

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

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

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- As amended by Act CXXXII of 1997 on Branches and Sales Agencies in Hungary of Undertakings Domiciled Abroad, Act LVIII of 1997 on Advertising Activities, Act LXXIX of 1997 on the Legal Status and Responsibility of the Members of the Government and of State Secretaries, Act XXVII of 1997 on the Amendment of Act II of 1991 on Bankruptcy Proceedings, Dissolution Proceedings and Final Settlements, Act LXXXIII of 2000 on the Amendment of Certain Statutes in Connection with Passing on Certain Responsibilities of the Chambers of Commerce, Act CXXXVIII of 2000 on the Amendment of Act LVII on the Prohibition of Unfair and Restrictive Market Practices, Act XXXVI of 2001 on the Amendment of Act XXIII of 1992 on the Legal Status of Civil Servants and of Other Acts, Act CII of 2001 on the Incompatibility Concerning, and the Obligation to Make Property Declarations upon, Persons Performing Responsibilities which Arise from the Exercise of State Executive Power or from Holding Office in Public Property Management, Act XVI of 2003 on the Regulation of the Market for Agricultural Products, Act XXIV of 2003 on the Amendment of Certain Statutes Related to the Utilization of Public Funds, the Publicity, the Improvement of Transparency and the Extension of Control, of the Utilization of Public Property and Act XXXI of 2003 on the Amendment of Act LVII on the Prohibition of Unfair and Restrictive Market Practices.
[Effective, pursuant to Art. 8 (1) of Act XXXI of 2003, from the date of entry into force of the Act Promulgating the Treaty of Accession of the Republic of Hungary to the European Union]

PART ONE

Chapter I

Scope of the Act

Article 1

- (1) This Act shall apply to market practices carried out on the territory of the Republic of Hungary by natural and legal persons and companies with no legal personality, including branches in Hungary of undertakings domiciled abroad with the exception for practices regulated in Chapter VI (hereinafter together: undertakings), except where otherwise regulated by statute. With the exception of practices regulated in Chapter II and III, this Act shall also apply to market practices of undertakings carried out abroad if they may have effects on the territory of the Republic of Hungary.
- (2) In any proceedings for the application of Articles 81 and 82 of the Treaty establishing the European Community (hereinafter: the EC Treaty) the procedural rules laid down in this Act shall also apply to market practices falling under those Articles where under Council Regulation (EC) No 1/2003 on the implementation of the competition rules laid down in Articles 81 and 82 of the Treaty (hereinafter: Regulation (EC) No 1/2003) the Office of Economic Competition or a Hungarian court may proceed.

Chapter II

Prohibition of Unfair Competition

Article 2

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

Article 3

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

Article 4

- (1) It shall be prohibited to acquire or make use of business secrets in an unfair manner or disclose them in an unauthorized way to third parties or the public.
- (2) The manner of acquiring a business secret shall also be deemed unfair if access to it was obtained without the consent of the holder and with the assistance of a person who was, at the time of the acquisition of the business secret, or in a period prior to it, in a confidential relationship or business relationship with him.
- (3) For the purposes of this Act:
 - a) the term 'business secret' means the concept defined in Article 81(2) of the Civil Code;
 - b) the term 'confidential relationship' particularly includes employment, labour and membership related relations;
 - c) the term 'business relationship' means the provision of information, negotiations and the submission of offers anticipating the conclusion of a contract even if no contract ensues.

Article 5

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

Article 6

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

Article 7

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

Chapter III

Prohibition of Unfair Manipulation of Consumer Choice

Article 8

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

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

- a) false declarations are made or facts are declared in a manner which is likely to deceive with respect to prices or essential features of the goods, including, in particular, the composition, use, effects on health or the environment, as well as their handling, origin or place of origin, source or method of the procurement; if the designation of goods is likely to deceive, or if any other information which is likely to deceive pertaining to the essential features of the goods is disseminated;
- b) it is concealed that the goods fail to meet legal or other usual requirements for such goods, or that the use of the goods requires conditions which are significantly different from what is customary;
- c) information that is deceptive or may possibly be deceptive is given about factors related to the sale and distribution of the goods influencing the decision of consumers, in particular, about the method of distribution, terms of payment, gifts associated with the goods, discounts, or the chance of winning;
- d) a false impression of especially advantageous purchase is created.

Article 9

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

Article 10

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

Chapter IV

Prohibition of Agreements Restricting Economic Competition

Article 11

- (1) Agreements or concerted practices between undertakings and decisions by social organisations of undertakings, public corporations, associations or other similar organisations (hereinafter referred to together as ‘agreements’), which have as their object or potential or actual effect the prevention, restriction or distortion of competition, shall be prohibited. Agreements concluded between undertakings which are not independent of each other do not qualify as such kind of agreements.
- (2) This prohibition applies, in particular, to
 - a) the direct or indirect fixing of purchase or selling prices or other business terms and conditions;
 - b) the limitation or control of production, distribution, technical development or investment;
 - c) the allocation of sources of supply, or the restriction of their choice as well as the exclusion of a specified group of consumers from purchasing certain goods;
 - d) the allocation of markets, exclusion from sales, or restriction of the choice of marketing possibilities;
 - e) the collusion of competitors concerning the bidding process;
 - f) the hindering of market entry;
 - g) cases, where, given transactions of the same value or character, there is discrimination between trading parties, including the application of prices, periods of payment, discriminatory selling or purchase terms and conditions or methods which place placing certain trading parties at a competitive disadvantage;
 - h) making the conclusion of contracts subject to the acceptance of obligations which, by their nature or according to commercial usage do not belong to the subject of such contracts.
- (3) Legal consequences attached by this Act to the infringement of Section (1) of this Article shall be applied together with those attached by the Civil Code to contracts infringing the law.

Article 12 [Repealed by Act CXXXVIII of 2000]

Article 13

- (1) Agreements, which are of minor importance, shall not be prohibited.

- (2) An agreement shall be deemed to be of minor importance if the joint share of the participating undertakings and undertakings which are not independent of them does not exceed ten per cent on the relevant market unless its object is
 - a) to fix, directly or indirectly, purchase or selling prices between competitors, or
 - b) to share markets between competitors.
- .(3) The market share must not exceed ten per cent for as long as the agreement is in force, or should it be in force for more than one year, in the particular calendar year.
- (4) Notwithstanding from the provisions set out in Sections (1) to (3), agreements shall be caught by the prohibition where competition is significantly prevented, restricted or distorted by the cumulative effect of those agreements and similar other agreements on the relevant market. The Office of Economic Competition may establish during the course of its proceedings that such an agreement falls under the prohibition. In such cases no fines may be imposed.

Article 14

- (1) The relevant market shall be defined by taking into account the goods which are subject to the agreement and the geographical area concerned.
- (2) In addition to the goods which are subject to the agreement any goods that can reasonably be substituted for them, in view of their intended use, price and quality and the terms and conditions of the fulfilment /demand-side substitutability/ and the aspects of supply-side substitutability shall be taken into account.
- (3) The term 'geographical area' means the territory outside which:
 - a) a consumer is unable to purchase goods or is able to purchase them only under considerably less favourable conditions; or
 - b) the seller of goods is unable to sell goods or is able to sell them only under considerably less favourable conditions.

Article 15

- (1) Undertakings shall be deemed not to be independent of each other, where, in accordance with Section (2) or (3) of Article 23,
 - a) one of them has control over the other, or
 - b) they are controlled by the same undertaking or jointly by the same undertakings.
- (2) Undertakings in which the state or a municipality holds a majority interest /Article 27(3)/, which have independent decision-making rights in the determination of their market conduct, and undertakings mentioned in Article 25 shall, however, be deemed independent of each other.

Article 16

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

Article 16/A

- (1) The group exemption from the prohibition on the restriction of competition does not apply to agreements where, by the cumulative effect of those agreements and similar other agreements on the relevant market, the requirements provided for by Article 17(1) are not satisfied.
- (2) The Office of Economic Competition may establish in the course of its proceedings that, with regard to the provision of Section (1) above, the benefit of the group exemption shall not apply to such an agreement for the future. In such cases no fines may be imposed.

Article 17

- (1) Agreements or planned agreements shall be exempted from the prohibition declared by Article 11 on individual application by the decision of the Office of Economic Competition, provided that
 - a) they contribute to a more reasonable organisation of production or distribution, the promotion of technical or economic progress, or the improvement of competitiveness or of the protection of the environment;
 - b) they allow consumers a fair share of the resulting benefit;
 - c) the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified common goals;
 - d) they do not create the possibility of excluding competition in respect of a substantial part of the products concerned.
- (2) An exemption decision shall specify the period for which the agreement is exempted. The effect of the exemption may be subjected to pre- or post-conditions and obligations may be attached to the exemption.
- (3) The decision exempting an agreement is of retroactive effect to the date of the conclusion of the agreement. A preconditioned exemption shall take effect from the date of the fulfilment of the conditions. A post-conditioned exemption shall take effect from the date of it being granted. It shall cease to have effect should any of the conditions not be satisfied.

