

## Deterrent fines imposed for cartel activity

HUF 7,178 billion (approx. EUR 25,6 million) has been imposed today for “hardcore” cartel activity by the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH). Four of the undertakings that have been imposed fines and another one were involved in bid rigging. They colluded and agreed to share the market, on the principles to be followed and in certain cases about the winner itself in connection with invitations to tender for public procurement procedures for renovating, reconstructing and rehabilitating railway lines in Hungary. The fifth undertaking that has not been fined was also involved in the bid rigging, however it submitted a leniency application to the GVH, i.e. it provided such evidence that was essential for revealing the infringement. In such cases undertakings may receive immunity from fines as it has happened this time as well.

**Based on the decision of the GVH, Colas Zrt. that belongs to the Colas-group has to pay a competition supervision fine of HUF 1,5 billion (approx. EUR 5,3 million), MÁVÉPCELL Kft. belonging to the Swietelsky- group HUF 2,1 billion (approx. EUR 7,5 million), MÁV MTM Rt. (under liquidation) HUF 178 million (approx. EUR 635 thousand), Szentesi Vasútépítő Kft. that is a member of the STRABAG-group HUF 3,4 billion (approx. EUR 12 million).**

The GVH has conducted proceedings against 17 undertakings for violation of the prohibition of agreements restricting economic competition. The GVH has found proven that five undertakings in the construction industry, namely Colas Dunántúli Út- és Vasútépítő Zrt., MÁVÉPCELL Mély-Magas és Vasútépítő Kft., MÁV MTM Mélyépítő Tervező Magasépítő Kereskedelmi és Ügyviteli Szolgáltató Rt. f.a., Szentesi Vasútépítő Kft. and Vasútépítők Pályatervező, Kivitelező és Iparvágányfenntartó Kft. had been involved in bid rigging between 2004-2005.

The proceedings against the other 12 undertakings (CELLVASÚT Építőipari Kft. Va, „GRANIT” HUNGÁRIA Építőipari és Szolgáltató Kft., Hídépítő Zrt., „HÍDÉPÍTŐ SPECIÁL” Vízi és Robbantási Munkák Kft., HOCHTIEF Construction AG Magyarországi Fióktelepe, a KELET-ÚT Építőipari, Beruházó és Szállítmányozó Kft. „KÖZÉPSZOLG” Ipari, Kereskedelmi és Szolgáltató Kft., KÖZGÉP Építő- és Fémszerkezetgyártó Zrt., Resonator Vállalkozási és Kereskedelmi Kft., STRABAG Zrt., Vegyépszer Építő és Szerelő Zrt., Wiebe Hungaria Vasútépítő Kft.) have been terminated since based on the evidence available – the GVH has not found proven that they had been involved in the activity restricting competition.

The investigation of the GVH was initiated on 20 November 2007 when some of the case handlers of the GVH held dawn raids at the premises of many of the undertakings under investigation, then the GVH – as a result of further on spot inspections – extended the proceedings to further practices of other undertakings. The competition supervision proceeding concerned several public procurement tenders published in the Official Journal of the EU, open also for other undertakings registered in other MSs, financed by EU resources. The aggregate value of the tenders was HUF 24 billion (approx. EUR 85,7 million).

Today the GVH has held a hearing as part of the competition supervision proceeding and it has established in its decision disclosed that Colas Zrt., MÁVÉPCELL Kft., MÁV MTM Rt. (under liquidation), Szentesi Vasútépítő Kft. and Vasútépítők Kft. concluded restrictive agreements when they agreed in the principles of market sharing in connection with several tenders issued by MÁV Zrt. EU Program Directory between 2004-2005 for railway reconstruction and based on the agreements they indeed shared the market among themselves which restricted competition.

The undertakings infringing the law, based on the evidence revealed, on 29 November 2004 agreed on sharing the market among themselves. They agreed to share the following tenders issued for the rehabilitation of the railway lines concerned

- Kecskemét – Kiskunfélegyháza in 2004
- Rákospalota - Újpest tender that was likely to be issued in 2004,
- Cegléd - Szolnok tender that was likely to be issued in 2005,
- Győr tender that was likely to be issued in 2005
- Zalaegerszeg - Ukk tender that was likely to be issued in 2005 and the Ukk – Boba delta tender the accomplishment of which is still in process.

