

Act CLXIV of 2005 on Trade
/competition law related provisions of the Act*/

Scope of the Act

§ 1 This Act shall apply to the pursuance and control of commercial activities, with the exception of health care services regulated in another statute, on the territory of the Republic of Hungary.

Definitions

§ 2 For the purposes of this Act:

- (a) the term “*supplier*” means a person which sells products and services, for the purposes of distribution, to other persons performing commercial activities; ...
- (e) the term “*significant market power*” refers to a market situation as a consequence of which the dealer becomes or has become a contracting partner for the supplier which the latter is unable to reasonably evade at forwarding its goods and services to the customers and which is able, due to the size of its share in the turnover, to influence regionally or all over the country market access of a product or a group of products;
...

Rules for undertakings having significant market power

§ 7 (1) It shall be prohibited to abuse significant market power vis-à-vis suppliers.

(2) An abuse within the meaning of Section (1) may, in particular, consist in:

- (a) unjustifiably discriminating against suppliers,
- (b) unjustifiably restricting suppliers access to sales opportunities,
- (c) imposing unfair conditions on suppliers, which result in a distribution of risks one-sidedly benefiting the dealer, in particular disproportionately shifting costs which are incurred also in the business interests of the dealer, as costs of storage, advertising, marketing etc., on the suppliers,
- (d) unjustifiably altering contract terms, to the detriment of the suppliers, after concluding the contract or reserving this option for the dealer,
- (e) subjecting future business relations of the dealer with the suppliers to conditions, in particular stipulating or retrospectively enforcing the application of a most-favourable-conditions clause or obliging the suppliers to give discounts, in respect of certain products and for a specified period of time, exclusively to the dealer in question or obliging the suppliers to produce, in order to get any of their products to be distributed, products sold under the trade mark or brand of the dealer,
- (f) charging fees one-sidedly to suppliers for, in particular, putting them on the dealer’s suppliers-list or allowing their goods to become part of the dealer’s product range or in consideration of services not demanded by the suppliers,

* Amended by Act CIX of 2006 on the Amendment of Certain Statutes in Connection with Changes in the Branch of Government. The amendment has not concerned the competition law related provisions of the Act.

- (g) threatening with termination of the agreement (delisting) with the intention to enforce one-sidedly beneficial contractual terms,
 - (h) unjustifiably forcing suppliers to avail themselves of third persons as suppliers or of an own service provider of the dealer,
 - (i) applying sales prices, in cases in which the dealer is not the owner of the goods, which are lower than the invoice prices determined in its contracts, save for prices applied in the sales of substandard goods or in clearance sales within a seven-day period before the expiry of the quality preservation term or introduction prices applied no longer than 15 days or prices applied in end-of-season clearance sales or in cases where the types of products dealt with or the field of activities are changed or in clearance sales of stocks of outlets which will be closed down.
- (3) Significant buyer power vis-à-vis suppliers exists where the consolidated net turnover derived from commercial activities of the group of undertakings in question, including all the parent companies and subsidiaries under Act C of 2000 on Accounting or, for the case of joint purchasing, all the undertakings establishing the purchasing association in the previous year (hereinafter: “the consolidated net turnover”) was higher than HUF 100 billion.
- (4) In addition to as defined in Section (3) above, significant market power of the dealer also exists where the commercial undertaking or the group of undertakings or the purchasing association is in, or acquires, based on the structure of the market, the existence of entry barriers, the market share and the financial strength of the undertaking and its other resources, the size of its trading network, the size and location of its outlets and all of its trading and other activities, a one-sidedly favourable bargaining position vis-à-vis its suppliers.
- (5) Undertakings falling under Section (3) above shall be obliged to use fair commercial practices in their relations with suppliers, prepare a self-regulating code of ethics listing those practices and create a procedural system to be applied in cases in which principles of the code of ethics in question are infringed. The code of ethics shall be prepared and submitted for approval to the Hungarian Competition Authority within six months of the date of the entry into force of this Act.

Involvement of interest representation organisations

- § 8 (1) Social organisations representing commercial undertakings shall be entitled to the status of a party in public administrative proceedings (including competition supervision proceedings) started against infringements of the provisions of this Act which have concerned a wide range of dealers or suppliers or have been substantially disadvantageous to the operation of undertakings.
- (2) The right to proceed under Section (1) is without prejudice to the right of suppliers and undertakings to take further action against the offender.

The control of how commercial activities are practised, sanctions

- § 9 (2) The supervision of abusive practices within the meaning of § 7 of dealers having significant market power shall be performed by the Hungarian Competition Authority, with the application in its proceedings, conducted under the procedural rules laid down in Act LVII of 1996 on the Prohibition of Unfair and Restrictive

Market Practices (hereinafter: “PURA”), of the provisions which are governing the cases the subject of which are infringements of § 21 PURA.

Closing provisions

§ 10 (1) This Act shall enter into force on the first day of the sixth month following its promulgation.*

* This Act was enacted by Parliament on 13 December 2005 and published in Magyar Közlöny 2005/168, Vol. 1 (on 25 December 2005), p. 11008-11013.