertaking's net turnover in the preceding business year, for undertakings and HUF five hundred thousand, for natural persons who do not qualify as an undertaking. In the case of exceeding time limits specified for the performance of procedural obligations, the maximum procedural fine shall be one per cent of the undertaking's per-day net turnover in the preceding business year, for undertakings and HUF fifty thousand per day, for natural persons who do not qualify as an undertaking. A separate legal remedy (Article 82) may be sought against an injunction imposing a procedural fine. The application has a suspensive effect on the implementation of the injunction. The investigator or the competition council bringing proceedings in the case may also amend their injunction imposing a procedural fine.

Procedural fees and costs

Article 62

procedural fees

(1) Where the proceedings are started on application pursuant to Article 24 or 25, the applicant shall pay, upon submission of the application, a procedural fee of HUF two million. Where the competition council bringing proceedings in the case in proceedings started on the basis of Article 24, makes its decision pursuant to point b) of Article 63(3), an additional procedural fee of HUF eight million shall be paid within fifteen days of the date of service of the decision. In the case of termination of the proceedings pursuant to Article 68(5) half of the procedural fee paid shall be reimbursed to the party. There is no charge if proceedings are terminated pursuant to Article 68(4). Prior notification of a price increase is free of charge (point c) of Article 67(2)).

(2) Where, in the decision made on the substance of the case, the competition council bringing proceedings in the case authorises, pursuant to point b) of Article 77(1), a concentration of undertakings it shall at the same time oblige the parties to pay the fee and costs determined in Section (1) above and Section (3) below respectively.

(3) The parties are obliged to advance and, irrespective of the outcome of the proceedings, bear the costs of proceedings started on application. Where the application is found to be well-founded, the procedural fee and costs may be divided between the applicant and the undertaking which is the subject of the decision.

(4) The costs incurred in proceedings started ex officio are borne by the party if an infringement was established, including termination of the proceedings pursuant to point c) of Article 76(3). If there was no infringement established the costs of the proceedings started ex officio are borne by the state.

costs

(5) In the case of proceedings started ex officio, if more than one undertaking is jointly engaged in unlawful practices, they shall bear joint and several liability for payment of the costs of the proceedings.

(6) No exemption may be granted from the obligation of payment of the fee and the costs of proceedings. Interpreters' fees are advanced and borne by the state.

(7) Witnesses are entitled to reimbursement of costs necessarily incurred in connection with their appearance. Witnesses shall be made aware of this fact following their hearing. The remuneration of experts is governed by a regulation issued by the minister responsible for justice. Separate legal remedy (Article 82) may be sought against the injunction establishing the remuneration of experts and witnesses, which has a suspensive effect on implementation.

Time limits for settlement

Article 63

(1) It shall be an ex officio duty to ensure a thorough investigation of cases and completion within a reasonable period of time.

(2) Unless another time limit is set by law, the resolution concluding the proceedings shall be made within,

a) in the case of proceedings started on the basis of Articles 8 to 10, ninety days of the date of the order to open the case;

b) in the case of proceedings started on the basis of Articles 11 and 21, one hundred eighty days of the date of the order to open the case;

c) in the case of proceedings started on the basis of Article 67 (3) for failure to submit an application for the authorisation defined by Article 24, one hundred eighty days of the date of the order to open the case.

time limits

(3) In the course of the control of a concentration, the resolution concluding the proceedings shall be made within:

a) forty five days, where:

aa) no concentration pursuant to Article 23 or with a view to Article 25 is effected; or

ab) the thresholds set by Article 24 are not met by the given concentration; or

ac) granting authorisation for the concentration may clearly not be refused pursuant to Article 30(2);

b) one hundred twenty days in all other cases;

of the date of receipt, or the completion, of the application.

(4) In respect of the application of point b) of Section (3), the resolution shall be made by the competition council bringing proceedings in the case within forty five days of the date of receipt or completion of the application.

(5) When reckoning the deadlines for settlement the periods of time elapsed to take the following measures need not be taken into account:

a) the time elapsed before calling the legal successor into the proceedings or its voluntary entry into the proceedings or calling the appropriate party into the proceedings or extending the application to cover the appropriate party,

b) in the case of the death of the legal representative of the party if the legal representative did not have a proxy, before a notification concerning the new legal representative of the party,

c) in the case of stoppage of the operation of the Hungarian Competition Authority for any reason beyond the Authority's control, if it makes it impossible to contact the party, until the elimination of the obstacle,

d) in the case of expert assistance is being used, the time elapsed before receiving the expert opinion,

e) in the case of serving abroad, until such serving is effected,

f) until the settlement of a request sent to a foreign authority,

g) the period of time used for the exclusion procedure relating to a member of the competition council bringing proceedings,

h) the time elapsed between the date of the commencement of the out-of-lawsuit procedures defined in Articles 65/A and 65/B and the date when the court made its decision,

i) where the absence of a resolution concerning an application for legal remedy as defined in Article 82(3) prevents the resolution-making, until the assessment of the application for legal remedy has been made.

extension of the time limit

(6) The time limit for settlement may be extended by a maximum of sixty days, in cases pursuant to point b) of Section (2) two times by a maximum of one hundred eighty days each, in cases pursuant to point a) of Section (3) by twenty days, where justified. This must be notified to all interested persons before the expiry of the original time limit.

(7) Where an investigator is excluded, the deadlines for the investigation shall be counted from the appointment of the new investigator.

**authority being
“silent”**

Article 64

If in the case of proceedings started on application as defined by Article 67(2), the competition council bringing proceedings in the case fails to make a resolution within the time limit defined by Article 63, the request shall be deemed to have been granted.

Clarification of the facts of the case

Article 65

(1) When clarifying the facts of the case, the investigator and the competition council bringing proceedings in the case shall apply the provisions of this Article and, except for those of Article 44, the rules laid down in PAPA relating to the clarification of the facts and to the control exercised by administrative authorities.

(2) In proceedings started ex officio parties shall be obliged to supply, at the request of the investigator or the competition council bringing proceedings in the case, the data which are necessary to decide on the substance of the case, including personal data. Parties shall not be obliged to make statements admitting an infringement of the law, they may however not refuse to supply incriminating evidence of any other kind.

