

Act C of 2003 on Electronic Communications (extract)

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In order to further improve the electronic communications infrastructure of the information society, provide consumers with reliable and safe electronic communications services of proper quality at the lowest possible prices, promote efficient competition in the electronic communications market regardless of the technology applied, and to comply with the legislation of the European Community, Parliament hereby enacts the following Act on electronic communications:

Article 9

1. The National Communications Authority (hereinafter: the authority) is an entity of public administration with legal personality and national competence. The authority shall be directed by the Government and supervised by the minister.

Co-operation with the Gazdasági Versenyhivatal ➡

Article 20

1. In order to consistently safeguard competition and to promote the uniform application of legislation, the authority and the competition authority shall closely cooperate with one another concerning matters affecting competition in the electronic communications market, in particular in procedures concerning
 - a. the definition of the affected markets of electronic communications,
 - b. the analysis of competition in the affected markets,
 - c. the identification of service providers with significant market power and the prescription of obligations that bind them,
 - d. the elaboration of a methodology to analyse the price squeeze and the analysis of the price squeeze.
2. When stipulating the affected markets in electronic communications, analysing competition in the affected markets and identifying service providers with significant market power, the authority shall put the technical opinion of the competition authority into the focus; whenever it deviates from this technical opinion, it shall inform the

competition authority about its reasons for doing so.

3. In the course of their cooperation, the authority and the competition authority shall ensure that their procedures be in line with the regulations concerning data protection and interests with regard to commercial secret are not violated. Within this, the authority transferring data to the other authority shall inform the supplier of the data about the transfer of the data and the authority receiving the data shall ensure that the data be given at least the same level of protection as at the transferring authority.
4. The authority and the competition authority shall specify the details of their cooperation, review them annually and make them available to the public at large, including the methodologies developed in the course of their cooperation.

Initiating the Procedure ➡

Article 42

1. The Board shall launch the procedure ex officio, if the notification is accepted, the procedure is initiated in accordance with the provisions of paragraph (2) and the fact giving rise to the procedure is noted by the Board itself.
2. The Board shall launch the procedure ex officio, if
 - a. the minister,
 - b. the chairman of the competition authority,
 - c. the director general of the consumer protection authority,
 - d. the data protection ombudsman,
 - e. the chairman of the National Radio and Television Body, and
 - f. the European Commission

learns about the violation of a rule concerning electronic communications, or the need to identify an entity as a service provider with significant market power or the need to review obligations specified for service providers with significant market power and request the initiation of a procedure.

3. If, in the course of a procedure initiated within the deadline stipulated in Article 40 (1), the Board learns about a violation of rights in addition to those already subject to investigation, it may act ex officio with respect to these violations before making its decision. The parties and those concerned shall be informed either in writing or during the hearing about the facts concerning the new violation of rights about which the Board has just obtained information and they shall be given an opportunity to state their opinion in respect of such violations.

Identification of Markets and Service Providers with Significant Market Power and the Stipulation of Obligations ➡

Article 52

1. The Board shall identify affected markets; analyse competition and its effectiveness in affected markets, and, when competition is found insufficiently effective, it shall identify the service provider or service providers with significant market power in the affected markets; and stipulate at least one of the obligations incorporated in Chapters XI-XIV for the service provider or service providers with significant market power warranted by the impediments to competition explored on the basis of market analysis and proportionate thereto, or maintain or amend at least one obligation set forth in legislation prior to first implementation of the market analysis according to this paragraph, or thereafter in the decision of the authority for the service provider with significant market power.
2. With a view to market identification and market analysis, electronic communications service providers shall be subject to a reporting obligation. In the event of the nonperformance or inadequate performance of the reporting obligation, the Board shall levy a fine according to Articles 33 (3) - (5).
3. The Board shall carry out market identification and market analysis based on the criteria announced by the minister by decree in accordance with the relevant principles of competition law.

Article 53

1. Based on a market analysis, the Board shall identify the service provider which, on its own or together with another service provider, holds dominant market position in an effective market where economic competition is insufficiently effective, that is, it is in an economic position enabling it to pursue its activities largely independently of competition, buyers and, ultimately, consumers.
2. When identifying the service provider with significant market power, the Board shall take into account that the service provider with significant market power in a given market may also qualify as such in a neighbouring market (that is, a market closely related to it) when, as a result of the relationship between the given market and the neighbouring market, the service provider may transfer its economic power in one of the markets to the other, thereby reinforcing its economic power.
3. When based on the market analysis the Board does not designate a service provider with significant market power at the time of the commencement of the market analysis as such, it shall in its decision terminate the identification of this service provider as one having significant market power.
4. In the case of a market between Member States, also affecting the geographic area of the Republic of Hungary, defined in a decision of the European Commission, the Board shall identify the service provider with significant market power in co-operation with the electronic communications authorities of the Member States concerned.

Article 54

1. In markets where a service provider has significant market power, the Board shall provide for one or more obligations to be imposed on identified service providers with significant market power from among those specified under Chapters XI-XIV as warranted by the impediments restricting competition as explored by the market analysis and in proportion to such impediments, or it shall maintain such obligations in force, or modify the obligation previously provided for the service provider with significant market power.
2. In the case of a market between the Member States, also affecting the geographic area of the Republic of Hungary, defined in a decision of the European Commission, the Board shall determine the obligations, maintain them in force, and amend or repeal them in cooperation with the electronic communications authorities of the Member States concerned.

