

HUNGARY *

Legislative changes

Change is the only constant but the pace of change can often vary. In year 2014 the Hungarian antitrust community welcomed a year with less change than what has been customary in the prior years. In our 2013 annual update we covered the substantial amendments to Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (“Competition Act”)¹, carried out by the Hungarian Parliament by passing Act CCI of 2013 on the Amendments to the Competition Act (“Amendments”). Since the Amendments entered into force on January 1, 2014 and on July 1, 2014, respectively, they were the most important legislative developments in Hungarian antitrust law in 2014.²

Mergers

Notable mergers in Hungary concerned the insurance industries, printed media, and the pharmaceuticals/vaccines markets.

On April 28, 2014, the Competition Authority authorized the direct sole control of VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe (“VIG AG”) over AXA Biztosító Zrt (“AXA Biztosító”), and with this, also accorded sole indirect control over AXA Money & More Pénzügyi Tanácsadó Zrt (“AXA MoMo”).³ As a consequence, the VIG group acquired from the AXA group the Hungarian branch of its insurance activities.

On July 22, 2014, the Competition Authority authorized two closely related transactions. In the first, Lumen Hungary Holding, a company of Vienna Capital Partners (“VPC”), purchased

* The contribution for Hungary was written by Dr. Kornelia Nagy-Koppany, Dr. Annamaria Klara and Robert Almosd, JD of KNP LAW Nagy Koppany Varga and Partners.

¹ Available in Hungarian at http://njt.hu/cgi_bin/njt_doc.cgi?docid=26902.287066

² For further details see pages 75-76 of <file:///C:/Users/Annamari/Downloads/-IC722000-newsletterpubs-2013AntitrustYearReview.pdf>

³ Decision No. Vj/4-31/2014, April 28, 2014, available in Hungarian at http://gvh.hu/data/cms1026849/Vj004_2014_m.pdf.

Hungarian newspapers from Axel Springer SE and Ringier AG.⁴ In the second, Ringier Axel Springer Media AG acquired direct sole control over other Hungarian newspapers.⁵ In 2010, Axel Springer SE and Ringier AG sought to merge their Central Eastern European media interests in a jointly controlled undertaking, to be known as Ringier Axel Springer Media AG. The concentration required preliminary approval from the National Media and Information Authority (“NMIA”), the government authority entrusted with competence over media matters. The NMIA refused to issue a preliminary approval, and the companies’ individually controlled Hungarian newspapers could not be placed under Ringier Axel Springer Media AG. Following the unsuccessful merger attempt, Axel Springer SE and Ringier AG sold some of their Hungarian newspapers to VPC. Their jointly controlled company, Ringier Axel Springer Media AG acquired Blikk Kft and Axel Springer-Budapest Kiadó Kft from Axel Springer SE and Ringier AG, respectively.

On June 25, 2014, the Competition Authority authorized the concentration of Central Group Media Holding Kft (“Central”) and Sanoma Media Budapest Zrt (“Sanoma”).⁶ Central acquired direct sole control over Sanoma by purchasing one hundred per cent of its shares.

On October 29, 2014, the Competition Authority authorized the acquisition by Ringier Axel Springer Media AG (“Ringier”) of two job search websites, “profession.hu” and “jobmonitor.hu”.⁷ Ringier purchased the websites and all assets necessary for their operation

⁴ Decision No. Vj/06-35/2014, July 22, 2014, *available in Hungarian* at http://gvh.hu/data/cms1029093/Vj006_2014_m.pdf. English summary at http://gvh.hu/en/resolutions/resolutions_of_the_competition_council/Resolutions_2014/vj_6_2014_35.html.

⁵ Decision No. Vj/07-46/2014, July 22, 2014, *available in Hungarian* at http://gvh.hu/data/cms1029094/Vj007_2014_m.pdf. English summary at http://gvh.hu/en/resolutions/resolutions_of_the_competition_council/Resolutions_2014/vj_7_2014_46.html.

⁶ Decision No. Vj/47-13/2014, June 25, 2014, *available in Hungarian* at http://gvh.hu/data/cms1029062/Vj047_2014_m.pdf.

⁷ Decision No. Vj/80-10/2014, October 29, 2014, *available in Hungarian* at http://gvh.hu/data/cms1029772/Vj080_2014_m.pdf.

from their operator, Sanoma Media Budapest Zrt (currently Centrál Média csoport Zrt, “Centrál”). Central is controlled by Central Group Media Holding Kft.

On December 22, 2014, the Competition Authority authorized the acquisition of Baxter Vakcina Üzletág [Baxter Vaccine Business] by Pfizer Ireland Pharmaceuticals and Pfizer Manufacturing Austria GmbH.⁸ In addition to Hungary, the concentration was notified in Austria, Brazil, the Czech Republic, Germany, Portugal, and Spain.

