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Minority Shareholding and coordinated effects – Note by Hungary

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Hungary

1. Introduction

1. A central dilemma in antitrust policy is balancing the free flow of capital with the need to protect competitive market structures. Fluid capital markets depend on the ability of strategic investors, private equity funds, and venture capitalists to acquire non-controlling equity stakes, which provide essential liquidity, support research and development, and foster cross-border growth. However, when these investments involve competing firms within the same relevant product market, or entities operating along linked stages of a vertical supply chain, they can fundamentally reconfigure the economic environment. Even without transferring outright corporate power, partial equity ownership, structural cross-holdings, and shared governance personnel can soften competitive rivalry, align commercial incentives, and create informational channels that foster tacit coordination at the expense of consumer welfare.

2. For the Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter referred to as GVH), this tension demands a pragmatic, well-calibrated regulatory response, which prioritizes legal certainty and commercial predictability. In the context of minority shareholdings, a clear distinction must be drawn between transactions that confer rights of control on a minority investor – thereby falling within the scope of merger control – and those that do not. The latter may instead be subject to the general prohibition against anti-competitive agreements.

3. The Hungarian Competition Act (Act LVII of 1996 on the Prohibition of Unfair Market Conduct and the Restriction of Competition; hereinafter referred to as the Tpvt.) thus maintains a strict demarcation between structural arrangements that result in the acquisition of control, which are governed by merger control rules, and other commercial agreements. While the judgment in Case C-449/21 Towercast has somewhat blurred these boundaries by opening the door to reviewing transactions below notification thresholds under Article 102 of the Treaty on the Functioning of the European Union, maintaining the separation between these two regulatory frameworks remains of paramount importance.

4. The Hungarian competition policy addresses non-controlling structural links through a coordinated, dual-track framework. On the structural front, the GVH employs a low-threshold screening mechanism within its merger review procedures – most notably the mandatory disclosure of shareholdings of ten percent or greater – supplemented by institutionalized pre-notification consultations. On the behavioural front, the GVH utilizes general antitrust prohibitions against anti-competitive agreements and concerted practices under Article 11 of the Tpvt. and Article 101 of the TFEU.

2. The statutory foundations of independence

5. The assessment of competitive independence is governed by Article 15 of the Tpvt., which anchors the single economic entity doctrine in Hungarian law. Under Article 15(1), undertakings forming part of the same corporate group or subject to common direct or indirect control are not treated as independent competitors, thereby excluding intra-group arrangements from the prohibition of restrictive agreements under Article 11. Article 15(2) defines the boundaries of a group of undertakings strictly through the control criteria of Article 23, while Article 15(3) provides an essential carve-out for public enterprises: state-

or municipally owned entities are recognized as mutually independent so long as they retain autonomous decision-making power over their commercial conduct.

6. The core provision of Hungarian merger control is the aforementioned Article 23 of the Tpvt., which defines a concentration as an operation resulting in a durable change of control over an independent undertaking. Under this provision, a concentration occurs exclusively through specific legal events: the merger or consolidation of previously independent undertakings, the acquisition of direct or indirect sole or joint control by one or more entities over the whole or parts of another undertaking, or the establishment of a full-function joint venture that permanently performs all the economic functions of an autonomous commercial player. By restricting the scope of Article 23 to changes of decisive control, the Hungarian legislature made a deliberate policy choice: merger review is reserved for genuine, structural reorganizations of market power.

7. Therefore, only transactions that bring about a durable and legally cognizable change in the control structure of an undertaking are classified as concentrations subject to ex-ante merger review. Purely passive minority shareholdings, which do not confer the ability to determine or veto strategic commercial conduct, are deliberately exempted from the administrative burdens of pre-merger filing.

3. Strategic influence vs. minority protections

8. Because pure financial investments do not confer corporate control, drawing the exact line between non-controlling minority holdings and controlling stakes constitutes the central analytical task when dealing with minority shareholdings. The concept of independence is elaborated on in Notice 2/2023 and, as affirmed by Hungary's Supreme Court in case-law, the GVH considers those principles to be authoritative in antitrust and cartel proceedings as well. Namely, the acquisition of control must be “legally graspable” and durable. Control cannot be established upon speculative assumptions, transitory commercial arrangements, or informal commercial pressure; it requires an enforceable legal right or factual certainty of decisive influence over an undertaking's strategic conduct.