Article 18

- (1) Applications may be made to the Office of Economic Competition asking it to establish that an agreement, or planned agreement
 - a) does not qualify as one restricting competition pursuant to Article 11, or

- b) does not fall under the prohibition, with a view to Article 13, or
 - c) is exempted from the prohibition in accordance with Article 16.
- (2) Applications for the exemption of an agreement or planned agreement from prohibition pursuant to Article 17 shall be submitted to the Office of Economic Competition.
- Article 19**
- (1) The Office of Economic Competition shall revoke its decision made pursuant to Article 18 where
- a) the obligee is in breach of any obligation attached to the decision,
 - b) the decision, which has not been reviewed yet by the court, was based on misleading information regarding a fact which was fundamental to the making of the decision, or
 - c) there has been a change in important market circumstances which were fundamental to the making of the decision, resulting in the requirements provided for by Article 17(1) being no longer satisfied.
- (2) The Office of Economic Competition may amend its decision made pursuant to Article 18 where the obligee is in breach of any obligation, or unable to satisfy any of the conditions, attached to the decision but where the obligee has not been found negligent.
- (3) In cases regulated pursuant to points a) and b) of Section (1) the Office of Economic Competition may decide on the revocation of its decision with retroactive effect to the date when the decision was made.

Article 20

The burden of proof that an agreement or a planned agreement does not qualify as one restricting competition pursuant to Article 11, does not fall under the prohibition, with a view to Article 12, or is exempted pursuant to Articles 16 or 17 from the prohibition shall rest with the applicant.

Chapter V

Prohibition of Abuse of a Dominant Position

Article 21

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

- a) in business relations, including the application of standard contractual terms, to set unfair purchase or selling prices or to stipulate in any other manner unjustified advantages or to force the other party to accept disadvantageous conditions;
- b) to limit production, distribution or technical development to the prejudice of consumers;

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

Article 22

- (1) A dominant position shall be deemed to be held on the relevant market /Article 14/ by persons who are able to pursue their business activities to a large extent independently of other market participants substantially without the need to take into account the market reactions of their suppliers, competitors, customers and other trading parties when deciding their market conduct.
- (2) In assessing whether a dominant position exists, the following factors shall be considered, in particular:
 - a) the costs and risks of entry to and exit from the relevant market, and the technical, economic and legal conditions that have to be met;
 - b) the property status, financial strength and profitability of the undertaking, and the trends in their development;
 - c) the structure of the relevant market, the comparative market shares, the conduct of market participants and the economic influence of the undertaking on the development of the market.
- (3) Dominant positions may be held by individual undertakings or jointly by more than one undertaking.

Chapter VI

Control of Concentration of Undertakings

Article 23

- (1) A concentration of undertakings is effected, where
 - a) two or more previously independent undertakings merge or an undertaking is integrated with another or a part of an undertaking becomes part of another undertaking which is independent of the first one;
 - b) a sole undertaking or more than one undertaking jointly acquire direct or indirect control of the whole or parts of one or more than one other undertaking which have been independent of them; or
 - c) more than one undertaking, which are independent of each other, jointly create an undertaking controlled by them, into which they integrate an identical activity which they each previously performed or complementary activities provided that this does not qualify as an agreement restricting economic competition pursuant to Article 11.
- (2) For the purposes of this Act, direct control is exercised by a sole undertaking, or more than one undertaking jointly, which
 - a) have the ownership of the interests or shares of another undertaking entitling them to exercise majority voting rights, or are holders of more than fifty per cent of the voting rights; or
 - b) are entitled to appoint, elect or recall the majority of the executive officials of another undertaking; or
 - c) are entitled by contracts to exercise decisive influence on the decisions of another undertaking; or
 - d) acquire the ability on a factual basis to exercise decisive influence on the decisions of another undertaking.
- (3) For the purposes of this Act, indirect control is exercised by one undertaking over another undertaking which is controlled, solely or together with it, by a third undertaking under its control or is jointly controlled by third undertakings under its control.
- (4) For the purposes of this Act, activities of an office-holder relating to winding up and dissolution of undertakings do not qualify as the exercise of control.
- (5) The concept of 'part of an undertaking' is to be understood as assets or rights, including the clientele of an undertaking, the acquisition of which, solely or together with assets and rights which are at the disposal of the acquiring undertaking, is sufficient for enabling market activities to be pursued.

Article 24

- (1) For a concentration of undertakings, the authorization of the Office of Economic Competition shall be sought in cases where the aggregate net turnover of the undertakings concerned /Article 26/ exceeded HUF ten billion in the preceding business year, and:
 - a) the net turnover of the part of an undertaking, which becomes part of another undertaking, or of the undertaking, which becomes integrated with or comes under the control of another undertaking, or of at least two of the undertakings which are direct participants /Article 26(2)/ in the merger, together with the net turnover of the indirect participants /Article 26(3)/ connected to them, was higher than HUF five hundred million each in the preceding year; or
 - b) together with the net turnover, counted by the same method as for the purposes of point a) above, of the part of an undertaking, which becomes part of another undertaking, or of the other undertaking, which becomes integrated with or comes under the control of another undertaking, or of the direct participants in the merger, the net turnover of which was under HUF five hundred million each, the integrating undertaking or the undertaking acquiring control or the undertakings participants in the merger, the net annual turnover of which was higher in the previous year than HUF five hundred million each, together with the indirect participants /Article 26(3)/ implemented transactions within the two-year period preceding the date of the said transaction with undertakings the aggregate net turnover of which in the preceding year was higher than HUF five hundred million.
- (2) In the case of concentrations of credit institutions, ten per cent of their total assets shall be taken into account in place of net turnover. In the case of concentrations of insurance companies, the value of gross premiums written, which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, shall be taken into account in place of net turnover. In the case of concentrations of undertakings engaged in investment services and of funds, the incomes from those services and the contributions, respectively, shall be taken into account.

Article 25

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

Article 26

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

- (2) Direct participants are the undertakings with the participation of which the concentration is effected.
- (3) Indirect participants are undertakings
 - a) under the control, as referred to in Section (2) or (3) of Article 23, of a direct participant,
 - b) controlling, as referred to in point a), a direct participant,
 - c) under the control, as referred to in point a) above, in addition to direct participants, of an indirect participant, as referred to in point b),
 - d) being under the joint control of two or more participants, whether they are direct participants or indirect participants pursuant to points a)-c).
- (4) Undertakings which relinquish their controlling powers as a conclusion of the concentration shall be left out of account when identifying the range of the indirect participants.

Article 27

- (1) When applying Article 24(1), in calculating net turnover, the turnover of the undertakings concerned /Article 26/ or parts of them shall be reduced by the sales between themselves.
- (2) In calculating the net turnover of undertakings of foreign nationality, the net turnover realised from sales in the preceding business year in the territory of the Republic of Hungary shall be taken into account.
- (3) In calculating the net turnover of undertakings concerned of majority state or municipality ownership, economic units with autonomous decision-making powers in determining their market conduct shall be taken into account.
- (4) For parts of undertakings, the net turnover realised in the preceding year by the use of the assets and rights by the undertaking which sold them shall be taken into account.

Article 28

- (1) For a concentration to take place, it is the obligation of the direct participants or the acquirers of a part of the seller-undertaking or direct control, in merger and integration cases or in any other cases respectively, to apply for authorization pursuant to Article 24.
- (2) An application for authorization shall be submitted within thirty days of the date of the publication of the invitation to tender, the conclusion of the contract or the acquisition of the controlling rights, whichever of them is the earliest.
- (3) In cases of concentrations of credit institutions or insurance companies, the application for authorization shall be submitted to the Office of Economic Competition on the same date as the application for permission to be submitted to the branch supervisory authority as provided for under separate legislation.

Article 29

For a contract resulting in the concentration of undertakings pursuant to Article 24 to come into existence, the authorization of the Office of Economic Competition shall be required.

Article 30

- (1) When appraising an application for authorization of a concentration, both concomitant advantages and disadvantages shall be considered. In the course of this consideration, the following aspects shall be examined, in particular:
 - a) the structure of the relevant markets, existing or potential competition on the relevant markets, procurement and marketing possibilities, the costs, risks and technical, economic and legal conditions of market entry and exit, the prospective effects of the concentration on competition on the relevant markets;
 - b) the market position and strategy, economic and financial capacity, business conduct, internal and external competitiveness of the undertakings concerned and likely changes in them;
 - c) the effect of the concentration on suppliers and on intermediate and final consumers.
- (2) The Office of Economic Competition may not refuse to grant authorization for a concentration where, with a view to the provisions of Section (1), the concentration does not create or strengthen a dominant position, which would impede the formation, development or continuation of effective competition on the relevant market /Article 14/ or on a substantial part of it.
- (3) In order to reduce the detrimental effects of a concentration, the Office of Economic Competition may attach to its decision pre- or post-conditions and obligations. It may, in particular, demand by its decision the divestiture of certain parts of the undertakings or certain assets or the relinquishment of control over an indirect participant, setting an appropriate time limit for the carrying out of these requirements.
- (4) A preconditioned authorization shall take effect from the date of the fulfilment of the conditions. A post-conditioned authorization shall take effect from the date of it being granted. It shall cease to have effect should any of the conditions not be satisfied.
- (5) The authorization which has been granted for a concentration shall also cover restrictions necessary to the implementation of the concentration.

Article 31

If it is established in the course of the proceedings of the competition supervision that a concentration which is subject to authorization pursuant to Article 24, has been carried out without obtaining such an authorization and may not have been capable of authorization, the Office of Economic Competition may require by its decision, setting an appropriate time limit, the separation or divestiture of the merged undertakings or assets or interests or the

relinquishment of joint control or it may attach other obligations to its decision in order to restore effective competition.

