

ANNUAL REPORT ON COMPETITION LAW AND POLICY DEVELOPMENTS IN HUNGARY

(January – December 2012)

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

1.1 Changes to the narrower legal environment

Amendment of the Competition Act in 2012

1. The overall review of the Code of Administrative Procedure was an ongoing process in 2012. In this framework, several of the procedural rules laid down in the Competition Act (CA) were amended, resulting in a clearer and more coherent link between the two Acts.
2. As a result of the changes, **merger cases have become easier to manage**. Firstly, with the exception of data which is necessary for identification purposes, certification may not be demanded in respect of information that is public or that must be contained in the records of an official body, court or the Hungarian Chamber of Civil Law Notaries. Secondly, since 1 February 2012 the so-called **simplified decisions**, which contain no justifications or information as to remedies, have also been available in competition supervision proceedings.

Amendments to the Act on Public Administrative Procedures (PAPA)

3. The general review of the PAPA, the procedural act applicable in competition cases, also indirectly impacted upon the CA. For example, the PAPA has re-defined the chapters on the costs of proceedings and on enforcement procedures, introducing technical clarifications as well as substantive changes, such as the simplification of the opening of enforcement procedures. Furthermore, the criteria for the extension of administrative time limits have been tightened, the time limits for responding to requests for national legal assistance have been clarified and the institution of depositions introduced.

Changes to the organisation of the court system

4. As of 1 January 2012, the role of the county courts was taken over by ‘tribunals’; consequently, any legal actions or requests for judicial review of the decisions of the Hungarian Competition Authority are now assessed by the Budapest Metropolitan Court (tribunal). Any appeals lodged against decisions made by tribunals acting as courts of first instance by 31 December 2012 in administrative cases will be heard by another chamber of the tribunals acting as courts of second instance after 1 January 2013¹.

1.2 Changes to the broader legal environment

Amendment of the Unfair Trading Practices Act

5. Since 1 August 2012, the National Food Chain Safety Office, rather than the GVH, has been competent to proceed in respect of agricultural and food products in cases subject to Act XCV of 2009 on the Prohibition of Unfair Trading Practices in relation to Agricultural and Food Products. The change does not affect the application of the Competition Act to abuse of dominance cases or the power of the GVH to proceed.

Scope of the Interbranch Organisation Act

6. The entry into force of the Act on Interbranch Organisation on 1 September 2012 effectively exempts certain market organisation measures from the application of the cartel rules of the Competition Act provided that certain public interest objectives are met. This is in line with the arrangement laid down in the regulation of the agricultural market of the EU and takes into account the competition advocacy objectives of the GVH.

¹ Section 1(7) of Act CCXI of 2012 on the Amendment of Regulations Relating to the Judiciary.

7. Approximately two months after its entry into force, major amendments were introduced to the Act as a result of a motion of a Member of Parliament. Pursuant to the new rules, it has practically become impossible to impose sanctions on cartels in respect of agricultural products, irrespective of the identity of the infringing market participant (producer, purchaser, processor or retail chain). This has significantly constrained the ability of the GVH to act.

Purchasing groups

8. Pursuant to the Act on the Prohibition of Unfair Commercial Practices against Consumers (UCPA), no purchasing group can be established between 1 January 2012 and 1 January 2014. This also means that action can be taken against commercial practices aimed at organising such groups. However, the prohibition has clearly not had the desired result and the GVH has therefore submitted a recommendation to the legislator that a new, detailed regulation contained in a Government decree is adopted.

The new Criminal Code

9. From the perspective of the GVH, the most important change to the new Criminal Code in 2012 concerns the regulation of restrictive agreements in public procurement and concession procedures, which has now been brought into line with the leniency policy provided for in the Competition Act. In the future, it can be established upon the submission of a leniency application whether the applicant needs to fear sanctions under criminal law. The GVH expects that there will be an increased interest in its leniency policy and a corresponding increase in the number of cartels that are detected.
10. Another novelty of the new Criminal Code is also worth mentioning: in order to protect competitors it is now a criminal offence to disclose business secrets. This means that the protection already offered by the Competition Act is now supplemented with more severe criminal sanctions.

“Hungarian products”, “Hungaricums”

11. The ministerial decree on the voluntary use of identification marks on food products and the Act on Hungarian national values and ‘Hungaricums’ entered into force at the end of 2012. Even though the GVH continues to proceed against commercial practices using the ‘Hungarian product’ or ‘Hungaricum’ markings deceptively based directly on the UCPA to protect the average consumer, the new legal regulations may be useful in promoting enforcement.

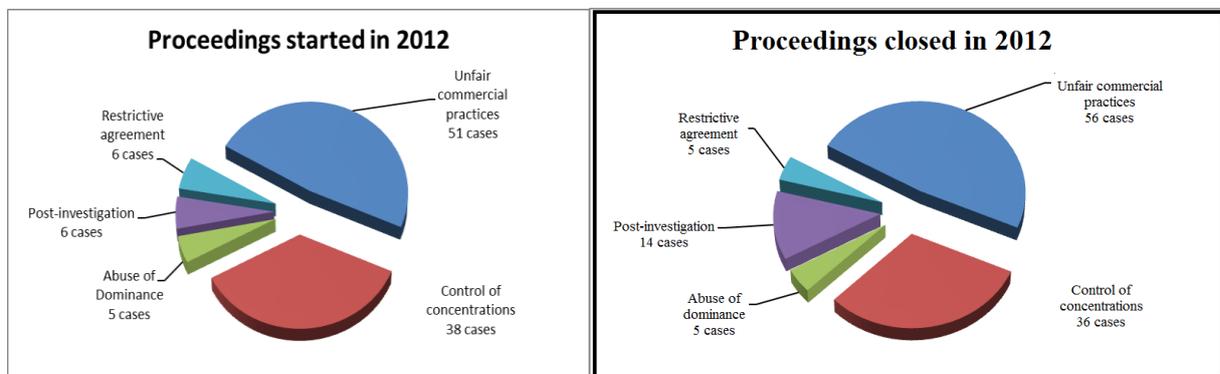
Who is the average consumer and what can be expected of him?

