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ISSUES RELATED TO COMPETITION LAW OF PARTICULAR
RELEVANCE TO DEVELOPMENT

PREPARATIONS FOR A HANDBOOK ON COMPETITION LEGISLATION

Handbook on Competition Legislation

Note by the UNCTAD secretariat

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INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in Section F.6 (c), provides for the compilation of a Handbook on Restrictive Business Practices Legislation.
2. Further, the Expert Meeting on Competition Law and Policy, at its first session, recommended that the UNCTAD secretariat be requested to continue to publish further issues of the Handbook on Competition Legislation (see agreed recommendations, Annex I, in TD/B/COM.2/3-TD/B/COM.2/EM/5).
3. Accordingly, the secretariat prepared this note which contains commentaries on and texts of competition legislation of Algeria, Côte d'Ivoire and Hungary.*
4. Thus, to date the UNCTAD secretariat has issued notes containing commentaries and texts of competition and restrictive business practices legislation of 33 countries: Algeria, Belgium, Brazil, Bulgaria, Canada, Chile, Côte d'Ivoire, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Jamaica, Kenya, Lithuania, Mexico, Norway, Pakistan, Poland, Portugal, Republic of Korea, Romania, Slovak Republic, Spain, Sri Lanka, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Zambia.
5. The Secretary-General of UNCTAD, in his note of 8 March 1996, requested States which so far had not done so, or which had introduced new or amending competition legislation since their last communication to the UNCTAD secretariat, to provide the UNCTAD secretariat with their relevant legislation, court decisions and comments, on the basis of the format supplied (see below). (However, in the case of States adopting competition legislation for the first time, the commentary may not necessarily conform to the format.) In order to facilitate the reproduction of texts of legislation in more than one official language of the United Nations, States were invited to submit, if possible, the text of their legislation in one or more other languages of the United Nations.
6. The UNCTAD secretariat is grateful to States which have contributed the material requested for the compilation of the Handbook, and once again requests States which have not yet done so to meet the request of the Secretary-General of UNCTAD mentioned above.

* The contributions are reproduced in the language and form in which they were submitted to the secretariat.

FORMAT FOR CONTRIBUTIONS TO THE HANDBOOK

- A. Description of the reasons for the introduction of the legislation.
- B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation.
- C. Description of the practices, acts or behaviour subject to control indicating for each:
 - (a) The type of control, for example: outright prohibition, prohibition in principle, or examination on a case-by-case basis;
 - (b) The extent to which the practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example, controls concerning misleading advertising.
- D. Description of the scope of application of the legislation, indicating:
 - (a) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;
 - (b) Whether it applies to all practices, acts or behaviour having effects on that country, irrespective of where they are committed;
 - (c) Whether it is dependent upon the existence of an agreement, or of that agreement being put into effect.
- E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body(ies).
- F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices.
- G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered.
- H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof.

I. Commentary by the Government of Algeria on Ordinance
No. 95-06 of 25 January 1995 on competition

ORDINANCE NO. 95-06 OF 25 JANUARY 1995:
BACKGROUND AND SPHERE OF APPLICATION

I. Commentary by the Government of Algeria on Ordinance
No. 95-06 of 25 January 1995 on competition

**A. OUTLINE OF THE REASONS UNDERLYING THE
INTRODUCTION OF THE LEGISLATION**

Since 1988 Algeria has been engaged in an extensive programme of economic reforms, whose central aim is to ensure a shift from a controlled economy to a market economy.

These reforms have primarily taken the form of a large number of sectoral items of legislation designed to introduce a market economy. Among them, the ordinance on competition was enacted on 25 January 1995.

This ordinance, which entered into force on 25 August 1995, lays down the major principles governing competition in Algeria. The details of the application of these principles are set out in regulations.

The ordinance abrogates all the instruments containing provisions which run counter to these principles - notably the Prices Act.

The opening up of the Algerian economy to freedom of trade and industry was reflected in the establishment of arrangements for safeguarding and promoting competition so as to ensure the smooth operation of the market.

The Competition Board, which was established for that purpose under the ordinance of 25 January 1995 and began work on 30 September of the same year, has an important role to play among the institutions of the Algerian State.

As an independent agency which enjoys administrative and financial autonomy, the Board is responsible for promoting and enforcing the rules of free competition in order to stimulate economic efficiency and enhance consumer welfare.

Our agency, whose headquarters is in Algiers, has three (03) series of functions:

- * Functions in the area of studies and research, putting forward strategies which might foster the promotion and development of competition.
- * Consultative functions.
 - The Board may be consulted by the legislature in connection with proposals and bills, and on any matter related to competition.
 - It may also be consulted by local authorities, economic and financial institutions, economic agents, professional associations and associations of consumers.
 - The Board must be consulted by the Government in connection with any draft regulations relating to competition.

- * Functions involving a power to impose penalties and to order compliance with the rules governing competition.
 - The Competition Board is authorized to develop relations in the areas of cooperation and information exchange with foreign agencies and international institutions.
 - It reports annually to the President and the legislature.
 - The Competition Board is composed of twelve (12) members falling in the following categories:
- * Five (05) members who are or have been advocates in the Supreme Court or other courts or the Court of Audit;
- * Three (03) members selected from among public figures who are well known for their skills in economic matters or in competition and consumer affairs.
- * Four (04) members selected from among professionals who are or have been active in the sectors of manufacturing, distribution, services or the liberal professions.
 - The members of the Board are appointed for a term of five (05) years.
 - The Chairman of the Board is appointed from the bench. He is assisted by two (02) vice-chairmen.

DESCRIPTION OF THE SPHERE OF APPLICATION OF ORDINANCE
NO. 95-06 OF 25 JANUARY 1995

All the activities of enterprises which may give rise to a restriction of competition fall within the sphere of application of the ordinance, which is thus a broad one.

- MATERIAL SPHERE OF APPLICATION
- The ordinance applies to economic agents. An economic agent is any producer of goods or services and hence participant in the economic process. Consequently the ordinance is not applicable to consumers or to labour. It applies both to the private sector and to the public sector.

The sphere of application encompasses all the forms of restriction of competition - in other words all economic behaviour which can have an effect on competition.

