



GAZDASÁGI  
VERSENYHIVATAL

## The sector inquiry

The President of the Hungarian Competition Authority (hereinafter the GVH) as empowered by Article 36/A of the Competition Act (Act No LVII of 1996) ordered a sector inquiry for the first time into the mobile telecommunications services sector in 2001. Article 36/A, effective since 1st February 2001, empowers the President to request by decision, setting a time limit for compliance, that undertakings in the relevant sector supply information required to understand and appraise the functioning of a market. This provision introduced into the Hungarian competition law the institution, well known in the European Union, which enables the authority to survey market circumstances of a whole sector. During the inquiry, the authority may collect and analyse necessary, even confidential information and may ask for the co-operation of bodies of the public administration. The application of the substantial provisions of the 1st part of the Competition Act is not purpose of the inquiry, so during the proceedings sanctions might only be imposed if the undertakings infringe their obligation to provide information.

The sector inquiry is successful if it enables the authority to work out a complete view on the sector inquired, including price movements and other market circumstances on the grounds of which it becomes possible for the authority to bring or suggest the enactment of the necessary legal provisions related to the sector.

The first section of the above mentioned Article established the circumstances which might lead to the launch of a sector inquiry, namely when price movements or other market circumstances suggest that competition is being prevented, restricted or distorted, or a dominant position is being abused, by one or more undertakings in a given market. These circumstances could be but are not necessarily the results of the illegal activity of an undertaking. In other words, these circumstances might be the symptoms of a market failure arising in the sector or in a part of it and the inquiry would serve for the GVH to discover the real cause of these circumstances and the necessity of state intervention. However, even if the inquiry discovers that the level of competition is insufficient in the market, it is not a purpose to investigate and analyse which undertaking infringed which part of the Competition Act. At the evaluation of the necessity of state intervention, it is indispensable to make a distinction between cases where the cause of market failure is an infringement of the Competition Act falling under the jurisdiction of the GVH and where the elimination of the cause of market failure falls out of the jurisdiction of the GVH. In the first case, the GVH may immediately initiate proceedings concerning the alleged infringement, while in the latter case it may enter into competition advocacy calling the competent authority to take the necessary measures.

The evaluation phase of the inquiry, upon specific decision of the President, may end up in a comprehensive market study summarising the observations of the inquiry, presenting the areas where market failures were observed and proposing possible remedies for these failures.

## Contents

### **1. Executive summary**

#### ***1.1. Circumstances of the launch of the inquiry***

#### ***1.2. External circumstances determining the competitive conditions of the sector***

#### ***1.3. International environment of the mobile telecommunications sector***

#### ***1.4. Arguments of the parties submitted during the inquiry***

#### ***1.5. Economic analysis and conclusions***

##### *1.5.1. Methodology*

##### *1.5.2. Scope of the detailed inquiry*

##### *1.5.3. End-user services – the retail market*

##### *1.5.4. The category of wholesale services*

##### *1.5.5. Conclusions*

### **2. Circumstances of the launch of the inquiry**

### **3. External circumstances determining the competitive conditions of the sector**

#### ***3.1. The technical background of the mobile telecommunications services - brief summary***

#### ***3.2. The legal environment prior to liberalization***

##### *3.2.1. Regulation of market entry*

##### *3.2.2. Rules of operation*

##### *3.2.3. Price regulation*

##### *3.2.4. Co-operation with other telecommunications networks*

#### ***3.3. Present legal environment determined by the Communications Act***

##### *3.3.1. Regulation of market entry*

##### *3.3.2. Rules of operation*

##### *3.3.3. Price regulation*

##### *3.3.4. Co-operation with other telecommunications networks*

#### ***3.4. Provisions of the Concession Agreements***

##### *3.4.1. Market entry and start of operation*

##### *3.4.2. Provisions affecting subscribers*

##### *3.4.3. Competition rules of the Concession Agreements*

##### *3.4.4. New situation in 1999*

### **4. International trends in mobile telecommunications**

#### ***4.1. Expansion of mobile services, general trends***

**4.2. Present regulatory approach and developments in Europe****4.3. Antitrust practice concerning mobile telecommunications****5. General assessment of the views of the operators regarding the market****5.1. Initial assumptions of the Gazdasági Versenyhivatal (Competition Authority)****5.2. Views of the operators**

