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

-- 2015 --

**29-30 November 2016**

*This report is submitted by Hungary to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 29-30 November 2016.*

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

### 1.1 Changes to the narrower legal environment: Amendments to the Competition Act in 2015

1. In June 2015, the Parliament passed amendments to Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (Competition Act), which mainly modified the procedural rules relating to merger control. With the effect of June 2015, the main amendments are as follows:

- the provisions relating to the calculation of the net turnover of undertakings in merger cases have changed;
- the data that are necessary to calculate the turnover and that are available when the application is submitted should be taken into account;
- regarding the calculation of the net turnover, the date of implementation of the concentration is decisive in merger cases when there has been a failure to submit the application, or the application has been submitted after the implementation of the concentration;
- depending on the individual application, the proceeding competition council may grant its consent to the acquirer of control to exercise its right of control before the resolution concluding the proceeding for the authorisation of the concentration is adopted if this is necessary to enable the acquirer to continue the business and preserve the value of its investment, only if the observance of the provisions of the resolution can be assured in case of prohibiting the concentration or setting conditions or imposing obligations;
- the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) is not obliged to refund the administrative fee which is paid for merger control if the proceeding is terminated because the subject of the application does not concern a concentration or the authorisation of a concentration.

2. In recent years, the GVH has made decisions on numerous merger applications in which the authorised transaction was made up of many steps that separately also amounted to concentrations. The GVH's experiences of these procedures are contained in the notice on interrelated transactions assessed as one concentration and many correlated concentrations assessed in one procedure, which entered into force in June 2015. The notice explicitly sets out the case in which different transactions constitute one concentration, and differentiates it from the case in which there are many concentrations that can only be assessed in consideration of each other in one procedure due to their mutual interrelation. In order for a case to be handled as a single concentration, a unified economic goal must link the different steps of the transactions in the case in question. For example, there may be a situation in which there are a number of transactions that amount to separate concentrations, but the activities of the involved independent undertakings are connected to each other in a way that they may only be rationally be carried out by the undertakings working together, with this joint operation resulting in perceivable efficiency gains.

3. One of the amendments to Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (Act on Administrative Procedures), which serves as background law for the procedures in competition law, also modified merger control with effect from January 2016. The rules related to the so-called summary procedures significantly decreased the procedural time limit that applies in merger cases under the Competition Act.

4. In order to ensure the protection of the rights of the owners of privileged information, the amendments to the Competition Act particularised the rules relating to the management of and access to

personal data and to privileged information provided for by law and the rules relating to access to files (effective from June 2015).

5. The settlement procedure provided for in the Competition Act came into effect on 1 July 2014. As a result of one of the amendments to the Competition Act, the rules related to the withdrawal of settlement have also been clarified.

6. A new feature of Hungarian competition law is the requirement that the proceeding competition council may only issue a warning instead of imposing a fine on small or medium sized enterprises (SMEs) if they have committed an infringement for the first time – with the exception of infringements of EU law and a number of other specific cases as determined by law. When issuing its 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. This rule came into effect in June 2015.

7. As a result of the amendments to the Competition Act, the Act now explicitly stipulates that the provisions which regulate the specificities of agriculture and which were originally part of Act CXXVIII of 2012 on agricultural associations and on the regulation of certain issues concerning the agricultural markets (Act on inter-branch organisations) but which are now part of the Competition Act, are only applicable if the primacy of the competition rules of the European Union do not prevail. This amendment is effective from September 2015.

8. In connection with the amendments to the Competition Act, the provision amending the Act on Public Procurement aims to make actions against competition law infringements in public procurement procedures more efficient. With effect from June 2015, the amending provision stipulates that if the minister responsible for public procurement and for the use of European Union funds notices, or has reasonable grounds to suspect an infringement of the provisions regarding the prohibition of restrictive agreements contained in the Competition Act or the Treaty on the Functioning of the European Union when verifying the validity of public procurements, then he/she may make this known to the GVH. The minister responsible for public procurement is now entitled to forward to the GVH the data – except for classified information – in his/her possession due to the verification of the concerned public procurement, contract or amendments thereto.

9. A further amendment (effective from November 2015) to the Act on Public Procurement has upgraded the status of a competition law infringement so that it is now a ground for obligatory exclusion, meaning that contracting entities that have been classified as unreliable for certain reasons are prohibited from participating in public procurement procedures. Potential competition law infringements are also now examined retroactively to 3 years instead of 5 years. The amended provision makes it clear that the exclusion is not only applicable to competition law infringements committed in tendering procedures but also to any competition law infringements committed by the undertaking in the past 3 years. It is a new feature of the public procurement rules that the contracting entity may be excluded from a particular public procurement procedure if the contracting authority can prove that it has committed a competition law infringement in the same procedure. The Act on Public Procurement enforces the leniency policy regulated in the Competition Act by exempting from exclusion those undertakings which report the infringement to the GVH before submitting their offer (or their final offer), presuming that the GVH is able to establish that the conditions related to immunity from fines are fulfilled.

10. The ‘Act on the Organisation of Markets of Agricultural Products, Farmer and Inter-branch Organisations’ provides an exemption from the prohibition of cartels regulated in the Competition Act. With effect from November 2015, the exemption is granted if the organisation or inter-branch organisation representing suppliers – which are defined according to the ‘Act on the Prohibition of Unfair Distributional

Practices of Agricultural and Food Products to be Applied towards Suppliers’ – makes a survey, provides information to its members about the market, the prices applied on the market, the supply and sales opportunities, the application of incentives, the development of the market situation of products and the assurance of balanced market conditions or engages in reconciliation among the members in this respect. In order for this exemption to apply, the economic and social advantages gained from the above-mentioned activities must exceed the disadvantages stemming from the behaviour restricting competition which results from the above-mentioned activities.

## **1.2 Changes to the broader legal environment**

11. In 2015, the Constitutional Court made decisions in three cases concerning competition law. The consequences of those decisions are as follows:

- In the first case the Constitutional Court established, among others, that (1) a provision of the Competition Act operative from 1 November 2005 is in harmony with the Fundamental Law of Hungary. The provision sets forth that the turnover of the group of undertakings to which the undertaking that has committed the infringement belongs forms the basic amount of the fine that may be imposed for the infringement. (2) Moreover, a previous infringement of another economic entity belonging to the group of undertakings may be taken into account as an aggravating factor. (3) As the unlawful status in question had started before November 2005 when different provisions were applicable, the Constitutional Court confirmed the legal principle which provides that when the sustainment of the unlawful status constitutes the infringement, the substantive law which is operative at the time of the termination of the unlawful status has to be applied.
- In the second case the Constitutional Court interpreted certain provisions of the Act on Administrative Procedures in the context of interest to be paid in the case of late payments of the fines.
- In the third case, the Constitutional Court examined whether or not the default interest could be charged for the period between the adoption of the final court decision and the decision of the Curia (extraordinary review court), if in a final decision the judicial review court had repealed the decision of the GVH which had established an obligation on the undertaking and also imposed a fine in a competition supervision proceeding, and then in the course of a special remedy, in an extraordinary review procedure, the Curia changed the previous decisions of the courts and upheld the resolution of the GVH. In response to the applicant’s claim that the judicial injunction infringed the applicant’s right to a legal remedy because the applicant had to pay the default interest as a sanction on the basis of the injunction for the period of the review procedure without a specific legal provision that had prescribed this payment obligation, the Constitutional Court came to the conclusion that the appealed injunction was contrary to those provisions of the Fundamental Law of Hungary which provides that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”, and „everyone shall have the right to seek remedy against judicial, administrative or other official decisions, which infringe upon his or her rights or legitimate interests”.

