

# CONSUMER PROTECTION IN THE HUNGARIAN COMPETITION LAW

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## **Abstract**

This contribution analyses the legal provisions on consumer protection in the Hungarian competition law such as the Hungarian Competition Act and the Hungarian Advertising Act guaranteeing the fair treatment of consumers in the economic market. The legal practice is also shown through fraudulent market behaviors revealed in the credit card market. The contribution also deals with changes emerging shortly according to transposition of EC directives.

## **Key words**

Hungarian competition law- Hungarian consumer law- Hungarian case law- transposition of EC directive

One of the significant elements of the economic competition is the battle to gain the consumers' confidence. In this "battlefield" consumers needed a special legal protection because their rights and interests were often violated by dishonest market behaviors in many different cases. To this end the state has established the frames of fair and free economic market. In Hungary the legal requirements being in force are in the Act LVII of 1996 with the title prohibition of unfair and restrictive market practices (furthermore: the Hungarian Competition Act). The aim of the regulation is to achieve a fair competition on the economic market with excluding behaviours having harmful effect on consumers' decision. Thus, the Hungarian Competition Act assures legal background of developing a highly informed customer society, whose members can make their buying choice under no unfair influence.<sup>1</sup>

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<sup>1</sup> About Hungarian competition law see more: Miskolczi-Bodnár Péter: *Versenyjog*: Miskolc, Novotni Alapítvány, 2005, ISBN 963 9360 317

## **Legal provisions in the Hungarian Competition Act according to consumer protection**

The Hungarian Competition Act dedicates an own chapter to the unfair manipulative activities, and in general it prohibits deceiving consumers in economic competition.

We can find more articles protecting the interests of customers. For example the prohibition on abuse of a dominant position particularly, when it limits production, distribution or technical development to the disadvantage of the consumers. The Hungarian Competition Authority will only permit a concentration of certain undertakings if, inter alia, they have no harmful effect on the interests of the consumers.

The Hungarian Competition Act specifies two behaviors that should not be allowed in any circumstances. The first prohibition pertains to the misleading of consumers. The second one is about those unjustified business methods that restrict the freedom of consumers' choice.

The Hungarian Competition Act also gives examples of the typical unfair business activities. Some sellers give false declaration or facts about their goods in order to convince the consumers that their product or service is the best, the most useful in the market. These declarations and facts are usually in connection with the price and main features of the goods. The essential features according to the Hungarian Competition Act are composition, use, effects on health and environment, handling, origin, source or method of purchasing of the goods. Another form of deception is giving false information about the sale and the distribution of the goods. This misleading information is usually about method of distribution, terms of payment, discounts or it holds the chance of winning or obtaining gifts. Consumers can also be deceived, when the seller conceal from the consumers that the offered product or service does not meet the legal or other usual requirements or they are not informed about the unaccustomed use. The Hungarian Competition Act also specifies and therefore prohibits those business activities that create the persuasion about a beneficial purchase based on false impression. Creating conditions which do not facilitate the objective evaluation and comparison of goods or offers is also prohibited. It should be remarked that this list is only setting some examples to make the application of law easier; the Hungarian Competition Authority has competence for intervention in other unfair manipulative situations as well.

## **Fraudulent behaviors in advertising**

In many cases consumers make their decisions on the basis of the information passes by advertisements. These commercial messages usually intend to attract consumers' attention and to encourage them to buy or use that certain product. The number of advertising opportunities is boundless, and it is continually increasing due to the development of information and communication technology. The commercial messages mostly consist of persuasive pictorial and/or sound effects and some informational facts about the product. The advertisers do their best to increase sale and popularity. In some cases the chosen advertising practice can also be suitable to deceive consumers' rights. Thus, consumers' interests need legal protection in this field as well.

In Hungary the Act LVIII of 1997 (furthermore: Hungarian Advertising Act) contains the provisions concerning to the business advertising activity. The Hungarian Competition Authority also controls the application of the provisions on the comparative advertising<sup>2</sup> and on the prohibition of misleading advertising declared by the Hungarian Advertising Act. In other fraudulent cases the National Authority for Consumer Protection and in pharmaceutical advertising the National Institute of Pharmacy has competence to proceed.

In case of an infringement process, the Competition Council examines the reality of the facts stated in the advertisement. Sometimes even those ads containing accurate information can have a deceptive influence on consumers due to their pictorial appearance (small letters, colors merged into the background, insufficient time for reading). The whole impression created by the advertisement is also taken into account during the process. The types of advertising are considered as well. Different amount of information and message can be extracted from flyers, TV screens, car doors, pages of magazines. Another relevant consideration is the fact that there are consumers who are well-informed and those who are not. In a lot of cases, the consumers can not repeat the details of the contract, although they concluded it personally. Other relevant aspects are for instance that it can not be expected from consumers to handle all excessive advertisements under protest and check their statements all the time. When the Competition Council judging a situation the aim of the advertisements also deserves attention: namely to generally inform potential customers about

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<sup>2</sup> See more: Péter Miskolczi-Bodnár: *Definition of comparative advertising*, In: European Integration Studies, , Volume 3., Number 1., Miskolc, Miskolc University Press, 2004, pp. 25-44., ISSN 1588-6735

products and services in order to increase consumption. Consequently commercial messages are not suitable to cover all relevant information and facts.

