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Assessing the Impact of Competition Authorities' Activities – Note by Hungary

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1. Introduction

1. This contribution presents the practice and experience of the Hungarian Competition Authority (GVH)[1] in simplified calculations of expected consumer savings from its activity (also known as *ex-ante* impact assessments), in the context of the respective OECD Guide[2] (Guide) and its possible revision.

2. The scope and structure of this contribution follow the outline provided in the Secretariat's Invitation. It begins with a selective overview of our practice, serving as reference for the rest of the contribution.[3] Then it elaborates on the relationship between our calculation method and the Guide, highlighting considerations from our practice in relation to the issues raised by the Secretariat. These include dilemmas and unresolved questions within the GVH, which are offered as expert-level input to inform the ongoing dialogue on whether, and how, the Guide should be revised.

2. Current practice and use of the Guide

2.1. General

3. The GVH regularly performs simplified calculations of expected consumer savings resulting from its competition cases on a voluntary basis. The first assessment, covering cases closed between 2008 and 2012, was published in 2014. Since then, the GVH has published such assessments biannually (i.e. in every second year), each covering a six-year period to help moderate volatility caused by the small size of Hungary. The most recent assessment, published earlier this year, covers the period from 2009 to 2024.

4. In our assessments, consumer savings are conceptualised as the avoided loss that consumers would have suffered in the absence of the intervention of the GVH, due to weakened competition. These are highly stylised calculations, focusing on direct, static price effects and relying on key assumptions, such as the price difference caused by the weakened competition and its duration (default values). The calculations are based on information already known to or easily accessible by the GVH, including files of the case and other related cases, such as follow-up investigations.

5. We operate under the assumption that our cases have prevented loss, unless there is clear evidence to the contrary. Notable examples of the latter include situations where the restrictive practices ended independently of the intervention of the GVH (typically before it occurred), or where the intervention of the GVH ultimately proved ineffective.

[1] In Hungarian: Gazdasági Versenyhivatal (GVH).

[2] Guide for helping competition authorities assess the expected impact of their activities, OECD, April 2014 (Guide): https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/evaluation-of-competition-interventions/Guide-competition-impact-assessmentENG.pdf

[3] A more detailed overview is available in an earlier GVH contribution: Assessing and Communicating the Benefits of Competition Interventions – Note by Hungary, 12 June 2023 (DAF/COMP/WP2/WD(2023)4).

These cases are excluded from the calculation. While this approach involves the use of some *ex-post* information, it does not alter the overall *ex-ante* character of the assessment.

6. The calculations are performed at the level of individual cases, then aggregated and ultimately compared to the budget of the GVH. The aggregated results are published on the website of the GVH[4] in a public document, which also includes the list of cases involved, a detailed description of the calculation method with explanatory notes, illustrative charts, and numerical examples. Results are carefully framed, e.g. key figures are rounded to avoid creating an illusion of unwarranted numerical precision.

7. While we do not apply the Guide directly in our calculations, it has served as a useful reference point for international best practices, both in the design of our calculation method and in the communication of the results. Our assessments are consistent with the Guide. In our experience, not only has the content of the Guide proven fit for purpose, but its open and flexible approach and language have also been particularly beneficial, an aspect we believe is worth preserving in any future revisions.

2.2. Use and reception

8. The primary objective of our assessment is to illustrate the benefits of competition law enforcement and the public resources allocated to it in a simple and intuitive way. While this kind of calculation amounts to no more than "informed guessing", it is fit for purpose precisely because it is rough-and-ready, and biased to be conservative. It is always highlighted that the actual benefits exceed, potentially by a wide margin, the calculated consumer savings. In this context, even the fact that not all effects or activities are covered does not pose a problem, except in extreme cases.[5]

9. Having an idea of the magnitude of expected consumer savings from some of the main activities of the GVH (and knowing that they are calculated in a widely accepted and conservative manner) provides GVH leadership with a degree of self-confidence. These results are regularly referenced in public speeches and interviews. Additionally, the aggregated results are presented in the GVH's annual reports submitted to the Hungarian Parliament.[6]

10. The results are occasionally referenced by political stakeholders, in a friendly context, but overall they attract modest interest. Media attention was relatively strong in 2014, when the GVH presented its first assessment in a press conference; however, journalists were primarily interested in non-public, case-specific details, such as the consumer savings from individual cases, or the case with the most benefit. Later, media coverage has largely been limited to repeating the content of GVH press releases on subsequent assessments, with the topic gradually blending into the general "media noise".