(3) In proceedings started ex officio investigative measures may be carried out on any sites where evidence necessary to clarify the facts of the case is kept. For the purposes of the clarification of the facts of the case, any persons or organisations are obliged to provide the necessary information in writing too and send any documents relating to the subject of the investigation to the Hungarian Competition Authority.

(4) In proceedings started ex officio parties or other persons possessing documents are obliged, at the request of the investigator, to display, in a readable form or a form which is eligible to be copied, of information recorded on data carriers.

investigatory powers

(5) The investigator and the competition council bringing proceedings in the case shall be entitled to make copies of documents. In proceedings started ex officio the investigator shall be entitled to make physical back-up copies of data carriers and to scrutinize, by means of the back-up copies, the data stored on those data carriers where the data carriers are likely to store data relating to the infringement of the law.

(6) In cases where pieces of physical evidence may be seized in accordance with the provisions of PAPA, they may be put under seal in place of being seized. In such cases the investigator shall put the documents in a storing device suitable for keeping them or in a separate room, to be closed and sealed by him subsequently.

(7) The Hungarian Competition Authority shall be authorised, in connection with the economic activity under review, to have access to, and manage, the personal data of the party and of other persons participating in the proceedings; it may seize records or data bases containing data of this kind. Where a piece of evidence contains personal data, which do not relate to the subject of the proceedings and it is not possible to separate data without a lessening of the probative force of that piece of evidence, the Hungarian Competition Authority shall be authorised to manage any personal data concerned by the piece of evidence; it may however examine personal data not relating to the infringement which is subject of the investigation only to the extent necessary to ascertain that the data do not relate to the infringement which is subject of the investigation.

(8) Access to documents relating to the economic activity under review, which contain state or trade secrets is governed by the provisions of a separate regulation.

(9) The Hungarian Competition Authority may use documents, data, records or any other information, which were lawfully collected by it in the procedures defined in Chapters VIII to XII, in its other competition supervision proceedings.

Article 65/A

(1) In the course of proceedings started ex officio based on Article 11 or 21 of this Act or on Article 81 or 82 of the EC Treaty, the investigator may search, and enter on his own, against the will of the owner (possessor), any site or open to this end any land, buildings and premises closed. It may oblige the party or its agent or former agent, employee or former employee to provide information and explanation orally or in writing, or collect information on the spot in any other manner.

(2) In premises used for private purposes or privately used, including vehicles and other land, investigative measures within the meaning of this Article may only be carried out, if they are in the use of any executive official or former executive official, employee or former employee, agent or former agent of the party or of any other person who exercises or exercised control as a matter of fact.

(3) Carrying out the investigative measures specified by this Article shall be subject to the attainment in advance of a judicial authorisation. The application for such an authorisation of the Hungarian Competition Authority shall be considered out of lawsuit by the Municipal Court of Budapest, within seventy two hours of receipt of the application. There is no appeal against the injunction of the court and no review is possible.

(4) The court shall authorise the investigative measure applied for to be taken where the Hungarian Competition Authority is able to show that other investigative measures would be likely to result in failure, and there are reasonable grounds to presume that a source of the information relating to the specified infringement is kept on the site indicated by the application and it would presumably not be made available voluntarily, or would be made unusable. The court may authorise the investigative measure to be taken partially, specifying the target persons of the particular investigative measures.

(5) Investigative measures may be carried out, based on the decision of the court, within ninety days of the issuance.

(6) The investigation shall be commenced concurrently, at the latest, with commencing the investigative measures specified by this Article. The party present shall be informed of the injunction pursuant to Article 70(1).

(7) When commencing them, the investigative measures specified by this Article shall be notified orally to the persons concerned and they shall be carried out, where possible, in the presence of the persons concerned. The persons concerned shall be informed, before the commencement of the investigative measures, of the decision of the court and the purpose of the investigative measures.

(8) To carry out the investigative measures specified by this Article, the Hungarian Competition Authority may resort to the assistance of the police. The police may use coercive measures and means as set out by the rules relating to it.

**fact-finding
measures**

(9) When taking an investigative measure within the meaning of this Article, the investigator shall be entitled to make copies of, or seize, pieces of evidence, which are not relating to the subject of the investigation and are not covered by the authorisation of the court, but which are indicative of an infringement of Article 11 or 21 of this Act or of Article 81 or 82 of the EC Treaty. In respect of such pieces of evidence, the authorisation of the court shall be obtained subsequently. The application for authorisation must be submitted within thirty days, at the latest, of the measure taken. Should the procedure defined by Article 65/B be followed in respect of a piece of evidence, the application for the judicial authorisation shall be submitted within eight days of the conclusion of the procedure. Where a subsequent authorisation of the court was not obtained, the piece of evidence in question may not be used.

(10) The provisions laid down in Articles 65 and 65/B shall apply *mutatis mutandis* to the procedure defined by this Article.

Article 65/B

(1) Documents prepared for the purposes of, or during, the exercise of the rights of defence of the parties or prepared in the course, or for the purposes, of communication between the parties and the lawyers appointed by them, furthermore documents containing statements made in the course of such communication, provided in each of these cases that this character is directly manifested by the document concerned, may not be used in evidence, examined or seized in the course of the competition supervision proceedings, and the owners of such documents may not be obliged in the course of inspections to present those documents, except where otherwise provided by this Article. Parties may waive the application of this prohibition.

(2) Documents not in the possession of the party (or its legal representative) or of a lawyer authorised by the party may not be qualified as documents not to be used in evidence according to Section (1) above unless a person concerned show they came out of his possession in an illegal manner.

(3) If the investigator intends to oblige the party (or its legal representative) or its authorised lawyer to present a document defined in Section (1) or if he intends to examine, take possession of or make copies of such a document during an inspection or during a search pursuant to Article 65/A, the party (or its legal representative) or its authorised lawyer may refuse to take action to grant the request. The investigator shall be entitled, without prejudice to the right protected by this Article, to have access to the document concerned in order to establish whether the reference to that document's falling under Section (1) is obviously unfounded.

(4) Where contrary to the statement made by the person concerned, the investigator considers the document not to be covered by Section (1), the document (or the physical back-up copy made of it) shall be put in a storing device suitable to preclude access to the document. The lock on the storing device shall be authenticated by the person concerned and the investigator signing it in a manner, which prevents the storing device from being opened without the authentication being damaged. The Hungarian Competition Authority shall take possession of the storing device.