## **2. Proceedings**

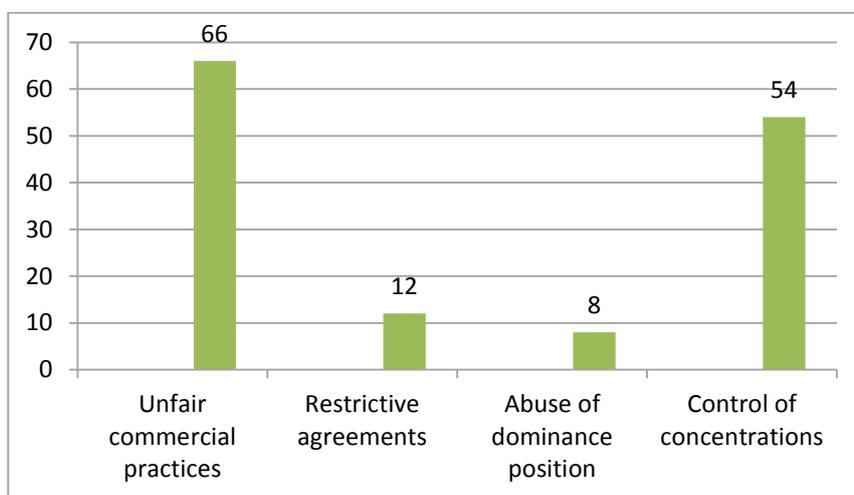
12. In 2015 the Authority was contacted, orally or in writing, on more than 2400 occasions and a further 1739 written communications were handled by the GVH’s case handlers.

13. The numbers of 2015 reflect an increasing tendency as regards to case initiations. In 2015 a total of 140 new cases were initiated, this exceeds the number of cases initiated in 2014 by 12%.

14. Altogether 125 proceedings were closed (this is almost identical to the number of cases closed in 2014, which was 124).

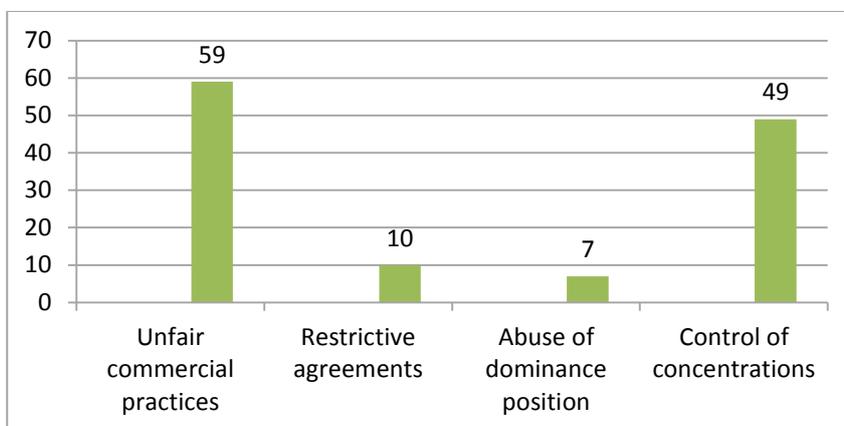
15. Regarding initiated proceedings, in line with previous tendencies, consumer protection proceedings counted for the highest portion of the proceedings, with 66 cases. In 2015, 54 merger cases, 8 cases related to abuse of dominance and 12 cases concerning restrictive agreements were initiated. The number of cases and the share of the different case categories more-or-less reflect past tendencies, although the last few years show some increase in the number of merger cases and the GVH foresees the continuation of this tendency also for the next few years.

**Number of cases initiated by the GVH in 2015**



16. Similar to case initiations, most of the closed proceedings were consumer protection cases. The GVH considers consumer protection and fostering fair market behaviour a high priority in order to ensure that consumers benefit from the advantages of competition and make the right decisions. Of (all) the cases closed in 2015, 59 were related to consumer protection, 10 to restrictive agreements and 7 to abuse of dominance. The Authority assessed 49 merger applications.

**Number of cases closed by the GVH in 2015**



17. The effectiveness of the operation of the GVH cannot be solely measured on the degree of the sanctions it imposes, as the basic task of the GVH is to maintain the public interest in fair competition and maintain a culture of compliance with the law. 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 HUF 5 billion (approx. EUR 15.6 million) in 2015. The total amount of the fines collected in 2015 was HUF 2.8 billion (approx. EUR 8.7 million).

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

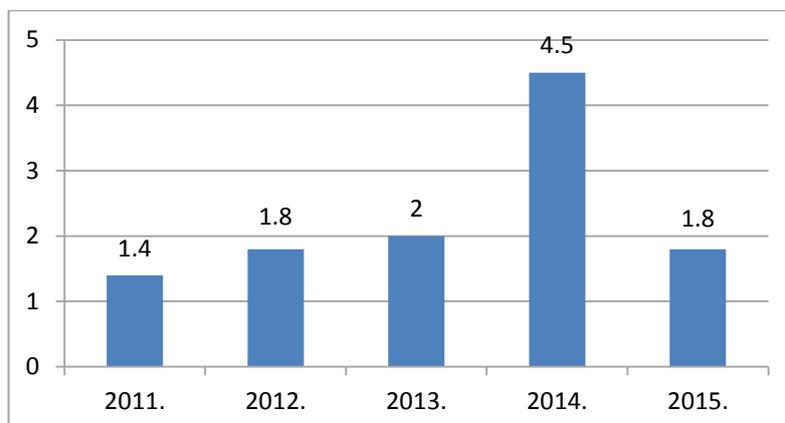
18. The enforcement of the legislation on consumer protection is divided among public authorities along their competences. Besides the GVH, the Hungarian Authority for Consumer Protection (Nemzeti Fogyasztóvédelmi Hatóság – NFH) and the Central Bank of Hungary (Magyar Nemzeti Bank – MNB) – this latter as the board having financial supervisory authority – have consumer protection related competences. If an infringement targeting end consumers (B2C practices) exerts material influence upon competition, then the GVH is in charge of applying the law, unless the infringement occurs on labels, in user manuals (warnings and instructions) or by violating the information requirement set out in other legal norms. The MNB has jurisdiction in connection with practices carried out by those financial institutions the supervision of which belongs to the competence of the authority. In any other situation, it is the NFH that has jurisdiction to proceed. In defining the material influence on competition, the extent of the practice or the size of the undertaking liable for the infringement is to be taken into account. For the sake of guaranteeing legal certainty, the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices (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.

### **2.1.1 *Practices in B2B relations – targeting businesses – belong to the sole competence of the GVH.***

19. 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”).

20. 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.

21. In 2015 the GVH closed 59 consumer protection proceedings. On 42 occasions the Competition Council, the decision-making body of the GVH, established an infringement, in 4 cases adopted a commitment decision, since the GVH found that the public interest may be guaranteed by accepting the commitments offered by the parties. The remaining 12 cases were closed by an injunction of the case handler. In 2015, the GVH imposed fines amounting to a total of HUF 584 million (approx. EUR 1.8 million EUR) in this category of cases.

**Fines imposed in consumer protection related cases (million Euro) 2011-2015**

22. 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.

23. 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 consumer.

#### 2.1.2 *Financial services*

24. The significant information asymmetry that the GVH has experienced in its practice on the market of financial services can be traced back to the low level of financial knowledge of consumers, the abundance and complexity of financial services and the huge volume of contractual documents associated with financial services. As a consequence of the information asymmetry and taking into account the fact that consumers rarely make decisions related to financial services, often contract for long periods of time, and make decisions concerning large amounts of money as compared to their every-day transactions, there is usually a significant risk to consumers on this market.

25. In 2015, the GVH made 4 decisions related to financial services. One of them concerned naive consumers (young persons who had only had a few financial experiences), in two cases vulnerable groups of consumers were targeted (the first of the two cases involved old people who intended to save money for funeral expenses, while the second case involved consumers who had limited financial and credit opportunities), while the final case involved the supply of incorrect information about credit cards.

