

Act LVII of 1996

on the Prohibition of Unfair and Restrictive Market Practices^{*}

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 the fairness and freedom of economic competition. To this end, it is necessary to adopt competition rules which prohibit market practices that are contrary to the requirements of fair competition or that restrict economic competition, and which prevent concentrations of undertakings that are disadvantageous to competition, while at the same time as to provide for the necessary institutional and procedural background. In order to achieve these objectives — also taking into consideration the requirements of the approximation to the law of the European Community and the traditions of Hungarian competition law — Parliament passes the following Act.

PART ONE

Chapter I

Scope of the Act

Article 1

(1) This Act shall apply to market practices carried out in the territory of Hungary by natural and legal persons and, with the exception of practices regulated in Chapter VI, to branches in Hungary of undertakings domiciled abroad (hereinafter collectively: undertakings), unless otherwise provided by law. With the exception of practices carried out outside the European Economic Area and regulated in Chapters II and III, this Act shall also apply to market practices of undertakings carried out abroad if they may have effects in the territory of Hungary.

(2) In any proceeding for the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (hereinafter: TFEU) (formerly Articles 81 and 82 of the Treaty establishing the European Community) the procedural rules laid down in this Act shall also apply to market practices falling under those Articles where the Hungarian Competition Authority or the Hungarian courts may proceed under Council Regulation (EC) No 1/2003.

Chapter II

Prohibition of Unfair Competition

Article 2

It shall be prohibited to engage in unfair economic activities, particularly in a manner that infringes or jeopardises the legitimate interests of customers, buyers, recipients or users (hereinafter collectively: trading parties) or competitors, or that are contrary to the requirements of business fairness.

^{*} As it is applicable from 1 September 2015

Article 2/A

Article 3

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

Article 4

(1) It shall be prohibited to acquire or make use of business secrets as defined in the Civil Code in an unfair manner or to disclose them without authorisation to third parties or to 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 owner and with the assistance of a person with whom such owner had a business relationship, including any communication, negotiation or submission of a tender prior to a business transaction but not followed by the conclusion of a contract, or a relationship of trust, in particular under a contract of employment or other similar employment relationship or membership.

Article 5

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

It shall be prohibited to manufacture, distribute or advertise marketable movable property (hereinafter: products) or services without the consent of a competitor if these goods have a characteristic presentation, packaging, sign (including designation of origin) or denomination, or furthermore it is prohibited to use a name, indication or other sign by which a competitor or its products or services are usually recognised.

Article 6/A

(1) It shall be prohibited to make any statement or communication with the purpose of promoting the sale, or the use in any other manner than sale, of products, services, forces of nature that can be exploited as property, real estate, securities, financial instruments or intangible assets (hereinafter collectively: goods), or in connection with this purpose, promoting the name, sign or activities of the undertaking, or raising awareness of the goods or brand name which, explicitly or by implication, identifies a competitor of the undertaking or goods produced, distributed or introduced by a competitor with intended use identical or similar to that of the goods presented (hereinafter: comparative advertising), if

(a) this may result in any unfair advantage derived from the reputation of the competitor or the name, goods, indication and other sign of such competitor;

(b) this may harm the reputation of the competitor or the name, goods, indication or other sign of such competitor;

(c) it presents goods as imitations or replicas of other goods bearing a trade mark or other protected sign; or

(d) it may result in market participants mistaking the undertaking for its competitor or the name, goods, indication or other sign of the undertaking with those of a competitor.

(2) No agreement or set of rules established in the framework of self-regulation in the market which sets rules of conduct in respect of a commercial practice or sector for those undertakings that have accepted such rules as binding on themselves (hereinafter: code of conduct) shall promote any conduct in violation of paragraph (1). The person responsible for the drafting of the code of conduct as well as the person designated in the code of conduct as being responsible for the revision of, and the monitoring of compliance with it, shall be liable for any violation of this provision.

Article 7

It shall be prohibited to infringe in any manner the fairness of any bidding process — in particular in respect of competitive tenders —, auctions or stock exchange transactions. This prohibition shall apply only to practices not regulated by any other provision of this Act or by a specific other act.

Chapter III

Prohibition of Unfair Manipulation of Business Decisions

Article 8

(1) It shall be prohibited to deceive trading parties in economic competition.

(2) Deception of trading parties shall mean any commercial communication, including any communication of information irrespective of the manner of its publication, other conduct, act or omission (hereinafter collectively: business practice) directly relating to the sale, provision or promotion of goods by an undertaking, or by any person acting in the name or on behalf of an undertaking, which,

(a) in respect of material information, contains incorrect facts or presents facts in a manner which in light of all the circumstances of their presentation is deceptive or is likely to deceive the trading parties to whom it is addressed or to whom it reaches; or

(b) taking account of all factual circumstances and the limitations of the communication medium, hides or conceals information which is necessary for the business decision of the trading party in the given situation and which, for this reason, shall be regarded as material, or provides such information in an unclear, unintelligible, ambiguous or untimely manner, and thereby affects or is likely to affect the economic behaviour of trading parties or potential trading parties.

(3) For the purposes of paragraph (2), ‘material information’ means, in particular, any information that relates to one or more of the factors listed below:

(a) the essential characteristics of the goods, in particular:

(aa) execution, composition and technical features,

(ab) quantity,

(ac) geographical or commercial origin,

(ad) method and date of manufacture or provision,

(ae) availability, delivery,

(af) usage, knowledge required for use and maintenance,

(ag) fitness for purpose, results to be expected from their use,

(ah) compliance with the requirements set out in the relevant national legislation or in any directly and generally applicable European Union legislation, or in the absence of such provisions, with the requirements which the goods are commonly expected to satisfy,

(ai) dangers or risks,

(aj) effects on health,

(ak) effects on the environment, energy efficiency characteristics, and

(al) tests or checks carried out or the results thereof;

(b) the price or the fee of the goods or the manner in which the price or the fee is calculated;

(c) any other contractual condition, in addition to what is contained in point (b), relating to the purchase or use of the goods; and

(d) the undertaking or the person acting as its agent, the attributes and rights of the undertaking, in particular its legal status, assets, commercial or intellectual property rights, qualifications, awards and distinctions.

Article 9

It shall be prohibited to employ a business practice that unduly restricts the trading party's freedom of choice, in particular the creation of circumstances which make the realistic appraisal of the good or offer, or its objective comparison with another good or offer difficult, if this affects or is likely affect the economic behaviour of trading parties or potential trading parties.

Article 10

Comparative advertising shall be permitted only if

- (a) it exclusively compares goods intended for the same purpose or meeting the same needs;
- (b) it compares relevant, determinant, representative and verifiable features of the goods, and it must be objective, including in respect of price where that is also an element of the comparison;
- (c) for products with designation of origin, it relates exclusively to products with the same designation.

Article 10/A

(1) The provisions of Articles 8 and 9 shall apply if the business practice in question exclusively affects a person who is acting for purposes relating to his/her profession or economic activity.

(2) When assessing a business practice, the conduct of a trading party which is reasonably well-informed in business matters and which acts with reasonable care and circumspection under the circumstances shall be the reference point.

(3) The meaning of terms customarily accepted in business shall be taken as a guide when establishing whether the information is capable of misleading.

Article 10/B

Codes of conduct shall not promote non-compliance with the provisions of Articles 8 to 10.

Article 10/C

(1) Liability for non-compliance with the provisions of Articles 8 and 10 shall lie, in addition to the undertaking having a direct interest in the sale, provision or promotion of goods to which the business practice in question pertains (hereinafter: user of the business practice), with those who disclose the commercial communication within the scope of their business practices through appropriate channels, and with those who are responsible for creating the commercial communication or for providing other related services within the scope of their independent economic activities, if the infringement arises from a reason relating to the presentation of the commercial communication other than what should be regarded as the consequence of the execution of an explicit instruction of the user of the business practice.

(2) The person responsible for the formulation of the code of conduct as well as the person designated in the code of conduct as being responsible for the revision of, and the monitoring of compliance with the code shall be held liable for any violation of the provision set out in Article 10/B.

Chapter IV**Prohibition of Agreements Restricting Economic Competition****Article 11**

(1) Agreements or concerted practices between undertakings and decisions (hereinafter collectively: agreements) by organisations of undertakings established pursuant to the freedom of association, public corporations, associations or other similar organisations of

undertakings (hereinafter collectively: association of undertakings), which have as their object or potential or actual effect the prevention, restriction or distortion of competition, shall be prohibited. Agreements concluded between undertakings not independent from each other shall not qualify as such agreements.

(2) This prohibition shall apply, 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 developments or investments;

(c) the allocation of sources of supply, or the restriction of the possibility to choose from them as well as the exclusion of a specified group of trading parties from purchasing certain goods;

(d) the allocation of markets, exclusion from sales, or restriction of the choice of market outlets;

(e)

(f) the hindering of market entry;

(g) cases, where, in respect of transactions of identical value or character, there is discrimination between trading parties, including the application of prices, time limits for payment, discriminatory selling or purchase terms or methods which place 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, are unrelated to the subject matter of such contracts.

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

Article 12

Article 13

(1) Agreements 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 of undertakings which are not independent of them does not exceed ten per cent on the relevant market except if its object is

(a) to fix, directly or indirectly, purchase or selling prices between competitors; or

(b) to share markets between competitors.

(3) The requirement of the market share not exceeding ten per cent must be satisfied for as long as the agreement is in force, or if it is in force for more than one year, in each calendar year.

(4) Notwithstanding the provisions set out in paragraphs (1) to (3), an agreement shall be caught by the prohibition where competition is significantly prevented, restricted or distorted by the cumulative effect of the agreement and other similar 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.

(2) In addition to the goods subject to the agreement, any goods that can reasonably be substituted for them in view of their intended use, price, quality and the terms of performance (demand-side substitutability) and the aspects of supply-side substitutability shall be taken into account.

(3) Geographical area means the territory outside which

(a) the trading party is unable to purchase goods or is able to purchase them only under considerably less favourable conditions; or

(b) the seller of the goods is unable to sell the goods or is able to sell them only under considerably less favourable conditions.

Article 15

(1) Undertakings shall be deemed not to be independent of each other where they belong to the same group of undertakings or where they are controlled by the same undertakings.

(2) An undertaking belongs to the same group of undertakings together with those undertakings which

(a) are under its sole control, as referred to in Article 23(2) or (3);

(b) exercise control over it, as referred to in point (a);

(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) to (c) and the undertaking concerned.

(3) The undertakings referred to in Article 25 and those in majority state or municipal ownership and with autonomous decision-making powers in determining their market conduct (Article 27(3)) shall be deemed to be independent of each other.

Article 16

Certain categories of agreements may be exempted from the prohibition of Article 11 by the Government in a government decree. The Government may adopt decrees about the group exemption of agreements taking into account the provisions of Article 17 of this Act.

Article 16/A

(1) The group exemption from the prohibition on the restriction of competition shall not apply to an agreement where, as a result of the cumulative effect of the agreement and similar other agreements on the relevant market, the requirements set out by Article 17 are not satisfied.

(2) The Hungarian Competition Authority may establish in the course of its proceedings that, with regard to the provision of paragraph (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.

Article 17

An agreement is exempted from the prohibition pursuant to Article 11 provided that

(a) it contributes 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) it allows final trading parties 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; and

(d) it does not enable the exclusion of competition in respect of a substantial proportion of the goods concerned.

Article 18

Article 19

Article 20

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 the exemption.

Chapter V

Prohibition of Abuse of a Dominant Position

Article 21

It shall be prohibited to abuse a dominant position, in particular:

(a) to set unfair purchase or selling prices or to stipulate in any other manner unjustified advantages or to force another party to accept disadvantageous conditions in business relations, including the application of standard contractual terms;

(b) to limit production, distribution or technical developments to the prejudice of final trading parties;

(c) to refuse, without justification, to create or maintain business relations appropriate for the type of transaction in question;

(d) to influence the economic decisions of another 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 is likely to 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, are unrelated to the subject matter 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 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 economic decisions in order to obtain unjustified advantages.

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 economic activities to a large extent independently of other market participants without the need to substantively 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;

(b) the assets, 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.

(3) A dominant position may be held by a single undertaking, a group of undertakings, jointly by more than one undertaking, or jointly by more than one group of undertakings.

Chapter VI

Control of Concentration of Undertakings

Article 23

(1) A concentration of undertakings shall be deemed to arise where

(a) two or more previously independent undertakings merge or an undertaking is absorbed by another undertaking or a part of an undertaking becomes part of another undertaking which is independent of the first one; or

(b) a sole undertaking acquires, or more than one undertaking jointly acquire, direct or indirect control over an undertaking which is independent of it or them, or over more than one other undertaking which are independent of it or them but not of each other; or

(c) more than one independent undertaking 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

(a) has, or have, the ownership of the businesses or shares of another undertaking entitling it or them to exercise majority voting rights, or is or are holders of more than fifty per cent of the voting rights; or

(b) is, or are, entitled to appoint, elect or recall the majority of the executive officers of another undertaking; or

(c) is, or are, entitled by contracts to exercise decisive influence on the decisions of another undertaking; or

(d) acquires, or acquire, the actual ability to exercise decisive influence over the decisions of another undertaking.

(3) For the purposes of this Act, an undertaking shall have indirect right of control over another undertaking which

(a) is directly controlled, whether jointly with such undertaking or solely, by an undertaking under its direct control;

(b) is directly controlled jointly by undertakings under its direct control,

(c) is controlled in accordance with paragraph (2) or point (a) or (b) by undertakings under its indirect control pursuant to point (a) or (b); or

(d) is controlled in accordance with points (a) to (c) by undertakings under its indirect control pursuant to points (a) to (c).

(4) For the purposes of this Act, activities of the office-holder relating to the winding up and dissolution of undertakings shall not qualify as the exercise of control.

(5) For the purposes of this Act, 'part of an undertaking' shall mean assets or rights, including the client base 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 the pursuit of market activities.

Article 24

(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 fifteen billion forints 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 that are members of the respective group of undertakings and other undertakings was more than five hundred million forints.

(2) In assessing whether the five hundred million forint threshold is met, concentrations not subject to authorisation pursuant to paragraph (1) which took place within a two-year period preceding the concentration concerned between the group of undertakings acquiring control and undertakings which belonged to the group of undertakings which ceases to have control as a result of the concentration, shall also be taken into account.

(3) For the concentration of insurance undertakings, the value of gross premiums shall be taken into account in place of net turnover. For the concentration of investment service providers and funds, the income from such services and from contributions, respectively, shall be taken into account. For the concentration of 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) commissions receivable;
- (d) net profit on financial operations;
- (e) income from other business activities.

Article 24/A

The Government may, in the public interest, in particular to preserve jobs and to assure the security of supply, declare a concentration of undertakings to be of strategic importance at the national level. For such concentrations, the authorisation of the Hungarian Competition Authority referred to in Article 24 shall not be required.

Article 25

Temporary acquisitions of control or ownership for a period not exceeding one year by insurance undertakings, credit institutions, financial holding companies, investment companies or asset management organisations shall not be subject to an authorisation requirement provided that the purpose of such acquisitions is the preparation of a resale and that the undertaking acquiring control does not exercise its controlling rights, or exercises them only to an extent which is strictly necessary for the attainment of such objectives. The Hungarian Competition Authority may authorise the extension of the said one-year period once, by a maximum of one year, at the request of the undertaking acquiring control before the expiry of the one-year transitory period if the undertaking demonstrates that the alienation could not be accomplished within one year for reasons beyond its control.

Article 26

(1) Undertakings concerned are undertakings participating directly or indirectly in the concentration.

(2) Direct participants are:

(a) in the case provided for in Article 23(1)(a), the merging undertakings, the undertaking being absorbed and the absorbing undertaking, as well as the undertaking which absorbs the part of an undertaking;

(b) the undertaking acquiring direct control pursuant to Article 23(1)(b), the undertaking controlling such undertaking jointly with one or more members of another group of undertakings by acquiring indirect joint control pursuant to Article 23(1)(b), as well as the undertaking over which control is acquired; and

(c) the undertakings setting up a joint venture pursuant to Article 23(1)(c).

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

(4) For the purposes of identifying indirect participants, the undertaking whose right of control terminates as a result of the merger, as well as the undertaking other than a direct participant controlled by such undertaking shall be disregarded.

(5) A group of undertakings concerned is a group of undertakings which comprises a direct participant pursuant to paragraph (2) and the indirect participants related to it pursuant to paragraphs (3) and (4).

Article 27

(1) For the purposes of Article 24(1), in calculating net turnover, the value of sales between undertakings belonging to the same group of undertakings concerned, or parts of undertakings of those undertakings, shall not be taken into account.

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

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

(4) For a part of an undertaking, the net turnover realised in the preceding year by the use of the assets and rights constituting that part of an undertaking 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, undertakings belonging to the same group of undertakings shall be deemed to be one single undertaking.

(6) Net turnover shall be determined relying on the net turnover contained in the annual accounts or simplified annual accounts adopted for the last business year with an audited annual report available at the date when the application is submitted. In proceedings initiated upon an application that has been submitted after a concentration has been implemented as well as in proceedings initiated ex officio pursuant to Article 67(2), the net turnover for the last business year with an audited annual report shall be taken into account which was available at the date when the concentration was implemented.

(7) The sums indicated in a foreign currency shall be converted into forints at the central rate of exchange published by the National Bank of Hungary in effect at the time of the closing of the business year of the undertaking in question.

Article 28

(1) In cases of mergers, absorptions and the establishment of joint ventures, it is the obligation of the direct participant to seek an authorisation for the concentration under Article 24; in all other cases such obligation rests with the acquirer of the part of an undertaking, or the acquirer of direct control or the undertaking directly controlling the former.

(2) The application for authorisation may be submitted after the announcement of the public bid, the conclusion of the contract or the acquisition of the right of control giving rise to the concentration, whichever occurs 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 has to be submitted to the supervisory authority as provided for in separate legislation.

(4)

Article 29

(1) The concentration of undertakings under Article 24 shall not be implemented without the authorisation of the Hungarian Competition Authority, in particular, voting rights or rights of appointment or the election of the executive officers acquired as a result of the

concentration shall not be exercised; in the course of the decision making by the undertaking or the part of an undertaking which is merging, being absorbed or which was previously independent; furthermore, in the course of the business relations between the undertakings participating in the concentration, the situation prior to the concentration shall be applicable.

(2) The prohibition set out in paragraph (1) shall not apply to the conclusion of the contract or the making of the public bid giving rise to the concentration, nor in relation to the former to the execution of acts or legal statements required for the conclusion of the concentration as long as they do not result in the exercise of controlling rights by the acquirer of control.

Article 29/A

(1) On a reasoned request of the undertaking obliged to seek authorisation of the concentration pursuant to Article 28(1), the Hungarian Competition Authority may, taking into account all the circumstances of the case, in particular by assessing the effect of the prohibition set out in Article 29 on the undertakings concerned and on other undertakings as well as the potential detrimental effects of the concentration on competition, grant its consent to the acquirer of control to exercise its right of control, by derogation from Article 29, before the resolution concluding the proceeding for the authorisation of the concentration is adopted, in particular if this is necessary to preserve the value of its investment.

(1a) The request pursuant to paragraph (1) shall be submitted to the Hungarian Competition Authority concurrently with the application for authorisation of the concentration pursuant to Article 24 or together with an application for justification within eight days from the time of obtaining knowledge of the necessity of the exercise of the right of control before the resolution concluding the proceeding for authorisation of the concentration is made, otherwise no application for justification may be submitted in case of failure to observe the time limit.

(1b) In the request pursuant to paragraph (1) the applicant shall provide evidence of the circumstances making the exercise of the right of control necessary before the resolution concluding the proceeding for authorisation of the concentration is made, furthermore he or she has to demonstrate how and to what extent the exercise of the right of control will be exercised before the resolution concluding the proceeding is made as well

(a) the ways in which the right of control will be exercised and the goals that are intended to be achieved as well as justification for the chosen ways of achieving the goals that have been regarded as necessary,

(b) the likely effect of the right of control on the undertakings concerned and on other undertakings,

(c) how the competitive conditions that may potentially be changed as a result of the exercise of the right of control may be restored, furthermore, how any resulting harmful competitive effects of the concentration may be eliminated.

(2) If the consent pursuant to paragraph (1) is granted, the Hungarian Competition Authority may, in order to preserve the conditions of competition existing before the concentration or to mitigate the potential harmful effects of the concentration on competition and taking into account the interests of the undertakings concerned, set conditions or impose obligations for the exercise of the right of control pursuant to paragraph (1) (hereinafter collectively: control limitation provision) to assure that the exercise of the right of control does not lead to changes in market conditions that would prevent or significantly hinder the restoration of competitive conditions existing before the concentration and the elimination of the harmful competitive effects of the concentration. Concurrently with the imposition of the control limitation provision, the applicant may be obliged to provide information relating to the exercise of the right of control, in particular information on specific decisions or legal statements.

(3) The Hungarian Competition Authority shall also revoke during its proceeding its consent to the exercise of the right of control granted pursuant to paragraph (1) or modify the

control limitation provision if the exercise of the right of control would prevent or significantly hinder the restoration of the conditions of competition existing before the concentration or the elimination of the detrimental effects of the concentration on competition.

(4) If the Hungarian Competition Authority refuses to grant its authorisation to the concentration, any legal transaction or legal statement arising from the exercise of the right of control in violation of the prohibition set out in Article 29 or of the control limitation provision pursuant to paragraph (2) shall be null and void. However, an undertaking may not plead this provision if it exercised its right of control in violation of the prohibition set out in Article 29 or in contravention of the control limitation provision; furthermore, such undertaking shall be liable for damages arising from the application of the legal consequences of nullity as set out in this provision.

(5) In the case of a concentration resulting in the acquisition or change of control over a major undertaking with preferential status or a part thereof created in the course of the liquidation of an undertaking which is granted preferential status due to its strategic importance as defined in Article 65 of Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (hereinafter: major undertaking of preferential status), the consent of the Hungarian Competition Authority need not be sought for the exercise of the controlling rights as defined in paragraph (1); this provision is without prejudice to the application of paragraphs (2) to (4).

Article 30

(1) When assessing a concentration pursuant to Article 24, both concomitant advantages and disadvantages shall be considered. In the course of such consideration, the following factors shall be examined in particular:

(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 to them;

(c) the effect of the concentration on suppliers and trading parties.

(2) The Hungarian Competition Authority shall grant authorisation for a concentration where, with a view to the provisions of paragraph (1), the concentration would not significantly reduce competition on the relevant market (Article 14), in particular as a result of the creation or strengthening of a dominant position. 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 founding groups of undertakings, such concentration shall be assessed under Article 17.

(3) Where the significant reduction of competition in the relevant market resulting from the concentration can be prevented if certain pre- or post-conditions are satisfied — in particular the alienation of certain parts of an undertaking or particular assets, or the termination of control over an indirect participant — or if certain rules of conduct are observed, and the undertakings which are concerned in this respect commit to modify the concentration in line with such conditions, or to show appropriate conduct once the concentration is implemented, the Hungarian Competition Authority shall authorise rather than prohibit the concentration upon imposing the pre- or post-condition or obligation offered.

4) A preconditioned authorisation shall take effect from the date of the fulfilment of the conditions. A post-conditioned authorisation shall take effect on the date it is granted; however, it shall cease to have effect if any of the conditions is not satisfied.

(5) The authorisation granted for a concentration shall also cover restrictions necessary for the implementation of the concentration.

(6) In the course of the assessment of the concentration, the effects on competition arising from the exercise of controlling rights pursuant to Article 29/A shall also be considered. In its decision, the Hungarian Competition Authority shall also establish whether the exercise of controlling rights by the party acquiring control complied with the control limitation provision.

