

Case number:	Vj-60/2004
Party:	Aréna Üzemeltető Rt., Multimédia Light and Sound Kft. Ticketpro Kft.
Type of case:	agreement restricting competition
Decision:	infringement established
Date:	8 September 2005

VJ-60/2004

Aréna Üzemeltető Rt., Multimédia Light and Sound Kft. and Ticketpro Kft. (agreement restricting competition)

Summary

The Competition Council of the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) has investigated several agreements between Aréna, Multimedia and Ticketpro. The Competition Council came to the conclusion that the exclusivity clause in the agreement between Aréna and Ticketpro as well as the agreement between Aréna and Multimedia, could altogether have a synergic distorting effect on competition. The cross-ownerships between Ticketpro and Multimedia were taken into account.

Undertakings involved

- A. **Aréna** Üzemeltető Rt. received the right from the Hungarian State to be the controlling company of the Budapest Sports Stadium (hereinafter: the Budapest Sports Stadium). Aréna was, at the time of the investigation, an affiliation of the French *Bouygues* group.
- B. **Multimédia** Light and Sound Kft. is a concert promoter and is a member of a Hungarian group of undertakings under majority control of foreign (European) companies.
- C. **Ticketpro** Kft. is a ticket distributor and is a Hungarian affiliation of the Canadian undertaking 2908026 Canada Inc.

Proceedings, applicable law

- A. Proceedings were initiated on 6 April 2004, under Hungarian competition law (Tpvt.).
- B. The legal base of the proceedings was extended to Articles 81 and 82 of the EC Treaty in April 2005. As the infringement had started before Hungary's accession to the European Union (1 May 2004), and continued after this date, both Hungarian competition law and EC competition law, as the effect on inter-state trade was established, had to be applied.

Agreements under investigation

A. The agreement between Aréna and Ticketpro (Agreement A)

According to the agreement between Aréna and Ticketpro, the latter received the exclusive rights to issue and to distribute tickets for the Budapest Sports Stadium for 5 years as well as the right for an optional prolongation of these exclusive rights for an additional 5-year period. The exclusivity clause in the agreement between Aréna and Ticketpro meant in practice that if a concert promoter intended to organise an event in the Budapest Sports Stadium, Aréna could only sign that agreement if it obliged the concert promoter to take the services of Ticketpro.

B. The agreements between Aréna and concert promoters (Agreement B)

The rental fee for the Budapest Sports Stadium is 15% of the net revenue of the event, but there is also a minimum and a maximum amount which has to be paid in case 15% of the net revenue is smaller or larger than that amount. According to the general terms of contract for renting of the Budapest Sports Stadium (*Annex I to Agreement B*) the concert promoter willing to organise an event must take the services of Ticketpro.

According to the general terms of contract for the operation of ticket offices (*Annex II to Agreement B*) the concert promoter may only rent the Budapest Sports Stadium if it takes the services of a ticket agent (Ticketpro) appointed by Aréna.

C. Agreement between Ticketpro and concert promoters (Agreement C)

This agreement stipulates the way tickets are distributed for an event in the Budapest Sports Stadium (e.g. fees to be paid to Ticketpro, advertisement surface reserved exclusively for Ticketpro, as well as the back side of the tickets, etc.).

D. Annual rental agreement between Aréna and Multimedia (Agreement D)

According to this agreement, Multimedia receives special advantages from Aréna (e.g. special treatment concerning payments; after 10 events the 11th event is free of charge; Multimedia receives the title „Aréna’s first partner”, etc.).

The agreement was signed for one year and then it was renewed for another year; it has expired on 1 March 2005. According to the parties the agreement has not been renewed.

The relevant market and the question of whether dominant positions exist

A. The relevant product market

a) Subject of the above agreements are events to be organized in the Budapest Sports Stadium. In order to bring about an event in a certain city or country, the followings are needed:

- a venue for the event
- the organisation of the event (e.g. negotiation with the performer) is carried out by a concert promoter (concert organiser)
- the distribution of tickets for the event (ticketing services)

- b) Resulting from the special features of the Budapest Sports Stadium, events in the present case involve high profile, mostly international, special entertaining events of a great budget attracting a large number of spectators.
- c) Despite the special features of the Budapest Sports Stadium (large and unique complex, with a very modern technology, suitable to host international events, e.g. concerts, shows, etc.) it cannot be stated that the Budapest Sports Stadium is unsubstitutable. The reason for this is that high profile international concerts are also held in other stadiums. That is the reason why the *Stadium cannot be regarded as being in a dominant position*.
- d) However, without defining its exact market share, it may be considered that *Aréna has considerable market power*. There are periods (late autumn, winter, early spring) when the roofing of a venue is indispensable. In such periods only the Budapest Sports Stadium can host 12.000 persons. The SAP Stadium (Budapest) and Főnix (Debrecen), the second and the third largest venues, can host only ca. 6000-7000 persons. In summertime the situation is different as Kisstadion (17.000 persons) and Puskás Ferenc Stadium (28.000-40.000 persons) are also suitable venues for the events mentioned above. However, it can be stated that the Budapest Sports Stadium has indeed considerable advantages (modern technology; it is located in the capital, etc.) which provides Aréna a strong market position.
- e) As far as the substitutability for events from the standpoint of concert promoters is concerned, it is true that it may be possible to switch between the organisation of different types of events. However, it is certain that the events mentioned above require stable financial background and special knowledge, therefore the chance for substitutability is limited.
- f) On the market of concert promoters there are many undertakings but only a few of them (Multimedia Kft.; Showtime Kft.; Concert & Media Kft.; Sziget Kft.) have the necessary financial background as well as the special knowledge to organise big international events attracting a large audience.
- g) Undertakings, which want to be on the market of ticket agents must have an online system of distribution by which they are able to sell tickets at the sites of a countrywide network of sales points and are able to provide the possibility for the consumers to purchase tickets by telephone as well as via the Internet. The main undertakings capable of carrying out these activities are: Ticketpro; Ticket Express; Interticket; Concert & Media; Ticketportal.

