

Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers

/competition law related provisions of the Act/

With a view to protecting the interests of consumers, to fostering fair market practices and to improving the efficiency of combating unfair commercial practices, while recognizing the importance of professional self-regulation the aim of which is to eliminate unfair commercial practices and strengthening, for this purpose, the monitoring of the compliance with codes of conduct formulated in the framework of self-regulation, Parliament hereby passes the following Act.

General Provisions

Article 1

(1) This Act determines the requirements for commercial practices followed in regard to consumers before, during and after a commercial transaction in relation to goods and for the codes of conduct applied to such commercial practices, furthermore, it determines the rules for the procedures conducted against infringements of those requirements.

(2) This Act shall apply to commercial practices carried out in the territory of the Republic of Hungary, and to those that concern any person in the territory of the Republic of Hungary in his capacity as a consumer.

(3) This Act shall not apply to

- a) the conclusion, validity and legal effects of contracts, nor to civil claims arising out of or in connection with commercial practices;*
- b) the creation, existence and exercise of intellectual property rights;*
- c) to the certification and indication of the standard of fineness of articles of precious metal.*

(4) Separate statutes or laws adopted for the implementation of those statutes may lay down rules in terms of consumer information, which are more detailed or stricter than those adopted by this Act, relating to

- a) financial services and activities auxiliary to financial services, insurance activities, and the activities of insurance intermediaries and insurance consultants, investment service activities and ancillary services to investment activities, commodity exchange services, services provided by voluntary mutual insurance funds and services provided by private pension funds;*
- b) immovable property,*
- c) the enforcement of requirements relating to health aspects and safety requirements of goods;*
- d) the enforcement of requirements relating to the protection of the environment; or*
- e) the conditions of the practising of regulated professions specified in the Act [C of 2001] on the Recognition of Foreign Diplomas and Certificates in order to ensure compliance with fundamental professional rules of the given profession relating in particular to the independence, dignity and honor of the profession, the protection of professional secrecy and the fairness in regard to consumers and in regard to other persons that practise the given profession..*

(5) Laws relating to activities other than those specified in Section (4) above may impose requirements on commercial practices, which are more detailed or stricter than those adopted by this Act, insofar

- a) this is necessary for the implementation of a binding legal act of the Community, or*
- b) this is expressly allowed by a binding legal act of the Community, which relates to certain goods or to certain group of those goods.*

Article 2

For the purposes of this Act

- a) „*Consumer*” means any natural person who is acting for purposes which are outside his independent profession or economic activity;
- b) „*Undertaking*” means any person who, in commercial practices, is acting for purposes relating to his independent profession or economic activity;
- c) „*Goods*” means any movable property that is tradeable and capable of appropriation, including money, securities, financial instruments and natural resources that can be utilized in the same way as things (hereinafter together referred to as “products”) and of immovable property, services and acquired rights, which constitute intangible assets and which do not (directly) relate to immovable property;
- d) „*Commercial practices*” means any course of conduct, activity, omission, advertising, marketing or other commercial communication by an undertaking or a person acting for, or on behalf, of the undertaking, directly connected with the sale or supply to consumers or promotion of goods;
- e) „*Commercial communication*” means the communication of information directly relating to the independent profession or economic activity of the undertaking, not depending on the method of its representation and its means;
- f) „*Advertising*” is the term defined as advertising by the Act on Essential Conditions of and Certain Limitations to Business Advertising Activity;
- g) „*Invitation to purchase*” means a commercial communication, which indicates characteristics of the goods and the price or fee in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase or utilize the goods;
- h) „*Transactional decision*” means any decision taken by a consumer concerning whether, how and on what terms to conclude a contract or to exercise a right in relation to the goods;
- i) „*Code of conduct*” means an agreement or set of rules created in the framework of market self-regulation, which determines behavioural rules in relation to a particular commercial practice or business sector for undertakings that undertake to be bound by the code (hereinafter referred to as “compliance with the code of conduct”).

Prohibition of Unfair Commercial Practices

Article 3

- (1) Unfair commercial practices shall be prohibited.
- (2) A commercial practice shall be unfair if:
 - a) it fails to meet the standard of special skill and care, which a person carrying out that commercial practice may reasonably be expected to exercise, commensurate with the fundamental principle of good faith and fairness (hereinafter referred to as the “requirement of professional diligence”); and
 - b) it appreciably reduces or is likely to appreciably reduce the possibility for the consumer to whom it is directed, whom it reaches or to whom it is addressed to make an informed decision with regard to the goods, based on the necessary information, and thereby causes the consumer or is likely to cause him to take a transactional decision that he would not have taken otherwise (hereinafter referred to as “distortion of the behaviour of consumers”).
- (3) In particular, commercial practices shall be unfair within the meaning of Section (2), if they are misleading as set out in Articles 6 and 7 or are aggressive as set out in Article 8.
- (4) The commercial practices listed in the *Annex* shall be regarded as unfair.