(7) The Hungarian Competition Authority shall prohibit any concentration which – taking into account also paragraph (3) – may not be authorised pursuant to paragraph (2).

Article 31

If a concentration that cannot be authorised under Article 30 is executed despite the prohibition set out in Article 29, or a concentration is executed in contravention of the decision of the Hungarian Competition Authority prohibiting the concentration or without satisfying the condition set forth in the authorisation, the Hungarian Competition Authority, in order to eliminate the harmful effects of the concentration or to restore the competitive conditions that existed before the concentration, shall prescribe in its decision, setting an appropriate time limit, the termination of the concentration – in particular the divestiture or the alienation of the undertaking or a part of the undertaking, assets, interests or shares that were merged, absorbed or acquired by another undertaking as a result of the concentration, or the termination of the joint control – or another appropriate obligation necessary for the achievement of that objective.

Article 32

(1) The Hungarian Competition Authority shall also withdraw or amend its decision authorising a concentration made pursuant to Article 30 in the cases and under the terms set out in this Article.

(2) The Hungarian Competition Authority shall withdraw its decision authorising a concentration made pursuant to Article 30 where:

(a) the grant of the authorisation by the decision, which has not been reviewed by the court, was based on misleading information concerning a fact which was material to the adoption of the decision; or

(b) the undertaking subject to the decision is in breach of any obligation attached to the decision or to the amended decision as defined in paragraph (4) below.

(3) The decision may be withdrawn within five years of

(a) the date of its delivery in the case provided for in paragraph (2)(a);

(b) the expiry of the time limit for the fulfilment of the obligation, or in the case of a continuing obligation, the violation of the obligation, in the case provided for in paragraph (2)(b).

(4) The Hungarian Competition Authority shall amend its decision authorising a concentration made pursuant to Article 30

(a) at the request of the undertaking subject to the decision, if the request is submitted by the end of the time limit set for the fulfilment of the obligation or the condition, and if the undertaking subject to the decision is unable to fulfil the obligation or the condition set forth in the decision for unavoidable reasons beyond its control; or

(b) at the request of the undertaking subject to the decision or on its own initiative if the fulfilment of the obligation set forth in the decision is no longer justified due to changes in market conditions or the conditions of competition,

and the detrimental effects of the concentration which justified the imposition of the obligation may be eliminated in some other manner or without the imposition of the obligation.

(5) The decision may be amended on own initiative within five years of the expiry of the time limit for the fulfilment of the obligation, or in the case of a continuing obligation, the violation of the obligation.

PART TWO

Chapter VII

The Hungarian Competition Authority

Article 33

(1) The Hungarian Competition Authority is an autonomous state administrative body which is responsible for competition supervision and for further functions as set forth in this Act and in separate acts. Furthermore, the Hungarian Competition Authority carries out all the duties delegated by European Union law to the competence of the competition authority of a Member State.

(2) In the performance of its functions the Hungarian Competition Authority is subject only to the law, it may not be bound by instructions and it shall perform its functions independent of other bodies and free from any interference. All the duties of the Hungarian Competition Authority shall be prescribed by law.

(3) The Hungarian Competition Authority shall deliver its opinion on regulatory concepts and draft legislation, except on municipal decrees, which relate to its scope of duties and competencies, furthermore, which restrict competition (in particular through the performance of some activity, the determination of the conditions of market entry or the granting of exclusive rights), or which affect the conditions of competition including actions against conducts infringing the freedom of competition, or which contain provisions concerning prices or the terms of sale. The municipal clerk may solicit the opinion of the Hungarian Competition Authority on draft municipal decrees.

(4) The Hungarian Competition Authority shall, in order to promote the public acceptance of competition, compliance with the law by undertakings and the creation of a competitive regulatory environment ensuring informed decision-making by consumers, furthermore, to improve consumer awareness, in particular through supporting academic and educational programmes in the field of competition law, competition policy and consumer protection, as well as the education of experts in the fields of competition law, competition policy and consumer protection policy and increasing awareness of competition policy, decision making by consumers and the protection thereof, contribute to the development of competition culture and the culture of the conscious decision-making of consumers, as well as to the development of the professional discourse on the economic and legal aspects of competition and conscious consumer decisions.

Article 33/A

(1) The Hungarian Competition Authority is a public, budgetary institution with separate, autonomous operation and financial management, which constitutes a separate chapter in the central budget; the powers of the head of the body controlling the chapter are vested in the President of the Hungarian Competition Authority. In this capacity, the President of the Hungarian Competition Authority shall have authority to in the framework of the reallocation of the priority budget plans to also increase the priority budget plan concerning individual entitlements.

(2) Parliament shall have the exclusive right to reduce the principal amounts of the expenditure and revenue accounts of the Hungarian Competition Authority.

(3) The total amount of the administrative fees payable for the proceedings of the Hungarian Competition Authority shall be considered as the own income of the Hungarian Competition Authority and shall be used by the Authority to cover its operational expenditures. The Hungarian Competition Authority may use any amount carried over from the previous year to finance its duties in subsequent years.

(4) The seat of the Hungarian Competition Authority shall be in Budapest.

Article 33/B

The Hungarian Competition Authority shall not be open and shall not be at the disposal of consumers on the ten working days before 20 August and on the working days between 24 December and 1 January every year.

Article 34

The legal status of the President and Vice-Presidents of the Hungarian Competition Authority, and members of the Competition Council shall be governed — subject to the derogations set out in this Act — by the provisions of Act CXCV of 2011 on Public Service Officials (hereinafter: Public Officials Act).

Article 34/A

No person shall be appointed as the President or a Vice-President of the Hungarian Competition Authority or as a member of the Competition Council who

(a) has a criminal record;

(b) has no criminal record, but whose criminal liability has been established by the court in its final, non-appealable judgment for the following crimes:

(ba) for misuse of information classified as top secret or secret, misuse of information classified as confidential, misuse of information classified as restricted, for false accusation, misleading an authority, perjury, subornation to perjury, suppressing exculpatory circumstances, aiding and abetting; for crimes against the integrity of public life as defined in Title VII of Chapter XV, for crimes against the integrity of international public life or participation in criminal organisations as defined in Title VIII of Chapter XV, for crimes against public confidence as defined in Chapter XVI Title III, for economic crimes as defined in Chapter XVII, for crimes against property as defined in Chapter XVIII as defined in Act IV of 1978 on the Criminal Code in effect until 30 June 2013,

(bb) misuse of classified information, false accusation, misleading an authority, perjury, subornation to perjury, suppressing exculpatory circumstances, aiding and abetting, for any crime of corruption or for participation in a criminal organisation under Chapter XXVII, any crime against public confidence under Chapter XXXIII, for any crime under Chapters XXXV-XLIII as defined in Act C of 2012 on the Criminal Code, or

(bc) for any crime committed in a criminal organisation.

The exclusion according to paragraph (b) applies for a period of twelve years from the time of expiration of the detrimental consequences attached to the convictions (hereinafter: rehabilitation) in the case of a custodial term of imprisonment of five years or more imposed for a crime of intent, for a period of ten years from the rehabilitation in the case of a custodial term of imprisonment of less than five years imposed for a crime of intent, for a period of five years from the rehabilitation in the case of community service work or a fine imposed for a crime of intent, for a period of eight years from the rehabilitation in the case of a suspended term of imprisonment imposed for a crime of intent, for a period of three years from the rehabilitation in the case of a suspended fine imposed for a crime of intent.

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 Hungary. The President of the Hungarian

Competition Authority proposes the two Vice-Presidents of the Hungarian Competition Authority to the Prime Minister who, if in agreement, submits the nomination to the President of Hungary. The Vice-Presidents are appointed by the President of Hungary, who, at the same time, entrusts one of the two Vice-Presidents with the responsibilities of the Chair of the Competition Council. The President and Vice-Presidents are appointed for a term of six years. After the expiry of the six-year period such appointments may be renewed, with the proviso that the Chair of the Competition Council may be reappointed only once.

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

(4)-(7)

(8) The President and the Vice-Presidents of the Hungarian Competition Authority shall 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 shall be concluded one month before the date of expiry of the preceding appointment.

Article 35/A

(1) Prior to their nomination the candidates for the position of the President and the Vice-Presidents of the Hungarian Competition Authority; furthermore, the candidates for the members of the Competition Council shall prove with official certificates to the Prime Minister or to the President of the Hungarian Competition Authority, respectively, the fact that no grounds for disqualification pursuant to Article 34/A are present.

(2) The Prime Minister may request the President and the Vice-Presidents of the Hungarian Competition Authority, and the President of the Hungarian Competition Authority may request the members of the Competition Council, during their term of appointment in writing — with a warning to the legal consequences of non-compliance – to demonstrate that no grounds for disqualification pursuant to Article 34/A are present.

(3) Should the President or a Vice-President of the Hungarian Competition Authority or a member of the Competition Council certify, upon the request pursuant to paragraph (2) within twenty working days calculated from the day of such request or, if compliance with such time limit is impossible due to a cause beyond the control of the person, immediately following the termination of that cause, that no grounds for disqualification pursuant to Article 34/A are present, the Hungarian Competition Authority shall reimburse the above officials the administrative fee paid for the procedure opened upon application for an official certificate issued by the criminal records office.

(4) The Prime Minister shall manage the personal data of the President and Vice-Presidents of the Hungarian Competition Authority obtained pursuant to paragraphs (1) and (3), and the President of the Hungarian Competition Authority shall manage such data of the members of the Competition Council, until the end of the term of their appointment.

Article 36

(1) The President of the Hungarian Competition Authority shall:

(a) direct the activities of the Hungarian Competition Authority;

(b) represent the Hungarian Competition Authority;

(c) establish the organisational and operational rules of the Hungarian Competition Authority, approve the organisational and operational rules of the Competition Council, set the number of allocated posts and the procedure for the issuance of official copies in the Hungarian Competition Authority;

(d) exercise employer's rights, with the exceptions set out in this Act, over the Vice-Presidents of the Hungarian Competition Authority, members of the Competition Council, civil servants, civil service administrative support staff and employees of the Hungarian

Competition Authority, and carry out the duties conferred upon the heads of administrative organisations by the Public Officials Act;

(e) appoint the persons representing the Hungarian Competition Authority in the Advisory Committee on Restrictive Practices and Dominant Positions set up by Council Regulation (EC) No 1/2003, and in the Advisory Committee on Concentrations set up by Council Regulation (EC) No 139/2004; and

(f) direct the activities of the Hungarian Competition Authority relating to the development of competition culture and of the culture of informed decision-making by consumers.

(2) The President of the Hungarian Competition Authority

(a) may attend the sessions of Parliament;

(b) shall, when requested, give expert advice to Parliament on issues relating to economic competition;

(c) shall submit 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 its law enforcement experience, on how fairness and freedom of competition are observed; and

(d) shall attend, in a consultative capacity, the meetings of the Government where issues relating to the scope of duties of the Hungarian Competition Authority are discussed.

(3)-(4)

(5) At the request of the Government, ministers or international organisations, the President of the Hungarian Competition Authority shall report on his/her experience gained in the course of his/her activities relating to economic competition and on issues relating to economic competition.

(6) The President of the Hungarian Competition Authority, together with the Chair of the Competition Council, may issue notices, which describe the basic principles of the law enforcement practice of the Hungarian Competition Authority. Notices have no binding force; their sole function is to increase the predictability of law enforcement.

(7) The President of the Hungarian Competition Authority may vest, by his/her decision on the establishment, separate legal personality in the department of the Hungarian Competition Authority created for the purposes of the development of competition culture in Hungary and in the European Union and of the promotion of the development of the institutional system of competition law enforcement in the region.

Article 36/A

The Secretary General of the Hungarian Competition Authority shall perform, in accordance with the relevant legislation and professional requirements, the duties relating to the direction of the organisation of the Hungarian Competition Authority as provided for in the organisational and operational rules of the Hungarian Competition Authority and under the supervision of the President.

Article 37

(1) The Competition Council consists of a Chair and members. The Competition Council shall perform the duties set forth in this Act. The Chair and members of the Competition Council shall make their decisions independently, in accordance with the law and in conformity with their own convictions, and they may not be influenced or instructed in making their decisions.

(2) The Chair of the Competition Council

(a) shall organise the activities of the Competition Council;

(b) shall supervise compliance with procedural time limits;

(c) shall prepare and submit for approval [point (c) of Article 36(1)] the organisational and operational rules of the Competition Council;

(d) shall provide for the publication of the resolutions of the Competition Council (Article 80); and

(e) may act as a member of the proceeding competition council.

(3) Following nomination by the President of the Hungarian Competition Authority, the members of the Competition Council are appointed and dismissed by the President of Hungary. The appointment is made for a term of six years. The appointed members may be re-appointed once following the end of their term of office.

(4) The appointment of a civil servant of the Hungarian Competition Authority into the Competition Council shall not affect his/her public service status. If the mandate of such member of the Competition Council is terminated due to the expiry of the term of his/her mandate, the civil servant shall be reclassified in accordance with the rules of promotion, and shall be reinstated in the position held before his/her appointment or offered another post appropriate for his/her education, qualifications and credentials. If a civil servant requests to be dismissed on account of his/her transfer to a different position, his/her membership in the Competition Council shall be considered as the position occupied before the new appointment for the purposes of Article 48(7) of the Public Officials Act.

Article 38

(1) The mandate and, with the exceptions provided for in Article 37(4), the public service relationship of the President and Vice-Presidents of the Hungarian Competition Authority and of the Competition Council members shall terminate

- (a) upon expiry of their term of appointment;
- (b) upon reaching seventy years of age;
- (c) upon death;
- (d) upon resignation;
- (e) upon the establishment of a conflict of interest;
- (f) upon dismissal.

(2) In the cases provided for in points (a) to (c) of paragraph (1), termination of the mandate of the President and Vice-Presidents of the Hungarian Competition Authority and of members of the Competition Council shall be established by the President of Hungary upon the proposal of the Prime Minister as regards the President, and upon the proposal of the President in other cases.

(3) The resignation of the President and Vice-Presidents of the Hungarian Competition Authority and of members of the Competition Council shall be tendered in writing to the President of Hungary through the Prime Minister as regards to the President, and through the President in other cases. In the event of resignation, the time of termination of the mandate shall be determined by the President of Hungary on the proposal of the Prime Minister as regards to the President, and on the proposal of the President in other cases, however, such time shall not be later than sixty days following the submission of the resignation to the Prime Minister as regards to the President, and to the President in other cases; otherwise no confirmation of acceptance is required for the resignation to take effect.

(4) Any conflict of interest of the President and Vice-Presidents of the Hungarian Competition Authority and of members of the Competition Council shall be established by the President of Hungary on the proposal of the Prime Minister as regards to the President, and on the proposal of the President in other cases.

(5) The President and Vice-Presidents of the Hungarian Competition Authority and members of the Competition Council

(a) shall be dismissed by the President of Hungary on the proposal of the Prime Minister as regards to the President, and on the proposal of the President in other cases, if

- (aa) he or she is unable to attend to the tasks deriving from his/her mandate for a period exceeding ninety days for reasons imputable to them,

(ab) he or she does not fulfil the conditions for entering into a public service relationship as set out in the Public Officials Act or in this Act, or

(ac) he or she refuses or fails to submit a declaration of personal wealth, or has knowingly disclosed false data or information in their declaration of personal wealth; or

(b) may be dismissed by the President of Hungary on the proposal of the Prime Minister as regards to the President, and on the proposal of the President in other cases, if he or she is unable to attend to the tasks deriving from his/her mandate for a period exceeding one hundred and eighty days for reasons beyond his/her control.

(6) Prior to submission to the President of Hungary, the proposal for a establishment of a conflict of interest or for dismissal in relation to the President, Vice-Presidents or members of the Competition Council shall be sent by the Prime Minister as regards to the President, and by the President in other cases to the person concerned, who may apply to the labour court within five working days in accordance with the provisions of the Public Officials Act applicable to civil service disputes. The person concerned shall send a copy of the statement of claim registered as received by the court to the person who has the right to propose the establishment of the conflict of interest or the dismissal.

(7) The proposal for establishing the conflict of interest or for dismissal may be submitted to the President of Hungary following the expiration of the period available for seeking a remedy before the court, or if an action is brought in the court, after the court decision has been rendered final. The decision of the President of Hungary may not be appealed and no civil service claim may be initiated.

Article 39

A case handler is a civil servant acting in the exercise of the duties and competences of the Hungarian Competition Authority who performs investigations in sectoral inquiries, in proceedings relating to formal and informal complaints as well as in competition supervision proceedings, or who participates in such proceedings to assure their effectiveness. The positions of case handlers shall be defined in the organisational and operational rules of the Hungarian Competition Authority.

Article 40

(1) The President and Vice-Presidents of the Hungarian Competition Authority, the members of the Competition Council, the Secretary General and the case handlers shall not enter into any other legal relationship other than legal relationships relating to scientific, educational, artistic, copy editing, editorial activities, legal relationships relating to intellectual activities protected by copyright, voluntary work in the public interest and foster family employment (conflict of interest).

(2)-(3)

(4) The President and the Vice-Presidents of the Hungarian Competition Authority and the members of the Competition Council shall file individual declarations of personal wealth pursuant to the rules relating to Members of Parliament, the first time within thirty days of their appointments. The rules relating to the registration, control and handling of the declarations of personal wealth of Members of Parliament shall apply to the registration, control and handling of the declarations of personal wealth in question.

(5)

Article 41

(1) The powers relating to the verification of compliance with the requirements of appointment, calling for presentation of proof of the fulfilment of the requirements of appointment, the reporting of reasons giving rise to conflicts of interest and the elimination of conflicts of interest are exercised by the Prime Minister as regards to the President, and by the President as regards to the Vice-Presidents and the members of the Competition Council.

(2) The Secretary General shall be responsible for the management of the personal files of the President, the registration of data set forth in Article 115 of the Public Officials Act as regards the President and the administrative tasks relating to the employment relationship of the President.

Article 42

(1) The President, Vice-Presidents and Secretary General of the Hungarian Competition Authority are entitled to a salary and to benefits equal to those of ministers, state secretaries and deputy state secretaries, respectively; furthermore, the President, the Vice-Presidents and the Secretary General are entitled to an executive salary supplement amounting to 110 per cent, 100 per cent and 90 per cent, respectively, of their basic salary; moreover, the President and the Vice-Presidents are entitled to a salary complement amounting to 80 per cent of their basic salary, and the Secretary General is entitled to a salary complement amounting to 70 per cent of his/her basic salary. The members of the Competition Council are entitled to a basic salary which is ten times the remuneration base of civil servants and to an executive salary supplement of 80 per cent of their basic salary.

(2) The President, Vice-Presidents and Secretary General of the Hungarian Competition Authority and the members of the Competition Council are entitled to forty working days of paid vacation in a calendar year, with the proviso that they shall be given sixteen working days in a year at the time of their choice, by way of derogation from the vacation schedule.

(3) If the mandate of the President or a Vice-President of the Hungarian Competition Authority or a member of the Competition Council is terminated after he or she has spent at least three years in office, he or she is entitled to a benefit equal to his/her monthly salary for three more months, which shall be considered income subject to social contribution tax, health care contributions and for health insurance, unemployment insurance and pension contributions except if his/her mandate is terminated for the reason provided for in point (d) or (e) of Article 38(1) or for the reasons of dismissal specified in point (a) of Article 38(5).

(4) If his/her mandate is terminated after more than three years in office calculated from the time of appointment, the benefit specified in paragraph (3) above shall be increased by one additional month of salary for each additional year in office, however, it may not exceed twelve months' salary in aggregate.

(5) Where the mandate is terminated due to death, the widow(er) or, in the absence thereof, the heir shall be entitled to such benefits. Such payment shall be exempt from health insurance, unemployment and pension contributions. Such payment shall not be recognised as a part of the average monthly salary for the purposes of awarding survivors' pensions.

(6) In the case of the continued employment of any member of the Competition Council pursuant to Article 37(4), paragraphs (3) or (4) above shall be applicable with the derogation that instead of the benefits set forth in these provisions, the civil servant shall be entitled to the difference between his/her previous and new salary for the period defined therein, if the previous salary was higher.

Article 42/A

(1) Any civil servant employed by the Hungarian Competition Authority holding a degree from an institution of higher education shall be classified into the grade specified in paragraph (2) as appropriate for the length of his/her employment in a public service relationship, and into the pay grades specified in paragraph (3) in the cases therein provided for, in accordance with the provisions of Article 118, Article 119, Article 120(1), Article 121 and Article 122 of the Public Officials Act as appropriate.

(2) Civil servants shall be classified as

(a) trainee as career starter;

(b) assistant after one year of employment in a public service relationship;

- (c) counsellor after three years of employment in a public service relationship;
- (d) senior counsellor after eight years of employment in a public service relationship;
- (e) executive counsellor after sixteen years of employment in a public service relationship;
- (f) senior executive counsellor after twenty-five years of employment in a public service relationship.

(3) Civil servants classified under paragraph (2)(a) and (b) are not subject to any pay grades, whereas civil servants classified under paragraph (2)(c) to (f) are subject to pay grades I and II. Civil servants classified in the counsellor grade under paragraph (2)(c) shall be promoted to pay grade II of counsellors after five years of employment in a public service relationship, civil servants classified in the senior counsellor grade under paragraph (2)(d) shall be promoted to pay grade II of senior counsellors after twelve years of employment in a public service relationship, civil servants classified in the executive counsellor grade under paragraph (2)(e) shall be promoted to pay grade II of executive counsellors after twenty years of employment in a public service relationship, civil servants classified in the senior executive grade under paragraph (2)(f) shall be promoted to pay grade II of senior executive counsellors after thirty years of employment in a public service relationship.

Article 42/B

(1) Civil servants may be appointed to positions of head of section, deputy head of section or head of unit to direct separate organisational units of the Hungarian Competition Authority. No more than one deputy head of section may be appointed to each organisational unit to act as deputy for the head of section, without any responsibility to head a specific organisational unit.

(2) Unless otherwise provided for in this Act, the provisions of the Public Officials Act with reference to the heads of departments, deputy heads of departments and heads of divisions shall apply *mutatis mutandis* to heads of sections, deputy heads of sections and heads of units.

(3) In the course of the classification of the civil servant appointed to positions of consultant or senior consultant in the Hungarian Competition Authority, the grades of executive counsellor and senior executive counsellor, respectively, as defined in this Act, shall be applicable; civil servants in the executive counsellor grade shall be entitled to the same salary as deputy heads of sections and civil servants in the senior executive counsellor grade shall be entitled to the same salary as the heads of sections.

Article 42/C

(1) The basic salary of a civil servant employed by the Hungarian Competition Authority who holds a degree from an institution of higher education shall be

- (a) remuneration base times 4 for trainees;
- (b) remuneration base times 4.5 for assistants;
- (c) in the case of counsellors,
 - (ca) remuneration base times 5.5 in pay grade I,
 - (cb) remuneration base times 6 in pay grade II;
- (d) in the case of senior counsellors,
 - (da) remuneration base times 6.5 in pay grade I,
 - (db) remuneration base times 7 in pay grade II;
- (e) in the case of executive counsellors,
 - (ea) remuneration base times 7.6 in pay grade I,
 - (eb) remuneration base times 7.9 in pay grade II;
- (f) in the case of senior executive counsellors,
 - (fa) remuneration base times 8.4 in pay grade I,
 - (fb) remuneration base times 8.6 in pay grade II.

