

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

HUNGARY

[April 2006]

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

A. Notification provisions	1996. évi LVII. törvény a tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról (Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices; "Versenytörvény", "Tpvt." "Competition Act") Article 28 www.gvh.hu/
B. Notification forms or information requirements	Application Form for the authorization of a concentration Form - Merger (Fúziós kérelem) www.gvh.hu/
C. Substantive merger review provisions	Competition Act, Part One, Chapter VI. Control of Concentration of Undertakings www.gvh.hu
D. Implementing regulations	N.A.
E. Interpretive guidelines and notices	Notice No. 1/ 2003, on the considerations in differentiating between concentrations subject to authorisation in simplified or full procedure

2. Authority or authorities responsible for merger enforcement.

<p>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</p>	<p>Gazdasági Versenyhivatal, GVH The Hungarian Competition Authority</p>
<p>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</p>	<p>Gazdasági Versenyhivatal 1054 Budapest Alkotmány utca 5. Hungary</p> <p>Telephone: +36-1-472-8900, Website: www.gvh.hu Fax: +36-1-472-8905 Available language: Hungarian, English</p>
<p>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</p>	<p>The Vice-President's Secretariat may be consulted at the following address and phone number on how to answer the questions of the application form. The consultation possibility aims at helping to resolve concrete interpretation problems related to the application form and the method of answering and to identify the relevant information. Consequently, the GVH will not assume the work and responsibility of answering, and cannot be consulted for this purpose.</p> <p>Vice President's Secretariat telephone: +36-1-472-8907 Fax: +36-1-472-8850 E-mail: merger-info@gvh.hu</p>

3. Covered transactions

<p>A. Definitions of potentially covered transactions (i.e., concentration or merger)</p>	<p>Article 23 defines the potentially covered transactions. These are as follows:</p> <p>(a) two or more previously independent undertakings merge or an undertaking is integrated with another or a part of an undertaking becomes part of another undertaking which is independent of the first one;</p> <p>(b) a sole undertaking or more than one undertaking jointly acquire direct or indirect control of the whole or parts of one or more than one other undertaking which have been independent of them;</p> <p>(c) more than one undertaking, which are independent of each other, jointly create an undertaking controlled by them, which is able to perform on a lasting basis all the functions of an independent undertaking</p> <p>However, according to Article 25: Temporary acquisition of control or ownership for a one-year period at the longest by insurance companies, credit institutions, financial holding companies or property managing organisations</p>
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	<p>for the purposes of preparing a resale do not qualify as concentrations if they do not exercise their controlling rights, or exercise them to an extent which is indispensable to the attainment of these objectives.</p>
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>Article 23 (2) defines direct control as follows: For the purposes of this Act, direct control is exercised by a sole undertaking, or more than one undertaking jointly, which</p> <ul style="list-style-type: none"> a) have the ownership of the interests or shares of another undertaking entitling them to exercise majority voting rights, or are holders of more than fifty per cent of the voting rights; or b) are entitled to appoint, elect or recall the majority of the executive officials of another undertaking; or c) are entitled by contracts to exercise decisive influence on the decisions of another undertaking; or d) acquire the ability on a factual basis to exercise decisive influence on the decisions of another undertaking. <p>Article 23 (3) defines indirect control as follows: For the purposes of this Act, indirect control is exercised by one undertaking over another undertaking which is controlled, solely or together with it, by a third undertaking under its control or is jointly controlled by third undertakings under its control.</p> <p>In addition Article 23 (4) states that activities of an office-holder relating to winding up and dissolution of undertakings do not qualify as the exercise of control.</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>As it can be seen from the above the voting right representing 50% of the shares +1 share has to be regarded as control. The voting right representing shares below 50% in itself does not qualify as control, however, if the conditions of Article 23 (2) points b)-d) are met, the acquisition of control has to be established irrespective of the shareholding.</p>
<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p>	<p>Pursuant to Article 23 (1) (c) a concentration of undertakings is effected, where more than one undertaking, which are independent of each other, jointly create an undertaking controlled by them, which is able to perform on a lasting basis all the functions of an independent undertaking.</p>

