

Subject: Vj-8/2012; BankAdat case (excerpt)

Executive summary

Between 9 June 2000 and 2 December 2012, the Magyar Bankszövetség (Hungarian Banking Association, hereinafter: Bankszövetség) operated the so-called BankAdat database in a way that was likely to restrict economic competition when it made it possible for the members of the database to exchange data that was confidential, strategic and which could not be obtained from other sources or which could only be obtained with a substantial delay from analysing market processes. The Nemzetközi Bankárképző Központ Zrt. (International Training Centre for Bankers Ltd., hereinafter: Bankárképző) collaborated in the operation of the database.

On 11th April 2012, the Gazdasági Versenyhivatal (GVH – the Hungarian Competition Authority) launched an investigation against Bankszövetség, Bankárképző and 38 banks due to the operation of the BankAdat database. From the data contained in the BankAdat database that were subject to the information exchange, the market strategies, future behaviour, and promotion plans of the parties potentially became foreseeable to each other. From the standpoint of the GVH, the information exchanged might have influenced the parties' market behaviour from 2000 until it was no longer in operation. As the first formal step in the procedure, the GVH held an unannounced inspection on the premises of the abovementioned Bankárképző.

The GVH investigated the case in the context of both the initial market conditions, and how the information exchange might have resulted in changes to those conditions, taking into account the specific characteristics of the BankAdat database including its purpose, conditions of access to the system and conditions of participation in the system, the frequency of the information exchanges, the type of information exchanged and the importance of the information.

Relevant market

The relevant product market was identified by the proceeding Competition Council as the market of financial services. There was no need for a narrower market definition, as the elements of the BankAdat database had direct or indirect effects on all sub-categories of the financial market.

The relevant geographic market is the whole territory of Hungary.

Undertakings involved

- Magyar Bankszövetség
- Nemzetközi Bankárképző Központ Zrt.
- AXA Bank Europe SA Magyarországi Fióktelepe,
- Magnetissimo Pénzügyi Zrt. „v.a.”,
- Banif Plus Bank Zrt.,
- BNP Paribas Magyarországi Fióktelepe,
- Budapest Hitel- és Fejlesztési Bank Zrt.,
- CIB Bank Zrt.,
- Citibank Europe plc Magyarországi Fióktelepe,
- Commerzbank Zrt.,
- QUAESTOR Bank Zrt.-t,
- Crédit Agricole Corporate and Investment Bank SA,
- Deutsche Bank AG Magyarországi Fióktelepe,
- Erste Bank Hungary Zrt.,
- Erste Lakástakarék Zrt.,
- FHB Jelzálogbank Nyrt.,
- FHB Kereskedelmi Bank Zrt.,
- Fundamenta-Lakáskassza Zrt.,
- Gránit Bank Zrt.,
- ING Bank N.V. Magyarországi Fióktelepe,
- KDB Bank Európa Zrt.,
- Kereskedelmi és Hitelbank Zrt.,
- Magyar Cetelem Bank Zrt.,
- Magyar Takarékszövetkezeti Bank Zrt.,
- Merkantil Váltó és Vagyonbefektető Bank Zrt.,
- MKB Bank Zrt.,
- OTP Bank Nyrt.,
- OTP Jelzálogbank Zrt.,
- OTP Lakástakarékpénztár Zrt.,
- Porsche Bank Hungaria Zrt.,
- Raiffeisen Bank Zrt.,
- Sberbank Magyarország Zrt.,
- SOPRON BANK BURGENLAND Zrt.,

- UniCredit Bank Hungary Zrt.,
- UniCredit Jelzálogbank Zrt.

Facts

Market behaviour of the undertakings involved

In 2000, Bankszövetség and Bankárképző brought about an agreement concerning the actuation of the BankAdat database into which the participating 38 banks sent, on a quarterly basis, approximately 2000 strategic pieces of confidential, present and immediate past, individualised, non-public datum. The data contained in the BankAdat database were both individually and aggregately recognisable by the participant banks between 2000 and 2012.

Background on the information exchange system

Even before the establishment of the BankAdat database, there had existed an information system between banks, the so-called Bankközi Információs Rendszer (BIR – Inter-Bank Information System), which was aimed at determining the level of risk faced by partners when the banks dealt with each other. The BIR, however, consisted of significantly less information than the BankAdat database. This system had been in operation since 1993, with the participating banks providing each other with quarterly information. Supported by an adequate IT background, the aim of the BankAdat database was to improve the existing system and increase efficiency.

The first steps concerning the establishment of the BankAdat database were taken in June 2000. The database was meant to contain aggregate sectoral and segment information on retail and corporate markets beside the publicly accessible data, to help market positioning. During the summer of 2000, on several occasions co-ordination took place, led by Bankszövetség, which aimed at the creation of a system that gathered easily accessible and reliable information on the market and market processes. The final concept of the system stipulated that access to the database could only be obtained via the entry of a unique password for each of the participating banks and that the data had to be voluntarily given; however, the banks could only access the types of information that they had also provided about themselves. The BankAdat database began its operation in November 2000.