(5) In respect of whether the document concerned is covered by Section (1), the Municipal Court of Budapest shall decide out of lawsuit, at the request of the Hungarian Competition Authority, after having heard the party, within eight days of submission of the application. The Hungarian Competition Authority shall attach to its application the storing device containing the document.

legal privilege

(6) Should the court consider the document not to be covered by Section (1), it will hand the document over to the Hungarian Competition Authority; further treatment of the document will be governed by the general rules relating to documents. Should the resolution state the contrary, the court will forward the document to the party.

(7) In cases where the content of a document is only partly covered by Section (1), the document shall be separated, provided that this does not result in a lessening of the probative force, and the procedure defined in Sections (4) to (6) shall be conducted only in respect of the part of the document which is covered by Section (1). Should the separation mentioned above be carried out in respect of the physical back-up copy of a data carrier, the procedure defined in Sections (4) to (6) shall be conducted by using a copy, which enables the separation to be carried out; subsequently, this copy may be used in the course of the procedure of the taking and assessing of evidence and the physical back-up copy shall be stored as set out in Section (4) above. It shall be an exclusive power of the court to have access to that physical back-up copy, in order to control the authenticity of the copy used in the course of the procedure of obtaining and assessing evidence.

(8) In cases where the document cannot be separated without a lessening of the probative force, the court shall identify by its injunction the parts of the document, which are being covered by Section (1). The document shall be stored as set out in Section (4) and it shall be given to the Hungarian Competition Authority. The storing device may be opened or the part of the document not covered by Section (1) may be examined only in the presence of the party. The party shall be notified, at least three days in advance, of the time, the likely duration and the place of such an investigative measure. The performance of the examination shall not be prevented by the lack of appearance of the duly notified party.

(9) In cases where the party (or its legal representative) could, as set out in Section (3), but failed to, ensure protection for the document, Section (1) shall not apply in respect of that document.

Article 66

[Repealed by Act LXVIII of 2005]

Chapter XI

Performance of the Competition Supervision Proceedings of the Hungarian Competition Authority

Commencement of competition supervision proceedings

Article 67

(1) Competition supervision proceedings are commenced on application or may be started ex officio.

(2) Competition supervision proceedings shall be commenced on application in the following cases:

- a) authorisation as defined by Article 24,
- b) extension of the period determined by Article 25, or
- c) prior notification of price increase.

(3) The competition supervision proceedings may also be commenced ex officio where it is established that, in the cases defined by Section (2), the initiation of competition supervision proceedings should have, but have not been, applied for.

commencement of proceedings

time-bar

(4) No investigation may be started where five years have elapsed since the infringement of this Act. Where the infringement of the Act is committed through a failure to eliminate a state of affairs or situation, the time limit does not start as long as this state of affairs or situation exists.

(5) Competition supervision proceedings, which may be commenced ex officio shall start on the day on which the injunction pursuant to Article 70(1) is made; competition supervision proceedings commenced on application shall start of the date of receipt of the application.

Commencement of investigation on application

Article 68

(1) An application for commencement of proceedings may be submitted by persons:

- a) obliged by Article 28(1) to obtain authorisation for a concentration, or
- b) obliged by another regulation to notify a price increase in advance, or
- c) who were not able to fulfil within one year an obligation relating to disposal pursuant to Article 25.

application

(2) Applications submitted pursuant to Article 24 shall be accompanied by a properly completed copy of the application form for the authorisation of a concentration issued by the Hungarian Competition Authority.

(3) Applications defined by Article 24 shall be submitted at the time defined by Article 28(2).

(4) The applications shall contain all facts and details required for the assessment of the case. Where the information provided is seen as incomplete, the application may be returned on one occasion, within fifteen days of receipt of it, by the investigator for completion setting a time limit for compliance. This time limit may be extended on one occasion where justified.. Where the applicant fails to complete the information or provides inappropriate information following such a request, the investigator shall terminate the proceedings. Separate legal remedy (Article 82) against the injunction on terminating the proceedings may be sought.

(5) The applicant may withdraw its application for the commencement of proceedings in the course of the proceedings before the decision is made.

Article 69

[Repealed by Act LXVIII of 2005]

Opening an investigation ex officio

Article 70

(1) The investigator shall issue an injunction to open an investigation upon observation of an activity, conduct or situation which may violate the provisions of this Act, provided that the proceedings are within the competence of the Hungarian Competition Authority and the proceedings are necessary to safeguard the public interest. Such an injunction shall specify the circumstances and practices that necessitated the proceedings.

**starting proceedings
ex officio**

(2) Where the court, due to a lack of competence, refers a case to the Hungarian Competition Authority, the investigator shall proceed in accordance with Article 68 in the cases defined by Article 67(2), and in accordance with Articles 43/G-43/I in other cases.

(3) The fact that an investigation has been opened may be disclosed. Where the opening of an investigation is disclosed to the public, the results of this investigation shall also be published.

(4) The investigator shall extend the investigation by his injunction where an activity, conduct or situation may infringe or may also infringe, in addition to what has been indicated in the injunction initiating the case, another provision of this Act or Article 81 or 82 of the EC Treaty. The investigation may also be extended to activities, conducts or situations relating to those indicated in the injunction initiating the case.

(5) The investigator may divide competition supervision proceedings started against more than one party into separate proceedings if the case can be assessed in respect of the individual parties. The time limits for settlement, which apply to the proceedings conducted after the separation shall be the same as those governing the original proceedings.

The report of the investigator

Article 71

**report of the
investigator**

(1) After completing the investigation, the investigator shall prepare a report, which he shall submit to the competition council, together with the files.

(2) The report shall contain:

- a) the subject matter of the investigation,
- b) the facts established and the supporting evidence, and
- c) the proposal of the investigator relating to the further course of the proceedings and for interim measures where necessary.

(3) In justified cases, the investigator may, in a separate report, propose interim measures prior to the conclusion of the investigation.

Article 71/A

**termination of the
proceedings by the
investigator**

The investigator shall terminate by injunction the competition supervision proceedings started ex officio, where the circumstances specified by Article 70(1), which gave rise to the ordering of the investigation to be opened do not exist, or if the evidence obtained in the course of the proceedings does not allow the existence of an infringement of the Act to be found and the continuation of the proceedings is likely to result in failure. The complainant shall also be informed of the injunction. Separate legal remedy (Article 82) may be sought against the injunction terminating the proceedings.

