



**ANNUAL REPORT ON COMPETITION LAW AND POLICY
DEVELOPMENTS IN HUNGARY**

(January – December 2017)

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|---|-----------|
| ANNUAL REPORT ON COMPETITION LAW AND POLICY DEVELOPMENTS IN HUNGARY | 1 |
| (JANUARY – DECEMBER 2017) | 2 |
| 1. CHANGES TO COMPETITION LAWS AND POLICIES, PROPOSED OR ADOPTED | 3 |
| 2. PROCEEDINGS | 4 |
| 2.1 Unfair manipulation of decisions of trading partners, and unfair commercial market practices against consumers | 5 |
| 2.2 Restrictive agreements | 12 |
| 2.3 Abuse of dominant position | 14 |
| 2.4 Control of concentrations | 15 |
| 3. CLIENT FRIENDLY SOLUTION TO THE ACCESS TO THE FILE – VIRTUAL DATA ROOM AT THE GVH | 17 |
| 4. MARKET ANALYSIS AND INQUIRY INTO SECTORS OF THE ECONOMY | 18 |
| 5. LESSONS OF THE COURT REVIEWS OF THE GVH'S DECISIONS | 19 |
| 6. COMPETITION ADVOCACY – COMMENTING ON REGULATIONS AND OTHER DRAFTS | 19 |
| 7. COMPETITION CULTURE | 21 |
| 7.1. The activity of the Competition Culture Centre | 21 |
| 7.2. Cooperation with other organisations | 22 |
| 8. THE ACTIVITY OF THE OECD-GVH REGIONAL CENTRE FOR COMPETITION IN BUDAPEST | 23 |
| 9. INTERNATIONAL RELATIONS | 24 |
| 10. RECOMMENDATIONS OF THE GVH TO THE PARLIAMENT | 24 |
| 11. TECHNICAL CONDITIONS AND OTHER INFORMATION | 25 |

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

Amendment of the Competition Act in 2017

1. The Competition Act was amended on several points in December 2016, with the amendments entering into force in January 2017. The most significant amendments related to the procedures governing the control of concentrations of undertakings. In recent years the GVH has taken significant measures to reduce the administrative burden faced by undertakings subject to authorisation procedures and to accelerate proceedings relating to the authorisation of concentrations. The ultimate purpose of the legislative amendment of December 2016 was to reinforce and promote this trend.
2. The number of cases requiring no special investigation and closed with a simplified decision has increased in recent years. In order to accelerate the proceedings in such cases pursuant to the amendment of the Competition Act (instead of an application for authorisation) a notification must be submitted to the GVH by those who qualified as applicants within the meaning of the former legislation.
3. The GVH immediately examines a notification of a concentration. If the content of the notification is sufficient to establish that the concentration will obviously not result in a significant lessening of competition on the market affected, the GVH does not initiate a competition supervision proceeding and instead issues an official certificate to that effect to the notifying party, based on which the concentration may be implemented. If, however, it is not obvious from the notification of the concentration that the concentration would not significantly reduce competition, or this cannot be established clearly based on the notification, the GVH initiates a competition supervision proceeding within eight days to examine the concentration.
4. The legislative amendment also affected the net turnover thresholds relating to applications for authorisation (now notification), in view of the fact that the thresholds had not changed since 2005 despite an aggregate inflation rate of close to 50%. The former 500 million HUF (approx. 1.5 million EUR) threshold (individual turnover of at least two undertakings participating in the transaction) was increased to one billion HUF (approx. 3 million EUR), thereby potentially reducing the number of transactions requiring notification to the competition authority by 10-15%.
5. The increase of the 500 million HUF threshold aggravated an existing problem, namely, the fact that in markets with relatively low aggregate turnovers concentrations below the threshold could also result in a significant lessening of competition, particularly through the creation or strengthening of dominant positions. Consequently, the legislative amendment empowered the GVH to investigate a concentration below the threshold ex officio if the concentration is likely to result in a significant lessening of competition, particularly if it creates or strengthens a dominant position.
6. Another major area of amendment was the transposition of Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. In this regard infringements of competition law mean infringements of Hungarian or EU rules prohibiting restrictive agreements and abuses of dominant position. The new regulation governs the enforcement of civil claims for such infringements in court, expanding the set of public law instruments available to the

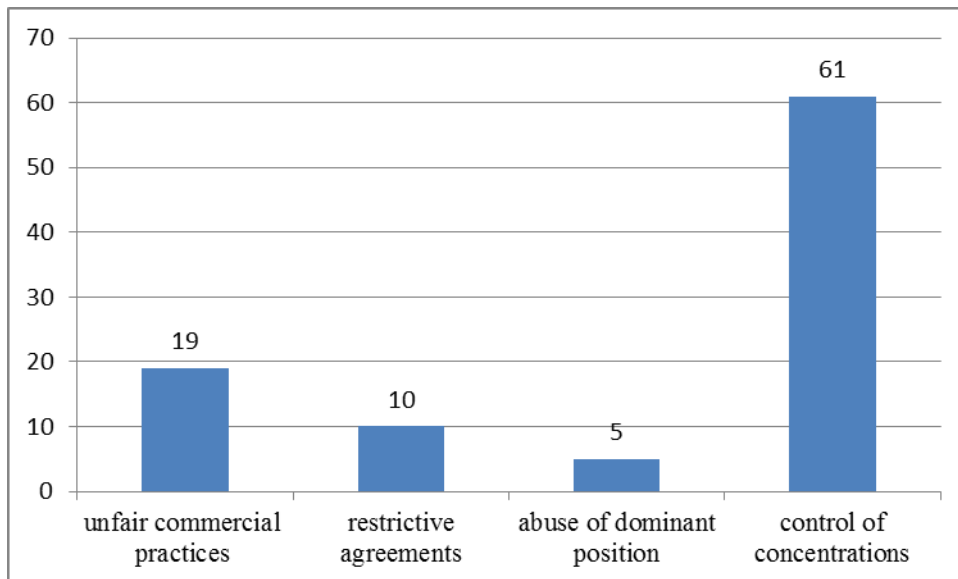
competition authority. The regulation strived to coherently harmonise these two forms of enforcement (e.g. regarding special rules governing the participation of the competition authority in actions for damages under private law, access to documents held by the competition authority, or the binding nature of the part of the decision of the competition authority establishing the infringement).

7. On 13 June 2017 the amended provisions entered into force, according to which vertical agreements containing price fixing may not be exempted from the prohibition of agreements restricting economic competition on the grounds of minor importance, thereby approximating the law to EU law.

2. Proceedings

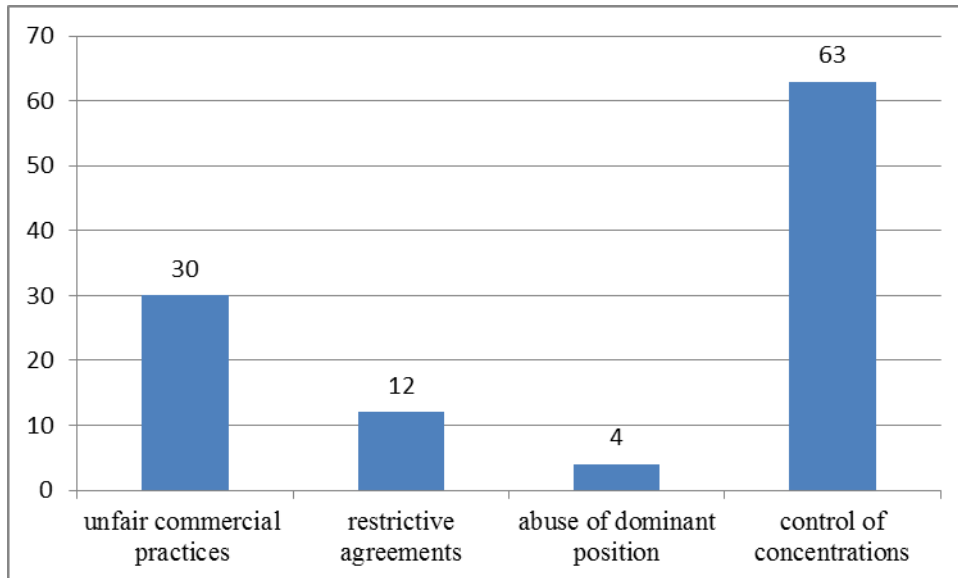
8. In 2017 the GVH's Client Service was contacted, by phone or in person, on nearly 2000 occasions and it handled a further 876 written communications.
9. In 2017 a total of **95 new cases** were initiated. The trend of 2016 continued in that cases related to the control of concentrations remained the highest number of cases dealt with by the GVH (61 such proceedings were initiated in 2017). In 2017, 19 proceedings were initiated relating to unfair commercial practices, 10 relating to restrictive agreements, and 5 relating to abuses of dominance.

