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## Annual Report on Competition Policy Developments in Hungary

-- 2019 --

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## *Hungary*

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

#### **1.1. Summary of new legal provisions of competition law and related legislation**

##### *1.1.1. Legislative changes affecting the organisation of the GVH*

1. The Act CVII of 2019 on bodies with special legal status and the status of their employees, which was adopted on 17 December 2019 and entered into force on 1 January 2020, significantly affected the organisation of the GVH. The Act brings about major changes in the law regarding the legal status of both the GVH and its employees.

2. Since 2019, the GVH has allocated considerable resources to the preparatory tasks concerning the transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

##### *1.1.2. Legislative changes affecting the proceedings of the GVH*

3. As of January 2020 the Act CXXVII of 2019 amended Article 54/A of the Competition Act (Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices). The purpose of this amendment is, in view of the exclusion of competition supervision proceedings and the requirements laid down in decision no. 7/2019 (III. 22.) of the Constitutional Court of Hungary, to align the provisions of the Competition Act related to the confidential treatment of data concerning witnesses with Article 28 (1) of Act CL of 2016 on General Public Administration Procedures. As a result of this alignment, it will now be possible to require the confidential treatment of the data of witnesses ex officio in competition supervision proceedings if such an order has already been made in another proceeding.

#### **1.2. Other relevant measures, including new guidelines**

4. In order to increase the predictability of law enforcement, the President of the GVH and the Chair of the Competition Council may jointly issue notices detailing the basic principles of the law enforcement practice of the GVH. Based on law enforcement experience in recent years, in 2019 the GVH revised its Notice No. 6/2017 on certain law enforcement issues related to merger control proceedings. As part of the review, the GVH initiated a public consultation on the draft notice. As a result of this, in December 2019 the GVH issued a new notice. (Notice No 1/2019.).

## 2. Enforcement of competition laws and policies

### 2.1. Action against anticompetitive practices; agreements and abuses of dominant position

#### 2.1.1. Anticompetitive practices

5. In 2019, the GVH adopted 13 decisions in proceedings involving anti-competitive agreements. In 8 cases the GVH established infringements, in 3 cases the proceedings were terminated, while the remaining 2 cases were suspended.

#### 2.1.2. Significant cases

6. In 2019, the GVH adopted a number of significant decisions relating to one of its primary objectives, namely the adoption of strict action against cartels, particularly those concerning public procurement procedures. The Authority utilises the leniency policy and the settlement procedure in order to pursue its objective of eliminating anti-competitive conducts on markets. The leniency policy enables fine reductions to be granted to those undertakings that reveal their infringements, while the settlement procedure provides for fine reductions for those undertakings that waive their right to seek a legal remedy.

#### *Bid rigging*

7. In relation to bid rigging, in 2019 the prohibition decisions adopted by the GVH concerned the following anti-competitive behaviours.

8. In public procurement procedures funded by the EU for the provision of specialised bins, vehicles and equipment for waste, the GVH found that five undertakings - JUMBO LOG Kft., RESTONE Kft., Profi-Bagger Kft., M-U-T Kft. and MENTO Kft. - had engaged in unlawful activities.<sup>1</sup> The investigation revealed that in 2014 and in 2015 the undertakings concerned had unlawfully shared information with each other when participating in procurement procedures: they had concerted their offers and they had agreed on the winner in advance. The GVH found evidence relating to the cartel during the unannounced inspections it carried out on the undertakings' premises. The GVH imposed the maximum competition supervision fine that it can impose on the majority of the undertakings concerned. At the same time, the GVH reduced the fines imposed on JUMBO LOG Kft., RESTONE Kft. and Profi-Bagger Kft. by 30% for their cooperation during the settlement procedure and for waiving their right to a legal remedy. As a result, the GVH imposed fines amounting to a total of over EUR 2.5 M on the undertakings concerned.

9. In connection with EU funded projects for the development of energetic systems in the framework of the *'Environment and Energy Operative Programme'* published by the Ministry of National Development, the investigation of the GVH found that six undertakings, namely Alter Energetikai Iroda Tudományos Szolgáltató Bt., Megújuló Energiapark Kutatóközpont Kft., Új Irány Energetika Kft., LKM.HU Service Kft. and Havrilla-Ép Építőipari Szolgáltató Kft. had coordinated their submitted price offers concerning the implementation of solar power systems.<sup>2</sup> Consequently, the GVH established the violation and imposed fines amounting to the maximum legal amount on

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<sup>1</sup> Official registration number of the case: **VJ/77/2016**.

<sup>2</sup> Official registration number of the case: **VJ/41/2016**.

the undertakings, corresponding to 10% of the net turnover achieved in the previous business year of the undertakings. However, in the framework of the settlement procedure the GVH reduced the possible maximum legal amount of the fine by 30% for Havrilla Kft., as the undertaking acknowledged the infringement and waived its right to seek a legal remedy. In total, the GVH imposed fines of more than EUR 253,000 on the undertakings.