The proceedings of the competition council

Article 72

**resolutions of the
proceeding
competition council**

(1) After receipt of the report submitted by the investigator the competition council bringing proceedings in the case:

- a) shall terminate by injunction the proceedings, where the circumstances specified by Article 70(1), which gave rise to the ordering of the investigation to be opened do not exist, or if the evidence obtained in the course of the proceedings does not allow the existence of an infringement of the Act to be found and the continuation of the proceedings is likely to result in failure; separate legal remedy (Article 82) may be sought against the injunction terminating the proceedings;

interim measure

b) may return the files to the investigator where it establishes that the clarification of the facts requires further investigation or that an extension of, or the calling of a new party into, the proceedings is justified;

c) may, by an interim measure, prohibit in its injunction the continuation of the illegal conduct or order the elimination of the unlawful situation, where prompt action is required for the protection of the legal or economic interests of the interested persons or because the formation, development or continuation of economic competition is threatened.

(2) Where an interim measure is requested by a party, the competition council bringing proceedings may require a bond as a condition. A separate legal remedy (Article 82) may be sought against the injunction ordering an interim measure or the provision of a bond.

(3) The competition council bringing proceedings may provide the investigator with guidance on the method and the direction of the conduct of the investigation as early as before closing the investigation.

(4) The complainant shall also be informed of the injunction made pursuant to point a) of Section (1).

Article 73**preliminary position of the proceeding competition council**

(1) Where the measures defined by points a) and b) of Article 72(1) are unnecessary, the competition council bringing proceedings in the case shall send its preliminary position about the case, which shall set forth the facts of the case which have been established, the evidence in support of them, the assessment of them and the substance of the aspects and the conclusions which are necessary to make a resolution, to the party.

(2) A preliminary position need not be prepared where the proceedings are started on application, the competition council bringing proceedings in the case consents to the content of the application and the application of Article 30(3) is unnecessary. In such cases the competition council bringing proceedings in the case shall reach its decision (Article 77) without a trial.

*The trial of the competition council***Article 74****trial of the proceeding competition council**

(1) The competition council bringing proceedings in the case shall hold a trial in so far this is requested by the party or considered necessary by the competition council bringing proceedings in the case. Concurrently with sending its preliminary position, the competition council bringing proceedings in the case shall ask the party to make a statement on whether it requests a trial to be held. The date of the trial shall be set in time to allow the party to prepare for the trial.

(2) At the trial (or without holding a trial), the competition council bringing proceedings in the case may terminate the proceedings by injunction in cases specified in point a) of Article 72(1).

(3) Competition council trials shall be held in public. Through its reasoned injunction, the competition council bringing proceedings in the case may exclude the public from the trial or part thereof, on request or ex officio, where such an exclusion is indispensable for the protection of the confidentiality of state secrets, trade secrets, business secrets or data pertaining to the property status of a party, received from a credit institution (bank secrets) or from an insurance undertaking (insurance secrets), or secrets defined by separate statutes and relating to the treatment of securities or the operation of funds, or with regard to the interests of the national economy.

Commitments

Article 75

**commitment
injunctions**

(1) Where, in the course of competition supervision proceedings started ex officio, parties undertake commitments to ensure, in a specified manner, compliance of their practices with the provisions of this Act or of Article 81 or 82 of the EC Treaty and if effective safeguarding of public interest can be ensured in this manner, the competition council bringing proceedings in the case may by injunction make those commitments binding on the parties, terminating at the same time the proceedings, without concluding in the injunction whether or not there has been or still is an infringement of the Act. A separate legal remedy (Article 82) may be sought against the injunction.

(2) Commitment injunctions are without prejudice to the power of the Hungarian Competition Authority to start new competition supervision proceedings in the case where there has been a material change in the circumstances or where the injunction was based on misleading information concerning a fact which was fundamental to the making of the resolution. In the course of the new competition supervision proceedings, resolution shall be made of the injunction, which was adopted previously based on Section (1).

Post-investigation

Article 76

post-investigation

(1) The investigator shall hold a post-investigation in order to check

- a) the compliance with the commitments specified in the injunction pursuant to Article 75, or
- b) the fulfilment of the pre- or post-conditions provided for by the decision, or
- c) the fulfilment of the obligations provided for by the decision.

(2) The investigator may hold a post-investigation in cases concluded by the decision of the competition council bringing proceedings in the case.

(3) The provisions of the competition supervision proceedings shall apply mutatis mutandis to the post-investigation.

(4) On the basis of the report submitted by the investigator, the competition council bringing proceedings in the case shall

- a) by injunction impose fines (Article 78) in cases pursuant to point a) of Section (1) where parties failed to comply with a commitment, except where, due to changes in the circumstances, the enforcement of compliance is not justified; in such cases and in cases where the commitments have been fulfilled, he shall by injunction terminate the post-investigation;
- b) by injunction establish in cases pursuant to point b) of Section (1) whether the pre- or post-conditions have been satisfied,
- c) in cases pursuant to point c) of Section (1), terminate by injunction the post-investigation where the obligation has been fulfilled or revoke or amend by a decision its preceding decision where the

obligation has not been fulfilled or the fulfilment is not justified, respectively;

d) in cases pursuant to Section (2), by injunction, terminate the post-investigation where voluntary compliance with the decision is established or order the decision to be enforced in the absence of compliance.

(5) Separate legal remedy (Article 82) may be sought against the injunction imposing fines pursuant to point a) of Section (4).

Decisions

Article 77

(1) The competition council bringing proceedings in the case, in its decision,

a) shall decide on the applications specified by Article 67(2),

b) in the case of proceedings started pursuant to Article 67(3), may authorise the concentration of undertakings or may extend the one-year time limit pursuant to Article 25,

c) may establish pursuant to Article 16/A that the benefit of the application of the group exemption does not apply to the agreement,

d) may establish that the conduct is unlawful,

e) may order a situation violating the Act to be eliminated,

f) may prohibit the continuation of the conduct which violates the provisions of the Act,

g) where it finds that there is an infringement of the law, it may impose obligations including in particular the obligation of a contract to be concluded where an unjustified refusal to create or maintain business relations appropriate for the type of the transaction (point c) of Article 21) has been found,

h) may order a corrective announcement to be published in respect of a previous information which is likely to deceive,

i) may establish that the conduct is not unlawful,

j) may revoke or amend its earlier decision (Articles 32 and 76 of this Act, Article 114 of PAPA).

