

The Gastroyal-campaign misled consumers

The Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) imposed a fine of HUF 10 million (approx. EUR 35 thousand) on Larabay Food Vendéglátóipari Kft. Between 15 June 2009 and 26 October 2009 the undertaking misled consumers with its advertisements concerning discount prices of several products published in its weekly menu card and on its website.

Within the time period under investigation Larabay Food Vendéglátóipari Kft. (previously known as Gastroyal Food Vendéglátóipari Kft.), an undertaking that is engaged in food home delivery services, published a campaign in its weekly menu card and on its website offering several products with a discount price. In order to highlight the offered discounts, previously applied prices were marked with black colour and a deletion, while actual prices were emphasized with red colour. Beneficial prices were also underlined with the application of the following expressions: “discount” and “discount prices”.

The investigation of the GVH aimed to clarify whether the products offered by Gastroyal were really more favourably obtainable within the campaign than outside the campaign. One of the typical attributes of the food home delivery market is that consumers usually make their choices by taking into consideration the prices offered by the market players. Therefore, it is essential to provide sound information about the product concerned and if there is a discount attached to the price, advertisement has to be clear in that regard. Thus the promised discount cannot suggest false, non-existing or exaggerated opportunities to obtain savings. As a consequence of the above-mentioned, it is highly exceptionable if consumers have to compare actual prices with prices that were actually not applied by the undertaking previously, or if it is not possible to calculate the factual discounts. Under ideal circumstances, consumers would be informed firstly about the price of the product within the time of the campaign and outside of it, secondly about the measure of the obtainable savings that could be reached within the time of the campaign.

Larabay conveyed a clear message through its weekly menu cards and its website: namely, that the products are offered with favourable prices during the campaign. Therefore, the undertaking was required to give clear information on the offered discounts that would correspond to reality.

According to the GVH, Larabay did not fulfil the above-mentioned requirements in its advertisements. The undertaking attached high and unfavourable prices (served as a basis for the discounted prices) to several products in its advertisements that were actually never applied by the undertaking, and even if those prices were already applied that concerned only a short period. With regard to the so-called summer season foods, the undertaking offered products cheaper before the campaign than the prices that were stated as previous prices during the campaign and thus suggested that the measure of obtainable savings are higher. Concerning the above-mentioned products, the undertaking indicated prices that did

not exist previously thus measure of the discount did not correspond reality. The undertaking applied the same approach by promoting several dietaries for consumers that were offered on cheaper prices before the campaign than it was stated in the advertisements during the campaign. The Súlystop (“weight-stop”), the Kalóriafaló (“calorie-gobbler”), the Méregtelenítő (“detoxicating”) and the Zsírégető (“fatburner”) dietaries were promoted as discounted products since their introduction thus the higher prices attached to them in the menu cards and on the website were never been actually applied. In addition, “Cellstop” dietary was offered on a higher price just for one week before it was regarded as one of the discount dietaries. The undertaking applied higher prices concerning several products without actually selling those products previously.

As a summary it can be stated that consumers were not supplied with clear information about the campaign and the measure of available discounts and in addition, in some cases the obtainable savings indicated by Larabay were proved to be non-existing.

When determining the amount of the fine, besides the goals of prevention, the GVH considered as an aggravating circumstance that the advertisements reached a wide range of consumers, the campaign took place for several months and the undertaking put a special emphasis on the allegation that the products were sold on “discount prices”. The GVH also took into consideration that according to the undertaking under investigation, the infringement was committed on a highly competitive market where new competitors have to pursue an intensive advertising activity. Considering these circumstances, the advertising practice of the undertaking constituted a highly serious threat to competition.