

Act LVII of 1996

on the Prohibition of Unfair Trading Practices and Unfair Competition

The public interest attached to having a competitive market environment that best serves the economy and social progress, as well as the interests of the companies operating in observation of the requirements of integrity in business dealings as well as that of consumers, requires for the State to lay down legal facilities to ensure the fairness and freedom of economic competition. This requires the introduction of competition laws so as to prohibit trading practices that disregard the requirements of fair competition or that have the capacity to restrict competition, and prevent the concentration of companies as they are detrimental to competition, providing also for the required organizational and procedural requirements. With a view to achieve these goals, Parliament has adopted the following Act, taking into account the requirement of integration into the legislative framework of the European Community and the traditions of national competition laws:

PART I

Chapter I

Scope

Section 1.

(1) This Act shall apply to the market conduct of natural and legal persons and unincorporated business associations, including the Hungarian branches of foreign-registered companies, with the exception of the forms of conduct described in Chapter VI, (hereinafter referred to collectively as "companies"), displayed in the territory of the Republic of Hungary, unless otherwise provided by law. The market conduct displayed by companies abroad, other than the forms of conduct regulated in Chapters II and III, shall also fall under the scope of this Act, if the effect of such conduct may manifest itself within the Republic of Hungary.

(2) For the purposes of Articles 81 and 82 of the Treaty establishing the European Community (hereinafter referred to as "EC Treaty"), the market conduct governed under these articles shall be subject to the procedural regulations of this Act where the Office of Economic Competition or the Hungarian court has jurisdiction pursuant to Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (hereinafter referred to as "EC Regulation 1/2003").

Chapter II

Prohibition of Unfair Competition

Section 2.

It is prohibited to conduct economic activities in an unfair manner, in particular, in a manner violating or jeopardizing the lawful interests of competitors and consumers, or in a way which is in conflict with the requirements of business integrity.

Section 3.

It is prohibited to infringe upon or jeopardize the good reputation or credibility of any competitor by communicating or disseminating untrue facts, or by misrepresenting true facts with any false implication, as well as by any other practices.

Section 4.

(1) It is prohibited to gain access to or use business secrets in an unfair manner, and to disclose such secrets to unauthorized parties or to publish them.

(2) It shall also qualify as gaining access to business secrets in an unfair manner where access to such business secrets has been obtained without the consent of the entitled person through a party in a confidential relationship or business relationship with such person at the time of or prior to gaining access to the secrets.

(3) For the purposes of this Act:

a) 'business secret' shall have the meaning defined in Subsection (2) of Section 81 of the Civil Code;

b) 'confidential relationship' shall, in particular, mean employment relationship, other work-related contractual relationship and membership;

c) 'business relationship' shall comprise the provision of information, negotiations and making proposals prior to making a deal, whether or not a contract is subsequently signed in consequence.

Section 5.

It is prohibited to make an unfair appeal to another party which is aimed at dissolving an economic relationship maintained with a third party or at preventing the establishment of such a relationship.

Section 6.

Without the express prior consent of the competitor, goods or services (hereinafter referred to collectively as "goods") may not be produced, placed on the market or advertised with such typical external appearance, packaging or marking (including the indication of origin) by which the competitor or its goods are normally recognized; furthermore, any such name, marking or indication of goods may not be used by which the competitor or its goods are normally recognized.

Section 7.

It is prohibited to interfere with the integrity and fairness of bidding (in particular, public tender, invitation to tender), auctions and transactions conducted on an exchange market in any way. This prohibition shall only apply to the actions which are not regulated by another provision of this Act or by a separate act.

Chapter III

Prohibition of the Unfair Manipulation of Consumer Decisions

Section 8.

(1) It is prohibited to mislead consumers in economic competition. For the purposes of this Act, 'consumer' shall mean customers, buyers and users.

(2) The following conduct shall, in particular, be construed as misleading consumers:

a) the disclosure of untrue facts with respect to the price and essential qualities of the goods (such as the composition and use thereof, the effect they have on health and on the environment, the handling of goods, as well as the provenance, origin, source of supply or manner of the purchase of goods), or the misrepresentation of true facts with any false implication, the fitting of goods with misleading marking, or the provision of any information intended for misleading consumers in respect of the essential qualities the goods;

b) the suppression of the goods' non-conformity with legal provisions or with the requirements which the goods are commonly expected to satisfy, and that the use thereof requires the implementation of conditions substantially different from customary means;

c) where information suitable for misleading consumers is disclosed in respect of circumstances related to the sale and distribution of the goods and influencing the consumers' decision, in particular, in respect of the method of distribution, the terms of payment, any attached gift, discounts and any chances of winning;

d) where a purchase is falsely purported as an extraordinary bargain.

Section 9.

In establishing whether the information provided is capable of misleading the consumers, the colloquial meaning of the terms used, as known in everyday life and/or in the trade, shall apply.

Section 10.

It is prohibited to employ business methods intended to unjustifiably restrict the consumers' freedom of choice. Such methods shall be comprised as such where circumstances are created so as to make it significantly more difficult to make an informed assessment of the goods or the offer, and to compare the goods or the offer with other goods or another offer.

Chapter IV

Prohibition of Agreements Restricting Economic Competition

Section 11.

(1) Agreements and concerted practices between companies, as well as the decisions of the social organizations of companies, public bodies, unions and other similar organizations of companies, unions (hereinafter referred to collectively as "agreements"), which are aimed at the prevention, restriction or distortion of economic competition, or which may display or in fact displays such an effect, are prohibited. An agreement concluded between companies that are not unrelated shall not be construed as such.

(2) This prohibition shall, in particular, apply to the following:

a) fixing the purchase or sales prices, and defining other business conditions directly or indirectly;

b) restricting manufacture, distribution, technical development or investment or keeping them under control;

c) dividing the sources of supply and restricting the freedom of choosing from among them, as well as excluding specific consumers from the purchase of certain goods;

d) dividing the market, excluding any party from selling, and restricting the choice of means of sales;

- e)
- f) preventing any party from entering the market;
- g) where, in respect of transactions of an identical value or of the same nature, certain partners are discriminated against, including the setting of prices, payment deadlines, discriminatory sales or purchase conditions or the employment of methods which cause disadvantage to certain business partners in the competition;
- h) rendering the conclusion of a contract conditional upon undertaking any commitment which, due to its nature or with regard to the usual contractual practice, do not form part of the subject of the contract.

(3) The legal consequences which are attached by this Act to any infringement of the prohibition defined in subsection (1) shall apply concurrently with the legal consequences prescribed in the Civil Code in connection with contracts that violate the provisions of the legal rules.

Section 12.

Section 13.

(1) Agreements of minor importance shall not be subject to prohibition.

(2) An agreement shall be construed of minor importance if the total joint share of the parties concluding the agreement and of the companies that are not independent from such parties does not exceed ten percent in the market in question, except if it pertains to:

a) the fixing of purchase or selling prices, whether directly or indirectly, between competitors; or

b) the dividing of the market among competitors.

(3) The requirement of a market share of ten per cent or less shall be satisfied during the operative term of the agreement or in each calendar year if the said term covers more than one year.

(4) The provisions of Subsections (1)-(3) notwithstanding, any agreement that is able to create an environment, in conjunction with other agreements of the like, whereby competition in the relevant market is substantially obstructed, restricted or distorted, shall be subject to prohibition. The Office of Economic Competition shall have powers to declare an agreement illegal, in which case no penalty shall be imposed.

Section 14.

(1) The relevant market shall be defined with regard to the goods subject to the agreement and to the geographical territory.

(2) In addition to the goods for which the agreement is concluded, the goods considered as reasonable substitutes in terms of use, price, quality and the conditions of performance (substitution in demand) shall also be taken into account, as well as the factors involved in substitution in supply.

(3) A geographical territory is an area, outside of which:

a) the consumer is unable to purchase the goods, or is only able to purchase the goods under substantially less favourable conditions; or

b) the seller of the goods is unable to sell the goods, or is only able to sell the goods under substantially less favourable conditions.

Section 15.

(1) The companies belonging to the same company group and the companies which are controlled by the same companies are considered non-independent.

(2) A company shall be regarded to be part of the same group with any company:

a) that it controls independently according to Subsection (2) or (3) of Section 23;

b) that controls it according to Paragraph a);

c) that is controlled according to Paragraph a) by a company referred to in Paragraph b);

d) that is controlled jointly by any two or more of the companies referred to in Paragraphs a)-c) and the company.

(3) The companies mentioned in Section 25, as well as the companies, the majority of which is owned by the State or local self-governments which are vested with independent decision-making power in respect of defining their market policies [Subsection (3) of Section 27], shall be regarded as independent.

Section 16.

Certain groups of such agreements may be exempted by the Government in a decree from the prohibition defined in Section 11. The Government may provide for the exemption of specific groups of agreements with regard to the criteria set out in Section 17 of this Act.

Section 16/A.

(1) Aggregate exemption from the prohibition of restrictive market practices shall not apply to an agreement if the conditions laid down in Section 17 are not satisfied as result of the impact it creates in the particular market in conjunction with other agreements of the like.

(2) The Office of Economic Competition is vested with powers to declare that, with a view to Subsection (1), aggregate exemption shall not apply to an agreement in the future, in which case no penalty shall be imposed.

Section 17.

The prohibition defined in Section 11 shall not apply to an agreement if:

a) it contains facilities to improve the efficiency of production or distribution, or to promote technical or economic development, or the improvement of means of environmental protection or competitiveness;

b) a fair part of the benefits arising from the agreement is conveyed to the consumer;

c) the concomitant restriction or exclusion of economic competition does not exceed the extent required for attaining the economically justified common goals;

d) it does not contain facilities for the exclusion of competition in connection with a considerable part of the goods concerned.

Section 18.

Section 19.

Section 20.

The burden of proof to evidence that an agreement is exempted from the prohibition on the basis of Section 16 or Section 17 shall lie with the party who relies on the exemption.

Chapter V

Prohibition of Abuse of Dominant Position

Section 21.

It is prohibited to abuse a dominant position, in particular:

- a) to fix purchase or sales prices unfairly in business relations, including where general contract terms and conditions are applied, or to stipulate unjustified advantages by any other means, or to force the acceptance of detrimental terms and conditions on the other party;
- b) to restrict production, distribution or technical development to the detriment of the consumers;
- c) to refuse to establish or maintain business relations adequate for the nature of the transaction without any justification;
- d) to influence the other party's business decisions for the purpose of gaining unjustified advantages;
- e) to withdraw goods from general circulation or to withhold goods without justification prior to price increases or for the purpose of causing prices to rise, or by means otherwise capable of securing unjustified advantages or causing a disadvantage in competition;
- f) to render the supply and acceptance of goods contingent upon the supply or acceptance of other goods, or to render the conclusion of a contract conditional upon undertaking any commitment which, due to its nature or with regard to the usual contractual practice, does not form part of the subject of the contract;
- g) in connection with transactions of an identical value or of the same nature, to discriminate against certain business partners without due cause, including the setting of prices, payment deadlines, discriminatory sales or purchase conditions or the employment of methods which cause disadvantage to certain business partners in the competition;
- h) to force competitors off the relevant market, or to use excessively low prices which are based not upon better efficiency in comparison to that of the competitors, so as to prevent competitors from entering the market;
- i) to hinder competitors from entering the market in any other unjust manner; or
- j) to create a market environment that is unreasonably disadvantageous for the competitors or to influence their business decisions for the purpose of gaining unjustified benefits.

Section 22.

(1) 'Dominant position' shall mean when a company is in a position to conduct its economic activities in a given market in a manner largely independent of others, without having to take into consideration the market policy of its competitors, suppliers, buyers or other business partners in so far as to eliminate effective competition.

(2) The following criteria shall, in particular, be taken into consideration for the assessment of dominant position:

- a) the costs and risks entailed by entering into the relevant market and by exiting it, and the implementation of the technical, economic or legal background that may be required;
- b) the assets, financial strength and income of the company or group of companies [Subsection (2) of Section 15], and/or the development thereof;
- c) the structure of the relevant market, the ratios of market shares, the conduct of the participants of the market, and the economic influence exercised by the company or group of companies over the development of market trends.

