



GAZDASÁGI
VERSENYHIVATAL

ViDaNeT - Magyar Telekom merger blocked

The Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter: GVH) did not authorize Magyar Telekom Nyrt. (hereinafter: MT) to acquire control over ViDaNeT Zrt. claiming that as a consequence of the concentration one group of undertakings would control fixed line telephone and cable television networks – pledges of effective infrastructure-based competition – on the relevant geographic market. The GVH has blocked the acquisition despite of MT trying to outweigh the competition concerns arising from the merger by offering commitments prior to the decision-making.

On 8 December 2008 MT exercised its option and thus acquired the shares of Kaptár Zrt. in ViDaNeT Zrt; due to the transaction MT became 100% shareholder of the undertaking. On 9 December 2008 MT submitted an application to the GVH for the authorisation of this acquisition of shares. MT claimed that the planned concentration would not result in a restriction of competition as a consequence of current market processes, primarily the forging ahead of mobile Internet and satellite TV services. MT noted that in case the competition authority would express some concerns about the concentration, it is willing to undertake commitments in order to get the authorisation of the GVH. Accordingly, after the acquisition MT would assure ViDaNeT subscribers Internet access via cable TV network under conditions at least as favourable as it does in the case of the subscribers of its subsidiary T-Kábel, located outside the territory covered by the telephone network of MT.

At present ViDaNeT is providing electronic communication services (cable TV broadcasting, broadband cable Internet, voice transmission) in twenty settlements (for instance Győr, Tata, Mosonmagyaróvár, Kaposvár, Pécs and some areas of Budapest) mostly for residential customers.

MT is the largest residential fixed line telephone-, broadband Internet- and mobile communication provider in Hungary. The previous two services are sold by MT under the brand T-Home, the latter under T-Mobile. The Telekom group is also a significant player on the market of broadcasting. Under the brand T-Home MT also provides IPTV, satellite and cable television services. The latter is actually the gradual integration of the cable TV service provided by T-Kábel Magyarország Kft. (hereinafter: T-Kábel) into the uniform image of MT. Except for Mindszent, MT possesses fixed line telephone networks all over the area covered by the cable television network of ViDaNeT.

At the end of February 2009, after the completion of the documents, the GVH started to investigate the concentration in question and at the end of March 2009 it decided to assess the application in a full procedure, taking into account the high market shares of MT and ViDaNeT on the markets of Internet access, cable television and voice services. Closing the investigation the GVH informed MT in its preliminary position that the concentration is likely

to create a dominant position on the markets investigated – residential broadband cable Internet services, voice services, broadcasting – that hinders the development of effective competition. The GVH also assessed in its preliminary position the commitments offered by MT and found that they would not be eligible to outweigh the competition concerns arising from the transaction. Hereupon, the GVH held a hearing where MT proclaimed its intention to modify the commitments it had proposed, thus a second hearing was held by the GVH.

In its new commitment MT undertook to provide access to part of its network infrastructure (for example underground cable tunnels, or poles suitable for installing aerial cables) in the area of ViDaNeT for the requesting undertakings. Furthermore, in the relevant geographic area MT undertook to apply the most favourable prices of MT and ViDaNeT in connection with the retail services provided by ViDaNeT. Also, in the next three years MT will bring about developments on the network of ViDaNeT enabling it to provide excessively high – over 20 Mbit/sec - bandwidth services.

Nevertheless, the GVH did not authorise the concentration on the second hearing held after the assessment of the new commitments offered by MT. On the geographic area concerned – except for Mindszent – the independently controlled fixed line telephone- and cable television networks of MT and ViDaNeT would fall into the hands of a single group of undertakings by the concentration. According to the GVH, as a consequence of the concentration instead of the two significant independent market players possessing infrastructure of strategic importance there would remain only one player on the market of residential fixed line Internet services controlling the two significant, strategic networks. The infrastructure is considered to be strategic because, being an access network, it reaches customers directly, and three services (Internet, telephone, broadcasting) can be provided through it, thus making its owner a significant player in all three markets. Therefore, the concentration would eliminate the previous real competition, which was though obviously restricted because of the duopolic structure of the market, but still worked.

In its decision the GVH established that the commitments offered by MT were not eligible for outweighing the detrimental effects arising from the concentration, thus it could not be authorised.

The assessment of the GVH showed that competition based on the access to the infrastructure offered by MT would necessarily put smaller competition pressure on the parties to the concentration than the actual competition does and the commitments proposed cannot promote the possibility of developing competition on the merits as fast as required. Among others, such a commitment is not suitable for handling the situation of the previously independent competitors, who used to put pressure on each other, getting dependent on one of the competitors in the future. The exposed situation of the competitors allows the applicant – for instance through the submission of applications for access to the infrastructure – to foresee their plans on market extension and thus eliminates a significant factor of competition.

The other commitments offered by MT were not accepted by the GVH either. With respect to the pricing practice the GVH established that by its nature it only takes account of the prices applied at the time of decision-making, thus it cannot stand for the conditions given in a real competitive environment. Besides pricing practices, several dynamic competition conditions contribute to effective competition, which cannot be replaced by the commitments either. Nevertheless, the relevant market is very complex, consisting of many parameters (e.g. price, bandwidth – guaranteed or maximalized – and bundles). The GVH did not accept the commitment relating to the development of the network either, considering that the

development of cable television networks is already an existing practice – already accomplished by some cable television providers – and the competitive environment is just the one to assure the undertakings' devotion to the developments.