Article 32

- (1) The Office of Economic Competition shall revoke its decision made pursuant to Article 30 where:
 - a) the grant of the authorization by the decision, which has not yet been reviewed by the court, has been based on misleading information concerning a fact which was fundamental to the making of the decision; or
 - b) the undertaking subject to the decision is in breach of any obligation attached to the decision.
- (2) The Office of Economic Competition may amend its decision made pursuant to Article 30 where the obligee is in breach of any obligation, or unable to satisfy any of the conditions, attached to the decision but where the obligee has not been found negligent.

PART TWO

Chapter VII

The Office of Economic Competition

Article 33

- (1) The Office of Economic Competition is a public, budgetary institution which constitutes a separate chapter in the central budget.
- (2) Except where this Act provides otherwise, the responsibilities concerning the supervision of competition defined in this Act and in the Act on Price Setting are performed by the Office of Economic Competition. All the duties of the Office of Economic Competition must be prescribed by law.
- (3) The duties assigned to the competition authority of a Member State by the competition rules of the European Community are carried out by the Office of Economic Competition

Article 34

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

Article 35

- (1) The Office of Economic Competition is headed by the President.
- (2) The President of the Office of Economic Competition is nominated by the Prime Minister and appointed by the President of the Republic. The two Vice Presidents of the Office of Economic Competition are nominated by the President of the Office of Economic Competition to the Prime Minister who, in agreement with the nomination, submits the nomination to the President of the Republic. The Vice Presidents are appointed by the President of the Republic, who, at the same time, charges one of the two Vice Presidents with the responsibilities of the President of the Competition Council. The appointments of the President and the Vice Presidents are for a period of six years. After the expiry of the six-year period the appointed persons may be reappointed. The President of the Competition Council may be reappointed once only.
- (3) Prior to nomination by the Prime Minister, the candidates, at the initiative of the Prime Minister, will attend a public hearing by the competent committee of Parliament.
- (4) The mandate of the President and the Vice Presidents of the Office of Economic Competition comes to an end if:
 - a) the term of the appointment expires;

- b) the President (Vice President) resigns his position;
- c) the President (Vice President) dies; or
- d) the President (Vice President) is relieved of his position by the President of the Republic acting upon a proposal by the Prime Minister.

- (5) The President (Vice President) will be relieved of his position, if he has:
 - a) become unworthy of fulfilling it;
 - b) become incapable of fulfilling it; or
 - c) failed to report or put an end to any grounds for incompatibility /Article 40/
 - d) failed intentionally to fulfil his obligation to make a property declaration or intentionally supplied false information in respect of any important fact or data in his property declaration.
- (6) An official shall be deemed unworthy of fulfilling his position where he has a criminal record, or where a court has convicted him or applied another sanction, and he has not yet been deleted from the criminal record.
- (7) An official shall be deemed incapable of fulfilling his position where he has become permanently incapable of performing the attached duties, or where the performance of such duties by him does not meet the appropriate professional standards.

Article 36

- (1) The President of the Office of Economic Competition:
 - a) directs the activities of the Office of Economic Competition;
 - b) represents the Office of Economic Competition;
 - c) establishes the organisational and operational rules of the Office of Economic Competition and approves the organisational and operational rules of the Competition Council;
 - d) exercises the rights of employer, except for the appointment and dismissal of the members of the Competition Council, and records and controls the property-declarations of investigators and other civil servants who are obliged to make property declarations; and
 - e) appoints the persons representing the Office of Economic Competition in the Advisory Committee of Restrictive Practices and Dominant Positions of Regulation (EC) No 1/2003, and in the Advisory Committee on Concentrations set up by the Regulation of the Council on the control of concentrations between undertakings.
- (2) The President of the Office of Economic Competition:
 - a) may take part in the sessions of Parliament;
 - b) will, when requested, give expert advice to Parliament on issues relating to economic competition;
 - c) submits annual reports to Parliament, and upon request to the competent parliamentary committee on the activities of the Office of Economic Competition and, on the basis of his law enforcement experience, on how fairness and freedom of competition are observed; and

- d) attends, with consultative rights, the meetings of the Government where issues relating to the scope of duties of the Office of Economic Competition are discussed.
- (3) The President of the Office of Economic Competition, except for the provisions of Section (4) below, shall be solicited for his opinion concerning all measures drafted, and draft legislation that have a bearing on the responsibilities of the Office, in particular if such planned measures or legislation restrict competition /performance of some activity or entry into the market/, grant exclusive rights or contain provisions pertaining to prices or terms of sale.
- (4) The notary of a municipality may solicit the President of the Office of Economic Competition for his opinion concerning draft municipality regulations which have, as set out in Section (3) above, a bearing on the responsibilities of the Office of Economic Competition.
- (5) At the request of the Government, ministers, or international organisations, the President of the Office of Economic Competition shall report on experience gained in the course of his activities relating to economic competition and on issues relating to economic competition. For this purpose the President of the Office of Economic Competition may, on a voluntary response basis, collect data and request information.
- (6) The President of the Office of Economic Competition may issue, together with the President of the Competition Council, notices which describe the basic principles of the law enforcement practice of the Office of Economic Competition. Notices have no binding force, their function is to increase the predictability of law enforcement.

Article 36/A

- (1) Where price movements or other market circumstances suggest that competition is being prevented, restricted or distorted, or a dominant position is being abused, by one or more than one undertaking on a given market, the President of the Office may request, by decision, setting a time limit for compliance, that undertakings in the relevant economic sector supply information required to understand and appraise the functioning of a market.
- (2) Undertakings which do not observe, or do not observe within the specified time limit the decision, or supply incorrect or false information may be fined. The minimum fine shall be HUF fifty thousand, the maximum shall be one per cent of the undertaking's net turnover in the preceding business year. Undertakings exceeding the specified time limit may be fined on a daily basis. The maximum amount of this fine shall be one per cent of the undertaking's per-day net turnover in the preceding business year.
- (3) In the case specified in Section (1) above, the President of the Office of Economic Competition may also request central state bodies, except the Central Statistical Office, or the National Bank of Hungary, which have in their possession individual data, and combined data allowing the identification of data-suppliers, of which the Office of Economic Competition acting in the scope of its duties is entitled to acquire knowledge, to supply those data to the Office. The bodies to whom such a request is made shall be

obliged to supply the requested information including business secrets to the Office of Economic Competition. No fines may be imposed on the bodies specified in this Section.

- (4) A separate legal remedy may be sought against a decision made pursuant to Sections (1) and (2). The application has no suspensive effect on the implementation of the decision. Applications for a separate legal remedy shall be considered immediately by the Metropolitan Court out of lawsuit. No review of the decision of the court is possible.
- (5) The procedure regulated by this Article shall otherwise be governed mutatis mutandis by the provisions of Act IV of 1957 on the General Rules of Public Administrative Proceedings.

Article 37

- (1) The Competition Council consists of a President and members. The Competition Council performs duties defined by this Act.
- (2) The President of the Competition Council:
 - a) organises the activities of the Competition Council;
 - b) supervises compliance with procedural deadlines;
 - c) prepares and submits for approval / point c) of Article 36(1)/ the organisational and operational rules of the Competition Council;
 - d) ensures publication of the decisions of the Competition Council /Article 80/; and
 - e) may act as a member of the competition council bringing proceedings.

Article 38

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

Article 39

Civil servant staff of the Office of Economic Competition performing investigations or duties aimed at promoting investigations /hereinafter referred to as ‘investigator’/ are appointed by the President of the Office of Economic Competition.

Article 40

- (1) The President and Vice Presidents of the Office of Economic Competition, members of the Competition Council and the investigators shall not undertake any other assignment, shall not take up other gainful employment and may not be executive officials or members of the supervisory boards of companies or co-operatives, except for legal relations established for the performance of scientific, educational, artistic activities, activities falling under the protection of copyright or industrial property rights and literary advisory or editorial activities /incompatibility/.
- (2) Such persons shall immediately report the occurrence of any reason for incompatibility to the person exercising the right of employer. The person exercising the right of employer shall set a short period of time for the elimination of the grounds for incompatibility.
- (3) Where the person obliged to report incompatibility has failed to carry out that obligation, or to eliminate incompatibility within the time limit specified for this purpose, he shall be relieved of his duties.
- (4) The President and Vice Presidents of the Office of Economic Competition shall make property-declarations at the time of their appointment and thereafter annually; the members of the Competition Council and the investigators shall make property declarations at the time of their appointment and thereafter biennially, as determined by the rules relating to civil servants.

Article 41 [Repealed by Act LXXIX of 1997]

Article 42

The President and the Vice Presidents of the Office of Economic Competition are entitled to a monthly basic salary and to benefits equal to those of ministers and administrative state secretaries respectively, as determined on the basis of the provisions of Act XXIII of 1992 on the Legal Status of Civil Servants; the members of the Competition Council are entitled to a monthly basic salary equal to that of deputy state secretaries, as determined on the basis of the Act mentioned above. Notwithstanding the above, the President shall be entitled to a basic salary which is ten times as high as the basic remuneration of civil servants, the President, the Vice Presidents and the members of the Competition Council shall be entitled to a leader allowance the extent of which amounts to 100 per cent, 80 per cent and 70 per cent of their basic salary, respectively.