10. In tenders related to the procurement of diagnostic imaging equipment within the framework of the EU tender '*Supporting the procurement of health equipment aimed at saving energy*', the GVH's investigation found that several undertakings, namely Siemens Healthcare Kft., Siemens Termelő, Szolgáltató és Kereskedelmi Zrt., GE Hungary Ipari és Kereskedelmi Kft., PHILIPS Magyarország Kft., HOGE Orvosi Műszer Kft., Premier G. Med Kft., Euromedic Technology Kft., Chemium Zrt. 'i.L.', Medirex Zrt., and Mediszer Kórháztechnika és Kereskedelmi Kft. had shared public procurement tenders among each other.<sup>3</sup> Most of the undertakings actively cooperated with the authority in the proceeding. Three undertakings voluntarily admitted their unlawful conducts for which they also handed over evidence. The authority offered immunity from the imposition of a fine to Mediszer Kft., which was the first undertaking to apply for leniency. For the same reason, Siemens Healthcare Kft. was granted a fine reduction of 40%. While the GVH did not accept the leniency application of HOGE Kft., it did, however, reduce the fine imposed on the undertaking by 30% because the company had admitted its involvement in the infringement and had also waived its right to seek a legal remedy. Further significant fine reductions were granted by the GVH to a number of undertakings pursuant to the settlement procedure. The GVH imposed fines amounting to a total of EUR 4.8 M on the undertakings.

11. In addition to bid rigging, the GVH also closed proceedings related to other horizontal and vertical anti-competitive practices.

12. With regard to horizontal anti-competitive practices the GVH imposed fines on the former producers of Energizer, Duracell and Varta batteries for their participation in a cartel. The investigation revealed that in 2005 the battery producers concerned had agreed to pass the waste management fees that had been introduced around that time onto their customers as a separate cost element. As a consequence, for a period of 10 years the producers, in full agreement, passed the entire waste management fees onto their customers, thereby excluding competition among themselves in respect of this cost element. Due to the cooperation of the battery producers concerned, the GVH significantly reduced the amount of the fines that it could lawfully impose: the producer of Energizer batteries and the former producer of Duracell batteries, Procter & Gamble, acknowledged the infringement by submitting a leniency application and providing the required supporting evidence. The GVH waived the fine that would have been imposed on Energizer and halved the fine of Procter & Gamble. In addition, Procter & Gamble and the former producer of Varta batteries, Spectrum Brands Hungaria Kft., accepted the GVH's statement of facts and waived their right to seek a legal remedy in the framework of the settlement procedure, thereby contributing to the rapid conclusion of the procedure. Spectrum Brands received a further reduction of its fine as it undertook to further develop its compliance programme in order to avoid future infringements.

13. With regard to vertical anti-competitive practices, in 2019 the GVH closed two cases. In the first case the GVH imposed a fine of approx. EUR 330,000 on Husqvarna Magyarország Kft. for fixing the online retail prices of its products belonging to the Husqvarna, Gardena and McCulloch brands. During its proceeding the GVH established

<sup>3</sup> Official registration number of the case: **VJ/19/2016**.

that Husqvarna Magyarország Kft. had provided, in line with the practice prevailing in the concerned industry, the recommended retail prices of its Husqvarna, Gardena and McCulloch brands between 2013 and 2016.<sup>4</sup> This conduct in itself did not constitute a competition law infringement. However, in collaboration with the distributors, the undertaking concerned indirectly set the minimum online prices of its products by also fixing the maximum level of discount that distributors could grant from the recommended prices. These kinds of clauses are considered as particularly serious restrictions of competition, as they ultimately result in increased consumer prices given the fact that retailers are prevented from competing with each other by lowering prices. No fines were imposed on the concerned online distributors. However, all of the undertakings involved in the proceeding were obliged to adopt measures aimed at preventing similar infringements from occurring in the future. The prevention of such conducts is considered by the GVH as a priority objective in all sectors of the economy.

14. In the second case the GVH imposed fines amounting to a total of over EUR 1.5 M on a number of undertakings for restricting the distribution of alarm equipment for almost 10 years.<sup>5</sup> Based on the distribution agreements concluded between the distributor of Paradox security products (alarm systems and equipment), Paradox Security Systems (Bahamas) Ltd., and its distributors in Hungary – Power Biztonságtechnikai Kereskedelmi Kft. and Trióda Biztonságtechnika Zrt. –, their market conducts, emails and other evidence acquired during dawn raids, the GVH concluded that the three undertakings had

- prohibited the export of Paradox products (prohibition of so-called passive export),
- fixed the minimum prices of installers and thereby indirectly fixed the resale prices, and
- restricted the online sale of products by prohibiting the online publication of end-user prices.

15. Due to the above-mentioned anti-competitive measures, the concerned distributors and installers were able to charge high prices for the sale and installation of Paradox security products, which ultimately resulted in higher prices for consumers. The high prices that could be charged for the products led the distributors and installers to also recommend Paradox security products over other brands to their customers, the latter of which usually choose the brand recommended by installers due to the complexity of such products and their lack of expertise.

## 2.2. Abuse of dominance

16. In 2019, the GVH adopted 3 decisions in proceedings related to abuse of dominance. In 2 cases the proceedings were closed with commitments, while the remaining 1 case was terminated in the course of the investigation.

