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English - Or. English

20 May 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Information Sharing in Competition Policy – Note by Hungary

24 June 2026

This document reproduces a written contribution from Hungary submitted for Item 5 of the 149th OECD Competition Committee meeting on 22-24 June 2026.

Ori SCHWARTZ
Email : Ori.Schwartz@oecd.org

JT03587365

Hungary

1. Introduction

1. The Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) has dealt with horizontal information exchange cases. Two notable cases are **the Contact Lens Case** (initiated in 2010) and **the BankAdat Database Case** (initiated in 2012).

2. Framework

2. In Hungarian competition law, as under Article 101 TFEU, an information exchange is likely to be treated as a competition law infringement by object where competitors exchange individualised, non-public, recent or future oriented strategic information, for example information about planned future prices, quantities, capacities or commercial strategy.

3. Information exchange can be a stand-alone infringement. For example, if an undertaking discloses the details of its own bid and invites another undertaking to submit a supporting bid, this behaviour may amount to an unlawful information exchange even if following the request, the other undertaking does not submit a supporting bid in accordance with the request. The reason behind this is that due to such conduct, uncertainty among market players regarding their market behaviour and pricing is significantly reduced.

4. In Hungarian Competition law, if a trade association participates in or facilitates an unlawful information exchange, the trade association itself may be fined. If the trade association does not voluntarily pay the fine imposed and enforcement efforts are unsuccessful, the Competition Council may issue an order obliging the trade association to pay the fine from the contribution requested from its member undertakings. If those contributions do not cover the amount of the fine imposed, the Competition Council may hold individual member undertakings liable under the applicable Hungarian rules.

3. Case Review: the BankAdat Database Case

5. In 2012, based partly on evidence seized in a separate mortgage payment cartel investigation (VJ/74/2011), the GVH initiated a competition supervision proceeding against the Hungarian Banking Association and the International Training Centre for Bankers Ltd. with regard to the operation of the Database. The GVH also investigated 38 banks, all members of the Database.

6. The Database, operated by International Training Centre for Bankers Ltd., enabled its members to share strategic data and confidential information with each other. The goal of the Database was to provide up-to-date information to its members regarding the market, market processes, their competitors' performance, business strategies and data relating to quantities, costs, demand, profit. The main concern was that part of the Database allowed individually retrievable data relating to specific banks. These data included business secrets and strategic information, which could not be obtained elsewhere or only with a significant delay. The Database made confidential information available to its members, henceforth, it was not necessary for banks to send data to one another. In order to ensure the security of input data, access to the Database was only possible via password. Only the banks

providing data to the Database could access the database reports. No other institution, authority, or private individual had access to the database reports in any way. Members of the Database only received information regarding data they themselves also provided, which meant that the relevant section of the output table was blank for database members that did not provide a specific data.¹

7. From the standpoint of the GVH, the information exchanged was capable of influencing the parties' market behaviour from 2000 until 2012, thus restricting competition.

8. In December 2012 – in order to co-operate with the ongoing competition supervision proceeding – the Hungarian Banking Association and the International Training Centre for Bankers Ltd. modified their agreements to stop participants from accessing the data submitted by an individual bank. In 2013, the Database was shut down. Regarding the termination of the Database, the International Training Centre for Bankers Ltd. claimed that its new structure was no longer sustainable.²

4. The Decision of the GVH

9. The Competition Council identified the relevant product market broadly as the market of financial services, while the relevant geographic market was defined as the whole territory of Hungary.

10. In order to establish the unlawful information exchange, emails, meeting minutes, confidentiality agreements, analyses, documents containing correspondence between market participants and other documentary evidence were used.

11. In its decision, the GVH stated that there was an infringement of Article 11 (1) of the Hungarian Competition Act and Article 101 (1) TFEU (from the 1 May 2004 – Hungary's accession to the EU), given that the information flow provided by the Database could be considered as a horizontal information exchange. In the opinion of the Competition Council, the Database members provided data without a formal, contractual framework, on the basis of a so-called gentlemen's agreement. According to documentary evidence, the creation of the Database was the credit institutions' need for a better assessment of market conditions. The Database provided them with reliable, fast, detailed and accurate information regarding the market and market processes. In addition to the publicly available market information at their disposal, the members sought access to detailed information covering the market as a whole and also its two main segments (retail and corporate).