Cartels and Other Anticompetitive Practices

In its October 20, 2014 decision in a competition supervision proceedings initiated on March 22, 2011, the Competition Authority concluded that four newspaper publishing companies violated the prohibition of agreements restricting competition.⁹ The Competition Authority imposed a total fine of HUF 2,164,869,000.00 (approximately USD 9 million) on Axel Springer Magyarország Kft (“Axel”), RUSSMEDIA Kft (“Russmedia”)¹⁰, Lapcom Kiadó Zrt (“Lapcom”)¹¹, and Pannon Lapok Társasága Kiadó Kft (“Pannon”). According to the decision, during the period between May 2000 and April 2010, Axel, Russmedia, Lapcom, and Pannon were part of a comprehensive, competition restricting market division agreement with the objective of refraining from entering into each other markets.¹² In addition, the Competition Authority found that the four companies at different times of the year in 2010 and 2011 engaged in competition restricting concerted practices when they shared sensitive information with each other on the prices of advertisements in their printed and online local county newspapers. More precisely, the agreements they entered into concerning their Sunday

⁸ Decision No. Vj/78-41/2014, December 22, 2014, *available in Hungarian at* http://gvh.hu/data/cms1030172/Vj078_2014_m.pdf.

⁹ Decision No. Vj/23-322/2011, October 20, 2014, *available in Hungarian at* http://gvh.hu/data/cms1029574/Vj023_2011_m_v.pdf.

¹⁰ Formerly Inform Média Kft.

¹¹ Formerly Lapcom Lapkiadó és Nyomdaipari Kft.

¹² The four companies’ involvements started at different times. Axel and Russmedia engaged in May 2000, Lapcom in May 2000, and Pannon in May 2002.

papers contained mutual anti-competitive and price fixing provisions. The parties agreed that they would not encroach on each other's county and regional markets. The competition ban, in addition to the Sunday papers, extended to every printed and electronic newspaper. The companies also conducted negotiations regarding the prices of products sold through vendors, as well as prices charged for advertisers. The Competition Authority learned that the mutual anti-competitive provisions were deleted from the agreements on April 19, 2010. The companies challenged the decision of the Competition Authority in court where judicial review proceedings are currently pending.

On June 13, 2014, the Competition Authority issued a decision against five companies for unlawfully sharing information in the contact lenses and related care products market.¹³ The competition supervision proceedings was launched on December 7, 2010, against CooperVision Optikai Cikkeket Forgalmazó Kft ("CooperVision"), FOTEX-OFOTÉRT Optikai és Fotóciikk Kereskedelmi Kft ("Fotex-Ofotért"), Johnson & Johnson Egészségügyi és Babaápolási Termékeket Gyártó és Forgalmazó Kft ("Johnson & Johnson"), Novartis Hungária Egészségügyi Kft ("Novartis"), and "Kleffmann & Partner" Piackutató, Szolgáltató Kft ("Kleffmann"). The Competition Authority found that the agreement and the concerted practices of CooperVision, Fotex-Ofotért, Novartis, and Johnson & Johnson violated Section 11 of the Competition Act. The Competition Authority also concluded that the anticompetitive practices of the companies violated Article 101 of the Treaty on the Functioning of the European Union, as their effects were the prevention, restriction or distortion of competition within the internal market. The total fine imposed on the companies was HUF 98,800,000.00 (approximately USD 437,000.00). Johnson & Johnson, however, was exempted from the fine under the Competition Authority's leniency policy, and the proceeding against Kleffmann was terminated for lack of evidence proving the company's

¹³ Decision No. Vj/96-310/2010, June 13, 2014, *available in Hungarian* at http://gvh.hu/data/cms1027413/Vj096_2010_m_v.pdf.