### 2.2.1. Significant cases

17. In 2019, the telecommunication company Magyar Telekom Nyrt. launched a new low-priced triple play (TV + internet + phone) package in 406 towns as a result of the

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<sup>4</sup> Official registration number of the case: **VJ/103/2014**.

<sup>5</sup> Official registration number of the case: **VJ/97/2016**.

intervention of the GVH.<sup>6</sup> The investigation was initiated in 2017 after the GVH noticed that the undertaking's triple-play service package, which it introduced in May 2017, had only been made available in those towns where it faced strong competitive pressure. In contrast, it charged higher fees in those towns that lacked strong competition but where its network would have also been capable of providing the 'Flip' service. This conduct raised the suspicion that Telekom was charging its customers excessively high fees in these towns. As a result of the GVH's proceeding, the telecommunication company undertook to introduce a new tariff package in 406 towns, which would include TV, internet and telephone services. The low fee that would be charged for this new package was expected to result in considerable savings for consumers, when compared to the costs that they would incur if they were to purchase these services separately from Telekom. In accordance with the accepted commitments, Telekom undertook to make the new tariff package available in all those towns where its network is technologically capable of providing TV, internet and telephone services. The commitments submitted by Telekom would remain in place for a period of 2 years – in view of the rapid technological developments in the telecommunications markets and the ever-changing competitive environment. The new tariff package would be available to both Telekom's existing customers (without the obligation to pay a contractual penalty) and new subscribers.

### 2.3. Mergers & acquisitions

18. In 2019, 59 merger proceedings were closed – including notification proceedings – out of which 49 cases were closed in notification proceedings, 8 cases were closed in competition supervision proceedings, while 2 proceedings were suspended.

19. As regards to the notification proceedings, in 2 cases the GVH established that the transaction did not meet the HUF five billion threshold specified in Article 24 (4) of the Competition Act; consequently, the GVH rejected these 2 notifications. In the remaining 47 cases the GVH issued official certificates.

20. All of the competition supervision proceedings were initiated on the basis of notifications. In 4 cases the GVH granted the authorisation in a Phase II procedure – in 1 of these 4 cases the authorisation was granted subject to commitments aimed at eliminating the harmful competitive effects of the concentration.

#### 2.3.1. Significant cases

21. In the field of consumer electronics the GVH established that Media Markt's acquisition of control over Tesco's consumer electronics retail sector would not harmfully affect competition.<sup>7</sup> As a result of the concentration Media Markt Retail Cooperation Kereskedelmi Kft. would operate as an independent undertaking, specialising in the sale of consumer electronic goods (so called 'shop-in-shop') within the sales area of the stores of Tesco Global Zrt. in 9 locations (Budapest, Veszprém, Sopron, Baja, Esztergom, Szekszárd, Dunaújváros, Kaposvár, and Tatabánya). The GVH examined the potential competitive effects of the concentration in the consumer electronics retail sector on the national market and also on the involved cities. On the basis of the analysis the GVH concluded that the market concentration after the acquisition of control would not be significant enough to distort competition either nationally or locally. In its decision the

<sup>6</sup> Official registration number of the case: **VJ/56/2017**.

<sup>7</sup> Official registration number of the case: **VJ/34/2018**.

GVH also considered the possible benefits of the concentration, in particular the benefits for consumers (e.g. greater choice of products, improvement of consumer services).

22. In connection with the online sale of consumer electronics, the GVH determined that the acquisition of Dante International Kft. (eMAG) over Extreme Digital Zrt. (edigital.hu) would not result in a significant lessening of competition on the market.<sup>8</sup> According to the notification Dante International Kft., which operates the eMAG.hu online store, intended to acquire control over Extreme Digital Zrt., which operates the edigital.hu online store and 16 retail outlets in the country. Due to the very high turnovers of the online stores of the parties to the transaction – especially in relation to the sale of consumer electronics – the GVH ordered a full investigation to assess the potential harmful effects of the acquisition. In addition to analysing the data submitted by the parties, the GVH also consulted with competitors, suppliers and market research firms. The GVH concluded that on the market of consumer electronics, the online and traditional (bricks and mortar) market segments are not separate but actually form a single market. This is supported by the fact that market players using both online and offline trading methods typically set uniform prices and conditions nationwide, moreover Hungarian consumers attach great importance to the ability to visit the physical versions of online stores. The definition of the market as a single market was also supported by the majority of market players interviewed by the GVH, as well as by a market study undertaken by a market research institute. The combined market share of the parties on the market was found to be less than 20% and, therefore, according to the practice of the GVH no negative effects justifying regulatory intervention could be identified (see Notice 7/2017 of the GVH). The GVH was also of the opinion that the transaction would be unlikely to have harmful effects even if the investigation were to be limited to the online retail segment of consumer electronics, i.e. prices are unlikely to increase. In support of this conclusion, the GVH referred to the transparency of market prices, the price sensitivity of online consumers, the competitive pressure generated by the remaining competitors, and the contestability of the market.

