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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –
Contribution from Hungary**

- Session III -

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More documentation related to this discussion can be found at: oe.cd/icar.

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Interactions between Competition Authorities and Sector Regulators

- Contribution from Hungary -

1. Institutional context¹

1. The duty to ensure fair economic competition is enshrined in the Fundamental Law of Hungary,² and it is built on one of the founding principles of the European Union. Since fair competition is a precondition to the well-functioning of the internal market,³ it is every Member State's obligation to establish an environment, which is built on the respect, promotion and enforcement of competition rules in all sectors of the economy.

2. Now, since the promotion of fair competition necessarily overlaps with the tasks of different authorities, cooperation between the national competition authority and the sector regulators is of utmost importance. This is even more true for those sectors where market conditions change rapidly (such as in the energy and telecommunication sector), and where interpreting the specificities of the market concerned requires sector-specific expertise.

3. In the Hungarian legal system, the competences of the Hungarian Competition Authority (GVH) and that of the sector regulators are distinguished by law. The role of sector regulators in the field of competition is generally limited to the promotion and supervision of competition within the sector concerned and to providing sector-specific expertise (such as providing inputs for identifying the relevant market), while the right to initiate and conduct competition enforcement proceedings belongs to the exclusive competence of the competition authority. Therefore, in order to make sure that the competences of sector regulators and that of the competition authority are respected, the forms of cooperation have to be specifically laid down and their basis has to be established.

2. Basis of cooperation

4. The GVH has three main basis to cooperate with sector regulators. The first covers those forms of cooperation which are required by legislation and which are mostly in connection with the distribution of competences between the authorities. The second concerns establishing formal agreements with specific regulators in order to specify the roles of the authorities, which can either take the form of bilateral agreements or multilateral ones. The third category encompasses those instances when the GVH cooperates with the sector regulator in question on an ad-hoc basis without any formal agreement.

¹ Please note, that the GVH is competent authority also in consumer protection matters. This contribution covers cooperation between authorities both in antitrust and in consumer protection cases.

² Fundamental Law of Hungary, Article M (2)
<https://net.jogtar.hu/jogszabaly?docid=a1100425.atv> (For the English version, see:
<https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>)

³ See in particular: Treaty on the Functioning of the European Union (TFEU), Article 3 (1) (b)
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

5. The basis of cooperation between the GVH and the sector regulators is illustrated by the following table:

Table 1. Basis of cooperation between the GVH and the sector regulators¹

Legislation	Formal agreement (cooperation agreement)		No formal agreement
	Bilateral agreements	Multilateral agreements	
Act CLXXXV of 2010 on Media Services and Mass Media	GVH – National Media and Infocommunications Authority	GVH – Ministry of Innovation and Technology – Central Bank of Hungary	
Act C of 2003 on Electronic Communications	GVH – Hungarian Energy and Public Utility Regulatory Authority		
Act LXXXVI of 2007 on Electricity	GVH – Central Bank of Hungary		
Act XL of 2008 on Natural Gas Supply	GVH – National Food Chain Safety Office		
Act CXXXIX of 2013 on the Central Bank of Hungary	GVH – National Institute of Pharmacy and Nutrition		
Act XCVIII of 2006 Medicines Act	GVH – National Health Insurance Fund		
Act XLI of 2012 on Passenger Transport Services	GVH – National Transport Authority		
Act CLXXXIII of 2005 on Railway Transport	GVH – Hungarian Chamber of Commerce and Industry		
Act CLXIV of 2005 on Trade	GVH – National Authority for Data Protection and Freedom of Information		
Act CXLIII of 2015 on Public Procurement	GVH – Public Procurement Authority		
	GVH – Ministry of Justice		
	GVH – National Tax and Customs Administration		
	GVH – Association of Cities with County Rights		

Note: ¹ For the list of cooperation agreements, see: https://www.gvh.hu/en/gvh/cooperation_agreements

2.1. Cooperation required by legislation

6. In Hungary, sector-specific legislation provides for the legislative basis of cooperation between sector regulators and the competition authority.⁴ Sectoral legislation defines the competences of the sector regulators and that of the GVH and makes a clear distinction between their roles.

7. It is highlighted in all sectoral legislative acts that the sector regulator is obliged to respect the competence of the competition authority, which is the sole enforcer of

⁴ See for instance: Act CLXXXV of 2010 on Media Services and Mass Media, Section 111. § (1) (m) <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>; Act C of 2003 on Electronic Communications, Section 20. § <https://net.jogtar.hu/jogszabaly?docid=a0300100.tv>; Act CXXXIX of 2013 on the Central Bank of Hungary, Section 44. § (1) <https://net.jogtar.hu/jogszabaly?docid=a1300139.tv>

competition law rules in all sectors of the economy.⁵ Consequently, effective cooperation between the competition authority and the sector regulators is essential, which is why it is regulated by law.

