

**Joint venture of MPVI Mobil Zrt created by Magyar Posta Zrt.,
(Hungarian Post Plc), Magyar Villamos Művek Zrt. (Hungarian Electricity
Works Plc) and MFB Invest Investment and Property Management Plc**

In a Consortium Agreement concluded in relation to a tender relating to the electronic communications services to be provided on the 900MHz frequency band published by the National Media and Infocommunications Authority (NMHH) the three undertakings agreed to create a joint venture provided that they win the tender whereby they can transfer their right to use the frequency on the new joint venture. Once they had won the auction they submitted their application for authorisation of the creation of the joint venture to the GVH. The GVH in its decision authorising the creation of the joint venture made the following statements of utmost importance in relation to the assessment of state ownership in merger control proceedings.

In the application of Article 15 of the Hungarian Competition Act (HCA)]

- a) the undertaking with autonomous decision-making power in majority state ownership shall be deemed to be independent from all other undertakings in majority state ownership (which are not controlled by the undertaking in question); furthermore
- b) those undertakings in majority state ownership which belong to different state administration centres shall be deemed to be independent from each other.

For the purposes of the HCA the fact that the Minister is entitled to appoint and to remove the members of the management board [of ...] does not call into question the independence [of ...] from the Minister. Namely, in the case of undertakings in majority state ownership Article 23(2)b) of the HCA (pursuant to which the situation where an undertaking is entitled to appoint the majority of the executive officials of another undertaking shall be deemed as control) is “overtaken” by Article 15(3) of the HCA pursuant to which the independence of state owned undertakings shall be assessed explicitly in relation to the decision-making on competition-strategic (market) conduct; and in the GVH’s opinion the approval of the business plan is in this respect a determinant factor.