

The Hungarian Competition Authority (GVH) is an independent administrative authority of nationwide competence, the President of which is obligated to present annual reports to Parliament. The task of the GVH is the safeguarding of fair and free economic competition in the interest of the public. Its activity is based on three pillars: the competition supervision activity is based on the Hungarian Competition Act and the Community competition rules; through its competition advocacy the GVH strives to influence the making of state- and municipality-decisions having an effect on competition; it is responsible for the development of competition culture, particularly for the raising of public awareness about competition and for the contribution to the development of competition-related legal and economic activities of public interest.¹

SUMMARY AND RECOMMENDATIONS TO PARLIAMENT

General experiences

1 The competition strengthening effect of the accession to the EU has influenced significantly the Hungarian economic life in 2006 too. Through the globalization of the market competition contributed to a more complete satisfying of consumers' demands. At the same time competition put adaptation constraints on undertakings that lead to the bankruptcy of some of them. The development of competition forces undertakings to take into consideration foreign markets and both Hungarian and foreign markets generate efficiencies in their activities. Increased competition may result in some of them earning lower profits, which in turn may coerce the rationalization of the operation of the undertaking concerned. Reorganisation and bankruptcy may give rise to the temporary appearance of excess production resources, so they may generate an increase in unemployment rate. But this transformation ensures that more efficient undertakings get those not so efficiently used resources and that undertakings, which produce products demanded by consumers, flourish. This in turn strengthens income production in the economy and increases welfare. This regrouping, however, is subjected to a long-term development of human resources and tangible infrastructure and to the existence of a flexible economic policy and a social and employment system that absorbs economic shocks. Intense competition may give an impetus to unfair competition as well. The GVH fights against this phenomenon by series of market clearing proceedings and by imposing higher and higher fines on infringers.

2 Analysing **state activities** we can state, that the role of the free market within electricity market further increased in 2006. The public utility market was left by several undertakings that wished to buy cheaper electric energy from the free market, and as a result of this the share of the free market has grown from 33% to 40% in the electricity consumption. At the same time, the increase of the price level on free market in the middle of the year induced a movement into the opposite direction: consumers started to go back to the public utility sector. The reason of that is the specific regulatory solution, which makes it possible to consumers to change between the public and the competition sector free of charge without facing any administrative bans. Therefore consumers do not have to pay permanently more than the public utilities price, so they can try to enter the free market. This solution was useful at the beginning of the market opening, but now its disadvantages come to light as e.g. the fact that it strongly restricts the proper functioning of the free market. In the course of the sectoral inquiry the GVH also highlighted other problems, as the existence of the long-term agreements concluded for 8 to 15 years between the wholesaler MVM and the power plants and, furthermore, of those concluded relating to the use of interconnection capacities. These agreements cover about 70% of the market and by this they hinder the development.

3 By the end of 2006 non-residential consumers on the **market of natural gas** had already a two-and-a-half year experience to decide whether they satisfy their demand for natural gas from the traditional public

¹ For further information about the organisation, operation and activities of the GVH see its website (www.gvh.hu).

utility source or on the free market. Nevertheless only the large customers, which together accounted for 10% of the total annual gas consumption, grasped the opportunity and left public utility supply. In Hungary there are 17 registered licensees, so an undertaking, in principle, can ask the same number of companies for an offer, but in deed the number of the companies having suitable gas sources and meeting consumers' expectations is lower. Under these circumstances it will likely be supportive of further market opening that the natural gas wholesaler E.ON Natural Gas Trade Ltd, as part of its voluntarily undertaken commitment, which it made in order to get the authorisation of the European Commission for its acquisition of control over MOL's natural gas business, sold half of the amount of natural gas produced in Hungary to an undertaking not within its own interest sphere. This can contribute to the diminution, within the natural gas sector, of the weight of the biggest market participant E.ON, enhance potential competition and improve the conditions of competition.

4 In 2006 in the field of **railway freight transport** the number of market players increased, some of the consumers took up their own transporting activity (Mátra Erőmű Zrt.- Mátra Power Plant Ltd.. and Szentesi Vasútépítő Kft.- Szentes Railway Costruction Ltd.). With the railway market having partly been opened in May 2004, nine smaller undertakings entered that market and achieved, in 2006, a total market share of 4%. This is a good result compared with what can be found in the EU, but it is not satisfactory from the point of view of competition, so the market is still significantly concentrated. Based on the liberalization, the railway freight transportation market expanded and the largest amount of goods transported annually by rail was transported in 2006 within the period of the last 15 years. In the same time liberalisation is still disturbed by market failures, access to industrial sidetracks is further on hindered. The same two dominant undertakings (MÁV Zrt. and GYSEV Zrt.) as in the earlier years were on the market of passenger transport in 2006. It is a new development that the licensing of more than 5 provincial railway companies' is in progress; these companies may offer an alternative to the state railway in the rural sidelines. Although these railway companies have only local interest, the rail transportation of passengers is also going to change towards a multiparticipant model.

5 In the **air transport sector** the quick growing of the passenger traffic, caused by the low-cost airlines, stopped. This happened in spite of the fact that British BAA International, operating Budapest International Airport as a successor in that capacity of Budapest Airport Ltd decreased the airport fee by 5% and introduced several measures the aim of which was to achieve efficiencies. In order to clean up the profile, it sold in competitions certain operations as e.g. the minibus service and sold BA. Handling Kft, a provider of ground handling services. By the end of 2006, the British BAA was bought up by the German Hochtief Airport GmbH and the Canadian CDPQ and the airport came under the joint control of the new owners. The dominance of Ferihegy slightly weakened, because regional airports in Hungary played an increasing role in the international air traffic.

6 As a result of the special legal regulation, the market of **pharmaceutical trade** did not function as a competitive one during the last years. In contrary to the retail market on which only traces of economic competition existed, because the market was comprehensively regulated still in 2006 (with the market entry and both the forms of entrepreneurship and the ownership relations of market players being restricted, certain undertakings from the possibility to operate a pharmacy of their own being excluded and the scope for action of market players being limited), competition on the merit existed on the wholesale market. Overlapping and concentrations between wholesalers and retailers were restricted by the legal acts in force in 2006, which prohibited the direct acquisition, by wholesalers and manufacturers, of ownership in pharmacies. However, as controlling rights may happen to be exerted independently of the ownership relations, it is not surprising, that some of the large wholesalers and manufacturers had/has factual control over pharmacies. The existence of such control relations is not obvious and difficult to recognize, if it is recognizable at all, which is harmful to the efficiency of both competition and regulation.

7 In the area of **business-decision based processes**, we can say, the number of mergers increased in 2006, but the GVH granted less authorisations for them, because the authorisation threshold increased from HUF 10 billion (approximately Euro 40 million) to HUF 15 billion (Euro 60 million). As an addition to the traditional types of mergers – acquisition of undertakings based on financial investments, classical horizontal or vertical concentrations – in 2006 acquisitions of undertakings active on (only indirectly affected) neighbouring markets also appeared.

8 In the **retail trade**, in addition to an increase in the number of the outlets, a strong fluctuation could be observed. This phenomenon, the great number of both market entries and exits is an indicator in itself for real competition in this industry and the contestability of the retail market. The fragmented trade structure has remained typical of Hungary, though concentration is increasing further on and there is a considerable turnover into the direction of hypermarkets and discount outlets, which offer as their main profile daily consumer goods. The construction of big stores marketing technical and construction goods and products for DIY purposes is also in progress. In the other sectors there are also transformation processes: national trade chains close down and international chains expand, with the latter occupying the territories of other market participants (e.g. furniture, perfumery). However, even smaller shops are not driven out of the market, as the expansion policy of large trade chains supposes adequate market sizes and purchasing power which they cannot find at smaller settlements and suburbs, where small shops are able to adapt their choice and services to the demand of their buyers.

9 The structure of **the wholesale trade of fuels**, owing to the nature of the industry, changes relatively slowly. The decisive actor is still MOL; the other regional refining companies play smaller roles. In the retail trade of fuels the market expanded, as a result of trends in the economic activities and administrative measures. New participants with refining capacities have entered the market and the number of the fuel stations owned by hypermarkets is increasing, but MOL is still the largest market participant and its market share has not changed during the last seven years.

10 In the field of **motor vehicle trading**, competition is strong and Hungary belongs to the three cheapest Member State of the EU-25. At the same time this does not mean, that consumers can get a car at a really low price. Consumers, who pay cash or utilise freely usable credits are lucky with the low prices, but other consumers may pay more in the form of higher annuity payments of the insurance or the credit. The reason for that is the fact that a large part of the profit of the authorised dealers originates from bank and insurance commissions rather than from the sales of new cars. So dealers are interested in consumers buying cars on credit rather than in high car prices. Nonetheless there are several facts that make an increase in consumer welfare and a high level of it likely. More consumers chose cash paying taking advantage of the low prices of new and second-hand cars. Competition between car-financing undertakings is also beneficial for the satisfaction of consumers' demands. Because of the narrowing of the market and the low profit of the dealers, which built their saloons or service stations on credit, mergers and takeovers have begun also on this market.

11 During the year 2006 in the **info-communications sector** processes indicating convergence have intensified. On the market of fixed-line telephone services, the number of analogue fixed lines continued to drop. This can be explained by the spread of Internet Protocol (IP)-based voice services offered by cable television providers, in addition to the competition caused by mobile phone service providers. In order to retain clients, fixed-line service providers also offered IP-based services to consumers, so the monopoly of one of the fixed-line providers (Invitel) is questioned. The IP based services are spread, because in several smaller networks the provision of these services also started. This is in connection with the fact, that some of the alternative suppliers have started to provide background services for voice services of cable television providers. Intensification in competition is being expected as the National Communications Authority approved the reference offers relating to local loop unbundling that decreased radically the one-off and ad

hoc fees of the suppliers. This development has facilitated market entry. This kind of entry encouraged first the making of offers, which were combined with broadband access.

12 In the field of **mobile services**, there is still lively competition between the three network owner service providers on the retail markets, but virtual mobile service providers have not yet entered the market. In 2006, the third mobile service provider has also started its third generation broadband service, so the number of subscribers to the 3G-service is also growing. A good example of the voice market convergence, that Vodafone has further developed its product, that offers an alternative to the residential segment of the market (similar conditions for mobile calling from a certain geographic territory as for the fixed-line calls). The NCA continued its regulatory work the aim of which was to achieve a decrease of the termination fees, so in January 2009 the three big mobile service suppliers will have to reduce the wholesale trade termination fee to a cost-based level.

13 On the market of **Internet services**, the transformation of the structure is going on. The number of the broadband accesses is continuing to grow at an accelerated rate. The number of the subscribers to broadband accesses is ten times as high as that of switch-line and ISDN subscribers together.

14 On the market of **programme distribution**, competition is intensifying. Antenna Hungária Zrt. has developed its Antenna Mikro service to a modern digital service at the end of 2005 and has supplied with it several packages, electronic programme guides and channels, which could also be subscribed to separately. In this way it can compete with cable TV suppliers too. On the market of programme distribution the most significant event was the appearance of the DIGI TV (owned by the EMKTV) as a digital earth-satellite programme distribution service. A further favourable phenomenon was the appearance of the IPTV, the broadband programme distribution. The new technology needs a broadband connection, so its spread can be expected on densely populated territories, where the recovery of the necessary investments is quicker. The IPTV makes it possible for telecommunication suppliers to introduce the so-called triple pay service (telephone, Internet, television in one package), which has already been introduced in certain networks.

15 On the market of **postal services** the range of services reserved for Magyar Posta (Hungarian Post, the universal service provider) has been narrowed by the Act on Post, but none of the postal suppliers asked for a permission of the NCA to enter the universal postal services segment in 2006. The GVH stated, that the manpower lending in the delivery sector was not in the interest of the public, as public utility service providers used the manpower lended to perform not only delivery but also other tasks; the problem seems to be solved by the amendment of the Act on Post.

16 On the **credit institution** market the market share of the credit institutions has not changed considerably, and the profit of the sector was significantly high. Although new participants entered the market – new foreign institutions and several credit institutions had registered for cross-border service provision and two big insurance companies introduced their retail trade banking services – competition was increased by this only to a small extent. The reason for profits earned in the sector being high is that credit institutions typically do not compete in respect of the higher deposit rates and the lower lending rates but they focus to other characteristics of their products. So competition was carried out in the field of advertising and in geographic accessibility of the banks in the private banking. At the same time, the transformation of the banks and the growing of the big- and medium sized banks changed the opportunities for competition. Similarly to the last years the functioning in the form of bank-groups was observable: banking, leasing, insurance, investment and financial services were offered within one and the same business group. Subjects of the cooperation inside the group were the following activities: harmonisation of service providing and agent activities, marketing of each other products, ensuring the liquidity of the subsidiaries by their parent banks and granting resources to subsidiaries.

17 On the **life insurance** market the „life” sector was expanded as a consequence of consumers’ reaction to the introduction of the interest-tax. In the field of vehicle liability-insurance competition was

accelerated due to the free switchover period in November. In the interim period during the year competition was weaker and less people used the charts on the Internet comparing charges.

Legislative amendments

18 In 2005 there was a significant change in the **legal background of the competition rules** due to the amendment of the Competition Act and the entering into force of Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services replacing the former public administrative procedure Act. In 2006 there was no further amendment in the legal background of the competition rules, but because of the previous amendments it was necessary to amend the leniency notice of the President of the GVH and the Chair of the Competition Council of the GVH. Parallel with the modification of the leniency policy the GVH published a notice in February 2006 about the connections between its leniency policy, the criminal sanctioning of restrictive agreements concluded in the course of public procurement or concession procedures and the rules for tendering in public procurement. In December 2006, the Competition Council published again the up-dated version of its position statements with the aim of helping the observance of the law when undertakings apply the Competition Act.

19 The most significant change in **broader legal environment** was the entering into force of the new Act on Trade on 1 June 2006, that has extended the competence of the GVH. The new Act puts commercial undertakings with significant market power under the supervision of the GVH and prohibits the abuse of that position against the suppliers. The new Act, stimulating self-regulation, also orders the undertakings to prepare a code of ethics. The new Act prohibits only the abuse of significant market power but it does not limit the concentration of purchasing power of the commerce nor does it contain any specific rule against the increase of the purchasing power by the conclusion of restrictive agreements.

Proceedings

20 In 2006 the GVH conducted 207 **competition supervision proceedings**, out of which 178 cases were finished by the decision of the Competition Council. 85 of the latter related to unfair manipulations of consumer choice while 93 of the decisions to antitrust (mergers, restrictive agreements, abuse of dominance). Of the total number of the cases concluded by a decision 137 cases were commenced ex officio, while 41 started on application. Both the number and the proportion of the interventions of the GVH had been increased in comparison with 2005. The total number of interventions was 95, they were made mainly in consumer fraud cases (66 cases), and the rest were in cases with antitrust relevance (29 cases). In its decisions on the substance of the case, the Competition Council of the GVH imposed fines in 65 cases. These fines amounted to HUF 11681,2 million (approx. Euro 46,7 million), including the fines imposed for failure of notification of concentrations (HUF 42.5 million; approx. Euro 170 thousand). The total amount exceeded the totals of the previous years, including that in 2004, the year, which brought the imposition of a very high HUF 7043 million (approx. Euro 28.6 million) fine in the motorway construction cartel case.

21 In 2006 the GVH finished by decision 85 cases relating to **unfair manipulation of consumer choice**, out of which it had to intervene in 66 cases. There were more proceedings and interventions than in 2005 and the proportion of cases in which interventions were carried out increased too. In 63 of the 66 cases with intervention serious infringements were found, and in 44 of those cases the GVH imposed fines which amounted altogether to HUF 1822,8 million (approx. Euro 7,3 million). This amount is fourth as high as the fines imposed in the same type of cases in 2005. In 2006, similar to the last years, cases relating to telecommunications and financial services, furthermore to ads for and information about products with alleged curative effects were the most frequent ones and they brought the most serious infringements.

22 In 2006 there were 19 decisions on the substance of **restrictive agreement** cases. In 15 cases the GVH intervened and in 9 of these cases the Competition Council imposed fines in a total amount of HUF

8649,85 million (approx. Euro 34,4 million). Prohibited and secret (price fixing, market sharing and output limiting) hardcore cartels between tendering undertakings constituted a high-priority group of such cases. In 5 competition supervision proceedings unlawful cooperation between potential competitors on the IT market before the submission of their bids was proved. The highest fine imposed in 2006 concerned the insurance market, namely motor vehicle liability insurance. The two insurance companies fined did not create a cartel, but they accepted the cartel of the car repairers and with this cartel in mind they tried to oust smaller insurance companies on the market of motor vehicle insurance; the professional association of the car dealers gave assistance to their efforts. In 2006 undertakings were also “condemned” in the agriculture sector and in the field of book publishing and trade; some of the professional chambers were also fined.

23 In 2006 there were 33 decisions relating to the substance of **abuse of dominance position** cases. In 22 cases the dominance was established and in 11 cases of the latter an abuse was proved too, so that the GVH had to intervene. In 3 of those 11 cases the proceeding was terminated (after a suspension and/or based on a commitment offered by the parties). The GVH imposed fines in 5 of the 8 other decisions, in a total amount of HUF 1166 million (approx. Euro 4,5 million). In the field of programme distribution the complaints were typical (increasing fees to an excessive extent, structuring program packages in a disadvantageous manner) and concerning other infocommunications markets (fixed-line telephone services, Internet services, TV broadcasting) there were also proceedings in connection with the exclusion from the market e.g. restriction of the switchover to services of other suppliers. The GVH objected several times to the excessive pricing of complementary services on the pipeline energy market. For the first time, one of these cases ended with a commitment of the undertakings voluntarily to observe the law. This new possibility was introduced by the amendment of the Competition Act in 2005, replacing the institution of suspension. To solve the problem the GVH and the Hungarian Energy Office drew up a new regulation relating to price setting of these services. In addition to the energy sector there were proceedings against other public utility service providers (public sewage services, waste-management).

24 In 2006 the Competition Council concluded 43 cases relating to **concentrations**. This number is much smaller as the number of concentration cases in the preceding year. The reason for that is the new provision of the Competition Act, which raised the threshold of the notification of concentrations from 10 to 15 million HUF to reduce the administrative burdens on the undertakings. In 41 cases the undertakings concerned lodged an application to the GVH and in two cases the GVH started the proceedings ex officio. In 5 cases an authorisation was not necessary or the transaction did not qualify as a concentration. In 40 cases the GVH authorised the concentration in question, but in three cases the GVH accepted the commitments of the participants as preconditions for the authorisation. HUF 42,4 million (approx. Euro 170 thousand) fine as a total was imposed for the missing of the deadline set for the submission of applications. Of the 43 decisions closing cases 21 related to a change in the control exercised (horizontally) by competitors; in further 2 cases vertical and in 20 cases both horizontal and vertical or even neither horizontal nor vertical (as in the case of conglomerate mergers) combinations were brought about. In connection with the concentration the authorisation of which was applied for, it can be observed, that the concentration process within the industries is still going on, both worldwide and in Europe. In the background of the concentrations, efforts to widen the product range offered and to achieve cost savings could be observed while in other cases firms, which became bankrupt under competitive pressures, were bought up. The concentrations examined by the GVH concerned several markets (including markets in the energy sector, the construction industry, the agriculture and the food industry, drug retail trade, infocommunication sector, water and sewage management, financial services, real estate trading and others).

25 The **sectoral inquiry** of the GVH into the electric energy sector ended at the beginning of 2006. The main findings of the inquiry were known already in 2005; hence the annual report of 2005 contained them in detail. As a result of the sectoral inquiry, the GVH conducted proceeding against 6 Hungarian electric energy suppliers. The GVH in its proceedings also examines the market behaviour of the suppliers, which restricted

the possibility of supplier-change. The GVH's competition advocacy in the electric energy sector was also based on the sectoral inquiry.

26 Although the competence of the GVH is determined by the Competition Act and the provisions of EC competition law, other regulations also impose obligations on the GVH. The GVH has new responsibilities under the **Act on Trade**, which was enacted on 1 June 2006. It has supervisory tasks in respect of abuses of retail traders, which have a significant market power, and it accepts the code of ethics prepared by those undertakings. In the first half of the year the GVH prepared itself for the performance of the new tasks. At the end of the year the Authority confirmed a code of ethics for the period until 31 December 2007, which was lodged by the Hungarian Trade Association. In 2006 no complaints or informal complaints about infringements of the Trade Act were submitted to the GVH.

27 According to the **Act on Price Setting** infringements of official prices are examined and assessed by the authority that set the prices but it is exclusively the GVH which is empowered to impose fines. In 2006 it was the second time that the GVH conducted a proceeding to impose fine for the infringement of an official price regulation. The local government of Balmazújváros initiated the commencement of the proceeding, but the GVH, at the end, did not impose any fine.

28 Considering the **experiences of the judicial reviews**, half of the decisions of the GVH establishing an infringement were challenged, similar to the tendency of the last years. There is harmony in law enforcement between the GVH and the courts. Of the 369 decisions, which were reviewed under the Competition Act and became final, the Municipal Court of Budapest and the Supreme Court (or the Court of Appeal) changed the decision of the Competition Council in respect of its legal basis only in 18 cases and in further 15 cases the courts reduced the fine imposed by the GVH.

Competition Advocacy

29 The GVH performed active **competition advocacy** in the field of commenting on draft pieces of legislation and it also initiated advocacy on its own. The basis of the competition advocacy activity in the electric energy sector was the sectoral inquiry finished at the beginning of the year. The GVH took part in the committee that prepared the opening of the electric energy market. On the telecommunications market the GVH's advocacy was strong too. The GVH communicated its position about competition policy aspects not only when it was asked by other authorities but it also presented a comprehensive report about competition on the electronic communications market. The GVH continued its competition advocacy activity in the financial sector and made proposals to the regulatory authorities how to solve problems (arisen mainly in the field of consumer protection), which could not be tackled under the Competition Act but had an effect on competition.

30 The GVH is authorised to request **administrative bodies** to modify or revoke their decisions which the GVH finds violate the freedom of competition. The GVH may challenge the decision in the court if the body requested do not comply with the request. In 2006 the GVH did not make use of this power, because the administrative bodies concerned remedied the illegal situations.

31 During 2005 the GVH commented in detail on more than 100 **draft pieces of legislation** and other documents. The GVH had serious concerns relating to the decrees proposed to implement the Act on Trade, that it found would overregulate the market in contrast with the Act on Rail, in connection with that the necessary regulations did not exist. In relation to the electronic communications markets the GVH found, that a regulation was needed to dismantle the unnecessary barriers which restricted competition and to ensure at the same time that an intervention into market conditions would only happen in so far as it would be justified, proportional and based on constitutional principles. The GVH also collaborated with the Hungarian Communications Authority in its market analysing procedure and made comments to the report about the cable-line programme dissemination of the HCA. The governmental reform of the health care and the

medicine supply, which is in close connection with the health care, needed a large-scale competition advocacy work. It has been for years that the GVH prepares analyses and makes recommendations relating to the deregulation of the medicine distribution. Therefore it is interested in the realisation of the reform but at the same time, it has offered constructive criticism and made observations relating to the proposed measures (the lending of therapeutical appliances and equipment, the developing of the health care system, uniform nursing system, etc.)

Competition culture

32 The GVH put stronger stress to the developing of the competition culture. In order to raise public awareness of competition, its task is the dissemination of knowledge about competition policy and the contribution to the development of competition-related legal and economic activities of public interest. Several staff members of the GVH are teaching competition law in higher education, in 2006 the number of the presentations given by them was higher than 70, they gave more than 100 interviews and published more than 70 studies and papers. In 2006 there were 9 students in internship at the GVH and several students asked for assistance in preparing their diploma works, dissertations or theses. The number of the visitors of the GVH's homepage also increased.