12. The UCPA does not mention the term ‘average consumer’. It does require, however, that when assessing commercial practices, the conduct of such consumers must be considered who are reasonably well-informed and act with the care and circumspection that can be expected under the circumstances, taking into account the linguistic, cultural and social aspects of the commercial practice or product concerned as well. This legal wording effectively describes the common man in the street, i.e., persons representing the majority.

2. Proceedings

Key figures

13. In 2012 the Authority was contacted, orally or in writing, on more than 6000 occasions. Compared to the year 2011 figures, the number of persons contacting the Authority in person or by telephone increased by more than 70%, and the number of written communications by approximately 30%.
14. In 2012 a total of 106 competition supervision proceedings were initiated. Of the 38 merger cases, 37 were started upon application, and one was commenced ex officio. Of the remaining 68 cases, 6 related to cartels, 5 to abuse of dominance and 51 to unfair commercial practices, and the Authority conducted 6 post-investigations.
15. The GVH closed 116 cases in 2012. The Authority assessed 36 merger applications, made 5 decisions each relating to restrictive agreements and to abuse of dominance; in one of the latter cases a fine was imposed for the abuse of significant market power. The Authority assessed 56 unfair commercial practices and conducted 14 post-investigations.



16. The proceeding can be terminated if no infringement can be established on the basis of the evidence obtained in the course of the proceeding, or if pursuing the case further is not in the public interest.
17. In 2012 the GVH closed two cases with commitment orders.
18. The GVH imposed fines amounting to a total of 1.836 billion HUF (approx. 6.12 million EUR) in 2012. The amount of the fines imposed has significantly increased in comparison to previous years. This is mainly due to the fact that the Authority now takes firmer action against behaviour aimed at protracting the proceedings or having such an effect. In 2012 the Authority imposed procedural fines amounting to a total of 216 million HUF (720 thousand EUR).

2.1. Unfair manipulation of decisions of trading partners, and unfair commercial market practices against consumers

19. The GVH's antitrust and consumer protection activities complement each other by serving consumers' interests: competition makes it possible for consumers to choose the most suitable option from the maximum possible choices. However, if consumers are not

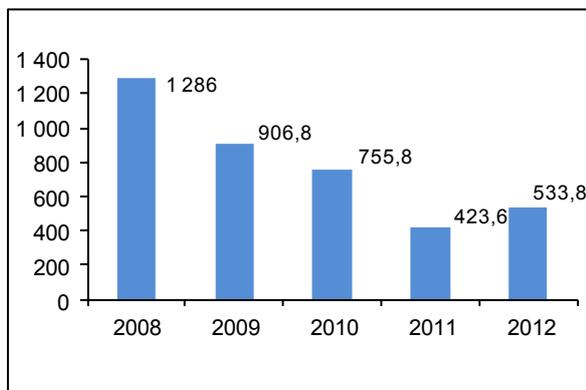
able to make rational decisions they cannot gain from the benefits of competition. In this regard the protection of competition and the protection of consumers cannot exist without each other and the best result can only be achieved if these are able to complement each other.

20. The main goal of the GVH's consumer protection activity is to assure undistorted competition and to maximise consumer welfare through the freedom of consumer choice. The GVH's consumer protection activity primarily focuses on the demand side of the markets: by investigating the communication activity of the supply side its aim is to protect the free and undistorted choice of the consumer. If it can be established that the choices of consumers in a given market have been unfairly manipulated by an undertaking, for example by inducing consumers to make a decision which they would not have otherwise made, the competition processes may be distorted as a consequence of the distorted decisions of the consumers.
21. Accordingly, in the competition supervision proceedings in this field, the GVH examines whether the consumers had the opportunity to search for information, and whether they had access to the information necessary for making a reasoned decision. Furthermore, it is also examined whether the undertakings have done everything to provide consumers with relevant and decisive information.
22. Market competition is normally capable of remedying consumer harm. However, in certain situations this is not the case, and state intervention is needed.
23. The enforcement of the legislation on consumer protection is divided among authorities along their competences. Besides the GVH, the Hungarian Authority for Consumer Protection (Nemzeti Fogyasztóvédelmi Hatóság – NFH) and the Hungarian Financial Supervisory Authority (Pénzügyi Szervezetek Állami Felügyelete – PSZÁF) have consumer protection related competences. If an infringement targeting end consumers (B2C practices) exerts material influence upon competition, then the GVH is in charge of applying the law, unless the infringement occurs on labels, in user manuals (warnings and instructions) or by violating the information requirement set out in other legal norms. The PSZÁF has jurisdiction in connection with practices carried out by those financial institutions the supervision of which belongs to the competence of the authority. In any other situation, it is the NFH that has competence. In defining the material influence on competition, the extent of the practice or the size of the undertaking liable for the infringement is to be taken into account. For the sake of guaranteeing legal certainty, the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices sets forth cases when the material effect on competition shall apply without prejudice to any other circumstances. This is the case, for instance, when the commercial practice is carried out through a media service provider providing national media services, or when the commercial practice is carried out through a periodical of nationwide circulation or a daily newspaper distributed in at least three counties.
24. Practices in B2B relations – targeting businesses – belong to the sole competence of the GVH.
25. B2C cases are covered to the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices while B2B cases are assessed under the relevant provisions of the Competition Act and the Advertising Act. The Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices prohibits unfair commercial practices on three grounds (unfairness, deceptive or aggressive commercial practices, “black list”). The Advertising Act contains the prohibition of misleading advertising as well as the

conditions for the publication of comparative advertisements, while the Competition Act covers deceptive and aggressive conducts relating to information other than advertising.