The first important modification to the system took place in 2004, when the banks undertook to provide their balance sheets and income statements once a year in a way that corresponded to the International Accounting Standard. The next significant step was taken in February 2007, when Bankárképző proposed a thorough review and amendment of the BankAdat database, which eventually resulted in additional types of data being introduced in the system. A working group consisting of experts from several participating banks was also established, with the aim of further developing the database. From 2009 the supervisory entities (the Hungarian National Bank – MNB,

and the former Hungarian Financial Supervisory Authority – PSZÁF) were also contributing to the database by sending aggregated data to the BankAdat database.

In December 2012 – in response to the on-going competition supervision proceeding initiated by the GVH – Bankárképző and Bankszövetség modified their agreements between each other and those with the participating banks in a way that the other participants could no longer access the data submitted by an individual bank. The undertakings involved expressed their wish to co-operate with the competition supervision proceeding, while maintaining the operation of the BankAdat database, which they deemed necessary for financial stability.

However, on 30 December 2013 Bankárképző terminated the database, claiming that its structure was no longer sustainable.

Principles behind the functioning of the BankAdat database

The basic principle behind the BankAdat database was the voluntary submission and reciprocity of data (as in the participating banks could only access the types of data which they had also provided about themselves). The quarterly data submission requirement stemmed from the fact that banks are obliged by legal provisions to rate their partners quarterly. The deadline for submitting data to the BankAdat database was two days after the deadline for submitting their rating data to the supervisory entities.

Each bank received a master user profile and password, with which the rest of the users of that bank could be managed. The requested data from the database was sent to the e-mail addresses of the requesting users in an encrypted form, which resulted in an Excel file after decryption by the individual bank. The handling of the data and the operating of the system was the task of Bankárképző, with special regard to data protection and confidential handling.

The data rows of the BankAdat database constantly increased between 2000 and 2013; however, their exact nature qualifies as a business secret and thus may not be detailed.

Legal assessment

Effects on trade between Member States

The investigated behaviour covered the whole territory of Hungary.

The parties to the proceedings are mostly Hungarian subsidiaries of international banks. However, the parent companies are significant market players at EU level, and the subsidiaries have a continual reporting obligation to them.

Based on the relevant turnovers and market shares of the undertakings concerned, it was likely that their behaviour might have had an appreciable effect on trade between Member States.

Consequently, the GVH found that Article 101 TFEU could be applied for the 2004-2013 period of the investigation. For the 2000-2004 period, only the provisions of the Hungarian Competition Act could be applied, as Hungary joined the EU in 2004.

Legal analysis

The proceeding Competition Council analysed the case and the behaviour of the undertakings in accordance with the relevant Hungarian case-law and those of the European Commission and the Court of Justice of the European Union, and in line with the Commission's Horizontal Guidelines.

The findings of the analysis, inter alia, are the following:

- The proceeding Competition Council found that contrary to the previously (before 2000) existing BIR, which consisted of bilateral information exchange between banks with the sole aim of facilitating interbank lending, the BankAdat database was aimed at having a far greater role and the exchange of a much wider range of information, including business secrets. This is explicitly stated in the preliminary concept of the BankAdat database.
- The data available for the participating banks was up-to-date and available to the other banks the day after its submission to the system. The proceeding Competition Council stressed that this data was then used to facilitate strategic business planning and product development. This led to the stabilisation of the market, on which the banks participating in the information exchange and contributing to BankAdat have a strongly oligopolistic position, jointly having approximately 80% market share.
- The structure of the database was the result of continuous development according to the needs and suggestions of the participating banks.
- The database provided access to detailed and unique data which was not – or only with a significant delay, deduced from market aspects – accessible publicly. The Competition Council found that the incidental efficiency benefits of the information exchange or the reasoning for the need to use such detailed information for benchmarking purposes are not justifiable based on the evidence.
- The in-depth detail of the exchanged information, the supply-side restrictiveness of the behaviour, the excessive time it lasted, and also the market shares of the banks, excluded the possibility of individual exemption in the case of all participants.
- Bankárképző and Bankszövetség (along with several of its members) offered to undertake commitments, but after a thorough analysis, the Competition Council found those commitments insufficient and consequently rejected them.

Taking everything into consideration, the competition council found that the investigated behaviour was potentially capable of having restrictive effects on

competition within the meaning of Article 101 (1) since it potentially had an appreciable adverse impact on competition through the horizontal information exchange, especially with regard to the nature of the individually querable types of information. The evidence accurately and consistently corroborated the infringement of the parties under investigation.

Decision

The GVH has found that there was an infringement of Article 101 (1) TFEU and Article 11(1) of the Hungarian Competition Act because the agreement and concerted practice of the undertakings involved and the operation of the information exchange system had as its effect the prevention, restriction or distortion of competition.

It has been found that the infringement lasted from June 2000 to December 2012.

The proceeding competition council has imposed a fine of

- 4,000,000,000 HUF (approximately 13 million EUR) on Magyar Bankszövetség and its members and
- 15,000,000. HUF (approximately 50,000 EUR) on Nemzetközi Bankárképző Központ Zrt.