11. The methodology has not been challenged by stakeholders, which may be attributed to several factors. First, the GVH based its approach on well-established international best practices when it launched its series of assessments. Second, it commissioned an

[4] *Ex-ante* impact assessments (the public documents) are available on the thematic website of the GVH: https://www.gvh.hu/en/gvh/analyses/ex_ante_impact_assessment

[5] At the same time, and largely for the same reasons, we believe that our results are not suitable for performance evaluation either alone or in comparison with the results of similar assessments over time or across jurisdictions. For the same reasons, the use of these results in strategic planning and priority setting is not straightforward.

[6] While the public report of our regular assessment is prepared on a biannual basis, interim results are included in all the GVH's annual reports.

independent review[7] of its first assessment and implemented the recommended refinements. Third, the GVH has consistently emphasised that the calculations are simplified, and the results are rough and of limited use. On one occasion, when a commenter requested the calculation method after the GVH shared the results on LinkedIn, the issue was easily resolved by inserting a link in the comment section to the dedicated impact assessment webpage of the GVH, where the whole methodology is publicly available.

2.3. Scope

12. In addition to mergers (both horizontal and vertical) and hardcore cartels, our calculation also covers other horizontal agreements, vertical restraints, and abuses of dominance cases. We consider this scope to be consistent with the Guide, which states that, besides "blocked mergers, mergers approved with remedies and cartels […] [t]he impact of other decisions, such as vertical agreements, and of other activities, such as market*/sectoral studies, may also be added*".[8]

13. Exploitative excessive pricing is a form of abuse of dominant position and, in principle, falls within the scope of our assessment. However, the standard assumption regarding price differences does not apply in the context of exploitative conduct. As a result, a calculation can only be performed if case-specific data, namely the hypothetical competitive price, is available. In practice, this condition has never been met, and such cases ultimately have not been included in the quantitative assessment.

14. Our regular assessment does not cover market studies and sector inquiries, but we have recently been able to apply the same simplified framework to selected competition advocacy proposals (implemented by government or business). In our experience, such assessments are not always possible, and when they are, they need to be more tailor-made (within the methodological framework of the regular assessment, i.e. identifying consumer savings as avoided losses and calculating them by multiplying three variables – turnover, price difference, duration – in a static way). One reason for this is that the assumptions on prices and duration made in the regular assessment do not apply.

15. 1In one project, the framework was adapted to the temporary opening of the market for Covid-19 antigen rapid self-tests, originally proposed by the GVH in its report on the accelerated sector inquiry into the reasons for the high prices of Covid-19 self-tests and whether these reasons were related to competition concerns. While in most competition cases the relevant turnover is known, and even in the absence of case-specific information on price difference and duration, default values can be applied, this was not the case here. We lacked both a price difference assumption (related to the market liberalization) and national-level data on the sales of rapid self-tests.

16. The project was prompted by press reports of the significant drop in prices after market opening and we used the number of Covid-19 incidents (daily confirmed new cases) and conservative assumptions on the use of rapid self-tests during the pandemic to estimate

[7] Balázs Muraközy and Pál Valentiny: Review of the "*Ex-ante* assessment of the welfare gains achieved by the GVH", MTA KRTK KTI, February 2014 : https://www.gvh.hu/pfile/file?path=/en/gvh/analyses/ex_ante_impact_assessment/GVH_Impact_Assessment_KRTK_ertekeles_-_final_PUBLIC_Eng&inline=true

[8] Guide page 1 (1.i).

sales volumes. The results and their explanation were published in a separate report,[9] rather than being incorporated into the biannual assessments, reflecting the stand-alone nature of the project.

17. Another – still ongoing – project applies the method to the withdrawal of the raw milk price forecast (effectively a recommended price) of the Milk Interprofessional Organisation and Product Board,[10] as proposed by the GVH in its report on the accelerated sector inquiry into the Hungarian markets of milk, dairy and plant-based products.[11] In this exceptional case, the subject of the assessment is analogous to a competition case dealing with a restrictive horizontal agreement.[12] As such, the same method, including the default values for price difference and duration, seems to be applicable.

