



GAZDASÁGI VERSENYHIVATAL

The procedure of the GVH concerned the vertical agreements between Sara Lee Hungary Kávé és Tea Kft. and eight of its distributors. It was presumed that there were agreements between **Sara Lee** and its **distributors** capable of restricting competition on the relevant market of coffee and tea in Hungary.

Undertakings involved:

1. Sara Lee is a wholesaler of coffee and tea products. It also supplies household chemicals and body care products.
2. The 8 affected distributors were suppliers of the HoReCa sector. Beside the coffee and tea products of Sara Lee, they dealt with beverages and tobacco as well.

Proceeding were initiated on 17 May 2005, under the Hungarian competition law (Tpvt.) and Article 81 EC. As the infringement had started before Hungary's accession to the European Union (1st May 2004) and continued after this date both Hungarian competition law and EC competition law, as the effect on inter-state trade was established, had to be applied.

The HoReCa sector was supplied by specialist retailers, but due to the decrease of its market share, Sara Lee decided to enter into contract with generalist suppliers of the HoReCa sector, distributing beverages and tobacco as well. This way Sara Lee intended to increase frequency of the visits of its distributors so to be able to provide better service.

The distributors enjoyed territorial exclusivity and according to their submission the relationship imposed few risks on them. However their agreement did not qualify as a genuine agency agreement.

The contract included the restriction of the free setting of prices. First it imposed a general obligation to consult prices with Sara Lee. This provision ensured the application of a more direct restriction, namely that prices had to be above costs but below a maximum level determined by Sara Lee.

Another restriction was that the distributors were provided exclusivity to supply a given geographic area. On the other hand they were not allowed to distribute coffee and tea products of other brands.

Though Sara Lee had a significant share on the relevant market, only a tiny segment of it was achieved through the distribution system subject to the investigation.

Legal assessment of the agreements

Reasons why inter-state trade is affected

The agreements covered the whole of Hungary, providing territorial exclusivity and establishing price restriction on resellers. The affected products were all imported goods and therefore the restrictions had a clear effect on inter-state commerce. Transport and

tradeability of the given products is easy. Sara Lee plays a predominant role on the national market. Due to its share the NAAT rule could have been considered as met. It was established that the agreements in question can have an appreciable, at least potential and indirect effect on trade between member states.

The agreements between Globus and BHRT and their distributors

The vertical agreements between Sara Lee and the distributors did not qualify as agency agreements. They did not constitute agreements falling under the national and EC de minimis rule either as the market share of Sara Lee is above 10 and 15% respectively. The agreements did not fall under Reg. 2790/99 on Vertical Agreements and Concerted Practices as they contain some black clause restrictions. Competition Council considered these stipulations of the contracts unfounded, therefore contemplates not to give individual exemption.

Therefore, according to the Competition Council, the agreements between Sara Lee and its distributors infringed Section 11 (1) of the Hungarian Competition Act and Art. 81 (1) of the EC Treaty.

On the other hand the Council also considered that the agreements had negligible effect on competition, having regard to the affected commerce, and that the restriction on the minimum level of prices was adjusted to the actual cost. It therefore decided to suspend the proceedings for six months allowing the parties to amend their agreements according to the established legal qualification of the GVH.

As the post-investigation established that the parties have amended their agreements as subscribed by the GVH, the Council stopped the proceedings.