26. In one of its procedures, the GVH established that the commercial practice, which concerned the advertisement between December 2012 and May 2015 by 4Life Direct Kft. of an insurance product (the so-called Időskori Biztonság – Secure Ageing) provided by Red Sands Life Company (Europe) Limited, misled consumers when it was suggested via certain communication measures that

- the insurance policy provided for a substantial contribution towards funeral and other expenses in every situation;
- the agent provided the insurance. The common, everyday interpretation of the words “provide guarantee” and “undertake guarantee” suggested that 4Life Direct Kft. provided the service and that Red Sands Life undertook (capital) guarantee, i.e. that Red Sands Life had secondary liability, with the effect that the use of such terms strengthened the incorrect message that was being conveyed to consumers.

27. Besides establishing the infringement, the competition council proceeding imposed a fine of HUF 63,000,000 (approx. EUR 197,000) on 4Life Direct Kft. and HUF 36,000,000 (EUR 112,500) on Red Sands Life Company (Europe) Limited.

### 2.1.3 *Comparative advertising*

28. Comparative advertising provides consumers with information, and also effectively conveys explicit messages; such advertising may, for example, induce price competition or innovation competition. Comparative advertising is not in itself unlawful; the provisions dealing with comparative advertising stipulate the requirements that must be met in order to ensure that the law is complied with. Given that comparative advertising involves the claim that a certain undertaking’s product/service is superior to that of a competitor’s and should therefore be chosen, it can have a profound and direct effect on consumers. Consequently, unlawful comparative advertising can result in significant harm to consumers and competitors.

29. In one of its procedures, the GVH established that Auchan Magyarország Kft. (Auchan) had infringed the requirements of verifiability and objective comparison by placing price-comparison billboards in Auchan supermarkets between 1 and 25 June 2012 and that it had engaged in an unfair commercial practice due to its infringement of professional diligence. Moreover, in its advertisements that compared prices and price levels and appeared on TV and radio between November 2013 and July 2014, it had infringed the requirement of objective price comparison.

### 2.1.4 *Sale of timeshares*

30. Timeshare contracts for periods of 20, 30 or even more years have become widespread in the last decade. The promise that timeshares already owned by consumers will be resold but that eventually an additional timeshare will be sold to consumers has become “popular” in the last few years. However, in the cases that the GVH examined the timeshares were not actually sold contrary to promises that were made and the whole commercial practice was based on false information. As a result of this alarming practice the GVH submitted a legislative proposal to the Parliament.

31. In two separate procedures, the GVH established that Online Resorts International Kft. and Online Resorts Kft. had engaged in an unfair trading practice in the meetings they had organised and also prior to the meetings through phone calls when, through verbal presentations, in order to sell their accommodation offers and make contracts they promised consumers who already owned timeshares and intended to sell them that they would resell their timeshares for them. They misled consumers by this behaviour. Besides establishing the infringement, the GVH imposed a fine of HUF 3,350,000 (approx. EUR 10,500) and HUF 10,000,000 (EUR 31,300) on the undertakings.

2.1.5 *Health-related products and products which promise to prevent or treat human diseases – protection of vulnerable consumers*

32. The GVH puts great emphasis on those cases, which affect vulnerable consumers and advertisements claiming that certain products and services have medicinal effects or other positive health benefits make up a significant number of the proceedings of the GVH. Consumers targeted by health-related claims are often in a vulnerable situation due to their own, or a relative's ill health. As a consequence, a lower level of rationality is expected of such consumers than that is expected of average consumers, as the former are more unlikely to question the truthfulness of claims due to their desire to recover; therefore, factual information that is not exaggerated is particularly important in this sector. These products can only be produced, distributed and advertised in accordance with strict rules. It must be noted that there are actually a number of claims relating to promised medicinal effects or other positive health benefits that are automatically prohibited by law; consequently, it is not possible to defend these claims before the GVH with supporting evidence. As regards to other claims, the GVH examines the truthfulness of the claims and considers the potential infringement on the basis of the submitted evidence.

33. In one of its procedures concerning health-related claims, the GVH initiated a proceeding against MAX-IMMUN Rák- és Immunkutató Kft. due to its advertised information in which it claimed that its medicinal mushroom extracts had curative properties. In addition to prohibiting the continuation of the infringing conduct, the GVH imposed a fine of HUF 5,000,000 (approx. EUR 15,600) on the undertaking.

2.1.6 *Medical devices advertised in product presentations*

34. While the GVH has imposed fines in a number of cases in recent years concerning the provision of misleading information by undertakings in product presentations combined with sales, 2015 proved to be a year in which a particularly high number of infringements were established. In product presentations combined with sales, typical infringing behaviours include undertakings making false claims regarding their products curative effects/positive health benefits, and undertakings giving the false impression that the products can only be purchased at reduced prices under particular terms and only at the product presentations. This results in consumers being forced to make immediate decisions, with the result that they are deprived of the opportunity to make an informed decision. In 2015, the GVH made decisions in 5 cases concerning medical devices. The GVH examines the truthfulness of the promises made in relation to the claimed medicinal effects and other positive health benefits of the medical devices in question; additionally it analyses the extent to which such promises are compatible with the intended use of the medical devices. Before a medical device may be placed on the market, it must first undergo a clinical evaluation in order to gain certification that it is fit to be used for its intended purpose. With regards to the products issued as a medical device, the GVH analyses the extent to which the marketing claims are in conformity with the certified clinical purposes as stipulated in the clinical evaluation of the product.

35. In one of its proceedings, the GVH established that PEMF Elektronik Kft. had engaged in an unfair trading practice when in connection with the pulsating magnet therapeutic medical device called Elixor Divine

- between 9 September 2014 and 18 December 2014, it presented the device as a marketable product (it popularised the product through websites despite the fact that the health authority had issued a resolution suspending distribution and prohibiting the advertisement of the product, and it held product presentations where the device was purchased by consumers);

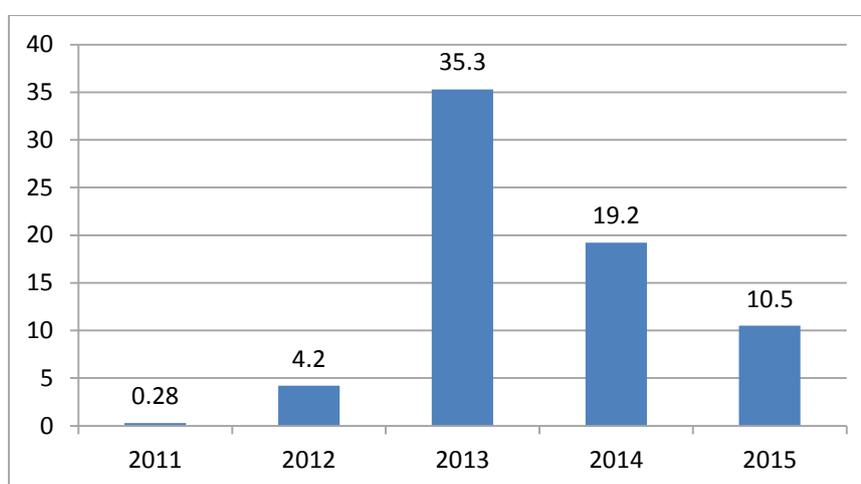
- between 15 November 2013 and 18 December 2014, it made unproven claims of a curative nature, which were consequently false according to the law; additionally, in the same period it made misleading claims relating to the positive health benefits of the device.

36. As a consequence, the GVH obliged the undertaking to pay a fine of HUF 19,532,490 (EUR 61,000).

## 2.2 Restrictive agreements

37. In 2015, the GVH made 10 decisions in restrictive agreement cases. Out of these cases, 5 resulted in the establishment of a competition law infringement, 3 in the acceptance of commitments and 2 cases were closed with the termination of the procedure.