23. With regard to the insurance market, the GVH received a notification of a concentration, according to which the insurance mediation company Netrisk intended to acquire direct and sole control over Biztosítás.hu, an undertaking involved in the same business activity.<sup>9</sup> Given that the undertakings concerned are the most important participants on the online insurance market, the GVH investigated the possible harmful effects of the concentration on competition in a detailed (so-called full) investigation proceeding. The GVH simultaneously analysed the information submitted by the parties and invited a number of insurance companies, insurance mediation companies, professional organisations and undertakings providing information technology solutions specialised for insurance activities to provide their opinions in the proceeding. After having examined the market of online insurance mediation and the expected impact of the acquisition on the market, the GVH also took into consideration the competitive pressure exercised by traditional insurance mediation activity (in person and on the phone) and the online platforms of the insurers.

24. The GVH concluded that no harmful impacts were likely to arise from the concentration also on the narrower online market. The prices of insurances are set by insurers and brokers, which means that insurance mediation undertakings are unable to

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<sup>8</sup> Official registration number of the case: **VJ/14/2019**.

<sup>9</sup> Official registration number of the case: **VJ/12/2019**.

directly increase prices and an indirect increase of prices is unlikely to occur (neither resulting from the reduction of benefits or the introduction of additional fees on top of insurance fees). On the basis of the significant bargaining power of the insurance undertakings, the GVH considered it unlikely that the concentration established by the transaction would enable the undertakings to implement any cost increase also affecting the price of insurances. Furthermore, the GVH established that there was unlikely to be a reduction in the quality of services provided by the undertakings as a result of the merger, given the fact that the merged undertakings would also be interested in the continuous development of the online platforms and in providing a wide range of insurance services following the concentration. As the case concerned digital services, the Authority also analysed the possible impact of the merging of the databases available to the undertakings. It was determined, however, that the merging of the undertakings would not have any substantial impact on data usability and, therefore, would not give the merged entity a competitive advantage over other insurance mediation undertakings and brokers. Consequently, the GVH established that the acquisition of control of Netrisk.hu over Biztosítás.hu would not significantly impede competition.

25. In 2019, the GVH conditionally cleared the acquisition of control of MOL Kiskereskedelmi Ingatlan Kft. and MOL Nyrt. (MOL) over petrol stations of Mobil Petrol in 5 locations (Pécs, Gödöllő, Fülöpszállás, Jászberény-Jászfákóhalma and Mezőkovácsháza).<sup>10</sup> The GVH ordered a full investigation (phase II) to assess the potential harmful effects of the acquisition, during which it obtained data from more than 50 market players and carried out on-site inspections. The GVH found that the transaction would raise competition concerns only in one out of the five locations concerned, in Mezőkovácsháza, where both petrol stations would belong to MOL, which might lead to an increase in retail price. The investigation also revealed that MOL sets the uniform framework conditions for its retail pricing nationwide, although the prices applied by each petrol station may differ from the national reference prices. In view of the competition concerns, MOL undertook not to deviate significantly from its national reference prices for certain fuel types ('diesel' and '95') in case of its petrol stations located in Mezőkovácsháza. This commitment means, on average, a decrease of approx. HUF 5-7/litre in the location concerned. According to the GVH's assessment, the commitment adequately remedies the identified competition problem for the next 5 years; consequently, the GVH authorised the transaction. The GVH will monitor the compliance with the decision in the framework of a follow-up investigation.

## 2.4. Consumer protection

26. In the field of consumer protection, the GVH closed 22 cases in 2019. In 13 cases the GVH established an infringement, out of which in 2 cases the GVH issued a warning. In 4 cases the GVH conducted a follow-up proceeding, in 3 cases the proceedings were closed with a commitment decision and in 2 cases the proceedings were terminated in the course of their investigation.

27. As in previous years, in 2019 the Authority continued to pay special attention to the identification and resolution of consumer protection issues related to the data-driven economy. In the digital world it is particularly important that consumers understand the business model on which a platform or application operates.

<sup>10</sup> Official registration number of the case: **VJ/46/2018**.

### 2.4.1. Significant cases

28. In 2019, the GVH imposed a fine amounting to a total of EUR 3.6 M on Facebook Ireland Ltd., which is the highest fine that the Authority has ever imposed in a consumer protection case.<sup>11</sup> The GVH found that Facebook Ireland Ltd. had infringed competition law when it advertised its services as being free of charge on its home page and Help Centre. While it was true that users did not have to pay for the concerned services, Facebook benefited economically from the users' data and activities, with users in this way paying for the services provided by the undertaking. The essence of the (so-called zero price) model of Facebook is that it attracts users with its online platform's content and it collects detailed information about its users' interests, behaviour and purchasing habits. The undertaking then uses this information to sell targeted advertising to its clients, with these paid for advertisements then appearing among the posts of targeted users. According to the GVH, the slogans *'It's free and anyone can join'* and *'Free and always will be'* used by Facebook distract its users' attention from the fact that they are indirectly paying for the use of its services in the form of the transmission of their data, the extent of the data collected, and all of the resulting consequences. The above-mentioned statements, which were found to have been deceptive, appeared on Facebook's homepage from January 2010 until August 2019 and on its Help Centre until 23 October 2019. The GVH noted that numerous users are not aware of the extent and value of the transferred data and do not generally read the general terms and conditions of online platforms. Consequently, the GVH was of the opinion that it is harmful to both short term and long term business decisions, and therefore also to some real economic processes, if users believe that they are able to use a service without any cost or without any risk.

