

turn, did not happen in the case at hand because the competition authority had rejected the claimant's request without even being aware of its discretionary powers.

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BREAKTHROUGH IN HUNGARIAN PRIVATE ENFORCEMENT CASES?

☞ Abuse of dominant position; Anti-competitive practices; Damages; Hungary; Private enforcement

In a recent judgment the Court of Appeal of Győr confirmed the judgment of the County Court of Győr, which ordered the defendant to pay compensation to the plaintiff since, as a result of the infringement of competition law rules, the plaintiff suffered damages.¹ This is one of the few private enforcement cases in Hungary and the only one, according to the author's knowledge, where compensation was actually awarded to the plaintiff.

In the first instance procedure before the County Court of Győr, the plaintiff requested the court to oblige the defendant to pay the plaintiff a HUF amount equalling approximately €10,000 in lost income, its statutory interests and litigation costs.

In the statement of claim, the plaintiff claimed that the defendant (a civil association in charge of the issuance of taxi permits in one of the Hungarian cities) passed a decision which limited the number of taxis that were able to operate in such city. As a result of this, new entrants faced a significant obstacle to entering the market and, in addition, market players already on the market were restricted with regards to the extension of their activities.

According to the plaintiff, this conduct violated both the prohibition on restrictive agreements (by preventing market entry) and the prohibition of the abuse of a dominant position (by hindering competitors from entering the market in an unjustified manner).² The plaintiff emphasised that, before the decision of the defendant regarding limiting the number of taxi permits was passed, he had already purchased another car to extend its business. However, he did not obtain the taxi permit necessary to use the car.

It is important to note that, before the initiation of the court procedure, the Hungarian Competition Authority (HCA) conducted competition supervisory proceedings in respect of the above-referred to decision of the defendant.³ However, the HCA passed a commitments decision in the case,⁴ without establishing any infringement. According to the commitment, the defendant was obliged to amend its decision so that it no longer limits the number of taxis that may be operated in the city.

In the court procedure, the defendant requested the Court to dismiss the plaintiff's claims. It stated that the decision of the HCA did not bind the Court and did not establish that there was a competition law infringement.

According to the first instance Court, the HCA decision does not have binding force on courts.⁵ However, the HCA's observations made during the court procedure were taken into account by the Court as evidence. Based on this and other pieces of evidence submitted in the court procedure, the

¹ Judgment no. Pf.V.20.047/2014/5 July 3, 2014.

² Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (the "Competition Act") s.11(2) item f) and s.21 item i).

³ Vj-44/2007.

⁴ According to s.75 of the Competition Act in force at that time, if the undertaking subject to the competition supervisory procedure undertakes to ensure that its conduct complies with the Competition Act and arts 101 and 102 TFEU, the HCA may make those commitments binding on the undertaking if it considers that compliance with the law and the effective safeguarding of the public interest can be ensured in this way. In such a case, the HCA does not establish the infringement nor the lack thereof.

⁵ Since July 1, 2014 HCA decisions have binding force on courts in respect of the establishment of an infringement.

first instance Court established that that the defendant's decision and its related practice infringed both the prohibition on restrictive agreements and the prohibition on abusing a dominant position.

The plaintiff proved the amount of damages by way of documents, witnesses and expert opinions, on the basis of which the amount of damages was properly estimated (although not precisely determined) in the view of the Court. The first instance Court accepted the amount of damages as proven by the plaintiff and awarded the claimed amount as general damages.⁶

Against this first instance judgment, the defendant filed an appeal where it objected that the first instance Court had established the competition law infringement even though the HCA terminated the competition supervisory procedure without the establishment of the infringement. In addition to this, it expressed its view that the plaintiff failed to properly evidence the amount of the damages, since the amount was merely estimated but not precisely determined.

The second instance Court approved the first instance judgment and rejected the defendant's appeal. The Court of Appeal of Győr confirmed that the evidencing procedure as carried out by the first instance Court and the evaluation of the evidence was appropriate. It also agreed that the HCA observations, as well as the HCA commitments decision, can be taken into account as evidence in the court case, the evaluation of which lies within the sole discretion of the court. It also pointed out that the mere fact that the HCA terminated the competition supervisory proceedings by way of a commitments decision cannot be interpreted to mean that there was no competition law infringement.

The second instance Court also confirmed that the first instance Court rightly obliged the defendant to pay general damages, which is capable of complying with the principle of full compensation in such cases where the amount of damage cannot be precisely calculated.

Apart from the fact that this court case is the first where damages were awarded in connection with a competition law infringement, this case is worth mentioning because of (at least) another two reasons. Firstly, this court case was not preceded by an infringement decision of the HCA, but a commitments decision, so practically it is a result of a stand-alone action where both the infringement and the damage, including its causality and amount, needed to be proved by the plaintiff. Secondly, it is welcomed that the Court applied the concept of general damages, since the amount of the damages, being lost income, could not be determined precisely but could only, by its nature, be estimated.

What is also remarkable is that in the available judgment of the Court of Appeal of Győr, the reasoning relating to the establishment and the legal assessment of the infringement is rather short (it cannot be excluded that the reasoning of the first instance judgment is more sophisticated, however it is not available publicly). In the second instance, the Court limited itself to the statement (confirming the first instance judgment) that the defendant breached both the prohibition on restrictive agreements and the prohibition on abusing a dominant position, since the purpose of limiting the number of taxi cars was to hinder market entry and to restrict the business of the market players, and the damage suffered by the plaintiff was caused indirectly by this decision of the defendant and was caused directly by the practice of the defendant which did not allow the use of the second taxi.

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⁶ Section 359(1) of the Civil Code (Act IV of 1959) in force at that time: If the amount—or a part of the amount—of damages cannot be calculated precisely, the court may oblige the party causing the damage to pay general damages in an amount which provides full financial compensation for the aggrieved party.