

<b>Case number:</b>	Vj-103/2004
<b>Party:</b>	Hewlett Packard Magyarország Kft.
<b>Type of case:</b>	Consumer fraud, abuse of dominance
<b>Decision:</b>	Suspension and based on post investigation the termination of proceedings
<b>Date:</b>	13 December 2005

### **The decision**

The GVH established that the warranty rules of Hewlett-Packard Magyarország Kft (HP) printers did not qualify as an abuse of dominance. It established however that the wording of the warranty was misleading and therefore constituted consumer fraud. Having regard to the insignificant effect on competition, the GVH, though it established the infringement, ordered the suspension of the proceedings for one month. HP was under an obligation to amend the wording of the warranty until the end of this period and to inform the consumers about the changes and the reasons for them in two national dailies. After the expiry of the suspension, based on a post-investigation, the GVH established that HP fulfilled its obligations and terminated the proceedings.

### **The behaviour**

The GVH initiated the proceedings because the warranty rules applied by HP relating to its printers allegedly constituted an abuse of dominance and consumer fraud under the Competition Act. According to the warranty rules if the failure of the printer was the result of incorrect use than warranty did not apply. In the Hungarian version of the rules however it was also expressed that the application of refilled or remanufactured inkjets qualified as incorrect use, giving the impression that the use of such appliances in itself led to the loss of warranty. In its final decision the GVH considered that the appropriate interpretation of the rules was that the application of non-HP inkjets was really qualified by HP as “incorrect use” but as not “incorrect use” as such only failures deriving from it results in the termination of the warranty. It was considered that the substance of the warranty rule was not abusive but the wording of it was misleading and as a consequence of the fact that it qualified the application of competing products as “incorrect use”, consumers became uncertain whether the use of non original HP appliances led or not to the loss of the warranty. As a result of the wording of the warranty, consumers became intimidated and were less willing to buy competing products on the secondary market.

As the investigation mainly targeted the issue of abuse of dominance, a number of statements were made by the GVH relating to this issue though no infringement of Article 82 EC or Section 21 of the Competition Act was established.

## **Markets affected by the agreement**

A number of undertakings like Canon, Lexmark, Olivetti, OKI, Minolta, Epson or Brother are present on the printers' market. They produce a large scale of printers some of which are more suitable for small and home offices while others with higher capacity and speed are designed for more intensive use. There exist different technologies. Two main groups are the inkjet and the laser printers. Characteristics of the former group are lower capacity, speed and price but colour printing is an option even in the cheapest models. Laser printers are mainly black and white but are more suitable for the printing of larger quantities of written documents. Printer manufacturers also produce appliances such as inkjets and laser toner cartridges for their printers. Compatibility among these secondary products is very low, practically non-existent. On the other hand empty inkjets and cartridges can be remanufactured or simply refilled. The former technology provides a good but not perfect quality, while the refilled products' quality is often inappropriate. There are undertakings present only on the secondary market, which developed into a complete industry. Consumers can therefore choose between the original appliances and their re-manufactured or refilled versions.

It was clear that the warranty rules were only applied for printers sold to the SOHO segment, as in the case of larger scale orders or more expensive printers different information and warranty leaflets were provided. The GVH also identified the SOHO segment as a separate market on the basis that the required capacity, speed and quality for this segment was lower, the price consumers of the SOHO segment were willing to pay was smaller. While larger undertakings often have dedicated specialists to manage their printers, special knowledge in the SOHO segment is often missing. Technical obsolescence is more critical to larger undertakings while printers' lifetime is longer in the SOHO segment.

The analysis was therefore restricted to the SOHO segment, which had the characteristics of a distinct market and which was affected by the allegedly abusive behaviour. In this segment the price of printers is low, sometimes a new cartridge costs as much as a new printer. Consumers are highly influenced by promotions and price reductions on the primary market of printers. Customers are less concerned about lifetime costs and seem not to be willing to take into consideration the price of secondary products. Once the printer was purchased the consumer can only quit the market of compatible secondary products if a new printer is purchased. This option however is available only if there are promotions reducing the great cost difference between cartridges and new printers. Taking into account that the actual lifetime of printers in the SOHO segment is longer than in the case of larger undertakings, exit barriers were considered even higher.

Taking into account all these aspects of the market, and having regard to the interpretation of Community Law as appeared in the case law (Hugin<sup>1</sup>, Hilti<sup>2</sup>, Pelikan/Kyocera<sup>3</sup> and Digital<sup>4</sup>) and in the legal literature, the GVH established that the secondary products of the different printers had the characteristics of distinct markets and that separate groups of consumers could also be identified, namely groups of those who had already purchased a given printer.

A characteristic of the infringement was that it only affected those customers which used the Hungarian text for information on warranty rules. As such leaflets were only provided in Hungary it was reasonable to say that from consumers' point of view the geographical market was Hungary. The structure of the market in Hungary is very similar to that of other European countries and as the very same competitors are present in all market segments there is no potential entry that would justify a geographical extension of the market.

The relevant market was therefore established as the Hungarian market of printer cartridges for HP printers used by the SOHO segment.

### **The decision**

HP had a share of 50-60% on the market of printers in Hungary. Its share on the relevant market was around 90%. It had also be taken into account that customers of the SOHO segment were less conscious of lifetime costs and based their decisions on the price of the primary product even if access to information on secondary product prices was easy to get. Consumers of the relevant product are more sensible for occasional promotions. In lack of such promotions exit costs are relatively high. On the other hand, dominance on the secondary product market is weakened by the effects of competition on the printers' market, the transparency of the prices of secondary products and the analyses and tests presented in different magazines.

The GVH considered that the establishment of dominance on a secondary product market should be based on the analysis of the following circumstances.

- the price of the primary product,
- the lifetime of the primary product,
- the price transparency of the secondary product,
- the ratio of the price of the secondary product to that of the primary product,
- information costs,
- other aspects.

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<sup>1</sup> 78/68/EEC Commission Decision Hugin/Liptons 1978 OJ L 22/23

<sup>2</sup> 88/138/EEC Commission Decision Eurofix-Bauco v. Hilti 1988 OJ L 65/19 illetve Case T-30/89 Hilti AG vs Commission 1991 ECR II-1439

<sup>3</sup> XXV Report on Competition Policy at 41

<sup>4</sup> Commission Press Release IP/97/868 in Philip Andrews Aftermarket Power in the Computer Services Market: The Digital Undertaking in ECLR 1998 at 176

As a consequence of the fact that the GVH did not consider the behaviour abusive, no decision was taken in the question of dominance.

Though the first interpretation of the warranty rules suggested that the repairing of the printers under guarantee was tied to the purchase of original HP cartridges, the GVH finally concluded that no tying was practised by HP. Only misled consumers were in the belief that the use of non HP cartridges resulted in the loss of guarantee rights. The GVH therefore considered that no abuse was committed though the qualification of the use of all non HP cartridges as incorrect misled the consumers about the applicability of warranty and therefore was suitable to reduce incentives to purchase competing secondary products. The behaviour of HP was therefore against Section 8 of the Competition Act.

Taking into account the insignificant effect on competition the GVH did not impose fine on HP. It suspended the proceedings for one month and ordered the amendment of the warranty rules. It also prescribed that the amendment and the underlying reasons should be published in two national dailies. As HP fulfilled its obligations, the GVH terminated the proceedings.

### **Observations**

The legal instrument of suspension of proceedings in the case of infringements of minor importance and the prescription of certain obligations was replaced by the introduction of the instrument of commitment decisions (in the form of commitment injunctions) by the 2005 amendment of the Competition Act in force as from 1 November 2005.