



GAZDASÁGI VERSENYHIVATAL

**Hungarian Competition Authority
Budapest, Hungary**

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1. Changes to competition laws and policies, proposed or adopted

1. In 2008 two substantive amendment packages affected the Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (the Competition Act), though only one of them entered into force in June 2009.

2. On 23 March 2009 the Hungarian Parliament adopted the amendments of the Competition Act. Actually the amendments were adopted in 2008 for the first time, but after a constitutional veto of the President of the Republic the Constitutional Court (CC) annulled certain elements of the draft law. Now the amending Act had to be re-adopted with the exception of the provision concerning the disqualification of the company CEOs (which was quashed by the CC). The amendments will enter into effect on 1 June 2009 and concern several parts of the Competition Act. The most important changes can be summarized as follows.

3. Until this latest amendment of the Competition Act the GVH's leniency policy was based on the Leniency Notice of the GVH issued in 2003. But the need to increase legal certainty for undertakings required the leniency rules to be regulated in the Competition Act. European tendencies also motivated the modifications of the leniency rules, namely the alignment of the Hungarian leniency regime to the Model Leniency Program of the ECN that was duly considered when the GVH worked out the new leniency rules. As a consequence of the amendment, the GVH's leniency rules are laid down in three documents: in the Competition Act, in a leniency application form and in a leniency guideline. The Competition Act regulates the basic rules (conditions of leniency, basic procedural rules etc.), the leniency application form lists the formal and substantive requirements of leniency applications and the leniency guideline gives detailed information on the leniency process. All of the documents are published on the GVH's homepage.

4. The new system is very much similar to the previous rules, but it also contains several new solutions that are beneficial for undertakings. These rules follow the solutions of the ECN Model Programme. For instance: while abolishing hypothetical applications, the GVH introduced a non-discretionary marker system, a summary application system and the possibility of submitting oral applications. In addition, the leniency application form gives detailed information on what type and quality of information should be submitted with the leniency application. The leniency guideline details the co-operation of the leniency applicant. According to the new provisions, an undertaking that coerced another undertaking to participate in a cartel, is not excluded in the future from getting reduction. There are detailed rules on how the GVH uses the submitted information until it makes a conditional decision on immunity and on what happens if the applicant withdraws the applications or if it is refused by the GVH. In the new regime, the decision-making body of the GVH, the Competition Council is responsible for delivering both the conditional and the final decision on leniency.

5. The new rules increase the transparency and legal certainty concerning the lodging and handling of leniency applications and as a result – according to the expectations of the GVH – they will increase the number of the applications. The incorporation of leniency rules into the Competition Act would also raise public awareness towards the instrument of leniency.

6. Other changes concerning cartels established by this latest amendment of the Competition Act set up more favourable liability rules for the undertakings taking advantage of the leniency policy, as these undertakings do not have to pay compensation in private enforcement claims until it can be collected from other cartel members. Another new provision of the Competition Act facilitates private enforcement by introducing the refutable presumption that, unless opposite is proved, the cartel raised prices by 10% at least.

7. Concerning mergers, the new rules replace the dominance test by new substantive test, the so-called SLC test. The merger procedural fees and the amount of fine payable in the case of a failure to apply for authorisation are increased by the amendments.

8. The amendments also affected the competition culture developing activities and possibilities of the GVH. The new rules put at the Authority's disposal ten per cent of the total average amount of the fines collected in the two previous years (it has been five per cent of the previous year's fines so far) and extend the scope of activities to the support of EU related competition culture and of consumer culture. Further amendments affected the competences, tasks, structure and internal procedures of the GVH (e.g.: possibility of extending the time limit two times instead of one in consumer protection-related cases, possibility of requesting legal remedy by the complainant).

9. The other amendment package introduced substantial changes to the Hungarian consumer protection regulation system in line with the UCP-Directive as from 1 September 2008 via Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers. Furthermore, Act XLVIII of 2008 on Essential Conditions of and Certain Limitations to Business Advertising Activity (a new Act on business advertising) entered into force also on 1 September 2008. The Competition Act was amended accordingly. The changes to the system concerned, among other things, basic terms and definitions, such as unfair commercial practices, blacklist, aggressive commercial practices, general-clause on commercial practices, the proceeding authorities and the competences of the GVH. (If the GVH finds, based on a formal or informal complaint submitted to it that the commercial practice in question is likely to be unfair and competition is affected by the practice, it will

initiate a competition supervision proceeding. The authority may also launch competition supervision proceedings in such situations on its own motion.)

10. In 2008 the President of the GVH together with the Chair of the Competition Council issued a notice on the application of remedies in merger cases.¹ A smaller part of merger transactions threatens efficient competition that requires the intervention of the competition authority. In certain cases the competition problem can be solved by imposing conditions or obligations on the merging parties so that the positive pro-competitive effects of concentration can be realised. The notice details the considerations and principles set out in law and used by the GVH to determine the appropriate remedies.

11. There were three decisions of the Constitutional Court (Alkotmánybíróság, AB) relating to the field of competition law or the functioning of the GVH. The AB rejected the submission², which complained that – among other statutes – the Competition Act discriminates, by their domicile, those who appeal the decision of the Competition Council since the Competition Act does not explicitly allow the application of a certain provision of the Act III of 1952 on the Code of Civil Procedures. This provision ensures that the appeal is regarded as submitted within the time limit (30 days) if it is taken to the post as registered mail even on the last day of the statutory deadline. Since an amendment (in force since 1 November 2005) inserted this possibility into the Competition Act, the complaint was rejected.

