

All about the Hungarian Competition Authority



Hungarian
Competition
Authority

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Descriptive booklet about the
Hungarian Competition Authority

2017

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THE ESTABLISHMENT OF THE HUNGARIAN COMPETITION AUTHORITY

The Hungarian Competition Authority (*Gazdasági Versenyhivatal* — *GVH* or *Authority*) is an autonomous public administrative authority safeguarding freedom and fairness of competition on the market. It reports directly and only to Parliament. The Authority began its operation on 1 January 1990 when the Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices entered into force.

The Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (Competition Act), that has been amended several times, entered into force on 1 January 1997. This Act defines the rules of Hungarian competition law, the legal status of the GVH, its organisational and operational framework, as well as its proceedings. Hungary's accession to the European Union represented a turning point in the history of the Authority. It resulted in the GVH becoming a member of the European Competition Network¹, which consists of the European Commission's DG Competition and the national competition authorities of the Member States. It also meant that the GVH had to start to apply European Union competition law in addition to the Hungarian competition law.

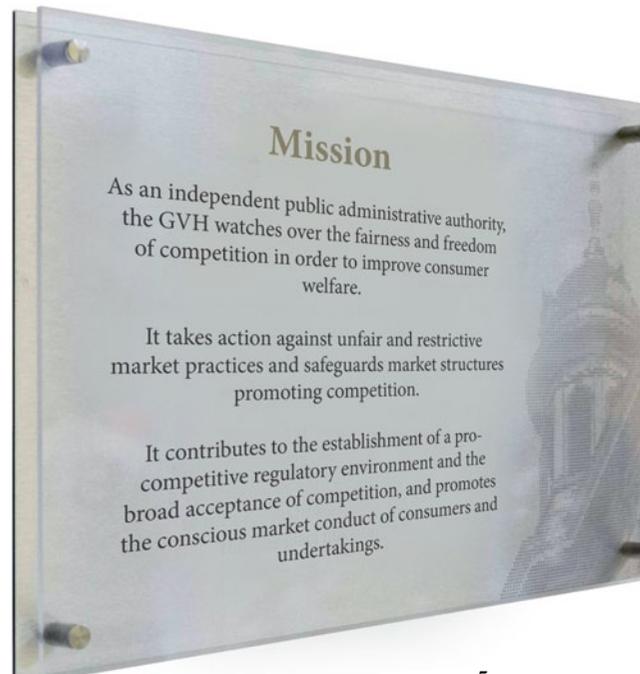
1 European Competition Network - ECN

THE TASKS AND RESPONSIBILITIES OF THE HUNGARIAN COMPETITION AUTHORITY

The main task of the GVH in relation to freedom and fairness of competition in the operation of a market economy is to enforce those competition law provisions within its competence that represent the public interest and that increase long-term consumer welfare, as well as competitiveness. It is also to use all available instruments in support of competition or, where competition is not possible or does not provide the best result, to assist in the adoption of state regulations that aim to create or replace competition.

Competition on a market is a mechanism of a market economy, and generally conveys best the needs of a society and the efficiency constraints of undertakings, and thus contributes to an increase in social welfare (including consumer welfare, competitiveness and efficiency and, ultimately, economic growth, employment and the standard of living). It is the responsibility of the GVH to ensure that this mechanism operates properly and to prevent any restriction or distortion of it.

The activities performed by the GVH for the purpose of protecting competition are based on three pillars. Firstly, as a **competition supervisory authority**, it enforces the provisions of the Hungarian Competition Act and of the other legal instruments falling under its competence, including European Union competition law. Secondly, within the framework of **competition advocacy**, it uses all of the instruments available to it to influence government decisions in support of competition. Thirdly, in order to ensure that competition is accepted by society, the Authority also contributes to the **development of competition culture and the culture of the conscious decision-making of consumers**. It does this by disseminating general information on competition policy and by raising competition awareness in public discourse concerning the legal and economic aspects of competition. By providing a description of competition regulations and by introducing the organisational and operational tasks of the GVH, this brochure intends to increase the awareness of market sector participants and consumers of competition law, and to thereby promote the enforcement of the rights conferred on them by competition law.



THE LEGAL STATUS, ORGANISATION AND CORE VALUES OF THE AUTHORITY

The GVH is an **autonomous public administrative authority**. It is independent from the Government and reports only to Parliament. The President of the Authority reports to Parliament annually on the activities of the GVH and on how free and fair economic competition is maintained, relying on the experiences it has obtained in the application of competition law. The GVH is a budgetary authority with nationwide competence and therefore does not have any regional organs. The staff members of the GVH responsible for proceedings relating to formal or informal complaints and competition supervision proceedings are called case handlers.

The GVH is headed by a **President**, who is assisted by two **Vice Presidents** and the **Secretary General** in his work. The President is appointed by the President of the Republic upon the proposal of the Prime Minister for a period of six years, while Vice Presidents are proposed to the Prime Minister by the President of the GVH. If the Prime Minister agrees, he makes a proposal to the President of the Republic for an appointment period of six years. Simultaneously with the appointment, the President of the Republic assigns one of the Vice Presidents to perform the tasks of the Chair of the Competition Council of the GVH, while the other Vice President (known as the general Vice President) is responsible for controlling and supervising the investigating sections. The office of the GVH is headed by the Secretary General under the direction of the President.

The **investigating sections** reporting to the general Vice President in charge of them are organised according to types of cases. In competition supervision cases, the investigating sections decide to launch competition supervision proceedings and make arrangements for the investigations required for decision-making. In this context, they:

- regularly monitor competition and the operation of the markets;
- decide whether to launch competition supervision proceedings based on the formal and informal complaints received by the Authority, or start proceedings on their own initiative due to a suspected violation of law;
- conduct all competition supervision proceedings launched on their own initiative, terminate the proceeding as appropriate or prepare a proposal for the decision to be adopted by the Competition Council;
- conduct post investigations to control the implementation of the decisions of the Competition Council of the GVH.