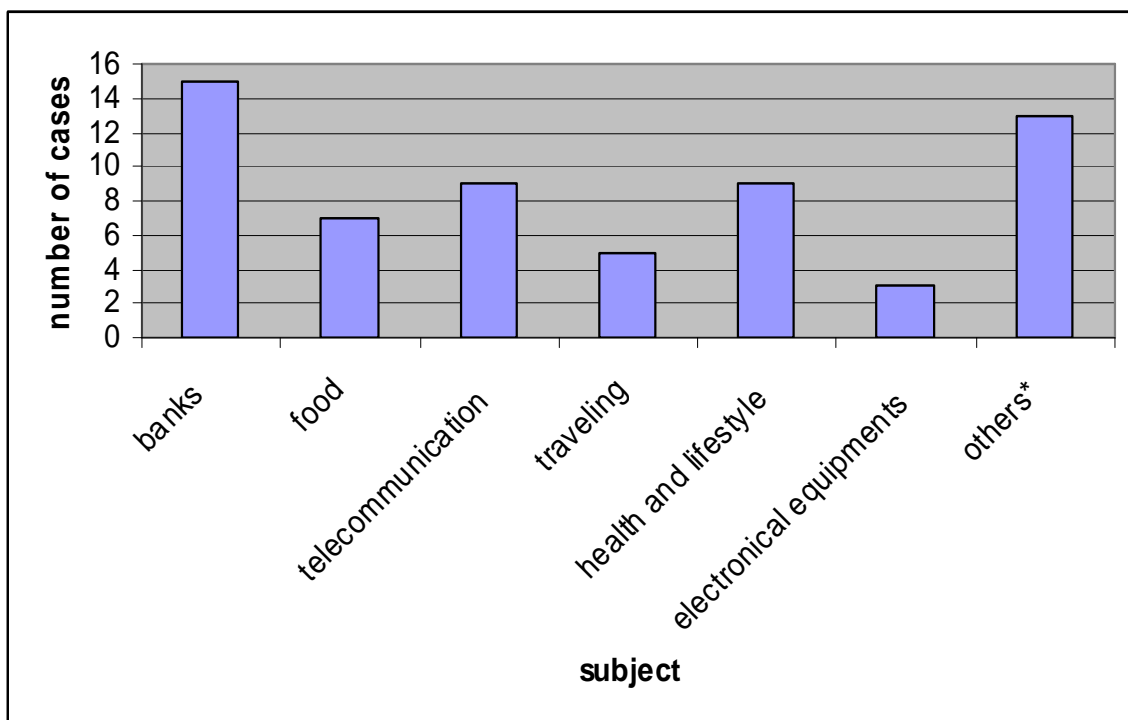
The Competition Council particularly considers in case of imposing a fine:

- the duration and frequency of advertisement's appearance,
- the role of the enterprise in the market,
- retentive power of fine according to the other competitors perspective,
- the sum of money spent on advertising,
- number of consumers who received the misleading information

### Continuous misleading activities of banks

In 2007 the Competition Council of the Hungarian Competition Authority conducted all together 158 processes. More than 50% of these cases were in connection with the deception of consumers. The following graph shows a comparative view on these cases based on subject matters:

Graph 1: Cases in 2007



Source: [www.gvh.hu](http://www.gvh.hu)

(\*subjects occurred only once or twice in 2007)

It follows that most cases were in connection with misleading information about bank products and services. After the comparison, it can be concluded that most consumer-frauds occurred on the credit card market. The banks failed to give appropriate information about the use of credit cards, especially about the conditions of no-interest payments. At the end of the series of market cleaning investigation processes the Hungarian Competition Authority imposed fines that total 268 Million HUF (approximately more than 1 Million €) on 7 banks.<sup>3</sup> In other cases, the reasons for conducting investigations against banks were incomplete guidance referring to the Standardized Deposit Interest Rates Index<sup>4</sup>, promise of availing certain interest<sup>5</sup> and credits<sup>6</sup>.

The importance of the consumer protection in this field is also emphasized in the report<sup>7</sup> of the Hungarian Financial Supervisory Authority. It draw the attention that

- most of the consumers do not know what the details of the interest free credit periods are,
- consumers usually do not consider that the interest free period will only apply, if the time limits of repaying the debt (for instance the annual cost of running the credit card, operational costs) are complied. The financial institutions usually fail to inform their customers about these provisions in the advertisements (although the contracts content them),
- Ads do not give all the necessary information to the consumers about credit cards. The details can be found in the general contracting rules or other documents that are usually very long and difficult for laymen to understand.
- Banks inform consumers on leaflets, ads, posters, homepage about the Standardized Deposit Interest Rates Index but detailed facts are failing.

