

Case number:	Vj-97/2004
Party:	Hungarian Society for the Protection of Audio-Visual Authors' and Producers' Rights (FilmJus)
Type of case:	Abuse of dominance – tariff setting
Decision:	Termination of proceedings
Date:	12 May 2005

Vj-97/2004
"FilmJus"
(abuse of dominance)

Summary

The Competition Council of the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) started proceedings against FilmJus and investigated whether it abused its dominant position in the setting of royalty. In absence of any violation the proceedings were terminated.

The Facts of the Case

In the case in question the issue was whether FilmJus, the sole society in Hungary for the protection of audio-visual rights of authors and producers, abused its dominant position by setting tariffs for Hungarian films made before 1987

- a) in an unfair manner not taking into consideration of the actual market prices,
- b) that may have hindered the Hungarian films from reaching consumers,
- c) in a manner that discriminated without justification against those obliged to pay royalties.

Nation widely, only one association may be registered for the collective management of copyrights and related rights for motion picture works. The minister appointed by the Government keeps records of the collective rights management organizations in accordance with the Copyright Act.

The right of distribution of Hungarian films made before 1987 are as follows

- films made before 1948 are distributed by the National Film Archive;
- films made by MAFILM-MOVI are distributed by MOKÉP, and
- films made by the Hungarian Television (MTV) are distributed by MTV.

Remuneration shall be paid by either the distributor or the provider (broadcasters and cable television providers etc.) of the film.

FilmJus has entered into contracts, setting the royalties to be paid individually, with one distributor (MOKÉP) in 2001 and with one provider in 1999. The amount of the royalty to be paid by the distributor was set at 15% of the price the distributor charged by films to the providers. The amount of the royalty to be paid by the provider was set on a Forint/minute basis.

Apart of these contracts, FilmJus (in accordance with the relevant legislation) determined the royalties. The amount of royalty was set on a Forint/minute/10,000 program subscriber basis and published in a communication.

A provider called Filmmúzeum entered into contract with MTV. According to the conditions set in the contract Filmmúzeum had the right to broadcast 400 hours of film/year for an amount of royalty set on a US Dollar/hour basis, and a particular film could be broadcasted 12 times at the most. Neither Filmmúzeum nor MTV paid royalties for the use of the copyrighted works, therefore FilmJus has filed a claim in the court.

Competitive Assessment

As by law, nation widely only one association may be registered for the collective management of copyrights and related rights for motion picture works, the Competition Council did not assess the question of dominant position.

At the same time, the Copyright Act does not exclude or prejudice the enforcement of other statutes with regard to royalties and other conditions. Further, the reasoning to the Act explicitly refers to the Competition Act.

Therefore, the Competition Council assessed only the question of royalties.

Ad a) Setting tariffs in an unfair manner

In the practice of the Competition Council, a price is considered to be unfair if it considerably exceeds the return that is proportionate to the justified investment in the given field taking into account the risks thereto.

The Competition Council held that the above calculation could not be interpreted meaningfully in the case of remunerations. Therefore, the method of the tariff setting rather than the amount of the tariffs should be assessed.

In connection to the method, it was stated that the prices were set in accordance with the Copyright Act, so to that respect FilmJus acted aptly. As to the setting of royalties based on the number of subscribers, the Competition Council was of the view that the number of subscribers was proportionate to the income of a provider, therefore the conduct was not in breach of the Competition Act.

Ad b) Hindering the Hungarian films from reaching consumers

The prohibition in the Competition Act to limit production, distribution or technical development to the prejudice of consumers concerns the supply side rather than the demand side behaviour. Therefore no anticompetitive behaviour can be established in this respect.

Ad c) Discriminating without justification

The Competition Council assessed the ratio between the amount of royalty set in the individual contracts and those set [to be set?]in [according to?]the communication of FilmJus. The Competition Council held on the one hand that setting royalties in a different manner for distributors and providers is not discriminatory.

On the other hand, the royalties to be paid for the use of non-MOKÉP distributed films (in case of Filmmúzeum) is about four times as high as the royalty to be paid for the use of

MOKÉP distributed films. However, an infringement can only be established if a trading party has been placed at a competitive disadvantage. As, in this case, the price difference affects all the distributors, the infringement cannot be established.

Decision of the Competition Council

Taking into account all the above, in absence of any violation, the Competition Council terminated the proceedings.

Budapest, 12 May 2005