(3) Dominant position may be achieved by a single company or group of companies or by several companies or groups of companies jointly.

Chapter VI

Controlling the Concentration of Companies

Section 23.

(1) A concentration shall be deemed to arise where:

- a) two or more previously independent companies merge, or one merges into another, or a part of a company becomes a part of another company which is independent of the first company;
- b) where one or more companies acquire direct or indirect control of the whole or parts of one or more other, previously independent, companies; or
- c) several independent companies jointly set up a company to be controlled by them that is capable to function in all respects as an independent company.

(2) For the purposes of this Act, one or more companies acting jointly shall be deemed to have direct control if:

- a) it holds over fifty per cent of the shares, stocks or voting rights in the controlled company; or
- b) it has the power to designate, appoint or dismiss the majority of the executive officers of the other company; or
- c) it has the power, by contract, to assert major influence over the decisions of the other company; or
- d) it acquires the ability to assert major influence over the decisions of the other company.

(3) For the purposes of this Act, a company shall be deemed to have indirect control over another company when the latter is controlled, whether independently or jointly, by one or more companies under the control of the former.

(4) For the purposes of this Act, the activities of a liquidator or receiver shall not be considered as control.

(5) For the purposes of this Act, 'business unit' shall mean the assets or rights, including clients and customers, that, if acquired, enable the acquiring company to enter a market by itself or together with the assets and rights at its disposal.

Section 24.

(1) Authorization from the Office of Economic Competition shall be required for the merger of companies if the combined net sales revenue of all groups of companies involved (Subsection (5) of Section 26), and the net sales revenues of the companies controlled jointly by members of the groups of companies involved with other companies in the previous financial year exceeded fifteen (15) billion forints, and among the groups of companies involved there are at least two groups with net sales revenues of five hundred million forints or more in the previous year together with the net sales revenues of companies controlled by members of the same group jointly with other companies.

(2) The five-hundred-million-forint threshold shall cover the mergers - that took place during the two-year period preceding the merger and which were not subject to authorization - between companies that used to be part of the group that lost control due to the merger with companies of the group that acquired control.

(3) In connection with the merger of insurance companies, the value of the gross insurance premiums shall be taken into account instead of the net sales revenue. For the merger of investment service providers and investment funds, the revenue from investment services and membership fees, respectively, shall be taken into account. In connection with the merger of credit institutions and financial enterprises the following items of income shall be taken into account instead of the net sales revenue:

- 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 companies,
- c) commissions receivable,
- d) net profit on financial operations,
- e) other operating income.

Section 25.

The temporary (not to exceed one year) acquisition of control or assets by an insurance company, credit institution, financial holding company, mixed-activity holding company, investment firm or property management organization shall not be deemed a concentration, if such acquisition is made in preparation of resale, and if control is not exercised, or it is limited to an extent that is absolutely necessary. The Office of Economic Competition may authorize the extension of the said one-year period if the company in question provides proof that alienation could not be accomplished within one year.

Section 26.

- (1) The companies concerned are the companies involved directly and indirectly in the concentration.
- (2) Direct participants are the ones between whom the concentration arises.
- (3) Indirect participants are other members of the group of companies [Subsection (2) of Section 15] in which the direct participant is also a member.
- (4) In the course of determining the circle of direct participants, those whose right of control terminates as a result of the merger shall be disregarded.
- (5) 'Group of companies concerned' means any direct participant under Subsection (2), plus the indirect participants with which it is affiliated in accordance with Subsections (3) and (4).

Section 27.

- (1) For the purposes of Subsection (1) of Section 24, in the course of calculating net sales revenues, the turnover between the companies concerned (Section 26) or between the divisions thereof shall be disregarded.
- (2) In the course of calculating the net sales revenues of (non-resident) companies whose corporate domicile is abroad, the net sales revenues generated in the previous business year from the goods sold in the territory of the Republic of Hungary shall be taken into account.
- (3) In calculating the net sales revenues of the companies concerned, under the majority control of the State or by local self-governments, that company comprising a business unit shall be taken into account which has an independent right of decision-making in respect of defining its market policy.
- (4) In respect of the alienation of business units, the net annual revenue of the previous year received by the company from the utilization of assets and rights shall be taken into consideration.
- (5) The net sales revenues of a company under joint control shall be divided equally among the controlling companies, whereupon the companies of the same group shall be treated as a single entity for the purposes of calculating the controlling share.

Section 28.

(1) In the case of merger or fusion, the direct participant or, in all other cases, the party acquiring the business unit or direct control must - as prescribed under Section 24 - apply for authorization.

(2) The application for authorization shall be submitted within thirty (30) days from the publication of the public invitation to tender, the conclusion of the contract, or the acquisition of the right of control, whichever occurs earlier.

(3) In the case of the concentration of credit institutions as well as of insurance companies, the application for authorization shall be submitted to the Office of Economic Competition simultaneously with the application for the permit of the supervisory agency defined in specific other legislation.

Section 29.

The authorization of the Office of Economic Competition is required for the conclusion of a contract resulting in a concentration as defined in Section 24.

Section 30.

(1) Applications for authorization shall be adjudged upon weighing the advantages and disadvantages resulting from the concentration, such as in particular:

a) the structure of the relevant markets; the existing or potential competition, the purchase and sales opportunities on the relevant markets; the costs and risks, as well as the technical, economic and legal requirements for entering into and exiting from, the market; the foreseeable impact of a concentration upon competition in the relevant markets;

b) the market position and strategy of the companies concerned, their economic and financial capability, their business policy, their competitiveness on national and foreign markets, and any expected changes therein;

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

(2) The Office of Economic Competition may not refuse to grant authorization if, with regard to the contents of Subsection (1), the concentration does not create or intensify a dominant position in so far as to prevent the development, maintenance or expansion of effective competition in the relevant market (Section 14) or in a considerable segment thereof. If the purpose or effect of setting up a company jointly as defined in Paragraph c) of Subsection (1) of Section 23 is the implementation of concerted practices among the group of companies, the merger shall be adjudged in accordance with Section 17.

(3) In the interest of reducing the disadvantageous effects of concentrations, the Office of Economic Competition may render its authorization contingent upon prior or subsequent conditions; in particular, certain obligations, such as having to alienate certain business units or other assets within a prescribed deadline; or the termination of control over a company that is indirectly involved.

(4) If authorization is granted as contingent upon any prior condition, it shall become operative once the condition has been satisfied. An authorization contingent on any subsequent condition shall become operative when it is granted; however, it shall be cancelled if the condition is not satisfied.

(5) The scope of authorization granted for concentrations shall cover the restrictive market practices necessary for the implementation of such concentrations.

Section 31.

If, in the course of a competition control procedure, it is established that a concentration that has been implemented without authorization (which, according to Section 24, requires

authorization) could not have been authorized, the Office of Economic Competition, in order to restore effective competition, may prescribe the separation or alienation of the merged companies or assets and business units, the termination of joint control, or some other obligation within the deadline prescribed.

Section 32.

(1) The Office of Economic Competition shall revoke its decision adopted on the basis of Section 30 if:

a) granting of the authorization in a decision not reviewed by the court is based upon the misleading communication of a fact of import for the purposes of making the decision; or

b) the obliged company has failed to perform any of the obligations stipulated in the decision.

(2) The Office of Economic Competition may amend its decision passed on the basis of Section 30 if the obligor has failed to perform any of the obligations or is unable to satisfy any of the conditions laid down in the decision for reasons that are not attributable to him.

PART II

Chapter VII

The Office of Economic Competition

Section 33.

(1) The Office of Economic Competition is a central budgetary agency with an independent chapter in the structural order of the central budget; the key figures on the expenses and income side of its budget may be reduced only by Parliament decision.

(2) The responsibilities related to supervising competition, as defined in this Act and in the Act on Price Control Regulations, shall be fulfilled by the Office of Economic Competition, unless this Act provides otherwise. The tasks and duties of the Office of Economic Competition shall be prescribed on the strength of an Act.

(3) The Office of Economic Competition shall handle all duties conferred upon the competition authorities of Member States by the competition laws of the Communities.

Section 34.

The provisions of Act XXIII of 1992 on the Legal Status of Civil Servants shall apply to those in a civil service legal relationship with the Office of Economic Competition, with due regard to the exceptions set out in this Act.

Section 35.

(1) The chief executive of the Office of Economic Competition is the President.

(2) The president of the Office of Economic Competition shall be nominated by the Prime Minister and appointed by the President of the Republic. The two vice-presidents of the Office of Economic Competition shall be nominated by the president of the Office of Economic Competition to the Prime Minister, who - if in agreement - shall forward it to the President of the Republic. The vice-presidents, one of whom shall be assigned to fill the office of the president of the Competition Council, shall be nominated by the President of the Republic. The terms of the president and the vice-presidents shall be six (6) years. The terms of these officers may be renewed; the term of the president of the Competition Council may be renewed only once.

(3) Prior to the Prime Minister making his nomination the candidates shall be heard by the competent committee of Parliament in a public hearing, upon the initiative of the Prime Minister.

(4) The mandate of the President and vice-presidents of the Office of Economic Competition shall terminate if:

- a) the term of the appointment expires;
- b) the President (vice-president) resigns his office;
- c) the President (vice-president) dies;
- d) the President (vice-president) is relieved from his office by the President of the Republic, on the recommendation of the Prime Minister.

(5) The President (vice-president) shall be relieved if he:

- a) has become unworthy of his office;
- b) has become unsuitable for the office;
- c) failed to report or terminate the reason for any conflict of interests (Section 40);
- d) deliberately declined to file a compulsory declaration of personal wealth, or has knowingly disclosed false data or information in the declaration.

(6) An officer shall be regarded unworthy of his office if he has a criminal record or if sentenced or sanctioned by the court of law, and he has not yet been deleted from the criminal register.

(7) An officer shall be regarded as unsuitable for the office if he is unable to fulfill the responsibilities related to this office for any extended period of time, or if he performs his duties inadequately from a professional point of view.

(8) Candidates for the office of the president and vice-president of the Office of Economic Competition are to be designated within three months before the term of the outgoing president and vice-president expires, and the appointment procedure shall be concluded one month before the previous term is terminated.

Section 36.

(1) The President of the Office of Economic Competition shall:

- a) direct the activities of the Office of Economic Competition;
- b) represent the Office of Economic Competition;
- c) establish the organizational and operational rules of the Office of Economic Competition, and shall approve the organizational and operational rules of the Competition Council;
- d) exercise the employer's rights, with the exception of the appointment and recall of the members of the Competition Council, and shall record and inspect the declarations of personal wealth filed by the inspectors and other public officials;
- e) designate the persons representing the Office of Economic Competition in the Advisory Committee on Restrictive Practices and Dominant Positions set up under EC Regulation 1/2003 and in the Advisory Committee on concentrations set up under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (hereinafter referred to as "Council Regulation (EC) No. 139/2004"),
- f) be responsible for the improvement of competition practices, such as
 - fa) for educating the public concerning the competition policy for broader acceptance, including a campaign for providing information regarding the advantages of a competitive environment, and for promoting the implementation of regulations designed to support competition in a law abiding way,
 - fb) for contributing to the development of trade circles addressing the economic and legal aspects of competition.

(2) The President of the Office of Economic Competition:

- a) may attend the sessions of Parliament;

b) shall provide expert opinions on issues concerning economic competition for Parliament, when so requested;

c) shall annually report to Parliament and, upon request, to the competent committee of Parliament on the activities of the Office of Economic Competition, and, on the basis of his observations made in connection with the application of this Act, as to the enforcement of the integrity, fairness and freedom of economic competition;

d) shall attend the meetings of the Government discussing issues concerning the sphere of responsibilities of the Office of Economic Competition in an advisory capacity.

(3) All action plans and proposed concepts and drafts of legislation concerning the sphere of responsibilities of the Office shall be discussed with the President of the Office of Economic Competition - with the exception set forth in Subsection (4) - particularly if the planned action or legal provision restricts competition (performing certain activities or entering the market), provides exclusive rights, or contains provisions regarding prices or trade conditions.

