



GAZDASÁGI
VERSENYHIVATAL

The GVH condemns the internal codes of the Hungarian Chamber of Architects

The Gazdasági Versenyhivatal (competition authority of Hungary, hereinafter GVH) initiated competition supervision proceedings against the Hungarian Chamber of Architects because its Code of Ethics and Discipline and related codes and protocols contained some provisions restricting competition between architects. The codes and protocols of the Chamber covered every member of the Chamber therefore the whole territory of the Republic of Hungary, which may affect trade between Member States. The Chamber has applied the Code and protocols under investigation since 6th March 1998.

The GVH investigated whether the Code and related protocols of the Chamber infringed Article 11 of the Hungarian Competition Act. According to Article 11, agreements or concerted practices between undertakings and decisions by social organisations of undertakings, public corporations, associations or other similar organisations, which have as their object or potential or actual effect the prevention, restriction or distortion of competition, shall be prohibited. Since 1 May 2004, the investigated provisions of the codes and protocols of the Chamber infringed Article 81 of the EC Treaty as well. The GVH imposed a fine of HUF 5 million on the Chamber.

According to the decision, the following provisions are contrary to Article 11 of the Hungarian Competition Act and since 1 May 2004 to Article 81 (1) of the EC Treaty:

- Second sentence of Paragraph 3.8. of the Code of Ethics and Discipline between 1 March 2003 and 31 January 2005,
- Paragraphs 6, 9, 13 of the Preamble and Paragraphs 2-3 of Point 1 of Part IV of the Code of Tariffs between 1 March 2003 and 31 January 2005,
- Paragraphs 6 and 9 of the Preamble of the Code of Tariffs since 1 February 2005,
- Paragraphs 29.2 points d)-f) of the draft Code of Competition, and
- Every version of the Code of Ethics and Discipline since 1998, which restricts participation in competition between architects (generally Chapter II Paragraph 6.1

and in the version in force between 1 February 2005 and 31 May 2005 Chapter I Paragraph 4.1).

The Competition Council established that the conduct is unlawful, ordered the situation violating the Act to be eliminated, prohibited the continuation of the conduct (except where the Chamber already made modifications) and imposed a fine of HUF 5 million (approximately EUR 20 000).

The basic amount of fine was the net turnover of the Chamber because the GVH had no authentic data relating to the aggregate net turnover of the members of the Chamber.

Relevant circumstances concerning the effect of the infringement:

- In Hungary, every architect is a member of the Chamber therefore the infringement has an expansive effect on competition.
- The Codes and protocols were not actually applied by the architects although the recommended prices were capable of orientating the actual premiums.

Extenuating circumstances:

- The Chamber was bound to create the Code of Tariffs but it acted in excess its rights relating to recommendations.
- The notice of the Council of European Architects orientated the conduct of the Chamber therefore it was less able to recognize the infringement.
- There wasn't any disciplinary procedure against the members of the Chamber.
- Partial active redemption of the Chamber.

Aggravating circumstances:

- The infringement of the codes and protocols is a offence according to the Code of Ethics and Discipline.
- The GVH has already challenged the practice (price fixing) of the Chamber.
- The 18th footnote of the draft Code of Competition contained a reference of competition law therefore the Chamber acknowledged the criteria of competition law.

The modified provisions of the codes and protocols are not accessible on the website of the Chamber.

Undertakings involved

The Hungarian Chamber of Architects (hereinafter Chamber) is a professional chamber established by Act No. LVIII of 1996 on the Chamber of Architects and Engineers (hereinafter Chamber Act). The Chamber is a public body for the purposes of Article 65 of Act IV of 1959 on the Civil Code of the Republic of Hungary. The Chamber – as a public body – assigns public tasks but law limits its rights. According to the Chamber Act, the Chamber came into existence by its judicial enrolment. According to Article 11 paragraph (2) g), the public tasks of the Chamber are the followings “the Chamber draws up for guidance the recommended tariffs of architectural activities and related requirements of the service”.

Facts

The following provision of the Code of Ethics and Discipline concerning calculation of tariffs was of legal force between 1 March 2003 and 31 January 2005:

Paragraph 3.8. “The architect is entitled to premium for its activity completed under commissioning. The Code of Tariffs of the Hungarian Chamber of Architects must determine the premium of the architectural service in line with the costs and labour equivalent to professional and aesthetical criteria, the accountability and the value relations of an exact period.”