18. Other enforcement activities of the GVH, such as abuse of economic dependence type cases under the trade act[13] and consumer protection cases, are not covered by the assessments. In certain cases, it is difficult to conceive direct consumer savings, while in others, the challenge lies in their quantification. Nevertheless, selective, tailor-made assessments may still be feasible, similarly to the approach taken with competition advocacy, as discussed earlier. Consumer protection (enforcement and advocacy alike) is a target area for further exploration in the future.

19. We consider merger cases with remedies in our assessments, but not commitment decisions in non-merger cases. This distinction is based on the premise that merger remedies are accepted if the merger would otherwise have been blocked, while in non-merger cases commitments are used to streamline the procedure, and it cannot be taken for granted that the original conduct was indeed restrictive or harmful to consumers.

20. Similarly, we do not consider withdrawn mergers, unless we know that the withdrawal was prompted by competitive concerns raised by the GVH.

21. We do not consider deterrence in our assessments, as we lack the tools to measure it. While we are aware of the method used in the UK to determine deterrence (or compliance) "rates"[14] by surveying businesses and law firms about mergers and collaborations that were considered but voluntarily abandoned due to anticipated

[9] Simplified quantification of the consumer savings from the 2022 temporary market opening in the Covid-19 rapid self-test retail distribution in Hungary, Hungarian Competition Authority, 28.11.2024.

https://www.gvh.hu/pfile/file?path=/en/gvh/analyses/ex_ante_impact_assessment/covidgyorsteszt-exante-impactass-2022-2024-11-28-eng_final---exchrate-updt&inline=true

[10] In Hungarian: Tej Szakmaközi Szervezet és Terméktanács (an industry association covering multiple levels of the value chain, the Hungarian "interbranch organisation" under the Common Agriculture Policy of the European Union).

[11] Report of the accelerated sector inquiry into the Hungarian market for milk and dairy products Budapest, 2023.

https://www.gvh.hu/en/resolutions/sectoral_inquiries_market_analyses/sectoral_inquiries/final-report-of-the-accelerated-sector-inquiry-into-the-hungarian-market-for-milk-and-dairy-products

[12] The GVH has incomplete jurisdiction over agriculture products/markets.

[13] Act No CLXIV of 2005 on trade (Sections 7, 7/A and 7/B).

[14] These rates were not multipliers. The results of the surveys were used to establish ratios between the number of such self-corrections and the number of enforcement cases. However, the results of direct consumer savings were not multiplied by these rates to obtain an estimate of the consumer benefits of deterrence.

competition law concerns, without the involvement or knowledge of the OFT/CMA, we believe the dynamics in Hungary are quite different. In a small, low-trust economy like ours, we do not believe that Hungarian business and legal culture facilitates the reliable collection of information through such surveys.

2.4. Default values

22. Since the start of our assessments (i.e. covering cases from 2008 to 2024), we have relied on the assumptions about the price effects of restrictive practices and anticompetitive mergers, as well as the duration of those price effects (in the absence of GVH intervention), in approximately four in every five cases. In about half of the remaining cases, case-specific values were used. In the other half, a percentage of the default values were used (e.g. we used half of the default value for price increases in cases where there was uncertainty about the actual effects of the conduct).[15]

23. We apply the same default values for expected price difference and duration across all non-merger cases. While this is admittedly a simplification, we consider it a reasonable one, as in our experience, different types of anticompetitive conduct (such as various forms of agreements) often mix and overlap, making it difficult to deal with multiple default values within a single case.

24. We consider our sets of default values to be consistent with the Guide. Regarding the expected price difference, our default value for cartels (10%) is identical to the one suggested in the Guide,[16] while for other non-merger cases (10%) and for mergers (5%) it falls within the range laid out in Annex 1 of the Guide. As for the expected duration, our default value (2 years) is either identical to or more conservative than those suggested in the Guide.[17]

3. Potential for updating the default values

25. In the absence of our own *ex-post* evaluations, the work of others in identifying and justifying appropriate default values was essential for us. Sources of international best practice were particularly useful to us when they also highlighted the background of those values.

