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Price fixing on the car navigation tool market

The Hungarian Competition Authority (GVH) imposed a total fine of HUF 103 million on four undertakings producing and distributing car navigation tools. The undertakings concerned fixed the retail prices of their navigation tool products between 2005 and 2006 and threatened with sanctions over the undertakings that applied cheaper prices.

The GVH initiated a proceeding against LCP Systems Kft. in November 2006. According to the GVH, LCP Systems - as the official distributor of Mitac GPS tools and retailer on the domestic market of handheld GPS tools - and retailers and wholesalers interested in the product probably entered into an agreement concerning the retail prices of Mitac products. The GVH suspected that according to the agreement retailers applied the minimal retail prices ”recommended” by LCP with the express aim of avoiding price competition between the undertakings.

Mitac is a Taiwanese undertaking that is interested in the development, production and sale of personal computers, servers and mobile communication tools. Mitac sells navigation tools under its own two brand names: Mio and Navman. LCP is the official distributor of Mitac in Hungary, with a significant share of the Hungarian PDA market. In the course of the investigation other undertakings got in the picture as well as active participants of the agreement restricting competition. One of them was the RRC-group, which is one of the most significant Eastern-European undertakings on the market of distributors interested in network devices and other telecommunication products. The GVH also drew into the investigation the wholesaler Hamex Zrt. and Speedshop Kft. running PDAMánia webshop.

The GVH investigated whether the price agreement and price fixing mechanism between Mitac, LCP and its business partners were eligible to restrict market competition. Among the products of the whole car navigation tool market, the relevant market concerned is

- Navigation computers (PNAs),
- PDAs with integrated GPS (PDA-k),
- smartphones involving pocket PC phones with integrated GPS and telephone PDAs.

The price fixing agreement had several elements:

I. Price cartel between LCP and RRC

LCP and RRC, as wholesalers of QTek cell phones, on 17 July 2006 agreed between each other to harmonise their minimal retail prices: they determined the retail price of QTek-9000 products for resellers. According to the GVH the agreement severely restricts price competition between the two wholesalers as significant market players of the QTek market. However, based on the evidences available, RRC did not comply with the agreed price, it also sold the tools for a cheaper price, thus the agreement did not have significant negative effects on the market. Yet based on the Competition Act even those agreements that have as their object or potential or actual effect the prevention, restriction or distortion of competition, are prohibited. The fact that one of the parties did not comply later with the agreement does not make the agreement invalid.

II. Vertical price harmonisation between Mitac and LCP

In the course of the period investigated, LCP and Mitac did not sign a contract on the distribution of Mio products. However, the e-mails exchanged between them that have been revealed by the GHV unequivocally prove that they agreed between each other on the reseller and end user prices of Mio products. According to the agreement Mitac determined the prices concerned and LCP was charged with their maintenance. The express aim of the agreement was to maximise the market share of Mio products in Hungary and in the surrounding countries. The prices determined by Mitac did not function as recommended, but as fixed prices on the market. Mitac warned its partners on several occasions to follow the prices determined.

The undertaking which was reluctant to keep to the fixed prices, had to face serious sanctions. Mitac also warned its partners that Mio had the right to stop the supply if the partners were unwilling to follow the prices. One of the e-mails of Mitac revealed that Mitac even “punished” the price-breaking distributors by keeping 2 percent of the margin. Mitac and LCP with the above mentioned conduct became parties to an illegal price-fixing agreement, which with respect to the market share of Mitac, could appreciably restrict competition.

III. Price maintenance by LCP in Hungary

Although the reseller contracts concluded by LCP do not contain price fixing clauses, the emails found in the course of the dawn raids carried out by the GVH constitute proof for existing price fixing practices. The prices indicated in the tables sent periodically were actually applied by LCP as minimum prices; together with its business partners LCP frequently made steps in order to coerce the application of the minimum prices by resellers.

It was not only that a few bilateral price fixing agreements were concluded between business partners. The prices determined and recommended by LCP were all part of an overall, well-planned system, the final aim of which was to assure significant market share and market success to Mitac products. LCP managed to work out and operate - more or less - a price mechanism that pushed back price competition to the minimum. It was considered more important to promote the marketing activity of the dealers by assuring them an appropriate level of margin, in order to sell more.

The above mentioned price maintenance agreements were proposed by LCP. All clients of LCP receiving tables from it on the resale and/or consumer prices were parties to the agreement. Besides the employees of LCP, the two premium distributors Hamex and Trendex also played an essential role in the enforcement of the agreement. In a certain period also Speedshop provided significant help in connection with the monitoring of prices applied by online webshops.

With respect to the maintenance of the agreement the biggest challenge proved to be the undertakings often referred to as “pricebreakers” by the undertakings under investigation. These undertakings were able to sell at lower prices partly by selling goods imported from abroad, from other EU Member States. This indicates to the GVH as well, that Hungarian prices – applied as a consequence of the agreement – exceeded the price level of the neighbouring countries; otherwise parallel import would not have been profitable.

A slight deviation (about HUF 1-2 thousand) from the minimum price level was tolerated, however, when a reseller went below the level agreed by HUF 8-10 thousand, "convincing" phone calls could be expected from LCP or one of its wholesale partners,

In the view of the GVH, the price maintenance system of LCP was actually implemented in practice, moreover, right during the first few months being of vital importance for market run up. Some dealers ignored the agreement – mostly those selling through the Internet – but this does not change the fact that the whole system actually existed and was implemented in many cases, thus resulting in higher prices consumers had to pay. This behaviour of LCP, Speedshop and Hamex qualifies as the fixing of consumer prices that restricts economic competition, therefore it is prohibited by competition law.

Based on the above mentioned, the GVH has fined Mitac HUF 50 million (approx. EUR 167 thousand), LCP HUF 43 million (approx. EUR 143 thousand), Hamex 9 million (approx. EUR 30 thousand) and RCC has recieved a symbolic fine of HUF 1 million (approx. EUR 3300). The amount of the fine was based on the turnover achieved by the undertakings on the Hungarian market from sales of the relevant products. In the case of Mitac and LCP the GVH considered as an aggravating circumstance that the restrictive agreement originated from these two undertakings, they monitored its enforcement and the agreement covered products with significant market shares. Furthermore, LCP had already been condemned by the GVH. One of the reasons Speedshop has not been fined is that its price breaking-down practice prevented the price maintenance system of LCP from working properly in practice.

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