(4) Discussions with the President of the Office of Economic Competition regarding the propositions of local authorities that concern the sphere of responsibilities of the Office of Economic Competition - prescribed under Subsection (3) - shall be initiated by the local notary.

(5) At the request of the Government, the Ministers or international organizations, the President of the Office of Economic Competition shall provide information on his observations made in connection with economic competition and on issues related to economic competition. In the interest of this, the Office of Economic Competition may collect data and request information, a response to which is voluntary.

(6) The President of the Office of Economic Competition is authorized to publish - together with the President of the Competition Council - a directive to contain the guidelines of judicial principles employed by the Office of Economic Competition. The directive shall have no statutory force for its sole purpose is to improve foresight in legal ramifications.

(7) The President of the Office of Economic Competition shall have powers to delegate - declaration of foundation - legal personality in the upon department of the Office of Economic Competition established for the objective of improvement of competition practices and of the legal facilities for regional competition.

Section 36/A.

Section 37.

(1) The Competition Council is comprised of a president and members. The Competition Council shall fulfill the responsibilities defined by law.

(2) The president of the Competition Council shall:

a) organize the work of the Competition Council;

b) check compliance with the administrative time limits;

c) prepare the organizational and operational rules of the Competition Council, and shall present them for approval [Paragraph c) of Subsection (1) of Section 36];

d) provide for the publication of the decisions of the Competition Council (Section 80);

e) have powers to proceed in his capacity as a member of the acting Competition Council.

Section 38.

(1) The members of the Competition Council shall be appointed and recalled by the President of the Republic on the recommendation of the President of the Competition Council. The above-specified members shall be appointed for a term of six (6) years, which may be renewed only once.

(2) In the course of the competition control proceedings, the members of the Competition Council shall only be subject to the law, otherwise they shall function as public officials of the Office of Economic Competition.

(3) A member of the Competition Council shall be relieved from his office if:

- a) he has become unworthy of his office [Subsection (6) of Section 35];
- b) he has become unsuitable for the office [Subsection (7) of Section 35];
- c) he has failed to report or terminate the reason for any conflict of interests (Section 40);
- d) a disciplinary punishment of loss of office was imposed on him;
- e) he has failed to file the compulsory declaration of personal wealth, or did so improperly.

Section 39.

The public officials of the Office of Economic Competition conducting investigations and fulfilling duties which facilitate the successful conclusion of investigations (hereinafter referred to as "investigators") shall be appointed by the President of the Office of Economic Competition.

Section 40.

(1) The President and vice presidents of the Office of Economic Competition, the members of the Competition Council and the investigators may accept no other commissions, with the exception of scientific, educational, artistic activities and activities falling under copyright protection, activities falling under the scope of regulations on the protection of industrial rights, and legal relationships aimed at proofreading and editing activities, may pursue no other gainful activities, and may not be the senior officers and members of the supervisory boards of business association and cooperatives (conflict of interests).

(2) They shall, without delay, report the emergence of any reason for a conflict of interests to the person exercising the employer's rights. The person exercising the employer's rights shall order the termination of the reason for such a conflict of interests within the summary deadline prescribed.

(3) If the person subject to notification requirement failed to report a conflict of interests, or failed to terminate the conflict of interests by the deadline prescribed, measures shall be taken for relieving him from his office.

(4) According to the provisions on public officials, the President and vice-presidents of the Office of Economic Competition shall file their declarations of personal wealth when appointed and every year thereafter; members of the Competition Council and inspectors shall file theirs when appointed and every other year thereafter.

Section 41.

Section 42.

(1) The President and vice- presidents of the Office of Economic Competition shall be entitled to the same remuneration and benefits as the basic monthly salary and benefits of ministers and of state secretaries, respectively, as prescribed in Act XXIII of 1992 on the Legal Status of Civil Servants, with the exception that the basic salary of the vice-presidents shall be consistent with the basic salary of aldermen, and an executive bonus of 110 per cent and 100 per cent of the said basic salaries shall be paid, respectively, to the president and vice-presidents. The basic salary of Competition Council members shall be ten times the salary base specified in specific other legislation and their executive bonus shall be 80 per cent of the basic salary.

(2) The President and vice- presidents of the Office of Economic Competition and Competition Council members, when leaving their post after at least three years in office, and the reason for leaving is the expiry of their delegated term, reaching the age specified in specific other legislation or retirement, shall be entitled to their monthly salary for a three further months. If their mandate is terminated due to death, the above benefit shall be paid to the heir.

(3) If their mandate is terminated after more than three years in office, the benefit specified in Subsection (2) shall be increased by one additional month for each additional year in office, however, it may not exceed twelve months.

Section 42/A.

(1) Investigators shall be categorized as assistant investigators, investigators, counselors, chief counselors and chief executive counselors.

(2) The president may appoint an investigator under the title of director of the bureau of investigations, which functions as an independent organizational unit, and may appoint his/her substitute under the title of deputy director of the bureau of investigations.

(3) Assistant investigators, investigators, counselors and chief counselors shall be entitled, respectively, to five, ten, eleven and twelve extra days of paid vacation. Chief executive counselors and directors and deputy-directors of bureaus of investigations shall be entitled to thirteen extra days of paid vacation.

(4) The basic salary of investigators according to the salary base defined in another act shall be:

- a) four times the salary base for assistant investigators;
- b) seven times the salary base for investigators;
- c) seven-and-a-half times the salary base for counselors.
- d) eight times the salary base for chief counselors;
- e) eight-and-a-quarter times the salary base for chief executive counselors;
- f) eight-and-a-half times the salary base for deputy-directors of bureaus of investigations,
- g) nine times the salary base for directors of bureaus of investigations.

(5) The executive bonus for chief counselors, chief executive counselors, deputy-directors of bureaus of investigations and directors of bureaus of investigations shall be 20, 30, 40 and 90 per cent, respectively, of the basic salary.

(6) Investigators:

- a) shall commence their careers in investigation as assistant investigators for the duration of the trial period regardless of the length of time they previously served as civil servants;
- b) shall be employed as investigators after at least two years as an assistant investigator in the Office of Economic Competition and if they are rated suitable or higher, or if they have at least three years of experience in the field and a basic degree in civil administration or another similar degree.

(7) Investigators:

- a) shall be promoted to counselor after working two years as an investigator and if they receive a rating of excellent and have a basic degree in civil administration or another similar degree;
- b) shall be promoted to chief counselor if they are rated excellent and if they have a higher degree in civil administration or another similar degree;
- c) shall be promoted to chief executive counselor from chief counselor if they have excelled in this position vested with special responsibilities.

(8) Candidates for promotion to deputy-directors and directors of bureaus of investigations shall have a higher degree in civil administration or a similar degree.

(9) All workers of the Office of Economic Competition, employed in civil service or under contract of employment, shall be entitled to one month's salary as a special benefit paid twice in

each calendar year if their relationship with the Office of Economic Competition is active at the time of payment, and their employment was not interrupted during the half-year in question. The special benefit shall be paid in two installments, by the end of the month that follows the half-year in question.

(10) Civil servants working in positions created for furthering the principal activities of the Office of Economic Competition, for which no higher education is required, shall be entitled to a bonus of 50 per cent of the salary base.

Section 43.

(1) Members of the Competition Council must have the relevant degree of higher education. The member of the Competition Council with a law degree shall have passed the bar examination.

(2) Investigators in the Office of Economic Competition shall have the relevant degree of higher education.

Section 43/A.

The Office of Economic Competition shall be entitled, with a view to disseminate a competition culture, to use maximum five per cent of the fines collected in the previous year, and the whole amount of the procedural fees and administrative penalties collected in the previous year to cover the costs of competition control proceedings and sectoral inquiries.

Chapter VIII

Investigations into Sectors of the Economy

Section 43/B.

The provisions contained in Sections 49-51 and Subsection (2) of Section 58 shall duly apply to sectoral inquiries conducted by the Office of Economic Competition. Otherwise, the provisions of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter referred to as "APA") shall apply to these sectoral inquiries, unless this Chapter contains provisions to the contrary.

Section 43/C.

(1) Where the movement of prices or other circumstances suggest that competition may be restricted or distorted within the market of any particular sector of the economy, the President of the Office of Economic Competition shall have powers to adopt a ruling for conducting an inquiry to study and analyze trends of trade. The justification of the ruling ordering the sectoral inquiry shall contain an indication of the market developments due to which the sectoral inquiry is necessary. The ruling for launching the inquiry shall be communicated by way of a notice posted on the official web site of the Office of Economic Competition. A sectoral inquiry shall be conducted by the public officials designated by the President of the Office of Economic Competition.

(2) In the course of a sectoral inquiry the President of the Office of Economic Competition may request companies of the sector in question to supply all necessary information within the prescribed time limit. The President of the Office of Economic Competition shall impose a penalty by way of a ruling upon any company for failing to comply with the request for

information in due time or for supplying incorrect or misleading information. The minimum penalty shall be fifty thousand forints and the maximum shall be one per cent of the net sales revenues of the previous financial year. If payment is made past the due date the penalty shall be computed daily, where the maximum shall be one per cent of the net sales revenues of the previous financial year prorated for one day.

(3) In the case specified in Subsection (1), the President of the Office of Economic Competition may request individual data and consolidated data suitable for individual identification, to which the Competition Council is entitled in its official capacity, from the government agency of record, and from the Magyar Nemzeti Bank (National Bank of Hungary). The agencies defined in this Subsection shall not be subject to any penalty.

Section 43/D.

(1) The companies requested and the bodies referred to in Subsection (3) of Section 43/C shall disclose the data and information, including business secrets, to the Office of Economic Competition as requested under Subsections (2) and (3) of Section 43/C.

(2) The expert conducting the sectoral inquiry shall have access to the documents deemed necessary to discharge his duties, including documents containing business secrets, bank secrets and insurance secrets, and securities and fund secrets specified in specific other legislation.

(3) The person requested to supply information may request - citing the safeguarding of trade secrets [Paragraph a) of Subsection (3) of Section 4] - that publication of any information that contains trade secrets should be prohibited. Simultaneously with adopting a decision concerning the request, the President of the Office of Economic Competition may order the requesting party - other than the bodies referred to in Subsection (3) of Section 43/C - by way of a ruling to supply the same documents with business secrets removed.

Section 43/E.

(1) The Office of Economic Competition shall prepare a report on the outcome of the sectoral inquiry within a reasonable timeframe. The President of the Office of Economic Competition shall have powers to publish an edited version of the report with any state and service secrets, bank secrets, insurance secrets, and securities secrets and fund secrets specified in specific other legislation, with trade secrets removed.

(2) The Office of Economic Competition shall ascertain that the parties affected have the opportunity to present their opinion in writing before the report is published, or may conduct a hearing to the effect. The edited version of the report with trade secrets removed shall be sent to the parties concerned in due time to allow at least thirty days for the parties concerned to present their opinion in writing or to prepare for the hearing. The Office of Economic Competition shall publish the executive summary made on the written opinions or on the hearing, and the documents containing the substantive comments made by the market players concerned regarding the contents of the report - at their request - simultaneously with the report on the same medium.

(3) Consistent with what is contained in the report referred to in Subsection (1), the President of the Office of Economic Competition:

a) may order the opening of competition control proceedings on the strength of Section 70 against the company involved;

b) shall inform the competent Parliamentary committee, the Ministry or the competent authority, that the sectoral inquiry has revealed a type of market disturbance that cannot be remedied by competition control proceedings.

Section 43/F.

The ruling for launching the inquiry according to Subsection (1) of Section 43/C, the ruling for imposing a penalty under Subsection (2) of Section 43/C, and the ruling rejecting a request for handling documents as trade secrets according to Subsection (3) of Section 43/D may be appealed by the person affected within fifteen days from the date when the ruling was communicated. In the case of the ruling for launching an inquiry according to Subsection (1) of Section 43/C the proceedings shall not be delayed on account of the appeal. The Municipal Court of Budapest shall review these appeals in expedited administrative proceedings without litigation.

