

## **Hungary**

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**I. Existing National Law****a) General Provisions on Unfair Commercial Practices****i. Could you describe the general legal framework of the law on unfair commercial practices in your country (e.g. structures, main acts/statutes, leading cases, codes of conduct, self-regulation)?**

Act IV of 1959 on the Civil Code (hereinafter referred as: Civil Code) contains basic provisions on contracts, general contractual conditions, false compliance, guaranty and warranty. The Civil Code also defines consumer contract. These rules harmonise Hungarian law with Directive 1999/44/EC on certain aspect of the sale of consumer goods and associated guarantees.

Act CLV of 1997 on consumer protection (hereinafter referred as: Consumer Protection Act) includes general rules concerning consumer information, labelling, protection of the life, health and safety of consumers, protection of consumers property, indication of price, packaging, consumer education, enforcement of consumer rights.

Act LVII of 1996 on the prohibition of unfair and restrictive market practices (hereinafter referred as: Competition Act) contains a general clause on unfair commercial practices with a view on the interests of the undertakings as well as on the interest of consumers.

Act LVIII of 1997 on Commercial Advertising Activity (hereinafter referred as: Advertising Act) includes general provisions on unfair commercial practices, comparative advertising, protection of children and juveniles, and special rules on advertising tobacco and alcohol products.

The Hungarian Code on Advertising Practice was enacted in 1997, modified in 2001 by ten advertising and other undertaking associations. The Code complements legislation on advertising. Its core principles are strengthening fair competition, ethics and moral norms, ensuring commercial freedom of speech. There are sector specific codes in force as well: beer-, pharmacy- tobacco- and television industry have their own codes of conduct.

**ii. Does a general clause on unfair commercial practices exist?**

According to the Article 5 point 1 of 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 (hereinafter referred as: UCP), unfair commercial practices shall be prohibited. These practices shall be considered as business-to-consumer commercial practices (Article 3, point 1). Concerning the definitions laid down in Article 2 point d) of UCP, business-to-consumer practices mean any act, omission, course of conduct or representation including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers.

Hungary already has the provisions concerning unfair commercial practices laid down in UCP in its consumer protection and competition law.

Chapter II of Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter referred as: Competition Act) includes the general prohibition of unfair competition. The Competition Act shall generally apply to the market conduct of natural persons and legal entities, as well as of unincorporated business associations (hereinafter jointly referred to as "undertakings"), carried on in the territory of the Republic of Hungary, unless otherwise provided by law. The Article 2 Competition Act says that it is prohibited to carry on economic activities unfairly, in particular, in a way violating or jeopardising the lawful interests of competitors or consumers, or in a way breaching the requirements of business integrity. On these grounds the general clause on unfair competition applies to business to business (B2B) and business to consumer (B2C) relations as well. It means the general clause on commercial practices is included in the general clause on unfair competition.

In the interest of ensuring the fairness and freedom of economic competition between economic organisations, the Competition Act covers practices that may harm competitors' interests without harming consumers' interests (B2B).

Article 3 Competition Act prohibits violating or jeopardising the good reputation or creditworthiness of a competitor by stating or spreading untrue facts, and by misrepresenting true facts, as well as by any other practices. According to Article 4, it is prohibited to gain access to or use business secrets unfairly, and to disclose such secrets without authorisation to third parties or publish them.

The Competition Act prohibits unfair appeals to somebody with the intention to disrupt existing economic relationships with third parties or to prevent the creation of such relationships (Article 5). Concerning Article 6, it shall be prohibited to manufacture, distribute or advertise goods and services without the consent of competitors if such goods have a characteristic, presentation, packaging or labelling, or use a name, mark or designation, by which a competitor or its goods are usually recognised. According to Article 7 it shall be prohibited to infringe in any way the fairness of any bidding process - in particular in respect of competitive tenders - and that of auctions or stock exchange deals as well.

The Competition Act includes a general prohibition of unfair influence over consumer decisions (Chapter III). In order to achieve a high level of consumer protection, the Competition Act covers practices, which harm consumers' economic interest directly, and may have an indirect effect to the competitors' interest (B2C). According to Article 8 Competition Act, it shall be prohibited to mislead consumers in economic competition. For the purposes of the Competition Act, consumers shall be considered as customers, buyers and users. The provisions of the Competition Act protect consumers from the competitors' point of view. This means that consumers are only protected in case of competition, in the process of competition between competitors. The goal of the regulation is not to materially distort the economic behaviour of consumers or to use undue influence towards consumers by the trader.

Materially distorting the consumers' economic behaviour means, according to the Competition Act, using a commercial practice to appreciably impair their ability to make an informed decision, thereby causing them to take a transactional decision that they would not have taken otherwise. The Competition Act defines the term of undue influence as well. It means exploiting a position of strength in relation to the consumer so as by applying pressure, even without using

or threatening to use physical force, significantly limiting the consumer's ability to make an informed decision.

Act CLV of 1997 on Consumer Protection (hereinafter referred as: Consumer Protection Act) contains general provisions on consumer information, including labelling (Articles 9- 11), user's manual and instructions (Article 12), conformity assessment (Article 13), indication of price (Article 14) and packaging (Article 15). According to Article 8 of Consumer Protection Act, the purpose of information is the following.

"Consumer information shall provide consumers

- a) with adequate knowledge for selecting such goods or service, furthermore with basic knowledge regarding the basic attributes and characteristics of the goods and services necessary for the use of goods and services and the maintenance of goods, the quality, price or fee of the goods and services, instructions relative to the use of goods and any hazards associated with such use,
- b) with basic information necessary for enforcing his rights."

**iii. Who or what is protected by these provisions (e.g. consumers, customers in general, competitors, functioning of markets)?**

The development of fair commercial practices within the area without internal frontiers is vital for the promotion of the development of cross-border activities. The purpose of the UCP is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating laws, regulations and administrative provisions of the Member States on unfair consumer practices harming consumers' economic interests.

The UCP therefore approximates the laws of the Member States on unfair commercial practices, including unfair advertising, which directly harm consumers' economic interests and thereby indirectly harm the economic interests of legitimate competitors.

On these grounds, Article 3 says that this Directive applies to unfair business-to-consumer practices, before, during and after a commercial transaction in relation to a product. UCP is without prejudice to contract law and, in particular, to the rules on the validity, formation or effect of a contract, or national rules relating to the health and safety aspects of products.