29. The 10% tip-slider applied by HelloPay Zrt., which automatically adds a tip of 10% to the amount payable for a particular service unless actively modified or deleted by a consumer, and which is commonly found at payment terminals at festivals, fairs and restaurants, was also found to be unlawful.<sup>12</sup> The GVH established that HelloPay Zrt. exerted undue psychological pressure on consumers by automatically applying a 10% tip and donation rate at the terminals it provides. Due to the infringement, the GVH obliged the company to pay a fine of EUR 62,500. The GVH is of the opinion that the way the terminals operate, namely by automatically displaying an expected tip of 10%, can significantly limit the decision-making process of consumers, especially in connection with payment circumstances at festivals and restaurants (communication difficulties, time pressure, noise, crowd, etc.). The use of such terminals reduces the ability of consumers to independently determine whether they wish to pay a tip, and if so, the amount of the tip. The GVH prohibited the company from continuing the infringing conduct, with the result that it must modify the information provided at the terminals and after this modification it can no longer set a default tip of 10%.

30. The case initiated against the online payment method provider PayPal (Europe) S.á.r.l. et Cie, S.C.A concluded with the acceptance of commitments.<sup>13</sup> The GVH initiated the proceeding in 2017 because it was likely that the information provided by the payment service provider was both outdated and incomplete regarding the exchange rates applied to payments requiring conversion. The information provided was also inadequate as regards to the options for modifying the exchange rates. PayPal carries out conversions for its

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<sup>11</sup> Official registration number of the case: **VJ/85/2016**.

<sup>12</sup> Official registration number of the case: **VJ/64/2017**.

<sup>13</sup> Official registration number of the case: **VJ/18/2017**.

consumers at its own exchange rates, although consumers may also choose to convert their payments at the bank rates applied by their card-issuing banks. Since the exchange rates applied by certain service providers are different, the decision of the user can lead to different purchase prices, which means that it is important that proper and timely information is provided to consumers when they are using such services. As a result of the accepted commitments, PayPal simplified the operation of its website during the procedure and undertook to change the information provided to Hungarian users at the time of purchase within 4 months. Consequently, the undertaking will display the exchange option of the card issuer with its own exchange rate. If a consumer decides to use the exchange rate applied by his/her card-issuing bank the undertaking shall advise the consumer to check their bank notification. Furthermore, PayPal undertook to make the contracts it concludes with consumers more transparent. When making its decision the GVH considered it a significant factor that the commitments of the undertaking directly promote efficient competition, specifically as regards to the ability to choose and change service providers. The GVH shall monitor the fulfilment of the commitments in the framework of a follow-up investigation.

31. In the case of Wizz Air Hungary Zrt., the GVH investigated Wizz Air's "Wizz Flex" service, which is an ancillary service that enables flight tickets to be modified without the payment of a fee; customers who had purchased this service only had to pay the price difference between their original flight ticket and new flight ticket and between the baggage fees.<sup>14</sup> However, in the course of its competition supervision proceeding, the GVH became aware of further detailed conditions relating to the service that significantly restricted the ability of customers to benefit from the free flight modification. Furthermore, it was presumed that consumers had not been given adequate information about the applicable restrictive conditions. Pursuant to its commitments Wizz Air undertook to provide each consumer who had used the Wizz Flex service since 2010 with compensation in the form of a lump sum payment. Additionally, as regards to those customers that had modified their flights and had been unable to benefit from the lower cost of their chosen new flights, Wizz Air undertook to pay the differences between the flights. The number of customers entitled to the compensation is between 120 thousand and 220 thousand; the average compensation will be EUR 8.3 per passenger. Wizz Air shall credit the compensation to the Wizz accounts of the customers and the customers shall have five years to use this sum, or to have this sum transferred to their bank accounts on the provision of their banking details. After this 5-year period has elapsed, any remaining compensation that has not been used will be transferred to the SOS Children's Villages Foundation. Wizz Air must prove that the compensation has been paid through an external audit. Furthermore, Wizz Air undertook to amend its information practices relating to its Wizz Flex service in order to make the content of the service clear. Additionally, it will implement a number of IT developments to make the service more comprehensible and user-friendly and, finally, it will conduct a targeted educational campaign on the consumer rights of air passengers.

32. At the end of 2016 the GVH initiated proceedings to examine the social media activities, and in particular the advertising activities, of influencers with an outstanding number of followers. All these proceedings were terminated with the acceptance of commitments, the main purpose of which was to provide the relevant market players with guidance – without the imposition of a penalty – on expectations and obligations with regard to advertising on social media. As regards to the expectations placed on the influencer, he/she should make it clear and perceivable to consumers (followers) when a

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<sup>14</sup> Official registration number of the case: **VJ/17/2017**.

post is being published in exchange for some form of consideration (e.g. money, trial product, other discount, etc.). Furthermore, it is important to note that the publisher of the post and the seller of the product are equally responsible for the appearance of the ad tag (#advertisement) in the post, which means that both parties have an interest in ensuring that their communications are legal. The GVH monitored the compliance with the commitments in the framework of follow-up investigations. In 2019, 3 decisions were adopted in the follow-up investigations, out of which in 1 case the GVH terminated the proceeding, while in 2 cases it imposed a fine.