The Board's field of competence in fact relates to all practices which restrict or prevent the normal operation of healthy competition.

These practices fall within the competence of the Competition Board in the first instance, and, where appropriate, the Algiers court.

The task of the supervisory authorities of the Ministry of Trade, in this context, is to detect such practices and highlight them. These authorities work in cooperation with the Competition Board, which can entrust them with carrying out surveys.

Consequently it is important to become familiar with these practices and the various forms they take. They consist for the most part of unlawful agreements and abuse of dominant positions. All these practices have the effect of limiting free competition. That is why they are known as anti-competitive practices, as described below:

1. UNLAWFUL AGREEMENTS

Article 6 of ordinance No. 95-06 of 25 January 1995 prohibits concerted practices and actions, agreements and understandings, express or tacit, when they have the purpose or may have the effect of preventing, restricting or distorting free competition in a given market, and in particular when they are liable to:

- Limit lawful access to the market or the lawful exercise of commercial activities by another producer or distributor;
- Limit or control production, outlets, investment or technical advances;
- Divide up markets or sources of supply;
- Hamper the setting of prices through the free play of the market by artificially encouraging their rise or fall.

Evidence of the above-mentioned practices, which have been declared illegal, is recorded following investigations that are carried out in keeping with the provisions of the ordinance.

Under the provisions of this article, a number of conditions must be met for the purposes of its application:

- The first condition is the existence of intent on the part of several enterprises to work together to take joint action designed to distort the operation of a given market for products or services. In the absence of such intent, the condition is not met.

Concerted action on the part of enterprises may take the form of a contract or written agreements. In such cases, the agreement is known as an express agreement; and even if the contract is legally valid, article 6 will still apply, as it is aimed at compliance by enterprises with the rules of the market.

However, the concerted action may not have a clear legal form, but operate through a simple joint action without leaving any written trace; this is a tacit agreement under the terms of article 6.

Such cases are more difficult to pinpoint than the former. However, the Competition Board and the authorities have an obligation under the ordinance to secure evidence and impose penalties.

There are two difficulties involved in this form of illegal practice:

- * The first difficulty is related to the search for precise evidence of an agreement in the economic field in the form of similar or identical behaviour on the part of several enterprises which hampers free competition.
 - * The second difficulty is that the evidence gathered in the field must be sufficiently convincing to persuade the Competition Board and, where appropriate, the Algiers court of the existence of illegal agreements which jeopardize competition.
- The second condition is that this concerted action must actually constitute an obstacle to competition, under the provisions of article 6 of the ordinance, either by preventing competition or by restricting it or distorting the free operation of market forces.

Consequently, agreements which are not designed to hamper free competition, or do not have that result, cannot constitute an offence and do not fall within the sphere of application of this article. This applies to various groupings of enterprises or professional associations whose aim, far from restricting competition, has to do with organization of the profession and the exchange of technical, management or other information.

Article 6 of the ordinance lists a few ways in which competition may be hindered; this list will be built on by the Competition Board on the basis of practical cases put before it. These obstacles may be roughly divided into two types. The first are those which are aimed at limiting the number of competitors in a given market. The second are those aimed at restricting each competitor's room for manoeuvre in that market.

In this way, the first type of obstacle may take the form of actions aimed at preventing or limiting access to a market, such as certain professional rules (customer cards, registration in an association, etc.). They may also take the form of the limitation or restriction of production, outlets, investment or technical advances (production quotas, limitation of the number of customers, etc.).

The latter type of obstacle occurs in the market for products and services itself (through dividing up of the market to deter new competitors, sharing out of customers or geographical areas of coverage, action to affect the free setting of prices or mark-ups, joint setting of prices or mark-ups or the exchange of information on them, as well as common price tariffs, etc.).

2. ABUSE OF MARKET POWER

Another area in which the Competition Board and the monitoring departments operate is the abuse of market power, a practice which is prohibited by and punishable under the ordinance as an obstacle to free competition.

Article 7 of the ordinance on competition prohibits:

- Abuse of a situation arising from a dominant or monopolistic position in a market or market segment;
- Refusal to sell without a legitimate reason, as well as hoarding of products in commercial premises or in any other place, declared or undeclared;
- Tied or discriminatory selling;
- Sales made conditional on the purchase of a minimum quantity;
- Imposition of an obligation to resell at a minimum price;
- Breaking off of a commercial relationship on the sole grounds that a partner has refused to agree to unjustified trading conditions;
- Any other action likely to reduce or eliminate the benefits of competition in a given market.

The criteria which define a dominant position and actions constituting abuses are defined in regulations.

The actions listed above which reflect an abuse of market power present no major difficulties either in terms of understanding or in terms of application.

However, the difficulty lies in determining a dominant position itself, since an enterprise which does not enjoy a dominant position in the market or is not in a monopoly situation, for example, lacks the means to avoid effective competition as alternative solutions are available to customers in the same market.

Consequently, the fundamental issue is that of thorough familiarity with the market which is suffering from domination, and identification of the dominant position itself.

2.1. THE CONCEPT OF A MARKET

Generally speaking, the concept of a market is perceived from two viewpoints, namely:

- Economic delimitation, determining whether there are similar products or services offered by competitors which can be purchased on the same terms as the product or service in question. If so, there can be no dominant position.

The concept of substitutability of products and services is very important in market delimitation. For example, in the fats market, margarine is a substitute for butter. In contrast, in the tyre market, passenger vehicle tyres cannot be substituted for goods vehicle tyres.

- Geographical delimitation, measuring the degree of competition over a given area.

In such cases, it is possible that satisfactory competition at the national level may not be adequate to ensure normal competition at the regional level, because of excessive supply or transport costs, leading to a risk of domination in a regional market.

Identifying a dominant position involves assessing the shape of the market for products and services in which the enterprise may occupy a position which enables it to direct the market in keeping with its own economic policy.

2.2. MARKET DOMINATION

Generally speaking, a dominant enterprise is one which is capable of hampering the process of competition because no competitor is in a position to offer its customers alternative solutions, so that the enterprise can, in an unchallenged manner, lay down the conditions in which the market operates, namely:

- Access to the market,
- Trade policy,
- Levels of prices and mark-ups,
- Terms of sale, etc.

