

## THE ACCELERATED SECTOR INQUIRY

Under the special rules adopted during the pandemic in July 2021, the GVH was entitled to perform the sector inquiry with tighter deadlines and in a more targeted way.

**The goal** of an accelerated sectoral inquiry (ASI) is the same as that of a normal sector inquiry. Namely, to gather information on and analyse the conditions of competition on a certain market. According to the new regulations, the initiation of an ASI may be justified if two conditions are met. There should be a reasonable presumption that competition on a given market is distorted or restricted based on its features or characteristics. And the new element is that urgency is also needed to identify and address those market problems. The opening of an accelerated sector inquiry is based on “own-initiative” of the GVH not targeting against individual companies nor do they follow up a specific suspicion of an antitrust violation. It is an information-gathering tool, allowing the GVH to collect a great amount of data in a very short time, thus enabling to detect the potential competition problems on markets essential for consumer welfare.

**Compared to the general rules** governing the sector inquiry the ASI differs in terms of **deadlines and the fact-finding powers**.

**Deadlines** for a sector inquiry report are not set out in the Hungarian Competition Act. They can typically last two or three years in our experience. Whereas the draft accelerated sector inquiry report must be completed within 30 days. It may be extended twice by a maximum of one month. The strengthened **fact-finding powers** as procedural fines and unannounced on-site inspections should be properly applied. The court will allow the on-site search if the GVH reasonably presumes that evidence relating to the purpose and subject matter of inquiry can be found at the place of the request.

**The results** of the investigation will be summarised in a report by the GVH, following a **public consultation**. The result of the ASI can be various. When finding an infringement, the GVH may launch competition proceedings. When market distortion cannot be remedied in whole or in part by means of competition supervision proceedings, the GVH (1) may inform the government about the market distortion, or (2) publish non-binding recommendations for market participant to promote fair and effective competition, or (3) initiate an amendment of legislation. In all recent cases soft law recommendations have been issued for market players or competition advocacy actions have been taken.

The GVH immediately used its new powers and launched its first accelerated sector inquiry in the summer of 2021. This tool has worked so well that the legislator decided to keep it permanently and amended the Hungarian Competition Act in December 2021, enacted by the Act CXXX of 2021, effective as of 1 June 2022.

## **RULES ON ACCELERATED SECTOR INQUIRIES**

### **Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition**

#### Section 43/D

(1) Where the movement of prices or other circumstances suggest that competition may be restricted or distorted within the market of any particular sector of the economy, the Gazdasági Versenyhivatal (Hungarian Competition Authority) shall have powers to adopt a ruling for conducting an inquiry to study and analyze market developments. The justification of the ruling ordering the sectoral inquiry shall contain an indication of the market developments on account of which the sectoral inquiry is necessary. The ruling for launching the inquiry shall be communicated by way of a notice.

(1a) Where there are reasonable grounds to believe on the basis of sectoral specificities, individual characteristics or organizational structure of a sector that competition may be restricted or distorted within a particular market of that sector, and urgent action is required to identify and address such market problems, the Gazdasági Versenyhivatal (Hungarian Competition Authority) shall - by way of a ruling - initiate **accelerated sector inquiries** to detect and analyze market developments. The justification of the ruling ordering the accelerated sector inquiry shall contain an indication of the market developments on account of which the accelerated sector inquiry is necessary. The ruling ordering the accelerated sector inquiry shall be communicated by way of a notice. The ruling ordering the accelerated sector inquiry shall be considered delivered on the day following the date when the public notice was posted.

(2) The following shall apply to sector inquiries and **accelerated sector inquiries** mutatis mutandis:

a) Section 53/A, Section 53/B, Subsections (1)-(3) of Section 54, Subsection (4) of Section 54/A, Subsections (1), (3) and (4) of Section 55, Section 55/A, Subsections (1), (2) and (7) of Section 55/B, Section 55/C, Section 55/D, Section 56, Subsections (1), (1a), (5) and (6) of Section 61, Subsections (6) and (8)-(10) of Section 62/B, Section 64, Section 64/A, Subsections (1)-(3) and (5)-(7) of Section 64/B, Section 64/C, Section 64/E, Section 64/F, Section 65, Subsection (2) of Section 78 and Section 84/C; furthermore

b) save where this Chapter provides otherwise, the provisions of Act CL of 2016 on General Public Administration Procedures (hereinafter referred to as “Administrative Procedure Act”):

ba) on the principle of legality, the principle of effectiveness, basic principles applicable to clients, and on the principle of good faith and the principle of trust,

bb) on the general rules on representation and powers of attorney,

bc) on requests,

bd) as regards the requests made by participants of the proceedings, on the requests and their contents, presentation and adjudication, remedying deficiencies, on the rejection of requests, and on the termination of proceedings opened upon such request,

be) on applications for justification,

bf) on notifications of procedural steps,

bg) on recording procedural steps,

bh) on rulings, content and form of decisions, as well as on the definitiveness, delivery, correction, supplementing, modification or withdrawal of such decisions,

bi) on persons having the right to appeal, rulings that may be appealed individually, the suspensive effect of an appeal, and on lodging an appeal, and

bj) on enforcement,

with the proviso that the provisions relating to clients shall also apply to companies operating in the market to which the sectoral inquiry, accelerated sector inquiry pertains (hereinafter referred to as “company operating in the sector affected”), and the provisions concerning appeals shall also apply to the remedies provided for in Subsection (4).