Article 42/A

- (1) The investigators shall be categorised as junior investigator, investigator, investigator-adviser, principal investigator-adviser and leading principal investigator-adviser..
- (2) The President may charge the investigator to work as bureauhead-investigator, assuming the responsibilities of the leader of a separate unit.
- (3) Junior investigators, investigators, investigator-advisers and principal investigator-advisers shall be entitled to an additional leave of 5, 10, 11 and 12 workdays, respectively; leading investigator-advisers and bureauhead-investigators (as leaders) shall be entitled to an additional leave of 13 workdays.
- (4) The basic salary of the investigator shall be
 - a) 4 times, for junior investigators,
 - b) 7 times, for investigators,
 - c) 7,5 times, for investigator-advisers,
 - d) 8 times, for principal investigator-advisers,
 - e) 8,25 times, for leading principal investigator-advisers,
 - f) 8,5 times, for bureauhead-investigators,as high as the basic remuneration established by a separate statute.
- (5) The extent of the leader allowance shall amount to 20 per cent, for principal investigator-advisers, 30 per cent, for leading principal investigator-advisers and 40 per cent, for bureauhead-investigators, of their respective basic salaries.
- (6) The investigators shall be included in the category:
 - a) junior investigator, if they are career-starting civil servants;
 - b) investigator, if they have worked as junior investigators for at least two years for the Office of Economic Competition and have got an assessment of at least "eligible" or they have had at least three years' work experience in their special fields and took a primary examination in public administrative knowledge or have been equivalently qualified.
- (7) The investigators
 - a) shall be included in the category of investigator-adviser, if they have had two years' work experience as investigators, have got an assessment of "eligible" and have undertaken a specialist examination in public administrative knowledge or have obtained equivalent qualifications;
 - b) may be included in the category of principal investigator-adviser, if they have received an assessment of "excellently suitable" and have undertaken a specialist examination in public administrative knowledge or have obtained equivalent qualifications;

- c) principal investigator-advisers, to whom special responsibilities have been granted, may be included in the category of leading principal investigator-adviser, if the performance of their work is at an outstanding level.
- (8) Civil servants who have undertaken a specialist examination in public administrative knowledge or have obtained equivalent qualifications are eligible to be appointed as bureauhead-investigators.
- (9) Bureauheads of the Office of Economic Competition other than bureauhead-investigators shall be entitled to a basic salary and a salary bonus equal to those of general directors determined by the Act on the Legal Status of Civil Servants.

Article 43

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

PART THREE

Chapter VIII

General Rules Governing the Competition Supervision Proceedings of the Office of Economic Competition

Application of the general rules of public administrative proceedings

Article 44

Unless otherwise provided in this Act, economic competition supervision proceedings shall be governed by the provisions of Act IV of 1957 on the General Rules of Public Administrative Proceedings, with the exception of Article 3(1), (3)-(5) and (7)-(8), Article 4(1)-(4), Article 5(1)-(3), Article 6, Article 7(2), point a) of Article 8(2), Article 9, Article 11, Article 12, Article 13(1), Article 14, Article 15, Article 16(1), (2) and (4), Article 17(3), Article 19(2)-(8), Article 23(4) and (5), Article 24(2) and (7), first sentence of Article 27(1), Article 27(3)-(4), Article 32(3), Article 35, Article 36(4), Article 37(3), Article 38, Article 40, Article 41(1)-(2), Articles 49-60, Article 61(1), (3) and (5), Articles 62-72, Article 75, Article 77, Article 78, Article 82(1) point c), (2) and (3), Article 84, Article 85, Article 89(1), (2), (4) and (5), and Articles 90-96 of that Act.

Competence

Article 45

The Office of Economic Competition shall have jurisdiction in all cases relating to competition supervision which do not belong to the competence of the courts /Article 86/.

Article 46

The competence of the Office of Economic Competition covers the whole territory of the country.

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

Article 47

- (1) The competition supervision proceedings consist of the following phases:
 - a) the procedure of the investigator;
 - b) the procedure of the competition council;
 - c) post-investigation; and
 - d) enforcement.

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

Article 48

- (1) The decision on the merits of the case of the competition council bringing proceedings /Article 77/ shall be made by a panel of three members or - where the subject of proceedings is the control of a concentration of undertakings, the assessment of an abuse of a dominant position or a restrictive agreement, and if appropriate - by a panel of five members.
- (2) Where this law speaks of competition council bringing proceedings in the case, this term means the board defined in the above Section (1). In other cases, the investigator or a member of the competition council bringing proceedings in the case may proceed alone.

Article 49

- (1) The following persons must be excluded from dealing with a particular case:
- a) the parties, persons jointly authorized or sharing obligations with the parties, and persons whose rights or obligations may be affected by the result of the proceedings;
 - b) representatives of the persons defined in the above point a);
 - c) relatives and former spouses of the persons defined in the above points a) and b);
 - d) persons who have been heard in the course of the proceedings as witnesses or experts, or the hearing of whom as witnesses or experts has been ordered; or
 - e) persons who cannot be expected to form an objective opinion of the case /prejudice/.
- (2) [Repealed by Act CXXXVIII of 2000]

Article 50

- (1) Investigators and members of the competition council bringing proceedings in the case shall immediately notify the President of the Office of Economic Competition and the President of the Competition Council respectively, if any of the above reasons for their exclusion from the proceedings exists. Investigators and members of the competition council bringing proceedings in the case shall bear disciplinary responsibility and financial liability for failure to make such notification or for any delay in making such a notification.
- (2) Reasons for exclusion may be reported by a party at any phase of the proceedings; however, in the course of the procedure of the competition council, he may enforce them only in cases where he makes it probable at the same time that he has just acquired knowledge of the fact which serves as a basis for exclusion.

- (3) Where a party makes an obviously unfounded notification of a reason for exclusion, or where a party repeatedly makes unfounded notifications against the same person in the same proceedings, a disciplinary fine may be imposed on him in the decision refusing the exclusion /Article 61/.

Article 51

- (1) In respect of the exclusion of an investigator or a member of the competition council bringing proceedings in the case, the decision shall be made by the President of the Office of Economic Competition or the President of the Competition Council respectively, who will appoint at the same time the new investigator or the new member of the competition council bringing proceedings in the case, if necessary.
- (2) Where an investigator or a member of the competition council bringing proceedings in the case has reported the reason for exclusion, he shall not take further part in the proceedings until the issue is settled. In any other case he may continue but shall not make decisions resulting in the conclusion of the case. In the case of a notification made by a party repeatedly against the same person, such a limitation shall not apply.
- (3) Where the reason for exclusion was reported by a party, legal remedy /Article 77/ against the decision on the refusal of exclusion may be sought by request for a review, by the court, of the decision on the merits of the case made by the competition council bringing proceedings in the case.
- (4) Where an investigator is excluded, the deadlines for the investigation shall be counted from the appointment of the new investigator; in the case of the exclusion of a member of the competition council bringing proceedings the time used for the exclusion procedure shall not be taken into account when reckoning procedural deadlines.
- (5) Where the President of the Competition Council acts as a member of a competition council bringing proceedings the rules relating to the procedure of his exclusion shall be the same as those governing the exclusion of the investigator.

The party

Article 52

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

Article 53

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

- (2) Where, in the course of proceedings started ex officio, a party has been wound up, its legal successor may be drawn into the proceedings. Where inclusion of the legal successor in the proceedings is not justified - with respect to the provisions in Article 70(1) - or where there is no legal successor to the party, the proceedings shall be terminated by the investigator or the competition council bringing proceedings in the case.
- (3) Where it is established from the available information that the proceedings started ex officio are directed at an inappropriate party, the appropriate party may be called into the proceedings and the previously involved party simultaneously released. Otherwise the proceedings shall be terminated by the investigator or the competition council bringing proceedings in the case.

Representation

Article 54

- (1) The party is represented in the proceedings by its legal representative or proxy.
- (2) The following persons may proceed as proxy:
 - a) a fellow party or his legal representative or proxy;
 - b) a relative of the party;
 - c) an attorney or a law firm;
 - d) an official in charge of a state body in cases relating to the activities of such a state body;
 - e) a member or an employee of an economic organisation authorized to perform management responsibilities in cases related to the activities of such an economic organisation;
 - f) organisations representing the interests of persons with an interest in the economic activity concerned; and
 - g) persons authorized by law to proceed in such capacity.
- (3) In the case of a proxy defined in point f) of Section (2) the investigator or the competition council bringing proceedings in the case may oblige the party to appoint another proxy, where he or it is expected to order the hearing of an organisation, mentioned in point f) of Section (2) above, in the case.
- (4) Authorizations to act as proxy must be in writing. The issuance and termination of such authorizations are governed by the provisions in Articles 68-71 of Act III of 1952 on the Code of Civil Procedures.