participation in the competition restriction and its intention to support it. The allegation in the proceedings was that CooperVision, Fotex-Ofotért, Johnson & Johnson, and Novartis, the three market leaders in the contact lenses and related care products market operated an information sharing system disguised as a market research service with the assistance of Kleffman, a market research company. Between 2003 and 2010, the companies shared trade information that contained quantity and sales price data. The information sharing system was also suitable for sharing with each other the companies publicly not available trade secrets, based on which they could coordinate their practices in a competition restricting manner and reduce the uncertainty stemming from the market behavior of certain companies. The companies initiated judicial review proceedings against the Competition Authority's decision. In three notable cases the Competition Authority sanctioned companies for engaging in competition restricting conducts relating to public procurement tenders. In the first case they¹⁴ concluded that on December 19, 2014, OTYS ÚTTECHNIKA Korlátolt Felelősségű Társaság, ÚT-GARANTOR Korlátolt Felelősségű Társaság, and Kristály-Vár Építési, Kereskedelmi és Szolgáltató Korlátolt Felelősségű Társaság agreed on the entity submitting the winning bid in two separate tender proceedings involving water damage related to urban development and reconstruction projects. The Competition Authority imposed a HUF 43,560,000.00 (approximately USD 170,160.00) fine. In the second case,¹⁵ which was decided on December 22, 2014, the investigated companies coordinated their bidding price and their bids in public tenders related to solar energy system installation, building and electrical energy project management, and building energy system modernization. The total fine imposed on ÉTER-1. Mérnöki és Tanácsadó Kft, EUROLARES Gépészeti, Kereskedelmi

¹⁴ Decision No. Vj/48-122/2013, December 19, 2014, *available in Hungarian* at http://gvh.hu/data/cms1030268/Vj048_2013_m_v.pdf. English summary at http://gvh.hu/en/resolutions/resolutions_of_the_competition_council/resolutions_2013/Vj_48_2013_12_2.html.

¹⁵ Decision No. Vj/65-215/2012, December 22, 2014, *available in Hungarian* at http://gvh.hu/data/cms1030431/Vj065_2012_m_v.pdf.

és Szolgáltató Kft, RVI Magyarország Tanácsadó Kft, QUALIKO Műszaki Tervezési és Tanácsadói Iroda Bt, SCHNEIDER Investment Ipari Szolgáltató és Kereskedelmi Kft, and AQUAPLUS Kútfúró, Építő és Termálenergetikai Kft was HUF 148,390,000.00 (approximately USD 557,400.00). In the third case¹⁶ that was decided on May 8, 2014, the subject companies coordinated their bidding prices and divided the market among themselves in public tenders related to geophysical survey of mines and complex well inspection surveys of thermal water wells. The Competition Authority imposed a total fine of HUF 7,940,000.00 (approximately USD 36,400.00) on GEO-LOG Környezetvédelmi és Geofizikai Kft and “GEOSERVICE” Geofizikai, Geológiai és Kútszelvényező Korlátolt Felelősségű Társaság.

Court Decisions

The Budapest Capital Court of Appeals in its March 5, 2014, judgment¹⁷ reversed and remanded to the Competition Authority for new proceedings the trial court’s judgment affirming the decision of the Competition Authority in a cartel case against several food processing and wheat milling companies. In the underlying case concerning twenty-five companies, the Competition Authority in its October 28, 2008, decision,¹⁸ imposed a total fine of HUF 2.3 billion (approximately USD 10,900,000.00), on seventeen out of the original twenty-five companies that were allegedly engaging in competition restricting practices. The Competition Authority found that the companies concluded bilateral and multilateral agreements to divide the floor and other wheat mill products market and fix minimum prices and price increases. The companies filed an action in the district court for judicial review

¹⁶ Decision No. Vj/66-65/2012, May 8, 2014, *available in Hungarian at* http://gvh.hu//data/cms1026902/Vj066_2012_m.pdf. English summary at http://gvh.hu/en/resolutions/resolutions_of_the_competition_council/resolutions_2012/vj_66_2012_65.html.

¹⁷ Decision No. 2.Kf.649.964/2013/20, March 5, 2014, *available in Hungarian at* http://gvh.hu//data/cms1026885/Vj069_2008_FT.pdf.

¹⁸ Decision Nos. Vj/69-538/2008, Vj/69-539/2008, and Vj/69-564/2008, October 28, 2010, 2014, *available in Hungarian at* http://gvh.hu//data/cms992405/Vj069_2008_T.pdf. English summary at http://gvh.hu/en/resolutions/resolutions_of_the_competition_council/resolutions_2008/7043_en_vj-692008538.html.

proceedings. The trial court affirmed the decision of the Competition Authority that the plaintiffs appealed. The appellants argued that after the trial court issued its judgment, a new law on agricultural and foodstuff products was passed, which was a new fact, not available during the trial. They contended that under the new statute their proceedings before the Competition Authority would be treated in a more favorable light. They claimed that the new law could be applied in their case based on the principle that new regulations can be applied retroactively if they were more favorable to the party of interest. The respondent Competition Authority countered that the new law only applied retroactively to pending administrative proceedings, and since the Competition Authority decision concluded this case, the new statute cannot be retroactively applied to appellants' case. The appeals court agreed with the appellants that the underlying case was still pending until the final decision of the court in the judicial review proceedings, and found that the new, more favorable law could be retroactively applied to appellants' competition proceedings.