- (2) The basic salary of executive employees shall be
- (a) remuneration base times 8.6 for heads of units;
 - (b) remuneration base times 8.7 for deputy heads of sections;
 - (c) remuneration base times 9 for heads of sections.
- (3) The executive salary supplement shall be
- (a) 20 per cent of the basic salary for heads of units;
 - (b) 40 per cent of the basic salary for deputy heads of sections;
 - (c) 90 per cent of the basic salary for heads of sections.
- (4) Trainees, assistants, counsellors, senior counsellors, executive counsellors and senior executive counsellors shall be entitled, respectively, to three, five, ten, eleven, twelve and thirteen extra working days of paid vacation each year. The extra vacation time of executives shall be twelve days for heads of units and thirteen days for deputy heads of sections and heads of sections.
- (5) The President of the Hungarian Competition Authority may award a case handler supplement to civil servants employed as case handlers in positions of particular responsibility. The positions where the case handler supplement is payable shall be defined by the public administration rules of the Hungarian Competition Authority after an analysis and assessment of the scope of activities in question. The case handler supplement may not exceed 30 per cent of the basic salary for the grade of the civil servant, with the proviso that if the basic salary of the civil servant has been adjusted, the combined total of the case handler supplement and the amount of the adjustment may not be higher than 50 per cent of the basic salary for the grade of the civil servant concerned.
- (6) Civil servants who are not graduates of an institution of higher education and who are employed in positions supporting the basic activities of the Hungarian Competition Authority shall be entitled to a salary complement amounting to 80 per cent of their basic salary.
- (7) By way of derogation from the salary structure defined in this Act and in the Public Officials Act, the President of the Hungarian Competition Authority may establish a personal salary for civil servants who achieve outstanding performance as evidenced by an assessment report or, in the absence of such report, by an assessment of professional performance, to be paid from the budget plan for individual entitlements. A personal salary may be granted to a maximum of twenty per cent of the number of posts allocated to the Hungarian Competition Authority, where the monthly salary for the period beginning on 1 March and ending at the end of February the following year may not exceed six times the monthly average gross wage in the national economy officially published by the Central Statistics Office for the previous year. The personal salary awarded shall remain in effect for a period of one year, until the end of February the following year.

Article 43

- (1) Members of the Competition Council shall be graduates of an institution of higher education in a relevant field. Members of the Competition Council with a degree in law shall have passed the professional law examination in Hungary.
- (2) Civil servants holding a case handler position in the Hungarian Competition Authority shall be graduates of institutions of higher education in a relevant field.
- (3) The education and qualifications recognised as amounting to a higher qualification in a relevant field for the purposes of paragraphs (1) and (2) shall be specified in the organisational and operational rules of the Hungarian Competition Authority.

Article 43/A

- (1) The Hungarian Competition Authority shall provide for training and vocational training for its employees in public service relationships, including management training. The detailed

rules governing training and vocational training shall be laid down in the public administration rules of the Hungarian Competition Authority.

(2) The detailed rules governing the scheme, procedures and the levels of the assessment of the professional performance and appraisal of the employees of the Hungarian Competition Authority under public service relationships, the procedure, scheme and terms of selection and the scheme, organisation and implementation of competitions shall be set out in the public administration rules of the Hungarian Competition Authority.

(3) The President of the Hungarian Competition Authority shall determine the detailed rules applicable to other benefits that may be provided to civil servants employed by the Hungarian Competition Authority, including target bonuses and sabbaticals, including the ratio of these benefits to the original budget plan of the salaries that are set by law.

(4) The Hungarian Competition Authority is not obliged to transmit data on administrative activities relating to human resources.

Article 43/B

(1) Except where the provision or disclosure of information is prescribed by law, the President and Vice-Presidents of the Hungarian Competition Authority, members of the Competition Council and persons employed by the Hungarian Competition Authority under a public service relationship or any other work-related contractual relationship shall keep confidential, may not publish unlawfully or use or disclose to third parties any restricted access data or any other data not in the public domain which has come to their knowledge relating to the activities and the performance of the duties of the Hungarian Competition Authority during the term of their employment and after the termination thereof.

(2) Restricted-access data means data — with the exception of information which has to be accessible by the public as it is of public interest — which are qualified as secret in relation to the practice of a profession or qualified as other types of secrets by separate law (hereinafter collectively: privileged information), as well as personal data and other information to which access is restricted by virtue of this Act in the course of access to file.

Chapter VIII

Market analysis and sectoral inquiries

Article 43/C

(1) With a view to discharging its statutory responsibilities more effectively and efficiently, the Hungarian Competition Authority may conduct market analyses, in the framework of which it surveys and analyses the operation of particular markets, the market processes and the development of market trends as well as particular market practices employed in multiple industries or a specific segment of an industry, as well as the effects thereof on competition and trading parties, in particular ultimate trading parties, relying on information in the public domain, data collected on a voluntary response basis and the involvement of external experts or consultants where required.

(2) The Hungarian Competition Authority shall announce on its website the initiation of a market analysis, the specific markets, market practices and issues covered, as well as the proposed time-frame.

(3) On the conclusion of a market analysis, the Hungarian Competition Authority shall prepare a report presenting the issues investigated, the facts discovered and the findings, any further measure that needs to be taken and the methodology employed, and it shall publish this report on its website.

Article 43/D

(1) Where price movements or other market circumstances suggest that competition is possibly being distorted or restricted in a market within a specific sector, the Hungarian Competition Authority shall, by an injunction, launch a sectoral inquiry with a view to exploring and assessing the market processes. The reasoning of the injunction initiating the sectoral inquiry shall specify the market circumstances that necessitated the opening of the inquiry. The injunction initiating the inquiry shall be communicated by way of an announcement on the website of the Hungarian Competition Authority.

(2) The provisions of Articles 49 to 51, Article 55(1), (3) and (4), Article 55/A, Article 55/B(1), (2) and (7), Article 55/C(1) to (3), Article 55/D, Article 64/A(1) and (2), Article 64/B(3) to (6) and Article 78(2) shall apply *mutatis mutandis* to sectoral inquiries. Unless this Chapter provides otherwise, in other respects sectoral inquiries shall be governed, *mutatis mutandis*, by the provisions of Act CXL of 2004 on the General Rules of Administrative Procedures and Services (hereinafter: Act on Administrative Procedures) with the proviso that 'party' shall be construed to mean an undertaking which carries out an economic activity in the market subject to the sectoral inquiry (hereinafter: undertaking operating in the sector)

(3) A procedural fine may be imposed upon any person who fails to comply with a request for information or complies with a delay, supplies false information, or otherwise fails to comply with his/her disclosure obligation for reasons attributable to him or her. The minimum procedural fine shall be fifty thousand forints and the maximum shall be one per cent of the undertaking's net turnover in the financial year preceding the adoption of the injunction imposing the fine. In the event of a breach of the specified time limit, a procedural fine calculated on a per day basis may be imposed, its maximum amount being one per cent of the net per day turnover in the business year preceding the adoption of the injunction imposing the procedural fine.

(4) An authority or any other government or municipal body requested to assist within the framework of national legal assistance shall not be obliged to produce a version of the document referred to in Article 55/A(5), and shall not be subject to any procedural fine.

(5) Injunctions adopted during a sectoral inquiry that may be contested separately pursuant to the Act on Administrative Procedures or this Act may not be appealed, however, judicial review may be requested within fifteen days from the date when the injunction was serviced. The provisions on the judicial review of injunctions adopted in administrative proceedings shall apply to such judicial review, with the proviso that the court shall adjudge the application in a priority proceeding.

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.

(2) Before the report is adopted, the undertakings operating in the sector shall be given an opportunity to submit comments about the contents of the report in writing. To facilitate this process, a draft version of the report with restricted access data removed shall be sent to the undertakings operating in the sector for comments in due time to allow at least thirty days for the submission of their comments.

(3) The Hungarian Competition Authority shall hold a public hearing if the undertakings operating in the sector cannot be clearly identified, or if contacting such undertakings on an individual basis would place an unreasonable burden on the authority due to the large number of such undertakings, or where deemed necessary in order to elicit the views of other concerned parties in relation to the draft report. The venue and time of the public hearing, as well as information about its subject matter shall be published on the website of the Hungarian Competition Authority forty-five days before the hearing at the latest; furthermore, undertakings operating in the sector shall be given this information via a public notice. The

Hungarian Competition Authority shall publish on its website the draft of the report as well as any comments made concerning the draft if so requested by the originator(s) of the comments, with restricted access data removed, ten days before the hearing at the latest. The Hungarian Competition Authority shall prepare a summary or minutes on the hearing.

(4) The Hungarian Competition Authority shall publish on its website the report on the findings of the sectoral inquiry, the summary or minutes of the written comments or of the hearing, and — if requested — the documents containing the substantive comments made by the undertakings operating in the sector regarding the contents of the report, with restricted access data removed.

Article 43/F

If a market analysis or a sectoral inquiry detects a market failure which cannot be remedied in full or in part by competition supervision proceedings, the Hungarian Competition Authority

(a) shall inform the competent committee of the Parliament, or the competent minister or authority;

(b) may publish a non-binding public recommendation for market participants concerning best practices and recommended market conducts that facilitate the maintenance and promotion of fair and effective competition and the supply of adequate information to trading parties; or

(c) may initiate, if deemed necessary, the enactment or amendment of legislation with the competent authority.

Chapter IX

Formal and informal complaints

Article 43/G

(1) A formal or informal complaint may be submitted to the Hungarian Competition Authority by any person concerning any infringement which falls within the competence of the Hungarian Competition Authority, including concentrations implemented in violation of the prohibition pursuant to Article 29.

(2) The proceeding relating to formal or informal complaints shall not be part of the competition supervision proceeding. In proceedings relating to formal or informal complaints, the following shall apply *mutatis mutandis*:

(a) Article 46, Article 55/A, Article 59, Article 63(6), and Article 64/A(1) and (2), with the proviso that in the application of Article 59 ‘party’ shall mean the person submitting the formal or informal complaint, as well as the entity subject to the complaint or the entity to whose conduct the formal or informal complaint relates; furthermore

(b) in the proceedings relating to formal complaints, Article 55/B(1), (2) and (7), Article 55/C(1) to (3), Article 55/D and Article 56; and

(c) in proceedings relating to informal complaints, Article 55/C(1).

(3) At the request of the person submitting the formal or informal complaint, the Hungarian Competition Authority shall keep confidential the fact that he or she has submitted a formal or informal to the Hungarian Competition Authority.

(4) The files relating to the formal or informal complaint proceedings may only be accessed by the person who has made the formal or informal complaint, respectively, after the decision has been adopted relating to the formal complaint or following the conclusion of proceeding relating to the informal complaint, with the proviso that restricted access data may only be disclosed if the person requesting access to the file can demonstrate that the special conditions set forth in the separate act governing the protection of the data concerned are fulfilled.

(5) The Hungarian Competition Authority shall be entitled to manage restricted access data obtained in proceedings relating to formal or informal complaints for a period of three years after the decision has been adopted on the formal complaint or following the conclusion of the proceeding relating to the informal complaint.

(6) If a competition supervision proceeding is opened in connection with the practice indicated in the formal or informal complaint, the rules governing competition supervision proceeding shall apply to the access of file and to the management of data.

Article 43/H

(1) Formal complaints can be made by submitting a duly completed form issued by the Hungarian Authority to the Hungarian Competition Authority. The form must contain all the relevant facts needed for the assessment of the formal complaint, including, in particular, the data necessary for the identification of the complainant and the undertaking(s) complained of, the identification of the alleged infringement, a description of the particular conduct through which the alleged infringement was committed, essential information required to define the relevant market, an indication of the duration of the alleged infringement, as well as facts and evidence supporting the statements made concerning the alleged infringement.

(2) Unless this Act provides otherwise, proceedings opened upon a formal complaint shall be governed, *mutatis mutandis*, by Article 17, Article 17/A, Article 26, Article 33(3), Article 39, Article 40, Article 40/A, Article 58, Article 59, Article 65, Article 72(2), Article 73, Article 73/A(1) and (3), Article 78(2), (4) to (8) and (10), Article 78/Ab), Article 79, Article 80, Articles 81-81/B, Article 114 and Article 153 of the Act on Administrative Procedures, with the proviso that in the application of Article 17 and Article 39 of the Act on Administrative Procedures ‘party’ shall mean the complainant, and ‘other parties to the proceedings’ shall mean those against whom the complaint is submitted; in the application of Article 17/A, Article 26, Article 78, Article 80, Article 81 and Article 153 of the Act on Administrative Procedures ‘party’ shall mean the complainant, and in the application of Article 40, Article 40/A, Article 58, Article 59, Article 72(2), Article 73, Article 79 and Article 81/A of the Act on Administrative Procedures ‘party’ shall mean the complainant and — where applicable — those against whom the complaint is submitted. In the application of Article 33(3)(c) of the Act on Administrative Procedures, the period from the time when the injunction pursuant to paragraph (4) requiring the complainant to present data and documents was adopted, until they are presented but not later than the deadline prescribed for their presentation shall not be included in the administrative time limit.

(3) In matters arising during the proceedings the case handler shall issue injunctions.

(4) The case handler is entitled to obtain the information necessary for the assessment of the formal complaint; and to this end the case handler may, in the scope and to the extent necessary, request any person or organisation to supply information as well as data and documents in connection with the subject matter of the investigation, and may hear the complainant and the entity against whom a complaint was lodged. If the requested person or entity refuses to cooperate in the course of the proceeding, no procedural fine or other coercive measure may be imposed.

(5) Legal remedies against injunctions adopted by the case handler in the course of the formal complaint proceeding which can be contested separately pursuant to the Act on Administrative Procedures or this Act, with the exception of a legal remedy against injunctions pursuant to paragraph (7), shall be governed by Article 82 *mutatis mutandis*.

(6) The costs of the proceedings shall be provisionally borne in advance by the State, with the derogation that if the competition supervision proceeding establishes that the practice indicated in the formal complaint constitutes an infringement, or the concentration pursuant to Article 24 was implemented in contravention of the prohibition pursuant to Article 29, the costs of the procedure relating to the formal complaint shall be reimbursed by the party whose

infringement was established or who would have been obliged to submit an application for the authorisation of the concentration.

(7) Within two months from the day following the receipt of the formal complaint, the case handler shall

- (a) order the opening of an investigation pursuant to Article 70(1); or
- (b) establish that, based on the data contained in the formal complaint or obtained in the proceeding conducted on the basis of the formal complaint, the conditions for the opening of a competition supervision proceeding pursuant to Article 70(1) are not fulfilled; or
- (c) terminate the proceeding if, regarding the subject matter of the formal complaint,
 - (ca) a competition supervision proceeding is already in progress against the organisation or person to whom the complaint pertains, or
 - (cb) the Hungarian Competition Authority has already considered the subject matter of the formal complaint on the basis of the same facts and under the same legal regulations; or
- (d) for lack of competence, refer the case to another authority with appropriate competence and jurisdiction.

(8) The time limit pursuant to paragraph (7) may be extended, before its expiry, by up to two months where justified.

(9) The injunctions pursuant to paragraph (7)(b) and (c) shall be delivered to the complainant, and also to those complained of if they participated in the proceeding. The complainant shall be informed of the injunction pursuant to paragraph (7)(a) and (d), and those complained of shall be informed of the injunction pursuant to paragraph (7)d if they participated in the proceeding.

(10) A legal remedy against the injunction adopted pursuant to paragraph (7)(b) and (c) may be sought exclusively by the complainant within eight days from the date of its delivery. The provisions on the judicial review of injunctions adopted in administrative proceedings shall apply to any application for such a legal remedy, with the proviso that if the court considers paragraph (7)(a) to be applicable, it will oblige the case handler to order the opening of an investigation within thirty days.

Article 43/I

(1) The Hungarian Competition Authority shall treat any document submitted that is not recognised as a formal complaint within the meaning of Article 43/H(1), as an informal complaint as provided for in this Article.

(2) The case handler shall take the necessary measures as justified by the contents of the informal complaint. No action is required in relation to a repeated informal complaint which contains the same content as another informal complaint previously made by the same person, to a clearly unsubstantiated informal complaint or to an informal complaint made anonymously.

(3) The case handler may hear the person who submitted the informal complaint and those complained of and the case handler may request them to provide additional clarification and information.

(4) Where another authority has power to proceed concerning the conduct subject to the informal complaint, the Hungarian Competition Authority shall refer the informal complaint within eight days of establishing that fact to the authority with appropriate competence and jurisdiction, simultaneously notifying the person making the informal complaint of this measure.

(5) If the Hungarian Competition Authority decides to open a competition supervision proceeding in relation to the conduct complained about in the informal complaint or a competition supervision proceeding is in progress or has already been closed at the time of receipt of the informal complaint, the person making the informal complaint shall be notified

to that effect. If no further action is required in connection with the informal complaint, the complainant need not be specifically informed thereof, and in such an event the proceeding relating to the informal complaint shall be considered closed after one year from the date of receipt of the complaint.

PART III

Chapter X

General Rules of the Competition Supervision Proceedings of the Hungarian Competition Authority

Application of the general rules of administrative procedures

Article 44

(1) Unless otherwise provided for in this Act, competition supervision proceedings shall be governed by the provisions of the Act on Administrative Procedures, with the exception of Article 15(4), Article 18, Article 29(3)-(12), Article 30(a)-(b), Article 31(1)(j), Article 33/A, Article 38, Article 43(6a), Article 46(2), Article 47, Article 61(1), Article 64, Articles 68-69/B, Article 70, Article 71(2)(a), Article 71(7), Article 74(2)-(5), Article 75, Article 78/A(a), Article 88, Article 88/A, Article 91, Articles 93-94/A, Article 109(2), Article 116, Article 127(1)-(5) and (7), Article 128(1) and (3), Article 130, Article 134(b) and (c) and Article 157(4) of the Act on Administrative Procedures.

(2) In the application of the provisions of the Act on Administrative Procedures:

(a) a resolution of the first instance shall mean an injunction of a case handler in a competition supervision proceeding, or a resolution of the competition council proceeding in the case other than that mentioned in point (b),

(b) a resolution of the second instance shall mean an injunction of the competition council proceeding in the case in a proceeding for a legal remedy against an injunction of a case handler.

Scope of competences and territorial jurisdiction

Article 45

The Hungarian Competition Authority shall have the power to proceed in competition supervision proceedings in the case of any infringement of the provisions of this Act, with the exception of cases where the courts have competence pursuant to Article 86(1), as well as in administrative cases falling within its competence in accordance with the law.

Article 46

The Hungarian Competition Authority has the power to proceed in the whole territory of the country.

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

Article 47

(1) Competition supervision proceedings shall comprise the phases of the investigation and the proceeding of the Competition Council.

(2) The investigation phase ends when the case handler's report referred to in Article 71(1) is submitted to the Competition Council. The investigation phase shall continue if the

proceeding competition council adopts a decision pursuant to Article 72(1) or (3); the competition council proceeding in the case may also make recommendations to the case handler on the method and orientation of the investigation before the investigation is completed.

Article 48

(1) Unless otherwise provided for in this Act, resolutions are made and other necessary measures are taken by the case handler in the investigation phase and by the competition council proceeding in the case in the proceeding of the Competition Council.

(2) The Competition Council shall make its resolutions in a panel of three or five members appointed by the chair of the Competition Council from among the members of the Competition Council, as set out in the organisational and operational rules of the Competition Council, with the proviso that the member of the competition council proceeding in the case designated as the rapporteur may adopt injunctions on his/her own against which no legal remedy may be sought, or may take other measures as necessary.

Article 49

(1) The following persons shall 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 proceeding;
- b) representatives of the persons defined in point a) above;
- c) relatives and former spouses of the persons defined in points a) and b) above;
- d) persons who were heard in the course of the proceeding as witnesses or experts, or whose hearing as witnesses or experts was ordered; or
- e) persons who cannot be expected to form an objective opinion of the case (bias).

(2)

Article 50

(1) Case handlers and members of the competition council proceeding 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 proceeding exists. Case handlers and members of the competition council proceeding in the case shall be subject to disciplinary action and financially liable for failure to make such a notification or for any delay in making such a notification.

(2) Reasons for exclusion may be notified by a party at any phase of the proceeding; however, in the course of the proceeding of the Competition Council, he or she may only rely on such reasons if he or she proves presumptively that he or she acquired knowledge of the fact justifying such notification at the time in question.

(3)

Article 51

(1) In respect of the exclusion of a case handler or a member of the competition council proceeding in the case, the President of the Hungarian Competition Authority or the Chair of the Competition Council, respectively, shall make a decision within fifteen days from the day following the date of the notification of the grounds for the exclusion, and they shall appoint a new case handler or a new member of the competition council proceeding in the case where necessary.

(2) Where a case handler or a member of the competition council proceeding in the case has himself or herself notified the grounds for exclusion, he or she shall not take part in the proceeding until the notification has been adjudicated. In any other case he or she may proceed in the case but shall not make resolutions resulting in the closing of the case. This restriction shall not apply to notifications repeatedly made by the party against the same person.

(3)

(4)

(5) Where the Chair of the Competition Council acts as a member of the competition council proceeding in the case, the same rules that apply to the exclusion of a case handler shall also apply to his/her exclusion.

The party

Article 52

In competition supervision proceedings, party shall mean:

(a) with regard to the concentrations referred to in Article 24(1),

(aa) in proceedings started upon an application, the applicant, the direct participant to the concentration, and — in the case of the absorption of a part of an undertaking pursuant to Article 23(1)(a) — the undertaking of which the part of the undertaking in question was part of prior to the concentration,

(ab) in proceedings started *ex officio*, the undertakings referred to in point (a), and — in the case of concentrations pursuant to Article 23(1)(c) — the joint venture established by the concentration;

(b) in proceedings not covered by point (a), any person against whom proceedings were started *ex officio*.

Article 53

(1) In proceedings started upon an application pursuant to Article 67(1), the legal successor of the applicant party may, within thirty days of succession, apply to have the fact of succession established.

(2) In proceedings started *ex officio*, the legal successor of a party may be called into the proceedings. Where the inclusion of the legal successor in the proceeding – having regard to Article 70(1) – is not justified the proceeding shall be terminated by the case handler or the competition council proceeding in the case.

(3) Where it may be established from the information available that the proceeding started *ex officio* was initiated against the wrong party, the right party may be called into the proceeding upon the simultaneous release of the previously involved party. Otherwise, the proceeding shall be terminated by the case handler or the competition council proceeding in the case.

(4) If the information available proves presumptively that another undertaking was also engaged in the conduct that is being investigated in a proceeding started *ex officio*, or that another undertaking may also have responsibility for the conduct being investigated, the case handler shall call such other undertaking into the proceeding.

(5) Where the granting of authorisation in a proceeding commenced upon an application pursuant to Article 67(1) would require a condition or obligation to be imposed on an undertaking which is not a party to the proceeding, such undertaking may enter the proceeding as a party upon the invitation of the case handler or of the competition council proceeding in the case. The undertaking entering the proceeding may not withdraw the application.

Confidential treatment of the particulars of legal persons

Article 54

Upon a reasoned request, the competition council proceeding in the case shall order the confidential treatment of the name, registered office and the name of the legal representative of the legal person which participates in the proceedings in the capacity of other participant or

of a person obliged to disclose data if the legal person submitting the request proves presumptively that it is likely to suffer significant adverse consequences as a result of its participation in the proceeding. The provisions governing the confidential treatment of information concerning natural persons shall apply, *mutatis mutandis*, to the confidential treatment of information in connection with legal persons.

Access to the file and management of data generated during the proceedings

Article 55

(1) Parties shall have a right to access documents generated in the course of the competition supervision proceeding.

(2) Witnesses shall have a right to access the documents containing their witness statements; the holders of the subject matter of an inspection shall have a right to access the documents drawn up about the inspection.