Apart from these activities, the investigating sections also take part in the opening of draft legislation and other concepts submitted to the Authority for discussion, as well as in other competition advocacy activities of the GVH. They also take part in the activities performed by the GVH in relation to the development and dissemination of competition and consumer culture.

Of the investigating sections, the **Consumer Section** is responsible for handling certain formal and informal complaints, for conducting investigations in relation to cases on unfair commercial practices against consumers with a significant effect on competition and for enforcing the provisions on unlawful comparative advertising and on the unfair manipulation of business decisions. The **Antitrust Section** is responsible for investigating abuse of dominance cases, restrictive agreements, and concerted practices. The **Cartel Section deals with** secret cartels, which represent the most severe form of competition restriction (price fixing, market sharing). The Cartel Section is assisted by the **Cartel Detection Section**, which reports directly to the President and facilitates the detection of cartels through the collection of intelligence and fact finding. The concentrations of undertakings are controlled by the **Merger Section**. The staff of the section mostly act upon the received notifications of concentrations in order to perform an ex ante control of the long-term effects of changes to the market structure (to prevent the emergence of anticompetitive market structures such as monopolies). Due to the specificities of merger control, the Merger Section is an investigation section that does not report directly to the general Vice President of the GVH but to the Chair of the Competition Council of the GVH. During their work the investigating sections also monitor the practice of the Court of Justice of the European Union, the European Commission and of the Member States. The competition supervision and competition advocacy activities of the investigating sections are also assisted by other organisational units. Thus the **Legal Section** offers institutionalised support by legal experts. In order to improve the quality of economic analysis and increase the role of analytical work, the **Chief Economist's Section** is responsible for preparing thorough theoretical and, whenever possible, empirical economic analyses in the context of individual competition supervision proceedings.

In competition supervision cases, the **Competition Council of the GVH** adopts resolutions on the substance of the competition supervision proceedings of the GVH and some of the orders terminating the proceedings. The Competition Council operates as a separate decision-making body within the Authority. It also makes arrangements for the disclosure of its resolutions to the public and for their enforcement. The Competition Council also assesses the applications that are submitted for legal remedies against the so-called interim decisions adopted by the case handlers during competition supervision proceedings. The activities of the Competition Council are organised and controlled by the Chair of the Competition Council. The Competition Council decides on individual cases in a three- or five-member Council, appointed by the Chair of the Competition Council. Pursuant to the provisions of the Competition Act, the members of the Competition Council are absolutely independent in their competition supervision proceedings: when they adopt the resolution, they are only subject to the law, no instructions can be given to them. The Competition Council is assisted in its work by the **Decision-Making Support Team**, while the **Court Representation Section** represents the GVH in court if a legal remedy is sought against one of its decisions. Apart from their

responsibilities in relation to competition supervision, the members of the Competition Council and the staff of units working alongside the Council also take part in the activities performed by the GVH in relation to competition advocacy and the development of competition culture.

The **International Section**, which reports directly to the President, has responsibilities relating to international cooperation, which includes the application of European Union law and cooperation within the European Union. Furthermore, it also contributes to the enforcement of competition law and to activities relating to competition advocacy and the development of competition culture.

The registration and administration of consumer complaints, the number of which has increased in recent years, including the procedures related thereto, are performed by the **Consumer Service Section**, which operates under the supervision of the Secretary General of the Authority. The filtering of complaints allows the investigating sections to conduct more effective enforcement focused work. The activities of the GVH relating to the development of competition and conscious consumer culture are carried out and coordinated by staff members of the **Competition Culture and Communications Section** under the supervision of the Secretary General; they are specifically responsible for the advancement of competition culture. Other units reporting directly to the Secretary General, including the **Human Resources Section**, the **IT and Document Management Section** and within this, the **Document Management Team** and the **Section for Accounting**, are responsible for assisting in the day-to-day operation of the Authority.

— Core values of the Authority

Legality and due process. The GVH works in compliance with Hungarian and EU laws, respecting and promoting the rights of persons involved in proceedings, and meeting expectations relating to the mutual cooperation of parties in proceedings. All staff members of the GVH must proceed impartially and in compliance with the requirement of due process. The requirement of due process demands that procedural rules laid down in the Fundamental Law, in other legislation or in the directly applicable legal acts of the European Union that are binding in their entirety are observed in the course of case administration in the Authority.

Client focus. Client and public focus must become core values permeating the entire organisational culture. It is essential that the proceedings of the GVH are transparent and predictable and that in the course of performing their duties, employees do not place unnecessary burdens on clients and engage in open and two-way communication. The process of the professionalisation of customer service is present in the whole of the public administration sector; employees working in this area master abilities and skills relating to customer service and client relations, in addition to their professional competences. The actions and attitude of customer service employees have a decisive influ-



ence of the image and reputation of the entire institution; consequently, the development of the required competences must be a priority.

Professionalism. The GVH requires its employees to behave in a professional manner at all times and promotes professionalism as a core value of the entire operation of the GVH. To this end, work must be performed to high professional standards and professional considerations must be consistently enforced. The all-encompassing requirement of professionalism is conducive to the GVH being efficient in its operations, effective in its actions, law-abiding, thorough and consistent in its decisions, thereby preserving and enhancing its professional prestige.

Cooperation of employees. In their work, employees focus on the attainment of the corporate objectives formulated with their participation and, in addition to striving for good individual performance, they assist one another to create a cohesive community and to achieve common goals. The GVH considers it a priority that employees are willing to cooperate with each other as required for the professional performance of their tasks. This requirement is actively promoted by the GVH amongst its staff.

Employee recognition. The staff of the GVH perform their responsibilities with professional loyalty to the mission, values and strategic objective of the GVH. In return, within the constraints of the law, the GVH rewards, both financially and ethically, its

employees for serving the public and working to high professional standards, and facilitates their professional development.

Transparency and predictability. The GVH is committed to the highest degree of transparency in its operations and to making them accessible to the broad public. Transparency and predictability are required by the principle of due process, which promotes legal certainty: consistent law enforcement on the side of the GVH and voluntary compliance and enforcement on the side of market participants.

