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Information about mergers on the food retail market

Substantial ownership shifts took place in the food retail market in Hungary between June 2012 and February 2013. During this period the GVH (Gazdasági Versenyhivatal – Hungarian Competition Authority) received 13 merger applications concerning this sector, with one-third of all incoming applications concerning the food retail market. This is in stark contrast to the previous one and a half years, in which no such application was made.

As a result of the mergers, 158 food retail stores changed hands across the country. Most of these changes took place Budapest, Southern Dunántúl and Northern Hungary. Characteristically each acquisition of control concerned only a smaller region or settlement as the applicants usually took over shops in their operating territory. Retail markets are traditionally local markets, with consumers generally buying food and other everyday consumer goods in the proximity of their homes or workplaces. For this reason, the GVH investigates the effect of acquisitions of control primarily by settlements, and in some cases, by subregions. The Competition Council authorised the acquisitions of control in each case without making any commitment decisions. A more sophisticated practice was also developed during the procedures for judging mergers which concern the everyday consumer goods market.

The main reason for the high number of mergers concerning the food retail sector is that the Delhaize group, operating the chains Match, Profi and Cora, left the Hungarian market. In eight associated investigations 57 Match and Profi stores were acquired by different groups of undertakings. The shops were mainly obtained by independent companies belonging to the franchise of Coop and CBA, but a group of undertakings, operating Reál stores, and SPAR also extended their chains through the acquisition of Match and Profi stores. Through a transaction which was authorised by the European Commission, Auchan took over the operation of Cora stores in Hungary. In addition, authorisation was not required for the sale of many shops due to the low revenue of the group of undertakings of the buyer or transferred stores. Consequently, the GVH did not receive any notification of these cases.

An additional important factor was the legal restriction relating to the establishment and extension of retail properties over 300 m². This has prompted market participants that wish to expand to acquire stores that are currently in operation instead of building new ones. For example, members of the Coop's chain were active in the field of mergers irrespective of the departure of the Delhaize group, especially Nyírzem Zrt. and Mecsek Fűszért Zrt. (Pékó-group). Some of the mergers took place between the Coop members and this meant that the acquired stores remained within the chain. This resulted in the consumers being unaware of the ownership shifts.

Only one transaction raised competition concerns among different franchise networks and was the subject of case no. Vj/53/2012. in which the Pékó-group acquired control over undertakings operating on the wholesale market, namely Integrál-M Kft. and Mába Invest Kft. In this case

overlaps were identifiable between the parties in five settlements (Zalaegerszeg, Keszthely, Lenti, Nagyatád, Fonyód) and in two subregions (of Nagykanizsa and Letenye). On the basis of information presented by the applicant, the emergence of harmful horizontal effects could not be excluded in several settlements as both parties had obtained a large number of stores with similar profiles that were close to each other. The GVH did not have enough information about the market and therefore the investigation was carried out in full procedure (second phase). This enabled the market participants to be contacted and provided the GVH with an opportunity to gather enough information about the market concerned and about issues regarding the evaluation of competitive effects.

The procedure also dealt with question as to whether market participants which are independent from each other, but which belong to the same franchise network, can be considered as competitors, and if so, to what extent. On the basis of inquiries about the franchise contracts and statements of the market participants, it could be proved that the owners had decision-making power (first and foremost about prices, to a certain extent the range of goods and opening hours), which made independent market operation possible. This means that the participants had the ability to become fully independent either by leaving the franchise network or by joining another one. In view of the above, the GVH considered the groups of shop owner undertakings to be market participants and decided that it was unnecessary to investigate in detail the consolidated share or the market role of the franchise networks.

In the course of the determination of the product markets, the GVH investigated the substitution among different business groups (traditional shops, super - and hypermarkets) in the field of everyday consumer goods for the first time. The Competition Council arrived at the conclusion that hypermarkets are characterised on the one hand by their wider product range, lower prices and typically longer opening hours, and on the other hand by their location in suburban areas (which results in them not being considered as a rational alternative for everyday shopping for a significant proportion of the population). While the first group of differences can restrict the substitutability of traditional shops and hypermarkets, the second one can strengthen the substitution capacity of hypermarkets in favour of the traditional shops.

The latter finding leads on to the determination of the relevant geographic market, and in the course of that, the market definition applied previously on settlement level market definition was amended with a more sophisticated analysis which takes into consideration the distance between the shops and the settlements. As a consequence, in certain cases, small settlements which are close to each other can be classified as one market, whereas in the case of mergers concerning the city centres of bigger cities, the outskirts' hypermarkets can sometimes be ignored or considered to be of lesser importance. As market shares can be used to evaluate market power if the market is sufficiently homogenous, in case of the retail market, the aggregate shares calculated on potential narrow and wide retail markets provide more precise information about the role of undertakings on the market. In the case of everyday shopping it is primarily the distances between the shops that determine the competitive pressure on the market participants. Therefore, in the course of evaluating the competitive effects, in addition to market shares, the GVH investigates in detail the location of the participants' shops, and the nearby competitors on the market concerned.

The merger – similarly to other transactions – also concerned the wholesale of food and other everyday consumer goods. While calculating the market shares, the GVH added new elements to its former case law by taking into account the fact that a significant proportion of the retail market chains purchase the products directly from the producers. As a consequence, the wholesale market, including the supply of franchise stores and independent shops, was

defined as a narrow product market, to which the supply of chains by central procurement does not belong.

As a result of the above, it was established that each of the shares of the concerned groups of undertakings on both settlement and subregion levels are below 10%, there are also lots of competitors with similar profiles close to their shops. Consequently, their combined share on the wholesale market does not exceed the 10%, and taking into account the possible narrowest product and geographic markets, anticompetitive effects are not likely. Further retail cases were also investigated in the above mentioned manner except it was not considered justified to request information from the market participants. Due to this latter fact, the market shares could only be estimated pro rata based on the populations of the settlements.

In addition, in many cases – particularly in transactions concerning Match and Profi stores – the acquisitions of control were based on several agreements, e.g. lease and sales contracts, generally for each shop separately. The decisions of the GVH confirmed its former case law, i.e. that various transactions could result in one merger if connected to each other. Furthermore, the GVH also established that in case only one business activity, i.e. one economic entity, is covered by the acquisition by more but inter-conditional legal transactions, then it can be considered as one merger.

Due to the mergers subject to authorisation the number of stores belonging to Coop's chain increased to 50 across the country, while CBA's chain obtained almost as many shops as it lost. However, it is important to emphasise that beside the mergers concerning the groups of undertakings and stores with low turnovers, authorisation is not required for the market changes which occur when a group of undertakings transfer the operated shops – and sometimes the wholesale network too – from a franchise network to another one. In this case, however, the ownership and management stay unchanged and only the contractual relations change. Consequently, from the consumers' point of view even significant changes cannot be considered as acquisition of control. For example, in October 2012 Palóc Nagykereskedelmi Kft., Pilis Csoport Kft. and Pólus-Coop Zrt., which earlier belonged to CBA, joined Coop's chain. Two months later Palóc Nagykereskedelmi Kft. returned to the CBA group, and due to the reorganisation, a total of 166 shops changed chains, which is more than those that did as a result of the mergers which were authorised by the GVH.

The case number of the mergers is listed in the Hungarian version of the press release.

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Hungarian Competition Authority

Further information:

Katalin GONDOLOVICS

spokswoman

Mail: 1054 Budapest, V. ker. Alkotmány u. 5.

Postal address: 1245 Budapest, 5. POB 1036

Tel: (+36-1) 472-8902

Email: press@gvh.hu

<http://www.gvh.hu>