26. Comparative advertisements are subject to special regulation: pursuant to the Advertising Act, the GVH is competent to proceed against non-objective comparative advertising both in B2C and B2B cases.
27. The GVH closed 56 consumer protection proceedings in 2012. On 50 occasions the Competition Council, the decision-making body of the GVH, adopted a decision while 6 cases were closed with an order of the investigator. In 2012, the Authority imposed fines amounting to a total of 533.8 million HUF (approx. 1.8 million EUR) in this category of cases.

Fines imposed in consumer protection cases (B2B and B2C) (HUF) 2008-2012



Some high-profile case categories

Vulnerable consumers

28. Legal regulations specifically deal with commercial practices that target consumers who are particularly vulnerable due to their age, credulousness, or mental or physical disability. Vulnerable consumers are typically affected by claims related to the health or curative effects of products/services as they seek a cure intensively, even beyond the limits of reason, and they are particularly susceptible to any new information or option.
29. For instance, in the “Energy spiral” case the Competition Council declared “that a wide range of products affect health and the human body, from food and dietary supplements through to medical devices and instruments which are meant to improve one’s quality of life. In the case of these products, a significant group of consumers is more vulnerable than the average person and more sensitive to communication messages relating to curative effects due to their intense desire for a solution, even beyond the limits of reason, or because of a psychological condition arising from their illness or dysfunction.” In this case, the Competition Council imposed a fine of 12 million HUF (approximately 40 thousand EUR) for the misleading information that was contained in commercial communications.

Financial services

Purchasing groups

30. As in previous years, a large proportion of the consumer protection proceedings of the GVH are competition supervision proceedings against organisers of purchasing groups.
31. As purchasing groups are not financial service providers, the Hungarian Financial Supervisory Authority is unable to apply the measures available to it in respect of financial institutions; still, they continuously monitor the operations of such groups.
32. The organisation and operation of purchasing groups is not regulated by any special law. The amendment of the Consumer Protection Act effective as of 1 January 2012 states that no purchasing group may be established until 1 January 2014. This, however, does not mean that existing purchasing groups do not have to comply with those laws which are binding on everybody in general, such as the Civil Code, the Consumer Protection Act or the rules prohibiting unfair business-to-consumer commercial practices.
33. In 2012 the Authority established infringements by the organisers of purchasing groups on eight occasions and initiated competition supervision proceedings in four cases. This highlights the recurring and topical nature of the problem. The GVH objected to the fact that the advertised activities were equivalent to lending and that consumers were not clearly informed that the extension of the services concerned were funded by internal lending (from the payments of members). It was also not communicated that consumers may have had to wait a long time before they could obtain the objects of their desire, and that the length of the wait was also affected by their willingness to make a prepayment and by an element of luck (the person to obtain the right of purchase in any month was selected by drawing lots).
34. In addition to the initiation of specific proceedings, the Competition Culture Centre of the GVH launched a campaign targeting a wide range of consumers with the slogan '*Don't be taken in*'. In the campaign, commercials were shown in prime time national television, radio spots were broadcast, and the GVH devoted a special page to this issue on its website (www.nedoljonbe.hu).

Payment by bank cards in post offices

35. In this case the GVH examined whether consumers, when using their bank cards to pay in post offices, were informed that the transactions constitute cash withdrawals and are therefore subject to fees which are higher than when withdrawing from ATMs. The proceeding was closed with a commitment order.