(3) Third parties other than the party and other participants to the proceedings, including witnesses and holders of the subject matter of the inspection with regard, respectively, to documents other than those containing the witness statements and the documents drawn up about the inspection, shall be allowed access to documents after the final, non-appealable conclusion of the proceedings; prior to the final, non-appealable conclusion access to the documents is only possible if such third parties can demonstrate that access to such documents is necessary to enforce a statutory right or to meet an obligation arising from law or from an administrative decision.

(4) Access to documents pursuant to paragraph (3) may be refused if disclosure of such documents would jeopardise the legitimate operation of the Hungarian Competition Authority, the discharge of its duties and competences without any undue external influence, the efficiency of its actions in the public interest against practices prohibited in Article 11 or 21 of this Act or in Article 101 or 102 of the TFEU, in particular the application of leniency pursuant to Article 78/A.

(5) Persons entitled to access documents pursuant to paragraphs (1) to (3) may exercise such right of access to the documents of proceedings started *ex officio* only after the completion of the investigation, once the preliminary position of the competition council proceeding in the case or, if it was previously delivered, the report completing the investigation, is delivered to the parties pursuant to Article 73 with the proviso that parties entitled to access the documents pursuant to paragraphs (1) and (2) may have access before such time to documents the knowledge of which is essential to the exercise of their right to a legal remedy against an injunction adopted during the proceeding against which a separate legal remedy may be sought.

(6) Upon the party's request, the competition council proceeding in the case may authorise access to specific documents before the delivery to parties of the report completing the investigation or of the preliminary position for reasons other than those indicated in paragraph (5) if this does not jeopardise the effectiveness of the proceeding.

(7) The right of access to the file – in respect of preparing copies of a document that is an abstract made by rendering personal data and privileged information unrecognisable – may be exercised through the payment of costs determined by government decree.

Article 55/A

(1) Even if the conditions pursuant to Article 55 are satisfied, persons entitled to access file shall not come to learn of

(a) any document, or any part of a document, that may contain any reference to the identity of a person whose natural identification data and home address, or name, registered office and

name of legal representative of a legal person is accorded confidential treatment by an injunction of the competent authority, or — at the request of the person concerned — that may contain any reference to the fact that such person submitted a formal or informal complaint to the Hungarian Competition Authority;

(b) the personal data of persons not covered under point (a), except

(ba) in the case of access to file by a party, or

(bb) the special conditions for access to the data laid down in another act regulating the protection of the data concerned are fulfilled;

(c) classified information in the absence of clearance for use or inspection;

(d) other privileged information, except where

(da) the lack of knowledge of such information would hinder the party in exercising his/her statutory rights and the separate act governing the protection of the data concerned does not preclude access to the data, or

(db) the special conditions for access to the data set forth in a separate act governing the protection of the data concerned are fulfilled;

(e) internal documents of the Hungarian Competition Authority, the European Commission and the competition authorities of the States which are parties to the Agreement on the European Economic Area, including the EFTA Surveillance Authority (hereinafter: national competition authorities), including the documents pursuant to Articles 11 and 14 of Council Regulation (EC) No. 1/2003, and correspondence between the Hungarian Competition Authority, the European Commission and other national competition authorities or correspondence among the latter, with the exception of documents or data contained therein that were used in evidence when establishing the facts of the case, provided that lack of access to such document or information would hinder the party in exercising his/her statutory rights;

(f) seizure copies, interim working copies and investigation working copies pursuant to Article 65/B or 65/C unless otherwise provided for in this Act.

(2) Access to certain documents on grounds of business secrecy or privacy, if other statutory conditions of such classification concerning these data are satisfied, may be restricted only if the person who provided the data or from whom the Hungarian Competition Authority obtained the data (hereinafter collectively: person providing data) identified, at the time of providing the data or, if the data was obtained by the Hungarian Competition Authority in the manner indicated in Article 65/B, within the time limit set in the summons of the case handler to that effect, the data which should be treated as a business secret or a private secret as well as the owner of the secret where it is different from the person who provided the data.

(3) If there are reasonable grounds to believe that certain data constitutes a business secret or a private secret of a person other than the person who provided the data and the identity of the owner of such data can be established, the case handler or the competition council proceeding in the case shall contact the data owner, except where the person who provided the data has already made the statement pursuant to paragraph (2) in respect of such data, requesting him or her to make a statement within eight days whether the data constitutes a business secret or a private secret. If the data owner fails to make such a statement within the set time limit, access to the file shall not be restricted on grounds of the business secret or private secret nature of the data contained therein. No application for justification may be submitted in case of failure to observe the time limit for making such a statement.

(4) The statement pursuant to paragraphs (2) or (3) shall clearly specify the data to be treated as a business or a private secret and the reasons for such treatment separately for each data, in particular the interest to be protected which would be harmed if the data were to be disclosed to unauthorised persons.

(5) Upon the summons of the case handler or the competition council proceeding in the case, the person providing the data or, in the case pursuant to paragraph (3), the data owner shall supply a version of the document which does not contain the data pursuant to paragraph (2).

Article 55/B

(1) At the request of the person entitled to access the file pursuant to Article 55, the case handler or the competition council proceeding in the case shall decide in an injunction whether to grant access to the file or to reject the request for access to the file, following an assessment of whether the conditions pursuant to Article 55, Article 55/A and paragraph (2) and (3) below are satisfied at the time of the consideration of the request for access. The person requesting access to the file may seek a separate legal remedy against the injunction rejecting a request for access to the file, except where Article 55(6) applies.

(2) If other statutory requirements relating to the treatment of data identified as a business secret or a personal secret pursuant to paragraph (2) or (3) of Article 55/A are not satisfied, including the case where the statement does not comply with the requirements pursuant to Article 55/A(4), the case handler or the competition council proceeding in the case shall decide, in an injunction, following the acquisition of a statement from the data owner where necessary, on the termination of the treatment of the data concerned as privileged information and it shall permit access to the file.

(3) In the cases pursuant to Article 55/A(1)(d)(da) or (e) the competition council proceeding in the case shall grant access to the file on condition that a written statement is made containing the obligation to keep the data confidential, after it has weighed up the interest of the party requesting access to the file in gaining knowledge of the data and the interest of the data owner in keeping the data confidential.

(4) In the injunction granting access to the file pursuant to paragraph (3), if it is necessary in order to prevent access to the data by unauthorised persons, the competition council proceeding in the case – in order to ensure that the data are disclosed to the narrowest possible extent and to the fewest possible persons – shall determine the detailed rules of access to the file and

(a) may restrict the taking of copies or abstracts from the document; and

(b) in exceptional cases, where the statutory rights of a party can be assured only by allowing access to data the precise knowledge of which by the party requesting the access may directly and irreversibly harm the interest of the data owner in keeping the data confidential, may stipulate that access to the file shall be exercised exclusively through an attorney representing the party or an expert engaged by the party with the proviso that no restricted access data thus obtained shall be disclosed to the party.

(5)

(6) The data that has been disclosed pursuant to paragraph (3) shall be used exclusively in the competition supervision proceeding concerned and in any related judicial review procedure.

(7) The data owner may seek a separate legal remedy against the injunction pursuant to paragraph (2). On the basis of such an injunction, access to the data concerned may not be granted before the expiry of the time limit for submitting a request for judicial review or, if the right to seek a legal remedy has previously been waived, before the receipt of the last waiver or, in a judicial review proceeding relating to the injunction, before the final, non-appealable order of the court.

Article 55/C

(1) Documents containing restricted access data shall be handled separately in the case file so that they cannot be accessed by any person other than the case handler and other public

service official participating in the handling of the case in taking procedural measures, the members of the competition council proceeding in the case, and the President and Vice-Presidents of the Hungarian Competition Authority as well as courts, other bodies or persons entitled to manage or come to learn of such data in the manner and scope set forth in an act of law.

(2) The resolution shall be worded, and in order to ensure the right of access to the file an abstract of the document shall be prepared in such a way that it contains no restricted access data which the addressee of the resolution and the person entitled to have access to the file may not come to learn of pursuant to Articles 55-55/B. To that end, the person participating in the proceeding shall be identified by his/her role, but if this is not capable of preventing the identification of such person, then any data enabling identification shall be deleted in a manner that does not prejudice the establishment of the facts of the case. The resolution shall contain the content of other restricted access data rendered unrecognisable without revealing the details thereof.

(3) After the final, non-appealable conclusion of the proceeding, all restricted access data managed in the course of the proceeding shall be blocked, the restricted access to them shall be clearly indicated and their separate handling from other information shall be assured. Blocked data may be stored until the files of the case underlying the proceeding are scrapped or archived; they can be managed, with the exception of the case pursuant to Article 64/A(3), exclusively for the purpose of the enforcement of a final, non-appealable resolution, monitoring the enforcement of the final, non-appealable resolution or legal remedy or review relating to the final, non-appealable resolution, and may be disclosed exclusively to a court, other body or person entitled to manage or have access to such data in the manner and scope specified in law.

Article 55/D

In the course of accessing the file the entitled person may make copies or take notes, or request copies, of the document or a part hereof, unless a restriction has been imposed in the injunction granting access pursuant to Article 55/B(3). The authority shall certify such copies upon request.

Justification for omission

Article 56

It does not qualify as an omission of the time limit or deadline set for remedying deficiencies, or for providing data or documents or for making a statement if the case handler or the competition council proceeding in the case, upon the reasoned request of the obligor submitted before the end of the time limit or the deadline, extends the time limit or sets a new deadline for the fulfilment of the obligation. Such a request for an extension may be submitted on one occasion, and no application for the justification of an omission may be submitted in respect of a failure to meet a time limit or deadline for the submission of a request for the extension of the time limit or deadline.

Article 57

(1) No application for justification shall be submitted two months after the expiry of the deadline or the last day of the missed time limit.

(2) The resolution on the application for justification shall be made by the case handler if the omission occurred during the investigation, or by the competition council proceeding in the case if it occurred during the proceeding of the Competition Council. A separate legal remedy (Article 82) may be sought against an injunction issued by the case handler rejecting the application for justification. An injunction rejecting the application for justification by the

competition council proceeding in the case may be contested in the action filed for judicial review of the decision.

International legal assistance

Article 58

(1)-(2)

(3)

(4) The Hungarian Competition Authority may enter into cooperation agreements with foreign competition authorities for mutual assistance in performing their respective duties.

Service of documents

Article 59

(1) Parties without any home address or registered office in Hungary shall appoint an agent for service of process if they have no representative with a home address or registered office in Hungary.

(2) Service of documents to a party who has no home address or registered office in Hungary may be effected by public notice or, if the applicable conditions are satisfied, by an administrator for service of process in the absence of an agent for service of process exclusively if the service cannot be effected in a manner to assure its certification, through international legal assistance or other modes of service available.

(3) Service carried out abroad by post shall be deemed formulary if it satisfies either the provisions of national law concerning the service of official documents, or the laws and regulations applicable at the place of service.

(4) In the event of service through public notice the public notice shall be posted on the bulletin board of the Hungarian Competition Authority and published on the central system and on the website of the Hungarian Competition Authority.

Stay of the proceeding

Article 60

A separate legal remedy (Article 82) may be sought against an injunction on the stay of the proceeding in proceedings started upon application as provided for in Article 67(1).

Termination of the proceeding

Article 60/A

(1) The resolution on the termination of proceedings pursuant to Article 31(1)(a) of the Act on Administrative Procedures for reasons laid down in Article 30(g) of the Act on Administrative Procedures shall be made by the competition council proceeding in the case if

(a) the subject of the application is not a concentration pursuant to Article 23; or

(b) the concentration is not subject to an authorisation requirement pursuant to Article 24.

(2) Any injunction on the termination of proceedings pursuant to Article 53(2) and (3) or Article 31(1)(e) and (i) of the Act on Administrative Procedures shall also be served to the complainant.

Procedural fines

Article 61

(1) A procedural fine may be imposed on those who engage in an act or show a conduct which has the object or result of protracting the proceeding or preventing the establishment of the facts of the case.

(2) Furthermore, a procedural fine may be imposed on any party if he or she violates the control limitation provision pursuant to Article 29/A.

(3) The minimum procedural fine shall be two hundred thousand forints for undertakings and fifty thousand forints for natural persons not qualifying as undertakings, and the maximum shall be, in the case of undertakings, one per cent of the net turnover in the business year preceding the adoption of the injunction imposing the procedural fine, and five hundred thousand forints for natural persons not qualifying as undertakings. Article 78(2) applies accordingly to the calculation of the maximum amount of the procedural fine.

(4) Where a time limit was set for a procedural obligation the procedural fine for failure to meet that time limit shall be calculated on a daily basis where the obligor shall pay a procedural fine for the period starting at the expiry of the time limit for performance and ending on the date when the obligation is fulfilled. The procedural fine relating to any month of non-performance after the expiry of the time limit for performance shall fall due and become payable on the day directly following such month; the procedural fine relating to the month of performance shall fall due and become payable on the day of performance. In the case covered in this paragraph, the maximum daily amount of the procedural fine shall be one per cent of the net turnover in the financial year preceding the adoption of the injunction imposing the procedural fine, prorated per day, for undertakings and fifty thousand forints per day for natural persons not qualified as undertakings.

(5) The case handler or the competition council proceeding in the case may *ex officio* amend or withdraw their respective resolution imposing the procedural fine to the obligor's benefit even if no infringement has been committed.

Administrative fees and procedural costs

Article 62

(1) For proceedings started upon application pursuant to Article 67(1), an administrative fee shall be paid for the proceeding, except for the review proceeding. The administrative fee shall be

(a) sixteen million forints where the competition council proceeding in the case decides that a full investigation of the concentration is necessary pursuant to Article 72(3);

(b) four million forints in other cases.

(2) The administrative fee pursuant to paragraph (1)(b) above shall be paid when the opening of the proceeding is requested.

(3) If the competition council proceeding in the case decides that a full investigation of the concentration is necessary pursuant to Article 72(3), it shall summon the applicant in its injunction, indicating an eight-day time limit and a warning as to legal consequences, to pay the part of the administrative fee pursuant to paragraph (1)(a) which is in excess of the sum already paid pursuant to paragraph (2). If the applicant fails to comply with the payment obligation within the specified time limit, the proceeding shall be terminated; in such case, the part of the administrative fee paid pursuant to paragraph (2) shall not be refunded.

(4) Where the proceeding is terminated because the applicant did not comply with the summons for remedying deficiencies pursuant to Article 68(4), the administrative fee already paid shall be refunded.

(5) Where the proceeding is terminated upon the withdrawal of the application, half of the administrative fee already paid shall be refunded.

(6) The administrative fee shall cover all procedural costs.

Article 62/A

(1) Unless otherwise agreed by the parties, the administrative fee shall be paid by the applicant.

(2) The administrative fee shall be paid by way of transfer to the special budget plan account of the Hungarian Competition Authority at the Hungarian State Treasury.

(3) The transfer order shall contain the name of the applicant as well as the names of direct participants to the concentration or, if the administrative fee is paid following the start of the proceeding, the case number and, where Article 62(3) is applied, the registration number of the injunction pursuant to Article 72(3).

(4) If the administrative fee or a part thereof, or in the event of overpayment the excess sum, has to be refunded, the Hungarian Competition Authority shall without delay transfer such sum, acting *ex officio* or upon request, to the payment account from which the administrative fee was originally paid.

(5) Article 28(2)(a), and, with the exception pursuant to Article 62(4) and (5) of this Act, Article 28(2)(b), Article 28(3), Article 31(3) and Article 80(1)(k) of Act XCII of 1990 on Duties shall be applied to the administrative fee accordingly with the proviso that the administrative fee remains payable if the proceeding is terminated for the reasons pursuant to Article 60/A(1) of this Act. No exemption may be granted from the payment of the administrative fee.

(6) The provisions of the legislation governing the specificities of the financial reporting and bookkeeping obligation of entities financed by the state budget shall apply, *mutatis mutandis*, to the handling, accounting and registration of such fees.

Article 62/B

(1) The costs of the proceedings opened *ex officio* pursuant to Article 67(2) shall be payable by the party that would have been obliged to submit the application pursuant to Article 28(1).

(2) Other procedural costs incurred in the course of proceedings opened *ex officio* shall be borne by the infringing party where an infringement is established. If more than one undertaking jointly committed an infringement, they shall bear joint and several liability for the payment of the costs of the proceedings.

(2a) The procedural costs that have arisen in a proceeding closed by commitments pursuant to Article 75 shall be borne by the party that offered the commitments. If more than one undertaking offered commitments, they shall bear joint and several liability for the payment of the procedural costs.

(3) No exemption may be granted from the obligation of payment of the costs of proceedings.

Administrative time limits

Article 63

(1) The thorough investigation of cases and their completion within a reasonable time frame shall be assured *ex officio*.

(2) The final decision concluding proceedings shall be adopted and measures shall be taken to have such decision serviced

(a) within three months from the day on which the investigation was ordered, if the proceeding was started pursuant to Chapter III;

(b) within six months from the day on which the investigation was ordered, if the proceeding was started pursuant to Article 11 or 21 of this Act, or Article 101 or 102 of the TFEU;

(c) within six months from the day on which the investigation was ordered if the proceeding was started pursuant to Article 67(2) concerning a concentration implemented in spite of the prohibition pursuant to Article 29;

(d) within thirty days in case of proceedings started upon application for an authorisation pursuant to Article 24, subject to the derogation pursuant to paragraph (3);

(e) within forty-five days in the case of proceedings started upon application for an authorisation pursuant to Article 25.

(3) If the competition council proceeding in the case decides that a full investigation of the concentration is necessary pursuant to Article 72(3), the final decision concluding the proceeding shall be adopted and measures shall be taken to have such decision serviced within four months.

(4) In addition to the rules laid down in the Act on Administrative Procedures, for the purposes of calculating the administrative time limit, the time elapsing

(a) from the time of the dissolution of the party

(aa) until the time the legal successor is called into the proceeding started *ex officio*,

(ab) until the expiry of the time limit prescribed for the submission of the request for the establishment of succession, or until such request is considered if submitted in due time;

(b) in a proceeding started upon application, from the time of the invitation of an undertaking that originally has not been a party to the proceeding to enter the proceeding until the time such undertaking enters the proceeding as a party but not later than the expiry of the time limit set in the invitation to enter the proceeding;

(c) in the case of the death of the legal representative of the party, if the party had no authorised representative, until the new legal representative of the party is notified;

(d) from the time when any grounds for the exclusion of the case handler or a member of the competition council are notified by the case handler or the member of the competition council until such notification is adjudicated;

(e) from the time of the summoning of the owner of privileged information to make a statement pursuant to Article 55/B(2) or (3), or the party to make a statement pursuant to Article 65/C(6), until such statement is made but not later than the expiry of the time limit set;

(f) from the time of requesting information or the provision of data or documents pursuant to Article 64/B(4), until they are supplied but not later than the expiry of the time limit for performance;

(g) from the time the preliminary position of the competition council proceeding in the case or the report completing the investigation is sent to the party pursuant to Article 73, until the party makes its statement but not later than the expiry of the time limit set for making such statement;

(h) from the time the notice pursuant to Article 75/A is published, until the expiry of the time limit for the submission of comments;

(i) from the time of the opening of the non-litigious proceedings pursuant to Articles 65/A and 65/C until the court order is adopted;

(j) from the time of the service of the injunction adopted by the case handler or the competition council proceeding in the case relating to the access to the file, until the expiry of the time limit for seeking a legal remedy against such injunction, or — if the right to seek a legal remedy had previously been waived — until the date of receipt of the last waiver, or if the injunction of the case handler was appealed, until the final, non-appealable resolution of the competition council proceeding in the case is made, or in a judicial review proceeding

against the injunction of the competition council proceeding in the case until the final, non-appealable order of the court is made, shall not be taken into account.

(5) Where justified, the administrative time limit may be extended before it expires by the President of the Hungarian Competition Authority or, in the phase of the proceeding of the Competition Council, by the Chair of the Competition Council

(a) in the proceedings pursuant to paragraph (2)(a) on two occasions, by up to two months each time;

(b) in the proceedings pursuant to paragraph (2)(b) on two occasions, by up to six months each time;

(c) in the proceedings pursuant to paragraph (2)(c) on one occasion, by up to two months;

(d) in the proceedings pursuant to paragraph (2)(d) on one occasion, by up to twenty days;

(e) in the case pursuant to paragraph (3) on one additional occasion, by up to two months.

(6) The time limit for the completion of expert opinions shall be thirty days, which can be extended on one occasion by up to thirty days upon the reasoned request of the expert.

(7) Time limits expressed in days shall not include the duration of the administrative vacation pursuant to Article 33/B. If a time limit expressed in months would expire during the administrative vacation, the time limit shall expire on the first day following the administrative vacation.

Article 64

In proceedings started upon application pursuant to Article 67(1), if the competition council proceeding in the case fails to make a decision within the time limit pursuant to Article 63, the authorisation shall be deemed to have been granted.

Clarification of the facts of the case

Article 64/A

(1) The Hungarian Competition Authority shall be entitled to access and manage privileged information which is necessary to carry out the proceeding, unless this is precluded by a separate act governing the protection of such data.

(2) If the means of proof contains any personal data or privileged information beyond the personal data that is essential to carry out the proceeding and the privileged information necessary to carry out the proceeding, and if the separation of such data and information is impossible without compromising the probative value of such means of proof, the Hungarian Competition Authority shall be entitled to access and manage all personal data and privileged information affected by the means of proof unless this is precluded by a separate act of law governing the protection of the data concerned. The Hungarian Competition Authority shall be entitled to examine personal data that is not essential, or privileged information that is not necessary for carrying out the proceeding only for the time required to ascertain whether the data or information in question is necessary to conduct the proceeding. Following such examination, the personal data that is not essential, or privileged information that is not necessary for conducting the proceeding shall be managed pursuant to Article 55/C(3).

(3) The Hungarian Competition Authority may use the documents, data and other means of proof lawfully obtained in the course of sectoral inquiries, proceedings relating to informal or formal complaints or in competition supervision proceedings in other competition supervision proceedings as well.

Article 64/B

(1) On the summons of the case handler or the competition council proceeding in the case, the parties shall be obliged to disclose the data necessary for reaching a decision on the

merits, including personal data and — unless precluded by a separate act of law governing the protection of the data concerned — privileged information as well. Parties shall not be obliged to make statements admitting an infringement of the law; they must, however, not refuse to supply incriminating evidence, data or documents of any other kind.

(2) In the proceeding conducted for an infringement of Article 8, the user of the business practice shall, on the summons of the case handler or the competition council proceeding in the case, justify the validity of any factual statement that formed part of the business practice. If the user of the business practice fails to comply with this obligation, the factual statement in question shall be deemed to be untrue. The user of the business practice shall be advised of this presumption in the summons.

(3) The authority, government or municipal body subject to a request to provide data or documents within the framework of national legal assistance shall make available the personal data or privileged information that is necessary to comply with the request to the Hungarian Competition Authority, unless this is precluded by a separate act of law governing the protection of the data concerned.

(4) The case handler and the competition council proceeding in the case may request, in the scope and to the extent necessary to conduct the proceeding, any person or organisation to supply information as well as to provide data and documents in connection with the subject of the investigation. The provisions relating to witnesses shall apply *mutatis mutandis* to the requested person's right of access to the file and expenses, to the right of refusal of natural persons to provide data, to the fact that the data and documents provided may be used as evidence, to the use of languages, the confidential handling of natural identification data and home addresses, and to the exclusion from the handling of the case.

(5) Witnesses, and any other persons contacted under paragraph (4), may be interviewed about personal data and privileged information as well, and they are obliged to make such data and information available to the Hungarian Competition Authority unless this is precluded by a separate act of law governing the protection of the data concerned.

