

MISLEADING COMMERCIAL PRACTICE RESULTED IN A FINE BEING IMPOSED ON AUCHAN

The Competition Council of the Hungarian Competition Authority (hereinafter Gazdasági Versenyhivatal – GVH) established in its resolution, issued on 2 August 2012, that Auchan had pursued unfair trade practices in the form of misleading commercials concerning its advertised goods between 6 August 2010 and 12 August 2010 in its printed, digital, billboard and shopping centre ads. As a result of the violation of the provisions of Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers, the Competition Council imposed a fine of 10 million HUF (approx 35.842 EUR) on the undertaking.

In the competition supervision proceeding the Competition Council concluded that the trade practice of Auchan was unfair for the following reasons:

Between 6 August 2010 and 12 August 2010 the undertaking advertised 74 goods in its printed leaflets and digital ads on the internet, on the coffee “Omnia” on its 350 billboard ads throughout the country as if they were exclusively Hungarian goods. There were also ads placed in shopping centres which indicated where the promoted goods could be found within the shopping centres. The commercial practice of the undertaking involved the use of Hungarian folk patterns, red and green coloured markings and the slogan “Auchan Hungarikum”.

The investigation evaluated the commercial practice of the undertaking and concluded that the patterns, the markings and the slogan gave consumers the impression that the advertised goods were all Hungarian products.

At the time of the initiation of the proceeding there was no clear and precise legal definition of the term *Hungarikum* and the Competition Council therefore relied on its consistent practice¹ and the non-binding communication of the Ministry of Agriculture concerning an earlier conducted survey² in order to determine what could be considered as a Hungarian product or *Hungarikum* by consumers.

Accordingly, consumers assumed that a good was Hungarian if it was produced in Hungary or if the food-product was manufactured using Hungarian ingredients. Out of the 74 advertised goods, the undertaking declared that 33 were either produced in Hungary or manufactured using Hungarian ingredients, that 3 were not Hungarian, but did not clarify the nature of the remaining 38 goods.

¹ Competition Council Resolution No. VJ-88/2010., Competition Council Resolution No. VJ-8/2011., Competition Council Resolution No. VJ-21/2011.

² FOODAPEST exhibition from 21 until 24 February 2010 Survey conducted among visitors

The Competition Council also took into account existing jurisprudence on consumers'³ behaviour related to Hungarian products and cited that consumers were indeed conscious in their market decisions about the Hungarian origin of products. A considerable proportion of consumers were likely to be influenced by the promotion of the Hungarian nature of the goods. These consumers specifically chose Hungarian products and especially Hungarian food-products after considering the quality of the goods, food-safety priorities and the fact that by doing so they would be supporting the Hungarian economy. Contrary to the argumentation of the undertaking, the Competition Council found that even if a given item was more expensive but promoted as Hungarian, the consumers tended to choose it because of the above detailed concerns for quality, safety and support.

By using Hungarian folk patterns, the red and green colours from the national tricolor and the slogan "Auchan Hungarikum" for the advertised goods that fell under the scope of the investigation, the commercial practice of the undertaking gave them the semblance of Hungarian products. In the Competition Council's opinion it was obvious that the aim of the practice was to promote the goods as Hungarian products.

The investigation also established that a large number of the advertised goods did not qualify as Hungarian goods in terms of what the consumers generally held as Hungarian products or the undertaking failed to prove their Hungarian nature in the proceeding.

Among those who were sensitive to the Hungarian nature of the goods, the commercial practice of the undertaking was capable of hindering the ability of consumers to make informed decisions and was also capable of persuading them to purchase the advertised goods. The main aim of the message of the advertisement was to promote goods as if they were Hungarian products and it was therefore capable of misleading consumers.

The Competition Council of the GVH therefore found that the undertaking had conducted a misleading commercial practice and imposed a fine of 10 million HUF (approx. 35.842 EUR) on Auchan for its unfair trade practices. When determining the amount of the fine, the Competition Council considered the known costs of the commercial practice.

Budapest, 2 August 2012

Hungarian Competition Authority

³ Metropolitan Court of Budapest decision No. 3.K.33882/2011/5. on the Competition Council Resolution No. Vj-88/2010.