According to the preamble of the Competition Act, the public interest attached to the maintenance of the market competition serving economic efficiency and social progress, as well as the interests of the economic organisations, observing the requirements of business integrity as well as that of consumers are protected by its provisions.

Concerning the scope of the Competition Act (Article 1), the Act applies to the market conduct of natural persons and legal entities, including Hungarian branch offices of foreign-registered companies, as well as of unincorporated business associations carried on in the territory of the Republic of Hungary, unless otherwise provided by law. This means that the subject of the Competition Act is so broad that it involves everyone and every organisation able to act in the market.

The Competition Act provisions are protecting consumers in the process of competition between undertakings. Chapter III of the Competition Act addresses commercial practices

directly related to influencing consumers' transactional decisions in relation to products. The Competition Act directly protects consumer economic interests from unfair business to consumer commercial practices on the market. Thereby, it also indirectly protects legitimate businesses from their competitors who do not play by the rules in the Competition Act and thus guarantees fair competition in fields coordinated by it.

The Consumer Protection Act protects the consumer. According to the preamble of the Consumer Protection Act, the protected interest is the provision of proper protection of consumer interests, with special emphasis on the safety of goods and services, protection of property, proper information and education, efficient legal remedy, and consumer protection through non-governmental (civil) organisations, and further development of the institutions necessary for the enforcement of such measures. Article 1 Consumer Protection Act says that this Act shall apply to all activities conducted by natural and legal persons, unincorporated business associations and to the branch offices of foreign registered enterprises (hereinafter jointly referred to as "economic organisations") within the territory of the Republic of Hungary, which involve or may involve consumers.

**iv. Are there definitions of consumers, specific groups of customers, such as “vulnerable consumers” or “children”, are there definitions of “business”, “trader” or similar terms?**

According to the definitions of UCP, consumer means any natural person who, in commercial practices covered by the Directive, is acting for purposes, which are outside his trade, business, craft or profession (Article 2(a)). It is the same definition laid down by other Directives on consumer protection.

Where certain characteristics such as age, physical or mental infirmity or credulity make consumers particularly vulnerable to a commercial practice or to the underlying product and the economic behaviour of such consumers is likely to be distorted by the practice in a way that the trader can reasonably foresee, it is appropriate to ensure that they are adequately protected by assessing the practice from the perspective of the average member of that group.

Concerning the Hungarian legislation, the Consumer Protection Act includes the general definition of *consumer*. According to the Consumer Protection Act, *consumer* shall be taken to mean the person who buys, orders, receives or uses goods – for purposes other than the business or professional activity he engages in – or to whose benefit a service is provided, furthermore, who is the target of any information or offer on goods or services (Article 2 point (e)). With regard to the preamble of the Competition Act, the term '*consumer*' means customer, purchaser or user (Article 8(1)). According to the business advertising activity, as written above, by Article 2 point f) Advertising Act, *consumer* means all private individuals, legal entities and economic associations without legal entity towards at or which advertising is directed.

In coherence with the *aquis communautaire*, with particular regard to the Directive 89/552/EEC concerning the pursuit of television broadcasting activities, the Advertising Act restricts advertising tobacco and alcoholic beverages. On these grounds, the Advertising Act has several provisions protecting the interests related to health and moral welfare of children and juveniles.

Concerning Article 2 sub h Advertising Act, *children* mean persons younger than 14 years of age, *juveniles* means persons between 14 and 18 (Article 2 point (e)). Advertising targeted at

children or juveniles may not be published if it may harm their *physical, intellectual or moral development*, or take advantage of their credulity or lack of experience, it *directly encourages them to motivate adults to purchase goods*. Advertising may not be published if it may harm the physical, intellectual or moral development of children or juveniles, including in particular advertising which shows children or juveniles in dangerous or violent situations or in situations with sexual emphasis (Article 5). Advertising of pharmaceuticals may not be published if it is addressed to children (Article 10).

Advertising of tobacco products or alcoholic beverages is prohibited

a) in *printed materials* fundamentally targeted at children or juveniles,

b) on the *front cover* of printed materials,

c) in *theatres or cinemas before 8 PM*, as well as immediately preceding any programs for children or juveniles, during the full duration thereof, and immediately after,

d) on *toys* and the packaging thereof,

e) in *public education*, in *health institutions* and within a distance of 200 meters from the entrance thereof (Article 12 indent (1)).

Tobacco products or alcoholic beverages may not be advertised if the advertising is targeted at children or juveniles, or depicts children or juveniles (Article 12, indent (2)).

The UCP defines trader as any *natural or legal person* who, in commercial practices covered by this Directive, is *acting* for purposes relating to his trade, business, craft or profession and anyone is acting in the name of or on behalf of a trader (Article 2 sub b).

Hungarian legislation uses the term "*undertaking*" to define the trader. It shall be noted that although the term is uniform, in the English translations different terms are used both in the Competition Act and in the Advertising Act. According to the Competition Act, the term *company*, which means natural and legal entities, defines trader including Hungarian branch offices of foreign-registered companies, as well as of unincorporated business associations. The Advertising Act refers to the trader as "*enterprises*", which includes private individuals, legal entities or economic associations without legal entity. The Hungarian law also uses a few other expressions for defining the trader or business.

The Consumer Protection Act makes a distinction between distributor and manufacturer. Concerning Article 2 sub j, *distributor* shall mean an *economic organisation* marketing goods and/or services to consumers. For the purposes of Chapter II of this Act ('Protection of Life, Health and Safety of Consumers') "*distributor*" shall mean the entity that does not alter the safety features of the goods he places on the market. According to Article 2 Consumer Protection Act *manufacturer* shall mean:

ka) any profit-oriented entity *established* in the European Economic Area engaged in the manufacture, production, restoration or reparation of goods, or an entity labelling itself as the manufacturer by affixing its name, trademark or other distinguishing label;

kb) the manufacturer's authorised *representative* who is established in the European Economic Area, if the manufacturer itself is not established in the European Economic Area; or in the absence of such a representative, the importer, furthermore;

kc) an entity whose activities may influence the *safety* of the goods in the process of marketing."

The aim of the distinction is that different rules apply to the distributor and the manufacturer in particular with regard to the liability in connection with consumer safety aspects.

**v. How are rules on fair commercial practices interpreted (e.g. by public authority, case law, codes of conduct)?**

Chapter VII of the Consumer Protection Act circumscribes the institutional system of consumer protection institutions. According to Article 40, the Minister responsible for consumer protection shall draw up and present to the Government for approval the strategy for a consumer protection policy and shall make recommendations for the organisational and institutional implementation of such. The Minister shall also take or initiate measures concerning the enforcement and protection of consumer rights.