9. Under Section III.2.1 of the Notice, sole control exists when a single commercial entity has the autonomous ability to determine the strategic commercial decisions of another undertaking. Sole control is most commonly established through de jure mechanisms.

10. Sole control may also manifest de facto, even where a minority investor holds less than fifty percent of the voting rights, if the remaining shareholding is highly fragmented across numerous passive shareholders who do not attend general meetings, since in these cases an investor holding a sizeable, though still minority block may reliably command an absolute majority of votes cast. However, the GVH sets a very high evidentiary standard before recognizing such behaviour as de facto sole control. This is vividly illustrated in Paragraph 36 of Notice 2/2023, which details a landmark administrative precedent where an investor held a 24,54 percent equity stake, making it by far the single largest shareholder. Despite this sizable holding, the GVH concluded that the investor did not possess de facto sole control, because other substantial shareholding blocks of 15,86 percent and 8,38 percent were held by active, sophisticated investors. Given the presence of these organized minority blocks, the largest shareholder could not realistically anticipate consistently achieving an absolute majority of votes cast at general meetings, precluding an establishment of decisive control.

11. In contrast to sole control, joint control arises when two or more independent undertakings must reach mutual agreement concerning the strategic commercial strategy

of a business. In practice, this often occurs through negative control, as detailed in Paragraph 42 of the Notice. If a minority shareholder can block a strategic proposal or other key commercial decisions, the target undertaking is unable to execute its commercial strategy without that shareholder's consent. This creates an institutional deadlock that forces the co-owners to negotiate a shared compromise, aligning their strategic commercial conduct.

12. To prevent ordinary minority investment protections from inadvertently triggering merger filing obligations, the GVH strictly distinguishes between strategic vetoes and standard minority shareholder protections. Strategic vetoes confer joint control because they directly govern the target's competitive behaviour in the market. As established in the Notice, strategic rights encompass the power to approve or veto the annual commercial business plan, the annual operating budget, major capital investment programs, or the appointment and dismissal of executive leadership.

13. Conversely, minority shareholder protections are rights established by corporate law or contractual agreements solely to protect the financial value of a minority equity. These include veto rights over extraordinary corporate events, such as amendments to the undertaking's articles of association, increases or reductions of registered share capital, or the voluntary liquidation of the undertaking. Because these protective vetoes do not permit the minority investor to dictate, modify, or block the commercial strategy, pricing policy, or competitive conduct of the target, they are classified as purely defensive and fall outside the scope of merger control.

14. A further cornerstone of the Hungarian control analysis is the aggregation principle regarding family relationships, established in Section 2.10 (Paragraphs 78–83) of the Notice in conjunction with Article 8:2 of the Hungarian Civil Code. Market participants might attempt to bypass merger thresholds by dispersing equity holdings among family members, creating the superficial appearance of fragmented minority holdings that each fall below control thresholds. In its established practice, the GVH applies a robust structural presumption: close relatives – including spouses, linear ascendants, descendants and siblings – holding equity stakes or board seats in competing or vertically related undertakings are presumed to coordinate their market behaviour and exercise their voting rights in concert, since in competition economics, close familial relationships effectively eliminate genuine commercial rivalry and independent decision-making.

4. Systematic market monitoring and early warning mechanisms

15. Restricting merger control strictly to operations involving decisive control creates an intentional jurisdictional boundary. Because pure minority shareholdings fall outside Article 23 of the Tpvt., the GVH cannot prohibit them or impose structural remedies under ex-ante merger review. Yet, economic theory and market experience confirm that non-controlling structural ties can alter competitive incentives and facilitate collusive information flows.

16. The GVH's strategic solution is the implementation of an advanced, low-threshold information screen embedded within its mandatory merger Notification Form. Rather than lowering the jurisdictional threshold for what constitutes a concentration, the filing system mandates transparency regarding structural ties whenever a notifiable merger is filed. Merging parties are legally obligated to disclose all shareholdings of at least 10% held by any entity within their group of undertakings in any undertaking that is active in horizontally overlapping or vertically related markets within Hungary. Furthermore, the Form requires the comprehensive reporting of all jointly controlled corporate entities,

cross-shareholdings, and interlocking directorates throughout the notifying parties' broader corporate structures.

17. This reporting requirement serves as a systematic early warning system: by tracking minority equity blocks and shared executive personnel across competing businesses, the GVH identifies structural links that could facilitate illegal information exchanges or tacit collusion. This intelligence enables the authority to monitor market conduct and, where competitive concerns arise, launch targeted antitrust investigations under Article 11 of the Tpvt.

