

Fine imposed by the GVH on purchasing group organizer SWISS INVEST

The Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) imposed a fine of HUF 2 million (approx. EUR 7 000) on SWISS INVEST 2009 Hungary Pénzügyi Szolgáltató Kft and prohibited the undertaking from continuing to publish the investigated advertisements with the objected content.

The GVH investigated the statements of SWISS INVEST 2009 Hungary Pénzügyi Szolgáltató Kft (SWISS INVEST), active in organising and managing purchasing groups, which were published in the printed media before 11 June 2010. Based on the large number of informal complaints submitted to the GVH, it could be presumed that SWISS INVEST, which is engaged in organizing purchasing groups since the springtime of 2009, failed to provide information or did not provide unequivocal information in its advertisements targeting consumers about the essential features of the purchasing groups. It failed to mention that a given service is financed by means of internal loan transactions (from the prepayments of the members), that fortune plays a decisive role (it is by lot or/and based on the prepayments that they choose the lucky member who obtains the purchasing right in a given month) and the fact that the consumer cannot obtain the purchasing right and thus the product desired at the time of entering into contract, this occurs later, maybe even years later.

The members of the purchasing group undertake to pay monthly payments for a determined length of time and acknowledge not obtaining the desired product after the first payment. At the regular general meetings convened by the organiser of the purchasing group (in this case SWISS INVEST) it is by lot or/and based on a commitment to pay prepayments that they chose the lucky member who is going to obtain the purchasing right. It must be pointed out that if a consumer wishes to obtain a product of higher value (the desired product costs several millions), then he or she has to enter into several contracting positions (more than one membership, several contracts), and he or she can only obtain the desired sum if chosen by lot in case of all the positions at the same time, or if it is he or she who commits to pay prepayments of the highest sum in each group. By the end of the duration of the contract (maybe after 15 years), providing that all the monthly payments are fully paid and completed, even those consumers can obtain the purchasing right who have not yet been chosen by lot or who could not allow to pay prepayments.

All in all, fortune plays a determining role in the functioning of the purchasing groups. This “fortune feature” is both manifested during the lots and also when committing to pay prepayments. The members of the group are not aware of and thus cannot influence the willingness of the others to commit to pay prepayments, consequently it cannot be foreseen how much (how many months of) prepayment are necessary to offer in order to obtain the purchasing right in a given month. Hereby the possibility to pay prepayments puts the

members of the group vis-à-vis each other in a situation where they have to compete in order to get chosen as soon as possible. This means that those members who are in a weaker financial situation might find themselves at the end of the list, which cannot be foreseen or influenced in advance.

All these mentioned put the consumers in an insecure situation, they cannot calculate when they can obtain the purchasing right and so the desired product.

Among others, the GVH investigated whether those indigent people who are in a difficult financial situation, who are not creditworthy in the eyes of the banks (for instance those on the black-list, the so-called BAR-list, pensioners or even self employers who are registered as low income makers) might have been aware of the essential features of the purchasing groups based on the advertisements and the information targeting them.

After the investigation of the statements published in the printed media, the GVH came to the conclusion that the consumer when reading the advertisements referring to the amount of the sum offered, duration of the contract and the monthly payments might have come to the conclusion - based on the generally accepted meaning of the expressions used - (as a result of the global effect of the advertisements) that by using the advertised service he or she can obtain the sum required right away and that is to be paid back afterwards by monthly payments. Based on the advertisements, the consumers could not even guess that they would obtain the product required by lot or by undertaking to pay prepayments (thereby being exposed to fortune), may be after 5-10-15 years later and that payments of the members (a kind of internal loan system) is necessary. Consumers were generally not aware that purchasing groups do not give credits and that Swiss Invest is not a credit institution rather it is active in organising and managing purchasing groups, therefore it is not even authorised to give credit. Nevertheless, a part of the advertisements offered positively credit of great value to the consumers, which undoubtedly did not correspond to the reality.

The GVH found that each and every advertisement published in the printed media infringed the Competition Act. According to the GVH, advertisements published in leaflets and newspapers with high sales like Blikk, Metropol, Helyi Téma, Napi Ász and Nemzeti Sport were eligible to manipulation of consumer choice. This is also supported by the fact that Swiss Invest continuously deemed it important to advertise since the advertisements constituted the basis of the contact between the undertaking and its future clients. It is also to be highlighted that the slogans used in certain advertisements (“also for those on the black list of the banks and for pensioners”) had an attention-attracting effect by catching the attention of those indigent consumers who constitute the main target group of such services.

In the recent years several decisions of the GVH and the courts concerned the advertising activity of purchasing groups. All of them stressed that the advertisements in connection with the purchasing groups have to cover the essential and unique features of the special purchasing relationship since an advertisement meets the requirements of the trustworthy and accurate information only if the unique feature of the system can be perceived. When publishing the advertisements the undertakings have to emphasize that the service is based on prepayments and also the fact that the consumers’ need is only satisfied in the future, not in a pre-determined time. Thus, it is considered to be an infringement if advertisements do not refer to the “fortune feature”, and the fact that it could take a lot of years (possibly 15 years) to actually obtain the product. It also violates the law if based on the everyday meaning of the expressions the advertised service can be regarded as identical with a service differing in its essential features, namely the credit providing.

The advertisements under investigation published by Swiss Invest in the printed media did not meet these requirements.

The GVH also pointed out that publishing of the phrase “purchasing groups - 20 years so far in Hungary” was eligible to mislead consumers, since the phrase undoubtedly conveyed the message that the publishing undertaking can be trusted with its 20 year-long experience, which does not correspond to reality.

The GVH imposed a fine – taking into account the preventive goals of the sanctioning – of HUF 2 million on the undertaking, close to the highest possible fine provided by the Competition Act. When deciding the amount of the fine, the GVH considered as an aggravating circumstance that the campaign took place for more than a year, were quite strenuous and the unfair advertisements reached a wide range of consumers. The targeted circle of consumers consists of people generally in a financially weak, indigent situation, who as a consequence of the published advertisements were entering into long-term agreements. The GVH took also into account as a mitigating factor that consumers were able to gain more information in connection with the operation of purchasing groups before concluding the contract. However, the GVH underpinned that there are also problems with regard to the informational scheme of the purchasing groups. This is also supported by the fact, that the number of consumers who were excluded/have terminated their contract is extremely high compared to the number of those who have entered into contract with the organizer of purchasing groups.

Case Number: **Vj-13/2010.**