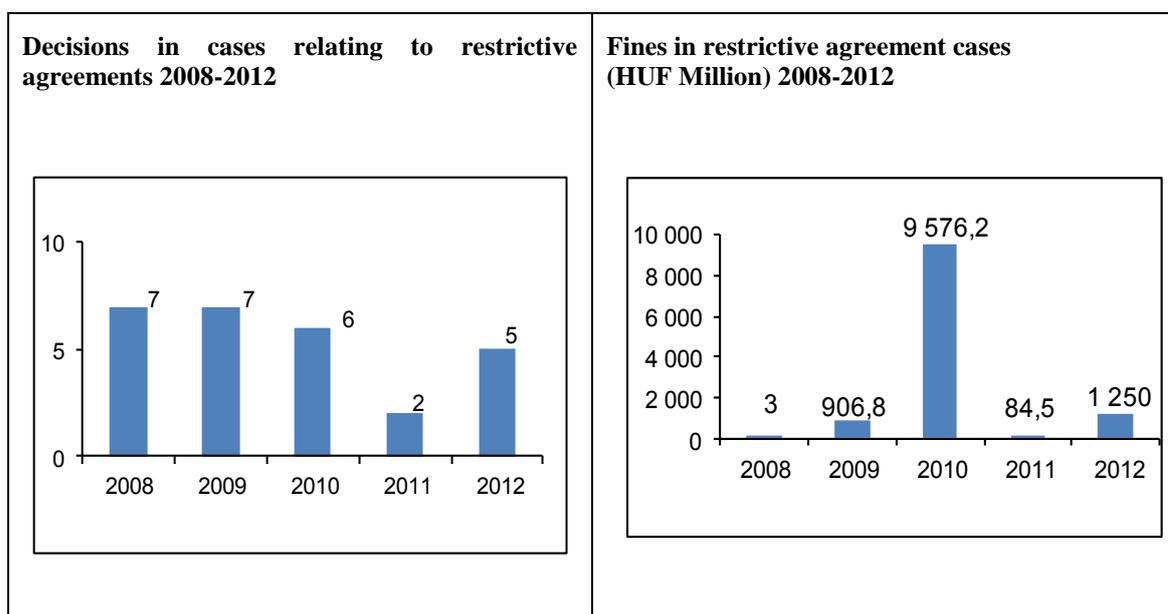
Hungarian product / Hungaricum

36. In a procedure against Auchan Hungary Kereskedelmi és Szolgáltató Kft., the GVH established that the use of Hungarian motifs, red and green colours, and the Hungarian slogan '*...Hungaricum*' together conveyed the message to consumers that the advertised products were Hungarian. While the commercial practice concerned did not explicitly state that the products were Hungarian, it did, however, use the same Hungarian-style motifs together with the red/green colours that were shown in other pages of the campaign brochure subject to the investigation, where the undertaking under

investigation offered certain goods expressly as Hungarian products. The undertaking created a false impression that consumers would be purchasing Hungarian products even though the Hungarian origin of the items had not been verified and some products were proven to originate from outside of Hungary.

2.2. Restrictive agreements

37. The detection of cartels remained a priority for the GVH in 2012. The Authority initiated proceedings in 6 cases, conducted on-site inspections, without prior notification, at 11 locations and opened investigations against a total of 56 undertakings during the year. As in previous years, in 2012 the overwhelming majority of the cartels that were detected by the GVH were a result of the information the GVH had received. Such information generally came from disgruntled companies operating in the industry concerned or excluded from the cartel, former employees of cartel members, or in case of public procurement cartels, other parties with an interest in the procurement procedure or the employees of such undertakings.
38. In 2012 the Authority received three applications for **leniency**. In respect of the informant reward, another important weapon in the detection of cartels, the GVH was contacted on approximately 20 occasions by informants in 2012, a similar figure as in 2011. Most of the applications failed to satisfy the requirements set out in the Competition Act. On the whole, the information supplied by the informants proved useful to the Authority even if it did not result in the initiation of any proceedings. This is because such information enables the GVH to gain a better understanding of the market/s concerned, thus facilitating the commencement of proceedings at a later date.
39. While the number of cartel-related complaints and reports to the GVH was high like in previous years, very few competition supervision proceedings were also initiated this year.
40. In 2012 the GVH closed 5 cases, with a total of 16 undertakings subjected to investigations. Of the cases closed, the GVH terminated three, suspended the proceedings in one case and imposed a fine of 1.25 billion HUF (approx. 4.2 million EUR) in one case, in addition to establishing the existence of an infringement.



Cartel on the market of rail freight transport services

41. The GVH imposed a competition supervision fine of 1,250 million HUF (approximately 4.2 million EUR) on Győr-Sorpon-Ebenfurti Vasút Zrt. (hereafter GySEV), MÁV Magyar Államvasutak Zrt. (hereafter MÁV) and Rail Cargo Hungaria Árufuvarozási Zrt. (hereafter RCH) for infringing competition regulations by concluding restrictive agreements aimed at sharing the rail freight market among themselves and by applying a common tariff system.
42. During its competition supervision proceeding, the GVH aimed to clarify whether the undertakings under investigation were conducting restrictive market practices on the market liberalised on 1 May 2004 by applying uniform prices for railway freight forwarding (GySEV, MÁV and RCH) and by concluding a cooperation agreement between GySEV and MÁV. At the same time, the GVH also assessed whether the practice of the parties under this agreement constituted an anticompetitive restriction.
43. From the evidence available the GVH established that RCH and GySEV had concluded a cooperation agreement aimed at geographically sharing the freight forwarding market between themselves, which was in effect from 1 January 2006 to 25 May 2009. Their agreement, which contained as a significant element the framework agreement on the cooperation regarding joint freight forwarding activity, aimed to uphold the status quo of the period before the liberalisation of the market.
44. The GVH also established that the (theoretically) competing undertakings had applied a uniform pricing policy (common tariff system). The agreement was in effect from 1 May 2004 to 31 December 2005 between GySEV and MÁV, and from 1 January 2006 to 17 July 2007 between RCH (established after the separation of the MÁV Freight Forwarding Branch) and GySEV. The uniform list prices that served as the basis of the common tariff system were always based on the agreement of the two most significant market players: they published and modified their tariff systems at the same time. Their price lists were identical, both in terms of form and substance; moreover, the service components, rates and the method of price formation were also determined on a uniform basis.

Sugar cartel

45. In the sugar cartel case, the GVH investigated whether the three Hungarian sugar producers [Agrana Kft. (and Magyar Cukor Zrt., which took over the distribution of sugar and other products from Agrana in 2005), Eastern Sugar Zrt., Mátra Cukor Zrt. (and Eurosugar S.A.S., which took over the sugar distribution business of Mátra Cukor on 1 October 2007)] had concluded a restrictive agreement by allocating their markets and agreeing upon their prices.
46. During the proceeding Mátra Cukor explained that the representatives of the undertakings under investigation had exchanged information and coordinated their conduct on the Hungarian sugar market between 2003 and February 2009. The consistent parts of the statements made during the proceeding revealed that in 2003 the parties had exchanged quantitative information on their recent turnovers, broken down by customer, in tripartite meetings, by telephone and in text messages. Between 2004 and 2006 they shared aggregate figures for their recent sales. While the aggregate figures contained data on exports to the EU and domestic sales, no client-level data was exchanged.
47. Based on an assessment of the contradictory evidence available, the Competition Council did not find the infringement of the parties substantiated and considered that the

