Exclusive beer supply agreements of Heineken, Dreher and Borsodi

In June 2011 the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) initiated proceedings against Heineken Hungária Sörgyárak Zrt. (Heineken), Dreher Sörgyárak Zrt. (Dreher), Borsodi Sörgyár Kft. (Borsodi) and Pécsi Sörfőzde Zrt. (Pécsi Sörfőzde) for their respective exclusive agreements with operators of restaurants, pubs and similar establishments.

Beer is sold through two main channels to customers: on-trade and off-trade. "On-trade" refers to business with hotels, restaurants and catering / cafes (HoReCa), "off-trade" refers to sales to food retailers such as supermarkets, etc. The investigation focused on the on-trade exclusive beer supply agreements (HoReCa-agreements) which tied all or a proportion of the beer purchased by a HoReCa unit to a single beer brewing company. By these agreements HoReCa undertakings obtained supplies of beer products from only one supplier in return for certain economic and financial benefits.

The role of imports and of independent wholesalers on the on-trade market is limited in comparison to their role on the off-trade market.

Carlsberg entered the market through imports and with special brand selections. Since then no other company has successfully entered the market or gained a significant market share.

New phenomenon is the appearance of small special breweries but partially because of the exclusive beer supply agreements (HoReCa-agreements) they have not been able to gain a significant share of the market.

The undertakings under investigation apply similar types of HoReCa contracts in order to secure their market shares on the on-trade market. These contracts all have the similar effect on competition of preventing new companies from gaining access to a sufficient number of HoReCa units, which is necessary to enter the Hungarian HoReCa market. The foreclosure effects are measured by a series of competition indicators, such as the existence of networks of similar agreements, the number of outlets tied by these agreements, the duration of the exclusivity clauses, the quantities of beer related to these agreements, the total market shares attached to the parties, and the share of the tied beer consumption which is closed from the competition by these agreements.

The GVH found that through exclusive contracts Heineken, Borsodi, Dreher and Pécsi Sörfőzde taken together took up 43.5-44.3% of the sales of beer consumed on premises in Hungary. Moreover, (along with Carlsberg) the five largest market players accounted for 82-95% of the total sales made in the so called HoReCa (Hotels, Restaurants and Catering/Cafes) market in the period investigated. As a consequence of the exclusivity clauses, neither imports nor small breweries were able to gain market shares vis-á-vis the large beer companies.

On the basis of the commitments offered by the undertakings the GVH has imposed an obligation on Heineken, Borsodi and Dreher to decrease the amount of beer sold to single outlets under exclusivity terms (i.e. hindering the products of other breweries) in two steps by almost 20% in total by the end of 2017.

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As a result of the decreases pursuant to the commitments, the market shares foreclosed from competition will decrease by about 4% in the case of Heineken and about 5% each in the case of Borsodi and Dreher by the end of 2017. This means that the market share foreclosed through the simultaneous ties will fall from 43-44% to about 30% in total, thereby increasing the chances that alternative beer companies (including small breweries) will enter the Hungarian market. Due to its small market share Pécsi Sörfőzde did not contribute to an appreciable extent to the cumulative effects of parallel networks; therefore based on the provisions on minor importance the GVH terminated the proceeding against Pécsi Sörfőzde.

After analysing the contents of the commitment application, the GVH established that by accepting the commitments the cumulative market foreclosure effect having triggered the competition concerns will cease and the smaller market players will have greater chances to put competitive pressure on the larger beer companies; the risk of repetition of the perceived competition problem will likely decrease and having regard to the mechanism for certification of their fulfilment the commitments meet the requirement of verifiability.