12. The Constitutional Court rejected the submission claiming that the scope of the Competition Act was defined inaccurately³. According to the Constitutional Court, legal certainty requires that the text of the law is clear, but it is not against legal certainty if the provisions of the law need further interpretation in practice, even if in certain cases this means problem-solving, constructive interpretation. The Constitutional Court deemed evident that the scope of the Competition Act covers all market practices carried out on the territory of Hungary by any natural or legal person (or companies with no legal personality), except where otherwise regulated by statute. This corresponds to the sector-neutral nature of the Hungarian Competition Act. The submission also objected that the provision of the Competition Act prohibiting predatory pricing (as an abuse of dominant position) settles objective responsibility, which is – again – contrary to legal certainty and thus unconstitutional. The Constitutional Court found that it is obvious from the text of the legal norm that the aim of the law is to prohibit this type of abuses regardless of the intention of the dominant firm.

13. The Constitutional Court rejected a third submission⁴ claiming that it violates the ‘presumption of innocence’ if the request for judiciary review of the decision of the Competition Council had no dilatory effect on the enforcement of the decision. According to the Constitutional Court the ‘presumption of innocence’ cannot be interpreted so extensively, this presumption serves to prevent non-reparable injuries suffered by the suspected party, if later in the appeal process the alleged infringement proved to be unsubstantiated.

¹ Notice No 1/2008 of the President of the Hungarian Competition Authority and the Chair of the Competition Council on the application of remedies in merger cases

² Decision 915/E/2005.

³ Decision 84/B/2001

⁴ Decision 94/B/2007.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities of: - competition authorities; - courts

	Number of cases ⁵	Number of GVH interventions according to casetypes ⁶	% of GVH interventions according to casetypes	Fines imposed (million HUF)
Abuse of dominant position	7	3	4,1	-
<i>abusive</i>	3	3	4,1	-
<i>restrictive</i>	4	0	0,0	-
<i>composite and other</i>	0	0	0,0	-
Restrictive agreements	6	5	6,8	3
<i>horizontal</i>	3	3	4,1	3
<i>vertical</i>	1	1	1,4	-
<i>composite and other</i>	2	1	1,4	-
Concentration	37	2	2,7	18⁷
<i>horizontal</i>	19	0	0,0	<i>n.a.</i>
<i>vertical</i>	2	0	0,0	<i>n.a.</i>
<i>composite and other</i>	16	2	2,7	<i>n.a.</i>
All antitrust cases	50	10	13,5	3
Consumer fraud	66	64	86,5	713,525
<i>deception of consumer</i>	61	59	79,7	705,425
<i>restricting consumer choice</i>	1	1	1,4	0,1
<i>composite</i>	4	4	5,4	8
All cases⁸	116	74	100,0	734,525

⁵ In one of the cases, which concerned two different case-types at the same time, only one decision was made. In the case Vj-142/2007 the GVH initiated a proceeding for an alleged restrictive agreement and failure to make a notification; and consequently these cases are both included in the table covering agreements and concentrations. As a result the number of decisions made pursuant to the Competition Act is 115, and not the simple amount of case types, which would give 116.

⁶ Depending on the type of the case, GVH (Hungarian Competition Authority) interventions might result in different types of decisions:

- establishment of the infringement: applied in all types of cases (The category of 'failure to make a notification' is not included. Although this is also considered an infringement, it is not a GVH intervention in this context. This fact influences the overall number of infringements and the amount of fines imposed);
- termination of proceedings after commitment decisions: applied in all case types (except for the concentrations);
- refusal of authorisation or imposition of conditions: applied in the case of concentrations;
- voluntary acceptance of the obligations of the GVH: applied in the case of concentrations and restrictive agreements

⁷ Procedural fine imposed for failure to notify in due time.

14. In 2008 the GVH conducted 167 competition supervision proceedings, out of which 116 cases were finished by the decision of the Competition Council (including commitment decisions).⁹ There were 66 cases finished in the case category of unfair manipulation of consumer choice while the number of antitrust cases finished is 50. The total number of the interventions of the GVH was 74, they were made mainly in consumer deception cases (64 cases), and the rest were in cases with antitrust relevance (10 cases). The GVH terminated five of the antitrust proceedings after it had made, by its orders, commitments offered by parties binding for them to remedy competitive problems.

15. In 2008 the GVH imposed fines in 41 decisions. The amount of the fines imposed was HUF 734,5 million (approx. EUR 2,6 million), including HUF 18 million imposed for failure to notify M&As in due time. A decisively larger part of the fine (HUF 713,5 million) was imposed in unfair manipulation of consumer choice cases, the rest related to anticompetitive agreements (HUF 3 million) and no fine was imposed in abuse of dominant position cases at all.

16. Decisions of the GVH can be reviewed by the Budapest Metropolitan Court, the judgements of which can be further appealed before the Budapest Appeal Court. At a third level the Supreme Court can also deliver a judgement should one appeal the judgement of the Appeal Court in the form of a request for exceptional review. According to the Act on Civil Procedures a decision can be appealed by any party to the proceeding, or by anybody whose rights and obligations are directly affected by the case concerned. Such a person might be e.g. the complainant or other participants of the proceeding. The review court may alter the decision or dismiss it and order the initiation of a new proceeding.

17. The rate of decisions appealed significantly decreased in 2008 in comparison with the previous years. Till 2007, around a half of the decisions establishing an infringement was submitted to court for review, but in 2008 this rate was less than a quarter.

18. Looking at the results of the court review cases on a wider time-scale, more than 80% of the 430 appeals of the decisions brought under the present competition law have become final. This figure is much higher than beforehand, which unambiguously shows the acceleration of the judicial proceedings. The appealed decisions of the GVH were altered in part or in its entirety in 23 cases. In another 21 cases the amount of the fine was reduced to certain extent. It can therefore be assumed that there is still a high level of harmony between the GVH and the courts in the application of the competition law.

19. One of the most significant judgements in 2008 was the one of the Supreme Court in which it upheld the decision of the GVH establishing the existence of a cartel in the construction industry¹⁰. The GVH had previously established that the undertakings – Betonút Rt., DEBMÚT Rt., EGÚT Rt., Hídépítő Rt., Strabag Rt. – that submitted bids as response to

⁸ The resolution made and the fine imposed on Magyar Hipermarket Kereskedelmi Kft. (Cora) in the case Vj-64/2007 for failure to comply with the commitments is neither included in the table for decisions terminating the cases nor in the column concerning the amount of the fines imposed.