The GVH attaches great importance to transparency and disclosure in the context of its autonomous status: on the one hand, this supports responsible operation and lends credibility to the GVH, and on the other hand, it is a prerequisite for high-quality comments and critiques from the professional competition community, which is particularly important for an independent competition authority, and which the GVH welcomes.

Integrity. GVH employees are obliged to report to their direct superior or to the appropriate authority with competence in the case of any act of corruption, use of public funds and public assets in a wasteful, non-transparent manner or for private purposes, any activities in violation of the requirement of due process, as well as any suspicion of the above. The GVH also promotes the practical application of professional ethics through internal rules (code of ethics), which guarantees the protection of complainants and the impartial investigation of complaints.

Partnership. The GVH strives for cooperation with external stakeholders affected by its work. It takes into consideration the general economic and market environment and the views of other stakeholders. In particular, the GVH regards as special partners the sectoral supervisory bodies responsible for the economic regulation of sectors as well as other public administrative bodies and strives to cooperate with them in various forms, including the coordination of actions to address particular problems and the sharing of the available instruments that are available to the various authorities.

The GVH also monitors the work of other institutions working in competition policy and incorporates the experiences gained by these institutions into the work of the GVH. This is primarily achieved by adapting the interrelations, approaches and methods of the institutions to meet the specific needs of the authority. Such institutions include competition authorities and sectoral regulators of other countries as well as international organisations (in particular the ECN, OECD, International Competition Network). The GVH also considers persons, organisations, institutions and non-governmental organisations working in the Hungarian or international professional communities and academia to be important cooperation partners.

LEGAL BACKGROUND OF THE OPERATION AND LAW APPLICATION TASKS OF THE AUTHORITY

— Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices

The Competition Act contains the majority of the substantive rules of Hungarian competition law pertaining to the courts and the GVH. It therefore covers general unfair business practices, the unfair manipulation of business decisions in relation to competition, unlawful comparative advertising as well as restrictive practices (antitrust), and also sets out procedural rules for the enforcement of the rules within the scope of the substantive law.

The Competition Act **generally** prohibits any **unfair market practice**. It also provides a list of unfair business practices that violate the law. These include, e.g., injuries to reputation, violations of business secrets, invitations to boycott, imitations, unfair comparative advertising and violations of the rules of tendering. It is important to stress that as the prohibited business practices in such cases typically result in lawsuits between competitor undertakings, and thus fundamentally violate private interests, the competition rules are **not enforced by the GVH**. However, the parties may bring an action in **court**.

In respect of the other category of rules contained in the Competition Act (including **unfair manipulations of business decisions, unlawful comparative advertising, prohibition of cartels and other restrictive agreements, or abuses of dominant positions**), the GVH proceeds in the competition supervision proceeding as the authority responsible for protecting and enforcing the public interests related to competition. However, since November 2005 any party suffering damage as a result of a violation of law may also enforce these rules directly in a court individually on its own initiative. Nevertheless, the application of the **merger control** provisions in the form of preliminary authorisations falls within the exclusive competence of the GVH.

The Competition Act aims to protect fair competition between market players by prohibiting the **unfair manipulation of business decisions**. That is, it aims to protect those market decisions that are not influenced by unfair competition instruments. If a manufacturer, distributor, or advertising undertaking deceptively presents any goods or services to trading parties with more favourable features than their actual features, it will result in a more favourable situation for him on the market compared to the competitors using fair instruments, and will also distort market conditions.



Furthermore, the Competition Act sets the requirements for lawful comparative advertising; that is, it specifies the cases where **comparative advertising is unlawful**. Comparative advertising in itself is not forbidden but it must satisfy the following criteria:

- it may compare exclusively goods intended for the same purpose or meeting the same needs,
- it must objectively compare one or more material, relevant, representative and verifiable features of the goods,
- if it compares the prices of goods, it must do so objectively,
- for products with designation of origin, the comparison may relate exclusively to products with the same designation.

Unlawfully made comparisons may distort the freedom of decision-making, the choice, of the addressee of the advertisement.

The same legal frameworks apply to horizontal (between competitors) and vertical (between undertakings operating at two different levels of the production scale, e.g., manufacturer-distributor) **agreements restricting competition**: any agreement restricting competition is null and void. However, there are some exceptions and exemptions from this general prohibition. *De minimis* agreements are not pro-

hibited (in which case the joint market share of the participating undertakings is not higher than 10%), while agreements between undertakings under the same control are not deemed restrictive agreements. Pursuant to the provisions of the Competition Act, an agreement may be exempt from the prohibition if the following conditions are met: it results in favourable economic impacts and a fair share of the benefits arising from the agreement are enjoyed by consumers, while the agreement does not restrict competition more than is absolutely necessary to achieve those benefits and competition does not disappear completely as a result of the agreement. Group exemption regulations make it easier to establish whether any agreement between undertakings fulfils these requirements or not. The undertakings must decide themselves, and they may have to prove in a competition supervision proceeding that any agreement restricting competition is exempt from the general prohibition either individually, by fulfilling the requirements set out under the Competition Act, or in compliance with one of the group exemption regulations; the GVH does not (and may not) adopt any formal decision on the exemption of the agreement.

The secretly implemented, so-called hardcore competition restrictions, the **cartel agreements** represent the most severe cases of agreements restricting competition. These agreements relate to the direct or indirect fixing of sales prices among competitors, market sharing by the competitors (including bid rigging) or the allocation of production or sales quotas, and therefore, they may not be considered exceptions, or be eligible for exemption.