The main consumer protection enforcement authority is the General Inspectorate of Consumer Protection that is under the supervision and control of the Minister designated by the Government. Regional inspectorates work in every county of Hungary and in the capital Budapest. The regional inspectorates shall perform the regulatory tasks of consumer protection with the professional guidance of the General Inspectorate on Consumer Protection.

However, the competence of the General Inspectorate of Consumer Protection and the regional inspectorates may not interfere with the consumer protection duties and competence falling by law under the jurisdiction of other organs. Concerning unfair commercial practices, this other organisation is the Hungarian Office of Economic Competition (hereinafter referred to as: Competition Office).

With regard to Article 44 Consumer Protection Act, the representative bodies of local governments may promote formation of independent consumer organisations and may support the activities of non-governmental organisations aimed at the enforcement of local consumer protection interests. The representative bodies of local governments may voluntarily take part, based on agreement with the chamber, in the operation of arbitration boards, as well as operate consumer protection by consulting offices, depending on consumer demand.

Finally, Article 45 Consumer Protection Act says that the State and local governments shall promote and assist the activities of non-governmental organisations providing representation of consumer interests. The State shall support civil organisations representing consumer interests through the annual budget.

It is very important that in the last few years arbitration boards have become more popular with consumers. Article 18-37 Consumer Protection Act deals with the arbitration board that is established for the purpose of attempting to reach an agreement between an economic organisation and a consumer to settle a dispute (consumer litigation) or, should the prior process fail, to decide on the matter in order to quickly, efficiently and simply enforce consumer rights. The arbitration board is an independent body operating in connection with regional chambers of commerce (hereinafter referred to as „chambers”). The chambers of commerce and industry and the chamber of agriculture operating within the same territory operate the arbitration board jointly. Local governments may, voluntarily and on the basis of an agreement with the chamber, participate in the work of arbitration boards.

Conducting the proceedings due to the violation of the prohibition of the unfair competition (the general clause – B2B) shall fall within the competence of the court (Chapter XII of the Competition Act). In the statement of claim, the interested party may demand that a violation of the law be established or may demand the termination of the violation of the law and the prohibition of the party violating the law from any further violation of the law or may demand

that the party violating the law give satisfaction (make an apology) by making a statement or in another appropriate manner, and, if necessary, that sufficient publicity be given to the satisfaction (apology) on the part or at the expense of the party violating the law or may demand the termination of the injurious situation, the re-establishment of the state of affairs prior to the violation of the law, and the deprivation of the goods manufactured or placed on the market through the violation of the law of their offending character, or, if this is not possible, the destruction thereof, and the destruction of any special devices and facilities used for the manufacture thereof, or may demand that the defendant disclose information on the parties participating in the manufacturing and marketing of the products involved in the case as well as on the business relations it has established to distribute such products. Proceedings conducted by the court shall also extend to the imposition of the fine.

Concerning the rules of the unfair commercial practices specially for B2C, the competent authority is the Hungarian Office of Economic Competition (hereinafter referred as: Competition Office). The Part III of the Competition Act contains the rules of the proceeding of the prohibition of unfair influencing of consumer decisions by the Competition Office. The competence of the Competition Office shall extend to the whole territory of the country. (Art. 46.)

A review of the decision passed on the merit of the case of the Competition Office, may be requested of the court with a statement of claim within thirty days reckoned from service. Such request for review shall have no dilatory effect on the execution of the decision (Art. 83(1)). The court may alter the decision of the competition board (Art. 83(4)).

Concerning unfair commercial practices there are codes of self-regulation on the field of commercial advertising. The Hungarian Advertising Association has held together the representatives of the publicity business since 1975. The Publicity Ethics Commission has carried out its work since 1981, and they consider the creation of the Publicity Ethical Codex a great merit. This Codex is the basis for the settlement of complaints relating to the advertisements already published. The 16 largest professional federations, bodies, associations agree with the contents of the Codex, and the leaders of these organizations have attested by their signatures that their members recognize the requirements set forth in the Codex mandatory for themselves. This means that the Hungarian Publicity Ethical Codex is a document based on business consensus. The Publicity Ethics Commission enjoys strong legitimacy since it carries out its tasks in compliance with the Codex based on mutual understanding.

It is important to know that the Publicity Ethics Commission is no court, does not punish but advises the participants on their ethical delinquency. About half of the issues submitted to the Commission and asking for its position concern violation of ethical norms, while the rest concerns mainly publicity taste, is subjective, where the Commission does not initiate in merito investigation. The Commission meets every second week and discusses five issues in average in compliance with the Codex and with its own Procedures. These figures indicate, too, that both the consumers and the business are aware of the existence and activity of the Publicity Ethics Commission.

**b) Provisions on Specific Issues****i. Are there other provisions and case law prohibiting misleading advertising?**

The UCP sets up a general prohibition of unfair commercial practices which in particular shall be regarded as unfair if they are misleading as set out in Articles 6 and 7, or aggressive, as set out in Articles 8 and 9. UCP does distinguish between misleading actions and misleading omissions. According to Article 6, *misleading action* should be considered, if as a commercial practice containing false information therefore untruthful or in any way, including the overall presentation deceives or is likely to deceive the average consumer. Misleading exists even if the information is factually correct, in relation to one or more of the *elements* listed in point (1), and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise. According to Article 7(1) UCP, *misleading omissions* mean such a commercial practice, which, in its *factual context*, omits *material information* that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise. To determine the *factual context* it shall be taken into account of all the features and circumstances and *limitations of the communication medium*. Where the medium used to communicate the commercial practice imposes *limitations* of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted (Article 7(3)). In order to ascertain, which information shall be regarded as *material*, subparagraph 4 contains a list of omissions.

Article 7(2) UCP contains an additional provision. It says that a misleading omission deemed to exist where a trader hides or provides unclear, unintelligibly, ambiguously or untimely such material information or fails to identify the commercial intent of the commercial practice if not already apparent from the context.