Article 4

(1) In adjudicating on commercial practices the behaviour of the consumer shall be taken as a benchmark, who is reasonably informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors relating to the commercial practice or the goods in question. Where a commercial practice is specifically aimed at a particular group of consumers, it shall be assessed from the perspective of the behaviour of the average member of that group.

(2) Where certain characteristics such as age, credulity or physical or mental infirmity make consumers particularly susceptible to a commercial practice or to the underlying goods and the behaviour only of the group, which can clearly be identified, of such consumers is likely to be distorted by the practice in a way that the person carrying out that practice can reasonably foresee, the practice shall be assessed from the perspective of the behaviour of the average member of that group.

(3) The common and legitimate advertising practice of making, to an extent determined by the nature of advertising, exaggerated statements or statements, which are not meant to be taken literally shall not be treated as a commercial practice likely to distort the behaviour.

Article 5

Codes of conduct may not encourage unfair commercial practices.

Article 6

(1) A commercial practice shall be regarded as misleading if it contains false information or represents factually correct information in such a way, including overall presentation, that makes it deceive or be likely to deceive the consumer in relation to one or more of the following elements, and thereby causes the consumer or is likely to cause him to take a transactional decision that he would not have taken otherwise:

- a)* the existence or nature of the goods, taking also into account the legal provisions relating to the name of the products;
- b)* the main characteristics of the goods, such as in particular
 - ba)* their design, composition, technical specification and accessories,
 - bb)* their quantity,
 - bc)* their geographical and commercial origin,
 - bd)* the method and date of manufacture or provision,
 - be)* their availability and delivery,
 - bf)* their usage, the knowledge needed for their use and maintenance,
 - bg)* their fitness for purpose, the results to be expected from their use, advantages offered by them,
 - bh)* the danger and risks attached to their use,
 - bi)* their environmental effects,
 - bj)* their impact on health, or
 - bk)* the material features or results of tests or checks carried out on them;
- c)* the price or fee of the goods or the manner in which the price or fee is calculated, or the existence of a specific price discount or advantage;
- d)* tax exemption, tax allowance or other tax advantage provided in connection with the utilization of the goods;
- e)* the need, in connection with the goods, for a service, part, replacement or repair;
- f)* after-sale customer assistance and complaint handling, in connection with the goods;
- g)* the identity, attributes and rights of the undertaking or his representative, such as his nature, his legal status, affiliation and connection, assets, ownership of intellectual and commercial property rights, approval, qualifications or his awards and distinctions;

h) the extent of the undertaking's commitments, the motives for the commercial practice and the nature of the sales process, any statement or indication in relation to sponsorship or approval of the undertaking or the goods; or

i) the consumer's rights, or the risks of disadvantageous legal consequences he may face in connection with the transaction.

(2) A commercial practice shall also be regarded as misleading if

a) it may create confusion with another undertaking or any trade names, goods, designations of goods or other distinguishing marks of another undertaking;

b) it involves non-compliance by the undertaking with commitments contained in codes of conduct by which the undertaking has undertaken to be bound, where:

ba) the commitment has been offered not only in the form of a declaration of intent but is firm and is capable of being verified, and

bb) the undertaking indicates in the commercial practice that it is bound by the code,

if, in the factual context of the commercial practice, taking account of all its features and circumstances, this causes or is likely to cause the consumer to take a transactional decision that he would not have taken otherwise.

Article 7

(1) A commercial practice shall be regarded as misleading if,

a) in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits or hides information that the consumer needs, according to the context, to take an informed transactional decision and that is therefore material or if it provides such material information in an unclear, unintelligible, ambiguous or untimely manner or fails to identify the commercial intent of the commercial practice if not already apparent from the context; and

b) thereby causes or is likely to cause the consumer to take a transactional decision that he would not have taken otherwise.

(referred to hereinafter as „misleading omission”).

(2) Where the medium used to communicate imposes limitations of space or time, these limitations and any measures taken by the person carrying out the commercial practice to make the information available to consumers by other means shall be taken into account in deciding whether misleading omission has been committed.

(3) For the purposes of this Article, information the provision of which is required by

a) any directly applicable legal act of the European Union,

b) specific legal provisions the aim of which is to transpose provisions of binding legal acts of the European Union, or

c) the legal provisions specified in points *a)* to *d)* of Section (4) and point *b)* of Section (5) of Article 1 of this Act

shall be regarded as material in relation to the commercial communication defined therein.

