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ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES

-- Note by Hungary --

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More documents related to this discussion can be found at <http://www.oecd.org/daf/competition>.

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HUNGARY

1. Historical background

1. The Gazdasági Versenyhivatal (GVH – the Hungarian Competition Authority) began its operation on 1st January 1991.

2. Stemming from the centrally planned economy prevailing in Hungary until 1989, prices and material flows were controlled and planned by the state. The National Office for Price Setting and Material Flows (Price Office) formed the institutional background of this control. The content of this control changed over time and towards the end of the centrally planned economic system (i.e. in the second half of the '80s) it was gradually dismantled. In parallel with this process, the competition law was elaborated in the same period, mostly on the basis of the intellectual capacities of the Price Office. When the Competition Act (CA) entered into force on the 1st of January 1991, price control and the Price Office ceased to exist. The majority of the GVH's staff was recruited from among the colleagues of the former Price Office.

2. Decision-making solution in the Hungarian competition law

3. At the outset the Hungarian competition regime set up an interesting and quite unique (in Hungarian public administration) decision making solution, which has so far been very effective. Decision-making is a built-in function of the GVH. There is a separate body within the GVH – the Competition Council (CC) – under the management of one of the Vice Presidents of the GVH, who is at the same time the Chair of the CC. The CC decides each case in a three-member (exceptionally five-member) panel designated by the Chair of the CC and its members act with full autonomy. They cannot be instructed and they are subordinated exclusively to the law. In 1991 the six members of the Competition Council were appointed for an unspecified term. Since then the term of this appointment has changed and now the tenure is six years (renewable).

4. The members of the CC are lawyers or economists (or have both qualifications). There must be at least one economist among the members of the decision panel for every case.

3. Independence of the GVH

5. The GVH was set up as a budgetary institution with a nation-wide competence. It is located in Budapest and does not have regional offices. The total staff number is 125 (permanent over time since its establishment).

6. The independence of the authority is guaranteed in the following ways:

- The GVH is an independent institution (independent from the Government), which cannot be instructed by any governmental institution except by law.
- The President of the GVH is nominated by the Prime Minister, heard by the Parliament and appointed by the President of the State. Her/his tenure is six years (renewable), which overlaps the four-year period of the Government. The President cannot be dismissed (except under

specific circumstances, such as for committing a crime or misusing information qualified as a top secret, etc.).

- The Vice-Presidents are proposed by the President of the GVH to the Prime Minister, who – if s/he agrees – nominates the Vice-Presidents. The Vice-Presidents are appointed by the President of the Republic, who at the same time entrusts one of the two Vice-Presidents with the responsibilities of the Chair of the Competition Council. The tenure of the Vice-Presidents is six years and may be renewed. The Chair of the Competition Council may only be renewed once.
- The operation and financial management of the GVH is completely autonomous and constitutes a separate chapter in the central budget.

7. The Competition Act also contains guarantees concerning the transparent operation of the GVH. These are as follows:

- a) **Publicity:** according to the CA, the GVH has to publish the non-confidential versions of all of its decisions and all of its final orders adopted in the conclusion of proceedings the opening of which were made also public.
- b) **Report to the Parliament:** the GVH submits annual reports to Parliament and, upon request, to the competent parliamentary committee on the activities of the GVH. On the basis of its law enforcement experience, these reports detail how fairness and freedom of competition are being complied with.
- c) The National Audit Office controls how the GVH uses its financial resources.

8. The GVH is not aware of any planned policy or legislative change that would affect its currently enjoyed independence from the Government in the near future.

4. Internal organisation of the work

9. In January 1991, when the GVH began its operation, the work within the Directorate of Investigators – which was responsible for investigating cases – was shared between the given sections on a sectoral basis (there were separate sections for industry, trade, agriculture and services). This meant that the experts in these sections had to deal with all kinds of practices regulated under the CA (i.e. with consumer fraud cases, restrictive agreements, abusive practices and mergers and acquisitions). This was a very rational decision at the outset, since most of the investigators had previously worked for the Price Office, where they had been able to accumulate substantial knowledge about the price setting system and the structural characteristics of the industries for which they were previously responsible. But as the years have passed, this concept has changed and the GVH's investigative sections are now specialised according to the areas regulated by the CA (i.e. antitrust, mergers, consumer protection.).

10. Over the years the following changes have taken place:

- In the first decade of its operation (in the '90s) the sector based organisational structure of the GVH basically remained the same, but over the years new sections were set up (for financial services and infocommunications), some of the initial sections were combined (the Industrial, Trade, Agriculture and Services Sections merged into a "Production and Services Section", the coverage of the Infocommunications Section was extended to all network industries), but the basic logic behind its organisational structure (the sector-based specialisation) did not change.
- The setting up of a new group (later section) for the detection of cartels in August 2001 represented the first deviation from this initial work management philosophy. This meant that the

examination of hard-core cartels was separated from the work of the original sectoral investigative sections and this dedicated unit became responsible for this area irrespective of the sector to which the investigated undertakings belonged.