8. We illustrate this form of cooperation with a merger-specific procedure in the media sector.

9. As regards other sectors, however, different forms of cooperation are prescribed, and more types of the listed cooperation forms may be present. For example, the Media Council of the National Media and Infocommunications Authority is obliged to present its official statement on specific merger cases for the GVH's consideration,⁶ this will be examined in more detail below, and also there are joint market surveillance is required by the law.

10. According to Article 171(1) of the Hungarian Media Act⁷ in case of notification of concentration of undertakings or the affiliates of two groups of companies as defined in Article 15 of the Competition Act⁸ bearing editorial responsibility and the primary objective of the undertakings concerned is to distribute media content to the general public via an electronic communications network or a printed press product, the GVH is obliged to obtain the opinion of the Media Council relevant to the notification of concentration.

11. Without having this prior express consent of the Media Council of the National Media and Infocommunications Authority, the GVH cannot make its decision on the merger in question. As it has to be a prior consent, the GVH has to initiate a competition proceeding (based on Article 67 (4) b) of the Competition Act), if the parties have not submitted the preliminary express consent of the Media Council (or the request for its consent) together with the notification form of the merger.⁹ In its competition supervision proceeding, it is the GVH's legal obligation to obtain the opinion of the Media Council as specialist authority via issuing an order of request for information.

12. As can be seen, the two separate proceedings of the National Media and Infocommunications Authority and the GVH are distinct in a way that two different authorities are responsible for them and the proceedings are also of different focus – while the National Media and Infocommunications Authority examines media pluralism, that is, the right for diversity of information within the relevant market for the media content service; the GVH concentrates on the competitive effects of the merger at hand. These different aspects are intertwined and combined during the assessment of a merger.

13. The Media Council may (i) grant approval, (ii) refuse to grant approval or (iii) grant approval subject to conditions as an outcome of its procedure. Another important fact is that – based on Article 171(4) of the Media Act – the official assessment of the Media Council is binding upon the GVH; the GVH must prohibit the merger, irrespective of the potential outcome of its own assessment, if the Media Council refuses to grant approval.

⁵ See for instance: Act CLXXXIII of 2005 on Railway Transport, Section 79/E. § (1) <https://net.jogtar.hu/jogszabaly?docid=a0500183.tv>; Act XL of 2008 on Natural Gas Supply, Section 127/A. § (b) <https://net.jogtar.hu/jogszabaly?docid=a0800040.tv>; Act LXXXVI of 2007 on Electricity, Section 107. § (4) <https://net.jogtar.hu/jogszabaly?docid=a0700086.tv>

⁶ See: Act CLXXXV of 2010 on Media Services and Mass Media, Section 171. § <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>

⁷ Act CLXXXV of 2010 on Media Services and on the Mass Media

⁸ See: Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Restriction of Competition

⁹ Article 171(7) of the Hungarian Media Act

However, the other outcomes of the decision of the Media Council does not prevent the GVH from (a) prohibiting a merger that has already been officially approved by the Media Council irrespective of any condition the Media Council may have imposed, or (b) imposing a condition or an obligation to implement a commitment as defined in Article 30(3) of the Competition Act that the Media Council failed to impose.

14. Since 2010, the GVH has examined 15 mergers¹⁰ in total that had to be examined by the Media Council as well, however, only one was finally blocked by the GVH on the basis of the refusal of approval of the Media Council (VJ/87/2016. RTL/CDM). In another case, the competition proceeding was terminated after the parties withdrew their request for authorisation of the transaction due to the refusal of approval of the Media Council (VJ/42/2010. Axel Springer/Ringier (JV)).

15. In the field of media regulation, sector regulator and the GVH are also jointly responsible for market surveillance, so in this field two different types of cooperation are present.

16. The above-mentioned procedure is not the only example for cooperation mandated by law. With respect to the energy sector, it is required by law that the Hungarian Energy and Public Utility Regulatory Authority shall seek the opinion of the GVH in its significant market power procedures so that it can identify those energy providers that have significant market power.¹¹

17. There is also a specific regulation in the agricultural sector: according to section 93/A of the Competition Act, the GVH is required to obtain the resolution of the Minister for agricultural policy and act accordingly before initiating a competition supervision proceeding concerning agricultural food products.