Like the UCP, Article 8 Competition Act details the general clause and indicates those elements that shall in particular constitute the misleading of consumers. It contains practices, such as *stating untrue facts* in respect of the price and material qualities of the goods, presenting goods with attributes capable of misleading the consumer (Article 8(2) point a). Furthermore, it shall be prohibited to conceal that the *goods do not satisfy the provisions of the legal rules or the usual requirements* set in respect of the goods, and that the consume of the goods requires to achieve conditions substantially different from the usual (Article 8(2) point b). It shall also be prohibited to provide *information* capable of misleading the consumer in respect of circumstances related to the sale and distribution of goods and of *influencing the consumer's decision*, in particular, in respect of the method of distribution, the terms of payment, the attached gifts, the discounts granted and the chances of winning (Article 8(2) point c). Finally, misrepresenting a purchase as a highly advantageous bargain constitutes the misleading of consumers as well (Article 8(2) point d).

The infringement is realised by false allegation, by presenting true misleadingly and by any information *objectively suited to mislead*. A thorough examination of the target consumer group is essential since any information can be misleading, moreover, according to the decision 1997/1995. *VJ of the Hungarian Office of Economic Competition*, professionals and laymen consider the same act in a different way.

The petitioner “K” Beer Ltd. produces beer-industry products. Its competitor’s, “B” Ltd, activity is the same. “K” Ltd. issued brochures advertising “K” brewery methods and appliances. The petitioner applied to the Competition Office for a decision concerning the publication by the adverse party of brochures like his in order to popularise “A” Beer. According to his standpoint, a consumer who had seen the brochure used to popularise “K” brewery technique before, could have been misled by assuming that the similar brochure is promoting “K” product as well. Hence this could be regarded as a misleading action as regards the origin of the product.

The Competition Council examined whether the similar form of the brochures had been able to mislead the consumers. It should have taken into account the fact that the appliance used for brewery sold by “B” Ltd. was relatively of great value and buyers were customers who dealt with beer production and marketing. Moreover the customers’ practice was after preliminary information and before purchasing these products, to survey reference plant during work. On these grounds, Competition Council held that similarity of the brochures’ pictures is neither sufficient to be considered as unduly influencing the decision of customers with competence nor restricts substantially the freedom of choice.

Frequent infringements occur when the trader or supplier exaggerates the effect of the substantial features of the product, or the impact on health and environment or states a basically untrue result on the possible effect.

The Competition Office held that the statements of Scorpio Ltd. that appeared in several magazines was able to mislead the consumers (Vj-144/1995/21.). It was stated that “ALEX” car air conditioner is able to regulate humidity, designed for every car type and that] its system was equivalent to the manufactured ones. In its decision the Competition Office ordered to stop the behaviour and imposed penalty. The Courts rejected the appeal of the petitioners. The appellate Courts decided that an advertisement is unlawful, where it states an untrue result on the possible effect of the product restricting the consumers’ freedom of choice.

Consumers’ misleading can be committed not only in an active manner, by false allegation, but also when the vendor *omits* the substantial deficiencies of the product (misleading omission). It is important for the consumer to know the substantial features of the product or supply, and whether the purchased product is in accordance with the standards and specific provisions applying to the product.

In compliance with Article 7 paragraph 2 UCP, Article 9 Competition Act says that in assessing whether the information provided is capable of misleading the consumers, the *general meaning of the terms* used as accepted in everyday life and/or in the trade shall apply.

In that special case when a practice is both directed to business and consumers Article 7 of Act LVIII of 1997 on Commercial Advertising (hereinafter referred as: Advertising Act) says, that it is forbidden to publish misleading advertisements.

According to the preamble of the Advertising Act, the intention of the Parliament is to regulate business-advertising activity for the purposes of achieving fair communication with consumers, protecting the interests of enterprises, observing the requirements of fair business practices, and facilitating the sale of goods and services.

As for this issue Article 1 Advertising Act adds the following. This Act shall apply to *any business advertising activity* performed by private individuals, legal entities or economic associations without legal entity (hereinafter jointly referred to as: enterprises) in their capacity as advertisers, advertising service providers or publishers of advertising in the territory of the Republic of Hungary. With regard to this, the Advertising Act does only applies to business advertising, but does not to political or social advertising or other means of policy communication (for example: subvention). Similarly to Competition Act, “the subject of the Advertising Act is so broad that the *business advertising activity* is the key issue in defining the scope of the Act.

Specific parts of commercial practices can constitute misleading advertisements. Article 2 point n Advertising Act contains the definition of misleading advertising. It shall mean any advertising which in any way, including its presentation, *deceives or is likely to deceive the persons* to whom it is addressed or whom it reaches and which, for reason of its deceptive nature, is *likely to affect their economic behaviour* or which, for those reasons, *harms or is likely to harm a competitor* engaged in the same or similar activities. Article 7(2)-(3) Advertising Act says that for the purpose of defining a misleading advertisement, the following information transmitted in the advertisement shall be taken into consideration. It is important to inform the consumer about the *general characteristics* of the merchandise (Article 7(2) point a). It shall be understood as any facts transmitted concerning the place of origin of the merchandise, its ingredients, safety factors, its impact on health, technical features, its environmental features and energy consumption (Article 7(3)). Furthermore, its availability, date of manufacture, quantity, its suitability for a given function, the expected results from its use, the way it is controlled or tested, and any other fact regarding the application, shipping, use and maintenance of the merchandise (Article 7(3)). It is obliged to transmit information on the *price* of the merchandise or the pricing method, and other *contractual conditions* of purchase as well as on the *disposition of the advertiser*, such as its characteristics, the rights, wealth and/or endowments of or the awards received by the advertiser (Article 7(2) point b-c).

**ii. Are there other provisions and case law regulating comparative advertising?**

Comparative advertising may be published if it fulfils the conditions set out in Article 7/A(2)-(3) Advertising Act, as follows. Comparative advertising cannot be misleading, shall not harm the reputation of another company or the name, merchandise, brand name and other marking of such company. Comparative advertising shall not produce confusion between the advertiser and another company or the name, merchandise, brand name and other marking of such company, shall not produce any unfair advantage derived from the reputation of another company or the name, merchandise, brand name and other marking of such company. Furthermore, it shall not violate the provision of Article 6 Competition Act on the prohibition of imitating the merchandise of another company or the characteristics of such merchandise. The Competition Act requires some positive conditions as well. Comparative advertising shall be allowed to compare only goods, which are similar in terms of purpose and function. The advertisement shall objectively compare one or more features of the goods in question which are definitive and typical, and which can be confirmed. It shall objectively exhibit the prices, where applicable, and relate to goods of the same origin, where applicable.

**iii. Are there other provisions and case law regulating aggressive practices?**

Concerning Article 10 Competition Act, it shall be prohibited to apply business methods, which restrict, without justification, the freedom of choice of consumers.

