

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Hungarian Competition Authority

15.03.2021.

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction's merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]

Statutory Laws

A. Notification provisions

The core provisions concerning the control of concentrations are set out in Chapter VI of the Hungarian Competition Act² (hereinafter: "Competition Act") (Articles 23-32).

Pursuant to Article 24(1) of the Competition Act, a concentration of undertakings shall be notified to the Hungarian Competition Authority (hereinafter: GVH) in cases where the aggregate net turnover of all the groups of undertakings concerned [Article 26(5) of the Competition Act] and the undertakings jointly controlled by undertakings that are members of the groups of undertakings concerned and by other undertakings exceeded fifteen billion HUF [approx. 41 million EUR³] in the preceding business year, and the net turnover of each of at least two of the groups of undertakings concerned in the preceding business year combined with the net turnover of the undertakings jointly controlled by undertakings that are members of

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

² Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (frequently used abbreviation in Hungarian: Tpv.).
http://www.gvh.hu/en/legal_background/rules_for_the_hungarian_market/competition_act

³ As of December 31st, 2020

	<p><i>the respective group of undertakings and other undertakings in the preceding year was more than 1 billion HUF [approx. 2.7 million EUR].</i></p> <p><i>According to Article 24(4), a concentration shall be notified also if it is not obvious that the concentration does not significantly impede competition on the relevant market (Article 14), in particular as a result of creation or strengthening of a dominant position, and where the aggregate net turnover of all the groups of undertakings concerned and the undertakings jointly controlled by undertakings that are members of the groups of undertakings concerned and by other undertakings exceeded 5 billion HUF [approx. 13.7 million EUR] in the preceding business year.</i></p> <p><i>Furthermore, other major sources of law regarding transactions are:</i></p> <ul style="list-style-type: none"> <i>• Act CXX of 2001 on Capital Markets (Capital Markets Act)</i> <i>• Act V of 2013 on the Civil Code (Civil Code)</i> <i>• The Civil Code provides a number of general principles and relevant provisions including those relating to the merger and demerger of companies, the increase and decrease of the subscribed capital of companies, etc.</i> <i>• Act CLXXXV of 2010 on Media Services and Mass Media (Media Services Act)</i> <i>• Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests</i> <i>• and there are temporary rules (usually stipulated by government decrees) due to the COVID-19 virus.</i>
<p>B. Substantive merger review Provisions</p>	<p><i>According to Article 30 of the Competition Act:</i></p> <p><i>(1) The GVH shall prohibit a concentration where, with a view to the provisions of paragraph (2), the concentration would significantly reduce competition on the relevant market, in particular as a result of the creation or strengthening of a dominant position.</i></p> <p><i>(2) When assessing a concentration, both advantages and disadvantages resulting from the concentration shall be considered. In the course of such consideration, the following factors shall be examined in particular:</i></p> <ul style="list-style-type: none"> <i>a) the structure of the relevant markets, existing or potential competition on the relevant markets, procurement and marketing possibilities, the costs, risks and technical,</i>

	<p><i>economic and legal conditions of market entry and exit, the prospective effects of the concentration on competition on the relevant markets;</i></p> <p><i>b) the market position and strategy, economic and financial capacity, business conduct, internal and external competitiveness of the undertakings concerned and likely changes to them;</i></p> <p><i>c) the effect of the concentration on suppliers and trading parties.</i></p> <p><i>(3) Where the significant reduction of competition in the relevant market resulting from the concentration can be prevented if certain pre- or post-conditions are satisfied — in particular the alienation of certain parts of an undertaking or particular assets, or the termination of control over an indirect participant — or if certain rules of conduct are observed, and the undertakings which are concerned in this respect commit to modify the concentration in line with such conditions, or to demonstrate appropriate conduct once the concentration is implemented, the Hungarian Competition Authority may, rather than prohibiting the concentration, impose an obligation to abide by such commitments or impose pre- or post-conditions for the implementation of the concentration</i></p>
<p>C. Implementing regulations</p>	<p><i>There are no implementing regulations. It must be noted, however, that some answers below (where relevant) further elaborate on the established practice of the GVH.</i></p>
<p>D. Notification forms or information requirements</p>	<p><i>The notification form is uniform for all transactions, however, Chapter V.9. of the form provides for the option to disclose relevant qualitative factors to the effects on competition (this questionnaire shall be completed with respect to the aspects and questions of the detailed market analysis according to the Guide on the notification form).</i></p> <p><i>The notification Form is accessible in English on the GVH’s website:</i></p> <p>https://www.gvh.hu/pfile/file?path=/en/for_professional_users/forms/fuzios_urlap_uj_logo_a_pdf&inline=true</p> <p><i>The Guide to the notification form is available on the website of the GVH’s website (in Hungarian only):</i></p> <p>https://www.gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/urlapok/fuzios_utmutato</p>

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Interpretative Guidelines and Notices

E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]

The following guidance are available in connection with the merger notification process, and, for completeness' sake, it should also be mentioned that there is a notice regarding the pre-notification consultations (Notice N° 9/2017. of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority regarding the pre-notification consultations related to the concentration assessment procedure).

Notice N° 2/2020 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority regarding certain jurisdictional aspects of the procedure for assessing concentrations

https://www.gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/kozlemenyek/2_2020_kozlemeny_2021re&inline=true

To be used for notifications submitted after 1 January 2021.

Notice 7/2017 (modified by Notice N° 2/2018 and Notice N° 3/2020) of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority regarding the obligation of notification of concentrations, the initiation of competition control proceedings and the application of the 'non obviousness' criteria in the initiation of Phase II proceedings

https://gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/kozlemenyek/7_2017_egyseges-a-modositoval_2021re&inline=true

Provisions modified by Notice N° 2/2018 are used for notifications submitted after 1 January 2019 and provisions modified by Notice N° 3/2020 are used for notifications submitted after 1 January 2021.

Guidance to the Filling Out of the Concentration Notification Form for the authorisation of a concentration pursuant to Section 24 of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (Guidance to the Notification Form).

	<p>https://www.gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/urlapok/fuzios_utmutato_20180101&inline=true</p> <p>To be used for notifications submitted after 1 January 2018.</p> <p><i>(Please note that the Guidance and the Notices are only available in Hungarian.)</i></p>
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	<p>Guidance about the methods of analysis used by the GVH in the proceedings for the authorisation of a concentration, as well as the specific information that these methods rely on and the relating information requirements.</p> <p>Issued in 2010.</p> <p>https://www.gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/osszefonodasok_-_fuziok/Szakmaifelhasznalok_fuziok_tajekoztatas_bevezeto_2010_09_16.pdf&inline=true</p> <p>General Methodology: The methodological approach of the analysis of the concentrations</p> <p>Issued in 2010.</p> <p>https://www.gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/osszefonodasok_-_fuziok/Szakmaifelhasznalok_fuziok_altalanos_modszertan_2010_09_16.pdf&inline=true</p> <p><i>(Please note that these Guidance are only available in Hungarian)</i></p>
G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	<p><i>Our authority has not published any guidelines or directives on notification of mergers involving specific sectors.</i></p>
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	<p>Market definition – The most important considerations that must be taken into account when defining the relevant markets affected by the concentration</p> <p>Issued in 2010.</p> <p>https://www.gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/osszefonodasok_-_fuziok/Szakmaifelhasznalok_fuziok_piacmeghatarozas_2010_09_16.pdf&inline=true</p> <p>Data – The degree of detail and the quality of the data used by the GVH for the quantitative analysis of the concentrations.</p> <p>Issued in 2010.</p>

	<p>https://www.gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/osszefonodasok_-_fuziok/Szakmaifelhasznalok_fuziok_adatok_2010_09_16.pdf&inline=true</p> <p>Assessment of horizontal effects – The considerations that must be taken into account when assessing the non-coordinated horizontal effects of concentrations. Issued in 2010</p> <p>https://www.gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/osszefonodasok_-_fuziok/Szakmaifelhasznalok_fuziok_horizontalis_hatasok_2010_09_16.pdf&inline=true</p> <p>Please note that these documents are only available in Hungarian.</p>
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2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	Gazdasági Versenyhivatal (GVH – Hungarian Competition Authority)
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	<p>Address: H-1054 Hungary, Budapest, Alkotmány utca 5.</p> <p>Postal address: H-1391 Budapest 62, PO Box 211</p> <p>Telephone: (0036) 1-472-8900</p> <p>E-mail (Merger Section): fuzios@gvh.hu</p> <p>Website address: http://www.gvh.hu/</p> <p>Languages available: Hungarian, English</p>
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	<p>Head of Merger Section: Ms Judit Buránszki</p> <p>Telephone: (0036) 1-472-8908</p>

E-mail:
fuzios@gvh.hu
or
buranszki.judit@gvh.hu

3. Covered transactions

A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, demergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]

The Competition Act regulates concentrations of all types of undertakings (including legal entities and private persons if they fall under the scope of the Competition Act, that is, if they engage in economic activity).

According to Article 23(1) of the Competition Act, the GVH will examine the following types of transactions:

- i. merger of two or more previously independent undertakings;*
- ii. acquisition of direct or indirect, sole or joint control over the whole or a part of a previously independent undertaking; and*
- iii. formation of a full-function joint venture.*

However, according to Article 25 of the Competition Act, temporary acquisitions of control or ownership by insurance undertakings, credit institutions, financial holding companies, mixed-activity holding companies, investment undertakings or asset management organisations shall not be subject to a notification requirement where the purpose of such acquisitions is the preparation of a resale and the undertaking acquiring control does not exercise its controlling rights, or exercises them exclusively to an extent which is strictly necessary for the attainment of such objectives, and the period of the acquisition of control or ownership does not exceed one year. If the resale fails to take place within one year, the concentration shall be notified to the Hungarian Competition Authority within fifteen days of the end of the one-year transitional period at the latest. In the event of failure to notify the concentration, it shall be regarded as a concentration implemented in contravention of the prohibition pursuant to Article 29.