5.2.1. End-user services

5.2.2. Services of wholesale nature

5.2.3. Network services

5.2.4. Data-transmission services

5.2.5. Other special services

5.2.6. Product markets according to the Competition Act – possibilities of substitution

**5.3. Summary****6. Economic analysis and conclusions****6.1. Introduction**

6.1.1. Relevant market

6.1.2. Market definition for the purpose of sector inquiries

**6.2. Methodology**

6.2.1. Main aspects of market definition, methodological limits

6.2.2. The hypothetical monopolist test

6.2.3. Analysis of elasticity

6.2.4. Time-series analysis by linear regression

**6.2.5. Analysis of correlations**

**6.3. Retail market**

6.3.1. Conceptual definition of the retail market

6.3.2. End-user services, products in the retail market

6.3.3. Trends present in the retail market

6.3.4. Interrelations between mobile and fixed markets

6.3.5. Summary of retail market

**6.4. Wholesale sector**

6.4.1. Concept of the wholesale sector and services thereof

6.4.2. Significance of the access-type services in telecommunications – unilateral access

6.4.3. Roaming services

6.4.4. Termination market

6.4.5. Summary of wholesale market

**6.5. *Geographical market***

6.5.1. Domestic market

6.5.2. Definition of distinct market segments

**7. Conclusions**

# 1. Executive summary

## 1.1. *Circumstances of the launch of the inquiry*

Although during the last ten years the mobile sector has gained a significant share within the market of telecommunications, no in depth analysis of the mobile sector has been made. By initiating a sector inquiry, the GVH had the intention to contribute to that necessary analysis. At the initiation, the GVH perceived such market failures at three areas that could be the result of anticompetitive practices of market participants in the given circumstances:

- There is a significant difference between the price of mobile telecommunications services and that of fixed-line services. This difference is not so obvious if we consider that both services have the same main purpose, i.e. voice transmission and communication. In order to get a complete clear picture, the relative position of the mobile and the fixed-line sector from the consumers' point of view and the competition within the market of mobile services have to be examined.
- The interconnection (call termination) prices in the mobile sector also deserve a closer look. There is a significant difference between the price of calls terminated on a fixed network and on a mobile network, and between the price of calls terminated on a certain mobile network, depending on whether the call was originated in a fixed or a mobile network. These differences cannot be easily explained, so it is necessary to make an in depth analysis of the competition prevailing in the market(s) including the call termination services.
- The use of radio frequencies is needed for the provision of mobile telecommunications services. Frequency is a scarce resource that delimits market actors' possibilities of action, and their number by means of state regulation. As a result of the limited number of market participants and the high entry barriers, the mobile market has oligopolistic characteristics. In such market structure, an entry that eases the limitations caused by resource scarcity may increase consumer welfare under certain circumstances. On an international level, there are many examples of how such an entry could be ensured through access agreements. There was no entry into the Hungarian market which may as well be the result of some undertaking(s)'s anticompetitive behaviour. In order to give an answer to the arising questions, it is first necessary to examine the concrete technical and legal circumstances and the possible effects on competition.

The GVH contacted the mobile operators<sup>1</sup> and the groups of undertakings entitled to offer telecom services on fixed lines in May 2001 for the first time. The GVH has asked for additional information from both the service provider groups of undertakings and the Hungarian Communications Authority later on.

---

<sup>1</sup> In Hungary all the undertakings providing mobile telecommunication services are at the same time mobile network operators. For that reason they will hereinafter be referred to as operators. (*The translator*).

## **1.2. External circumstances determining the competitive conditions of the sector**

As in the case of other branches of the telecommunications sector, it is necessary to give a general overview of the technical and legal background of the mobile telecommunications services in order to describe the dynamics of the mobile market. Such objective basic circumstances determine the way market can evolve and form the firms' market strategies. Two kind of mobile technologies have been set up in Hungary, the NMT analogue system, which operates on 450 MHz and the GSM technology, which is a digital system based on a uniform European standard. An important characteristic of the mobile telecommunications service is that the functioning of the system requires the use of radio frequencies, which is a scarce resource, so the possibility of entry into the market is always limited.