26. We would welcome an update of the Guide's assumptions on price increase and duration, provided it is based on new and solid empirical findings concerning the suggested default values, and accompanied by an update of the other best practices listed in Annex 1 of the Guide. Should the suggested assumptions or the range of other best practices change, which may or may not be the case, we would certainly consider adjusting our own default values accordingly. Such a change would result in a structural break in the time-series of our calculated consumer savings. However, we recognise that any methodological

[15] These cases – or more precisely, those that were not overturned by subsequent judicial review and therefore excluded from the calculation – represent 83 (default values used), 3 (case-specific information used) and 14 per cent (percentage of the default values used) of the cumulative (and still standing) calculated consumer savings over the 2008–2024 period.

[16] Guide page 4 (3.2).

[17] Guide page 5 (3.2).

development could lead to structural breaks.[18] In any case, we have never encouraged intertemporal comparisons, as the movements of calculated and actual benefits may differ significantly due to the multiple blind spots inherent in the assessment.[19]

27. A more differentiated set of default values could potentially enhance the accuracy and credibility of the future assessments. However, it is important to keep in mind that these assessments are intended to easy to do, back-of-the-envelope style calculations aimed at general advocacy. Any move toward greater sophistication would involve trade-offs. As explained earlier, we have found it reasonable to use the same default values for duration across all cases and for price differences across all non-merger cases.

4. Potential for expanding the Guide

4.1. Social discounting

28. Our calculations are already adjusted for inflation and incorporate a social discount rate of 3.5 per cent to reflect the fact that our assessments cover six years and include public spending. The use of this discount rate, along with its specific value, was recommended by two independent academics in their 2014 review of our first assessment, based on the work of Moore at al. (2004).[20] We also calculate the present value of our past results internally (though we do not update the already published reports with them, to avoid confusion). Such updates are a prerequisite for intertemporal comparisons as well (even though we do not encourage such comparisons for other reasons).[21]

29. Although such adjustments are easy to make, we encountered an unexpected challenge. Results adjusted for the social discount rate became abstract and misleading to those unfamiliar with the concept (which is most of the target group). To grasp the scale of the savings, people tend to mistakenly compare the published amounts with other, non-adjusted sums. Therefore, although the promise of a simplified calculation of expected consumer savings is to show the benefits of competition policy in plain monetary terms, we have found it better to rely not on the absolute amount of savings expressed in national currency, but on its ratio to the budget of the GVH (adjusted in the same way).

30. If the revised Guide moves towards social discounting, it would be very useful to include information on background and advice on presentation.

4.2. Advocacy

31. The Guide already allows for the assessment of competition advocacy and market studies.[22] As explained earlier, our regular assessments do not cover advocacy, market studies or sector inquiries, but we have been able to carry out similar assessments of our

[18] Various updates can complicate intertemporal comparisons, and as can widening the scope of the assessment.

[19] As noted in footnote 5.

[20] M. A. Moore, A. E. Boardman, A. R. Vining, D. L. Weimer, and D. H. Greenberg: Just give me a number! Practical values for the social discount rate. Journal of Policy Analysis and Management Vol. 23. No. 4. pp.: 789–812, 2004.

[21] As noted in paragraph 26 and in footnote 5.

[22] “*The impact of […] other activities […], may also be added.*” Guide, p 1 (1.i).

implemented advocacy proposals on a selected, stand-alone basis.[23] In our experience, while using the same framework, such assessments need to be more tailor-made, except where they involve a conduct that could have – at least in theory – been the subject of competition enforcement, where the availability of default values greatly facilitates the assessment.

32. Given the low likelihood of identifying default values for advocacy actions and market studies, simplified calculations in these areas could perhaps be best supported by collecting and sharing these assessments through a dedicated and regularly updated platform and events. The work of the Competition Committee on *ex-post* evaluations could serve as a model.

33. As explained earlier, we do not assess deterrence, and in this regard, a description of compliance surveys in the revised Guide would have limited practical relevance for us (although we recognise that such content is likely a necessary component for the Guide to advance in this area). We would be more interested in alternative methods. One potential option worth exploring is the use of a conservative default multiplier for deterrence, which – if proves to be appropriate – would align well with the logic of the simplified assessment and its default values.[24]

4.3. Judicial reviews

34. Our assessments already consider the final outcomes of the judicial review of cases in the calculations. We operate under the assumption that our decision was correct unless and until a final court ruling finds otherwise. Past results are updated internally (though not in already published reports, to avoid confusion), which means that our assessments remain a kind of unfinished business, and our results a moving target until all judicial reviews concerning the cases included in the assessment are concluded.[25]

35. This approach follows from the basic logic of the assessment, which identifies consumer savings as avoided consumer loss, caused by the restriction of competition. We cannot claim in the assessment that our intervention prevented or removed a restrictive practice/merger causing consumer loss if the court does not uphold the finding that the practice/merger was, in fact, restrictive.[26] By the same token, we cannot attribute a certain amount of turnover to a case when the court finds that the actual figure was different.