(2) Pre- or post-conditions and obligations may be attached to the decisions granting authorisation for concentrations.

(3) [Repealed by Act LXVIII of 2005]

Article 78

(1) The competition council bringing proceedings may impose a fine on persons violating the provisions of this Act. The maximum fine shall not exceed ten per cent of the net turnover, achieved in the business year preceding that in which the decision establishing the violation is reached, of the undertaking or, where the undertaking is member of a group of undertakings, which is identified in the decision, of that group of undertakings. The maximum fine imposed on social organisations of undertakings, public corporations, associations or other similar organisations shall not exceed ten per cent of the total of the net turnover in the preceding business year of undertakings, which are members of them.

decision

fine

(2) Where no information which could be considered as authentic on the net turnover, achieved in the business year preceding that in which the decision establishing the violation is reached, of the undertakings or the group of undertakings mentioned in Section (1) is available, the last business year with an authentic annual closing shall be taken into consideration when determining the maximum fine.

(3) The amount of the fine shall be established with all the relevant facts of the case taken into account, in particular the gravity of the violation, the duration of the unlawful situation, the benefit gained by the infringement, the market positions of the parties violating the law, the imputability of the conduct, the effective cooperation by the undertaking during the proceedings and the repeated display of unlawful conduct. The gravity of the violation shall be established, in particular, on the basis of the threat to economic competition and the range and extent of harm to the interests of consumers.

(4) Fines imposed on broadcasters shall be paid into the Broadcasting Fund.

(5) In cases where a member of a group of undertakings, which has committed the infringement, fails to voluntarily pay the fine and the enforcement results in failure, the competition council bringing proceedings in the case shall by a separate injunction jointly and severally oblige the members of the group of undertakings concerned which have been identified in the decision to pay the fine or the part thereof which was not collected.

(6) In cases where a social organisation of undertakings, public corporation, association or other similar organisation fails to voluntarily pay the fine and the enforcement results in failure, the competition council bringing proceedings in the case shall by a separate injunction jointly and severally oblige the undertakings which participated in reaching the unlawful decision and are identified as such in the decision, to pay the fine.

(7) A separate legal remedy pursuant to Article 82(3) may be sought against an injunction made pursuant to Section (5) or (6).

(8) In order to effectively detect secret agreements infringing Article 11, the Hungarian Competition Authority may frame a leniency policy, in which it may lay down, on the one side, the principles governing its approach when it takes into account, in determining the amount of the fine it intends to impose, the effective collaboration of an infringing undertaking in the detection of the infringement and, on the other side, the extent to which it can take into account this collaboration. The conditions for the application of the leniency policy shall be described in a notice pursuant to Article 36(6).

leniency policy

Article 79

The amount of the fine for failure to submit an application for the authorisation defined by Article 24 may not exceed HUF fifty thousand per day.

Publication of the resolution

Article 80

publication of the resolution

The competition council bringing proceedings shall publish its decisions and it may publish its injunctions. This shall not be prevented by applications initiating a court review of the resolutions; however, the fact of a court review having been initiated shall be indicated when the publication is made. If the injunction ordering the opening of an investigation has been published, the resolution concluding the proceedings shall also be published.

Chapter XII**Legal Remedy in the Competition Supervision Proceedings of the Hungarian
Competition Authority***Objections to the investigation*

Article 81

**objections to the
investigation**

A party may file an objection, in writing, to any irregularities in the investigation procedures, within three days of the irregular measure alleged. The investigator or the competition council bringing proceedings in the case shall give reasons for its course to ignore the objection in the report or the resolution concluding the proceedings respectively.

Legal remedy against injunctions made in the course of the proceedings

Article 82

**legal remedy against
injunctions**

(1) Separate legal remedies may be sought against the injunctions made by the investigator or the competition council bringing proceedings only in cases where this is authorised by this Act. The submission of an application for legal remedy does not have a suspensive effect on the implementation of what has been ordered by the contested injunctions or on the continuation of the proceedings, unless otherwise provided by this Act. Application for a legal remedy may be submitted by the party or the person in respect of whom the injunction contains provisions, within eight days of the conveyance of the injunction.

(2) Application for a legal remedy submitted against an injunction made by the investigator shall be assessed by the competition council bringing proceedings in the case apart from its trial. In assessing the application, the competition council bringing proceedings in the case may make the following resolutions: it may affirm or amend or annul the injunction of the investigator, furthermore, at the same time with the annulment, it may order the investigator to repeatedly proceed. Of the injunctions assessing an application for legal remedy of the competition council bringing proceedings in the case, further legal remedy may be sought only against those which were made in respect of applications for legal remedy against an injunction pursuant to Article 60, 61, 62(7), 68(4) or 71/A of the investigator.

(3) Applications for a separate legal remedy against an injunction made by the competition council bringing proceedings in the case shall be considered by the Municipal Court of Budapest in administrative proceedings out of lawsuit.

Administrative lawsuits

Article 83

**administrative
lawsuits**

(1) In cases where an action is brought in order to get the decision reached in competition supervision proceedings reviewed by the court, the statement of claim shall be, within thirty days of the conveyance of the decision, submitted to the competition council or taken to the post as registered mail.

(2) The competition council bringing proceedings in the case shall refer the statement of claim, along with the documents of the case and its observations about the contents of the statement of claim, to the court within thirty days of receipt of the statement of claim. In cases where the statement of claim contains an application for a stay of enforcement, the statement of claim and the documents of the case shall be referred to the court within fifteen days of receipt of the statement of claim.

(3) Upon an authorisation given by the Chair of the Competition Council members of the competition council bringing proceedings may also act as representatives of the Hungarian Competition Authority in administrative lawsuits.

(4) The court may overrule the decision of the competition council.

(5) Where the decision made by the competition council bringing proceedings in the case violated a legal norm as a result of which the party has a claim for the reimbursement of the fine, the refunded amount is subject to interest corresponding to twice the central bank's prime rate in the period in question.