Such domination of a market by an enterprise may be identified using a variety of criteria, including:

- The size of market share, expressed in terms of turnover or sales volume, measuring the enterprise's position in the market in question as compared with competitors.
- Ease of access to the market in question or other markets.
- The status of the enterprise (independent or part of a group).
- The enterprise's access to preferential finance.
- The existence of preferential customs barriers.

Generally it is a combination of such criteria which provides grounds for claiming that an enterprise occupies a dominant position in a given market.

However, it should not be forgotten that ordinance No. 95-06 of 25 January 1995 on competition prohibits not dominant position but the abuse of a dominant position as reflected in the types of behaviour listed in article 7, constituting obstacles to free competition.

A dominant position is a prerequisite for the abuse of dominant position.

Concluding this section on abuse of market power, mention should be made of the obstacles which result from market domination alone. These generally involve actions or practices which, while not abuses in themselves, nevertheless constitute prohibited practices because they are carried out by enterprises which have no competitors.

These practices include certain contract clauses which are typical of situations of dependence vis-à-vis monopolies, or exclusivity clauses which prevent the emergence of new producers or distributors.

3. LOSS LEADER SELLING

A third anti-competitive practice, known as loss leader selling, is also prohibited by the ordinance. Article 10 forbids any economic agent to sell a good at a price lower than its actual cost price when this practice has had, has or may have the result of restricting competition in a given market.

This provision does not apply to:

- Perishable goods liable to rapid deterioration, goods originating from a voluntary or forced sale following a termination of business or a sale conducted in pursuance of a court decision, goods whose sale is seasonal and goods which are outmoded or technically obsolete;
- Goods which have been or may be supplied or resupplied at a lower price. In such cases, the minimum effective reselling price may be that at which the goods are resupplied;
- Products whose cost price is aligned with the ruling price of the competitors, provided that they do not resell below the threshold corresponding to loss leader selling.

Although this practice is not common in Algeria, and notwithstanding the restrictions on the application of this article, it should be taken into account in the light of the changes which have taken place in modes of distribution of products as a result of the liberalization of foreign trade and the opening up of the market.

This practice may be used by certain distributors who do not hesitate to resell certain products at a loss in order to attract customers, in the hope of selling other products with large mark-ups. However, the ultimate purpose of this sales method is to eliminate competition by resorting to this form of dumping.

4. CONCENTRATION

Concentration is governed by article 11 of the ordinance, which provides that any plan for concentration or any concentration resulting from any act of whatever form which involves a transfer of ownership over all or part of the

goods, rights and obligations of an economic agent and which is designed to enable an economic agent to control or exert over another economic agent a decisive influence likely to jeopardize competition, inter alia by strengthening its dominant position in a given market, must be submitted by its proposers to the Competition Board, which must take a decision within three (03) months.

The Competition Board may authorize or reject the planned concentration or the concentration, giving its reasons.

However, the Competition Board may authorize the concentration provided that certain conditions are met in order to safeguard and develop competition.

4.1. MONITORING OF CONCENTRATIONS: SPHERE OF APPLICATION

This article of the ordinance stipulates a very broad sphere of application for the monitoring of concentrations, owing to the great diversity of concentrations or regroupings of enterprises.

It is not possible to provide an exhaustive list of actions deemed to constitute concentrations because of the large number and variety of commercial, industrial and financial operations which lead to regroupings and take-overs of enterprises by other enterprises.

However, concentrations are generally placed in three groups, on the basis of the links created between enterprises.

- The first type involves contractual links which enable two or more enterprises to reach agreement to pursue a given objective. The parties may set the duration of their cooperation, its extent and the nature of their relationship, at their convenience. Examples are ad hoc groupings of enterprises (in public works, civil engineering, etc.) or cooperation agreements (pooling of research findings, joint use of distribution networks, etc.).
- The second type of links are financial links. This may involve the acquisition of shareholdings, the establishment of subsidiaries, holding companies, etc.
- Lastly, the third type of links are structural links which involve complete mergers of enterprises or the absorption of enterprises by other enterprises.

However, all these forms of regrouping, which may be perfectly admissible and lawful under company law, must be monitored and reviewed, because they can reinforce or create dominant positions and jeopardize free competition.

Here the role of the Competition Board is not to prevent the regrouping of economic agents, but to ensure that a sufficient level of competition is maintained.

4.2. MONITORING OF CONCENTRATIONS: CONDITIONS AND PROCEDURES

Article 11 of the ordinance imposes two conditions on the review of any proposed concentration or actual concentration.

- The first condition is that the concentration is likely to jeopardize competition.
- The second condition is that the proposed concentration or the actual concentration must be aimed at achieving a level of over 30 per cent of sales in the domestic market.

If these two conditions are met, the concentration is put before the Competition Board for review.

This does not anticipate the decision to be taken by the Competition Board after studying each individual case.

As far as monitoring procedures are concerned, we shall content ourselves with an outline, pending action by the Competition Board to spell out its method of monitoring concentrations.

Monitoring of concentrations may take the following forms:

- A review on the initiative of the enterprises themselves in notifying the concentration operation to the Competition Board, which in such cases has three (03) months to draw up its position.
- A review on the initiative of the Competition Board or the trade authorities, when it is suspected that the concentration operation may jeopardize competition or is aimed at achieving a level of over 30 per cent of sales.

In either case, the Competition Board reaches a decision on the basis of an economic case study of the operation, sketching its positive effects and its negative effects.

The content of the case study and the criteria to be used will be specified by the Competition Board.

II. Commentary by the Government of Côte d'Ivoire on
Law No. 91-999 of 27 December 1991 on competition

COMMENTARY ON COTE D'IVOIRE'S COMPETITION ACT,
ADOPTED ON 27 DECEMBER 1991

As a part of the structural adjustment programme, Côte d'Ivoire has opted for liberalization of trade and prices and the withdrawal of the State from manufacturing and distribution activities.

This new approach, focused on private initiative, places emphasis on enhancing the institutional framework and will increase the competitiveness of local enterprises.

SECTION 1: THE AIMS OF THE LEGISLATION

The legislature decided to restore free enterprise through the adoption of Act No. 91-999 of 27 December 1991 on competition. Its provisions relate to:

- Modernization of the institutional environment for enterprises;
- The emergence and development of free markets and transparency in them;
- Efforts to make Ivorian enterprises more competitive.