B. The relevant geographic market

- a) The Competition Council considers the territory of *Hungary as the relevant geographic market*.
- b) The reason for this is that the performers give concerts usually on a tour going from one country to another. Also, due to travel costs, etc., the cost of a concert for a person attending it from abroad rises considerably. Also, there are other barriers: many people do not have Internet access or a credit card; different currencies; transaction costs. Furthermore, the ticket agents have reported very small amounts (in comparison to the total amounts sold) of tickets to be sold abroad

Legal assessment of the agreements

A. *The agreement between Aréna and Ticketpro and the agreements between Aréna and the concert promoters concerning the exclusive rights of Ticketpro*

The agreements between Aréna and the concert promoters (Agreement B) do not fall under Regulation (EC) No 2790/99 on Vertical Agreements and Concerted Practices as these agreements are rental agreements. Also, the agreement between Aréna and Ticketpro (Agreement A) do not fall under this Regulation because of the high market share of Aréna. Agreements A and B cannot, from the competition point of view, be separated from each other, therefore if one of them did not fall under this Regulation, the other would not do so either.

The fact that there are preferential agreements between venues, concert promoters and ticket agents is not in itself detrimental to competition. The question is whether these agreements, by restricting competition, lead to higher prices for consumers. In Hungary, just like in many other European states, it is a general practice that concert promoters are free to choose among ticket distributors. It may be stated that the concert promoter, by choosing a ticket distributor has direct influence on the price the consumer will pay. Because of the exclusivity clause in the agreement between Aréna and Ticketpro the concert promoter cannot select a ticket distributor as it is obliged to take the services of Ticketpro. Therefore, due to this agreement, competition between ticket agents is eliminated and Ticketpro can simply demand a fee as high as it desires. Hence, the agreement (Aréna – Ticketpro) is capable to restrict competition and to have a foreclosing effect on the market. Also, the establishment of a network of such agreements would lead to the „freezing” of the market where no competition is present.

Security reasons cannot be accepted as a justification for the exclusivity, because international examples show that creating an interconnection between ticket checking systems at the gate of a stadium is considered as a normal practice.

B. *The agreement between Aréna and Multimedia*

As stated above, Aréna provides unjustified advantages for Multimedia in respect of the rental of the Budapest Sports Stadium. The parties could not objectively justify why these advantages are given to Multimedia without any competitive bidding procedure or any other kind of competition.

C. *Additional remarks*

- a) The detrimental effects of the above agreements are shown by the fact that, in the given period, Multimedia was able to organise 27 events whereas its competitors could only hold 5 events in the Budapest Sports Stadium. The Budapest Sports Stadium is a large and unique complex, with a very modern technology, suitable to host international events (e.g. concerts, shows, etc.). Hence, the distortive effects of the agreements on the competitive process were also increased by these circumstances.
- b) It is of utmost importance to highlight the cross-ownerships between the above undertakings (Ticketpro and Multimedia). These relations indicated that the financial, etc. benefits from the agreements were kept within their sphere of interest. Moreover, due to these relations Multimedia was enabled, via Ticketpro,

to have access to sensitive business information of other concert promoters when that concert promoters organised events in the Budapest Sports Stadium.

Change in circumstances and the decision of the Competition Council

- A. On 29 August 2005 the Competition Council was informed by Aréna Üzemeltető Rt. (the undertaking which had the rights to operate Budapest Sports Stadium) that the agreement between the State of Hungary (the owner of Budapest Sports Stadium) and Aréna had been terminated. As a result, all rights and obligations of Aréna related to the operation of Budapest Sports Stadium ceased to exist. The latter meant that, *inter alia*, the agreements between Aréna and Ticketpro as well as between Aréna and Multimedia were also terminated.
- B. The Competition Council held that the agreements altogether **could have a synergic distorting effect on competition**. Having regard to the probably small magnitude of the distorting effect the Competition Council imposed no fine. Also, due to the new circumstances concerning the agreements, as explained above, it was not necessary to order the termination of the infringements or impose obligations on the undertakings involved.