18. Another type of cooperation required by law makes possible the aspects of competition being taken into account in different fields by requiring the consultancy and the notification of the staff of the competition authority. The president of the GVH (or his/her representative) is a member of the Public Procurement Council of the Public Procurement Authority,¹² the Concession Council of the Supervisory Authority of Regulated Activities,¹³ and the Anti-Corruption Working Group of the newly established Integrity Authority.¹⁴ The board positions enable the representatives of the competition

¹⁰ VJ/42/2010. Axel Springer/Ringier (JV); VJ/6/2014. Axel Springer/Ringier (JV); VJ/7/2014. Axel Springer/Ringier (JV); VJ/65/2011. RTL Group/IKO Média; VJ/66/2011. M-RTL/IKO Televisions; VJ/23/2015. Columbia Pictures/Viasat; VJ/107/2015. Megapolis/TV2; VJ/58/2016. Mediaworks Hungary/Pannon Lapok Társasága; VJ/87/2016. RTL/CDM; VJ/102/2016. Centrál Média csoport/Hearst; B/822/2017. A Value/Lapcom; VJ/26/2017. Konzum Alapkezelő, Konzum Management, Mészáros Lőrinc/Opimus; VJ/45/2017. Mészáros/Konzum Alapkezelő/OPUS; ÖB/54/2021. Ringier/RASMAG (dissolution of JV); ÖB/9/2022. Canal+/SPI

¹¹ See: Act LXXXVI of 2007 on Electricity, Section 107. § (3)
<https://net.jogtar.hu/jogszabaly?docid=a0700086.tv>

¹² See: Act CXLIII of 2015 on Public Procurement, Section 182. § (1) and (2) (e)
<https://net.jogtar.hu/jogszabaly?docid=a1500143.tv>;

¹³ See: Act XXXII of 2021 on the Supervisory Authority of Regulated Activities, Section 21. § (2)
<https://net.jogtar.hu/jogszabaly?docid=a2100032.tv>

¹⁴ See: Act XXVII of 2022 on the Supervision of Spending Funds Granted by the European Union, Section 55. § (1) (b)
<https://net.jogtar.hu/jogszabaly?docid=A2200027.TV&searchUrl=/gyorskereso>

authority to have a consultative, advisory role in sector-related issues, such as in the transparency of public procurements, or the integrity of spending EU funds.

2.2. Bilateral agreements

19. Formal agreements provide another basis for cooperation between the GVH and sector regulators, out of which bilateral agreements are the most common. At the time of this writing, 13 bilateral agreements have been concluded, which cover a variety of sectors and have many advantages. These cooperation agreements try to establish a more efficient way of cooperation than the one required by legislation. Often, they are going beyond the already established framework that is regulated by legislation and can be concluded with those sector regulators, with whom cooperation is not required by law. Cooperation agreements, by their commonly agreed contractual nature, are adapted to the specific interests of the authorities and, therefore, establish the possibility of a more informal, direct and effective cooperation between the parties.

20. The GVH typically has the same general role, which include the following means of cooperation: monitoring the market, conducting sector inquiries, conducting competition enforcement proceedings, reviewing legislative proposals, initiating legislative acts, promoting the integrity of competition. By contrast, the roles of the sector regulators vary according to their peculiarities and are typically more specific. As regards the shared roles of the GVH and the sector regulators, they represent an intrinsic part of all types of cooperation agreements and typically cover those means of cooperation, which are in both authorities' interest and which thus require the same degree of efficiency and professionalism on both sides. These cooperation forms typically cover the following duties: consultation and communication procedures, data sharing, cooperation in international cases, establishing working parties etc.

2.3. Multilateral agreements

21. At the time of this writing, the GVH has concluded only one multilateral agreement in terms of sectoral cooperation. The agreement specifies the forms of cooperation between the competition authority and that of two sector regulators: the Ministry of Innovation and Technology and the Central Bank of Hungary. The cooperation agreement covers shared roles only, which are similar in nature as the ones observed in bilateral agreements. None of the three authorities has any distinct duties but only shared ones, which include cooperation in consumer protection cases and resolving issues that may arise from the overlapping competences of the three authorities.

2.4. Ad-hoc cooperation

22. The last type of cooperation concerns those cases when the GVH cooperates with sector regulators without any formal means, that is, without having either a legislative basis or a bilateral or multilateral agreement as its ground. This form of cooperation typically occurs in the so-called accelerated sector inquiries and includes most commonly those cases when the GVH cooperates with the Central Statistical Office or the National Public Health Center.¹⁵

¹⁵ Please refer to pages 10 and 11 for a more detailed description.

