



GAZDASÁGI
VERSENYHIVATAL

Hungarian Competition Authority imposed a fine of HUF 6.8 billion (approximately EUR 27.8 million)

The Competition Council of the Hungarian Competition Authority observed in its injunction of 21 December 2006 that the conduct, which Allianz Hungária Biztosító Rt., Generali-Providencia Biztosító Zrt., Gépjármű Márkakereskedők Országos Szövetsége, Magyar Peugeot Márkakereskedők Biztosítási Alkusz Kft., Magyar Opelkereskedők Bróker Kft. and Porsche Biztosítási Alkusz Kft adopted in the last years, was capable of restraining economic competition. The Competition Council imposed fines amounting altogether to HUF 6814,3 million on:

- Allianz Hungária Biztosító Rt.: HUF 5319,0 million (approximately € 21.7 million),
- Generali-Providencia Biztosító Zrt.: HUF 1046,0 (approximately € 4.3 million),
- Gépjármű Márkakereskedők Országos Szövetsége: HUF 360,0 million (approximately € 1.5 million),
- Magyar Peugeot Márkakereskedők Biztosítási Alkusz Kft.: HUF 45,0 million (approximately € 180 thousand),
- Magyar Opelkereskedők Bróker Kft.: HUF 13,6 million (approximately € 55 thousand) and
- Porsche Biztosítási Alkusz Kft.: HUF 30,7 million (approximately € 125 thousand).

The Competition Council terminated the proceeding against Magyar Biztosítók Szövetsége.

The conduct of Gémosz

1. The Hungarian Association of Automobile Dealers (hereinafter: Gémosz) was formed in 2002 and has currently more than 300 members. The association covers around 600-700 automobile dealers.
2. Since its formation in 2002, Gémosz aim was to restrain price competition on the car repair market and to enforce standard prices and price increases of its members.
3. Between 2003 and 2005 Gémosz agreed with the insurance companies Allianz Hungária Biztosító Rt. (hereinafter: Allianz) and Generali-Providencia

Biztosító Zrt. (hereinafter: Generali) on the hourly wages for car repair works. From these arrangements, the decisions made by Gémosz in this subject matter are derivable.

4. It is of competition law concern when an association of undertakings in the absence of statutory authorization behaves in a way, which directly affects prices. In the present case, Gémosz agreed with Generali and Allianz on "recommended prices". This conduct was an infringement of competition law as, due to the recommended prices, the prices on the market differed from those, which would have come to exist without the agreement. Not only is the formal decisions or the recommendation made by the association prohibited by competition law, but also all kind of manifestations are infringements of law, which intend to harmonize (independently of its real effect) the market behaviour of its members and in this way restrict economic competition.
5. The Competition Council came to the conclusion that Gémosz, Allianz and Generali had a practice, which was capable of restricting competition, when, between 2003 and 2005, they fixed the prices of car repair works charged by the automobile distributors.
- 6.

Determining the fine, the Competition Council applied the provision of the Competition Act, according to which the fine imposed on an association of undertakings may not exceed ten per cent of the total net turnover in the preceding business year of the undertakings, which are members of it, and not that of the association itself. ***The conduct of Allianz relating to the hourly wages for repair works***

7. Allianz and Gémosz made arrangements between 2003 and 2005 concerning the hourly wages for repair works applied by Allianz. In some of these arrangements the amount of the hourly wage was provable linked with the revenues made in the insurance sale. These agreements the Competition Council found unlawful.

There was no definite proof that the agreements made about the hourly wages applied in 2003 included the revenues from the agreements with the authorised dealers, whereas this was an element of the arrangement between Allianz and Gémosz in 2004 and 2005.
8. It was additionally verified that during the time Allianz agreed with the individual automobile dealers about the hourly wages in 2004 and 2005, it was a common practice to link the hourly wages with the revenues made in the insurance sale. No proof could be found for this practice in the previous period.
9. Taking into account the above, the Competition Council concluded in its injunction that the agreements of Generali and Allianz made with the automobile dealers in 2004 and 2005, linking the hourly wages for repair works applied by the automobile dealers, with the revenues made in the sale of Allianz insurances, were capable of restraining competition.

The conduct of Generali relating to the hourly wages for repair works

10. Generali and Gémosz made arrangements between 2003 and 2005 concerning the hourly wages for repair works applied by Generali. Based on available evidence, it was not observable whether the agreement included a link between the hourly wages and the revenues made in the insurance sale.

At the same time it was verifiable that during the time of the negotiations between Generali and certain automobile dealers in the subject matter of the hourly wages applied between 2004 and 2005, it was a common practice to link the amount of the hourly wages with the revenues made in the insurance sale. However, for the preceding years the Competition Council had no proof for such behaviour.

11. The Competition Council concluded in its injunction that the agreements between Generali and the individual automobile dealers made between 2004 and 2005, which included a link between the revenues made in the sale of Generali insurances and the hourly wages for repair works charged by the automobile dealers, were capable of restraining competition.

Some aspects of the evaluation of the conduct Allianz and Generali applied in relation to the hourly wages for repair works

12. No competition proceeding was commenced against the individual automobile dealers contracting with Allianz and Generali. The Competition Council did not find it necessary to extend the proceeding to these undertakings. In order to eliminate market distortions, the ban on the arrangement between Allianz and Generali was seen sufficient to protect public interest.

13. In the opinion of the Competition Council, with the creation of a link between the hourly wages and the achievements made in the insurance sale, the aim of Allianz and Generali was to limit, in exchange for higher hourly wages, the access to this channel of insurance selling for other insurance companies.

The two market leader insurance companies, Allianz and Generali, accepted the higher hourly wages in return for new insurance contracts. The other insurance companies on the market also had to apply higher hourly wages and increase their expenses, whilst, due to the arrangements, their access to the distribution of automobile insurance contracts became limited.