Number of cases initiated by the GVH in 2017



10. Altogether 109 proceedings were closed. Similar to case initiations, most of the closed proceedings were merger cases. Of (all) the cases closed in 2017, there were 63 merger cases (the same number as in 2016). 30 cases were related to consumer protection, 12 to restrictive agreements and 4 to abuse of dominance.

Number of cases closed by the GVH in 2017



11. Given that the basic task of the GVH is to maintain the public interest in fair competition and to maintain a culture of compliance with the law, the effectiveness of its operation cannot be solely measured by the total amount of the fines it imposes. Nevertheless, the total amount of the fines imposed in competition supervision procedures by a competition authority is an important measure of the success of its activities. The GVH imposed fines amounting to a total of 1.3 billion HUF (approx. 4 million EUR) in 2017.

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

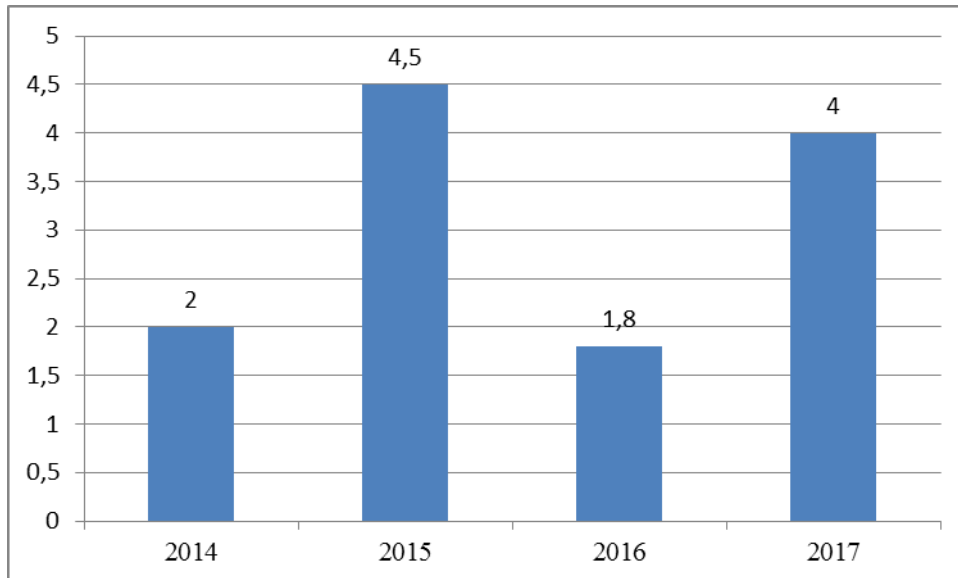
12. The enforcement of the legislation on consumer protection is divided among public authorities according to their specific competencies. These authorities are the GVH, the Central Bank of Hungary (Magyar Nemzeti Bank, MNB) and the Ministry for Innovation and Technology (Innovációs és Technológiai Minisztérium, ITM). 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 requirements set out in other legal norms. The MNB – as the body responsible for supervising the activities of entities/persons subject to the laws of the financial sector – has jurisdiction to take actions to protect the rights of consumers using financial services. In any other situation, it is the ITM that has jurisdiction to proceed through its institutions. Additionally, the ITM is responsible for the operation of the existing two consumer protection laboratories, as well as for the European Consumer Centre in Hungary. When assessing the material influence on competition in order to decide which authority is competent in the given case, among others the extent of the practice and the size of the undertaking liable for the infringement are taken into account. For the sake of guaranteeing legal certainty, the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices (UCP Act) 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.

13. Practices in B2B relations – targeting businesses – belong to the sole competence of the GVH.
14. B2C cases are covered by the UCP Act, while B2B cases are assessed under the relevant provisions of the Competition Act. The UCP Act prohibits unfair commercial practices on three grounds (unfairness, deceptive or aggressive commercial practices, “black list”).
15. Comparative advertisements are subject to special regulation: pursuant to the Hungarian Competition Act, the GVH has jurisdiction to proceed against non-objective comparative advertising, both in B2C and B2B cases.
16. In 2017 the GVH closed 30 consumer protection proceedings. On 16 occasions the GVH established an infringement, in 5 cases it adopted a commitment decision as it determined that the public interest could be guaranteed by accepting the commitments offered by the parties. In 3 cases the GVH issued a warning to the undertakings¹. A further 6 cases were terminated by the GVH.
17. In 2017 the GVH devoted special attention to the identification of unfair commercial practices relating to the data-based economy, and continued to accord priority to the protection of vulnerable consumers.
18. Cases related to markets such as infocommunication services, classified advertisements for real property, the sale of second-hand cars, retail trade, as well as the markets of pharmaceuticals, dietary supplements, foods and medical devices.
19. The GVH pays special attention to market signals received concerning online trade. Numerous complaints were once again received concerning the operation of web shops, particularly the operation of certain online auction sites. The GVH’s investigation of the commercial practices of undertakings participating in the annual Black Friday campaign deserves special mention.
20. In 2017 the GVH imposed fines amounting to a total of 1,178.5 million HUF (approx. 3.6 million EUR) in this category of cases.

¹ An amendment of the Hungarian Competition Act, which came into effect on 19 June 2015, made it possible for the GVH to issue a warning with the aim of steering small and medium sized enterprises (SMEs) in the direction of compliance with competition law. As a result of this amendment of the law, the GVH may issue a warning instead of imposing a fine on an SME if it has committed an infringement for the first time. When issuing a warning the GVH may, if it considers it necessary, oblige the SME in question to create a compliance programme and a set of internal procedural rules aimed at ensuring that the enterprise does not commit a further infringement in the future.

Fines imposed in consumer protection related cases (million Euro) 2014-2017



21. 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 number of 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 they are able to complement each other.
22. The consumer protection work of the GVH focuses primarily on the demand side of the market. Its objective is to guarantee the conditions that are necessary to enable consumers to engage in conscious decision-making, or to put it differently, to ensure the freedom of decision making of consumers through scrutinising the effects of the communication of supply-side actors on consumer behaviour. If it is established that the decisions of a significant proportion of the consumers in a particular market are being unfairly influenced by an undertaking or that consumers are being forced to make decisions that they would not have otherwise made, then market processes and competition may be being distorted by the distorted decisions of the consumers.