3. Cooperation in practice

23. How the GVH cooperates with sector regulators in practice can be divided into two separate categories. The first one concerns those instances when the cooperation has a direct effect on competition enforcement (such as the official statement of the Media Council in merger cases relating to the media sector), while the second category concerns those cases when the cooperation occurs in specific investigations or procedures (such as in sector inquiries or accelerated sector inquiries), and thus has a more indirect effect on competition enforcement.

3.1. Direct effect on competition enforcement

24. Our first case example is related to consumer protection. In 2022, the GVH found that STADA Hungary Kft. infringed the Medicines Act through advertising Venoruton Forte 500 by failing to comply with the prescription requirements of the pharmaceutical product concerned. The basis of the infringement was a disputable line of a certain commercial communication, which ran as follows: “Taking one pill a day can already mitigate the effects of varicose veins.” In determining whether the sentence had any basis in fact, the GVH could rely on the findings of the National Institute of Pharmacy and Nutrition, which contributed to the efficiency of the competition proceeding in several ways. First of all, cooperation with the pharmaceutical sector regulator provided sector-specific insights, interpretation and made crucial data available, such as the marketing authorization of the medicine concerned. Secondly, the general statement of the National Institute of Pharmacy and Nutrition on the medicine concerned provided valuable inputs to the GVH’s finding.¹⁶

25. Cooperation between the sector regulator and the competition authority is similarly efficient in merger cases. In 2020, the GVH authorised the merger of four undertakings in the energy sector.¹⁷ The decision of the competition authority was based mostly on the official statement of the Hungarian Energy and Public Utility Regulatory Authority, which the sector regulator provided specifically for the case concerned by identifying the specificities of the relevant market and the merger concerned.

26. As another example, the GVH initiated a competition proceeding against Magyar Telekom Nyrt. in 2017 for making one of its services (Flip triple-play) only in those areas available, where it faced severe competition¹⁸. Magyar Telekom Nyrt. made a commitment that it would make a new service available in the affected areas, which would have similar features and accessibility as the Flip triple-play service.¹⁹ As far as cooperation between the competition authority and the sector regulator is concerned, it can be observed that the

¹⁶ See: Case No. VJ/15/2022.

https://www.gvh.hu/pfile/file?path=/dontesek/versenyhivatali_dontesek/versenyhivatali_dontesek/dontesek-2022/Vj015_2022_m.pdf1&inline=true

¹⁷ See: Case No. VJ/37/2020

https://www.gvh.hu/pfile/file?path=/dontesek/versenyhivatali_dontesek/versenyhivatali_dontesek/dontesek-2020/vj037_2020_m&inline=true

¹⁸ The service was available at a more affordable price than other services of the undertaking, however the technical conditions also existed in different areas of the country. The service could be purchased only where the undertaking faced severe competition.

¹⁹ See: Case No. VJ/56/2017

https://www.gvh.hu/pfile/file?path=/dontesek/versenyhivatali_dontesek/versenyhivatali_dontesek/dontesek_2017/Vj056_2017_m&inline=true

GVH took into consideration the data provided by the National Media and Infocommunications Authority as well as its market studies.

3.2. Indirect effect on competition enforcement

27. Cooperation between the GVH and sector regulators also takes place in sector inquiries and accelerated sector inquiries. While cooperation in these instances is not directly linked to a competition supervision proceeding as in those cases illustrated above, it nevertheless has an indirect effect on competition enforcement. The indirect impact on competition proceedings lies in the specificity of these inquiries to reveal crucial inconsistencies and market anomalies of a given sector and shed light on those contributing factors to the prevention, restriction or distortion of competition that usually remain hidden during competition investigations.

28. Sector inquiries are commonly used in the competition policy of the EU²⁰ as well as in several national jurisdictions.²¹ Just like in the Hungarian legal system, their aim is to gain a reliable overview into the conditions of a certain sector (energy, media, e-commerce, pharmaceuticals etc.) if competition is likely to be restricted or distorted in the market concerned.²²

29. In 2020, the GVH launched an inquiry into the market of Hungarian media service and broadcasting sector as a response to complaints regarding increased costs for broadcasters and other market distortions. The GVH cooperated, among others, with the National Media and Infocommunications Authority, which provided sector-specific data, and interpreted sectoral legislation.²³

30. In another example, the GVH conducted an inquiry into the bank card acceptance sector in 2017 in order to gain an insight into the acceptance of card payments by undertakings. The circumstances that called for the sector inquiry were brought to the attention of the GVH by the Central Bank of Hungary, which highlighted that the costs regarding accepting card payments is relatively much higher for small and medium-sized enterprises than they are for bigger companies. In its findings and suggestions, the competition authority relied heavily on the data provided by the Central Bank.²⁴