With the aim of providing incentives to cartel participants to put an end to their participation in a cartel, and thus to increase the number of whistle blowers, the GVH published a Notice on **leniency** in 2004. These rules were incorporated into the Competition Act as from 1 June 2009. In general terms, by providing information about the existence of a cartel, and by submitting evidence thereof, a cartel member can be granted immunity or the fine imposed by the GVH on the cartel member can be reduced. A new tool in the fight against cartels is the reward that is given to informants who provide indispensable information on a cartel. A new tool in the fight against cartels is the reward that is given to informants who provide indispensable information on a hard core cartel. This provision entered into force on 1 April 2010. The **informant** is eligible for the reward if the conditions laid down in the Competition Act are met.²

It needs to be noted that since 1 September 2005, the Criminal Code has also prohibited (1) any agreement that restricts competition in a **public procurement or concession tender procedure** by fixing the prices (fees) and other contractual terms and conditions or by market sharing for the purpose of manipulating the outcome

² Further information on the reward for informants is available at http://www.gvh.hu/fogyasztoknak/informatori_dij.

of the tender, (2) concerted activities, or (3) participation in decision making by an association of undertakings in order to restrict competition. The Criminal Code qualifies the above acts as **crimes**, punishable with imprisonment of one to five years. It is important to note that anyone who has cooperated with the GVH under the leniency policy on the basis of the Competition Act may receive, pursuant to the Criminal Code, immunity from the imposition of a criminal sanction, or a criminal sanction may be mitigated without restriction in cases worth for such appreciation.

A special case within the overall concept of agreements is a **decision of an association of undertakings** (social organisation of undertakings, public corporations, associations or other similar organisations, such as industry federations, interest protection organisations, chambers) **restricting competition**, which is also prohibited. This prohibition was included in the Competition Act to prevent the avoidance of legal consequences by referring to any agreements being concluded by an association in which the undertaking is only a member and not by the undertaking itself. These organisations can influence the market conduct of the undertakings belonging to them (members of the organisations) using their legal or factual instruments, through which they also engaged in market conduct themselves.

In relation to a **dominant position**, the principle of abuse is applied, i.e. it is not prohibited to have a dominant position, but any abuse of it is prohibited. An undertaking is in a dominant position on the market if it can make its economic decisions largely independent from the other market actors. In this special market situation, involving a lower degree of competition, the undertaking in a dominant position has increased liability when it makes its business decisions. It may constitute an abuse of dominant position, e.g., if an undertaking uses its dominant position to restrict competition, it hinders the market entry of other undertakings without justification, applies excessively high prices damaging consumers, or, on the contrary, extremely low prices below costs in order to drive out competitors from the market, or applies unilaterally detrimental terms and conditions to its customers.

Merger control is based on a mandatory preliminary authorisation system. The authorisation of the GVH is required for the merger of any undertakings with a turnover higher than the threshold defined under the Competition Act. Without the authorisation of the GVH, the merger may not be carried out. If the undertakings go ahead with the merger despite the prohibition, the GVH may launch proceedings on its own initiative. When granting its authorisation, the GVH analyses the impact of the merger on the structure of the relevant market. Since November 2013 the Government has had the power to exempt certain concentrations, deemed in the public interest, from the merger control proceedings of the GVH.

The GVH can protect competition by not only conducting competition supervision proceedings into the conduct of individual undertaking(s) but by also surveying the general competition processes of a particular sector or market. The Competition Act

authorises the President of the GVH to order a **market analysis** or a **sectoral inquiry** to promote the discharge of its responsibilities more effectively and efficiently or if the market processes observed in a particular sector indicate any infringement or distortion of competition. In the course of a market analysis, the operation of particular markets, market developments and market trends are analysed relying on information in the public domain or on data collected on a voluntary response basis. Where necessary, external experts or consultants may also be called in. In contrast, during sectoral inquiries a report is prepared based on a detailed analysis of the information collected from market actors. The outcome of market analyses and sectoral enquiries is later used as a basis of further activities of the GVH (specific competition supervision proceedings, competition advocacy activities or the development of a culture of competition). The two instruments are different in that a market analysis may be started at the GVH's discretion while a sectoral enquiry may be commenced only if market circumstances indicate a distortion or restriction of competition.

— European Union Competition Law

On 1 May 2004, Hungary joined the European Union. This resulted in changes to the application of competition law. Simultaneously with enlargement, the European Union competition law reform package entered into force in the European Union, and imposed the task of ensuring compliance with European Union competition rules not only on the European Commission but also on the national competition authorities (i.e. the GVH in Hungary). **The competition rules under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)** prohibit agreements restricting competition and abuse of dominant position on the common market and their contents are in harmony with the applicable provisions of the Competition Act in terms of the prohibition of agreements restricting competition and abuse of dominant position. If the **GVH** suspects any violation of law, it is **entitled** and also **obliged to apply** the law of the European Union (i.e. start a proceeding based on the assumed violation of the European Union competition law) if the conduct may have an effect on trade between Member States. The 'effect on trade between Member States' concept is a complex concept with the most essential message that such a conduct can have an actual or potential, indirect or direct effect on competition even between Member States. This effect may take the form of influencing market conduct across actual borders (e.g., agreements concerning export-import activities) or modifying the structure of competition (e.g., agreements closing the national market, restricting competition coming from abroad, conduct based on dominant position). In such proceedings the GVH primarily applies, as **substantive law**, the competition rules of the TFEU, other European Union legal acts (directives, regulations, Commission communications), as well as the legal principles developed in the case law of the European Commission and the European Court of Justice to date, in its proceedings conducted under Hungarian **procedural law**. The substan-

tive law provisions of the Competition Act can be applied parallel with the above. In the application of the competition rules of the TFEU, the members of the ECN cooperate closely with each other in order to ensure the efficient and consistent enforcement of law. The main rules of cooperation are set out in Council Regulation (EC) No 1/2003, which defines the procedural framework for the application of European Union competition rules.

Accession to the European Union has also brought changes in the area of merger control. In the case of **mergers with a European dimension**, i.e. any concentration of undertakings with a turnover higher than the threshold defined in Council Regulation (EC) No 139/2004 affecting more than one Member State, preliminary authorisation does not fall within the competence of the national competition authority (in Hungary, the GVH) but, as the main rule, the European Commission is entitled to grant such authorisations.

— Group exemption regulations

In Hungary, exemption for specific groups of agreements restricting competition is granted in **government decrees**. Taking into account the experience gained over a number of years, in harmony with the exemption rules of the Competition Act and considering also the block exemption regulations of the European competition law, these decrees contain the conditions that need to be met by an agreement in order for it to be automatically exempted from the general statutory prohibition. The regulatory logic of the decrees is primarily based on market shares. Automatic exemption is generally granted below the specific market share threshold, provided that the agreement does not contain any provisions that are unacceptable in terms of competition and stipulated by the decree.