Pursuant to Article 25/A of the Competition Act, a merger realised by a financing transaction necessitated by the COVID-19 virus involving a directly or indirectly majority state-owned venture capital fund or a private equity fund shall not be subject to a notification requirement whereby the venture capital fund or the private equity fund

	<i>acquires, solely or jointly with other undertakings, right of control for investment protection purposes.</i>
B. What is the geographic scope of transactions covered?	<i>According to Article 1(1), the Competition Act shall apply to market practices carried out in the territory of Hungary by natural and legal persons unless otherwise provided by law. This Act shall also apply to market practices of undertakings carried out abroad if they may have effects in the territory of Hungary.</i>
C. If change of control is a determining factor, how is control defined and interpreted in practice?	<p><i>The Competition Act differentiates between direct and indirect control. Under the merger control rules both direct and indirect control are caught. According to Article 23(2), direct control is to be interpreted as:</i></p> <ul style="list-style-type: none"> <i>i. the acquisition of over 50 per cent of voting rights;</i> <i>ii. the power to designate, appoint or recall a majority of the executive officers of the other undertaking;</i> <i>iii. a contractual right to exert decisive influence over the decisions of the other undertaking; or</i> <i>iv. the de facto ability to exert decisive influence over the decisions of the other undertaking.</i> <p><i>Pursuant to Article 23(3) of the Competition Act, an undertaking (the parent) shall be deemed to have indirect control over another undertaking which</i></p> <ul style="list-style-type: none"> <i>a) is controlled directly by an undertaking under direct control of the parent (either solely or jointly with the parent);</i> <i>b) is controlled directly and jointly by undertakings under direct control of the parent,</i> <i>c) is controlled directly or in accordance with point a) or b) by undertakings under indirect control of the parent pursuant to point a) or b); or</i> <i>d) is controlled in accordance with points a) to c) by undertakings under the indirect control of the parent pursuant to points a) to c).</i> <p><i>Under the Competition Act, indirect control is also stipulated in order to capture the entire group of undertakings to which the company in question belongs.</i></p>

	<p><i>In addition, Article 23(4) of the Competition Act states that activities of a liquidator or the officer responsible for the winding up and dissolution of undertakings shall not qualify as the exercise of control.</i></p>
<p>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</p>	<p><i>The merger regime of the Competition Act does not extend to minority shareholdings and other interests less than control.</i></p> <p><i>Acquisitions of assets are covered transactions. The assets do not have to form a free-standing business. According to the Article 23(5) of Competition Act ‘part of an undertaking’ (or ‘business unit’) shall mean assets or rights, including the client or customer base of an undertaking, the acquisition of which, solely or together with assets and rights which are at the disposal of the acquiring undertaking, is sufficient for the pursuit of market activities.</i></p> <p><i>“Bare” asset purchases which are not qualified as a part of undertaking are not covered by the merger regime of the Competition Act.</i></p>

<p>4. Thresholds for notification</p>	
<p>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</p>	<p><i>Article 24(1)-(4) of the Competition Act sets out the applicable thresholds for notification.</i></p> <p><i>1) A concentration must be notified to the GVH if the aggregate net turnover of all the groups of undertakings concerned [Article 26(5) of the Competition Act] and the undertakings jointly controlled by undertakings that are members of the groups of undertakings concerned and by other undertakings exceeded fifteen billion HUF [approx. 41 million EUR] in the preceding business year, and the net turnover of each of at least two of the groups of undertakings concerned in the preceding business year combined with the net turnover of the undertakings jointly controlled by undertakings that are members of the respective group of undertakings and other undertakings in the preceding year was more than 1 billion HUF [approx. 2.7 million EUR]. (Article 24(1) of the Competition Act)</i></p> <p><i>2) A concentration shall be notified also if it is not obvious that the concentration does not significantly reduce competition on the relevant market (Article 14), in particular as a result of creation or strengthening of a dominant position, and where the aggregate net turnover of all the groups of undertakings concerned and the undertakings jointly controlled by undertakings that are members of the groups of undertakings concerned</i></p>

and by other undertakings exceeded 5 billion HUF [approx. 13.7 million EUR] in the preceding business year. (Article 24(4) of the Competition Act)

In assessing whether the one billion HUF threshold is met, all concentrations in respect of which no competition supervision proceeding had been conducted which took place within a two-year period preceding the concentration concerned between the group of undertakings acquiring control and undertakings which belonged to the group of undertakings which ceases to have control as a result of the concentration, shall also be taken into account, with the exception of concentrations notified and acknowledged pursuant to Article 43/N(1)(b). (Article 24(2) of the Competition Act).

In calculating net turnover, the value of sales between undertakings belonging to the same group of undertakings concerned, or parts of undertakings of those undertakings, shall not be taken into account (Art. 27(1) of the Competition Act).

The following items shall be taken into account in place of net turnover: (a) for insurance undertakings, the value of gross premiums; (b) for investment undertakings, the income from investment services; (c) for commodity exchange service providers, payment institutions, electronic money institutions or financial intermediaries, the sum of the net sales revenue and the income from financial operations; (d) for the stock exchange, the sum of the annual fees paid by dealers from the revenues of exchange activities; (e) for funds, the income from contributions; (f) for financial institutions, the sum total of the incomes under the items of the interest receivable and similar income, income from securities [income from shares for dealing purposes, income from shareholding (dividend, share), income from shareholding in related undertakings (dividend, share), income from undertakings with substantial ownership participation (dividend, share), income from undertakings with other nature of shareholding (dividend, share)], commissions receivable, net result on financial operations and other income from commercial operations. For merging insurance companies, the threshold is calculated on the value of the secured gross insurance premiums. For investment firms and funds, the threshold is calculated on the revenue from investment services or membership fees respectively. (Article 24(3) of the Competition Act)

For a part of an undertaking (or business unit), the net turnover realised in the preceding year by the use of the assets and rights constituting that part of an undertaking (or business unit) shall be taken into account. (Article 27(4) of the Competition Act)

In calculating the net turnover of undertakings, the net turnover realised from sales in

	<p><i>the preceding business year in the territory of Hungary shall be taken into account. (Article 27(2) of the Competition Act).</i></p> <p><i>Article 27(3) of the Competition Act states that in calculating the net turnover of undertakings in majority state or municipal ownership, those undertakings constituting economic units shall be taken into account which have autonomous decision-making powers in determining their market conduct.</i></p> <p><i>In accordance with the Competition Act, mergers failing to reach the above-mentioned turnover thresholds are not subject to merger control by the GVH and therefore may not be investigated under the merger control provisions.</i></p> <p><i>Furthermore, if a transaction fulfils the threshold set out in the Council Regulation (EC) N° 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), the European Commission has jurisdiction to proceed.</i></p> <p><i>The EC Merger Regulation is available under the following link: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004R0139</i></p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p><i>When determining the relevant undertakings for threshold purposes, Article 26(5) of the Competition Act shall apply, namely undertakings concerned are undertakings participating directly or indirectly in the concentration.</i></p> <p><i>Direct participants can be determined pursuant to Article 26(2) of the Competition Act. They are – in case of an Article 23(1) a) type of merger – the merging undertakings, or the acquiring and the acquired undertakings, as well as the undertaking into which the business unit is incorporated. Direct participants can be – in case of an Article 23(1) b) type of merger – the undertaking acquiring direct sole or joint control, the parent companies (coming from different groups of undertakings) of such undertaking and the undertaking whose control is acquired. Finally, direct participants can be undertakings forming a joint venture in case of an Article 23(1) c) type merger.</i></p> <p><i>Pursuant to Article 26(3) of the Competition Act, indirect participants are the other members of the group of undertakings (Article 15(2)) to which a direct participant belongs.</i></p> <p><i>For the purposes of identifying indirect participants, undertakings whose rights of control terminate as a result of the merger, as well as undertakings other than direct</i></p>

	<p><i>participants controlled by such undertaking shall be disregarded.</i></p> <p><i>There is a special threshold calculation concerning the net turnover of undertakings jointly controlled by two or more undertakings (see our answer to section B below). In this case the net turnover shall be apportioned equally to each undertaking having control over them; for the purposes of such apportioning, undertakings belonging to the same group of undertakings shall be deemed to be one single undertaking.</i></p>
<p>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p>	<p><i>For a concentration of undertakings, the authorisation of the GVH shall be sought in cases where the thresholds described under Section 4.A. are met.</i></p> <p><i>With the exception of practices carried out outside the European Economic Area and regulated in Chapters II and III of the Competition Act (concerning the Prohibition of Unfair Competition and Unfair Manipulation of Business Decisions), the provisions of the Competition Act shall also apply to the market practices of undertakings carried out abroad if they may have effects in the territory of Hungary.</i></p> <p><i>As a result, foreign mergers shall be subject to Hungarian merger control if they may have an effect within the territory of Hungary. Consequently, meeting the turnover thresholds in Hungary is sufficient even in the absence of any structural links to Hungary. (Both elements of the turnover thresholds relate to turnover realised in Hungary.) In practice, there are two main situations in which foreign-to-foreign mergers are caught: where there are Hungarian subsidiaries of the parties; or there are no subsidiaries, but the parties themselves have turnover in Hungary, that is, their goods and services are present in the Hungarian market.</i></p> <p><i>In the case of foreign undertakings, only the net sales revenues generated from the goods sold or services rendered in Hungary are taken into account.</i></p>
<p>D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</p>	<p><i>No, at least two of the groups of undertakings concerned have to meet the notification thresholds laid down in Article 24(1) of the Competition Act.</i></p> <p><i>However, different rules apply to mergers meeting the criteria laid down in Article 24(4) of the Competition Act. Here, only the combined turnover is regarded, which can be reached by only one of the group of undertakings (e.g., the acquirer) alone, the other (group of) undertaking(s) can even be a start-up having no turnover realised yet.</i></p>