An essential feature of the development of the Hungarian mobile system is that it has been connected to the uniform European system, therefore as it operates on 900 and 1800 MHz, it enables users to connect to foreign operators' systems and so to use their cell phones outside the country. The inherent advantages of digital technology – better quality of voice transmission, the possibility of providing various premium content services – have also contributed to a great extent to the success of the GSM. GSM technology is constantly developing, and provides numerous new ways of satisfying the users' always changing needs. One of the most important new technologies is the General Packet Radio Service (GPRS) that established reasonable conditions for customers to reach the Internet. As it is expected in other places of the world, the introduction of the third generation technologies will fundamentally influence the future development of the Hungarian mobile sector.

The legal background of the mobile telecommunications services significantly changed during the period examined by the inquiry, which has also influenced the market. The sector was regulated by the Telecommunications Act no. LXXII. of 1992 (hereinafter TA) during the period starting from the entry of the operators into the market<sup>2</sup> until 23rd December 2001. According to the provisions of the TA, the entry on the market was possible only by means of a so-called Concession Agreement, which had a significant influence on market conditions. The tendering process that an undertaking had to go through to get a concession imposed special entry conditions on the one hand, and on the other the Concession Agreements had clauses that considerably determined the possible market activity. Indeed, these contracts regulated the behaviour of operators, and the competent state person, i.e. the minister signing the Concession Agreement could verify whether such dispositions were respected. The terms and conditions of the contracts were binding on the operators in parallel with relevant laws, sometimes even competing them.

Within the system established by the TA the mobile telecommunications services were deemed to be services of public interest, and operators had the obligation to contract with subscribers. At the adoption of the TA, a broad price regulation was imposed on the sector and until the beginning of 1998 the prices of the mobile services were regulated according to a price cap formula. Since January 1998 the operators have been free to set their prices concerning all of the services, and regulation did not change until July 2001. From then on, the prices to be paid by subscribers for calls originated in a fixed-line network and terminated in a mobile network are to be determined by the fixed-line operators and not by the mobile operators. Another important element of the TA was the disposition regarding co-operation

---

<sup>2</sup> This period started with the entry of Westel 450 in 1990 and ended in 1999 with the entry of Vodafone.

with other telecommunication networks. It is essential for the provision of telecommunication services that the users of different networks are able to communicate with each other – this requires the interconnection of the networks. The TA, its executive decrees and the concession contracts all contained important dispositions regarding co-operation. It was together with the entry of Vodafone into the market that a provision concerning co-operation and with significant effects on competition came up in the Concession Agreements of GSM operators: the compulsory domestic roaming. As a result of this provision, Westel 900 and Pannon GSM have to provide Vodafone access to their own networks until Vodafone disposes of an adequate nationwide network.

The expiry of the exclusive rights in the fixed-line sector had a significant influence on the whole telecommunications sector. This led the legislator to create a new law, the Communications Act no XL of 2001 (hereinafter CA), which brought important changes also into the mobile sector. As regards market entry, the concession system had been terminated, it is now enough to make a notification in order to start the provision of a service. However, the necessary individual licenses aimed at ensuring the material conditions of the activity need to be attached to such notifications. These include licences concerning the use of radio frequencies, telephone number allocation and network building. So it means that for market entry it is still necessary to fulfil a numerous legal conditions.

The dispositions regarding the provision of mobile telecommunications services have only been slightly modified compared to the TA. However, there were important changes to rules on price regulation and co-operation. The new category of the CA, “operators having significant market power” applies also to the mobile service providers. The role of operators with significant market power must be examined in two markets in connection with the mobile sector: the market of mobile telecommunications services and that of interconnection. On the latter market, as regards the prices of termination and interconnection of calls originating from a fixed-line network and directed towards its own network, an operator having significant market power shall set such prices on a cost basis, namely calculated according to the Long Run Incremental Cost (LRIC) rule. Another obligation regarding co-operation: mobile operators shall ensure that subscribers can freely choose a service provider for their international calls.