⁹ This number does not include those decisions of the Competition Council which resulted in the termination of proceedings in absence of evidence proving the existence of an infringement of the law or in absence of public interest. This number does not include the decisions brought in proceedings terminated for administrative reasons either.

¹⁰ Vj-027/2003

an invitation to tender issued in 2002 by the National Motorway Corp. (Nemzeti Autópálya Rt.) concluded an agreement infringing the Competition Act. The undertakings previously agreed among themselves about the identity of the bidder which would win the construction works contract for the particular motorway-sections. In some cases they even agreed that the winners would involve the others as subcontractors. Every large undertaking that could be expected to meet the conditions to be fulfilled by candidates set out in the invitation was party to the cartel agreement. The total of the fines imposed amounted to HUF 7,043 billion (approx. EUR 27.7 million in January 2006) that have already been paid in by the infringers.

20. Among the judgement of courts in appealed abuse of dominance cases, the one concerning an electricity supplier, Dél-Magyarországi Áramszolgáltató Zrt. (DÉMÁSZ) should be set out¹¹. In its proceeding the GVH established that DÉMÁSZ abused its dominant position when it made its consent to the modernisation plan of street-lighting dependent on not only technical or security aspects, but also questions regarding the ownership and operation of the system, gave its agreement to the modernisation of the street light system only in the event that the contractor buys the replaced old lamps from DÉMÁSZ, thus causing unjustified expenses. In addition to this it undertook to supply electric energy and provide trouble shooting services under unusually favourable terms and conditions for those municipalities at which DÉMÁSZ was in charge of the modernisation of public lighting; and entered into all-inclusive long-term agreements on providing all the services related to public lighting services with penalty clauses that prevented or at least limited the municipalities' possibility as eligible consumers to purchase electricity for public lighting from other distributors after liberalisation.

21. Therefore the GVH imposed a fine amounting to HUF 45 million (approx. EUR 180.000) on the electric energy supplier. The Budapest Metropolitan Court upheld the decision in the first instance in a repeated proceeding in 2007 and the Budapest Appeal Court dismissed – with its binding judgement – the appeal of the plaintiff in mid September 2008 thereby confirming the decision of the GVH. The courts confirmed that not only the stand-alone elements of the behaviour of DÉMÁSZ were unlawful, but they infringed the law also in their entirety, because of the common goal lying behind them, consequently these elements constituted a uniform infringement.

2.1.2 Description of significant restrictive agreement cases

22. In 2008 the Competition Council made six decisions in the case category of anticompetitive agreements. One of the cases was closed without intervention, since the agreement (involving vertical and horizontal aspects) did not prove to be anticompetitive. Three cases were terminated by prohibiting the unlawful conduct and two proceedings were closed with commitments. Half of the investigated agreements were concluded between competitors, two agreements involved both horizontal and vertical issues and one case concerned a vertical agreement.

23. In 2008 the number of investigations concerning hardcore cartels were less than in the previous years and this year leniency was not applied in any case at all. Four proceedings that started by dawn raids were terminated in 2008. A reasonable explanation of the decrease in the number of cartel investigations is that the courts have reached final decision in several significant cases recently, and this made firms far more cautious.

¹¹ Vj-176/2001

24. The GVH continued the investigation and evaluation of codes of ethics of professional chambers and associations in 2008. The main concern, that emerges in the case of recommended prices is that, it provides the market actors with a kind of certainty which artificially orientates their business decisions and finally leads to less competition and a higher level of prices. Recommended prices of professional associations can have negative effects on the demand side too, since consumers might think that prices lower than the recommended cover inadequate quality or that there is no sense in trying to find a cheaper service provider as every market actor applies same prices.

25. In accordance with these considerations, the GVH adopted an infringement decision establishing that the Hungarian Real Estate Association's (Magyar Ingatlanszövetség – MAISZ) real estate agent fee recommendations for its members (in force between 2004 and 2007) were anticompetitive¹². The "Tariffs for Real Estate Services" and the "Guiding Tariffs for Real Estate Valuation Activity" published on the homepage of the association contained recommendations for the minimum and maximum of estate agent fees (that were calculated as a percentage of the value categorised in different levels) and absolute value (HUF) recommendations for the minimum, average and maximum of expert fees. Furthermore, these documents determined four categories for minimal overhead prices by the hour depending on what qualification and kind of liability insurance the real estate appraiser or the organization had.

26. MAISZ – a professional organization (trade association) of 584 members – organizes and coordinates its members engaged in property sales, brokerage, development, management, appraising and in general other activities related to real estates, furthermore other asset-based business valuations, valuation of intangible assets and financial analysis. The documents objected by the GVH had been elaborated by the member undertakings themselves in the special committees of the association, and then forwarded to the other undertakings for review. Thereafter, taking into account these opinions, the committees elaborated the final version of the recommendations.

27. The Competition Council established that these recommendations intended to restrict competition and had the ability to have such an impact. The investigation covered the analysis of the actual effects through a market analysis conducted by the GVH. According to this research the effect of the recommendations on pricing strategy of the market actors was statistically significant. In addition, the provisions of the MAISZ that members were obliged to take into consideration the recommendations and the failure of that might have led to ethical-disciplinary consequences intensified this effect.

28. Since MAISZ violated the competition law, the GVH compelled the association to remove the documents mentioned above from its homepage within 30 days of receipt of the decision, disclose the decision of the GVH on its homepage and call the attention of the visitors and all the members to the fact that the earlier fee recommendations were unlawful. The GVH did not impose a fine on the association, since in the course of the proceedings the GVH took into consideration that legal norms still allow several chambers to publish recommended prices. It was considered as a mitigating factor that MAISZ did not carry out disciplinary actions against those undertakings that had deviated from the recommendations. The GVH also adopted an infringement decision and imposed fines on the Hungarian

¹² Vj-001/2008

Journalists' Association (Magyar Újságírók Országos Szövetsége – MÚOSZ) for the anticompetitive fee recommendations for its members¹³.