14. The conduct of Allianz and Generali was capable of lowering the intensity of competition. The prices, consumers had to pay for insurances and repair works, did not evolve in a fair competition.

15. Determining the fines imposed on the insurance companies, the Competition Council took into consideration the relevant turnover Generali and Allianz achieved on the automobile insurance market in 2004 and 2005 (without the turnover made with reinsurance contracts).

Arrangements and concerted practices of Allianz and Generali

16. At the beginning of the investigation it was assumed that besides the agreements on the hourly wages between Allianz and Generali, in connection to the automobile distributors, another agreement existed on the application of uniform negotiations, identical hourly wages and supplements.

The Competition Council could not find definite proof for (horizontal) arrangements by Generali and Allianz in the subject matter of hourly wages for repair works. There was also not enough evidence to prove that the insurance companies followed a concerted practice.

Arrangements between the insurance companies and the insurance brokers

17. Insurance brokers are special actors on the insurance market. Their activity is to establish insurance contracts as a regular business activity. They are not agents of the insurance companies, but those of the insured parties. Within the insurance market, brokers are independent of the insurance companies and have a mediator role in helping their clients (the contractors) to find the most adequate insurance contract.

This special role of the insurance brokers has the result that in relation to their clients, there are the brokers who create competition between the insurance products and make it function. Accordingly, every conduct, which intends to hinder, limit or distort this competition, or is able to generate such an effect, is capable of violating competition law.

18. Pursuant to the legal regulation in force, it is not against the law that not the client (contractor/consumer), but the insurance company pays the commission for the insurance broker. However, due to the special status of the insurance broker on the market, some limits are still set by competition law: the broker is not allowed to make arrangements with an insurance company, which would limit competition on the insurance market.

For example, arrangements in which the parties determine the following are infringements of the law:

- the number of all risks automobile insurance contracts and obligatory automobile liability insurance contracts which the broker should mediate to the insurance company in a given period of time,
- a definite minimum percentage of all risks insurance and obligatory automobile liability insurance contracts the broker should mediate to the insurance company in a given period of time, also stating at least how many all risks and obligatory automobile liability insurance contracts this should be in a month,
- the number of all risks insurance and obligatory automobile liability insurance contracts should exceed in a given period of time the number of contracts, which were made in the preceding period of time (precedent period)

Further, all arrangements violate competition law, which link the commission of the insurance broker on a band with the number of the mediated contracts (or with the insurance fee of the portfolio), in this way motivating the broker to mediate a higher number of contracts to the insurance companies.

19. In the case of the insurance brokers, against which a proceeding was started, it could not be set aside that the brokers had to appear in the arrangements between the insurance companies and the automobile dealers, which attached the hourly wages with the sale of insurance contracts. The insurance companies took part in the insurance sales as insurance sellers and stood on

the side of the brokers, as they would be their agents. The brokers played an important role in the establishment of the arrangement network, in which the Allianz and Generali paid higher repair hourly wages to the automobile dealers in exchange for favourable insurance sales.

20. According to the aspects stated above, the Competition Council came to the conclusion that the arrangements between

- Allianz and Magyar Peugeot Márkakereskedők Biztosítási Alkusz Kft. (hereinafter: MPM) concluded for the period of 4 October 2000 to 9 March 2005
- Allianz and Magyar Opelkereskedők Bróker Kft. (hereinafter: MOSZ) concluded for the period of 16 April 2002 to 21 March 2005,
- Allianz and Porsche Biztosítási Alkusz Kft. (hereinafter: PORSCHE) concluded for the period of 24 April 2002 to March 2005,
- Generali and MPM concluded for the period of 11 October 2000 to 1 March 2005,
- Generali and MOSZ concluded for the period of 21 December 2001 to 10 August 2005,
- Generali and PORSCHE concluded for the period of 21 January 2002 to 31 August 2005

aimed at influencing the insurance brokers in a way which was capable of restricting competition.

21. Determining the fine, the Competition Council based its decision

- in the case of Allianz and Generali, on the insurance fee of the portfolio the insurance brokers mediated to the insurance companies in a given period of time,
- in the case of the insurance brokers, on the commission the insurance brokers received after the number of insurance contracts they mediated to the insurance companies in a given period of time.

Prohibition to continue the unlawful conduct

22. The Competition Council prohibited the undertakings to continue the unlawful conduct after the receipt of this injunction. This does not mean that for example, an insurance company is not allowed to make any arrangement with an insurance broker or with an automobile dealer. The injunction of the Competition Council desires to achieve these arrangements to be made under observance of the requirements of competition law.

The conduct of Mabisz (Association of Hungarian Insurance Companies)

23. In connection with the activity of professional associations, the Competition Council recalls one of the basic goals of competition rules, namely that market actors should make their business decisions freely and independently. Since market actors do not have access to all information about the operation of the market, some of the decisions may carry risks. Obviously, it lies in the interest of the undertakings to minimise risk originating from independent decisions and the absence of information. Often, associations of undertakings or other

organizations take charge of certain tasks, which contribute to transparency and enhance the knowledge about markets. In this way organizations can enable their members to avoid risky decisions.

The collection, exchange and supply of data are traditional functions of professional associations, whereas competition law limits these activities. Especially, the activities cannot violate the principle according to which competitors have to develop their competition behaviour independently, without knowing the future behaviour of their competitors. Inasmuch the association overrides this limit; its liability in competition law can be concluded.

24. The competition supervision proceeding the subject matter of which is an arrangement between the insurance companies in respect to the hourly wages for repair works was also extended to Mabisz.

In relation to Mabisz, the Competition Council terminated the proceeding. It could not be proved that Mabisz behaved unlawfully in connection with the hourly wages for repair works.