Chapter IX

Notification and Complaint

Section 43/G.

(1) In connection with any conduct invading the provisions of Sections 8, 10, 11, 21 and 24 of this Act and/or Articles 81 and 82 of the EC Treaty, that falls within the jurisdiction of the Office of Economic Competition, anyone may lodge a notification or complaint with the Office of Economic Competition.

(2) The proceedings for investigating a notification or complaint shall not comprise part of the competition control proceedings; the provisions of Chapters X-XII of this Act - with the exceptions set out in Section 54 - shall not apply to the proceedings launched upon a notification or complaint.

Section 43/H.

(1) A notification shall be made by submission of a standard form, properly filled out, of a format prescribed by the Office of Economic Competition, to the Office of Economic Competition. The standard form contains the particulars of essence for the ensuing examination, such as data for the identification of the notifier and the notified person, a description of the alleged infringement, description of the actual conduct that is deemed illegal, basic information required for definition of the market affected, the duration of the alleged infringement, and any facts and evidence that may be admitted to support the accusation of the alleged infringement.

(2) In connection with the proceedings launched upon notification of the provisions of the APA only Section 17, Section 26, Section 40, Sections 58-59, Sections 72-73, Sections 78-79, Section 81, Section 122 and Section 153 shall apply, and the term 'client' as used in the APA shall be understood as 'notifier'.

(3) If the Office of Economic Competition has no jurisdiction to act upon a notification, it shall transmit the case within fifteen days to the body vested with powers and jurisdiction, and shall inform the notifier accordingly.

(4) The investigator shall have authority to obtain the data necessary for examination of the notification, to conduct a hearing for the parties concerned, and to clarify the facts to the extent necessary for examination of the notification with the help of other authorities or experts. If the party affected refuses to cooperate, no administrative penalty may be imposed nor may any means of coercion be used. Where a notification submitted is similar to a previous one submitted by the same person, it may be ignored.

(5) Any person who supplies information to the Office of Economic Competition in the course of the proceedings opened upon a notification may request - citing the safeguarding of trade secrets - that free access to documents for inspection or for making copies or notes be limited.

The documents of the case may be inspected only by the notifier, and only in the case referred to in Paragraph b) of Subsection (8), after the ruling concerning the notification is adopted, for reasons of exercising his right for remedy, except if the investigator has limited access to the documents on the grounds of protection of trade secrets.

(6) The State shall advance and cover the costs of the proceedings. If according to the findings of the competition control proceedings the conduct indicated in the notification is declared unlawful, the perpetrator shall be liable to cover the costs of the notification proceedings as well.

(7) The notifier may request to remain anonymous, or that he/she shall not be identified as having made a notification to the Office of Economic Competition.

(8) Within sixty days from the date of receipt of the notification the investigator:

a) shall launch an inquiry pursuant to Subsection (1) of Section 70; or

b) shall adopt a ruling declaring that, based on the information supplied and on the findings of the procedure conducted upon the notification, the requirements set out in Subsection (1) of Section 70 for launching a competition control proceedings are not satisfied.

(9) The time limit referred to in Subsection (8) may be extended in justified cases by sixty days.

(10) The ruling referred to in Paragraph b) of Subsection (8) shall be communicated to the notifier in all cases, and shall be communicated to the notified person only if having participated in the proceedings.

(11) The ruling adopted under Paragraph b) of Subsection (8) may be appealed by the notifier within eight days from the date when the ruling was communicated. The Municipal Court of Budapest shall review these appeals in administrative proceedings without litigation. If the court's finding is for the application of Paragraph a) of Subsection (8), the investigator shall be ordered to launch the inquiry within thirty days.

Section 43/I.

(1) The Office of Economic Competition shall handle any submission that is not construed a notification in accordance with Subsection (1) of Section 43/H as a complaint. The procedures upon complaints shall be governed by the provisions of this Section.

(2) If the Office of Economic Competition has no jurisdiction to act upon a complaint, it shall transmit the case within fifteen days to the body vested with powers and jurisdiction, and shall inform the complainant accordingly.

(3) A complaint shall be adjudged within thirty days from the date of receipt. If the inquiry is estimated to take more than thirty days, the investigator shall so inform the complainant within the original time limit and shall specify the expected date for reaching a decision in the case.

(4) The investigator may hear the complainant and may request the supply of additional information. The complainant may request to remain anonymous, or that he/she shall not be identified as having made a complaint to the Office of Economic Competition.

(5) Where a complaint submitted is similar to a previous one submitted by the same person anonymously, it may be ignored.

(6) If a complaint is found substantiated, the investigator shall decide as to the measures deemed necessary, and shall inform the complainant accordingly.

PART III

Chapter X

General Rules of the Competition Control Proceedings Conducted by the Office of Economic Competition

Application of the General Provisions of Administrative Proceedings

Section 44.

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

Powers and Jurisdiction

Section 45.

The Office of Economic Competition shall have jurisdiction in all competition control cases which do not fall under the jurisdiction of the court (Section 86).

Section 46.

The competence of the Office of Economic Competition shall extend to the entire territory of the country.

Stages of the Competition Control Proceedings, Composition of the Proceeding Body, Disqualifications

Section 47.

- (1) The stages of the competition control proceedings are:
- a) the proceedings conducted by the investigator;
 - b) the proceedings conducted by the Competition Council;
 - c) the follow-up investigation;
 - d) enforcement.

(2) In the course of the proceedings the investigator and the competent Competition Council may adopt rulings, however, only the competent Competition Council may adopt a resolution in conclusion of the case.

Section 48.

(1) The competent Competition Council shall make its decision in panels consisting of three or five members.

(2) Any reference made in this Act to a competent Competition Council shall be construed as the council as defined in Subsection (1). In other cases, the investigator or a member of the competent Competition Council may also proceed alone.

Section 49.

(1) The following shall be excluded from the administration of a case:

- a) the client, the person authorized or obliged jointly with the client, as well as those on whose rights and obligations the outcome of the proceedings may have an impact;
- b) the representatives of the persons referred to in Paragraph a);
- c) the relatives or ex-spouse of the persons referred to in Paragraphs a) and b);
- d) those who were heard in the course of the proceedings in the capacity of witness or expert, or whose hearing in the capacity of witness or expert was ordered; or
- e) any person who may not be expected to form an objective view of the case for other reasons (bias).

(2)

Section 50.

(1) The investigator shall, without delay, report to the President of the Office of Economic Competition, while the member of the competent Competition Council shall report to the President of the Competition Council if they should be excluded for any reason. The investigator or the member of the competent Competition Council shall be subject to disciplinary action and financial liability for failure to report the above in due time.

(2) The disqualifying circumstance may be reported by the client at any stage of the proceedings, however, in the course of the proceedings of the Competition Council he may only enforce the disqualifying circumstance if promptly able to provide proof of having learned of the fact underlying the report at that time.

(3) If the client's motion for exclusion is manifestly unfounded, or if lodging another unsubstantiated attempt in the same proceeding for the exclusion of the same person, an administrative penalty may be imposed upon this client in the ruling in which exclusion is refused (Section 61).

Section 51.

(1) In the case of an investigator, the President of the Office of Economic Competition shall make a decision on the matter of disqualification and shall, if necessary, appoint a new investigator, while in the case of a member of the competent Competition Council, the President of the Competition Council shall make a decision on the matter of disqualification and shall, if necessary, appoint a new member to the competent Competition Council.

(2) If the investigator or the member of the competent Competition Council himself reported the disqualifying circumstance, he may not proceed in the case until his report is settled. In all other cases, he may proceed in the case but he may not pass a decision resulting in the conclusion of the case. This restriction shall not apply in connection with any report submitted repeatedly by the client against the same person.

(3) If the disqualifying circumstance was reported by the client, he may contest the ruling rejecting disqualification in the remedy proceedings against resolution adopted by the competent Competition Council (Section 77).

(4)

(5) The President of the Office of Economic Competition shall take part in the proceeding of the Competition Council. In connection with the disqualification of the President, the provisions on the disqualification of investigators shall be applied.

The Client

Section 52.

For the purposes of this Act, 'client' means any person against whom proceedings were instituted ex officio, the applicant (Section 68), and the person to whom the application relates.

Section 53.

(1) Where a client is terminated by way of legal succession, the successor may, within thirty days of succession, join the proceedings instituted on application on a voluntary basis. If failing to join voluntarily, the investigator or the competent Competition Council shall terminate the proceedings.

(2) If the client ceases to exist during proceedings instituted ex officio, its legal successor may be involved in the proceedings. If, with regard to the provisions contained in Subsection (1) of Section 70, it is not justified to involve the successor, or if the client has no successor, the investigator or the competent Competition Council shall terminate the proceedings.

(3) If, on the basis of the available data, it can be established that the proceedings instituted ex officio were not instituted against the right client, the right client may be involved in the proceedings following the release of the other client. Failing this, the investigator or the competent Competition Council shall terminate the proceedings.

(4) If the available data provides conclusive evidence for the involvement of another company in the conduct for which the ex officio proceedings were instituted, the investigator shall extend the proceedings to this company as well.

(5) In proceedings instituted upon request, if granting the authorization would require that certain obligations are imposed upon a company that were not involved in the proceedings as a client, this company may enter the proceedings as a client at the investigator's request. The company that has entered the proceedings subsequently shall not be able to withdraw the request.

Representation

Section 54.

(1) The client shall be represented in the proceedings by his legal representative or authorized proxy.

(2) The following may act as proxy:

- a) a co-client, and the legal representative or proxy thereof;
- b) the client's relative;
- c) an attorney-at-law or a law office;
- d) the officer of a state agency in matters related to the activities of the state agency;
- e) a member or employee of an economic operator authorized to proceed in respect of the matters of the economic operator;

f) the interest representation organization of those concerned in the given economic activity;
g) those who are authorized thereto by law.

(3) In the case of a proxy referred to in Paragraph f) of Subsection (2), the investigator or the competent Competition Council may instruct the client to appoint another proxy if it is expected that the investigator or the competent Competition Council will order the hearing of the interest representation organization.

(4) The power of attorney shall be made out in writing. The provisions contained in Sections 68-71 of Act III of 1952 on the Code of Civil Procedure shall apply to the issuance and termination of authorizations.

Access to Documents, Business Secrets

Section 55.

(1) The client and his representative shall have access to the documents following conclusion of the proceedings, as of the time specified by the acting Competition Council, and shall be able to make copies and notes thereof. The initial date of access to documents for inspection shall be set to allow ample time for the client to prepare for making a statement. The acting Competition Council may adopt a ruling to authorize the client and his representative to inspect certain specific documents before the conclusion of the proceedings, if this is unlikely to adversely influence the outcome of the proceedings.

(2) The district attorney, and the investigating authority by permission of the district attorney, and experts shall have access at any time to the necessary documents for discharging their respective duties, including documents containing business secrets, bank secrets and insurance secrets, and securities and fund secrets specified in specific other legislation, and shall be able to make copies and notes thereof.

(3) The client and other parties to the proceeding may request - citing the safeguarding of trade secrets - that free access to the documents for inspection or for making copies or notes be limited. The ruling adopted by the investigator or the competent Competition Council for rejection of the request may be appealed (Section 82). Simultaneously with adopting a decision concerning the request, the investigator or the competent Competition Council may order the client or other parties to the proceeding to supply the same documents with business secrets removed.

(4) If requested by a foreign authority, the reply it provides in compliance with a request shall be treated as business secrets to the extent specified, in due observation of what is contained in Subsection (2).

(5) In the course of the proceedings conducted by the Office of Economic Competition, the clients and other parties to the proceedings may not be allowed access to the internal documents of the Office of Economic Competition, the European Commission and the competition authorities of Member States, including the documents specified in Articles 11 and 14 of Council Regulation (EC) No. 1/2003, and the correspondence between the Office of Economic Competition and other authorities or among the latter, if these internal documents will not be presented as evidence when making the case.

Justification of Default

Section 56.

Section 57.

(1) An application for extension shall not be accepted past sixty days of the neglected deadline or the last day of the neglected time limit.

