

Black list of companies liable for serious e-commerce infringement will be drawn up

The amendments, entered into force on 1 January 2017, of the Act CLV of 1997 on Consumer Protection entail significant changes for electronic commercial service providers. On the one hand, in case of repeated infringement by such service providers, the rate of consumer protection fines to be imposed was increased; on the other hand, the database of companies liable for serious infringement will be established and become publicly available.

In case of repeated infringement relating to electronic commercial service, if the company concerned is qualified as small-and medium sized enterprise according to the relevant legislation, a consumer protection fine can be imposed amounting from HUF 200,000 (instead of HUF 15,000) to HUF 2 million (instead of HUF 500,000). It is essential to note that in case of SME's, the requirement still applies that only a notice can be issued in case of the first infringement with certain specified exceptions, a fine can be imposed on them in case of repeated infringement. The rates of fines to be imposed in case of infringements resulting in endangering the well-being or health of consumers or causing financial loss to consumers were not affected by the amendments entering into force.

Furthermore it is an essential change that provisions have been added to the Act on Consumers Protection, under which final decisions establishing serious infringement relating to electronic commercial service adopted by the consumer protection authority, the Hungarian Competition Authority (GVH) or any courts, and related data specified by legislation must be disclosed on the website of the Ministry for National Development. The number, the subject of the case, the name, the registered seat and any identification data, and the website of the company liable for infringement must be disclosed in particular, as well as the breached legislative provision must be also indicated. In order to ensure the disclosure, the court, the Hungarian Authority for Consumer Protection and the Hungarian Competition Authority are required to send their relevant decisions to the Minister for Consumer Protection, unless the Hungarian Authority is also involved in the proceedings as a party. The decisions must be disclosed in an anonymous form, with the deletion of the personal and protected data and the limited access data of the consumer according to the applicable legislative provisions.

Government Decree No. 453/2016. (XII.19.) entered into effect on 1 January 2017 specifies the scope of serious infringements relating to commercial service. It is qualified as serious infringement if the company providing electronic commercial services fails to fulfil its specified obligation to provide



information towards the consumer prior to the execution of the agreement. These include the following data and information about which consumers must be informed: the name of the company, the address of its registered seat, other data; conditions for the performance of the agreement, and in particular the payment, transportation, performance date and the method of handling complaints; deadline or other conditions for the withdrawal from, or termination of, the contract without giving a reason, including the sample of withdrawal/termination notice required by legislation; the legal obligations relating to legal guarantee and product warranty; after-sale customer and other services ; the existence of warranty and the conditions thereof; and, if applicable, the term of the contract, and if the contract was concluded for an indefinite period of time or becomes permanent after the elapse of a specific term, the conditions for the termination of the contract.

Furthermore, it is qualified as serious infringement if the consumer was unable to exercise its right to withdraw from the contract due to the conduct attributable of the company, or if the company applied unfair contract terms, if the court declared the contract term unfair in public enforcement of claims or in bringing a public action.

The “black list” of the aforementioned e-commercial companies must be disclosed on the website of the Ministry for National Development in such a way that the name of the company concerned, as well as its name used in providing commercial service identifiable for the consumers, the web address, the decision of that particular court or authority, the fact of review proceedings, if any, and the legislative provisions indicated to be violated can be searched in the texts of the decisions to be disclosed and of the relevant information.

The data must be deleted from the database or the website after the elapse of two years following the disclosure, unless the company was finally held liable by the Hungarian Authority for Consumer Protection, the Hungarian Competition Authority (GVH) or any court for a repeated serious infringement.