29. Another significant case of anticompetitive agreements affected the pharmaceutical market¹⁴. At the beginning of 2007 Hungaropharma, a wholesaler of medicine and therapeutic products (not directly involved in retail trade) decided to make an offer to pharmacies to establish a strategic cooperation. Until mid 2008, it concluded agreements with 490 pharmacies. The pharmacies concerned were located in Budapest, in all significant cities of the country and in numerous townships. In order to co-ordinate the cooperation, Hungaropharma and the pharmacies concluding the agreement established the Gyöngy Strategic Association and adopted its Cooperation Regulation.

30. In return for marketing assistance and supporting the supply of materials necessary for the operation, the participating pharmacies agreed to purchase 80% of their demand from Hungaropharma. The latter also agreed to help pharmacies in providing services to customers. This agreement primarily proved to be vertical since Hungaropharma was a supplier of pharmacies. Due to the council, established by the Cooperation Regulation and consisted of delegates from the pharmacies and Hungaropharma, the agreement could serve as a platform to cooperation among competitors. Thus, the Competition Council also evaluated the horizontal aspects of the agreement.

31. The investigation revealed that two points of the document were suitable for restricting market competition. Pursuant to the agreement, member pharmacies were only allowed to launch their own discount campaigns if the council has already agreed. According to the GVH, the obligation on the members to report discount campaigns might have restricted competition by informing competitors about each other's pricing practices. The second objected point of the agreement was about the determination of resale prices. According to this point pharmacies were obliged to maintain the discount prices determined by Hungaropharma. This obligation reduced the incentives to decrease price in itself and prevented the buyer pharmacies from determining their prices on their own, therefore the GVH considered this point of the cooperation agreement as a restrictive practice.

32. The GVH established the infringement and prohibited the application of the objected points of the agreement. During the proceeding, Hungaropharma expressed its intention to fully review the cooperation agreement and to conclude contracts with the pharmacies complying with the expectations of the GVH by 31 December 2009. Hungaropharma also agreed to inform every member that the discount-related point of the agreement has to be interpreted that pharmacies do not apply higher prices than the discount price offered by Hungaropharma and that the consent of the council is obligatory only in the case of discount campaigns running in parallel with the campaigns launched by the Gyöngy chain.

33. Beyond establishing the infringement no fine was imposed, since Hungaropharma admitted the infringement and actively cooperated with the GVH in the course of the proceeding.

34. The GVH closed the proceedings against eleven Hungarian broker firms as there was no evidence underpinning the alleged cartel case, but as part of this case, the Budapest Stock

¹³ Vj-036/2008

¹⁴ Vj-057/2008

Exchange (BÉT) offered commitments¹⁵. According to the facts, in September 2006, based on the decision of the general manager of BÉT, the contract size of some stock exchange products (futures) was reduced. This step was initiated by BÉT Trading Committee functioning as the organ responsible for the representation of investment firms' (i.e. broker firms) interests. After a preliminary coordination simultaneously with the decision of BÉT – and hiding behind it – the broker firms all increased their brokerage fees coming from futures transactions by 200-300 percent. Furthermore it was presumed that the uniform fee rise was possible due to a decision elaborated beforehand by the Trading Committee (thus indirectly the brokerage firms) and announced by BÉT in autumn 2005. Following this decision a brokerage firm wishing to enter any section of the stock exchange (shares, futures, foreign exchange etc.) had to pay an entry fee amounting to HUF 30 million contrary to the earlier entry fee amounting to HUF 5 million.

35. In the course of the investigation concerning the fee raising by the eleven investment service providers, the GVH could not find any documents serving as evidence substantiating directly or indirectly its suspicion. It could only establish that while some undertakings did not raise their fees at all, others did so but to a largely different extent. The fact that the dates of the changing of brokerage fees were the same could raise suspicion, however the GVH, in the absence of opposing evidence thought it realistic that the decision of the general manager of BÉT to decrease contract sizes explained the vicinity of the dates when fees were changed.

36. However the GVH went on with investigating BÉT to find out whether the same-time increase of entry fees was susceptible to hinder investment providers from entering the market. BÉT proposed commitments: first, it modified the entry fee to net HUF 10 million per sector from 1 August 2008 on, for all undertakings wishing to enter any section, included those already with a section membership and those that wish to become new members; secondly, if a future section member wishes to get a membership in three sections and pays all the three one-time entry fees, altogether net HUF 30 million, it may obtain a fourth membership (in a fourth section) without the obligation to pay the entry fee; thirdly, members that have already paid the one-time entry fee of HUF 30 million under the old scheme for entry fees may enter any further sections without the obligation to pay. The GVH came to the conclusion that the public interest attached to competition can most effectively be assured by accepting the commitments proposed and by making them binding.

2.1.3 Description of significant abuse of dominant position cases

37. In 2008 the Competition Council adopted seven decisions in cases related to presumed abuse of dominance. Three of them were closed with commitment decisions, consequently in these cases no infringement was established. All of these three cases involved exploitative abuse. Every firm pursued its activity as a monopolist due to some special circumstances or exclusive right, but the price determination or its details were not regulated in the given industry.

38. The GVH investigated the conduct of E.ON Dél-dunántúli Áramszolgáltató Zrt. (DÉDÁSZ) which is a regional electricity provider and via its affiliate company owner of the electric grid in the southern parts of the country¹⁶. In Hungary municipalities can decide whether they would like to obtain public lighting services from the incumbent electricity

¹⁵ Vj-152/2006

¹⁶ Vj-031/2007

supplier (which indirectly owns also the distribution network) or from another provider. In the latter case, the independent electricity provider has to pay a distribution fee to the regional distribution company for using its grid. This fee is regulated, but DÉDÁSZ could raise its overall income by dividing the city into smaller areas and by charging a certain fee area by area (according to the location of transformer stations) instead of charging a uniform fee for the city as a whole. The GVH accepted the commitments of DÉDÁSZ to change its practice, and terminated the proceeding without establishing the infringement or imposing a fine.

