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No competition concerns related to Tesco price comparison ads

The message of Tesco's price comparison advertisements is that there are and there will always be some cheaper products in Tesco supermarkets than in those of Interspar – established the Hungarian Competition Authority (GVH). By this reasoning the GVH terminated the proceeding against Tesco without establishing the infringement.

At the end of October 2008 the GVH initiated a competition supervision proceeding against Tesco-Global Áruházak Zrt (hereinafter referred to as Tesco). In its weekly nationwide promotion leaflets, the daily paper Blikk and advertisements displayed on the shelves of the supermarkets, Tesco compared its prices, with respect to some varying products chosen by Tesco, with the retail prices applied for the same products by Interspar supermarkets run by Spar Magyarország Kereskedelmi Kft.

The GVH begins its reasoning by saying that comparative advertising is a useful information source for consumers. It effectively contributes to the revival of price competition, hereby making prices favourable for consumers. However for achieving this, comparative advertisements have to be elaborated and published in a very careful way. The said applies for price comparison advertising to an even greater extent.

The GVH started its investigation from the fact that the compared prices were real in the course of the mystery shopping. The fact itself that the compared prices are real at the time of comparison does not make price comparison necessarily lawful. Price comparisons that are not durative, but contain prices that have been decreased shortly before the comparisons for convincing consumers, may be qualified as deceiving. Although the price comparison may formally be valid at the time of the comparison, it does not give a real picture for consumers as it was based on artificial price distortion.

In the course of the investigation, the GVH only observed in the case of five products that Tesco had changed prices within three weeks before the mystery shopping. Four out of the five were changed again within one week after the mystery shopping. The price compared during the mystery shopping did not prevail for more than a month in the case of four products.

The GVH analysed the changes in prices following the price comparison. The GVH did not take into account the price decreases applied by Tesco, since these changes did not affect consumers adversely. Only those increases in price were examined that were applied as a result of the decision of Tesco during the validity period of its promotion leaflets. The GVH does not have information about the exact circumstances that justified these changes in price. Tesco argued that fierce market competition indicated the price changes, however the

GVH could not accept this since “changes in prices as a result of market price competition” would have resulted in a decrease in price.

However, the GVH did not analyse the circumstances in details for several reasons. First, the completion of the statement of facts would take a lot of time and cost a lot of money. Second, in the course of the investigation of the GVH, between Spar and Tesco there was a civil lawsuit in progress, within the framework of which the incidental (injury of the competitor) encroachment on the competitor’s rights could have been remedied. Third, price comparison is also available for the competitor concerned by the comparison, that is to say the information can also reach consumers with the help of market tools. According to the GVH, the protection of adequately deliberate consumers does not justify that the fact finding procedure mentioned, which takes a long time and costs a lot, should be financed from public funds, simultaneously with the civil lawsuit in progress concerning a lot of details.

According to the GVH, the practice investigated cannot be merely deemed comparative advertising. This price comparison is part of an overall advertising, which contains slogans and price comparisons at the same time. These two parts of the advertisement are not separated from each other for the consumer either. For instance the advertisement published in Blikk has two parts: the content of the right side with the discounts does not belong to the comparison, but the slogans emphasized in the advertisements – “Low prices every day”, “We help you to economise every day” and “Save at Tesco” – can be linked to price comparison as for their place and content too.

The GVH claims that when analysing the messages of the advertisements, the general impression of the advertisements has to be considered, not only a part of it, e.g. price comparison. The advertiser calls the attention of the readers to the most important parts by manipulating them with the size of the letters and vivid colours. In both advertisement types, the colours and the bigger letters highlight the slogans, among others the text “Save at Tesco” – as a result of price comparison – and its aggregate amount written with the biggest size. This can be considered the main message while the price comparison is given with smaller letters and thus has less importance in the message, it is actually indicated in support of the main message. Within the price comparison the information that the labelled prices refer to an earlier determined time is given with the smallest letters.

Based on all the above mentioned, according to the GVH, the message of the advertisements regularly published for certain consumers is that in Tesco there are and there will always be some products cheaper than in Interspar. Hereby the GVH terminated the proceeding with its order against Tesco for price comparison.