(4) The Minister responsible for Justice shall publish, on the homepage of the ministry headed by him, an informative list of the legal provisions transposing binding laws of the European Union mentioned in point *b)* of Section (3).

(5) In the case of an invitation to purchase, the following information shall be regarded as material:

a) the main characteristics of the goods, to an extent appropriate to the medium used to communicate;

b) the identity and the address of the undertaking, or the identity and the address of the undertaking on behalf of which the person carrying out the commercial practice is acting;

- c) the price or fee inclusive of value added tax and other mandatory charges, or where the nature of the goods means that the price or fee cannot reasonably be calculated in advance, the manner in which the price or fee is calculated, as well as all additional charges such as, in particular, freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- d) the terms and conditions for payment, delivery, performance and the method of complaint handling, if they depart from the requirements of professional diligence;
- e) for contracts involving a right of withdrawal for the consumer granted by a legal norm, an indication of the existence of such a right.

The case mentioned in Section (5) shall not be regarded as misleading omission, if the information is already directly apparent from the context.

Article 8

(1) A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by the use of psychic or physical force, through either exploiting a position of power in relation to, or harassing, the consumer, it significantly limits or is likely to significantly limit the consumer's freedom of choice or conduct, or possibility to make an informed decision, with regard to the goods and thereby causes the consumer or is likely to cause him to take a transactional decision that he would not have taken otherwise.

(2) In determining whether a commercial practice is aggressive, account shall be taken of:

- a) its timing, location, nature and the duration of application;
- b) the use of threatening, frightening or abusive language or behaviour in the commercial practice;
- (c) the exploitation of any specific circumstance of such gravity as to impair the consumer's judgement, of which the person carrying out the commercial practice is aware, to influence the consumer's decision with regard to the goods;
- d) any unjustifiably onerous or disproportionate non-contractual barriers imposed in situations where a consumer wishes to exercise rights under the contract, including rights to withdraw from a contract or to switch to other goods or another undertaking;
- e) any threat to take any action that cannot legally be taken.

Responsibility for the Infringement of the Prohibition of Unfair Commercial Practices

Article 9

(1) The undertakings that is directly interested in the sale or promotion of goods to which the commercial practice in question pertains shall bear responsibility for the infringement of the prohibition of unfair commercial practices.

(2) The undertaking referred to in Section (1) shall also bear responsibility if the commercial practice is carried out under contract by another person acting for or on behalf of the undertaking.

(3) Notwithstanding the provision set out in Section (2), for an infringement originating from any reason relating to the method of representation of the commercial communication also the person shall bear responsibility who makes the commercial communication available by using suitable means and the person who creates, in the framework of his independent economic activity, the commercial communication or provides other services related thereto, except where the infringement originates from the carrying out of an instruction given by the undertaking mentioned in Section (1). These persons and the person mentioned in Section (1) shall bear joint and several liability for any damage caused by the unlawful commercial practice.

(4) For the infringement of the provision laid down in Article 5, the person or persons formulating the code of conduct, those responsible for the revision of the code and those responsible for the control of compliance with the code by undertakings that undertook to be bound by the code, shall bear responsibility.

Proceeding Authorities**Article 10**

- (1) The consumer protection authority shall have the power to proceed against infringements of the prohibition of unfair commercial practices, with the exceptions defined in Sections (2) and (3).
- (2) The Hungarian Financial Supervisory Authority shall have the power to proceed against infringements of the prohibition of unfair commercial practices, with the exception defined in Section (3), where the commercial practice concerned relates to an activity of the undertaking, which is supervised, under Act CXXXV of 2007 on the Hungarian Financial Supervisory Authority (hereinafter: "FSAA"), by the Hungarian Supervisory Authority.
- (3) The Hungarian Competition Authority shall have the power to proceed against infringements of the prohibition of unfair commercial practices, where the commercial practice is capable of materially affecting competition.
- (4) Section (3) shall not apply where the unfair commercial practice is displayed only on the product or on the packaging of the product, or fixed to the product by other means (hereinafter referred to collectively as "label"), or is apparent from manual guides or directions for use given to the product or from the warranty note, or if it is carried out by the infringement of the information requirement set out in Article 7 (3).
- (5) Where the commercial practice displayed on the label is also carried out by other means of communication represented in the same way and with the same content and where with respect to the latter commercial practice the Hungarian Competition Authority has the power to proceed in view of its material effect on competition, the Hungarian Competition Authority shall also have the power to assess the infringement committed by the commercial practice displayed on the label.