<p>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p><i>No. However, different rules apply regarding some sectors (see also our answer to Section 22 below)</i></p> <p><i>The Hungarian Government may declare mergers in any sector as having a national strategic importance due to public interest.</i></p> <p><i>Furthermore, a merger realised by a financing transaction necessitated by the COVID-19 virus involving a directly or indirectly majority state-owned venture capital fund or a private equity fund shall not be subject to a notification requirement whereby the venture capital fund or the private equity fund acquires, solely or jointly with other undertakings, right of control for investment protection purposes.</i></p>
<p>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p>	<p><i>Special threshold calculations are applicable only in the financial sector. For more detailed information, see our answer to Section 4.A above.</i></p>
<p>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</p>	<p><i>Basically, there are no special rules regarding jurisdictional thresholds for foreign transactions. Foreign mergers – i.e., both the acquiring and acquired parties are foreign – can be subject to Hungarian merger control if the transaction may have an effect within the territory of Hungary. As a result, fulfilling the turnover thresholds in Hungary is sufficient even in the absence of any structural links to Hungary.</i></p> <p><i>Please also see the answers provided for Section 4.C.</i></p>
<p>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</p>	<p><i>No.</i></p> <p><i>Although there are two thresholds, one primary, where the notification is mandatory (with standstill obligation), and a lower secondary, where the notification is voluntary (without standstill obligation) (see our answer to question 6.A below).</i></p>
<p>I. Are current notification criteria catching relevant</p>	<p><i>Yes, they are. There are no specific notification criteria regarding mergers concerning digital markets. However, the additional voluntary threshold was designed to catch</i></p>

<p>transactions related to digital markets?</p>	<p><i>acquisitions of start-up companies with no or small actual revenues but strong potential to grow.</i></p> <p><i>In the notification form the acquirer is required to present and justify using qualitative aspects that the transaction will not result in adverse effects on competition, if as a result of the concentration an undertaking having considerable financial strength and significant market power on the relevant market acquires a start-up undertaking that is not present on the relevant market or that has a net turnover of less than 1 billion HUF [approx. 2.7 million EUR], but which nevertheless has significant development possibilities.</i></p>
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Calculation Guidance and related issues

<p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<p><i>The standard threshold (which applies with standstill obligation) is based on revenues: there is a combined turnover threshold and a separate turnover threshold, which at least two of the parties must each meet (in the case of more than two parties) in order for the transaction to fall under the merger regime.</i></p> <p><i>The voluntary threshold (which applies without standstill obligation) consists of a revenue threshold (a combined one, which is 1/3 of the standard combined revenue threshold) and the potential of a competition problem. The latter is a screening test mostly based on market shares explained in a Notice as described at section 7.B.</i></p>
<p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p>	<p><i>Entities belonging to the same group of undertakings as the top-level controller are included when determining for threshold purposes.</i></p> <p><i>The assessment is indeed based on control, the key question is when determining the relevant (group of) undertaking(s) is that by whom the investment fund is controlled. The definition of control in these cases are the same as the definition of control in general.</i></p>
<p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</p>	<p><i>Yes, the controller of an investment fund is required to present turnover information related to other funds under the same control, because they belong to the same group of undertakings.</i></p> <p><i>Those other funds are considered as part of the transaction for turnover purposes (and for competitive assessment purposes as well).</i></p>

<p>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</p>	<p>According to Article 27(7) of the Competition Act, the sums indicated in a foreign currency shall be converted into HUF at the central rate of exchange published by the National Bank of Hungary (available at: http://www.mnb.hu/en) in effect at the time of the closing of the business year of the undertaking in question.</p>
<p>5. Pre-notification</p>	
<p>A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g. time limits, type of guidance given, etc.].</p>	<p>The rules concerning pre-notification procedure are stipulated in Article 43/L of the Competition Act and in Notice N° 9/2017. of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority regarding the pre-notification consultations related to the concentration assessment procedure.</p> <p>https://gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/kozlemlenyek/9_2107_Uj_prenotifikacio_kozlemleny_tiszta&inline=true</p> <p>To be used after 1 January 2018.</p> <p>(Please note that the Notice is available only in Hungarian.)</p> <p>Pre-notification contacts shall be initiated in connection with the already decided transactions. The aim of the pre-notification talks is to promote legal certainty and to facilitate the procedure that may result in saving time and expenses for the parties involved in the transaction. In order to make the pre-notification contacts useful, they must be made in due time, in other words it is advised to have enough time between pre-notification talks and the filing of the formal notification (generally at least two weeks).</p> <p>The GVH normally requires five working days to review the draft notification before the pre-notification takes place. It should be noted that both deadlines (two weeks and five working days) are in line with DG COMP's best practices (Best Practices on the conduct of EC merger control proceedings, available at: http://ec.europa.eu/competition/mergers/legislation/proceedings.pdf).</p> <p>This enables the GVH to have enough time to give its opinion on the merits on the pre-notification documents and questions. It also means that the parties will have enough time to incorporate the GVH's remarks made during the pre-notification proceeding into their formal notification.</p> <p>The subject of the pre-notification proceeding must concern actual, concrete (proposed with the participation of market operators specified to the GVH) transactions. However, a signed contract memorandum of understanding is not required.</p>

	<i>Pre-notification is not mandatory. According to the Article 43(L) of Competition Act, before submitting a notification of a concentration, the undertakings obliged to submit such notification of concentration may request pre-notification contact with the GVH.</i>
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	<p><i>The written preparation of pre-notification consultation does not have any strict formal precondition, however, in order to carry out successful consultation, parties should make written preparatory notes before the meeting that contains a brief summary of the proposed transaction (Parties' relevant turnovers (whether thresholds are met), structure and timing of the transaction, business motivations, market context etc.) , the relevant markets, market shares, the envisaged effects on competition and any other circumstances that need to be evaluated in the parties' view.</i></p> <p><i>The written preparation can be made in the following forms: by submitting the draft of the concentration notification form, presentation or other memorandum. In general, the GVH prefers to receive the draft concentration notification form. Filing preparatory documents of the deal could also be useful.</i></p> <p><i>The document initiating the pre-notification contacts should also contain: the circumstances, questions which serve as a basis for initiating pre-notification and which cannot be answered by the well-prepared parties or their legal representatives unanimously according to the existing (case) law (e.g. the extent and type of the data/information that is needed to assess the transaction; the clarification of the questions stemming from the fulfilment of the notification form). The parties should include their own assessment and answers concerning these circumstances and questions.</i></p>

6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	<i>Notification of transactions exceeding the thresholds of Article 24 (1) of the Competition Act is mandatory, and in the case of transaction falling in the scope of Article 24 (4) the notification is voluntary.</i>
B. If parties can make a voluntary merger filing when may they do so?	<i>See above.</i>

<p>C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)</p>	<p><i>The notification of concentration may be submitted after the announcement of the public bid, the conclusion of the contract or the acquisition of the right of control giving rise to the concentration, whichever occurs the earliest (Article 28(2) of the Competition Act).</i></p> <p><i>The earliest that a transaction can be notified is when the parties have agreed on the concentration (e.g., the parties have concluded the agreement; the acquirer would be de facto able to exert decisive influence over the decisions of the target). It is important to note that the notification has to be filed before the concentration is implemented.</i></p>
<p>D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	<p><i>There is no deadline for filing the notification to the GVH. The notification needs to be filed before the concentration is implemented.</i></p> <p><i>The deadline and triggering event do not depend on the structure of the transaction.</i></p> <p><i>There are no special rules for public takeover bids in terms of the timing of the notification.</i></p>
<p>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p><i>Because of the standstill obligation there is no notification deadline, however, the notification needs to be filed before the concentration is implemented. But, as an exemption from this obligation, the GVH may permit the acquirer to exercise its control rights before the concentration has been cleared: in such a case, the acquirer has to submit a reasoned request to this effect (Article 29/A of the Competition Act). The GVH may grant permission for the control rights to be exercised in advance if this would be necessary to maintain the value of the acquirer's investment in the target. Specific conditions and obligations may also be imposed on the acquirer along with the permission and – in order to make such conditions and obligations effective – the GVH may request specific market or business information from the acquirer in question.</i></p>

<p>7. Simplified Procedures</p>	
<p>A. Describe any special procedures for notifying transactions</p>	<p><i>If according to the case handler a competition supervision procedure does not need to</i></p>

<p>that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).</p>	<p><i>be initiated for the assessment of the concentration, the case handler issues within 8 days from the date of the received notification or, if the administrative service fee is paid in a later stage, from that time – in agreement with the proceeding Competition Council – an official certificate declaring that the circumstances of initiating a competition supervision procedure are not present (authorising the concentration).</i></p> <p><i>Please note, that the GVH treats the pre-notification talks as a priority in order to provide support for the notifying parties to submit a fully complete notification form. If the parties submit a fully complete notification form and the necessity to initiate a competition supervision procedure does not apply, the GVH is to issue an official certificate – in accordance with Article 43/N(1)(b) of the Competition Act stating that no assessment is needed in connection with the concentration – in a very short period of time (authorisation of the concentration within 8 calendar days).</i></p> <p><i>The parties may also request that their notification be reviewed in a so-called “express” procedure. This is applicable in such cases when the parties submitted all necessary information during the pre-notification phase and the case handlers – in agreement with the competition council proceeding in the case – deem that the procedure will be closed with the issuance of an official certificate, as there are clearly no competition concerns. It is important to note, however, that the steps for the initiation of an express procedure need to be taken before the submission of the notification form – i.e., the parties must submit the final notification form and its annexes during the pre-notification phase which the case handlers (and, indirectly, the competition council proceeding in the case) review and approve. This may lessen the 8 calendar days to generally two days. Also note that the initiation of such express proceedings is at the discretion of the GVH, i.e., it may decide not to do so; and if the case handlers find that the final notification form is substantially different to the one submitted during pre-notification, they may proceed within the “regular” 8-day timeframe.</i></p>
<p>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</p>	<p><i>According to Notice N^o 7/2017, if, based on the information contained in the notification and other information officially available, it can be safely concluded that the transaction has no adverse horizontal, vertical or portfolio effects, the GVH examines the transaction in a simplified procedure.</i></p> <p><i>If the concentration has horizontal, vertical or portfolio effects, but the market shares fall below the following thresholds, the GVH examines the transaction in a simplified procedure.</i></p>