After recognizing the imperfection of informing consumers about using credit cards in advertisements the Hungarian Financial Supervisory Authority decided to release online

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<sup>3</sup> Vj-78/2007/41, Vj-79/2007/189, Vj-76/2007/69, Vj-48/2007/43, Vj-49/2007/64, Vj-47/2007/58, Vj-113/2007/41

<sup>4</sup> 129/2007/14, Vj-17/2007/15

<sup>5</sup> Vj-114/2007/19

<sup>6</sup> Vj-53/2004/18

<sup>7</sup> [http://www.pszaf.hu/engine.aspx?page=showcontent&content=pszafhu\\_fogyhit\\_tajek\\_kiadv\\_20061201\\_1](http://www.pszaf.hu/engine.aspx?page=showcontent&content=pszafhu_fogyhit_tajek_kiadv_20061201_1) (2008.05.10.)

available guidelines and charts (making objective comparison between credit cards of certain financial institutes easier) for consumers.<sup>8</sup>

### **Foreseeable changes on the field of consumer protection in the Hungarian competition law**

The European Union is also dealing with the insurance of fair economic competition. In 2005 the European Council and European Parliament adopted a directive called the “Unfair Commercial Practices Directive”<sup>9</sup>. In the following year the 2006/114/EC directive<sup>10</sup> was released. The reason was that previously the laws of the Member States of the European Union concerning to these issues showed differences which could generate barriers against the functioning of the internal market.<sup>11</sup>

The Hungarian drafts according to the transposition of these directives are now among the items of legislative schedule of the spring session 2008 of the Parliament. The amendments will touch upon more Acts such as the Consumer Protection Act or Hungarian Competition Act. A unified Code will regulate the provisions and the restrictions on business advertising activities. A completely new Act related to the business-to consumer relationship is also among the drafts with the title “Act on Prohibition of Unfair Commercial Practices against Consumers”.

The heading of chapter according to consumer protection in the Hungarian Competition Act will switch to “unfair manipulation of business decisions”. The general prohibition will regard

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<sup>8</sup> About Hungarian case law according to consumer fraud in the telecommunication market see more: Horváth Zsófia: *Adalékok a gazdasági reklámtevékenység hazai szabályozásához*, Collega, XI. évfolyam, 2-3. szám, 2007, 127-130.o.

<sup>9</sup> Directive 2005/29/EC of the European Parliament 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 (‘Unfair Commercial Practices Directive’) OJ L 149, 11.6.2005, pp. 22-39.

<sup>10</sup> Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, OJ L 376, 27.12.2006, pp. 21-27.

<sup>11</sup> See more: Christian Handig: *The Unfair Commercial Practices Directive – A Milestone in the European Unfair Competition Law?* In: *European Business Law Review*, Kluwer Law International, 2005, pp. 1117-1132, or Jules Stuyck, Evelyne Terryn, Ton von Dyck: *Confidence through fairness? The new Directive on unfair business-to consumer commercial practices in the internal market*, In: *Common Market Law Review*, Vol. 43. Kluwer Law International, 2006, pp.107-152.

to the unfair manipulation of the *business partners*'<sup>12</sup> (instead of consumers') decisions in the economic market.

The drafted Code on business advertising activity intends to make changes on terms and definitions<sup>13</sup> and establish new ones such as the definition of enterprise, or the code of conduct. The draft would initiate more regulation to protect the interests of children. The provisions on tobacco and alcoholic beverages will be refined as well. A new chapter will deal with the misleading advertisements and the comparative advertisements.

The most significant alteration is referring to the distinct regulation of unfair market and trade practices from a consumer protection perspective. It adopts the role of self-regulation in the development of consumer protection. The general prohibition on unfair commercial behaviours stands in the centre of the draft. These activities can not meet the diligence of professional requirements and distortion of economic behaviour of consumers. The deceptive and aggressive behaviours are specially emphasized and elaborated in the draft. In accordance with the Unfair Market Practices Directive a "black" list is annexed to the draft that includes 31 examples of unfair commercial activities. The directive neither establishes sanctions nor the acting authority. The competence in the Hungarian draft is divided among the National Authority of Consumer Protection, Hungarian Competition Authority and Hungarian Financial Supervisory Authority. Responsibility issues and conduction of infringement proceeding is also regulated.

It is doubtless that the current legal regulation needs changing in order to better serve the interests of consumers in the European Union. The reforms will concern to all participants of the economic market. It is still questionable whether the new system can redeem what is expected. One aspect will still remain: provisions on the protection of consumers in competition law will be declared in more Acts. It is worth deliberating with conformity of these acts to each other. Maybe it can not serve appropriately the interests of consumers if more Codes intend to protect them by "diffused" regulation. Time will probably give the solution, and it will also be emerged whether the business sector could get prepared to apply the new rules and meet the legal requirements.

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<sup>12</sup> According to the draft a business partner is anyone who is not a consumer.

<sup>13</sup> The definition of consumer according to the current regulation is „all natural and legal persons and companies with no legal personality on which the advertisement is targeted” in the Hungarian Advertising Act. The draft uses the term of “addressee of advertisement” instead of “consumer”.

## **Literature:**

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