



GAZDASÁGI
VERSENYHIVATAL

Concentration without authorization of the GVH

As already published by the media in the middle of April, the Hungarian Competition Authority (GVH) imposed a total fine of HUF 27 million (approx. EUR 90 thousand) on Bonitás 2002 and Tendre for failing to submit an application for the authorization of the planned concentration.

Bonitás 2002 Befektető és Tanácsadó Kft. (investment and consulting company, hereinafter Bonitas) acquired 50% of the shares of Tendre Takarmányipari Kft. (animal feed company, hereinafter Tendre) from Dr. ELF Kft. on 3 August 2007. The other 50% of the shares of Tendre Kft. is held by Forrás Vagyonkezelési és Befektetési Nyrt. (property management and investment company, hereinafter Forrás).

100% of the shares of Bonitás 2002 are owned by Sándor Csányi whose group of undertakings (Csányi-group) is interested in stockbreeding, plant cultivation and services, viniculture, fodder production, meat and dairy production related to them and also in ammunition production. The share of the Csányi-group on the Hungarian market does not reach 1% in the case of any plants. Among stockbreeding products it has a market share exceeding 1% on the Hungarian market only in the case of raw milk (1-1,5%) and pork fat stock (around 5%). It has around 2% of shares from mix fodder production in Hungary while Tendre has around 10% of shares.

Forrás is member of the undertaking-group controlled by Domestore Gazdasági és Üzletviteli Tanácsadó Kft. (economic and management consulting company). The main profile of the Domestore-group is to provide services in hotels and real estate management. Some members of the group are also interested in agriculture, however in connection with these activities (e.g. mixed fodder production) their shares from the Hungarian market are negligible.

Based on the Competition Act, a concentration of undertakings is effected, where a sole undertaking or more than one undertaking jointly acquire direct or indirect control of the whole or parts of one or more than one other undertaking which have been independent of them. Direct control is exercised by a sole undertaking, or more than one undertaking jointly, which have the ownership of the interests or shares of another undertaking entitling them to exercise majority voting rights. For a concentration of undertakings, the authorisation of the Hungarian Competition Authority have to be sought in cases where the aggregate net turnover of all the groups of undertakings concerned and the undertakings jointly controlled by undertakings that are members of the groups of undertakings concerned and by other undertakings exceeded HUF fifteen billion in the preceding business year, and the net turnover of each of at least two of the groups of undertakings concerned in the preceding business year combined with the net turnover of the undertakings jointly controlled by

undertakings members of the respective group of undertakings and other undertakings was more than HUF five hundred million.

Since the aggregate net turnover of the undertaking-groups that control Tendre Kft. exceeded HUF 15 billion in 2006, and the net turnover of at least two of them (Csányi-group and Domestore-group) exceeded HUF 500 million at that time, they should have requested the approval of the GVH for the concentration concerned. They should have submitted the application for the authorisation at the GVH within 30 days following the date of the conclusion of the contract. However, both Bonitas 2000 and Forrás failed to notify the transaction. (The undertakings under investigation only asked for the opinion of the GVH.) Pursuant to the Competition Act, for failure to submit an application for the authorisation of the concentration, the GVH may impose a fine on the undertakings failing to submit such an application. The maximum fine may be HUF 50 thousand a day.

388 days passed between the 30th day following the date of the conclusion of the contract (2 September 2007) and the day when the proceeding of the GVH was started (24 September 2008), thus the maximum amount of fine imposed might have been HUF 19,4 million. Finally only Bonitás was imposed a fine of HUF 17 million. The GVH has taken into account that Forrás was only a passive party to the concentration since it had jointly controlled Tendre dating back even before the conclusion of the contract. However, Bonitás acquired joint direct control over Tendre on the basis of the contract being object to the proceeding, thus the GVH imposed an almost maximum fine on it. The maximum fine was not imposed since the GVH did not contest that the undertakings concerned did not wish to keep the transaction a secret.

At the same time the GVH posteriorly authorised Bonitás to acquire a joint control together with Forrás over Tendre since neither in plant cultivation, animal husbandry nor in animal feed production the aggregate net turnover of the Csányi- and Domestore-group reaches the 20% level above which competition concerns arise.

The GVH also made a merger decision in another case, which also affects Tendre, prior to the above-mentioned concentration.

On 22 February 2007 Lakópark Kft. located at Igló út, member of the Domestore-group purchased the immovable property (land and building) of Bábolna (already under liquidation at that time) with the plants functioning there in Nagyigmánd and Zalacséb, and on 26 February 2007 Lakópark rented them to Tendre. On 28 February 2007 and 5 March 2007 Tendre Kft. rented for an indefinite time from Bábolna Kft all the movables found on the above properties in Nagyigmánd and Zalacséb, hereby ensuring its first options on them. Simultaneously with these renting contracts (also on 28 February 2007 and 5 March 2007) Tendre Kft. also concluded Trademark License Agreements with Bábolna for using the trademarks of the products made in its plants of Nagyigmánd and Zalacséb, hereby ensuring first options on them. Finally on 5 May 2008 Tendre Kft. bought from Bábolna all the movables and trademarks, which had been rented by it up to that time. However, Tendre failed to submit an application for the authorisation of the concentration from the GVH.

According to the GVH, all the assets and rights (animal feeding business unit) purchased were appropriate on their own for Tendre Kft. – by taking over the market activities of Bábolna - to pursue market activities (animal feed production and sales). Therefore purchasing these assets and rights is qualified as a concentration. The contract relating to the leasing (managing) of the assets and rights being part of the undertaking only creates a concentration if it is related to a longer term, and the parties to this transaction concluded the above contracts for an indefinite period of time. However, based on the content of the

agreements (terms of first option) and some of the circumstances of their conclusion (a member of the Domestore-group purchased the assets, the lessor (Bábolna) was under liquidation) the GVH did not find contestable that the change was meant to be permanent, this statement can also be supported by the fact that the movables and trademarks were purchased by Tendre.

The GVH established that in 2006 the aggregate net turnover of the Domestore-group being party to the transaction and the animal feed business unit exceeded HUF 15 billion, each turnover was more than HUF 500 million, hereby the authorisation of the concentration by the GVH should have been sought. The application for the authorisation should have been submitted to the GVH within 30 days following the date of the conclusion of the last contract (by 4 April 2007). The proceeding was only initiated 539 days later. Since pursuant to the Competition Act, in this type of cases the maximum amount of fine imposed may be HUF 50 thousand a day, the GVH could have imposed a maximum of fine totalling HUF 26,95 million. However, it only imposed a fine of HUF 10 million on Tendre since the transaction had insignificant effects on the market, hereby it is improbable that Tendre deliberately failed to request the approval.

The concentration was finally authorised by the GVH since the Domestore-group even after purchasing the animal food business unit could not acquire 20% shares on the animal feed production market above which competition concerns could have been arisen.