They determined the principles of market sharing in details in connection with the first tender mentioned which was already issued at the time of the meeting, and in connection with the other tenders expected to be issued later they all agreed to benefit from the tenders on equal terms. The two tenders for the Zala region, the one for Cegléd – Szolnok railway, the one for Újpest – Rákospalota line and the one for the partial reconstruction of the railway station in Győr were the potential tenders that were likely to be issued.

The principle aim of the undertakings taking part in the restrictive agreement was to ensure that the winner of the tenders mentioned would be one of them. As part of the agreement they decided to either involve the other participants as subcontractors in the implementation of the projects or to choose one of them to win the tender in another public procurement proceeding. Consequently the aim of the practices investigated was also to exclude the other potential tenderers, maybe those which were registered in the other Member States of the EU, hereby stabilizing their market shares in Hungary and preventing new entrants from entering the market. Furthermore it was also envisaged to weaken the “negative” effects of competition in the fight for the projects (e.g. lower prices that mean less profit for the undertakings) or even to exclude competition completely.

The grounds for the decision of the GVH were among others the documents seized during the dawn-raids, notes about the agreements as direct written evidence, testimonies and statements as well as the information disclosed in the leniency application of one of the members of the cartel.

Based on the decision of the GVH, Colas Zrt. that belongs to the Colas-group has to pay a competition supervision fine of HUF 1,5 billion (approx. EUR 5,3 million), MÁVÉPCELL Kft. that belongs to the Swietelsky-group HUF 2,1 billion (7,5 million), MÁV MTM Rt. (under winding-up) HUF 178 million, Szentesi Vasútépítő Kft. that belongs to the STRABAG-group HUF 3,4 billion (approx. EUR 12 million).

The decision of the GVH underlines again that hardcore cartelist should expect significant amount of fines.

Vasútépítők Kft. has not been fined since it cooperated with the GVH within the framework of the leniency program. Thanks to this cooperation the GVH has acquired such information with the help of which the above-mentioned complex infringement has become provable. As this proceeding - which has just been closed - shows, the leniency policy contributing to the detection of cartels works properly since within the framework of the leniency program the undertakings that cooperate with the GVH may receive immunity from serious fines.

When determining the amount of the fine, the GVH took into consideration that the fine to be imposed has to be proportionate to the infringement committed on the one hand and it has to have a deterrent effect on the other hand. The GVH considered as an aggravating factor that the restrictive practices revealed – market sharing and price fixing committed within the framework of public procurement procedures – qualified as extremely serious infringements of the law, took place for a long period of time and covered the whole territory of Hungary. In the case of Szentesi Kft. that belongs to the Strabag-group, the GVH did not ignore the fact either that the other members of the undertaking-group involving the infringing undertaking have already been parties to similar collusions on several occasions.

In legal practice this kind of repeated infringements are called habitual recidivism. That means that the undertaking commits similar or same kind of infringements several times in a short period of time. According to the GVH, habitual and repeated recidivism is to be considered a significant aggravating factor when determining fines. Even the courts supervising the decisions of the GVH agree with this latter opinion. Based on all these mentioned, it is obvious that repeating infringements are not worth for the undertakings since the amount of the fine in these cases may be significantly higher.

Above all these mentioned, when determining the amount of the fine imposed, the GVH deemed it important to take into account the size, turnover of the undertaking (undertaking-groups) concerned so to deterrent the latter from committing further infringements. The GVH emphasized that the undertaking-group has the overall responsibility that all its members comply with the competition rules.

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Hungarian Competition Authority  
Communication Team

Further information:

Jozsef SARAI

Hungarian Competition Authority

Address: 1054 Budapest, V., Alkotmány u.5.

Postal address: 1245 Budapest, 5. POB. 1036

Tel: +36-1-472-8933

email: press@gvh.hu

<http://www.gvh.hu>