Digital challenges in the field of consumer protection

23. In early 2017 the GVH set up a working group to promote the skills necessary to assess digital markets. The working group analyses the information necessary for the identification and understanding of certain phenomena, prepares and draws up drafts of conceptions for investigations, examines past cases relating to the subject, and initiates investigations based on the conclusions. Furthermore, it intends to make recommendations for legislative measures to increase the efficiency of competition supervision on digital markets.
24. The establishment of the working group was necessary due to the dynamics of these markets, the special features of supply and demand, and in particular the unique characteristics of consumers' decisions, which differ from other markets.
25. In the digital world, the number of latent violations or ones that are not obvious to consumers is likely to be very high. There exists a large information asymmetry in this field. In

particular, the high volume of information, the dynamics of technological development, and the speed and complexity of the services provided make it harder for consumers to identify infringing behaviours.

Information Communication Services: Telecom Case (Comparative advertising)

26. The GVH found that Magyar Telekom Nyrt (Telekom) had committed an infringement when in its comparative advertising campaigns it failed to impartially compare the size of its 4G mobile internet network to those of its competitors. In its advertisements Telekom conveyed the message that its 4G network was larger than that of its two competitors, Telenor and Vodafone. The GVH concluded that this conduct amounted to an infringement of the rules relating to comparative advertising as the advertisements in question did not satisfy the requirement of verifiability: the coverage maps referred to by Telekom did not enable its claims relating to national coverage to be verified; furthermore, the statement that at any point in time the national coverage of a mobile carrier is the largest cannot be considered as being objective if, due to the characteristics of the 4G mobile service, such a situation cannot be sustained because of rapid network development.
27. The GVH found that when analysing the objectivity of comparative advertising, it is not only the validity of the communication that must be examined but also whether the feature advertised (in this case, the size of the network) is a typical and decisive criterion for the choice of a 4G mobile internet carrier under the prevailing market conditions. In the justification of the decision the GVH emphasised that on the Hungarian mobile telecommunications market and, in particular on the mobile internet market, it is highly important to prevent a market leader suggesting to consumers, by way of comparative advertising that relates to its own network but disregards the dynamics of competition, such a benefit that will tie consumers to itself for up to two years. The GVH based the calculation of the fine on the costs of the advertising campaigns. It considered, as aggravating circumstances, that due to its novel and complex nature the 4G service was largely unknown to most consumers, thereby resulting in a significant information asymmetry; that the campaigns lasted for long periods, relying on and reinforcing each other through the use of the same slogan; and that the infringement may have been prolonged due to the one or two year long loyalty periods imposed on consumers. As mitigating circumstances, the GVH considered that the differences between the carriers could be verified for the entire period investigated in the case of one carrier, and for part of the period investigated in the case of the other by comparing the coverage maps; and that the questions dealt with by the decision can be considered novel. The GVH imposed a fine of 600 million HUF (approx. 1.9 million EUR) on Telekom for its unlawful comparative advertising carried out in its campaigns using the slogan ‘4G network with the highest coverage’.

Commitment decision in the influencer’s case

28. The GVH accepted the commitments offered by GoldenEye Kreatív Kft and Magyar Telekom Nyrt. (Telekom), according to which the communication practice of the influencer, and the contracting practice relating to marketing cooperation with influencers would be modified. Additionally, the commitments also included communication activities with educational purposes. The GVH did not establish an infringement in the case and therefore did not impose a fine. According to the GVH, beside the targeted circle of consumers, the commitments were also capable of reaching and guiding advertisers, business partners, and

other influencers. Based on the lessons of this case, the GVH published a document² on its website about how it approaches the compliance activity of influencers.

Vodafone Case (Misleading Information)

29. According to the decision of the GVH, Vodafone provided misleading information about the real price of the devices in its commercials when it did not showcase the monthly (extra) fee, which in fact had to be paid and which meant that even during the commitment period after purchasing the phones consumers were burdened with extra costs in addition to the so-called unit price which was advertised as the basic service. This may have given the average consumer the false impression that – even though only when committing to a loyalty period – they were being offered a particularly favourable price, and they may have falsely believed that only the highlighted part of the price had to be paid in relation to the device (beyond the monthly base-fee, which is, however, related to the telecommunication service). The GVH deemed the above-described type of communication unlawful. Despite the fact that Vodafone did not admit to the infringement, as a sign of its cooperation it strengthened its compliance programme to an extent that went beyond the usual market practice; changed its commercial practice and eventually the sales construction of its devices as well; and furthermore offered the affected consumer group the possibility to freely cancel their fixed-term contracts, thus undertaking a significant financial burden. The GVH regarded the above actions – especially the indemnification-like contract termination offer – as significant mitigating circumstances, and consequently it set the amount of the fine, which was calculated on the basis of the costs of the particular campaigns, at 200 million HUF (approx. 619 thousand EUR), taking into account other factors as well. The GVH will continue to prominently encourage the compensation of harmed consumers in its competition supervision proceedings.

Media Markt Saturn (Weekend Sales Promotion)

30. The GVH established that Media Markt Saturn Holding Magyarország Kft. (Media Markt) had engaged in unfair commercial practices in relation to its bronze-weekend sales promotion that took place in 2015 and therefore imposed a fine of 10 million HUF (approx. 31 thousand EUR). The company advertised its promotion on the radio, on banners and on point-of-purchase materials. When assessing the advertisements, the GVH paid particular attention to the fact that it was a targeted campaign, which meant that it was particularly effective at capturing consumers' attention and significantly increasing sales due to the channels used, subject matter and timing. The GVH established that Media Markt had engaged in unfair commercial practices as it had provided misleading information about the details of the promotion in its radio commercials: the radio commercials claimed that consumers would receive a discount if they spent over 20,000 HUF (approx. 62 EUR) when in fact this was not true; furthermore, on its banners is failed to disclose the limitations applicable, for instance that the so-called 'flyer products' and online purchases were not covered. When setting the fine, the GVH began by taking into account the revenue generated from the infringement, as it considered this an appropriate point of reference and the most accurate reflection of the potential effect and efficiency of the commercial practice, in view of the nature and presentation of the commercials. The GVH considered the compliance-like

² See under:
http://www.gvh.hu/en//data/cms1037361/aktualis_hirek_gvh_megfeleles_velemenyezer_2017_11_30_a.pdf

attempts of the undertaking to be a mitigating circumstance; these were not directly linked to the commercial practice investigated, but constituted significant consumer-friendly measures that were likely to help prevent future infringing commercial practices. In the established practice of the GVH campaigns and discounts that expressly promise to cover ‘all’ purchases, products, etc. are misleading if in reality the campaigns do not apply to all of them; that is, the availability of the discounts is limited. The GVH terminated the proceedings with regard to point-of-sale materials.

Extreme Digital (Black Friday Campaign)

31. The GVH investigated Extreme Digital’s promotional campaign for 20 November 2015 (Black Friday). In its communication campaign Extreme Digital promised consumers that they could obtain huge discounts during the campaign period. When assessing these advertisements, the GVH paid particular attention to the targeted nature, subject matter and timing of the campaign, as all of these factors enabled the consumers’ attention to be effectively captured, thereby facilitating a significant increase in sales. The GVH established that Extreme Digital had engaged in unfair commercial practices because the discounts indicated in its advertisements were only available for products that could not be considered as typical products on the basis of their average price or character, and less than 1% of the products offered were available with the ‘up to 70%’ advertised discount and considerably less than 10% of the products could be purchased with ‘a discount of up to 50%’. In the established practice of the GVH, ‘up to claims’ are misleading if the products available in the promotion are not typical of the goods sold by the company or the scope of products indicated in the commercial, and the product range covered by the ‘up to claim’ is realistically not accessible; that is, it is below 10% of the product offering. When setting the fine the GVH took into account, as aggravating circumstances, the fact that the commercial practice investigated reached a wide range of consumers, delivered a strong message and, in view of its simplicity, clarity, emphatic nature and reference to the consumer price, resulted in a substantial increase in the number of orders received by Extreme Digital. The GVH considered, as a mitigating circumstance, the fact that at the time of the infringement the undertaking was an SME. The GVH imposed a fine of 20 million HUF (approx. 62 thousand EUR) for the infringement.

