

Case number:	Vj-39/2002
Party:	UPC Magyarország Kft. (UPC)
Type of case:	Abuse of dominance – restrictive practice
Decision:	Imposition of fine
Date:	16 December 2002

Vj-39/2002
"UPC Magyarország Kft."
(abuse of dominance)

Summary

The Competition Council of the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) fined UPC for the abuse of its dominant position by refusing to enter into cable network accession contract with TVNet.

In the case in question, the Competition Council of the GVH held that UPC abused its dominant position by refusing, without justification, to establish or maintain business relations appropriate for the type of transaction with the TVNet Számítástechnikai¹ Kft. (hereinafter TVNet), an Internet provider. This infringement is covered by Subsection (c) of Article 21 of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter: the Competition Act). Therefore the Competition Council imposed a fine of HUF 35,000,000 (ca. EUR 138,000) on UPC.

The reasons for the above decision were as follows.

In 1998 UPC purchased the first generation cable network of Satimex Kft. In connection with the cable network, the Satimex Kft. transferred all its rights and obligations deriving from its contracts concluded with third parties, amongst them with TVNet, to UPC. According to one of these contracts, TVNet was entitled from 1996 to 31 December 2001 to exclusively provide Internet services on the cable network of Satimex Kft. within the territory of the 13th district of Budapest. Following the purchase of the cable network by UPC, TVNet continued its activity until 31 December 2001 in accordance with the provisions of its contract with Satimex Kft.

In 1999, however, UPC commenced to construct a new second generation cable network covering the same territory as the first generation one. As of the expiry of the contract, UPC discontinued to operate the first generation cable network, and, at the same time, refused to enter into a new agreement with TVNet relating to the latter providing Internet service on the second generation cable network. Therefore, TVNet had to abandon its services, while UPC started to offer its own services to the costumers of TVNet.

¹ TVNet Computertechnic

The Competition Council established that the relevant product markets in the present case were the following. In the first place, the wholesale market, and in the second place, the retail market of the provision of Internet access services through broadband Internet access technologies (ADSL, cable net).

The Competition Council was of the view that the relevant geographic market were, in a wider sense, those districts of Budapest and the neighbouring town Budaörs, where UPC was able to provide broadband Internet access through its cable network; and, in a narrow sense, all those areas (such as the 13th district of Budapest), where the technical conditions to provide ADSL were not available.

The Competition Council established that UPC held a dominant position on both relevant product markets within the relevant geographic market as defined above, that is within the 13th district of Budapest.

In its defense, UPC argued, first, that the Competition Act did not apply to the conduct examined by the Competition Council, and, second, that it did not abuse its dominant position in the course of its market practices.

The Competition Council was of the view that the second generation cable network of UPC was technically suitable for parallel activities of two Internet providers, and the commencement and the maintenance of the activity did not require any further investment. Further, no evidence was found that the lack of agreement to provide access for TVNet to UPC's cable network was due to the disagreement on the price that UPC intended to charge.

Taking into account that Act LXXII of 1992 on Telecommunications and the enforcement decrees thereto – regulating the Internet access services – were not in force at the time of the infringement, further, that the notion of the 'accession contract' was regulated by the Act XL of 2001 on Communications that came into effect only on 23 December 2001, the Competition Council held that the given market practice of UPC did come under the ambit of the Competition Act. Accordingly, the Competition Council fined UPC for the abuse of its dominant position.