

Case number:	Vj-174/2005
Party:	Magyar Posta Zrt.
Type of case:	Abuse of dominance
Decision:	Termination of proceedings
Date:	5 October 2006

**Vj-174/2005
Magyar Posta Zrt.
(Abuse of dominance)**

Summary

The Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) commenced a competition supervision proceeding against Magyar Posta Zrt. (hereinafter: Hungarian Post) to investigate alleged exclusionary practices of the Hungarian Post, which offered special rebate conditions in the field of postal services in connection with the production of printed postal products.

The proceeding aimed to determine whether the above mentioned exclusionary practices were suitable to restrict competition pursuant the Hungarian Competition Act and Article 82 of the EC Treaty.

The Competition Council terminated the proceeding.

Undertaking concerned

Hungarian Post: a wholly state owned corporation.

Procedure and – where relevant – ECN co-operation

The proceeding against the Hungarian Post was commenced on 10 October 2005 pursuant to the provisions of the Hungarian Competition Act and Article 82 of the EC Treaty.

Facts

The Hungarian Post offered four different conditional rebate systems. Those were

- rebate offered on the growth in the volume of mail traffic;
- “sortiment bonus” rebate;
- rebate stipulated in the agreement between Magyar Posta and Magyar Telekom Rt;
- fidelity rebate.

Rebate offered on the growth in the volume of mail traffic

This rebate was granted to customers to reward the annual growth in the volume of traffic in the domestic mail, postcards, leaflets, official documents and direct advertisements.

Sortiment bonus rebate

This type of rebate – which was offered by the Hungarian Post only for a year – was available to the extent that the various products of the Hungarian Post were purchased. The more type of products was purchased in an increased quantity, the higher rebate the customers received. The most significant service in this regard was the production of printed postal matter. Upon request, customers of the Hungarian Post who purchased printed postal products declared that the rebates system did not influence them in entering into contract with the Hungarian Post.

Rebate stipulated in the agreement between the Hungarian Post and the Magyar Telekom Rt.

In the agreement the Hungarian Post stipulated exclusive rights to provide postal services for the Magyar Telekom Rt. in the period between 1 September 2005 and 31 December 2007 Magyar Telekom would get a minimum of 14% of rebate on certain type of services on condition that the Magyar Telekom Rt. does not deliver the postal products in question by itself, neither hire any third party for the job.

Fidelity rebate

The rebate was available on condition that the gross turnover of all the postal services in the year under review arrives at the level of that of the previous year.

Legal assessment

The Hungarian Post held a dominant position covering the whole territory of the Member State

The relevant product market was defined as the market of letter-post services.

The relevant geographic market was defined as the territory of Hungary.

Where an undertaking, which holds a dominant position covering the whole territory of a Member State, engages in exclusionary abuses, trade between Member States is normally capable of being affected. Therefore, the competition supervision proceeding was commenced both under the Hungarian Competition Act and Article 82 of the EC Treaty.

Regarding the rebates, the Competition Council established that three types of them required closer scrutiny as the violation of the competition law could not be ruled out unambiguously.

- The rebate offered on the growth in the volume of mail traffic, in absence of exclusivity, did not proved to be unlawful with its 1 to 1.5 % size.
- The sortiment bonus rebate, in theory, could have influenced the market as the Hungarian Post made conditional the rebate it offered on this market where it had a dominant position on the extent to which the services it offered on the competitive market were taken. However, in reality the rebate did not have any actual effect on the market.
- The rebate stipulated in the agreement between Hungarian Post and Magyar Telekom Rt. did not violate the competition rules as Magyar Telekom Rt. had the possibility to terminate the contract in case of regulatory changes. Further, since the Magyar Telekom Rt's demand amounted to less than 10% of the Hungarian Post's total postal product delivery, the agreement could not influence the market entry of other competitors.

The Competition Council has taken into account the fact that the employee leasing in the field of universal postal services does not necessarily serve the public interest. The Magyar Telekom Rt. belongs to those few customers of the Hungarian Post, which, by virtue of their size, have the ability to lease employees to do their own delivery in areas where both the number and the density of customers facilitate that instead of using the Hungarian Post's services. However, the cherry picking in these low cost areas would generate higher costs for the Hungarian Post in less densely populated areas, and, as a consequence, higher prices for consumers, which in turn would push up the prices of the Hungarian Post's competitors, which use employee leasing.

Decision

The Competition Council terminated the proceeding as

- a) regarding the sortiment bonus rebate and the fidelity rebate it deemed unnecessary the continuation of the proceeding;
- b) regarding the other conducts it established that, in the absence of any violation, the defending party could not be found liable.