In order to achieve these objectives, the new rules are designed to eliminate all practices which hamper free competition.

**SECTION 2: DESCRIPTION OF PRACTICES, ACTIONS
AND BEHAVIOUR SUBJECT TO REVIEW**

Ivorian legislation distinguishes between practices which result from individual behaviour (restrictive practices) and those which arise from concerted actions (anti-competitive practices).

1. CONCERTED OR ANTI-COMPETITIVE PRACTICES

There is a blanket ban on these practices, but exemption may be granted under article 10 in the case of those which arise from the application of a law or regulation or which would generate economic progress for the community as a whole.

It should be noted that any agreement reached in violation of articles 7 and 8 of the Act is void ab initio.

1.1. Agreements (article 7 L)

Article 7 defines agreements as accords, concerted practices and decisions to associate or collective recommendations emanating from natural or legal persons, public or private.

This article prohibits any concerted action, agreement, alliance or arrangement, express or tacit, which has the purpose of or may have the effect of hampering or limiting free competition, in particular when the action tends to:

- Limit access to a market or free competition among enterprises;
- Hamper the setting of prices through the free operation of the market by artificially encouraging price rises or falls;
- Limit or control production, outlets, investment or technical or commercial advances;
- Divide up markets or sources of supply.

This list is not exhaustive.

1.2. Abuse of market power (article 8 L)

An enterprise or group of enterprises exercise market power when its or their activities occupy a dominant position in the domestic market or a substantial part of it which is characterized by a monopoly or a manifest concentration of economic power.

A dominant position is not reprehensible in itself; only abuses resulting from such domination are prohibited under article 8 of the Act. They may take the form of **a refusal to sell, tied sales or discriminatory selling conditions as well as the breaking off of a commercial relationship on the sole grounds that a partner has refused to agree to unjustified trading conditions.**

As in article 7, the list of behaviour involving abuse is not exhaustive.

1.3. Economic concentration

The review of economic concentration operations is one of the major innovations introduced by the Act of 27 December 1991 on competition. The machinery is not intended to prohibit all concentration operations but rather to block those which are deemed excessive because they have harmful impacts on competition.

1.3.1. Economic concentration: definition and sphere of application

Under article 35 of the Act, **concentration results from any act, of whatever form, which involves a transfer of ownership or of enjoyment of all or part of the goods, rights and obligations of an enterprise or whose purpose or effect is to enable an enterprise or group of enterprises to exert a decisive influence, directly or indirectly, over one or more other enterprises.**

It follows from the definition that concentration occurs in two (2) situations.

- (a) **Acts which involve a transfer of property or of ownership of all or part of the goods, rights and obligations.**

They occur when:

- Two or more enterprises merge;
- One or more enterprises which already control at least one enterprise directly or indirectly acquire total or partial control of one or more enterprises;
- Two or more enterprises create a joint enterprise by setting up a new company.

- (b) **Acts which enable decisive influence to be exerted.**

The review arrangements may apply to operations whose sole consequence is to enable an enterprise or group of enterprises to exert influence on one or more enterprises.

This very broad approach will make it possible to extend the review process indefinitely to the establishment of financial ties between companies, the establishment of groups of enterprises, etc.

1.3.2. Procedure for the notification of ministerial decisions

Article 34 stipulates that **the opinion of the Competition Commission may be sought on any proposed concentration or actual concentration likely to jeopardize competition.**

It should be noted that notification by an enterprise in this way is optional. However, the authorities may on their own initiative order an investigation along these lines.

In order for a concentration operation to be reviewed, the turnover of the enterprises participating in the operation and their subsidiaries must total at least 50 per cent of the sales, purchases or other transactions in a national market for substitutable goods, products or services or a substantial part of such a market.

Beyond this threshold, the Competition Commission studies the situation in the market concerned and expresses its opinion to the minister, who may:

- Not allow the project to proceed;
- Order the restoration of the status quo ante or modify or add to the operation; or
- Take any appropriate step to ensure or restore sufficient competition.

2. PRACTICES THAT RESTRICT COMPETITION

Under the Act, practices that restrict competition are all individual forms of behaviour by economic agents falling under criminal and/or civil law which are reprehensible in themselves, independently of any collusion or their impact on the market.

The Act contains two types of prohibition:

- An absolute prohibition;
- A prohibition in principle, with scope for exemptions.

Some of these prohibitions cover steps which have the result of denying uniform opportunities for supply (discrimination), while others cover aggressive selling techniques or the imposition of uniform minimum prices.

2.1. Absolute prohibitions

The absolute prohibitions apply to individual practices for which the Act allows no exceptions. These are:

- Prescribed prices;
- Pyramid selling;
- Conditional, tied or combined sales.

2.1.1. The practice of prescribed prices

Article 25 of the Act prohibits the practice of prescribed prices in the form of **action by any person to prescribe a minimum level for the sales price of a product or a good, the price of a service or a mark-up, directly or indirectly.**

As defined, the prohibition relates both to the price itself and the mark-up.

The setting of a mark-up or joint price-fixing standards among a number of enterprises or in a profession under an agreement is also unlawful under article 25.

2.1.2. Pyramid selling

Pyramid selling consists of involving the consumer in the distribution of products by asking him or her to seek other customers, who will in turn be induced to contact further persons, thus playing the role of canvassers, intermediaries or agents.

Article 28-2 defines this method of selling as **any selling technique consisting in particular of offering a product to members of the public by leading them to hope to obtain the product free of charge or against payment of a sum lower than its value and making sales conditional on the acquisition of coupons or tickets by third parties or the collection of memberships or registrations.**

Under this definition, three (3) conditions have to be met:

- The offer of goods to the public;
- The hope on the part of the targets of this offer that they will obtain the goods free of charge or at a reduced price;
- The collection of memberships or registrations as a condition of the sale.

2.1.3. Conditional, tied or combined sales

Two clauses now prohibit **sales which are deemed to be conditional**:

- The first, which governs offences in criminal law, relates only to sales to consumers. Under article 27 **it is prohibited to make the sale of a product conditional on the purchase of a prescribed quantity or the concomitant purchase of another product or another service, or to make the provision of a service conditional on the provision of another service or the purchase of a product**;
- The second, relating to offences in civil law, governs relations between professionals.