12. The characteristics of the relevant market and the nature of the information exchange enabled the members to become familiar with each other's business policies and to determine the business policies they intended to follow. The GVH considered that the database could reduce strategic uncertainty between competitors, in particular because the

¹ Halik-Szabó Vivien: A versenytársak közötti információcsere (Information Exchange Among Competitors)

https://www.jogiforum.hu/wp-content/uploads/2026/01/halik-szabo-vivien_a-versenytarsak-kozotti-informaciocsere_jogi-forum.pdf

²Excerpt:https://www.gvh.hu/pfile/file?path=/en/resolutions/resolutions_of_the_gvh/resolutions-documents/resolutions_2012/Vj008_2012_excerpt_a&inline=true

exchanged information was individualised, recent, regularly updated and not available to non-participating financial institutions.

13. According to the Competition Council, any potential efficiency gains from the information exchange under review could not be substantiated. Taking into consideration the specific and detailed data shared within the Database, the nature of the information obtained and the duration of the information exchange all preclude the fulfillment of the criteria necessary for an information exchange to be considered within the scope of the exemption.

14. The Competition Council justified the finding that the Database operated in a manner that restricts competition with regard to the exchange of individually retrievable data as follows:

- the input data processed in the Database originated from the internal sources of market participants,
- the output data was accessible only to Database members,
- users of the Database received the output data in a customized, detailed format,
- the exchange of information contained recent and current data, repetitive and updated at regular intervals,
- the operation of the Database was not transparent; it failed to confer any advantage for consumers, it was only advantageous to the members of the Database,
- it provided members with detailed insight into their competitors' market activities in every significant market segment,
- members could determine their current and expected market share in every relevant market segment,
- members could plan or re-plan their market strategies in all relevant market segments based on the shared data,
- it reduced competitive incentives,
- it hindered the emergence of new market entrants and new market strategies,
- no specific characteristic of the relevant market could be identified that would justify such extensive, detailed data sharing (e.g.: total contingent and future liabilities, balance sheet items, business loans, adjusted regulatory capital, marketing expenses, number of retail customers, number of corporate customers, quarterly average balance of retail checking accounts, quarterly average balance of corporate checking accounts),
- the individually shared data served as a strategic business policy indicator.

15. Based on the foregoing, the Competition Council found that, in addition to the characteristics of the market, the characteristics of the information exchange under review - in particular the nature, scope, and level of detail of the shared data, the frequency of the information exchange and the fact that the data exchange lasted for a duration of 12 years - as well as its market coverage, a restrictive effect on competition was detected. The case was classified as a stand alone potential effects case.

16. According to the Competition Council, the exchange of information regarding data that could be queried individually within the Database *did not constitute a hard-core cartel*. However, it affected numerous dimensions of competition, as it led to such extensive

individual data sharing that competitors' knowledge of this data affected the dimensions of price competition, quality competition and innovation competition.

17. The GVH imposed a fine of HUF 4.000.000.000 (approximately EUR 11,000,000) on the Hungarian Banking Association, while the International Training Centre for Bankers Ltd. received a fine of HUF 15.000.000 (approximately EUR 41,000).

18. In determining the fine imposed on the Hungarian Banking Association, the Competition Council based its calculation on the relevant turnover generated by the members of the Database between 2001³ and 2012. In the case of the International Training Centre for Bankers Ltd., the revenue generated from the operation of the Database during the period of the infringement was considered as the relevant revenue on the basis of which the fine was determined.

19. The GVH did not establish the direct responsibility of the member banks that provided data, because the decisions on the establishment and operation of the Database were the actions of the Hungarian Banking Association itself.⁴

5. The Decision of the Supreme Court

20. The GVH provided an assessment of the information exchange that took place in accordance with the Horizontal Guidelines, however, the Court found that the GVH had not proved the infringement to the requisite legal standard. The Court of Appeal, which reviewed the case, set aside the decision and terminated the proceedings, a ruling that the Supreme Court also upheld.

21. The Supreme Court emphasised that the potential effects of the information exchange must be assessed on a case-by-case basis where the Authority proceeds on an effects-based theory. The assessment of anti-competitive effects (within the framework of a so-called counterfactual analysis) compares the potential effects of the information exchange with the competitive situation that would have existed in the absence of such exchange. For an information exchange to restrict competition by effect, it must be shown that it affects at least one parameter of competition (e.g. price, output, product quality, product range, or innovation).

22. According to the Supreme Court, the GVH should have conducted a more concrete economic analysis based on the specific facts of the case and should have demonstrated a causal link between the exchange of information and the alleged actual or likely anti-competitive effects. The Supreme Court concluded that if an exchange of information has a potential anti-competitive effect, it is not possible to establish an infringement or to impose severe legal consequences without conducting a detailed impact analysis and solely relying on general references to the Horizontal Guidelines. The case therefore illustrates the evidentiary risk of treating information exchange by applying a potential effects-based approach without a sufficiently elaborated counterfactual and actual effects' analysis. The Supreme Court also stated in its decision that in the case of past, completed conduct, it is possible to assess the potential anticompetitive effect within a limited scope if there is a circumstance that precludes the actual occurrence of such an effect (e.g. a change in market conditions, refraining from the infringement, or failure to implement the agreement) and

³ The Database only started operating regularly in 2001.

