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English - Or. English

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Working Party No. 3 on Co-operation and Enforcement

ECONOMIC EVIDENCE IN MERGER ANALYSIS

-- Hungary --

15 February 2011

The attached document is submitted to Working Party No. 3 of the Competition Committee FOR DISCUSSION under item III of the agenda at its forthcoming meeting on 15 February 2011.

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1. Institutional questions

1. At the Hungarian Competition Authority (GVH), all mergers are investigated by a case team. The members of the case team are case handlers from the Section responsible for the merger, are selected by the Section Head, and can be lawyers or economists.

2. There is a separate Chief Economist Team (CET), whose members are only economists. Depending on the importance and difficulty of the merger, the CET gives advice to the case team at various points of the case or writes individual assessments on the whole merger or selected aspects (for example giving a detailed market definition or competitive assessment on one of the affected markets). The general practice is that the CET participates in all Phase II mergers, and in Phase I mergers where economic questions play a decisive role.

3. There has been a conscious effort to improve the GVH's internal economic expertise in dealing with antitrust cases and in particular mergers for the past five years. The CET was established exactly with this aim in 2006.

4. The GVH does not use outside economists in merger investigation to assess market definition or competitive interactions in the antitrust sense. The only experts the GVH uses in merger investigations are market research companies when there is a need for conducting large consumer surveys, in which these companies have especial expertise, and employ staff for conducting surveys all around the country. In those cases, the market research company typically submits a (separate) report on the results of the survey, this report however does not deal explicitly with antitrust issues. It is then the GVH that prepares the report answering the antitrust questions by analyzing the database complied by the market research company.[1]

5. The merging parties usually rely on their internal team of economists / business analysts, and rarely use outside economic experts. There has been only one merger case in the past five years where the parties submitted a separate analysis provided by an economic consulting firm. If outside economic input was used in the other cases, it was incorporated into the submissions prepared by the legal counsel of the parties (and therefore it was not apparent whether it was prepared internally or not).

6. The interaction between the GVH's economists and the parties during the investigation phase is typically connected to the requests for data issued by the GVH, i.e. discussing what data are available, how different measures of market size may be estimated, etc. Discussions on theories of harm and competitive assessment mostly take place only after issuing a Statement of Objections, but in that case the dialogue takes place between the Competition Council of the GVH and the legal counsel of the parties.

7. In 2010, the GVH issued a document on "Frequently Asked Questions on the Competitive Assessment of Mergers", which was finalized after a public discussion with outside commentators. These documents summarize the GVH's best practice in the last years by giving detailed guidance on the following topics:

- General methodology of evaluating mergers
- Detailedness and quality of data needed for competitive assessment in merger cases

[1] In one case, for example (Ringier/Hid Radio, Vj-155-2008), the question was whether tabloids can be substituted by other daily newspapers, TV programs or Internet sources, and a large survey was conducted. The market research company's report analyzed the substitution patterns among various dimensions, in the style of a business study, but only the investigation report defined antitrust markets by using a SSNIP logic.

- Market definition in merger cases
- Assessment of non-coordinated horizontal merger effects

8. Further FAQs are planned on the assessment of coordinated horizontal and vertical merger effects.

9. In the last five years, the GVH blocked only one transaction (Magyar Telekom/Vidanet, Vj-158/2008), which was appealed at the court. In that specific case, the Municipal Court (court of first instance) evaluated the economic evidence on market definition questions (analysis of questionnaire data and economic trends) and approved the GVH's decision. It also concluded, however, that the GVH failed to completely uncover the question of entry in order to safely establish the creation of a dominant position by the merger, and therefore obliged to GVH to reopen the merger case for further investigation. The GVH appealed the decision of the Municipal Court and now awaits the decision of the Appeal Court (court of second instance).

2. Gathering data for economic analysis

10. The GVH can request data from merging parties and third parties as well. If they fail to comply with the request, administrative fines can be charged to any parties.

11. When preparing data requests, the first priority is to get aggregated data reflecting market developments for the last two-three years: revenues, quantities and prices. It is also very important to get information on firm- and industry-specific shocks (to demand and costs) as soon as possible. Further data needs depend on the specific characteristics of the industry and the theory of harm.

