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| <b>Case number:</b>                                | Vj-130/2004/26  |                        |
| <b>Short title</b> (party, conduct, type of case): | T-Mobile Magyarország Távközlési Részvénytársaság – mobile phone service – Unfair manipulation of consumers’ choice |                        |
| <b>Type of case:</b>                               | Unfair manipulation of consumers’ choice  | Deception of consumers |
| <b>Date:</b>                                       | January 25, 2005, Budapest  |                        |

## Vj-130/2004/26

## “T-Mobile”

## (unfair manipulation of consumer choice)

## s u m m a r y

**The Competition Council of the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) established that T-Mobile followed a practice, through the advertisements of certain call tariffs, which was able to unfairly manipulate consumer choice. The Council therefore imposed a fine of HUF 40 million (ca. 160.000 EURO) on it.**

*I. Initiation of the proceedings*

The Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter: GVH) initiated proceedings against T-Mobile in order to establish whether the undertaking by its advertisements about the introduction of a new so-called Relax-tariff system and, subsequently, about the decrease of the Relax-tariffs, violated Article 8 para. (1) and (2) of the Hungarian Competition Act (Act No LVII. of 1996) and Article 7 para. (2) point (b) of the Act on Business Advertising Activity (Act No LVIII. of 1997).

*II. The party to the proceedings*

T-Mobile is the affiliate of Matáv Távközlési Rt. (Matáv), whose main shareholder is Deutsche Telekom AG, with a share of 40,32%. Matáv is the largest Hungarian telecommunications company, present in all segments of the telecommunications market either directly or via its affiliates. T-Mobile is the market leader on the Hungarian mobile telecommunications market. Its market share according to the number of subscribers was 46,74% in July 2004.

*III. The behaviour under investigation*

Providers dealing with mobile telephony service offer basically two types of tariffs to their potential and existing subscribers:

- (1) a subscription tariff, which is post-paid, and
- (2) a pre-paid card-tariff.

The Relax-tariffs, introduced by T-Mobile as a new product on the Hungarian telecom sector, are subscription tariffs. These tariffs contain a fixed amount of minutes which can be spent in

each month. This post-paid charge cannot be circumvented, i.e. its amount is not subject to turnover. If the turnover exceeds the fixed amount of minutes, then a certain tariff per minute will be paid. The tariff is principally designed for domestic calls, with a supplementary charge if international calls are made.

T-Mobile has spent several hundreds of millions of HUF on advertising the above tariffs. It should be noted that the majority of consumers subscribing to various Relax tariffs in general exceed the fixed amount of minutes.

Concerning the rivals, Vodafone started a similar campaign from 19 June 2004, and Pannon GSM did similarly from 19 July 2004 on.

#### *IV. Report of the investigator*

According to the case-handler the behaviour in question was capable to violate the Competition Act, as the pieces of information in the Relax-tariffs advertisements could easily be misinterpreted.

#### *V. Position of T-Mobile in the proceedings*

T-Mobile highlighted that it provided its potential and existing consumers with most detailed and up-to-date information on the conditions of the different Relax tariffs.

T-Mobile made reference to the nature of advertisement as intending solely to draw consumers' attention to the novelty of the given product, not intending to provide them with all the details about the product.

**As for the monthly charge, T-Mobile highlighted that according its view the consumer does not have to pay a monthly charge, but only the call prices per minute. Beyond this charge, there are no additional charges to be paid, so there are no monthly charges.**

T-Mobile has also pointed out that, given the high interest rate of the mobile tariffs and the low costs of information-seeking, it is reasonable to expect from a typical, cautious and reasonable consumer to adopt its decision on purchasing a tariff not exclusively on the terms of the advertisements. T-Mobile stated that subscription to Relax tariffs can only take place at the provider (at after sales services, etc.) Moreover, the consumers can obtain information through telephone assistance which is free of charge.

#### *VI. Legal background*

According to Article 8 para (1) of the Hungarian Competition Act it is "prohibited to deceive consumers in economic competition". According to Article 8 para (2) point (a) "deception of consumers shall be presumed if false declarations are made or facts are declared in a manner which is likely to deceive with respect to prices or essential features of the goods, including, in particular, the composition, use, effects on health or the environment, as well as their handling, origin or place of origin, source or method of the procurement; if the designation of goods is likely to deceive, or if any other information which is likely to deceive pertaining to the essential features of the goods is disseminated". Article 9 provides that "the meaning of terms customarily accepted in daily life or in the respective trade shall be taken as a guide when establishing whether the information is likely to deceive consumers".

**According to Article 78 para (1) of the Hungarian Competition Act the Competition Council may impose a fine on the undertaking violating the provisions of the Act. The maximum fine shall be 10% of the undertaking's net turnover in the preceding business**

**year. Pursuing Article 78 para (2) “the amount of the fine shall be established with all the relevant facts of the case taken into account, in particular the gravity of the violation, the duration of the unlawful situation, the benefit gained by the infringement, the market positions of the parties violating the law, the imputability of the conduct, the effective co-operation by the undertaking during the proceedings and the repeated display of unlawful conduct”.**

*VII. Decision of the Competition Council*

The Competition Council concluded, first, that it regarded advertisements as an effective means to influence consumers. This is proven by the fact that rival profit-oriented undertakings are common to have recourse to advertisements in order to increase sales. Secondly, the Competition Council stated that the primary content of the information provided in relation to the Relax-tariffs was its simplicity, the lack of monthly charge and the low call prices.

According to the Competition Council’s view the comment to the tariffs as being free of monthly charge was not true, as the consumers must, in any circumstances, pay at least the total price of the fixed amount of minutes purchased, regardless how many minutes is spent. This can indeed be considered as a monthly charge as it is fixed.

Another important observation to the advertisements was that the information provided on call prices per minute did not reflect the fact that it was about an average price per minute. The call price per minute was not universal, as the advertisements suggested, but is varied.

According to the view of the Competition Council, the misleading effect of the advertisements was not mitigated by the possibility to receive information about the tariffs and other general terms at T-Mobile’s shops.

However, the Competition Council did not consider the information provided in the context of the price decrease unlawful. The Competition Council, similarly, did not hold the information provided by T-Mobile on its web-site unlawful, as, there, the consumers can easily inform themselves about the exact tariffs and terms of their telephone calls.

In determining the amount of the fine, the Council considered the significant extent of the impediment of fair competition. There is a very strong competition on the market of mobile telecommunications and providers spend significant amount of their incomes on informing their consumers. The fine should be of a considerable amount to have a deterrent effect on the party infringing the provisions of the Hungarian Competition Act. The undertaking in question is a market leader, its market share is almost 50%. Therefore, such an undertaking has special responsibility on the market and must thus act with even more care when pursuing such advertisement campaigns.