Access to the files, business secrets

Article 55

- (1) The party, its representative and the public prosecutor may have access to the documents at any time in the course of the proceedings and make copies or take notes thereof. The expert may have access in the course of the proceedings, or sectorial inquiries defined by Article 36/A, to the documents which are necessary to perform his duties, including those which contain business secrets, bank secrets, insurance secrets or secrets defined by separate statutes and relating to the treatment of securities or the operation of funds.
- (2) The party and other persons participating in the proceedings may request limitation of access to the documents or to the making of copies or to the taking of notes thereof, with reference to the need of protection of business secrets. When deciding about this request, the investigator or the competition council bringing proceedings in the case may oblige the party or the other participants in the proceedings to prepare a version of the document concerned which does not contain business secrets. Separate legal remedy /Article 82/ may be sought against the decision of the investigator or the competition council bringing proceedings in the case.
- (3) Even where no request for limitation of access to the documents, as defined in Section (2), has been submitted, other persons participating in the proceedings may have access, with the consent of the investigator or a member of the competition council bringing proceedings in the case, to the documents of the proceedings, or may make copies or take notes thereof, only if they have a lawful interest in the contents, and the access to the documents is not contrary to secrecy rules and does not violate business secrets. The competition council bringing proceedings in the case must, upon his request, enable the complainant to have access to the documents of the case and to take notes thereof, within 15 days of a decision on the merits of the case, taking into account the limitations contained in Section (2).
- (4) A foreign authority may request that a part or the whole of the content of their response to a request for information be treated as a business secret. The treatment of business secrets is governed by the rules defined in Section (2).

Calculation of time limits, negligence

Article 56

- (1) Time limits shall be calculated in days, months or years.
- (2) A time limit calculated in months or years shall expire on the day which corresponds to the starting day in respect of its number, or where there is no corresponding day of such a number in the month of expiration, on the last day of that month.

Article 57

- (1) A person who has failed to appear on the specified date, or who exceeds a time limit, may file an application for justification to remedy the consequences of the negligence, within eight days of the specified date missed or of the last day of the time limit exceeded. Where the party acquires knowledge of the negligence at a later date or the obstacle is eliminated later, the time limit begins on the day of receipt of that information or of the elimination of the obstacle respectively. No application for justification may be submitted after sixty days.
- (2) The application for justification must specify the cause of the negligence and any circumstances which are indicative of innocence or negligence. In the case of missing a time limit, the act in respect of which a person was negligent must be performed concurrently with the submission of the application for justification.
- (3) In respect of an application for justification, the decision is made by the investigator during the investigation, or by the competition council bringing proceedings in the case during the procedure of the competition council. A separate legal remedy /Article 82/ may be sought against a rejection by the investigator of the application for justification. Rejection of the application for justification by the competition council bringing proceedings in the case may be contested by request for a review, by the court, of the decision made on the merits of the case.

Request for information

Article 58

- (1) Unless an international agreement provides otherwise, requests for information from abroad may be addressed directly to the Office of Economic Competition.
- (2) Requests for information abroad as well as responses to requests or applications received from foreign authorities or persons - unless otherwise provided for by an international agreement - shall be sent by the Office of Economic Competition directly to the foreign authority
- (3) Documents generated in the course of the proceedings may be made available on request to a foreign authority. Documents containing business secrets may only be made available if this is provided for in an international agreement. Where the requested documents contain business secrets, a condition of disclosure is an undertaking by the foreign authority to treat the contents of the documents as business secrets.

Serving

Article 59

- (1) Unless otherwise provided for in an international agreement, the Office of Economic Competition shall serve the documents on the competent authorities abroad.
- (2) Service performed abroad shall be deemed valid if it meets the requirements laid down either in domestic law or the law of the country where the service is performed.

Stay of proceedings

Article 60

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

Disciplinary fines that may be imposed in the course of the proceedings

Article 61

- (1) A disciplinary fine may be imposed on the party or other persons participating in the proceedings if they engage in an act or display behaviour which is aimed at protracting the proceedings or preventing the disclosure of facts, or which has such an effect.
- (2) A person who disrupts the trial may be called to order by the chairman of the trial. In the case of repeated or grave disruption, such a person shall be expelled from the room, and a disciplinary fine may be imposed.
- (3) The minimum disciplinary fine imposed pursuant to the above Sections (1) and (2) shall be HUF fifty thousand, the maximum shall be one per cent of the undertaking's net turnover in the preceding business year, for undertakings and HUF five hundred thousand, for natural persons who do not qualify as an undertaking. In the case of exceeding time limits specified for the performance of procedural obligations, the maximum disciplinary fine shall be one per cent of the undertaking's per-day net turnover in the preceding business year, for undertakings and HUF fifty thousand per day, for natural persons who do not qualify as an undertaking. A separate legal remedy /Article 82/ may be sought against a decision imposing a disciplinary fine. The

application has a suspensive effect on the implementation of the decision. The investigator or the competition council bringing proceedings in the case may also amend their decision imposing a disciplinary fine.

Procedural fees and costs

Article 62

- (1) Where the proceedings are started on application, the applicant shall pay, upon submission of the application, a procedural fee of HUF one hundred thousand or HUF two million in cases of proceedings started on the basis of Article 18 Sections (1)-(2) or Article 25, respectively. At proceedings started on the basis of Article 24, the procedural fee to be paid upon submission of the application shall be HUF two million. Where the competition council bringing proceedings in the case in proceedings started on the basis of Article 24, makes its decision pursuant to point b) of Article 63(3), an additional procedural fee of HUF eight million shall be paid within 15 days of the date of service of the decision.. Prior notification of a price increase is free of charge /point d) of Article 67(2)/. In the case of termination of the proceedings pursuant to Article 68(5) half of the procedural fee shall be paid; there is no charge if proceedings are terminated pursuant to Article 68(4).
- (2) Where, in the decision made on the merits of the case, the competition council bringing proceedings in the case exempts, pursuant to point b) of Article 77(1), an agreement restricting competition from the prohibition or authorizes a concentration of undertakings it shall at the same time oblige the parties to pay the fee and costs defined in Section (1) above and Section (3) below.
- (3) The parties are obliged to advance and, irrespective of the outcome of the proceedings, bear the costs of proceedings started on application. Where the application is found to be well-founded, the procedural fee and costs may be divided between the applicant and the undertaking which is the subject of the decision made on the merits of the case.
- (4) The costs incurred in proceedings started ex officio are borne by the party if an infringement was established, including termination of the proceedings pursuant to point c) of Article 76(3). If there was no infringement established the costs of the proceedings started ex officio are borne by the state.
- (5) In the case of proceedings started ex officio, if more than one undertaking is jointly engaged in unlawful practices, they shall bear joint and several liability for payment of the costs of the proceedings.
- (6) No exemption may be granted from the obligation of payment of the fee and the costs of proceedings. Interpreters' fees are advanced and borne by the state.
- (7) Witnesses are entitled to reimbursement of costs necessarily incurred in connection with their appearance. Witnesses shall be made aware of this fact following their hearing. The remuneration of experts is governed by a regulation issued by the Minister of Justice.

Separate legal remedy /Article 82/ may be sought against the decision establishing the remuneration of experts and witnesses, which has a suspensive effect on implementation.

Time limits for settlement

Article 63

- (1) It shall be an ex officio duty to ensure a thorough investigation of cases and completion within a reasonable period of time.
- (2) Unless another time limit is set by law, a decision on the merits of a case shall be made within,
 - a) in the case of proceedings started on application, ninety days of the date of receipt, or the completion, of the application;
 - b) in the case of proceedings started ex officio:
 - ba) on the basis of Articles 8 to 10, ninety days;
 - bb) on the basis of Articles 11 and 21, one hundred eighty days;
 - bc) on the basis of Article 67 (3) for failure to submit an application for the authorization defined by Article 24, one hundred eighty days," of the date of the order to open the case.
- (3) In the course of the control of a concentration, a decision on the merits of a case shall be made within:
 - a) 45 days, where:
 - aa)no concentration pursuant to Article 23 or with a view to Article 25 is effected; or
 - ab)the thresholds set by Article 24 are not met by the given concentration; or
 - ac)granting authorization for the concentration may clearly not be refused pursuant to Article 30(2);
 - b) 120 days in all other cases;
of the date of receipt, or the completion, of the application.
- (4) When reckoning the deadlines for settlement, the period of time elapsed before calling the legal successor into the proceedings or its voluntary entry into the proceedings or calling the appropriate party into the proceedings or extending the application to cover the appropriate party need not be taken into account.
- (5) When reckoning the deadlines for settlement the periods of time elapsed to take the following measures need not be taken into account:
 - a) in the case of the death of the legal representative of the party if the legal representative did not have a proxy, before a notification concerning the new legal representative of the party,
 - b) in the case of serving abroad, until such serving is effected,

- c) where the absence of a decision concerning an application for legal remedy as defined in Article 82(3) prevents the decision-making on the merits of the case, until the decision pertaining to the application for legal remedy is reached,
 - d) in the case of stoppage of the operation of the Office of Economic Competition for any reason beyond the Office's control, if it makes it impossible to contact the party, until the elimination of the obstacle,
 - e) the period of time used for the exclusion procedure relating to a member of the competition council bringing proceedings as defined in Article 51(4).
- (6) The time limit for settlement may be extended by a maximum of sixty days, in cases pursuant to subpoint bb) of Article 63(2) two times by a maximum of one hundred eighty days each, where justified. This must be notified to all interested persons before the expiration of the original time limit.

