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The Hungarian Competition Authority fined three IT undertakings for participating in a cartel agreement

The Competition Council of the Hungarian Competition Authority (Gazdasági Versenyhivatal - GVH) established in its decision issued on 15 June 2006, that ISH, SAP and IBM, undertakings active in the IT sector, infringed the provisions on the prohibition of agreements restricting economic competition of the Hungarian Competition Act, when they formed a cartel to divide amongst each other certain public procurements announced by five universities. For this serious breach of the Competition Act ISH, SAP and IBM were fined HUF 130 million, HUF 690 million and HUF 690 million respectively.

The Competition Act considers any agreements or concerted practices between undertakings unlawful, which have the object or effect of preventing, restricting or distorting competition on the market.

The Economic and Technological Department of ELTE, Semmelweis University, University of Szeged, University of Pécs and the Centre for Doctor and Health Sciences of the University of Debrecen announced public procurement procedures to upgrade their IT facilities in 2004. The five projects were of different magnitude and were worth a total of HUF 13 billion. At first all the five public procurements were won by the undertakings concerned, however that announced by ELTE had to be repeated again according to the Arbitration Committee for Public Procurement, and was won by another company in the end.

In the competition supervision proceeding, it has been established that ISH, SAP and IBM, which are prominent actors on the Hungarian IT market, concluded a secret 'teaming' cartel agreement in 2004 in order to win all the public procurements announced by universities in that year. The undertakings concerned aligned their behaviour, capable of restricting competition, by

- placing parallel offers to foster their chance of winning,
- influencing collectively the wording of two public procurements' tender invitation,
- discussing methods for driving out other main competitors from the procurement procedures.

According to the GVH, these practices were capable of influencing the competition in the public procurement procedures without having any beneficial effects, which could have led to an individual exemption.

This decision does not mean however, that the legitimacy of the new product produced in the cooperation of the undertakings concerned and owned by the

MedSAPSol, a daughter company of ISH, is called into question. The new device in question might have certain beneficial effects under fair and undistorted competition in the industry concerned. As of now, by the practices referred above, the undertakings sought and attained the aim of restricting competition, which was already weakened by their teaming agreement.

For these unlawful practices the GVH fined ISH HUF 130 million, SAP Magyarország HUF 690 million and IBM Magyarország HUF 690 million respectively.

When calculating the fines for the practices concerned, the GVH paid special attention to the value of the five public procurements, the seriousness and the effects of the infringements and the undertakings' attitude towards the infringements. The relatively small fine imposed on ISH is due to the Hungarian Competition Act, which stipulates that the amount of fine imposed may not exceed 10% of the annual turnover of the undertaking concerned. The difference between the fines imposed demonstrates well that a considerably higher amount of fines might be necessary to deter larger companies from future infringements.

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