Clearance sales for example, which distract consumers' attention from the substantial features – low quality – of the product and prevent consumers from making an informed decision can be regarded as aggressive practices.

**iv. Are the provisions and case law regulating special marketing techniques?****1. Distance marketing**

Regulations set out in Government Decree No. 17/1999 (II. 5.) on Distant Contracting harmonise Hungarian law with Directive No. 97/7/EC of the European Parliament and the European Council on the distance contracts with regard to the protection of consumers. According to Article 1 the Decree applies to contracts concluded between business organisations on the one part and consumers on the other part concerning provision of services or sales of goods by business organisations, using exclusively one or more means of telecommunication (distant contracting). 'Means of telecommunication' shall refer to devices that make it possible for remote contractual declarations to be made between absent contracting parties. Such devices include pre-printed forms not indicating the address or the addressee, standard letters, press advertisements with order forms, catalogues, telephones, automatic calling devices, radios, video-phones, videotexts (microcomputers with screen) with keyboard or touch-screen, electronic mail (e-mail), facsimile and television.

With regard to automatic calling devices Article 9 (1) of the Decree says that the explicit consent of the consumer shall be required for the business organisation to conclude a contract via either fax or an automatic calling device. Article 9 (2) adds that unless special legislation provides otherwise, the business organisation may, in the absence of the consumer's explicit objection, use direct contact telecommunication devices, except for those falling within the scope of Paragraph (1). Although cold calling is an increasingly used method of marketing in Hungary, there are not any specific provisions of this issue; general rules of this Decree apply.

This regulation contains provisions on contracts concluded through electronic mail. However, it is material to indicate that Act 108 of 2001 on electronic commercial activities deals with e-commerce and other issues concerning information society. This Act contains provisions regarding information and technical provisions connected to contracts concluded electronically and service providers' including intermediary's liability as well.

Concerning Article 8 of the Decree the business organisation may not demand any consideration from the consumer in case it sells a product or provides a service that the consumer has not ordered at an earlier date (unsolicited goods). The absence of an explicit statement by the consumer shall not justify the assumption that the consumer has - automatically - accepted the offer of the business organisation.

As far as information duties of this Decree are concerned, see for reference point I.b.V.

## 2. Face to face marketing

Article 1 (1) of Government Decree No. 370/2004. (XII. 26) shall apply to contracts under which a trader supplies goods or services to a consumer and which are concluded away from his business premises: - during an excursion organised by the trader or a third party, or-during a visit by a trader to the consumer's home or to that of another consumer; to the consumer's place of work; where the visit does not take place at the express request of the consumer. Furthermore, the protection of the consumer has more directions. First of all, the circle of marketed goods is restricted. It is prohibited to sell for example foods or medicaments. The trader has to meet information duties towards consumers, it is prohibited to visit the consumer from 19 p.m. to 9 a.m. and the consumer can terminate a contract within 8 working days.

Multi-Level-Marketing is legal as long as it can not be regarded as pyramid-selling, as it is written below. The provision of pyramid-selling laid down in the Act IV. of 1978 on Criminal Code. It is prohibited to organise of a pyramid game (Art. 299/C). According to this paragraph, the person who organises a game based on the collection and distribution of the money of the others in a predetermined form and way, which also contains an element of risk, in which the participants joining in a chain-like manner pay cash to, or perform other service for the participants preceding them in a chain, directly or through the organiser, commits a felony and shall be punishable with imprisonment of up to three years. Common attributes of pyramid games are that real economic activity can slightly be detected.

## 3. Price reduction techniques

The Hungarian Competition Act includes the prohibition of the unfair influencing of consumer decision in particular of misrepresenting a purchase as a highly advantageous bargain. In Hungary the Act on Commercial Advertising and the Act on Agrarian Market Regulation regulates specially price reduction techniques.

The Competition Act is prohibited to mislead the consumers in the economic competition (Art. 8(1)). Misleading information shall all information, which are capable of misleading the consumer is provided in respect of the price of the goods or which are capable of misleading the consumer is provided in respect of circumstances related to the sale and distribution of the goods, in particular the terms of payment, the attached gifts, the discounts granted and the chances of winning (Art. 8(2)).

The Act LVIII of 1997 on Commercial Advertising (hereafter: Advertising Act) has provisions on the special offer. Art. 2 point m defines the special offer. It says that special offer shall mean all offers, which differ from common commercial practice due to their unique features in terms of time, quantity, quality or for other reasons, such as, in particular, seasonal sales promotions, clearance sales, discount sale offers whether temporary or tied to a special event, and any promotions for gifts or prizes. The Advertising Act permits advertise special offer, including special price offers, if it clearly and plainly states the product to which it pertains, as well as the period or duration for which it is offered, or that it is offered for a product from a specific date as long as such product is available.

Sales below cost are prohibited in relation to foodstuffs. According to the Act XVI. of 2003 on the Agrarian Market Regulation retail trade price of agricultural and foodstuff industry products cannot be lower than their invoiced deliverance price stipulated in the contract. In case of

violating this provision it is possible to recourse to the competent County Agricultural Office for legal redress within 60 days from committing. In case of other goods only general competition rules apply.

**v. Are there specific provisions and case law regarding information requirements (e.g. rules that impose on traders a duty to disclose to the consumer all ‘material information’)?**

The Government Decree No. 17/1999 (II. 5.) on Distant Contracting contains provisions concerning information duty towards consumers. These shall be unambiguous, plain and accurate information, according to the means of telecommunication applied. According to Article 2(1) of the Decree, prior to contracting, the business organisation shall – in due time – inform the consumer of the following:

- a) the registered name (name), registered seat (place of residence) and registration number of the business organisation, determined in a separate rule of law, as well as the tax identification number and the telephone number of the business organisation. Article 2 (3) adds to this subparagraph the following. If the business organisation offers to conclude a contract with the consumer via telephone, at the beginning of the telephone conversation it shall inform the consumer of its registered name (name), registered seat (place of residence), telephone number and, especially, of its intention to conclude a contract.
- b) relevant features of the subject of the contract;
- c) the consideration, including other payment obligations in connection with the consideration;
- d) delivery costs, [where necessary];
- e) other terms of payment, conditions of delivery or terms of performance of the contract;
- f) the right of termination of the contract (Articles 4 and 5);
- g) the fee of using the means of telecommunication, if different from the basic rate;
- h) the term of the offer; and
- i) the shortest term of contract, in case the contract is performed continuously or repeatedly.