Article 84

In court proceedings started on the basis of a claim against a decision of the competition council, Chapter XX of Act III of 1952 on the Code of Civil Procedures shall apply, with exceptions defined by Article 83 of this Act.

Chapter XIII

Litigation initiated by the Hungarian Competition Authority

Article 85

**actions against
administrative
decisions**

(1) Where in the course of its operation the Hungarian Competition Authority finds that any public administrative resolution violates the freedom of economic competition, it shall request the public administrative institution to amend or revoke the resolution in question.

time-bar

(2) Where such a public administrative institution fails to comply within 30 days with the request defined by the above Section (1), the Hungarian Competition Authority may seek a court review of the resolution of such a public administrative institution violating the freedom of economic competition, except in cases where the law excludes a court review of such public administrative resolutions. No such claim may be lodged after six months have elapsed from the entry into force of such a resolution, and no application for justification may be submitted where the time limit is missed.

(3) The assessment of such lawsuits shall belong to the competence of the county court (the Municipal Court of Budapest). The provisions laid down in Chapter XX of Act III of 1952 on the Code of Civil Procedures shall apply *mutatis mutandis* to the proceedings of the court.

Chapter XIV

The Competition Supervision Proceedings of the Court

Article 86

competence

(1) Proceedings in cases of violation of the provisions contained in Articles 2 to 7 belong to the competence of the court.

resolutions of the courts

(2) In the claim, the interested party may demand:

- a) the establishment of the violation,
- b) termination of the violation and the prohibition of continued violation by the offender,
- c) that the offender make amends - through making an announcement or in some other appropriate manner - and, if necessary, that sufficient publicity be given to such an announcement by the offender or at its cost,
- d) termination of the infringing state of affairs, restitution of the situation preceding the infringement, and depriving the goods produced or distributed in an infringing manner of their infringing features or, where this is not possible, destruction of such goods, as well as the destruction of any special facilities used for the production of such goods,
- e) damages subject to the provisions of the civil law, and
- f) [Repealed by Act LXVIII of 2005]
- g) that the offender supply information about the persons who participated in the production and distribution of the goods concerned by the infringement and about the business relations created for the dissemination of such goods.

(3) [Repealed by Act LXVIII of 2005]

Article 87

The scope of the court proceedings also includes the imposition of fines as defined by Article 78.

Article 88**time-bar**

(1) Action in court may be started with reference to practices defined in Articles 2 to 7 within six months of acquiring knowledge thereof. No action may be started after the end of five years of the display of such conduct.

(2) Where the contested conduct is realised by failure to eliminate a state of affairs or a situation, the time limit defined in Section (1) shall not start as long as the state of affairs (situation) continues to exist.

competence

(3) Litigation started pursuant to this Chapter shall come within the competence of the county court (the Municipal Court of Budapest).

Article 88/A

The competence of the Hungarian Competition Authority, determined by Article 45 of this Act and used to safeguard, pursuant to Article 70(1), the public interest, shall not prevent civil law claims, arising out of the infringement of the provisions laid down in Chapters III to V of this Act and mentioned in Articles 11(3) and 93, from being enforced directly in court.

Article 88/B**private enforcement**

(1) For lawsuits to be assessed under the provisions laid down in Chapters IV and V of this Act, the provisions of Act III of 1952 on the Code of Civil Procedures shall apply with the exceptions defined in this Chapter.

(2) The court shall notify, without delay, the Hungarian Competition Authority of lawsuits before it, which are to be assessed under the provisions laid down in Chapters III to V of this Act.

amicus curiae

(3) The Hungarian Competition Authority may submit, until the closure of the trial, written observations on issues relating to the application of the provisions laid down in Chapters III to V of this Act, furthermore it may also submit oral observations at the trial. If the Hungarian Competition Authority intends to exercise its right to make oral observations, this must be notified to the court. The information provided by the observation of the Hungarian Competition Authority may be used in evidence in the lawsuit.

(4) At the request of the court, the Hungarian Competition Authority shall inform the court, within sixty days of receipt of the injunction of the court requesting this information, of its opinion on points concerning the application of the provisions laid down in Chapters III to V of this Act.

(5) At the request of the Hungarian Competition Authority, the court shall transmit to it the documents of the lawsuit, which are necessary for the preparation of its observations or for the formation of its opinion on points of law referred to in Section (3) and Section (4) respectively. The costs of making copies of the documents shall be advanced by the court. At the request of the Hungarian Competition Authority, the court may give its consent to the Hungarian Competition Authority having access to the documents in place of transmitting them to it.

(6) Where at any phase of the lawsuit, the Hungarian Competition Authority notifies the court hearing the lawsuit of competition supervision proceedings it has initiated in the case concerned, the court shall stay its proceedings until the expiry of the time limit for filing an action in the court against the decision reached in the competition supervision proceedings or in cases where an action is filed against that decision, until the date on which the decision of the review court becomes final. The statement on the existence or absence of an infringement, made in the decision of the Hungarian Competition Authority against which no action has been filed or in the decision of the review court, shall be binding on the court hearing the lawsuit.

(7) In such lawsuits, the burden of proving the facts evidencing an infringement of the provisions laid down in Chapters III to V of this Act shall rest on the party alleging the infringement; the burden of proving that the conditions for claiming the benefit of the application of a group exemption pursuant to Article 16 of this Act or the conditions set by Article 17 of this Act are fulfilled, shall rest on the party alleging this.

(8) The court may also decide pursuant to Article 13(4) or 16/A(2) if the party referring to these provisions can show that the conditions set by this Act have been met.

Chapter XV

Enforcement of the Resolutions of the Hungarian Competition Authority

Article 89

enforcement

(1) Resolutions made in the course of competition supervision proceedings are final if no claim for a legal remedy has been filed against them within the time limit or a legal remedy has been waived or is precluded.

(2) Resolutions, which are final, may be enforced if the time limit or deadline for implementation set by them expired without due compliance. Resolutions, which are not final, may be enforced if a claim for remedy has no suspensive effect on their enforcement.

(3) The competition council bringing proceedings in the case shall ex officio order, by a separate injunction, the enforcement of its resolutions made in the course of the competition supervision proceedings, without delay following the expiry without due compliance of the time limit set for the implementation.