33 The seventh **student competition** in the topic of competition and competition policy was successfully organised in 2006.

34 For the coordination of works the aim of which was the developing of the competition culture, a **Competition Culture Centre** (CCC) was established, which is a specialized unit within the authority. The tasks of the CCC are defined in its annual work plan. A separate annual report about the work of the CCC has been prepared and attached to this report.

Institutional and international relations

35 In the field of the **institutional relations** the GVH co-operated regularly with ministries, sectoral supervisory authorities and professional organisations. The GVH cooperated with the National Communications Authority, especially in its market analysing procedure, and renewed its agreement with the Hungarian Energy Office. It also has cooperation agreements with the Hungarian Rail Office and with the Ministry of Economy and Transport. The latter wants to promote the GVH's competition advocacy activity particularly in the field of the liberalisation of the electricity and gas markets, the supervision, from a competition aspect, of the traffic sector and in relation to consumer protection. In 2006 an agreement was concluded between the National Security Office and the GVH to raise the efficiency of the cooperation between the two authorities.

36 In 2006, one of the most important parts in the international cooperation activities of the GVH was its participation in the **European Competition Network** (ECN). From the date of Hungary's accession to the EU, the GVH had been required to apply Community competition law in every case, which might affect trade between Member States. ECN relations became ever more case oriented during 2005. The GVH continued its participation in the activities of the ECN working groups and its representative became co-chair of the working group, which analysed the work experience of the system. Further, the GVH has membership in a number of professional (sectoral) working groups of the ECN. Since many years the GVH has plaid an active role in the work of the International Competition Network (ICN). In the framework of this organisation the GVH participated also in 2006 in the project the aim of which was to achieve efficiencies in the technical assistance granted to new competition authorities. The GVH also acted as a consultant authority in an ICN pilot project launched at the end of 2005, which aimed at assisting in the resolution of particular problems arisen in the activities of competition authorities with minor experiences.

As far as the bilateral relations of the GVH are concerned, they were still dominated by the authority's activity to help **South Eastern European competition authorities**. The GVH concluded an agreement with the Bulgarian competition authority and won a project together with the French competition authority to help the Ukrainian authority in the EU harmonisation process. Hungary has also an agreement with the Romanian authority.

The GVH prepared some professional reports to assist in the work of the **OECD Competition Committee** and its working parties.

37 **The OECD - Hungary Regional Centre for Competition in Budapest (RCC)** finished its first whole year after its establishment. The RCC, relying on the professional background of the OECD and the GVH, gives assistance through organising educational and professional programs first of all to Central, East and South East European countries in developing their competition policy, competition law and competition culture and assists the work of the competition authorities, enhancing in this way competition and promoting economic growth. Relating to the professional work of the RCC a separate annual report is attached to this report.

Budapest, 20 March 2007

Dr. Zoltán Nagy
President

DETAILED REPORT

I. GENERAL EXPERIENCES

1.1. DEVELOPMENTS OF MARKET CONDITIONS IN 2006

38 For the purposes of competition policy, the terms market situation and conditions of competition fundamentally mean market structure and the conditions of market entry and exit, since these factors mainly determine the intensity and other characteristics of competition. The assessment below is based alone on the experiences of the Hungarian Competition Authority (GVH), obtained especially during the application of the Competition Act, so it does not necessarily give a full or scientific picture, and the description of the development of market conditions is not equal to the assessment of the development of the economy as a whole or of its competitiveness.

1.1.1. The effects of state interventions

39 The competition strengthening effect of the accession to the EU has influenced significantly the Hungarian economic life in 2006 too². Through the globalization of the market competition contributed to a more complete satisfying of consumers' demands. On markets exposed to international competition existed the prices of consumer durables decreased by 4% and the prices of the clothes increased by only 0,4%.³

40 At the same time competition is going hand in hand with coercion, which lead to the bankruptcy of some of the undertakings. The development of the competition coerces the undertakings to take

into consideration the foreign markets and, on both the Hungarian and foreign markets, made them to act with higher efficiency. Stronger concurrency may result in lower profit of some undertakings forcing those undertakings to rationalize their operation. This in-house reorganisation and the collapse of undertakings, which are unable to bring about efficiencies may give rise to a temporary appearance of excess production resources and result in an increase of unemployment. This transformation ensures, however, that more efficient undertakings get those not so efficiently used resources and that undertakings, which produce products demanded by consumers, flourish. This in turn strengthens income production in the economy and increases welfare. This regrouping, however, is subjected to a long-term development of human resources and tangible infrastructure and to the existence of a flexible economic policy and a social and employment system that absorbs economic shocks.

41 The intensifying of competition may result in a more intensive use of unfair competition methods. The GVH fights against the distortion of the market with series of market clearing proceedings and by imposing higher fines.⁴

42 On the Hungarian **electricity market** the roll of the free market has grown further. The market of the public utilities was left by several undertakings, which bought cheaper electricity on the free market and, as a consequence, the share in the electricity consumption of the free market has grown from 33% to 40%. At the same time, the price level growing on the free market of electricity in 2006 caused a movement into the opposite direction: consumers started to go back to the public utilities sector. The reason for that is the specific regulatory solution, that makes it possible to consumers to change, free of charge and without facing administrative barriers, between the public utilities and the competitive market. Therefore consumers do not need to pay permanenetly more than the public utilities price, so

² According to the survey of Eurobarometer, 48% of the Hungarian undertakings alleged, that competition was increased by the single market and 4% felt, that it decreased.

³ According to the survey of the Eurobarometer, 62% of the population stated, that the intensifying of competition was good. 71% of the population thought, that consumers had a better position, 42% felt an extension of the choice and 41% felt that prices became better thanks to the single market.

⁴ According to the survey of Eurobarometer Hungarian peoples are more sceptical, than the average of the EU 25 (67%) or the average of the newly accessed Member States (77%). At the same time in connection with the need to preserve fair competition there is full agreement and 95% of the public think that it to be important.

they are encouraged to try to enter the free market. This solution was useful in the beginning of the opening of the markets, but now its disadvantages come to light as e.g. the fact that it strongly restricts the proper functioning of the free market. In the course of the sectoral inquiry the GVH also highlighted other problems, as the existence of the long-term agreements concluded for 8 to 15 years between the wholesaler MVM and the power plants and, furthermore, of those concluded relating to the use of interconnection capacities. These agreements cover about 70% of the market and by this they hinder the development. The European Commission has started a competition supervision proceeding to examine whether the system of long term agreements is in compliance with the provision laid down in Articles 81 and 82 of the EC Treaty. The result of the proceeding is expected by 2007.

43 By the end of 2006 non-residential consumers on the market of **natural gas** had already a two-and-a-half year experience to decide whether they satisfy their demand for natural gas from the traditional public utility source or on the free market. Nevertheless only the large customers, which together accounted for 10% of the total annual gas consumption, grasped the opportunity and left public utility supply. In Hungary there are 17 registered licensees, so an undertaking, in principle, can ask the same number of companies for an offer, but in deed the number of the companies having suitable gas sources and meeting consumers' expectations is lower. Under these circumstances it will likely be supportive of further market opening that the natural gas wholesaler E.ON Natural Gas Trade Ltd, as part of its voluntarily undertaken commitment, which it made in order to get the authorisation of the European Commission for its acquisition of control over MOL's natural gas business, sold half of the amount of natural gas produced in Hungary to an undertaking not within its own interest sphere. This can contribute to the diminution, within the natural gas sector, of the weight of the biggest market participant E.ON, enhance potential competition and improve the conditions of competition.

44 In 2006 in the field of **railway freight transport** the number of market players increased, some of the consumers took up their own transporting activity (Mátra Erőmű Zrt.- Mátra Power

Plant Ltd.. and Szentesi Vasútépítő Kft.- Szentés Railway Construction Ltd.). With the railway market having partly been opened in May 2004, nine smaller undertakings entered that market and achieved, in 2006, a total market share of 4%. This is a good result compared with what can be found in the EU, but it is not satisfactory from the point of view of competition, so the market is still significantly concentrated. Based on the liberalization, the railway freight transportation market expanded and the largest amount of goods transported annually by rail was transported in 2006 within the period of the last 15 years. In the same time liberalisation is still disturbed by market failures, access to industrial sidetracks is further on hindered. The same two dominant undertakings (MÁV Zrt. and GYSEV Zrt.) as in the earlier years were on the market of passenger transport in 2006. It is a new development that the licensing of more than 5 provincial railway companies' is in progress; these companies may offer an alternative to the state railway in the rural sidelines. Although these railway companies have only local interest, the rail transportation of passengers is also going to change towards a multiparticipant model.

45 The new Act on Rail (which came into force in January 2006) established the Hungarian Rail Office (HRO), as a regulatory authority. Part of the multiparticipant railway market is the creation of a Network Terms and Conditions regulation that enables an unimpeded use of the tracks both in domestic and foreign traffic. The preparation of the Network Terms and Conditions is jointly controlled by the GVH and the HRO.

46 **Passenger transport** is also going to change for the multi-participant model.

47 In the **air transport sector** the quick growing of the passenger traffic, caused by the low-cost airlines, stopped. This happened in spite of the fact that British BAA International, operating Budapest International Airport as a successor in that capacity of Budapest Airport Ltd decreased the airport fee by 5% and introduced several measures the aim of which was to achieve efficiencies. In order to clean up the profile, it sold in competitions certain operations as e.g. the minibus service and sold BA. Handling Kft, a provider of ground handling services. By the end of 2006, the British BAA was bought up

by the German Hochtief Airport GmbH and the Canadian CDPQ and the airport came under the joint control of the new owners. The dominance of Ferihegy slightly weakened, because regional airports in Hungary played an increasing role in the international air traffic and Ryanair – the leading low-fare air carrier in Europe started flights to the airports London Stansted and Frankfurt Hahn from Sármellék.

48 As a result of the special legal regulation, the market of **pharmaceutical trade** did not function as a competitive one during the last years. In contrary to the retail market on which only traces of economic competition existed, because the market was comprehensively regulated still in 2006 (with the market entry and both the forms of entrepreneurship and the ownership relations of market players being restricted, certain undertakings from the possibility to operate a pharmacy of their own being excluded and the scope for action of market players being limited), competition on the merit existed on the wholesale market. Overlapping and concentrations between wholesalers and retailers were restricted by the legal acts in force in 2006, which prohibited the direct acquisition, by wholesalers and manufacturers, of ownership in pharmacies. However, as controlling rights may happen to be exerted independently of the ownership relations, it is not surprising, that some of the large wholesalers and manufacturers had/has factual control over pharmacies. The existence of such control relations is not obvious and difficult to recognize, if it is recognizable at all, which is harmful to the efficiency of both competition and regulation.

1.1.2. Developments based on business decisions

49 In the area of **business-decision based processes**, we can say, the number of mergers increased in 2006, but the GVH granted less authorisations for them, because the authorisation threshold increased from HUF 10 billion (approximately Euro 40 million) to HUF 15 billion (Euro 60 million). As an addition to the traditional types of mergers – acquisition of undertakings based on financial investments, classical horizontal or vertical concentrations – in 2006 acquisitions of undertakings active on (only indirectly affected) neighbouring markets also appeared.

50 In the **retail trade**, in addition to an increase in the number of the outlets, a strong fluctuation could be observed with some 5 to 7 thousand shops ceasing to exist and 6 to 7 thousand opening quarterly. This phenomenon, the great number of both market entries and exits is an indicator in itself for real competition in this industry and the contestability of the retail market. The fragmented trade structure has remained typical of Hungary, though concentration is increasing further on and there is a considerable turnover into the direction of hypermarkets and discount outlets, which offer as their main profile daily consumer goods. The construction of big stores marketing technical and construction goods and products for DIY purposes is also in progress. In the other sectors there are also transformation processes: national trade chains close down and international chains expand, with the latter occupying the territories of other market participants (e.g. furniture, perfumery). However, even smaller shops are not driven out of the market, as the expansion policy of large trade chains supposes adequate market sizes and purchasing power which they cannot find at smaller settlements and suburbs, where small shops are able to adapt their choice and services to the demand of their buyers.

51 The structure of **the wholesale trade of fuels**, owing to the nature of the industry, changes relatively slowly. The decisive actor is still MOL, the other regional refining companies play smaller roles. In the retail trade of fuels the market expanded, as a

result of trends in the economic activities and administrative measures. New participants with refining capacities have entered the market and the number of the fuel stations owned by hypermarkets is increasing, but MOL is still the largest market participant and its market share has not changed during the last seven years.

52 In the field of **motor vehicle trading** competition is strong and Hungary belongs to the three cheapest Member State of the EU-25. At the same time this does not mean, that consumers can get a car at a really low price. Consumers, who pay cash or utilise freely usable credits are lucky with the low prices, but other consumers may pay more in the form of higher annuity payments of the insurance or the credit. The reason for that is the fact that a large part of the profit of the authorised dealers originates from bank and insurance commissions rather than from the sales of new cars. So dealers are interested in consumers buying cars on credit rather than in high car prices. Nonetheless there are several facts that make an increase in consumer welfare and a high level of it likely. More consumers chose cash paying taking advantage of the low prices of new and second-hand cars. Competition between car-financing undertakings is also beneficial for the satisfaction of consumers' demands. Because of the narrowing of the market and the low profit of the dealers, which built their saloons or service stations on credit, mergers and takeovers have began also on this market.

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54 In the field of **mobile services**, there is still lively competition between the three network owner service providers on the retail markets, but virtual mobile service providers have not yet entered the market. In 2006, the third mobile service provider has also started its third generation broadband service, so the number of subscribers to the 3G-service is also growing. A good example of the voice market convergence, that Vodafone has further developed its product, that offers an alternative to the residential segment of the market (similar conditions for mobile calling from a certain geographic territory as for the fixed-line calls). The NCA continued its regulatory work the aim of which was to achieve a decrease of the termination fees, so in January 2009 the three big mobile service suppliers will have to reduce the wholesale trade termination fee to a cost-based level.

55 On the market of **Internet services**, the transformation of the structure is going on. The number of the broadband accesses is continuing to grow at an accelerated rate. The number of the subscribers to broadband accesses is ten times as high as that of switch-line and ISDN subscribers together.

56 On the market of **programme distribution**, competition is intensifying. Antenna Hungária Zrt. has developed its Antenna Mikro service to a modern digital service at the end of 2005 and has supplied with it several packages, electronic programme guides and channels, which could also be subscribed to separately. In this way it can compete with cable TV suppliers too. On the market of programme distribution the most significant event was the appearance of the DIGI TV (owned by the EMKTV) as a digital earth-satellite programme distribution service. A further favourable phenomenon was the appearance of the IPTV, the broadband programme distribution. The new technology needs a broadband connection, so its spread can be expected on densely populated territories, where the recovery of the necessary

investments is quicker. The IPTV makes it possible for telecommunication suppliers to introduce the so-called triple pay service (telephone, Internet, television in one package), which has already been introduced in certain networks.

57 The acquisition of Euoweb by Invitel happened also in 2006.⁵

58 On the market of **postal services** the range of services reserved for Magyar Posta (Hungarian Post, the universal service provider) has been narrowed by the Act on Post, but none of the postal suppliers asked for a permission of the NCA to enter the universal postal services segment in 2006. The GVH stated, that the manpower-lending in the delivery sector was not in the interest of the public, as public utility service providers used the manpower lended to perform not only delivery but also other tasks; the problem seems to be solved by the amendment of the Act on Post.

59 On 18 October 2006 the European Commission published the draft of a further amendment to the framework directive, the most important element of which was that the intention of total market opening due by 2009 that was already mentioned in 2002 was confirmed. The GVH will devote increased attention to the liberalisation process.

60 The **market of printed press** did not significantly change, it is still dominated by the three big newspaper publisher groups and county papers also maintained their strong respective positions. The convergence-phenomenon is appreciable on both the media and newspapers market on the side of advertisers and on the readers side as well, the consequence of which is that market players try to increase their presence in the media. On the vertical side of the market a new distribution company for delivering newspapers to subscribers has been created with the authorisation of GVH, which attached obligations to its decision⁶.

61 On the **credit institution** market the market share of the credit institutions has not changed considerably, and the profit of the sector was significantly high. Although new participants entered the market – new foreign institutions and several

credit institutions had registered for cross-border service provision and two big insurance companies introduced their retail trade banking services – competition was increased by this only to a small extent. The reason for profits earned in the sector being high is that credit institutions typically do not compete in respect of the higher deposit rates and the lower lending rates but they focus to other characteristics of their products. So competition was carried out in the field of advertising and in geographic accessibility of the banks in the private banking. At the same time, the transformation of the banks and the growing of the big- and medium seized banks changed the opportunities for competition. Similarly to the last years the functioning in the form of bank-groups was observable: banking, leasing, insurance, investment and financial services were offered within one and the same business group. Subjects of the cooperation inside the group were the following activities: harmonisation of service providing and agent activities, marketing of each other products, ensuring the liquidity of the subsidiaries by their parent banks and granting resources to subsidiaries.

62 The **leasing market** is in transformation: in 2006, car-leasing (the importance of which is outstandingly high in Hungary) accounted only for 62% of the leasing market as compared with a 67% share in 2005, while the leasing of machines, production facilities, luxury goods and real estates is increasing. Competition in car leasing has become stronger but leasing firms run increased risks as a consequence of which the quality of their portfolio is worsening. A number of cars must be returned to the financing institutions due to lack of payment.

63 On the **life insurance** market the „life” sector was expanded as a consequence of consumers’ reaction to the introduction of the interest-tax. (In 2006, the life insurance sector showed a growth of 40%.) In the field of vehicle liability-insurance competition was accelerated due to the free switchover period in November. In the interim period during the year competition was weaker and less people used the charts on the Internet comparing charges.

64 The **cinema market** faces strong competition from DVDs, the downloading and the television, which urged cinema operators to merge.

⁵ Vj-5/2006

⁶ Vj-116/2006

In the last two years the structure of the market has come closer to a monopoly. Currently, Palace Cinemas has a market share of 80%, because it bought up Hollywood multiplexes and Kossuth cinema in July 2006 from InterCom and in 2005 it bought Mammut cinema. These concentrations were not subject to the GVH's authorisation as they did not reach the HUF 15 billion threshold. Palace cinemas lessened competition in prices by reducing the number of discount-ticket days to only one a week. Concentration in the countryside has also increased with the biggest player being Cinema City with a market share of 40%.

1.2. LEGISLATIVE AMENDMENTS

1.2.1. Amendments of the Competition Act

65 The comprehensive amendment of the Competition Act in 2005 made it necessary to amend the **leniency notice⁷ of the GVH**. Under the amended notice the GVH ensures to undertakings that apply for leniency to remain unidentified until the starting date for the access to files. From that date on, the application and the enclosed proofs can be accessed – under the general rules – by all parties of the proceeding to ensure they can exercise their right of defence. In February 2006 the GVH published a **guide** about the connections between the leniency policy of the GVH, the criminal sanctioning of agreements in restraint of competition in public procurement and concession procedures and the bidding rules of the Act on Public Procurement.

66 In December 2006 the GVH published again an updated version of **the position statements of the Competition Council**, which reflects the interpretation of the Competition Act by the Competition Council. These statements are binding on neither civil nor administrative courts but as they promote undertakings to act lawfully they could

serve as a guidance to the application of the Competition Act.

67 In 2006 no **decision of the Constitutional Court** concerned the field of competition law.

1.2.2. Changes in the broader legal environment

68 The new Act on Trade⁸ entered into force on 1 July 2006 and it widened the competence of the GVH. The new Act put into the GVH's competence the control of commercial undertakings with significant market power and it prohibited them from abusing their power against their suppliers. It also ordered them to elaborate a code of ethics until the deadline of 1 December 2006. Under the Act on Trade significant buyer power vis-à-vis suppliers exists where the consolidated net turnover derived from commercial activities of the group of undertakings in question, including all the parent companies and subsidiaries or, for the case of joint purchasing, all the undertakings establishing a purchasing association in the previous year was higher than HUF 100 billion. In addition to as defined above, significant market power of the dealer also exists where the commercial undertaking or the group of undertakings or the purchasing association is in, or acquires, based on the structure of the market, the existence of entry barriers, the market share and the financial strength of the undertaking and its other resources, the size of its trading network, the size and location of its outlets and all of its trading and other activities, a one-sidedly favourable bargaining position vis-à-vis its suppliers.

69 The new Act does not restrict the concentration of buyer power nor introduces special rules to limit the expansion of buyer power by restrictive agreements. In both cases the general competition law norms should be applied. An illustrative list has also been given containing the most typical conducts qualifying as an abuse of significant market power. An abuse may, in particular, consist in: unjustifiable discrimination against suppliers; unjustifiable restriction of suppliers access to sales opportunities; imposition of unfair conditions on suppliers, which result in a distribution

⁷ Notice No 1/2006, on the amendment of Notice No 3/2003 on the application of a leniency policy to promote the detection of cartels, of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority

⁸ Act CLXIV of 2005 on Trade (Act on Trade)

of risks one-sidedly benefiting the dealer; unjustifiable alteration of the contract terms to the detriment of the suppliers, after concluding the contract or reserving this option for the dealer; subjecting of the future business relations of the dealer with the suppliers to conditions; charging fees one-sidedly to suppliers; threatening with termination of the agreement (delisting) with the intention to enforce one-sidedly beneficial contractual terms; unjustifiably forcing suppliers to avail themselves of third persons as suppliers or of an own service provider of the dealer; the application of sales prices lower than the purchasing price, in some cases.

70 Self-restriction plays an important role besides the rules of the Act. Beyond those rules the Act prescribes undertakings the application of fair commercial practices against their suppliers and the elaboration of a code of ethics, which identifies these practices and establishes procedural rules to apply for the case of an infringement of the code.

71 Cases relating to the abuse of significant market power are to be dealt by the GVH under the application of the same procedural rules as in the cases the subject of which is the abuse of dominance. This means that in the case of an infringement of the substantive rules of the Act on Trade the GVH applies the procedural rules of the Competition Act.

1.2.3. Changes in Community competition rules

72 Since Hungary's accession to the EU the changes in the Community competition rules have also been part of the legislative amendment within the meaning of this Report because those rules are also directly applied by both undertakings and the competition authority.

73 The Council approved the Commission's proposal on the **repeal of the special rules concerning maritime transport**⁹. The regulation made it possible to maritime transport conferences jointly to determine tariffs and transport capacities. The repealing of the Regulation is advantageous to Community export since it ensures lower tariffs

besides keeping transportation reliable. The general competition rules are applicable from October 2008 on in this sector.

74 The Commission issued new guidelines on the **method of setting fines imposed for the infringement of Articles 81 and 82 of the Treaty**. Instead of amounts preliminary determined as limits, the new guidelines take the turnover on the relevant market as a basis, and they take the duration, nature and possible repetition of the infringement more seriously into account than their "predecessor" did it.

75 The Commission also renewed its **leniency notice**. It specifies what information should be given to the Commission to get immunity from fines. It introduces the „marker-system" which makes it possible to undertakings to file part of the evidence only at a later date, while an earlier one will be considered as the starting point of cooperation with the Commission. The notice specifies more precisely what quality of evidence can lead to a reduction in the amount of the fine. It is a novelty that continuous cooperation with the authority is needed for the fine to be reduced.

76 The European Commission continued its **revision of the application of Article 82 of the Treaty**. In the first phase it focused on the exclusionary abuses and it elaborated, published, then withdrew for redrafting, a discussion paper. It is planned that during 2007 the examination of exploitative abuses will take place, and subsequently the two finalized discussion papers would be jointly issued.