According to Article 3 (1) of the Decree, the business organisation shall provide the consumer with written information or other documents confirming the verbal information (hereinafter jointly referred to as ‘written information’) on the contents of Subparagraphs a) to f) of Paragraph (1) of Article 2 of this Decree in due time, prior to the signing of the contract or at the time of the execution of the contract at the latest. In addition to those stipulated in Paragraph (1), the written information shall include the following:

- a) the conditions, modes and consequences of termination;
- b) the address of the premises (branch office) or other unit of the business organisation where consumers may enforce their complaints;
- c) the conditions of warranty (guarantee) and the provision of any available after-sale services (spare part supply, servicing);
- d) the possibility of terminating the contract, if it was concluded for an indefinite period of time, or for a period exceeding one year.

**vi. Are there specific provisions and case law concerning specific sectors (e.g. final consumers)?**

Act LXXXII. of 2003 on foodstuffs (hereinafter referred as: Food Act) refers to the Regulation No. 178/2002 of the European Parliament and of the Council on 28<sup>th</sup> January 2002 laying down the general principles and requirements of food law establishing the European Food Safety Authority and laying down procedures matters of food safety. Article 3 point 18 of the Regulation says that final consumer means the ultimate consumer of foodstuff who will not use the food as part of any food business operation or activity. Food Act aims to protect the interest of consumers and provides adequate information for consumers to make an informed decision concerning the food they buy, According to Article 10(2) Food Act visualisation of the foodstuff and labelling shall not mislead the consumer.

**vii. What are the national laws of post-contractual and after-sale commercial practices?**

The Civil Code contains the basic provisions regarding guarantee and warranty caused by false compliance. According to Article 305(3) the obligor is liable for false compliance. If the obligee knew or ought to have known about any lack of conformity at the time of concluding the contract, the obligor is exempt from bearing guarantee responsibility (Article 305/A(1)). Unless proved otherwise, any lack of conformity, which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity (Article 305/A(2)). In the case of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement, or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods (Article 306(1)). The Civil Code contains provisions regarding the subjective and objective deadline of enforcing the consumer's right. The consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity (Article 307(2)-(3)). The objective deadline of enforcing rights is two years from the time of delivery (Article 308(4)).

**viii. Are there provisions and case law on handling complaints?**

Article 38 Consumer Protection Act contains provisions concerning customer service. This means that economic organisations or those providing financial, private pension, insurance and telecommunication services shall operate a customer service department for handling consumer correspondence, investigating and redressing complaints and for providing extensive information to consumers at a location which is open for customers. The economic organisation shall establish the policy and business hours and shall provide the operating conditions of the customer service department without causing any detriments to the interests of consumers. The customer service must issue a written statement regarding the rejection of a complaint with an explanation attached, a copy of which shall be presented to the consumer or sent to the customer within 15 days. As part of the procedure of handling consumer correspondence and providing information to consumers, the customer service must cooperate with non-governmental organisations providing representation of consumer interests.

## II. Possible obstacles to the Directive on Unfair Commercial Practices from the national law perspective

### a. What are the main obstacles from the point of view of your country, which might result, complicate transposition and implementation of the Directive?

The term of average consumer is used by UCP but it was not defined. Every Member State has its own enforcement system and jurisdiction, which are able to elaborate the definition of the average consumer, taking into account the relevant decision of the *European Court of Justice* as well. The Hungarian Office of Economic Competition uses the term average consumer, which means as a consumer acting *circumspectly* and *reasonably* in a *generally expected manner*. A *circumspectly* acting consumer takes decision regarded as optimal, in the current situation, by subjective guess of presumption. The requirement of acting in an *expected manner* meets the consumer if he keeps informing until the expected advantages of questing information exceed the expected costs.

On these grounds the transposition of UCP would have been complicated if average consumer were defined in the text. Still, the application of average consumer is possible in Hungarian legislation in lack of this definition.

### b. Do you see any incompatibilities within your national legal system?

Hungarian national legal system is prepared to implement UCP. The enforcement would have been difficult if the term of average consumer had remained in the directive.

### c. How could the Directive be transposed into your national law?

UCP could be transposed into the Competition Act as well as the Commercial Advertising Act.

### d. What would be – from the perspective of your national law – the appropriate sanctions in case of infringement of the general clause of the Directive? Is there a system to enforce the provisions on fair commercial practice? How is this organised?

UCP orders the Member States to ensure that adequate and effective means exist to combat unfair commercial practices and for compliance with the provisions of this Directive in the interest of consumers (Article 11 paragraph 1). According to Article 13, Member States shall lay down penalties for infringements of national provisions adopted in application of this Directive and shall take all necessary measures to ensure that these are enforced. These penalties must be effective, proportionate and dissuasive.

In the Hungarian legislation, the enforcement of regulations is assured by sanctions. According to the provisions of the Competition Act, in case of misleading practices the Hungarian Office of Economic Competition is entitled to impose sanctions as follows:

- shall state the kind of behaviour violating the law,
- shall order to stop the behaviour violating the law,
- shall prohibit continuing the behaviour violating the law,
- In case of breach of the law the Hungarian Office of Economic Competition is entitled to proceed and prohibit, without justification, to create or maintain business relations appropriate for the type of transaction. (Article 21(c))
- shall order to publish emending statement concerning information suitable for deceit
- shall evoke or amend its decision made previously (Article 19, 32)
- The Competition Council shall impose penalties against those violating the provisions.

The maximum amount of the penalty shall be at the most 10% of net revenues of the enterprise in the previous business year. However, the maximum penalty imposed against NGO's of enterprises, public bodies, associations and other bodies shall be at the most 10% of net revenues of the targeted undertaking/body in the previous business year.

Article 47(1) Consumer Protection Act says that the acting authority (the General Inspectorate of Consumer Protection), upon establishing in proceedings a violation of consumer protection regulations prescribed in this Act and in other legal regulations, may, unless otherwise prescribed by legal regulations,

- a) order the state of infringement to be terminated,
- b) prohibit continuation of the illegal conduct,
- c) order the goods imposing hazards to the life, health or physical safety of consumers to be removed from the market,
- d) order the goods imposing hazards to the life, health or physical safety of consumers to be destroyed in observation of environmental protection regulations,
- e) order a business establishment to be closed, in the event of sales conditions endangering the life or health of consumers or of economic activities in violation of the provisions of the prohibition of unfair market practices affecting a wide range of consumers and/or causing substantial damages.

