

Philips-Hungary

Refusal to supply components outside the brand-service network by PHILIPS-Hungary

In its decision the Competition Council of the Hungarian Competition Authority declared that PHILIPS-Hungary had abused its dominant position by refusing to supply PHILIPS components outside the brand-service network. The Competition Council prohibited continuation of this practice and imposed a fine of 4.000.000 HUF¹.

I. Description of the market on which PHILIPS-Hungary is active

Philips products have a share of at least 10 per cent on the market of household appliances (~ razor, hair dryer, etc.) and electronic entertainment devices (radio, TV, hi-fi, etc.) in Hungary. PHILIPS-Hungary is the subsidiary of a multinational group, seated in the Netherlands. PHILIPS-Hungary is specialised in supplying import and domestically produced Philips products.

As a supplier, PHILIPS-Hungary is bound by law (~ cabinet decree) to ensure the supply of **components** necessary for the use, repair and accessories of imported products during their lifetime.

In order to ensure the fulfilment of the obligation laid down by this law **PHILIPS-Hungary signed agreements with several individual service providers and thus set up a network of service providers**. The members of this network had the obligation to repair Philips products and to take part in courses organised by the PHILIPS-Hungary in order to ensure the high level of their service. In the agreement, signed by PHILIPS-Hungary and the service providers, no territorial exclusivity was guaranteed and the members had the right to repair other companies' products as well; however, they had to obtain components from PHILIPS-Hungary. Occasionally, despite this clause in the agreement, members of the network turned to PHILIPS-Hungary's competitors to obtain Philips components.

PHILIPS-Hungary was obliged to supply components requested on a continuous basis. PHILIPS-Hungary did not supply components towards outside the network because it considered this not as profitable as its other activities.

There were three **competitors** from which the members of the network occasionally obtained Philips components: Nedish, Aswo, and Sini.

1. The market of components for household appliances

Nedish had market share of 24.2% on the market of components for Philips household appliances. On this relevant product market, Nedish was the only competitor, but its prices were 22% higher than those of PHILIPS-Hungary.

2. The market of components for electronic entertainment devices

On the market of components for electronic entertainment devices made by Philips, Nedish had 16.9%, Aswo had 8.4% and Sini had 2.8% market shares (it must be added that components supplied by Sini were not original Philips components, but ones which could partly replace Philips products).

¹ [This was considered to be relatively high at the time of the decision of the Competition Council]

It must be added that the competitors supply only part of the range of Philips components on both markets.

Concluding from the above, PHILIPS-Hungary had, on both component markets, **market shares** of 75.8% and 71.9% respectively.

II. Proceeding

The Hungarian Competition Authority started the proceeding on its own initiative.

1. Arguments of PHILIPS-Hungary

PHILIPS-Hungary submitted that it was not competing on the market of components as it provided components solely to its network of service providers. It also added that its aim was to ensure the high satisfaction of final consumers by supplying only to certain selected service providers.

2. Decision of the Competition Council

According to the constant practice of the Competition Council an anti-competitive conduct has to be appraised in view of ensuring consumer interests. The Competition Council does not doubt that the economic interest of PHILIPS-Hungary is that final consumers should replace their components of Philips products with original Philips components by “brand service providers”. However, as the Competition Council pointed out, the interest of consumers is to have their products repaired with Philips components, but this does not necessarily have to be done by a “brand service provider”, as there is no reason to believe that the service outside PHILIPS-Hungary’s network is of lower quality.

According to the Competition Council PHILIPS-Hungary has a **dominant position** on the market of Philips components for the following reasons: *on the one hand* PHILIPS-Hungary has a high market share on the relevant market (over 70%), *on the other hand*, its competitors are offering only part of the range of Philips components, therefore the final consumers cannot purchase all Philips components from PHILIPS-Hungary’s competitors.

The **freedom of concluding agreements for dominant undertakings** is restricted, as, according to Art. 21 (c) of the Hungarian Competition Act, it is prohibited for a dominant undertaking “to refuse, without justification, to create or maintain business relations appropriate for the type of transaction”, except if it can prove that its refusal is justifiable. The justification submitted by PHILIPS-Hungary, namely that it was not competing on the market of Philips components as it provided components solely to its network of service providers cannot be accepted because PHILIPS-Hungary was supplying these components to individual service providers for a compensation, thus being active on that market, as well.

While it is true that even a dominant undertaking cannot be forced to maintain disadvantageous business practice, this has not been the situation in the present case.

Concluding from the above, the Competition Council ruled that PHILIPS-Hungary cannot, in the future, refuse to supply Philips components, but may determine, provided that this is not contrary to Art. 21 (g) of the Hungarian Competition Act², the conditions under which it will supply these components.

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² See *infra* in the Annex.