5. The boundary of permissible investor conduct and the role of antitrust enforcement

18. When minority shareholdings do not constitute a concentration, the GVH relies on behavioural enforcement under Article 11 of the Tpvt., which mirrors Article 101 of the TFEU. The GVH maintains a strict boundary between the legitimate flow of for example aggregated or historical financial data and the unlawful exchange of forward-looking, competitively sensitive information, such as pricing algorithms or customer-specific data.

19. A minority investor who utilizes their position to facilitate such exchanges between competitors risks violating the prohibition on restrictive agreements. This is particularly relevant in the bad-faith utilisation of minority stakes through board representation, where even a non-controlling presence can be misused as a forum for market sharing or no-poach agreements, following principles established in cases like Delivery Hero/Glovo. To mitigate risks arising from even legitimate information sharing, the GVH advocates for the use of procedural safeguards like firewalls and clean teams: sensitive business data accessed by the minority shareholder’s board delegate or investment team must be strictly shielded and separated from the investee’s own operational, commercial, and pricing decision-makers.

6. Substantive assessment of relationship-based coordinated effects

20. While jurisdictional criteria determine whether a transaction undergoes merger review, substantive analysis focuses on how structural ties alter market incentives. In its Notice 3/2023 regarding the obligation to notify a concentration, the initiation of a competition supervision proceeding to examine the concentration, and the condition of "non-obviousness" in phase II proceedings, the GVH formalized a sophisticated analytical framework governing “relationship-based coordinative effects”. Detailed in Section III.1, Paragraphs 18, 20, and 21 of the Notice, this doctrine recognizes that non-controlling equity ties, minority shareholdings, and personal governance interlocks can significantly heighten the likelihood of collusive market outcomes, even in the absence of a formal cartel agreement.

21. For tacit coordination to succeed in an oligopolistic market, three structural conditions must generally be met: undertakings must be able to monitor each other's market conduct to detect deviations from the coordinated price; there must exist a credible deterrent mechanism to punish any undertaking that cuts prices; and the competitive reaction of outside competitors or customers must not be sufficient to undermine the coordinated outcome. Under standard competitive conditions, an undertaking has every incentive to lower prices or aggressively innovate in order to steal market share from its rivals. However, if undertaking A acquires a 15% minority equity interest in its competitor, undertaking B, undertaking A's financial incentives transform: if it steals market share from undertaking B, undertaking B's profitability will decline, directly diminishing the financial

value of undertaking A's equity investment. Undertaking A effectively internalizes a portion of the commercial harm inflicted on its competitor. Consequently, undertaking A's incentive to compete aggressively is dampened.

22. Furthermore, Notice 3/2023 highlights that structural minority links serve as powerful conduits for market transparency. Even when an equity holding does not confer strategic control, it frequently entitles the investor to board observer rights, access to regular financial briefings, or representation on non-executive advisory committees. This heightened structural transparency lowers the detection threshold for competitive distortions, as the stability of tacit collusion may become preferable to short-term gains from price competition.

23. Because pure minority holdings fall outside ex-ante merger control, the GVH relies on antitrust enforcement under Article 11 of the Tpvt. and Article 101 of the TFEU. Article 11 broadly prohibits all agreements, decisions of associations, and concerted practices that have as their object or potential effect the prevention, restriction, or distortion of competition. When market intelligence reveals that minority cross-ownership, board representation, or bilateral governance arrangements are being used to facilitate illegal information sharing or soften competitive rivalry, the authority initiates formal antitrust proceedings.

24. In practice, however, ex-post antitrust enforcement against non-controlling minority holdings is relatively rare, given the substantial evidentiary obstacles involved. A core difficulty consists of drawing a clear line between lawful investor oversight and anti-competitive information exchange: minority shareholders legitimately require visibility into corporate performance, making it difficult to prove that shared information crossed into competitively sensitive territory. Furthermore, demonstrating that collusion was caused by the minority tie – rather than spontaneous, independent parallel behaviour typical of tight oligopolies – demands a high standard of proof to be met in the absence of explicit evidence.

25. For an example of how this looks in the Hungarian practice, see the case description of VJ/22/2019. in the Annex.

7. Conclusion

26. The enforcement practice and policy perspective of the Hungarian Competition Authority on minority shareholdings and coordinated effects represent a sophisticated, pragmatic compromise. As global financial markets expand and digital platforms construct ecosystems, corporate boundaries are becoming increasingly opaque. Traditional antitrust models that view undertakings purely as autonomous, isolated competitors or fully integrated corporate conglomerates fail to capture the complex, interconnected reality of modern commercial life. Today, prominent undertakings are linked through dense webs of minority equity investments, cross-ownership, debt holdings, strategic alliances, and shared governance personnel.