⁴ Decision of the GVH (Vj/8-1751/2012): https://www.gvh.hu/pfile/file?path=/dontesek/versenyhivatali_dontesek/versenyhivatali_dontesek/dontesek_2012/Vj008_2012_m_v&inline=true

this is proven. However, the mere failure of the competition authority's evidentiary procedure cannot serve as a basis for examining the potential effect.⁵

6. Conclusions

23. By the mid-2010s, the GVH appeared to have developed a cautious approach regarding the identification of horizontal restrictions when those restrictions could not be clearly classified as a restriction of competition by object. This caution led to the outcome of the BankAdat Database case and another case concerning the contact lens market (VJ/96/2010). In the contact lense case, the parties exchanged quarterly, publicly not available, individualised information on wholesale quantities and revenue data for certain contact lens segments (e.g. daily disposable lenses), by means of a market research company, on an oligopolistic market, for 6 years. After having analysed the characteristics of the price exchange system of the parties according to the Horizontal Guideline on the application of Article 101 TFEU, the GVH concluded that the exchange of data between the competitors was of strategic importance.

24. In these cases, the GVH switched to a potential effects-based approach instead. In both cases, the GVH's reliance on an effects-based or potential-effects theory increased the evidentiary burden before the courts.

25. In the contact lens case, in the statement of objection issued prior to its decision, the GVH was still of the view that the parties shared market data not available from public sources that was capable of influencing each other's business strategies, thereby engaging in an exchange of information that constituted a restriction of competition by object. However, in the decision of the Competition Council the GVH shifted to a potential effects-based approach, an approach which sealed the fate of this case before the court and also that of the BankAdat Database case, in which the GVH equally presented a potential effects-based approach.⁶

7. CJEU preliminary ruling in a comparable banking information-exchange case (C-298/22.)

26. The BankAdat Database Case never made it to the CJEU. However, the EU Commission would have preferred to intervene for the sake of a preliminary ruling on the subject matter. This application for intervention was unfortunately rejected by the court of first instance. In 2024, the CJEU delivered a preliminary ruling concerning a comparable exchange of information between Portuguese banks.⁷ In Case C-298/22, the CJEU held that

⁵ Decision of the Supreme Court (Kf.VI.38.305/2018/21): <https://birosag.hu/ugyfeleknek/birosagi-hatarozatok-gyujtemenye>

⁶ Tóth András: A magyar versenyjog kölcsönhatásai az európai versenyjoggal és a magyar közigazgatási bírósággal (The Interactions Between Hungarian Competition Law, European Competition Law and Hungarian Administrative Jurisprudence)

https://jak.ppke.hu/storage/tiny_mce/uploads/old/uploads/articles/2198023/file/Toth%20Andras_ha_bilitacios_tezis.pdf

⁷ Molnár Levente: A tiltott információcserék friss példája az Európai Unió Bírósága előtt (A Recent Example of Prohibited Information Exchange Before the ECJ)

<https://jogaszvilag.hu/napi/a-tiltott-informaciocserék-friss-peldaja-az-europai-unio-birosaga-elott/>

such a comprehensive and reciprocal exchange of strategic information among competitors may be classified as a restriction by object under Article 101 TFEU without proof of actual market effects, where its content, objectives, economic and legal context reveal a sufficient degree of harm to competition.

27. The ruling is particularly relevant to BankAdat because it confirms that a stand-alone exchange of strategic banking information may fall within Article 101 (1) TFEU by object, especially where the data reduce uncertainty about competitors' future market conduct. This is especially true where competitors exchange information on future pricing intentions, credit spreads or risk parameters. The Portuguese case therefore strengthens the argument that information exchange in banking markets may, where the relevant conditions are met, be treated as a by object infringement.

28. It should be highlighted, however, that the two cases are not identical. The BankAdat case was based on a potential effects-based approach, whereas the Portuguese authority characterised the exchange as a restriction by object. Therefore, it can be concluded that the authority's legal characterisation is essential: if an authority alleges a restriction by object, it must prove that the exchange is by its nature sufficiently harmful to competition, while if it alleges an effects-based infringement, it must provide a robust economic analysis of likely effects and causation.