## 2.5. Judicial review of the GVH's decisions

33. Out of the decisions adopted by the GVH in 2019, court review was initiated in 21 cases. This includes simplified lawsuits. In 2019 the GVH won 65% of the administrative lawsuit, with simplified lawsuits included in this calculation.

## 3. Competition advocacy & competition culture

### 3.1. Competition advocacy

34. In the field of competition advocacy, in 2019 the GVH also aimed to use all of its instruments available to influence government decisions in support of competition. As regards to the meaning of government decisions, this includes the formulation of public policies, their application, and the individual administrative steps and interventions of government and other public institutions. With regard to competition advocacy, the GVH aims in particular to be able to express its position on as many draft laws as possible. The most important indicator of the success of the GVH's advocacy efforts is, however, the extent to which its expressed positions are utilised and taken into account by the legislator. Consequently, the GVH monitors draft legislation and whether the comments it has made have been taken into account.

35. In 2019, out of the number of draft pieces of legislation received by the GVH (31) and out of the number of draft pieces of legislation uploaded on the government's homepage (12), the GVH sent its comments in 11 cases. A significant proportion of these comments contained recommendations aimed at changing the rules governing the operation of the GVH and at improving the quality of codification, 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.

36. In 2019, the GVH intervened in 2 cases in relation to the anomalies of the legal background identified in the course of competition supervision proceedings or during the investigation of complaints. Both interventions were in the health and social sectors (medical aids and government support for the purchase of cars for severely disabled people). A common feature of the cases was that the beneficiaries of the government support programmes were severely disadvantaged people who were further disadvantaged due to a lack of information, absence of freedom of choice and inability to access the support, whereas the companies involved in the disbursement of subsidies were able to generate additional income. Unfortunately, so far no substantive initiative or measure has been taken in order to eliminate the identified legal anomalies.

### 3.2. Competition culture

37. The GVH's work in relation to the development of competition culture includes its own tasks in this area, for which it draws on its professional resources, as well as its contributions – both professional and financial – to those programmes that require the input of other bodies for their implementation.

38. In 2019, 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 and raise public awareness. 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. In this framework, among others, the following events took place in 2019.

- In line with tradition the Hungarian Competition Law Association and the GVH jointly organised a conference entitled the '**III. Hungarian Competition Law Forum**'. Its aim was to bring together all of the stakeholders (i.e. judges, attorneys, legal counsels, representatives of companies, academia and public administration) of competition law for a day to discuss the current hot topics of competition law.
- 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.
- As part of the Cultural Heritage Days the GVH opened its building to the public for the first time in 2015, and due to the positive feedback it received it organised the '**Open GVH**' programme for the third time in 2019. Compared to 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.

### 4. International relations

39. 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 cooperation.

40. 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.

41. The GVH's contribution to the work of the OECD Competition Committee and to its working groups continued to be of uppermost importance also in 2019, and in this year the GVH sent submissions to OECD roundtables held on the following topics; '*Access to the case file and protection of confidential information*', '*Hub-and-spoke arrangements*', and '*The standard of review by courts in competition cases*'.

42. In accordance with established practice, in 2019 the GVH also sent one of its experts to the OECD for a whole year as a secondee on a rotation basis.

43. In 2019 the GVH also remained an active participant in the International Competition Network (ICN), in particular in the work of the Cartel Working Group. The GVH remained responsible for the coordination of the project on the ‘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 responsible for several other ICN CWG projects (e.g. the project on leniency incentives and the organisation of several webinars on various topics).

44. As regards bilateral cooperation, during 2019 the GVH received delegations from the State Administration for Market Regulation (SAMR) of the People’s Republic of China, the successor of the Ministry of Commerce (MOFCOM), and the Office of the Anti-monopoly Committee of the State Council, which is responsible for areas such as competition and anti-monopoly policies.

45. On 10-12 September 2019, the GVH in cooperation with the Federal Trade Commission (USA) organised the 12<sup>th</sup> Annual FTC – Eastern European Competition Workshop. The workshop provided the participants with training on assessing competitive pressure imposed by online retailers on brick and mortar retailers and vice versa, rebates and MFN (and similar) clauses, vertical restraints (primarily non RPM restrictions) and methods of informal information gathering.

46. In the field of consumer protection, in the European Economic Area, the Consumer Protection Cooperation Network (CPC Network) provides the framework for cooperation, especially related to the rapidly evolving digital sphere. In addition to providing information to each other and requesting assistance from each other to carry out investigative measures, the members seek to take joint action to address problems that are occurring in several Member States. The GVH is actively involved in the CPC Network, and in 2019 it sent requests for information in 2 cases, sent alerts in 2 cases, and participated in the development of a joint action against Booking.com. Following dialogue with the European Commission and national consumer authorities, Booking.com has committed to make changes in the way it presents offers, discounts and prices to consumers.<sup>15</sup> Furthermore, colleagues of the GVH participated in several workshops organised by the CPC Network, sometimes as lecturers.