1.3. PRINCIPLES FOLLOWED BY THE GVH

77 In May 2006 the GVH published **two draft documents**: one about the **fundamental principles relating to freedom of competition followed by the GVH** and another about the **freedom of consumers choice**. The first one is about classical competition policy fields – like mergers, restrictive agreements, abuse of dominance, competition advocacy and the development of competition culture. It also goes into institutional and functional issues as e. g. that of the independence of the GVH. The second document describes the principles,

⁹ Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport

which relate to the GVH's work in the field of unfair manipulation of consumer choice.

78 Interested persons could make observations about both drafts. The observations received basically confirmed and enriched the drafts. After having finished the consultation period, the GVH will publish – probably in the first quarter of 2007 – the final versions of the documents.

79 The objective followed was to create documents which describe the competition policy approach and considerations of the GVH regarding competition policy and consumer protection, thereby expressing a general competition policy and consumer protection approach. The GVH explained and published these principles in order to create transparency and predictability of its operation for professionals, thereby increasing legal certainty, and contributing to the development of competition culture in Hungary.

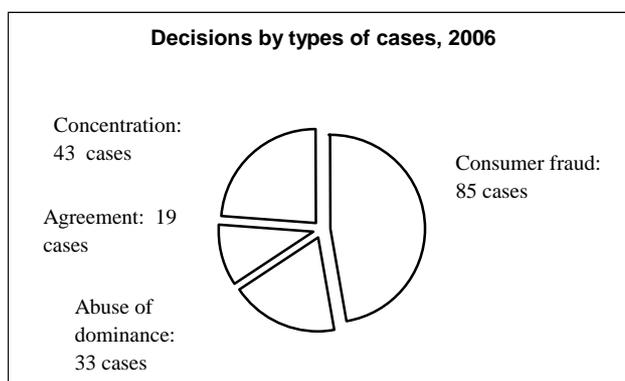
II. PROCEEDINGS

80 Competition supervision proceedings of the GVH are commenced on application or may be started ex officio. An application for commencement of a proceeding must be submitted by participants of certain concentrations to obtain authorisation for their proposed transaction. The proceedings are commenced ex officio in the cases of unfair manipulation of consumer choice, agreements restricting competition and abuse of dominance. Competition supervision proceedings may also be commenced ex officio where the initiation of competition supervision proceedings should have, but have not been, applied for. Ex officio proceedings are commenced based on complaints, informal complaints, experiences coming from a sectoral inquiry, applications submitted in connection with the leniency policy or after referrals of a case within the scope of the ECN¹⁰.

81 In 2006 the GVH conducted 206 competition supervision proceedings, of which 178 cases were

finished by a decision¹¹. These figures show the competition supervision proceedings, which were started in 2006 or came over from previous years and were finished in 2006. Besides, the investigators of the GVH and the Competition Council dealt with **101** further competition supervision cases in which no decisions have been made yet.

82 **93** of the decisions related to the antitrust (mergers, restrictive agreements, abuse of dominance), while **85** of them to unfair manipulations of consumer choice.¹²



83 **137** cases were commenced ex officio, while **41** were started on application. Both the number and the proportion of interventions have been increased in comparison with 2005. The total number of interventions was 95, mainly in consumer fraud cases (66 cases), and the rest were cases with antitrust relevance (29).¹³

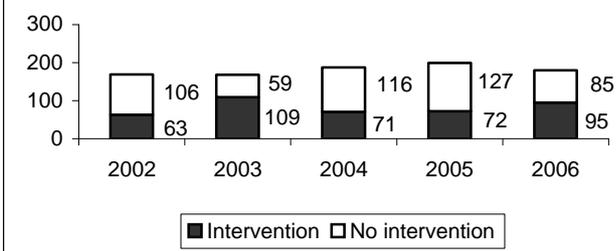
¹¹ The figures show only the decisions, which were made on the substance of the case, but do not show the number of the injunctions.

¹² The difference between the number in the text (178) and that in the diagram (180) ensues from the fact that 2 cases fell in two categories at the same time (abuse of dominance and restrictive agreement). These numbers relate to the competition cases only, and do not contain the proceeding concerning the infringement of the Act on Price Setting (Vj-62/2006), the description of which can be found in Chapter 2.5.

¹³ "Intervention" is a collective term, with different particular content according to the types of cases.

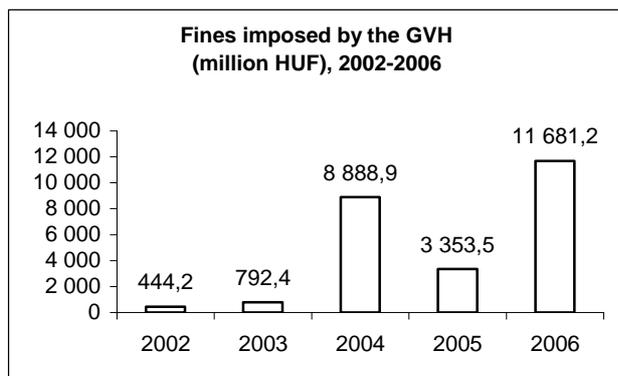
¹⁰ ECN – European Competition Network

Decisions under the Competition Act of the Competition Council broken down by the number of interventions, 2002-2006



84 In its decisions on the substance of the case, the Competition Council of the GVH imposed fines in 65 cases. These fines amounted to HUF **11,681.15** million (approx. Euro 46,7 million), which contains the fines imposed for failure to submit an application for the authorisation of a concentration (HUF 42.5 million; approx. Euro 170 thousand). This amount exceeds the fines of the preceding years, including that in 2004.¹⁴ Because of the obvious individualities of the cases, total fines in the following years will possibly not reach a similarly high level.

Fines imposed by the GVH (million HUF), 2002-2006



85 A significant part of the fines in 2006 was imposed in cartel cases of which the Vj-51/2005. case relating to insurance companies ended with a HUF 6,814.3 million (approx. Euro 27.3 million) fine and the Vj-162/2004 case, where the Competition Council “condemned” IT undertakings, with a HUF 1,510 million (approx. Euro 6.04 million) fine. At the same time it must be stressed that the fines imposed

by the GVH’s Competition Council regarding unfair manipulation of consumer choice in 2006 – HUF 1,822.8 million (approx. Euro 7.3 million) exceeded significantly the fines of the preceding years¹⁵. In addition in the Vj-22/2005 case the undertakings fined had to face a HUF 1,000 million (approx. Euro 4 million) fine for they infringed the prohibition of the abuse of a dominant position.

86 With regard to the minor importance of the infringement, in 2006, the Competition Council ordered the termination of the proceeding in 7 cases (3 consumer frauds, 3 abuse of dominance, 1 restrictive agreement), in which the undertakings infringing the law undertook to discontinue the infringement, and assumed an obligation for the fast and effective reparation of the damage which arose from their conduct. The cases with the termination of this kind are an important part of the GVH’s activity. From the point of view of competition they are as significant as the imposition of sanctions, because the termination of the unlawful conduct can be achieved also in this way.

87 Though the fundamental tasks and the competence of GVH is given by the application of the Competition Act and the Community competition rules, other statutes¹⁶ also give enforcement tasks to the GVH.

88 Below, the experiences made with complaints, informal complaints and competition supervision proceedings and procedures on the basis of the Act on Trade and The Act on Price Setting will be presented in details without mentioning all the cases. Mentioned will be cases in which the lesson to be drawn from the enforcement of law is of fundamental importance, or which shows returning, typical or new market phenomenon/anomalies.

¹⁴ The outstanding high amount of fines in 2004 can be attributed to the motorway cartel case (Vj-27/2003.), which ended with the imposition of a HUF 7,043 million (approx. Euro 28.6 million) fine.

¹⁵ 2005: HUF 438.5 million (approx. Euro 1.75 million); 2004: HUF 321.45 million (approx. Euro 1.3 million); 2003: HUF 90 million (approx. Euro 360 thousand).

¹⁶ Act CLXIV of 2005 on Trade (Act on Trade); Act LXXXVII of 1990 on Price Setting

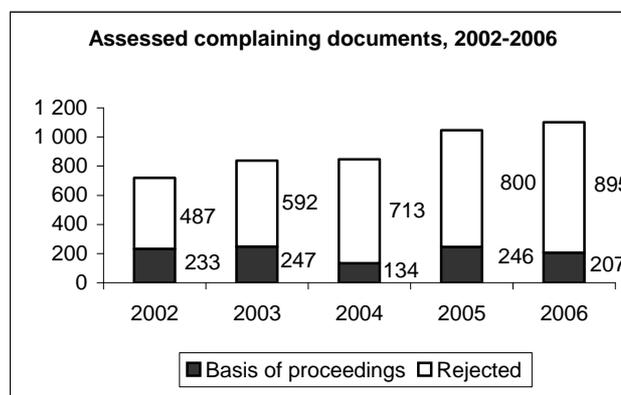
2.1. INITIATION OF CASES

2.1.1. Complaints and informal complaints

89 The dual system of complaints and informal complaints, which has been introduced by the latest amendment of the Competition Act in 2005, is unique in the Hungarian administration. The complaint is a special legal institution in the Competition Act. Complaints can be submitted to the GVH by a properly completed form containing the important facts required for the assessment of the complaint.¹⁷ Informal complaints can be submitted in other less formal ways. Both complaints and informal complaints can serve as the basis of the initiation of competition supervision proceedings; however, there are differences between them regarding the time limits of settlement and the rights of persons submitting complaints or informal complaints (hereinafter together, unless otherwise indicated: "complaints").

90 Complaints are special sources of information for the GHV. The submission of a complaint or an informal complaint does not automatically result in a competition supervision proceeding. The GVH launches an investigation, if the suspected activity, conduct or condition may violate the provisions of the Competition Act (or the Community competition law), the GVH is competent to proceed and the safeguarding of the public interest requires an intervention of the Authority.

91 In 2006 the GVH assessed 1102 complaining documents (initiating a competition supervision proceeding or rejecting the complaint) which figure shows a 5% increase as compared to the 1046 complaints in 2005.



92 The major part of the complaining documents (71%) were submitted by natural persons. The minor part of the complaining documents was referred to the GVH by other administrative organs, similarly to the previous years mostly by the General Inspectorate for Consumer Protection.

93 In 2006 the GVH rejected 69% of the complaints and 84% of the informal complaints, that is altogether 895 complaining documents. The rejection was made because of the lack of competence of the GVH in respect of 24% of the 895 documents mentioned above and a further 26% of them objected to practices, which did not fall within the subjective scope of application of the Competition Act. 18% of the infringements were found to be of minor importance and 11% had already been assessed in previous proceedings. 207 complaining documents (76 complaints and 131 informal complaints) served as the basis of 120 competition supervision proceedings (where the facts of the case or the identity of the undertaking affected by the complaining documents justified, the GVH joined more than one complaining document). The majority of the competition supervision proceedings (91 cases – 76%) concerned consumer fraud practices, 24 cases (20%) concerned the abuse of a dominant position and 5 cases related to agreements restricting competition.

94 The complaints concerned similar sectors and behaviours as in the previous years: the advertising practice of hypermarkets, other retail chains and financial providers, banks, insurance companies. Unfounded statements in advertisements can induce undesirable changes on the market. In the field of (both fixed-line and mobile)

¹⁷ The form can be found on the website of the GVH in both Hungarian and English; however, in principle, complaints can only be submitted in Hungarian.

telephone services the possibilities of extensive growth had been exhausted, so that success could be reached by the reallocation of the markets. With this realization in mind, market players several times crossed the borders of correct information giving.

95 Once again many complaints concerned the pricing and contracting practice of cable television providers. A number of complaining documents related to services of gas, electricity and district heating providers the prices of which could be determined freely by those providers (measuring, installation or change of meters, etc.).

96 Complainants may seek legal remedy directly from the Municipal Court of Budapest against an injunction through which the GVH refuses to commence a competition supervision proceeding in connection with the complainant's complaint. The Competition Act does not provide this possibility regarding informal complaints. In 2006, complainants sought this kind of legal remedy in 15 cases but the court rejected 13 of the claims (87%).

97 Where the GVH is not authorised to proceed in respect of the statements made in a complaining document, it refers the complaining document to the body competent to proceed in the case, if such a body exists, and informs the person submitting the complaining document of this measure. Where the case falls under the competence of the court, the GVH informs the person submitting the complaining document of this fact. In 2006 the GVH referred 95 cases (8 complaints and 87 informal complaints) to the body competent to proceed in the case, most of them to the General Inspectorate for Consumer Protection and its regional offices, to the National Communications Authority and to the Hungarian Energy Office.

98 In some of these cases neither the GVH nor any other organ can remedy the problem (for example due to the lack of competence). Where it is possible the GVH tries to draw the attention of the organ, which has the closest connection to the issue, but there are still some phenomena, which would need to be dealt with. The Authority experienced in several cases that many complaints could be prevented by giving better and more detailed information to consumers.

99 A number of complaints concerned the new type of advertisements. Some of the shoe stores tried to increase their turnover by disseminating **leaflets and applying posters, which contained the slogans „Closing-down sale” and „Bankruptcy procedures”**. The leaflets also contained the expressions „Only today” or „Closing-down today” though these advertisements had already been in the streets for months. At the same time they advertised Spanish and Italian leather shoes while mostly Chinese – probably non-leather – shoes could be bought in them. But because of the strong competition between shoe stores and considering the size of the stores, in the view of GVH these conducts did not appreciably affected competition; hence there was no need to commence any competition supervision proceeding. However, continuously arriving complaints indicate that the conduct is spreading, therefore a coordinated action of consumer protection organs and the GVH was deemed would be necessary.

100 Other important subjects were the so-called **call TV programmes and sms quiz games**. Unfortunately neither the National Radio and Television Commission, nor the Gambling Supervision Authority, nor the General Inspectorate for Consumer Protection admits to be competent to deal with these complaints. The Competition Council terminated the case concerning ATV's „Pénzfürdő” (“Money-bath”) programme (Vj-201/2004) and, at the same time, it established in its decision – regarding this case – that the provisions of the Competition Act protected only the freedom of consumers' choice, but this protection did not cover the performance i. e. the control of quality of the service provided though consumers' interests can be supposed or even established to be injured in this area.

101 The **exclusive agreements between building investors and telecommunications service providers** were also subject to many complaints in 2006. In these cases, under the construction of a gated residential community or an owner-occupied block, the investor conclude an agreement with a telecommunications service provider under which the latter creates the telecommunications network of the given real estate. The only considerations from the viewpoint of investors, which they take into account when they select the provider of the service, are cost-

effectiveness and the commission service providers possibly offer. In exchange service providers get exclusive rights to operate the network and provide services for a fixed term (5-15 years). In the GVH's viewpoint, these problems should be dealt with by civil law tools in the first place. The GVH may take actions in the case of agreements with economically unjustifiable conditions or in cases, in which the long-term exclusive agreements of the service provider taken in their entirety are capable of appreciably affecting the market. But this latter presumption is not justified by the present market conditions.

102 In 2006 a number of complaints stemmed from allegedly abusive practices (such as **measuring, accounting, invoicing**) of energy supplying companies (**electricity and gas suppliers**). The price setting of utilities is regulated, but providers are free to establish the prices of connected services. Most of the problems derived from a change in the accounting system (all the providers switched to the system of yearly reading of meters). The GVH has no competence for these complaints so they were referred to the Hungarian Energy Office.

103 In connection with a complaint the objectionable authorisation practice concerning the installation of **wind turbines** came to GVH's knowledge. The energy produced by wind turbines falls under guaranteed offtake but the setting up of the production capacity need to be authorised by the Hungarian Energy Office. The regulated tariff of this kind of energy is high; therefore the investment in setting up of wind turbines is remunerative. Therefore, several **applications on setting up wind turbine capacities** were filed within a short period. In the absence of related legal rules the Hungarian Energy Office limited the capacity of wind turbines, which can be set up. In this respect, the GVH draws the attention of the legislator to the circumstance, that low-level and detailed rules are needed to guarantee discrimination-free allocation and to hinder the (potential) unfair competition between undertakings.

104 A number of complaints related to **public services concerning district-heating, drinking water, drainage of wastewater and local waste management**. The fees of these services are

determined by local governments based on the authorisation given by the law. The GVH does not have competence to deal with this kind of abuse-of-dominance complaints of undertakings, since it is the regulator within the local government who is entitled to examine the infringement of provisions on local-government-regulated prices.

2.1.2. Coordination relating to the application of EC law

105 As a consequence of Hungary's accession to the EU, the GVH is required to apply both the Hungarian Competition Act and the Community competition rules. The application of the latter is mandatory if the practice in question may affect trade between Member States. This is a complex concept the substance of which is that a behaviour may have an influence, directly or indirectly, actually or potentially, on competition in Community dimension. This effect can be realised through an influence exerted on actual cross-border conducts (e. g. agreements relating to export or import), or through the modification of the structure of competition (e. g. agreements and abusive practices foreclosing the national market against foreign competition).

106 Experience gained in the course of proceedings in which Community law was applied is described in Chapter 2.2. below.

107 The GVH initiated 18 cases on Community law basis in 2006. Together with the cases on the same legal basis from preceding years (a further 18 cases) the number of cases had been doubled. The Competition Council made a decision in 9 cases, in 6 of which it imposed a total fine of HUF 1000 million (approx. Euro 4 million).

108 Through the cooperation in the ECN, the GVH gets up-to-date information on the cases which are initiated by the Commission and by other Member States and in which Community law is applied. It also provides information on its own cases. The aim of this arrangement is to ensure that cases are dealt with by the (procedurally) best-placed authorities within the network. In the framework of this system staff members of the GHV studied 326 cases initiated by other members of the ECN. In 2006 the GVH did not take over any case

while it referred only one case. This case was referred to another competition authority – namely the Commission – before the commencement of a proceeding. In this case, the Commission initiated its proceeding within short, and it carried out an inspection in Hungary with the assistance of GVH experts. The subject of the case is to establish whether the long-term power purchasing and capacity reservation agreements between the wholesaler and the domestic generators, and the long-term electricity import contracts/long-term cross-border capacity reservations foreclose the Hungarian electricity market and prevent the development of competition.

109 2006 was the first year when the GVH requested the performance of a procedural act from other NCAs. Altogether 9 NCAs gave procedural help to the GHV. The information obtained in this way contributed to the assessment of the respective cases.

110 According to the EC Merger Regulation concentrations which must be notified to the Commission must not be notified to the NCAs. But the NCAs can express their views on these cases. In 2006 the Commission solicited the GVH for its views about 356 merger notifications with a Community dimension and 48 requests for referral. Contrary to the previous year, none of those transactions and requests for referral affected the Hungarian market to a considerable extent.

2.2. MAIN PROCEEDINGS

2.2.1. Unfair manipulation of consumer choice

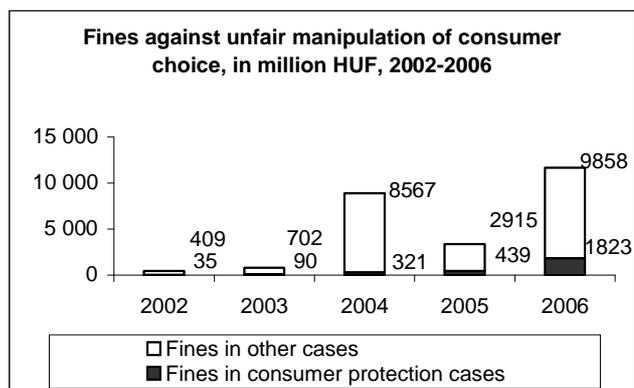
111 Chapter III of the Competition Act prohibits unfair manipulation of consumer choice, which misleads consumers and the application of business methods that restrict, without justification, the freedom of choice of consumers.

112 Article 8 provides an illustrative list of the deceptive practices. A practice is deceptive if false declarations are made or facts are declared in a manner which is likely to deceive consumers with respect to prices or essential features of the goods;

furthermore, if the designation of goods is likely to deceive, or if any other information which is likely to deceive pertaining to the essential features of the goods is disseminated. It is also deceptive if it is concealed that the goods fail to meet legal or other, usual, requirements for such goods, or that the use of the goods requires conditions, which are significantly different from those, which are customary. Furthermore, it is prohibited to supply information that is deceptive or may possibly be deceptive, about factors related to the sale and distribution of the goods influencing the decision of consumers, in particular, about the method of distribution, terms of payment, gifts associated with the goods, discounts, or the chance of winning. Finally, it is prohibited to create a false impression of an especially advantageous purchase.

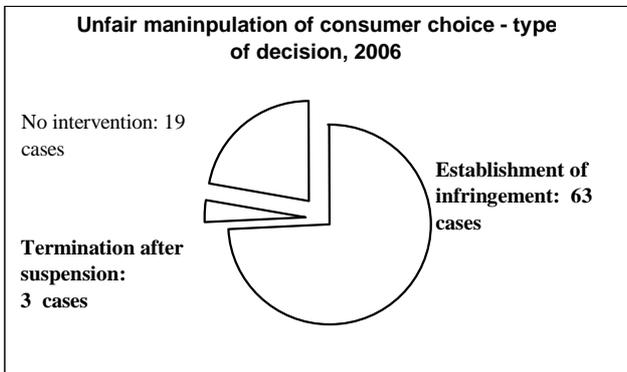
113 As to the clarification of the content of the variety of expressions used in practice, Article 9 provides that the meaning of terms customarily accepted in daily life or in the respective trade must be taken as a guide when establishing whether the information is likely to deceive consumers.

114 Article 10 of the Competition Act identifies the making of the objective appraisal of goods or offers, or the objective comparison between them



and other goods or offers more difficult, as business methods that restrict, without justification, the freedom of choice of consumers.

115 The practice of the Competition Council draws a distinction between the statements of fact listed in Articles 8 and 10 by the capability of a practice contested to of a given undertaking to mislead consumers regarding the undertaking's own goods or services. Practices a decisive element of which is (capable of) misleading consumers, infringe



Article 8 rather than Article 10. Otherwise Article 10 applies (case Vj-74/2006).

116 It is important to highlight the fact that the aim of the above Articles of the Act is to protect fair and undistorted competition and the public interest attached thereto rather than to remedy individual harms. These provisions advance the freedom of consumer choice; hence competition and the economic interests of consumers are protected.

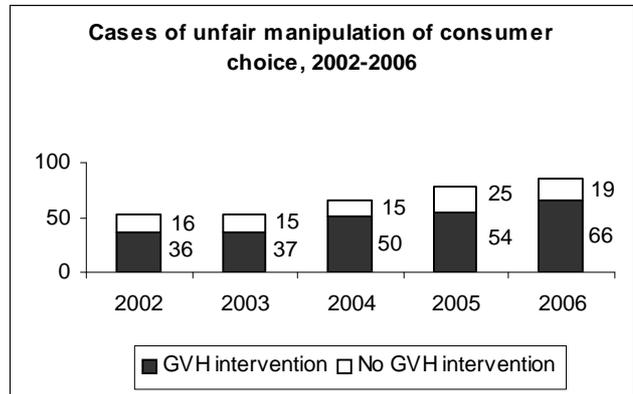
117 In the course of its competition supervision proceedings, the Competition Council examines whether consumers had the possibility to seek for, in an undisturbed process, and obtain, the information they needed to be capable to arrive at a conscious decision. By doing this, the GVH safeguards consumers' right to obtain appropriate information. This arrangement contributes, besides protecting consumers, to the proper functioning of the market.

118 In respect of unfair manipulation of consumer choice, there were 85 Competition Council decisions on the substance of cases in 2006, out of which the GVH intervened in 66. There was an increase in the number of cases as compared to 2005.

