



GAZDASÁGI
VERSENYHIVATAL

GVH's appeal rejected by the Court in the software license case

The Appeal Court of Budapest confirmed the first instance judgement and rejected the appeal of the Hungarian Competition Authority (GVH) in the software license case. The decision of the Court is final. The GVH turned to the Court because it found that the Directorate for Centralised Public Procurements (Központi Szolgáltatási Főigazgatóság, hereinafter: KSZF) restricted competition on the market of software licenses by defining in an unlawful way the subject matter of the invitation to tender relating to the public procurement of software licenses.

On 4 January 2008, the KSZF announced an open public procurement procedure relating to the enlargement, extension, supplement, version control and replacement of software licences used by administrative and educational institutions, and the purchasing of new software licenses. The value of the four-year-term framework agreement was HUF 25 billion. The contract notice stated in connection with the subject matter of the public procurement that only distributors of Microsoft “or equivalent” software might submit tenders.

On 28 January 2008, the member of the Public Procurement Council (Közbeszerzések Tanácsa, KT) delegated by the GVH turned to the Public Procurement Arbitration Board (Közbeszerzési Döntőbizottság, KDB) requesting the suspension of the procedure, claiming that the description of the subject matter of the procurement was restricting competition. In her reasoning she stated that it was unnecessary for the KSZF to specify “Microsoft” products in order to provide a precise and intelligible description of the subject matter of the procurement. With this provision, the contracting authority restricts competition between undertakings on the software market. According to her notification, Microsoft has a leading position on the software market anyway; strengthening this position would be a mistake.

In the remedy proceeding launched upon the submission of the member representing the GVH in the KT, on 21 February 2008, the KDB passed an order terminating the proceeding. The KDB found that specifying the brand of the product was aimed at describing the subject matter of the public procurement procedure as precisely as possible, thus no infringement was committed. State bodies typically use Microsoft software, that is the reason why software that are compatible to them are needed in the future. On 10 March 2008, the GVH requested the review of the decision by the Municipal Court of Budapest. The member of the KT delegated by the GVH requested the Court to annul the decision of the KDB and to order the initiation of a new proceeding.

On 1 September 2008, the Municipal Court of Budapest rejected the appeal of the GVH. In its judgement the Court stated that applying the term “Microsoft” software license (or equivalent product) in the invitation was justified, given that the contracting authority had the right to determine its own demands relating to the purchase, thus assuring compatibility with the already existing systems.

The first instance judgement was challenged by the GVH. However, on 14 October 2009 the Appeal Court of Budapest rejected the appeal of the GVH and upheld the judgement of the Municipal Court of Budapest. The judgement is final.

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