Article 30-3 stipulates that **a manufacturer, trader, industrialist or craftsman shall be liable for any action he or she takes ... to make the sale of a product or the provision of a service conditional either on the purchase of a prescribed quantity or on the provision of another service, and for compensation for any damage caused.**

Cases of conditional sales, as practices which hamper free competition, fall into three (3) types:

- Obliging a purchaser to buy a minimum quantity (selling in prescribed quantities);
- Putting on sale different products in a single lot, without allowing the buyer to divide the lot up or to purchase certain items in the lot;
- Refusing to accede to a request by the purchaser of a good or service (conditional selling or provision of a service).

2.2. Blanket prohibitions

These prohibitions relate exclusively to practices for which the Act allows exceptions. They fall into four (4) categories:

- Loss leader selling (article 24)
- Refusal to sell (articles 27 and 30-2)
- Bait-selling (article 26)
- Discriminatory practices (article 30).

2.2.1. Loss leader selling

Loss leader selling is more than a sales technique - it is a restrictive practice whose pernicious purpose is to eliminate competitors in order to capture the market and subsequently impose terms.

Loss leader selling thus creates a dangerous obstacle to competition. For that reason, article 24 prohibits the practice, which it defines as **the reselling of a product without modification at a price lower than the effective purchase price, which is the price presumed to appear on the invoice, plus the taxes and charges applying to that purchase, minus the reductions and discounts of all kinds granted by the supplier at the time of invoicing.**

The prohibition does not apply to:

- Perishable products liable to deterioration;
- Products originating from a voluntary or forced sale following a termination or change of business, or the disposal of sale goods;
- Products of a highly seasonal nature;
- Products which no longer correspond to general demand (unsalable articles).

2.2.2. Refusal to sell

Refusals to sell have been prohibited by the legislature, firstly in order to protect consumers against traders of dubious character, and secondly to guarantee all buyers of a given product the same opportunities to acquire it without fear of meeting with a refusal.

The prohibition is set out in articles 27 and 30-2 of the Act, which draws a distinction between consumers and professionals.

It is forbidden to refuse to sell a product or provide a service to a consumer without a legitimate reason.

A manufacturer, trader, industrialist or craftsman shall be liable for any refusal to comply with the requests of the purchasers of products or requests for the provision of services, when such requests are not abnormal in any way and are made in good faith, and for compensation for any damage caused.

The practice of refusing to sell may take the form of:

- A direct refusal to comply with the request itself;
- A refusal to provide information necessary for the placing of an order in such a way as to prevent the making of the request;
- An attempt to fulfil an order which is not in any way abnormal on terms which differ from those put forward by the purchaser and which are unacceptable to him or her.

A person responsible for a refusal to sell may escape liability on three (3) conditions:

- The request must not be abnormal in any way, as compared with the seller's customary practices;
- The request must be made in good faith;
- The seller must be able to cite a legitimate reason for the refusal.

2.2.3. Discriminatory practices

Discriminatory practices are prohibited because they are incompatible with free competition, which presupposes equal treatment applicable to all economic partners.

These practices have been decriminalized, and hence now constitute merely offences in civil law, provided that they comply with the conditions set out in article 30-1 of the Act, which stipulates that **a manufacturer, trader, industrialist or craftsman shall be liable for any steps he or she takes to apply to or obtain from an economic partner prices, payment deadlines, sales conditions or terms for sale or purchase which are discriminatory and are not justified by genuine benefits in return, or which thereby create a competitive disadvantage for that partner, and for compensation for any damage caused.**

The prohibited discrimination relates not only to prices but also to the other terms of the transaction.

The legal prohibition of discriminatory practices is aimed first and foremost at differences in sales prices set by the enterprise for some parties and not for others.

Sales conditions may relate in particular to order completion dates, arrangements for packaging, delivery, transport and payment, etc.

However, this prohibition may be subject to limits when the discrimination is justified by genuine benefits arising from:

- The magnitude of the quantity sold;
- The services provided by the customers or suppliers;
- Trade cooperation of long standing under written agreements.

2.2.4. Bait-selling

Bait-selling is a technique for encouraging purchases by attracting customers with the prospect of obtaining, together with a product or service which is purchased, another object or another service free of charge.

This sales technique, which is used either to launch a new product or service or to maintain customer interest in a product or an enterprise, is subject to the limits set out in article 26.

The article prohibits any sale or proposed sale of products or goods or any provision of services to consumers which entitles them to receive free of charge, immediately or after a period, a gift consisting of products, goods or services, unless they are identical to those which are the subject of the sale or the service.

This provision does not apply to small items or services of low value or to samples.

SECTION 3: THE SPHERE OF APPLICATION OF THE COMPETITION ACT

The provisions of article 60 stipulate that the rules set out in this Act apply to all activities in manufacturing, distribution and services, including those engaged in by public bodies.

1. NATURAL OR LEGAL PERSONS

It follows from the above definition that the Act applies both to natural persons and to legal persons who are not necessarily participants in the market concerned.

Where natural persons are concerned, only those who have fraudulently played a personal role in the practices referred to in articles 7 and 8 are liable to the penalties set out in article 20.

Similarly, public bodies are among those concerned by the prohibition.

2. ACTIVITIES IN MANUFACTURING, DISTRIBUTION AND SERVICES

In providing that the terms of article 60 apply to all activities in manufacturing, distribution and services, the legislature conferred on this Act an extensive sphere of application. In this way, it covers everything which may be of economic value or be the subject of an act of production or exchange.

Nevertheless, not all acts or types of behaviour stemming from an act of the administration (the State or local authorities) are involved (municipal orders or decrees).

3. INDEPENDENT STATUS OF AGREEMENTS

The Act is applicable by virtue of the mere existence of an agreement or a form of behaviour which restricts competition, regardless of whether the agreement is put into effect.

By forbidding understandings which have the purpose or may have the effect of hampering or limiting free competition, the legislature made such hampering an independent condition of the prohibition, insofar as it is not even necessary to demonstrate the application of the practice, and hence the existence of actual effects.