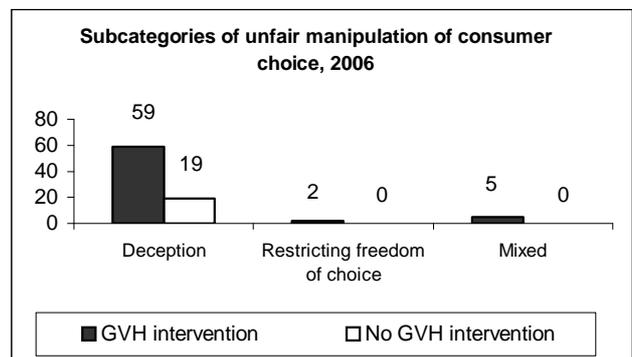
119 In 63 of the 66 cases mentioned above, a serious violation of the law was established. The fines imposed in 44 of these cases amounted (altogether) to HUF 1 822,8 million (around Euro 7,3 million), which is about four times higher than the amount of the similar fines in 2005.

120 In 19 of the violation cases, however, the Competition Council did not impose any fine and in three cases a suspension of the proceeding was ordered, taking into consideration the minor importance of the infringement.

121 Taking into account the distinction made between the statements of fact mentioned in Articles 8 and 10 (see paragraph 125 above), 78 and 7 of



the 85 unfair manipulation cases concerned the misleading of consumers and the restriction of the freedom of choice of consumers, respectively; in 5 of the 7 restriction-cases also the misleading of consumers was subject of the case.



122 The following case summaries provide an overview of the main aspects of the assessment of the cases, grouped according to the tendencies evolving in the information practice targeted to the demand-side of the market.

123 In the course of giving information to consumers (within the meaning given in Chapter III of the Competition Act), undertakings apply **different communications techniques** adjusted to the given market environment. Beyond the regular means – the so-called above-the-line (ATL) means – , which are typically used in the mass media, below-the-line (BTL) means such as on-line marketing are used more and more extensively. Both the selection of the means and their linking together form part of the marketing strategy of undertakings.

124 Mention must be made of the fact, however, that some of the advertisements may qualify differently depending on whether they are assessed from the aspect of marketing or of competition expectations.

125 **Vodafone Magyarország Kft's** introductory campaign of its "VitaMax Dumabérlet" tariff package

is a good example to underpin this statement. With this advertising campaign as the most effective above-the-line advertising and marketing campaign in that year, Vodafone won the Gold EFFIE Award in 2006. At the same time, in the case Vj-75/2005 the Competition Council held that the campaign was capable of misleading consumers by creating the false impression of an especially advantageous purchase, as the information that consumers would have needed to be able to compare the service with competing services was not included in the message some of the advertisements transmitted to consumers. Advertisements may not be created based on a principle according to which reasonable consumers are expected to verify the information they get through the advertising, the Competition Council stated.

126 In the course of integrated communications campaigns, undertakings reach consumers by using both above-the-line and below-the-line communications methods. Besides winning new customers, the aim of these campaigns is to win away customers from competitors. This behaviour is typical on saturated or tightening infocommunications markets such as the markets of mobile phone services or of fixed-line voice telephony, respectively.

137 The use of integrated communications campaigns is typical for huge market players with high market shares and great financial strength as these campaigns are costly. In these types of communication campaigns, the various techniques are focused on the communication of a "central" message. This message is to improve the image of the undertaking and to display the product as a brand (Vj-48/2006, Vj-114/2006).

127 The Competition Council held (Vj-48/2006, Vj-74/2006, Vj-89/2006) that the elements of these integrated campaigns are to be differently assessed from the aspect of competition law as far as the information provided by them is concerned.

128 In the case Vj-74/2005 against **SkyEurope Airlines Hungary Kft.**, the Competition Council held that in establishing the capability to mislead of the information given in an advertising campaign, attention must be paid to the visual and/or acoustic presentation of it. While with certain media, complementary information and fine-printed

explanations may become part of the message reaching consumers (e. g. with the printed press), this does not happen with other ones, such as TV commercials or billboard advertisements, where statements displayed/to be seen for a very short time cannot become part of that message.

129 In relation to the advertisements in the printed press, what is of importance is the positioning, highlighting and the design of the information. Headlines count more than the fine print. TV advertisements convey only a limited amount of information to consumers due to the timeframes available. Radio advertisements are effective up to three pieces of information at a time. Billboards are within sight only for a few seconds, accordingly they convey three motives at most.

130 Pieces of the information that play an equally important role in consumers' decision, are required to be equally well readable. The relevant pieces of information have to be in balance; it is the net impression what matters. Advertisements that go against the above principle are caught by the Competition Act (Vj-39/2006).

131 In the course of advertising campaigns conducted on markets of financial services (e.g. case Vj-56/2006), advertisers must also take into consideration the strict rules for the provision of those services.

132 The Competition Council established in its decision (Vj-56/2006) that the conduct of **Országos Takarékpénztár és Kereskedelmi Bank** Nyrt. (National Savings- and Commercial Bank, the largest Hungarian commercial bank, hereinafter: OTP) was suitable to deceive consumers. OTP, from October 2003 on, stated in some of its advertisements that a credit card owner „might use his/her card for 45 days without paying an interest”. These terms could give the false impression to consumers that they might use their credit margin for a period of up to 45 days without paying any interest, and they should only start paying interest after the expiration of the deadline for the credit they had got. Such interpretation of OTP's advertisements by consumers was reasonable, since consumers had to pay an annual credit card fee. Contrary to the advertisements of OTP, the lack of interest was subjected to a condition, namely to whether consumers paid back, within a certain

deadline, all the debts burdening their credit limits (i.e. the total amount of the value of their purchases, cash withdrawals from ATMs, interests, costs and fees).

133 In the above case, the Competition Council confirmed anew its view that consumers cannot be expected to check for themselves, either upon warning or without it, whether an advertisement is or not in compliance with competition rules. Therefore, the making available of additional information (apart from what is contained in the advertisement) by OTP does not exempt it from competition law liability.

134 The Competition Council stressed that crediting affects consumers' life to such an extent (particularly under the special Hungarian market conditions), that the business advertising activities concerned are required to face higher requirements in comparison to those determined for the advertising of the retail distribution of goods.

135 Consumer groups/shopping clubs belong to the providers of financial services, however, only the general rules of civil law apply to these services; no specific laws or regulations are in force regarding this area. Contracts run for a long time (for up to even ten years), and members have a hard job when cancelling their membership. Getting out of the deal is linked with burdensome financial consequences. It can be presumed based on the experience of the GVH that these consumer groups live on the damage caused to the consumers exited, or excluded of, the club rather than on the profits they earn as service providers.

136 The Authority identified several times during the preceding years the shortcomings and problems of the regulation in force relating to consumer groups. At the same time, a new element has appeared in the marketing communications of these companies, namely an effort of the clubs to blur the borderline between their services and the crediting they offer.

137 In the telecommunications sector, advertisers used the word "free" as an adjective in the central message in several of their integrated advertising campaigns. The Competition Council established that consumers interpret the word "free" as one with the meaning "costing absolutely nothing". They do not ponder on, however, whether

the condition "free" refers is valid only in respect of certain charges or of the service as a whole (Vj-187/2005).

138 On markets of daily consumer goods price discount actions/campaigns are characterised by the not sufficiently large (i. e. not sufficiently large for the entire period of the promotion) stocks of the advertised products. Therefore, consumers seek in vain the promoted products (Vj-159/2005, Vj-22/2006 – **Tesco-Global Áruházak Rt.**, Vj-29/2006 – **Auchan Magyarország** Kereskedelmi és Szolgáltató Kft.) It happens as well that the promoted product is sold at a price which is higher than what has been advertised (Vj-29/2006 – Auchan Magyarország Kereskedelmi és Szolgáltató Kft.), or that the information provided is misleading (Vj-159/2005, Vj-22/2006 – Tesco-Global Áruházak Rt., Vj-41/2005 – Auchan Magyarország Kereskedelmi és Szolgáltató Kft.), or that the word "cheapest" is unfoundedly used (Vj-29/2006 – Auchan Magyarország Kereskedelmi és Szolgáltató Kft.).

139 **Direct marketing** is getting more and more popular due to its low costs and the high number of consumers who can be contacted by means of it. However, its misleading potential is utilised as well. Direct marketing tools are used to establish a sort of direct communication between consumers and the undertaking with the aim that consumers get knowledge of, and place an order for, the product in question of the company. **Direct mail**, a specific form of direct marketing, has also been dealt with in the competition supervision proceedings.

140 The **World Health Rák- és AIDS Kutató** (Cancer and AIDS Research) Kft. sent e-mail messages to consumers who suffered from some kind of illnesses (Vj-37/2006). This target group constitutes a special group of consumers who can be easily persuaded as their illness makes them less rational but ready to buy anything that they hold prospective to cure them.

141 Health care, prevention and healthy lifestyle are ranked high in consumer priorities. Accordingly, more and more products related to these priorities are marketed. However, the number of products to which attractive, but scientifically not verified features are attributed also increases.

142 In deception cases in connection with health products, the Competition Council has on several occasions ordered a corrective announcement to be published.

143 Increasingly, communication via the Internet gains ground in both the integrated and non-integrated communications campaigns.

144 The Internet plays a central role in the communications and marketing strategy of airways. The intensive price competition in this sector forces companies to apply dynamic communications strategies. In the case Vj-74/2006, the GVH initiated the proceeding because **Sky Europe** did not communicate all the elements of the price to be paid by consumers; furthermore, though the company indicated the price, the appropriate interpretation of the price was given in fine print, which made the objective appraisal of the service more difficult. The conduct was capable of misleading consumers regarding the real value of the service, creating the false impression of an especially advantageous purchase.

145 In 2006, the Competition Council highlighted the pitfalls of comparative advertising in a number of the competition supervision proceedings.

146 In the case Vj-148/2005 the Competition Council imposed a significant amount of fine on **Colgate-Palmolive Magyarország Kft.** because the advertisements for its 'Total' toothpaste claimed that 'no other toothpaste can provide better protection' and included as an endorsement the sentence 'it is the choice of dentists'. These advertisements were broadcasted continuously from the beginning of 2004. Therefore, the campaign was capable of deceiving consumers.

147 In a case against **Auchan Magyarország Kereskedelmi és Szolgáltató Kft.** (Vj-80/2005), with regard to the 'best price' marketing statement, the Competition Council held unlikely that in a fast changing market environment such primacy claims could be valid in respect of any product under the whole advertising period. Albeit price monitoring might be used for this purpose, but it would be expensive. Therefore, such statements may not be reasonably used.

2.2.2. Agreements restricting competition

148 Chapter IV of the Competition Act provides that all agreements restricting competition are illegal and void, unless they are of minor importance or the undertakings which are parties to them are not independent of each other. Besides, restrictive agreements may be exempted from the prohibition by Government regulations on the exemption of certain groups of agreements, and they may individually fulfil the requirements for being exempt from the prohibition. For an agreement to be exempted the resolution of the GVH¹⁸ is not needed as – similarly to the Community competition law – the undertakings have to assess for themselves – and prove in the course of an investigation of the competition authority - that their agreement is in line with the Competition Act or with any of the Government regulations mentioned above, and thereby it is not prohibited.

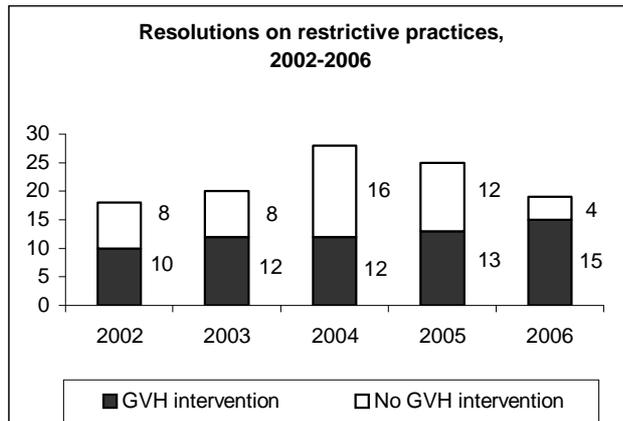
149 As from May 2004, if restrictive agreements may have an effect on trade between Member States the competition supervision proceedings must be conducted with the direct application of Article 81 of the Treaty, but applying the Hungarian procedural provisions at the same time. The GVH proceeds as the national competition authority of an EU Member State.

150 In 2006, the Competition Council made 19 resolutions on the substance of cases, through 15 of which the GVH intervened. With regard to restrictive agreement cases, the intervention of the GVH meant

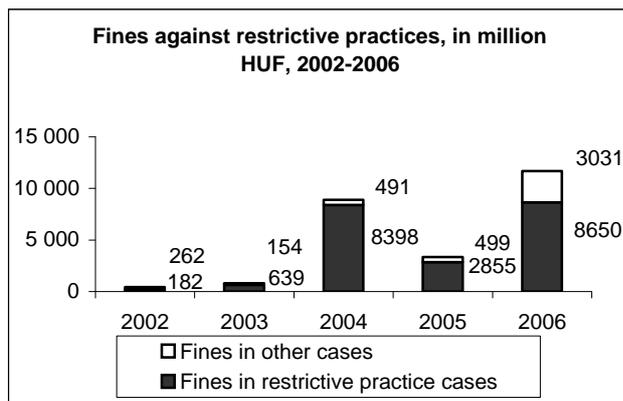
¹⁸ There are two types of resolutions, which are adopted in the course of competition supervision proceedings: they are either decisions or injunctions. The competition council reaches decisions when it decides on the substance of cases: it decides whether to authorise or not a concentration or establishes an infringement of the law or establishes that the conduct in question is not unlawful. Relating to all other issues including procedural questions, the competition council or the investigator decides by injunctions. Accordingly, the proceeding is terminated by injunction where the evidence obtained does not allow the existence of an infringement to be found or where the public interest does not justify the initiation or continuation of a proceeding or for administrative reasons (such as the withdrawal of the application for authorisation of the concentration or the non-fulfilment of the request for completion).

Until 1 November 2005 exclusively decisions were issued and it has only been since that date that a distinction is made, in compliance with the principles laid down by Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services (which has also been in force since that date) between resolutions issued as decisions and those issued as injunctions.

(in 2006) the establishment of an infringement including the making of such an establishment following a suspension of the case; the termination of the proceeding, following a suspension of the case, taking into account a commitment undertaken by the parties; or the termination of the proceeding following an amendment, respecting the competition concerns of the GVH, of the agreement voluntarily made by the parties to the agreement (if this is reflected by the decision adopted in the case).

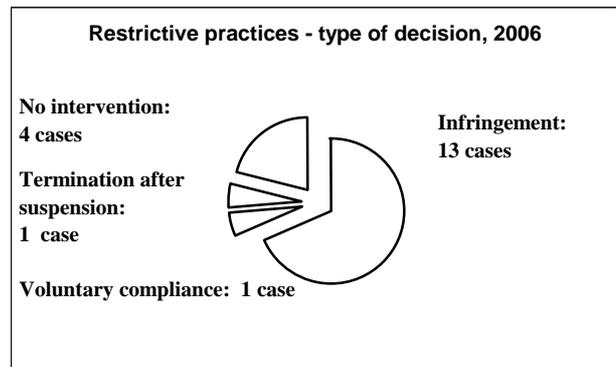


151 In 9 cases out of 15 in which the GVH intervened, the Competition Council imposed fines amounting altogether to HUF 8650 million (approximately Euro 34,6 million).

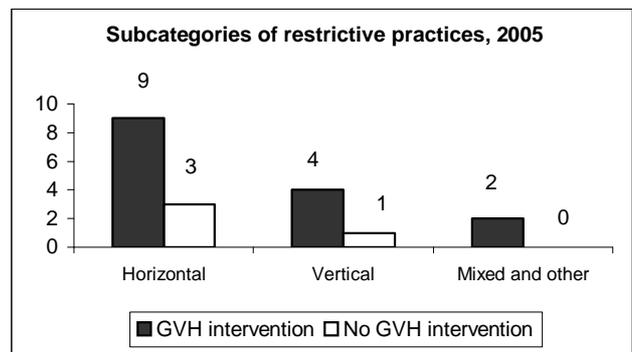


152 In two cases the Competition Council terminated the proceedings, as the investigation had not revealed or could not prove any restrictive agreement. In one case a suspension was ordered (and the case was terminated following the post-investigation), due the minor significance of the infringement and with respect to the infringer's commitment to terminate the infringement. In

another case the Competition Council found that the agreement fell under a group exemption.



153 In more than half of the cases assessed (12 cases) the agreement was concluded between competitors, in 5 cases it was of a vertical, while in further 2 cases of a mixed nature. In 9 of the 12 cases, the GVH had to intervene and prohibit the restrictive practice concerned. Out of the 5 vertical cases, 4 required an intervention. The GVH intervened in both of the mixed cases.



154 In 2006, the GVH closed 5 proceedings where trade between Member States was affected. Accordingly, the relevant Articles of the Treaty were applied. In three of the said cases (Vj-156/2004, Vj-180/2004, Vj-16/2005) an infringement was established, one case (Vj-157/2004) was terminated following a suspension in the course of which the parties modified their agreement to bring it into compliance with Article 81(3), and in one case (Vj-94/2005) no grounds were found for an action of the GVH.

155 **Concerted practices** restricting competition are also prohibited by the Competition Act, since they are in the same way conscious anticompetitive arrangements. They are cooperations between

competitors in order to minimize the risks associated with competition.

156 A meeting where undertakings exchange information regarding their future market behaviour qualifies as a concerted practice, as the participants take into consideration all the obtained information in their future market behaviour.

157 **Bid rigging** remains an important category within secret hard-core cartels. In investigating these agreements, dawn raids (searches of the premises of the parties without prior notification) constitute a core technique. Another tool used against hard-core cartels is the leniency policy, though none of the cases closed in 2006 was initiated under leniency policy.

158 In 2004, **SAP Hungary Kft.** (SAP), **IBM Magyarország Kft.** and **International System House Kft.** concluded a teaming agreement, and negotiated several times the strategies to be followed in public procurement procedures the subject of which were the procurements of information technology systems in a total value of HUF 14 billion (around Euro 56,0 million) by five Hungarian universities. Furthermore, in two of these procedures, the said undertakings influenced the wording of the invitations to tender. The three undertakings agreed upon the identity of the winner and its subcontractor (Vj-162/2004).

159 In their defence, the parties argued that the cooperation between them was necessitated by their joint research and development activity which they performed in connection with the projects. However, the Competition Council found that the cooperation in question was not necessary, as all the undertakings had the capability of acting on its own in the course of the procurement procedures.

160 The Competition Council established in its decision that the IT undertakings **Albacomp Számítástechnikai Rt.** and **Synergon Informatikai Rendszereket Tervező és Kivitelező Rt.** concluded an anti-competitive agreement in order to win the HR project of the nuclear power plant of Paks (case Vj-21/2005).

161 The local government of the city Győr announced a public procurement procedure by publishing a notice on 25 June 2003. The public procurement aimed at introducing an integrated

financial economic system (Vj-20/2005). Subsequently, on 27 April 2004 PA Rt. announced a one-round, restricted public procurement procedure for "the review of SAP system modules functioning in a production plant and the involvement of an adviser and project manager in the version-modification of an IT-project". The Competition Council found, based on evidence (mainly e-mail messages), that Synergon and SAP Hungary concluded an agreement in connection with the two procedures, which was suitable to influence the result of the competition.

162 In the case Vj-40/2005, several anticompetitive practices were established by the Competition Council. 1) The undertakings **Synergon** and **Montana** concluded an agreement for the case, that Synergon would win the public procurement procedure, the so-called „support” procedure, published by Magyar Fejlesztési Bank (MFB) in 2003. The agreement was suitable to restrict competition. 2) With respect to the „support” and „exchange” tenders invited by MFB in 2004, Synergon and HP agreed that HP would surrender the „support” project to Synergon if Synergon helped HP to win the „exchange” project. 3) HP and Montana concluded an agreement regarding HWB Bank's project „WAN”, which agreement was suitable to restrict competition. 4) **HP** and Montana concluded a restrictive agreement in connection with the public procurement procedure of Nemzeti Autópálya Rt., published in October 2003.

163 The biggest fine in 2006 was imposed in a case that concerned the insurance sector, within which the hourly wages were connected to the obligatory liability car insurance and the all risks car insurance. In the case, the two insurance companies, which were fined – **Allianz Hungária Biztosító Zrt.** and **Generali-Providencia Biztosító Zrt.** – did not enter into a restrictive agreement between them but approved the price fixing cartel of the car repairers, by means of which the above mentioned two insurance companies tried to restrict competition on the insurance market, driving out in this way smaller insurance companies of the market.

164 The two market leader insurance companies agreed on recommended prices with the Hungarian Association of Automobile Dealers (**Gémosz**) between 2003 and 2005. In practice, these

recommended prices made it possible for the dealers having membership in Gémosz to restrict price competition. As a result of the concerted practice, the car repairers managed to increase their hourly wages by more than 10% above inflation.

165 The two insurance companies accepted these hourly wages in exchange for the car repairers entering into new insurance agreements with them, further for agreeing in respect of the hourly wages for car repair. As a consequence, all the other insurance companies had to accept the artificially high hourly wages, thus they had difficulties in selling their vehicle insurance services.

166 In the insurance sector, insurance brokers play a key role. Their activity is to establish insurance contracts as a regular business activity. They are not agents of the insurance companies, but those of the insured parties. Within the insurance market, brokers are independent of the insurance companies and have a mediator role in helping their clients (the contractors) to find the most adequate insurance contract. This special role of the insurance brokers has the result that in relation to their clients, there are the brokers who create competition between the insurance products and make it function. Accordingly, every conduct, which intends to hinder, limit or distort this competition, or is able to generate such an effect, is capable of violating competition law.

167 Pursuant to the legal regulation in force, it is not against the law that not the client (contractor/consumer), but the insurance company pays the commission to the insurance broker. However, due to the special status of the insurance broker on the market, some limits are still set by competition law: the broker is not allowed to make arrangements with an insurance company, which would limit competition on the insurance market.

168 For example, arrangements in which the parties determine the following are infringements of the law:

- the number of all risks automobile insurance contracts and obligatory automobile liability insurance contracts which the broker should mediate to the insurance company in a given period of time,

a definite minimum percentage of all risks insurance and obligatory automobile liability insurance contracts the broker should mediate to the insurance company in a given period of time, also stating at least how many all risks and obligatory automobile liability insurance contracts this should be in a month,

the number of all risks insurance and obligatory automobile liability insurance contracts should exceed in a given period of time the number of contracts, which were made in the preceding period of time (precedent period)

169 Furthermore, all arrangements violate competition law, which link the commission of the insurance broker on a band with the number of the mediated contracts (or with the insurance fee of the portfolio), motivating in this way the broker to mediate a higher number of contracts to the insurance companies.

170 In the case of the insurance brokers – **Magyar Peugeot Márkakereskedők Biztosítási Alkusz Kft.**, **Magyar Opelkereskedők Bróker Kft.** and **Porsche Biztosítási Alkusz Kft.** – against which a proceeding was started, it could not be set aside that the brokers had to “appear” in the arrangements between the insurance companies and the automobile dealers, which linked the hourly wages with the sale of insurance contracts. The insurance companies took part in the insurance sales as insurance sellers and stood on the side of the brokers, as they would be their agents. The brokers played an important role in the establishment of the arrangement network, in which Allianz and Generali paid higher repair hourly wages to the automobile dealers in exchange for favourable insurance sales.

171 The Competition Council prohibited the unlawful conduct and imposed a fine amounting altogether to HUF 6.8 billion (approximately Euro 27.8 million).

164 Recurrent competition problems in the **sector of agriculture** are the minimum price setting and the market sharing (by production quotas) with the assistance of product boards and chambers. In 2006 the GVH investigated a cartel case concerning the egg market.