### **1.3. *International environment of the mobile telecommunications Sector***

The services based on the mobile radio transmission technology started to spread on an international level in parallel with the introduction of analogue systems in the 1980s. The technological switch in the 1990s has fundamentally changed the role played by mobile services within the telecommunications sector. At the end of the last decade, the number of mobile subscribers per 100 resident has reached or exceeded in all European countries the number of fixed-line subscribers. Although the mobile market had a very successful start in Italy, now the Scandinavian countries are undoubtedly the leaders in Europe in this field. The European market showed a further important growth in 2001, and during that year the European Union market gained a considerable lead over the United States. In parallel with the growth of the number of subscribers the price of mobile services typically decreased. In every market, the most important price fall could be observed during the period when the monopolistic or duopolistic market structure typical to the analogue system turned into a competition among more actors. There was a similar market development in the Eastern European countries to the one experienced in Western European countries with some delay. An important feature of all of the examined national markets is the fact that the mobile

affiliated company of the ex-monopolist telecommunication firm has generally acquired a leading position. On the other hand, competition is stronger where at the beginning more undertakings got a concession at the same time than where there was a lag between market entries. Moreover, a special characteristic of the Eastern European area is that at the early stages of market development, because of the undeveloped state of the fixed-line network, subscribers had often no choice but to choose mobile telecommunication services.

The future of mobile telecommunications greatly depends on the regulatory concepts observed on an international level. The telecommunications regulatory reforms of the European Union – the approved laws will be applied from July 2003 – laid a special emphasis on questions regarding the mobile sector. Generally speaking, in some areas the provisions will be more detailed than previously – this will be the case for interconnection, domestic roaming, choice of service provider, number portability. However, the approved directives do not contain dispositions that are binding on every Member State, their transposition depends on whether the Member State considers them necessary or not. In fact, the general principle is that regulation is to be implemented only in that event if there is not enough competition in the particular market. Regarding regulatory concepts in Hungary, it is therefore important to keep in mind that government should intervene only to the extent necessary in the light of the degree of competition observed in each market.

Many important lessons can be learnt from the international competition law experiences concerning the mobile sector, even if the analysis of particular cases provides a quite heterogeneous picture. In some countries<sup>3</sup>, abuse of dominant position cases were investigated, but the existence of a dominant position – of one or more firms – has not been established in these cases. It is important to note that the examined cases were initiated concerning different markets; the approach to retail and wholesale markets typically differed. In a significant Italian cartel case, the competition authority has found that a long-term collusion could be proved. From a general point of view, it can be noted that almost in every European and OECD country among the telecommunication cases there were noteworthy ones concerning the mobile sector.

#### **1.4. Arguments of the parties submitted during the inquiry**

When initiating the inquiry, beside defining the series of data required, the GVH held it to be important to inform the undertakings concerned about its preliminary views in respect of the market. This can essentially be summarised as follows: the mobile telecommunications sector is a unity of a number of services, in which more relevant markets are to be defined, and the conditions of competition may also differ in these markets. Preliminarily, the GVH defined the groups of end-user, wholesale-type, network and data-transmission services.

The answers of the operators differed substantially depending on the characteristics of the one providing the answer; in this way, the digital mobile operators, the analogue operator and the fixed-line operators, among them the MATAV and the representative of the local concession companies, the LTO Association could be identified. However, it was important to note that the operators provided similar answers concerning end-user services. In substance, operators think that the services themselves – domestic calls, international calls, access etc – cannot be viewed separately from one another, and competition takes place among service packages.

---

<sup>3</sup> For instance in Ireland and Finland.



The answer of the LTO Association is unique in that respect that they proposed a certain distinction among end-user services, that is, between pre- and post-paid services as a minimum. With respect to the wholesale services, the operators generally pointed out the weaknesses of the categorization, and in most cases, they emphasised that currently no wholesale service exists in Hungary in the classical sense of the word. Nevertheless, practically all the operators agreed with the preliminary classification of the GVH concerning network services and data-transmission services.

