

Restrictive agreements on the book market

The Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) determined that Pécsi Direkt Kereskedelmi és Szolgáltató Kft., Lira Könyv Zrt., Libri Könyvkereskedelmi Kft, and Sun Books Könyvkereskedelmi Kft (“f.a.” – being liquidated), which are book retailers, had concluded restrictive agreements with book publishers. As a result of it, the GVH imposed a fine of 70 million HUF (approx. 233 thousand EUR).

In its proceeding the GVH investigated the terms and conditions set out in the distribution agreements, i.e. commission and sale contracts between book retailers and publishers. According to the GVH it was objectionable that Lira and Sun Books, Pécsi Direkt and Libri had all entered into contracts (mostly in the form of commission contracts) where the distributors (as commissioners) agreed to follow the retail prices which were set by the publishers (as principals) for both wholesale and retail sales. The GVH established that the setting of the retail prices by the distributors amounted to anti-competitive behaviour which deprived the retailers of the freedom of determining the prices. While the setting of the prices by publishers has been a common practice for decades, originating from the commission-form sale, the GVH found that the relationship between the above mentioned decisive retailers and publishers had recently changed. In the investigated time period their relationship was not to be considered as a genuine agency agreement in the competition law sense. The clauses objected to, however, led to the prices determined by the publishers becoming fixed, therefore excluding one of the most important factors of competition: price competition. Consequently, consumers did not benefit from its effects through lower prices.

According to the clauses contained in several of the contracts the publisher also undertook to not set lower prices for the competitors of the distributor. According to the most favoured client principle, the seller (the publisher) is bound to offer the purchaser (the distributor) the most favourable conditions on the market, i.e. the biggest discount. Pursuant to the clause the publisher must not provide more favourable conditions for other distributors than the ones set out in the contract, or if it does, it has to provide those conditions for the given retailer as well, otherwise sanctions take effect. Some of the investigated contracts also restricted the temporal forming of the prices, both in the period between the publication and the delivery of the books to the retailers, and during a specific time period at the end of the year.

In its investigation the GVH established that in their contracts with the publishers the book retailers had concluded restrictive agreements regarding the setting of the retail prices, the price-setting of the competitors and the altering of consumer prices over time. Since the provisions strengthened the effects of each other, they were particularly able to restrict book-retail competition.

As a result of the infringement the GVH fined Pécsi Direkt Kereskedelmi és Szolgáltató Kft. 40 million HUF, Lira Könyv Zrt. and Sun Books Könyvkereskedelmi Kft. jointly 15 million HUF

and Libri Könyvkereskedelmi Kft. 15 million HUF. The GVH terminated its proceeding against the smaller book retailers and publishers because it found that through modifying the contracts of the determinative retailers the restriction of competition could be adequately eliminated.