165 The **Hungarian Association of Layer Hybrid Breeders and Egg Producers** had a so-called price board, which set minimum prices from 2002 and onwards. Further, in 2002, 2004 and 2005 the Association published detailed recommended prices for its members in the Association's newsletter. In addition to this, between 2002 and 2004, an import licensing system was operated, and thereby the import activities of all members were monitored.

166 The Association cooperated with some of the larger egg producers in organising their consultations. This practice constituted an information cartel.

167 The above practice of the Association and the breeders, besides infringing the Competition Act, infringed EC competition law as well, since it affected trade between Member States. The practice covered a significant part of Hungary, and restricted the export.

168 Cooperation among market players is common not only in the agriculture sector, but in other areas as well. In the case Vj-47/2006, the Competition Council established that certain provisions of "The rules relating to competition in Hungarian publishing and bookselling" of the **Hungarian Association of Book Publishers and Retailers** restricted economic competition. In particular, the rules concerning the regulation of final, net, booking and subscription-prices as well as the price reductions and clearance sales of member booksellers were deemed to be unlawful. At the time of the proceeding, the Association had 144 members, which accounted for some 80% of the annual turnover of the book market. The Competition Council prohibited the Association from applying the provisions in question and obliged it to inform the member booksellers about the Council's decision within 15 days after receipt of the decision.

169 The activity of professional chambers relating to ethical issues has long been in the centre of the GVH's interest. Since 1997, several codes of ethics were the subject of competition supervision proceedings. One of the reasons for this is that it must be made clear for the public that competition law applies to the chambers and their codes of ethics in the same way as to any other business activity.

170 The case relating to the **Hungarian Bar Association** (Vj-180/2004) concerned the rules (Code of Conduct) adopted by the Hungarian Bar Association in relation to the advertising activity of attorneys and the written position of the Bar Association's presidency in which it gave extensive rules on the outlook and content of the websites of an attorney. The Bar Association qualified as an association of undertakings within the meaning of Article 81 of the Treaty, the Code of Conduct and the written position proved to be a decision of an association of undertakings. Certain provisions of the above mentioned regulations restricted competition as defined in Article 81(1) and did not satisfy the conditions of Article 81(3). The Competition Council prohibited the Bar Association from applying these rules as of 30 days after receiving the Council's decision. The Competition Council obliged the Bar Association to publish the Competition Council's decision on its homepage and in the official journal of the Hungarian Bar Association, furthermore to communicate it to the competent ethical committees. The Competition Council obliged the Bar Association to eliminate the situation violating the competition rules until 15 September 2006. Finally, the Competition Council imposed a fine of HUF 5 million (approx. Euro 18 thousand) on the Bar Association.

171 In a similar case against the **Chamber of Hungarian Auditors** (Vj-16/2005), the Competition Council found that the Chamber's Code of Conduct prohibited not only misleading advertising but also those types of advertising, mainly comparative and price advertising, which may reveal information, which is correct but possibly detrimental to the interest of other auditors and auditing companies.

180 The Competition Council found the following provisions to be restrictive under Article 81 of the EC Treaty and Article 11 of the Hungarian Competition Act: prohibition of the publishing of persuasive texts; of the publishing of comparisons with other auditor or auditing companies; of the advertising by publishing fee information; prohibition on praising the speed and quality of the service in a manner that makes other auditor's same or similar services recognisable; defining the ambit of information to be published in trade magazines, newspapers; prohibition on recruiting clients; prohibition on comparative advertising at conferences or other

events. Taking into consideration the modifications made to the Code of Conduct during the proceeding there was no need to prohibit the continuation of the infringement. The Competition Council did not find it necessary to impose a fine on the Chamber.

172 Vertical agreements are often subject to competition supervision proceedings. In 2006, the GVH examined two concession agreements concerning the distribution of deep-frozen food products. In the agreements between **Unilever Magyarország Kft. and its partners** (Vj-156/2004), the concessionaire distributors undertook to buy and distribute exclusively Unilever ice creams. They also undertook not to buy and distribute any product that might be a substitute for/competitor of the ice creams of Unilever. Territorial restrictions were also stipulated in the agreements. Furthermore, the distributors were obliged to accept the obligations mentioned above for further two years following the termination of the agreement.

173 The Competition Council held that the agreements were capable of restricting not only active but also passive sales. This is against the provisions of both the Hungarian and EC competition law.

174 The GVH examined in its proceeding (Vj-94/2005), whether the contracts concluded between the **British American Tobacco** group (BAT) and its 23 distributors about the distribution of tobacco products in the territory of Hungary infringe Article 81 EC Treaty.

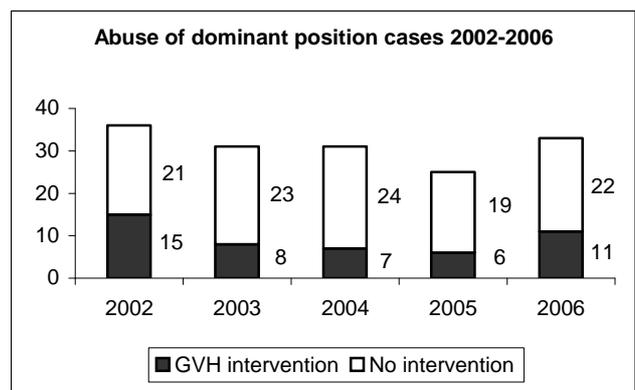
184 The contracts qualified as vertical agreements within the meaning of the relevant block exemption Regulation of the Commission; however, the exemption provided for by the Regulation did not apply to them as the market share held by BAT exceeded the market share threshold of 30% and the agreements had been concluded for an indefinite duration. As the benefit of the block exemption is limited to vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 81(3), it may normally be sufficient to examine the possible adverse effects which the differences between an agreement not covered and the agreements covered by the block exemption could have on the agreement's in question meeting the conditions established by Article 81(3). In this particular case the Competition

Council found no such adverse effects and hence, no grounds for further action on its part as concerns Article 81.

2.2.3. Abuse of dominant position

175 Chapter V of the Competition Act contains the prohibition on the abuse of dominance, which includes both exploitative and exclusionary conducts. Since May 2004, when an undertaking abuses its dominant position and this conduct has an effect on trade between Member States, the GVH applies also Article 82 of the EC Treaty in its competition supervision proceedings, while using the national procedural rules. In 2006, the GVH finished several cases applying EC competition law as well, one of which ended with the finding of an infringement (Vj-22/2005) and three were terminated, as there were no grounds for action in them (Vj-27/2005, Vj-84/2005 and Vj-174/2005).

176 In 2006 the GVH adopted 33 decisions on the substance of abuse of dominant position cases.



177 In 22 cases the Competition Council established that the undertaking concerned had a dominant position, while out of these, in 11 cases the Competition Council also found an abuse. Fines in the amount of HUF 1166 million (around Euro 4,7 million) have been imposed in 5 cases.

178 There were several cases where the Competition Council clarified important issues with regard to the legal practice, therefore we deal with them separately.

189 In relation to the factors contributing to dominance, we have to mention the case initiated

against **Fővárosi Csatornázási Művek** Zrt. (FCSM, Budapest Sewage Works). The company argued that it might not exclude any consumers from the service, even if they did not pay, since its market was a regulated one, furthermore, since it was a natural monopoly. The Competition Council established that the fact that an undertaking operated on a regulated market did not exclude the possibility for it to have a dominant position. When legal provisions eliminate the possibility of the application of a sanction that is generally allowed to be used against consumers who are in breach of their contract they concluded with the provider, this in itself does not deprive the provider of its dominant character. Even if the natural monopolist performs certain activities more efficiently than two or three competing undertakings would do, it is a fact that the infrastructure provider has no competitors and due to the special economic circumstances, other competitors are not likely to enter the relevant market. However, this factor just supports the establishment of dominance rather than the finding of the opposite. An abuse of the dominant position can be found in the case of a natural monopoly as well, if its behaviour constitutes an abuse.

179 In the case against **Invitel Távközlési Szolgáltató** Zrt. (Vj-142/2005), the Competition Council interpreted Articles 21(i) and 21(j) of the Competition Act, which prohibited the hindering of market entry and the creation of disadvantageous market conditions for competitors without justification, respectively. Accordingly, the hindering of market entry can be established not only when the conduct actually prevents, but also when it significantly impedes, market entry. Furthermore, for an infringement of Article 21(j) to be established it is not required that a competitor should be driven out of the market as a result of the conduct creating disadvantageous market conditions. It is enough if the competitor's market presence significantly decreases or does not increase at the rate that would have been justified in the absence of the behaviour. On the other hand, conducts which are disadvantageous for competitors are necessary corollaries of competition, therefore the absence of justification forms part of the infringement mentioned above. While in the case of the use of means that directly restrict competition, the dominant firm applying those means has the duty to provide a valid

justification, in the case of indirect methods, like the reducing of prices, which secure advantages for consumers and thereby result in a gain in the market share of the dominant firm, it is for the GVH to prove that competition will be restricted by them on a lasting basis, as a consequence of which the practice in question qualifies as unjustified. These indirect methods do not necessarily restrict competition, on the opposite: they could be the manifestation of healthy competition. The restriction of competition can be established only if the conduct is suitable to generate market foreclosure or at least if the undertaking is likely to maintain its market share gained through the conduct even after ceasing to perform it.

180 With regard to the public interest criterion the fulfilment of which is required for the initiation of a competition supervision proceeding, in the case **Hírösgazda Városszolgáltató** Kft. (Vj-93/2006) the Competition Council made the following remarks. The termination of a proceeding due to the absence of public interest does not entail that it should not have been initiated anyway. It cannot be excluded that only facts, which became known or events, which happened during the proceeding give reason for the termination due to the lack of public interest. This happened in the case mentioned above, when **Hírösgazda Városszolgáltató** Kft. ceased to pursue its allegedly infringing behaviour and entered into the requested contract.

181 In 2006, the investigation initiated against **Magyar Államvasutak** Zrt. (MÁV, State Railway company) both under EC and national competition law was an outstanding case from several aspects.

182 The liberalisation of railway freight transport markets created the opportunity for new railway undertakings to enter the market, which was earlier supplied exclusively by the vertically integrated companies MÁV and GySEV, which provided track maintenance and operation, furthermore freight and passenger transport. Immediately following market opening several private railway undertakings entered the market, which would have needed non-discriminatory access to the railway infrastructure and other ancillary services from MÁV as the infrastructure manager. Despite the quick entry of these new firms, the market opening produced no significant results, which could be attributed partly to

the non-satisfactory regulatory background and mainly to the conduct of MÁV, which was the subject of the GVH's investigation.

183 The Competition Council found that MÁV, which had a dominant position both on the market of access to infrastructure (upstream) and on that of railway transport of freight (downstream), infringed the prohibition on abuse of dominant position by several conducts pursuant to the national law, EC law and the Implementing Rules of the competition related provisions of the Europe Agreement concluded between Hungary and the EC.

184 MÁV abused its dominant position on the market of access to national railway infrastructure by causing unreasonable additional costs to its competitors on the freight transport market (and placing them at a competitive disadvantage), when it required bank guarantee as a prerequisite for the conclusion of the 2005 network access agreements.

185 Another abuse committed by MÁV was the hindering, delaying and sometimes the impeding of new entrants' access to non public industrial sidetracks in its ownership or under its management. In the rail transport of freight, to provide door to door services, the shipper needs access not only to the public rail network but also to the industrial sidetracks; otherwise it cannot enter the „last mile” necessary to reach the premises of the customer. For historic reasons most of these industrial sidetracks are owned or managed by the incumbent MÁV instead of the owner of the industrial premises. Moreover, within the organisation of MÁV, these sidetracks were allocated to its freight transport branch MÁV ÁFU, the direct competitor of private railways, and not to the infrastructure-managing branch MÁV PV, which situation inherently created the possibility of conflicts. The Competition Council confirming its earlier practice established again that without prejudice to property rights, competition rules impose a special responsibility on dominant firms in their business relations. Based on this special responsibility, a refusal to deal can be found illegal if the dominant firm cannot provide an objective justification and besides the concrete harm on the customer concerned there is a significant negative impact on competition and its effectiveness.

186 Finally, MÁV also abused its dominant position by concluding long term transport agreements

with exclusivity clauses in the period 2003-2005 with the most significant bulk-shippers, thereby foreclosing access of new entrants to a significant part of the freight transport market. As to the period before liberalisation, these long-term framework agreements infringed also the Implementing Rules of the Europe Agreement. The reason is that the explanation for the conclusion of the agreements was the expected liberalisation and the intention to delay the entry of probably more efficient new entrants by cutting of their way to the new entrants most lucrative potential shippers. The Competition Council imposed a fine of HUF 1 billion (approx. Euro 4,0 million) since the conduct of MÁV jeopardised market liberalisation through the significant restriction of competition.

187 The GVH indicated already in its 2005 Annual Report that on the network energy market certain ancillary consumer services with no regulated prices, like the installation or change of meters, the connection/disconnection to the service, etc., tended to be excessively priced. While in 2005, cases dealing with these issues were terminated without the establishment of an infringement, in 2006, in 4 proceedings, infringements were established. The GVH, in cooperation with the energy regulator made a proposal for the regulation of the prices of these services too.

188 The case against **Budapesti Elektromos Művek** Nyrt. (Budapest Electric Works, ELMÜ, Vj-47/2006) has brought an example of the above-mentioned illegal behaviours, moreover, it shows also the application of the new provisions on commitments of the Competition Act.

189 According to the Business Terms of ELMÜ, eligible customers have to provide a direct analogue line or an analogue line that creates automatic connection to the extension for the distance reading of consumption meters. The fact that eligible customers are allowed to buy electricity from any wholesaler, does not eliminate the need for them to conclude an agreement, enabling the connection to and the usage of the network, with the electricity distributor, which has exclusivity in that area. Eligible customers within the meaning of the Act on Electricity must have a consumption meter that enables the distance reading of it. Based on the, at present available, technologies distance reading can

be performed by using an analogue line or a GSM modem.

190 Since in the operational area of ELMŰ its network is indispensable for eligible customers to be connected to the network, ELMŰ has a dominant position in relation to customers. The investigation revealed that besides the analogue line prescribed exclusively by the Business Terms of ELMŰ, the GSM modem would have also enabled the distance reading of the consumption meter. According to the opinion of the Competition Council, ELMŰ did not prove that the analogue line requirement would be a part, by its nature, of the network usage agreement, nor can it be held as general contracting practice, or that any of the distance reading methods would be less advantageous for either the customers or the distributor. Based on the above, the Competition Council found it illegal to exclude the usage of the GSM modem reading method.

191 ELMŰ modified its Business Terms and submitted them for approval to the energy regulator. In parallel, it undertook that until the final approval by the regulator, it would proceed according to the modified Business Terms, therefore it asked for a commitment injunction of the Competition Council.

192 Since the 2005 amendment of the Competition Act, in the course of proceedings started ex officio, parties may offer commitments to ensure, in a specified manner, compliance of their practices with competition provisions. If effective safeguarding of public interest can be ensured in this manner, the Competition Council, by injunction, makes those commitments binding on the parties, terminating at the same time the proceedings, without concluding whether or not there has been or still is an infringement. By means of commitment injunctions the infringing situation can be remedied even during the proceedings; moreover, the defending parties can avoid the negative consequences of the establishment of an infringement and bad publicity. According to the standpoint of the Competition Council, in the case of ELMŰ the commitment injunction was an appropriate method for remedying the competition problem.

193 In the case against **E.ON Tiszántúli Áramszolgáltató** Zrt. (E.ON East Hungary Electricity Supplying Ltd.) the Competition Council

established an infringement and fined the company HUF 2 million for the arbitrary and unfair determination of the temporary connection service fees (Vj-190/2004). The Competition Council came to similar conclusions with regard to TIGÁZ Tiszántúli Gázszolgáltató Zrt., a natural gas supplier and public service provider active in Northeast Hungary, concerning the connections fees for eligible customers; therefore it imposed a fine of HUF 4 million on TIGÁZ (Vj-116/2005).

194 As to **infocommunications markets**, the Competition Council reached several important decisions in 2006. The excessive increase of cable TV prices and the disadvantageous restructuring of programme packages, as in earlier years, were returning issues before the GVH. Furthermore, fixed-line telecommunications, Internet and television broadcasting markets were examined for exclusionary abuses.

195 On the market of fixed-line telecommunications, **Hungarotel** abused its dominant position (Vj-69/2005) when it restricted without justification carrier selection in relation to voice telephony. Consumers having fixed-line subscription can choose, in addition to the network owner as a fixed-line telecommunications provider, also providers of carrier services. Carrier service providers are telecommunication providers that use the infrastructure of other providers and enable phone calls for the subscribers of the latter to be carried out by adding prefix numbers to their phone numbers. When using a carrier service provider, the customer pays the subscription fee to the provider that owns the infrastructure, while for the individual phone calls, he has to pay to the carrier service provider.

196 The conduct of Hungarotel proved to be abusive, because the company allowed carrier selection only within the subscription package with the highest monthly fees and the lowest call prices. For most of the subscribers it was not worth to choose this package, since savings on the call prices were relatively limited due to the lower Hungarotel prices, while they had to pay the highest subscription fee. In October 2005 Hungarotel restructured its packages and allowed in all of them carrier selection. However, the restrictive effect was still present, since these new packages contained

also free minutes. In this manner the objective of Hungarotel was to achieve that subscribers consider carrier services only with regard to phone calls in excess of the free minutes. Moreover, Hungarotel determined the amount of free minutes for the particular packages, based on the consumer habits, in a way that most consumers just wanted to use their phone for the duration of the free minutes.

197 If it is not worth for the subscribers of Hungarotel to use a carrier service provider, then it is not profitable for the carrier service provider to enter the market in Hungarotel's network. Thus the behaviour of Hungarotel, by which it made its own subscribers to have an "adverse interest" in selecting a carrier service provider, deterred its competitors from bearing the non-insignificant extra costs of market entry. For the case they nevertheless entered the market, Hungarotel made their economic situation much more difficult. The infringing situation ceased to exist when the company modified its subscriber packages by abandoning free minutes and allowing carrier selection.

198 The restriction of carrier selection was also the subject of the case conducted against the telecommunication service provider **Invitel Távközlési Szolgáltató Zrt.** (Invitel, Vj-142/2005) which tried to induce subscribers to refrain from the use of carrier service providers. It is true that Invitel did not restrict directly the possibility of carrier selection; nevertheless indirectly its aim was to do so by providing discounts for subscribers who abstained from carrier selection. An essential question of the proceeding was whether Invitel had a dominant position on the access market, since carrier service providers need access to the network to provide their services to customers in other networks. The Competition Council examined the substitutability between fixed-line telephony and telephony over cable networks. It came to the conclusion that in the relevant geographic area cable telephony was a real substitute for fixed-line telephony, however for a few months, Invitel might have had a dominant position due to the lack of substitution.

199 The Competition Council established that it is no doubt disadvantageous for carrier service providers if Invitel applies business strategies, which

eliminate subscribers' interest in choosing alternative providers. The investigated package might have had that kind of negative effect, however for various reasons (the advantage granted for the refraining from carrier selection is not significant, the time period when a dominant position existed was relatively short, the behaviour of Invitel did not hinder carrier selection on the national level) it did not decrease appreciably the intensity of competition. The Competition Council terminated the proceeding since not even for the period within which Invitel might have had a dominant position, could it establish an abuse of dominant position.

200 On the other hand, the Competition Council found the practice of **Magyar Telekom Nyrt.** (Magyar Telekom, (Vj-39/2005) illegal with regard to the removal of ADSL-modems when customers change their Internet providers. Magyar Telekom, in contrast to Invitel, tried to restrict customers in switching to other providers by subjecting such changes to detrimental conditions rather than by offering discounts. Pursuant to the findings of the investigation, the unreasonably lengthy service disruption in the case of a change of the provider cannot be justified either by technical or economic reasons.

201 The GVH initiated a proceeding against **Antenna Hungária Magyar Műsorszóró és Rádióhírközlési Nyrt.** (AH, the Hungarian broadcasting company, Vj-27/2005). In this case, the alleged abusive conduct was excessive pricing on the markets of national analogue terrestrial television broadcast diffusion¹⁹ services, which would enable unfair cross subsidization on the market of television broadcast distribution²⁰ services thereby excluding competitors from that market or hinder their entry.

202 With regard to television broadcast distribution the Competition Council established that entry is not likely to happen on this market, therefore

¹⁹ Broadcast diffusion means a one-way radio telecommunication process effected through a surface or satellite system, intended for a theoretically unlimited number of users with suitable receiving devices, for the transmission of sound, image or signals of another nature.

²⁰ Broadcast distribution means the electronic forwarding of the broadcasting signals generated by the broadcaster to radio and televisions broadcast diffusion and broadcast transfer networks simultaneously, without any alteration, through wire (cable) networks, and terrestrial or satellite radio communication networks.

pricing below actual costs cannot be a suitable means of excluding competitors, which was the reason for the termination of that part of the proceeding.

203 With regard to excessive prices on the national analogue terrestrial television broadcast diffusion (broadcasting) market, the Competition Council terminated also the proceeding, however it made several important findings both under national and EC competition law. In relation to Article 21 of the Competition Act, the Competition Council found that the existence of a price cap regulation did not hinder, in principle, the application of competition rules, since the undertaking concerned retained certain autonomy when acting to determine its prices. The same can be said concerning Article 82 of the Treaty.

225 The method of the regulation, the determination of official prices according to the Act on Price Setting represents the same principle, which is used under the competition rules for the assessment of excessive prices when benchmarking cannot be applied. According to the Act on Price Setting, a maximum price must be determined to cover the costs of the efficiently operating undertaking and the profit necessary for its operation. According to the competition rules, a price is excessive when it exceeds (significantly) the economic value of the services, i.e. the sum of the economically reasonable costs and the fair profit attributable to the particular sector. Based on the above, the Competition Council found that it could not apply the Competition Act, since the finding of an excessive price would only be possible if it was determined contrary to the provisions of the Act on Price Setting. This on the other hand would infringe the Constitution and not the Competition Act, therefore in the absence of an infringement the proceeding was terminated in this respect.

204 Then again, the Competition Council considered that it could apply Article 82 of the Treaty to the prices of AH due to the primacy of Community law, by jointly applying Articles 10 and 82 of the EC Treaty. The obligations arising the Treaty require the GVH, as a national competition authority responsible for ensuring that Article 82 is observed, to disapply any provision of national law, which contravenes a Community rule. Accordingly, if the prices are

excessively high contrary to Article 82, then the Competition Council has to disapply the regulation adopted on the official maximum price while the state involvement has to be considered when setting fines in the case.

205 The GVH investigated AH's prices with the assistance of experts, who identified potential problems concerning the costs of AH. Based on the experts' report the Competition Council concluded that the difference between the economic value and the actual price might not be unfair taking into account also the items of digital terrestrial broadcasting in calculating the costs, however only parts of the latter costs were justified. Nevertheless further investigation was not needed, since in the meantime AH reduced its prices, which made a possible sanctioning unnecessary. Moreover, to establish the infringement, additional cost elements had to be determined more precisely and alternative cost allocation methods had to be examined. In this connection the Competition Council established several times that there is no particular prevailing cost allocation method, any deviation from which would entail an infringement of competition law. The Competition Council also considered that from a competition policy point of view, contractual disputes not affecting long-term consumer welfare or the reallocation between different production levels are indifferent. Potentially excessive prices in television broadcasting are exactly this phenomenon, since consumers do not have to pay for terrestrial reception to the content providers. Finally the Competition Council informed in detail the National Telecommunications Authority about its experience in the case.