Presentation of a legal right as a benefit Autocentrum (Unfair Commercial Practice)

32. According to the decision of the GVH, Autocentrum AAA AUTO Kft. (AAA) engaged in unfair commercial practices because in its advertising it presented the legal rights of consumers as if they were unique benefits offered by AAA. The GVH established that AAA had engaged in an unfair conduct when presenting the rights of consumers granted by the Civil Code (warranty and warranty of title). Through a number of advertising channels (fliers, indoor/outdoor posters, radio commercials, press advertisements, online advertisements, electronic direct marketing letters, and on the www.aaauto.hu website) AAA promised customers both a 12-month warranty and a guarantee of the legal origin of the vehicles (warranty of title), claiming that these features, among others, were unique to the offer of AAA. When setting the fine the GVH considered, as aggravating circumstances, that the infringing commercial conduct was maintained for an extended period and reached a large number of consumers, as well as that the competition authority had previously condemned the undertaking for a different infringement and only a short period of time has

elapsed between that previous decision of the GVH and the start of the new infringing conduct by AAA. The GVH took into account as a mitigating circumstance that the undertaking submitted the draft version of its compliance programme.

33. The GVH stated that in their commercial practices undertakings should separate the information on consumer rights that is provided by law and the special features of various offers that are subject to commercial decisions of the undertakings. Consequently, the competition authority expects undertakings not to present a consumer right as if it exclusively stems from the consumer friendly attitude of the undertaking, or as if the undertaking is not obliged to grant the consumer right in question in accordance with the law in force. The GVH imposed a fine of approximately 30 million HUF (approx. 93 million EUR) on AAA for the infringement and ordered the discontinuation of the infringing conduct. In its decision, the GVH named AAA Auto International a.s., the parent company of the firm, as the party with joint and several liability.

Sale of Timeshare Rights: Consumers misled by Dinasztia Wellness

34. The GVH concluded that Dinasztia Wellness Kft. in.liq. had misled consumers with its offer relating to the sale of timeshare holidays. In its decision the GVH stated that the undertaking had engaged in unfair commercial practices as it had falsely led consumers to believe that it was involved in the secondary sale of timeshare holidays, and that the resale service or the success of secondary sale was conditional on consumers purchasing another timeshare holiday. The undertaking also acted as an intermediary in selling loan contracts to consumers for the financing of the purchase of the new timeshare holiday. When setting the fine, the GVH regarded as aggravated factors, inter alia, the following: the infringing practice was maintained for a long period and consequently reached a significant number of consumers; the entire commercial operation of the undertaking was based on false, unlawful information and targeted vulnerable consumers; the undertaking gained significant benefits from the infringement; the service relied on a relationship of trust; and the infringement caused significant harm and expense to consumers. The GVH imposed a fine of 22.5 million HUF (approx. 70 thousand EUR) on the undertaking for the infringement.

Medicinal products, food supplements, food products, medical devices and cosmetics

Pharma Nord Élelmiszer Kereskedelmi Kft.

35. The GVH found that Pharma Nord Élelmiszer Kereskedelmi Kft (Pharma Nord Kft.) and Pharma Nord ApS. had committed an infringement when advertising several of their products. It was established that the undertakings had failed to present a number of non-prescription drugs in accordance with their product characteristics and had promoted several dietary supplements in a manner that did not comply with the applicable sectoral regulations. Furthermore, the two undertakings had published surreptitious advertising in a publication for pharmacists. When calculating the fine the GVH regarded, as aggravating factors, that the infringing commercial practice was maintained for a long time, approximately two years, and also reached vulnerable consumers. In addition, with regard to surreptitious advertising, it was also an aggravating circumstance that advertising disguised as editorial content is a severe violation. The GVH considered, as mitigating circumstances, the substantial compliance efforts of the undertakings and, in case of the advertisement disguised as editorial content, that the undertakings abandoned this practice. The GVH imposed a total

fine of more than 38 million HUF (approx. 118 thousand EUR) on the undertakings for the infringement.

Sandoz case

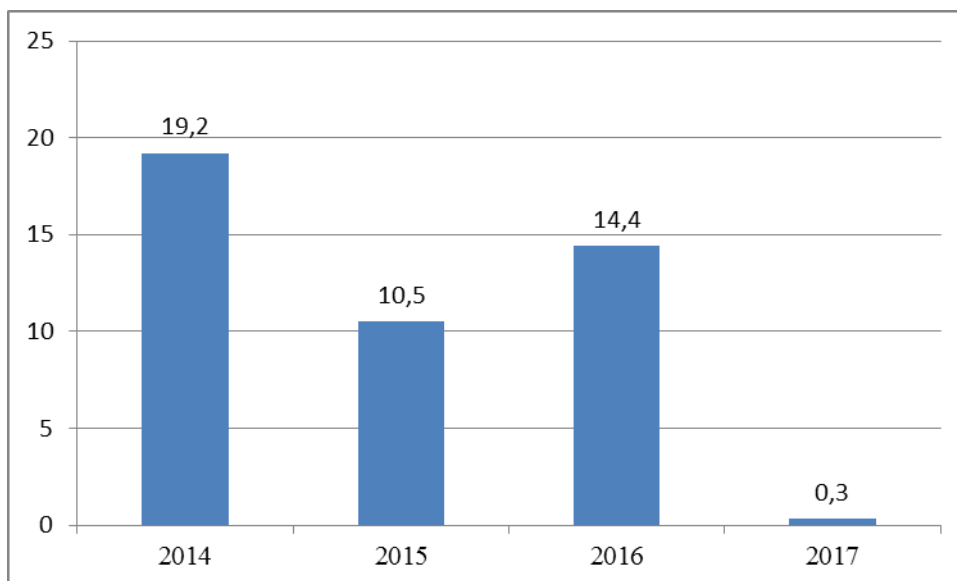
36. The GVH established that the advertisements of SANDOZ Hungária Kereskedelmi Kft. related to ACC OTC products were unlawful as they were not in accordance with the summary of product characteristics (SmPCs) and instead went beyond them. The advertisements promised a quick effect concerning the overall mechanism of action of the medicinal products, when according to the SmPCs the quick effect only concerned the absorption rate. The GVH imposed a fine of HUF 105 million (approx. 330 thousand EUR) on the undertaking for the infringement.

2.2 Restrictive agreements

37. In 2017 the GVH adopted 12 decisions in proceedings involving restrictive agreements. In 6 cases the GVH established an infringement and imposed a fine, in 5 cases the proceedings were terminated, and in 1 case the proceeding was closed with a commitment decision.

38. In the 6 cases where infringements were established, fines of 81.3 billion HUF (approx. 250 thousand EUR) were imposed in aggregate.

Fines imposed in restrictive agreement cases (million EUR) 2014-2017



39. As in previous years, in 2017 a substantial proportion (approx.60-65%) of the complaints relating to cartel activities concerned public procurement procedures, primarily public procurements relating to EU-financed programmes.

40. In order to detect cartels the GVH relies, in addition to its own detection efforts, on the now well-established Cartel Chat (anonymous contact system for providing information and asking questions about cartels), leniency programme and informant reward scheme. A total of 10 leniency applications were received, a surprisingly high number relative to previous years; 5 competition supervision proceedings were initiated as a result of these applications.

