

The GVH imposed fines for pharma cartel

The Hungarian Competition Authority (GVH) established in its decision that three pharmaceutical wholesalers, with the active collaboration of two consultant companies, had committed an infringement. The wholesalers influenced the medicine public procurement by harmonising their prices prior to the submission of their offers and shared the market among one another. The GVH imposed a total fine of almost HUF 2.5 billion (EUR 8 million) for the infringement.

In 10 November 2011, the Budapesti Egészségközpont Zrt. launched an accelerated, restricted public procurement procedure, the subject of which was *“The supply of medicines and solutions for infusions”* for twelve hospitals belonging to the Metropolitan Municipality to the value of HUF 5 billion (EUR 16 million) per year. The public procurer employed PharmAudit Kft. as an external expert, which with the help of Mezadin Piackutató és Marketing-kommunikációs Kft. (Mezadin) organised the infringing collusion between the parties.

The condemned undertakings jointly brought about the modification of the tender by the public procurer in a manner that meant that only EUROMEDIC-PHARMA Gyógyszernagykereskedelmi Zrt. (EUROMEDIC-PHARMA), HUNGAROPHARMA Gyógyszerkereskedelmi Zrt. (HUNGAROPHARMA) and TEVA Gyógyszergyár Zrt. (TEVA) were able to fulfil the conditions; consequently, only these three wholesalers could participate in the public procurement procedure for the framework agreement. The public procurer made the modifications according to the interests of the parties – taking into account the backroom deals of the cartel members – as a result of which other potential candidates, like other pharmaceutical companies were excluded from the tender.

After this, with the coordination of PharmAudit the three wholesalers shared the 919 active ingredients specified in the tender for the twelve metropolitan hospitals among one another in order to become tender winners in the ratio of their intentions.

The GVH established that EUROMEDIC-PHARMA, HUNGAROPHARMA, TEVA, PharmAuditKft. (under winding up) and MEZADIN had committed a single, complex and continuous infringement aiming at and having the effect of the restriction of competition during the above mentioned public procurement procedure when

- they manipulated the procurement notice and
- prior to the submission of their offers they set their respective prices in contemplation of the prices of each other,
- they shared the market among one another.

The imposed fines are:

EUROMEDIC-PHARMA Gyógyszernagykereskedelmi Zrt.	HUF 792,200,000 (EUR 2,530,990)
HUNGAROPHARMA Gyógyszerkereskedelmi Zrt.	HUF 792,200,000 (EUR 2,530,990)
TEVA Gyógyszergyár Zrt.	HUF 792,200,000 (EUR 2,530,990)
MEZADIN Piackutató és Marketing-kommunikációs Kft.	HUF 66,595,000 (EUR 212.764)
PharmAudit Kft. (under winding up)	HUF 12,400 (EUR 40)

The competition supervision proceeding was initiated on 9 April 2013 by an investigative measure without prior notification, a so-called dawn raid, at the registered offices and branches of the undertakings under investigation.

The GVH utilised as evidence documents, testimonies – also testimonies of protected witnesses – that were seized during the dawn raid as well as data on cell towers regarding mobile phones and other records.

Public procurement cartels involving price fixing and market sharing are considered to be the most severe type of competition infringement. The infringement uncovered in the present case is aggravated by the fact that the co-ordinations aiming at the determination of prices and the sharing of the market were successful; in other words, the undertakings did in fact manage to implement the provisions of their agreement.

When setting the amount of each fine, the GVH regarded as the basis of the fine three times the sum of the total value of the winning offer in the public procurement, uniformly in the case of each undertaking under proceeding, as set out in the Fining Notice of the GVH.

The GVH regarded as **mitigating circumstances** that

- due to the specific nature of the framework agreement type public procurement procedure, the affected hospitals were able to continue tendering and
- the winning wholesalers' actual turnover realised in the framework of the tender was in total 400 million HUF less than the value set in the signed framework contract.

The GVH regarded the behaviour of the undertakings under investigation as **severely imputable**. The fines imposed on the collaborating undertakings PharmAudit and MEZADIN were set at the legal maximum level.