27. The Hungarian model resolves this challenge through a synchronized architectural design. On the jurisdictional axis, the GVH preserves the “control test” established by the Tpvt. and Notice 2/2023. By requiring a durable change of decisive control – whether legally through voting majorities, contractually through absolute commercial dependence, or through strategic negative vetoes over business plans – the Hungarian system guarantees legal certainty. Passive minority investments or sovereign wealth fund allocations can proceed swiftly without facing unnecessary filing costs or regulatory delays.

28. Simultaneously, the GVH avoids the initiation of excessive proceedings by using its merger Notification Form as a unique market intelligence tool. By enforcing the mandatory disclosure of all horizontal and vertical shareholdings of ten percent or greater, tracking interlocking management personnel, and facilitating pre-notification dialogues, the authority gains rare insight into the domestic market. When these structural links generate relationship-based coordinated effects, soften competitive incentives, or become conduits for illicit information exchanges, the GVH can intervene using the antitrust tools of Article 11 of the Tpvt. and Article 101 of the TFEU.

29. Through this balanced, dual approach, the Hungarian Competition Authority ensures that Hungary remains an attractive and predictable destination for international capital, while firmly protecting consumers against the anti-competitive effects of coordinated market conduct.

Annex A. a relevant case before the GVH regarding minority shareholding and co-ordinated effects

30. The GVH recently addressed a particularly complex set of issues concerning minority shareholding, corporate links and the potential for co-ordinated effects in its antitrust case VJ/22/2019 regarding Magyar Telekom Nyrt. ("Magyar Telekom") and ViDaNet Zrt. ("ViDaNet"). The case is noteworthy because the relationship between the two undertakings did not fit neatly within the conventional distinction between independent competitors and undertakings belonging to the same economic entity.

31. The subject of the proceeding was to examine whether the system of interests that has developed between the two telecommunications undertakings – Magyar Telekom and ViDaNet – since the mid-2000s had an impact on competition between the undertakings in the market for electronic communications services.

32. The precursor to the initiation of case VJ/22/2019 was a proceeding launched by the GVH to examine a merger notification submitted by Magyar Telekom in 2018, according to which Magyar Telekom intended to acquire a part of ViDaNet's telecommunications networks and the associated customer base. Based on information obtained during this merger proceeding (VJ/43/2018), the GVH identified a set of relationships between Magyar Telekom and ViDaNet – economic ties and contracts atypical for the telecommunications market (including agreements related to financing, administrative services, and certain wholesale services) – that pointed to a closer co-operation between the two undertakings, which may have influenced their respective business policies, resulting in reduced competition between them. Proceeding VJ/43/2018. was therefore suspended, because, in order to clarify these concerns – prior to the decision on the notified concentration – an examination of these structural effects was deemed necessary, which was carried out within the antitrust case VJ/22/2019.

33. Although Magyar Telekom held a substantial equity interest in ViDaNet, including 67% of its shares, its voting rights amounted to only 37%, while another undertaking, named KAPTÁR Befektetési Zrt. ("Kaptár") held 10% of the shares and 50.005% of the voting rights, and yet another shareholder of ViDaNet, Investel Zrt. ("Investel") held 22,5% of the shares and 12,5% of the voting rights. Magyar Telekom also had the right to appoint some members to ViDaNet's board of directors, while maintaining a number of commercial and contractual relationships with ViDaNet, including accounting, administrative and financing arrangements and network lease agreements. The parties therefore remained legally independent, but their relationship was materially closer than that ordinarily observed between unrelated horizontal competitors.

34. The central issue was consequently whether Magyar Telekom and ViDaNet should have been regarded as independent undertakings for the purposes of competition law. This distinction was of paramount practical importance, since if Magyar Telekom had exercised control over ViDaNet, the relationship could potentially have fallen within the merger control framework, including a separate investigation concerning the alleged failure to notify or obtain clearance for a concentration (i.e. a gun-jumping case).

35. The conclusion of the investigation was that Magyar Telekom did not have controlling rights over ViDaNet during the relevant period neither on a legal, nor on de facto basis. In particular, Magyar Telekom did not hold a majority of the voting rights, and the members appointed by Magyar Telekom to ViDaNet's board of directors did not

constitute a majority. The GVH therefore considered the two undertakings to be independent for the purposes of the Hungarian rules governing restrictive agreements.