SECTION 4: BODIES RESPONSIBLE FOR ENFORCING THE ACT

Enforcement of the provisions of the Competition Act is in the hands of administrative bodies and the judicial authorities.

1. ADMINISTRATIVE BODIES

The administrative bodies are responsible for identifying all forms of behaviour which violate the rules of transparency and the free operation of the market. To do so, they have investigatory powers defined in articles 45 and 49 of the Act.

The actions of these administrative bodies vary depending on the nature of the acts involved.

1.1. The sphere of action of the Competition Directorate

The investigatory powers of the Competition Directorate in identifying and recording unlawful behaviour cover an extensive sphere of application ranging from regulation of the prices of certain products to market transparency and individual or collective competitive abuses. All the practices mentioned in section 2 may be investigated by the Directorate.

Following the various investigations, the Directorate either places infractions on record and reaches a settlement, or forwards the records with a report to the Competition Commission.

1.2. The Competition Commission

In order to prevent or counter the effects of the collective practices mentioned in chapter 1 of title 3, the Act set up a new authority known as the **Competition Commission**. It is a consultative body of the administrative type, composed of nine members, and has no decision-making powers. The Act granted it only general consultative powers (article 6-1) for all competition issues which are put before the Commission or which the Commission takes up itself.

However, article 6-3 also allows it to give its opinion on the settlement of disputes involving unlawful agreements, abuses of market power and economic concentration by means of the same procedures as those followed before the courts.

1.3. The Minister of Trade

Articles 17 and 18 confer on the Minister of Trade the power to take decisions on the basis of the opinions expressed by the Competition Commission.

Ministerial decisions involve orders to comply and monetary penalties which may not exceed 5 per cent of the turnover of enterprises or 1 million FF in the case of individuals.

2. THE REGULAR COURTS

Those responsible for the actions covered by the Act may be brought before the courts, which may be called on in two types of situation:

- If the actions cannot be characterized as criminal offences, the case is heard before the civil and commercial courts;
- If the actions are offences, the case is brought before the criminal courts.

2.1. Action by the civil or commercial courts

The civil or commercial court may hear a case brought against natural or legal persons whose behaviour has caused injury to an economic agent or the community.

Such behaviour may involve a refusal to sell, discriminatory practices or tied sales as defined in article 30 of the Act.

Agreements or dominant positions may also be involved. In such cases, the case may be brought to annul agreements which contravene articles 7 and 8 under article 9 of the Act.

2.2. Action by the criminal courts

A criminal court may hear a case involving an offence, whatever its degree of gravity. Under the Act selling at a loss, prescribed prices, pyramid selling and bait-selling are correctional offences.

In addition, anyone who has personally played a part in the application of the practices referred to in articles 7 and 8, and any offender who refuses to provide the investigators with information, is liable to prosecution.

SECTION 5: THE PRINCIPAL TYPES OF OPINION ISSUED BY THE COMMISSION

As indicated above, the Competition Commission has no decision-making powers. It merely issues opinions in its areas of competence as defined in article 6 of the Act.

An account of the activities of the Competition Commission during the initial years of its operation appears in the first two progress reports, from which the principal opinions that led to ministerial decisions have been taken.

1. ADVISORY OPINIONS

Under articles 1, 2 and 6-2, the Commission was asked to furnish opinions on certain regulations. These were:

- Opinion No. 94-001 AC of 12 January 1994 concerning the draft decree freezing prices and mark-ups for products, goods and services in Côte d'Ivoire following the devaluation of the CFA franc;

- Opinion No. 94-006 AC of 18 October 1994 concerning the draft decree modifying the annex to decree No. 92-50 of 29 January 1992, which regulated competition and prices.

2. CASES INVOLVING UNLAWFUL AGREEMENTS AND ABUSES OF MARKET POWER

Under article 6-3, the Competition Commission is competent to issue opinions on unlawful agreements, abuses of market power and economic concentration.

As regards prohibited agreements, the Commission issued opinion No. 002 CTX of 27 March 1996 concerning anti-competitive practices in the inter-urban passenger transport sector.

The Commission established the existence of collusion on prices between the UTB and STIF companies on the route between Abidjan and Bouaké (330 km), and recommended that the Minister should impose a fine of 50,000 FF on each company.

As regards abuse of market power, the Commission, on receipt of a complaint from the Chamber of Industry and Commerce and the Minister of Trade, undertook investigations in the soft drink and beer production and distribution sector. Following the investigations, the Solibra company, which has a dominant position in the sector, was found to have breached article 8 by:

- Violating its distributors' commercial freedom of action through the imposition of a mandatory sales price;
- Registering customers in a discriminatory manner.

The Commission's opinion recommended that the Minister should:

- Impose a fine of 350,000 FF on Solibra;
- Order the publication of the Minister's decision based on the opinion.

CONCLUSION

Although it pursues national objectives, Ivorian legislation forms part of the international trend stemming from the liberalization of international trade which has become known as globalization. In this context, it stands together with the West African Monetary and Economic Union Treaty which prohibits abuses of market power and interventions by the authorities which are liable to distort competition.

III. Commentary by the Government of Hungary on Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices passed on 25 June 1996

Commentary by the Government of Hungary on Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices passed on 25 June 1996 (stand: September 1997)

A. Description of the reasons for the introduction of the legislation

Hungary's previous competition act, Act No. LXXXVI of 1990 on the Prohibition of Unfair Market Practices, was approved by Parliament on 20 November 1990. It was in force from 1 January 1991 to 31 December 1996. During this period the number of decisions reached under the application of the Act amounted to almost 1,000 and the Act appropriately protected which was declared in its preamble the public interests in competition, the interests of competitors and, in connection with fair market conducts, the interests of consumers.

The need of approximation to European legal norms in connection with the country's association agreement with the European Communities and their member States, promulgated by Act No. I of 1994, the changes of the Hungarian economy on its way of transition and the experiences gained through the enforcement of the competition law, numerous advices of foreign experts, these were, however, the main factors which moved the Hungarian legislators to elaborate a new competition act, Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter: the Act or the Competition Act) that has been effective since 1 January 1997.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation

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

The most important new objectives of the Act are those connected with the law approximation and the aim to create a system of procedural rules that reflects the differences between competition supervision proceedings and civil proceedings on the one hand and the former and administrative procedures under their general rules on the other.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

The type of control, for example: outright prohibition, prohibition in principle, or examination on a case-by-case basis.