There are group exemption decrees in force in Hungarian competition law in relation to **technology transfer** [Government Decree No. 86/1999. (VI. 11.)]; **specialisation** [Government Decree No. 202/2011. (X. 7.)]; **insurance** [Government Decree No. 203/2011. (X. 7.)]; the **after-market of motor vehicles** [Government Decree No. 204/2011. (X. 7.)]; **research and development** [Government Decree No. 206/2011. (X. 7.)]; and **vertical agreements** [Government Decree No. 205/2011. (X. 7.)].

Under European Union competition law, certain groups of agreements are exempted on the basis of the **regulations of the European Commission**, which are based on principles similar to those outlined above. There are European group exemption regulations in force in the motor vehicle sector [Commission Regulation (EU) No 461/2010]; concerning technology transfer [Commission Regulation (EU) No 316/2014]; and vertical agreements [Commission Regulation (EU) No 330/2010].

In those areas where both EU and Hungarian block exemption regulations exist, the Hungarian regulation follows that of the EU for reasons of legal certainty and competition policy.



– Act XLVII of 2008 on the Prohibition of Commercial Practices that Are Unfair to Consumers (UCP Act)

The general framework of rules on providing consumers with information is based on the provisions of the UCP Act that entered into force on 1 September 2008. (Business-to-consumer) commercial practice is any course of conduct, act, omission or any other commercial communication including advertising and marketing, which is directly connected to the sale, servicing or promotion of a product. The UCP Act contains a general prohibition of **any unfair market practice** and it prohibits, in particular, **misleading and aggressive commercial practices**. Furthermore, it also provides an annex with a specific list of 31 practices (a so-called “**black-list**”) which qualify as infringements without the need to take further circumstances into account, solely on the basis of engagement in such behaviours.

There is a system of shared competences for the implementation of the provisions of the UCP Act; in addition to the GVH, the **authority for consumer protection** and the **National Bank of Hungary** (Magyar Nemzeti Bank– MNB), the latter of which has responsibility for the supervision of the financial intermediation system, have

powers to apply the Act. Cases that have no substantive effect on competition are handled by the authority for consumer protection and the MNB. Of the two, the authority for consumer protection has general powers while the MNB is responsible for cases covered by its usual supervision activity, i.e. concerning financial institutions. The GVH proceeds in all cases affecting competition, except for cases where the infringement is committed by means of labels, manual guides or directions for use or by the non-observance of certain special information requirements provided by separate legal norms. The distortion of consumers' decision-making, if it is wide-ranging, might be suitable for the distortion of the competitive process as well.³

— European Union consumer protection law

The European Union issued a **Directive on Unfair Commercial Practices** (UCP Directive) (2005/29/EC) in 2005. The European Union recognised that differences in the consumer protection regulations of the individual Member States may significantly distort competition. It therefore adopted a Directive with the purpose of harmonising consumer protection regulation to the highest possible extent and to ensure the consistent application of a high-level of consumer protection in each Member State. The Directive was **transposed into the Hungarian legal system** by Act XLVII of 2008 on the Prohibition of Commercial Practices that Are Unfair to Consumers ("Unfair Commercial Practices Act"). The GVH is one of the authorities that has the power to apply this Act (see above).

In addition, in order to ensure the consistent application of consumer protection law in the EU, following the example of the ECN, the **European Union** established a **network of European consumer protection authorities** comprising of the competition authorities of the Member States (Regulation (EC) No 2006/2004 of the European Parliament and the Council on the co-operation of consumer protection authorities). The network only acts against cross-border violations of law that are likely to deceive consumers, as the number of such cases is increasing in parallel with the deepening of integration. Out of the Hungarian authorities, the GVH proceeds against unfair commercial practices with a significant effect on competition.

— Act XCVIII of 2006 on the general provisions relating to the reliable and economically feasible supply of medicinal products and medical aids and on the distribution of medicinal products (Act on the Distribution of Medical Products)

The requirements for the advertising of medicinal products and medical aids are set out in a separate act: the Act on the Distribution of Medical Products. In the event of the violation of provisions governing the commercial practices that are unfair to

³ Before the new regulation on consumer protection entered into force (on 1 September 2008), the GVH contributed to the protection of competition and consumer interests by enforcing the provisions of the Competition Act on the prohibition of unfair manipulation of consumer choice, i.e. the prohibition on information that is misleading or likely to mislead consumers and on the unjustified restriction of consumer choice.

consumers relating to medicinal products or medical aids, the GVH has powers to conduct proceedings.

— **Act XLVI of 2008 on the food supply chain and on the control and supervision of the food supply chain (Act on the Food Supply Chain)**

In respect of food, the labelling of food, the method of labelling, the presentation of food products and the conditions of their advertising are also governed by separate statutes, such as the Act on the Food Supply Chain and, since 13 December 2014, the directly applicable Regulation (EU) No 1169/2011, which replaced the former. The GVH also has powers to proceed regarding food labelling that is not in conformity with the regulation or is misleading.

— **Act CLXIV of 2005 on Trade (Act on Trade)**

The provisions of the Act on Trade prohibit any abuse by large traders (having significant market power or buying power) against their suppliers; the GVH is one of the bodies responsible for the supervision of such abuses pursuant to the substantive law provisions of the Act on Trade.

— **Other legal regulations containing provisions about competition**

There are also other pieces of legislation that do not form part of the strictly interpreted competition rules, but which contain provisions related to competition and, indirectly, to the activities of the GVH. **These are the legal regulations on certain regulated sectors or natural monopolies.** These regulations are enforced by the GVH where a substantial effect on competition is present, while enforcement in general is the responsibility of the authorities established for the supervision of the sectors concerned (e.g., the National Institute for Pharmacy and Nutrition, the National Media and Communications Authority, the Hungarian Energy and Public Utility Regulatory Authority). Furthermore, in order to assure that considerations of competition are taken into account, legal regulations require cooperation with the GVH on certain issues, the typical framework of which is defined in cooperation agreements between the authorities.