**Fines imposed in restrictive agreement cases (million EUR) 2011-2015**



38. As in previous years, in 2015 a substantial proportion (approx. 60-65%) of the notices and cartel activities reported to the GVH related to public procurement procedures. The reported public procurements primarily concerned programmes financed by the European Union. This can be partly owed to the fact that to detect these types of cases the GVH has established a close relationship with the government authorities responsible for overseeing the use of European Union funds. This relationship is provided for in the new Act on Public Procurement. According to the new Act, if during the process of the verification of public procurement procedures and public contracts, and/or concessions for works or services and any subsequent amendment thereof for compliance with public contract law, the minister responsible for public procurement and for the use of European Union funds notices or has reasonable grounds to suspect an infringement of the provisions of Section 11 of the Competition Act or Article 101 of TFEU, the minister is entitled to forward to the GVH the data – except for classified information – in his/her possession due to the verification of the concerned public procurement, public contract, concessions for works or services and/or amendments in question in accordance with the provisions of the Competition Act pertaining to complaints or informal complaints.

39. Although the number of submitted applications for the informant reward (20) did not change compared to the previous year, the GVH did not accept any of the applications received in 2015 as none of the applications complied with the applicable legal provisions. In contrast, the number of accepted leniency applications increased: the GVH accepted 3 applications in 2015.

40. The informant reward and leniency policy are effective measures against cartels. While the number of received applications for both measures significantly varies from year to year, they both play an important role in the detection of cartels through the provision of information to the GVH relating to cartels.

#### *2.2.1 Cartels on the market of plastic pipes and plastic fitting products*

41. According to the decision made by the GVH, in the framework of bilateral coordination, between April 2009 and December 2011 BTH Fitting Kft. (BTH) and Pipelife Hungária Kft. (Pipelife), and between June 2009 and December 2011 Pipelife and Wavin Hungary Kft. (Wavin), violated competition law in the form of a single, complex, continuous infringement, by sharing their wholesalers, determining minimum prices applicable towards their wholesalers, and sharing among themselves the sales of pipes and fitting products in projects.

42. In the course of the investigation BTH and Pipelife submitted leniency applications. As a consequence, the GVH granted full immunity to Pipelife, with the result that the undertaking was not required to pay a fine which would have amounted to more than HUF 800 million (more than EUR 2.5 million). As regards to BTH's leniency application, this resulted in a 40% reduction in the fine, with a fine of HUF 55,314,000 (approx. EUR 176 thousand) being imposed on the undertaking. Wavin, which had increasingly objected to the finding that it had committed an infringement, was obliged to pay a fine of almost HUF 670 million (approx. EUR 2.1 million).

43. The GVH took into account, as an aggravating circumstance, that the market players held significant market positions and therefore could have been aware of the unlawfulness of their conduct. A further aggravating circumstance that was taken into account in the case of the infringement between Pipelife and BTH was the fact that the undertakings enforced the details of their agreements in practice, with the consequence that the infringement had a real impact on the market. However, regarding the agreement concluded by and between Wavin and Pipelife, the GVH took into account, as a mitigating circumstance, the fact that the restrictive conduct appeared not to have been implemented in full in all respects.

#### *2.2.2 Market sharing vertical agreements in the mosquito control market*

44. The GVH established in a competition supervision proceeding that Bayer Hungária Kft. (Bayer) and Corax-Bioner Környezetvédelmi Zrt. (Corax-Bioner) had agreed in 2010 and 2011 that Corax-Bioner would not start manufacturing its own mosquito insecticide substance, and that it would rather continue to purchase the K-Othrin concentrate of Bayer in return for significant discounts. The agreement concluded for 2011 also encompassed that Corax-Bioner would refrain from purchasing Bábolna Bio Kft.'s own-manufactured similar product. Two foreign subsidiaries of the Bayer AG group also took part in the conclusion of the agreements.

45. It was also established in the case that Corax-Bioner and Farmmix Kft. had agreed on the market for mosquito insecticides produced through the dilution of mosquito insecticide substances that Corax-Bioner would resell the mosquito insecticide substance purchased from Bayer to Farmmix Kft. on the condition that in 2010 the latter would not present offers to key clients of Corax-Bioner, i.e. to a specified group of undertakings concerned with eliminating mosquitos.

46. During the proceeding it turned out that Corax-Bioner and Gergely Air Kft. – in the framework of a meeting with an anticompetitive object on 3 July 2010 which took place with the collaboration of Szemp Air Kft. – had shared the market for eliminating mosquitos among themselves; this market sharing

covered the tender procedures – announced partly as public procurements – in the regions of Lake Velence, Lake Tisza and Szigetköz.

47. In order to sanction the agreements restricting economic competition, the GVH imposed a total fine of approximately HUF 80 million (approx. EUR 250,000) on seven undertakings, from which the total fine of the Bayer-undertakings was more than HUF 62 million (approx. EUR 193,750).

### 2.2.3 *Cartel in the public procurement of medicines*

48. In 2011, Budapesti Egészségközpont Zrt. launched an accelerated, restricted public procurement procedure for the framework agreement, the subject of which was “The supply of medicines and solutions for infusions to the value of HUF 5 billion (EUR 16 million) per year”. After a prior coordination with the purpose of excluding potential competitors from the procedure, undertakings participating in the cartel influenced the publication of the eligibility requirements of the tender contained in the invitation to tender. Being aware of the requirements of the tender, before submitting their bids they discussed and agreed on the prices (which were contained in the final offer) that each undertaking would offer; additionally, they determined which undertaking would be entitled to which product contained in the framework agreement. By their behaviour, the undertakings aimed to keep their market share at the same level and the price level they reached on the medicine market covered by the hospital institutions and their premises that were listed in the tender.

49. The GVH established that EUROMEDIC-PHARMA, HUNGAROPHARMA, TEVA, PharmAuditKft. (under winding up) and MEZADIN had committed a single, complex and continuous infringement aimed at and having the effect of restricting competition, when during the public procurement procedure, they manipulated the procurement notice, agreed on the prices that they would submit prior to submitting their offers and shared the market among themselves. Besides establishing the infringement, the Competition Council obliged the undertakings to pay a total fine of almost HUF 2.5 billion (EUR 8 million).

### 2.2.4 *Vertical agreements on beer products sold in single outlets*

50. The competition supervision proceeding initiated in 2011 against Heineken Hungária Sörgyárak Zrt. (Heineken), Borsodi Sörgyár Kft. (Borsodi), Pécsi Sörfőzde Zrt. (Pécsi Sörfőzde) and Dreher Sörgyárak Zrt. (Dreher) was concluded by the acceptance of commitments from the three biggest Hungarian breweries and the termination of the procedure.

51. During the procedure, the GVH found that through exclusive contracts Heineken, Borsodi, Dreher and Pécsi Sörfőzde taken together were responsible for approx. 44% of the sales of beer consumed on premises in Hungary between 2007 and 2011. The five largest market players (along with Carlsberg which did not have the capacity to produce beer in Hungary) accounted for 82-95% of the total sales made in the so-called HoReCa (Hotels, Restaurants and Catering/Cafes) market in the period investigated. As a consequence of the exclusivity clauses, neither imports nor small breweries were able to gain market shares vis-à-vis the large beer companies.

52. In order to conclude the procedure as quickly as possible, Heineken, Borsodi and Dreher submitted commitments to the GVH, in which they undertook to decrease the amount of beer sold to single outlets under exclusivity terms in two steps by almost 20% in total by the end of 2017. The Competition Council of the GVH accepted the commitments.

