

They have gone through the mill – GVH made its decision in the mill-cartel case

The Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) imposed a fine of HUF 2,3 billion (Approx. EUR 8,4 million) to the parties due to their involvement in a “hard-core” cartel. The 16 fined undertakings that are specialized in Hungarian grain processing, committed a persistent and complex infringement between February 2005 and April 2008, which targeted to restrict economic competition on the market concerned. They colluded and agreed on the prices of certain whole-grinds, the alteration of their prices and in addition, they shared the market among themselves with the commitment that they would refrain from entering into each other’s market.

Cartel activity in general, but especially those cartels that aim to agree on prices and market-sharing are regarded as the most serious infringements in competition law, which could harm the purchasers of the concerned products and thus the consumers. The cartel, which was detected by the GVH, affected primarily the market of wheat flour that is reckoned among the basic food industry products in the Hungarian consumption patterns.

When setting the amount of the fine, the GVH took into consideration that several undertakings were recidivists with regard to this serious infringement; furthermore the authority took into account also the special features of the food industry sector and the difficult financial situation of certain undertakings.

Out of the 25 undertakings, which received the preliminary position of the GVH with regard to the infringement of the prohibition of agreements restricting competition, 17 were suspected by the GVH to get participated in the cartel activity. Most of the above-mentioned undertakings (Cerbona Élelmiszeripari és Kereskedelmi Zrt., DIAMANT Kft., Első Pesti Malom- és Sütőipari Zrt., Gyermely Zrt., Hajdúsági Gabonaipari Zrt., Ócsai Malom Kft., Júlia-Malom Élelmiszeripari és Kereskedelmi Kft., Pannonmill Malomipari Zrt., „SIKÉR” Zrt., SZATMÁRI Malom Termelő és Kereskedelmi Kft., ABO MILL Malomipari Zrt., Szécsény-Mill Kft.) cooperated continuously during the infringement (i.e: from February 2005 until April 2008), while 5 undertakings (Cornexi Élelmiszeripari Zrt. f.a., Budai Malomipari Kft., „GA-BO” Élelmiszeripari és Kereskedelmi Kft., LAMEPÉ Agrokémiai Vagyonkezelő és Szolgáltató Kft., MÁRIA-MALOM Malomipari Termékeket Gyártó Kereskedelmi és Szolgáltató Kft.) were found to have participated in the infringement only occasionally by attending certain meetings.

According to the available evidences, the GVH came to the conclusion that in the case of 8 undertakings, the participation in the restrictive agreements could not be proved without doubts, thus the authority terminated its competition supervision proceedings with regard to them.

This particular competition supervision procedure does not lack every competition law precedents. The GVH has already conducted a competition supervision procedure under the case number of Vj-74/2003., in which the authority established in its decision in October 2004 that Magyar Gabonafeldolgozók, Takarmánygyártók és -Kereskedők Szövetsége and 12 competitors (Agrimill-Agrimpex Rt., Agrograin Rt., Budai Malomipari Kft., Cerbona Rt., Cornexi Rt., Diamant International Malom Kft., Első Pesti Malom Rt., Gyermely Rt., Hungaromill Rt., Pannon Gabona Rt., Sikér Kft., Szatmári Malom Kft.) have concluded restrictive agreements. Within the framework of these agreements, the undertakings agreed on the prices of BL-55 flour (i.e. white flour) and they undertook to maintain the “status quo” on the market (i.e. to refrain from entering into each other’s market). The decision made by the GVH in this case was upheld by the Municipal Court and by the Hungarian Supreme Court, too.

As the investigation revealed, despite the above-mentioned decision of the GVH the restrictive practices have not been terminated, but from that time, the organization and the nature of the practices has changed a lot and as a consequence of this, the representatives of the undertakings intended to pursue their activity without any written evidences.

According to the available data, the mills, which were significant market players at national level, played a decisive role in the cartel; the agreement, which was concluded between them, would form the main stream of the restrictive practices under investigation. Generally the most relevant mills, which possess 70-80% of the capacity of the Hungarian mill industry, participated in the national meetings. These undertakings typically own several mills around the country, and considering the location of those mills and the control relations between the undertakings the majority of those undertakings is active in several regions of Hungary.

Besides it turned out that meetings were held not only on the national but also on the regional level with the participation of further representatives of the industry. On these regional meetings next to those significant market players which were present at the national level meetings appeared representatives of smaller mills operating at regional level. (The regional meetings targeted the involvement of smaller mills, in order to convey and reinforce the agreements that have been made at national level. By doing so, the undesirable phenomena that smaller mills “pick” from the market to the detriment of larger mills by applying lower prices could be avoided. According to that, the agreed increase of price was forced to the customers on the whole geographic territory of Hungary). The GVH revealed many meetings on which discussion took place on these subject matters.