(2) The application for extension shall be adjudged by the investigator during the course of the investigation, or by the competent Competition Council in the proceedings before the Competition Council. The decision of the investigator for rejecting the application for extension may be appealed separately (Section 82). The ruling of the competent Competition Council for rejecting the application for extension may be contested in a request filed for judicial review.

International Legal Assistance

Section 58.

(1)-(2)

(3) At the request of a foreign authority, the documents of the proceedings may be released. Documents containing any business secrets may only be released if so prescribed in an international agreement. If the documents requested contain any business secret they may be released on condition that the foreign authority undertakes to treat the contents of the document confidentially.

(4) The Office of Economic Competition may enter into agreements for cooperation with foreign competition authorities for mutual assistance in fulfilling their respective duties.

International Service of Process

Section 59.

(1)

(2) Service performed abroad shall be regarded legitimate if it satisfies either the provisions of the national laws, or the legal regulations applicable at the place of service.

Suspension of the Proceedings

Section 60.

In proceedings instituted upon request, in the case of the suspension of the proceedings, the ruling adopted by the investigator or the competent Competition Council may be appealed (Section 82).

Administrative Penalty

Section 61.

(1) An administrative penalty may be imposed upon the client and any other party to the proceedings, and any person who is required to cooperate in the process to ascertain the relevant facts of the case if, during the course of the proceedings, **they perform acts or engage in conduct which are aimed at or result in the protraction of the proceedings or making it impossible to reveal the relevant facts of the case.**

(2) A person who disturbs the order of the hearing may be called to order by the chair of the hearing, and may be expelled or may have an administrative penalty imposed on him in the case of the repeated or more serious disturbance of the order of the hearing.

(3) The minimum amount of the administrative penalty imposed on the basis of Subsections (1) and (2) shall be fifty thousand forints, and the maximum amount thereof shall be - in respect

of companies - one per cent of the net sales revenue of the previous financial year, or five hundred thousand forints for natural persons. The administrative penalty for failure to meet the deadline prescribed for procedural obligations shall be - in respect of companies - a maximum of one per cent of the net sales revenue of the previous financial year prorated per day for each day of delay, or fifty thousand forints per day for natural persons. The resolution ordering the administrative penalty may be appealed (Section 82), upon which the enforcement of the resolution shall be suspended. The investigator or the competent Competition Council may also reverse his/its own resolution in which the administrative penalty was imposed.

Procedural Fees and Costs

Section 62.

(1) In respect of proceedings carried out upon request under Section 24 or Section 25, the petitioner shall pay - at the time when submitted - a procedural fee of two million forints. If the competent Competition Council resolves a proceeding instituted pursuant to Section 24 on the basis of Paragraph b) of Subsection (3) of Section 63, an additional eight million forints shall be paid within fifteen days after the resolution is delivered. In the case of the termination of the proceedings on the basis of Subsection (5) of Section 68, one half of the paid up procedural fee shall be refunded to the client, or if terminated on the basis of Subsection (4) of Section 68, the proceedings is exempt from charges. The prior notification of any price increase [Paragraph c) of Subsection (2) of Section 67] is exempt from charges.

(2) If, by applying Paragraph b) of Subsection (1) of Section 77, the competent Competition Council authorizes the merger of companies in its decision, it shall simultaneously order the client to pay the fee specified in Subsection (1) and/or to cover the costs specified in Subsection (3).

(3) The client shall advance and, regardless of the outcome of the proceedings, cover the costs of the proceedings instituted upon request. If the request is found substantiated, the procedural fee and the costs may be divided between the applicant and the company to which the resolution pertains.

(4) The costs incurred in proceedings instituted ex officio shall be covered by the client if any illegal conduct is established, including the termination of the proceedings on the basis of Paragraph c) of Subsection (3) of Section 76. If no illegal conduct is established the costs of proceedings instituted ex officio shall be covered by the State.

(5) In the case of an investigation instituted ex officio, if several companies were jointly engaged in any illegal conduct, they shall bear joint and several liability for the payment of the costs of the proceedings.

(6) No exemption may be granted from the payment of the procedural fee and the costs. The interpreter's fee shall be advanced and covered by the State.

(7) Witnesses may demand reimbursement for their expenses incurred in connection with their appearance. Witnesses shall be reminded thereof at the end of the hearing. Experts shall be remunerated in accordance with the provisions decreed by the Minister of Justice. The ruling adopted for establishing the witness's and the expert's fees may be appealed (Section 82), upon which the enforcement of the decision shall be suspended.

Administrative Time Limit

Section 63.

(1) The thorough investigation of cases and the conclusion thereof within a reasonable time shall be provided for.

(2) Unless another deadline is prescribed by law, the final decision in conclusion of the proceedings shall be adopted:

a) within ninety days from the day on which the investigation was ordered, if instituted pursuant to Sections 8-10;

b) within one hundred and eighty days from the day on which the investigation was ordered, if instituted pursuant to Sections 11 and 21;

c) within one hundred and eighty days from the day on which the investigation was ordered if the proceedings have been instituted under Subsection (3) of Section 67 for failure to submit the application for the authorization referred to in Section (24).

(3) As regards the control of company mergers the final decision in conclusion of the proceedings shall be adopted - from the day on which the application was submitted or the missing information was supplied -

a) within forty-five days if:

aa) there is no merger within the meaning of Sections 23 and 25; or

ab) the merger remains below the value specified under Section 24; or

ac) authorization cannot be denied on the basis of Subsection (2) of Section 30;

b) within one hundred and twenty days in all other cases.

(4) The acting Competition Council shall decide regarding the application of Paragraph b) of Subsection (3) within forty-five days from the day on which the application was submitted or the missing information was supplied.

(5) For the purposes of the administrative time limit, the amount of time elapsing:

a) until the legal successor is involved in the proceedings or until the legal successor joins the proceedings on a voluntary basis, and until the right client is involved in the proceedings or until the application is extended onto the right client;

b) in the case of the death of the client's legal representative, if the legal representative had no proxy, until the client's new legal representative is notified;

c) in the case that the Office of Economic Competition has suspended operations due to some unavoidable event, if the client cannot be contacted for such reason, until the hindrance is eliminated;

d) until the expert's opinion is delivered, if one has been requested;

e) in the case of foreign delivery, until delivery is completed;

f) until the request sent to a foreign authority is answered;

g) until the expulsion of a member of the Competition Council is resolved;

h) in the nonlitigious proceedings specified in Section 65/A and 65/B, from the time they are opened until the court's decision is adopted;

i) if lacking a decision concerning the legal remedy governed under Subsection (3) of Section 82 is an obstacle for adopting a decision, until the petition for remedy is adjudged,

shall not be taken into account.

(6) In justified cases, the administrative time limit may be extended by a maximum of sixty days or, in the cases defined under Paragraph b) of Subsection (2) on two occasions by a maximum of one hundred and eighty days each, and in the case referred to in Paragraph a) of Subsection (3) by a maximum of twenty days. The parties concerned shall be notified of any such extension before the original deadline expires.

(7) In the case of disqualification of the investigator, the investigation time limits shall recommence upon the appointment of the new investigator.

Section 64.

If the competent Competition Council fails to make a decision by the deadline specified in Section 63 in proceedings instituted upon request on the basis of Subsection (2) of Section 67, the request shall be regarded as granted.

Clarification of the Facts of the Case

Section 65.

(1) In the process of ascertaining the relevant facts of a case the investigator or the competent Competition Council shall proceed in accordance with the provisions of this Section and - subject to the exceptions set out in Section 44 - the provisions of the APA pertaining to establishing the relevant facts of a case and to regulatory inspections.

(2) In ex officio proceedings, when so requested by the investigator or the acting Competition Council the client is required to supply all information as it may be necessary for reaching a conclusive decision, including personal data. The client may not be compelled to make a confession of an illegal act, however, he may not refuse to make available any evidence, incriminating or otherwise.

(3) In ex officio proceedings investigative measures may be conducted at any place presumed to contain any evidence that may be necessary to ascertain the relevant facts of the case. Any person and organization shall be required to provide the information that may be required to ascertain the relevant facts of the case in writing as well, or to make available to the Office of Economic Competition the documents that concern the subject of the investigation

(4) In ex officio proceedings, when so requested by the investigator, the client or the holder of a relevant document shall make available a display of any information stored on a data medium in a format for reading and copying.

(5) The investigator and the acting Competition Council shall be authorized to make copies of the relevant documents. In ex officio proceedings the investigator shall be entitled to make a hard mirror image copy of the data medium, and to inspect the contents through this image copy if there is reason to believe that it contains data concerning the alleged illegal activity.

(6) If the APA provides for the seizure of physical evidence, such physical evidence may have seals affixed instead of seizure. In carrying out the sealing procedure the investigator shall deposit the documents into a suitable container or in an isolated room, and shall have the official seal affixed on the container or room.

(7) The Office of Economic Competition shall have powers to obtain and process - in connection with the economic activities investigated - the personal data of the client and any other party to the case, and the records or database containing such data may be seized. Where a means of evidence contains personal data that does not pertain to the investigation, and if this data cannot be detached without compromising the probative value of the evidence, the Office of Economic Competition shall be entitled to process all personal data affected, however, the entitlement to inspect the personal data that does not pertain to the investigation is valid only to the extent required to ascertain that the data is not connected to the illegal activity investigated.

(8) The provisions of specific other legislation shall apply to granting access to documents containing state and trade secrets related to the economic activity under investigation.

(9) The Office of Economic Competition shall be authorized to use the instruments, data, documents and other information or means of evidence it has legitimately obtained in the proceedings under Chapters VIII-XII in other competition control proceedings as well.

Section 65/A.

(1) In the course of an investigation launched ex officio under Sections 11 and 21 of this Act or under Articles 81 or 82 of the EC Treaty, the investigator shall be empowered to search any premises, to enter such premises under probable cause under his own authority, without the consent of the owner (tenant) or any other person in the premises, and to open any sealed-off area or building for this purpose. In the process of the search the investigator shall have powers

to demand information, written or oral, from the client, the client's representative (former representative) or employee (former employee), and may gather intelligence in any other way.

(2) Investigative measures under this Section may be carried out in the private domain, including vehicles and other premises, if it is in the use of the client's any former or current executive officer, employee or representative, or any other person who effectively exercises control or who used to exercise control.

(3) The investigative measures specified under this Section shall be carried out in possession of a prior court order. The written request of the Office of Economic Competition submitted for court order shall be decided upon by the Municipal Court of Budapest within seventy-two hours from the time of receipt of the request in a nonlitigious procedure. The court's decision may not be appealed and may not be reviewed.

(4) The court shall authorize the above-specified investigative measure if the Office of Economic Competition is able to substantiate probable cause that any other investigative measure is unlikely to produce the required results, and if there is reason to believe that the source of information - relating to the illegal activity investigated - indicated is in the location for which the court order is requested and it is presumed that this information will not be surrendered voluntarily or that it would be destroyed. If the investigative measure is only partially accepted, the court shall specify the type of procedure and the person who is the subject of such procedure.

(5) In possession of the court order the investigative measure may be carried out within a period of ninety days from the date of issue.

(6) The investigation shall be launched at the time or before the investigative measure specified in this Section is carried out. The decision specified in Subsection (1) of Section 70 shall be communicated to the client if present.

(7) Regarding the investigative measure carried out under this Section the person affected shall be informed verbally at the time the investigative measure commences, and it shall be carried out if possible in the presence of these persons. Before the investigative measure is carried out the court order shall be presented and the purpose of the investigative measure shall be communicated.

(8) The Office of Economic Competition may request police assistance when carrying out the investigative measure defined in this Section, in the course of which the police are entitled to take measures and use force in a manner permissible in accordance with the legal regulations governing the police.

(9) In the course of carrying out the investigative measure defined in this Section, the investigator shall be empowered to make copies of or seize any means of evidence suggesting any illegal conduct in violation of Sections 11 and 21 of this Act or Articles 81 or 82 of the EC Treaty, even if such evidence is not directly related to the subject of the investigation and if not covered by the court order. In the case of such means of evidence the court order shall be obtained subsequently, for which the request shall be submitted within thirty days following the date when the investigative measure was carried out. If this means of evidence is presented for the proceedings governed under Section 65/B, the petition for a court order shall be submitted within eight days from the date of conclusion of these proceedings. In the absence of a subsequent court order the means of evidence shall be inadmissible.