Article 64

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

Clarifying the facts of the case

Article 65

- (1) In order to be able to perform their legal duties, the investigator and the competition council bringing proceedings in the case shall be entitled to
 - a) access to documents relating to the economic activities, even if such documents contain business secrets, or may require the displaying, in a readable form or a form which is eligible to be copied, of information recorded on data carriers;
 - b) perform an inspection at the party, enter any of the premises, including vehicles and any land used for the purpose of business activities, of the party, oblige the party or its agent or former agent, employee or former employee to provide information and explanation orally or in writing, or collect information on the spot in any other manner; and
 - c) make copies of or abstracts from documents and furthermore, for this purpose, take possession of them for a period of maximum 8 days.
- (2) Access to documents relating to the economic activity under review which contain state or trade secrets is governed by the provisions of a separate regulation.
- (3) Where in order to clarify the facts of the case it is necessary to collect information from persons or organisations other than the party, they are obliged to provide such information and make available any documents relating to the subject of the inspection.
- (4) The investigator and the competition council bringing proceedings in the case are entitled, in connection with the economic activity under review, to have access to the personal data of the party and of other persons participating in the proceedings.

- (5) In the course of the competition supervision proceedings, the party shall be notified of a suspected violation of law and of the examined facts , at a time early enough to enable the party to make a statement of its position concerning them.
- (6) The supply of a document, data, record or any other information which may be used as incriminating evidence may not be refused, the party or the person making a statement shall however not be obliged to admit by that statement an infringement of the Act.

Article 65/A

- (1) In the course of investigations started ex officio, the subject matter of which is an infringement of Article 11 or 21, the investigator is entitled to search with a particular purpose, and enter to this end on his own, the premises, including vehicles and any land used for the purpose of business activities, of the party and undertakings having connections with the party.
- (2) In the course of investigations started ex officio, the subject matter of which is an infringement of Article 11 or 21, the investigator is entitled to enter on his own and search with a particular purpose the premises used for private purposes or privately used, including vehicles and other land, of any executive official or employee (agent) of the party or of any other person who exercises control as a matter of fact.
- (3) Carrying out the investigatory acts specified by this Article shall be subject to the attainment in advance of a judicial authorization decision. Such a decision may be made upon a reasoned written request of the Office of Economic Competition to be submitted to the president of the county court located within the jurisdiction of the investigatory act concerned. Should the competence of more than one court apply, the obtainment of the decision of any of them shall satisfy this provision. The time elapsed between submitting the request and reaching the decision shall not be taken into account when reckoning the deadline for settlement.
- (4) The court shall make its decision within seventy two hours of the submission of the request. In cases where it grants the request partially, it may specify by its decision the target persons of the particular investigatory acts. Investigatory acts may be carried out, based on the decision of the court, within ninety days of the issuance.
- (5) The court shall grant the request where the applicant is able to show that other investigatory acts are likely to result in failure, and there are reasonable grounds to presume that the specified source of the information is kept on the site indicated by the request, or there are reasonable grounds to presume that the specified source of the information is kept on the site indicated by the request and it would presumably not be made available, or would be made, in any manner, unusable , for the investigator.
- (6) The investigatory acts specified by this Article shall be carried out, where possible, in the presence of the person concerned including his agent, representative or employee and he shall be informed, before the commencement of an investigatory act, of the decision of the court and the purpose of the investigatory act.

- (7) To carry out the investigatory acts specified by this Article, the Office of Economic Competition may resort to the assistance of the police. The police may use coercive measures and means as set out by the rules relating to it.
- (8) The Office of Economic Competition shall not consider applying Article 65(5) for the purposes of this Article.

Seizure, sequestration

Article 66

- (1) Original pieces of any documents of the party may be seized or sequestered where suspicion of a serious violation of the law has arisen and there is a danger of tampering with or destruction of the documents.
- (2) Documents in possession or custody of the party may not be seized where marks on them or any other circumstances indicate, without any need of further proof and beyond any doubt, that they are not owned by the party.
- (3) The investigator or the competition council bringing proceedings shall make a decision on the seizure or the sequestration, against which separate legal remedy may be sought /Article 82/.
- (4) The seizure or the sequestration shall be terminated when it is no longer necessary for the purposes of the proceedings.

Chapter IX

Performance of the Competition Supervision Proceedings of the Office of Economic Competition

Commencement of the competition supervision proceedings

Article 67

- (1) Competition supervision proceedings are commenced on application or may be started ex officio.
- (2) Competition supervision proceedings shall be commenced on application in the following cases:
 - a) establishment as defined by Article 18(1),
 - b) exemption as defined by Article 18 (2),
 - c) authorization as defined by Article 24,
 - d) prior notification of price increase, or

- e) extension of the period determined by Article 25.
- (3) The competition supervision proceedings may also be commenced ex officio where it is established that, in the cases defined by Section (2), competition supervision proceedings should have, but have not been, applied for.
- (4) No investigation may be started where three years have elapsed since the infringement of this Act. Where the infringement of the Act is committed through a failure to eliminate a state of affairs or situation, the time limit does not start as long as this state of affairs or situation exists.

Commencement of investigation on application

Article 68

- (1) An application for commencement of proceedings may be submitted by persons:
 - a) interested in the establishment as defined by Article 18(1),
 - b) applying for exemption as defined by Article 18(2),
 - c) obliged by Article 28(1) to obtain authorization for concentration,
 - d) obliged by another regulation to notify a price increase in advance, or
 - e) who were not able to fulfil within one year an obligation relating to disposal pursuant to Article 25.
- (2) Applications submitted pursuant to Article 18 or Article 24 shall be accompanied by a properly completed copy of the notification form issued by the Office of Economic Competition.
- (3) Applications defined by Article 24 shall be submitted at the time defined by Article 28(2).
- (4) The applications shall contain all facts and details required for the assessment of the case. Where the information provided is seen as incomplete, the application may be returned on one occasion, within fifteen days of receipt of it, by the investigator for completion setting a time limit for compliance. This time limit may be extended on one occasion where justified.. Where the applicant fails to complete the information or provides inappropriate information following such a request, the investigator shall terminate the proceedings. Separate legal remedy against the decision on terminating the proceedings may be sought /Article 82/.
- (5) The applicant may withdraw its application for the commencement of proceedings in the course of the proceedings before the decision on the merits of the case is made. In this case the proceedings shall be terminated.

Complaints and hearing

Article 69

- (1) On observation of a conduct falling within the competence of the Office of Economic Competition and violating this Act, persons whose rights or lawful interests are affected may make a complaint to the Office of Economic Competition. The person complainant shall not be entitled to the rights of a party and shall not bear its obligations.
- (2) Such a complaint shall specify the activity or conduct which may constitute a violation of the Act.
- (3) Where the complaint does not contain the required facts or data, the investigator shall hold a hearing with the participation of the interested persons, obtain written evidence and, where necessary, clarify with expert assistance the facts indicative of a violation of this Act.
- (4) The costs of the hearing shall be advanced and borne by the state. If in the course of the competition supervision proceedings an infringement is established, the costs of the hearing shall be borne by the parties whose conduct was found to infringe this Act.
- (5) The complainant may request non-disclosure of his identity or, if he is heard as a witness, of the fact that he made a complaint to the Office of Economic Competition.
- (6) Within sixty days of receipt of the complaint:
 - (a) action must be taken to open an investigation, or
 - (b) where no investigation is justified, a decision stating this shall be forwarded to the complainant.

The time limit for taking the measure may be extended on one occasion by sixty days.

- (7) The complainant may seek a legal remedy against a decision made pursuant to point b) of Section (6) above. A separate legal remedy may be sought, pursuant to the provision of Article 82(3), against a decision of rejection of the competition council bringing proceedings in the case.

Opening an investigation ex officio

Article 70

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

- (2) Where the court, due to a lack of competence, transfers a case to the Office of Economic Competition, the investigator shall proceed in accordance with Article 68 in the cases defined by Article 67(2), and in accordance with Article 69(6) in other cases.
- (3) The fact that an investigation has been opened may be disclosed. Where the opening of an investigation is disclosed to the public, the results of this investigation shall also be published.

The report of the investigator

Article 71

- (1) After completing the investigation, the investigator shall prepare a report which he shall submit to the competition council, together with the files.
- (2) The report shall contain:
 - a) the subject matter of the investigation,
 - b) the facts established and the supporting evidence, and
 - c) the proposal of the investigator relating to the further course of the proceedings and for interim measures where necessary.
- (3) In justified cases, the investigator may, in a separate report, propose interim measures prior to the conclusion of the investigation.

The proceedings of the competition council

Article 72

- (1) On the basis of the report submitted by the investigator the competition council bringing proceedings in the case:
 - a) shall terminate proceedings if their continuation is deemed unnecessary or where it is established that, in the absence of any violation, the defending party cannot be found liable;
 - b) may return the files to the investigator for completion at the same time extending the time limit for settlement /Article 63(5)/ where it establishes that the clarification of the facts requires further investigation;
 - c) may, by an interim measure, prohibit in its decision the continuation of the illegal conduct or order the elimination of the unlawful situation, where prompt action is required for the protection of the legal or economic interests of the interested persons or because the formation, development or continuation of economic competition is threatened.

- (2) Where an interim measure is requested by a party, the competition council bringing proceedings may require a bond as a condition. A separate legal remedy may be sought against the decision ordering an interim measure or the provision of a bond (Article 82/).
- (3) The competition council bringing proceedings may provide the investigator with guidance on the method and the direction of the conduct of the investigation as early as before closing the investigation.