With respect to substitution and market definition, operators regard the domestic market of mobile services as relevant market. They suppose that primarily the different service packages offered by the operators compete with each other, and not the services themselves. According to the operators there are both demand and supply substitutions among mobile operators, while supply substitution cannot exist on the side of fixed-line operators. The demand side substitution between mobile and fixed-line services is generally considered as limited: fixed-line services can substitute mobile services only to a limited extent. It is to note, that the LTO Association alleged that because it is impossible to substitute in call termination, each mobile network forms a separate market, that is, mobile operators practically have monopoly position as regards call termination.

## **1.5. Economic analysis and conclusions**

### **1.5.1. Methodology**

The purpose of market definition in case of the sector inquiry is not completely the same as in the case of antitrust investigations. In the latter, the GVH decides upon certain behaviours or situations, while in case of a sector inquiry the goal is to assess market movements and competitive situation in general, and the analysis of the markets defined as separate serves only the achievement of this goal. Accordingly, the conclusions about the markets drawn from the analysis are not necessarily the same as those in an antitrust investigation.

In course of the analysis, the GVH used both qualitative and quantitative methods: in case of the former, the conclusions to be drawn from the conduct of the market players should be mentioned, while in case of the latter, which represents the major part of the analysis, several approaches were applied at the same time. It is also important to mention the estimation of elasticity often used to analyse markets, the analysis of price movements and adjusting speeds, and finally the hypothetical monopolist test<sup>4</sup> generally used in antitrust cases. Because of the speed of changes, the characteristics of the market analysed and the quality of available data highly affected the choice of the method applied in a given situation. On the base of all these facts, it is to be stated in general that the GVH did not have the opportunity in all cases to make the analysis by the method optimal for the given case. In these cases, the GVH chose the method offering a result closest to the optimal outcome, accommodating to the reality determined by the given data. Prior to the detailed assessment, the report describes the most often applied methods: time-series analysis by linear regression, and correlation analysis.

### **1.5.2. Scope of the detailed inquiry**

The GVH wished to conduct the analysis proceeding from the larger groups of services formed on the basis of the answers given by the operators to the preliminary assumptions.

---

<sup>4</sup> Test of small, but significant, non-transitory increase in price (SSNIP test)

While forming the groups, it was a decisive aspect for the GVH to have the series of data from a minimum period of time necessary for the analysis of the defined service-group, and that the given service formed a substantial part of the revenues of the entire sector. As a result, those services that – according to the characteristics of their demand – have not yet been spread widely, were excluded from the scope of the analysis. The main reason of this decision was that the GVH did not want to draw any conclusions regarding services that could not be classified for the present. With respect to the above, the services could be divided into two groups:

- retail services consumed by end-users (with emphasis on voice-transmission services);
- wholesale services consumed by telecom operators.

### 1.5.3. End-user services – the retail market

When assessing the retail market, the GVH accepted the preliminary assumption that the service packages and not the single services themselves compete under the given market conditions at the time of the inquiry.<sup>5</sup> Therefore, the analysis was centered on the issue of retail prices and the assessment of the level of competition related thereto, the relations between pre- and post-paid packages, and the effects between fixed-line and mobile services. In course of the assessment, the GVH had to apply a method other than the optimal one, but it was possible to give adequate answers to the above issues by applying more substituting methods. The analysis of trends and correlations is not able by itself to define markets but may provide strong evidence pro or contra certain allegations. Lacking consumer surveys, it is the only way to check the correctness of the preliminary assumptions empirically, too. The GVH applied the hypothetical monopolist test as another method to assess the range of substituting products.