41. The submission of leniency applications may be particularly significant in the case of public procurement cartels because cooperation with the GVH has a substantial effect on the level of the fine imposed in the initiated competition supervision proceeding; indeed, persons affiliated with companies submitting leniency applications are in a significantly more favourable position in any criminal proceeding that may be initiated due to cartel activities. If an undertaking making use of the leniency programme also participates in the settlement proceeding, it may benefit from a fine reduction of up to 80% in aggregate.
42. In a settlement proceeding, the GVH reduces the amount of the fine by 10-30% if the undertaking against which the proceeding is conducted admits, based on the evidence presented to it, to the infringement, and waives its rights to access the file, to make a statement, to demand a hearing or to seek a judicial remedy, thereby contributing to the faster, less resource-intensive conclusion of the case. The settlement procedure may result in significant cost savings for both the GVH and undertakings.

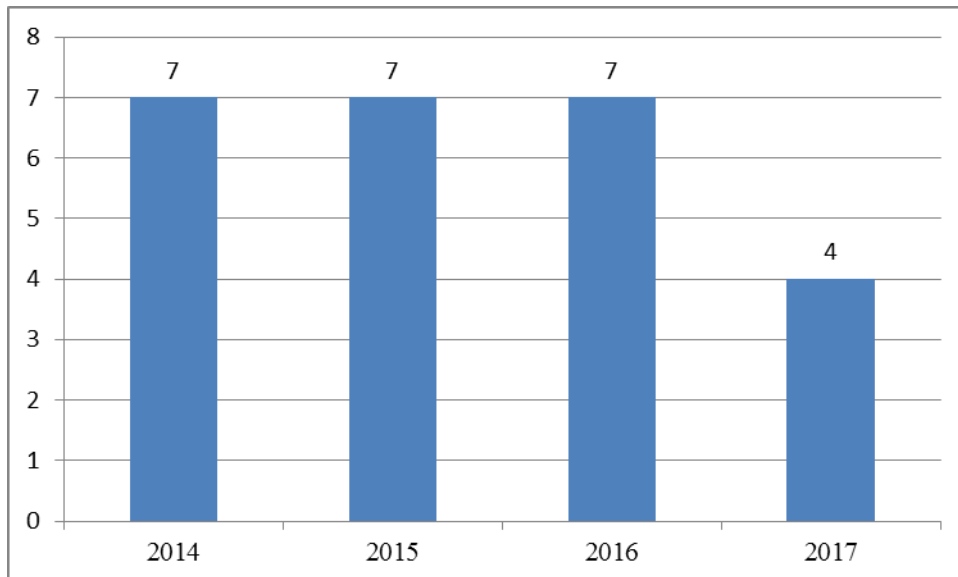
Real estate agents' cartel

43. According to the GVH's decision, four real estate agent firms (Duna House Holding Nyrt. (DHH), Otthon Centrum Holding Kft. (OCH), Duna House Franchise Szolgáltató Kft. (DHF) and Otthon Centrum Franchising Tanácsadó Kft. (OCF) had concerted their pricing policies and exchanged confidential business information in the framework of their cross-selling cooperation. The GVH held that the determination of the minimum commission rates and the allocation of areas of operation for members of the franchise network by DHF and OCH amounted to an infringement of the law. In the course of its investigation, the GVH found that the two networks had entered into agreements about sharing their stocks of the real estates to be sold under exclusive commission, thereby significantly increasing the two networks' incomes and strengthening their market positions; the commission fees (in fixed amount and in percentage) on the territory covered by the cooperation; determining the minimum amount and percentage of the commission payable on the seller side, and the amount of discount to be granted under cross-selling cooperation; and the exchange of certain sensitive business information e.g. data on some of the sales processes and the stock of commissions of DHF and OCF.
44. In its decision, the GVH stated that the contracts concluded between DHF and the members of its network of real estate agents, as well as between OCF and members of its network of real estate agents – either through the stipulation of prohibitions or the application of sanctions – had hindered the free determination of prices by the franchisees and prohibited the acceptance of commissions on the territory of other franchisees. The GVH invited the undertakings to indicate whether they were interested in engaging in a settlement procedure, in order to enable the proceeding to be concluded in a swift and effective manner. The undertakings presented their settlement submissions, in which, among other things, they voluntarily admitted the infringement; therefore the GVH reduced the fine imposed by 30%. A total fine of 75.68 million HUF (approx. 235,000 EUR) was imposed on the undertakings for the infringement.

2.3 Abuse of dominant position

45. In 2017 the GVH adopted decisions in 4 abuse of dominance cases. 1 case was closed with a commitment decision, while the other 3 cases were terminated in the course of their investigation. This year did not see the imposition of a fine in this case category.

Number of decisions in abuse of dominance cases (2014-2017)



Refusal to deal case in the pharmaceutical sector

46. The GVH initiated proceedings against Sanofi-Aventis for a suspected abuse of a dominant position on becoming aware of the fact that Sanofi-Aventis had refused to conclude a contract concerning the distribution of pharmaceuticals with a pharmaceutical wholesaler undertaking. Sanofi-Aventis distributes numerous pharmaceuticals that are essential for maintaining a competitive supply portfolio of pharmaceutical wholesalers and it can be presumed that Sanofi-Aventis has a dominant position on the relevant markets of these pharmaceuticals. Based on this presumption, it was suspected that Sanofi-Aventis had placed – without justification – certain groups of the market participants in a disadvantageous position against the incumbent market participants i.e. those already present on the market. It was also suspected that when Sanofi-Aventis was selecting its pharmaceutical wholesaler partners it was adopting a practice that was not based on an assessment of the anticipated and actual economic gains resulting from the business relation in question. In accordance with the Hungarian and the European competition law enforcement practice, harm to consumers' interests is the precondition of the intervention of the competition authority. In other words, competition law serves to ensure effective competition and benefits for consumers and is not aimed at protecting the mere existence of market players. However, on the basis of the data gathered in the course of the competition supervision proceeding, there was no clear evidence that the conduct of Sanofi-Aventis could result in significant adverse consequences for consumers, and the GVH therefore terminated its proceeding.

UPC District 29 abuse case

47. In February 2015 the GVH initiated a proceeding to investigate the terms of the internet service of UPC Magyarország Telekommunikációs Kft. in numerical district 29 because a large number of consumer complaints indicated that in this numerical district UPC offered a lower-quality internet service (with slower upload and download speeds) than in the other areas of the country, while the subscription fee was higher. When the proceeding was initiated, UPC had no infrastructure-based competitor in a considerable number of the settlements in district 29. The proceeding examined whether UPC had abused its dominance by limiting technical development and employing unfair prices.
48. UPC implemented a significant price reduction in the investigation phase of the proceeding in all of district 29, and then submitted a commitment application, which it amended several times based on the feedback of the GVH. Based on the submitted commitments, the GVH imposed the following obligations on UPC: the undertaking must carry out network developments in 12 settlements of district 29; it must ensure that the quality and pricing conditions of the networks resulting from the development projects are not worse than its national service terms and that its customers can join such networks without any additional charge, in line with the connection process customary at UPC; and it must maintain the lower prices for the currently available ADSL internet service (the quality of which is lower than that of the proposed networks) in the 12 settlements where the network development project is implemented as long as the ADSL service is available in the given settlement after the envisaged network development, and in Pilis and Tápíóság, at least until 31 December 2022. Furthermore, UPC was ordered to regularly inform the affected consumers of the steps being taken and to demonstrate its fulfilment of the commitments to the GVH. The GVH did not establish an infringement in the case and therefore did not impose a fine.

2.4 Control of concentrations

49. In 2017 the number of merger cases continued to rise: 61 merger proceedings were initiated (including notification proceedings under the new regime) as compared to 58 in 2016 and 54 in 2015, while 63 merger cases were closed in 2017 (including the ones carried over from 2016).
50. During 2017 the merger-related institutional and regulatory conditions significantly changed as a result of the amendment of the Competition Act effective from 15 January 2017, according to which the former application-based proceeding was replaced by a **notification regime in merger control**. It is partly as a consequence of this amendment that the 33 merger proceedings that were dealt with under the simplified regime, which does not require the initiation of a competition supervision proceeding, were subject to an administrative time limit of 5 days on average.
51. In 17 cases the authorisation was granted in a Phase I procedure, and in 4 cases in a Phase II procedure out of the latter 1 authorisation was granted with commitments. In addition, in 1 Phase II case the GVH prohibited the transaction and in 1 Phase II case it terminated the proceedings.