Article 90

enforcement fine

(1) Where the competition council bringing proceedings in the case, by its resolution, obliged the party to perform an act or display a conduct specified in the resolution, the competition council bringing proceedings in the case, concurrently with the ordering of the enforcement, shall impose an enforcement fine. The enforcement fine shall not exceed HUF fifty thousand per day.

(2) The competition council bringing proceedings in the case may set on one occasion, upon a reasoned application of the obligee, an extended time limit for voluntary compliance, raising at the same time the daily rate of the enforcement fine. The increased fine shall not exceed HUF hundred thousand per day.

(3) The obligee shall pay the enforcement fine for the period between the ordering of the enforcement, or the increased enforcement fine for the period between the expiry of the extended time limit for voluntary compliance, and the day of confirmation of performance of what has been ordered by the decision.

(4) The enforcement fine may be imposed at the same time on both an undertaking and its manager.

finest not paid

(5) Fines imposed in competition supervision proceedings and not paid within the time limit set for the compliance qualify as public debt, to be exacted like taxes, and which is to be collected officially upon request of the Hungarian Competition Authority by the tax authority.*

Article 90/A

enforcement

The enforcement of the resolutions ordering the performance of an act or the display of a conduct specified in the resolution shall be executed by the Hungarian Competition Authority.**

Article 91

objection to the enforcement

(1) A person whose right or lawful interest is violated by the ordering of the enforcement or by the imposition of the enforcement fine shall be entitled to file an objection to the enforcement with the Chair of the Competition Council within three days of acquiring knowledge of the violation of such interests.

(2) The Chair of the Competition Council shall decide on the objection to the enforcement within eight days of receipt. No legal remedy is available against such an injunction.

* As of 1 January 2008, Article 90(5) of this Act will lose force in connection with Article 62(3) of Act LXVIII of 2005 and Article 173(3) PAPA.

** In connection with Article 63(2) of Act LXVIII of 2005 and Article 173(3) PAPA, as of 1 January 2008, Article 90/A of this Act will change, as follows. „The enforcement service may draw the Hungarian Competition Authority into the execution of the enforcement of the resolutions ordering the performance of an act or the display of a conduct specified in the resolution.”

Chapter XVI

Procedure for the Application of European Community Competition Rules

General rules

Article 91/A

**general procedural
rules**

(1) In any proceedings for the application of Articles 81 and 82 of the EC Treaty the provisions of this Act shall be applied with the exceptions defined in this Chapter and by Regulation (EC) No 1/2003.

(2) In carrying out the control of concentrations between undertakings which are covered by European Community law the provisions of this Act shall apply when this is provided for by Regulation (EC) No 139/2004. In such cases, of the provisions of this Chapter, those of Articles 91/E and 91/G are applicable.

The proceedings of the Hungarian Competition Authority

Article 91/B

In applying Articles 81 and 82 of the EC Treaty the Hungarian Competition Authority shall cooperate, in a manner specified by Regulation (EC) No 1/2003, with the European Commission and the competition authorities of the member states of the European Union.

Article 91/C

Before scheduling the trial the competition council bringing proceedings shall inform the Commission and in so far this is appropriate the competition authority of the member state concerned of its preliminary position (Article 73). The trial may not be held earlier than thirty days after the European Commission was informed. In such cases the time limit for settlement shall be extended by thirty days.

Article 91/D

If evidence originating from the European Commission or another member state competition authority is used in the course of the competition supervision proceedings, the competition council bringing proceedings shall substantiate in its reasoning to the resolution – by showing that the conditions set by Regulation (EC) No 1/2003 have been met – the applicability of such evidence.

Article 91/E

(1) In settling complaints the investigator shall refuse to take action to open an investigation, furthermore, the investigator and the competition council bringing proceedings shall terminate the proceedings started ex officio if the European Commission has initiated its own proceedings in the case.

(2) In settling complaints taking action to open an investigation may be refused if the competition authority of another member state has initiated its own proceedings in the case.

(3) The investigator and the council bringing proceedings may stay or terminate the proceedings started ex officio if the competition authority of another member state has initiated its own proceedings in the case.

(4) No separate legal remedy is available against an injunction made pursuant to Sections (1) to (3).

**rules for the
procedure of the
Hungarian
Competition
Authority**

(5) When the Hungarian Competition Authority makes a request to the Commission pursuant to Article 22(1) of Regulation (EC) No 139/2004, the investigator shall stay the proceedings of the Authority upon submission of the request.

(6) The investigator shall by injunction terminate the proceedings, if the Commission decides, upon request of the Hungarian Competition Authority, to examine the concentration. If the Commission decides not to examine the concentration, the investigator shall continue the proceedings.

(7) If in connection with an application for authorisation submitted to the Hungarian Competition Authority, the Commission, in accordance with the provisions of Article 22(2) of Regulation (EC) No 139/2004, informs the Hungarian Competition Authority of a request pursuant to Article 22(1) of Regulation (EC) No 139/2004 it has received from another member state, the investigator or the competition council bringing proceedings in the case shall stay the proceedings.

(8) As soon as the Hungarian Competition Authority has informed the Commission that it does not wish to join the request mentioned in Section (7), he or it shall continue the proceedings.

(9) The investigator or the competition council bringing proceedings in the case shall by injunction terminate the proceedings, in so far the Hungarian Competition Authority has joined the request mentioned in Section (7) and the Commission decides to examine the concentration.

(10) The investigator or the competition council bringing proceedings in the case shall continue the proceedings, in so far the Hungarian Competition Authority has joined the request mentioned in Section (7) but the Commission decides not to examine the concentration.

(11) No separate legal remedy may be sought against injunctions made according to Sections (5) to (10).

Article 91/F

(1) When the execution, in the course of the proceedings of the European Commission, of the investigative measures specified by Section (1) of Article 65/A(1) is necessary and in the case specified by Article 21 of Regulation (EC) No 1/2003, the procedural rules set out in Article 65/A shall apply to the prior authorisation by the court.

(2) The court shall take an authorisation injunction if the conditions set by Regulation (EC) No 1/2003 or by Regulation (EC) No 139/2004 are satisfied.

(3) The European Commission may submit its request for a prior judicial authorisation of the investigative measure directly to the court or may request the Hungarian Competition Authority to act on behalf of it.