Article 73

Where the measures defined by points a)-b) of Article 72(1) are unnecessary, the competition council shall schedule a trial. Concurrently with scheduling the trial, the competition council shall send the report of the investigation and its preliminary position, which shall set forth the facts of the case which have been established, the evidence in support of them, the assessment of them and the substance of the aspects and the conclusions which are necessary to reach a decision, to the party. The date of the trial shall be set in time to allow the party access to the files and to prepare for the trial.

The trial of the competition council

Article 74

- (1) The competition council bringing proceedings in the case shall make its decision on the merits of the case /Article 77/ on trial. A decision on the merits of a case may be reached without a trial where the parties have jointly requested its omission, or where all parties consented to such a request.
- (2) The competition council bringing proceedings in the case may decide also pursuant to point a) of Article 72(1) at the trial.
- (3) Competition council trials shall be held in public. Through its decision with reasoning attached, the competition council bringing proceedings in the case may exclude the public from the trial or part thereof, on request or ex officio, where such an exclusion is indispensable for the protection of the confidentiality of state secrets, trade secrets, business secrets or data pertaining to the property status of a party, received from a credit institution (bank secrets) or from an insurance company (insurance secrets), or secrets defined by separate statutes and relating to the treatment of securities or the operation of funds, or with regard to the interests of the national economy.

Suspension of proceedings

Article 75

- (1) The competition council bringing proceedings in the case may order the suspension of proceedings started ex officio where the conduct under review jeopardises the freedom or fairness of competition only to a minor degree and the defending party undertakes:
 - a) to refrain from continuing this conduct; and

- b) to take the measures which are necessary, to prevent any damage where the danger of such damage occurring exists, or appropriate to remedy infringements already committed.
- (2) The duration of the suspension of proceedings shall be defined by the competition council bringing proceedings in the case; it may not, however, exceed six months.

Post-investigation

Article 76

- (1) The investigator
 - a) shall hold a post-investigation in the case of a suspension of proceedings,
 - b) may hold a post-investigation in cases concluded by a decision on the merits of the case of the competition council,
 - c) shall hold a post-investigation in order to check the fulfilment of the pre- or post-conditions or obligations provided for by the decision.
- (2) In the course of the post-investigation the procedural rules of this Act shall be applied except that the report shall be submitted to the competition council bringing proceedings in the case within thirty days, for cases to which point a) of Section (1) applies within thirty days of the termination of the suspension. This time limit may not be extended.
- (3) On the basis of the report submitted by the investigator, the competition council bringing proceedings in the case shall
 - a) terminate the post-investigation where voluntary compliance with the decision made on the merits of the case is established,
 - b) order the decision on the merits of the case to be enforced in the absence of voluntary compliance,
 - c) terminate the competition supervision proceedings or order their continuation where post-investigation has been ordered due to the suspension of the proceedings,
 - d) establish whether the pre- or post-conditions have been satisfied,
 - e) terminate the post-investigation or revoke or amend by a decision on the merits of the case its preceding decision where an obligation has been or has not been fulfilled, respectively /point i) of Article 77(1)/.

The decision on the merits of a case

Article 77

- (1) The competition council bringing proceedings in the case, in its decision,
- a) shall decide on the applications specified by Article 67(2),

- b) in the case of proceedings started pursuant to Article 67(3), may exempt the agreement restricting economic competition from the prohibition, or may authorize the concentration of undertakings,
 - c) may establish pursuant to Article 16/A that the benefit of the group exemption does not apply to the agreement,
 - d) may establish that the conduct is unlawful,
 - e) may order a situation violating the Act to be eliminated,
 - f) may prohibit the continuation of the conduct which violates the provisions of the Act,
 - g) where it finds that there is an infringement of the law, it may impose obligations including in particular the obligation of a contract to be concluded where an unjustified refusal to create or maintain business relations appropriate for the type of the transaction /point c) of Article 21/ has been found,
 - h) may order a corrective announcement to be published in respect of a previous information which is likely to deceive,
 - i) may revoke or amend its earlier decision /Articles 19 and 32/,
 - j) shall terminate, pursuant to point a) of Article 72(1), the proceedings,
 - k) may extend the one-year time limit pursuant to Article 25.
- (2) Decisions exempting agreements which restrict economic competition from the prohibition shall determine the date until which the exemption shall have effect. Pre- or post-conditions and obligations may be attached to the decisions granting exemption from the prohibition to agreements which restrict economic competition, or authorization for concentrations.
- (3) Decisions made pursuant to point c) of Section (1) and Section (2) of Article 18 shall advise of the possibilities of the Office of Economic Competition establishing a situation as defined in Article 16/A or revoking its decision pursuant to Article 19(1).

Article 78

- (1) The competition council bringing proceedings may impose a fine on persons violating the provisions of this Act. The maximum fine shall be ten per cent of the undertaking's net turnover in the preceding business year. The maximum fine imposed on social organisations of undertakings, public corporations, associations or other similar organisations shall be ten per cent of the total of the net turnover in the preceding business year of undertakings which are members of them.
- (2) The amount of the fine shall be established with all the relevant facts of the case taken into account, in particular the gravity of the violation, the duration of the unlawful situation, the benefit gained by the infringement, the market positions of the parties violating the law, the imputability of the conduct, the effective co-operation by the undertaking during the proceedings and the repeated display of unlawful conduct. The gravity of the violation shall be established, in particular, on the basis of the threat to economic competition and the range and extent of harm to the interests of consumers.
- (3) Fines imposed on broadcasters shall be paid into the Broadcasting Fund.

Article 79

The amount of the fine for failure to submit an application for the authorization defined by Article 24 shall be a maximum of HUF fifty thousand per day.

Publication of the decision

Article 80

The competition council bringing proceedings shall publish its decisions made on the merits of the cases, it may publish its other decisions. This shall not be prevented by applications initiating a court review of the decisions. If the decision ordering the opening of an investigation has been published, the decision ordering the termination of the proceedings or the decision made on the merits of the case shall also be published.

Chapter X

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

Objections concerning the investigation

Article 81

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

Legal remedy against decisions made in the course of the proceedings

Article 82

- (1) Separate legal remedies may be sought against the decisions made by the investigator or the competition council bringing proceedings in the case during the proceedings in the cases defined in this Act. This does not have a suspensive effect on the implementation of the provisions of the contested decisions or on the continuation of the proceedings, unless otherwise provided by this Act. Application for a legal remedy may be submitted

by the party or the person in respect of whom the decision contains provisions, within 8 days of the conveyance of the decision.

- (2) Application for a legal remedy submitted against a decision made by the investigator shall be assessed by the competition council bringing proceedings in the case apart from its trial. No further legal remedy may be sought against the decision of the competition council bringing proceedings in the case, with the exception defined by Article 69(7).
- (3) Applications for a separate legal remedy against a decision made by the competition council bringing proceedings in the case in the course of the proceedings shall be considered immediately by the Metropolitan Court out of lawsuit. The court may overrule a decision made by the competition council bringing proceedings in the case. There is no appeal against such an injunction and no review is possible.

Administrative lawsuits

Article 83

- (1) Revision of a decision on the merits of a case, including its complementation and amendment affecting the operative part, may be requested from the court through submission of a claim within thirty days of the serving of such a decision. The claim has no suspensive effect on the implementation of the decision.
- (2) The claim must be submitted to the competition council. The competition council bringing proceedings in the case shall transfer the statement of claim, along with the files relating thereto, to the court within 8 days of its receipt.
- (3) Upon an authorization given by the President of the Competition Council members of the competition council bringing proceedings may also act as representatives of the Office of Economic Competition in administrative lawsuits.
- (4) The court may overrule the decision of the competition council.
- (5) Where the decision made by the competition council bringing proceedings in the case violated a legal norm as a result of which the party has a claim for the reimbursement of the fine, the refunded amount is subject to interest corresponding to twice the central bank's prime rate in the period in question.

Article 84

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

Chapter XI

Litigation Initiated by the Office of Economic Competition

Article 85

- (1) Where in the course of its operation the Office of Economic Competition finds that any public administrative decision violates the freedom of economic competition, it shall request the public administrative institution to amend or revoke the decision in question.
- (2) Where such a public administrative institution fails to comply within 30 days with the request defined by the above Section (1), the Office of Economic Competition may seek a court review of the decision of such a public administrative institution violating the freedom of economic competition, except in cases where the law excludes a court review of such public administrative decisions. No such claim may be lodged after six months have elapsed from the entry into force of such a decision, and no application for justification may be submitted where the time limit is missed.
- (3) The local court operating at the seat of the county court shall be competent in respect of such litigation. In Budapest proceedings shall be conducted by the Central District Court of Pest. The court proceeds pursuant to the provisions of Chapter XX of the Code of Civil Procedures.

