



GAZDASÁGI
VERSENYHIVATAL

Cartel on the market of rail freight transport services

The Gazdasági Versenyhivatal (GVH – Hungarian Competition Authority) established that Győr-Sorpon-Ebenfurti Vasút Zrt. (hereafter GySEV), MÁV Magyar Államvasutak Zrt. (hereafter MÁV) and Rail Cargo Hungaria Árufuvarozási Zrt. (hereafter RCH) have infringed Hungarian and EU law by concluding restrictive agreements aimed at sharing the rail freight market among themselves and by applying a common tariff system. The GVH imposed a fine of 1.250.000.000 HUF (approx. 4 million EUR) on the parties.

During its competition supervision procedure, the GVH aimed to clarify whether the undertakings under investigation were conducting restrictive market practices on the newly liberalised market by

- applying uniform prices for railway freight forwarding (GySEV, MÁV and RCH) and by
- concluding a cooperation agreement between GySEV and MÁV. At the same time, the GVH also evaluated the practice conducted by the parties under this agreement.

The Hungarian railway market was liberalised on the day of Hungary's accession to the EU (1 May 2004). Before liberalisation took place, the two incumbent integrated railway undertakings were MÁV and GySEV, which were providing infrastructure access services to operators without their own tracks, and rail freight transport services to customers. The railway network – which in the case of GySEV meant the Győr-Sopron, Sopron-Ágfalva-frontier and Sopron-Szombathely railways, and in the case of MÁV, the remaining part of the Hungarian railways – also served as the meeting point (borderline) for the two incumbents' infrastructures. Thus, the system was based on the so-called unified railway model. According to this model, the incumbents carried their freights within their own infrastructures, and when they reached each other's borderline, they passed the freight to their competitor (without outreaching their "traditional" infrastructures), who was then able to carry it on within its own infrastructure.

As a result of the liberalisation process, the use of the public railway network became possible for "private" railway undertakings which – in the possession of the necessary permissions – were able to access the railway network freely without discrimination. The regulatory measures aimed to make the freight forwarding services more efficient, competitive and to decrease prices due to the creation of free competition. According to the GVH's experience, some smaller undertakings (so-called private railways) entered the market, but GySEV and MÁV – which due to their experiences in the sector and the fact that their business clients could have become each other's most significant competitors – refrained from entering into a price competition with each other and from threatening each other's "traditional" infrastructure.

During its procedure the GVH established that RCH and GySEV had concluded a cooperation agreement which aimed to geographically share the freight forwarding market among themselves, which was in effect from 1 January 2006 to 25 May 2009. Their agreement, which contained as a significant element the framework agreement on the cooperation regarding the freight forwarding activity, aimed to uphold the status quo established by the parties in the period before the liberalisation of the market. Therefore, RCH and GySEV declared that they would “respect” each other’s infrastructure and undertake to not carry out freight forwarding activities on the “other’s” infrastructure. Moreover, they agreed on those freights that concerned both the infrastructure of MÁV and GySEV, and agreed that RCH and GySEV would be forwarding the freights by passing them on to each other on the borderline of their infrastructures (in line with the so called passing on freight forwarding principle). Furthermore, they also undertook to only exceptionally enter “each other’s” infrastructure. By concluding this agreement, the two most significant market players on the Hungarian railway market have shared the market among themselves, substituting the possible competitive behaviour – that was available due to the liberalisation – with their infringing cooperation.

The GVH has also established that the – hypothetically – competing undertakings have applied a uniform pricing policy (common tariff system) that can be regarded as a restrictive price agreement. The agreement was in effect between 1 May 2004 and 31 December 2005 concerning GySEV and MÁV, and between 1 January 2006 and 17 July 2007 concerning RCH (which was until 1 March 2010 called MÁV Cargo Árufuvarozási Zrt, as a result of the separation of the MÁV Freight Forwarding Branch) and GySEV. The uniform list prices that served as a basis of the common tariff system were always the subject of the agreement of the two most significant market players: they published and modified their tariff systems at the same time. A comparison between their price lists shows that they are identical, both substantially and formally, moreover the service components, rates and the method of the pricing policy were also determined on an unified basis. The common tariff system was sufficient for restricting competition, as it mutually decreased the competitive pressure on the undertakings concerned, which could have otherwise created – under competitive market circumstances – uncertainty for the parties in relation to their perspective pricing strategies. However, as a consequence of the rebates provided by the undertakings, the common tariff system was only rarely used in practice, but this does not eliminate the fact that they used the tariff system as a common ground for action and that it was still capable of orientating the close competitors’ pricing behaviour.

Besides establishing the infringement, the GVH imposed a fine of 300 million HUF (approx 1 million EUR) on GySEV, 100 million HUF (approx 300 thousand EUR) on MÁV and 850 million HUF (approx 2.8 million EUR) on RCH. Regarding the amount of the fines, the GVH placed utmost importance on the contribution of the undertakings in the market sharing, which was regarded as a more serious infringement.

When calculating the amount of the fines, the GVH used as a starting point the net turnover of each of the undertakings under investigation that was realised during the period of the infringement and that stemmed from the freight forwarding activity.