



GAZDASÁGI
VERSENYHIVATAL

Fine for failure to provide data

Three undertakings that had earlier been found guilty of deceiving consumers impeded the Hungarian Competition Authority (GVH) in its fact-finding activity. As a consequence Crystal Institute Kft, StemXcell Kft and Flavinárium Zrt received a procedural fine amounting altogether to HUF 12,83 million (approx. EUR 47 thousand).

The GVH had earlier established that the practice of StemXcell Kft., Crystal Institute Kft., Dunai és Társa Bt. and Flavinárium Első Magyar Flavonoid és Antioxidáns Termék Forgalmazó Zrt. was likely to deceive consumers by claiming in advertisements between 2007 and 2008 that Olimpiq StemXCell nutritional supplement was able to multiply and protect stem-cells, and there was a correspondence between health and the product, and the latter had a curative effect.

The GVH prohibited the continuation of the infringement by StemXcell Kft., Crystal Institute Kft., Dunai és Társa Bt. and Flavinárium Zrt. It also ordered the undertakings mentioned to publish the decision of the GVH visibly, without any comments, for half a year following its publication, on the homepage of all the webpages operated or run by them, where they would provide any kind of information in connection with Olimpiq StemXCell. Furthermore the GVH imposed a fine of HUF 10 million (approx. EUR 36 thousand) on StemXcell Kft., HUF 25 million (approx. EUR 92 thousand) on Crystal Institute, HUF 500 thousand (approx. EUR 1,8 thousand) on Dunai és Társa Bt. and HUF 15 million (approx. EUR 55 thousand) on Flavinárium Zrt.

The GVH also held a post-investigation in the case in order to check the compliance with the obligations provided in the decision. For this reason this March the GVH obliged the undertakings under investigation to provide information about the fulfilment of the obligations. The GVH requested the undertakings to declare until 3 April 2009 whether they had published the decision of the GVH visibly, without any comments, for half a year following its publication, on the homepage of all the webpages operated or run by them, where they provided any kind of information in connection with Olimpiq StemXCell.

However, since they did not meet the request, they got procedural fines. Flavinárium Első Magyar Flavonoid és Antioxidáns Termék Forgalmazó Zrt. received a fine of HUF 6,65 million (approx. EUR 24 thousand), Crystal Institute Kft. HUF 5,35 million (approx. EUR 20 thousand), Dunai és Társa Bt. HUF 72 thousand (approx. EUR 260) and StemXcell Kft. HUF 830 thousand (approx. EUR 3 thousand).

Based on the Competition Act, a procedural fine may be imposed on the party or other persons participating in the proceeding, if they engage in an act or display behaviour which is aimed at protracting the proceeding or preventing the disclosure of facts, or which has such an effect.

The undertakings concerned submitted applications for a legal remedy against the decision, however, the GVH dismissed the applications.

Crystal Institute Kft. did not even try to comply with the obligation within the deadline determined, and claimed in its application that the chief manager had been sick. The GVH emphasized that the party to the proceeding was the undertaking, not the chief manager of the undertaking; as a consequence the existing rights and obligations of the undertaking under investigation did not correspond to the rights and obligations of the chief manager. Referring to the sickness of the chief manager has usually no significance in case of failure to comply with the obligation to submit the data requested. In this case the undertaking should have been able to prove that the chief manager possessed the data, information requested by the GVH and he or she was physically detained from sharing the data, information with someone who could have transmitted them to the GVH. Or else it should have been proved that besides the chief manager no other person was able to provide data, information considering their nature or features. However Crystal Institute Kft. did not prove this. The appeals brought by the other two undertakings were also refused by the GVH, since they failed to bring the applications against the imposition of the procedural fines within the time limit determined.