

The Hungarian Competition Act may be amended on several points and the GVH may be given new powers

The proposed provisions are not unprecedented at either European nor Hungarian level and, if adopted, will protect fair competition and Hungarian consumers.

Budapest, 3 April 2024 - The Hungarian Competition Authority (GVH) can become even more effective in its competition protection activities. The Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (Competition Act) may be amended on several points in the framework of the amendment of the laws on judicial matters. Among other things, a provision on undertakings of paramount significance could be introduced into the Competition Act, modelled on the German example, which could help the GVH to intervene quickly and effectively in the event of distortions of competition by taking a preventive approach. If adopted by Parliament, the proposed amendments could contribute to the effective enforcement and efficient performance of the tasks of the Hungarian Competition Authority, and ultimately to the protection of fair competition and Hungarian consumers.

The activities of the GVH for the protection of competition are based on three main pillars: in its competition supervision work it enforces the rules of the Hungarian Competition Act and EU competition law; in its competition advocacy work it uses the means at its disposal to influence public decisions in the interests of competition; and in order to promote social acceptance of competition, it contributes to the development of competition culture by disseminating knowledge of competition policy and by developing professional public opinion on the economics and law of competition.

In the framework of its competition policy activities, the GVH assists the legislator on the basis of its experience in the application of the law, especially when there is a need for its experience, in order to benefit from the experience of case law and to assist the application of the law, and to ensure that the laws are adapted to changing social, organisational and technical conditions. The amendments to Competition Act contained in the bill amending the 2024 Act on judicial matters are also essentially aimed at this.

The bill includes, among many other amendments to make the powers and functions of the GVH more effective, a provision on undertakings of paramount significance. The proposed new powers of the GVH are based on the German model: under Section 19a of the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen - GWB), the German Federal Competition Authority (Bundeskartellamt) is empowered to designate undertakings which are of paramount significance for competition across markets. An illustrative list of criteria to be taken into account by the authority when making such a designation is also set out in the GWB. The obligations that can be imposed on the designated undertaking are also very similar. In

addition, similar powers concerning ownership rights can be found in Articles 189 and 192/A of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises, which are exercised by the Hungarian Central Bank (Magyar Nemzeti Bank - MNB). The provision contained in the bill is therefore not unprecedented either in the toolbox of other foreign competition authorities or in relation to any other authority at the domestic level.

The justification for the obligations that may be imposed is that, for an internal or external reason that adversely affects the day-to-day operation of an undertaking of paramount significance, a market situation may arise (e.g., a threat to security of supply) that may require intervention by the authority to maintain the existing level of competition and avoid distortion of competition. In such a case, the authority should monitor that business decisions are aimed at maintaining the existing level of competition by addressing the internal or external cause adversely affecting day-to-day operations, in order to protect competition.

“In my view, the legislator has taken the rule of law aspects into account to a great extent in the bill to amend the Competition Act in order to ensure fair competition and the protection of Hungarian consumers. The new powers are also fully subject to safeguards,, since the conditions of application can only be decided in a competition supervisory procedure, and an administrative proceedings can be brought against the independent Competition Council decision designating and determining the obligation.” - emphasized Csaba Balázs Rigó, President of the Hungarian Competition Authority.

The designation of an undertaking as an undertaking of paramount significance and the imposition of an obligation on such an undertaking, which may be exercised by the GVH, is necessary to ensure the existence of conditions of fair economic competition and a healthy market structure facilitating such competition, as well as to protect consumers' rights.

The provision for an undertaking of paramount significance, together with the other amendments contained in the bill, could contribute to fair competition in the market and to the effective protection of Hungarian consumers.

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