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| Case number: | Vj-70/2002 |
| Party: | Budapest Film Kulturális Szolgáltató Kft, Intercom Nemzetközi Kulturális Szolgáltató Rt, Ster Century Magyarország Kft, UCICE Magyarország Szórakoztató Kft |
| Type of case: | cartel- price fixing |
| Decision: | prohibition with fine |
| Date: | 17 November 2003 |

The Competition Council found that the cinema operators Budapest Film Kulturális Szolgáltató Kft. (BF), Intercom Nemzetközi Kulturális Szolgáltató Rt. (Intercom), Ster Century Magyarország Kft. (Ster) and UCICE Magyarország Szórakoztató Kft. (UCICE) infringed the Competition Act when they illegally co-ordinated their price raise of 25 April 2002 in Budapest. Therefore it imposed a total fine of HUF 203 million (approximately EUR 781 000) on them.

The undertakings concerned and the facts

The Office of Economic Competition (GVH) initiated proceedings in June 2002 against the above mentioned motion picture exhibitors in Budapest for an alleged collusion on the price raise of 25 April 2002. BF is a municipality owned undertaking active in both the exhibition and distribution of motion pictures. As a distributor it deals mainly with art movies intended for smaller audiences. As an exhibitor it operates the Art movietheater-chain and two multiplexes (Corvin and Mammut). On the latter market it has a market share of 21 per cent.

Intercom, established in 1989 acts as the distributor of the main US film studios, releasing the mainstream Hollywood blockbusters in Hungary. Besides it is the biggest player on the exhibition market with established facilities both in Budapest and the countryside by owning 9 cinemas in total. Its market share is 41 per cent.

Ster and UCICE have a peculiar situation in this proceeding. Originally Ster operated the cinemas Westend and Campona with 14 and 11 halls respectively. UCICE entered the Budapest market with its MOM Palace cinema just before the alleged infringement. After the initiation of the competition authority's proceedings the parent companies of the two undertakings entered into an agreement as a result of which Westend and Campona became a part of UCICE and the Palace Cinemas chain. However UCICE indirectly controlled Ster as of the date 28 February 2002. Therefore the Competition Council treated the three cinemas as one entity on the market having 33 per cent.

The cinema market of the Hungarian capital went through the same changes as the whole country's industry after the changes at the end of the 80's. In short the process can be described by three major characteristics, the radical reduction of cinemas, the appearance of multiplexes at the expense of traditional "one-hall" cinemas and rise of chains instead of the stand-alone facilities. Multiplexes are cinema complexes with at least 6 halls, in Hungary generally built inside big shopping centres. These cinemas offer a technologically high level experience (Dolby Digital Surround Sound System, wide screens, etc.) for visitors combined with the best services in terms of comfort (air conditioning, comfortable chairs, huge space for legs, etc.). Additionally customers are provided with free parking, buffet and all the other

services a shopping centre can provide. These features made multiplexes a separate market from traditional cinemas.

The capacity of multiplexes is designed to peak hours, which practically means Friday, Saturday and Sunday evenings and holidays. In these periods capacity utilisation is near 100 per cent. However weekdays this drops to 15-20 per cent and in the mornings to 5-10 per cent. There are peak periods on a yearly basis as well, namely in May-June and October-November. Consequently the market is characterised by huge overcapacity, operators are losing.

Low utilisation and high fixed costs induce cinemas to a loss minimisation strategy in the form of constant price raises. Furthermore ticket prices include high levels of rates and taxes. During the past years exhibitors applied nearly identical prices.

Distributors are interested in running movies with the highest possible audience resulting high revenues, while exhibitors additionally have the interest to obtain the newest films at the earliest possible time. Distributors make screenings two months before the actual *première* for exhibitors, just to enable them making decisions about the possible hiring of the particular film. If the cinema operator would like to have the film, after negotiating the details (hiring fee, number of screenings per day, weeks of screening etc.) it enters with the distributor into a film-hiring contract. *Premières* are on Thursdays every week. On Mondays distributors and exhibitors hold consultations on the programmes, time schedule of screenings.

In April 2002 Intercom prepared a price plan for Budapest and the countryside with detailed breakdowns according to days, parts of the day, and discount days. The document ended with the sentence “it needs consultation with the competitors”. The data of April and May was circled and it was written on “with Port from April 25” (Mr. Ferenc Port is the CEO of BF). Mr. András Kálmán, the distribution manager of Intercom spoke with Mr. Port twice about the price raise and its details. On 22 April Mr. Kálmán informed several employees of Intercom in e-mail about the anticipated price raise in detailed breakdown with the notice “as a result of multilateral consultations.”

As of 25 April 2002 35 price-categories were identical for different days, part of days and discount days in the cinemas of Budapest. There were only three price categories which remained unchanged in the cinemas Campona and Westend, however this resulted just the same price as by the others (earlier these cinemas had always higher prices). Following 30 May the identity of prices changed.

Legal assessment by the Competition Council

The relevant market should be determined as selling cinema services (screening motion pictures) at the multiplex cinemas of Budapest. Multiplex cinemas are clearly distinguished from other “traditional” cinemas due to their geographical situation, film-offer, provided services. Neither treated the Competition Council home videos, DVDs as a substitute to the multiplex cinema. Finally the oligopolistic nature of the market was evaluated as a factor making favourable conditions for possible anticompetitive conducts.

Pursuant to Article 11 of the Competition Act 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.

The undertakings concerned are independent entities pursuing economic activities in the terms of the Competition Act.