(6) Experts shall be informed on all data that are necessary to perform their tasks; to the extent necessary to perform their tasks, experts may also come to learn of personal data which are not treated as confidential and — unless this is precluded by a separate act of law governing the protection of the information concerned — privileged information.

Article 65

(1) On the summons of the case handler or the competition council proceeding in the case, data recorded in a computing system or on an electronic data storage device (hereinafter collectively: data storage) shall be made available by the possessor of such data storage in a format enabling reading and copying.

(2) The case handler and the competition council proceeding in the case shall be entitled to make copies of documents and data stored on a data storage. In proceedings started *ex officio* the case handler shall be entitled to make a forensic copy of the data storage and to inspect its contents using that forensic copy if it is likely to contain data in connection with the conduct under investigation that cannot be retrieved in course of the proper use of the computer.

(3) In the process of making an electronic copy of the data stored on the data storage the data shall be recorded in a way that prevents the subsequent manipulation of the data or — if this is not possible due to the type of the data storage — the data shall be recorded using a technology that ensures that it is possible to control the unchanged nature of the data at a later stage.

(4) If the seizure occurs in such a way that the seized property is left in the custody of the holder, the case handler shall deposit the seized property in a container suitable for its safeguarding or in a separate room, and shall lock and seal such container or room.

Article 65/A

(1) In the course of a proceeding started *ex officio* pursuant to Article 11 or 21 of this Act or Article 101 or 102 of the TFEU, the case handler may search any premises, vehicle or data storage with a view to finding means of proof concerning the infringement investigated, and enter such premises under his/her own authority, against the will of the owner (possessor) or any other person present, and may open any sealed-off area, building or premises for this purpose (hereinafter: unannounced inspection). The Hungarian Competition Authority may request police assistance for the successful and safe conduct of the unannounced inspection.

(2) An unannounced inspection of the real estate, vehicles or data storage serving or used for private purposes which are not registered as the registered office or establishment of the party and are not used for economic activity by the party anyway, is only possible if they are used by a person who is, or was in the period investigated, the party's executive officer, employee or agent or a person exercising actual control over such party.

(3) An unannounced inspection shall only be carried out if a judicial warrant has previously been obtained. The written application of the Hungarian Competition Authority for such a warrant shall be adjudged in a non-litigious procedure by the Metropolitan Administrative and Labour Court of Budapest within seventy-two hours of receipt of the application. No judicial review may be sought or review procedure may be initiated against the order of the court.

(4) The court shall authorise the unannounced inspection requested if the Hungarian Competition Authority proves presumptively that other investigative measures would be unlikely to produce results, and there are reasonable grounds to presume that a means of proof relating to the infringement under investigation is in the location indicated in the application and that it would not be surrendered voluntarily, or it would be made unusable. The court may authorise an unannounced inspection to be taken partially, specifying the target persons and the type of investigative measures allowed.

(5) The unannounced inspection shall be carried out within three months from the service of the judicial warrant.

(6) The competition supervision proceeding shall be started simultaneously with the commencement of the unannounced inspection at the latest. The injunction pursuant to Article 70(1) shall be serviced at the scene to the party present, including the party's employee present, and shall be serviced to other parties also by telephone or fax, in addition to the start of the service pursuant to the general rules governing the mode of the service of decisions.

(7) The person affected, including the party's employee present and — in the case provided for pursuant to paragraph (2) — the affected person's family member of legal age, shall be informed verbally about the unannounced inspection at the time of the beginning of the search, and the court order authorising the unannounced inspection as well as the purpose of the investigative measure shall be communicated to the person affected before the investigative measure is started. Whenever possible, the unannounced inspection shall be carried out in the presence of the person affected. If the presence of the person affected cannot be ensured, the participation of an official witness in the unannounced inspection shall be requested. In the course of the unannounced inspection, the case handler may oblige the persons affected to provide information or explanation, written or oral, and may gather information on site in any other way.

(8) Unannounced inspections shall be conducted on working days between 8:00 and 20:00 hours, unless another time is necessary to assure the success thereof. In the case provided for pursuant to paragraph (2) the unannounced inspection shall be carried out so that it does not cause a disproportionate disturbance to the privacy of the person affected, and causes the least possible disruption to the work and regular activity of the person affected.

(9) In the course of the unannounced inspection, the case handler shall be entitled to make copies of or seize any means of proof indicative of an infringement of Article 11 or 21 of this

Act or Article 101 or 102 of the TFEU, even if such means of proof is unrelated to the subject matter of the investigation and is not covered by the judicial warrant. In the respect of such means of proof, the judicial warrant pursuant to paragraph (3) shall be obtained subsequently; in the absence of a subsequent judicial warrant, the means of proof discovered shall not be admissible as evidence.

(10) An application for a subsequent judicial warrant pursuant to paragraph (9) shall be submitted not later than within sixty days

(a) from the time the unannounced inspection was conducted;

(b) from the date of the preparation of the investigation working copy pursuant to Article 65/B(3) if a seizure copy is made of the means of proof during the unannounced inspection pursuant to Article 65/B(1); or

(c) from the time the Hungarian Competition Authority gained access to the evidence if any procedural measure pursuant to Article 65/C(9) or any proceeding pursuant to Article 65/C(10) is carried out in respect of the means of proof, regarding the documents subject to such procedural measure or proceeding.

Article 65/B

(1) If during the unannounced inspection it is impossible to inspect the data storage on-site without interfering with the normal course of activities of the person affected for a disproportionate length of time, or otherwise if the person affected agrees, the case handler shall make a copy of the data and documents found on the data storage (hereinafter: seizure copy).

(2) The minutes of the unannounced inspection shall contain the type of data storage used to record the copy with the data necessary for its individual identification, the nature of the data and of the documents copied as well as other necessary data which enable both the individual identification of the copy and the posterior control of the unchanged nature of the data.

(3) The case handler shall conduct the search of the means of proof using a working copy made pursuant to Article 65(3) of the data and documents on the seizure copy (hereinafter: investigation working copy). The case handler shall prepare a separate electronic or paper copy of the evidence intended to be used (hereinafter: evidence brief) and send the description enabling the individual identification of the data and documents therein to the party who previously had possession of the data storage or who is connected to the site where the seizure copy pursuant to Article 65/A(2) was made (hereinafter: party affected) or to the data owner, ordering them to make a statement pursuant to Article 55/A(2) or (3) within a time limit of eight days as to whether the evidence in the evidence brief contains any business secret or private secret. No application for justification may be submitted in case of failure to observe the time limit for making such statement.

Article 65/C

(1) Any document prepared for the purpose of defence shall not be used as evidence in competition supervision proceedings and, with the exception of the cases pursuant to this Article, may not be examined, seized, copied, and its presentation, surrender or access may be refused. Parties may waive the application of this prohibition.

(2) A document prepared for the purpose of defence shall mean a document or a part thereof that was created in the course of communications between the party and its hired lawyer for the purposes or in the framework of the exercise of the rights of defence of the party, or that is a record of the contents of such communications, provided that such character of the document is apparent from the document itself. A document not in the possession of the party or the lawyer concerned shall not qualify as a document prepared for the purpose of defence unless such party or lawyer are able to prove that the document was removed from their possession illegally.

(3) The case handler shall be entitled, without prejudice to the right protected in this Article and to the extent strictly necessary, to have access to the document to ascertain whether the claim to the qualification as a document prepared for the purpose of defence is clearly unfounded.

(4) In the course of an inspection or unannounced inspection the physical possession of a document may be acquired if

(a) a seizure copy is made thereof;

(b) only such affected persons were present at the procedural measure who were not authorised to represent the party or the lawyer concerned in respect of making a statement about the qualification of the documents as documents prepared for the purpose of defence; and

(c) the case handler contests the statement about the qualification of the document as a document prepared for the purpose of defence.

(5) In the case pursuant to paragraph (4) the document, or the seizure copy containing the document shall be deposited in a container which prevents access to the data and their subsequent manipulation and which is sealed and signed by the person concerned and the case handler in a manner which prevents the opening of the container without damaging the seal (hereinafter: sealed container).

(6) In the cases pursuant to paragraph (4)(a) and (b) the party affected shall be invited to make a statement about whether any of the documents taken into physical possession should be qualified as a document prepared for the purpose of defence, and to clearly indicate the document or part of document affected. The party affected shall simultaneously be notified that any document identified as such by him/her shall be subject to an investigative measure pursuant to paragraph (9). Such notice shall state the date, expected duration and place of such investigative measure, and it shall be communicated at a time that gives the party a minimum of eight days to make his/her statement.

(7) The sealed container may be opened and the document or the seizure copy deposited therein may be examined exclusively after the expiry of the time limit specified for the making of the statement pursuant to paragraph (6). If the party stated, within the time limit, that there is a document prepared for the purpose of defence in the container or that the seizure copy contains such a document, the sealed container shall be opened exclusively in the course of an investigative measure pursuant to paragraphs (9) or (13), and after the completion of the investigative measure the seizure copy shall once again be deposited in a sealed container.

(8) A document shall not be treated as a document prepared for the purpose of defence if the party affected failed to make a statement to this effect when the Hungarian Competition Authority took possession of the document or subsequently within the time limit for making such statement pursuant to paragraph (6). No application for justification may be submitted in case of failure to observe the time limit for making a statement pursuant to paragraph (6).

(9) If according to the statement of the party affected the documents taken into physical possession include documents prepared for the purpose of defence, such documents shall be separated in the presence of the party affected, in the case of seizure copies by using a copy enabling the separation of data (hereinafter: interim working copy), and documents prepared for the purpose of defence shall be released to the party affected and an investigation working copy not containing the document prepared for the purpose of defence shall be made of the interim working copy and subsequently the interim working copy shall be destroyed without delay by the physical destruction of the data storage containing the copy or by the erasure of the data using a procedure rendering the data irrecoverable. If, contrary to the statement of the party, the case handler considers the document not to have been prepared for the purpose of defence, the disputed document as well as the interim working copy containing the document

in question shall be deposited in a sealed container. The failure of the party affected to appear following due notification shall not prevent the execution of the investigative measure.

(10) In the case pursuant to paragraph (4)(c), and also if during the investigative measure pursuant to paragraph (9) the case handler disputes the qualification of a document as having been prepared for the purpose of defence, the dispute shall be decided, upon the request of the Hungarian Competition Authority and having heard the party affected, by the Metropolitan Administrative and Labour Court of Budapest in a non-litigious procedure within fifteen days after the submission of such request. The Hungarian Competition Authority shall attach to its request the sealed container containing the document and the interim working copy made thereof.

(11) If the court establishes that the document or the part thereof does not qualify as a document prepared for the purpose of defence, it shall release it to the Hungarian Competition Authority. If the court decides to the contrary, it shall release the document or the part thereof to the party affected.

(12) By way of derogation from paragraph (11), in respect of the documents contained in the interim working copy or if the document cannot be divided without compromising the probative value of the evidence, the court shall specify by order which document or which part of the document qualifies as having been prepared for the purpose of defence and it shall release the interim working copy or the document to the Hungarian Competition Authority in a sealed container.

(13) The sealed container released to the Hungarian Competition Authority pursuant to paragraph (12) may be opened, and the data contained therein may be examined only in the presence of the party affected and for the purpose of making an investigation working copy from the interim working copy with the document prepared for the purpose of defence removed, and for the purpose of the examination of the part of the document which does not qualify as having been prepared for the purpose of defence, following which the document shall be released to the party and the interim working copy shall be destroyed without delay by the physical destruction of the data storage containing the copy or by the erasure of the data using a procedure rendering the data irrecoverable. The party shall be notified at least three days in advance of the date, expected duration and location of such investigative measure. The failure of the party to appear following due notification shall not prevent the execution of the investigative measure.

Article 65/D

By way of derogation from Article 55/C(3), the seizure copy shall be blocked after the preparation of the investigation working copy or the completion of the procedural measure pursuant to Article 65/C(13), and access to the data contained therein shall be allowed exclusively to the court for the purpose of the verification of the validity of the evidence brief and the admissibility of the data contained therein as evidence. If the management of the seizure copy and the investigation working copy is no longer justified for the purposes of a legal remedy relating to the final, non-appealable decision, it shall be destroyed without delay by the physical destruction of the data storage containing the copy or the erasure of the data using a procedure which renders the data irrecoverable.

Use of languages

Article 66

(1) In the competition supervision proceeding documents drawn up in English, French or German may be submitted in the original language, furthermore, other submissions, with the exception of applications, may be submitted in English, French or German by the party or other participants in the proceedings.

(2) In proceedings started *ex officio* paragraph (1) may be applied subject to the consent of the parties.

(3) In the case pursuant to paragraph (1) the case handler or the competition council proceeding in the case may, acting *ex officio* or upon the other parties' request, require the submission of a Hungarian summary or a Hungarian translation of the document or the submission. The submission of a certified translation in proceedings opened upon application may be required only if there is doubt as to the accuracy of the translation.

Chapter XI

Conducting the competition supervision proceeding of the Hungarian Competition Authority

Opening of competition supervision proceedings

Article 67

(1) Competition supervision proceedings shall be opened upon application when related to an authorisation pursuant to Article 24 or the extension of a time limit pursuant to Article 25, without prejudice to paragraph (2), and *ex officio* in any other case.

(2) Competition supervision proceedings may also be initiated *ex officio* if the concentration pursuant to Article 24 is likely to have been implemented in contravention of the prohibition pursuant to Article 29.

(3) No competition supervision proceeding shall be initiated, with the exception of proceedings repeated due to legal remedy, if

(a) a period of three years has elapsed from the time of the infringement of the provisions of Chapter III;

(b) a period of five years has elapsed from the time of the infringement of the provisions of Chapters IV-VI;

(c) a period of five years has elapsed from the time of a concentration implemented in contravention of the prohibition pursuant to Article 29.

(4) For the purposes of applying paragraph (3)(a) and (b),

(a) where the infringing conduct is continuous in nature, the time limit shall begin at the time when the conduct is terminated;

(b) where the infringing conduct is committed through a failure to terminate a particular situation or state, the time limit shall not begin as long as such situation or state prevails.

(5) Competition supervision proceedings which may be opened *ex officio*, shall commence on the day on which the injunction on the initiation of the investigation pursuant to Article 70(1) is issued.

Opening of competition supervision proceedings upon application

Article 68

(1) An application for the opening of a proceeding may be submitted by persons

(a) obliged pursuant to Article 28(1) to submit an application for authorisation of a concentration;

(b) unable to fulfil the alienation obligation pursuant to Article 25 within one year.

(2) Applications for authorisation pursuant to Article 24 shall be submitted on the duly completed form published by the Hungarian Competition Authority to be used for applications for authorisation of a concentration. The application shall contain all the facts

and data necessary for the assessment of the case, and shall have the documents specified in the form enclosed.

(3) If the application for authorisation pursuant to Article 25 is submitted after the expiry of the time limit specified in Article 25 but the proceedings have not yet been opened *ex officio* pursuant to Article 67(2), the application shall not be rejected without an examination of the merits of the case.

(4) The case handler may issue a summons for remedying deficiencies within fifteen days from the day following the receipt of the application.

(5) A summons for remedying deficiencies may be issued during the proceedings also if the application fulfilled the requirements pursuant to paragraph (2) but such measure is necessary as a result of new information discovered during the clarification of the facts of the case.

(6) If the application was not rejected without an examination of the merits, the Hungarian Competition Authority shall publish on its website a notice on the initiation of competition supervision proceedings opened upon an application for authorisation pursuant to Article 24 and a brief description of the concentration which does not contain restricted access data, except if the application contained a request that the concentration should be treated as a business secret until its implementation.

Pre-notification contacts

Article 69

(1) Before submitting an application for the authorisation of a concentration pursuant to Article 24, the undertakings obliged to submit such an application may request a pre-notification contact with the Hungarian Competition Authority to clarify the scope of the data and documents that must be submitted with the application for the authorisation of the concentration that has already been agreed upon by the parties.

(2) The documents provided and the data disclosed at the time when the pre-notification contact is requested or during the pre-notification contacts may be used solely for the purposes of such contacts and in the competition supervision proceeding relating to the concentration to which the pre-notification contacts pertain.

Opening of competition supervision proceedings *ex officio*

Article 70

(1) The case handler shall issue an injunction opening an investigation upon observation of an activity, conduct or situation which falls within the competence of the Hungarian Competition Authority and which is likely to constitute an infringement if the protection of the public interest necessitates the conducting of a competition supervision proceeding. The injunction shall specify the circumstances and conduct or situation which constitutes the subject matter of the proceeding.

(2) If the court, due to its lack of competence, refers a case to the Hungarian Competition Authority, the case handler shall proceed in accordance with Article 68 in the cases pursuant to Article 67(1), and in accordance with Articles 43/G–43/I in other cases.

(3) The fact that an investigation has been opened may be disclosed to the public.

(4) If the activity, conduct or situation specified in the injunction opening the investigation also constitutes, in addition to what is specified in the injunction, another infringement in respect of which the Hungarian Competition Authority has competence, the case handler shall extend the scope of the investigation by way of an injunction.

(5) The investigation may also be extended to cover any activity, conduct or situation relating to that specified in the injunction opening the investigation.

(6) The case handler may separate the competition supervision proceeding initiated against several parties or against the same party or parties for several infringements into several proceedings, if the case can be assessed independently in respect of the individual parties or infringements. The administrative time limits applicable to the original proceeding shall continue to apply to the proceedings after such separation.

The report of the case handler

Article 71

(1) After completing the investigation, the case handler shall prepare a report, which he or she shall submit to the competition council together with the documents.

(2) The report shall contain

(a) the subject matter of the investigation;

(b) the established facts of the case and the supporting evidence; and

(c) the proposal of the case handler relating to the further course of the proceeding and the ordering of interim measures where necessary.

(3) Where justified, the case handler may also, in a separate report submitted prior to the conclusion of the investigation, propose

(a) a full investigation of the market impacts of the concentration in a proceeding initiated upon application for authorisation pursuant to Article 24;

(b) the granting or refusal of consent pursuant to Article 29/A for exercising controlling rights before the final resolution concluding the proceeding is adopted, with control limitation provisions where necessary; and/or

(c) the ordering of interim measures.

Article 71/A

The proceeding of the competition council

Article 72

(1) Upon receipt of the report of the case handler, the competition council proceeding in the case may return the documents to the case handler if it establishes that the clarification of the facts of the case requires the continuation of the investigation or that an extension of, or the calling of a new party into, the proceeding is justified.

(2) The competition council proceeding in the case shall decide within fifteen days from the day following the receipt of the application, based on the report of the case handler, about the application pursuant to Article 29/A for the exercise of controlling rights until the resolution on the merits of the proceeding is adopted, and on the application of control limitation provisions where necessary. No separate resolution shall be made on the application pursuant to Article 29/A, if the competition council proceeding in the case makes a decision on the application pursuant to Article 24 before the expiry of this time limit or terminates the proceeding for authorisation of a concentration.

(3) If, having regard to Article 30, it is not obvious from the application for authorisation pursuant to Article 24 that the concentration would not result in a significant reduction of competition in the relevant market, the competition council proceeding in the case relying on the report of the case handler – by returning the documents to the case handler – shall make a resolution on the necessity of a full investigation of the market effects of the concentration.

Article 72/A

(1) On the basis of the report by the case handler, the competition council proceeding in the case may, by an interim measure,

(a) prohibit the continuation of the conduct which is likely to constitute an infringement or order the termination of the situation which is likely to constitute an infringement, if it is urgently needed to protect the legal or economic interests of the concerned parties and the development, maintenance or improvement of competition is threatened;

(b) in proceedings opened *ex officio*, in order to mitigate the detrimental effects of the concentration on competition, or to ensure the enforceability of the measures pursuant to Article 31 may to the extent necessary order the use of control limitation provisions in the case of a concentration executed in contravention of the prohibition pursuant to Article 29 the authorisation of which is likely to be refused pursuant to Article 30, or in the case of a concentration executed in violation of the decision of the Hungarian Competition Authority prohibiting the concentration, or executed without fulfilment of the conditions set forth in the authorisation; or

(c) withdraw, pursuant to Article 29/A(3), its consent granted pursuant 29/A(1) or modify the control limitation provision ordered in the consent, if the concentration is likely to result in a significant lessening of competition on the relevant market.

(2) The interim measure pursuant to paragraph (1)(c) may also be requested by the party whose right of control will be ceased as a result of the concentration, indicating in the application the facts or circumstances justifying the necessity and expediency of the ordering of the interim measure. The competition council proceeding in the case shall make its decision on the application for the ordering of interim measures in priority proceedings after hearing the respondent parties.

(3) A separate legal remedy may be sought against the injunction ordering the interim measure. The competition council proceeding in the case may amend or withdraw its injunction ordering the interim measure *ex officio* even in the absence of a violation of the law, if this is justified by the changes in the circumstances which necessitated its adoption.

(4) The injunction ordering the interim measure may be declared enforceable irrespective of any application for the suspension of enforcement if any delay in enforcement is likely to cause irreparable harm.

Article 73

(1) If, based on the report completing the investigation, it is not necessary to take the measures pursuant to Article 72(1) or (3) or the proceeding need not be terminated, the competition council proceeding in the case shall send to the party its preliminary position about the case, which shall contain the facts of the case as established, the evidence in support thereof, the assessment of the facts, and the description of the substance of the considerations and conclusions used to arrive at the decision and the description of the considerations intended to be taken into account for the purpose of the imposition of a fine where relevant. The party may make statements or comments in response to the preliminary position within the time limit set by the competition council proceeding in the case, which shall not exceed thirty days from the time when the possibility to make a statement concerning the report of the case handler had been provided pursuant to paragraph (3), if this occurred.

(2) A preliminary position need not be prepared where the proceeding is started upon application, the competition council proceeding in the case consents to the content of the application and Article 30(3) or (7) need not be applied.

(3) If the competition council proceeding in the case deems it necessary with a view to the successful completion of the proceeding, in the case pursuant to paragraph (1), it may send the report of the case handler to the party before it services the preliminary position for comments or to solicit a statement and set a time limit therefor, and it shall then formulate its preliminary position and send it to the party pursuant to paragraph (1).

(4) For sending the preliminary position and the report, the provisions of Article 55/C(2) shall apply *mutatis mutandis*.

Settlement

Article 73/A

(1) If in proceedings opened *ex officio* pursuant to Article 11 or 21 of this Act or Article 101 or 102 of the TFEU, based on the report completing the investigation, having regard to the discovered facts of the case and the supporting evidence the competition council proceeding in the case deems it appropriate for the swift and effective conclusion of the proceeding, it may invite the party to indicate in writing whether it is interested in engaging in the settlement procedure pursuant to paragraph (2).

(2) If in response to the invitation pursuant to paragraph (1) the party indicates in writing, within the time limit of no more than fifteen days set by the competition council proceeding in the case, its willingness to engage in the settlement procedure, the competition council proceeding in the case shall hear the party, in the course of which it shall inform the party of the infringement it would be likely to find, the conduct giving rise to such finding and the underlying evidence, as well as the fine likely to be imposed including its minimum and maximum amount and the considerations to be taken into account in the determination of such amount. If the party and the competition council proceeding in the case reach a common understanding on the aforesaid factors within a time period which does not jeopardise the swift and effective conclusion of the proceeding, the competition council proceeding in the case shall invite the party to introduce its settlement submission within a time limit not exceeding fifteen days. No application for justification may be submitted in case of failure to observe the time limits for introducing a submission pursuant to this Article.