Article 11

- (1) For the purposes of Article 10, in assessing whether material effect on competition is exerted, the following aspects shall be taken into consideration, taking account of the characteristics of the market affected by the infringement:
 - a)* the scope of the commercial practices applied, with a special view to the nature of the medium used to communicate, the size of the geographical area affected by the infringement, the number of the outlets affected by the infringement, the duration of the infringement or the amount of the goods affected by the infringement; or
 - b)* the size of the undertaking responsible for the infringement, based on its net turnover.
- (2) Competition is materially affected if, irrespective of any other circumstances,
 - a)* the commercial practice is carried out through a program provider nationally providing programs;
 - b)* the commercial practice is carried out through a nationally distributed periodical or a daily newspaper distributed in at least three counties;
 - c)* the commercial practice carried out by the method of directly contacting consumers targets consumers of at least three counties; or
 - d)* the commercial practice promoting goods on the scene of their sale is organised in at least three counties.

Article 12

- (1) With a view efficiently to perform the duties assigned to them with regard to infringements of the prohibition of unfair commercial practices, the authorities mentioned in Article 10 shall cooperate with each other. The cooperation shall cover, in particular, the exchange of information on their enforcement practice, the uniform application of substantive and procedural rules and the prevention of any collision between, and the facilitation of efficient settlement of possible disputes about, powers to proceed.
- (2) The authorities shall determine in the framework of their cooperation the method for supplying data and information for the purposes of that cooperation, so in particular for supplying the notifications defined by Articles 20 (3), 23 (2), 25 (3) and 26 (2).

(3) The consumer protection authority, the Hungarian Competition Authority and the Hungarian Financial Supervisory Authority shall enter into a cooperation agreement laying down the detailed rules for their cooperation and shall review that agreement on an annual basis and make it available to the general public on their respective homepages.

Common Rules for the Procedure

Article 13

No proceeding may be started where three years have elapsed since the unlawful commercial practice was carried out. Where the unlawful behaviour is continuous, the time limit starts to run from the date of termination of the behaviour. Where the unlawful behaviour is committed through a failure to eliminate a situation or state of affairs, the time limit does not start as long as this situation or state of affairs exists.

Article 14

The proceeding authority may request the undertaking to furnish evidence as to the accuracy of factual claims in relation to the commercial practice. In the absence of compliance by the undertaking, factual claims shall be considered to be inaccurate. Advertisers shall be made aware of this fact in the request issued by the authority.

Article 15

(1) Proceedings conducted under this Act shall not prevent injured parties from enforcing civil law claims, which are based on the unfairness of a commercial practice, directly in court.

(2) In proceedings of the court, the burden of proving the accuracy of factual claims in relation to the commercial practice shall rest on the undertaking.

Article 16

If the unfair commercial practice has not yet been carried out but is imminent, in view of the activity of the undertaking, so in particular of the creation of the conditions, conclusion of the contracts and purchasing of the facilities that are necessary to carry it out, the proceeding authority shall have the power to prohibit, in advance, the planned commercial practice.

Article 17

(1) The authority specified by this Act shall have the power to proceed under this Act where a separate statute or a legal norm adopted for the implementation of that statute or a separate statute in terms of the infringement of provisions on commercial practices towards consumers of a directly applicable legal act of the European Union provide so. In such proceedings the proceeding authority shall examine the infringement of the provisions of this Act, the separate statute or the legal norm adopted for the implementation of that statute and the provisions on commercial practices towards consumers of the directly applicable legal act of the European Union.

(2) Where in proceedings referred to in Section (1) the proceeding authority finds that the commercial practice in question does not infringe the prohibition of unfair commercial practices, however, it infringes the provisions of the separate statute or the legal norm adopted for the implementation of that statute or the provisions on commercial practices towards consumers of the directly applicable legal act of the European Union, it shall apply the legal consequences defined in the separate statute mentioned in Section (1).

(3) Where in the proceedings referred to in Section (1) the proceeding authority finds that the commercial practice in question infringes the prohibition of unfair commercial practices and the provisions of the separate statute or the legal norm adopted for the implementation of that statute or the provisions on commercial practices towards consumers of the directly applicable legal act of the European Union, it may apply, in addition to the legal consequences defined in this Act, any of the legal consequences defined in the separate statute mentioned in Section (1); notwithstanding this provision, it shall impose the fine according to the provisions of the statute that provides for the higher amount of fine to be imposed, taking into account, when determining the amount that the commercial practice qualifies as unlawful on both of the legal bases.

Article 18

Where the undertaking that is responsible for the infringement carries out the unfair commercial practice with the assistance of another person [Article 9 (2)] and the infringement is not terminated within the time limit set by the decision of the proceeding authority, the proceeding authority shall have the power to oblige by a separate decision, exceptionally, the person providing assistance in carrying out the infringement to implement the original decision in relation to the termination of the unfair commercial practice, provided that no other means of eliminating the infringement are available and the person providing assistance in carrying out the infringement has been informed of the original decision.