By the distinction of fixed and mobile markets, two aspects were important: the index minutes/call and the examination of prices. The index minutes/call is interesting because this is the only indicator, which let us conclude on the type of calls originated by the consumers. The analysis of the index showed that mobile-originated calls are generally similar in length to fixed-to-mobile calls, but substantially shorter than fixed-to-fixed calls. The other interesting index is the average price level of calls. It indicated that the level of prices of mobile-originated calls is decreasing. With regard to fixed-originated calls, it is to be stated that the price of fixed-to-mobile calls is not decreasing, though its present level is nearly the same as that of the mobile-originated calls, so it is probable that these types of calls are not in the same market. However, in certain cases substitution between these two types of calls might be possible, since several features of those are similar: their price and length are nearly the same, and the mobility as additional value is present in both types. As opposed to this, the price of long-distance calls is significantly lower than that of the mobile-originated or fixed-to-mobile calls, and therefore substitution cannot be very strong in general. It is important to note that – following intuitive assumptions – the GVH also came to the conclusion that the two types of service cannot be substituted with one another entirely. According to the hypothetical monopolist test, in case of a small, but significant, non-transitory increase in the price of mobile services it is not probable that consumers would substitute them with fixed-line services. Besides all that, there are still two segments where the potential possibility of

---

<sup>5</sup> This situation might change in the future, of course. The development of wholesale markets and consumer demand have a decisive role in this change.

substitution arose after the comparison of prices. These are the possible substitutions between mobile-originated calls and long distance calls made by business customers, and between the fixed-line social package<sup>6</sup> and mobile pre-paid packages used by the lower segment of residential customers.<sup>7</sup> At the same time, it has to be emphasised that these are only potential substitutions, and the GVH did not have sufficient empirical data to assess the real grade of substitution.

Significant differences are also to be experienced among mobile-originated calls. In case of the post-paid and pre-paid segments, all the four calculated indexes showed significant variations. Nevertheless, as it was outlined above, these methods are not adequate for defining the separate markets; they are only applicable to support or test certain anticipations and assumptions. Accomplishing the hypothetical monopolist test, one may unambiguously come to the conclusion that the two segments are parts of the same market, because substitution is very strong on the demand side as well as on the supply side. The possibility of supply-side substitution is quite clean-cut. If a monopolist operated in one of the two markets, then in case of a price increase of 5-10% by this monopolist, there would not be any serious entry barriers<sup>8</sup> for the other market player, and in this way, market entry would be easy. On the demand side, substitution is also possible without any doubt; differences between the two products are not really significant for consumers, since functionally both services offer the same.

The analysis of price correlation further strengthened these observations. Prices change in the same manner within the mobile sector, except for W450. The relation between the post- and pre-paid segments is especially strong. According to that, it seems that mobile operators are in the same market, and the post-paid and pre-paid segments are also to be regarded as one market. As opposed to this, correlation between fixed-line and mobile markets are lower, which means that the effect of the same competitive factors is less appreciable. It supports the statement that long-distance calls are in a different market from mobile-originated calls.

#### 1.5.4. The category of wholesale services

As determining the category, GVH's choice was greatly influenced by the fact that the answers of operators regarding wholesale and network services were quite close to the preliminary assumptions of the GVH, but the classification of the services present in the market was somewhat different. Hence, the category of wholesale services was introduced for the sake of unified categorisation.

Concerning the wholesale sector, the following can be stated:

- ❖ Wholesale and retail services are in separate markets.
- ❖ At present, the following markets can be distinguished within the wholesale segment:
  - the unilateral access services provided by the domestic mobile operators to other companies;
  - international roaming services, and
  - termination markets of each operator.

---

<sup>6</sup> Package provided in the frame of universal service – *note of the translator*.

<sup>7</sup> This segment of customers usually does not use the access to the telecoms network of whatever technology to originate but only to receive calls.

<sup>8</sup> Naturally, those operators could enter the market, which already have a network and the necessary concession rights, since the lack of those is an absolute barrier to entry.

With respect to the first category, it is important to note, that it is not widely spread in the market (Probably the reason for this is basically the moratorium included in the Concession Agreements. The respective clauses of the Concession Agreements substantially do not intend to support the service provision of a new entrant other than those already in the market.) Currently, two examples fit into this category: the domestic roaming provided by Pannon GSM for Vodafone, and the access service provided by Westel 900 for MATAV. Neither did the GVH try to make any further distinctions – network access, airtime provision etc. – within the category, nor did it go into detailed assessment regarding competitive conditions in an undeveloped market. It is important to highlight, however, that the new directions emerging along the growing penetration of the mobile telecommunications market might increase the significance of this market segment, as it gives place to the exploitation of existing capacities.