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>Article 24(1)-(2) contain the thresholds applicable. For a concentration of undertakings, the authorization of the Hungarian Competition Authority shall be sought in cases where the aggregate net turnover of all the groups of undertakings concerned (Article 26(5)) and the undertakings jointly controlled by undertakings members of the groups of undertakings concerned and other undertakings exceeded HUF fifteen billion in the preceding business year, and the net turnover of each of at least two of the groups of undertakings concerned in the preceding business year combined with the net turnover of the undertakings jointly controlled by undertakings members of the respective group of undertakings and other undertakings was more than HUF five hundred million.</p> <p>In assessing whether the HUF five-hundred-million threshold is met, concentrations not subject to authorization which took place within a two-year period preceding the concentration concerned between the group of undertakings acquiring control and undertakings of the group of undertakings, the controlling powers of which relinquish as a conclusion of the concentration, shall also be taken into account.</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>Article 26 defines the direct and indirect participants (undertakings concerned) as follows:</p> <ol style="list-style-type: none">(1) Undertakings concerned are undertakings participating directly and indirectly in concentrations.(2) Direct participants are the undertakings with the participation of which the concentration is effected.(3) Indirect participants are the other members of the group of undertakings (Article 15(2)) to which a direct participant belongs.(4) Undertakings which relinquish their controlling powers as a conclusion of the concentration shall be left out of account when identifying the range of the indirect participants.(5) Groups of undertakings concerned are groups of undertakings which consists of a direct participant pursuant to Section (2) and the indirect participants connected to it pursuant to Sections (3) and (4). <p>Definition of Group of undertakings: Article 15 (2): An undertaking belongs to the same group as undertakings which</p> <ol style="list-style-type: none">a) are under the sole control, as referred to in Section (2) or (3) of Article 23, of it, (see also Question 3.B)b) have control, as referred to in point a), of it,c) are under the control, as referred to in point a) above, of the undertakings referred to in point b),d) are under the joint control of two or more of the undertakings referred to in points a)-c) and it. <p>Control is defined in the same way as in Article 23 (see Question 3.B).</p>

<p>C. Are the thresholds subject to adjustment (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>The thresholds may only be adjusted by amendment of the Competition Act.</p>
<p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>To the business year preceding the year of the transaction.</p>
<p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>For the methodology for identifying and calculating relevant sales or turnover see Article 27:</p> <p>(1) When applying Article 24(1), in calculating net turnover, the turnover of the undertakings concerned /Article 26/ or parts of them shall be reduced by the sales between themselves.</p> <p>(2) In calculating the net turnover of undertakings of foreign nationality, the net turnover realised from sales in the preceding business year in the territory of the Republic of Hungary shall be taken into account.</p> <p>(3) In calculating the net turnover of undertakings concerned of majority state or municipality ownership, economic units with market conduct shall be taken into account.</p> <p>(4) For parts of undertakings, the net turnover realised in the preceding year by the use of the assets and rights by the undertaking, which sold them, shall be taken into account.</p> <p>(5) The net turnover of undertakings jointly controlled by two or more undertakings shall be apportioned equally to each undertaking having control of them. For the purposes of such apportioning, controlling undertakings, which belong to same group of undertakings, shall be deemed to be one single the undertaking.</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>For an undertaking resident abroad the net turnover originating from Hungary must be calculated by converting (based on the medium rate of the Hungarian National Bank) into HUF the income received in other currency for the product from the Hungarian undertaking. If the supply was approximately continuous during the year, it is sufficient to take into account the average rate for the given year. If the supply to Hungary has taken place only for a limited period in a given year, the average rate valid for that period must be taken into account.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>For undertakings resident in Hungary their worldwide turnover, for undertakings resident abroad the turnover they achieved in the territory of Hungary must be taken into consideration</p>
<p>H. Can a single party trigger the notification threshold</p>	<p>No.</p>