36. However, the absence of control did not render the structural relationship irrelevant. Rather, the GVH considered that the combination of the ownership structure, personnel links and contractual relationships could give rise to concerns regarding the competitive interaction between two otherwise independent horizontal competitors. The ownership relationship formed only one element of a broader network of structural and contractual links, which would have been disregarded if the authority looked solely at the voting right percentage Magyar Telekom held in ViDaNet. The GVH also expressly considered the fact that the parties had entered into the aforementioned arrangements concerning accounting and administrative services, financing and network leasing, which were relationships not ordinarily observed (atypical) between competing telecommunications undertakings. The cumulative effect of these arrangements was relevant to the assessment of whether the parties' commercial incentives and competitive behaviour could have been affected.

37. The GVH's theory of harm focused, among other things, on the possibility that the close relationship between Magyar Telekom and ViDaNet could have weakened competition between them in areas where both undertakings provided telecommunications services. The investigation considered whether the parties might have competed less vigorously for customers in overlapping geographic areas and, in particular, whether Magyar Telekom might have had reduced incentives to develop its own network in settlements where it could provide services using ViDaNet’s network under a network lease arrangement. The latter concern was of particular significance because Magyar Telekom’s own network in certain such areas was considered technologically less advanced than competing networks.

38. As regards the evidentiary dimension, the proceedings were initiated following dawn raids conducted at the premises of Magyar Telekom, ViDaNet and Kaptár. The GVH obtained and analysed e-mail correspondence and other documents in order to establish whether the parties had engaged in conduct restricting competition. Some of the seized e-mails appeared to indicate that Magyar Telekom might have lacked incentives to develop its own network in areas where ViDaNet was present. At the same time, other correspondence indicated that Magyar Telekom had in fact undertaken network development in certain ViDaNet areas. The evidentiary record was therefore not unequivocal: while certain documents supported the competition concern, others pointed in the opposite direction. The GVH noted that a number of the relevant e-mails contained questions, assumptions or indications of possible behaviour rather than clear statements establishing the existence of an anti-competitive arrangement.

39. Notably, the investigation extended beyond electronic communications. The GVH examined ViDaNet’s ownership structure, the allocation and exercise of voting rights, shareholder voting patterns and the composition of its board of directors. The minutes of board meetings were particularly relevant to assessing the extent to which Magyar Telekom's representatives participated in the governance of ViDaNet. In parallel, the authority examined the various agreements between the parties. The combination of documentary evidence and corporate governance evidence was therefore used to assess both the formal independence of the undertakings and the possibility that their relationship nevertheless facilitated or induced co-ordinated behaviour.

40. The case was ultimately closed through a commitment decision rather than a finding of infringement. Following several rounds of discussions with the GVH, Magyar Telekom submitted a final commitment proposal in January 2025. The principal structural commitment consisted of the divestment of 100% of the shares in ViDaNet to a purchaser approved by the GVH. The commitment was designed to eliminate the ownership

relationship and, with it, the structural basis for the competition concerns identified during the investigation. The undertaking also included additional compliance-related measures intended to reduce the risk of similar competition concerns arising in the future.

41. The structural remedy is particularly notable in light of the nature of the theory of harm. Rather than requiring the GVH to reach a definitive conclusion and meet the exceptionally high standard of proof as to whether the various contractual and corporate links had actually resulted in unlawful co-ordination, the divestment removed the underlying relationship between the competitors, thus eliminating the basis of the concerns altogether. The GVH considered that the divestment was capable of eliminating the circumstances giving rise to the potential restrictive effects and of preventing similar concerns from arising in the future. The accepted commitments also included a ten-year prohibition on Magyar Telekom reacquiring ViDaNet.

42. The commitment decision nevertheless leaves the substantive questions open. In particular, the GVH did not make a definitive finding that the conduct under investigation constituted an infringement of the prohibition of restrictive agreements.

43. From a broader competition law perspective, the above case illustrates the procedural issues that may arise where a significant equity interest in a competitor falls short of conferring control but is accompanied by governance rights and extensive commercial links. The same factual circumstances may be relevant to determining whether an undertaking has acquired control for merger-control purposes and, if control is not established, whether the parties nevertheless remain sufficiently independent for their interactions to fall within the prohibition of restrictive agreements.