Article 19

In any proceedings for establishing the unfairness of commercial practices, the procedural provisions of the following statutes shall be applied:

- a) Act CLV of 1997 on Consumer Protection (hereinafter referred to as “CPA”), in the proceedings of the consumer protection authority;
- b) FSAA, in the proceedings of the Hungarian Financial Supervisory Authority;
- c) Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter referred to as „PURA”), in the proceedings of the Hungarian Competition Authority;

with the exceptions defined by this Act.

Special Rules for the Procedure of the Consumer Protection Authority**Article 20**

(1) Where the Hungarian Competition Authority has the power to proceed against unfair commercial practices observed by the consumer protection authority in the course of its supervisory checks or proceed on applications the subject of which is an infringement of the prohibition of unfair commercial practices, the consumer protection authority shall, without delay but within thirty days at the latest of the date on which the unlawful practice was observed or of receipt of the application, transfer the application and the documents generated in relation to the case, to the Hungarian Competition Authority and inform, simultaneously, the applicant accordingly.

(2) When assessing whether the consumer protection authority has the power to proceed, the consumer protection authority may require the undertaking to supply information about the communication media used in terms of the commercial practice in question.

(3) The consumer protection authority shall notify, within five days, the Hungarian Competition Authority of the initiation of its proceeding against any infringement of the prohibition of unfair commercial practices and it shall supply data necessary for the identification of the case, so in particular data necessary for the identification of the undertaking concerned, data supplied by, and necessary for the identification of, the person whose initiation resulted in the commencement of the proceeding, furthermore, a description of the facts that constitute the subject of the proceeding.

Article 21

(1) For the purposes of CPA, the provisions of this Act qualify as consumer protection provisions.

(2) With the application of Article 49 (1) of CPA, the consumer protection authority may also order the measure under Article 16 of this Act.

Special Rules for the Procedure of the Hungarian Financial Supervisory Authority**Article 22**

Articles 23 and 24 of Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services shall also be applied, mutatis mutandis, to the procedure conducted in relation to complaints and informal complaints submitted against infringements of the prohibition of unfair commercial practices.

Article 23

(1) Where the Hungarian Competition Authority has the power to proceed against unfair commercial practices observed by the Hungarian Financial Supervisory Authority (hereinafter referred to as "Supervisory Authority") in the course of its supervisory checks or proceed on complaints the subject of which is an infringement of the prohibition of unfair commercial practices, the Supervisory Authority shall, without delay but within thirty days at the latest of the date on which the unlawful practice was observed or of receipt of the complaint, transfer the complaint and the documents generated in relation to the case, to the Hungarian Competition Authority and inform, simultaneously, the applicant accordingly.

(2) When assessing whether the Supervisory Authority has the power to proceed, the Supervisory Authority may require the undertaking to supply information about the communication media used in terms of the commercial practice in question.

(3) The Supervisory Authority shall notify, within five days, the Hungarian Competition Authority of the initiation of its administrative proceeding against any infringement of the prohibition of unfair commercial practices and of any infringement of the prohibition of unfair commercial practices observed by it in the course of its supervisory checks and it shall supply data necessary for the identification of the case, so in particular data necessary for the identification of the undertaking concerned, data supplied by, and necessary for the identification of, the person whose initiation resulted in the commencement of the proceeding, furthermore, a description of the facts that constitute the subject of the proceeding.

Article 24

(1) Where it establishes an infringement of the prohibition of unfair commercial practices, the Supervisory Authority shall prohibit the continuation of the unlawful behaviour or order the unlawful situation to be eliminated, and it may impose fine, taking into consideration, *mutatis mutandis*, the aspects given by Article 47 (4) of FSAA. The Supervisory Authority shall impose a fine in each case in which

a) the undertaking has repeatedly infringed, at the same premises where the infringement was committed where applicable, within a period of six months following the deadline or the expiry of the time limit specified for performance of the obligation imposed on the undertaking by the final decision establishing the infringement; or

b) the infringement concerns a broad range of consumers.

(2) The amount of the fine imposed in proceedings under this Act shall be between HUF 15 thousand and

a) five per cent of the annual net turnover for undertakings covered by Act C of 2000 on Accounting (hereinafter referred to as "AA"), the annual net turnover of which exceeds HUF 100 million; however, the highest amount of the fine shall not exceed HUF 100 million or, in the case of infringements inflicting material harm on the property status of a broad range of consumers, HUF two billion;

b) HUF 500 thousand for undertakings *not* covered by point *a)*; however, in the case of infringements inflicting material harm on the property status of a broad range of consumers, it may amount to five per cent of the annual net turnover of the undertakings or, for undertakings *not* covered by AA, to HUF five million.

