



GAZDASÁGI
VERSENYHIVATAL

Concentration with conditions in the poultry industry

The acquisition of control over Kiskunhalasi Baromfifeldolgozó by Bács-Tak was cleared by the Hungarian Competition Authority; however, conditions and obligations were attached to the clearance decision.

Bács-Tak Takarmánygyártó és Forgalmazó (Fodder Production and Distribution) Kft. acquired 50,1% of the shares of Kiskunhalasi Baromfifeldolgozó (Poultry Processing Kiskunhalas) Zrt. in January 2007, while the authorisation of the Hungarian Competition Authority (GVH) was sought only in May 2007. Since the authorisation was applied for with considerable delay, the GVH imposed a fine of HUF two million (approx. EUR 7 900) on the applicant. The investigation revealed that both Bács-Tak (originally active in fodder production, but later also in broiler and duck breeding) and Kiskunhalasi Baromfifeldolgozó had personnel interlockings with the company Hungerit Baromfifeldolgozó és Élelmiszeripari (Poultry Processing and Food Industry) Zrt., which is also active in the poultry industry.

As the GVH has established, the participants of the transaction do not perform identical economic activities, hence, there is no risk that a dominant position could be created or strengthened in this context. However, a dominant position can be created not only by a group of undertakings, but also jointly by two or more undertakings. When establishing the existence of a joint dominance, the GVH has to prove that there is a special relationship between the groups of undertakings, which are legally independent of each other, a common interest that makes them unmotivated in competing with each other. In the case in question, the creation of a joint dominance could be based on the fact that the acquisition would establish a link between two Hungarian waterfowl (duck and goose) processing undertakings (Kiskunhalasi Baromfifeldolgozó and Hungerit). Namely, the acquirer of control over Kiskunhalasi Baromfifeldolgozó, Bács-Tak has ownership and personnel interlockings with Hungerit. Bács-Tak is a minority (16.9%) shareholder of Hungerit and one of the persons having interests in Bács-Tak is a member of Hungerit's supervisory board. Furthermore, the proprietor general manager of Hungerit is a member of the board of directors of Kiskunhalasi Baromfifeldolgozó; this circumstance further increases the possibility of a joint dominance.

The fact that an undertaking's representative is a member in the management of its competitor can facilitate the coordination of conducts between the two undertakings. A relatively high percentage of minority shares may make the undertaking interested in getting its competitor successful on the market. Taken this into consideration, the GVH has come to the standpoint that, as a result of the proposed transaction, Bács-Tak controlling the Kiskunhalas-group (i.e. Kiskunhalasi Baromfifeldolgozó and the undertakings controlled by it) and Hungerit would become jointly dominant on the market of the buying and processing of waterfowls. Therefore, the acquisition may not be cleared. However, the competition

concerns can be remedied by the elimination of the ownership and personnel interlockings between Bács-Tak and Hungerit.

Accordingly, the GVH cleared the transaction by attaching to its decision a pre-condition that the person having an interest in Bács-Tak resigns his membership in the supervisory board of Hungerit and that the meeting of the stakeholders of Kiskunhalasi Baromfifeldolgozó calls back from the board of directors the proprietor general manager of Hungerit. In addition to this, for the period until 31 December 2017, the GVH obliged Bács-Tak and all the undertakings directly and indirectly controlled by it, to refrain from buying Hungerit-shares. Furthermore, also until 31 December 2017, one and the same person may not be elected office holder, at the same time, of the Bács-Tak-group and the Hungerit-group. Until the fulfilment of the pre-condition, the authorisation will not take effect. In respect of the obligations imposed, the GVH will continuously monitor compliance and will revoke the authorisation in the case of non-compliance.