The provisions of the Code of Tariffs, which were in force between 1 March 2003 and 31 January 2005, influenced the application of premiums of the members.

a) Code of Tariffs concerning architectural creatures and services

Preamble

“Paragraph 6: The architect is the author, the provider of the architectural plan, the co-ordinator of the labour and the animator of architectonic at once. The novel tariff wants to fixate the multiplicity of the work towards the architect and its client – including the conception and the materialized building – and the premiums of each activity.

Paragraph 9: Only those plans are considered professionally founded and value-balanced by the Hungarian Chamber of Architects, which were effectuated under this Code.

Paragraph 13: The Hungarian Chamber of Architects holds the premiums defined by the Code fair and rationale, lower premiums are not capable of value-balanced coverage for workmanlike performance and they do not absorb the royalty and the fee of the service or the costs of the necessary documentation.”

Part IV Point 1 “Honorarium and defrayal”

“Paragraph 1-3: The architect is entitled to honorarium for its creature and services and to the defrayal of its concurrent costs. Honorarium and costs must be negotiated between the architect and its client under this Code in advocacy of each other. The negotiated premium must be proportionate to the creature and the provided services in details. The honorarium shall not be lowered due to the reduction of professional criteria.”

b) Other provisions of the Code of Tariffs concerning interior design and landscape architecture are similar to the above-mentioned rules.

c) Some provisions of the Code of Tariffs were modified from 1 February 2005, the relevant provisions are the followings:

- Paragraph 6 of the Preamble remained the same.
- Paragraph 9 of the Preamble:

“Only those plans – without detailed certification of the difference – are considered capable of professionally founded work and value-balanced by the Hungarian Chamber of Architects, which were effectuated under this Code.”
- Paragraph 13 of the Preamble:

“The Hungarian Chamber of Architects holds – in general – the premiums defined by the Code fair and rationale, lower premiums are not capable of value-balanced coverage for workmanlike performance and they do not absorb the royalty and the fee of the service or the costs of the necessary documentation.”
- Part IV Point 1 paragraph 2-3:

“...The negotiated premium must be proportionate to the creature and the provided services in details. Honorarium and costs must be negotiated between the architect and its client under the method of this Code and according to the recommended tariffs in advocacy of each other. The honorarium shall not be lowered due to the reduction of professional criteria beyond the standards. ”
- Part IV Point 2 “Foreclosure”

“In the absence of an initial planning phase, the authorisation planning phase shall not be provided and – except where otherwise regulated by a special provision – in its premium the initial labour must be included.”

d) According to Article 6.1. of the Code of Ethics and Discipline “The architect shall participate only in such a competition where the relevant rules and the codes and protocols of the Hungarian Chamber of Architects are respected and where

- equality of the applicants shall be ensured
- aspects of reflections are correct and preliminary published
- honorarium is proportionate to the negotiated task and
- publicity of the result of the application shall be ensured.”

e) The infringement of the codes and protocols of the Chamber is described as a offence.

f) Paragraph 29.2 of the draft Code of Competition contains the following provisions:

“d) Average parts of the premiums of each planning phase, which are protected under copyright, are in Paragraph 12 c). The author shall not abandon these parts of the premiums. The parties may apply different tariffs in proportion to – 10% or + 20% if they have acceptable cause.

e) The defined premiums of the Code, which are not protected by copyright, may be applied under general rules of enterprise but

- A disproportionately low premium is a dumping, which must be adjudicated according to the judicial practice and the guidance of the Chamber.

- A disproportionate high premium is antimoral.

f) A member of the Chamber commits an aggravating offence if he quotes a price or concludes a contract 40% lower than the calculated premium of the Codes.”

Legal assessment

According to the Competition Council:

- An architect is an undertaking for the purposes of Article 81 of the EC Treaty. Consequently, the Chamber is an association of undertakings and under Article 11 of the Hungarian Competition Act it is a public body as well.
- The codes and protocols of the Chamber shall be investigated under the provisions of competition law because the Chamber is not a public authority and these documents are not state measures. (Wouters judgement paragraph 57)
- The conduct under investigation may affect trade between Member States because in Hungary every architect is a member of the Chamber and foreign architects are potential members.
- Direct or indirect fixing of prices has as their object or effect the prevention, restriction or distortion of competition.
- The cited provisions of the Codes and related protocols infringe Article 11 of the Hungarian Competition Act and Article 81 Paragraph (1) of the EC Treaty (since 1 May 2004) because the recommended prices are in fact minimum prices.
- The cited provisions may not be exempted under Article 81 Paragraph (3) and Article 17 of the Hungarian Competition Act because these restrictions are not indispensable to the attainment of the objectives of the Chamber (ensuring the high standard of quality).