36. To date, we have not encountered a judicial review that has altered the outcome of the assessment purely on procedural grounds. At this stage, it is not entirely clear to us whether our approach would be appropriate in such a case. The answer may depend on how

[23] By law, the conclusion of the GVH's market studies and sector inquiries can be a combination of findings and advocacy proposals, but not direct interventions. If its findings justify it, the GVH launches a separate enforcement procedure in which it can intervene. Therefore, it is unlikely that the market studies and sector inquiries of the GVH have led directly to consumer savings.

[24] Ormosi (University of East Anglia) proposed in a workshop on *ex-ante* impact assessment in 2021 the assumption that the consumer benefit from deterrence is (at least) twice the direct consumer benefit, based on empirical research by him and others (Stephen Davies, Franco Mariuzzo and Peter L. Ormosi: Quantifying the deterrent effect of anticartel enforcement, Economic Inquiry, Western Economic Association International, vol. 56(4), pp 1933-1949, October 2018).

[25] This also affects intertemporal comparisons.

[26] This does not mean that our intervention did not happen and did not have an effect, but rather that this effect cannot be quantified in the same manner. Moreover, we can no longer assume that the effect of our intervention was net positive.

much legalistic we need to be, which is not necessarily a purely substantive analytical choice.

4.4. Commitment decisions

37. As explained earlier, mergers with remedies are included in our assessment, while non-merger commitment decisions are excluded. While we believe our approach is reasonable, the question of whether this distinction should be maintained is a recurring one. In our experience, merger cases can be concluded with remedies in an early stage, when the assessment of the merger is still inconclusive, whereas in non-merger cases, parties typically consider submitting commitments only in the more advanced stages of the investigation, when they have a better understanding of the potential risks. One option we are currently considering is to assume avoided consumer loss (by default) in both types of cases (i.e. mergers with remedies and non-merger commitments), provided that a statement of objections – outlining the competitive concerns of the GVH – has been issued.

38. However, the inclusion of non-merger commitments could still be controversial: the GVH does not declare an infringement in commitment decisions, leaving the question open for a reason, but would still say through its assessment that the conduct in question was anticompetitive and caused consumer harm.[27]

39. In any event, the inclusion of non-merger commitments in our calculation may not make the assessment truly more complete (and the amount of the calculated benefits significantly higher). At the very least, it is uncertain whether the GVH would obtain the relevant turnover data in such cases, as they do not involve fines. The calculation of the fines and its input data are usually very helpful in determining the relevant turnover for the assessment and in many cases these data cannot be obtained from other sources available to us.[28]

4.5. Merger withdrawals

40. As explained earlier, we currently include merger withdrawals in our assessment only when we know that the parties abandoned the merger as a result of the competitive concerns raised by the GVH. In all other cases, we assume that the withdrawal would have occurred regardless of our activity. To date, the GVH has had only one merger withdrawal, in 2009,[29] which appeared to be a direct response to the statements of objection of the GVH. However, the acquiring party vehemently denied this in the Hungarian business press. Based on legal advice, we ultimately chose not to include the case in our assessment and designed our current rule of thumb.[30]

41. Nevertheless, the question of whether our current practice is too conservative regularly arises in the context of the wider set of "inconclusive" cases, such as non-merger commitment decisions. One option could be that we assume a link between the withdrawal

[27] As noted earlier, we disclose the list of cases involved in the assessment.

[28] This does not apply to public procurement cartels, where the relevant turnover, the value of tenders, is known. However, public procurement cartels, a hardcore restriction, are unlikely to conclude with a commitment decision.

[29] Ringier / Híd Rádió (Blikk/Bors) merger (VJ/155/2008). A press release of 26.06.2009:

[30] As noted earlier, we disclose the list of cases involved in the assessment.

and the competitive concerns raised by the GVH once the statement of objections has been issued by the GVH (unless we know otherwise).