12. The GVH also tries to request some of the same data from various sources and check the responses against each other in order to avoid potential errors or misrepresentations. From time to time, parties are asked to estimate each other's sales, market shares etc., in order to get a balanced picture of the market and correct for potentially missing answers.

13. If parties rely on any economic analysis in their submissions, the database they used is also requested, verified and is usually used for further analysis.

3. Use of economic evidence

14. The GVH typically uses the evolution of pre-merger market shares as a screening device and to provide additional information on the nature of the competitive process. In order to do so, the GVH collects data in order to estimate various market shares (sales volume / revenue, subscribers, capacities if applicable, etc.). The GVH does not explicitly estimate post-merger market shares.

15. Market definition has always played a large role in the GVH's in-depth merger investigations, especially in mergers investigated under the Dominance test (that is, before 2009). Most of these analyses used methodologies more or less consistent with the SSNIP question (analysis of price and quantity data, transport cost tests, etc.), but never implemented a full-fledged SSNIP test, estimating demand and combining it with cost data. In some cases, the GVH used the merging parties' cost and elasticity estimates to do back-of-the-envelope SSNIP tests, but these results were complemented by stronger evidence.

16. In those mergers where the GVH used detailed questionnaires to explore substitution patterns (Ringier/Hid Radio, Vj-155-2008; Magyar Telekom/Vidanet, Vj-158/2008), various versions of the hypothetical SSNIP question were asked. However, these answers were mostly used to compute diversion

ratios and measure the closeness of competition between competing products, and were not directly used to estimate demand elasticities or critical losses.

17. As a result, the GVH did not estimate price or output effects of the merger based on demand estimates such as merger simulation or UPP. In one case (Magyar Telekom/Vidanet, Vj-158/2008), the GVH illustrated the price effects of the merger by decomposing how the acquiring telecom firm prices the different elements of its various internet subscription packages (length of contract, bandwidth, quotas, etc.) and then using this pricing policy to estimate the price increases for the packages offered by the acquired firm.

18. In mergers involving differentiated products, the GVH first analyzes price and quantity trends on the brand level to pinpoint possible substitution patterns. In the recent merger of two food companies producing certain types of sausages (Bonafarm/Herz, Vj-155/2009), the acquired firm had already been inactive for a couple of months before the transaction, so it offered a simple shock analysis to examine how the sales of the acquiring firm (and also of competitors and private labels) reacted to this change. The GVH did not use parties' internal reports to compute diversion ratios, because of their unavailability. As mentioned before, the GVH also used questionnaires in some industries involving differentiated products (newspapers, telecommunications) to compute diversion ratios.

19. The GVH would prefer to use more cross-sectional and time-series studies, but data usually lack enough variation that could be exploited. Such a study was successfully conducted in the merger of two retail gasoline brands (Shell/Tesco, Vj-19/2009), where cross-sectional price-concentration regressions were run with various measures for concentration, and the effect of entry/exit was also studied in the same panel database of weekly station-based prices. None of these estimations showed economically significant price effects.

20. There are very few mergers with coordinated effects in the GVH's history. However, in the recent merger of two cement producers (Holcim/VSH, Vj-153/2009), the GVH identified serious coordinated horizontal effects based on tacit collusion on market sharing, and therefore the merger was cleared only with structural and behavioral remedies. Among a lot of qualitative evidence, the GVH's analysis also included an analysis of transaction prices (showing that the location of the acquired "maverick" firm significantly mattered for the prices offered by the main competitors) and the analysis of market shares in various Hungarian regions.

21. In the case of vertical effects, there was no merger in which customer foreclosure issues were quantitatively analyzed. Concerning the aforementioned cement merger (Holcim/VSH, Vj-153/2009), input foreclosure concerns arose on some local markets where the acquiring firm had ready-mix concrete plants and the acquired firm was a main supplier to that region. In this case, the GVH used a simple analysis combining upstream and downstream margins and market shares to show that the acquiring firm might have an incentive to engage in input foreclosure.

22. Merging parties never submitted an efficiency argument supported by quantitative evidence to the GVH in a merger case. Therefore, the GVH was never required to seriously weight how efficiencies could potentially offset anticompetitive concerns.