(3) The net turnover referred to in Section (2) shall be determined relying on the annual account or simplified annual account (hereinafter together referred to as "annual account") relating to the business year preceding the date of the decision establishing the infringement. Where the period for which the undertaking has been in operation is shorter than a year, annualised figures shall be used. Where no information which could be considered as authentic on the net turnover of the undertaking achieved in the business year preceding the date of the decision establishing the infringement is available, the net turnover achieved in the last business year with an authentic annual closing shall be taken into consideration when determining the maximum fine. In the case of newly established undertakings that do not have an annual account yet, the business plan for the year when the proceeding was initiated, or in the absence of such a plan, the net turnover indicated by the undertaking upon request of the authority, calculated under the provisions of the AA on the preparation of interim balance sheets for the effective date when the proceeding was initiated, shall be taken into consideration.

(4) For the purpose of Section (2), the following income items shall be taken into account as the net turnover of the undertakings specified below in points *a)*-*d)*:

a) for insurance undertakings, the value of gross premiums;

- b) for investment undertakings, the sum of the incomes from investment services, non-investment services and non-distribution financial operations;
- c) for private pension funds and voluntary mutual insurance funds, contributions (membership fees) serving regular operation and activities; for voluntary mutual health and mutual aid funds, membership fees of the operative fund; and for institutions for occupational retirement provision, the sum of the members' contributions related to regular operations and activities;
- d) for credit institutions and financial undertakings, the sum of the following income items:
- da) interest income and similar income receivable,
 - db) income from securities,
 - dc) commissions and fees receivable (and due),
 - dd) net profit on financial operations where positive,
 - de) income from other business activities.
- (5) For the purpose of Section (2), where the undertaking provides the data in a foreign currency, they shall be converted into HUF data based on the official exchange rate quoted by the Magyar Nemzeti Bank for the day of closing of the undertaking's financial year, or in the case of newly established undertakings, for the last day of the previous year.
- (6) Notwithstanding the provision set out in Article 26 (2) of FSAA, incomes originating from fines imposed under this Act by the Supervisory Authority may be used solely for the purposes defined in points c) and e) of Article 26 (2) FSAA. Sections (3) and (4) of Article 26 FSAA are not applicable.
- (7) The provisions laid down in Sections (2) to (6) shall also apply to the fines imposed under point b) of Article 47 (1) FSAA for any infringement or circumvention of, or failure to comply or delay in complying with, the decisions made by the Supervisory Authority in proceedings under this Act.
- (8) Notwithstanding the provision set out in Article 32 (1) of FSAA, the Supervisory Authority shall publish its decisions made in proceedings under this Act.
- (9) The legal consequences defined in Section (1) shall not be applied in relation to parties, who have entered into an administrative agreement with the Supervisory Authority, for such an infringement committed within the time limit set by the agreement, the elimination of which is the object of that agreement.
- (10) With the application of Article 46 of FSAA also the measure under Article 16 of this Act may be ordered.

Special Rules for the Procedure of the Hungarian Competition Authority

Article 25

- (1) Notwithstanding Article 43/H (2) and the second sentence of Article 43/I (1), Articles 23 and 24 of Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services shall also be applied, *mutatis mutandis*, to the procedure conducted in relation to complaints and informal complaints submitted against infringements of the prohibition of unfair commercial practices.
- (2) In procedures conducted in relation to complaints submitted against infringements of the prohibition of unfair commercial practices, the investigator shall issue the order defined in Article 43/H (8) of PURA within thirty days of receipt of the complaint
- (3) The Hungarian Competition Authority shall notify, within five days, the consumer protection authority or, in the case of a commercial practice falling under Article 10 (2), the Hungarian Financial Supervisory Authority of the complaint about an infringement of the prohibition of unfair commercial practices and it shall supply data necessary for the identification of the case, so in particular data necessary for the identification of the undertaking concerned, data supplied by, and necessary for the identification of, the person whose initiation resulted in the commencement of the procedure, furthermore, a description of the facts that constitute the subject of the procedure.

Article 26

(1) Notwithstanding Article 70 (1) of PURA, the investigator shall issue an order opening an investigation upon observation of an activity, conduct or situation, which may be assumed to infringe the prohibition of unfair commercial practices and in relation to which the Hungarian Competition Authority has the power to proceed under this Act.

(2) The Hungarian Competition Authority shall notify, within five days, the consumer protection authority or, in the case of a commercial practice falling under Article 10 (2), the Hungarian Financial Supervisory Authority of the opening of an investigation for an infringement of the prohibition of unfair commercial practices and it shall supply data necessary for the identification of the case, so in particular data necessary for the identification of the undertaking concerned, data supplied by, and necessary for the identification of, the person whose initiation resulted in the commencement of the proceeding, furthermore, a description of the facts that constitute the subject of the proceeding.