(10) The provisions contained in Section 65 and Section 65/B shall duly apply to the proceedings under this Section as well.

Section 65/B.

(1) Any document created in the interest or in the process of the client exercising his fundamental right to defense, during or for the purpose of communications between the client and his defense attorney, or that is a record of the contents of such communications, provided in

all cases that the nature of these documents is readily apparent from the document itself, may not be admissible as evidence in competition control proceedings, they may not be examined or seized, and the holder of such documents may not be compelled to produce them for the purpose of inspection, unless this Section contains provisions to the contrary. The client shall have the right to waive this prohibition.

(2) The provisions contained in Subsection (1) do not apply with respect to any document that is not in the possession of the client (his legal representative), or in the possession of the client's attorney, unless the party concerned is able to prove that he was deprived of possession of the document in question illegally.

(3) If the investigator makes an attempt to compel the client (his legal representative) or the client's attorney to present a document to which Subsection (1) applies, or if the investigator wishes to inspect, take possession or make copies of such document in the course of an inspection or the search specified in Section 65/A, the client (his legal representative) or the client's attorney shall have the right to refuse. The investigator - in due respect of the right governed in this Section - shall be entitled to inspect the document to ascertain whether relying upon the protection afforded in Subsection (1) is manifestly unfounded or not.

(4) If, contrary to the assertion of the person concerned, the investigator is of the opinion that the document in question should not enjoy the protection under Subsection (1), the document, (or the hard mirror image made on the data medium) shall be deposited in a container that is capable to prevent access to the document. The sealing of the container shall be witnessed and signed by the person concerned and the investigator, where the seal shall be affixed to prevent opening the container without tampering with the seal. The Office of Economic Competition shall take possession of the container.

(5) As to whether a document should enjoy the protection under Subsection (1) shall be decided, upon the request of the Office of Economic Competition, by the Municipal Court of Budapest in a nonlitigious procedure - upon hearing the client - within eight days from the date of submission of the request. The Office of Economic Competition shall make available the container holding the document in question with the request.

(6) If the court rules that the protection under Subsection (1) not applies to the document, it shall be released to the Office of Economic Competition; henceforward the general provisions applicable to documents shall apply to the released document. If the court's decision is in the client's favor the document shall be released to the client.

(7) If the protection afforded under Subsection (1) applies only to a specific section of the document, the document shall be divided - without compromising its probative value -, and the proceedings defined in Subsections (4)-(6) shall be conducted solely with respect to the part to which Subsection (1) applies. If the hard mirror image made from a data medium has to be divided, the proceedings under Subsections (4)-(6) shall be carried out using a copy that can be divided, and this copy shall be subsequently presented as evidence, whereas the mirror image shall be deposited in accordance with Subsection (4). The mirror image may be inspected only by the court to ascertain the authenticity of the copy presented as evidence.

(8) If the document cannot be divided without compromising the probative value of the evidence, the court shall adopt a ruling to decide as to which sections of the document shall enjoy the protection under Subsection (1). The document shall be deposited in accordance with Subsection a (4) and shall be released to the Office of Economic Competition. The container may be opened and the section to which Subsection (1) does not apply may be inspected only in the presence of the client. The client must be notified at least three days in advance concerning the date and time of any such investigative measure, of the estimated duration and the venue. The client's failure to appear following proper notice shall not prevent the carrying out of the measure.

(9) Where the client (his legal representative) or attorney would have had the opportunity in accordance with Subsection (3) to provide for the protection of a document, however, they failed to do so nonetheless, the provisions of Subsection (1) shall not apply to this particular document.

Section 66.

Chapter XI

Conducting the Competition Control Proceedings of the Office of Economic Competition

Opening of Competition Control Proceedings

Section 67.

(1) Competition control proceedings shall be opened upon request, and may be opened ex officio.

(2) Competition control proceedings shall be opened upon request in the following cases:

- a) authorization under Section 24;
- b) extension of the time limit specified in Section 25;
- c) prior notification of price increase.

(3) Competition control proceedings may also be opened ex officio if it is established that in the cases listed in Subsection (2) competition control proceedings should have been requested but no such application has been submitted.

(4) No investigation may be launched if a period of five years has elapsed from the commission of any conduct that is deemed illegal under this Act. Where an illegal conduct is realized through failure to terminate a particular situation or predicament, the above period shall not commence as long as such situation or predicament continues to prevail.

(5) An ex officio competition control proceedings shall be considered opened on the day when the ruling referred to in Subsection (1) of Section 70 is adopted, whereas a competition control proceedings launched upon request shall be considered opened on the day of receipt of the request.

Institution of Investigations Upon Request

Section 68.

(1) Petition for the institution of a proceedings may be submitted by:

- a) those who are required under Subsection (1) of Section 28 to submit an application for the authorization of a merger;
- b) those who are required to notify price increases in advance on the basis of specific other legislation;
- c) any person who was unable to meet the obligation of alienation specified in Section 25 within one year.

(2) An appropriately completed copy of the notification form prescribed by the Office of Economic Competition shall be attached to the application submitted on the basis of Section 24.

(3) The application defined in Section 24 shall be submitted at the date specified in Subsection (2) of Section 28.

(4) The application shall contain all the facts and data necessary for the assessment of the case. In the absence thereof, the investigator may return the application once, within fifteen days from the date when received, requesting the provision of missing information within the deadline

specified. The deadline for providing the said missing information may be extended once in justified cases. If the applicant fails to provide the missing information or does not provide the missing information adequately after having been so requested, the investigator shall terminate the proceedings. The ruling adopted for terminating the proceedings may be appealed (Section 82).

(5) The applicant may withdraw his request for the opening of proceedings during the course of the proceedings, before a resolution is adopted.

Notification and Hearing

Section 69.

Ordering an Investigation Ex Officio

Section 70.

(1) The investigator shall adopt a ruling in which to order that an investigation be held in connection with any activity, conduct or predicament which is likely to violate the provisions of this Act, provided that the proceedings fall within the jurisdiction of the Office of Economic Competition, and the protection of the interests of the public requires it. The circumstances and actions, due to which the proceedings were instituted, shall be indicated in the ruling.

(2) If, due to its lack of jurisdiction, the court transfers a case to the Office of Economic Competition, the investigator shall proceed in accordance with Section 68 in the cases defined in Subsection (2) of Section 67, and in accordance with Sections 43/G-43/I in other cases.

(3) The fact that an investigation has been ordered may be disclosed to the public. If the fact that an investigation has been ordered is disclosed to the public, the public shall be informed of the outcome of the investigation as well.

(4) Where an activity, conduct or predicament indicated in the ruling for opening a proceedings under this Act or Articles 81 or 82 of the EC Treaty is also deemed to be in violation of other provisions of this Act, together or separately, or Articles 81 or 82 of the EC Treaty, together or separately, the investigator shall extend the investigation by way of a ruling. The investigation may be extended to cover any activity, conduct or predicament that is deemed to relate to the activity, conduct or predicament indicated in the ruling for opening the original proceedings.

(5) Where a competition control proceedings involve several clients, the investigator may separate it into independent proceedings if the case can be adjudged individually for the clients. The proceedings after the separation shall remain subject to the same administrative time limits.

The Investigator's Report

Section 71.

(1) Upon conclusion of the investigation, the investigator shall prepare a report and present it, together with the relevant documents, to the Competition Council.

(2) The report shall contain:

- a) an indication of the subject of the investigation;
- b) the facts of the case found and the evidence in support;

c) the investigator's proposal concerning further action, and, if necessary, the ordering of interim measures.

(3) In justified cases, the investigator may make a proposal for the ordering of interim measures also in a separate report, prior to the conclusion of the investigation.

Section 71/A.

The investigator shall dismiss an ex officio competition control proceedings by way of a ruling, if the circumstances referred to in Subsection (1) of Section 70 upon which the investigation was launched no longer exist, or if the evidence gathered is insufficient to prove the alleged infringement, and continuation of the investigation is not expected to produce any results. Such ruling shall be communicated to the notifier as well. The decision terminating the proceedings may be appealed (Section 82).

Proceedings by the Competition Council

Section 72.

(1) Upon receipt of the investigator's report, the competent Competition Council:

a) shall dismiss the proceedings by way of a ruling, if the circumstances referred to in Subsection (1) of Section 70 upon which the investigation was launched no longer exist, or if the evidence gathered is insufficient to prove the alleged infringement, and continuation of the investigation is not expected to produce any results; the decision terminating the proceedings may be appealed (Section 82);

b) may return the documents to the investigator if it establishes that further investigation is required in order to ascertain the relevant facts of a case, or if the proceedings should be extended or a new client should be involved in the case;

c) may prohibit the further continuation of the illegal conduct or may order the termination of the infringement, in its ruling, in the form of interim measures, if it is required out of pressing necessity due to the protection of the legal or economic interests of the interested parties, and the endangering of the formation, maintenance or development of economic competition.

(2) If the client requested the ordering of the interim measure, the competent Competition Council may request some form of security as a prerequisite. The ruling adopted to order the interim measure or the provision of security may be appealed in a separate case (Section 82).

(3) The competent Competition Council may intervene to make suggestions as to the mode and course of an investigation before the case is closed.

(4) The ruling referred to in Paragraph a) of Subsection (1) shall be communicated to the notifier as well.

Section 73.

(1) If the measures described in Paragraphs a)-b) of Subsection (1) of Section 72 are not required, the acting Competition Council shall convey to the client the preliminary assessment of the Competition Council, which shall contain the relevant facts and the exhibits of the case, and an explanation of the grounds and criteria on the basis of which the case is to be resolved.

(2) Preliminary assessment is not required in proceedings launched upon request, if the acting Competition Council is in agreement with the contents of the request, and if Subsection (3) of Section 30 need not be applied. In such cases, the acting Competition Council shall adopt a decision without a hearing (Section 77).

Hearing Conducted by the Competition Council

Section 74.

(1) The acting Competition Council shall conduct a hearing when so requested by the client, or if one is deemed necessary by the acting Competition Council. The acting Competition Council shall send its preliminary assessment and at the same time shall request the client to declare as to whether a hearing is requested or not. The hearing shall be scheduled for a date so as to allow sufficient time for the client to prepare for the hearing.

(2) The acting Competition Council may dismiss the case by way of ruling, within or without a hearing, in the cases specified in Paragraph a) of Subsection (1) of Section 72 .

(3) The hearing conducted by the Competition Council is open to the public. With its reasoned ruling, the competent Competition Council may exclude the public from the hearing or a part thereof upon request or ex officio, if it is absolutely necessary in the interest of the preservation of state secrets, service secrets, business secrets or data relating to the client's financial situation, data obtained from a credit institution (bank secret) or data obtained from an insurance company (insurance secret), and securities and fund secrets specified in specific other legislation, or with regard to the interests of the national economy.

Commitment

Section 75.

(1) If with respect to a conduct investigated by an ex officio competition control proceedings the client undertakes the commitment to proceed in a specific way to bring this conduct into conformity with the provisions of this Act and with Articles 81 and 82 of the EC Treaty, so as to ensure that the protection of public interest can be effectively implemented, the acting Competition Council shall have powers to adopt a ruling to dismiss the proceedings and to compel the client in question to undertake that commitment, without adopting an opinion regarding any infringement of the law. This ruling may be appealed (Section 82).

(2) Having adopted the ruling referred to in Subsection (1) shall not prevent the reopening of the competition control proceedings due to any significant changes that took place subsequently, or if the ruling was based upon the misleading communication of a key fact. In the course of the reopened competition control proceedings provision should be made for the ruling adopted under Subsection (1).

Follow-Up Investigation

Section 76.

(1) Investigators shall conduct a follow-up investigation to establish:

- a) whether the commitment specified in the ruling under Section 75 has been satisfied;
- b) whether a prior or subsequent condition set out in the resolution has been satisfied;
- c) whether the obligation prescribed in the resolution has been satisfied.