	<p><i>In line with the thresholds prescribed in the Notice, the activities of the participants are significantly overlapping if the joint market share of the market players on the overlapping product markets is over 20% and the increment is above 5%. A significant relation can be identified where the sole market share of one of the groups of undertakings participating in the concentration either on the seller or on the buyer side of the market resulting in a vertical relation, or on at least one of the complementary markets, is at least 30% and the increment is above 5%. The question of a substantial lessening of competition depends not only on the market share thresholds, but also on the respective market shares of the single groups of undertakings concerned, and on the concentration of the relevant market [see point 22 (c) (d) of Notice N° 7/2017], as well as on other qualitative aspects, which cannot be defined in advance and depend on the transaction in question and the market conditions (such as the intensity of the potential competition, the criteria for entering the market, the market power of competitors and customers, etc.) and which can rule out a substantial lessening of competition even at a market share substantially above the threshold mentioned above (see Point 26 of Notice N° 7/2017.).</i></p> <p><i>The GVH may also initiate a competition supervision proceeding if the transaction does not fall within the above criteria, but it has reasonable grounds to assume that the transaction would still lead to a significant lessening of effective competition. This is generally the case when an undertaking having significant market power (above 40%) would acquire an undertaking which is not yet present on the market or has only a negligible market share, yet it is verifiable by objective criteria (e.g., innovation or the size of its client pool) that its significant short-term development (entry in the market and/or growth) is realistic.</i></p> <p><i>The GVH also initiates a simplified procedure if the notification form is incomplete or it does not contain all necessary information for the assessment of the transaction.</i></p>
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8. Information and documents to be submitted with a notification	
<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</p>	<p><i>The documents supporting the facts and data disclosed in the notification must be submitted along with the notification form. In particular the contract(s) giving rise to the concentration or other document(s) serving as proof of the acquisition of control, any other documents directly related to the implementation of the concentration as well as the annual accounts of the groups of undertakings concerned or of the top-level controlling undertaking of the group in respect of the last officially closed business year</i></p>

	<p><i>preceding the concentration, if they are not available from a public Hungarian database. Documents or other files which are in the public domain or which must be included in a public register established by law shall not be required to be attached to the notification.</i></p> <p><i>For the authorisation of a proxy or agent for the service of process, the authorisation needs to be attached (e.g., power of attorney).</i></p> <p><i>Please see Chapter VI of the form.</i></p>
<p>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</p>	<p><i>There is no distinction between tangible and intangible assets in the description of the transaction.</i></p> <p><i>According to Article 23(5) of Competition Act ‘part of an undertaking’ (or ‘business unit’) shall mean assets or rights, including the client base of an undertaking, the acquisition of which, solely or together with assets and rights which are at the disposal of the acquiring undertaking, is sufficient for the pursuit of market activities.</i></p> <p><i>However, it should be mentioned that in respect to digital markets the GVH also takes into consideration the effects of the concentrations in aspect of the amount of user data the companies have, and which will be passed on in the transaction.</i></p>
<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p><i>As a general rule, the motivation for the transaction shall be presented in the form and the internal preparatory documents shall be attached. If the transaction may have adverse effects on competition, the parties shall demonstrate that the efficiencies of the transaction outweigh such effects, with the documents required depending on the specifics of the case (typically economic analysis).</i></p>
<p>D. What information is required in case the target company is experiencing financial insolvency?</p>	<p><i>There is no special information requirement in these cases, the parties shall demonstrate the three cumulative criteria of the failing firm defense and providing all necessary information.</i></p>
<p>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</p>	<p><i>General rules apply – an RFI may be issued.</i></p> <p><i>According to Article 64/B(6) of the Competition Act, the case handler and the Competition Council proceeding in the case may request, in the scope to the extent necessary to clarify the facts of the case and successfully conduct the proceeding, any person or organisation to supply information or to provide data or documents in connection with the subject of the investigation.</i></p>

	<p><i>Pursuant to Article 65/A(1) of the Competition Act, when a misleading submission of a material fact in the notification of a concentration is likely to have occurred, the case handler may, with a view to finding means of proof concerning certain types of infringements or the concentration investigated, search any premises, vehicle or data storage, – including those in paragraph (2) – and enter such premises under their own authority, against the will of the owner (possessor) or any other person present, and may open any sealed-off area, building or premises for this purpose (hereinafter: unannounced inspection). The GVH may request police assistance for the successful and safe conduct of the unannounced inspection.</i></p> <p><i>These procedural steps, however, are only possible in competition supervision proceedings – i.e. not in simplified procedures closed by issuing an official certificate. In case the notification form is deemed to be incomplete, a Phase I. investigation is initiated.</i></p>
<p>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</p>	<p><i>There are no document legalization requirements.</i></p> <p><i>According to Article 64/B(7) of the Competition Act, if any doubt arises concerning the authenticity or content of a public deed issued in another country, the case handler or the competition council proceeding in the case shall invite the party or the requested person to present a notarised copy of the already certified documents issued in that other country.</i></p>
<p>G. What are the agency’s rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</p>	<p><i>According to Article 64/B (2) of the Competition Act, the case handler or the competition council proceeding in the case may invite the party to submit a document or other paper if it is necessary for the clarification of the facts of the case and it cannot be obtained pursuant to the Act on General Rules of Electronic Administration and Trust Services. With the exception of the data necessary for the identification of the party, a party shall not be invited to submit data that are public or which must be included in a public register established by law.</i></p> <p><i>Furthermore, in the case of large groups of undertakings which are active in several different fields, the GVH does not require the presentation undertakings that are not relevant to the transaction.</i></p>

H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?

Yes.

The GVH may send formal requests for information to third parties during its proceedings.

According to Article 64/B(6) of the Competition Act, the case handler and the Competition Council proceeding in the case may request, in the scope to the extent necessary to clarify the facts of the case and successfully conduct the proceeding, any person or organisation to supply information or to provide data or documents in connection with the subject of the investigation.

There are no legal barriers preventing third parties from voluntarily submitting information.

The GVH publishes notices about mergers notified to it on its website.

According to Article 43/J(2) of the Competition Act, the GVH shall publish on its website a notice of the notification of the concentration as well as a brief description of the concentration which does not contain business secrets/restricted access data, except if the application contained a request that the concentration should be treated as a business secret until its implementation; this, however, does not prevent the Hungarian Competition Authority from taking the procedural measures necessary to clarify the facts of the case in the course of the proceeding for the investigation of the concentration, in particular from making use of the means of proof set out in Article 64/B.

Third parties may submit a formal complaint if they are aware of – an already implemented – concentration that has not been notified.

The possibility of market testing also enables third parties to contact the authority to intervene.

According to Article 75/A of the Competition Act, the competition council proceeding in the case (a) before adopting a decision in a proceeding for the investigation of a concentration imposing a pre- or post-condition pursuant to Article 30(3), or an obligation; or (b) before adopting a decision making the commitments pursuant to Article 75 obligatory, may, where it deems it necessary, initiate consultations with stakeholders by way of posting, simultaneously with sending the preliminary position to the parties, on the website of the Hungarian Competition Authority the condition or obligation which it plans to adopt, and/or the commitments with restricted access data removed, together

	<p><i>with an invitation requesting the stakeholders to submit their comments, with a view to obtaining their views in particular those of undertakings operating in the relevant market and of other persons affected by the case.</i></p> <p><i>Within twenty days from the date of publication of the notice referred to in paragraphs (1) and (2), any person may present their views, recommendations or comments concerning the envisaged decision in writing to the GVH.</i></p>
<p>I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</p>	<p><i>Yes, there are no legal barriers preventing the parties from voluntarily submitting information beyond what is required in the initial filing.</i></p>
<p>J. Are there different forms for different types of transactions or sectors?</p>	<p><i>No.</i></p> <p><i>The same form is applicable for all types of transactions or sectors.</i></p>
<p>K. With respect to investment funds:</p> <p>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</p> <p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p>	<p><i>i) Yes, it is requested.</i></p> <p><i>ii) Most importantly, it is necessary to decide who the controller of the investment fund is. If the investment fund is controlled by its investors, they or their undertakings will be the group of undertakings concerned. If the investment fund is controlled by the fund manager, it must present the other funds it manages.</i></p> <p><i>iii) See Section 8.G above.</i></p>

<p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	
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9. Translation

<p>A. In what language(s) can the notification forms be submitted?</p>	<p><i>According to Article 53/B(1) of the Competition Act, in competition supervision proceedings the official language shall be Hungarian. This means that the form may only be submitted in Hungarian.</i></p>
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<p>B. Describe any requirements to submit translations of documents:</p> <ul style="list-style-type: none"> i) with the initial notification; and ii) later in response to requests for information. <p>In addition:</p> <ul style="list-style-type: none"> iii) what are the categories or types of documents for which translation is required; iv) what are the requirements for certification of the translation; v) which language(s) is/are accepted; and vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted? 	<p><i>In general, according to Article 53/B(2) of the Competition Act, documents issued in English may be submitted in the original language; in this case the case handler or the competition council proceeding in the case may, acting ex officio or upon the other parties' request, require the submission of a Hungarian summary or a Hungarian translation of the documents.</i></p> <p><i>(3) The provisions of the Code of General Administrative Procedure pertaining to interpreters shall apply to interpreters.</i></p> <p><i>Some documents (typically appendices like transaction agreements, annual reports etc.) may be submitted in English. More specifically,</i></p> <ul style="list-style-type: none"> <i>i) and ii) the initial notification and responses to requests for information may only be submitted in Hungarian;</i> <i>iii) the contract which is the basis for the merger, preparatory documents, annual reports and other documents related to the undertakings participating in the merger are required to be translated if they are not submitted in English (or Hungarian);</i> <i>iv) in general, the GVH only asks for a certified translation if doubts about the authenticity of the summary translations arise;</i> <i>v) besides Hungarian, documents in English may be submitted;</i> <i>vi) yes, to the point where it is sufficient to support the data and information presented in the notification form. These summaries are accepted only in English.</i>
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10. Review Periods