The extent to which the practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered by this control, including those covered by controls relating specifically to consumer protection, for example, controls concerning misleading advertising.

There are five chapters in the Act which describe the practices subject to control:

Chapter II prohibits unfair competition (both in general and in particular concerning injury of reputation, misuse of business secrets, boycotts, imitation and biddings);

Chapter III prohibits the unfair manipulation of consumer choice (by consumer fraud or by applying business methods which restrict, without justification, the freedom of choice of consumers);

Chapter IV prohibits agreements which restrict the economic competition. This prohibition applies to agreements between undertakings which have as their object or potential or actual effect the prevention, restriction or distortion of competition; in particular it applies to price fixing and fixing business terms and conditions, the limitation, control or allocation of a.o. production, distribution, supply and markets, collusive bidding, the hindering of market entry, discrimination between trading parties and tied selling.

Legal consequences attached by the Act to the infringement of this provision "shall be applied together with those attached by the Civil Code to contracts infringing the law" (article 11 (3)), i.e. agreements restricting economic competition are void pursuant to the referred Civil Code provision.

Restrictive agreements, however, can be individually "exempted from the prohibition ... provided

they contribute to a more reasonable organization of production or distribution, the promotion of technical or economic progress, or the improvement of competitiveness or of the protection of environment;

they allow consumers a fair share of the resulting benefit;

the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified common goals;

they do not create the possibility of excluding competition in respect of a substantial part of the products concerned." (article 17 (1)).

The competition authority may establish that an agreement does not qualify as one restricting competition,

does not fall under the prohibition as being of minor significance or concluded between undertakings which are not independent of each other (see below under D (a)) or

falls under a block exemption regulation of the Government (article 16) and is thereby exempted. (Three kinds of "negative clearances", article 18 (1)).

All practices, acts or behaviour in section D, paragraph 3, of the Set are covered by this provision except where the territorial scope of the Act does not make this possible (export cartels; see below under D (b)).

Chapter V prohibits the abuse of dominant position, in particular by unfair price setting, limiting the production, distribution or technical development, refusing, without justification, to create or maintain business relations appropriate for the type of transaction, influencing the business decisions of the other party or the competitors in order to obtain unjustified advantages, creating, without justification, disadvantageous market conditions for consumers or competitors, tied selling, discrimination between trading parties, predatory pricing or hindering, without justification, market entry in any other manner.

Almost all practices, acts or behaviour in section D, paragraph 4, of the Set are covered by this provision except point (c) (mergers) to which chapter VI of the Act applies and except where the territorial scope of the Act does not make this possible (point (d), price fixing for exported goods).

Chapter VI of the Act regulates the control of concentration of undertakings. When assessing "a concentration both concomitant advantages and disadvantages shall be considered". The authorization of the concentration may not be refused if "it does not create or strengthen a dominant position, does not impede the formation, development or continuation of effective competition on the relevant market ... or on a considerable part of it, or if the concomitant advantages outweigh the concomitant disadvantages", as article 30 says in harmony with section D, paragraph 4, point (c), of the Set.

D. Description of the scope of application of the legislation, indicating:

whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

whether it applies to all practices, acts or behaviour having effects on that country, irrespective of where they are committed;

whether it is dependent upon the existence of an agreement, or of that agreement being put into effect.

The Act applies "to market practices carried out on the territory of the Republic of Hungary by natural and legal persons and companies with no legal personality (hereinafter together: undertakings), except where differently regulated by statutes ..." (article 1; see also (b) below).

As article 6 indicates, for the purposes of the Act the notion "goods" means both goods and services.

It is the responsibility of the Minister of Agriculture to ensure within the framework of the regulation of the market for agricultural products that the economic advantages realized by the application of indicative prices and quantitative restrictions outweigh the disadvantages resulting from restrictive practices as set out in article 16 (as amended by article 98 of this Act) of Act No. VI of 1993 on the Regulation of the Market for Agricultural Products.

Agreements between undertakings which are not independent of each other or the joint share of which on the relevant market does not exceed the threshold set in article 13 and concentrations under the thresholds set in article 24 or temporary acquisitions of control or ownership by financial institutions, insurance companies, financial holdings, investment companies or property managing organizations for the purposes of preparing a resale are not covered by the prohibition of restrictive agreements and by the control of concentration, provided for in the Act, respectively.

With the exception of unfair competition and unfair manipulation of consumer choice (chapters II and III) "this Act shall also apply to market practices of undertakings carried out abroad if they may have effects on the territory of the Republic of Hungary" (article 1).

There is no agreement upon the existence, or being put into effect, of which the scope of application of the Act would be dependent.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body(ies)

The responsibilities of competition supervision defined in this Act (and in Act No. LXXXVII of 1990 on Price Setting, see below under F) are performed by the Office of Economic Competition (hereinafter also: OEC, the Office) except in connection with the prohibition of unfair competition where proceedings in connection with the infringement of the provisions contained in chapter II of the Act belong to the competence of the court.

OEC is a public, budgetary institution all the duties of which must be prescribed by law. The competition supervision proceedings of the Office are governed by the provisions of the Act or, in absence of them, by the provision of Act No. IV of 1957 on the General Rules of Public Administrative Proceedings. (The procedural rules of cooperation with foreign competition authorities are set out in international agreements or in other legal norms, the Act says.)

In the following cases, commencing proceedings is mandatory for OEC on receipt of applications or may happen on the Office's own motion in the absence of applications:

individual exemption of agreements,

"negative clearances" under article 18 (1),

authorization of concentrations,

prior notification of price increase pursuant to the Act on Price Setting.

In other cases, where complaints and other communications are made about alleged infringements of the Act, commencing proceedings belongs to the discretion of OEC; the Act does not specify the aspects to be assessed by it when deciding on the opening of an investigation in such cases.

A revision of the decisions on the merits of cases may be requested from the court. Such court proceedings are governed by the provisions of chapter XX of Act No. III of 1952 on Civil Procedures.