(2) Investigators may conduct a follow-up investigation in a case concluded by the decision of the competent Competition Council.

(3) In the course of a follow-up investigation the provisions on competition control proceedings shall duly apply.

(4) On the strength of the investigator's report, the competent Competition Council:

a) shall adopt a ruling to impose a penalty (Section 78) if the client failed to carry out the commitment in the case of Paragraph a) of Subsection (1), except if the commitment should not be invoked due to changes in the relevant circumstances; if this is the case and also if the client satisfied the commitment, the follow-up investigation shall be terminated by way of a ruling;

b) shall adopt a ruling to determine whether the prior or subsequent condition has been satisfied in the case of Paragraph b) of Subsection (1);

c) shall, if the obligation is satisfied, terminate the follow-up investigation in the case of Paragraph c) of Subsection (1) or, if the obligation has not been satisfied, shall adopt a resolution to revoke or amend its previous resolution if fulfillment of the obligation is not justified;

d) shall adopt a ruling to terminate the follow-up investigation in the case of Subsection (2), if it is established that the decision is satisfied and fulfilled voluntarily, otherwise it shall order implementation of the decision by way of a ruling.

(5) The ruling referred to in Paragraph a) of Subsection (4) for imposing the penalty may be appealed (Section 82).

Resolution

Section 77.

(1) In its resolution, the competent Competition Council:

a) shall adopt a decision in respect of the applications defined in Subsection (2) of Section 67;
b) may, in proceedings instituted on the basis of Subsection (3) of Section 67, authorize the merger of companies, or extend the one-year time limit in accordance with Section 25;

c) may - pursuant to Section 16/A - determine that aggregate exemption shall not apply to a specific agreement;

d) may declare a conduct to be illegal;

e) may order the termination of any illegal conduct;

f) may prohibit the continuation of any illegal conduct;

g) may prescribe certain obligations in connection with illegal conduct, such as ordering the parties to conclude contracts in cases of unreasonable refusal to enter into a business relationship or to continue an existing one as appropriate for the nature of the transaction [Paragraph c) of Section 21];

h) may order the publication of a statement of correction in connection with any misleading information;

i) may declare a conduct to be legal;

j) may withdraw or reverse its previous resolutions [Section 32 and Section 76, and Section 114 of the APA].

(2) An authorization of merger may contain provisions to prescribe a prior or subsequent condition or an obligation.

(3)

Section 78.

(1) The acting Competition Council may impose a fine for any violation of the provisions of this Act. The fine shall be a maximum of ten per cent of the company's net sales revenue, or the net sales revenue of the group - of which the company penalized is identified in the resolution as a member - for the financial year preceding the year when the resolution on the illegal conduct was adopted. The fine for social organizations of companies, public bodies, associations and other similar organizations shall be a maximum of ten per cent of the previous financial year's net sales revenue of the member companies.

(2) If there is no credible information available on the net sales revenue of the companies or group of companies referred to in Subsection (1) for the financial year preceding the year when the resolution on the illegal conduct was adopted, the maximum amount of the fine shall be determined based upon the sales revenue for the last financial year for which the books are closed officially.

(3) The fine shall be determined with regard to all applicable circumstances, in particular, to the gravity and duration of the illegal conduct, the advantage gained by such conduct, the market position of the offenders, the degree of responsibility and any cooperation in the investigation. Repeat offenders shall be penalized accordingly. The gravity of the violation shall be determined, in particular, on the basis of the degree of obstructing competition and the scope and extent of the violation of consumer interests.

(4) A fine imposed upon a broadcaster shall be paid to the Broadcasting Fund.

(5) If the member of the group of companies charged with the infringement refuses to pay the fine voluntarily, and if it cannot be enforced, the acting Competition Council shall adopt a separate ruling to confer joint and several liability upon the members of the group indicated in the resolution to pay the fine or the portion still outstanding.

(6) If the social organizations of companies, public bodies, associations and other similar organizations refuse to pay the fine that was imposed upon them voluntarily, and if it cannot be enforced, the acting Competition Council shall adopt a separate ruling to confer joint and several liability upon the member company indicated in the resolution as taking part in adopting the unlawful decision to pay the fine.

(7) The ruling referred to in Subsections (5) and (6) may be appealed in accordance with Subsection (3) of Section 82.

(8) In order to effectively detect agreements concluded in violation of Section 11 the Office of Economic Competition may develop a policy of permissiveness, in which to define the guiding principles and the degree for taking into consideration the active cooperation of a company that is alleged to engage in illegal conduct to unravel the infringement when deliberating the decision for imposing a penalty. The criteria for the policy of permissiveness shall be defined in a notice posted in accordance with Subsection (6) of Section 36.

Section 79.

The maximum daily amount of the fine is fifty thousand forints in the case of failure to submit the application for the authorization defined in Section 24.

Public Disclosure of Decisions

Section 80.

The acting Competition Council shall make its resolutions available to the public and may publish its rulings, irrespective of whether or not a request for a court review was filed, however, if such request is filed it shall be indicated in the public disclosure. If the resolution to order an investigation was published, the decision passed in conclusion of the case shall also be published.

Chapter XII

Legal Remedy in the Competition Control Proceedings of the Office of Economic Competition

Objection to the Investigation

Section 81.

The client may lodge a complaint with respect to any irregularity in the investigation proceedings in writing within three days from the date it was taken. If the complaint is

disregarded, the investigator and the competent Competition Council shall convey the reasons, respectively, in the report or in the decision adopted in conclusion of the proceedings.

Remedy Against the Rulings Adopted in the Course of Proceedings

Section 82.

(1) The rulings adopted by the investigator or the acting Competition Council in the course of the proceedings may be appealed only in the cases defined in this Act, upon which the enforcement of the decision or the continuation of the proceedings shall not be suspended, in the absence of any provision of this Act to the contrary. The appeal may be submitted by the client or any person in respect of whom the ruling contains provisions, within eight days from the announcement of the ruling.

(2) An appeal against the ruling adopted by an investigator shall be adjudged by the acting Competition Council in chambers. In its decision the acting Competition Council may either sustain or reverse, or overturn the investigator's ruling, in connection with which it may also instruct the investigator to reopen the case. The decision of the acting Competition Council on the appeal shall be final, with the exception of the appeals lodged against the investigator's rulings adopted under Section 60, Section 61, Subsection (7) of Section 62, Subsection (4) of Section 68 or Section 71/A.

(3) The Municipal Court of Budapest shall review the appeals lodged against the rulings of the acting Competition Council in administrative proceedings without litigation.

Administrative Lawsuits

Section 83.

(1) Any request for the judicial review of the resolutions adopted in competition control proceedings shall be presented to the Competition Council within thirty days from the date when the resolution to which it pertains was communicated, or shall be mailed by registered post.

(2) The acting Competition Council shall forward the request for action, together with the documents of the case and its official position concerning the case, to the court within thirty days from the date when received. If the request contains an appeal for the suspension of enforcement, it shall be forwarded to the court together with the documents of the case within fifteen days from the date when received.

(3) In administrative lawsuits, the President of the Competition Council may appoint a member of the competent Competition Council to represent the Office of Economic Competition.

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

(5) If the decision of the competent Competition Council violated any legal provision, and as a consequence thereof, the client has the right to reclaim the fine, it shall be repaid with interest corresponding to double the amount of the current central bank base rate.

Section 84.

In the course of court proceedings instituted on the basis of a statement of claim submitted against the decision adopted by the competent Competition Council, Chapter XX of Act III of 1952 on the Code of Civil Proceedings shall apply, with regard to the exceptions set out in Section 83.

Chapter XIII

Legal Proceedings That May Be Instituted by the Office of Economic Competition

Section 85.

(1) If, in its official capacity, the Office of Economic Competition detects that an administrative decision violates the freedom of competition, it shall call upon the administration agency to reverse or withdraw the decision.

(2) If the administration agency fails to comply with the request referred to in Subsection (1) within thirty days, the Office of Economic Competition may file charges in the court to request the review of the decision adopted by the administrative agency that is alleged to violate the freedom of competition, unless the review of such administrative decisions are not permitted by law. After a period of six months following the operative date of the decision, no such petition may be submitted, and in the case of missing the above deadline, no application for extension may be submitted.

(3) The competent county court (Municipal Court of Budapest) shall have competence to hear the above-specified case. The acting court shall proceed in due observation of Chapter XX of Act III of 1952 on the Code of Civil Proceedings.

Chapter XIV

Competition Control Proceedings Conducted by the Court

Section 86.

(1) Conducting the proceedings due to the violation of the provisions contained in Sections 2-7 shall fall within the competence of the court.

(2) The plaintiff:

a) may demand that a violation of the law be established;

b) may demand the termination of the infringement and the prohibition of the offender from any further violation of the law;

c) may demand that the offender give satisfaction by way of a statement or in another appropriate manner, and if necessary, that sufficient publicity be given to the satisfaction on the part or at the expense of the offender;

d) may demand the termination of the injurious situation, to have the former status quo reinstated, and the deprivation of the goods manufactured or placed on the market illegally, or, if this is not possible, the destruction thereof, and the destruction of any special devices and facilities used for the manufacture or production thereof;

e) may demand compensation for damages in accordance with the rules of civil law; and/or
f)

g) may demand that the defendant disclose information on the parties participating in the manufacturing and marketing of the products involved in the case as well as on the business relations it has established to distribute such products.

(3)

Section 87.

Proceedings conducted by the court shall also extend to the imposition of the fine defined in Section 78.

Section 88.

(1) Legal proceedings may be instituted on the grounds of conduct in contravention of Sections 2-7 within six months of becoming aware thereof. No legal proceedings may be instituted after five years following the date of such conduct.

(2) Where an illegal conduct is realized through failure to terminate a particular situation or predicament, the above period in Subsection (1) shall not commence as long as such situation or predicament continues to prevail.

(3) The county (Budapest) court shall have jurisdiction in respect of legal proceedings instituted on the basis of this Chapter.

Section 88/A.

The competence of the Office of Economic Competition, established by Section 45 of this Act and conferred under Subsection (1) of Section 70, for protection of the interests of the public shall not prevent the enforcement of the civil claims mentioned in Subsection (3) of Section 11 and Section 93 of this Act for any infringement of the provisions of Chapters III-V of this Act in court action.

Section 88/B.

(1) In the lawsuits which are to be adjudged in accordance with the provisions contained in Chapters IV-V of this Act, the provisions of Act III of 1952 on the Code of Civil Procedure shall apply, subject to the exceptions set out in this Section.

(2) The court shall forthwith notify the Office of Economic Competition if the provisions contained in Chapters III-V of this Act are to be applied in an ongoing lawsuit.

(3) The Office of Economic Competition may present its opinion in writing before the hearing is adjourned concerning the application of the provisions contained in Chapters III-V of this Act, or it may present its opinions orally at the hearing. If the Office of Economic Competition wishes to present an oral argument, the court must be notified in advance. The argument presented by the Office of Economic Competition may be used as evidence.

(4) At the court's request the Office of Economic Competition shall convey its legal assessment concerning the application of the provisions contained in Chapters III-V of this Act within sixty days following receipt of the request therefor.

(5) If requested, the court shall convey to the Office of Economic Competition the documents of the case that are relevant for presenting an argument under Subsection (3) or the legal assessment under Subsection (4). The court shall prepay the costs for making duplicates of such documents. If requested by the Office of Economic Competition, the court may also authorize the visual inspection of the documents instead of conveying them.

(6) If, during any stage of the lawsuit, the Office of Economic Competition notifies the court that it has launched a competition control proceedings in the case in question, the court shall adjourn the hearing of the case until the time limit for lodging any action against the resolution adopted in the competition control proceedings has expired, or until the final conclusion of the judicial review, if one was requested. The resolution of the Office of Economic Competition, if not contested, and the part of the verdict of the court reviewing the resolution of the Office of Economic Competition for sustaining or overturning the resolution, shall be binding upon the court.