(3) The settlement submission shall, in accordance with the common understanding pursuant to paragraph (2), contain:

- (a) a statement of the party explicitly admitting his/her participation in the infringement;
- (b) a factual and brief description of the conduct and its legal assessment, the objective of the conduct and the way in which it was carried out, its duration and the manner and extent in which the party was involved;
- (c) the highest amount of the fine the party deems acceptable;
- (d) a statement of the party to the effect that he/she was appropriately informed by the competition council proceeding in the case about the provisions pursuant to paragraph (2) and that he/she was given sufficient opportunity to make his/her arguments;
- (e) a statement of the party to the effect that if the content of the preliminary position and of the decision corresponds to the content of the statement of admission, he/she will not apply for further procedural actions especially access to the file or hearing; and
- (f) statement of the party containing his/her waiver of his/her right to seek a legal remedy against the decision.

(4) By way of derogation from Article 73(1), the party introducing a settlement submission shall explicitly declare, within a maximum of fifteen days from the preliminary position, that the content of the preliminary position on the merits corresponds to what is contained in the settlement submission or that he/she withdraws the settlement submission.

(5) The settlement submission may be withdrawn before the expiry of the time limit to seek a legal remedy against the decision and only if the content of the preliminary position, or subsequently the decision, of the competition council proceeding in the case departs on the merits from what is provided in the settlement submission, including the case where the amount of the fine imposed exceeds the sum specified in paragraph (3)(c). In such case, the statement of admission referred to in paragraph (3)(a) shall not be admissible as evidence.

(6) The party involved in the settlement procedure shall keep this fact confidential as well as any information obtained during the settlement procedure until the conclusion of the competition supervision proceeding.

(7) The settlement submission and the fact that the submission has been introduced, until the time specified in Article 55(5), shall be treated as restricted access data. After the time specified in Article 55(5) the other parties may exclusively have access to the settlement submission with the proviso that no copies shall be made of the settlement submission; only notes may be taken thereof. Third persons within the meaning of Article 55(3) shall not have access to the settlement submission; they shall not make copies or take notes. If the settlement submission is withdrawn, the submission and any copies thereof shall be returned to the undertaking which introduced such submission.

Hearing

Article 74

(1) With the exception set out in Article 73(2), before adopting a decision the competition council proceeding in the case shall conduct a hearing if this is requested by the party or considered necessary by the competition council proceeding in the case. Concurrently with sending its preliminary position, the competition council proceeding in the case shall invite the party to make a statement as to whether it requests a hearing to be held. The hearing shall be scheduled so as to allow the party to prepare for the hearing.

(2) In a reasoned injunction, the case handler or the competition council proceeding in the case may, acting upon request or *ex officio*, exclude the public from the hearing or a part thereof if it is indispensable for the protection of confidentially treated personal or identification data, privileged information or other restricted access data pursuant to Article 55/A(1)(e) or (f).

Commitments

Article 75

(1) Where, regarding a conduct investigated in a competition supervision proceeding started *ex officio*, the party offers commitments to bring its conduct in a specified way in line with the applicable legal provisions and if the efficient protection of the public interest can be ensured in this manner, the competition council proceeding in the case may, in its decision, oblige the party to abide by such commitments without establishing the existence or the absence of an infringement in such decision. If the party has in the meantime ceased the conduct investigated, a commitment may be undertaken to comply with transparent and verifiable rules of conduct which assure that such conduct is not repeated.

(2) The competition council proceeding in the case may also amend or withdraw its decision pursuant to paragraph (1) in the cases and under the terms set forth in paragraphs (3) to (7).

(3) The competition council proceeding in the case shall amend the decision

(a) at the request of the undertaking subject to the obligation if such undertaking is unable to fulfil any obligation imposed in the decision for unavoidable reasons beyond its control; or

(b) at the request of the undertaking subject to the decision or on its own initiative if the fulfilment of any obligation set forth in the decision is no longer justified due to changes in circumstances, in particular in market conditions or the conditions of competition and the outcome aimed to be achieved by the commitments can be achieved by other means as well.

(4) The request pursuant to paragraph (3)(a) may be submitted within fifteen days from the time of obtaining knowledge of the cause preventing the fulfilment of the obligation but not later than two months from the date of occurrence of such cause.

(5) The competition council proceeding in the case shall withdraw its decision, which has not been reviewed by the court, if such decision was based on the misleading representation of the obliged undertaking concerning a fact which was material to the adoption of the decision.

(6) If the undertaking failed to fulfil the obligation set forth in the decision or in the amended decision pursuant to paragraph (3), the competition council proceeding in the case shall withdraw its decision or shall impose a fine upon weighing the consideration of the effective enforcement of the public interest underlying the decision prescribing the commitments undertaken, also having regard to the nature of the market conditions affected by the commitments, to the prevailing conditions of competition, to the extent that the commitments have been fulfilled up to that time, and to the imputability of the conduct of the undertaking with respect to the infringement.

(7) The decision may be withdrawn within five years of

(a) the date of its delivery in the case provided for in paragraph (5);
 (b) the expiry of the time limit for the fulfilment of the obligation, or in the case of a continuous obligation, the violation of the obligation, in the case provided for in paragraph (6).

(8) If the decision is withdrawn, the competition supervision proceeding shall be reopened irrespective of the restriction pursuant to Article 67(3), moreover, in the case provided for in paragraph (6) a procedural fine may be imposed for the conduct which serves as the ground for the withdrawal of the decision.

Consultations with stakeholders

Article 75/A

(1) The competition council proceeding in the case

(a) before adopting a decision on the authorisation of a concentration subject to a pre- or post-condition pursuant to Article 30(3), or to an obligation; or

(b) before adopting a decision making the commitments pursuant to Article 75 obligatory may, where it deems it necessary, initiate consultations with stakeholders by way of posting, simultaneously with sending the preliminary position to the parties, on the website of the Hungarian Competition Authority the condition or obligation which it plans to adopt, and/or the commitments with restricted access data removed, together with an invitation requesting the stakeholders to submit their comments, with a view to obtaining their views in particular those of undertakings operating in the relevant market and of other persons affected by the case.

(2) Within twenty days from the date of publication of the invitation pursuant to paragraph (1), any person may present his/her views, recommendations or comments concerning the envisaged decision in writing to the Hungarian Competition Authority.

Decisions

Article 76

(1) In its decision, the competition council proceeding in the case

(a) shall, upon the application pursuant to Article 67(1), authorise the concentration pursuant to Article 24, subject to a pre- or post-condition or an obligation where necessary, or prohibit the concentration, moreover it shall permit the extension of the one-year transitional period pursuant to paragraph 25, or shall dismiss the application therefor;

(b) in proceedings initiated pursuant to Article 67(2), shall subsequently authorise the concentration of undertakings, subject to a pre- or post-condition or an obligation where necessary, or shall prohibit the concentration;

(c) shall oblige the undertaking to fulfil the commitments pursuant to Article 75;

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

(e) may establish the fact of infringement;

(f) may order the termination of the infringing state;

(g) may prohibit the continuation of the infringing conduct;

(h) may, where the existence of an infringement is established, impose obligations, including in particular an obligation to contract, on the parties in the case of an unjustified refusal to create or maintain appropriate business relations for the type of the transaction concerned;

(i) may order the publication of a corrective statement in respect of any infringing communication of information;

(j) may establish that a conduct does not constitute an infringement;

(k) may impose a fine; or

(l) may issue a warning pursuant to Article 78(8) in addition to the imposition of the obligation that the party shall establish internal rules of procedures which ensure compliance with the provisions of competition law and the prevention of infringements.

(2) In the decision prohibiting the concentration, the competition council proceeding in the case shall simultaneously also decide on the application of the measure pursuant to Article 31, if applicable.

Follow-up investigation

Article 77

(1) The Hungarian Competition Authority shall conduct follow-up investigations *ex officio* to monitor compliance with the enforceable decision of the competition council proceeding in the case in terms of

(a) fulfilment of a pre- or post-condition pursuant to Article 30(3);

(b) fulfilment of an obligation pursuant to Article 30(3);

(c) fulfilment of commitments made pursuant to Article 75;

(d) fulfilment of an obligation to carry out a specific act, to show or refrain from a certain conduct other than the obligations covered by points (a) to (c), if compliance cannot be ascertained from the information available.

(2) Requests for the amendment of a decision pursuant to Article 32 or 75 shall be assessed within the framework of a follow-up investigation.

(3) In the course of a follow-up investigation the provisions governing competition supervision proceedings shall apply *mutatis mutandis*, subject to the derogations set out in this Article.

(4) A follow-up investigation may be opened within five years from the expiry of the time limit for the performance prescribed in the decision of the competition council proceeding in the case, or in the case of continuous obligations or post-conditions pursuant to Article 30(3), from the last day of the duration of the obligation or condition as prescribed in the decision or, in the absence of any such obligation or condition, from the date the decision becomes final. Such time limit shall not include any period during which the enforcement of the decision cannot be executed.

(5) The resolution concluding the follow-up investigation shall be adopted and measures shall be taken to have such resolution serviced within three month of the commencement

thereof; where justified, the administrative time limit may be extended prior to the expiry of the time limit on one occasion by up to three months.

(6) On the basis of the report of the case handler on the follow-up investigation, the competition council proceeding in the case shall

(a) in the case pursuant to paragraph (1)(a), establish in an injunction the fulfilment of the condition and terminate the follow-up investigation, or otherwise establish in a decision the non-fulfilment of the condition and, where the concentration was implemented, simultaneously decide on the application of the measure pursuant to Article 31;

(b) in the case pursuant to paragraph (1)(b), terminate the follow-up investigation where the obligation is fulfilled, in other cases it shall decide on the withdrawal or amendment of the decision pursuant to Article 32 and may impose a fine;

(c) in the case pursuant to paragraph (1)(c), decide on the withdrawal or amendment of the decision as provided for in Article 75, or if the former have not occurred, it shall terminate the follow-up investigation;

(d) in the case pursuant to paragraph (1)(d), terminate the follow-up investigation if the decision has been complied with voluntarily; otherwise it shall initiate the enforcement procedure.

Fines, warning

Article 78

(1) The competition council proceeding in the case may impose a fine

(a) for any infringement that falls within the competence of the Hungarian Competition;

(b) for the implementation of a concentration in violation of a prohibition set forth in a decision of the competition council proceeding in the case;

(c) for non-compliance with an obligation imposed in a decision granting authorisation for a concentration; or

(d) for failure to apply for the authorisation of the Hungarian Competition Authority for a concentration pursuant to Article 24 where the concentration was implemented even if such concentration was subsequently authorised by the competition council proceeding in the case in its decision.

(1a) The competition council proceeding in the case shall impose a fine for the non-fulfilment of a commitment pursuant to Article 75 except if the competition supervision proceeding was reopened as a result of the withdrawal of the decision imposing such commitment.

(1b) The fine shall not exceed ten per cent of the net turnover, achieved in the business year preceding that in which the decision is adopted, of the undertaking or the group of undertakings which is specified in the decision and of whom the undertaking on which the fine is imposed is a member. The fine imposed on associations of undertakings shall not exceed ten per cent of the net turnover in the preceding business year of the undertakings which are members of such associations.

(1c) Without prejudice to paragraph (1b), the amount of the fine pursuant to paragraph (1)(d) shall be a minimum of fifty thousand forints and a maximum of two hundred thousand forints per day for the period beginning on the day of the announcement of the public bid, the conclusion of the contract or the acquisition of the right of control giving rise to the concentration, whichever occurs the earliest, and ending on the date of the initiation of the competition supervision proceeding. The transitional period pursuant to Article 25 shall be disregarded when calculating the fine.

(2) In determining the maximum amount of the fine, the net turnover shall be determined relying on annual accounts or simplified annual accounts for the business year preceding that

in which the decision is adopted. If the undertaking operated for less than a full year in the year concerned, the figures shall be prorated for the full year. If there is no reliable information available on the net turnover of the undertaking in the year preceding the date of the adoption of the decision, the net turnover of the last business year with an audited annual report shall be considered. In the case of newly established undertakings with no available annual accounts, the business plan for the year in which the proceeding was initiated or in the absence of such plan, the net turnover calculated for the date of the initiation of the proceeding as the record date pursuant to the rules on the preparation of interim balance sheets of the Act on Accounting, submitted by the undertaking at the summons of the case handler or the competition council proceeding in the case, shall be taken into account. In other respects the provisions of Article 24(3) and Article 27(7) shall apply *mutatis mutandis* to the calculation of net turnover.

(3) The amount of the fine shall be established with all the circumstances of the case taken into account, in particular the gravity of the infringement, the duration of the infringing situation, the benefit gained by the infringement, the market position of the party infringing the law, the imputability of the conduct, the cooperation of the undertaking during the proceeding and the repetition and frequency of the infringement. The gravity of the infringement shall be established, in particular, on the basis of the extent of the threat to economic competition and the range and extent of the harm to the interests of ultimate trading parties.

(4) The amount of the fine pursuant to paragraph (1)(c) and paragraph (1a) shall be established with all the circumstances of the case taken into account, in particular the gravity of the breach of the obligation, the nature of the market and economic conditions affected by the obligation, the existing conditions of competition, the public interest underlying the decision making the commitments obligatory the market position of the undertaking, the imputability of the breach of the obligation, and the extent that the commitment had been fulfilled up to that time. The gravity of the breach of the obligation shall be established, in particular, on the basis of the extent of the threat to economic competition and the range and extent of the harm to the interests of trading parties and competitors.

(5) In cases where a member of the group of undertakings which has committed the infringement fails to voluntarily pay the fine and the enforcement procedure does not result in the collection of the total amount of the fine, the competition council proceeding in the case shall by a separate injunction oblige those members of the group of undertakings concerned which have been identified in the decision jointly and severally to pay the fine or the uncollected part thereof.

(6) Where the association of undertakings fails to voluntarily pay the fine and the enforcement procedure does not result in the collection of the total amount of the fine, the competition council proceeding in the case shall by a separate injunction oblige those members of the association of undertakings which participated in reaching the infringing decision and which have been identified as such in the decision, jointly and severally to pay the fine.

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

(8) Instead of imposing a fine the competition council proceeding in the case may issue a warning as a sanction on small and medium enterprises if they commit an infringement for the first time, with the exception of cases which involve an infringement of European Union law.

(9) It shall not be possible to set aside the imposition of a fine pursuant to paragraph (8), if

(a) the infringement takes the form of agreements or concerted practices aimed at fixing prices or sharing of markets in the course of public procurement procedures; or

(b) the infringement has been committed against persons, who, due to their age, gullibility, mental or physical disability, belong to an especially vulnerable, clearly identifiable group of persons.

Leniency policy

Article 78/A

(1) The competition council proceeding in the case shall grant immunity from fines, or reduce the fines in the case of undertakings that disclose to the Hungarian Competition Authority, in a manner specified by this Act, agreements or concerted practices between competitors which infringe Article 11 of this Act or Article 101 of the TFEU and which are aimed directly or indirectly at fixing purchase or selling prices, sharing of markets including bid-rigging or the allocation of production or sales quotas (hereinafter for the purposes of Articles 78/A-78/C: infringement) and their participation therein.

(2) Immunity from any fine shall be granted by the competition council proceeding in the case to the undertaking which is the first to submit an application for immunity and supply evidence

(a) which enables the Hungarian Competition Authority to obtain a prior judicial warrant to carry out an unannounced inspection in connection with the infringement, provided that the Hungarian Competition Authority did not, at the time of the application, already have sufficient information to substantiate the judicial warrant for the unannounced inspection;

(b) which enables the Hungarian Competition Authority to prove the infringement, provided that it did not, at the time when the evidence was provided, already have sufficient evidence to prove the infringement and none of the undertakings meets the condition set out in point (a).

(3) Upon an application the competition council proceeding in the case shall reduce the fine if the conditions for immunity pursuant to paragraph (2) are not met but the undertaking provides to the Hungarian Competition Authority evidence of the infringement which represents significant added value to the evidence already available to the Hungarian Competition Authority at the time when such evidence is provided.

(4) In the case of an application submitted after the day immediately preceding the date of service of the preliminary position or the report of the case handler pursuant to Article 73, or the starting date for the access to the file in respect of any of the parties, whichever occurs earlier, the fine may be reduced only if the undertaking presents unambiguous evidence relating to facts or circumstances that have a substantial impact on the assessment of the infringement and which was not previously known to the Hungarian Competition Authority.

(5) The rate of reduction of the fine shall be

(a) between 30 and 50 per cent in respect of the first undertaking to meet the condition pursuant to paragraph (3);

(b) between 20 and 30 per cent in respect of the second undertaking to meet the condition pursuant to paragraph (3);

(c) up to 20 per cent in respect of the third and subsequent undertaking to meet the condition pursuant to paragraph (3).

(6) Where an undertaking provides unambiguous evidence relating to a fact or circumstance which was not previously known to the Hungarian Competition Authority, and which shall be taken into account when determining the amount of the fine to be imposed for the infringement pursuant to paragraph (3), if this fact or circumstance substantively increases the amount of the fine to be imposed, the fact or circumstance in question shall be disregarded when determining the amount of the fine to be imposed upon the undertaking.

(7) In order to qualify for any immunity from, or a reduction in the amount of, the fine or enjoy the benefit of paragraph (6), the undertaking in respect of which the application is submitted shall satisfy the following conditions in addition to those set out above:

(a) it ends its involvement in the infringement immediately following the submission of its application except where required by the Hungarian Competition Authority in an injunction to continue such involvement to the extent and in the manner necessary to ensure the success of an unannounced inspection;

(b) it cooperates with the Hungarian Competition Authority in good faith, in full and continuously throughout the competition supervision proceeding; and

(c) without the express consent of the Hungarian Competition Authority, it does not disclose in any way the fact that it has submitted an application for immunity from or the reduction of the fine or the content of evidence submitted in this context, excluding similar applications submitted to other competition authorities; the Hungarian Competition Authority shall not refuse its consent to granting access to the information concerned where this is essential pursuant to a statutory provision or an obligation imposed by an authority.

(8) An undertaking which was actively involved in coercing other undertakings to participate in the infringement shall not be eligible for immunity from fines.

(9) Independent undertakings shall not jointly submit an application for immunity from or reduction of the fine and they may not act as each other's representative in connection with the submission of such application. An undertaking may submit an application for immunity from or reduction of the fine in respect of undertakings under its control without any express authorisation.

Article 78/B

(1) The application for immunity from or the reduction of the fine provided for in Article 78(2) or (3) shall as a minimum contain,

(a) the name and registered office of the applicant undertaking;

(b) a description of the conduct indicated by the applicant to be covered by Article 78/A(1), such as its nature, duration, the goods and the geographical area affected, and the identification of the undertakings participating therein;

(c) the States who are parties to the Agreement on the European Economic Area where evidence relating to the infringement is likely to be found;

(d) the names of competition authorities of other Member States to which the applicant has submitted, or intends to submit, an application for immunity from, or the reduction of, the fine.

(2) All the evidence in connection with the infringement and available to the applicant at the time of submission of the application shall be attached to the application.

(3) Immunity from the fine pursuant to Article 78/A(2)(a) may be granted — provided that all other conditions are met — also if at the time of the submission of the relevant application, the applicant is unable to submit all the evidence in connection with the infringement available to it to the Hungarian Competition Authority, but it undertakes to supplement the application within the time limit specified by the Hungarian Competition Authority (hereinafter: non-definitive application for immunity) and it provides all the evidence substantiating its application for immunity from the fine in the specified time limit. In addition to what is contained in paragraphs (1) and (2), the non-definitive application for immunity shall contain the justification for the delayed provision of evidence as well as the express commitment by the applicant to supplement the application with evidence.

(4) Immunity from or reduction of the fine may be granted also if, in relation to an infringement in respect of which the European Commission is particularly well placed to conduct a proceeding pursuant to its Notice on cooperation within the Network of Competition Authorities, the applicant submits, simultaneously with an application to the

European Commission for immunity from or reduction of the fine, an application for the same to the Hungarian Competition Authority as an authority being well placed to proceed pursuant to the Commission Notice and such application is not accompanied by all the evidence available but, if the Hungarian Competition Authority initiates a proceeding for the infringement, the applicant supplements the application within the time limit specified in the invitation of the Hungarian Competition Authority and provides all the evidence available to it (hereinafter: non-definitive preliminary application). The non-definitive preliminary application may also be submitted in English, French or German.

(5) If the applicant supplements the non-definitive application pursuant to paragraph (3) or (4) within the prescribed time limit by providing the necessary evidence, the date of receipt of the non-definitive application shall be considered as the date of receipt of the application and of the submission of the related evidence.

(6) Remedying deficiencies is not permitted in respect of applications for immunity from or reduction of fines; and no application for justification for failure to meet the time limit for the supplementation of the non-definitive application pursuant to paragraph (3) or (4) may be submitted.

(7) Applications for immunity from fines pursuant to Article 78/A(2)(a) may be withdrawn before they have been assessed pursuant to Article 78/C(2) or, in the event of refusal, within eight days from the service of the injunction of the competition council proceeding in the case containing such refusal; otherwise, applications for immunity from or reduction of fines cannot be withdrawn.

Article 78/C

(1) The competition council proceeding in the case shall assess applications for immunity from fines in the order of their receipt and applications for the reduction of fines taking into consideration the order of their receipt. Preparatory work for the resolution of the competition council proceeding in the case shall be performed by the case handler; in the course of which, the case handler shall examine, and give his/her opinion about the application and submit to the proceeding competition council the information available to the Hungarian Competition Authority relating to the infringement.

(2) Where the application for immunity from the fine meets the conditions set out in Article 78/A(2), the competition council proceeding in the case shall, by its injunction, establish that it provides grounds for granting immunity from the fine pursuant to Article 78/A(2)(a) or (b). The competition council proceeding in the case may depart from such injunction in the course of its decision making exclusively if the undertaking fails to meet the conditions set out in Article 78/A(7) or the ground for refusal pursuant to Article 78/A(8) applies. The competition council proceeding in the case shall dismiss, by way of an injunction, any application that does not provide grounds for being granted immunity from the fine. .

(3) If the application for immunity from the fine is dismissed, it shall be assessed as an application for the reduction of the fine, except where it was withdrawn by the applicant pursuant to Article 78/B(7).

(4) If the application for the reduction of the fine meets the conditions set out in Article 78/A(3), the competition council proceeding in the case shall, by its injunction, establish that it provides grounds for reducing the fine to be imposed on the applicant pursuant to Article 78/A(3). The competition council proceeding in the case may depart from such injunction in the course of its decision making exclusively if the undertaking fails to meet the conditions set out in Article 78/A(7). The competition council proceeding in the case shall dismiss, by way of an injunction, any application that does not provide grounds for the reduction of the fine.

(5) The competition council proceeding in the case shall adopt its injunction pursuant to paragraphs (2) and (4) and measures shall be taken to have such injunction serviced to the party concerned

(a) without delay in the case of an application for immunity from the fine pursuant to Article 78/A(2)(a), taking into account the time necessary for the assessment of the application;

(b) by the time the preliminary position is sent to the parties in the case of an application for immunity from the fine pursuant to Article 78/A(2)(b);

(c) by the time the preliminary position is sent to the parties in the case of an application for the reduction of the fine pursuant to Article 78/A(3), or in the case of an application submitted thereafter, without delay taking into account the time necessary for the assessment of the application.

Article 78/D

(1) Before an injunction pursuant to Article 78/C(2) is made, the application for immunity from the fine pursuant to Article 78/A(2)(a) and any means of proof attached thereto or supplied by the applicant in connection with such application shall be used exclusively to assess the application or to apply for a judicial warrant pursuant to Article 65/A; and access to them shall be granted exclusively to the case handler appointed to the case, the competition council proceeding in the case and the court. If the application is withdrawn, the application as well as any means of proof submitted by the applicant, together with any copies thereof, shall be returned to the applicant undertaking.

