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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Working Party No. 3 on Co-operation and Enforcement**

**Methodologies of Conducting Market Studies - Note by Hungary**

**20 June 2017**

*This document reproduces a written contribution from Hungary submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 20 June 2017.*

*More documents related to this discussion can be found at [www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm](http://www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm)*

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## Hungary

### 1. Background information

1. The Hungarian Competition Authority (GVH) is entitled to conduct two types of market studies: *market analyses* and *sectoral inquiries*<sup>1</sup>. These two types of market studies differ substantially in terms of their functions and their tools.

2. While a sectoral inquiry assumes that the competition has been distorted in a market within a specific sector, the launch of a market analysis does not require such an assumption. Contrary to a sectoral inquiry, a market analysis is purely aimed at analysing the operation of particular markets, the market processes and the development of market trends. Consequently, the GVH launches a sectoral inquiry if there are indications that the competition has been impaired in a particular sector, while a market analysis will be conducted if the sole aim of the GVH is to acquire information on the functioning of certain markets.

3. In comparison to a sectoral inquiry, the GVH has less effective tools at its disposal when conducting a market analysis, as the latter primarily relies on voluntary information received from market players, public bodies and publicly available information. External consultants may also be involved in a market analysis, although the GVH has not used this tool in its recent market analyses.

4. In a sectoral inquiry, the GVH is entitled to issue mandatory requests for information and sanctions may be imposed in case of non-compliance. Moreover, a sectoral inquiry is subject to more sophisticated procedural rules, for example in relation to the handling of confidential information, judicial review in certain cases, and the publication of the preliminary report of the sectoral inquiry. While in a sectoral inquiry, the protection of confidential information is subject to similar rules as in a competition control proceeding (enforcement action), there are no rules governing the handling of confidential data in a market study (this does not mean, however, that the GVH does not protect confidential information). A further difference concerns the rules related to the publication of the preliminary report: while the GVH has to publish the preliminary report of the sectoral inquiry for public consultation purposes, no such rules exist in relation to a market analysis. Despite these differences, both types of market studies may result in the same outcome. If the GVH finds a market disturbance that cannot be remedied by means of competition control proceedings (competition case), the GVH has the following options: it may inform the Parliament or the competent authority/ministry, and/or it may publish non-binding recommendations for market players and/or it may propose the amendment of legislation.

### 2. Information gathering

5. The GVH gathers information for market studies from different sources.

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<sup>1</sup> Article 43/C (1) and article 43/D (1) of the Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices

## 2.1. Background research

6. The GVH always conducts background research before the launch of a market study in order to identify the problems on a given market and to establish any need for the gathering of further data. The background research is usually based on publicly available information (articles, statistics, published databases and analysis). An analysis of the data published by the Hungarian Statistical Office is often a good starting point for a market study. Furthermore, data from previous proceedings and complaints are also used during the background research.

7. More intensive information gathering usually only takes place after the launch of a market study. Nevertheless, the boundaries may be blurred between background research and more intensive information gathering: on one occasion the GVH has conducted consumer research as a preparatory step for a sectoral inquiry.

## 2.2. More intensive information gathering

8. The GVH sends requests for information to market players in several rounds during market studies, in the form of a questionnaire containing both quantitative and qualitative questions about the market(s). In questionnaires the GVH usually requests not only objective data, but also (subjective) opinions on the matter. For example a survey often includes questions about assessing the intensity of competition, or the market position of market players on a scale from 1 to 5. If it is needed to obtain more information about the functioning of the markets, market players are also requested to submit their relevant contracts with other market players. During market studies the GVH may also contact public bodies and associations of market players in order to obtain a database about the market and to collect information on the regulation of a sector. Furthermore, research companies may be hired to conduct research into the consumer side of the market. In-depth interviews with market players and experts are used to clarify issues, which have not been properly revealed from the questionnaires. In addition, the GVH usually tries to survey the practice of other competition authorities concerning the specific market.

9. As indicated above, there is a significant difference between the two types of market studies; during a market analysis the GVH does not have powers to issue compulsory requests for information, in contrast to a sectoral inquiry. Due to the voluntary nature of contribution, the response rate is lower in a market analysis and the information provided by market players is typically short and less sophisticated. Consequently, more emphasis is placed on publicly available information in a market analysis than in an enforcement action. The size and the competition awareness of the companies also influence the willingness to provide information. Experience has shown that in a market study involving small market players, the use of market research is the most efficient way to gather information on the market.

## 3. Information analysis

10. In market studies, the main sources for analysis are the responses to questionnaires / requests for information. Descriptive statistics, such as averages, deviations, medians, and modus quantitatively summarise the features of the data

collected from the questionnaires. Ratios, distributions, correlations and cross tabulation analysis show the result of the survey more deeply. More emphasis is placed on aggregated data in market studies than in enforcement actions, because market studies describe the whole market. Illustrations using graphs and charts play a big role in market studies. Market trends are illustrated with analysis of time series data.

11. The GVH sometimes undertakes profitability and cost analysis as part of a market study in order to understand certain conducts in the market better. The GVH often faces the problem that the small sample size prevents the deep econometric analysis of data. However, the suitability of data for analysis also depends on the market. For example, in the card acceptance sectoral inquiry the GVH had at its disposal suitable data for econometric analysis.

12. It can occur that different types of information are not fully consistent with one another and in such a case the GVH attempts to identify the reason for the difference. Often it is a result of the different perspective of market players. In this case, the GVH simply shows the opinion of both sides as in a market study the GVH does not have to make a legal assessment in the same way as in an enforcement action.