47. In 2019, the GVH as a member of the CPC Network – along with 24 EU member states and Norway and Iceland – participated in an EU-wide screening of 560 e-commerce sites offering a variety of goods, services and digital content, ranging from clothing to computer software and entertainment tickets.<sup>16</sup> Some of the key results of the screening include the following.

48. Around 60% of these websites showed irregularities regarding the respect of EU consumer rules, predominantly in relation to how prices and special offers are presented.

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<sup>15</sup> Booking.com commits to align practices presenting offers and prices with EU law following EU action, European Commission, Press Release, 20 December 2019.

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_19\\_6812](https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6812)

<sup>16</sup> Online shopping: Commission and consumer protection authorities call for clear information on prices and discounts, European Commission, Press Release, 22 February 2019

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_1333](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1333)

49. For more than 31% of the websites offering discounts, consumer authorities suspected that the special offers are not authentic or they found the way the discounted price was calculated unclear.
50. On 211 websites the final price at payment was higher than the initial price offered.
51. 39% of those traders did not include proper information on extra unavoidable fees on delivery, payment methods, booking fees and other similar surcharges.
52. On 59% of the 560 websites checked, traders failed the obligation to provide an easily accessible link to the Online Dispute Resolution (ODR) platform, which is obligatory under EU law.<sup>17</sup>
53. On almost 30% of the websites, irregularities were found in relation to how information was presented about consumers' right to withdrawal.
54. The GVH is also a member of the International Consumer Protection Enforcement Network (ICPEN), an umbrella organisation consisting of 58 consumer protection law enforcement authorities, and is an active member of the United Nations Conference on Trade and Development (UNCTAD), and of the OECD Committee on Consumer Policy.

#### 4.1. Activity of the OECD-GVH Regional Centre for Competition

55. 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.
56. The programmes of the RCC, besides others, deal with the following topics: building blocks of competition policy, analysis of competition cases, investigative techniques, training of judges, law enforcement priorities, framework for the cooperation of the competition authorities of the region, competition advocacy, cooperation between competition authorities and regulatory bodies, and other general issues falling under competition law and policy.
57. In 2019, the RCC hosted 307 participants arriving from 35 economies and 63 speakers from 15 countries.
58. In 2019 the RCC organised the following seminars:
59. 13 February – Meeting of Heads of Agencies. The meeting provided an opportunity for the heads of the beneficiary authorities to discuss their enforcement and training priorities and needs with the staff of the GVH-OECD RCC staff.
60. 11-13 March – Seminar on Vertical Sales Restrictions and E-Commerce. Selective and exclusive distribution systems, platform parity agreements and various limitations on online sales can be ambiguous with regard to their competitive effects. In order to provide

<sup>17</sup> European Online Dispute Resolution (ODR) platform  
<https://ec.europa.eu/consumers/odr/main/?event=main.trader.register>

participants with a better understanding of vertical restrictions and their potential pro- and anti-competitive effects, the seminar looked at the relevant case law with an emphasis on the EU experience and e-commerce related questions.

61. 16-17 April – GVH Staff Training. Recent developments in EU competition law and selected competition law topics, such as e-commerce, the ECN+ Directive, and consumer and competition issues in the digital age were on the agenda of the training for the whole staff of the GVH.

62. 10-11 May – Seminar in European Competition Law for National Judges on Competition Economics. Economic concepts and analysis have taken on an increasingly important role in the field of competition law over the years. In modern antitrust litigation, the soundness of the economic methods used by national competition authorities in their examinations, as well as the relative relevance of the economic studies submitted by the companies' legal representatives to support their cases are subject to the scrutiny of national judges. This training aimed to familiarise national judges with basic economic concepts and the legal and procedural challenges they might face when applying them in competition law cases due to the increased relevance of economic analysis across all fields of antitrust law.

63. 28-30 May – RCC-FAS Seminar in Russia – Merger Control Investigations and Innovation, Kazan. The seminar looked at the theories of harm for merger cases, basic economic methods, investigative steps and measures, and at effective merger remedies with an emphasis on the adequate treatment of innovation in all steps of the merger review process.

64. 10-12 September – Outside Seminar in Ukraine – Competition Enforcement and Advocacy in the Pharmaceutical Sector. In addition to market definition, market power, the role of generics and IP rights, merger control and abuse cases, the seminar provided an overview of the regulatory framework of the pharmaceutical market and an introduction to competition assessment.

65. 22-24 October – Remedies and Commitments in Competition Cases. The seminar explored the use of structural and behavioural remedies and commitments while focusing on certain specific questions, such as how price caps or behavioural measures that are hard to monitor and enforce can be avoided.

66. 22-23 November – Seminar on European Competition Law for National Judges on New challenges for National Judges in the application of Articles 101 & 102 TFEU. The antitrust legal landscape is changing due to the transformation of the market environment in which companies are active. The application of traditional legal theories is being challenged by the existence of dynamic markets in digital sectors. Antitrust competition authorities are being forced to adapt their approach in order to deal with new types of illegal behaviours, particularly those committed by Big Tech companies. Consequently, the spotlight is currently on national courts and EU judges dealing with antitrust cases to provide appropriate legal guidance. With regard to this, the training aimed to update national judges about the new legal and procedural challenges they may face when dealing with competition law cases as a result of the latest legal developments that have taken place in the antitrust field.