Article 55

1. When the Board terminates the identification of a service provider as having significant market power, it shall also terminate - in its decision - the application of all the obligations imposed on the service provider in view of its identification as having significant market power stipulated by the Board or legal regulation in force at the time of the initial market analysis and the commencement of the procedure related to the specification of the obligations.
2. In its decision concerning the modification or termination of the obligation on the service provider with significant market power, the Board may keep in force the obligation to be amended or terminated for an appropriate transitory period (of at least 30 days but not exceeding 120 days).

Article 56

When in an exceptional and warranted case, the Board wishes to prescribe an obligation related to access or interconnection, other than those specified under Chapters XI-XIV for the service provider with significant market power, it shall send the draft of its decision concerning this to the European Commission for advance approval together with a detailed explanation. The procedure of the Board shall be suspended from the date of sending the draft decision to the European Commission until it brings its decision according to Article 65 (5).

Article 57

1. The Board shall carry out regular market analyses in the affected markets, to be repeated at least within a year from the completion of the preceding market analysis and the procedure related to the stipulation of obligations.
2. When the authority learns about a circumstance of significance for the evaluation of competition in an affected market, the Board shall carry out the analysis of the affected market or markets concerned without delay.
3. When on the basis of the results of the market analysis carried out it becomes

necessary

- a. to define a new affected market or new affected markets, or
- b. to terminate the identification of a market or markets as an affected market, or
- c. to identify or terminate the identification of a service provider as one having significant market power, or
- d. to specify, modify or terminate obligations for a service provider with significant market power, the Board that carries out the procedures according to Articles 36 and 52 shall bring its decision without delay.

Procedure in the Course of Price Squeeze Examination ➡

Article 63

1. The Board shall take action to examine price squeeze either upon request or ex officio or upon the initiative of the persons listed under Article 42 (2) a)-c).
2. Using the data received through data transmission called for in its decision, the authority shall examine whether a price squeeze may evolve as a result of the compensation requested by the service provider for its network services.
3. When the Board establishes that a price squeeze obtains, the Board shall examine whether such compensation for the network service is adjusted to the magnitude of the costs incurred in relation to the supply of the service. The burden of proof concerning this shall rest with the service provider.
4. If, in spite of the fact that a price squeeze obtains, the compensation for the network service is adjusted to the costs incurred in relation to the supply of the network service, the Board shall refer the case to the competition authority with a view to establishing whether or not the price setting for the output subscriber service constitutes a violation of Article 21 of the Act on Competition. The Board shall co-operate in the procedure of the competition authority.
5. When based on a new circumstance that has come to the knowledge of the Board, it cannot be established that the compensation for the network service according to Article 116 (1) is adjusted to the magnitude of the costs incurred in relation to the supply of the network service, the Board shall, in its decision,
 - a. specify the mandatory minimum of the difference between the price of the network service and the price of the output subscriber service and obligate the service provider to appropriately reduce the price of the network service, and
 - b. by setting a due date of 15 days, obligate the service provider to modify the reference offer containing the price causing a price squeeze as a result of the compensation not being adjusted to costs; following the unsuccessful expiry of the due date, it shall modify the reference offer in accordance with the legitimate

price by adopting a decision within 15 days, and

- c. within the limits specified in this Act and separate legislation, it may apply a fine or a measure proportionate to the severity of the breach of the law.

Prohibition to Apply Price Squeeze ➡

Article 116

1. The service provider having significant market power in any of the markets concerned shall set the compensation for the network service provided in this market so as not to give rise to a price squeeze in view of the prices of the output subscriber services.
2. The service provider subject to the obligation to disclose its reference offer shall, simultaneously with reducing the price of the output subscriber service by it or by the undertaking controlled by it, controlling it or subject to common control with it appropriately reduce the prices specified in its reference offer in order to enforce the provisions of paragraph (1), notify the authority thereof and make this accessible to the public in the same way as the reference offer.
3. The provisions of paragraph (2) need not be applied if the price reduction may affect at most 10% of the subscribers of the given service subject to the price reduction, or the impact of the price reduction does not exceed 5% of net sales arising from the supply of output subscriber services affected by the price reduction relative to the net annual sales of the service provider with significant market power or the undertaking controlled by it, controlling it or subject to common control with it, weighted with the volume of output subscriber services in the previous year affected by the price reduction and calculated with the reduced fee.
4. In the event of the reduction of the price of the output subscriber service according to paragraph (2), the service provider subject to an obligation to disclose a reference offer shall, simultaneously with the announcement of the price reduction, notify the price reduction to the authority also presenting its envisaged impact in detail and sending the data substantiating this in order to enable the authority to check the compliance of the fees in the reference offer with the provisions of paragraph (3).
5. When setting the compensation for the network service, the coverage of the costs incurred in relation to the provision of the service may be taken into account only to the extent that it does not exceed the requirement of the efficient service provider for the fair return of its investment required for providing the given service and the risk undertaken with the investment.