31. Sector inquiries have to be distinguished from accelerated sector inquiries, which tool was introduced in 2021 and provides a new mechanism for the GVH. The accelerated sector inquiry makes it possible for the GVH to carry out investigations in urgent cases when the

²⁰ See: Official Website of the European Commission https://competition-policy.ec.europa.eu/antitrust/sector-inquiries_en

²¹ See for instance: Official Website of the German Competition Authority (Bundeskartellamt) https://www.bundeskartellamt.de/DE/UeberUns/Publikationen/Sektoruntersuchungen/sektoruntersuchungen_node.html;jsessionid=26FDB0D772DF28BDEB45525EE290E202.2_cid371

²² Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, Section 43/D. § (1) <https://net.jogtar.hu/jogszabaly?docid=99600057.tv>

²³ Report on the Sector Inquiry of the Domestic Market of Media Shows and the Media Sector, 2021 https://www.gvh.hu/pfile/file?path=/dontesek/agazati_vizsgalatok_piacelemzesek/agazati_vizsgalatok/agazati_vizsalat_musorterjesztes_mediaszolgalatas_vegleges-jelentes&inline=true

²⁴ Report on the Sector Inquiry of the Bank Card Sector, 2019 https://www.gvh.hu/pfile/file?path=/dontesek/agazati_vizsgalatok_piacelemzesek/agazati_vizsgalatok/Bankkartya_agazati_jelentes_2019_07_18&inline=true

specificities or the complexity of a sector deems it necessary.²⁵ Recent examples of such circumstances include drastic price increases and shortages in the construction industry as well as the impact of the COVID-19 pandemic on the specific sectors of the economy.²⁶

32. So far, five accelerated inquiries have been conducted with regard to the following sectors: ceramic blocks, wood building materials, SARS-CoV-2 rapid tests and insulation materials.²⁷ It can be observed in these accelerated investigations that while the GVH cooperates with many sector regulators on the basis of cooperation agreements, there are also many instances, when cooperation does not have such a formal basis, taking into account the urgency of such investigations and shorter deadlines.

33. For instance, in the accelerated sector inquiry of SARS-CoV-2 rapid antibody tests launched in February 2022, the GVH cooperated (among others) with the National Institute of Pharmacy and Nutrition and the Ministry of Innovation and Technology on the basis of cooperation agreement, while it cooperated with the National Public Health Center and consumer protection authorities without any cooperation agreement. As regards the means of cooperation, they typically consisted of data-sharing and providing official statements and interpretations.²⁸

34. Similar observations can be made in the accelerated sector inquiry of wood building materials launched in 2021. In this investigation, the GVH cooperated with the National Food Chain Safety Office, the National Tax and Customs Administration and the Ministry of Innovation and Technology on the basis of cooperation agreement, while it cooperated with the Central Statistical Office without any formal cooperation agreement. As in the previous example, cooperation between the competition authority and the sector regulators consisted mostly of similar means: data-sharing and providing official statements and interpretations. As another form of cooperation, however, the GVH also conducted several on-site investigations with the National Food Chain Safety Office.²⁹

²⁵ Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, Section 43/D. § (1a) <https://net.jogtar.hu/jogszabaly?docid=99600057.tv>

²⁶ Flash Report on the Activities of the GVH in 2021, pages 11-15. https://www.gvh.hu/pfile/file?path=/en/gvh/flash-reports/Flash_Report_2021.pdf2&inline=true; For the detailed version, see: Parliamentary Report of the GVH from the year of 2021 https://gvh.hu/pfile/file?path=/gvh/orszaggyulesi_beszamolok/gvh_ogy_pb_2021.pdf1&inline=true

²⁷ See: Official Website of the GVH https://www.gvh.hu/dontesek/agazati_vizsgalatok_piacelemzesek/agazati_vizsgalatok

²⁸ Report on the Accelerated Sector Inquiry of the Domestic Market of SARS-CoV-2 Rapid Tests, 2022 https://www.gvh.hu/pfile/file?path=/dontesek/agazati_vizsgalatok_piacelemzesek/agazati_vizsgalatok/Covid_antitest_gyorstesztekek_vegleges_gyorsított_agazati_vizsgalati_jelentes.pdf1&inline=true

²⁹ Report on the Accelerated Sector Inquiry of the Domestic Market of Wood Building Materials, 2022 https://www.gvh.hu/pfile/file?path=/dontesek/agazati_vizsgalatok_piacelemzesek/agazati_vizsgalatok/Fa_epitoanyagok_gyorsított_agazati_vizsgalat_vegleges_jelentes_220112.pdf1&inline=true