<p>A. Describe any applicable review periods following notification.</p>	<p><i>Pursuant to Article 43/N(1) of the Competition Act, within eight calendar days from the date of receipt of the notification of concentration, or if the administrative service fee is paid at a later stage, from that time, the case handler shall</i></p> <ul style="list-style-type: none"> <i>a) order to initiate a competition supervision proceeding pursuant to Article 64(4),</i> <i>b) issue an official certificate to the notifier in the absence of circumstances to order to initiate a competition supervision proceeding in agreement with the proceeding competition council.</i> <p><i>The review periods when a competition supervision is to be initiated is the following.</i></p> <p><i>The review period for Phase I case is 30 days, and for Phase II cases is 4 months.</i></p> <p><i>The review period for the procedures initiated under Article 67(3) (if the concentration is implemented without the authorisation of the GVH is 6 months.</i></p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p><i>No.</i></p>
<p>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</p>	<p><i>Pursuant to Article 63(9) of the Competition Act, the administrative time limit may be extended before it expires in justified cases by the President of the GVH, or by the chair of the Competition Council during the proceedings of the Competition Council.</i></p> <p><i>The review period begins on the day of the opening of the proceedings (Article 63(1) of the Competition Act). Requests for additional information are suspend the review period (the period from the time when the request for information is issued until the answer is received by the GVH is excluded from the review period).</i></p> <p><i>It should be noted that if the GVH does not deliver a decision at the end of these periods, clearance is automatically granted by law for the transaction in question.</i></p>
<p>D. Is there a statutory or other maximum duration for extensions?</p>	<p><i>Yes, the maximum amount of time that each extension may be granted for is defined in the Competition Act.</i></p> <p><i>The review period may be extended once by 2 months in Phase II. investigations.</i></p> <p><i>The review period may be extended once by 20 calendar days in Phase I. investigations.</i></p>

<p>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</p>	<p><i>The GVH has the authority to suspend review periods in the following exceptional cases (the parties' consent is not required):</i></p> <p><i>The competition supervision proceeding may be suspended if the decision on the merits of the case is dependent on the prior adjudication of a question that is in the competence of another body or if a well-founded decision is impossible without another decision of the Hungarian Competition Authority as an authority closely linked to the case in question.</i></p> <p><i>When the GVH puts forward a request to the European Commission pursuant to Article 22(1) of EC Merger Regulation, the case handler shall suspend the proceeding of the GVH when such request is submitted.</i></p> <p><i>If in connection with an application for the authorisation of a concentration submitted to the GVH, the European Commission, in accordance with the provisions of Article 22(2) of the EC Merger Regulation, informs the GVH of a request pursuant to Article 22(1) of the EC Merger Regulation it has received from another Member State, the case handler or the Competition Council proceeding in the case shall suspend the proceeding.</i></p> <p><i>According to Article 80/D(1) of the Competition Act, the case handler or the competition council proceeding in the case shall suspend the competition supervision proceeding if the European Commission has initiated its own proceeding in the case, until the proceeding of the European Commission is concluded.</i></p> <p><i>The case handler or the competition council proceeding in the case may suspend the competition supervision proceeding if the competition authority of another Member State has initiated its own proceeding in the case, until the proceeding of the other Member State is concluded.</i></p>
<p>F. What are the time periods for accelerated review of non-problematic transactions, if any?</p>	<p><i>In non-problematic (clear-cut) transactions – where the notification form is completed and no further information is required - the time period for review is 8 calendar days, with the possibility of an even faster, so called 'express' review (see answer 7.A above).</i></p> <p><i>This 8-day period, however, is included in all proceedings, as described above – i.e., when no further investigation is required, the case is closed in this stage.</i></p>

<p>G. If remedies are offered, do they impact the timing of the review?</p>	<p><i>Parties may offer remedies at any time throughout the whole proceeding (e.g. parallel to the submission of the notification form, or after the Competition Council's preliminary position – Hungarian equivalent of the statement of objections – is issued). Remedies offered by the Parties parallel to the submission of the notification form or right after when the proceeding is initiated only can be accepted if the competition concern in the case is clear, and the remedies are suitable to remove the competition concerns identified.</i></p> <p><i>Remedies are assessed by the Competition Council and may be market tested.</i></p> <p><i>The assessment of the remedies generally does not influence the timing of the review – i.e. it does not automatically extend the legal deadline. However, the thorough assessment of the remedies necessarily causes the review to take longer compared to the timing if remedies had not been offered.</i></p> <p><i>The notice regarding remedies (Notice N° 8/2017 of the President of the Hungarian Competition Authority and President of the Competition Council on the imposition of conditions and obligations in decisions clearing a concentration) was last updated on 18.12.2020.</i></p>
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<p>11. Waiting periods / suspension obligations</p>	
<p>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</p>	<p><i>According to Article 29(1) of the Competition Act, the notifiable concentration of the undertakings shall not be executed in the absence of the approval of the GVH. In particular, voting rights in the target undertaking or rights related to the appointment of the management in the target undertaking shall not be exercised, and there is a general obligation to act in accordance with the situation prevailing before the concentration (standstill obligation).</i></p> <p><i>However, it is certainly permitted to implement a contract or to take other steps forming the basis of the given transaction (e.g. a share sale and purchase contract or a public bid).</i></p> <p><i>Moreover, transactions that fall within the scope of Article 24(4) (referred above as voluntary threshold) may be implemented before the final decision of the GVH – however, the parties still bear the risk of reversing the transaction and terminating the contract if the GVH finds that the notified transaction may not be approved, or if it</i></p>

	<i>imposes conditions, the parties must comply.</i>
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	<i>Yes, according to Article 29/A of the Competition Act, upon a reasoned request of the parties the GVH may grant its consent to the acquirer to exercise its rights of control before clearance. The GVH may grant its consent in particular if it would be necessary to maintain the value of the acquirer's investment in the target. Specific conditions and obligations may also be imposed on the acquirer when the consent is granted and – in order to make such conditions and obligations effective – the GVH may request specific market or business information from the acquirer.</i>
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?	<i>The applicable waiting periods are not limited to aspects of the transaction that occur within the GVH's jurisdiction. They apply to the proposed concentration as a whole.</i>
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	<i>Pursuant to Article 63/A of the Competition Act, if the GVH fails to deliver a resolution within the time limit defined by Article 63 (please see answer provided for Section 10/A.) the clearance of the GVH shall be deemed to have been granted.</i>
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	<i>N/A</i>
F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.	<i>N/A</i>

<p>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p><i>Parties that take measures in accordance with a decision providing for derogation from the standstill obligation (please see answer provided for Section 11/B. above) assume no risk even if the final decision in the matter is adverse. (Nevertheless, the parties must terminate the contract and reverse any steps taken so far if the GVH does not authorise the concentration.) Parties that implement a public bid, or a series of transactions on the stock exchange (please also see the answer provided for Section 11/A. above) also assume no risk.</i></p> <p><i>Transactions that fall within the scope of Article 24(4) may be implemented before the final decision of the GVH – however, the parties still bear the risk of reversing the transaction and terminating the contract if the GVH finds that the notified transaction may not be approved, or if it imposes conditions, the parties must comply.</i></p>
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<p>12. Responsibility for notification / representation</p>	
<p>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</p>	<p><i>In the case of a merger or joint venture, the parties or, in all other cases (e.g., acquisition of control), the party directly acquiring the business unit or the controlling rights or the undertaking that directly controls the party acquiring the business unit or the controlling rights is responsible for notifying the transaction.</i></p> <p><i>Article 28(1) of the Competition Act states that in the case of mergers, absorptions and the establishment of joint ventures, the direct participant is obliged to seek authorisation for the concentration under Article 24 of the Competition Act; in all other cases such obligation rests with the acquirer of the part of the undertaking, or the acquirer of direct control or the undertaking directly controlling the former.</i></p>
<p>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p><i>No.</i></p>
<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p><i>No.</i></p>

<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</p>	<p><i>According to Section 14 of the Act CL of 2016 on the Code of General Administrative Procedure, the authorised person shall provide proof of representation unless this is included in the client settings register. Authorisation shall be incorporated in a public deed or a private deed of full probative value or shall be recorded in the minutes.</i></p> <p><i>According to Section 44(5) of the Act LXXVIII of 2017 on the professional activities of attorneys-at-law, an attorney-at-law may not need to attest that the attorney-at-law verified the identity of the parties indicated in the document and their representatives acting in the matter; and the parties signed the document in the presence of the attorney-at-law, or acknowledged in his presence that the signatures put on the document are theirs, if the party's signature has been certified or attested by the competent Hungarian diplomatic mission of the place of signature, or an Apostille certificate has been enclosed thereto, or if the party's signature has been certified by a notary, or if an advanced electronic signature based on a qualified electronic signature or an advanced electronic signature based on a qualified certificate and a time stamp have been affixed to the document by that party.</i></p> <p><i>Undertakings which do not have a registered office in Hungary shall appoint an agent for service of process if they do not have a representative with a postal address or registered office in Hungary.</i></p>
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<p>13. Filing fees</p>	
<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]</p>	<p><i>The administrative fee is 1 million HUF [approx. 2.7 thousand EUR and 3.4 thousand USD] for the initial notification of a concentration. A procedural fee of an additional 3 million HUF [approx. 8.2 thousand EUR and 10.1 thousand USD] applies to competition supervision procedures, the assessment of which does not raise serious concerns (Phase I investigation). In more complicated cases when a Phase II investigation is launched, an additional 15 million HUF [approx. 41 thousand EUR and 50.45 thousand USD] has to be paid.</i></p>
<p>B. Who is responsible for payment?</p>	<p><i>Unless otherwise agreed by the parties, the fee shall be paid by the notifying party.</i></p>
<p>C. When is payment required?</p>	<p><i>The initial procedural fee is payable upon the submission of the notification. If a Phase I or a Phase II investigation is launched, the additional fee has to be paid within 8 days of</i></p>

	<i>the issuing of the decision.</i>
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	<i>Payments have to be made to the GVH's bank account via wire transfer.</i>

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	<p><i>The notifying party may initiate a pre-notification consultation with the GVH prior to the filing of the notification form (please also see Section 5.)</i></p> <p><i>Once a notification is filed, the GVH's case handlers in the Merger Section examine the form and the supporting evidence. The subsequent notification must contain all the facts and data necessary for the assessment of the case. If the notification is complete and there are no competitive concerns (according to the initial screening test of the relevant Notice as described above at section 7.B.), the case handler – having obtained the consent of the competition council proceeding in the case – may issue an official certificate for the authorisation of the concentration. If the notification is deemed incomplete and the GVH requires more information, the case handler initiates a Phase I competition supervision procedure.</i></p> <p><i>If the transaction might lead to the significant impediment of effective competition and if competition effects seem to be severe, the case handlers can initiate a Phase II procedure upfront. Or, based on the information gathered in a Phase I case, the case handlers may also decide to initiate a Phase II case. This decision is based on the complexity of the case and the competition effects it might cause.</i></p> <p><i>In the case of both Phase I and Phase II investigations, the procedure of the GVH is divided into two stages: the investigation procedure, ending with the final case report on the investigation; and the procedure of the Competition Council (decision-making body of the GVH).</i></p> <p><i>Phase I investigation</i></p> <p><i>Following the receipt of the necessary data and information, the case handler prepares a report with a proposal relating to the future course of the proceeding and interim measures, if appropriate. Thereafter the Competition Council, which has the sole power to decide on the merits of the case, will deliver its decision on the basis of the final report</i></p>