Number of merger cases by the types of decision in 2017

| | | |
|--|---|----------------|
| Granting of authorisation | Simplified procedure with authorisation (with official certificate) | 33 |
| | Phase I procedure | 17 |
| | Phase II procedure | 3 |
| | Authorisation with commitments in Phase II | 1 |
| Prohibition – prohibition of concentration in Phase II | | 1 ³ |
| Withdrawal – withdrawal of decision | | 2 |
| Termination of the proceeding | in Phase I | 3 |
| | in Phase II | 1 |
| Post-investigation: the commitments were complied with | | 2 |

52. In 2017 the GVH elaborated on its already extensive merger control practice on a number of points. The following statements of principle relevance and developments in enforcement are worth highlighting.

Joint control based on objective control

53. In the context of a specific case the GVH clarified that joint control based on objective control can be assumed in the absence of a separate agreement, if undertakings in the same group vote together in a company through their aggregate voting rights exceeding 50%, if there is no other enterprise independent of both enterprises the voting rights of which, together with the votes of at least one of the two undertakings, exceed 50%. In such a situation, the undertaking has no controlling owner.

Hierarchy of control rights

54. According to the hierarchy of control rights, in the case of a conflict between control based on the possession of the majority of votes and control based on a contract, the latter has priority. Accordingly, joint control exists based on an agreement between the two undertakings on the joint acceptance of the business plan even if one undertaking has a majority holding in the undertaking.

Assessment of a contract based on its content

55. General principles such as the assessment of a contract based on its content are also applicable in competition law. Thus, a preliminary contract between the parties is not

³ The competent regulatory authority – the National Media and Telecommunications Authority – did not authorise the transaction; consequently, pursuant to the relevant rules, the authorisation of the competition authority could not be granted.

considered to be premature if in such contract the parties agreed on every material issue regarding the concentration, also agreeing that if the conditions set out in the preliminary contract are satisfied, the concentration will be implemented. Accordingly, in terms of its content a preliminary contract is no different from a 'definitive' contract setting out the terms, that is, it is not to be considered 'proposed' simply because of its name.

Use of the internal documents of an undertaking

56. The internal documents of the groups of undertakings participating in a merger may be taken into account in the proceedings of the GVH, whether they were prepared expressly for the purposes of a competition analysis or otherwise. The authenticity and thus evidential force of the data in such documents is strengthened by the fact that they were not prepared at the instruction of an authority but are based on information obtained during the operation of the firm or on market information.

Sectorial experience obtained in merger proceedings

57. In 2017 the mergers examined by the GVH covered a number of industries; like in the previous year, the highest number of transactions (11) were implemented in the real estate industry, which constituted 17% of all the proceedings started upon application or based on a formal complaint that were closed in the year.

58. The GVH examined the food industry, the electronics industry, IT services, the printing industry, and the manufacture of various components and chemical materials in several proceedings. As regards to the agriculture industry, the number of concentrations declined relative to previous years, continuing the trend of recent years.

59. The GVH examined four concentrations on the advertising market. These cases related to the markets of the printed press, web-based platforms and television commercials. The GVH acknowledged three of the transactions in the sector, while in one case the GVH was obliged to prohibit the concentration due to the prohibition of the Media Council as the competent sectoral authority.

60. The GVH also examined 3 transactions in the financial services sector in 2017. They related to the markets of insurance, fund and asset management and other financial services. In one case, the GVH terminated the proceedings because it found that no control was acquired through majority voting rights, while the other two mergers were acknowledged by the GVH without any intervention.

3. Client Friendly solution to the access to the file – Virtual Data Room at the GVH

61. In the course of its competition supervision proceedings the GVH handles and stores a significant amount of documents. The representatives of the undertakings concerned – according to the rules of the Competition Act – are entitled to access the files that have been generated in the course of their official cases; they may make copies, or for a fee may have copies or certified copies made, all of which may then be used in the cases in question. The amount of documents accumulated in relation to one case can reach several thousand in pages, with the result that access to the file by attending in person and the making of copies is a lengthy and costly process for both the GVH and clients.

62. Due to the opening up of the Virtual Data Room, the GVH has provided electronic access to files since 25 October 2017.
63. The Virtual Data Room provides an online access opportunity and interface for those clients that have been approved as access-entitled users in relation to individual cases of the GVH or to the persons authorised by the clients (for example legal representatives or counsel). The login users are identified through the system of the Client Site (Ügyfélkapu).

4. Market analysis and inquiry into sectors of the economy

64. The Competition Act authorises the President of the GVH to launch, by an injunction, a sectoral inquiry with a view to exploring and assessing the market processes where price movements or other market circumstances suggest that competition is possibly being distorted or restricted in a market within a specific sector. The order opening the inquiry must be communicated by way of an announcement on the website of the GVH. In this inquiry, a report is prepared based on the detailed analysis of the information collected from market actors, which is used later as a basis of further activities of the GVH (particular competition supervision proceedings and competition advocacy activities). The concept of sectoral inquiry is not unknown in European practice either, as the European Commission also uses this method to obtain a general overview of the competition problems on a particular market (sector).

Sectoral inquiry on the market of accepting bank cards

65. On 20 January 2017 the GVH launched a sectoral inquiry on the market of accepting bank cards to explore and assess the market processes. The GVH noticed that smaller traders faced less favourable service fees than larger traders on the market of cash-substitute payment instruments, i.e. the market of accepting bank cards when initiating and maintaining payment with them. In the inquiry the GVH plans to overview the payment card industry, in particular the bank card acceptors as a downstream market. At the heart of the sectoral inquiry there will be an investigation of the competition conditions of the acceptance of bank cards and an evaluation of innovative cash-substitute payment instruments that may potentially put competition pressure on the payment card accepting market.
66. The GVH believes that the sectoral inquiry must fully explore every factor that can hinder efficient competition on the acceptor market. The GVH also commissioned a market research to investigate the costs of bank card payment. With the effects stemming from the changes made to the regulation of interbank commissions in mind, the market research, among others, also covered the awareness of traders and the practice of accepting different payment methods.
67. The results of the market research affirmed the need for a sectoral inquiry. A report detailing the findings of the inquiry will be published on its completion.

Analysis of the markets of new passenger car and LCV distribution and repair

68. On 10 May 2017 the GVH published its market analysis looking into the operation of the markets of new passenger car and LCV distribution and repair and the related insurance market in Hungary. In the course of the market analysis, which began on 1 December 2014,

the GVH looked into the specific design of the networks related to the sale and repair of cars and LCVs, any changes in these networks in recent years, the mutual effects of the characteristics of the markets of distribution and servicing, as well as the inter-brand and intra-brand competition.

69. The GVH's analysis, as evidenced by its publically available market analysis paper closing the exercise, found no market failure that could be remedied in a competition supervision proceeding, however, certain market issues affecting market conditions were identified. Accordingly, the GVH recommended the reduction of certain costs relating to the entry into service and operation of new vehicles in order to promote the sale of new vehicles, and recommended that consideration be given to the reduction of certain costs relating to the entry into service of used vehicles.
70. Furthermore, it proposed that the re-introduction of the campaign period in the MTPL market is given thought. In addition, the GVH addressed recommendations to market participants, proposing that they closely monitor the decisions of the GVH and the development of competition law trends to promote their compliance efforts.