It is an infringement of the Competition Act if competitors are not making their decisions independently, and act instead in co-operation. Whenever the co-operation has the aim or effect of influencing the proposed behaviour of competitors in the future, thereby excluding or substantially reducing the uncertainty inherent to effective competition it is undesirable from a competition law point of view. In particular it is prohibited to fix prices directly or indirectly, in this case the co-ordinated price raise from a determined price level. In such cases it is irrelevant that otherwise the price increase could be reasonable or prices are not the determinant factor for consumers in their choice of the product. The mere fact that the alleged behaviour relates to prices shows the eminent role of prices. Moreover price would play a more important role in consumers' decisions if there would be larger differences between prices. The undertakings concerned are responsible for hindering the emergence of this process with their alleged conduct.

A concerted practice with the aim of raising prices has clearly the object of restricting competition, and its effect is restriction as well. Through the concerted practice the undertakings concerned can count on the others that they won't be left alone with the increase of prices, which would have induced customers to go to another lower priced cinema instead.

In theory the question of conscious parallelism could be raised given the oligopolistic nature of the market. However this could be easily rejected due to the fact that there have been contacts with the aim or effect to influence the conduct of an actual competitor or to disclose to such a competitor the own contemplated course of conduct.

The Competition Council used as indirect evidence besides the notes and e-mails found at the premises of the undertakings the fact that the price increase involved more than 30 price data creating fairly similar prices, and where no increase was observable prices were already on the highest levels. Without collusion this similarity was in no way economically reasonable given on the different costs of the particular operators.

The decision

The Competition Council established that the undertakings infringed the Competition Act by unlawfully co-ordinating on cinema entry prices; therefore it imposed fines amounting from HUF 37 million to HUF 83 million, in total HUF 203 million. In fixing the fines the Competition Council took into account the following arguments.

Price-fixing is one of the most serious anticompetitive behaviours, even if on this market price competition is not the most important. Cinema services are regarded by the Competition Council as not satisfying basic consumer needs, on the other hand consumers couldn't do anything against the infringement. The Competition Council considered as aggravating the fact that participants covered over 95 per cent of the market.

Judgement of the Court of Appeal of Budapest of 26 April 2006

The Court of Appeal of Budapest established in its judgement of 26 April 2006, that the undertakings Budapest Film Kft., Intercom Rt., Ster Century Magyarország Kft. and UCICE Kft., which ran multiplex cinemas in the shopping centres Mammut, Eurocenter, Lurdy Ház, Duna Plaza, Campona, Westend and MOM Park Budapest, infringed the provisions on the prohibition of agreements restricting economic competition of the Hungarian Competition Act by raising their cinema ticket prices to exactly the same extent on 25 April 2002. The judgement of the Court of Appeal of Budapest is final. By this judgement the Court of Appeal of Budapest confirmed the judgement of the Municipal Court of Budapest, which rejected the appeal of the above undertakings against the Hungarian Competition Authority's decision establishing the unlawfulness of the undertakings' behaviour. The Hungarian Competition Authority, in its decision of 17 November 2002, obliged the undertakings to pay the following fines: Budapest Film: HUF 37 million (approx. EUR 142000); Intercom: HUF 83 million (approx. EUR 320000); Ster Century Magyarország and UCICE jointly: 83 million (approx. EUR 320000). None of the four undertakings have paid the fine yet.

The basis of the case was a competition supervision proceeding of the Hungarian Competition Authority (hereinafter: GVH). The aim of the competition supervision proceedings, conducted earlier by the GVH, was to find out whether the increase to a similar increase in the cinema ticket prices made by the undertakings Budapest Film, Intercom, Ster Century Magyarország and UCICE, running cinemas in shopping centres in Budapest (Mammut, Eurocenter, Lurdy Ház, Duna Plaza, Campona, Westend and MOM Park), on 25th April 2002 had been the result of a concerted practice seriously prohibited by the Hungarian Competition Law.

The GVH had to decide whether the undertakings' behaviour in question was only due to external economic circumstances on the market only or it was the result of a concerted practice of Budapest Film, Intercom, Ster Century and UCICE.

It was among the evidences that a series of the undertakings' data was found to be identical or similar. Also, the undertakings normally performed a price-taking behaviour, meaning that they used the higher prices set by other competitors on the market after at least one week passed. Furthermore, there were competitors on the market which did not raise their prices on 25 April 2002. The fact that the representatives of Budapest Film and Intercom had two phone talks about the possibility of raising prices was also of evidential importance. Their aim could also be established from their statements and other written proofs as.

The GVH did not accept the undertakings' evidences and arguments as to external economic impacts of the price increase of their cinema tickets, since such an uniformity in price increase could not have been caused by factors other than concertation.

Based on the above, the GVH imposed the following fines on the undertakings: Budapest Film: HUF 37 million (approx. EUR 142000); Intercom: HUF 83 million (approx. EUR 320000); Ster Century Magyarország and UCICE Kft. jointly and severally: HUF 83 million (approx. EUR 320000). When imposing the fine the GVH considered the amount of money the cinemas earned as a result of their cinema ticket price increase. Moreover, it was an aggravating circumstance that the undertakings blocked, in most of the cinemas in Budapest, price competition between them for about one month – it should be added that the four undertakings' market share was 95% in 2002.

All of the four undertakings made an appeal at the Municipal Court of Budapest against the decision of the GVH. However, the Municipal Court of Budapest, acting as a court of first instance, rejected their claims. On further appeal, the Court of Appeal of Budapest held that their action against the decision of the Municipal Court was unfounded and declared the judgement of the court of first instance to be correct. This ultimately meant that the GVH's assessment of the infringement committed by the four undertakings, Budapest Film, Intercom, Ster Century Magyarország and UCICE, was held to be correct.