206 During 2006, in the cable TV cases the Competition Council consistently applied its earlier practice. **PR-TELECOM** Zrt. (Vj-98/2005) was found to infringe the Competition Act because it modified programme-packages, thereby causing significant additional costs to consumers without a prior consultation of them.

229 A cable TV operator acts illegally if it modifies programme-packages in an arbitrary manner without the adequate consumer need. Before an operator in a monopoly position would raise its prices, it is required to give an opportunity to consumers to express their opinion about the modification. Should

the majority of consumers oppose the modification, the operator cannot legally execute it. In this way namely, the operator would oblige the majority of consumers to buy a product or product element, which they do not demand. Consumers have no alternative operators to turn to; therefore the modification is a constraint, an unjustified income transfer.

207 In the case initiated against **UPC Magyarország Kft.** (Vj-3/2005) the Competition Council gave additional insights with regard to the competition law assessment of programme-package modifications. For an infringement to be established the modification of the programme-package must be significant, the effect of the modification on subscription prices must be considerable, while there must not be any acceptable justification for it. Exceptionally even one of the former two conditions is sufficient for the establishment of an infringement, provided the change is of great significance. The real meaning of these terms has to be determined nevertheless on a case-by-case basis. A change in the programme-packages can be explained by technical reasons (e.g. by a change in the technology used, which enables a better reception) or by the winding up of a content provider. The monopolist network operator should survey consumer preferences and needs by public opinion polls conducted among the subscribers concerned.

208 The investigation conducted against **Magyar Posta Zrt.** (Vj-174/2005) concerned postal services and the various rebate practices of the incumbent operator. Although the proceeding was terminated without the establishment of an infringement, the Competition Council made important findings. The GVH may examine the rebate system of Hungarian Post, even if the Act on Post contains several general provisions on rebates to protect competition. The parallel competence of the sectoral regulator does not exclude the possibility of the GVH to initiate proceedings, as it was shown by this case as well.

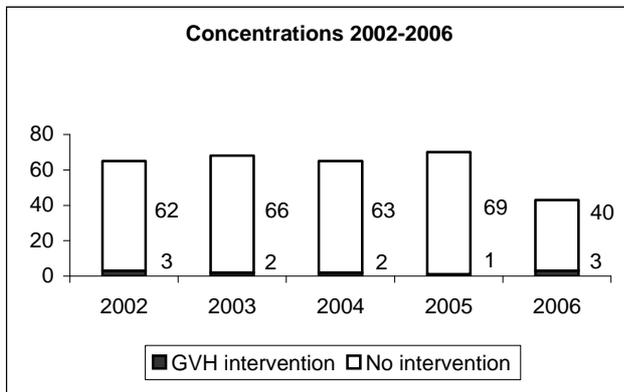
209 The Competition Council made several recommendations with regard to the rebate practice of dominant undertakings. It made a distinction between volume and fidelity rebates. The latter are not inherently illegal; in the absence of an exclusivity clause, fidelity rebates infringe competition law only if their level makes them suitable to hinder the

market entry of other companies. Volume rebates and other conditions enabling cost savings are not restricting competition, since they represent only the allowing of a share to consumers of the cost savings resulting from economies of scale. However, rebates connecting markets can give reasons for investigations. Although, due to the short period of application and the lack of effects, the Competition Council did not find it necessary to reach a final conclusion with regard to this behaviour of Magyar Posta. For the future, however, it decided “to keep an eye” on the rebate system.

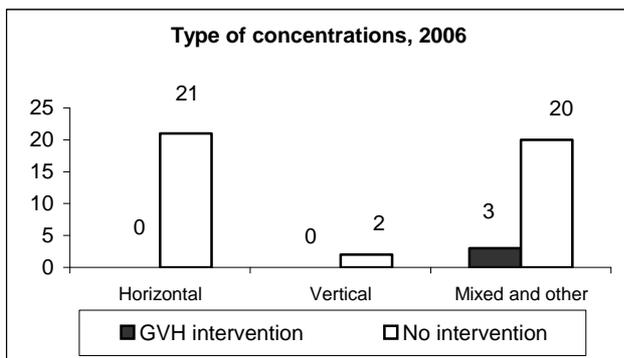
2.2.4. Mergers and acquisitions

210 Article 24 of the Competition Act contains the thresholds, which determine the size of concentrations to be notified to the GVH. Since May 2004, concentrations, which exceed the Hungarian thresholds and have at the same time a Community dimension, need only the authorisation of the European Commission pursuant to Regulation (EC) No 139/2004. In 2006, there were no concentrations with a Community dimension, which would have had a significant effect on the Hungarian market. In addition, the Commission and the national competition authorities can refer cases to each other; however, no referrals with a Hungarian involvement were carried out in 2006.

211 In 2006, the Competition Council adopted 43 decisions in cases of concentrations. This figure is significantly lower than of its predecessors in earlier years, which can be attributed to the 2005 amendment of the Competition Act that increased substantially the notification thresholds. The aim of the modification was to decrease the administrative burden of undertakings by raising the threshold from HUF 10 billion (approx. Euro 40 million) to HUF 15 billion (approx. Euro 60 million). The original figures were determined in 1990 with the adoption of the first competition law and remained unchanged till 2005.



212 In three cases the GVH authorised the concentrations with obligations prescribed for the notifying parties. Out of the 43 cases, 41 were initiated upon the application of notifying parties, while in two cases the GVH investigated the concentrations ex officio due to alleged failure of the parties to notify. For missing the deadline of required application for authorisation, the GVH imposed a fine of HUF 42.5 million on the undertakings concerned.



213 In 2006, the Competition Council made several important decisions with relevance to the enforcement practice. In case Vj-196/2005, the Competition Council declared that the market share of undertakings under the joint control of the groups of undertakings concerned must be equally divided between the controlling groups of undertakings. Nevertheless this method has only relevance when it is decided whether a concentration should be examined in a simplified or a normal procedure.

214 A group of undertakings can also be a single undertaking directly concerned, if indirect participants are not connected to it (Vj-210/2005). According to another case (Vj-24/2006), undertakings that jointly control the undertaking

acquiring direct control as a result of the concentration are direct participants of the concentration.

215 The case **Tate & Lyle Holland B.V./Eastern Sugar B.V.** (Vj-196/2005) raised several issues relating to the concept of the acquisition of actual control. The fact that the members nominated by an undertaking in the board of directors of another undertaking are in majority provides the possibility of decisive control over the decisions of that company. On the other hand, a situation like this can occur at any time (e.g. due to the resignation of a member), therefore the existence of an actual control within the meaning of the Competition Act can only be established if this situation is likely to remain permanent. Actual acquisition of control justifies a modified approach also concerning the deadlines for the application for an authorisation or with regard to the calculation of turnover. Article 28(2) of the Competition Act that prescribes a 30-day period within which the application for authorisation must be submitted is not applicable in the case of acquisition of actual control if there is no unambiguous date or event, which would trigger this notification obligation.

216 In order to check the fulfilment of conditions or obligations provided for by a decision the investigator holds a post-investigation. The Competition Act's provisions relating to post-investigation do not exclude more than one post-investigation to be held in the same case. On the contrary this could be expressly needed in the case of conditions prescribed for a longer period to enable a continuous control (Vj-210/2005).

217 In 2006, there were three merger cases where the GVH made an intervention. Concerning the acquisition of **Dataplex Kft.** by **Magyar Telekom Nyrt.** (Vj-210/2005) on the market of collocation services, i.e. Infocommunications infrastructure outsourcing services, the Competition Council found that conditions would be needed, since collocation and telecommunications services are acquired together and both undertakings are market leaders on their respective markets. From a competition law point of view the concentration raised concerns with regard to conglomerate effects, since telecom providers other than the acquirer could be excluded from the collocation centres, moreover through the

collocation services Magyar Telekom can get clients that use other telecom operators for their telecommunications services. Magyar Telekom thereby could have reinforced its position on the business telecommunications market. Therefore, the GVH imposed the following conditions on it. Magyar Telekom has to ensure that a choice of telecommunication operators is available in the future too, the collocation centre is open to alternative telecommunication providers as well and the fees and technical and administrative conditions are determined on a non-discriminatory basis also for providers other than Magyar Telekom. Finally Magyar Telekom may not connect to each other, on an exclusive basis, the telecommunications and collocation services; it had to provide them separately too.

218 Another concentration that ended with conditions in 2006, was the acquisition of control over **Sport1 TV Műsorszolgáltató Zrt.** by **Chellomedia Programming B.V.** (Vj-61/2006), a member of the Liberty Global group. This group also controls in Hungary the cable TV operator UPC and the telecom operator Monortel. The investigation revealed that the Sport1 channel is a popular one as far as sport media contents in Hungarian are concerned. Without Sport1, content distributors cannot provide competitive and attractive programme packages. By the acquisition of control, the new vertically integrated entity might be interested in refusing access to the dominant sport content for competing content distributors. On the other hand, the vertically integrated new entity must be fundamentally interested in increasing viewer numbers, consequently in a wider distribution. Therefore the negative effects described above would probably occur only when Liberty's networks overlap with those of competing infrastructures and especially in the case of new entrants. According to the standpoint of the Competition Council the vertical effects mentioned above raise competition concerns in relation to the IPTV technology (Internet Protocol Television, television through fixed-line telephone network, see also paragraph 8 of this annual report). Therefore it imposed conditions on the parties that would hinder the new entity from refusing to sell the Sport1 channel to other platform providers, if they are prepared to pay the not discriminatory fee for the content.

219 The Competition Council authorised with conditions the creation of **MédiaLOG Fiege Zrt.**, a joint venture of **Ringier Kiadó Kft.**, **Népszabadság Kiadó és Nyomdaipari Zrt.**, **Sanoma Budapest Kiadói Zrt.** (publishers) and **F-Log AG** to distribute newspapers (Vj-116/2006). Accordingly, the applicants that have joint control over the new entity, must ensure the same non discriminatory conditions for all parties that are interested in the distribution of their products through MédiaLOG Fiege, furthermore the business secrets which will get known to the company during these business relations may not be made accessible to any other undertakings.

220 The conditions were necessary because under the future business policy of Magyar Posta (Hungarian Post) it could not be ruled out that latter will exit the market of daily newspaper distribution and it will be foreclosed from magazine distribution following the creation of MédiaLOG Fiege. This would practically mean that the new entity will take over the whole distribution activity of the post. Consequently the so far neutral distributor Magyar Posta, which is not interested in newspaper publishing, would be replaced by MédiaLOG Fiege, a subsidiary of the publishers of the Ringier and Sanoma group. In this way the publishers would have an opportunity to discriminate against their competitors and to get access to those competitors vital business data.

2.3. SECTORAL INQUIRY

221 Chapter VIII of the Competition Act empowers the President of the GVH to initiate inquiries into sectors of the economy where price movements or other market circumstances suggest that competition is being distorted or restricted on a market belonging to the sector in question. Based on the information gathered, the GVH prepares and publishes reports on the results of the sectoral inquiries.

222 The inquiry of the electric energy sector started in 2004 and was finished at the beginning of 2006. The main statements of the report were known at the end of 2005 and were presented in the annual report relating to that year.

Recommendations were also submitted to Parliament.

223 Based on the results of the inquiry the GVH initiated 6 proceedings against electricity suppliers in 2006.²¹ It was suspected, that these companies jointly shaped their activity and entered into agreements with eligible consumers in favour of their own respective energy traders. It may qualify as an infringement if the supplier subjects the exit of eligible consumers from the public utility segment to conditions, which bounds them to the trader belonging to the same group as the supplier, or if special advantages are provided to certain eligible consumers in order to keep them within the public utility segment. The investigation found evidence of the fact that before the opening up of the market by 2003, suppliers offered preferential contracts to certain consumers lasting well after market opening, on condition that they would, in exchange, prefer their offers after the expiry of the contracts. The widespread application of these preferential, loyalty-inducing agreements could form an obstacle for new entrants. The proceedings were not closed in 2006 and therefore they will be presented in the next annual report.

224 The inquiry into the electric energy sector also formed the basis of competition advocacy initiatives. Furthermore, it contributed to the initiation of an investigation of the Commission relating to the agreements concluded between the network operator MVM and the electricity generators. The Commission suspects that these agreements were against EC 81 and 82.

2.4 PROCEEDINGS UNDER THE ACT ON TRADE

225 The Act on Trade, which entered into force on 1 July 2006 has broadened the range of powers of the GVH in two respects. First, it prohibits abusive behaviour of retailers having significant market power in face of their suppliers. It has become the task of the GVH to examine such behaviours.

Second, it prescribes these retailers the adoption and application of a code of ethics and the submission of it to the GVH.

226 During the first half of the year the GVH made preparatory steps for the application of the Act, preparing a form for complaints about infringements, identifying undertakings qualified by the Act as undertakings having significant market power, and clarifying the procedural background for the application of the Act.

227 The **Hungarian Trade Association** submitted the Code of Ethics prescribed by law for approval to the GVH on 9 November 2006. Besides other companies the Code was subscribed by the following retailers with significant market power: Auchan, Cora, Csemege-Match, Metro, Plus, Penny Market, Profi, Reál Hungária, SPAR and Tesco-Global.

228 The GVH established that the rules contained by the Code were in line with the provisions of the Act on Trade and approved the Code for the period lasting until the end of 2007, but expressly reserved the right for an intervention as it considered that the rules could properly be evaluated only in the light of the practice that would evolve based on them.

229 The subscribing undertakings were therefore requested to report on their experience and their views which they would develop in the light of that experience on the applicability and appropriateness of the Code by November 2007 with regard to a possible review of it.

230 Suppliers and representative bodies were also asked to present their views on the applicability of rules on retailers with significant market power.

231 One proceeding was initiated for the abuse of significant market power. It was commenced in July 2006 and it related to the shelf-service system applied by Tesco-Global since springtime 2005. The proceeding was not finished in 2006.

232 The GVH received no complaints on the infringement of the Act on Trade in 2006.

²¹ Cases Vj-104/2006, Vj-105/2006, Vj-106/2006, Vj-107/2006, Vj-108/2006 and Vj-109/2006

2.5 PROCEEDINGS INITIATED UNDER THE ACT ON PRICE SETTING

233 According to the Act on Price Setting²² infringements of officially set prices are investigated and established by the body that determined the price in question. The said body prohibits the application of the illegal price and takes appropriate redressing measures in respect of the customer damaged by the application of that price. Afterwards the body forwards its decision to the GVH for the imposition of a fine calculated according to the rules laid down by the Competition Act.

234 In 2006 it happened for the second time during its 16-year existence that the GVH initiated such a proceeding to impose a fine. The municipality of Balmazújváros forwarded its decision establishing that the **water supplier of Hajdú-Bihar county** increased its prices above the officially established level (case Vj-62/2006).

235 The GVH emphasised that it was not empowered to review the legality of the decision or to assess whether the official price itself was possibly incorrectly established. It may however take into account such a circumstance at the determination of the level of the fine.

236 The GVH found that the municipality based its decision on its regulation adopted in 1997, setting official prices. However in the following 8 years it accepted without any formal reaction the price rises of the water supplier and paid for the suppliers' services according to the higher prices. The water supplier determined its prices annually and they were accepted by the supplier's general assembly consisting of the representatives of the municipalities concerned including those of the municipality of Balmazújváros. The GVH considered that as the municipality neither set the official price in new regulations, nor declared the illegality of the prices determined by the water supplier, the water supplier was right to consider that according to the municipality itself that body had no right to set official prices.

237 The GVH considered it impossible to provide profitable services in 2006 on a price level established in 1997, and found that the supplier reached only a minimum level of profit on its activity anyway. It was therefore decided, that there was no need to impose any fine in addition to the restitution ordered by the municipality.

238 The case was generated by the regulation on property issues of the public utility. A municipality is entitled to establish official prices only if the given service is provided by a publicly owned public utility. In the present case the water supplier relied on the fact, that the municipality apportioned the utility into the utility company in 1997 and therefore lost its right to set official prices. In theory the Act might confirm this argument but the case is still pending before court.

2.6. COURTS

239 Before 1 November 2005 the GVH terminated its proceeding if it established that a behaviour was not illegal or could not be proved to have been performed. Under the present rules these two outcomes are separated. While the lack of illegality is established in a formal decision, a review of which may be requested by the parties or any person whose rights or obligations are affected by the decision (complainant, competitor), in case of the lack of sufficient proves or that of public interest, the proceeding is closed by an injunction. Only the entities may appeal against the injunction, concerning which the injunction contains express provisions.

240 As in previous years, around half of the ultimate decisions were appealed in 2006.

241 More than two thirds of the 369 decisions adopted under the Competition Act in force were definitely ruled on by the court. In 18 cases the grounds of the decisions were changed, while in 15 cases the amount of the fine was lowered to a certain extent.

242 A judgement adopted in 2006 relating to the **cinema cartel** (case Vj-70/2002) upheld the decision of the GVH establishing an infringement. Another important event, that at first instance two construction cartels (the **highway construction**

²² Act LXXXVII of 1990 on Price Setting

case Vj-27/2003 and the **reconstruction of Bartók Béla avenue** case Vj-138/2002) were assessed by court. It was upheld that undertakings that were parties to a restrictive agreement were in principle aware of the illegal nature of their behaviour and they tried to hide, to the extent possible, traces of such illegal cooperation. A third issue worth mentioning is a cartel relating to the **reconstruction of the headquarters of the Public Pension Fund**. In this case the court upheld the view of the GVH that under certain circumstances in a public procurement procedure the relevant market could be the given project, and therefore only undertakings participating in the tender could be considered to be competitors.

2.7. COLLECION OF FINES

243 In 2006 the GVH imposed fines in 65 cases. The whole amount was about HUF 12 billion most of which was imposed in cartel cases. However until the end of the year only HUF 2,7 billion was executable. Almost the whole of the executable fine was paid.

244 The sum of the fines ever imposed by the GVH is HUF 27,4 billion. The amount of fines executable annually has significantly increased, as courts were quicker in adopting (mainly refusing) decisions on requests for the suspension of fines till the end of the judicial procedure.

III. COMPETITION ADVOCACY

245 The most important form of competition advocacy is the opining on draft legislation, but other forms and means also exist. In certain cases the GVH can act on its own motion rather than only to react to other entities activity.

3.1 COMMENTING ON DRAFT PIECES OF LEGISLATION

246 According to the Competition Act all draft legislation affecting the scope of duties of the GVH

are required to be consulted with the President of the GVH.

247 In 2006 more than 400 drafts were forwarded to the GVH. The GVG considered necessary to elaborate its opinion relating to a quarter of those drafts.

248 The GVH supported the draft of the Government on the new directions and tasks of its European policy strategy constituting a step towards the liberalisation of internal market economy. In order to ensure effective functioning of the internal market it emphasised the importance of the promotion of competition policy.

249 The GVH opined on a study of the Ministry of Environment, which initiated the preparation of a new Act on water supply. The GVH emphasised that the use of water, with the water being a scarcely available and not substitutable material, should be sustainable. The regulation should therefore promote this approach, deciding at the same time on the possible forms of competition. The GVH supported the creation of a better-balanced regulation of the setting of prices, which would not necessarily lead to similar prices, as that might also lead to a non-sustainable use of water on the long term. The GVH conceptionally agreed with the opinion of the Ministry that a regulatory and supervisory authority, independent of the owner municipalities should be set up. The problems deriving from the combination of ownership and regulatory task are common problems in the case of all of the local utility services. A solution might be the establishment of an integrated authority.

250 The same problem appeared in the draft amendment of the regulation on prices of water supplied by state owned utilities. The draft treated the maximum price established in accordance with the Act on Price Setting if it were a fixed price. The GVH objected to this approach and the wording was amended accordingly. However, the new price structure still remained unconnected to real costs to a certain extent. As it is clear from notifications received by the GVH, it derives from the double role of the state, which is owner and regulator at the same time, that it allows state owned companies to give below-cost offers to win a concession and than, as the municipality does not agree to the subsequent increase in price, the state does not

stop the companies' loss-making functioning. It is likely that in such cases prohibited cross-subsidisation takes place between wholesale and retail activities, clearly distorting competition. The GVH indicated several times that water suppliers often granted exclusive right to third companies to provide services relating to the installation and maintenance of consumption measuring devices, while these companies introduced unjustified fees or price rises.

251 The GVH submitted a number of observations relating to draft regulations, which were based on the Act on Trade. The observations aimed at simplifying procedures relating to supervision of the retail and catering activity.

252 Concerning the regulation on fees of administrative procedures of the Hungarian Rail Office, the GVH held that such fees should be borne by all market actors, without discrimination. It considered the fee of dispute settlement procedures too high, and did not find appropriate a distinction by the complexity of the case. It was feared that the fee might constitute an obstacle for market actors in settling their disputes.

253 In connection with a draft regulation on highway fees the GVH draw the attention, concerning mobile payment methods, to certain questions to be resolved, based on its experience gained at examining mobile payment of city parking services.

254 Being determined by separate legal acts, such fees are covered by the Competition Act rather than by the Act on Price Setting. This requires the determination of a clear price setting method, which takes into account the exact content of the service, or the compensation of the costs.

255 The GVH rejected the idea appearing in the Act on Unfair Market Practices relating to the 2012 UEFA European Championship, that specific rules already laid down in the Act on Business Advertising Activity and the Competition Act should be – partly in a different manner – repeated in a separate statute. It was considered that, should the aim of the Act be to demonstrate that the rights of the UEFA would be appropriately secured, it would be better to emphasise the applicability and effectiveness of the present rules and enforcement practice. This was

particularly so, as the Act intended to introduce provisions and notions not in line with the Competition Act regulating similar unfair behaviours.

256 The GVH has welcomed that mortgage credit institutions are now allowed to provide credit above the 70% of the collaterals. The GVH proposed that the cost of the inclusion of the contract into a public document by a notary should be born by the bank rather than by the consumer, as it is a safeguard of this former's interest. However, this proposal was not accepted.

257 The rules on mobile phone number carrying have been amended partly in line with previous recommendations of the GVH. As a result the time necessary for the provision of this service has been reduced, and the minimum period prescribed by law has been abolished.

258 The GVH, with its 2002 study on retail supply of pharmaceutical products, was an initiator of the liberalisation of that market. It therefore supported the steps taken in this direction by the Government in 2006.

259 A first step in the creation of a competitive pharmaceutical market at retail level was the adoption of a ministerial decree on the distribution of pharmaceutical products. The GVH indicated in its opinion on the draft decree, that positive effects of liberalisation would only be generated if the conditions of distribution of pharmaceutical products by non-pharmacy distributors would not be more restrictive than justified. The GVH considered the obligation imposed on those distributors to have direct, internet based contact with the National Pharmaceutical Institute and visit its website twice a day as such restrictive preconditions. It also recommended that the list of drugs available at non-pharmacy distributors should be completed with the best selling non-prescription drugs.

260 Concerning the ministerial decree on subsidies for therapeutical aids, the GVH noted, that no restriction applied to the prices of the items contained by the list of subsidised aids. Consumer prices are therefore exclusively based on the prices offered by the manufacturers. Patients however are less informed about price levels and substitutability than they are in the case of normal consumer goods. Consumers' situation is worsening as a result of the

exclusive contracts concluded between manufacturers or distributors and hospitals as a consequence of which prices in hospitals are generally higher than the competitive price. A clear example for the lack of competition is the case of electronic devices where despite the significant fall in the price of parts, the price level of the final products remained on the same level.