39. Another exploitative case – closed also with commitments – involved a funeral service provider¹⁷. It concerned a discriminative practice as it charged almost 17 times more for the same service in the case of deceased persons of foreign nationalities than in case of Hungarian ones. The firm undertook to equate the prices (through decreasing the higher price) and to pay back the difference to the customer whom it actually charged the excessive price.

40. The GVH initiated a proceeding against the National Office for Translation and Attestation (Országos Fordító és Fordításhitelesítő Iroda Zrt. – OFFI) in September 2007 to examine whether the Office abused its dominant position when applying its price setting practices¹⁸. OFFI, providing translation and consecutive interpretation services is authorised by law to have exclusivity in Hungary for making authenticated translations and attesting translations. However concerns arose regarding the deadlines applied by OFFI. The Office offered a 30 working day basic deadline for authenticated translations. They also provided the possibility of a shorter deadline to be used, but short-deadline customers were required to pay a surcharge of 25 to 300 per cent depending on the extent of urgency. The amount of the 15 day urgency surcharge was also made depended on the fact whether the customer was qualified as a natural person or not.

41. After the initiation of the proceeding, OFFI undertook to modify the basic deadline from 30 days to 15 days in the case of shorter (up to 10 pages) translations and attestations, to apply an urgency surcharge of 25 per cent uniformly and only in the case when documents are longer than 10 pages, to insert these modifications in its Code of Business and to inform consumers about them. The OFFI also committed itself to apply a uniform system of surcharges concerning public corporations and the general public. The GVH accepted the commitments of OFFI and terminated the proceeding by delivering an order without establishing the infringement.

42. Although abuse was not proven in any of them, the GVH also investigated exclusionary conduct in several cases. Tying was suspected in a case against Magyar Telekom (the biggest telecom service provider in Hungary) since the firm made the provision of its IPTV service conditional upon the purchase of ADSL based Internet and indirectly of fixed line telephone¹⁹. Abuse of dominance could have been proven only if Magyar Telekom had possessed dominance in the market of IPTV and had intended to leverage this market power to the markets of Internet and fixed line telephone. Thus the primary question of the proceeding was whether the IPTV service could be considered as a separate market and whether the telecom operator possessed a dominant position on this market or not. The analysis of the data obtained during the investigation showed that the widespread cable and satellite TV services could be considered as reasonable substitutions of IPTV, thus the

¹⁷ Vj-157/2007

¹⁸ Vj-141/2007

¹⁹ Vj-006/2008

proceeding was terminated because of lack of dominance, without detailed investigation of tying practices.

43. The GVH initiated an investigation against T-Kábel Magyarország, a cable TV service provider²⁰. T-Kábel applied a potentially predatory pricing policy: it offered significant loyalty discounts to its customers located in areas where a competitor was building up a parallel cable network. The Competition Council established that the reduced prices were lower than the service provider's average total costs, but higher than its average variable costs. In such a case, further evidence is needed to qualify the conduct as an infringement. Since the intention of T-Kábel to exclude its competitor could not be proven unambiguously and the competitor continued its expansion, the Competition Council considered the conduct as a fast reaction to the new entrant and terminated the investigation.

44. The GVH investigated the marketing support system applied by Microsoft Hungary, the Hungarian subsidiary of the software world-company²¹. There was a presumption that the conditions and favours offered for the most significant software distributors gave no incentive to these distributors in selling other products competing with Microsoft Office software for office use.

45. The investigation of the GVH established that Microsoft Hungary is basically interested in marketing, it supports resellers by increasing promotion of products and training them, and by generating consumer demand for the products. It was found that Microsoft Hungary provided marketing support for official distributors only. The extent of the average support provided for the five distributors compared to the turnover of Microsoft did not reach 1 percent in 2006 and in 2007 either. There was not any contractual condition prescribing that distributors are obliged to refuse other products competing with Microsoft Office software and any clause stating that Microsoft products must meet a certain percentage of distributor demand either. Since according to the investigation, the terms and conditions of the agreements for marketing support between Microsoft and the official distributors in Hungary do not mention any provisions that were exclusive, making it compulsory to refuse or prefer competing products, thus they could not be considered as loyalty rewards. Therefore it was found that Microsoft did not commit an abuse of dominant position when it provided marketing support for the distributors.

2.2 Mergers and acquisitions

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws

46. In 2008, the Competition Council adopted 37 decisions in concentration cases. Of the 37 cases that ended with a final decision 36 were initiated upon the notification of the parties, while in the one remaining case the GVH opened proceedings ex officio due to a failure to notification. In this latter case the GVH imposed a fine of HUF 18 million on the parties who failed to notify. 19 cases out of the total 37 resulted in horizontal concentrations, 2 were of vertical nature, while the remaining 16 produced both horizontal and vertical effects or neither of them. The GVH intervened in two cases, namely it imposed obligations on the parties as a precondition for the authorization of the transaction. In seven cases it was found that there

²⁰ Vj-088/2007

²¹ Vj-104/2007

was no need to apply for authorization or the notified transaction did not qualify as a concentration under the Competition Act. In 28 cases the concentration was authorized.

