

Case number:	Vj-6/2005
Party:	UNILEVER Magyarország Kft.
Type of case:	Abuse of dominance
Decision:	Termination of proceedings
Date:	13 October 2005

Vj-6/2005
UNILEVER Magyarország Kft.
(Abuse of dominance)

Summary

The Competition Council of the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) started proceedings against UNILEVER Magyarország Kft. and investigated whether it abused its dominant position by restructuring its distribution system and thereby decreasing the number of distributors from 15 to 12. In absence of any violation the proceedings were terminated.

The decision

The Hungarian Competition Authority (GVH) established that there were no grounds for action concerning the alleged abuse of dominance of the ice cream producer UNILEVER Magyarország Kft (UNILEVER).

The behaviour

In January 2004 UNILEVER restructured its distribution system. The number of the distributors serving different geographic areas was decreased from 15 to 12 and the contractual conditions relating to the conditions of payment were also amended. Upon complaint the GVH initiated proceedings to investigate whether these events constituted an abuse of dominance.

Taking into account that if dominance had been established it would have covered the whole territory of Hungary, and therefore the behaviour would relate to a substantial part of the common market the procedure was initiated under EC law.

The undertakings

UNILEVER is a member of the Unilever Group. It is jointly controlled by Marga BV and Saponia BV. Both undertakings are affiliated companies of Unilever NV. UNILEVER was established in 1991 and entered into the ice cream and the margarine and detergent business through acquisitions. In 2001 UNILEVER sold its assets in the deep-frozen industry excluding ice creams. In 2002 it also sold parts of its detergent business.

At present UNILEVER is active in the food industry and in the production of household chemicals and cosmetics. It produces or distributes margarines (Rama, Delma, Flora), dehydrated stocks (Knorr), mustards, ketchups, mayonnaises, teas (Lipton), ice creams (Carte D'or, Magnum, Vienetta, Cornetto), cleaning supplies (Biopon, Domestos, CIF) soaps, shampoos and body care products (Baba, Dove, Sunsilk, Signal, Amodent).

UNILEVER produces ice creams in impulse, take home, multi-pack and catering packages. The products are distributed partly directly to the mainly large size retailers and partly through its concessionaire distributors to small size retailers. Distributors sell two thirds of the overall production of UNILEVER. UNILEVER has also engaged into a kind of retailing. Under the name Algida Express ice creams and other deep frozen products are distributed directly to the consumers on the street from vans in regular, scheduled journeys.

Originally UNILEVER engaged into distribution as well but later it entrusted independent undertakings to fulfil this task. The almost all of the present distributors are former employees of UNILEVER. UNILEVER provided financial contribution to the distributors to enable them to establish the necessary infrastructure (storage and transport capacities). It continuously holds seminars and courses for them and provides marketing support.

The number of concessionaire distributors has decreased during the years from 21 to the present 12. Parallel to this the areas of the excluded distributors were attached to those assigned to the remaining undertakings. The contracts were concluded for 3 years periods and could have been terminated on 30 days notice.

Markets affected by the agreement

The agreement concluded between UNILEVER and the concessionaire distributors relates to the wholesale distribution of industrial ice creams. Each distributor had a dedicated geographical area on which it had exclusive rights for distribution. Differentiation could be made among the different ice cream products according to their packaging and place and way of consumption. There are impulse, take home, catering and multi-pack ice creams.

The concessionaire distributors distribute products other than ice cream too. With one and the same transport facilities other deep frozen product are distributed. A common characteristic of the packaged deep frozen products is that their temperature shall not rise above –18 degrees Celsius. The same facilities are therefore eligible for the storage and transport of a number of products different in their intended use and not interchangeable from the point of view of the final consumer.

Taking into account that the market power of UNILEVER had to be assessed from the point of view of the distributors and not that of the consumers, demand side substitutability was analysed on the wholesale level. As the concessionaire distributors could use their transport and storage facilities for all kinds of packaged, deep frozen products the relevant product market could not be defined narrower than this product group. This approach was underlined by the fact that UNILEVER's Algida Express service dealt with the same product range. The relevant geographic market was the territory of Hungary as the agreements related to the supply of different geographic areas within the country.

The decision

In its decision the GVH established that UNILEVER did not have a dominant position on the relevant market. Its share on the market of deep frozen products was 11, 10 and 9% in 2002, 2003 and 2004, respectively. Competition was fierce even within the ice cream market segment. A number of market entries took place in the previous years, and the large size retailers had also appeared with their private labels.

The GVH established that in the case of refusals to supply the subject of the assessment should be the aim and the reasonability of the refusal and its effect on consumers. It should therefore be investigated whether competition was hurt by the behaviour of the allegedly dominant firm. Lack of such negative effects a refusal to supply does not raise concerns from a competition law point of view. It was established on the other hand, that the restriction of the number of the distributors and the increase of the individual territories had efficiency enhancing effects. The reshaping of the financing conditions also aimed an increase in the efficiency of the distribution.

The GVH concluded that even if UNILEVER were in a dominant position its behaviour would not constitute an abuse of dominance.