Within international roaming services, the following categories can be distinguished: roaming services provided for foreign companies (wholesale category), and roaming services provided for own subscribers (retail category).

Concerning the termination market, the GVH agrees with the approach that termination is the connection between the telecom company of the calling party and the telecom company of the called party. When materializing the service, the following decisions have to be made: the calling party decides to take the service, but the called party chooses the company. Since the calling party pays<sup>9</sup> for all services, the choice of the called party is not affected by the price of the service. Since the called party is not to be reached through another operator, the operator concerned holds a monopoly position in the market of termination of calls in its own network.

#### 1.5.5. Conclusions

The purpose of the inquiry of the mobile telecommunications services sector was to assess the competitive situation and the possible areas for intervention. As a result of the inquiry, the series of data available made it the GVH possible to draw certain conclusions related to the segments of the market giving the majority of the revenues of the sector, concerning the competitive situation. It became possible, related to the majority of the areas inquired, to establish whether the coercive effects of competition are effective enough to make the market competitive.

The answers for the preliminary questions raised prior to the inquiry could be summarised as follows:

- The price level of mobile telecommunications services is still higher than that of the fixed-line services. The analysis of the competitive situation of both sectors led the GVH to establish that in general mobile and fixed-line services could not substitute each other and therefore the difference between the price levels of the two sectors in itself could not be considered as a symptom of market failure. The observation of the decrease of average price levels in the retail market of the mobile sector makes probable the existence of retail competition.
- Related to interconnection fees the following could be established:
  - i. Based on the very limited substitution between the mobile and the fixed-line services presented above, the further examination of the difference in the termination fees applied in these two sectors is irrelevant.;

---

<sup>9</sup> So called CPP principle

- ii. Changes of the prices of calls terminating in a mobile network – taking into account price changes in general and the difference in prices of calls originating in different networks – show a sort of market failure. The opinion of the GVH is that call termination services markets constitute distinct markets in the case of each operator and that this makes it likely that each operator has a dominant position in the market of its own termination services. The detailed analysis found it likely that the market failure discovered by the inquiry was the result of one or more undertakings' restrictive practices. The analysis therefore claimed the initiation of competition supervision proceedings. Therefore in the case of the interconnection fees the inquiry met the complaints previously claiming the initiation of proceedings in this respect.<sup>10</sup>
- The inquiry concluded that the reasons for the lack of entry into the market of mobile telecommunications services were objective – the legal background – and that it could not be considered the result of one or more undertakings restrictive practices. However the GVH maintains its opinion that new entry based on access agreements would increase competition under certain circumstances and could contribute to the growth of consumer welfare. Further analysis of the question would be possible only after the demolition of legal barriers.

The report does not contain detailed proposals for state intervention but the GVH by using the experience gained from the inquiry is now able to contribute to the development of the legal background. The recognition of the necessity to review from time to time the competitive situation on the strategic sectors of the telecommunications market is an important lesson of the inquiry. This would strengthen the basis of the GVH's intervention and the better establishment of regulatory decisions. The fact that in the new regulatory structure of the EU the necessity of intervention should be justified on the grounds of the competitive situation on the relevant markets makes the systematic review more important. The proceeding authority should be in the possession of the relevant information. For the analysis of the competitive situation of a market two technical conditions are necessary:

- the authority should have enough power to get access to the relevant information being confidential or non-confidential. It should also have the possibility to impose sanctions on undertakings refusing to co-operate. Sanctions mean an appropriate amount of fine.
- the request of information should happen in a predictable way. A profound inquiry is based on data derived from appropriately long time-series. This increased obligation imposed on the information-provider further underlines the necessity of predictability. The continuous, pre-planned collection of data as required by the authority does not impose disproportionate obligation on the information-providers and ensures the correct presentation of the competitive situation.

---

<sup>10</sup> On 7th February 2002 the GVH initiated proceedings against the mobile telecommunications service providers and MATÁV the fixed-line operator because of the alleged infringement of Articles 11 and 21 of the Competition Act. The proceedings (No. Vj-22/2002) were still in process in September 2002.