(2a) The party given the right of access to documents under Subsections (1) and (3) of Section 55 in the case of sector inquiries and accelerated sector inquiries shall be allowed access to the documents of sector inquiries and accelerated sector inquiries only after the conclusion of such inquiries.

(2b) Sections 65/A and 65/B shall also apply to **accelerated sector inquiries** where the court shall authorize the site search requested in accelerated sector inquiries if the Gazdasági Versenyhivatal proves in its request presumptively that there is reason to believe that means of evidence can be found at the site indicated that is considered to be of essence relative to the purpose and subject matter of the accelerated sector inquiry. At the time of launching the site search the ruling ordering the accelerated sector inquiry shall be presented to the party affected by the site search.

(3) An administrative penalty may be imposed upon any person who fails to comply with the request for information, data disclosure or the presentment of documents, or does so belatedly, or for supplying information that is false or untrue, or for any other attributable infringement of the obligation of data disclosure. The minimum administrative penalty shall be fifty thousand forints per case and the maximum shall be one per cent of the net turnover for the financial year preceding the time when the ruling imposing the penalty was adopted. If payment is made past the due date the administrative penalty shall be computed daily, where the maximum shall be one per cent of the net turnover for the financial year preceding the time when the ruling imposing the penalty was adopted, prorated for one day.

(4) Rulings adopted during sector inquiries or accelerated sector inquiries, that may be subject to individual remedy in accordance with the Administrative Procedure Act may be challenged within fifteen days from the date when the ruling was delivered in an administrative action.

(5) In administrative actions opened against a decision adopted in procedures for the enforcement of the administrative penalty provided for in Subsection (3) the court shall give decision within fifteen days.

#### Section 43/E

(1) The Gazdasági Versenyhivatal (Hungarian Competition Authority) shall prepare a report on the outcome of the sector inquiry and the accelerated sector inquiry within a reasonable timeframe.

(2) The Gazdasági Versenyhivatal shall prepare a draft report on the outcome of the **accelerated sector inquiry** within one month after the date of ordering the accelerated sector inquiry which may be extended by the President of the Gazdasági Versenyhivatal on two occasions, up to one month each time. The ruling for extending the time limit for preparing the draft report shall be communicated by way of public notice. The day following the day of posting the public notice shall be considered the date of communication of the ruling on the extension of the time limit for preparing the draft report.

(3) Before the report is adopted, the companies operating in the sector affected shall be given the opportunity to present their opinion in writing. To that end, the draft of the report with restricted-access data removed shall be sent to the companies operating in the sector affected in due time to allow at least thirty days for presenting their views in the case of sector inquiries and at least eight days in the case of accelerated sector inquiries.

(4) The Gazdasági Versenyhivatal shall hold public hearings if the companies operating in the sector affected cannot be clearly identified, or if contacting such companies on an individual basis would entail unreasonable difficulties due to the large number of companies concerned, and where deemed necessary in order to elicit the views of other interested parties relating to the draft report. The place and time of the public hearing, and information as to the agenda shall be published in the case of sector inquiries at least forty-five days and in the case of accelerated sector inquiry at least fifteen days before the hearing on the website of the Gazdasági Versenyhivatal, and the companies operating in the sector affected shall be informed thereof by way of public notice. The Gazdasági Versenyhivatal shall post the draft of the report on its website at least ten days before the hearing, including the comments made in connection with the draft report - if so requested by the party who made the comment - with restricted-access data removed. The Gazdasági Versenyhivatal shall prepare an executive summary or minutes on the hearing.

(5) The Gazdasági Versenyhivatal shall publish the report made on the findings of the sectoral inquiry or accelerated sector inquiry, and the executive summary or report made on the written opinions or on the hearing, and - if requested - the documents containing the substantive comments made by the companies operating in the sector affected regarding the contents of the report, with restricted-access data removed.

#### Section 43/F

If, based on the findings of market analysis, sectoral inquiry or **accelerated sector inquiry**, market distortion exists and such distortion cannot be remedied in whole or in part by means of competition supervision proceedings, the Gazdasági Versenyhivatal (Hungarian Competition Authority):

- a) shall inform the competent committee of Parliament thereof, or the minister or authority of competent jurisdiction,
- b) may publish non-binding recommendations for market participant having regard to best practices for maintaining and promoting fair and effective competition, to facilitate the supply of information to trading parties, and to the market behavior recommended to be followed, or
- c) initiate, if deemed necessary, the enactment or amendment of legislation with the competent authority.