	<p><i>on the investigation.</i></p> <p><i>The GVH has to decide at the end of Phase I whether the transaction will be cleared during this phase (i.e. during Phase I) or whether a full proceeding (Phase II) is to be opened.</i></p> <p><i>Phase II investigation</i> <i>In more complex cases, the GVH requires more time to investigate the relevant markets and the possible effects of the transaction. This may involve the assessment of various units within the GVH (such as the chief economist's team, or other support sections). The final decision of the GVH is then issued within a longer waiting period.</i></p> <p><i>In Phase II investigations the GVH may issue an RFI to third parties (third parties, however, may also be asked in Phase I. investigations, if necessary – although this is less common in such procedures). Before adopting a decision on the authorisation of a concentration subject to a pre- or post-condition or obligation pursuant to Article 30(3) of the Competition Act, the Competition Council may initiate negotiations with interested parties by way of posting, simultaneously with sending the preliminary position to the parties, on the website of the GVH the proposed condition or obligation, and/or the commitment with restricted access data removed, together with a notice requesting the interested parties to submit their comments, with the aim of obtaining the views of undertakings operating in the relevant market and of other persons affected by the case (i.e. market test).</i></p>
<p>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</p>	<p><i>The substantive test applicable for the GVH is the so-called 'SIEC' test. Thus, according to Article 30 of the Competition Act, the GVH may only prohibit the implementation of a concentration if such concentration results in a significant impediment to effective competition, in particular by the creation or strengthening of a dominant position. When examining a notification, the advantages and disadvantages resulting from the merger are assessed. The Competition Act provides guidelines on how the GVH should review the notification. The following aspects should generally be considered:</i></p> <ul style="list-style-type: none"> <i>i. the structure of the relevant markets;</i> <i>ii. existing or potential competition in the relevant markets, purchase and sales opportunities, the costs and risks, as well as technical, economic and legal conditions of market entry;</i> <i>iii. the market situation and strategy, economic and financial capability, business conduct, domestic and international competitiveness of the undertakings concerned; and</i>

	iv. <i>the effect of the concentration on suppliers and consumers.</i>
C. What theories of harm does the agency consider in practice?	<i>In the course of the GVH's investigation the market position of the parties before and after the transaction and the possible horizontal, vertical and portfolio effects of the transaction are examined. Horizontal effects (e.g. price increase) may occur when the parties to the merger are direct competitors. Vertical effects concern situations when the undertakings concerned operate on different levels of the supply chain. In these cases, the market power held by one of the undertakings may be transferred to another market (e.g. input or customer foreclosure). In respect of portfolio effects (e.g. tying and bundling), the GVH examines whether any harmful effects may plausibly arise from the widening product range of the undertakings as a result of the transaction.</i>
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	<p><i>There is no special substantive test for joint ventures that can permanently fulfil all the functions of an independent undertaking (full-function joint venture). For them, the SIEC test also applies.</i></p> <p><i>In the case of a concentration that is a joint venture with the purpose or effect of concerting the market practices of the participants, the concentration is examined under the rules prohibiting anti-competitive agreements (and their exemption), and thus such a concentration must be permitted if:</i></p> <ul style="list-style-type: none"> <i>i. it rationalises production or distribution, or adds to technical or economic development, or helps environmental conditions or competitiveness;</i> <i>ii. consumers will be granted a fair share of the benefits;</i> <i>iii. the limitation or elimination of competition does not exceed that which is necessary to attain the set goals; and</i> <i>iv. the merger does not enable the elimination of competition regarding a significant proportion of the relevant products.</i>
E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?	<i>The preamble of the Competition Act directly mentions 'public interest' as one of the main reasons behind the adoption of the Competition Act, but it is important to note that the public interest notion that appears in the preamble only refers to the 'public interest attached to the maintenance of competition' (and not to the other aspects of public interest, such as e.g. the competitiveness of the national economy, etc.). The Competition Act also recognises the importance of the public interest attached to the maintenance of competition in Article 67 (2) within the reasons that should be taken into</i>

account when commencing a competition supervision proceeding ex officio.

Still, there is no explicit provision in the Competition Act concerning merger cases which requires the GVH to take into account public interest considerations when assessing a merger. It should be noted, however, that Article 29/A (5) of the Competition Act relaxes the standstill obligation in connection to 'major undertakings with preferential status'. This provision⁴ can be identified as a special form of consideration of public interest.

Pursuant to Article 30 of the Competition Act, when assessing a notification, the advantages and disadvantages resulting from the concentration must be assessed. In the course of this assessment, the aspects listed in the Competition Act are followed. These aspects generally do not refer to any non-competition factors, and in practice the GVH does not consider non-competition issues in the review process. Consumer benefits resulting from economic efficiencies generally receive considerable attention in the course of the GVH's procedure, and the advantages of the merger are judged from the consumers' point of view.

In the case of mergers between media enterprises, the GVH is obliged to consult the National Media and Infocommunications Authority and request a position statement from it on the effects of the merger on the plurality of the media. If the Media Council refuses to give its consent to the merger based on the expected negative effects on the plurality of the media, the GVH must also prohibit the merger (regardless of any competitive effects), as the position statement of the Media Council is binding on the GVH (please see also the answers provided for Sections 4.D and 21.A.).

If a merger has been declared - by way of a government Decree - as having a 'strategic significance' (including the need to protect workplaces and in the interests of security of supply), Article 24/A of the Competition Act provides the Government with the opportunity to exempt transactions from the competence of the GVH that would otherwise be notifiable concentrations. (Please see also the answer provided for Section 19.A.)

⁴ In the case of a concentration resulting in the acquisition or change of control over a major undertaking with preferential status or a part thereof created in the course of the liquidation of an undertaking which is granted preferential status due to its strategic importance as defined in Article 65 of Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (hereinafter: major undertaking of preferential status), the consent of the Hungarian Competition Authority need not be sought for the exercise of the rights of control as defined in Section (1); this provision is without prejudice to the application of Sections (2) to (4).

	<p><i>Pursuant to Article 25/A of the Competition Act, a merger realised by a financing transaction necessitated by the COVID-19 virus involving a directly or indirectly majority state-owned venture capital fund or a private equity fund shall not be subject to a notification requirement whereby the venture capital fund or the private equity fund acquires, solely or jointly with other undertakings, right of control for investment protection purposes.</i></p>
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p><i>In its decision, the GVH shall</i></p> <ul style="list-style-type: none"> <i>– authorise the concentration subject to a pre- or post-condition or an obligation</i> <i>– prohibit the execution of a concentration</i> <i>– authorise the concentration without any condition or obligation.</i> <p><i>The GVH is able to make decisions without giving detailed reasoning in straightforward cases by issuing an official certificate.</i></p> <p><i>The proceeding competition council may also terminate the proceeding if it comes to the conclusion that the transaction does not constitute a merger. The case handlers may reject a notification if it does not meet the thresholds, was not submitted by the proper entity or person or it is deemed to be too early. The case handlers may also terminate a competition supervision proceeding if it had become devoid of purpose.</i></p>
<p>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</p>	<p><i>Pursuant to Article 30(3) of the Competition Act, both structural and behavioural remedies may be imposed.</i></p> <p><i>The GVH Notice N° 8/2017 on remedies details the main principles for the acceptance of remedies by the GVH.</i></p> <p><i>For further information about the process please see the answer provided for Section 10.G.</i></p> <p><i>While they are not considered formal remedies, some cases the GVH uses so-called 'verbal interventions' (when the case handlers informally signal the parties that competition concerns may arise, and the parties can modify the transaction to remove the competition problem to avoid the in-depth – or any – investigation) also play a role in the GVH's practice. In the GVH's practice, verbal interventions are becoming increasingly relevant in merger proceedings (i.e. after the formal notification had been submitted) as well.</i></p>

15. Confidentiality	
<p>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</p>	<p><i>As a general rule, pre-merger notification filings are not public, the GVH treats the facts that have been stated and the materials that have been written in relation to the pre-notification contacts as confidential (Notice N° 9/2017. paragraph 34.). According to Article 43/L(2) of the Competition Act, the documents provided and the data disclosed at the time when the pre-notification is requested or during the pre-notification contacts may be used solely for the purpose of such contacts and in the competition supervision proceedings relating to the concentration to which the pre-notification contacts pertain.</i></p> <p><i>Right after the notification is made to the GVH, the GVH publishes on its website the fact and date of the notification, the reference number of the notification, the parties to the case and a short summary of the proposed concentration in a non-confidential version, except if the treatment of the concentration as a business secret until its execution was requested in the notification.</i></p>
<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<p><i>According to Article 55 of the Competition Act, the parties have the right to access documents generated in the course of the competition supervision proceeding.</i></p> <p><i>In a proceeding initiated based on a notification, the parties may exercise their right of access to the documents of proceedings only after the completion of the investigation, once the preliminary position of the competition council proceeding in the case or, if it was delivered earlier, the report completing the investigation, is delivered to the parties. However, parties entitled to access the documents may have access before such time. In this case they have to prove that the knowledge of these documents is essential to the exercise of their right to a legal remedy against an injunction adopted during the proceeding against which a separate legal remedy may be sought.</i></p> <p><i>Access to documents may be refused if disclosure of such documents would jeopardise the legitimate operation of the Hungarian Competition Authority, the discharge of its duties and competences without any undue external influence, the efficiency of its actions in the public interest against practices prohibited in Article 11 or 21 of the Competition Act or in Article 101 or 102 of the TFEU, in particular the application of leniency pursuant to Article 78/A of the Competition Act.</i></p> <p><i>In general, the right to access the file shall not include the right to access the personal data of persons, classified information in the absence of clearance to use or inspect such</i></p>