(e.g., one party's sales, assets, or market share)?	
I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?	Sales in the territory of the Republic of Hungary must be taken into account. Local presence is not required.
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	Location of the customer allocates geographically the sales.
K. If market share tests are used, are there guidelines for calculating market shares?	N.A.
L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?	<p>Yes.</p> <p>Article 24 (3): For insurance undertakings, the value of gross premiums shall be taken into account in place of net turnover. For investment service providers and funds, the incomes from those services and the contributions, respectively, shall be taken into account. For credit institutions and financial undertakings, the sum of the following income items shall be taken into account in place of net turnover:</p> <ul style="list-style-type: none"> a) interest income and similar income, b) income from securities: <ul style="list-style-type: none"> ba) income from shares and other variable yield securities, bb) income from participating interests, bc) income from shares in affiliated undertakings, c) commission receivable, d) net profit on financial operations, e) income from other business activities
M. Are any sectors excluded from notification requirements? If so,	No.

which sectors?	
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	No
O. Does the agency have the authority to review transactions that fall below the thresholds?	No. If a notified transaction fall below the thresholds, the Competition Council of the GVH establishes in its decision that the transaction is not required to be notified.

5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	Yes, if statutory notification threshold requirements are met.
B. Is notification mandatory post-merger?	The system is pre-merger, but if the parties fail to notify a merger in due time of course they have to do it post-merger, however this does not make the system post-merger.
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	N.A.
D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive)?	<p>Pursuant to Article 28 (2) an application for authorization shall be submitted within thirty days of the date of the publication of the invitation to tender, the conclusion of the contract or the acquisition of the controlling rights, whichever of them is the earliest.</p> <p>The underlying rationale of Article 28 (2) is that parties should come with a concentration to the GVH when only the GVH's authorization fails and every other condition of the transaction is already fulfilled.</p>
E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline	See the previous answer.

<p>and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	
<p>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>The parties cannot request an extension of the notification deadline.</p>

6. Simplified procedures

<p>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</p>	<p>N.A.</p>
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7. Documents to be submitted

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p>	<p>The application form covers all the requested information, see www.gvh.hu.</p> <p>The application form mentions the following documents that the parties must submit:</p> <ul style="list-style-type: none"> -The application for the authorization of the concentration; -The Application form; -The charts showing the control relations prior to and after the concentration -The original or a copy of the document proving the payment of the procedural fee; -A declaration of authenticity made by the applicant and the direct participants, where they state that the application submitted, its enclosure and all other documents are authentic and updated, and were compiled according to their best knowledge -for undertakings resident in Hungary, a certificate of incorporation (not older than 1 month), for undertakings resident
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	<p>abroad, a document which is equivalent to the certificate of incorporation, if available. For parts of undertakings, the document of the undertaking transferring its part;</p> <ul style="list-style-type: none"> -Original or authentic copy, and an authentic Hungarian translation of the signed contract bringing about the concentration or the transaction, the document constituting a proof of the acquisition of control, and the supplementary part of the contract or document concerning Hungary, if there is such document.; -Original or authentic copy, and an authentic Hungarian translation of a signed copy of any supplementary restrictive agreement; -An authentic Hungarian translation or, should this be unavailable, original language or English version of the decisions taken by the competition authorities of other countries or of the competition authority of the European Union in connection with the concentration which is subject of the application, if such a decision exists; -An authentic Hungarian translation or, should this be unavailable, the English version or, should this be unavailable, in original language version of the decisions taken by the competition authorities of other countries or of the competition authority of the EU; -For each undertaking concerned by the concentration, documents or relevant parts of them, on the net turnover realised in the preceding year; -For undertakings resident in Hungary: the annual report for the preceding year, in conformity with the Act on Accountancy (balance sheet, profit and loss account, notes on the accounts, furthermore the business report prepared contemporaneously with the annual report); -Documents (contracts, certificates of incorporation, business documents, etc.) proving concentrations which took place within a two-year period preceding the concentration concerned between the group of undertakings acquiring control (or enlarging otherwise) as a result of the concentration and the group of undertakings, the controlling powers of which relinquish as a result of the concentration.; -Agreements restrictive of competition concluded by the participant undertakings of the proposed concentration and other undertakings; -Business documentation concerning the requested information - if such documents are available; -Business documents containing professional estimates, if available; -Business documentation analysing the requested information - if such documents are available; -Business documentation concerning the proposed concentration - if such documents are available Business documentation prepared for the purpose of the proposed concentration; -Business documentation describing the advantages and disadvantages of the proposed concentration for the consumers, more reasonable production, technical development and external markets.
<p>B. Are there any document legalization requirements</p>	

apostille)?	The parties are required to enclose a declaration of authenticity, whereas the party (parties) state that the application submitted, its enclosure and all other documents are authentic and updated, and were compiled according to their best knowledge. The GVH prefers the original documents or their authentic copies. The application form mentions explicitly if an original or an authentic copy is requested.
C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?	No.