According to Article 48(1) Consumer Protection Act, the acting authority may impose a penalty. In the event of multiple infringements, fines may also be imposed cumulatively. The amount of the fines shall be established in consideration of all circumstances, with particular emphasis on the sphere and gravity of damages caused to consumers, the duration of the violation and repeated offence, and on the advantage gained by such violation. There is no upper limit of the amount of the fine prescribed by this Act. Article 18(1) Advertising Act says that if the authority responsible for the proceedings (either General Inspectorate of Consumer Protection or Hungarian Office of Economic Competition) establishes that the advertising violates the law,

- a) it may order that such violation should be terminated,
- b) it may prohibit continuation of the violation.

The authority responsible for the proceedings may impose a *penalty* on the party violating the law. In the event of repeated violations of the law, *cumulative penalties* may also be imposed. The amount of the penalty shall be established with respect to all circumstances of the case, including, in particular, the scope and severity of the offence against consumer interests, the duration of the violation of law, and any repeated violating conduct. Any penalties imposed on the basis of a final legal judgement and not paid shall be collected in the same way as taxes (Article 18(2)-(3)).

According to Article 39(1) Consumer Protection Act, non-governmental (civil) organisations providing representation of consumer interests may file charges against any party causing substantial harm to a wide range of consumers by illegal activities aimed at enforcing the interests of consumers even if the identity of the injured consumers cannot be established.

**e. How would the Directive be delimited to the following fields of law?**

**i. Contract and Tort Law**

Recital 11 of the UCP says that the Directive sets out a limited number of key information, which the consumer needs to make an informed transactional decision. Such information will not need to be disclosed in any advertisements, but only where the trader makes an invitation to purchase, which is a concept clearly defined in the Directive. Thus UCP provisions shall be applied to pre-contractual activities made by the trader (*invitation to purchase*) and also after the contract is concluded. Contract law is regulated by the Civil Code which contains provisions regarding consumer contracts including specific rules on general contractual conditions as well. On these grounds consumer protection authorities are able to handle complaints and impose sanctions against traders in connection with consumer contracts. Furthermore consumer protection authorities have right to inspect certain “pre-contractual” activities, such as advertisements, misleading actions and omissions and, after implementing UCP, aggressive practices as well.

**ii. Competition Law (aiming at the protection of the consumer)**

Competition law is regulated in Hungary by the Competition Act, which has explicit consumer protection provisions as it is written above. Competition Office deals with consumer complaints as well.

The Competition Act prohibits misleading the consumers in the economic competition (Article 8(1)). On the basis of the Competition Act the misleading of consumer in particular means the statement of the price and material qualities of the goods are untrue facts or true facts are stated in a manner capable of misleading the consumer, the goods are presented with attributes capable of misleading the consumer, or any other information capable of misleading the consumer is provided in respect of the material qualities of the goods or misrepresenting a purchase as a highly advantageous bargain (Article 8(2)). In establishing whether the information provided is capable of misleading the consumers, the general meaning of the terms used, as accepted in everyday life and/or in the trade shall apply.

The basic provisions of Hungarian competition law are laid down in the Competition Act. Based on the Competition Act, Government regulations contain provisions on the exemption of certain groups of restrictive agreements.

The Competition Act covers both competition restricting practices (antitrust law) and unfair market practices of undertakings. The Competition Act includes the most important provisions in respect of unfair market practices, unfair manipulation of consumer choice, restrictive agreements of undertakings (both horizontal and vertical), abuse of dominant position, merger control.

The legal framework is basically the same in respect of both horizontal and vertical agreements restricting competition. These agreements are prohibited, null and void, unless they fall within one of the exceptions set out in the Competition Act or are exempted on the basis of criteria laid down in the Act. Exemptions may be granted by block exemption regulations and individually.

Individual exemptions must be applied for to the GVH. Hardcore cartels however (as e. g. price fixing agreements between competitors) might never be subject of exemption. In the case of abuse of dominant position the "abuse principle" is applied, according to which the dominant position on the market is not illegal in itself, only the abuse of such position (e.g. exploiting consumers or restricting competition) is prohibited.

Competition Act also defines procedural framework for the application of Articles 81 and 82 of the EC Treaty in competition procedures before Hungarian courts and the Hungarian Competition Office. Article 21 Competition Act contains a general clause on the abuse of dominant position which is prohibited.

The Competition Act details the general rule with examples which shall in particular be considered as abusing dominant position (Article 21 points a-j). The Competition Act holds provisions on prohibition of agreements restricting economic competition as well. Namely, Article 11(1) Competition Act declares that agreements between undertakings and coordinated practices, as well as the decisions of the social organizations of undertakings, public corporations, unions and other similar organizations of undertakings, unions, which are aimed at the prevention, restriction or distortion of economic competition, or which may display or do display such an effect, are prohibited. An agreement concluded between undertakings that are not unrelated shall not be construed as such.

### **iii. Intellectual Property Law (e.g. Imitation)**

According to Article 86(1) Civil Code intellectual properties are under protection of the Act. This Article refers to the specific provisions of the particular areas, ties down the protection of the know-how and the application of the general civil rules (sanctions) as well. Thus, intellectual property law can be handled separately from the provisions of unfair commercial practices.

### **iv. Protection of Enterprises (esp. SME)**

According to Recital 5 of the UCP, this Directive neither covers nor affects the national laws on unfair commercial practices, which harm only competitors' economic interests or which relate to a transaction between traders, nor the provisions of Directive 84/450/EEC on advertising which misleads business but which is not misleading for consumers and on comparative advertising. This Directive addresses commercial practices directly related to influencing consumers' transactional decisions in relation to products. On these grounds, transposition will not have an effect on the regulations concerning the protection of enterprises. Furthermore, from the competition laws' point of view, the size of an enterprise does not matter at defining whether it has violated the rules on misleading advertising or on other unfair practices.

However, out of the scope of the consumer protection legislation, Competition Act contains several provisions as regards SME's as compared to businesses in general. The Article 21 Competition Act holds the prohibition of abuse of a dominant position. The Competition Act details this general rule with examples which shall in particular be considered as abuse a dominant position (Article 21 points a-j). A dominant position shall be deemed to be held on the relevant market 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. Dominant positions may be held by individual undertakings or jointly by more than one undertaking (Art. 22).

Retail traders use several other practices which in most cases cannot be regarded as abusing a dominant position. These practices overall are interpreted by the Competition Office as 'buyer power' that appears in activities which arise from the stronger market position of a retail trader. These practices are mostly legal, thus often used towards other businesses, in particular SME's. Retail traders frequently demand 'shelf charges', contributions to common marketing expenses, entering into exclusive contracts, etc.