	<p><i>information, other privileged information (e.g. bank secrets, business secrets), except where the lack of knowledge of such information would hinder the party in exercising their statutory rights and the separate act governing the protection of the data concerned does not preclude access to the file, or the special conditions for access to the data set forth in a separate act governing the protection of the data concerned are fulfilled.</i></p> <p><i>The parties also have no access to internal documents of the GVH, the European Commission and the competition authorities of the Member States which are parties to the Agreement on the European Economic Area.</i></p>
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p><i>Third parties shall be allowed access to documents after the final decision in the proceedings, or prior to the final decision if they demonstrate that access to such documents is necessary to enforce a statutory right or to meet an obligation arising from law or from an administrative decision.</i></p> <p><i>Third parties shall not be allowed to access to such information that even the parties do not have access to (see above).</i></p> <p><i>According to Section 25 of the Code of General Administrative Procedure, other Hungarian government bodies may request information from each other within the framework of national legal assistance.</i></p> <p><i>National legal assistance may be requested where any data, factual knowledge, document or other evidence is required for the requesting authority to discharge its duties.</i></p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p><i>Yes, according to Article 43/J(2) of the Competition Act, parties have the right to request that their act of notification is treated as confidential. In such cases, the GVH may not even publish the short summary of the case on its website. However, a non-confidential version of the final decision may be published.</i></p> <p><i>The notifying parties may also request that documents or information provided by them should be treated as confidential. If the GVH decides that such information or documents should indeed be treated as confidential, it may oblige the applicant or other parties to prepare a non-confidential version of the documents, in accordance with Article 55/A(5) of the Competition Act.</i></p>

<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p><i>Yes, but if the case handler rejects a party's claim that certain information contained in the notification should be treated as confidential, this decision is subject to review by the Competition Council (at the party's appeal). The Competition Council may abrogate, challenge or change the case handler's decision.</i></p> <p><i>Such an administrative review request must be filed within 8 days of the issuing of the case handler's decision.</i></p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p><i>The GVH only publishes the non-confidential versions of its decisions on its website.</i></p> <p><i>The GVH may oblige the applicant or other parties to prepare a non-confidential version of the documents that are treated as confidential. The GVH always prepares non-confidential versions of its own orders, decisions.</i></p> <p><i>The GVH has a guidance document on how to prepare non-confidential versions of documents on its website:</i></p> <p><i>(http://www.gvh.hu/data/cms1027429/szakmai_felhaszn_Tajekoztatok_ut_tajekoztato_tervezet_06_24.pdf?query=%C3%BCzleti%20titok.)</i></p> <p><i>(Please note this guide is available only in Hungarian.)</i></p> <p><i>Documents containing confidential data shall be handled separately in the case file so that they cannot be accessed by any person other than the case handler and the other public service official participating in the handling of the case in taking procedural measures, the members of the competition council proceeding in the case, and the President and Vice-Presidents of the GVH, as well as courts, other bodies or persons entitled to manage or view such data in the manner and scope set forth in an act of law.</i></p>

<p>16. Transparency</p>	
<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p><i>Yes, information about mergers is part of the GVH 's annual reports:</i></p> <p><i>http://www.gvh.hu/en/gvh/annual_reports</i></p>
<p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can</p>	<p><i>Yes, mainly (but not exclusively) in cases which are of public interest:</i></p> <p><i>http://www.gvh.hu/en/press_room</i></p>

<p>these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p>	
<p>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</p>	<p>Most decisions of the GVH are published on its official website: http://www.gvh.hu/en/resolutions</p> <p>When the proceeding is terminated by the case handler, however, is not necessarily made public.</p>
<p>E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]</p>	<p>Information pertaining to mergers can be found in the GVH's Annual Reports: https://www.gvh.hu/en/gvh/annual_reports/annual_reports</p> <p>As well as its newly published Flash Report: https://www.gvh.hu/pfile/file?path=/gvh/gyorsjelentesekek/gvh_gyorsjelentes_2020&inline=true</p>

<p>17. Cooperation</p>	
<p>A. Is the agency able to exchange information or documents with international counterparts?</p>	<p>Yes.</p>
<p>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p><i>As the competition authority of an EU member state, the GVH is engaged in intensive international cooperation with the other national competition authorities of the EU and the European Commission. Within the framework of the cooperation of the European Competition Authorities (ECA), the possibility of exchanging information relating to multijurisdictional mergers can be highlighted (for further information please see: http://ec.europa.eu/competition/ecn/eca_information_exchange_procedures_en.pdf).</i></p> <p><i>The GVH has concluded formal agreements with competition authorities outside the EU, for example Albania, China, Moldova, Serbia, the Russian Federation, Taiwan, Ukraine and Bulgaria, Croatia, Poland and Romania (before their accession to the EU). Finally, the GVH is also engaged in close professional cooperation with the competition authorities of the United States of America. Cooperation in these cases generally means that the relevant authorities exchange their professional experience, share best practices with each other and promote cooperation in the field of competition law and policy. By way of cooperation, the authorities, in particular, make available their annual reports and case descriptions to each other, they inform each other about professional events and provide</i></p>

	<p>assistance to each other in establishing relations with the respective legislative, executive and judiciary bodies of their states.</p> <p>For further information please visit the website of the GVH: https://www.gvh.hu/en/gvh/international_relations/international_bilateral_cooperation_agreements/6416_en_international_bilateral_cooperation_agreements</p>
<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.</p>	<p><i>The Competition Act does not permit the exchange of case related information that has been provided by the parties or third parties without their prior consent.</i></p>
<p>D. Is the agency able to exchange information or documents with other domestic regulators?</p>	<p><i>Pursuant to 64/B(5) of the Competition Act, the authority, government or municipal body subject to inquiry to provide data or documents shall make available the personal data or privileged information that is necessary to comply with the inquiry to the Hungarian Competition Authority, unless this is precluded by the act of law governing the protection of the data concerned.</i></p>

18.Sanctions/penalties	
<p>A. What are the sanctions/penalties for:</p> <ul style="list-style-type: none"> i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency? 	<p><i>The sanctions/penalties for:</i></p> <ul style="list-style-type: none"> <i>i) Failure to file a notification: daily fine between 50 000 and 200 000 HUF (approx. 137 and 548 EUR) from the triggering event (e.g. the conclusion of the contract) until the initiation of the GVH's proceeding, or, if applicable, until the GVH comes into possession of information that will reasonably warrant the initiation of a competition supervision proceeding for breach of the standstill obligation.</i> <i>(ii) Incorrect/misleading information in a notification: the GVH shall withdraw or amend its decision where the grant of the authorisation by the decision, which has not been reviewed by the court, was based on misleading information concerning a fact which was material to the adoption of the decision.</i> <i>(iii) Failure to comply with information requests: a procedural fine may be imposed on</i>

those who engage in an act or demonstrate a conduct which has the object or result of protracting the proceeding or preventing the establishment of the facts of the case, or on those who otherwise culpably fail to meet an obligation. Those that culpably fail to meet an obligation shall be ordered by the case handler or the competition council proceeding in the case to pay the additional costs thus incurred. The minimum procedural fine shall be 200 000 HUF (approx. 548 EUR) for undertakings and 50 000 HUF (approx. 137 EUR) for natural persons not qualifying as undertakings, and the maximum shall be, in the case of undertakings, one per cent of the net turnover in the business year preceding the adoption of the injunction imposing the procedural fine, and 500 000 HUF (approx. 1370 EUR) for natural persons not qualifying as undertakings.

(iv) Failure to observe a waiting period/suspension obligation: daily fine between 50 000 and 200 000 HUF (approx. 137 and 548 EUR) from the triggering event (e.g. the conclusion of the contract) until the initiation of the GVH's proceeding or, if applicable, until the GVH comes into possession of information that will reasonably warrant the initiation of a competition supervision proceeding for breach of the standstill obligation, and if the concentration cannot be authorised, the GVH may require the elimination of the harmful effects of the concentration or restoration of the competitive conditions that existed before the concentration, setting an appropriate time limit for the termination of the concentration, in particular the separation or divestiture of the undertaking or part of the undertaking, assets, interests or shares that were merged, integrated or acquired by another undertaking as a result of the concentration, or the termination of joint control, or impose another appropriate obligation required for the achievement of such objective.

(v) Breach of interim measures: The competition council impose an enforcement fine if performance of such specific act cannot be effectively enforced through any other means. The amount of the enforcement fine is the same than the procedural fine.

(vi) Failure to observe or delay in implementation of remedies: fines with a maximum of 10 percent of the net turnover, achieved in the business year preceding that in which the decision is reached and the GVH shall withdraw or amend its decision where the undertaking subject to the decision is in breach of any obligation attached to the decision.

The decision may be withdrawn within five years of the expiry of the time limit for the execution of the obligation, or in the case of a continuing obligation, the violation of the obligation.

(vii) Implementation of transaction despite the prohibition from the agency: fines with a maximum of 10 per cent of the net turnover, achieved in the business year preceding that

	<p><i>in which the decision is reached and the GVH may require the elimination of the harmful effects of the concentration or the restoration of the competitive conditions that existed before the concentration, setting an appropriate time limit, the termination of the concentration, in particular the separation or divestiture of the undertaking or part of the undertaking, assets, interests or shares that were merged, integrated or acquired by another undertaking as a result of the concentration, or the termination of joint control, or impose another appropriate obligation required for the achievement of such objective.</i></p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p><i>i) failure to file a notification: the party or parties which are responsible for making the notification and failed to notify.</i></p> <p><i>ii) incorrect/misleading information in a notification: the party or parties which are responsible for providing misleading information</i></p> <p><i>iii) failure to comply with information requests: the addressee of the information request.</i></p> <p><i>iv) failure to observe a waiting period/suspension obligation: the party or parties which acquire control.</i></p> <p><i>v) breach of interim measures: the party which the interim measures pertain to</i></p> <p><i>vi) failure to observe or delay in implementation of remedies: the party which the remedies pertain to.</i></p> <p><i>vii) implementation of transaction despite the prohibition from the agency: the party or parties which acquire control.</i></p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p><i>The GVH can directly impose these sanctions.</i></p>
<p>D. Are there any recent or significant fining decisions?</p>	<p><i>The GVH imposed fines because of early implementation several times. Find the press</i></p>