(2) The application for immunity from or reduction of the fine, the voluntary statement of the applicant undertaking made specifically relating to the application (hereinafter: leniency statement), and the fact that an application has been submitted and the nature of the evidence submitted in relation to such application shall be treated as restricted access data until the time pursuant to Article 55(5). After the time specified in Article 55(5), the party may exclusively have access to the application for immunity from or reduction of the fine and the leniency statement with the proviso that no copies shall be made of the leniency application and the leniency statement; only notes may be taken thereof. Third persons pursuant to Article 55(3) shall not have access neither to the application for immunity from or reduction of the fine nor to the leniency statement; they shall not make copies or take notes.

(3) The party or other participant in the proceeding may not be present at the hearing of a witness if the protection pursuant to paragraph (2) of the fact that an application for immunity from or reduction of the fine was submitted or the respective nature of the evidence supplied in this context cannot be assured in course of the hearing. In such case, a closed hearing shall be held and the party shall not be notified thereof.

Article 79

In its decision the competition council proceeding in the case shall reduce the amount of the fine to be imposed under other provisions of this Act by ten per cent, with respect to an undertaking that made a settlement submission pursuant to Article 73/A.

Reward for the supply of indispensable evidence

Article 79/A

(1) A natural person who has disclosed to the Hungarian Competition Authority written evidence qualifying as indispensable for the establishment of an infringement committed by competitors by means of agreements or concerted practices which infringe Article 11 of this Act or Article 101 of the TFEU and which are directly or indirectly aimed at fixing purchase or selling prices, sharing of markets — including bid rigging — or the allocation of production or sales quotas, shall be entitled to receive a reward.

(2) Indispensable evidence shall also include information based on which the court issues a warrant to conduct an unannounced inspection in the course of which the Hungarian

Competition Authority takes possession of evidence specified in paragraph (1). The evidence provided also qualifies as indispensable if it can be substituted by other evidence obtained subsequently by the Hungarian Competition Authority.

(3) The amount of the reward defined in this Article shall be one percent of the fine imposed by the Competition Council proceeding in the case, but it shall not exceed fifty million forints. If more than one natural person provides indispensable evidence, each person shall be entitled to the full amount of the reward. Any one natural person shall only be entitled to receive the reward once.

(4) An executive officer, member, supervisory board member, employee or agent of an undertaking which has previously submitted an application for immunity from fines or reduction of the fine relating to the same conduct pursuant to Article 78/A shall not be entitled to a reward.

(5) No reward shall be granted where the evidence has been obtained as a result of a crime or an offence. In cases where the proceeding relating to the crime or offence is initiated before the payment of the reward, the disbursement of such reward shall be suspended until the final, non-appealable conclusion of the criminal proceeding. If the final, non-appealable decision on the commitment of a crime or offence is delivered after the disbursement of the reward, such reward shall be reimbursed to the Hungarian Competition Authority.

(6) The reward shall not be paid to more than one person if it can be established, based on the data available, that the evidence concerned originates from a single source and it was divided with the sole purpose of obtaining multiple rewards. In such case the single amount of the reward shall be equally divided among those who are entitled to it.

(7) No repayment of the reward shall be required because the court decreased the amount of the fine or overruled its imposition, or changed the decision of the Competition Council proceeding in the case in a way that makes the evidence no longer indispensable, except in all those cases where the decision was changed due to the illegality of the evidence provided by the informant which is his/her conduct.

(8) The reward shall be exempt from the payment of personal income tax.

Article 79/B

(1) The Hungarian Competition Authority shall ensure that persons who claim to possess evidence pursuant to Article 79/A(1) are able to enquire about the likely assessment of such evidence without revealing their personal identity. The person making such enquiry shall be warned that the Hungarian Competition Authority shall not be bound by the preliminary assessment and he or she shall be informed of the rules applicable to the reward.

(2) The person providing evidence which is presumed to qualify as evidence pursuant to Article 79/A(1) shall be informed of the rules relating to the reward pursuant to Article 79/A. The person providing evidence shall inform the Hungarian Competition Authority about his/her claim for the reward within five days from the day when such information is provided. The person claiming the reward shall be warned that he or she may be heard as a witness pursuant to the law and that he or she may request the confidential treatment of his/her personal identification data. This request may not be refused; however, the requesting person shall be warned that the confidential treatment of his/her personal identification data may have an effect on the probative value of the evidence provided.

(3) If the case handler or the competition council proceeding in the case is of the opinion that the evidence provided in the course of the competition supervision proceeding is unsuitable for proving the infringement specified by Article 79/A(1), the person providing such evidence shall be informed of this fact during a hearing, and upon his/her request an injunction shall be issued on the refusal of the evidence. By way of derogation from Article 55, access to the minutes of the hearing and to the aforesaid injunction shall be provided only to the person having supplied the evidence.

(4) The competition council proceeding in the case shall issue separate injunctions on the payment of the reward for each person submitting a request pursuant to paragraph (2) at the latest within thirty days after its decision closing the proceeding. The person who claimed the reward may seek a separate legal remedy (Article 82) against such injunction.

(5) The reward shall be payable within thirty days after the injunction pursuant to paragraph (4) becomes final. The reward shall be paid from the expenditure budget plans set forth in the chapter containing the revenue account for fines and penalties of the act on the central State budget.

(6) If the reward is to be repaid, such repayment shall be made, based on a separate injunction issued by the competition council proceeding in the case, at the latest within thirty days from the date when the decision justifying such repayment becomes final. The person who claimed the reward may seek a separate legal remedy (Article 82) against such injunction. The reward to be repaid qualifies as a public-law debt to be collected like taxes.

Publication of the resolution

Article 80

(1) The Hungarian Competition Authority shall, after rendering restricted access data unrecognisable, publish on its website

(a) the final, non-appealable decision;

(b) the final, non-appealable injunction closing a proceeding the opening of which was made public pursuant to Article 68(6) or Article 70(3), as well as the final, non-appealable order on the annulment of such injunction of first instance instructing the case handler who issued such injunction to reopen the case.

(2) Any final, non-appealable injunction not covered by paragraph (1) that lays down principles for the law enforcement may be made public on the website of the Hungarian Competition Authority after the restricted access data therein have been rendered unrecognisable.

(3) The resolution may be published irrespective of any request for its judicial review; however, the fact that judicial review has been requested shall be indicated when the resolution is made public.

(4) Article 55/C(2) shall apply *mutatis mutandis* to rendering restricted access data unrecognisable in the resolution.

(5) If other statutory requirements relating to the confidential treatment of data identified as a business secret or a personal secret pursuant to Article 55/A(2) or (3) are not met at the time of the publication of the decision of the competition council proceeding in the case, and the publication of the decision without such data is likely to prejudice the established facts of the case, the competition council proceeding in the case shall decide, in an injunction, following the acquisition of a statement from the data owner where necessary, on the termination of the treatment of the data concerned as privileged information. The data owner may seek a separate legal remedy against such injunction, to which Article 55/B(7) shall apply *mutatis mutandis*.

Chapter XII

Legal remedy in the competition supervision proceeding of the Hungarian Competition Authority

Objection to the investigation

Article 81

A party may make an objection, to any irregularities in the investigation proceeding, within five days of the adoption of the alleged irregular measure. The case handler or the competition council proceeding in the case shall explain the reasons for disregarding the objection in the report or in its resolution concluding the proceeding, respectively.

Legal remedy against injunctions made in the course of the proceeding

Article 82

(1) A separate legal remedy may only be sought against the injunction made by the case handler or the competition council proceeding in the case in the course of the competition supervision proceeding where this is allowed by the Act on Administrative Procedures or this Act.

(2) The rules governing appeals shall apply to the legal remedy sought against the injunction of the case handler with the proviso that appeals shall be assessed by the competition council proceeding in the case. The injunction issued by the competition council proceeding in the case may not be appealed; however, its judicial review may be requested.

(3) An appeal against the case handler's injunction, or an application for judicial review of the injunction of the competition council proceeding in the case may be submitted by the party or any person in respect of whom the injunction contains provisions, and by the complainant if the injunction must be serviced to him pursuant to this Act, within eight days from the time of the service of the injunction.

(4) Appeals against an injunction issued by the case handler shall be assessed by the competition council proceeding in the case without holding a hearing. The competition council proceeding in the case shall adopt its resolution within thirty days, and measures shall be taken to have such resolution serviced; in justified cases this time limit may be extended before it expires by the Chair of the Competition Council once, by up to thirty days.

(4a) The court shall make a decision concerning any application for review lodged against the injunction of the competition council proceeding in the case pursuant to Article 55/B(1) and (7) and Article 80(5) in a priority proceeding, within fifteen days at the latest.

(5) In competition supervision proceedings no application for reopening the case shall be lodged.

Administrative lawsuits

Article 83

(1) Decisions adopted in competition supervision proceedings may not be appealed; however, their judicial review may be requested. The statement of claim shall be submitted to the competition council proceeding in the case, or shall be sent by post as a registered item.

(2) The competition council proceeding in the case shall forward the statement of claim and the file of the case together with its position on 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 also contains an application for a suspension of enforcement, the statement of claim and

the file of the case shall be forwarded to the court within fifteen days of receipt of the application.

(3) In administrative lawsuits, upon the mandate given by the Chair of the Competition Council a member of the competition council proceeding in the case may act as representative of the Hungarian Competition Authority.

(4) The court may amend the decision of the Competition Council.

(5) Where the decision made by the competition council proceeding in the case violated a legal provision and consequently the party has the right to require the repayment of the fine, it shall be repaid with interest corresponding to the prevailing central bank base rate.

Article 84

In court proceedings started on the basis of an action filed against a decision of the competition council proceeding in the case, the rules governing administrative lawsuits set out in the Code of Civil Procedure shall apply, with the derogations set out in Article 83 of this Act.

Chapter XXIII

Litigation initiated by the Hungarian Competition Authority

Article 85

(1) If in the course of its operation the Hungarian Competition Authority perceives that any resolution of an authority violates the freedom of competition, it shall call on such authority to amend or withdraw the decision in question. The restrictions contained in Article 114(2) of the Act on Administrative Procedures shall not apply to such amendment or withdrawal; furthermore, benefits resulting from the restriction of the freedom of competition shall not qualify, for the purpose of Article 114(3) of the Act on Administrative Procedures, as rights acquired and exercised in good faith.

(2) Where such an authority fails to comply with the summons pursuant to paragraph (1) within thirty days, the Hungarian Competition Authority may, by filing an action, seek the judicial review of the resolution of such authority which infringes the freedom of economic competition, unless the judicial review of such decisions is precluded by law. No such claim may be lodged after one year has elapsed from the date when such a decision becomes final, and no application for justification may be submitted in case of failure to observe the time limit.

(3) The administrative and labour court shall have competence over such lawsuit. The provisions applicable to administrative lawsuits laid down in the Code of Civil Procedure shall apply *mutatis mutandis* to the proceedings of the court.

(4) The Hungarian Competition Authority may request the body acting in the first instance which adopted the administrative resolution violating the freedom of competition and the body acting in the second instance to provide information about those administrative resolutions which were made in proceedings the subject of which was similar to that of the proceeding relating to the contested resolution. Based on the information provided, the Hungarian Competition Authority may request the resolutions specified therein to be sent to it.

Chapter XIV

The competition supervision proceeding of the court

Article 86

(1) The court shall have competence to conduct proceedings against violations of the provisions contained in Articles 2 to 7.

(2) In the action, the interested party may demand

(a) the establishment of the infringement;

(b) the termination of the infringement and the prohibition of further infringement by the party infringing the law;

(c) that the party infringing the law make amends — through an announcement or in any other appropriate manner — and if necessary, that sufficient publicity be given to such amends by or at the expense of the party infringing the law;

(d) the termination of the injurious situation, the restoration of the status quo preceding the infringement, and the deprivation of the infringing features of the goods produced or distributed through the infringement or, where this is not possible, the destruction of such goods, as well as the destruction of any special facilities used for the production of such goods;

(e) damages, and in the case of the violation of rights relating to personality compensation for injuries, in accordance with the rules of civil law; and/or

(f)

(g) that the party infringing the law supply information about the persons who participated in the production and distribution of the goods affected by the infringement and about the business relations created for the distribution of such goods.

(3) In lawsuits initiated for the infringement of the provisions laid down in Article 4 or 6, the interested party may demand in the action, in addition to what is contained in paragraph (2),

(a) the reimbursement of the enrichment achieved through the infringement;

(b) the seizure of devices and materials used exclusively or principally for committing the infringement, and products affected by the infringement, their handover to certain persons, their recall or withdrawal from commercial circulation, or their destruction;

(c) furthermore, the publication of the decision at the expense of the party infringing the law. Publication shall mean in particular publication in a national daily newspaper or through the Internet.

Article 87

The proceeding of the court shall also extend to the imposition of fines pursuant to Article 78.

Article 87/A

The court shall prohibit the publication of any comparative advertising that has not yet been published if it finds that if published, it would constitute an infringement of Article 6/A(1). The prohibition of the publication may also be ordered as an interim measure. No fine shall be imposed contemporaneously with the prohibition of publication.

Article 88

(1) An action for a conduct infringing Articles 2 to 7 may be filed within six months of its showing; no action may be filed after the expiry of three years from the time of the showing the conduct.

(2) If the conduct complained of is continuous in nature, the time limits referred to in paragraph (1) shall begin at the time when the conduct is terminated. Where the conduct

complained of is committed through a failure to terminate a particular situation or state, the time limit shall not begin as long as such situation or state prevails.

(3)

(4) The regional court shall have competence over actions filed pursuant to this Chapter.

(5) In lawsuits initiated for the infringement of the provisions laid down in Article 4 or 6, the interested party may, in addition to civil claims, request the court to order, under the conditions applicable to interim measures, protective measures to be taken pursuant to the rules of the Act on Judicial Enforcement, if he or she proved presumptively that the satisfaction of his/her claim for damages or for the reimbursement of the enrichment achieved through the infringement is subsequently in jeopardy; furthermore, he or she may request the party infringing the law to be obliged to disclose or present its banking, financial and commercial data and documents for the purpose of the ordering of the protective measures mentioned above. The interested party, if he or she gives his/her consent to the continuation of acts which allegedly infringe the provisions laid down in Article 4 or 6, may request, in place of demanding the termination of the infringement that the court obliges the party alleged to have infringed the law to provide security. The court may order the provision of security even in the absence of any request by the interested party provided that the interested party has submitted a request demanding the termination of the infringement and the court has refused to give effect to such request.

(6) Where a party in a lawsuit initiated for the infringement of the provisions laid down in Article 4 or 6 has already proved presumptively its factual statements to a reasonable extent, the court may, upon the request of the party providing evidence, oblige the opposing party

(a) to present documents and other physical evidence in its possession and to allow access to them in the course of an inspection;

(b) to disclose banking, financial and commercial data and present documents in its possession containing such data.

(7) Preliminary evidence may be presented before the initiation of a lawsuit if the interested party has proved presumptively to a reasonable extent the fact or threat of an infringement of Article 4 or 6. Decisions made on requests relating to the ordering of preliminary evidence may be appealed.

(8) Where an infringement of the provisions laid down in Article 4 or 6 is suspected, a request for an interim measure may also be filed before the statement of claim is submitted. This proceeding falls within the competence of the regional court which decides on the request in a non-litigious proceeding. A non-litigious proceeding relating to interim measures shall be governed by the provisions of this Act and, *mutatis mutandis*, the general rules of the Code of Civil Procedure, with the derogations stemming from the special characteristics of non-litigious proceedings. If the applicant initiated the lawsuit for the infringement of the provisions laid down in Article 4 or 6 pursuant to paragraph (9) the procedural fee payable for the lawsuit shall be the sum which exceeds the fee paid for the non-litigious procedure.

(9) The court shall make its decision on the interim measure in a priority proceeding, within fifteen days of the submission of the request for the interim measure at the latest. Appeals against the decision relating to the interim measure shall be adjudged by the court of second instance in a priority proceeding, within fifteen days of the submission of the appeal at the latest.

(10) The court shall, upon the request of the opposing party, repeal its decision relating to the interim measure, including any of the measures specified in paragraph (5), or to the preliminary proof requested before the submission of the statement of claim, if the injured party fails to initiate a lawsuit for the infringement of the provisions laid down in Article 4 or 6 relating to the claim enforced by the interim measure or intended to be substantiated through the preliminary proof, within fifteen days of the service of the decision. The court shall make

its decision on the requests relating to the repeal of decisions on interim measures or the ordering of preliminary proof in a priority proceeding, within fifteen days of the submission of such request.

(11) Where any delay would cause irreparable harm, it shall be treated as a case of extreme urgency and, therefore, the hearing of the opposing party may be omitted concerning the ordering of interim measures, including the measures specified in paragraph (5). Where any delay would cause irreparable harm or where there is a high risk of evidence being destroyed, it shall be treated as a case of urgency and therefore, the hearing of the opposing party may be omitted concerning the ordering of the preliminary evidence. Decisions made without the opposing parties having been heard shall be serviced to such parties when they are executed. After the service of the decision, the opposing party may request to be heard or the decision ordering an interim measure or the preliminary proof to be modified or repealed.

(12) The court may make, with the exceptions pursuant to the second and third sentences of paragraph (5), the ordering of an interim measure or of the preliminary evidence subject to the pledging of security. If the party entitled to seek satisfaction from the security pursuant to this paragraph or paragraph (5) fails to enforce his/her claim within three months from the day when the decision repealing the order relating to the preliminary evidence or the judgment or other decision concluding the lawsuit becomes final or when the lawsuit terminates, the person who pledged the security may request the court to give back such security.

(13) In court proceedings opened for any violation of the provisions of Article 6/A(1) the burden of proof relating to the validity of any factual statement that formed part of the comparative advertising lies with the user of the business practice.

Article 88/A

(1) The competence of the Hungarian Competition Authority, established by Article 45 of this Act for the enforcement of the public interest pursuant to Article 70(1), shall not prevent the direct enforcement of civil claims pursuant to Article 11(3) and Article 93 for the infringement of the provisions laid down in Chapters III to V in court.

(2) In court proceedings opened for any violation of the provisions of Article 8 the burden of proof relating to the validity of any factual statement that formed part of the business practice lies with the user of the business practice.

Article 88/B

(1) In lawsuits in course of the assessment of which the provisions laid down in Chapters III to V of this Act shall be applied, the provisions of the Code of Civil Procedure shall be applied with the derogations set out in this Article.

(2) The court shall notify the Hungarian Competition Authority without delay if in a lawsuit the need arises to apply the provisions laid down in Chapters III to V of this Act.

(3) The Hungarian Competition Authority may submit, until the closure of the trial, comments in writing on issues relating to the application of the provisions laid down in Chapters III to V of this Act; furthermore it may deliver an oral presentation of those comments at the trial. If the Hungarian Competition Authority intends to exercise its right to deliver an oral presentation, it shall notify the court of this fact. The information provided in the comments of the Hungarian Competition Authority may be used as evidence in the lawsuit.

(4) At the summons of the court, the Hungarian Competition Authority shall inform the court, within sixty days of receipt of the order of the court to this effect, of its legal position concerning the application of the provisions laid down in Chapters III to V of this Act.

(5) Upon request, the court shall send to the Hungarian Competition Authority the documents of the lawsuit that are necessary for the preparation of the comments or for the formation of its legal position pursuant to paragraph (3) and paragraph (4), respectively. The

costs of making copies of such documents shall be provisionally born in advance by the court. On the basis of the request of the Hungarian Competition Authority, the court may grant access to the Hungarian Competition Authority to the documents instead of sending them.

(6) If, in any phase of the lawsuit the Hungarian Competition Authority notifies the court that it has started competition supervision proceedings in the case in question, the court shall suspend its proceeding until the expiry of the time limit for filing an action against the decision adopted in the competition supervision proceeding or, if an action has been filed, until the final, non-appealable conclusion of the judicial review, except if the Hungarian Competition Authority has already adopted a final, non-appealable decision in the case or it has otherwise terminated its proceedings with final, non-appealable effect, and no judicial review of the resolution of the Hungarian Competition Authority was requested, or the judicial review has already been concluded by a final, non-appealable decision. In the latter case, the Hungarian Competition Authority shall send to the court its final, non-appealable decision or the final, non-appealable decision of the court adopted in the course of the judicial review.

(6a) If the Hungarian Competition Authority proceeded in the case in question, if it was not contested by an action, the part of the decision of the Hungarian Competition Authority which contains the finding of the infringement, or if judicial review of the decision was requested, the part of the court decision reviewing the decision of the Hungarian Competition Authority which contains the finding of the infringement shall be binding upon the court.

(7) In the lawsuits, the burden of proving the facts evidencing an infringement of this Act shall rest on the party claiming the infringement of the provisions laid down in Chapters III to V of this Act; the burden of proving that the benefit of a group exemption pursuant to Article 16 of this Act applies or that the circumstances pursuant to Article 17 of this Act apply, shall rest on the party making such claim.

(8) The court may also make its decision pursuant to Article 13(4) or Article 16/A(2) if the party invoking such provisions can prove that the circumstances set by this Act apply.

(9) In the lawsuit the provisions on business secrets shall apply *mutatis mutandis* to the settlement submission pursuant to Article 73/A and to the leniency statement pursuant to Article 78/D(2).

Article 88/C

In any lawsuit for the enforcement of a civil claim filed against a party to a restrictive agreement between competitors aimed at directly or indirectly fixing selling prices, sharing markets or setting production or sales quotas that infringes Article 11 of this Act or Article 101 of the TFEU, for the purpose of proving the effect exerted by the infringement on the price applied by the party infringing the law, it shall be presumed, unless proved otherwise, that the infringement influenced the price by ten per cent.

Article 88/D

Any person to whom immunity from the fine was granted pursuant to Article 78/A may refuse to pay compensation for any damage caused by his/her conduct infringing Article 11 of this Act or Article 101 of the TFEU as long as such claim may be recovered from any other person causing the damage who is responsible for the same infringement. This provision is without prejudice to the possibility of the initiation of a joint lawsuit against persons causing the damage. Any lawsuit initiated to enforce the liability of the person causing the damage to whom immunity from fines was granted shall be suspended until the administrative lawsuit for the review of the decision of the Hungarian Competition Authority establishing an infringement is closed with final, non-appealable effect.

Chapter XV

Enforcement of the resolutions of the Hungarian Competition Authority

Article 89

(1) The Hungarian Competition Authority shall monitor *ex officio* compliance with obligations imposed in enforceable resolutions, other than those provided for in Article 77(1) and (2).

(2) The case handler, or in respect of the resolutions of the competition council, the competition council proceeding in the case, shall *ex officio* by a separate injunction initiate the enforcement of their respective resolutions adopted in the course of the competition supervision proceeding without delay, if in the case pursuant to Article 77(6)(d) or based on the information available in the case pursuant to paragraph (1) above he or she or it establishes that the obligation imposed in the enforceable resolution has not been complied with or has only been complied with in part within the time limit or that although the obligations have been performed, this did not occur in accordance what had been prescribed. The enforcement procedure shall start upon the service of the injunction on the initiation of the enforcement to the obligor.

(3) In the proceeding for a legal remedy against the injunction of the competition council proceeding in the case on the initiation of the enforcement, no application for the suspension of the enforcement shall be entertained.

Article 90

(1) The competition council proceeding in the case shall, simultaneously with the initiation of the enforcement of an obligation to carry out a specific act, to show or refrain from a certain conduct (hereinafter together: specific act) prescribed by its resolution, impose an enforcement fine if performance of such specific act cannot be effectively enforced through any other means. The enforcement fine shall not exceed fifty thousand forints per day.