— **Joint notices of the GVH President and the Chair of the Competition Council of the GVH**

The Competition Act authorises the President of the GVH and the Chair of the Competition Council of the GVH to issue joint notices describing the basis of the law enforcement practice followed by the GVH. Contrary to legal regulations, these notices are not legally binding; their main purpose is to describe the content assigned to the



provisions of the law by the GVH in its law enforcement practice, summarising the law enforcement practice that has developed in its past and that which is envisaged for the future. The notices are based on the experiences resulting from the adopted decisions, yet they also reflect the competition approach of the GVH and the expected enforcement trends in general and are not just based on specific cases.

— **Position statements of the Competition Council of the GVH**

The position statements of the Competition Council of the GVH reflecting its interpretation of the Competition Act are also not legally binding. The disclosure of the position statements arising from the enforcement practice of the Competition Council provide guidelines primarily for market actors in the right interpretation and application of competition regulations, assisting such undertakings to comply with the law.

COMPETITION SUPERVISION AND OTHER LAW APPLICATION ACTIVITIES

— Competition supervision proceedings

The GVH enforces the provisions of the legal norms falling within its competence in its competition supervision proceedings. The rules for ordering, conducting and closing a competition supervision proceeding are contained in the Competition Act and, secondly, in the Act on the General Rules of Public Administrative Procedures and Services. Competition supervision proceedings are commenced on the GVH's own initiative.

The GVH launches competition supervision proceedings **on its own initiative** on suspicion of market conduct which is prohibited under the Competition Act and European Union competition rules, including the unfair manipulation of business decisions, unlawful comparative advertising, abuse of dominant position or agreements restricting competition, furthermore, against suspected infringements of the provisions of the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices, the relevant provisions of the Act on the Distribution of Medical Products and the Act on the Food Supply Chain and those provisions of the Act on Trade which relate to the abuse of significant market power.

The GVH may suspect a violation of law and therefore initiate proceedings itself, but **any person may also make formal or informal complaints** to the Authority. The submission of a formal or informal complaint does not automatically result in a competition supervision proceeding. The GVH launches an investigation if the suspected activity, conduct or situation may violate the provisions of the statutes it has power to enforce, the GVH is competent to proceed, and — with the exception of those cases where the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices is applicable — the protection of the public interest requires an intervention by the Authority.

In **cartel cases**, the parties to the infringement may apply for immunity from the imposition of a fine or for reductions in a fine that is imposed by submitting a **leniency application**, on the condition that they actively assist in the detection of the cartel. The Competition Act allows the undertakings forming a cartel to obtain full or partial immunity from a competition supervision fine, in accordance with the strictly defined criteria set out in the act, if they cooperate with the GVH. This is because the public interest in the detection and elimination of secret cartels prevails over the public interest in punishing the undertakings participating in the cartel. The leniency policy is based on the assumption that a secret agreement may involve participants who would be willing to terminate their participation and provide information about the existence and operation of the cartel if they were not afraid of

the competition supervision sanctions that would be imposed on them for their activities.

In proceedings launched against infringements of the UCP Act or against unfair manipulation of business decisions and unlawful comparative advertising, the GVH adopts a resolution within **three months**; this may be extended by two months on two occasions in a justified case. Any proceedings launched for the investigation of agreements restricting competition and abuse of dominant position must be closed within **six months**, this may be **extended on two occasions by six months on each occasion** in a justified case.

In its resolution on the substance of the case, the Competition Council of the GVH may

- establish that the conduct is unlawful,
- order the illegal situation to be eliminated, or
- prohibit the continuation of the conduct, which violates the provisions of the Act,
- impose an obligation on the undertaking an infringement by which it has established,
- order a corrective announcement to be published in respect of the unlawful information, or
- impose a fine, or
- issue a warning instead of imposing a fine where small and medium-sized undertakings are concerned, or
- establish that the conduct is not unlawful.

With a **commitment**, the desired effect on the market may be achieved without any major intervention when the undertaking against which the proceeding is conducted commits itself to harmonising its conduct with the applicable legal regulations. In such cases the public interest can be effectively protected by an order of the Competition Council of the GVH making the commitment in question binding on the undertaking and terminating at the same time the proceeding without declaring that the law has been violated.

In certain competition supervision proceedings the Competition Act allows the Competition Council of the GVH to invite the undertaking under investigation to participate in a negotiated settlement to promote the fast and effective completion of the proceeding. The Competition Council may make use of the instrument of **negotiated settlement** where it considers this expedient with a view to the facts of the case and the supporting evidence. If the negotiated settlement is successful, the undertaking under investigation, having admitted the infringement and having waived the right to seek legal remedy, is not subjected to a competition supervision proceeding but it must pay the fine proposed by itself and approved by the GVH.



A proceeding may be terminated by order in the absence of evidence proving the existence of an infringement of the law or in the absence of a public interest. A proceeding may also be terminated by order for administrative reasons (e.g. withdrawal of an application for the authorisation of a concentration or failure to supply completed documentation). Orders terminating a proceeding (as they do not qualify as resolutions made on the substance of the case) may be issued by both the Competition Council of the GVH and the case handler.

The GVH also conducts an **authorisation competition supervision proceeding upon receiving a notification of a concentration**, but if the notification obligation is violated (the concentration is implemented despite being prohibited, it may also proceed on its own initiative. A notification must be submitted to the GVH to obtain authorisation for a concentration; and an application must be submitted to request an extension, beyond the period of one year, of temporary acquisition of control or assets. The notification and the application must be submitted by completing a form and paying a procedural fee. The GVH must reply to a notification form or launch a competition supervision proceeding within 8 days.