2.2.2 *Summary of significant cases*

47. The Competition Council imposed obligations in its decision concerning the acquisition of Spektrum TV Zrt. by Chellomedia Programming BV²². Chellomedia is a member of the group of undertakings controlled by Liberty Global Inc. The Liberty-group has telecommunication networks in 15 countries besides providing media and content provision services all over the world. It has several affiliates in Hungary too: of them, UPC provides cable TV, Internet and telephone services; Monor Telefon supplies UPC Direct satellite TV services; Sport1 Holding Zrt. sells Sport1 and Sport2 TV programmes, TV Paprika Zrt. runs the thematic channels of TV Deko and TV Paprika, and Filmmúzeum Zrt is the vendor of the movie channel Filmmúzeum. Foreign members of the Liberty-group are also present in the Hungarian market with the Minimax, Club, Romantica, Europe and Reality TV channels (in Hungarian language) and the channel Extreme Sports.

48. John C. Malone is the biggest, though minority shareholder of Liberty Global Inc. and he is also the chairman of the company's board of directors. He is also the biggest, but minority shareholder and the CEO of Discovery Holding Company. The latter undertaking is a 66% shareholder of Discovery Communications Inc. that operates the Discovery documentary channel in Hungary too. Based on all this information, it can be established that John C. Malone has factual control of both Liberty Global Inc. and Discovery Holding Company (together: the Malone-group).

49. The aim of Spektrum TV provided by Spektrum Zrt. is to broadcast high quality scientific and documentary films and documentary series with Hungarian language support. Spektrum TV demands around 1300 hours of documentary film stock a year. Most of its revenue comes from cable-subscriptions, the rest from advertisements and sponsors. The channel is received in more than 2 million households in Hungary as part of channel subscription packages. It cannot be received separately.

50. The GVH presumed that if the two most important TV channels broadcasting documentary films were getting into the same group of undertakings, serious changes might have taken place in the field of TV channel sales.. That meant that only two independent players were able to operate on the market. In spite of this fact the GVH had no fears about the Malone-group getting into a dominant position, since the competitor's channel, National Geographic meant a good counterweight on the market. According to the GVH the Malone-group cannot get in a dominant position even together with the channel National Geographic (collective dominance), since special documentary channels (e.g. Viasat Explorer, Viasat History) are also competitors of the not specified general documentary channels.

51. However the Malone-group might have been interested in not selling (i.e. not granting access to) Spektrum TV channel by competitors, which are also engaged in television program distribution (refusal on the sale side) or in refraining from buying – as a distributor of programs – documentary TV channels competing with Spektrum (refusal on the purchaser side). Nevertheless the acquirer of Spektrum guaranteed not to refuse the purchasing offer of third parties for Spektrum TV channel until 31 July 2012 supposing that they are willing to pay a non-discriminatory fee set under the usual business and technical

²² Vj-061/2008

conditions and they meet the legal, technical and financial conditions necessary to operate the program provision. Since the GVH made this commitment binding on Chellomedia, there was no concern that Spektrum would not be available for other service providers.

52. Furthermore the GVH had no concerns either about the Malone-group refusing the appearance of TV channels (National Geographic, Viasat Explorer etc.) competing with Spektrum TV on its Hungarian network. On the one hand, the market share of the Malone-group was under 30% and in the future with the expansion of DigiTV and IPTV (Internet TV) this percentage is going to decrease, on the other hand, the group has less and less interest in limiting the supply since competition is expected to become stronger and stronger. That is to say, a refusal to distribute such a highly demanded channel would certainly result in losing subscribers.

53. Based on all these, with imposing the above-mentioned obligation up to 2012, the GVH granted authorisation to Chellomedia's acquisition of SpektrumTV.

54. Significant changes occurred in the media world as in its decision the GVH allowed Ringier Kft., Népszabadság Zrt. and Sanoma Zrt. to gain indirect control over MédiaLog Zrt. The transaction affected the newspaper distribution market²³. In November 2007 Ringier, Népszabadság and Sanoma, the three main newspaper publishers in Hungary, decided to acquire MédiaLog Zrt. from the German F-Log AG. MédiaLog was established in the summer of 2006 with the authorisation of the GVH and it provides subscription-based periodical distribution services.

55. In the course of the transaction Hungarian Subscribers' Trust (Magyar Előfizetői Vagyonkezelő – MEV), the joint venture of the three publishers, holding 49 % of MédiaLog shares, acquired 51% of the parcel of shares of F-Log AG. In this way, the method and the matter of MédiaLog's control significantly altered, thus the GVH investigated whether these changes, the increased independency of the remaining owners could have led to establishment or the strengthening of dominance.

56. Periodical distribution is a special service, the aim of which is that newspapers and periodicals reach readers directly or indirectly through specified media means. Within newspaper distribution we can distinguish buyer-seller and subscription-based distribution: the former means newspaper retail distribution, the latter home-delivery to subscribers. In Hungary buyer-seller newspaper distribution is currently managed by the sole undertaking Lapker Rt. with almost 100% market shares. Subscription-based periodical distribution requires a wide delivery network, logistics, infrastructure and supply chain management. Besides MédiaLog Zrt. Magyar Posta is the only other national distributor. Daily papers within the subscription-based distribution market differ from other subscriptions (periodical, weekly, bi-weekly, monthly papers, hereinafter referred to altogether as magazines). Daily papers must be delivered early in the morning every day. In the subscription paper distribution market, MédiaLog Zrt. possesses a market share exceeding 90% concerning national daily papers and about 30% concerning magazines.

57. As for the other participants in the transaction, they are editors of periodicals. The Swiss Ringier AG group comprises, among others, the Ringier Kft. – publishing the daily yellow press “Blikk”, “Nemzeti Sport” and many junior magazines – and Népszabadság Zrt., publishing the daily “Népszabadság”. The Ringier group is considered to be the biggest

²³ Vj-040/2008

publisher in the national daily press market on the basis of its high sales, with its 45% market share. The undertaking is also present in the magazine market with an around 5% market share. Sanoma Zrt. with Finnish interests is considered to be a strong player in publishing, with a market share of 30%. This undertaking publishes namely – among others – the magazines *Story*, *Nők Lapja* (a magazine for women), *Figyelő* (an economic magazine), *National Geographic* and *Cosmopolitan*.