### 2.2.5 Vertical agreement of MasterCard and OTP

53. The GVH initiated a competition supervision proceeding in 2013 against MasterCard Europe Sprl (MasterCard) and OTP Bank Nyrt. (OTP), as it found it likely that the contract made in 2012 between OTP and MasterCard would restrict the choice between sale options and would also impede the market entry of competitors. In the contract, OTP undertook to reach the turnover level determined by MasterCard each year (turnover level clause) and to reach the card proportion within OTP's debit card portfolio determined by MasterCard (card proportion clause). On the other hand, MasterCard undertook to provide OTP with different kinds of subsidies to achieve these goals. In the course of the proceeding the GVH investigated both the turnover level clause and the card proportion clause.

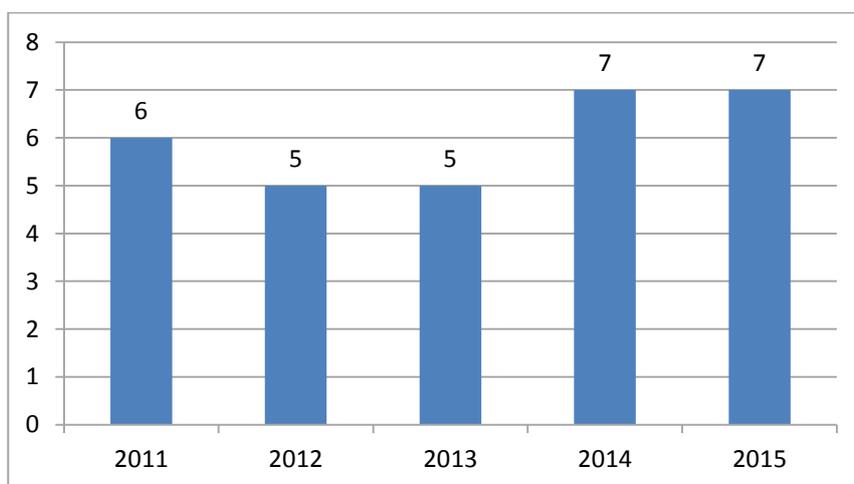
54. The market of card payment services affected by the agreement under investigation by the GVH is connected to the card payment system which can be described as a two-sided market. In card payment systems competition occurs on several levels; on the level of the payment card organisation on the one hand, and on the level of the card issuers and the acquirers on the other hand. The main goal of a payment card organisation is to have as many credit cards as possible on the market bearing its logo and to have these cards accepted at as many places as possible. It is in the interests of the issuing banks that they are able to provide their customers with better products and services in the most profitable manner.

55. After analysing the contents of the commitment application, the GVH accepted the joint commitments of the undertakings and terminated the procedure. In the commitment application, MasterCard and OTP undertook that with a retroactive effect to 1 January 2014, they would terminate the provision of their agreement that binds the subsidies to the card-ratio requirement.

### 2.3 Abuse of dominant position

56. In 2015 the Authority initiated 8 proceedings relating to abuse of dominance, out of which 7 cases were closed, including one under Act CLXIV of 2005 on Trade (Act on Trade) which deals with the prohibition of abuse of significant market power – SMP. From the 7 closed cases, in one case the GVH obliged the dominant undertaking to bring the infringement to an end and imposed a fine, one case was closed with a commitment decision, in four cases the procedure was terminated and in the SMP case–initiated against Auchan– the case concluded with a fine being imposed.

**Number of decisions in abuse of dominance cases (2011-2015)**



### 2.3.1 *The abusive behaviour of Nielsen Közönségmérés Kft.*

57. The GVH launched an investigation against Nielsen Közönségmérés Kft. (Nielsen) in July 2013 for its alleged infringement of the provisions relating to the abuse of a dominant position. The procedure concentrated on the interrelated, but distinct market practices of Nielsen. According to the GVH, the manner in which Nielsen was selling its television audience measurement service and the analysing software, and the related rebate system that it applied, might have had a foreclose effect on the analysing software market, resulting in Nielsen abusing its dominant position on the television audience measurement database market. Additionally, it was suspected that the contracting policy employed by Nielsen, especially relating to the applied data protection clauses, may have restricted the possibility of using external, independent, software to analyse the audience measurement database. The GVH investigated Nielsen's market behaviour for the period of January 2012 – June 2014.

58. Following the investigation, the Competition Council of the GVH terminated the procedure by accepting the commitments offered by Nielsen. On the basis of the commitments the GVH imposed the following obligations on Nielsen:

1. it shall alter the discounts relating to the joint selling of its databases and its software;
2. it shall sell its databases also without its own-developed Arianna software;
3. if it sells its databases together with the Arianna software, it shall apply separate prices and separate discounts for both the databases and the software;
4. it shall amend the price of the Arianna software applied to the single categories of customers only if and to the extent that is justified by possible changes in the market value of the software and competitive pricing;
5. it shall allow its customers, without the imposition of any conditions, to entrust third party software developing undertakings with the software-based management and processing of the databases, provided that the data do not fall into the possession of the software developing undertaking in the course of the software-based data management;
6. under specific conditions it shall allow its customers to entrust third party software developing undertakings with the software-based management and processing of the databases even in cases where the data falls into the possession of the software developing undertaking in the course of the software-based data management.

59. After analysing the contents of the commitment application, the GVH established that by accepting the above commitments the protection of the public interest could be effectively ensured, as both of the identified competition concerns could be removed, thereby eliminating the infringing situation.

### 2.3.2 *Auchan abused its significant market power*

60. In the Summer of 2012 the GVH initiated a competition supervision procedure aimed at establishing whether Auchan had infringed the Act on Trade by demanding after sale price discounts from its suppliers in order for the suppliers' products to be stocked, or continue to be stocked by Auchan, and whether as a result of this behaviour it had thereby abused its significant market power.

61. The investigation of the GVH revealed that between 1 June 2006 and 31 December 2014 Auchan had demanded after sale price discounts from a significant number of its non-food product suppliers. The GVH was not able to identify any services for which the aforementioned after sale price discount may have

served as compensation for the suppliers. According to the GVH's investigation, it could be established that Auchan demanded the after sale price discounts from its suppliers even after the sale of a single product, with the result that the employed sales volume discount system did not recognise any further performance as an outstanding selling performance. Furthermore the GVH established that the after sale price discounts operated as a unilaterally imposed fee, not necessitating any further performance on the side of the retailer.

62. In its decision, the Competition Council stated that Auchan had abused its significant market power by demanding the after sale price discounts from its suppliers **as a unilaterally charged fee and imposed a total fine** of more than HUF 1 billion (approx EUR 3.1 million). By applying the provisions of the Act on Trade, the GVH imposed an extremely high fine. The GVH considered it a serious aggravating factor that Auchan had continued its unlawful market behaviour even after the GVH had published its SPAR decision in June 2012 in which it condemned similar behaviour. The GVH considered it a significant aggravating factor that Auchan had chosen to disregard the settled case law dealing with this matter.

## **2.4 Control of concentrations**

63. In 2015 the GVH received a significantly higher number of merger applications as compared to previous years: the Authority received 54 merger applications in 2015, compared to the 32 received applications in 2014, which represents more than a 60% increase. The GVH closed 49 merger control cases in 2015, which is an increase of 40% compared to the number of closed applications in 2014 (35 cases). 45 of these were started upon application, 2 were commenced on the GVH's own initiative due to a suspected failure to apply for authorisation, and 2 post-investigations were also conducted.

64. 39 of these cases were assessed under the simplified (first-phase) procedure, and in 14 cases simplified decisions were made (which are not accompanied by a justification). The Competition Council found that 4 applications related to concentrations not subject to an authorisation requirement. The full (second-phase) procedure was implemented in 6 cases; however, based on the in-depth investigations that were conducted, the GVH did not need to intervene in these cases either (in the form of prohibition of concentration or imposition of conditions/obligations). 2 proceedings were initiated as a result of a failure to apply for authorisation. Out of these one was concluded during the year, with no infringement being established, and one ended with the imposition of a fine and remedial measures.