Article 27

(1) Section (1), point *a*) of Section (2) and Sections (5) to (7) of Article 63 PURA shall apply in regard to the time limits for settlement.

(2). With the application of point *c*) of Article 72 (1) PURA also the measure under Article 16 of this Act may be ordered.

(3) Commitments pursuant to Article 75 of PURA may also be offered by and made binding on parties who terminated the infringement in the meantime. In such cases, parties may offer commitments to refrain from repeating the infringement.

(4) Sections (1) to (6) of Article 88/B of PURA shall apply *mutatis mutandis* in lawsuits initiated under Article 15 (1) of this Act.

Cooperation with Consumer Protection Authorities of the European Economic Area**Article 28**

(1) In the enforcement of Regulation (EC) No 2006/2004 of the European Parliament and of the Council, the consumer protection authority, the Hungarian Financial Supervisory Authority or the Hungarian Competition Authority shall apply the national laws transposing Directive 2005/29/EC of the European Parliament and of the Council against intra-Community infringements, as it is set out in Article 10 of this Act.

(2) In mutual assistance procedures, the authorities mentioned in Section (1) shall proceed in compliance with Commission Decision 2007/76/EC as amended by Commission Decision 2008/282/EC.

(3) The Minister responsible for Justice shall publish, on the homepage of the ministry headed by him, an informative list of the laws transposing Directive 2005/29/EC of the European Parliament and of the Council.

Amendment of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices**Articles 29 and 30*****Amendment of Act CXXXV of 2007 on the Hungarian Financial Supervisory Authority*****Article 31*****Amendment of Other Laws*****Articles 32 to 51*****Closing Provisions*****Article 52**

(1) This Act shall enter into force, with the exceptions defined in Section (2), on the day following its promulgation.*

* This Act was enacted by Parliament on 9 June 2008 and published in Magyar Közlöny 2008/95 (on 28 June 2008), p. 5782-5813.

(2) Articles 1 to 31, Articles 33 to 47, Sections (1) to (7) and (10) of Article 48, Sections (1) to (10), (12) and (14) of Article 49 and Articles 50 and 54 shall enter into force on 1 September 2008.

Article 53

(1) The provisions laid down in Articles 10 to 28 shall be applied in proceedings and procedures initiated after the date of entry into force of these provisions.

(2) The following provisions of PURA shall be applied in proceedings and procedures initiated after the date of entry into force of these provisions:

- a)* point *c)* of Article 30 (1), laid down by Article 29 (10) of,
- b)* second sentence of Article 78 (3), laid down by Article 29 (11) of,
- c)* Article 43/B, laid down by Article 30 (2) of,
- d)* Article 43/G, laid down by Article 30 (3) of,
- e)* Sections (2) and (5) of Article 43/H, laid down by Sections (4) and (5) of Article 30 of,
- f)* point *c)* of Article 43/H (8), inserted by Article 30 (6) of,
- g)* Article 43/I (4), laid down by Article 30 (7) of,
- h)* Article 62 (4), laid down by Article 30 (9) of,
- i)* Sections (2) to (4), (9) and (10) of Article 65, laid down by Sections (10) to (12) of Article 30 of,
- j)* Article 67 (4), laid down by Article 30 (13) of,
- k)* Article 68 (2), laid down by Article 30 (14) of,
- l)* Sections (2) and (3) of Article 72, laid down by Article 30 (15) of,
- m)* point *h)* of Article 77 (1), laid down by Article 30 (16) of,
- n)* Article 88, laid down by Article 30 (17) of,
- o)* Article 88/B (1), laid down by Article 30 (18) of,
- p)* Article 89 (1), laid down by Article 30 (19) of,
- q)* the new Chapter XVII, inserted by Article 30 (20) of, and
- r)* Article 92, laid down by Article 30 (21) of,

this Act.

(3) [Amendments to FSAA]

(4) to (18) [Amendments to other statutes]

Article 54

The following provisions of statutes are repealed:

- a)*
- b)* Article 43/H (3) of PURA,
- c) to t)*

Article 55

[Legal provisions repealed]

Article 56

(1) This Act serves the purpose of compliance with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

(2) Articles 32 to 50 serves the purpose of compliance with the following legal acts of the European Union:

- a) to k)*

(3) This Act lays down provisions, relating to the responsibilities and the procedure of the consumer protection authority, the Hungarian financial Supervisory Authority and the Hungarian Competition Authority, for the implementation of the following legal acts of the European Union:

a) Regulation (EC) No 2006/2004 of the European Parliament and of the Council (of 27 October 2004) on cooperation between national authorities responsible for the enforcement of consumer protection laws, Article 4 (1), point *e)* of Article 4 (6) and point 16 if Annex I [Articles 27 (3), 28(1), 30(20), 31(1) and 41 (16) of this Act],

b) Commission Decision 2007/76/EC (of 22 December 2006) implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance [Article 28 (2) of this Act],

c) Commission Decision 2008/282/EC (of 17 March 2008) amending Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance [Article 28 (2) of this Act].