The subjects of the collusion were to agree on the prices of whole-grind, flour and bran, the possible increase of the prices and the issues of implementation (method, timing) in relation to them. From time to time an agreement was made on the meetings whether the colluding parties would increase prices of flour products – white flour and other types of flour -, in case of affirmation, what will be the new price and from which time will it be in force. As regards the by-product of whole grounding, namely the bran, the colluding parties primarily informed each other on the amount and the certain price of the distributed products, sometimes also agreed on the prices among themselves.

There were many evidences indicating that mills aimed to maintain “status quo”, thus they refrained from entering into each other’s market, and additionally they undertook

to respect the existing customer relations (namely, which customer belongs to which certain mill). As regards those larger customers that carried key importance, mills forced to comply with the existing “status quo”.

With their conduct the undertakings that usually have diverse leadership structures (i.e. some undertakings have Hungarian private or institutional ownership, some of them is owned by municipalities, while others operate under foreign management) have obviously caused harm to the Hungarian consumers, because due to the price-fixing and the market-sharing there was no effective competition on the market with regard to prices. Therefore the bakeries, which purchase baking products, the food-industry distributors and also the customers could only obtain the products at a higher price.

Beside the infringement of the Hungarian competition law the parties have also breached the competition rules of the EU. By organizing meetings both at national and regional level, the restrictive agreements concerned the whole territory of Hungary, one of the Member States of the European Union. Flour is mainly imported to Hungary from Slovakia, but there are some other neighbouring countries that transport flour to the country. The agreements covered the whole territory of Hungary; furthermore they could have an effect on the movement of goods and the economic activity affecting at least one other EU Member State directly, and thus would be able to have an affect on trade between the Member States.

The GVH has based its decision on the following evidences: documents, which were obtained during the dawn-raids held by the authority, direct written evidences, statements of the witnesses and other declarations. The GVH repeatedly showed in its decision that those undertakings, which have committed serious competition law infringements, will have to count with the authority, which will detect their conduct and consequently impose adequate sanctions on them.

When setting the amount of the fine, the GVH took into consideration that the fine has to comply with the level of the committed infringements and in addition, it has to convey a clear deterrent message. The decision has to make clear that it is absolutely not rewarding for the participating parties and for other undertakings representing other sectors to organize and to maintain cartels. According to the approach applied by the GVH, the decision has to comply with the level of the committed infringement and also with the status of the parties.

When evaluating the amount of the fine, the GVH has paid special attention to the fact that the infringement is regarded – due to its price-fixing and market-sharing attributes – as an especially serious competition law infringement. The undertakings were pursuing their complex and infringing activity in a persistent way, which concerned a long time period and covered the whole territory of Hungary. The GVH paid also attention to the fact that a lot of parties or their predecessors (Cerbona Zrt., DIAMANT Kft., Első Pesti Malom- és Sütőipari Zrt., Gyermely Zrt., Pannonmill Zrt., „SIKÉR” Zrt., SZATMÁRI Malom Termelő és Kereskedelmi Kft., Cornexi Élelmiszeripari Zrt. f.a., Budai Malomipari Kft.) were recidivists because they have already participated in an infringing collusion of the same kind. These kind of infringements are regarded as special recidivism, namely if the undertaking breaches the competition law rules by the same or almost the same kind of infringement several times. According to the GVH, the recidivism and the special recidivism have to be regarded as serious aggravating circumstances. This approach has been

upheld by the courts, which are authorized to review the decisions of the GVH. According to the above-mentioned circumstances, it is not rewarding to the undertakings to get participated in repeated infringements, because in this case the imposed fines may be increased significantly.

When setting the amount of the fine, the GVH also considered the level of intensity and the time period of participation of the parties in the infringement. It was regarded as an aggravating circumstance if some of the undertakings (Pannonmill Zrt.) coerced others to comply with the collusion and also if they were taking a leading role (e.g. arranging meetings) in the organization of the cartel. In contrast to that, it was regarded as a mitigating factor if the undertaking participated in the cartel activity just in a narrow scope and as a “sufferer” of the infringement.

When evaluating the proportionality of the fine, beside the level of the infringement the GVH took into consideration also the special economic situation of the given sector and undertakings, which meant that the financial situation of the undertakings carried relevance. As a consequence of this, the seriously difficult financial situation of some of the undertakings was regarded as a mitigating factor, thus some of the parties received reduction from the imposed fines due to their exceptional, certified special status. Following the above-mentioned reasoning, the GVH provided an opportunity to five undertakings (Cerbona Zrt., Első Pesti Malom- és Sütőipari Zrt., Gyermely Zrt., Hajdúsági Gabonaipari Zrt., ABO MILL Zrt.) to pay their fines in instalments.

The conduct of Júlia-Malom Kft. was regarded as a mitigating factor because the undertaking collaborated with the GVH within the framework of leniency policy, thus the GVH granted it immunity from a fine. Namely, the undertaking provided the GVH with sufficient evidences, which enabled the authority to prove the above-mentioned complex infringement. As this example clearly indicates, the leniency policy that aims the detection of cartel activities functions well, thus those undertakings that collaborate with the GVH can receive immunity from serious fines.

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