- In September 2004 staff members from each sectoral section were regrouped into a newly set up section, which began to deal exclusively with consumer fraud type violations (i.e. with unfair manipulation of consumer choice, later also with unfair commercial practices), irrespective of the sector of the economy.
- In March 2012 the ruins of the sector-based organisational structure was abandoned and two investigative sections were set up: the Antitrust Section and the Merger Section. These two sections were given responsibility for all of the cases falling under these case categories (the Consumer Protection Unit had already been vested with consumer protection-related issues). In April 2013 a separate Cartel Detection Section was set up and was entrusted with unveiling cartels, while the investigation of hard-core cartels remained under the umbrella of the Antitrust Section.

5. Possibilities for priority setting

11. From 1990-1996, the CA which was in force during that period did not allow the GVH to set priorities. This meant that if the Authority received a complaint, it was compelled to proceed and it had no discretion at all to consider whether the complaint was well founded or not.

12. When the currently effective CA of 1996 entered into force, the obligation of the GVH to proceed continued to exist concerning notifications (i.e. notification of agreements – requests for negative clearances or individual exemptions –, and notifications of concentrations). However, concerning complaints about suspected violations of the competition law the investigators of the GVH were given the discretion to decide whether to initiate a case on the basis of a complaint or to reject the complaint in question. The 1996 CA clearly set out the factors that had to be analysed by the investigators when they were exercising the above-mentioned discretion. If the practice in question was likely to violate the competition law, the GVH had competence to proceed and the investigator had to initiate a proceeding if this was necessary to safeguard the public interest.

13. Since the GVH received a huge number of irrelevant complaints, in 2005 the complaint system was substantially reformed. Under the rules effective from November 2005, complaints can be submitted to the GVH on a form requesting a relatively broad range of information. According to the reformed system it is no longer necessary for the complainant to be concerned by the suspected violation of the competition law. In this system complainants have special rights (e.g. to challenge a decision of the GVH rejecting a complaint). The possibility to submit indications (“informal complaints”) to the GVH that do not have to comply with the requirements for complaints still exists. However, “informal complainants” do not have the same rights as complainants.

6. Responsibilities

14. In addition to enforcing the antitrust provisions and rules on concentration control of the Hungarian Competition Act, the GVH is responsible for a few further areas of law.

15. In the field of consumer protection:

- a) In 2005, the Act on Trade vested the GVH with the authority to take actions against certain practices of large-scale retail chains. The relevant provisions of the Act prohibit dealers from abusing their “*significant market power*” by discriminating against suppliers, restricting the access of suppliers of the SME sector to sales opportunities, imposing unfair conditions on suppliers, unjustifiably altering the terms of contracts to the detriment of suppliers, etc. The Act

on Trade defines significant market power as the market power of a dealer (e.g. a retail chain), which cannot be bypassed in its capacity as a buyer by its suppliers and which is able to influence the market access of products. Groups of undertakings the turnover of which deriving from commercial activities exceeds HUF 100 billion (around Euro 330 million) are presumed to have, vis-à-vis their suppliers, such a significant market power.

- b) Although there is a separate Act on Consumer Protection in Hungary (enforced by the Hungarian Authority for Consumer Protection), in one of its chapters, the Competition Act also aims to protect fair competition between market players by prohibiting the unfair manipulation of business decisions. That is, it aims to protect those market decisions that are not influenced by unfair competition instruments.
- c) The GVH is also responsible for enforcing certain provisions relating to comparative advertisements (earlier the Act on Basic Requirements and Certain Restrictions of Commercial Advertisement Activities contained some provisions on comparative advertisement, but from 1st July 2014 these have been incorporated into the Competition Act).
- d) In 2008 the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices (UCP Act) was enacted, as a result of the incorporation of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive'). The GVH has jurisdiction in connection with any infringement of the provisions of this UCP Act, relating to the prohibition of unfair commercial practices if the commercial practices in question exert material influence upon competition (while in general the consumer protection agency has jurisdiction to enforce the UCP Act).

16. As regards the competence of the GVH in the field of antitrust and concentration control, two developments are worth mentioning:

- An amendment enacted in November 2012 limits the scope of the application of the CA when the object of the GVH proceeding involves agricultural products. In these cases the GVH must obtain the assessment of the Minister of Agriculture when the Authority intends to initiate a competition proceeding. This means that the Minister of Rural Development may establish the conditions for any exemption. Furthermore, if the Competition Council intends to impose a fine for an infringement, it must first warn the parties to bring their conduct into line with the rules within a certain deadline. A fine may only be imposed once this deadline has expired.
- In November 2013 an amendment to the CA exempted mergers deemed as being of national strategic importance from the merger notification obligation. This amendment did not substantially change the legislation which has been in force for 17 years, authorising the Hungarian Parliament to pass laws with simple majority exempting specific transactions from competition rules. Actually, the amendment of November 2013 is mainly of a technical nature and further clarifies the pre-existing general possibility of the exemption provided for by the CA. According to the amendment the Government can exempt certain mergers from the GVH clearance procedure in a much narrower range of circumstances compared to the general possibility, solely in cases when public policy interests – like the maintenance of employment and security of supply, both of which foster the welfare of consumers – are at stake by adopting a Governmental Regulation.

17. The GVH is not aware of any planned policy or legislative change that would affect its responsibilities in the near future.