#### **v. Product Safety and Product Liability**

The Consumer Protection Act regulates general product safety. According to Article 3(1) Consumer Protection Act, only goods that are safe may be placed on the market. Manufacturers shall take measures to ensure the safety of goods. Distributors must refrain from supplying products which they know or should have presumed, on the basis of the information in their possession and as professionals, do not comply with applicable safety requirements. Thus, implementing UCP will not have an effect on the provisions on product safety.

Act X of 1993 on product liability says that manufacturer of the product is responsible for the damage caused by the defect of the product. In case of an imported product manufacturer related provisions of this Act shall properly apply to the importer. These provisions do not have an effect on unfair commercial practices rules.

#### **vi. Criminal Law**

Transposition of the UCP would not touch regulations laid down in the Act IV. of 1978 on Criminal Code (hereinafter referred as: Criminal Code). However, pyramid selling is regulated in the Criminal Code, which has similarities to Multi-Level-Marketing.

#### **vii. Public Policy (questions of decency)**

Article 200(2) Civil Code declares that contracts in violation of legal regulations and contracts concluded by evading a legal regulation shall be null and void, unless the legal regulation stipulates another legal consequence. A contract shall also be null and void if it is evidently in contradiction to good morals. According to the Act XI of 1997 on the Protection of Trademarks, a sign shall not be granted trademark protection if its use would be contrary to public policy, morality or law (Article 3 par 1 point a). Under Article 96 Trademarks Act, collective marks are marks that are capable of distinguishing goods or services of the members of a social organization, public body or association from the goods or services of other undertakings according to the quality, origin or other characteristics of goods or services bearing the collective mark. A sign shall be excluded from trademark protection as collective mark if the regulations governing its use contain provisions contrary to public policy, morality or law (Article 96(3)(b)).

Concerning morality the Advertising Act includes special provisions. Advertisement may not be published if it may harm the physical, intellectual or moral development of children or juveniles, with particular regard to advertisements which show children or juveniles in dangerous or violent situations or in situations with sexual emphasis (Art. 5(1)). Any display of a pornographic advertisement is forbidden, with the exception of such a display on sexual goods and in sex shops (Art 5/A(1)). It is also forbidden to publish any advertisement that is aimed to arouse sexual stimulus, with the exception of such advertisement on sexual goods and in sex shops. (Art 5/A(4)).

There are voluntary codes of conduct, for example in advertising, that contain specific provisions concerning questions of decency. The Hungarian Code of Advertising Ethics has been drawn up with the purpose of providing norms in trading ethics for those engaged in advertising activities in Hungary. The Code is the collection of the practical, professional-ethical norms of those engaged in advertising in Hungary. The Hungarian Code of Ethics contains several prohibitions and restrictions in order to prevent unfair and unmoral advertising activity. According to the Code an advertisement may not include such elements and may not create a general impact that would injure the generally accepted moral and ethic norms of society (point 4.1). An advertisement may not distinguish people, nationalities, ethnics or sexes disadvantageously and may not support such views (point 4.5). An advertisement may not include elements, and may not create a general effect that encourages, supports or justifies aggressive, violent or unlawful behaviour (point 4.7). It is prohibited to use erotic or sexual elements for purposes not justified by the object and substance of advertising. Presentation of the human body within the limits of good taste may not be objected to (point 4.11). The advertising of pornographic objects, means and services may be carried out only by appropriately oriented methods, advertising media and locations (point 4.12).

**f. Is there any national unfair commercial practices' law, including case law, which may constitute a barrier to the Internal market, for example case law which raises questions similar to *Estee Lauder*, *Clinique* and *De Agostini*.**

The experiences of last years show that authority proceedings have a major role in legislative enforcement and imposing penalties. The regulations are under continuous formulation in order to solve arising problems concerning consumers' deceit.

As it is written above, Hungarian national unfair commercial practices' law does not constitute a barrier to the internal market. As far as case law is concerned its direction ought to be changed in certain fields of jurisdiction after implementing UCP with particular regard to the practices listed at the Annex and to the term of the average consumer.

According to VEF 2001/13. of the *Fővárosi Bíróság* (Appellate Court), the advertisement of *TESCO Globál Áruházak co.* (Tesco Global Stores in Hungary) (hereinafter referred as: *TESCO*) is not appropriate for misleading the consumers. *TESCO* promoted in his newsletter a *TI 30XA* scientific calculator for 1999 HUF for a period from 12 to 25 April 2000. However, in the picture a scientific calculator with higher capacity (*TI 36 XS*) was depicted. The type number of the device was not visible in the picture because the text covered it, but the image of the keyboard could well be seen. According to *TESCO*'s reasoning the correctness of the type number or the false labelling does not have an "information value" with regard to the average consumer. On these grounds this action is not relevant from the competition's point of view so the infringement was marginal. The Competitions Office held this reasoning as acceptable,

since the substantial features of the calculator had been recognisable because of the correctly transmitted type number and price. Replacing the pictures of products is not sufficient for misleading consumers, namely selecting a calculator is determined by its usage potentials instead of its look. On the spot the consumer can get acquainted with the real features of the product. The consumer, as the claimant appealed (Appellate Court) against this decision of the Competition Office at the *Fővárosi Bíróság*. He alleged that it is not possible to decide in general whether the targeted consumer group is in accordance with the average consumers' group or it is narrower. The consumer decided to visit TESCO and purchase the product on the basis of the picture. Although the type in the image is worth 4.500-5000 HUF, he considered the offer of 1999 HUF as real because the sale seemed to be reasonable. The claimant referred to Article 8(1) and Article 8(2) sub a and d Competition Act, and that bait-and-switch practices of department stores are getting more and more widespread. The *Fővárosi Bíróság* rejected the claim stating that provisions of the Competition Act are breached only if the information communicated is able to influence both the consumers' decision and economic competition. When examining this both the relevant consumer group and the required consumers' knowledge should be clarified. In this case the type and price of the product offered were right. The image of the product appeared, however, in a false way. According to the Court, buyers of calculators can be divided into two groups. Misleading is excluded concerning consumers who do not have any information on the visual features of the product. They only know that TESCO is offering calculators for 1999 HUF. Misleading for consumers who are able to recognise the keyboard and the operational qualities shall be excluded as well since the background knowledge of this group is enough to make a decision about the calculator's type and its price. In its decision the Court also added that it could not be concluded that it had been a conscious misleading action, but just a simple mistake made by TESCO.