



GAZDASÁGI
VERSENYHIVATAL

No investigation in the case of the waterworks concentration

Since it is not considered to be a concentration if the North Hungarian Regional Waterworks takes over the asset management of Danube Regional Waterworks and Tisza Regional Waterworks from the Hungarian state, the Hungarian Competition Authority (GVH) does not investigate the effects of the concentration on market competition.

The North Hungarian Regional Waterworks Ltd. (Észak-magyarországi Regionális Vízművek Zrt., hereinafter ÉRV Zrt.) operates both state-owned and municipal-owned drinking and waste water utilities in Heves, Nógrád and Borsod-Abaúj-Zemplén counties, the Danube Regional Waterworks Co. (Duna Menti Regionális Vízmű Zrt., DMRV Zrt.) in Pest, Nógrád and Komárom-Esztergom counties, the Tisza Regional Waterworks Co. (Tiszamenti Regionális Vízművek Zrt., TRV Zrt.) in Szabolcs-Szatmár-Bereg, Hajdú-Bihar, Jász-Nagykun-Szolnok, Heves and Csongrád counties. 100% owner of the shares of ÉRV Zrt and TRV Zrt. is the Hungarian State itself. The shares of DMRV Zrt are 90,1% state-owned; 6,5% are owned by the employees and 3,4% of the shares are owned by DMRV Zrt. itself.

As defined by the State Assets Act, entering into force on 1 January 2008, the exercise of the ownership rights of the Hungarian State is delegated to one single management body, the National Asset Management Council (Nemzeti Vagyongazdálkodási Tanács, NVT), commencing its operation the same day, whose tasks are managed by the Hungarian State Holding Company (Magyar Nemzeti Vagyonkezelő Zrt., MNV Zrt.). Pursuant to the Act, the MNV Zrt. manages state assets by itself, or it may let others manage state assets based on a contract.

At the beginning of April 2009, the NVT consented to assign the asset management tasks of the state-owned shares of DMRV Zrt. and TRV Zrt. to ÉRV Zrt. According to the decision instead of the NVT, ÉRV Zrt. is entitled to exercise the ownership rights of the shares of DMRV Zrt. and TRV Zrt.

Before the decision was made by the NVT, the ownership rights of the state assets had been directly exercised by MNV Zrt. in the case of all the three state-owned companies concerned. After the transaction, MNV Zrt. will continue to directly exercise its ownership rights over ÉRV Zrt., however in the case of DMRV Zrt. and TRV Zrt., it will only have an indirect right (through ÉRV Zrt).

At the end of April this year the ÉRV Zrt. submitted an application for authorization of the concentration at the GVH. In the course of the proceeding the GVH has had to clarify whether a concentration is created by the transaction. On the basis of the Competition Act, a concentration of undertakings is effected, where a sole undertaking or more than one undertaking jointly acquire direct or indirect control of the whole or parts of one or more than one undertaking which have been independent of them. Direct control is exercised by an

undertaking or more than one undertaking jointly if they are entitled by contracts to exercise decisive influence on the decisions of another undertaking (or a group of undertakings).

According to the Competition Act, an undertaking (or group of undertakings) acquires control over another undertaking (or group of undertakings) if the undertaking is capable of asserting influence over the decisions of the other undertaking relating to its market practices. In the present case these decisions are delegated to ÉRV Zrt. (thus first of all the approval of the annual and mid-term planning of DMRV Zrt. and TRV Zrt.). The approval of MNV Zrt. is only required when the decisions made have no direct impact on market processes. Based on all the above mentioned, according to the standpoint of the GVH, ÉRV acquires direct control over DMRV Zrt. and TRV Zrt.

However, based on the Competition Act, acquiring direct control is only qualified as concentration when an undertaking acquires control over another undertaking which is independent of it. Therefore, the GVH has had to clarify whether the undertakings concerned are independent of each other. The three water utility undertakings are in majority state ownership, however, according to the Competition Act, undertakings that are in majority state or municipality ownership and with autonomous decision-making powers in determining their market conduct have to be deemed to be independent of each other.

Regarding the right to make independent decisions, the practice of international competition law is based on the presumption that an undertaking that is 100% owned by another undertaking has no right to decide independently of the owner. This principle is also considered normative by the GVH. Among the undertakings concerned, ÉRV Zrt. and TRV Zrt. are both 100% state-owned, and the GVH has not found any circumstances on the basis of which their right to make independent decisions could be established. Though in the case of DMRV Zrt. the proportion of state-owned shares is less than 100% (90,1%), according to the GVH, the State, as the owner does not ensure more independence for DMRV Zrt. than for the other two undertakings having the same field of interest.

Considering all the above mentioned and taking into account that the ÉRV Zrt. acquiring control and DMRV Zrt. and TRV Zrt. controlled by the former undertaking used to belong all to the same state control (through NVT-MNV Zrt.), the three undertakings are not qualified as independent of each other. Therefore, the GVH established in its decision that no concentration is effected by the transaction under investigation.