5. Lessons of the court reviews of the GVH's decisions

71. In 2017 the parties filed for the judicial review of the GVH's decision on the substance of the case on 12 occasions.
71. From among the judgments of the Budapest Court of Public Administration and Labour, which is the first-instance review court for the decisions of the GVH, one has become final and enforceable. The judgment upheld the decision of the GVH in a cartel case in full.
72. The Budapest-Capital Regional Court as the second-instance court adopted 18 judgments in 2017. The second-instance court upheld the legality of the GVH's decision in 10 cases while it altered the GVH's decision in 3 cases, returned the case to the court of first instance for new proceedings in 2 cases, overturned the decision of the GVH or part thereof in 2 instances, and in 3 cases it instructed the GVH to conduct new proceedings while overturning the decision of the GVH.
73. The Curia of Hungary (court of third-instance) adopted 1 decision, where the legality of the GVH decision was confirmed.
74. In 2017, 23 non-litigious proceedings were initiated against the decisions of the GVH; of these, in 19 cases the Budapest Court of Public Administration and Labour confirmed the legality of the authority's decision, in 2 cases it overturned the substantive decision of the GVH and ordered the Authority to conduct new proceedings and in 2 other cases it instructed the GVH to conduct an administrative procedure.

6. Competition advocacy – commenting on regulations and other drafts

75. In the scope of its competition advocacy, in 2017 the GVH was sent submissions and proposed legislation for commenting in numbers similar to the average of previous years. The GVH studied 104 proposed pieces of legislation regulations in the scope of public administrative consultation.
76. The GVH sent its comments in 25 cases. Besides the submissions officially received by the GVH for comments, the Authority gave its opinion in a further 6 cases in relation to draft

pieces of legislation uploaded on the government's homepage. In 2017 a significant proportion of these comments contained recommendations aimed at changing elements of the applicable competition and procedural law, general government and enforcement rules governing the operation of the GVH, and on improving the quality of codification; a considerable proportion of the comments related to governmental strategy making, while a smaller proportion sought to facilitate the creation of a more competition-friendly regulatory environment, reduced administrative burdens and improved conditions of the consumer decision-making process.

77. One of the most important forms of competition advocacy is commenting on legislation but other routes are also available, including the forwarding to legislative bodies of legislative anomalies identified based on market signals, accompanied by competition policy comments. In some cases the GVH takes the initiative. Trade associations have been, and continue to be, fairly active in the collection and processing of sectoral data that may raise anticompetitive concerns. If the operation of such a system is not based on legal authorisation, such associations will want to obtain preliminary information from the GVH concerning the appropriateness of their activities under competition law. In such cases, a substantive response must generally be denied due to the implication of the competition supervisions powers of the GVH; however, the entities making an enquiry are interviewed or a written response is provided, calling attention to the competition rules relevant for the issue or to existing jurisprudence.
78. The GVH objected to the proposed legislation on the activities of lawyers because of its provision on the collection and analysis of data on legal fees by the Chamber, and its non-compatibility with competition law. The GVH also found the extension of membership in public bodies to legal counsels to be controversial in consideration of their employee status, highlighting the legal uncertainty arising from the potential conflicts of disciplinary procedures by the employer and the Chamber. Furthermore, the GVH made clarifying comments relating to legal professional privilege and files made for the purpose of defence, particularly because of the danger of incoherence with other legislation including the Competition Act. Following the objection concerning legal fees, the relevant provisions were dropped; however, the GVH's comments on legal counsels, legal professional privilege and files prepared for defence were disregarded.
79. In the context of the re-regulation of tax procedures the GVH noted that the provisions of the Act on the rules on taxation concerning cash registers and automatic equipment affect the markets of those products and the related markets of online data transmission. The provisions concerning these markets may give rise to several competition-related and regulatory problems due to the high barriers to entry and the resulting weak competition or the creation of monopolies. Consequently, the GVH proposed the reconsideration of certain provisions and urged the introduction of more effective price control mechanisms on the monopoly markets created as a result of such regulation. The comments of the GVH were not incorporated. In particular, this Act prohibits departure from the regulated price in either direction, in contrast with the provision of the Act on the setting of prices to the effect that no contract may stipulate a price higher than the regulated price. In practice this means that a monopolist service provider may not be obliged to reduce its prices even if its actual costs result in extra profits due the absence of the review of regulatory prices or for any other reason, or if there is a deterioration in the standard of services.

80. In the context of the proposal for registration fees to be paid by legal counsels and law clerks the GVH highlighted that in the course of setting the registration fees, the rates should be set based on justified costs, particularly because these high costs may serve as deterrents to entry. At the same time, it expressed its concerns regarding the economic soundness of the proposed rates as they were substantially different from the rates applied by other chambers. It should be noted that in Hungary registration in a chamber of commerce is mandatory, and the fees payable for membership vary widely. The GVH had conducted competition supervision proceedings against a number of county-level law chambers because they had openly set the objective of using high fees to hinder admission to their chambers and thus the setting up of legal practices. The comments of the GVH were not incorporated.
81. The GVH objected to the provision of the legislative proposal on the amendment of certain laws on the regulation of agriculture related to the general administrative procedure and for other purposes to the effect that the Hungarian Chamber of Plant Protection Professionals and Phytopathologists may issue recommendations concerning the upper and lower limit of the fees for services performed by phytopathologists. The comments of the GVH were not incorporated.

7. Competition culture

7.1. The activity of the Competition Culture Centre

82. The work of the GVH in developing competition culture includes the tasks of the GVH itself relying on its professional resources, as well as programmes where the GVH relies on the work of other bodies for implementation and, where required, it offers professional help and financial assistance.
83. In 2017, the GVH also placed significant emphasis on the importance of organising professional events and being a partner in the realisation of these events. In addition, it continued to pursue actions that foster competition, but not actions closely related to raising public awareness of competition law. Such actions are aimed, firstly, at inciting consumers to think through decisions before making transactions and, secondly, at encouraging undertakings to comply with competition law rules. During 2017 the following events aimed at developing competition culture took place, namely:
- a. The Hungarian Competition Authority (GVH) and the Hungarian Competition Law Association.
 - b. In September a legal history conference was organised, with the title of ‘The history of cartel law’, jointly by the GVH, the Legal Subcommittee of the Academic Committee of Szeged of the Hungarian Academy of Sciences and the Faculty of Law and Political Sciences of the University of Szeged. The event was related to the academic research on Act XX of 1931 on restrictive agreements to investigate the legal practice of the time. The topics discussed at the conference promoted the better understanding of a hitherto uncharted area of law, in the context of the theory of competition law, which may contribute to the discourse on present and future regulation.
 - c. In cooperation with the Loyola University Chicago School of Law and the Pázmány Péter Catholic University, the Authority organised an international

roundtable entitled ‘VI. Antitrust Marathon’ in October. Representatives of competition authorities, as well as consultants, lawyers and leading academics attended the event. The agenda of the roundtable also covered major issues of competition law compliance.

- d. The Competition Policy Advisory Bureau Network continues its operation in five big cities (Debrecen, Eger, Szeged, Pécs and Győr) in Hungary. The Network assists the GVH in the area of consumer protection and enhances the messages/principles of the GVH through its communication activity.
 - e. As part of the Cultural Heritage Days the GVH opened its building for public visiting for the first time in 2015, and due to the positive feedback, the “Open GVH” programme, for the third time, was organised also in 2017. Compared to the previous years, a larger number of visitors showed an interest in the history of the building and the daily work of the GVH, and were also able to ask questions informally from the colleagues of the GVH.
84. The GVH strives to promote compliance by stakeholders through measures assisting in law enforcement, the provision of information on the proceedings of the Authority, as well as through the use of soft law type instruments. In 2017 the GVH published notices about the following subjects, inter alia: the settlement procedure, the calculation of fines in case of practices infringing the prohibition of restrictive agreements and concerted practices, the abuse of dominance and the abuse of significant market power, on the factors to consider when calculating fines in consumer protection type cases, on procedural fines imposed relating to the disclosure obligation, the publication of information regarding certain proceedings of the Hungarian Competition Authority, and the rules of communication with the senior management of the Hungarian Competition Authority. Furthermore, in view of the amended merger regulations, the GVH updated its notices relating to concentrations and modified the notice on the application of leniency rules. All the notices are available on the GVH website.⁴
85. The GVH continues to subject its notices and working papers to public consultation, and the final versions of these documents are drafted and published following consideration of the comments received.

