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Contracts of the Gyöngy Pharmacy Network under review

The Hungarian Competition Authority (GVH) established that two points of the cooperation agreement regulating the operation of the Gyöngy Pharmacy Network including Hungaropharma and several pharmacies may be eligible for restricting competition. The GVH prohibited the application of the objected points.

The main profile of Hungaropharma is the wholesale of medicine and therapeutic products, it is not directly involved in retail trade. Hungaropharma buys medicine from approximately 300 suppliers, including all Hungarian pharmaceutical manufacturers. 73-75% of the products distributed by the undertaking are pharmaceuticals manufactured abroad. The activity of Hungaropharma covers all kinds of medicine and the whole territory of Hungary: besides premises in Budapest, it owns business sites in Debrecen, Békéscsaba, Veszprém, Miskolc and Kaposvár. The undertaking has about four thousand clients, including pharmacies, hospitals and other wholesalers.

At the beginning of 2007 Hungaropharma decided to make an offer to pharmacies relating to a strategic cooperation. It concluded agreements with 490 pharmacies realising 22% of the total turnover of the Hungarian pharmaceutical market until the end of the first half of 2008. The pharmacies concerned are located in Budapest, in all significant cities of the country and in numerous townships. In order to co-ordinate the cooperation, Hungaropharma and the pharmacies concluding the agreement until 31 May 2007 established a Pharmacy Partnership Association (called Gyöngy Strategic Association at the present time) and adopted its Cooperation Regulation.

In April 2008 the GVH initiated a proceeding against Hungaropharma in order to find out whether the cooperation agreement between the undertaking and the pharmacies violates the Competition Act. The investigation revealed that two points of the document are eligible for restricting market competition. Pursuant to the agreement, member pharmacies are only allowed to launch their own discount campaigns if the council representing all members of the agreement agrees. According to the GVH, the obligation on the members to report discount campaigns may restrict competition by informing competitors about each other's pricing practices. However, according to the law this restrictive effect only occurs, if the concerted practice affects at least 10% of the market turnover. The investigation of the GVH revealed that Gyöngy pharmacies jointly possess 22% of the domestic pharmaceutical retail market, thus the point of the agreement concerning the prohibition of discount sales is considered as an infringement. The second objected point of the agreement is about the determination of resale prices. This point obliges the pharmacies to maintain the discount prices determined by Hungaropharma. This obligation prevents the buyer pharmacies from determining their prices on their own, therefore the GVH considers this point of the cooperation agreement as a restrictive practice.

Based on that the GVH established the infringement and, beyond 30 days after receiving its resolution, prohibited the application of the points of the agreement that require the notification of discount campaigns by the members and determine resale prices. The GVH

emphasized that the members can also comply with the obligation if the agreement includes that the pharmacies do not apply higher prices than the discount price offered by Hungaropharma. The other objection of the GVH can be repaired by making the agreement of the council obligatory only in the case of discount campaigns running in parallel with the campaigns launched by the Gyöngy chain.

During the proceeding of the GVH, Hungaropharma expressed its intention to fully review the cooperation agreement and to conclude contracts with the pharmacies complying with the expectations of the GVH by 31 December 2009. Up to that time, the pharmacies that signed the agreement will receive a declaration paper in which Hungaropharma offers a unilateral commitment to interpret the objected points of the agreement the same way the GVH does.

Beyond establishing the infringement no fine was imposed, since Hungaropharma admitted the infringement and actively cooperated with the GVH in the course of the proceeding.

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