8. Translation

A. In what language(s) can the notification forms be submitted?	The notification and its enclosures must be submitted in Hungarian language, with the exception of points specifically identified by the notification form, in respect of which documents may be submitted in English version or, should this be unavailable, in original language. If a document is submitted solely in a foreign language version, a short Hungarian summary thereof must be enclosed.
B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	Generally the main documents are requested in Hungarian in the form of an authenticated translation, however if in the opinion of the applicants certain parts of the document contain irrelevant information for the proceedings and its authentic translation into Hungarian would lay a disproportionate burden on the applicants, it is sufficient to make a detailed review of the agreement in Hungarian, and enclose the authentic Hungarian translation of the relevant parts. Nevertheless whenever the GVH considers that the authentic Hungarian translation of other parts or the whole of the document is necessary for the proceedings, it will ask for the translation in its declaration of incompleteness. In the case of decisions of foreign competition authorities or the various business documents, if an authentic Hungarian translation is not available, the English version, or where it is not available the original version is acceptable as well.

9. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>Article 63 (3) In the course of the control of a concentration, the resolution concluding the proceedings shall be made within: a) forty five days, where: aa) no concentration pursuant to Article 23 or with a view to Article 25 is effected; or ab) the thresholds set by Article 24 are not met by the given concentration; or ac) granting authorization for the concentration may clearly not be refused pursuant to Article 30(2); b) one hundred twenty days in all other cases; of the date of receipt, or the completion, of the application. (4) In respect of the application of point b) of Section (3), the resolution shall be made by the competition council bringing proceedings in the case within forty five days of the date of receipt or completion of the application. (6) The time limit for settlement may be extended by a maximum of sixty days, in cases pursuant to point b) of Section (2) two times by a maximum of one hundred eighty days each, in cases pursuant to point a) of Section (3) by twenty days, where justified. This must be notified to all interested persons before the expiry of the original time limit.</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No</p>
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>The competition authority decides on the extension of the review periods. Article 63(6) of the Competition Act regulates the maximum for the extension (see answer "A" above).</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>The Hungarian Competition Authority may not refuse to grant authorization for a concentration where, with a view to the provisions of Article 30(1) of the Competition Act, the concentration does not create or strengthen a dominant position, which would impede the formation, development or continuation of effective competition on the relevant market or on a substantial part of it. Where granting authorization for the concentration may clearly not be refused the resolution concluding the proceedings shall be made within forty five days of the date of receipt, or the</p>

	completion, of the application (and not within one hundred twenty days). Notice No. 1/ 2003 of the President of the Gazdasági Versenyhivatal and the Chair of the Competition Council of the GVH explains the factors and considerations used by the GVH when deciding whether to assess an application for the authorisation of a concentration in accelerated or full procedure.
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10. Waiting periods / suspension obligations

A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.	The transaction cannot be implemented before the authorization is given by the GVH. For a contract resulting in the concentration of undertakings to come into existence, the authorization of the GVH is required. To transactions not authorized the legal consequences of invalidity determined by the Civil Code apply.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	Such a request may not be submitted.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available	The GVH assesses the whole transaction, i.e. not only its Hungary-related parts.

<p>to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Pursuant to Article 64 of the Competition Act if the Competition Council fails to make a resolution within the time limit defined by Article 63 (see answer 9/A), the request is deemed to have been granted.</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>Article 30 [...] (3) In order to reduce the detrimental effects of a concentration, the Hungarian Competition Authority may attach to its decision pre- or post-conditions and obligations. It may, in particular, demand by its decision the divestiture of certain parts of the undertakings or certain assets or the relinquishment of control over an indirect participant, setting an appropriate time limit for the carrying out of these requirements. (4) A preconditioned authorization shall take effect from the date of the fulfilment of the conditions. A post-conditioned authorization shall take effect from the date of it being granted. It shall cease to have effect should any of the conditions not be satisfied. [...] A precondition implicitly means that the waiting period aligns with the fulfilment of the condition.</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>The waiting period cannot be shortened.</p>
<p>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible</p>	<p>See answers to 9.A, 10.A and 10.C.</p>

measures" are taken).

11. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?	According to Article 28(1) of the Competition Act, the application for the authorization must be submitted by the following participant(s): <ul style="list-style-type: none">- In the case of a merger or integration, by the direct participants, namely the merging, or the integrating and the integrated undertakings, but at least one of them;- In the case of acquisition of control, by the acquirer(s) of the direct controlling rights;- In the case of the acquisition of a part of an undertaking, by the acquirer, that is by the integrating undertaking- In the case of the creation of a joint venture, by the founders as direct participants, but by at least one of them.
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	No
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	Pursuant to Article 54: The party is represented in the proceedings by its legal representative or proxy. (2) The following persons may proceed as proxy: (a) a fellow party or his legal representative or proxy; (b) a relative of the party; (c) an attorney or a law firm; (d) an official in charge of a state body in cases relating to the activities of such a state body; (e) a member or an employee of an economic organisation authorized to perform management responsibilities in cases related to the activities of such an economic organisation; (f) organisations representing the interests of persons with an interest in the economic activity concerned; and (g) persons authorized by law to proceed in such capacity. (3) In the case of a proxy defined in point f) of Section (2) the investigator or the competition council bringing proceedings in the case may oblige the party to appoint another proxy, where he or it is expected to order the hearing of an organisation, mentioned in point f) of Section (2) above, in the case. (4) Authorizations to act as proxy must be in writing. The issuance and termination of such authorizations are governed by the provisions in Article 68-71 of Act III of 1952 on the Code of Civil Procedures.
D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there	Pursuant to Article 54 (4) authorizations to act as proxy must be in writing. The issuance and termination of such authorizations are governed by the provisions in Articles 68-71 of Act III of 1952 on the Code of Civil Procedures.

special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?	In the case of a proxy enclose the original of the authorization to act.
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12. Filing fees

A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?	The fee for a merger filing is HUF 2 million (approximately EUR 8 000), which has to be paid at the time of the submission of the notification. If the case will be decided in full procedure /Article 63 (3) b) - see answer 10.A/, an additional HUF 8 million (approximately EUR 32 000) has to be paid within 15 days of the service of the decision.
B. Who is responsible for payment?	The notifying parties, who are responsible for notifying.
C. When is payment required?	See the answer to 12.A.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Payments have to be made to the GVH's competition supervision proceedings fee account by bank transfer.

13. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	In general, the GVH does not make public the fact that a concentration has been notified. In the course of the assessment the GVH can contact the market players.
B. Do notifying parties have	Pursuant to Article 55 (1) the party and its representative may have access to the documents after the completion of the

<p>access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	<p>investigation, following the date set by the competition council bringing proceedings in the case and they may make copies or take notes thereof. The starting date for the access shall be set early enough so as to enable the party to prepare for making a statement. Specifying the documents concerned, the competition council bringing proceedings in the case may give its consent to the party or its representative having access to the documents before the completion of the investigation where this does not jeopardise the effectiveness of the proceedings.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>Pursuant to Article 55 (2) at any time in the course of the proceedings, the public prosecutor or, with the consent of the public prosecutor, the investigating authority may have access to all the documents of the proceedings and the expert may have access to the documents which are necessary to perform his duties, including those which contain business secrets, bank secrets, insurance secrets or secrets defined by separate statutes and relating to the treatment of securities or the operation of funds; they may make copies or take notes of the respective documents.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Pursuant to Article 55 (3)-(4): (3) The party and other persons participating in the proceedings may request limitation of access to the documents or to the making of copies or to the taking of notes of the documents, with reference to the need of protection of business secrets. A separate legal remedy (Article 82) may be sought against an injunction made by the investigator or the competition council bringing proceedings in the case, which rejects the request. When deciding about this request, the investigator or the competition council bringing proceedings in the case may oblige the party or the other persons participating in the proceedings to prepare a version of the document concerned which does not contain business secrets. (4) A foreign authority may request that a part or the whole of the content of their response to a request for information be treated as a business secret. The treatment of business secrets is governed by the rules defined in Section (3).</p>
<p>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>Co-operation with the European Commission and the competition authorities of the Member States of the European Union pursuant to Community rules.</p>
<p>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential</p>	<p>Article 58(3) of the Competition Act: Documents generated in the course of the proceedings may be made available on request to a foreign authority. Documents containing business secrets may only be made available if this is provided for in an international agreement. Where the requested documents contain business secrets, a condition for disclosure is a commitment by the foreign authority to treat the contents of the documents as business</p>

