

## Pick's pricing practice is unlawful – The GVH has imposed a fine due to the fixing and setting of and minimum prices during temporary sales (promotions)

According to the decision of the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH), from January 2009 to December 2014, Pick Szeged Szalámigyár és Húsüzem Zrt. (Pick) determined minimum resale prices when distributing meat products processed by Pick during temporary sales (promotions) in the framework of its marketing strategy. The GVH has imposed a fine of HUF 44,000,000 (approx. EUR 142,000) on Pick for the infringement.

Based on promotion agreements and on other direct evidence, the GVH established that Pick had set fixed and minimum wholesale and retail prices for products which were processed by Pick and sold by certain commercial partners (wholesalers and retailers) during certain promotional periods.

Pick was able to force the recommended consumer prices on its commercial partners by threatening them with delisting and the imposition of other sanctions. However, it did not apply these threats in practice.

Pick and its commercial partners (wholesalers and retailers) are undertakings on different levels in the production and distribution chain. Pick is a producer on the upstream level of the production chain, while its commercial partners are on the downstream wholesale and downstream retail level of the distribution chain. The agreements between Pick and its commercial partners amounted to [vertical agreements](#).

**Vertical agreements** are agreements or concerted practices that are made between two or more undertakings that are on different levels in the production and distribution chain, for the buying, selling or reselling of certain products or services between the parties. The **defining characteristic** of a vertical agreement is that the parties clearly express their consent; this means that the concerned undertaking was not acting unilaterally.

In connection with the case, the GVH emphasised that it infringes competition law if a producer attaches certain conditions (e.g. relating to selling prices or quantity of goods) to the recommended consumer prices of its products and the acceptance of these prices during promotions set up by its commercial partners, and if it makes vertical agreements to achieve the performance of these terms. During the investigation, the GVH established that the agreements aimed to restrict competition, which was further supported by the motive of the parties. Pick was interested in making its brand image more attractive by forcing its commercial partners to sell its products for higher prices than those of its competitors. Pick's commercial partners were interested in excluding those competitors that were able to sell Pick-products cheaper than themselves.

When determining the basic amount of the fine, the GVH took into account the net sales revenues coming from the agreements on certain promotions. As relevant turnover, the GVH only took into account those agreements that were clearly made in order to bilaterally and mutually determine the minimum level of the consumer price.

When defining the amount of the fine, the GVH took into account, among other things, the following aggravating factors:

- wholesale and retail price fixing amounts to a serious competition law infringement,
- due to its leading market role, Pick's behaviour may influence the behaviour and pricing practice of other undertakings operating on the market.

The GVH took into consideration, as mitigating factors, that

- the actual existence and effects of the unified minimum prices recommended by Pick were not clearly ascertained by the price analyses made on the basis of publicly available data,
- Pick has explicitly admitted the infringement.

The GVH terminated the proceeding

- in connection with the setting of a non-reduced, normal price for processed meat products distributed by Pick and the setting of a fixed price for Familia products,
- against FOCUS Hungary Marketing Piackutató és Tanácsadó Kft. and GFK Hungária Piackutató Kft.

Case number: **Vj/37/2014**

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Hungarian Competition Authority

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