### *2.4.1 Number of merger cases by the types of decision in 2015*

65. In merger cases the GVH adopted its decisions well within the applicable statutory deadlines, and despite the fact that the workload and the number of cases have risen, the deadline applicable to settle such cases have decreased. In 2015 the GVH did not make use of the statutory option to extend the procedural deadline.

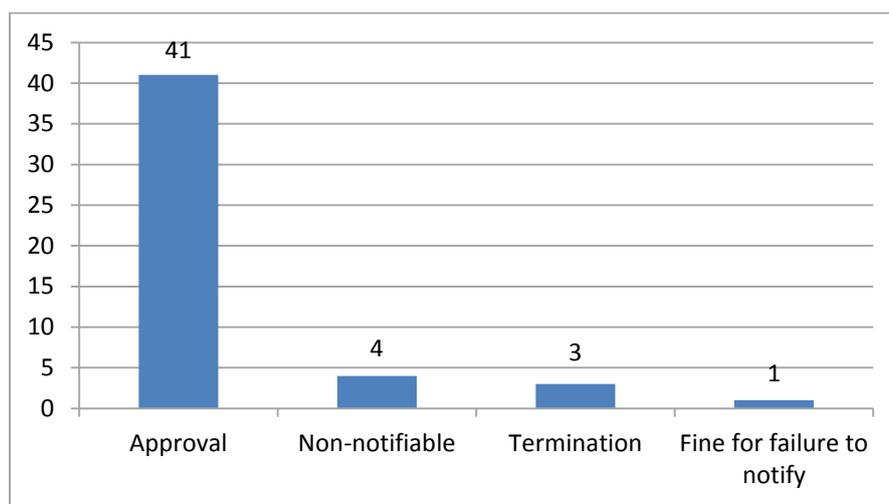
66. 21 of the proceedings started upon application and closed in 2015 were preceded by pre-notification contact, in 16 out of 39 cases involving the simplified procedure, and in 5 out of 6 cases involving the full procedure. As a result of the pre-notification contact, there were more cases in which there were no deficiencies requiring remedying in 2015 compared to 2014, with an increase from 14% to 48%. This reduction in deficiencies had a further knock-on effect in the form of a reduction in the time taken to conclude cases.

67. The concentrations investigated by the GVH in 2015 involved numerous industries. Most of the transactions, 6 in fact, took place in the energy sector, representing 13% of the closed cases started upon application. Many transactions involved the following industries: retail, electronics, automotive and related

parts, production, broadcasting and leasing services. 7-9% of the procedures concerned these industries in 2015.

68. Compared to previous years, in 2015 there were less merger cases related to the agricultural sector and 7% of procedures concerned operational leasing services, and within this the vehicle leasing service market.

69. Only 6% of the procedures closed in 2015; altogether 3 transactions took place with state involvement, which means that one or all of the undertakings acquiring control were state-owned. These mergers involved vehicle leasing services, financial market, as well as broadcasting service markets.



70. In merger cases the GVH adopted its decisions well within the applicable statutory deadlines, and despite the fact Market analysis and inquiry into sectors of the economy.

### 3. Market analysis and inquiry into sectors of the economy

71. Since 1 July 2014, the Competition Act has enabled the GVH – instead of or before initiating a sector inquiry on the observance of a market disturbance or the commencement of a competition supervision procedure – to monitor the level of the competition and the characteristics of a particular market in the framework of a market analysis. The purpose of a market analysis is to assist the GVH in the performance of its duties. To this end, the GVH makes use of the acquired information to manage the identified market disturbances, promote a more effective market operation and ultimately, through its facilitation of competition, to increase consumer welfare.

72. During a market analysis, the GVH with the help of external experts and consultants if necessary, uses public information and data collected on a voluntary basis to analyse and assess the operation of individual markets, market developments and market trends, and some market practices, as well as their particular impact on the competition and business partners, focusing especially on their impact on the final business parties. Market analysis is an efficient tool for gathering information about the operation and characteristics of a particular sector in cooperation with market participants, while avoiding the constraints associated with regulatory proceedings. During a market analysis, the GVH primarily counts on the voluntary contributions of undertakings operating in the sector in question. In order to increase the transparency of the GVH's activities, the acceptance of market analyses and to promote voluntary contributions, whenever the GVH initiates a market analysis it publishes a communication to this effect; furthermore, on the conclusion of the market analysis, it publishes a study based on its findings.

### **3.1 *Market analysis on the film distribution industry and on the film exhibition markets***

73. Making use for the first time of the new legal tool provided for by the Competition Act, on 31 July 2014, the GVH initiated a market analysis to examine the operation of the markets of film distribution and exhibition. In the course of the market analysis, the GVH examined the vertically integrated markets of film production and distribution; the structure and the characteristics of the operation of the film exhibition market, in particular, the system of distribution agreements between film distributors and cinema operators and the practice of applying Virtual Print Fees (VPFs). In the course of the market analysis the GVH contacted the major Hungarian film distributor and film exhibitor undertakings and their associations, relying on their voluntary responses; furthermore, it held interviews. The GVH held consultations with the motion picture authority, contacted the Member States' national competition authorities and relied heavily on publicly available information.

74. The draft version of the market analysis was published on 30 November 2015, and the market participants were given the opportunity to send replies until 31 December 2015. After receiving and processing the replies, the GVH will finalise the study during 2016.

### **3.2 *Market analysis on the car distribution and repair markets in Hungary***

75. On 1 December 2014 the GVH initiated a market analysis aimed at investigating the characteristics of the car and light commercial vehicle (LCV) distribution and repair markets in Hungary. In the course of the market analysis, which is still ongoing, the GVH seeks to analyse the specific design of the networks related to the sale and repair of cars and LCVs, the changes affecting these networks and also the inter- and intra-brand competition. During its analysis, the GVH is in particular examining the conditions of and possible restraints to competition concerning the repair of cars, such as the terms of access to warranty repair and spare parts, while at the same time also analysing the characteristics of competitive pressure exerted by independent repairers.

76. The methodology, uncovered facts and statements, and outcome, including any necessary further steps that must be taken, will be compiled in a market analysis study and published on the website of the GVH.

### **3.3 *Sector inquiry on the market of online room reservations***

77. On the market of online room reservation the GVH identified circumstances which suggest that competition is being distorted or restricted in a market of the sector. In order to identify and evaluate the market processes, the GVH initiated a sector inquiry in July 2013.

78. The undertakings present, business models employed and the reservations in use have significantly changed with the development of online reservations. As a result of the appearance of Online Travel Agencies (OTAs) the market became more transparent, as several hotel offers can be compared even on the website of just a single OTA. This transparency led to an increase in price competition among hotels (so called inter-brand competition); however, there was no substantive price competition among the OTAs on the market and the prices of accommodations were roughly the same in all sales channels in the first half of the period affected by the sectoral inquiry.

79. The lack of price competition may be caused by the rate parity agreements existing between accommodations and reservation portals. Rate parity refers to an agreement made with an online intermediary in which a hotel promises not to offer lower prices than those agreed with the given intermediary on its own website or to other intermediaries. To meet this clause the accommodation is required to standardise its room prices on all sales channels for a given period of time. This may result in

the elimination of intra brand competition and price competition between intermediaries offering the same hotel room.

80. So-called ‘price parity clauses’ can be found in the agreements of both international and large domestic OTAs. The use of price parity clauses on the Hungarian hotel market has spread through the help of the international market participants, and the majority of Hungarian market participants have been following this practice since it first emerged. One of the conclusions of the sector inquiry is that an agreement containing only one rate parity, and concluded with one significant online intermediary, can lead to the standardisation of room prices in the whole market on all sales channels.

