

Licensing in Hungary

Foreign trade in Hungary not likely to differ appreciably from that in any other country

BY DR. P. SEBESTYEN *

Nowadays people rely more on experts. Holy days are being organized by holy-day experts, experts advise management on the policy of their business, and experts on personnel policy tell you how to handle people. Many things which belonged in the sphere of sound judgment of competent people now are left to experts.

In our era of detente a new set of experts seems to have cropped up: experts on east-west licensing. I am looking at those experts with the greatest suspicion, at least concerning licensing business with Hungary. I will explain why.

It is common knowledge that the political and economic system of the socialist states differs from that of the nonsocialist states. But it is not generally known that there are important differences between the socialist states themselves. I have no exact knowledge about the licensing system of the other socialist states. Much of what I am saying applies only to Hungary.

True, in Hungary foreign trade is a state monopoly. That means that only enterprises upon which the right to ply foreign trade has been bestowed may practice foreign trade. Such companies are the foreign trade companies and a great part of the big industrial enterprises. In that respect I do not think that in practice there is much difference between Hungary and any other country. The practical outcome is that only direct negotiations with individuals are excluded. I have not seen many instances where international licensing transactions in Western countries have been made between a company of the home state and a foreign individual. Hungarian foreign trade companies are acting on behalf of manufacturers which have no right to carry on foreign trade in their own name and on behalf of individuals.

All that has no practical effect upon our foreign partners because the range of Hungarian partners in licensing is practically the same as in any other country.

Licensing agreements in Hungary require government approval. When the Hungarian party is licensor, this approval is given on submitting to the authorities the agreement. When the Hungarian party is licensee the approval is given before negotiations are initiated.

* *Legal adviser, Licencia Co., Budapest; paper presented at the Licensing Symposium, "Trends, Problems, Solutions in International Licensing," Budapest, Hungary.*

That again has no impact whatsoever on the foreign party.

To explain I must go behind the scenes. Hungarian enterprises, as I mentioned, are state-owned. But the state does not direct business policy. The position of the state is very much that of a majority shareholder of a Western company. The state appoints the director of the enterprise and controls major capital transactions, but does not interfere with daily business. This is the reason why I felt entitled to call these enterprises "companies." There is no separate permit system under the foreign currency regulations. A licensing agreement which has been approved does not need another permit to effect or receive foreign currency payment.

Hungarian companies negotiate licensing agreements freely. There are no special prescriptions, rules, or limitations. In negotiating they are guided by their business interest.

The approval system I mentioned is much less rigid than that of several western countries. It is less rigid than the French system, for instance, where authorities may, and do, withhold registration of an agreement by which a license is acquired, on grounds of the interest of national economy, on technical grounds, and for other reasons, which is — no need to say — a rather broad way of introducing limitations. The system in Spain, in the South American countries, let alone India, is much more complicated.

One has to consider Hungarian licensing not only from the point of view of passive licensing, for example, the case where a Hungarian enterprise acquires a license, but also from the side of active licensing, that is, the case when the Hungarian party is granting the license. The flow of technical knowledge from Hungary has always been another important factor, and is increasing recently. In this connection it may be of interest that in the last 25 years I have seen no simple instance when approval to an active licensing agreement has been withheld.

I mentioned that when the Hungarian party is the licensee preliminary approval is needed. Before granting the preliminary permit the authorities investigate whether the prospective buyer has sufficient funds, has the needed foreign currency at disposal, and whether the planned investment fits into the general plans of the industry in question. The decision between several offers of prospective licensors does not lie with the authorities.

When a foreign party negotiates the grant of a license with a Hungarian company, it can be confident without further investigation that the Hungarian company is acting within its right, that a preliminary permit has been issued, and that final approval will be

given if the agreement is within the limits of the preliminary permit. This is always the case because no Hungarian company would sign an agreement transgressing the said limits.

It can be seen that for the foreign party there is no need to care about the rules inherent in the Hungarian system. If it has any effect on the foreign party at all, it consists in dispensing the foreign party from investigating the solvency and the technical preparedness of its Hungarian partner.

Need Expert Knowledge

Of course, I would by no means pretend that the formation of a licensing agreement with a Hungarian party is an easy job. The reason is not that you need an expert in East-West licensing. You need the expertise, but the knowledge you need is that of an expert in licensing. Hungarian companies are well aware of their business interest. There is perhaps a certain tendency of preparing agreements in too much detail. Things are sometimes put on paper which seem at first glance self-evident. May I mention that we share this over-cautiousness with one or the other of the lawyers of the great economic powers. I have on my desk an American draft of nearly 200 pages where it is said on nearly a whole page that whenever in the wording the masculine is mentioned the feminine is comprehended too, and whenever something stands is singular, the plural is comprehended and vice versa.

64 The beliefs that there are certain standard clauses of licensing agreements which we are not permitted to accept is definitely untrue. We accept control of our ap-

pertaining accountancy, we accept arbitration clauses referring to institutional or ad hoc arbitration, we accept any of the great law systems as governing law of the contract. We not only accept secrecy of a know-how but keep the secret strictly, very often in our own interest, because know-how which has been acquired is not the property of the state but property of the particular company. There is no compulsion legal or moral, international or national, which ever proved stronger than obligation to and interest in secrecy.

Everything depends on negotiation, and who knows better than you gentlemen, that negotiation is a difficult art. Arguments are more important than sheer words, facts have more weight than arguments, and trustworthiness is sometimes more important than facts. We, too, have our red tape. Who has not? Several months ago I negotiated for three days an agreement with the German affiliate of one of the big American corporations. We were all very glad to put our paraph on the many pages at 1 a.m. the third night. I was told that they would have to send the text for approval to the States but that is a sheer formality. After two further months I received a "slightly amended" text — which had not much more in common with the original version than the definition of the subject matter.

Each of us met negotiators who always know better. This specimen is neither more nor less abundant with us than with others. You can be certain of one thing — if you meet a Hungarian negotiator you wish you had not met, he is an international type and not the embodiment of someone sitting behind a red curtain pulling the strings. The latter does not exist.