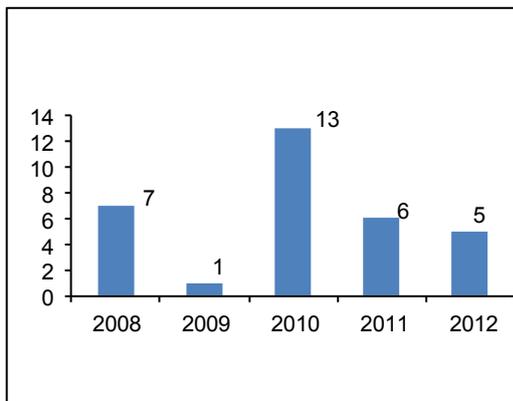
continuation of the proceeding could not be expected to yield additional results because the acquisition of any more statements was questionable. Consequently, the proceeding was terminated for lack of sufficient evidence.

48. In the context of the decision, the Competition Council also remarked that the amendment of the Interbranch Organisation Act in November 2012 had significantly restricted the GVH's powers to conduct cartel proceedings and sanction infringements concerning agricultural products. The existing uncertainties in the interpretation of the law constituted another reason to abstain from using additional resources to continue the proceeding, considering that it is in the public interest that the resources of the GVH are used in an efficient and effective manner.

2.3 Abuse of dominance

49. In 2012 the Authority initiated 5 proceedings in abuse of dominance cases and concluded 5 proceedings. Of these, three cases were closed by the investigator and one case by the Competition Council. In one case the GVH established that the retail chain under investigation had violated the provisions of the Act on Trade concerning the abuse of significant market power and imposed a fine of 50 million HUF (approximately 167 thousand EUR).

Decisions in cases relating to abuse of dominance, 2008-2012



Performance-related bonus system of Spar Magyarország Kft.

50. In this case, the GVH examined whether SPAR Magyarország Kft. (FMCG retail undertaking) had infringed the Unfair Trading Practices Act by applying a performance-related bonus system and whether this constituted an abuse of its significant market power vis-a-vis its suppliers.
51. The **performance-related bonus system** (PRB for short) belonged to the category of rebates, that is, a discount offered by SPAR to its suppliers that the parties settled between themselves in retrospect, depending on the actual turnover achieved by the retailer. The PRB of SPAR consisted of two elements: a static and a dynamic part. The static part was a percentage figure determined individually for each supplier; its rate did not depend on the volume of goods to be sold and as a result the supplier had to pay this amount irrespective of any other considerations. For the calculation of the dynamic part, SPAR specified a sale target for each supplier; if the supplier over- or underperformed

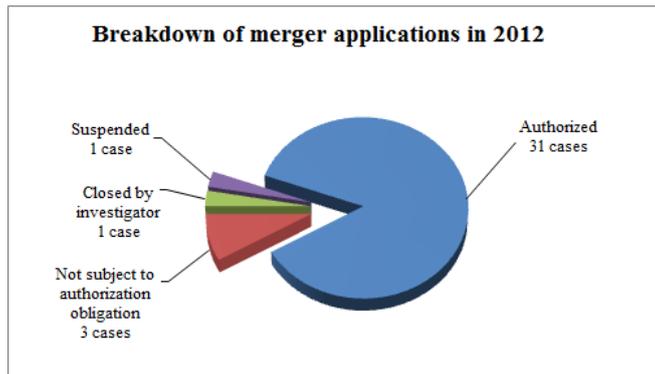
during the year, it had to pay a varying rate of the dynamic part of the bonus to SPAR. During the proceeding the Competition Council established that SPAR had unilaterally set the terms of the rebate system and that negotiations with the suppliers revolved exclusively around the percentage values to be used in the system.

52. Firstly, the PRB was a condition of distribution as SPAR would only carry the products of a supplier if it agreed to the retroactive application of the rebate by SPAR. Secondly, the evidence found during the proceeding (minutes of meetings, statements of suppliers) revealed that the PRB had been imposed unilaterally. The Competition Council found that the use of the PRB was unjustified: it was not used to recognise some achievement over and above what is part of the basic retail operation (simple distribution) as it only depended on the volume of the products sold (at the extreme even a single item of a product). It was also established that under the same conditions SPAR would not necessarily be able to demand ex post rebates for effectively any volume of sale that is part of its core activities (at the extreme even for the sale of a single item). The dynamic part of the PRB was found to be infringing in that SPAR demanded it even when it sold significantly less of the supplier's products than in the previous year. Furthermore, the Competition Council found that the use of the PRB was also unlawful because the law prohibits retailers possessing significant market power from unilaterally imposing a payment obligation (fee) for a service that a supplier has no intention of using, or simply so that the retailer is willing to offer the products of the supplier for sale.
53. In its decision, the GVH found that by its conduct SPAR had abused its significant market power. Consequently, it imposed a fine of 50 million (approximately 167 thousand EUR) on the undertaking.