(2) Upon the reasoned request of the obligor, the competition council proceeding in the case may, on one occasion, set an extended time limit for voluntary compliance, simultaneously increasing the daily rate of the enforcement fine. The increased fine shall not exceed one hundred thousand forints per day.

(3) The obligor shall pay the enforcement fine for the period between the initiation 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 verification of compliance with the decision.

(4) The enforcement fine may be imposed concurrently on both the undertaking and the legal representative thereof.

(5) The enforcement fine or the increased enforcement fine relating to any month of non-performance after the initiation of the enforcement or the expiry of the extended time limit shall fall due and become payable on the date directly following such month.

(6) The enforcement fine or the increased enforcement fine relating to the period between the beginning of the month of performance and the date of performance shall fall due and become payable on the day of performance.

Article 90/A

(1) The Hungarian Competition Authority shall contact the tax authority without delay after the initiation of the enforcement procedure for the collection of any fine unpaid within the time limit for performance, including any procedural or enforcement fines falling due, and of any unpaid late charges on unpaid fines.

(2) The Hungarian Competition Authority shall effect the enforcement of specific acts except where the competition council proceeding in the case imposed an enforcement fine. Article 61(3) shall apply to the procedural fines that may be imposed in enforcement procedures for the enforcement of specific acts.

Article 91

(1) An objection to enforcement may be lodged in connection with any unlawful resolution or measure taken in the course of the enforcement within three days after obtaining knowledge of such decision or measure or from the time the obstruction is eliminated, but not later than within one month from the date of the service of the decision or from the date on which the measure was taken.

(2) The competition council proceeding in the case shall assess the objection to enforcement lodged against the resolution or measure of the case handler, as well as the appeal against an injunction of the case handler that may be appealed pursuant to Article 144(1) of the Act on Administrative Procedures, within eight days.

(3) A request for judicial review lodged against a resolution of the competition council proceeding in the case adopted in an enforcement procedure shall be considered by the court in priority proceedings, but within fifteen days of the submission of such request at the latest.

(4) The provisions of Article 82 shall apply to objections to enforcements accordingly subject to the derogations set out in this Article.

Chapter XVI

Application of the European Union competition rules

General rules

Article 91/A

(1) In any proceedings for the application of Article 101 or 102 of the TFEU, the provisions of this Act shall be applied with the derogations set out in this Chapter and in Council Regulation (EC) No 1/2003.

(2) In carrying out the control of concentrations of undertakings which are covered by European Union law the provisions of this Act shall apply when this is provided by Council 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 proceeding of the Hungarian Competition Authority

Article 91/B

In applying Article 101 or 102 of the TFEU, the Hungarian Competition Authority shall cooperate, in a manner described in Council Regulation (EC) No 1/2003, with the European Commission and the competition authorities of the Member States.

Article 91/C

Before scheduling a hearing, the competition council proceeding in the case shall inform the European Commission and, where appropriate, the competition authority of the Member State concerned of its preliminary position (Article 73). The hearing may not be scheduled for a date earlier than thirty days after the notification of the European Commission. In such cases the administrative time limit shall be extended by an additional thirty days.

Article 91/D

If evidence originating from the European Commission or from a competition authority of another Member State is used in the course of the competition supervision proceeding, the competition council proceeding in the case shall substantiate in its reasoning to the resolution the admissibility of such evidence by demonstrating that the conditions set out in Council Regulation (EC) No 1/2003 have been met.

Article 91/E

(1) The case handler shall terminate the proceeding related to a formal complaint, furthermore, the case handler and the competition council proceeding in the case shall terminate the competition supervision proceeding started *ex officio* if the European Commission has initiated its own proceeding in the case.

(2) The proceeding related to a formal complaint may be terminated if the competition authority of another Member State has initiated its own proceeding in the case.

(3) The case handler and the competition council proceeding in the case may suspend or terminate the competition supervision proceeding started *ex officio* if the competition authority of another Member State has initiated its own proceeding in the case.

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

(4a) If the European Commission, in its decision adopted pursuant to Article 9 of Council Regulation (EC) No. 139/2004 decides to refer a case to the Hungarian Competition Authority for the assessment of a concentration with a European Union dimension, the notification submitted to the European Commission shall be treated as an application. In such case, for the purpose of implementing the second subparagraph of Article 9(6) of the Regulation, the competition council proceeding in the case shall draw up its preliminary position.

(5) If the Hungarian Competition Authority makes a request to the European Commission pursuant to Article 22(1) of Council Regulation (EC) No 139/2004, the case handler shall suspend the proceeding of the Authority simultaneously with the submission of such request.

(6) If the European Commission decides, upon the request of the Hungarian Competition Authority, to examine the concentration, the case handler shall by an injunction terminate the proceeding. If the European Commission decides not to examine the concentration, the case handler shall continue the proceeding.

(7) If in connection with an application for the authorisation of a concentration submitted to the Hungarian Competition Authority, the European Commission, in accordance with the provisions of Article 22(2) of Council Regulation (EC) No 139/2004, informs the Hungarian Competition Authority of a request pursuant to Article 22(1) of Council Regulation (EC) No 139/2004 it has received from another Member State, the case handler or the competition council proceeding in the case shall suspend the proceeding.

(8) Having informed the European Commission that it does not wish to join the request mentioned in paragraph (7), the case handler or the competition council proceeding in the case shall continue the proceeding.

(9) The case handler or the competition council proceeding in the case shall by an injunction terminate the proceeding if the Hungarian Competition Authority has joined the request mentioned in paragraph (7) and the European Commission has decided to examine the concentration.

(10) The case handler or the competition council proceeding in the case shall continue the proceeding if the Hungarian Competition Authority has joined the request mentioned in paragraph (7) but the European Commission has decided not to examine the concentration.

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

Article 91/F

(1) If in the course of the proceeding of the European Commission investigative measures specified in Article 65/A(1) are needed, as well as in the case specified by Article 21 of Council Regulation (EC) No 1/2003, the procedure set out in Article 65/A shall apply to the obtaining of prior judicial warrants relating to the investigative measure.

(2) The court shall issue a warrant if the conditions set out in Council Regulation (EC) No 1/2003 or in Council Regulation (EC) No 139/2004 are satisfied.

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

(4) If the performance of the investigative measure necessitates the assistance of the police, at the request of the European Commission the Hungarian Competition Authority shall proceed in order to ensure that such assistance is provided.

Article 91/G

(1) When the Hungarian Competition Authority is requested by the European Commission or by the competition authority of another Member State under Council Regulation (EC) No 1/2003, or by the European Commission under Council Regulation (EC) No 139/2004 to carry out investigative measures, the provisions of this Act shall be applied to granting the request with the proviso that the procedure shall be closed by an injunction of the case handler about the transmission of the evidence collected and no decision may be taken.

(2) If the Hungarian Competition Authority requests the competition authority of another Member State pursuant to Article 22(1) of Council Regulation (EC) No. 1/2003 to carry out an inspection or other fact-finding measure, the costs involved shall be treated as other procedural costs.

Rules for the proceeding of the court**Article 91/H**

(1) For lawsuits to be assessed under Article 101 or 102 of the TFEU, the provisions of the Code of Civil Procedure shall be applied with the derogations set out in this Article and in Council Regulation (EC) No 1/2003.

(2) The court shall without delay notify the European Commission and the Hungarian Competition Authority of lawsuits before it which are to be assessed under Article 101 or 102 of the TFEU. The Hungarian Competition Authority need not be specifically notified in lawsuits to which it is a party.

(3) The European Commission and the Hungarian Competition Authority may submit, until the closure of the trial, written comments on issues relating to the application of Articles 101 and 102 of the TFEU, furthermore, they may also deliver an oral presentation of those comments at the trial. If either of them intends to exercise its right to deliver an oral presentation, the court shall be notified about such intention. The information provided in the comments of the European Commission or the Hungarian Competition Authority may be used in evidence in the lawsuit.

(4) Upon request, the court shall send to the European Commission or the Hungarian Competition Authority the documents of the lawsuit that are necessary for the preparation of such comments. The costs of making copies of such documents shall be provisionally born in advance by the court. On the basis of the request of the person concerned, the court may grant access to the documents instead of sending them.

(5) If under Council Regulation (EC) No 1/2003 the court intends to request information from the European Commission concerning a question of fact or law, it shall decide about such request by an order against which no separate appeal may be lodged. Data or opinions on

questions of law given by the European Commission as an answer to such request may be used in evidence in the lawsuit.

(6) In order to fulfil the obligation pursuant to Council 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 in charge of justice. The minister in charge of justice shall send such judgment for information to the Hungarian Competition Authority.

Chapter XVII

Procedure of the Hungarian Competition Authority for the application of Regulation (EC) No 2006/2004 of the European Parliament and of the Council

Article 91/I

(1) The Hungarian Competition Authority shall be responsible for the enforcement of Regulation (EC) No 2006/2004 of the European Parliament and of the Council in respect of infringements within the European Union violating national legislation transposing

- (a) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and
- (b) Directive 2006/114/EC of the European Parliament and of the Council.

(2) In the course of mutual assistance, the Hungarian Competition Authority shall proceed in accordance with Commission Decision 2007/76/EC, as amended by Commission Decision 2008/282/EC.

(3) For information purposes, the minister in charge of justice shall publish on the website of the Ministry under his/her leadership the list of legislative provisions transposing Directive 2006/114/EC of the European Parliament and of the Council.

Article 91/J

In any procedures for the application of Regulation (EC) No 2006/2004 of the European Parliament and of the Council the provisions of this Act shall be applied subject to the derogations set out in this Chapter.

Article 91/K

(1) If the Hungarian Competition Authority is requested to supply information pursuant to Article 6 of Regulation (EC) No 2006/2004 of the European Parliament and of the Council, a competition supervision proceeding shall be started for this purpose. In such cases the proceeding shall be closed by the injunction of the case handler about the transmission of the information collected.

(2) If the case handler or the competition council proceeding in the case requests enforcement measures to be taken pursuant to Article 8 of Regulation (EC) No 2006/2004 of the European Parliament and of the Council, they may, with reference to this fact, decide not to initiate an investigation on the basis of an informal or a formal complaint or decide to terminate by an injunction the competition supervision proceeding.

(3) The case handler shall be entitled to establish whether the conditions pursuant to Article 8(4) of Regulation (EC) No 2006/2004 of the European Parliament and of the Council are fulfilled and, if the said conditions are not fulfilled, to communicate the information mentioned in Article 8(5).

PART FOUR

Chapter XVIII

Final Provisions

Article 92

(1) The Hungarian Competition Authority may initiate litigation to enforce civil claims of consumers where an infringing practice of an undertaking which falls within the competence of the Hungarian Competition Authority concerns a large group of individuals that can be defined relying on the circumstances of the infringement.

(2) The Hungarian Competition Authority is empowered to initiate such litigation only after it has initiated a competition supervision proceeding for the infringement in question. If the competition supervision proceeding is in progress, the court shall suspend its proceeding upon the request of the Hungarian Competition Authority until the conclusion of the competition supervision proceeding.

(3) No litigation may be initiated after three years have elapsed following the date when the infringement occurred. Failure to observe this time limit shall result in forfeiture of the right to initiate litigation. If the infringing conduct is continuous in nature, the time limit shall begin at the time when the conduct is terminated. If the infringing conduct is committed through a failure to terminate a particular situation or state, the time limit shall not begin as long as such situation or state prevails. The time limit for the enforcement of the claim shall not include the duration of the competition supervision proceeding.

(4) Where, with respect to the consumers affected by the infringement, the legal basis of the claim and the amount of damages described in the claim, or the content of the claim where other claims are raised, can be clearly established without considering the individual circumstances of the consumers affected by the infringement, the Hungarian Competition Authority may request the court to oblige in its judgment the undertaking in question to satisfy those claims, or otherwise, to establish the infringement covering all of the consumers indicated in the claim. If the court established the infringement concerning all of the consumers indicated in the claim, then these consumers shall only prove the amount of the damage and the causal relationship between the infringement and the damage if they initiate litigation against the undertaking concerned.

(5) In its judgment, the court shall specify the scope of consumers as well as the data necessary for their identification in respect of whom an infringement has been established and who are entitled to claim the performance of the obligation contained in the judgment.

(6) In its judgment, the court may authorise the Hungarian Competition Authority to publish such judgment in a daily newspaper of national circulation at the expense of the party infringing the law or to make it public in any other form justified by the nature of the infringement.

(7) If, in addition to establishing the infringement, the court also obliged in its judgment the undertaking to satisfy a particular claim, the party infringing the law shall satisfy the claim of the entitled consumer pursuant to paragraph (5) in accordance with the judgment. In the absence of voluntary compliance, the entitled consumer may request judicial enforcement. The court shall assess the consumer's entitlement on the basis of the conditions specified in the judgment in the course of its proceedings for the issuance of an enforceable document.

(8) The enforcement of claims by the Hungarian Competition Authority pursuant to this Article shall not prejudice the right of consumers to enforce their claims independently against the party infringing the law pursuant to the rules of the civil law.

(9) For the purposes of this Article, ‘consumer’ shall mean any natural person who is acting for purposes beyond his/her self-employment or economic activity.

Article 93

The legal consequences and the enforced civil claims arising from the violation of the provisions of this Act shall not prejudice the possibility of applying other civil law consequences or of initiating misdemeanour or criminal proceedings defined in specific other legislation.

Article 93/A

(1) In respect of agricultural products an infringement of the prohibition pursuant to Article 11 shall not be established if the distortion, restriction, or prevention of competition resulting from an agreement pursuant to Article 11 does not exceed the extent which is necessary to attain an economically justified, legitimate income and the player of the market affected by the agreement is not shut out from the attainment of such income.

(2) The minister responsible for agricultural policy shall establish whether the conditions of the exemption pursuant to paragraph (1) are met.

(3) In the course of an investigation of the infringement of the prohibition pursuant to Article 11 in respect of an agricultural product the Hungarian Competition Authority shall obtain the statement of the minister responsible for agricultural policy pursuant to paragraph (2) and shall proceed in line with it. The minister responsible for agricultural policy shall provide its statement within sixty days from the receipt of the inquiry of the Hungarian Competition Authority, for the period of which the Hungarian Competition Authority shall suspend its proceeding.

(4) The competition council proceeding in the case shall suspend the imposition of a fine in the case of an agreement infringing Article 11 where the infringement has been committed in respect of an agricultural product. In such a case the competition council proceeding in the case asks the parties to the agreement or the concerted practice to bring their conduct in line with the legislation by setting a time limit. If the time limit expires to no effect, the competition council proceeding in the case shall impose a fine.

(5) Paragraphs (1)-(4) shall only apply to a case, if the necessity of the application of Article 101 of the TFEU does not arise. The necessity of the application of Article 101 of the TFEU shall be established by the Hungarian Competition Authority in its competition supervision proceeding pursuant to Article 3(1) of Council Regulation (EC) No 1/2003, before making the final resolution.

Article 94

The procedural rules governing cooperation with foreign competition authorities are set out in international agreements or in specific other legislation.

Article 94/A

The provisions of the Act on Complaints and Notifications of Public Concern shall not be applicable to the matters covered by this Act.

Article 95

(1) This Act shall enter into force on 1 January 1997.

(2)

(3)-(4)

Article 95/A

(1) The provisions of this Act:

(a) as established by Act LVI of 2009 on the Amendments Relating to the Entry into Force of Act CXI of 2008 on the Amendment of Act CXL of 2004 on the General Rules of Administrative Procedures and Services and to the Transposition of Directive 2006/123/EC

on Services in the Internal Market, shall apply to proceedings initiated after the entry into force of these provisions and to repeated proceedings;

(b) as established by Act CLII of 2010 on the Amendment of Certain Acts in Relation to the Calculation of Time Limits in Calendar Days, shall apply to proceedings initiated after the entry into force of these provisions and to repeated proceedings;

(c) as established by Act CLVIII of 2010 on the Hungarian Financial Supervisory Authority, shall apply to proceedings initiated after the entry into force of these provisions and to repeated proceedings.

(2)

(3) Of the provisions of this Act established by Act XIV of 2009 on the Amendment of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices:

(a) Article 30(2) and Article 79 shall apply to concentrations created after the entry into force thereof;

(b) Article 78/A and Article 78/B shall apply to applications submitted after the entry into force thereof;

(c) Article 86(3) and paragraphs (5) to (12) of Article 88 shall apply to infringements committed after the entry into force thereof;

(d) Article 88/C shall apply to civil litigations initiated after the entry into force thereof;

(e) Article 88/D shall apply to conducts causing damages carried out after the entry into force thereof.

(4) The provisions of this Act established by Act CXV of 2011 on the Special Provisions for Bankruptcy and Liquidation Proceedings Concerning Major Economic Operators of Preferential Status for National Economy Considerations and on the Related Amendments shall apply to proceedings initiated after their entry into force.

Article 95/B

(1) The provisions of this Act relating to administrative fees and procedural costs, as established by Article 19 of Act CLXXIV of 2011 on the Amendment of Act CXL of 2004 on the General Rules of Administrative Procedures and Services and of Other Related Acts, and on the Amendment of Certain Acts Relating to the Review of the Regulatory Competences of Ministers (hereinafter: Act on Administrative Procedures amendment), shall apply to proceedings initiated after the entry into force of these provisions, with the proviso that a separate legal remedy may be sought against injunctions for the termination of the proceedings for non-payment of the administrative fee, and – with suspensory effect on their enforcement – injunctions establishing the costs of the proceedings.

(2) The provisions of this Act, as established by Articles 20 to 22 of the Act on Administrative Procedures amendment shall apply — with the exception set out in paragraph (3) — to proceedings initiated after the entry into force of these provisions and to repeated proceedings.

(3) The provisions of this Act, as established by Articles 20 to 22 of the Act on Administrative Procedures amendment, shall also apply to enforcement procedures initiated after the entry into force of these provisions.

Article 95/C

(1) Article 37(4), Article 38, Article 41 and Article 42 of this Act, as established by Act CCI of 2013 on the Amendment of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices and of Certain Regulations Relating to the Proceedings of the Hungarian Competition Authority (hereinafter: the Amending Act) shall also apply to legal relationships existing at the time when this provision enters into force.

(2) Within thirty days following the entry into force of Articles 42/A to 42/C of this Act, as established by the Amending Act, the civil servants and civil service administrative support

staff employed by the Hungarian Competition Authority shall be categorised into grades and pay grades pursuant to Articles 42/A to 42/C. The salary and paid vacation of civil servants and civil service administrative support staff employed by the Hungarian Competition Authority — without prejudice to the adjustment pursuant to Article 133 of the Public Officials Act — may not be reduced in consequence of the application of Articles 42/A to 42/C, insofar as they remain employed in the position held before the entry into force of Articles 42/A to 42/C.

(3) Subject to the derogations pursuant to paragraphs (4) and (5), the procedural regulations of this Act, as established by the Amending Act, shall apply to competition supervision proceedings, proceedings relating to formal or informal complaints and sectoral inquiries initiated or repeated after the entry into force of these provisions; Articles 78/A to 79 of this Act, as established by the Amending Act, shall apply to applications for immunity from or reduction of the fines submitted after the entry into force of these provisions.

(4) Article 29, Article 29/A and Article 78(1)(c) of this Act, as established by the Amending Act, shall apply to concentrations created after the entry into force of these provisions.

(5) The provisions of this Act relating to the management of restricted access data, access to file and the publication of resolutions, as established by the Amending Act, shall also apply to proceedings which are in progress at the time of the entry into force of these provisions, with the proviso that no resolution pursuant to Article 55/B(2) may be adopted with respect to data to which access has already been restricted at the time of the entry into force of these provisions by a final, non-appealable resolution upon a request submitted for the restriction of access to documents on the grounds of confidentiality of business secrets, and any data identified as a business secret or a personal secret in requests submitted for the restriction of access, which are pending at the time of the entry into force of these provisions, shall be considered as having been indicated pursuant to Article 55/A(2).

(6)(a) The Hungarian Competition Authority shall proceed in accordance with the provisions relating to infringements of Chapter III for any conduct infringing the provisions of Article 12 or Article 13(2) of Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions applying to Commercial Advertising Practices, and for any code of conduct inciting such conduct carried out or applied before the entry into force of Articles 105 to 107 of the Amending Act;

(b) the court shall have competence in accordance with the provisions relating to infringements of Chapter II for any conduct infringing the provisions of Article 13(1) of Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions applying to Commercial Advertising Activities, as well as for any code of conduct inciting such conduct carried out or applied before the entry into force of Articles 105 to 107 of the Amending Act.

(7) Article 95/A(2) of this Act, as established by Article 36 of Act LXXVI of 2012 on the Technical Deregulation of Certain Acts and Other Legislation With a View to Eliminating the Unnecessary Over-Regulation of the Legal System, shall continue to apply to cases in progress at the time of its entry into force.

Article 95/D

(1) Article 44(1), Article 76(1)(l) and Article 78(8) and (9) of this Act, as established by Act LXXVIII of 2015 on the Amendment of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices and of Certain Regulations Relating to the Proceedings of the Hungarian Competition Authority (hereinafter: the Amending Act²) shall apply to proceedings initiated after the entry into force of these provisions and to repeated proceedings.

(2) Article 27(1) and (6), Article 28(2), Article 29/A(1a) and (1b), Article 62(4), Article 62/A(5) and Article 72(2) of this Act, as established by the Amending Act², shall apply to concentrations created after the entry into force of these provisions.

(3) Article 55(7), 55/B(3) and (7), Article 73/A(5) and (7) and Article 78/D(2) of this Act, as established by the Amending Act2, shall also apply to those proceedings still in progress at the time of the entry into force of these provisions, in which the preliminary position of the competition council proceeding in the case or the report completing the investigation has not yet been sent pursuant to Article 73 to the parties.

(4) Article 55/B(5) of this Act, as repealed by the Amending Act2, shall not apply to those proceedings in which the preliminary position of the competition council proceeding in the case or the report completing the investigation has not yet been sent pursuant to Article 73 to the parties.

(5) Article 93/A of this Act, as established by the Amending Act2, shall also apply to proceedings being in progress at the time of the entry into force of these provisions and to repeated proceedings.

Article 96

The Government shall be authorised to regulate, by way of decrees, the exemption of certain groups of agreements from the prohibition pursuant to Article 11 of this Act.

Article 97

The Government shall be authorised to declare, for considerations of public interest, specific concentrations of undertakings to be of strategic importance for the national economy by way of a decree.

Article 98

(1) Article 6/A, Article 8, Article 10, Article 10/A(1), Article 10/B, Article 10/C, Article 64/B(2), Article 72/A(1)(a), Article 76(1)(i), Article 86(1), Article 87/A, Article 88(13) and Article 88/A(2) serve the purpose of compliance with Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

(2) The following provisions of this Act contain regulations for the implementation of the European Union legislation indicated below:

(a) Article 1(2), Article 33(1), Article 36(1)(e), Article 91/A(1), Articles 91/B to 91/D, Article 91/E(1) to (4) and Articles 91/F to 91/H for Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;

(b) Article 36(1)(e), Article 91/A(2), Article 91/E(4a) to (11) and Article 91/G(1) for Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings;

(c) Chapter XVII for Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, in the context of the scope of the duties and proceedings of the Hungarian Competition Authority;

(d) Article 91/I(2) for Commission Decision 2007/76/EC of 22 December 2006 implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance, as amended by Commission Decision 2008/282/EC of 17 March 2008, in the context of the scope of the duties and proceedings of the Hungarian Competition Authority.