58. The GVH examined whether Ringier and Sanoma could establish a dominant position in the publishing market, after acquiring MédiaLog through MEV Kft. According to the GVH, daily papers and magazines do not belong to the same commodity market. Furthermore, it was only Ringier among the undertakings concerned in the transaction that deals with publishing daily papers. Both big publishers are present in the magazine market, however their joint market share is not high enough to put them in a dominant position. It might arise that MédiaLog Kft., controlled by the two publishers would discriminate against other publishers in the area of distribution. To avoid this, the GVH required the compliance with the same conditions that had to be satisfied for the establishment of MédiaLog in 2006. Thus MédiaLog Logisztikai Zrt. was obliged to provide subscription-based newspaper and magazine distribution services under the same conditions (without discrimination) for every client wishing to use them; as well as not to provide any information on business secrets provided by clients of the above-mentioned services to third parties (not even to the other applicants of the transaction in question).

59. These conditions were accepted by the firms concerned in the case, therefore the GVH authorised the transaction. Furthermore, the GVH emphasized that the decrease in the number of controllers also qualifies as concentration and has to be authorized, since the interests of a joint venture and its behaviour can be highly dependent on whether there is a financial investor among the controllers or not.

60. The Hospinvest Zrt. applied for authorisation after it won the public tender procedure for the operation of Markhot Ferenc Hospital and Clinic in Eger, owned by Heves county²⁴. The tendering referred to the operation of the Hospital for 20 years in line with the legislation in force and according to the medical, professional and economic programmes adopted. Moreover, it referred to the operation, preservation, maintenance and development of the assets given into property management in line with the legislation in force in order to ensure or improve the meeting of the minimum conditions and to preserve or develop the structure of the treatment of in- and out-patients and of the diagnostics in the institution.

61. The GVH investigated the amount of the net turnover achieved together by the Markhot Ferenc Hospital and Hospinvest, since the Competition Act covers only the market behaviour of undertakings. According to the GVH, the treatments of patients allocated to the hospital's own provision area, which are in 100 % funded by the Health Insurance Fund, are not market activities, because on the hospital's (supply) side, there are capacity and output limitations on the one hand, and a service supply obligation on the other hand, while on the patient's (demand) side, the decision on which hospital to choose is not made as a market decision either, since patients can only visit the hospital in their respective areas. In addition to these, this service is free, because health insurance is not made within a real insurance relationship but the charge serving as basis for financing is "tax-like". The two other types of activities of hospitals, namely the treatment of patients coming outside from the hospital's own provision areas and other activities wholly financed by the patient receiving the

²⁴ Vj-073/2008

treatment, can be regarded as market activities. The GVH concluded that only if the aggregate net turnover of the undertakings concerned originating from these two latter kinds of activities had exceeded the HUF 15 billion threshold, would the GVH have examined the possible distorting effect of the transaction. The GVH found that the HUF 15 billion threshold is by no means exceeded. Consequently, the concentration was not subject to an approval by the GVH due to the small scale of the market activities.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

62. Within the framework of competition advocacy the GVH tries to influence state decisions in favour of competition. In these efforts the GVH uses its rights granted to it by the Competition Act relying on the constitutional right for free competition, and raises the awareness of general public. State decisions in this context include the shaping of public policies and the individual decisions and interventions of the government and other state bodies.

63. The most important form of competition advocacy is the opining of legislation. However, other tools are also available; e.g. the GVH may also submit proposals and its role is not restricted to mere reactions to others' initiatives.

3.1 Opining draft pieces of legislation

64. According to the Competition Act all draft pieces of legislation that might affect the scope of duties of the GVH have to be submitted for opining to the GVH. In 2008 360 proposals and drafts were submitted for opining, with a sixth of them requiring a detailed analysis from a competition perspective. The number of submitted proposals and drafts was by 30% less than it was in the previous year and several important draft pieces of legislation "bypassed" the GVH owing to the negligence of the proponents. The GVH tries to call the attention of the codifiers to this problem and prepares and submits its opinion even if it only gets to know about the piece of legislation after it was adopted.

65. In 2008 the GVH gave detailed remarks to the new draft of the Act on Media. According to the draft the codifier would abolish the rigid regulation based on the access to limited resources, and build it on the market players' market power and ability to influence the consumers' opinion. The draft did not contain elements about the ex ante control of behaviour, which would have been in line with the outcome of the GVH's sectoral inquiry on electronic media market. The new regulation would assign the tasks to the GVH related to the competition in the media and press markets, especially in deciding whether the market actors have significant market power (SMP) or not, but the draft has not been adopted yet.

66. The GVH prepared a comprehensive study about the system of compulsory originality control of motor vehicles, its regulation and the functioning of the market. This system was introduced in 1999 in order to filter out stolen cars in the course of sale transactions, but – according to the results of the study – it doesn't serve its goal well enough and doesn't operate in an efficient way. Consequently the GVH proposed the review of the state supervision, the reduction of the originality control fees or the alteration of the service to become market-based.

67. In the course of the statutory-based cooperation in SMP procedures between the sectoral regulators and the competition authority, certain decisions of the National

Communications Authority (Nemzetközi Hírközlési Hatóság, NHH) and the Hungarian Energy Office (Magyar Energia Hivatal, MEH) were commented by the GVH. According to the GVH's view, competition in the electronic communication sector develops adequately due to the fine-tuning of the regulation, while there is still a lot to do concerning the regulation of electricity markets. As regards this latter sector, most comments of the GVH related to the decisions about the obligations of the service providers that possess SMP in the wholesale markets.

68. In addition to these, the GVH had a significant advocacy role concerning drug commerce, tourism, taxi services, the financing of higher education institutions and rail public service as well as in the field of rules for public procurement. The Authority was also very active in the implementation process of the UCP directive.

4. Summaries of or references to new reports and studies on competition policy issues

69. Throughout 2008 the GVH continued the sectoral inquiries on customer mobility in retail banking and on electronic media. Both works were launched in the previous year. The final reports of both sectoral inquiries will be published at the beginning of 2009.