2.4 Control of concentrations

54. The review of the GVH's merger control procedures, which was started in 2011, continued in 2012, with the purpose of assuring that investigations are conducted to a high professional standard, as fast as possible and with reduced administrative burdens for the undertakings. The project had the following key elements:
- a) In February 2012 the Authority introduced a new application form for the authorisation of concentrations of undertakings as required by the Competition Act, as well as guidelines for pre-notification relating to mergers. The new form facilitates the separation of simple mergers from more complicated transactions and the identification of the various issues to be analysed, reduces the costs incurred by clients and the amount of data that must be supplied.
 - b) The guidelines for pre-notification summarise the most important information concerning such proceedings so that parties are aware of the practice the GVH intends to adopt in this area.
 - c) Since 1 February 2012 the so-called simplified decisions, which contain no justifications or information as to remedies, have also been available in competition supervision proceedings. Simplified decisions are explained in detail in the chapter on mergers. The GVH summarised the information relating to the applicability of simplified decisions in a *notice*.
55. In 2012 the GVH closed 36 merger investigations; 34 of these were started upon application, one ex officio due to a suspected failure to submit an application for the

authorisation of a concentration, and one case was suspended. The Competition Council authorised each transaction unconditionally, in a simplified (so-called Phase I) procedure in 25 cases and in a full (so-called Phase II) procedure involving more detailed analysis in 6 cases. On three occasions it was established that the concentrations were not subject to authorisation requirements, while one proceeding was terminated by the investigator because of the withdrawal of an application. In 2012 no fines were imposed for a failure to apply for an authorisation of a concentration, while the late submission of an application resulted in the imposition of fines on two occasions (totalling 2.6 million HUF, or approximately 9 thousand EUR).



56. One reason for the higher merger numbers relative to 2011 is the more active role of the state: public entities were involved in every fifth merger transaction. The increase in the number of acquisitions of control by state-owned undertakings may be the combined result of several factors: the continuing spillover effects of the economic crisis, the effects of changes in the legal environment as well as the Government's clear intention to increase public involvement in certain sectors, primarily those which are related to public services and which are considered as strategic industries.
57. Another key aspect in the merger cases of 2012 was the continuous and significant increase in the number of mergers involving the retail and wholesale trade of consumer staples in the second half of the year. In 2012 there were 9 merger cases in this market, 6 of which were submitted in the last month of the year, and the trend appears to be continuing in 2013.

Magyar Villamos Művek Zrt., MFB Invest Zrt., Magyar Gáz Tranzit Zrt.

58. In this case the GVH authorised the acquisition of joint control by Magyar Villamos Művek Zrt. and MFB Invest Zrt. over Magyar Gáz Tranzit Zrt. (MGT), with the purpose of the undertaking constructing, then operating for 25 years, the Hungarian section of a new, Hungary-Slovakia high-pressure natural gas pipeline. The role of MGT is to construct, in cooperation with eastream a.s., an undertaking registered under Slovakian law, the Hungarian section of a new, bidirectional, high-pressure (75 bar) natural gas transmission pipeline and to subsequently operate it for 25 years. The new gas pipeline will provide 10-15% of the total import capacity of natural gas pipelines in Hungary. The concentration only had vertical effects as the MVM group is present on the market of natural gas trade; furthermore, some of its power plants are gas-fired. However, the concentration is not expected to have any adverse competitive effects considering that the new gas pipeline will increase the total import capacity and also because of the existing low market share of the MVM group on the wholesale trade of natural gas and the significant market position of the leading market actor on the market of imported gas

transportation (FGSZ Zrt.). It was also an important consideration that the entry of the MFB group as an entity having joint control, reduces rather than strengthens, any anticompetitive concerns relating to the vertical connection because the MFB group as a new (joint) controlling entity will have an interest in maximising the efficiency of the operation of the MGT.

KKE-West Kft., Naszálytej Zrt. et al

59. In the view of the Competition Council, the purpose of controlling concentrations is to monitor their long-term effects on market structure; for this reason, the arrangement used to acquire control (number of steps or of legal transactions) is essentially insignificant as long as the end result gives rise to a single concentration. For this, as evidenced by the consistent practice of the Competition Council and of the European Commission, the real economic purpose of the transactions must be identified. This also means that the various transactions constitute a single concentration if they are related in such a manner that one transaction would not have taken place in the absence of another transaction.
60. In the *KKE-West Kft., Naszálytej Zrt. et al* case the Competition Council established that the various transactions were to be treated as a single concentration even though the shares necessary for the concentration were acquired from different sellers as the transactions only made sense in combination in light of the objectives of the parties.

3 Experience concerning the judicial review of the decisions of the GVH

61. As in previous years, a legal remedy was sought against about half of the decisions establishing an infringement in 2012.
62. The Metropolitan Administrative and Labour Court of Budapest (the review court of first instance) made 28 decisions; in 13 cases their decisions closed the cases with final effect, each of them upholding the decisions of the GVH.
63. The Metropolitan Court of Budapest (review court of second instance) made 16 decisions, upholding the decisions of the GVH in their entirety in 11 cases, slightly reducing the fines in 2 cases and overthrowing its decisions in part or in full on three occasions.
64. The Curia (review court in exceptional cases, only on legal matters) decided on 6 appeals. They upheld the final decisions on five occasions, slightly reducing the amount of the imposed fines in two of these cases. In another case, the GVH submitted the application for review, which the Curia found to be justified.
65. At the end of 2011, in the *Ingatlandepó* case, the GVH filed a public interest action to the Budapest Metropolitan Court against Experient Entertainment Ltd. and Weltimmo S.r.o in order to establish the nullity of the unfair general terms of business applied by the undertakings. In its decision made on 27 April 2012 (not yet final), the Budapest Metropolitan Court established that the sections of the general terms of business that became part of the contracts of consumers that the GVH found objectionable were null and void. Consequently, any party entering into a contract with the respondent undertakings would not be subject to the nullified sections of the business terms.

4. Competition advocacy – commenting on regulations and other drafts

66. Last year the **Authority received a total of 115 submissions and draft pieces of legislation** for comments; in addition, it **sent 8 comments on its own initiative** based on

proposals found on the Government's website. The number of draft laws sent to the GVH for comments decreased slightly relative to the average of previous years, and the decline also applied in percentage terms. The GVH also monitored draft legislation published on the Government's website and whenever it was possible (despite time constraints), it submitted its comments concerning competitive conditions to the promoter of the legislation.