	<p>release of the most recent fining decision that was translated into English here: https://gvh.hu/en/press_room/press_releases/press_releases_2018/gvh_once_again_imposes_a_fine_for_the_implementation_of_a_merger</p> <p>The GVH more recently, in September 2020, imposed a fine of 15,4 million HUF (approx. 42 177 EUR) for an early implementation of a merger (case VJ/15/2020).</p> <p>The GVH also imposed fines and revoked its prior clearance decisions due to the parties providing misleading information (see for example cases VJ/14/2017., VJ/15/2017 and VJ/31/2018.). You may find more information on the latter case on the GVH's website: https://www.gvh.hu/en/press_room/press_releases/press_releases_2018/the_hungarian_competition_authority_has_revoked_it</p> <p>A significant procedural fine of 20 million HUF (approx. 54 775 EUR) was also imposed in 2020.</p>
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19. Independence	
<p>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</p>	<p>Since 2013 the Competition Act provides the Government with the opportunity to exempt transactions from the competence of the GVH that would otherwise be notifiable concentrations. Article 24/A of the Competition Act states that the Government may, in the public interest, in particular to preserve jobs and to assure the security of supply, declare a concentration of undertakings to be of strategic importance at the national level. For such concentrations, the GVH has no power to investigate it, and the acquirer is not obligated to notify the merger.</p> <p>Past experience shows that the reasoning of the decrees which declare the concentrations to be of strategic importance is relatively short and primarily based on the reasons (preserving jobs, assuring the security of supply) listed under Article 24/A of the Competition Act (see our detailed answer on the reasoning of the exempted concentrations in Section 14.E).</p> <p>The Government decrees – as pieces of legislation – are published in the official journal of Hungarian Legislation (in the so-called 'Magyar Közlöny', the Hungarian Gazette, available</p>

	<p>at: http://www.magyarokzlony.hu/).</p> <p><i>This exemption was reviewed by the Constitutional Court of Hungary, which found it to be in accordance with the Fundamental Law of Hungary.</i></p> <p><i>It is important to emphasise that the public interest exemption only affects the competence of the GVH. Consequently, concentrations which meet the turnover thresholds stipulated by the EC Merger Regulation have to be notified to the European Commission, i.e. to DG COMP.</i></p>
B. What are the grounds for such ministerial intervention?	<i>N/A – see above.</i>
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	<i>N/A</i>

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	<p><i>Decisions of the GVH may be appealed within 30 days from the receipt of the decision. It must be addressed to the GVH, then the GVH forwards the appeal along with the case file to the Budapest-Capital Regional Court of Appeal (in Hungarian: Fővárosi Törvényszék), which, in its full judicial review procedure may alter the decision of the GVH.</i></p> <p><i>The judgment of the Budapest-Capital Regional Court of Appeal may be contested before the Curia (in Hungarian: Kúria).</i></p> <p><i>A summary on the Hungarian Judicial System is available in English at the official homepage of Hungarian courts:</i></p> <p>https://birosag.hu/en/hungarian-judicial-system</p> <p><i>The courts decided on merger-related decisions of the GVH which were appealed against in an average of 476 days per case.</i></p>
B. Describe the procedures for protecting confidential	<i>Section 163 of the Code of Civil Procedure states that</i>

<p>information used in judicial proceedings or in an appeal/review of an agency decision.</p>	<p><i>(1) Notwithstanding the provisions laid down in section 162, no copy or extract shall be made of or from the minutes of a hearing from which the public was excluded with a view to preserving any classified data, or any other document containing classified data. In such event, the inspection of documents shall be subject to the permission of the classifier, to be granted in accordance with the rules laid down in the Act on the protection of classified data, and to the conditions set by the president of the court.</i></p> <p><i>(2) With regard to documents containing business secrets, professional secrets, or any other secret specified by an Act but not mentioned in paragraph (1), the parties, prosecutors, other persons participating in the procedure and their representatives may exercise their right to access and make copies of documents subject to the order and rules set by the proceeding judge and after making a written statement on undertaking the duty to preserve any such secret. If the person entitled to grant an exemption from confidentiality declares in due time and in accordance with section 322 (2) that he does not consent to the inspection of the document containing business secrets, professional secrets, or any other secret specified by an Act, no part of the document containing such secrets may be inspected, copied, or made an extract from by any person other than the court, the keeper of the minutes or the transcriber.</i></p> <p><i>(3) If the subject matter of the action is whether or not the content of a document qualifies as data of public interest, the document concerned shall not be inspected during the proceedings, and, after the conclusion of the proceedings with final and binding effect, it may be inspected or copied only to the extent necessary to decide the action. This provision shall not apply to the court, the keeper of the minutes, the transcriber and to the person participating in the procedure who submitted the document.</i></p> <p><i>(4) The inspection of the minutes mentioned in paragraph (1) and of a document containing any secret mentioned in paragraphs (1) to (3), the provision of information regarding the contents thereof and the copying of or making extracts from a document containing any secret mentioned in paragraphs (2) and (3) shall be permitted only to a person specified in an authorisation for inspection granted by the classifier or by a person entitled to grant an exemption from confidentiality.</i></p>
<p>C. Are there any limitations on the time during which an appeal may be filed?</p>	<p><i>The request for judicial review must be filed within 30 days of the delivery of the decision.</i></p>

21. Additional filings

A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?

No additional filings are required, however, in the case of concentrations between media enterprises, the GVH is obliged to consult the National Media and Infocommunications Authority, more precisely its Media Council, and request a position statement from it on the effects of the merger on the plurality of the media. If the Media Council refuses to give its consent to the merger based on the expected negative effects on the plurality of the media, the GVH must also prohibit the merger (regardless of any competitive effects), as the position statement of the Media Council is binding on the GVH.

The National Media and Infocommunications Authority's procedure is initiated on the request of the GVH after its own merger procedure has been started – alternatively, the parties may also request the Media Council's position statement before filing the merger notification and submit it as an annex of the notification form in order to speed up the review process.

The Media Council's opinion is legally binding on the GVH. This means that:

- i. If the Media Council grants approval: the GVH – on the basis of its competition related assessment – may still prohibit the merger, or it may clear it (with or without conditions).*
- ii. If the Media Council refuses to grant approval: the GVH must prohibit the merger irrespective of the potential outcome of its own assessment.*
- iii. If the Media Council grants approval subject to conditions: the GVH – on the basis of its competition related assessment – may still prohibit the merger, or it may clear it (with or without competition law-based conditions).*

In the majority of energy market related cases, refusal by the Hungarian Energy and Public Utility Regulatory Authority to grant authorisation is likely to result in a case being unsuccessful. The decisions of the HEA, however, are not binding on the GVH. Consequently, the GVH may still authorise a transaction based on its substantive competition assessment. But in practice, eventually the merger cannot be executed legally because of the lack of the approval of the HEA.

In the case of concentrations of credit institutions or insurance undertakings, special approval must be obtained – in addition to the GVH's authorisation – from the Financial Stability Board of the National Bank of Hungary.

As regards concentrations of businesses engaged in the operation of pharmacies, the Medicines Supply Act Article 75) binds the GVH:

A concentration shall not be authorised if it would give – direct or indirect – control to a given business association or company group, or the same natural person over more than four pharmacies, moreover, a concentration shall not be authorised if it would give – direct or indirect – control to a given business association or company group, or the same natural person over three or more pharmacies in a community with a population of less than twenty thousand.

According to Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests, foreign investors may acquire, in an economic entity registered in Hungary with activities specified under paragraph (4), by establishing an economic entity or by acquisition a) directly or indirectly ownership share beyond 25% – in the case of public limited companies, ownership share beyond 10% – or b) controlling interest as specified in the Code of Civil Procedure after notifying the minister designated in the Government decree and receiving confirmation of the acknowledgement of this notification.

The notification obligation under (1) holds also where the foreign investor's acquisition of under 25% would result in the total share of foreign investors in an economic entity registered in Hungary and with activities specified under (4) – with the exception of public limited companies –exceeding 25% altogether.

The activities subject to the notification obligation are the following:

- a) manufacture of weapons and ammunition as well as of military equipment and devices subject to licence,*
- b) manufacture of dual use products,*
- c) manufacture of intelligence devices and equipment specified in the government decree on the detailed rules of obtaining a licence for military activity and certifying businesses,*
- d) provision of financial services specified in the act on credit institutions and financial enterprises and from among auxiliary financial services, the operation of a payment system,*
- e) services governed by the act on electricity,*
- f) services governed by the act on natural gas supply,*
- g) services governed by the act on water public utility services,*
- h) services governed by the act on electronic communications,*
- i) the set-up, development and operation of electronic information systems governed by the act on the electronic information security of central and local government agencies.*

22. Closing Deadlines	
A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	<i>The authorisation does not oblige the parties to execute the transaction. Therefore, a situation may arise – either because of objective reasons (for example another authorisation must be sought as well) or because of subjective reasons (for example lapse of interest) – that the GVH authorises the transaction, but the concentration is eventually not executed</i>
22. Post Merger review of transactions	
A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	<p><i>An investigation may be reopened – more precisely, the decision is revoked, and a new proceeding is initiated – if the GVH becomes aware that its decision was based on misleading or incorrect information supplied by the parties (see our answer to question 18/A above).</i></p> <p><i>According to Article 77(1) of the Competition Act, the GVH shall conduct a post-investigation (follow-up investigation) ex officio to monitor compliance with the enforceable decision of the competition council proceeding in the case, having regard to the fulfilment of the pre- or post-conditions set out in Article 30(3) of the Competition Act.</i></p> <p><i>A follow-up investigation may be opened within five years from the expiry of the time limit for the performance prescribed in the decision of the competition council proceeding in the case, or in the case of continuous obligations or post-conditions pursuant to Article 30(3), from the last day of the duration of the obligation or condition as prescribed in the decision, or, in the absence of any such obligation or condition, from the date the decision becomes final. Such time limit shall not include any period during which the enforcement of the decision cannot be executed.</i></p>
B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?	<p><i>The GVH – aside from the previously described follow-up investigations, which are mandatory by law – does not conduct ex-post analyses of cleared mergers. However, it regularly updates and publishes its ex-ante Impact Assessment, which takes into account merger decisions.</i></p> <p><i>Find more information and the latest publication here:</i> https://www.gvh.hu/en/gvh/analyses/ex_ante_impact_assessment</p>