(7) In the lawsuit the burden of proof shall lie upon the party claiming the infringement of the provisions of Chapters III-V of this Act; the applicability of aggregate exemption pursuant to Section 16 and conformity with the provisions contained in Section 17 shall be verified by the party in whose interest it is claimed.

(8) The court may also adopt a decision in accordance with Subsection (4) of Section 13 or Subsection (2) of Section 16/A, if the party relying upon these provisions is able to evidence compliance with the relevant legal requirements.

Chapter XV

Enforcement of the Decision of the Office of Economic Competition

Section 89.

(1) A decision adopted in the course of competition control proceedings shall be deemed final and operative if no appeal is submitted against the decision within the deadline prescribed, if the right to appeal was relinquished or no remedy is available.

(2) The final decision may be enforced if the deadline or time limit prescribed in the decision was disregarded. A decision that has been appealed may be enforced if the appeal has no suspensory effect.

(3) The acting Competition Council and the investigator shall *ex officio* adopt a ruling immediately upon the expiry of the prescribed date for performance, in which to order the implementation of its decision adopted in the competition control proceedings.

Section 90.

(1) If the decision of the Competition Council contains provisions to compel the client to perform a specific action or to engage in a certain conduct, the acting Competition Council shall order enforcement and shall simultaneously impose an enforcement penalty. The enforcement penalty may extend to maximum fifty thousand forints daily.

(2) The acting Competition Council, at the obligor's justified request, may prescribe a new deadline on one occasion, for voluntary compliance, and simultaneously increase the daily amount of the enforcement penalty. The increased enforcement penalty may extend to maximum one hundred thousand forints daily.

(3) The enforcement penalty shall be payable as of the date of the enforcement order, and the increased penalty shall be payable as of the expiry of the deadline extension until performance in compliance with what is contained in the resolution is verified.

(4) The enforcement penalty may be imposed concurrently both on the company and on the executive officer of the company.

(5) A fine imposed in the course of competition control board proceedings, to the extent that it has not been paid by the person on whom it was imposed within the time limit for payment, shall be treated as a public debt to be collected by the competent state tax authority at the request of the Economic Competition Office.

Section 90/A.

Decisions directed at the performance of an action or at a certain conduct shall be enforced by the Office of Economic Competition.

Section 91.

(1) Any person whose rights or rightful interests are violated by the enforcement procedure or the imposition of the enforcement penalty may lodge a demurrer to the President of the Competition Council within three days of becoming aware of such injury.

(2) The President of the Competition Council shall adopt a ruling concerning the demurrer within eight days and this ruling shall be final and may not be appealed.

Chapter XVI

Application of the Community Competition Rules

General Provisions

Section 91/A.

(1) For the purposes of the application of Articles 81 and 82 of the EC Treaty, the provisions of this Act shall apply with the exceptions set out in this Chapter and in Council Regulation (EC) No. 1/2003.

(2) With respect to the control of concentrations of companies under Community legislation, the provisions laid down in this Act shall apply if so stipulated in Council Regulation (EC) No. 139/2004. Of the provisions of this Chapter, Sections 91/E and 91/G may be applied in such cases.

Procedure of the Office of Economic Competition

Section 91/B.

In the application of Articles 81 and 82 of the EC Treaty, the Office of Economic Competition shall cooperate with the European Commission and with the competition authorities of Member States in the manner specified in Council Regulation (EC) No. 1/2003.

Section 91/C.

The competent Competition Council shall convey its preliminary opinion (Section 73) to the European Commission before the hearing is set and in justified cases, to the affected competition authority as well. The hearing must be set after the thirtieth day following the notification of the European Commission, in which case the administrative time limit is extended by an additional thirty days.

Section 91/D.

If any evidence supplied by the European Commission or the competition authority of another Member State is presented in the course of a competition control procedure, the competent Competition Council shall confirm the admissibility of such evidence in its disposition of the decision under the requirements set out in Council Regulation (EC) No. 1/2003.

Section 91/E.

(1) In the handling of a report, the investigator shall refuse to order an inspection and the investigator or the competent Competition Council shall terminate any ongoing investigation initiated ex officio if the case is already being investigated by the European Commission.

(2) In the handling of a report, the investigation of a case may be refused if it is already being investigated by the competition authority of another Member State.

(3) The investigator or the competent Competition Council may suspend or terminate an investigation initiated ex officio if the case is already being investigated by the competition authority of another Member State.

(4) The rulings adopted under Subsections (1)-(3) may not be appealed.

(5) If the Office of Economic Competition makes the request under Article 22 (1) of Council Regulation (EC) No. 139/2004 to the Commission, the investigator shall suspend the proceedings simultaneously.

(6) If the Commission decides upon the request of the Office of Economic Competition to examine a concentration, the investigator shall terminate the proceedings by way of a ruling. If the Commission refuses to examine the concentration, the investigator shall carry on the proceedings.

(7) If, in connection with an application for authorization of a concentration submitted to the Office of Economic Competition, the Commission informs the Office of Economic Competition in accordance with Article 22 (2) of Council Regulation (EC) No. 139/2004 that it has received a request under Article 22 (1) of Council Regulation (EC) No. 139/2004 from another Member State, the investigator or the acting Competition Council shall suspend the proceedings.

(8) The investigator or the acting Competition Council shall carry on with the proceedings after having notified the Commission that it does not wish to join the request referred to in Subsection (7).

(9) The investigator or the acting Competition Council shall adopt a ruling to terminate the proceedings if having joined the request referred to in (7), and the Commission decided to examine the concentration in question.

(10) The investigator or the acting Competition Council shall carry on with the proceedings if having joined the request referred to in (7), however, the Commission decided not to examine the concentration in question.

(11) The rulings adopted under Subsection (5)-(10) may not be appealed.

Section 91/F.

(1) Where any of the investigative measures described under Subsection (1) of Section 65/A are necessary in the course of a proceeding of the European Commission, and in the case defined in Article 21 of Council Regulation (EC) No. 1/2003 such measures may be taken subject to the court order granted under the procedure defined in Section 65/A.

(2) The court shall grant authorization if the conditions set out in Council Regulation (EC) No. 1/2003 and Council Regulation (EC) No. 139/2004 are satisfied.

(3) The European Commission may submit its request to the court for prior authorization of an investigative measure directly, or may summon the Office of Economic Competition to do so on its behalf.

(4) Where police assistance is required for carrying out an investigative measure, it shall be requested by the Office of Economic Competition on behalf of the European Commission.

Section 91/G.

If the Office of Economic Competition is requested to carry out an investigative measure by the European Commission or the competition authority of another Member State pursuant to Council Regulation (EC) No. 1/2003 or by the European Commission pursuant to Council Regulation (EC) No. 139/2004, it shall be executed in observation of the provisions of this Act, with the exception that such proceeding shall terminate upon the investigator conveying the evidence gathered without passing any decision (Section 77).

Court Proceedings

Section 91/H.

(1) In lawsuits that are to be adjudicated under Articles 81 and 82 of the EC Treaty, the provisions of Act III of 1952 on the Code of Civil Procedure shall apply subject to the exceptions set out in this Section and in Council Regulation (EC) No. 1/2003.

(2) The court shall forthwith notify the European Commission or the Office of Economic Competition if Articles 81 and 82 of the EC Treaty are to be applied in an ongoing lawsuit. The Office of Economic Competition need not be notified if it is a party to the lawsuit in question.

(3) The European Commission or the Office of Economic Competition may present its opinion in writing before the hearing is adjourned concerning the application of Articles 81 and 82 of the EC Treaty, or it may present its opinions orally at the hearing. If either of them wishes to present an oral argument, the court must be notified in advance. The argument presented by the European Commission or the Office of Economic Competition may be used as evidence.

(4) If requested, the court shall convey to the European Commission or the Office of Economic Competition the documents of the case that are relevant for presenting an argument. The court shall prepay the costs for making duplicates of such documents. If requested by the parties concerned, the court may also authorize the visual inspection of the documents instead of duplicating them.

(5) If, pursuant to Council Regulation (EC) No. 1/2003, the court intends to seek assistance from the European Commission concerning a fact or legal issue, it shall be accomplished by an official resolution, which cannot be appealed. Any information or argument supplied by the European Commission in reply to the said request may be used as evidence in the lawsuit to which it pertains.

(6) The court shall forthwith notify the Ministry of Justice of its ruling in connection with the obligation to notify the European Commission prescribed in Council Regulation (EC) No. 1/2003. The Ministry of Justice shall also inform the Office of Economic Competition of the ruling.

PART IV

Chapter XVII

Closing Provisions

Section 92.

(1) The organization protecting consumer interests, the Office of Economic Competition (if it falls within its jurisdiction and it has substantiated the infringement by resolution), or the chamber of economy, on behalf of its members, may file a lawsuit against any perpetrator whose illegal action results in a grievance that affects a wide range of consumers or is of a considerable magnitude in order to assert the civil claims of consumers, even if the identity of the aggrieved consumers cannot be established.

(2) The claim mentioned in subsection (1) shall lapse within one year reckoned from the time when the grievance was caused.

(3) The court may compel the offender to reduce the price, to repair or replace the goods or to refund the purchase price. The court may, in its ruling, authorize the party enforcing the claim to publish the ruling in a national daily newspaper at the expense of the offender.

(4) The offender shall satisfy the claims of the aggrieved consumer in accordance with the ruling. This does not affect the right of the consumer to enforce any other claims against the offender in accordance with civil law.

Section 93.

The legal consequences applied and the civil claims enforced on the grounds of the violation of the provisions of this Act shall not affect the possibility of applying other legal consequences under civil law, as defined in specific other legislation, or the possibility of instituting misdemeanor or criminal proceedings.

Section 94.

The procedural order of cooperation with foreign competition control agencies shall be established by international agreements or in specific other legislation.

Section 94/A.

The provisions contained in Sections 141-143 of Act XXIX of 2004 on Amendments and Repeals of Legal Regulations and other Legislative Changes Related to Hungary's Accession to the European Union shall not apply to the matters governed under this Act.

Section 95.

(1) This Act shall enter into force on 1 January 1997. However, the provisions of Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices shall apply to cases in progress at the date of entry into force.

(2) The entry into force of this Act shall have no effect on the previous appointment of the President and vice-presidents of the Office of Economic Competition for a specific term that is still in progress at that time.

(3) A proposal concerning the appointment of the Competition Council members shall be presented within sixty days from the date of entry into force of this Act.

(4) The prohibition set out in Subsection (1) of Section 11 of this Act shall not apply for a period of one year following the date of entry into force to agreements concluded prior to the entry into force of this Act and that were not prohibited under the provisions previously in force. Any person to whom this applies may request the Office of Economic Competition to declare this fact. In this case, the provisions of Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices shall apply to the proceedings of the Office of Economic Competition.

Section 96.

The Government is hereby authorized to decree the exemption of certain groups of agreements from the prohibition contained in Section 11.

Section 97.

Simultaneously with this Act entering into force, the following shall be repealed:

- a) Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices;
- b) Section 155 of Act I of 1996 on Radio and Television Broadcasting;
- c)
- d)
- e) Section 67 of Act XXXIX of 1994 on the Commodities Exchange and Commodities Exchange Transactions;
- f) Subsection (3) of Section 43 of Act CXII of 1993 on the Amendment of Act LXIX of 1991 on Financial Institutions and Financial Institution Activities;
- g) Law-Decree No. 19 of 1987 on Tenders;

h) the passage "Section 52 of Act LXXXVI of 1990' in Section 4 of Act LXXXVII of 1990 on Price Control Regulations.

Section 98.

The following provisions of this Act contain regulations for the implementation of the Community legislation indicated below:

- Subsection (2) of Section 1, Subsection (3) of Section 33, Paragraph e) of Subsection (1) of Section 36, Subsection (1) of Section 91/A, Sections 91/B- 91/D, Subsections (1)-(4) of Section 91/E, and Sections 91/F-91/H for Council Regulation (EC) No. 1/2003;

- Paragraph e) of Subsection (1) of Section 36, Subsection (2) of Section 91/A, Subsections (5)-(11) of Section 91/E, and Sections 91/F-91/G for Council Regulation (EC) No. 139/2004.