Annex to Act XLVII of 2008

Unfair commercial practices

1. Claiming to be a signatory to a code of conduct when the undertaking is not.
2. Claiming that a code of conduct has an endorsement from a public administrative authority or other body vested with public administrative authority, which it does not have.
3. Displaying a trust mark, quality mark or similar distinctive labelling without having obtained the necessary authorisation.
4. Claiming, if only by the representation of the goods in commercial communication, that an undertaking including its commercial practices or its goods has been approved, endorsed or authorised by a public administrative authority, a body vested with public administrative authority or a private law person vested with such authority when it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Making an invitation to purchase goods at a specified price without disclosing the existence of any reasonable grounds the undertaking may have for believing that it will not be able to offer for supply or to procure another undertaking to supply, those goods or goods replacing them at that price for a period that is, and in quantities that are, reasonable having regard to the goods, the reach of the commercial communication relating to the goods and the price offered (bait advertising).
6. Making an invitation to purchase goods at a specified price and then:
 - a) refusing to show the advertised goods to consumers; or
 - b) refusing to take orders for the goods or deliver the goods within a reasonable time; or
 - c) demonstrating defective samples of themwith the intention of promoting different goods (bait and switch).
7. Falsely stating that goods will only be available for a very limited time, or that they will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient time or opportunity to make an informed choice.
8. Undertaking to provide after-sales service to consumers with whom the undertaking selling the goods has communicated prior to the conclusion of contracts in a language which is not an official language of the Member State where that undertaking is located and then making such service available only in another language without clearly disclosing this to the consumer before the conclusion of a contract.
9. Stating or otherwise creating, if only by the representation of the goods in commercial practice, the impression that the goods can legally be distributed when they cannot.
10. Presenting rights given to consumers in law as a distinctive feature of the undertaking's offer.
11. Using editorial content in the written or electronic media to promote goods, or utilization of them in any other way, where the undertaking has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertisement disguised as advertorial).
12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the goods.
13. Advertising goods that are similar to goods made by a particular undertaking in such a manner as deliberately to mislead the consumer into believing that the goods are made by that same undertaking when they are not.
14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the possibility to receive reward that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of goods.
15. Claiming that the undertaking is about to cease its activities or move premises when it is not.
16. Claiming that goods are able to facilitate winning in games of chance.

17. Falsely claiming that goods are able to cure illnesses, or the dysfunction or malformations of human organism.
18. Passing on materially inaccurate information on market conditions or on the possibility of finding the goods with the intention of inducing the consumer to buy or utilize the goods at conditions less favourable than normal market conditions.
19. Announcing in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.
20. Describing goods as “gratis”, “free”, “without charge” or similar if the consumer has to pay anything other than the unavoidable costs of responding to the commercial practice and collecting or paying for delivery of the goods.
21. Including in advertising material an invoice or similar document seeking payment, which gives the consumer the impression that he has already ordered the advertised goods when he has not.
22. Falsely claiming or creating the false impression that the undertaking is not acting for purposes relating to its business, economic activity or profession, or otherwise falsely representing oneself as a consumer.
23. Creating the false impression that after-sales service in relation to goods is available in a Member State other than the one in which the goods are sold.
24. Creating the impression that the consumer cannot leave the premises until he concludes a contract.
25. Conducting personal visits to the consumer’s home ignoring the consumer’s request to leave and not to return.
26. Urging the consumer repeatedly and in an unwanted manner by telephone, fax, e-mail or other equivalent individual means of communication or other means of telecommunication except to the extent, which is necessary to the fulfilment of a contractual obligation of the undertaking.
27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to written requests of a consumer, in order to dissuade him from exercising his contractual rights.
28. Including in an advertisement a direct exhortation to children to buy or utilize advertised goods or persuade their parents or other adults to buy the advertised goods for them.
29. Demanding immediate or deferred payment for, or the return or safekeeping of, goods supplied or provided by the undertaking, but not ordered by the consumer (unsolicited sales) except where the goods are substitutes supplied or provided in compliance with the contract.
30. Explicitly informing a consumer that if he does not buy the given goods, the functioning of the undertaking or the job or livelihood of its employees will be in jeopardy.
31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other benefit, when in fact either there is no such prize or benefit, or taking any action in relation to claiming or utilizing the prize or benefit is subject to the consumer paying a certain amount of money or incurring a cost.