261 The GVH recommended deregulation relating to the lifelong learning of doctors, dentists, pharmacists and clinical psychologists. Lifelong learning in these professions is in the public interest, but its stimulation should not be a duty of the state, but a requirement imposed by employers being under the pressure of competition. Moreover, the present rules do not secure competitive neutrality or the same treatment for the participants. Besides other problems, the mandatory nature of participation and the lack of competition generate increasing prices. On the other hand, hospitals and health institutions should be required to publish up-to-date information on the participation of their respective medical staffs in lifelong learning projects.

262 It happened several times that the GVH gave its opinion on the municipality regulation of taxi services. The Authority had no concerns as far as the application of separate regulations to certain market segments with high traffic, such as airports and railway stations, was concerned. It is considered legal to grant exclusive contract or special rights to supply such a market segment, supposed that the supplier was selected in a tender for a predefined period, and that passengers have the possibility to get on-and-off other taxis e.g. taxis ordered by phone. It can also be possible to apply in such situations a specific price regulation, supposed that price was an aspect in the selection of the supplier by the inviter of the tender. It was also emphasised how important it was properly to inform consumers about prices and alternative suppliers before the actual provision of the service.

263 It was also emphasised by the GVH that undertakings maintaining taxi stations should be obliged to present the tariffs maximised by the municipality, thereby informing consumers about the level above which no price may be charged. It also repeated its opinion that maximum prices should not be maintained in the case of services ordered by

phone and instead, taxi companies should put emphasis on consumer information.

3.2 ACTIVE ROLE IN COMPETITION RELATED MATTERS

264 Upon request of other institutions or on its own initiative the GVH shapes its opinion on questions affecting its activity. In this context the GVH attaches utmost importance to its recommendations it made in its previous years' annual reports to Parliament.

265 In 2006 one of the decisive elements of the GVH's electric energy related advocacy activity was the sectoral inquiry finished at the beginning of the year. The findings of the inquiry gave guiding principles for the real advocacy work made during the year. From August 2006 the market opening of the sector initiated by the Government got new impetus. The GVH was involved into this process

266 In its sectoral inquiry the GVH found that though the market opening process was beneficial, to some extent, to competition, the operational model began to block further development of it in the industry and considerable changes would be necessary to make further steps forward. Among others the GVH stressed the necessity of terminating the co-existence of the double verticum (i.e. the co-existence of the public utility market and free market) in order to allow the formation of a viable wholesale market. In connection with this latter the GVH underlined the importance of several questions, namely the issue of long term energy purchase contracts, the proper tackling of the problems arising from their competition limiting effects, the creation of regional markets and the preparation of rules regulating the use of cross-border capacities. The GVH also urged the separation of the ownership of the system operator from that of other market participants.

267 In August 2006 an inter-ministerial committee was set up to co-ordinate the opening up of the electric energy market. The Ministry of Economy and Transport invited the GVH to participate in this body. The Hungarian Energy Office has already prepared a model description

which might be a proper basis for the preparation of the legislation or at least for the initiation of professional consultations. It seems to be a very promising development that the participants of the body agreed that the solution of the problem of the long-term electric energy purchase contracts formed the key element of the market opening. Taking into consideration the work performed since the establishment of this inter-ministerial committee, the GVH has fears that the market opening will not be carried out until 1 July 2007, which is the deadline set by the European Union.

268 In addition to its membership in the committee, the GVH used other channels as well for competition advocacy in the electric energy sector. From this point of view the exchange of letters between the GVH and the Hungarian Privatisation and State Holding Company and the Ministry of Economy and Transport is worth mentioning. This correspondence aimed at preventing the owner (MVM – Magyar Villamos Művek Rt., i.e. Hungarian Power Companies Ltd.) of the national system operator (MAVIR – Magyar Villamos Rendszerirányító Rt., i.e. Hungarian Electricity System Operator Ltd.) from instructing MAVIR to pursue anticompetitive activities. (MVM tried to influence MAVIR in several ways, e.g. it imposed overly high profit requirements on MAVIR, which otherwise operated with regulated prices). The GVH feels that the concerns which it formulated when MVM acquired MAVIR were well founded and hence, the GVH's request for an ownership separation is justified.

269 During the year, by invitation of the Prime Minister, the GVH participated in a committee, which dealt with the questions of the electric energy supply, more particularly with market opening and administrative measures necessary to this market opening.

270 From both regulatory and law enforcement point of view there were several developments on the telecommunications markets in 2006.

271 Upon request of the National Radio and Television Commission (NRTC), the GVH elaborated its opinion on the regulatory framework of Internet Protocol Television (IPTV) services. The GVH expounded that it appraised the appearance of IPTV services as services fostering competition on

the electronic communications market. At the same time the GVH drew the attention of the NRTC to the circumstance that the limitation of coverage area – as it is regulated by the Act on Media – might be contrary to the provisions of the relevant Competition Directive²³ and of the Authorisation Directive²⁴. According to the latter, Member States are obliged to ensure the freedom to provide electronic communications networks and services; moreover, Member States may not prevent an undertaking from providing electronic communications networks or services. In June 2006 the NRTC informed the GVH that it would not apply the provision of the Act on Media on the limitation of coverage area in the future, in accordance with the GVH's suggestion.

272 Since this abstention of the NRTC is not a long-term solution of how to fulfil the requirements of the Union, the GVH urged the amendment of the Act on Media. In its advocacy the GVH explained that the reference to the pluralism of media did not make the limitation of coverage area acceptable in itself since the limitation is not only disproportional but it is also unnecessary. The reason of the GVH's objection is that the limitation of coverage area obviously ties the ownership of cable TVs (CTV) with the services, which might be provided through these networks; meanwhile the scope of these services is far wider than that of the simple programme distribution. As a consequence of this, the limitation of coverage area means a disproportional intervention in competition.

273 As the answer to an inquiry of the Assistant of the Ombudsman, the GVH prepared an overview of the competition aspects of extension of the rights to distribute programmes of the commercial TVs, granted by the NRTC without tendering. The GVH considered such decisions of the NRTC as measures being immanent parts of state management rather than decisions having business nature. The decisions of the NRTC aimed at mitigating the welfare losses stemming from the scarcity of frequencies and it was made after a

²³ Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services

²⁴ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services

thorough consideration of the aspects determined by the Act on Media. Consequently, the review of the NRTC's decision cannot be made on the basis of competition policy.

274 The GVH welcomed the publication of the strategic concept on the regulation of electronic communications prepared by the National Communications Authority. The GVH fully supported that the NCA put into the focus the creation of effective competition on both levels, i.e. in the electronic communications infrastructure and in retail services. At the same time the GVH stressed that in a situation in which a „dominant player” scenario would exist, the NCA would face more ex-ante challenges and tasks in the area of creating effective competition. The GVH hopes that in addition to the fulfilment of its tasks determined for the years 2006-2007, the NCA will have the time and resources needed to fulfil its regulatory function as well. Among the main tasks to tackle, the regulatory issue of interaction between the fixed-line and mobile voice markets, the development of wholesale markets in investment context and the reinforcement of competition in broadband internet services through improving the DSL (digital subscriber line) wholesale conditions are the most challenging ones.

275 7 years after its previous study, the GVH published in 2006 its analysis on „the GVH's competition policy views on the state of electronic communications market in Hungary”. The GVH believes that this paper gives an up-to-date survey about the topic at the appropriate time when the regulatory stage and the development of competition in electronic communications can be best described. By 2006, time got ripped for the GVH to assess the results of market opening on this area. In such a situation the role of the GVH depends, to a great extent, on whether the Authority is able to recognise and assess with the required flexibility and speed the rapid changes in market circumstances. In addition to competition proceedings, this may influence the pro-competitive regulation, since through its advocacy function the GVH has strong influence also on this latter. Moreover, the importance of competition advocacy in this field is more and more increasing due to the long-term tendency of the development of electronic communications markets. Through publishing this document the GVH intends to show the progress

reached on the European and domestic market of electronic communications as an appropriate example to other industries going through the liberalisation process.

276 The GVH continued its advocacy efforts also in the area of financial services. Originally this work began in 2005, by the preparation of recommendations for Parliament, as a result of an inquiry into the sector.

277 In the 2005 report to Parliament the GVH – closing the sectoral inquiry – made several suggestions to the relevant governmental and supervisory bodies having competences in the regulation of this industry. In these recommendations the GVH addressed a few issues influencing the conditions of competition and consumer protection, which could not be influenced with tools of the competition supervision. The bodies which the GVH approached – the Ministry of Finance, the Ministry of Social Affairs and Labour, the Hungarian Financial Supervisory Authority, the General Inspectorate for Consumer Protection and the Hungarian Banking Association – responded positively on the suggestions of the GVH.

278 In November 2006 the Hungarian Financial Supervisory Authority (HFSA) published recommendations on the principles of retail crediting by financial institutions – the recommendations were in line with the suggestions of the GVH. The main motivation of the publication of this document was that the credit institutions failed properly to analyse whether their clients were able to raise credits, furthermore the fact, that clients could hardly follow – due to their limited knowledge about these issues – the developments and innovations on these markets. The HFSA found frequently used market practices that, though not violating any law, were objectionable from the point of view of consumer protection, mainly because of the limited level of information which they provided to consumers. The Hungarian Banking Association also joined these recommendations.

279 Within the framework of its competition advocacy activity in individual cases, the GVH also represents the interest of competition. If the particularities of a situation show regulatory failure or a violation, which might be remedied by another administrative body, the GVH draws the attention of

the relevant ministry or public institution to this situation („signalisation”).

280 Such an action was made by the GVH when the Authority experienced a practice which became general in funeral services. As a new market expansion strategy, certain funeral service providers followed unfair practices by inspiring the conclusion of „pre-contracts” for their service. With no competence to take action against this, the GVH informed the Ministry of Local Government and Regional Development and the Ombudsman suggesting them to act in order to remedy these anomalies.

281 Based on a complaint the GVH was informed that the Ministry of Justice and Law Enforcement requested firms, through a communication on its website, exclusively to use a particular electronic program when applying for electronic administration and, at the same time, it made the use of this software free. With this step the use of competing software programs was endangered. In its advocacy letter the GVH asked for explanation. The Ministry explained that the clause on exclusivity was a misunderstandable wording about the use of the program and this clause was then deleted from the website.

282 According to Article 85 of the Competition Act the GVH requests, where it finds that any public administrative decision violates the freedom of competition, the public administrative institution to amend or revoke that decision. This provision was not used in 2006.

IV. COMPETITION CULTURE

4.1 THE DEVELOPMENT OF COMPETITION CULTURE

283 It is the responsibility of the GVH to safeguard, as an authority representing the public interest, freedom and fairness of market competition enforcing economic efficiency. The GVH not only ensures, through its competition supervisory activity, compliance with the Hungarian and Community competition rules, but it also performs competition advocacy and promotes the development of competition culture, which latter activities are equally important parts of its mandate. With the

establishment in July 2005 of the Competition Culture Centre, its activity relating to the development of competition culture had been institutionalised.

4.1.1 What does the term „development of competition culture” mean?

284 The concept of competition culture comprises public awareness of competition, competition policy and competition law, public attitudes to competition and, furthermore, competition related legal and economic activities of public interest.

285 **Public awareness of competition, competition policy and competition law** includes not only the knowledge of the basic competition related concepts and the recognition of the beneficial impacts of competition (e.g., that it generally results in lower prices, better quality and bigger choice rather than higher prices, lower quality and more limited choice), but also awareness and understanding of the functions of competition regulation and the competition authority (e.g., that competition authorities are established to protect competition instead of protecting domestic companies from the “excessive competition” generated by foreign companies).

286 **Public attitudes to competition** reflect the extent to which the society and its particular groups (companies, public administration employees, political decision-makers, the population and the media) accept competition as a fundamental institution of the market economy, and the extent to which they attach positive associations and expectations to this institution. Naturally, this is in connection with the basic knowledge persons have about competition because if this knowledge is erroneous, the concept of competition may also be distorted (e.g., the belief that competition leads to a reduction of competitiveness and a loss of jobs), which may even lead to a rejection of competition.

287 **Competition policy related scientific activities** are connected to researchers and tutors, university departments and subjects, research programmes, institutions, periodicals and articles in them, books and technical events etc. focusing on the issues of competition policy, both in terms of law

and economics. By keeping competition policy issues on the agenda, science contributes to a creative approach to various problems and the applicable responses, and it also improves the general level of the understanding of competition policy issues.

288 Competition culture in a broader sense means **“the culture of competing”**. Using an analogy, this indicates a kind of sportsmanlike conduct on the market but, as competition policy focuses on long-term consumer welfare, the “culture of competing” by no means suggests inclination towards “friendly”, less intensive competition (in which the interests of participants are not infringed), but in fact it means stiff, sometimes aggressive competition respecting the competition rules though, averse to any collusion with the other competitors. Any other understanding of “fair” competition in fact indicates lack of competition culture and may clearly lead to competition restriction (e.g., in the case of certain professional organisations which tend to encourage, and often even oblige, their members to refrain from competition by introducing ethical rules, and referring to the interests of “fair” competition).

289 Since November 2005, the **Competition Act**²⁵ has also expressly defined the responsibility of the Authority and its President in the development of competition culture, outlining also the content of this responsibility. Within the framework of development of competition culture, the Act defines the **dissemination of competition policy information** to increase the acceptance of competition within the society (including information about advantages arising from competition and for the purpose of promoting compliance with law and development of a competition-friendly regulatory environment), as well as the **contribution to the development of competition related economic and legal activities of public interest** as the main tasks of the GVH. At the same time, the amendment of the Competition Act has also created a financial basis for the increased participation of the GVH in the dissemination of competition culture, as a result of which the efforts of the Authority in this area can now reach a wider target audience and, in addition

to the activities of the GVH in this field, it can also support other organisations participating in the development and dissemination of competition culture. In contrast with the other two core responsibilities of the Authority, i.e., competition supervision proceedings and competition advocacy, in which the GVH has a leading or even exclusive role, the role of the GVH, similarly to any other competition authorities, is significantly more limited in the development of competition culture. The development and maintenance of an advanced competition culture depends on numerous individuals and organisations from participants in science and education, through the civilian sector and economic stakeholders all the way to political decision-makers and of course it cannot be achieved without the involvement of the GVH. The degree and nature of this involvement will necessarily decrease as competition culture is developing and the number and role of the organisations involved in the dissemination of competition culture are increasing, but at the current level of competition culture development, the involvement of the GVH is still crucial.

4.1.2 How can the GVH contribute to the development of competition culture?

290 Using all instruments within its competence, the GVH has always tried to have a fair share in the actions related to the development of competition culture. As its main activity of this kind, the Authority has provided and **provides general information and performs PR activities**, including information on the benefits of competition, the nature and provisions of the competition law as well as the description of the general activities and responsibilities or particular decisions of the Authority and their results in the form of various brochures, leaflets and other publications, press releases and press conferences as well by means of its enquiries. Participation of the members of staff of the GVH and their presentations delivered in various professional events also form part of the same category. Another aspect of the same activity is that the **decisions of the GVH and its major competition advocacy documents are available for the general public**. Similarly, the Authority tries to summarise its general experiences and approach related to its law enforcement practice in the form of

²⁵ Article 36 (1) point f) of Act LVII of 1996 on the prohibition of unfair and restrictive market practices, inserted by Act LXVIII of 2005 effective from 1 November 2005.

public **communications**, and that the Competition Council of the GVH also publishes its conclusions relating to principles crystallised in its legal practices in the form of **position statements**. As the Authority tries to involve participants of the technical public life dealing with competition policy into its activities as much as possible, it does not only inspire **scientific research**, but also generates a demand for it. On the other hand, we must also see that it is also in the interest of the GVH to improve the condition of competition culture, because it facilitates competition, the enforcement of the competition policy and competition law, as well as the activities of the Authority (i.e., it also has an impact on the competition supervision and competition advocacy activities of the Authority).

291 The activities of the GVH focusing on the development of competition culture have become increasingly determined and target oriented in the course of the last five years. This was also supported by a **series of surveys** commissioned by the GVH and conducted by TÁRKI Social Research Inc. in a 3-year period starting in 2002. The purpose of the surveys was to prepare an empirically founded overview of competition culture in Hungary for the GVH, which would enable the Authority to take the result into account in its activities and various decisions and to determine the actions needed for the development of competition culture. The research focused primarily on the awareness of and opinion about the competition rules and the GVH, as well as the assessment of the accuracy and depth of the knowledge of competition law. The surveys repeated annually among the population, companies, lawyers (advocates, in-house counsels, public administration lawyers), as well as economic journalists clearly indicated that many actions were still required in the area of developing competition culture, in which process the GVH would have to play the role of a catalyst as a “knowledge centre” of competition law and competition policy. In order regularly to monitor the condition of competition culture and development trends as well as identify current problems, the Authority would like to continue these surveys in the future as well, using them as a yardstick against which to measure its related activities, without forgetting though that any perceptible change will occur and can be detected in the survey only on a longer term.

4.2 ORGANISATION AND FUNCTIONING OF THE COMPETITION CULTURE CENTRE

292 Made it necessary by the amendment of the Competition Act in 2005, the President of the Authority established a **separate organisational unit** in that year, for the purpose of the in-house coordination and performance of the tasks, which the GVH had concerning the development of competition culture. This unit is the **Competition Culture Centre (CCC, Centre)**, which is headed by the General Secretary of the GVH.

293 The CCC has its **own budget within the Authority**, the disbursements of which are earmarked in accordance with the statutory objectives of the Centre’s operation. The financial and economic tasks, which are in connection with that operation, are performed by the Budget Section of the GVH.

294 The tasks of the CCC are defined in its **annual work plan**. Apart from the activities focusing on the development of competition culture with the technical support of the GVH, the work plan also contains programmes in the implementation of which the GVH relies on the contribution of other organisations to which it provides financial and, as circumstances may require, also technical support from its available budget. Besides the experiences collected by the GVH in its competition supervision and competition advocacy work, the tasks deemed necessary are defined with the help of the surveys on the condition of competition culture, indicated above. Consequently, in addition to the tasks to be performed by the CCC on behalf of the Authority, the programmes through which the CCC intends to focus, complementing its own role, on the involvement of a large number of external organisations in the development of competition culture, promoting in this way social interpenetration of the commitment to the developing of competition culture in the society and strengthening the foundations of the development of competition culture outside the competition authority, are equally important in achieving the set targets.

295 It is the General Secretary of the GVH who compiles the annual work plan of the CCC, which is

adjusted to the objectives of the Authority set for the given year. The work plan is approved by the President of the Authority. The tasks contained in it are performed by the investigators of the CCC (who were two by number in 2006) and by other staff members of the Authority charged with those tasks, on a case-by-case basis, by the General Secretary. Should professional or other reasons require this, also external experts may be involved.

296 The CCC opened a public discussion about its draft **work plan for 2006/2007** in May 2006, enabling the professional public to extend by its ideas and suggestions the range of the tasks defined by the Authority. The work plan was finalised taking into account the received proposals and remarks and was published at the end of September outlining the tasks for sixteen months (September 2006 – December 2007) and the actions related to the performance of those tasks, as well as the general operational principles of the Centre.

297 The work plan intends to reach, through its specific activities, a **large target audience**, including

- Students and tutors, dealing with/interested in competition law or competition related economic analysis, of higher educational institutions,
- Teachers and students in primary and secondary education,
- Theoretical experts and researchers,
- Small and medium-sized undertakings having any contact with the proceedings and the competition supervision activities of the Authority,
- NGOs playing important roles in the development of consumer culture and the information supply to consumers, as well as
- Public administration officials and decision-makers engaged in one way or another in competition related issues during their work, including members of Parliament and their consultants.

298 The **main operational principles** of the CCC focus on regulated and transparent operation, of which the power of publicity is an important guarantee. The CCC can achieve transparency by

making available to the public, on the homepage, its work plan, the major data and use of any support paid from the its budget (name of the supported organisation, programme, support amount and, subsequently, a technical report), as well as the annual report about its activities.

299 To enable control of the use of its available financial resources, the CCC has developed a **competition system** within the framework of which applicants with appropriate references may receive support for their projects that have a good professional basis and a reasonable budget. The CCC can grant support, based on the principles defined in its work plan, only by means of tendering. In 2006, it issued invitations to tender in relation to four points of its work plan. It did not prevented applicants to submit more than one application, but always took into account this fact at the assessment of the applications in order to avoid the concentrating of the supports granted at some of the applicants.

300 It was one of the initial principles of the CCC that the CCC would provide support to applicants (tenderers) as a co-financier, therefore applicants had to provide a certain amount of own funds in order to get the support. However, on the basis of the experiences gained in the first months, the CCC modified the invitations for tendering as of 1 January 2007. Tenders submitted after that date which satisfied the objectives announced might receive even full support (up to 100% of the cost budget) should need for such a support have arisen. However, the modifications have not changed the maximum "per-application" amount available. The intention behind them was to prevent difficulties in raising own funds from imposing any barrier on the submission of tenders and yet not to encourage applicants to request support in a higher amount than it was justified. The invitations allowed for the applicants to cover their own funding from a support which they received from any subsystem of the state budget, provided the supports demanded would not generate profits to the applicants. At the assessment, tenders relating to projects not supported yet from any other, state or municipality budgetary, source are preferred.

301 The CCC indicated the time covered by its work plan, i. e. lasting until the end of 2007, as the

implementation period for the tender projects. It did not exclude, however, that supports would also be granted to ongoing programmes, or to programmes which would only be finished after the end date of the implementation period or the implementation of which would take several years.

302 The CCC enters into a support contract with the winners of the tendering based on the decision of an evaluation committee. This contract defines in detail the terms and conditions of the use of support, the time schedule of implementation and financing, as well as the controlling and settlement procedures. The non-repayable support is disbursed in the form of post-financing but, if it is requested, it can also be made available in instalments, following the approval of the technical and financial report.

303 In 2006 about 30 tenders were submitted to the CCC. Only one of them was assessed until the end of that year. Hence, only one support-decision was made within the period under review.

304 The activity of the CCC is described below in a breakdown, which is in compliance with the listing of the tasks contained in the work plan. It should be realised, however, that in 2006 the main tasks related to the laying of the foundations (i. e. the preparation of the work plan, the creation of the tendering system and the announcement of the tendering). Most of the results of those efforts were achieved, however, later than the end of the year under review and, as a consequence of this fact, they will only be described in the CCC's 2007 activity report.

4.3 RESULTS ACHIEVED BY THE COMPETITION CULTURE DEVELOPING AND DISSEMINATING ACTIVITY IN 2006 OF THE COMPETITION CULTURE CENTRE

4.3.1 Translation into Hungarian and publication of a foreign specialist book

305 It is one of the main objectives of the CCC to make some of the internationally well-known specialist books dealing with competition law, competition policy or market theory also in Hungarian available to groups of readers targeted by the CCC. As the criterion No 1 the CCC expected the professional books selected as candidates to be published in Hungarian language to give a

comprehensive overview, from both legal and economic aspects, of timely issues of competition law and policy and to cover all the important cases, which laid the foundations of the international law enforcement practice. As a further criterion, the publication considered useful to the target groups, which the CCC intended to reach was required to be both internationally recognized and internationally read by similar groups of users.

306 The CCC's first choice in 2006 was **Massimo Motta's "Competition Policy – Theory and Practice"**. The Hungarian version is likely to be published in the summer of 2007. The CCC got a licence, for the translation of the timely edition of the book and the publication and distribution of its Hungarian version, covering seven years and 500 copies sold (to be extended by mutual agreement of the parties) from the rightholder, the Cambridge University Press.

307 The CCC intends to forward the Hungarian edition to libraries and to judges, university teachers and other persons dealing with competition law in their practice. The CCC envisages making a book of this kind translated each year in the future.

4.3.2 Compilation of educational publications

308 The GVH publishes well understandable, illustrative materials prepared by its staff members. These materials disseminate knowledge to a wide range of readers about competition and competition related fundamental notions in general, furthermore, about the application of competition law in certain industries and on certain markets in particular. They are regularly published, depending on their volume in form of booklets or short leaflets; their content can also be found on the homepage.