7.2. Cooperation with other organisations

86. The GVH aims to establish and deepen ties with representatives of the academic community working in competition law and competition policy and with relevant professional organisations. In this context, based on the cooperation agreement concluded in 2016 with the SME initiative ‘Economic and Cultural Club of Family, Micro- and Small Enterprises’ (KKVHÁZ), the Authority regularly attended thematic roundtables organised jointly by the Ministry for National Economy and the KKVHÁZ in 2017.

⁴ http://gvh.hu/szakmai_felhasznaloknak/kozlemlenyek

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

87. 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, FYR of Macedonia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The RCC is financially supported by the Hungarian Government.
88. The programmes of the RCC, besides others, deal with the following topics: analysis of 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, and other general issues falling under competition law and policy. Regular meetings, training programmes, seminars and workshops were organised on these topics.
89. In 2017 the RCC hosted 302 participants arriving from 35 economies and 49 speakers from 18 countries.
90. With a view to the needs of competition authorities, having consulted previous participants of the RCC's events and the senior officials of authorities, the RCC has established a constantly changing, evolving programme structure that responds to the training needs of participants.
91. In 2017 the RCC organised 3 seminars in Budapest for its core target group (competition authorities of South-East Europe and the majority of the CIS countries). Topics of these events were: 1/ 'Market Definition', 2/ 'Best Practices in Cartel Procedures' and 3/ 'Competition Rules and the Pharmaceutical Sector'.
92. Each year the RCC organises a professional event in one of the 18 countries that constitute its primary target group. This seminar is unique as its agenda focuses on the needs of the host competition authority. After already being held in Albania, Armenia, Bulgaria, Ukraine, Croatia, the Republic of Macedonia, Georgia and Serbia, in 2017 Bosnia-Herzegovina hosted the event. The seminar was held in Sarajevo, with the title 'OECD Competition Assessment Toolkit'. The event was attended by 36 competition law professionals from 15 countries.
93. Once a year the RCC organises a joint event with the Federal Antimonopoly Service (FAS) of the Russian Federation. In 2017 the seminar was held in Moscow and it dealt with the topic of market studies. The speakers, who came from OECD countries, shared their experiences of the way market analyses fit into the work of competition authorities, namely how they may assist in and provide information for investigations and competition advocacy. Topics included general theoretical information regarding market analyses, best practices as well as available OECD, ICN and national guidelines, and the sectoral inquiry of the European Commission into e-commerce. Focal subjects included issues relating to the internet economy and purchasing power problems.

9. International relations

94. The international relations of the GVH focused mainly on cooperation with the European Commission and the national competition authorities of the EU Member States, cooperation within the framework of the Competition Committee of the Organisation for Economic Cooperation and Development (OECD) and the International Competition Network (ICN), as well as on bilateral cooperations.
95. Similarly to the practice of previous years, the case-related cooperation 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.
96. The contribution to the work of the OECD Competition Committee and to its working groups continued to be of uppermost importance also in 2017. Contributions were prepared for the topics: ‘Methodologies of Conducting Market Studies’ and ‘Cooperation between Competition Agencies and Regulators in the Financial Sector’.
97. In accordance with established practice, in 2017 the GVH also sent one of its experts to the OECD for a whole year as a secondee on a rotation basis.
98. Concerning cooperation with the International Competition Network (ICN), in 2017 the GVH remained an active participant, in particular, in the work of the Cartel Working Group, and was responsible for the coordination of the project on ‘Anti-Cartel Enforcement Template’. In addition to this, since April 2016 the GVH has held the position of co-chair of the Regulatory Framework Subgroup of the Cartel Working Group of the ICN and in this capacity it has also been running several other ICN CWG projects.

10. Recommendations of the GVH to the Parliament

99. In line with its established practice, the Hungarian Competition Authority formulates recommendations to the Parliament on identified issues affecting competition or consumers that are beyond its competence, or that are less suitable for being dealt with using the tools at its disposal. The report on 2017 contained the following recommendations:
 - a. Based on concrete experience gained from competition supervision proceedings, the GVH is of the opinion that consideration should be given to amending the Competition Act to the effect that if the prohibition of anticompetitive conducts set out in the Competition Act or Article 101 TFEU is not violated, it should be qualified unfair to invite a competitor to engage in a conduct that aims to infringe competition law. This would enable to qualify an invitation to engage in infringing conduct as unlawful. In the specific proceeding, the GVH found that with regard to the products concerned (plant protectives and artificial fertilisers) the association of merchants repeatedly attempted to convince the association of manufacturers, and when that attempt failed, the individual manufacturers, to harmonise their commercial strategies and withdraw their promotional materials from the market. The GVH found that the existence of an agreement or concerted practice (i.e. an infringement) was not supported by evidence because the aforementioned practices on their own merely qualify an ‘unsuitable act of instrumental nature’ until the contact between suppliers based on the decision results in an agreement between suppliers or a concerted practice; however, the

GVH is of the view that an invitation to commit an infringement can in itself be of concern as it goes beyond legitimate interest representation.

- b. Once again the GVH recommended that Parliament should review the rules governing the timeshare market. In the experience of the GVH, its competition supervision proceedings and available tools continue to be insufficient to prevent unfair commercial practices relating to timeshare holidays, with investigations against new undertakings having to be initiated again and again. Consequently, the GVH considers it appropriate to reconsider the rules governing this market, with particular emphasis on the registration of secondary distributors, the expansion of the scope of instances resulting in secondary distributors being banned from such operations and the establishment of the liability of the operators of holiday homes through the recording of telephone communication.
- c. The GVH recommended that a ‘*Do not call*’ register should be set up. In the recent past, the GVH received signals again from consumers complaining about unfair commercial practices and mentioning that undertakings had contacted them by telephone to promote their goods or services, with consumers unsure of how their phone numbers had been obtained. Even though such calls may provide consumers with new information, potentially containing favourable offers, it is also important that consumers are easily able to decide whether or not they wish to be contacted through this channel and that they are given the opportunity to review the calls they have consented to. Even though unsolicited calls are prohibited, in order to monitor compliance with the relevant legislation it must be first established whether prior consent was (appropriately) granted, which may be a long process. It could be effective to supplement the system by a register set up pursuant to legislation in which consumers may enter their telephone numbers, clearly expressing that they do not wish to be contacted for commercial purposes, with undertakings required to respect such opt-out or else face, relatively quickly and consistently, dissuasive penalties (imposed by sectoral market surveillance or data protection institutions).

11. Technical conditions and other information

Resources of the competition authority

Annual budget (in HUF and EUR)

| | | |
|-------------|-------------|-------|
| 2017 | billion HUF | 2.917 |
| | million EUR | 9.1 |

Number of employees

| | 2017 |
|------------|-------------|
| Economists | 14 |
| Lawyers | 55 |

| | |
|-----------------------------|-----|
| Lawyer-economists | 8 |
| Other professionals | 8 |
| Support staff | 35 |
| All staff combined (actual) | 120 |

100. In 2017 the Authority had 2.917 billion HUF (approx. 9.1 million EUR) available to fund its work. The annual finances of the budget chapter were balanced, with no liquidity issues arising; the GVH honoured its payment obligations in time.