81. The position of the GVH is in line with the conclusions of international procedures on the topic, according to which wide parity clauses (i.e. comprising all sales channels) may restrict competition by standardising market prices and increasing barriers to entry. This may give rise to particular competition concerns with regard to the market concentration in Hungary. The application of wide parity clauses does not result in efficiency benefits or enhance consumer welfare to such a degree that could justify the total restriction of competition among the single sales channels. A unique feature of the Hungarian sector inquiry is that the study also covered the mapping of the demand-side and the analysis of consumer habits.

82. A narrow parity clause may pave the way for accommodation providers (hotels) to be able to freely apply different price policies via certain sales channels. On the other hand, OTAs may announce special promotional periods at the expense of their commission rates and may also compete on prices.

83. After the draft report of the sectoral inquiry was released, the largest Hungarian-owned market player of the Hungarian online booking market (Szallas.hu) indicated to the GVH that it plans to switch to the application of a narrow parity clause, thus following the international market players. It will hopefully also influence the conduct of players with smaller market shares.

#### **4. Lessons of the court reviews of the GVH’s decisions**

84. From the 63 resolutions made in procedures initiated by the GVH in 2015, in 20 cases a legal remedy was sought against the decision establishing an infringement: 14 decisions concerning the violation of the prohibition of unfair commercial practices against consumers were challenged, 4 infringement decisions establishing restrictive agreements were challenged, 1 decision establishing an abuse of a dominant position was challenged, and against 1 decision – made according to the Act on Trade – concerning the infringement of the prohibition of abuse of significant market power a legal remedy was sought.

85. In 2015 a relatively large number of administrative non-contentious proceedings were initiated, with a total number of 62 non-contentious procedures taking place during the year. One-third of these proceedings concerned the initiation of the enforcement procedure and the calculation of default penalties, while in 10 cases a legal remedy was sought against judgments imposing procedural fines. It should be emphasised that in more than ten cases the non-litigious procedures were launched in connection with orders to ensure the right of access to documents, which is considered a relatively new development.

86. In 2015 the court of first instance (the Metropolitan Administrative and Labour Court of Budapest) delivered decisions in review proceedings on 25 occasions. 7 cases – which were applications for annulment of the decisions of the GVH – were concluded with final judgments rejecting the applicants’ complaints. In 15 out of the 18 non-final first instance decisions, the applicants’ claims were rejected, in one case the GVH’s decision was overturned, in one case it was partially annulled and an order was made

to reopen the case, and in one case the court fully annulled the GVH's decision. In the latter 3 cases the GVH submitted applications for review to the Budapest-Capital Regional Court (review court of the court of first instance).

87. At the court of second instance, the Budapest-Capital Regional Court issued 15 judgments in 2015. In 14 cases the applicants' claims were rejected, in one case, the court of first instance (which had earlier annulled the decision of the GVH) was required to reopen the case. All of these final court decisions ended with the GVH's decisions being upheld.

88. In 2015, the Curia ensuring extraordinary review procedure decided on 3 applications and in all of these 3 cases upheld the second instance judgments declaring the legality of the GVH's decisions, that is, the actions of the applicants were dismissed. Consequently, the GVH effectively protected its decisions during the review procedure of the Curia.

## **5. Competition advocacy – commenting on regulations and other drafts**

89. In 2015 the GVH received a total of 113 submissions and draft pieces of legislation for comments, and sent its comments in 24 cases. These figures demonstrate a significant increase compared to the declining trend of previous years. The majority of these comments continued to focus on creating a more competition-friendly regulatory environment, reducing administrative burdens, and improving the conditions of the consumer decision-making process. A smaller number of comments concerned improving the quality of codification.

90. During the year, several draft pieces of legislation concerned the GVH itself as a public administrative body and required comments.

91. In 2015 the GVH was intervening twice when it experienced competition problems in certain markets<sup>1</sup> which arose in relation to certain provisions of the monopoly control or other state interventions. The interventions drew up ideas related to possible state action measures to eliminate the competition problems. It has also occurred that intervention<sup>2</sup> took place to establish clearer tasks and competences between the competition authority and other authorities. In four cases requiring knowledge of the powers and law enforcement practices of the GVH, the latter was contacted by ministries and one public corporation, thereby enabling the experiences gained by the GVH to be put to use.

92. The GVH's initiation of the amendments to the Competition Act providing for small and medium sized enterprises to be given a warning instead of a fine in the case of a first infringement, and the requirement – which may be imposed – that such undertakings must establish internal compliance manuals and develop internal procedures for preventing infringements, can be seen as having been a success.

93. The GVH commented on the draft version of the National Anti-Corruption Programme and Action Plan for 2015-2016 and considered it important as a general remark to draw attention to the fact that as a result of the legislation in force and the operation of state bodies, the proliferation of decisions lacking normativity is increasing the risk of corruption, with the consequence that in many cases the negative trends can only be prevented by new legislation. From a competition perspective the above-mentioned issues deserve special attention, as they lead both to situations distorting competition and to the increase of the risk of corruption. Consequently, the GVH deemed that it was important to analyse corruption risks during the preliminary impact assessment. The comments of the GVH particularly

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<sup>1</sup> Mobile payment, cross-border rail freight

<sup>2</sup> The GVH made proposals on the clarification of the food board, consumer protection, and competition regulatory powers.

highlighted to the promotion of competition compliance, within the framework of which the GVH operates a website dedicated to competition compliance issues; furthermore, it has initiated a press campaign and organised a conference exclusively for SMEs. The public procurement cartel detection activity of the GVH must be also highlighted. There are a number of recommended steps that could be taken in order to assist the work of the GVH, these include: making available a broad range of data related to public procurement procedures, improving the searchability of the data available in the public procurement database (while also making it accessible by either the public or some authorities), and giving the GVH the greatest possible access to public procurement related information and documents. The comments of the GVH were partially incorporated: decision was made about the improving of the searchability of the public procurement database. The GVH sends an annual report to the Minister of Interior about the results of the cooperation it achieves within the frameworks of the joint cooperation focusing on the fight against corruption.

94. Unfortunately, the final version of the decree does not contain the above-mentioned added Article, which required the effect of corruption to be included in impact analyses as a risk factor.

95. Concerning the draft of the new Public Procurement Act, the GVH made comments on the exclusion rules from public procurement procedures applicable to those (including those belonging to the same group of companies or their successor) that have committed infringements of competition law and criminal law. Taking into consideration the fact that a cartel member that assists the GVH to detect a cartel can benefit from an exemption, reduction or even a reward in relation to some legal consequences, the GVH also sought to ensure that the procedural provisions and sanctions that are applied in the different branches of law do not cancel each other out. Consequently, it specifically commented on the need to ensure that the applicable legal rules are consistent and non-contradictory. In addition, the GVH aimed to guarantee by law that certain information is made publicly available in easily searchable databases so that participation in anti-competitive collusions can be readily detected and in order to avoid that the stakeholders involved in a secret cartel do not become prematurely aware of the case related data collection and intelligence activities of the authorities. The comments of the GVH were partially incorporated.

## **6. Competition Culture**

### **6.1 *The activity of the Competition Culture Centre***

96. 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, professional help and financial assistance.

97. The advocacy work of the Authority was focusing in 2015 on the 25<sup>th</sup> anniversary of the establishment of the GVH and the passing of the first Competition Act. The series of programs organised for the jubilee year was launched by the publishing of the Commentary on Act LVII of 1996 on the Prohibition of Unfair and Restrictive Practices in April. This would have never been possible without the support of the GVH staff members and recognised experts. It was followed by the “Open GVH” event, which was organised for the first time within the framework of the Cultural Heritage Day in 2015. The legal history exhibition, opened in September 2015, in the building of the GVH thematically presents the establishment of Act XX of 1931 on the Agreements Controlling Economic Competition, its national and international background, and the organisation and the operation of the Cartel Commission and the Cartel Court between 1931 and 1945, furthermore; it contains a selection of contemporary cartel cases and position statements.

