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VERSENYHIVATAL

Microsoft did not abuse dominant position

Microsoft Hungary did not abuse its dominant position when it provided marketing support to distributors – established the Hungarian Competition Authority (GVH). The Hungarian subsidiary of the software world-company imposed neither exclusivity terms nor conditions for refusing competing products in return for loyalty rewards.

The GVH initiated a proceeding against Microsoft Hungary in July 2007 since it observed that Microsoft likely applied a system of conditions and favours for the most significant software distributors giving no incentive to these distributors in selling other products competing with Microsoft Office software for office use.

The investigation of the GVH established that Microsoft Hungary is basically interested in marketing, it is engaged in supporting resellers by increasing promotion of products and training them, and by generating consumer demand for the products. Negotiating contractual terms with Microsoft's Hungarian wholesalers (official distributors) and sales of Microsoft Office products in Hungary (including attached benefits provided for resellers) are conducted by the Irish Microsoft Ireland Operations Limited.

Microsoft Hungary provides solely marketing support for official distributors (BSC Kft., CHS Hungary Kft., Disztribútor.hu Zrt., Ingram Micro Magyarország Kft., Sved Zrt.). The extent of the average support provided for the five distributors compared to the turnover of Microsoft did not reach 1 pct either in 2006 nor 2007. There was not any contractual condition prescribing that the distributors are obliged to refuse other products competing with Microsoft Office software, nor any clause stating that a certain percentage of distributor demand must be met by Microsoft products.

Regarding benefits with similar (price decreasing) impact of the support provided, the rules are unambiguous: an undertaking in a dominant position may not impose on its customers agreements for the exclusive purchase of its products – as a condition for benefits received – , since it may hinder competitors entering the market. There is a significant difference between these kinds of favours (loyalty rewards) and benefits granted above a certain quantity of purchase which is considered to be lawful. "Quantity-based" benefits are solely linked to the quantity of the products purchased from the producer concerned.

At the same time loyalty benefit is not linked to a specific quantity, but to the purchaser's needs and the benefit is rewarded in exchange for the customer's purchasing exclusively from the brand concerned. It is considered to be a specific case when the benefit is linked to quantity, however, it is not granted on a quantity basis but rather the quantity represents the customer's hypothetical purchasing capacity, thus the benefit is not linked to the highest

quantity but to the highest possible percentage of needs. The latest practice mentioned is also unlawful.

Since according to the investigation, the conditions of the agreements for marketing support between Microsoft and the official distributors in Hungary do not mention any provisions that are exclusive, making it compulsory to refuse or prefer competing products, thus they cannot be considered loyalty rewards. Therefore the Microsoft did not commit an abuse of dominant position when it provided marketing support for the distributors.