In **merger control**, the GVH grants its authorisation for a merger in a **simplified or full procedure**, depending on the complexity of the case. The GVH adopts a decision in a simplified procedure, if the merger does not significantly reduce competition on the market(s) affected by the merger, in particular as a result of the cre-

ation or strengthening of a dominant position. The time limit for closing a simplified procedure is 30 days, which may be extended by 20 days on one occasion in a justified case. If the application related to the extension, beyond the period of one year, of temporary acquisition of control or of assets, the administrative time limit is 45 days. If, in view of the complexity of the case, the Competition Council of the GVH considers that a more detailed investigation is required to assess the impact of the concentration on the market, the concentration will be investigated using the full procedure, in which case the decision closing the proceeding must be adopted within four months. This time limit may be extended once by a period of two months where justified. A proceeding launched on the basis of a concentration effected despite a prohibition must be completed within six months.

In its decision, the Competition Council of the GVH may authorise the proposed transaction (the merger or takeover, acquisition of control or its extension), or may reject its authorisation. The concentration may not be carried out before the GVH grants authorisation. However, upon special application the GVH may authorise the exercise of certain control rights, particularly if this is required to maintain the value of the investment and does not cause an irreversible change in market conditions. The Competition Council of the GVH may also set pre- or post-conditions or impose obligations on the party(ies) notifying the concentration in its resolution authorising the merger in order to mitigate any detrimental impact on competition (for instance, separation of a particular activity of the undertaking, or the prescription of specific conduct). In the case of concentrations implemented without the authorisation of the GVH or in the case of concentrations where the conditions for authorisation are not met, the Competition Council of the GVH may order by its decision the restoration of the pre-merger situation or impose obligations in order to restore effective competition.

The Act CLXXXV of 2010 on Media Services and Mass Media stipulates that the GVH shall obtain the position statement of the Media Council of the National Media and Communications Authority (hereinafter: Media Council) for the approval of concentrations, which enterprises, or the affiliates of at least two groups of companies bear editorial responsibility, and the primary objective of which is to distribute media content to the general public. The position statement of the Media Council on the prohibition of the concentration binds the GVH, however, the GVH is not prevented from prohibiting a merger that has been approved by the Media Council, or from imposing a condition or an obligation.

During the competition supervision proceedings, the **GVH** has **numerous investigative powers** in order to clarify the facts of the case, including collection of data, hearing of witnesses, employment of experts, access to documents, based on a judge's permit site search on the premises of the undertaking without prior notification, or even in the home and motor vehicles of the employees of the undertak-

ing, seizure, putting under seal, making backup copies of the data available on IT or communication tools.

After the closing of a competition supervision proceeding, the GVH conducts **post-investigations** to control compliance with the decision of the Competition Council of the GVH (e.g., completion of the required obligation).

— Formal and informal complaints

On the observation of a conduct falling within the competence of the Hungarian Competition Authority that violates the Competition Act, European Union competition rules, the UCP Act, the relevant provisions of the Act on the Distribution of Medical Products and the Act on the Food Supply Chain or the Act on Trade, **any person may submit a formal or informal complaint to the GVH**, which may serve as an important market signal assisting the Authority and may result in the launch of a proceeding. Both formal and informal complaints may be submitted **free of charge**. **Upon the request** of a person submitting a formal or an informal complaint, **GVH will not reveal his/her identity or the fact that he/she submitted a complaint to the undertaking(s) concerned**.

As the GVH proceedings are commenced ex officio, a person submitting a formal or an informal complaint does not become a party to the proceeding, even if the GVH commences an investigation based on the formal or informal complaint and he/she is not affected by the decision of the Competition Council of the GVH. The complainant has to be informed about the termination of the proceeding, and has the right to seek a legal remedy against that order.

• Formal Complaint

A formal complaint may be made by duly completing the form issued by the GVH. The party submitting the complaint must answer the mandatory sections of the form, sign it, and then submit it to the GVH. This form may be downloaded from the website of the GVH or collected in person from the Consumer Service Section of the GVH. Alternatively, the GVH sends the form by mail if requested.

Depending on the type of the case, the case handlers of the GVH have one or two months to conclude whether a competition supervision proceeding should be launched in relation to any conduct described in the complaint. This time limit may be extended by 60 days on one occasion where justified. If no proceeding is launched based on the complaint, then the person submitting the complaint may seek a legal remedy against the refusal at the Metropolitan Administrative and Labour Court of Budapest.

• Informal complaint

If anyone observes a violation falling within the competence of the GVH, he/she may submit an informal complaint to the GVH about it without any formal re-

quirements. The advantage of the informal complaint as a form of a submitted report is its simplicity, as it does not require any particular format or content. Thus, the complainant may even choose to submit, among others, a report or letter written by hand, or an e-mail message. However, the consequence of this option is that the informal complaint is judged using a simpler procedure.

Informal complaints are checked first by the Consumer Service Section. Repeated informal complaints having the same content as an informal complaint previously made by the same person, or informal complaints made by anonymous persons do not need to be considered. Likewise, informal complaints concerning problems that clearly fall outside the scope of the Competition Act and the competence of the GVH can be disregarded. If needed, further information can be requested in order to clarify the competence of other authorities, and where necessary, the informal complaint can be forwarded to the body which has the power to proceed. Those informal complaints that require further investigation are forwarded to the investigative sections. The Consumer Service Section notifies the person making the informal complaint of this measure. It is to be noted, however, that if no competition supervision proceeding is launched on the basis of the informal complaint then the complainant may not seek a legal remedy.



THE PRIVATE ENFORCEMENT OF CLAIMS BASED ON VIOLATIONS OF COMPETITION RULES AND PUBLIC INTEREST ACTION

— The private enforcement of claims

Unlawful conduct violating the Competition Act (and/or the European Union competition rules) or the provisions of the UCP Act can harm the public interest that needs to be protected by the GVH but also **the individual interests (typically by causing damage)** of consumers, market participants or other persons affected by the infringement. Consequently, there are two ways in which action can be taken against parties that have violated the Competition Act. If for the purpose of protecting public interests, it is necessary, the GVH can launch a competition supervision proceeding in order to eliminate the unlawful conduct or to impose sanctions on the violator whenever it is justified. On the other hand, the party suffering damage may also launch a civil lawsuit directly in order to seek a legal remedy for individual damage. While the main objective of any proceeding launched by the competition authority in order to protect the public interest is to eliminate the unlawful

conduct or impose sanctions in justified cases, in a civil proceeding providing for a legal remedy for individual damage, the court may directly order damages to be given to the harmed party and may also transform the contracting relations. (Thus, for example, the court may establish a contract between the parties, may oblige parties to perform or, in addition to declaring that an agreement restricting competition violates the law, the court may also apply the legal consequences of nullity and voidness of the agreement.) With the aim of helping to prove the damage caused by the cartel, and its price increasing effect, the Competition Act stipulates that it shall be presumed, unless the opposite is proved, that the infringement influenced the price to an extent of ten per cent (rebuttable presumption).