(4) When the performance of the investigative measure necessitates the assistance of the police, the European Commission may request the Hungarian Competition Authority to take the steps, which are necessary to afford it.

Article 91/G

When the Hungarian Competition Authority is requested, under Regulation (EC) No 1/2003, by the European Commission or the competition authority of another member state or, under Regulation (EC) No 139/2004, by the European Commission, to carry out investigative measures, the provisions of this Act shall be applied at granting the request except that the procedure shall be closed by an injunction of the investigator about the transmission of the evidence collected; in such cases no decision (Article 77) may be taken.

Rules for the proceedings of the court

Article 91/H

**rules for the
procedure of the
court**

(1) For lawsuits to be assessed under Articles 81 and 82 of the EC Treaty, the provisions of Act III of 1952 on the Code of Civil Procedures shall apply with the exceptions defined in this Article and by Regulation (EC) No 1/2003.

(2) The court shall notify, without delay, the European Commission and the Hungarian Competition Authority of lawsuits before it, which are to be assessed under Articles 81 and 82 of the EC Treaty. The Hungarian Competition Authority need not be specially notified in lawsuits to which it is a party.

amicus curiae

(3) The European Commission and the Hungarian Competition Authority may submit, until the closure of the trial, written observations on issues relating to the application of Articles 81 and 82 of the EC Treaty, furthermore they may also submit oral observations at the trial. If any of them intend to exercise its right to make oral observations, this must be notified to the court. The information provided by the observation of the European Commission and the Hungarian Competition Authority may be used in evidence in the lawsuit.

(4) At the request of the European Commission or the Hungarian Competition Authority, the court shall transmit them the documents of the lawsuit, which are necessary for the preparation of their observation. The costs of making copies of the documents shall be advanced by the court. At the request of the person concerned, the court may give its consent to the person having access to the documents in place of transmitting them to it.

(5) If under Regulation (EC) No 1/2003 the court intends to request information from the European Commission on facts or on points of law, it shall decide about the request by injunction against which no separate legal remedy may be sought. Data or opinion on points of law given by the European Commission as an answer to the request may be used in evidence in the lawsuit.

(6) In order to fulfil its obligation under Regulation (EC) No 1/2003 relating to the provision of information to the European Commission, the court shall forward its judgment without delay to the minister responsible for justice. The minister responsible for justice shall send the judgement for information to the Hungarian Competition Authority.

PART FOUR**Chapter XVII****Closing Provisions**

Article 92

**public interest
actions**

(1) The Hungarian Competition Authority, in cases falling into its competence, if it established an infringement by its decision; the chambers of commerce in respect of their members; or consumer protection organisations may file an action against persons who have put consumers at a substantial disadvantage or have disadvantaged a wide range of consumers by their activities infringing this Act even if the identity of the consumers suffering damage cannot be established.

time-bar

(2) The claim defined by the above Section (1) shall be time-barred in one year from the realisation of the disadvantage.

**publication of the
judgement**

(3) The court may oblige the offender to implement a price cut, repair or replace the goods, or refund the purchase price. In its judgement the court may authorise the party taking the action to publish the judgement in a national daily at the expense of the offender.

	(4) The offender must satisfy the claim of the consumer suffering damage in accordance with the judgement. This does not prejudice the right of the consumer to take further action against the offender in accordance with the provisions of the civil law.
legal consequences	Article 93 The legal consequences flowing as a result of the violation of the provisions of this Act and the enforced civil law claims shall not prejudice the possibilities to apply other civil law consequences defined in other legal norms or to initiate a petty offence action or criminal proceedings.
	Article 94
international cooperation	The procedural rules of cooperation with foreign competition authorities are set out in international agreements or in other legal norms.
	Article 94/A
complaints and notifications of public interest	Articles 141 to 143 of Act XXIX of 2004 on the Amendment of Certain Statutes and the Repeal and Laying Down of Certain Statutory Provisions Related to the Accession to the European Union are not applicable in cases covered by this Act.
	Article 95
	(1) This Act enters into force on 1st January 1997. Cases pending at the time of its entry into force, however, shall continue to be governed by the provisions of Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices.
	(2) The fixed term appointments of the President of the Hungarian Competition Authority and of his deputies in effect at the time of the entry into force of this Act are not affected by its entry into force.
entry into force	(3) A submission concerning the appointment of the members of the Competition Council shall be made within sixty days of the entry into force of this Act.
	(4) The prohibition defined in Article 11(1) of this Act may not be applied, for a period of one year following the entry into force of this Act, to agreements concluded prior to the entry into force of this Act if such agreements were not prohibited by the provisions previously in force. Entitled persons may request the establishment of this fact by the Hungarian Competition Authority. In such cases proceedings of the Hungarian Competition Authority shall be governed by the provisions of Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices.
transitional period	
	Article 96
block exemption	The Government shall be empowered to lay down in regulations the rules of the exemption of certain groups of agreements from the prohibition declared by Article 11 of this Act.

Article 97

With the entry into force of this Act:

- a) Act XXXVI of 1990 on the Prohibition of Unfair Market Practices;
- b) Article 155 of Act I of 1996 on Radio and Television;
- c) Article 173 of Act XCVI of 1995 on Insurance Undertakings and Insurance Activities;
- d) points f), g), h) and i) of Article 84(1) of Act XVI of 1994 on Chambers of Commerce;
- e) Article 67 of Act XXXIX of 1994 on the Commodity Exchange and Transactions at the Commodity Exchange;
- f) Article 43(3) of Act CXII of 1993 amending Act LXIX of 1991 on Financial Institutions and Their Activities;
- g) the Law Decree 19 of 1987 on Tenders;
- h) the text “Article 52 of Act LXXXVI of 1990” in Article 4 of Act LXXXVII of 1990 on Price Setting

repeal

are repealed.

Article 98

The rules necessary for the implementation of Regulation (EC) No 1/2003 and Regulation (EC) No 139/2004 are laid down

- by Article 1(2), Article 33(3), point e) of Article 36(1), Article 91/A(1), Articles 91/B to 91/D, Article 91/E(1)-(4) and Articles 91/F to 91/H and
- by point e) of Article 36(1), Article 91/A(2), Article 91/E(5)-(11) and Articles 91/F-91/G

**implementation of
Council Regulations**

of this Act respectively.