67. In the course of exercising its right to **comment on proposed legislation**, the GVH looks at the competitive conditions on the market affected by the legislation; in particular, in the event of measures directed at setting or changing the conditions of market entry, the GVH assesses whether the objective to be achieved by the regulation is compatible with the selected regulatory tools and whether the proposed measure has anticompetitive effects that are unreasonable in light of the expected results. In the event of exclusive rights to be provided, the GVH examines whether the exclusivity is unavoidable for the provision of some public service, and if so, whether regulating the conduct of the market actor that is to become a monopolist can prevent it from abusing its dominance.
68. In respect of **consumer protection related laws** and measures, in its competition advocacy work the GVH mostly examines whether they comply with EU and Hungarian laws relating to unfair B2C commercial practices in the internal market, and whether the proposed arrangements will hinder enforcement.
69. In the case of legislation setting **regulated prices**, the GVH typically does not examine the levels of the prices themselves, as that is the responsibility of the regulator; instead, it focuses on the safeguards to prevent cross-subsidisation, which would distort competition, and highlights the need for the accounting separation of the costs of services in the competitive and non-competitive sectors.
70. As in previous years, when the GVH was of the opinion that an initiative would have a negative effect on competition and this opinion was disregarded in the course of the interministerial circulation of the draft, the GVH generally requested the sponsor to make note of the disagreement of the GVH and to explain the dissenting opinion in its proposal. The GVH found that this was seldom done. In most cases the competition authority only found out if its comments had been utilised after the legislation had been promulgated.

Some comments on competition advocacy

71. In drafting Act CXXVIII of 2012 on inter-branch organisations and on certain issues of the regulation of agricultural markets (Interbranch Organisation Act), the legislator took into account the comments of the Authority, incorporating the competitive considerations proposed in the draft Act. The same did not apply to Act CLXXVI of 2012 on the amendment of Act CXXVIII of 2012 on inter-branch organisations and on certain issues of the regulation of agricultural markets, concerning which the GVH sent its comments in writing to the Member of Parliament who submitted the bill. The GVH also sent this letter to the Minister for Rural Development and to the chair of the relevant parliamentary committee, offering technical support. The GVH was particularly concerned that not only would the proposal have allowed the "useful" cooperation of producers (aiming to allocate fair share of income for the producers) but it would have also exempted from competition law consequences the restrictive conduct of other actors of the distribution chain, including purchasers wholesalers and retail chains, which may also be problematic in other respects due to their significant market power. The result of the amendment is a disadvantage to consumers that clearly exceeds the benefit otherwise achievable through supporting agricultural entities.

72. In 2012 the relevant chambers of commerce approached the competent ministry, then the GVH, concerning the government regulation of engineering and architectural design fees. Based on the interpretation of the relevant practices of EU Member States and the arrangements in EU law they had come to the conclusion that the Government could introduce a system of price regulation that was more restrictive and which specified minimum and maximum rates, if allowed to do so by law. They stated that their main objective was to guarantee quality by constraining cut-throat price competition which leads to prices that fail to cover their justified costs and which thus undermines quality. They also voiced their concern that the stagnation of the economy and the major decline in the construction market, which may in turn send design firms into bankruptcy, may cause excessive damage to society. In their view, this damage should be reduced, if need be, by providing additional funding through the temporary imposition of minimum prices. The GVH recommended that other solutions should be sought to guarantee the quality of professional services. The Authority disagreed that restricting price competition would be the appropriate tool. The crisis has clearly had a negative effect on some markets and the undertakings operating in them; however, setting minimum prices is not a suitable instrument to ward off the consequences of market constriction: the need for adaptation cannot be avoided in this manner. On the initiative of the chambers the Parliament, upon a motion for amendment submitted by a Member of Parliament, initially enacted an amendment which authorised the Government to set, in law, the minimum and maximum rates for the work of engineering and architectural designers and experts. In 2013, however, this provision was amended² to the effect that the Government is allowed to set the scope of functions to be performed in the course of the architectural and engineering design of buildings, the content of the design fee for architectural-engineering design services and the design fee for architectural-engineering design work performed by designers resident in Hungary, by setting a maximum target rate.

5. Competition Culture – the activity of the Competition Culture Centre

73. The competition culture activity is organised by the Competition Culture Centre (CCC) which is one of the organisational units of the GVH. It works on the basis of a pre-defined annual work plan, which provides for, among other things, raising public awareness of competition, the dissemination of knowledge about competition policy, and the contribution, on its part, to the development of competition-related legal and economic activities of public interest. Its operation is financed by the GVH budget.

74. To perform its tasks, the CCC used different means and completed various projects. E.g.

- it operates the website of the GVH, by publishing among others all the decisions of the authority, also the CCC operates two microsites about the risks of purchasing groups – www.nedoljonbe.hu – and about compliance – www.megfeleles.hu;
- the CCC is the editor of a professional periodical, called *Versenytükö* (“Mirror of Competition”). Articles to this publication are written mostly by the staff of the GVH, at the same time the ‘*Versenytükö*’ offers the possibility of professional introduction for those younger colleagues who are interested in competition law issues. *Versenytükö* is distributed free to law firms, undertakings, associations of undertakings, municipalities, professional journalists, administrative bodies, regulatory

²Act XXXIV of 2013 on the institution participating in the settlement of debates concerning the design and construction of buildings and on the amendment of certain acts with a view to preventing a financial gridlock in the construction industry and to late payment (Section 23 (6)-(7))

authorities, judges, libraries, universities and articles of the publications may be also read electronically on the website of the GVH;