Chapter XII

The Competition Supervision Proceedings of the Court

Article 86

- (1) Proceedings in cases of violation of the provisions contained in Articles 2-7 belong to the competence of the court.
- (2) In the claim, the interested party may demand:
 - a) the establishment of the violation,
 - b) termination of the violation and the prohibition of continued violation by the offender,
 - c) that the offender make amends - through making an announcement or in some other appropriate manner - and, if necessary, that sufficient publicity be given to such an announcement by the offender or at its cost,
 - d) termination of the infringing state of affairs, restitution of the situation preceding the infringement, and depriving the goods produced or distributed in an infringing manner of their infringing features or, where this is not possible,

- destruction of such goods, as well as the destruction of any special facilities used for the production of such goods,
- e) damages subject to the provisions of the civil law, and
 - f) establishment of a contract in the case of the unjustified refusal to create business relations appropriate for the type of the transaction /Article 21 point c)/,
 - g) that the offender supply information about the persons who participated in the production and distribution of the goods concerned by the infringement and about the business relations created for the dissemination of such goods.
- (3) Where the party entitled files a claim pursuant to point f) of Section (2), the court shall issue a request to the Office of Economic Competition to establish the fact of unjustified refusal to create business relations appropriate for the type of the transaction. The Office of Economic Competition shall proceed as requested by the court.

Article 87

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

Article 88

- (1) Action in court may be started with reference to practices defined in Articles 2-7 within six months of acquiring knowledge thereof. No action may be started after the end of three years of the display of such conduct.
- (2) Where the contested conduct is realised by failure to eliminate a state of affairs or a situation, the time limit defined in Section (1) shall not start as long as the state of affairs /situation/ continues to exist.
- (3) Litigation started pursuant to this Chapter shall come within the competence of the county /metropolitan/ court.

Chapter XIII

Enforcement of the Decisions of the Office of Economic Competition

Article 89

- (1) Decisions made in the course of competition supervision proceedings are final and enforceable if no claim for a legal remedy has been filed against them within the time limit or a legal remedy has been waived or is precluded by this Act. Decisions, for which the claim for a remedy has no suspensive effect pursuant to this Act, are also enforceable.
- (2) Where the decision made by the competition council bringing proceedings in the case set a time limit or deadline for implementation, the decision may be enforced only if it

expired without proper compliance. The competition council shall ex officio order the enforcement of decisions made in the course of the competition supervision proceedings.

Article 90

- (1) Where the fine imposed by the decision on the merits of a case of the competition council bringing proceedings in the case is enforceable, following expiration of the time limit determined for voluntary compliance, the party fined shall pay an interest corresponding to twice the central bank's prime rate for the period in question.
- (2) Where the enforcement is aimed at the performance of an act or display of conduct specified in the decision of the competition council (hereinafter: the specified act), the enforcement shall be ordered by the competition council bringing proceedings in the case, imposing at the same time an enforcement fine. It may set a new time limit for voluntary compliance.
- (3) The enforcement fine shall amount to a maximum of HUF fifty thousand per day, payable by those obliged for the period between the conveyance of the decision ordering the enforcement and the day of confirmation of performance of the specified act. Where the competition council bringing proceedings in the case has repeatedly set a time limit for voluntary compliance pursuant to Section (2), and that has also elapsed without due compliance, the competition council bringing proceedings in the case may raise the daily rate of the enforcement fine as compared with that imposed in the preceding decision.
- (4) The enforcement fine may be imposed at the same time on both an undertaking and its manager.
- (5) Fines imposed in competition supervision proceedings and not paid within the time limit set for the compliance qualify as public debt, to be exacted like taxes, and which is to be collected officially upon request of the Office of Economic Competition by the competent tax authority.

Article 91

- (1) A person whose right or lawful interest is violated by the ordering of the enforcement or by the imposition of the enforcement fine shall be entitled to file an objection against the enforcement with the President of the Competition Council within three days of acquiring knowledge of the violation of such interests.
- (2) The President of the Competition Council shall make a decision pertaining to the objection against the enforcement within 8 days of receipt. No legal remedy is available against such a decision.

Chapter XIV

Procedure for the application of European Community competition rules

General Rules

Article 91/A

- (1) In any proceedings for the application of Articles 81 and 82 of the Treaty the provisions of this Act shall be applied with the exceptions defined in this Chapter and by Regulation (EC) No 1/2003.
- (2) In carrying out the control of concentrations between undertakings which are covered by European Community law the provisions of this Act shall apply when this is provided for by the Regulation of the Council on the control of concentrations between undertakings. In such cases, of the provisions of this Chapter, those of Articles 91/F and 91/G are applicable.

The proceedings of the Office of Economic Competition

Article 91/B

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

Article 91/C

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

Article 91/D

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

Article 91/E

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

- (2) In settling complaints taking action to open an investigation may be refused if the competition authority of another Member State has initiated its own proceedings in the case.
- (3) The investigator and the council bringing proceedings may stay or terminate the proceedings started ex officio if the competition authority of another Member State has initiated its own proceedings in the case.
- (4) No separate legal remedy is available against a decision made pursuant to Sections (1) to (3).

Article 91/F

- (1) When carrying out, in the course of the proceedings of the European Commission, the investigatory acts specified by Sections (1) and (2) of Article 65/A is necessary, such acts shall be performed by applying the procedural rules set out in Sections (3), (4) and (6) to (8) of Article 65/A.
- (2) The court shall take an authorization decision if the conditions set by Regulation (EC) No 1/2003 or the Regulation of the Council on the control of concentrations between undertakings are satisfied.
- (3) The European Commission may submit its request for a prior judicial authorization directly to the court or may request the Office of Economic Competition to act on behalf of it.
- (4) When carrying out the investigatory acts specified by Sections (1) and (2) of Article 65/A necessitates the assistance of the police the European Commission may request the Office of Economic Competition to take the steps which are necessary to afford it.

Article 91/G

When the Office of Economic Competition is requested by the European Commission or the competition authority of another Member State, under Regulation (EC) No 1/2003, or by the European Commission, under the Regulation of the Council on the control of concentrations between undertakings, to carry out investigatory acts, the provisions of this Act shall be applied at granting the request except that the proceedings shall be closed by a decision of the investigator about the transmission of the evidence collected; in such cases no decisions on the merits of the case may be taken.

The proceedings of the court

Article 91/H

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

- (2) The court shall notify, without delay, the European Commission and the Office of Economic Competition of lawsuits before it which are to be assessed under Articles 81 and 82 of the EC Treaty. The Office of Economic Competition need not be specially notified in lawsuits to which it is a party.
- (3) The European Commission and the Office of Economic Competition may submit, until the closure of the trial, written observations on issues relating to the application of Articles 81 and 82 of the EC Treaty, furthermore they may also submit oral observations at the trial. If any of them intend to exercise its right to make oral observations, this must be notified to the court. The information provided by the observation of the European Commission and the Office of Economic Competition may be used in evidence in the lawsuit.
- (4) At the request of the European Commission and the Office of Economic Competition, the court shall transmit them the documents of the lawsuit which are necessary for the preparation of their observation. The costs of making copies of the documents shall be advanced by the court. At the request of the authority concerned, the court may give its consent to the authority's having access to the documents in place of transmitting them to it.
- (5) If under Regulation (EC) No 1/2003 the court intends to request information from the European Commission on facts or points of law, it shall decide about the request by injunction against which no separate legal remedy may be sought. Data or opinion on points of law given by the European Commission as an answer to the request may be used in evidence in the lawsuit.
- (6) In order to fulfil its obligation under Regulation (EC) No 1/2003 relating to the provision of information to the European Commission, the court shall forward its judgment without delay to the Ministry of Justice. The Ministry of Justice shall send the judgement for information to the Office of Economic Competition.

PART FOUR

Chapter XV

Closing Provisions

Article 92

- (1) The Office of Economic Competition, in cases falling into its competence, if it established an infringement by its decision; the chambers of commerce in respect of their members; or consumer protection organisations may file an action against persons who have put consumers at a substantial disadvantage or have disadvantaged a wide range of consumers by their activities infringing this Act even if the identity of the consumers suffering damage cannot be established.
- (2) The claim defined by the above Section (1) shall be time-barred in one year from the realisation of the disadvantage.
- (3) The court may oblige the offender to implement a price cut, repair or replace the goods, or refund the purchase price. In its judgement the court may authorize the party taking the action to publish the judgement in a national daily at the expense of the offender.
- (4) The offender must satisfy the claim of the consumer suffering damage in accordance with the judgement. This does not prejudice the right of the consumer to take further action against the offender in accordance with the provisions of the civil law.

Article 93

The legal consequences flowing as a result of the violation of the provisions of this Act and the enforced civil law claims shall not prejudice the possibilities to apply other civil law consequences defined in other legal norms or to initiate a petty offence action or criminal proceedings.

Article 94

The procedural rules of co-operation with foreign competition authorities are set out in international agreements or in other legal norms.

Article 95

- (1) This Act enters into force on 1st January 1997. Cases pending at the time of its entry into force, however, shall continue to be governed by the provisions of Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices.
- (2) The fixed term appointments of the President of the Office of Economic Competition and of his deputies in effect at the time of the entry into force of this Act are not affected by its entry into force.
- (3) A submission concerning the appointment of the members of the Competition Council

shall be submitted within sixty days of the entry into force of this Act.

- (4) The prohibition defined in Article 11(1) of this Act may not be applied, for a period of one year following the entry into force of this Act, to agreements concluded prior to the entry into force of this Act if such agreements were not prohibited by the provisions previously in force. Entitled persons may request the establishment of this fact by the Office of Economic Competition. In such cases proceedings of the Office of Economic Competition shall be governed by the provisions of Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices.

Article 96

The Government shall be authorized to lay down in regulations the rules of the exemption of certain groups of agreements from the prohibition declared by Article 11 of this Act.

Article 97

With the entry into force of this Act:

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

are repealed.

Article 98