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**Commitments in procedures regarding unfair / misleading advertising
before the Hungarian Competition Authority**

If the Hungarian Competition Authority ("HCA") initiates proceedings based on unfair / misleading advertising (towards both consumers and non-consumers), the fine that may be imposed is rather high. In principle, the maximum amount is 10% of the net turnover of the infringer's group of undertakings reached in the business year preceding the decision of the HCA. In practice, HCA calculates the amount of the fine on the basis of the cost of the infringing communication campaign.

In such proceedings, the HCA has the right to accept commitments from parties if it considers that compliance with the law and the effective safeguarding of the public interest can be ensured by the commitment. If the HCA accepts the commitment, the case is terminated so that the HCA's order does not establish the liability of the undertaking and the infringement (and it does not impose any fine) but makes the commitment binding for the party to the proceedings.

Therefore it is worth investigating the practice of the HCA in relation to commitments in order to evaluate in which cases it is likely that commitments will be accepted instead of an infringement being established.

While the Competition Act grants wide discretion to the HCA in accepting or rejecting a commitment, the HCA's notice on commitments in proceedings investigating the infringement of the prohibition on unfair B2C commercial practices provides guidelines on the circumstances in favor of and against accepting a commitment (which is also applicable in the case of B2B relations according to the HCA's case law).

Circumstances in favor of accepting commitments include offering the same at an early stage of the procedure (thus making the procedure more cost effective and shorter), offering compensation to those consumers who suffered damages due to the infringement; and offering to organize an educational campaign for consumers in connection with those facts which mislead them in the investigated commercial practice. This educational campaign should be able to reach significant sections of those consumers concerned with the infringement and should improve consumers' consciousness in respect of decision-making. Also, a circumstance in favor of accepting commitments is if the commitment improves commercial practices in general, beyond the specific practices of the undertaking subject to the procedure, meaning that it should provide general guidance for market players.

However, commitments are not likely to be accepted if in the past the HCA has already accepted a commitment from the same party in a case with the same or similar infringement; or if the party did not perform its commitment which was accepted in the past or if the



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legislation or the legal practice already provided clear guidance with respect to the subject matter.

Since 2009, the HCA has accepted commitments in less than 15 cases. In the majority of cases, multiple types of commitments are offered simultaneously by undertakings and accepted by the HCA. *Changing the investigated commercial practice and refraining from it in the future* was almost always an element of the commitment. However, this commitment alone was only accepted in two cases. Both cases concerned smaller companies whose advertisement could reach a small group of consumers only.

In several cases the reason why the commitments offered were accepted was mainly because *the commitment was able to improve commercial practices in general and to give a guidance for market players*: this was the case with the price communication of the wholesaler of pharmaceutical.

In some cases commitments were accepted where the investigated companies have offered some kind of *remedy for consumers*: cable TV providers supplied media boxes which were not compatible with digital televisions and the companies have committed to provide their subscribers with media boxes compatible with those types of televisions as well. Furthermore, a wholesaler of pharmaceuticals advertised a discounted recommended retail price while the actual price was different, so it committed to refunding the difference between the recommended retail price and the actual price.

Organizing an educational campaign for consumers was also accepted as a commitment in some cases: in the same case as mentioned above, the pharmaceutical company organized a campaign which explains the difference between recommended retail price and the actual retail price to consumers. Furthermore, a company distributing food supplements misled consumers by making the impression that its product may have therapeutic effects and it committed to amending its misleading communication and to explaining the difference between vitamins, food supplements and medicines on its website.

In addition, companies have committed *to educate their employees or partners and to change their internal processes*. These cases concerned larger companies (a gas provider and a financial institution) or more complicated business procedures where the unfair commercial practice was mostly realized by employees or agents of the companies.

As can be seen based by the above, the HCA accepted commitments in various cases relating to various industries assessing the acceptance of commitments on a case by case basis. Therefore, it is always worth considering and evaluating this opportunity in the event of an HCA procedure at an early stage of the proceedings.



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