For agreements no system of mandatory notifications exists. Nevertheless parties are not allowed to presume for themselves their agreement to fulfil the requirements of exemption of article 17 (1) but are obliged to apply for individual exemption of the Office of Economic Competition. On the other hand, they may apply for a "negative clearance" of the Office (see under C above).

For a concentration to take place it is the obligation of the direct participants or the acquirers of the controlling rights to apply for the authorization of the Office supposed the thresholds set in article 24 of the Act are met.

The Office of Economic Competition, in its decisions, reached on the merits of cases

decides on the applications (see under (a) above); such exempting or authorizing decisions may be subjected to conditions (for instance, in order to moderate the disadvantageous effects of a concentration, the divestiture of specified parts of the undertakings or specified assets or the relinquishment of control over an indirect participant may be set as a condition for the authorization), such exemptions may be granted for a limited period;

may establish a behaviour to be unlawful;

may order a state of affairs infringing the Act to be eliminated (for instance, at concentrations, carried out illegally without obtaining an authorization, which may not have been authorizable, the Office may require the separation or divestiture of the merged undertakings, assets or interests or the relinquishment of joint control);

may prohibit the continuation of the conduct which infringes the provisions of the Act;

may order a corrective announcement to be published in respect of a previous information which may possibly deceive consumers;

revokes its earlier decision where

the interested parties (in cartel cases) or the undertakings concerned (in merger cases) act contrary to a stipulation or have not fulfilled a condition set by the decision, or

the decision (in cartel and merger cases; in the latter: the authorization), which has not been reviewed yet by the court, was based on misleading information concerning a fact which was important from the point of view of the decision, or

important market circumstances relevant from the viewpoint of the decision (in cartel cases) have changed significantly, in particular where the condition of the exemption made by the decision ceased to exist in the meantime;

may impose fines;

terminates pending proceedings where, against a background of the facts brought to light by the investigation, their continuation is deemed groundless or, in the absence of infringement, the defending party cannot be condemned.

In administrative lawsuits the court may overrule the decisions of the Office.

The OEC has to be consulted concerning all draft submissions or draft legislation where the planned measures or legislation have a bearing on economic competition.

The Office may seek a court review of public administrative decisions violating the freedom of competition except in cases where the law excludes a court review of such administrative decisions. The Office (in the same way as the Chamber of Commerce or consumer protection organizations but in cases falling into its competence only after having stated by its decision an infringement of the law) may file actions against persons who have put consumers at a substantial disadvantage or have disadvantaged a wide range of them.

The president of the Office presents annual reports to Parliament and, upon request, to the competent parliamentary committee on the activities of the Office and on how fairness and freedom of competition are observed.

The court, in its competition supervision proceedings relating to unfair competition, chapter II of the Act, may reach decisions which are similar to those of the Office of Economic Competition, with some self-evident differences and with the basic difference that it may grant also damages, subject to the provisions of the civil law.

In the case of unjustified refusals to create business relations appropriate for the type of the transaction (see what has been described above under C concerning chapter V of the Act) the court may be requested to

establish the contract. Where the party entitled files such a claim "the court shall issue a request to the Office of Economic Competition to establish the fact of unjustified refusal to create business relations" of the kind mentioned. "The Office of Economic Competition shall proceed as requested by the court." (article 86)

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices

Concerning Act No. VI of 1993 on the Regulation of the Market for Agricultural Products see D (a) above.

Empowered by article 16 of the Act the Government has adopted three block exemption regulations: Gov. Regulation 53/1997. (III.26.), 54/1997. (III.26.) and 50/1997. (III.19.) on the exemption from the prohibition on restriction of competition of certain groups of exclusive distribution agreements, exclusive purchasing agreements and insurance agreements, respectively. Basically, these regulations follow patterns of the EC competition law.

Further block exemption regulations are in preparation.

Articles 3 to 6 of Act No. LXXXVII of 1990 on Price Setting (the "Price Act") empowers the Government to create a system of prior notifications of price increase for products the manufacturers of which are in a dominant position, assessed under the criteria of the Competition Act, on the relevant market. Authorizing or prohibiting such price increases belongs to the responsibilities of the Office. It was through the several times updated Gov. Regulation 106/1990. (XII.18.) that the Government made use of the empowerment of the Price Act. Although the Price Act is still in force, since 1 January 1996 there are no products the price increases of which would fall under the obligation of prior notification.

It is article 62 (1) (i), (1) (ii) and (2) of the Europe Agreement - signed on 16 December 1991 and promulgated by Act No. I of 1994 - establishing an association between the Republic of Hungary, of the one part, and the European Communities and their member States, of the other part, and article 8 (1) (i), (1) (ii) and (2) of Protocol No. 2 on certain coal and steel products to that Agreement which declares that the following are incompatible with the proper functioning of the Agreement, insofar as they may affect trade between the Parties:

agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition, and

the abuse of dominant positions in the territories of the Community or of Hungary as a whole or in a substantial part thereof.

Any practices contrary to this provision "shall be assessed on the basis of the rules of articles 85, 86 ... of the Treaty establishing the European Economic Community" and of articles 65 and 66 of the Treaty establishing the European Coal and Steel Community.

The Implementing Rules for the application of these competition provisions promulgated in Hungary by Gov. Regulation 230/1996. (XII.26.) set out, a.o., rules for the cooperation in dealing with individual cases of the two competition authorities, the OEC and the Commission of the European Communities (DG IV) and make the Association Council a forum of dispute settlement.

The Republic of Hungary has free trade agreements with

the member States of the European Free Trade Agreement (EFTA), signed on 29 March 1993, promulgated by Act No. LXXXVIII of 1993, and

the Czech Republic, the Republic of Poland, the Republic of Romania, the Slovak Republic and the Republic of Slovenia in the framework of the Central European Free Trade Agreement (CEFTA), that was originally signed on 21 December 1992 and promulgated by Act No. XII of 1995.

Article 19 of the first and article 22 of the second of them declare, as counterparts of the competition rules set out above of the association agreement, that the following are incompatible with the proper functioning of these agreements insofar as they may affect trade between the parties:

agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition and

the abuse of dominant positions in the territories of the parties as a whole or in a substantial part thereof.

Some further free trade agreements containing similar competition rules are in preparation.