67. 10-12 December – Sector Event: Competition Rules and the Energy Sector. The energy sector has a number of unique characteristics and specificities that need to be considered when analysing the way in which competition takes place in the sector. The goal of the Workshop was to enable competition officials to become more familiar with

international practices relating to cartels, abuse of dominance, mergers and competition advocacy in this fundamental sector of modern economies.

## 5. Resources of competition authorities

68. The Hungarian Parliament approved the planned amount of the budget of the GVH for 2019, which was initially calculated as 2,579.4 million HUF, including the sum to be used for the activities of the OECD-GVH Regional Centre for Competition in Budapest, which was initially calculated as 158 million HUF for 2019. Following the modification of the planned amount, the available budget for the GVH and the RCC was 3,754.8 million HUF, including the outstanding amounts of 2018.

69. The annual finances of the budget chapter were balanced, with no liquidity issues arising; the GVH honoured its payment obligations in time.

**Table 1. Annual budget**

	2019
million HUF	3,754.8
million EUR	11.3

70. The total number of staff in the GVH was 115 as of 31 December 2019.

**Table 2. Number of employees**

	2019
Economists	14
Lawyers	56
Lawyer-economists	5
Other professionals	7
Support staff	33
All staff combined (actual)	115

71. The total number of staff in the main categories of activity (antitrust, mergers, consumer protection, and advocacy) in 2019 was 82.

## 6. Summaries of or references to new reports and studies on competition policy issues

72. In 2019 the GVH closed its sector inquiry into the payment card industry, targeting in particular the ‘downstream’ side of the market, i.e. bank card acceptance market. Payment by bank card is still not widespread in Hungary today, despite the fact that a reduction in cash payment would help to curtail the grey economy. Consequently, in the framework of a sector inquiry the GVH set out to identify the factors that may be hindering the more widespread acceptance of card payment and the ways in which these barriers may be overcome by market players or through regulation. In the final report the GVH did not reveal any market failures necessitating the initiation of competition supervision proceedings. It did, however, identify - among other things - a number of market

circumstances affecting competition on the market. Consequently, the GVH issued a number of recommendations to address the highlighted concerns.

73. The main findings of the sector inquiry and the related recommendations can be summarised as follows.

74. While the reduction in the level of the interchange fees has generally mitigated the merchants' cost burden, the extent of the reduction depends on the size of the merchants. The smallest merchants have benefitted the most from the cost reduction; however, when compared to turnover, this merchant size category still faces the highest cost burden. The proportionally higher fees can be partly explained by economies of scale; however, further discrepancies likely stem from differences between merchants – given their bargaining power and awareness. Consequently, the GVH recommends launching awareness raising programmes for merchants.

75. Fees that are proportional to the transaction number, which also increased during the investigated period, are also primarily detrimental for small-sized merchants processing low-value transactions; consequently, the GVH recommends minimising or eliminating these fees.

76. The POS terminal installation programme has also contributed to a significant reduction in the acceptance costs of the smallest merchants (less than 1 million HUF quarterly card payment turnover). However, the fees of merchants falling into a higher turnover category (1-2.5 million HUF quarterly card payment turnover) have increased. This is due to the low bargaining power of these merchants and the fact that they were unable to participate in the programme due to already possessing a POS terminal at the time that the programme was launched. The GVH recommends extending the programme to this category of merchants.

77. According to a market survey conducted in the course of the sector inquiry, merchants consider it disadvantageous that they only receive the value of purchases several days later. The GVH therefore recommends that acquiring banks speed up the crediting process of card transactions.

78. In addition, the GVH recommends increasing the popularity of bank card acceptance as well as the use of bank cards through tax policy measures.

79. In 2019, the GVH took advantage of the use of a market analysis in the field of consumer protection for the first time. The GVH launched a market study into digital comparison tools (websites and mobile-applications) in order to determine whether consumers can rely on the information provided on such websites and applications and the extent to which the provided information is objective and user-friendly. The market study revealed that an increasing number and a more diverse range of digital comparison tools are available to consumers. While these tools enhance and support competition and enable consumers to search for the best products, and therefore generally have a positive effect, they also present a number of risks. Digital comparison tools operating under market conditions may be interested in manipulating the ranking order of products in exchange for possible financial rewards from the suppliers of goods. Comparability can be reduced, for example, if several products are highlighted in return for additional benefits or if the comparison of complex products is only based on one single criterion. Digital comparison tools may even present an offer differing from reality in the absence of detailed information, given the high degree of complexity of products. At the same time, sellers can also react to the emergence of digital comparison tools by deliberately “clouding” the circumstances in order to make the comparison of their offers on the basis of the price and other criteria more

difficult. By doing so, they can increase search costs, weaken price competition and transparency, and thereby counteract the theoretically favourable purposes of digital comparison tools. In order to maintain consumer confidence, comparison tools need to have a transparent business model. In its analysis, the GVH a) drew attention to the phenomena that prevent consumers from being adequately informed when using comparison tools and b) promoted the provision of transparent information to consumers, without which the use of comparison tools may also lead to anti-competitive effects.