information to exchange such information?	secrets.
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14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	Yes, see: http://www.gvh.hu/index.php?l=e&id=104&m=2
B. Does the agency publish press releases related to merger policy or investigations?	Yes, in cases meeting public interest.
C. Does the agency publish decisions on why it cleared / blocked a transaction?	All decisions of the GVH are published on its website.

15. Sanctions/penalties

A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?	Pursuant to Article 79 the amount of the fine for failure to submit an application for the authorization may not exceed HUF fifty thousand per day. The contract does not come into existence, unless the authorization is given by the GVH. The legal consequences of an invalid contract apply to transaction, as defined by the Civil Code.
B. Which party/ies are potentially liable?	The party which failed to notify (see 11.A)
C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure	The GVH can impose these sanctions directly.

and indicate how long this procedure can take.

16. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.

A) DIRECT PARTICIPANTS OF THE CONCENTRATION:
Article 83

(1) In cases where an action is brought in order to get the decision reached in competition supervision proceedings reviewed by the court, the statement of claim shall be, within thirty days of the conveyance of the decision, submitted to the competition council or taken to the post as registered mail.

(2) The competition council bringing proceedings in the case shall refer the statement of claim, along with the documents of the case and its observations about the contents of the statement of claim, to the court within thirty days of receipt of the statement of claim. In cases where the statement of claim contains an application for a stay of enforcement, the statement of claim and the documents of the case shall be referred to the court within fifteen days of receipt of the statement of claim.

[...]

(4) The court may overrule the decision of the competition council. [...]

Article 84

In the course of court proceedings started on the basis of a claim against a decision of the competition council, Chapter XX of Act III of 1952 on the Code of Civil Procedures shall apply, with exceptions defined by Article 83 of this Act.

B) THIRD PARTIES

On the basis of Act III of 1952 on the Code of Civil Procedures

17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?

No additional filings are required, however, pursuant to Article 28(3) of the Competition Act, in cases of concentrations of credit institutions or insurance undertakings, the application for authorization must be submitted to the Hungarian Competition Authority on the same date as the application for permission to be submitted to the branch supervisory authority (the Hungarian Financial Supervisory Authority) as provided for under separate legislation.

18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?

As a consequence of Article 29 of the Competition Act the authorization always relates to the given transaction (which is contained in the contract between the parties). The authorization does not oblige the parties to execute the transaction. Therefore the situation may arise - either because of objective reasons (for example another authorization must be sought as well) or because of subjective reasons (for example lapse of interest) - that the GVH authorizes the transaction, nevertheless, the concentration does not come into existence or does but only in part. If the parties later conclude a new contract concerning the part of the concentration, which had not been executed previously, the authorization of the GVH must be sought, if the conditions in Articles 23 and 24 are met.

19. Post merger review of transactions

Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?

Article 76 of the Competition Act
“(1) The investigator shall hold a post-investigation in order to check
[...]
b) the fulfilment of the pre- or post-conditions provided for by the decision,
[...]
(3) The provisions of the competition supervision proceedings shall apply mutatis mutandis to the post-investigation.
(4) On the basis of the report submitted by the investigator, the competition council bringing proceedings in the case shall
[...]
b) by injunction establish in cases pursuant to point b) of Section (1) whether the pre- or post-conditions have been satisfied,
[...].”

Article 32 of the Competition Act
“(1) The Hungarian Competition Authority shall revoke its decision made pursuant to Article 30 where:
a) the grant of the authorization by the decision, which has not yet been reviewed by the court, has been based on misleading information concerning a fact which was fundamental to the making of the decision; [...].”