- as in previous years, the GVH updated and published its descriptive booklet: “What you should know about the Hungarian Competition Authority?” in English language;
- the CCC took part of the Albanian Twinning Program by discourses about developing competition culture and the awareness of conscious decision making of consumers;
- the GVH participated fifth time in Civil Island at the Island Festival in Budapest;
- the CCC made both complex and case surveys in 2012 about the awareness of and the opinion about competition and competition rules, and the GVH, about the depth of the knowledge and about selected cases or actions like the “Ingatlandepó” case or the Hungarian product cases;
- according to the result of the surveys commissioned by the GVH, a comprehensive communication campaign was started to foster competition law compliance and to promote the competition culture for undertakings, especially for SMEs. In the compliance campaign, the GVH cooperates with professional organizations of lawyers, accountants and business interest groups because most business owners of the small and medium sized undertakings receive the information on legal and taxation changes from their lawyers and accountants;
- the GVH continued the cooperation with the MNB and the PSZÁF in the Financial Culture Team, which was founded by the staff of the three institutions to publish booklets about information on financial knowledge for everyday people;
- the CCC cooperates with other institutions as well in the organisation of professional programs or in their co-financing. With the support of CCC the Foundation for Conscious Finances developed the competition module of its financial learning material which was used in approx. 70 schools in Hungary. In November of 2012 the Hungarian Association for the Protection of Industrial Property and Copyright organised a conference on “The present and the future of intellectual property” with the professional and financial support of CCC. The event attracted a widespread professional audience.

6. International relations and the activity of the OECD-GVH Regional Centre for Competition in Budapest

6.1 International relations

75. The international relations of the GVH focused mainly on co-operation with the European Commission and the national competition authorities of the EU Member States, co-operation within the framework of the Competition Committee of the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network (ICN), as well as by bilateral co-operations.
76. Similarly to the practice of the previous years, the case-related co-operation within the European Competition Network (ECN) in respect of the application of the competition rules of the EU continued to be one of the main fields of the international relations.
77. Concerning co-operation with the International Competition Network (ICN), due to the troika system introduced for the management of the ICN working groups, in 2012 the GVH gave up its co-chairmanship in the ICN Cartel Working Group. Nevertheless, the active participation of the GVH in the work of the Cartel Working Group did not stop,

since the GVH remained responsible for the coordination of the project on “Anti-Cartel Enforcement Template”.

78. The contribution to the work of the OECD Competition Committee and of its working groups had an outstanding importance also in 2012. Contributions were prepared in the topics of market definition, competition and payment systems and leniency for subsequent applicants.
79. In compliance with the established practice, the GVH sent also in 2012 one of its experts to the OECD for a whole year as a secondee on a rotation basis.
80. Concerning the bilateral international relations, the Albanian twinning project is worth mentioning. In 2009 a consortium was formed by the Department for Business, Innovations and Skills of the United Kingdom, the Italian Competition Authority and the GVH in order to make a bid for the twinning project, which is a project that is aimed at providing technical assistance for the Albanian Competition Authority. The consortium won the tender and in 2012 short-term experts of the GVH completed 12 missions for the colleagues at the Autoriteti i Konkurrencës.

6.2 The activity of the OECD-GVH Regional Centre for Competition in Budapest

81. The OECD-GVH Regional Centre for Competition in Budapest (RCC) was established by the OECD and the GVH on 16 February 2005. Relying on the professional background of the Competition Division of the OECD and the GVH, the Centre provides capacity building assistance and policy advice for the competition authorities of the Central, East and South-East European region, namely for Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The RCC is financially supported by the Hungarian Government.
82. Among others, the RCC deals with issues such as: analysis of core competition cases, investigative techniques, competition policy principles in the process of regulatory reforms, training of judges, law enforcement priorities, guidelines, policies, practices and procedures, framework for the cooperation of the competition authorities of the region, competition advocacy, tools for communication, cooperation between competition authorities and regulatory bodies, other general issues falling under competition law and policy. Regular meetings, training programmes, seminars and workshops were organised on all these topics.
83. In 2012 the RCC organised 8 major events and hosted 252 participants and 54 speakers arriving from 34 countries.
84. Among others topics like vertical restraints, innovative remedies in merger analysis, competition litigation and price related abuse of dominant position appeared on the agenda of the RCC events. Two separate events were devoted to training of European judges.
85. The line of RCC seminars organised abroad also continued. This time the Antimonopoly Committee of Ukraine hosted this event on the topic of “*Economic Analysis Tools in Cartel Investigations*”. In addition to this, co-organised and co-financed with the Federal Antimonopoly Service of Russia, a further workshop was organised for the competition authorities of the CIS countries in the topic of “*Competition Issues in Payment Card Services*”.

7. Technical conditions and other information

86. In 2012 the GVH spent HUF 2.246 billion (that is approximately EUR 7.5 million) for its operation.

87. In 2012 the approved number of the members of the GVH was 125.

88. Similarly to the practice applied in previous years, the GVH has placed a special emphasis on the advanced studies of its colleagues by providing them with the opportunity to become acquainted with European Union law practice. In 2012, two of the civil servants of the GVH worked for the European Commission as national experts. Furthermore, one of the colleagues of the GVH was provided with a foreign employment option at the OECD centre in Paris.

8. Resources of the competition authority

Resources overall (current numbers and change over previous year)

Annual budget (in HUF and EUR)

2012	billionHUF	2.246
	million EUR	7,5

Number of employees (person-years)

	2012
Economists	50
Lawyers	20
Lawyer-economists	7
Other professionals	5
Support staff	36
All staff combined (actual)	118