98. During 2015 several events aimed at developing competition culture took place, namely:

- The main event of the Jubilee year was the international competition law conference organised for the 25<sup>th</sup> anniversary of the establishment of the GVH in November 2015. The former presidents of the GVH and the current president, Miklós Juhász, talked about the initial, current and future challenges faced by the competition authority. High-level national and international competition law experts and regulatory officials also discussed the role of competition policy in the transitional economies, the consumer protection role of competition authorities and a nowadays increasingly emerging issue, namely the competition concerns relating to the exchange of information and the creation of information databases.
- As a result of the open public procurement procedure tender issued by the GVH in 2014 aimed at developing the competition culture and the culture of conscious consumer decisions, 5 Competition Advisory Offices (in Debrecen, Eger, Győr, Pécs and Szeged) were reopened in March 2015. The work of the advisory offices, which is carried out with the involvement of Civil Organisations, is to increase consumers' awareness of competition law and conscious consumer decision making, and to identify competition problems arising on the local market independently of input from the GVH. As of March 2015, compared to the 223 responses which were received during the previous year's programme which ran for a period of six-months, more than 968 responses were received by post, in person, by phone or through electronic channels. Through its 46 self-organised events 2200 consumers could be personally contacted. The Network of Advisory Offices is present on one of the largest social networking sites and also provides advice to interested parties on the country's most popular online consumer advice blog.
- The results of the survey showed that the majority of SMEs, in addition to not being aware of what a cartel is, its definition or the possible legal consequences stemming from it, had never even heard about the leniency policy.
- Having regards to the above-mentioned, the GVH targeted SMEs to enhance their awareness on cartels and leniency through a communication campaign launched on 1 December 2015. The campaign, with the slogan "Nem marad köztetek" ["It cannot be kept secret"], aimed to popularise the leniency policy, raise awareness, educate and instigate leniency applications.
- The attainment of the goals identified in the previous paragraph is being further supported by the Cartel Chat, an anonymous contact system, which was introduced in 2015. The GVH was awarded an Honourable Mention prize by the International World Bank and the ICN in its Competition Advocacy Contest, which is aimed at developing competition culture. The GVH gave its learning materials prepared for contracting parties and their – supervisory authorities and – colleagues involved in public procurement tenders the title "The possibilities of the contracting parties to help the detection of cartels". The educational material is intended to provide professional assistance to contracting entities – as well as for the colleagues of their supervisory authorities – to enable them to recognise suspicious situations and in such cases to inform the GVH.
- Based on the received complaints and market notices referring to uncertainty and the experiences derived from conducted competition procedures, the GVH decided that it needed to draw consumers' and undertakings' attention to the misleading information methods employed in several areas (fake bills, products curing cancer, product fairs, timeshares, dietary products and travel offers). Launched on 20 October 2015, the aim of the "Think Through Calmly" campaign of the GVH is to help consumers and undertakings realise the misleading nature of advertisements and to support their decisions with its suggestions.

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

99.      The OECD-GVH Regional Centre for Competition in Budapest (RCC) was established by the OECD and the GVH on 16 February 2005. Relying on the professional background of the Competition Division of the OECD and the GVH, the Centre provides capacity building assistance and policy advice for the competition authorities of the Central, East and South-East European region, namely for Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The RCC is financially supported by the Hungarian Government.

100.     Among others, the RCC deals with issues such as: analysis of core competition cases, investigative techniques, competition policy principles in the process of regulatory reforms, training of judges, law enforcement priorities, guidelines, policies, practices and procedures, framework for the cooperation of the competition authorities of the region, competition advocacy, tools for communication, cooperation between competition authorities and regulatory bodies, and other general issues falling under competition law and policy. Regular meetings, training programmes, seminars and workshops are organised on all these topics.

101.     In 2015 the RCC organised 9 major events and hosted 303 participants arriving from 34 countries and 66 speakers from 18 countries.

102.     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.

103.     In 2015 the OECD-GVH Regional Centre for Competition in Budapest organised three seminars in Budapest for the staff of competition authorities, its primary target group. The seminars focused on the following subject matters: 1/ "Remedies and Commitments in Competition Cases", 2/ "Update in Competition Economics" and 3/ "Competition Topics in Telecommunication and Electronic Communication Markets".

104.     Upon the request of the Georgian competition authority, a professional event was organised in Tbilisi on the subject of "evidence in cartel cases". The RCC organised a joint seminar with the Russian competition authority in Veliky Novgorod (Russian Federation) on the subject of the OECD Competition Assessment Toolkit and its practical application for the staff of the competition authorities of CIS countries.

105.     In 2015 the RCC organised competition law seminars for the judges of the European Union on two occasions. The first event ("Competition Economics for Judges – basic economic and legal concepts") presented the concepts of competition economics as they are relevant for the work of judges and focused on the methods used by economists. It focused in particular on the economics of abuse of dominance cases, distribution restraints (such as restrictions on internet sales), and claims for damages. The event was attended by 26 judges from 14 EU countries. The second seminar focused on recent cases involving EU competition law, under the title "Trends in the case law and in the competition policy, and their effect on cases litigated before national courts", and was attended by 25 judges from 14 EU countries. The event reviewed cases on the analytical framework in Article 101 cases, information exchanges, abuse of dominance, and standard setting in an IP context.

## **7.      *Cooperation with other organisations***

106.     The GVH has the objective of establishing and deepening ties with representatives of the academic community working in competition law and competition policy and with relevant professional

organisations. In this context, the Authority concluded cooperation agreements with several bodies in 2015, including the Hungarian Competition Law Association, the National University of Public Service, the Budapest Business School and the Frank Ignác Foundation operating as a partner body of ELTE University, and continued its long-term cooperation with the Centre for Economic and Regional Studies of the Hungarian Academy of Sciences and with other organisations carrying out competition law related work.

## 8. International relations

107. 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 co-operations.

108. Similarly to the practice of previous years, 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.

109. Contributions to the work of the OECD Competition Committee and its working groups continued to be of uppermost importance in 2015. Contributions were prepared on the topics of “Competition and cross platform parity agreements”, “Does Competition kill or create jobs?”, “Competition and industries prone to endemic collusion”.

110. In accordance with established practice, in 2015 the GVH also sent one of its experts to the OECD for a whole year as a secondee.

111. Concerning cooperation with the International Competition Network (ICN), in 2015 the GVH remained an active participant in particular in the work of the Cartel Working Group, being responsible for the coordination of the project on the “Anti-Cartel Enforcement Template”.

112. The Authority celebrated the 25<sup>th</sup> anniversary of its establishment in November 2015 and the passing of the first Competition Act with a high-level international competition law conference, which was organised with the participation of experts from all over Europe. The former presidents of the GVH and the current president, Miklós Juhász, talked about the initial, current and future challenges faced by the competition authority. Further topics included the role of competition policy in the transitional economies, the consumer protection role played by the GVH over the last 25 years, and the nowadays increasingly emerging issue, namely the competition concerns relating to the exchange of information and the creation of information databases. The 209 national and international participants of the event were made up of regulatory officials, lawyers, judiciary experts, trade unionists and in-house lawyers.

## 9. Resources of the competition authority

### 9.1 Annual budget (in HUF and EUR)

|      |                            |               |
|------|----------------------------|---------------|
| 2015 | HUF billion<br>EUR million | 3,144<br>10.1 |
|------|----------------------------|---------------|

**9.2** *Number of employees (type-year)*

|                             | <b>2015</b> |
|-----------------------------|-------------|
| Economists                  | 18          |
| Lawyers                     | 57          |
| Lawyer-economists           | 8           |
| Other professionals         | 5           |
| Support staff               | 34          |
| All staff combined (actual) | 122         |

113. In 2015 the Authority had HUF 3,144 billion (approx. EUR 10.1 million) available to fund its work. The annual budget was balanced, no liquidity issues arose, and the payment obligations of the GVH were fulfilled on time.