## 4. Case studies

13. The GVH has conducted two sectoral inquiries and two market analyses in recent years.

### 4.1. SI on hotel online booking

14. The sectoral inquiry on the hotel online booking market focused in particular on price parity clauses, commissions paid to online travel agencies and the conditions of market entry. In the course of the sectoral inquiry, the GVH issued mandatory information requests to market players and used the data of the Hungarian Central Statistical Office as well as other surveys. In addition, a market research company was hired to conduct research into the consumer side of the market. As a result of the sectoral inquiry, the GVH took the position – in line with the conclusions of similar European procedures – that the wide MFN (Most Favoured Nation) may restrict competition by standardising market prices and increasing barriers to entry. In response to the preliminary report, the largest market player of the Hungarian online booking market indicated to the GVH that it plans to switch to the application of a narrow MFN, which is likely to affect the conduct of smaller market players<sup>2</sup>. The GVH has been monitoring the developments in this market in the framework of the monitoring working group coordinated by the European Commission. The monitoring exercise was recently closed<sup>3</sup>.

### 4.2. SI on on the market of payment card acceptance

15. The latest sectoral inquiry has recently been launched on the market of payment card acceptance because smaller traders are facing less favourable service fees than larger traders on the market of cash-substitute payment instruments. As a preliminary step, the

<sup>2</sup> See the executive summary of the report in English under: [http://www.gvh.hu/en//data/cms1034473/Agazati\\_vizsgalat\\_online\\_szallashelyfoglalas\\_piacan\\_vegleges\\_jelentes\\_2016\\_06\\_08\\_a.pdf](http://www.gvh.hu/en//data/cms1034473/Agazati_vizsgalat_online_szallashelyfoglalas_piacan_vegleges_jelentes_2016_06_08_a.pdf)

<sup>3</sup> The report of the monitoring exercise is available on [http://ec.europa.eu/competition/ecn/hotel\\_monitoring\\_report\\_en.pdf](http://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf)

GVH commissioned a market research to investigate the costs of accepting card payments. With the effects stemming from the changes made to the regulation of interchange fees in mind, the market research among others also covered the awareness of traders and the practice of accepting different payment methods. The results of the market research affirmed the need for a sectoral inquiry. During the sectoral inquiry the GVH plans to overview the payment card industry, in particular card acceptance as a downstream market. At the heart of the sectoral inquiry will be an investigation of the competition conditions of the acceptance of bank cards and an evaluation of innovative cash-substitute payment instruments that may potentially place competitive pressure on payment card acceptance as a market; additionally, the inquiry will deal with not only the past and present state of the market but also with possible future changes to competition. As a first step, the GVH has consulted the Hungarian financial supervisory authority. Furthermore, the GVH plans to request information from issuing and acquiring banks, bank-card companies and other non-financial acquirers, before finally consulting the traders themselves.

### 4.3. Film distribution market analysis

16. The first market analysis of the GVH examined the structure and the characteristics of the film distribution and exhibition market, in particular the system of distribution agreements between film distributors and cinema operators and the practice of applying Virtual Print Fees (VPF). The launch of the market analysis was motivated by significant changes to the film distribution and exhibition market in recent years. On the one hand, the merger in 2011 between Cinema City International N.V. (CCI) and Palace Cinemas significantly changed the film exhibition market as a consequence of which CCI became a strongly dominant player in Hungary. The authorisation of the GVH was not needed for the merger as the turnover of the parties did not meet the merger notification thresholds. On the other hand, significant technical changes had been taking place since the beginning of 2000s, resulting in films being distributed in reusable digital form. VPF was originally introduced in order to share the cinema operators' costs of transition to digital technology among film studios, distributors and cinema operators.

17. During the market analysis the GVH requested information from film distributors and cinema operators; the response rate was around 50%. The GVH interviewed some market players, associations of market players and a public body, used publicly available information, and surveyed the experience of some European competition authorities.

18. As expected, the market analysis revealed a concentrated structure on the film exhibition market: Cinema City had a market share significantly over 50%, and had a very strong bargaining power against film distributors. As a result of the market analysis, the GVH drew up a number of recommendations, for example the GVH suggested that the rules of merger control should also be applied in those cases where the undertakings do not meet the merger notification thresholds, but which involve a merger that may nevertheless significantly affect the structure of a market. This recommendation resulted in a change to merger regulation in Hungary. According to the new regulation, the GVH may examine a merger where the turnover of the parties does not meet the notification threshold, but may significantly reduce the competition on the market. The GVH published its preliminary results of the market study on its website which proved to be

quite useful, since market players – even those who did not reply in the first round – submitted valuable comments.<sup>4</sup>

#### **4.4. Analysis of the car and light commercial vehicle distribution and repair markets**

19. Another market analysis has been launched to examine the characteristics of the car and light commercial vehicle distribution and repair markets. The analysis also involves related motor insurance issues. The GVH requested information from major car importers, car retailers and repairers, furthermore from insurance companies and public bodies. The GVH also interviewed two car importers. The preliminary conclusions of the market analysis are adversely affected by the lack of contribution of certain market players (car retailers and repairers)<sup>5</sup>. Nevertheless, the response rate of insurance companies and professional associations was high.

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<sup>4</sup> See the English version of the executive summary of the report under: [http://www.gvh.hu/en//data/cms1034370/Piacelemzes\\_filmforgalmazas\\_vegleges\\_2016\\_05\\_26\\_a.pdf](http://www.gvh.hu/en//data/cms1034370/Piacelemzes_filmforgalmazas_vegleges_2016_05_26_a.pdf)

<sup>5</sup> Only 12 % of the requested market players provided information