

Communication concerning the decision of the Curia of Hungary in the administrative case
X. Hungary Kft. (plaintiff) v. Hungarian Competition Authority (defendant)

The defendant initiated proceedings against the plaintiff, operating as the Hungarian subsidiary of an international air transport company, for the unfair manipulation of consumers. In its decision, the competition authority argued that the plaintiff's information policy in 2007 had potentially resulted in the unfair manipulation of consumer choices, since its provisions of information on the price of advertised aeroplane tickets had been misleading, and some of its advertised tariff discounts related to aeroplane tickets had not reflected the true volume of consumer savings. Consequently, the competition authority inflicted a fine of 20 000 000,- HUF on the plaintiff. The decision of the defendant also stated that, as from the spring of 2007, the plaintiff, deviating from its previously applied information policy, had started to advertise the total prices of its tickets, including taxes, duties and ticketing service fees, however, had continued to apply numerous additional fees, in particular baggage fees.

On the 25th of March 2007, the plaintiff introduced baggage fees on the second checked bags of passengers, in October 2007, the above fees were also extended to the first checked bags, yet the company omitted to inform the passengers about these fees in the advertisements examined by the competition authority. By applying in its promotion campaigns and advertisements the term "ticket price includes all taxes, fees and duties", the plaintiff misleadingly suggested that the advertised price included all applicable costs, and could be considered as the total price. Based on Article 8, paragraph (1) of the Act n° LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (hereinafter referred to as the UTP Act), and on Article 7, paragraph (1) of the Act n° LVIII of 1997 on Business Advertising Activity (hereinafter referred to as the BAA Act), the defendant qualified the plaintiff's conduct unlawful.

In some of its advertisements, the plaintiff concealed that the advertised price only covered one-way air transport, thus misleading its customers and violating the provisions of Article 8, paragraph (2), point a) of the UTP Act. Furthermore, the plaintiff – with regard to Article 17, paragraph (3) of the BAA Act – violated the provisions contained in Article 8, paragraph (2), point d) of the UTP Act, since the company failed to prove that the advertised tariff discounts and reduced-price fares were actually available.

Subsequently, the plaintiff submitted an action for judicial review against the defendant's administrative decision. The Curia, in conformity with the above administrative decision, as well as with the related judicial decisions of the first and second instance courts, found that baggage fees had not been in general use in the examined period, in addition, the plaintiff stated that the majority of low-cost air transport companies had not included baggage fees in their advertised prices. The Curia argued the average consumer should be taken into account as reference person in business advertising, and advertisers should proceed on the assumption that consumers make reasonable and well-considered purchasing decisions. The consumers' precautions and considerations could, however, not result in obliging consumers to precisely verify the non-advertised terms and conditions of generally phrased offers. Thus, the reasonable consumer could not be expected to completely understand – without further request for information – the ticket policies of different air transport companies which applied various types of additional fees. Therefore, service-providing companies should be obliged to inform their consumers about all the terms and conditions related to the price of their services. In its advertisements examined by the competition authority, the plaintiff misled its customers when it indicated the total price of its services without including baggage fees. The above method of advertising is considered unfair and unlawful, regardless of the fact that the plaintiff's online registration system offered consumers the possibility to understand the additional character of baggage fees – to be paid for extra bags other than the hand luggage – prior to ticket purchase. The Curia rejected the plaintiff's argument according to which the promotions and advertisements under examination could be considered lawful on the basis of the detailed provisions of information available on the company's website. In indent 59 of its judgement rendered in the case C-122/10, the European Court of Justice stressed that as regards appropriate advertising "it may be sufficient for only certain of a product's main characteristics to be given and for the trader to refer in addition to its website, on condition that on that site there is essential information on the product's main characteristics, price and other terms". In the present case, no further reference was made to the plaintiff's website in the examined promotions and advertisements. The mere fact that the plaintiff operated its website with all the necessary information, does not justify its unlawful conduct, since consumers cannot be obliged to verify the appropriateness and completeness of advertised information and to request further information in the event of misleading advertising, such as concealing information about the product/service's main characteristics (i.e. baggage fees) or providing ambiguous information (i.e. total ticket price, one-way or return ticket).

Budapest, the 28th of September 2012

Administrative and Labour Department of the Curia of Hungary