70. The reason of the initiation of a sectoral inquiry in the banking sector was that based on market information and information obtained from the proceedings, it seemed to be reasonable to investigate the markets of households' and small enterprises' current accounts, personal loans, personal mortgage loans and housing mortgage loans to explore, whether customer mobility and thus effective competition were hindered. As a result of the investigation the GVH established that shortcomings in the regulation of switching had the potential to seriously limit consumers' choice and consequently effective competition did not always prevail on the market.

71. The GVH identified four factors that may have distorted competition on the market of household loans: (1) unilateral modification of contract terms and conditions are applied too broadly, (2) banks impose high switching costs (closing charges) on consumers, (3) lack of price transparency renders the comparison of products more difficult and (4) the non-portability of state subsidies for mortgage loans enhances contract asymmetry for the benefit of lenders. Concerning the market of current accounts the inquiry established that direct expenses related to switching are not excessively high. However, switching might be difficult due to the lack of transparency of the offers and to the cumbersome administration.

72. After publishing the report of the sectoral inquiry – based on its observations – the GVH turned to the relevant ministries, authorities and the Banking Association with its recommendations concerning the improvement of regulation in the above mentioned fields. The active competition advocacy efforts of the GVH also contributed to the outcome that in March 2009 the Hungarian Parliament adopted an amendment that limits the possibilities of banks to modify the loan and leasing contracts unilaterally – thus resolves at least partly the above-mentioned problems. As a result, the different types of interests, fees and costs can be modified unfavourably for customers only if the modification is objectively justifiable by external events and its possibility is explicitly mentioned in the contract previously. A change of an external event allows the modification of one single item only. An important feature of the amendment is that banks are obliged to inform their customers personally about any potential change 60 days before the implementation. According to this, an announcement published in branches or through the website of the bank 15 days before the change was

sufficient to meet the legal requirements – but it did not provide the customers with enough time to consider switching of the supplier. Since the perception of the GVH was that the switching costs are considerable enough to deter customers from trying to find another bank to refinance their loans, it made also suggestions to set off this effect. According to the new regulation, if a modification is disadvantageous for customers, they have the right to terminate the contract free of charge. Another result of the recommendations of the GVH is that the sector-specific regulator is planning to create a verifiable product-comparison website, which could improve the transparency in the market.

73. The sectoral inquiry on electronic media market was initiated in July 2007 in order to evaluate the retail and wholesale markets of television broadcasting (content provision and content packaging service), the television advertising market, the access to sport and film rights and the conditions for television broadcasting. At the beginning of the investigation the GVH identified the following circumstances that might have led to the restriction of competition: (1) the market shares of the two commercial television channels with country-wide coverage on the advertising market did not seem to be proportional compared to the number of their viewers, (2) the success of the entry of content providers to the Hungarian market strongly depends on cable television platforms (whether they can use them or not) and (3) the platform providers are all vertically integrated to a certain extent (there are no independent content packaging providers) that also might raise concerns in connection with the simplicity of the entry of content providers.

74. According to the report of the sectoral inquiry, the GVH did not identify any circumstance in relation to the above-mentioned core concerns which would have justified the initiation of a competition supervision proceeding or an initiative for the modification of the relevant regulation. First of all, the presumed disproportion concerning the possessed share of the advertisement market and the number of viewers was proved to be true only in the case of the biggest commercial channel, but it could be justified by efficacy arguments and peculiarities of the advertisement market. Secondly, the concern about the access to cable networks was not proven to be problematic in practice as the growing competition among the different platforms dissolves the incentives of cable television providers to refuse to deal with any of the content providers. Finally, the GVH established that the lack of independent content packaging providers was a result of objective circumstances, and it did not hinder competition among content providers in itself.

75. The GVH pointed out that all of the initial concerns had a reasonable explanation, therefore no intervention was needed. However, the sectoral inquiry was undoubtedly useful for the GVH as it helped to reach better understanding about the market mechanisms on the electronic media market that is under continuous development. The evaluation of the current market forces and characteristics strongly supported the further creation of the GVH's approach in this dynamic field.

5. Resources of the competition authority

5.1 Resources overall (current numbers and change over previous year)

5.1.1 Annual budget (in HUF and EUR)

2000	million HUF	576.4
	million EUR	2.3
2001	million HUF	950.2

	million EUR	3.8
2002	million HUF	1179
	million EUR	4.7
2003	million HUF	1196
	million EUR	4.8
2004	million HUF	1164
	million EUR	4.7
2005	million HUF	1522
	million EUR	5.8
2006	million HUF	1787
	million EUR	7.1
2007	million HUF	2294.4
	million EUR	9.1
2008	million HUF	2399
	million EUR	8.9

5.1.2 Number of employees (person-years)

Economists

2000	2001	2002	2003	2004	2005	2006	2007	2008
21	27	32	31	31	28	27	31	33

Lawyers

2000	2001	2002	2003	2004	2005	2006	2007	2008
38	36	43	49	49	49	39	44	47

Other professionals

2000	2001	2002	2003	2004	2005	2006	2007	2008
26	21	18	19	18	18	14	14	11

All staff combined

2000	2001	2002	2003	2004	2005	2006	2007	2008
104	120	120	120	119	116	114	114	120

5.2 Human resources (person-years) applied to

5.2.1 Enforcement against anticompetitive practices, merger review and enforcement

76. This activity required approximately 60 person-years including merger review²⁵ but excluding consumer protection (unfair competition). Professionals at theoretical sections (legal, international, competition policy) were counted as 0,5 person-year.

²⁵ There is no dedicated staff for merger review.

4.2.2 *Advocacy efforts*

77. Advocacy activity of the GVH required around 10 person-years. There is no explicitly dedicated staff for this task, but a number of employees participate in the shaping of the views of the GVH on draft legislation submitted for opining and on the assessment of existing norms.