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| <b>Case number:</b>  | Vj-47/2004  |
| <b>Party:</b>        | Hungarian Association of Book Publishers and Book Retailers |
| <b>Type of case:</b> | agreement restricting competition                           |
| <b>Decision:</b>     | the situation to be eliminated                              |
| <b>Date:</b>         | 11 April 2006   |

**The Competition Council of the Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) established in its decision, issued on 11 April 2006, that certain provisions of “The rules relating to competition in Hungarian publishing and bookselling” of the Hungarian Association of Book Publishers and Book Retailers restrict economic competition. In concreto, the rules concernig the regulation of final, net, booking and subscription-prices as well as the price reductions and clearance sale of member booksellers were deemed to be unlawful. The Competition Council prohibited the Association to apply the provisions in question and obliged it to inform the member booksellers about the present decision within 15 days after receipt of the decision.**

Subject of the competition supervision proceeding were certain provisions of “The rules relating to competition in Hungarian publishing and bookselling” (hereinafter: Competition Rules) regarding to market practices of member booksellers of the Hungarian Association of Book Publishers and Book Retailers (hereinafter: Association).

In Hungary the trade of books is mainly based on agency contracts (consignment agreements). This means that the books published do not come into the possession of book retailers: they simply sell the books on the market and transfer their revenue, or part of it reduced by their commission, to the publisher.

The Competition Council of the Hungarian Competition Authority pointed out in its decision that the provision of the “Competition Rules”, which intended to introduce a resale price maintenace, violated the prohibition of agreements restricting economic competition of the Hungarian Competition Act. The unlawfulness exists only if the publications are NOT traded in the framework of a consignment agreement. In respect of publications which came into the possession of the book retailer it is unjustified to restrict the right of the retailer to determine prices as it would be, from the point of view of competiton, advantageous to let the new owner (the book retailer) to decide freely on the prices of goods in his possession.

Furthermore, the GVH held that the clauses of the “Competition Rules” which aimed to restrict the period of selling the books at a price below one, determined by the publishers, were also unlawful.

Moreover, the competition between the individual publications might be violated as a consequence of the provisions of the “*Competition Rules*”. One of the clauses of the “*Competition Rules*” stipulates an absolute temporal restriction on price: “*the books in the wholesalers’, retailers’ and publishers’ storages and shops which are considered as ‘left overs’, out of date or which lost their value in any other ways may not be sold at a price below the regular price in larger amounts during two periods of the year (between 1 March and 15 June and 1 October and 31 December. In this context larger amount means the books*

*in a total value of at least HUF 50 million.*” This enables, not depending on whether the publications are distributed outside or even within the frame of a consignment agreement, , not only the restriction of intra-brand competition, but also, by having a horizontal effect, the restriction of competition between individual publications. As a consequence of the restriction, it is not possible to sell certain publications, in larger amounts, at a reduced price on the market; this leads to the limitation of the possible substitutability between the individual publications.

Further in respect of the “Competition Rules” of the Association, it may be stated that the system of free prices, the possibility for the creation of which the “Competition Rules” attempt to prevent or diminish, makes it possible to reduce prices and, via the competitive pressure established in this way, it gives incentives to efficiencies of the undertakings. Consumers who are willing to receive improved or more services should pay for these additional services. If they do not request more or improved services, this means that the provision of services offered to them beforehand was not efficient enough. As a consequence of price-fixing, those retailers who would be able, by becoming more efficient, to reduce their prices, and thus increase their market share, cannot utilize this potential advantage resulting from their efficient operation. Therefore, it seems obvious that an undertaking’s advantage of the increased efficiency, which could be manifested in lower book prices, cannot be enjoyed by the consumers. Also, the specialisation, due to the competitive pressure, makes it possible to decrease the expenses while satisfying the special requests, for more and improved services, of consumers.

If certain consumer groups are not inclined to buy the goods at a higher price, which results from the smaller amount of copies published, then it is not justifiable to make other consumers pay for the undertaking’s losses resulting from consumers’ unwillingness to pay higher prices. In the opinion of the Association, lower quality publications, purchased by the majority of consumers, make it possible to publish and retail publications of higher quality. However, as the GVH pointed out in its decision, because of the price-fixing practice, the artificially high prices of publications prevent consumers who prefer books of lower quality, i.e. the majority of the customers, from buying higher amounts of this kind of publications or even from buying at all. Namely, without price-fixing, as the Association has also agreed on that, the prices of this segment of the market are most probably going to decrease.

Based on the above, the Competition Council of the GVH prohibited the application of the unlawful provisions of the “Competition Rules” of the Hungarian Association of Book Publishers and Book Retailers and obliged the Association to inform the member booksellers about the present decision within 15 days after receipt of the decision.