309 First, the consolidated text of the **Competition Act**, as it was in force, came out not only in Hungarian but also in English. A column of catchwords on the left side of each page facilitates rapid looking over of and search in the text. The publication of the Russian version of the Act is in preparation.

310 Subsequently, an informative publication about the **organisation of the GVH** (legal status, responsibilities, organisational structure, division of

work between the particular units) **and its activity**, mainly about the background of the Authority's operation and law enforcement tasks (substantive and procedural rules in its competence, ways and conditions of making complaints and informal complaints) came out.

311 As a part of its fight against cartels, which is one of the most important activities of the GVH, the CCC updated the Authority's informative publication about **bid rigging in public procurement procedures and its suspicious signs**. The booklet may assist mainly public administration officials whose work includes procurement, in recognising, from certain, most common and typical, signs concertation between bidders and notifying it to the GVH facilitating in this way the disclosure of cartels which restrict competition.

312 The subject of another booklet titled **"Investigatory powers which the Hungarian Competition Authority may use in connection with its inspections carried out during its competition supervision proceedings or during proceedings of the European Commission conducted against alleged infringements of Article 81 or 82 of the EC Treaty"** is in connection with that of the latter one. This publication describes the investigatory powers which the investigators of the GVH may use during their "dawn raids" as the rights granted to and the obligations imposed on, in connection with an on-spot inspection without a preliminary notice, the competition authority and the undertakings against which a proceeding has been initiated, are very often not satisfactorily known to the undertakings and even to their legal representatives.

313 In addition to the materials which were published, the CCC began still in 2006 to prepare the edition of further leaflets about case-types (misleading of consumers, abuse of a dominant position, restrictive agreements, merger control), the possibilities and legal bases of private enforcement and other issues relating to which the GVH found it important and necessary to publicize its opinion (as experiences drawn from consumer fraud cases the subject of which were residential lending, consumer groups, life annuity programmes, food products, products having curative effects, medicines or novelties of the telecommunications market). Further

leaflets of this kind will deal with Community competition rules e.g. by summarising the legal practice in connection with the application of the "effect on trade between Member States" concept or by providing information about recent developments in Community law enforcement. These publications are likely to come out in 2007.

4.3.3 Organisation of professional events and providing, based on tendering, supports to the organisation of such events by other entities and to the participation in such events organised by other entities

314 The CCC itself organises professional events as fora for discussion about timely issues of competition law or competition policy and it promotes the realization of events, presentations, conferences, professional fora, seminars, training programmes, etc. organised by other entities, both professionally (by ensuring the participation of its staff members as lecturers) and financially (through tendering). Moreover, tender procedure CCC/3/2006 offered possibility for researchers dealing with issues of competition law, competition policy and market theory to participate, as lecturers or hearers, in professional events organised in Hungary or abroad by the GVH (CCC) or other institutions or to carry out study tours in connection with the said research fields.

315 In response to this invitation to tender, one tender was submitted in 2006, the assessment of which would be finished in 2007.

4.3.4 Invitations to tender to support competition law, competition policy and market theory related research work

316 By supporting the research work of this kind, the CCC intends to make a contribution to the **widening and improvement of theoretical and empirical knowledge in Hungary about competition law, competition policy and market theory**; the CCC does not wish to finance in this way research work or expert activities which are in direct connection with the law enforcement activity of the GVH (including e. g. ongoing competition supervision proceedings or proceedings in preparation or other GVH procedures such as inquiries into sectors).

317 For the years 2006 and 2007, i. e. the period covered by the work plan, the CCC invited tenders (tender procedure CCC/4/2006) concerning both the economic and legal aspects of the following subjects:

- Price differentials between markets of Hungary and other EU Member States;
- Switch-over costs and service provider change;
- Competition and competitiveness in Hungary;
- Law enforcement questions arising in connection with the implementation of the UPC-Directive;
- The possibility to sue for damages in cases in which the GVH established an infringement of the law;
- Excessive prices – treatment by and methodological approach of the European competition authorities;
- Verbal and statistical methods of market definition in the practice of foreign competition authorities;
- Principles of economics in the fining practice of foreign competition authorities;
- The competition law and the collective management of rights;
- European competition authorities and courts assessing public procurement cartels;
- Pharmacy liberalisation and the retail market of medicines – analysis and comparison with other European countries' experiences;
- Competition in Hungary on current account market and on the market of current account connected services, with a special regard to entry barriers and switch-over costs;
- Transparency-actions of Member States' competition authorities against unfair (general and individual) contractual terms and conditions.

318 In response to this invitation to tender, five tenders were submitted in 2006, the assessment of which would be finished in 2007.

4.3.5 Open tender procedure for other supports

319 In the framework of the open tender procedure CCC/5/2006, tenders relating to **any other research project about competition law or competition policy or market theory** which the applicant thought was useful for the development of competition culture, could be submitted. Applicants were required to give a detailed description of the envisaged research and the ways in which the results of the research work were expected to contribute to the development of home competition culture.

320 This invitation to tender allows the CCC to grant support to scientific and educational projects (in particular to projects relating to scientific research and to programmes and publications of the primary, secondary and university education) of other organisations involved in the development of competition culture, which could not be supported in any other form within the tendering system of the CCC.

321 These supports are in the same way not intended by the CCC to finance research work or expert activities, which are in direct connection with the law enforcement activity of the GVH (including e. g. ongoing competition supervision proceedings or proceedings in preparation or other GVH procedures such as inquiries into sectors).

322 In response to this invitation to tender, 10 tenders were submitted in 2006. One of them was assessed in that year while the assessment of the others would only be finished in 2007. Based on the tender assessed, the CCC provided, in autumn of 2006, a HUF 500 thousand (about EUR 2000) support to the Faculty of Law and Political Sciences of Pázmány Péter Catholic University for the publication of new lecture notes about competition law.

4.3.6 Appearance in the mass media

323 As experience shows there is frequent need to give a to some extent detailed analysis (or one understandable not only for professional audience) or presentation of, or even hold a **discussion about the motivations of the GVH** against the background of which the Authority adopts its

decisions, makes statements in the framework of its sectoral inquiries or gives its opinion on pieces of draft legislation. In order to satisfy this need, the GVH/CCC strengthened the informative activity, which it performed via the press and an inherent part of which was the **training of, and the supply of targeted information to, press contributors, including in particular specialised journalists.**

4.3.7 Announcement of a tender procedure to support the consumer protection related work of civil organisations; cooperation with other organisations involved in the dissemination and development of competition culture

324 It was one of the aims and objectives set by the work plan of the CCC to provide supports to civil organisations, which promoted, through their respective professional activities, the **development of both competition culture and consumer culture** in Hungary including the increase in the public awareness of consumer protection and competition rules, the representation and enforcement of the interests of consumers and efficiencies in the implementation of competition policy and consumer protection policy.

325 In tender procedure CCC/7/2006 the range of possible applicants covered social organisations performing nationwide activities in consumer protection and training/education, which had been active, at the date when they submitted their respective tenders, for at least two years. Moreover, the CCC underlined and consequently enforced, in the course of the assessment of the tenders, the principle according to which tender projects were required to be in connection with competition law and policy (i. e. with competition law related consumer protection), too, to be eligible to get support. Though consumers protecting civil organisations targeted by this tendering were engaged mainly in “classical” consumer protection, they had nevertheless to face this limitation that originated from statutory constraints burdening the CCC.

326 In response to this invitation to tender, 10 tenders were submitted in 2006, the assessment of which would be finished in 2007.

4.3.8 Development of the competition law, competition policy and market theory related book stock of libraries

327 By contacting Hungarian **higher educational institutions** providing education/training in competition law, competition policy and market theory (15 universities and colleges) and supporting their purchases of academic and professional books and periodicals in Hungarian and foreign languages, the CCC has made a valuable contribution to the extension of their specialist libraries. They could make their choice, up to a framework amount of HUF 1 million each, from a list of the relevant publications compiled and sent to them by the CCC. Each contacted library used the opportunity offered by the CCC and highly appreciated the support.

4.3.9 Elaboration of the Competition Day concept and organisation of the first related programme; establishment of a Competition Culture Award and having a connected work of art made

328 The CCC has established a **Competition Culture Award** to recognise the activities of experts working outside the Competition Authority but making outstanding contributions to the development of competition culture. This award was presented for the first time on 1 December 2006 by GVH President Zoltán Nagy to **Éva Voszka**, doctor of the Hungarian Academy of Science and scientific co-worker of Financial Research Corporation (Pénzügykutató) in a ceremonial framework. The papers and other works Ms Voszka has published until now about competition related issues reflect excellent professional qualities and also satisfy the requirements of dissemination of competition culture.

4.3.10 The provision of information about competition law and market theory to members concerned of Parliament and their consultants, to experts and officials of the Government and to municipalities

329 In this field, the CCC focused on the information supply to officials in public administration in 2006.

330 As a part of its related activity, it provided supports to the **participation in professional events abroad** (which concerned the relationships between the given sector/industry and the competition policy) of one staff member of the Ministry of Health and the Hungarian Energy Office each. The said supports covered 70% of the related costs.

4.3.11 Creation of the infrastructure of the CCC

331 The easiest way to the giving of access to the CCC is through the creation of a well usable, updated and informative **homepage**. Though the CCC has its own homepage, this homepage is connected to that of the GVH. Hence, the revision and improvement of the GVH-homepage is a precondition for the creation of the said CCC-homepage. The revision began in autumn of 2006 and will be finished in 2007.

332 The **development of the professional library** of the GVH also has a bearing on the creation of the CCC's infrastructure. The library is namely operated within the framework of the CCC and it holds, apart from technical literature about competition law and policy, also other specialist books about law and economics and, furthermore, publications both in paper and electronic versions of international institutions active in these special fields.

4.3.12 Publication of the quarterly Mirror of Competition (Versenytükör)

333 The CCC does not only issue one-time publications, it also launched a competition law-competition policy quarterly titled Mirror of Competition (Versenytükör). The majority of the authors of the quarterly are staff members of the GVH, but the periodical applies a broader approach to competition policy and therefore, apart from issues of the activities of the GVH and the courts in relation to law enforcement, it also introduces adjacent subjects influencing the functioning of competition, based on studies prepared by experts of the given subject. The Mirror of Competition always reports on the major decisions made by the Competition Council and the courts in the last quarter, the competition advocacy activities of the

Authority and the latest developments in Community competition law; each number of the periodical contains also news and reports relating to the GVH. Naturally, the periodical also covers the latest events of the CCC and the OECD-Hungary Regional Centre for Competition in Budapest.

334 To give an insight into the nature of the "guest-papers" which were published in the Mirror in 2006, only the lessons drawn from Microsoft by an official of the European Commission's DG Competition, various aspects of the "legal privilege" as they were displayed against the background given by a German case, the human rights' relations of the procedure of the competition authority as an assistant lecturer of the University of Szeged saw them and the prospects of private enforcement from the point of view of a judge working at the Municipal Court of Budapest should be mentioned here.

335 The CCC forwards the Mirror as a free publication a. o. to undertakings, legal buros engaged in competition law, representatives of the professional press, professional associations, municipalities, public administrative authorities, judges, members of Parliament, educational institutions and libraries, but the articles will also be available on the CCC's website.

4.4 CONDITIONS OF THE OPERATION

336 Authorised by Article 43/A of the Competition Act, the GVH may use for the development of competition culture 5% as a maximum of the total amount of the fines collected in the previous year.

337 In accordance with this provision, the financial resources available to the CCC amounted to HUF 316,1 million in 2006.

338 The amount actually used was only HUF 77,9 million. The low extent of exploitation can be attributed to the fact, that the year 2006 was, primarily, a year of preparatory activities, but it is also a proof of the CCC's effort to utilise carefully and reasonably the available financial resources.

4.5 OTHER COMPETITION CULTURE DEVELOPING ACTIVITIES OF THE GVH

339 In 2006 several GVH experts taught competition law related subjects at universities and gave lectures to interested audience. In this framework more than 70 lectures were provided, the number of interviews given by GVH experts to the media was above 100 and the number of professional papers and articles published in newspapers and periodicals was close to 70.

340 In 2006, 9 students spent their traineeship at the GVH and several students requested the assistance of the GVH staff to complete their closing thesis at the university. The library of the GVH is also available for students and researchers. It was the seventh year in which the traditional competition between university students was invited – this time 4 students submitted their thesis which were published on the website of the GVH.

341 The GVH is a founding member of the Hungarian Competition Law Association, which is the Hungarian branch of the International League of Competition Law (LIDC). In the framework of the cooperation with this association in 2006, several events were organised, among others some discussing the reform of Article 82 of the Treaty, practical questions of private law enforcement and a draft policy paper of the GVH.

342 The website of the GVH is an essential means of informing the public about the activity of the Authority. In 2006 almost 230 thousand visits were recorded. The electronic version displayed on the website of the merger notification form helps to a great extent the client-friendly administration. In the autumn of 2006, the GVH began to reform its homepage. The Hungarian version of the website started its operation in January 2007.

343 The Enquiries of the GVH play an important role by providing information about the operation of the Authority and about its opinion concerning market competition. In 2006 the Enquiries were contacted more than 2300 times.

344 In 2006 dailies, economic periodicals and the electronic media mentioned the GVH about 1400, 300 and 50 times, respectively.

V. INSTITUTIONAL AND INTERNATIONAL RELATIONS

5.1. INSTITUTIONAL RELATIONS

345 The GVH had regular working relations with the relevant ministries, industrial supervisory authorities, organisations functioning with the involvement of market participants and other professional NGOs.

346 In the field of telecommunications the cooperation of the GVH with the National Communications Authority (NCA) continued focusing mainly on market analyses. The professional consultations between the NCA and the GVH conducted before the NCA issued its draft decision about the NCA's market review procedure concerning the market for voice call termination on individual mobile networks, have effectively contributed to the achieving of the goals declared in the Cooperation Agreement between the two authorities. This Cooperation Agreement puts the competition authority's experience into the NCA's practice, facilitates the uniform understanding of market processes and promotes effective competition on electronic communications markets. Apart from this, the experts of the GVH are regular attendees at the professional events and fora organised by the NCA and the latter also provides lecturers for some of the workshops organised by the OECD-Hungary Regional Centre for Competition in Budapest. There is a regular and fruitful contact also between the NCA and the Competition Council of the GVH.

347 The state organ responsible for digital transformation is the Prime Minister's Office, which published a strategic document on this topic for professional consultation. The GVH also commented on this document and it participates in the work of the renewed DTV Coordination Committee.

348 In June 2006 the GVH renewed its cooperation agreement concluded originally in 1998 with the Hungarian Energy Office, the market surveillance authority of the energy sector. The new agreement addressed the increased tasks stemming from the market opening process. In 2006 the cooperation focused on competition advocacy issues and an essential result of the work was the

setting up of a market analysing working group to study the situation on the markets of energy transmission networks. The working group will gradually prepare analyses by a systematic methodology.

349 In December 2006, the GVH signed a cooperation agreement with the newly established Hungarian Rail Office (HRO). The Act on Railway Transport entered into force on 1 January 2006. This Act made reference to the necessity of cooperation between the two authorities in several areas, so the two authorities fulfilled this provision of the Act on Railway Transport. In addition to cooperation in the field of law enforcement, the document extends the framework of the cooperation to competition advocacy and professional activities performed in both domestic and international fora.

350 A new cooperation agreement was elaborated also between the GVH and the Hungarian Financial Supervisory Authority (HFSA). The agreement was concluded in January 2007. Through the cooperation, the two authorities intend to contribute to the transparent operation of financial markets, to foster the development of these markets under fair competitive conditions and to decrease the risk consumer run when making their decisions, by facilitating the access to information necessary to the decision-making. As a result of this increased cooperation, the HFSA participates in the elaboration of a questionnaire initiated by the GVH. This questionnaire aims at analysing consumers' habits as far as a switchover between banks is concerned. Magyar Nemzeti Bank, the central bank of Hungary (MNB) also joined this project. Building on the experience of this survey, the MNB initiated the teaching of a subject in the secondary schools about general financial topics in order to increase the level of knowledge of the younger generation of these matters.

351 A further agreement was concluded between the GVH and the Ministry of Economy and Transport in March 2006. The main objectives of this agreement are to foster the effectiveness of the competition advocacy activity of the GVH among others in the field of liberalisation of the markets of electric energy and gas, the competition-related monitoring of the operation of transport markets and in consumer protection.

352 The agreement concluded in September 2006 between the GVH and the National Security Office aims at increasing the effectiveness of the cooperation between these two organisations.

353 The cooperation of the GVH with the General Inspectorate for Consumer Protection is essential. During 2006 there were several meetings both between high-level officials of the two institutions and on the expert level.

354 As regards the consumer protection related activity of the GVH during the year, there were several proceedings at the GVH in connection with drugs or curative products. From this point of view the cooperation of the GVH with the National Institute of Pharmacy and the National Institute of Food Safety and Nutrition proved to be important.

355 Taking into consideration the large number of consumer fraud cases, the GVH attaches great importance to its working relationship with the Advertising Standards Alliance.

356 The GVH played an active role in the law approximation process which aimed at adapting the EU directive on unfair business-to-consumer commercial practices. This work began in 2005 and continued also in 2006 both in the expert group led by the Ministry of Social Affairs and Labour and in the codification performed by a working group under the leadership of the Ministry of Economy and Transport.

357 The GVH continued to play an active role in the work of the Public Procurement Council.

358 In 2006 – similarly to the practice of previous years – the GVH received the agenda of the Hungarian Privatisation and State Holding Company every week. Based on the agenda the GVH may request that the privatisation agency send it the documents, which may result in changes in the competitive situation on certain markets, as a consequence of sales of state ownership. On the one hand, this allows the GVH to comment on these transactions; on the other hand, the GVH gains valuable information, which makes it possible for the Authority to develop its knowledge about these markets. Based on this information in 2006, among others, the GVH commented on the mid-term plan of the Magyar Villamos Művek Rt. (MVM – Hungarian Power Companies Ltd.). As our opinion, it was

stressed that the GVH considered it important to separate the system operator Magyar Villamos Rendszerirányító Rt. (MAVIR – Hungarian Electricity System Operator Ltd.) from the MVM.

359 In order to obtain the necessary information in the framework of its law enforcement and competition advocacy activity, the GVH kept professional contacts with numerous administrative bodies (ministries, municipalities, the Ombudsman) and professional organisations (e.g. Hungarian Gas Association, Hungarian Petroleum Association, Association of Hungarian Steel Industry, Hungarian Trademark Association, etc.).

5.2. International relations

360 In 2006 the international relations of the GVH were determined by its cooperation with the competition authorities of the European Union and its Member States, with the OECD and with the International Competition Network and of course also by the bilateral relationships. In addition to these, the activity of the OECD-Hungary Regional Centre for Competition had great importance.

361 The cooperation of the GVH with the competition authorities of the European Union had two main directions. On the one hand, the GVH has to co-operate with all the other ECN members in cases dealt with by the Authority under the European competition rules. On the other hand, the GVH is active in the work of the horizontal working group of the ECN, which analyses theoretical issues, and also in the sectoral subgroups, which focus their activity on industry-specific questions.

362 The cooperation with the OECD Competition Committee and its working groups is traditionally an essential task for the GVH. During the year concerned, country submissions were prepared by the GVH relating to the topics of essential facilities, retail banking services and their competition-related aspects, techniques and evidentiary issues proving dominance/monopoly power and private enforcement of competition law. In the framework of its cooperation with the OECD, the GVH sent (and sends regularly) a secondee to the OECD on an annual rotation basis. The costs of the secondee are jointly covered by the OECD and the GVH.

363 During 2006, the GVG participated in the work of the ICN as well. In this context the Authority participated in a partnership and consultation project of pilot nature, which provided technical assistance to competition authorities having modest operational experience. This project was practically finished in the spring of 2006. As a continuation of the project the GVH participated in a work aiming at mapping the needs of ICN member authorities as far as technical assistance is concerned.

364 Another ICN related work was the process of the completion of the 'Anti-Cartel Enforcement Template'. This project was co-ordinated by the GVH. The template form was elaborated in 2005, while 2006 brought the completion of the form by around 50 ICN member authorities. More than 30 of these forms were uploaded to the ICN website as well.

365 In its bilateral relations the GVH focused mainly on the competition authorities of the South-East European countries. This is partly reflected by the activity of the OECD-Hungary Regional Centre for Competition, since this activity supports mainly the work of the competition authorities of this region. As regards the practical bilateral relations, the GVH concluded a bilateral cooperation agreement with the Ukrainian competition authority in January 2006 and based on this cooperation, in November of the year, Ukrainian experts visited the GVH for consultation. In the second half of the year, the French competition authority DGCCRF and the GVH prepared a joint offer to the competition published in the framework of a twinning project, the beneficiary of which would be the Anti-Monopoly Authority of Ukraine (AMCU). This offer won the competition, so in 2007-2008 the GVH will participate in the screening of the Ukrainian competition law, in the assessment of its compatibility with the European competition rules and in the provision of several workshops for the staff of the AMCU. 2006 saw several events in the framework of the cooperation agreement concluded between the Hungarian and the Romanian competition authorities in September 2005. These events served the preparation of the Romanian competition authority for EU membership.

366 A first contact between the GVH staff and Chinese competition law experts was made in June, when a Chinese delegation met staff members from

the GVH in Budapest. In December, the EU-China Trade Project: Support to China's Integration into the World Trading System organised a workshop for experts of the Legal Commission of the Standing Committee of the National People's Congress and a Hungarian expert also made a contribution on this event. The experience shows that there is a sincere interest on the Chinese side in getting familiar with the Hungarian experience.

367 It is also worth mentioning that a delegation of young colleagues of the Bundeskartellamt visited the GVH in May 2006 for a 2-day consultation. The GVH as a target authority to be visited was chosen by the members of the visiting group.

VI. RESOURCES OF THE ACTIVITY, INFORMATION OF OTHER

368 The staff number of the GVH was 116, however, this increased during the year by 8 additional posts. The reason for this was the new task stemming from the Act on Trade. In parallel, the GVH had to decrease its workforce by 10 persons.

369 According to the law, fines imposed by the GVH and the procedural fees attached to its proceedings are incomes of the state budget. In 2000, fines and fees in total amounts of HUF 8398,2 million (around Euro 33,6 million) and HUF 183,8 million (around Euro 0,7 million), respectively, were paid. From these amounts the GVH may have used altogether HUF 237,5 million (cca Euro 0,95 million) for its proceedings in addition to the allowance granted by the state budget for its operation.

370 In 2006, there was one essential change of organisational nature at the GVH. After the setting up of a Legal Service at the GVH in 2005, the economist line was reinforced in 2006 by the creation of the post of the 'chief economist' at the Authority. The chief economist will have a double role. On the one hand, he will assist the proceedings of the Authority with analyses of economic nature (if possible by using empirical methods), on the other hand, he will contribute to the answering of certain questions, including questions arising in the field of

competition advocacy, where this answering requires high-level proficiency in economics.

371 The internal course organised for the GVH staff on the subject of „Antitrust economics” continued also in 2006. This course aims at helping the experts of the GVH to get knowledge about economic theories and methods applicable in the field of competition policy and law enforcement and also at enabling them better to analyse market structure, market behaviours and better to identify competitive concerns.

372 In 2006, three colleagues from the GVH had the possibility to be trainee at the Directorate General for Competition of the European Commission and a further colleague worked as national expert at the same institution.

373 From 1 January 2006, the GVH introduced the electronic mail registry. This is the first step leading to the introduction of electronic administration at a later stage.