Gazdasági Versenyhivatal

Restrictive practices of cable associations

The Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) established that the Hungarian Cabel Communications Association (Magyar Kábelkommunikációs Szövetség – MKSZ) and the Hungarian Cable Television and Telecommunication Association (Magyar Kábeltelevíziós és Hírközlési Szövetség – MKHSZ) had applied restrictive conditions in their model contracts for programme distribution. The GVH imposed a fine of 11 million HUF (approx. 36.600 EUR) on the undertakings.

The Hungarian Competition Authority assessed the conditions of the model contracts for programme distribution which served as the basis for the individual negotiations between broadcasters and large cable operators and the practice applied to the admission of new members by the two cable associations between 2005 and 2009.

According to the GVH's assessment, under the associations' model contracts members received discounts which were not usually available to non-member broadcasters. The amount of the discount was fixed in the model contracts, along with the benchmark price that was to be charged to non-members. Via this method, prices were set for potential competitors, for non-member cable operators. The above-mentioned stipulations of the model contracts affected the majority of the conditions for broadcasting programmes, although the broadcasters did not necessarily apply these conditions or at least not to the full extent.

The GVH established that the practice was restrictive in its object as it indirectly fixed the prices that applied to non-member cable operators. It was also determined that the practice was also restrictive in its potential effects with regard to the exclusivity of the discounts. As a result of the practice, non-members may have been disadvantaged as a result of having to pay higher distribution costs than members, with such costs potentially amounting to at least 4-5 % of non-members' totals costs This in turn may have led to a lessening of competition by forcing non-members to charge higher subscription fees and/or offer less or less attractive (thus less expensive) channels and/or cut development expenses.

The Competition Council regarded the practice of the two associations, respectively, as being anticompetitive as the practice involved the associations of undertakings applying terms in their model contracts which had the object or effect of restricting competition. Consequently, the Competition Council imposed a fine of 8 million HUF (27 thousand EUR) and 3 million HUF (10 thousand EUR) on MKSZ and MKHSZ, respectively.

With regard to the other practice that was assessed by the Competition Council, namely the discrimination applied to membership, the conditions for establishing an infringement were not met. In line with European case law, in order for an association's practice of accepting or denying membership applications to be regarded as anticompetitive, it is necessary for the association to hold a dominant position and/or have exclusive control over an input that is regarded as an essential facility. Having regard to the fact that there were two associations with similar model contracts (and programmes fees) and more or less the same programme providers, this condition could not be convincingly proved. Furthermore, the investigation could not reveal the full extent of the associations' practice regarding member admission, and neither an agreement nor a concerted practice could be proved. Accordingly, the Competition Council terminated the proceeding in this respect.

The Competition Council further found that there was no reason to act concerning the agreement/concerted practice of the associations with regard to the model contracts as it could not be proved to a satisfactory level that there was no other reasonable explanation for the similarity of their practice other than coordination.

Case number: Vj-151/2009.

Budapest, 4 September 2013.

Hungarian Competition Authority

Further information:
Katalin GONDOLOVICS
Spokeswoman
Mail: 1054 Budapest, V. ker. Alkotmány u. 5.
Postal address: 1245 Budapest, 5. POB 1036
Tel: (+36-1) 472-8902
Email: press@gvh.hu
www.gvh.hu