— **Public interest action**

The GVH may file an action to enforce the civil law claims of consumers where the infringement concerns a large group of individuals that can be defined based on the circumstances of the infringement. The GVH is empowered to file the action only where it has commenced a competition supervision proceeding against the infringement in question. The enforcement of claims by the GVH does not prejudice the right of consumers to take further action by themselves as individuals against the infringer under the provisions of the civil law.

In the case of public interest actions, if the uniform legal basis of the demands put forward can be verified, the GVH may ask the court to oblige the undertaking by its judgement to satisfy those demands. If the demands concerned cannot be uniformly determined, the GVH may ask the court to establish by its judgement that the activity pursued by the undertaking was unlawful and furthermore, it shall identify the group of consumers entitled to request the fulfilment of the obligation imposed by the judgement. This can facilitate the private enforcement by consumers.

COMPETITION ADVOCACY

Competition advocacy is a collective term for all of the activities of the GVH by which the Authority intends to influence the development and enforcement of various public policies in support of competition, including various regulations, other public decisions and individual administrative steps. In this context, the GVH uses all of the powers conferred on it by the Competition Act, it may refer to constitutional guarantees attached to competition and it may turn to the public as well.

One of the most important forms of competition advocacy is the opining of draft legislation and concepts submitted to the GVH for discussion. According to the provisions of the Competition Act, the GVH delivers its opinion on all draft proposals and legal regulations which affect the tasks and competence of the Authority. During the preparation of its opinion about such drafts, the GVH takes all reasonable efforts to reflect competition policy criteria and aspects. By investigating the competition conditions of the market affected by the regulation and, in the case of any changes in the conditions applicable to market entry, the GVH considers whether the objective intended to be achieved with the regulation is in line with the regulatory instruments and whether they will not result in any disproportionate competition restriction compared to the expected result.

Apart from competition advocacy in the form of public administrative opining, the GVH also enforces the interests of competition in relation to individual cases. If the circumstances of any case indicate any regulatory insufficiency (or perhaps excessive regulation), or any violation, which may be eliminated with the proceeding of a different agency, the GVH indicates the problem detected by it to the competent agency.

If the GVH comes across any public administrative decision infringing freedom of competition pursuant to the provisions of the Competition Act, the GVH may also request the public administrative agency adopting the decision to modify or even withdraw its decision. If the public administrative agency does not comply, the GVH may apply to the court to request a review of the public administrative decision. The GVH may request information about the public administrative resolutions made in proceedings the subject of which was similar to that of the proceeding relating to the contested resolution.

THE DEVELOPMENT OF COMPETITION CULTURE

In addition to competition supervision and competition advocacy, the third pillar of the activities of the GVH for the purpose of protecting competition is the development of competition culture.

The development of competition culture and the improvement of the culture of conscious decision-making among consumers primarily involve the dissemination of general information about competition, competition policy, the decision making of consumers and the protection of this decision-making process. The purpose of the above is to increase the social acceptance of competition, to promote a culture of compliance and a pro-competitive regulatory environment fostering conscious consumer decisions and to enhance consumer awareness, as well as to contribute to a professional discourse on the economic and legal aspects of conscious consumer decisions. The GVH furthers this objective by launching communication campaigns, preparing and publishing various educational materials, organising and sponsoring professional events, translating and publishing technical literature from other languages, supporting educational and scientific research projects through tenders and providing (mostly technical) assistance to the work of entities that set out to develop and disseminate competition culture.

Within the GVH, the performance and coordination of tasks related to the development of competition culture is the responsibility of staff of the Competition Culture and Communications Section dedicated to the enhancement of competition culture and reporting to the Secretary General. However, all other staff members of the GVH also contribute to this effort.

Further information about the activities and operation of the GVH is available on its website: **www.gvh.hu**

LEGISLATION

— Hungarian legislation:

- Act LVII of 1996 on the prohibition of unfair and restrictive market practices
- Act XLVII of 2008 on the prohibition of commercial practices that are unfair to consumers
- Act XLVI of 2008 on the food supply chain and on the control and supervision of the food supply chain
- Act XCVIII of 2006 on the general provisions relating to the reliable and economically feasible supply of medicinal products and medical aids and on the distribution of medicinal products
- Act CLXIV of 2005 on trade (Act on Trade)
- Government Decree No. 202/2011 (X.7.) on the exemption from the prohibition on restriction of competition of certain groups of specialization agreements
- Government Decree No. 203/2011 (X.7.) on the exemption from the prohibition on restriction of competition of certain groups of insurance agreements
- Government Decree No. 204/2011 (X.7.) on the exemption from the prohibition on restriction of competition of certain groups of agreements concerning the after-market of motor vehicles
- Government Decree No. 205/2011 (X.7.) on the exemption from the prohibition on restriction of competition of certain groups of vertical agreements
- Government Decree No. 206/2011 (X.7.) on the exemption from the prohibition on restriction of competition of certain groups of research and development agreements
- Government Decree No. 86/1999. (VI.11.) on the exemption from the prohibition on restriction of competition of certain groups of technology transfer agreements

— European Union legislation:

- Treaty on the Functioning of the European Union
- Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty
- Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings
- Directive 2005/29/EC of 11 May 2005 of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market
- Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws
- Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices
- Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector;

- Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements;
- Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers
- Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products

ORGANISATION CHART OF THE GVH



Published by the Gazdasági Versenyhivatal, H-1054 Budapest, Alkotmány u. 5.

www.gvh.hu

Managing publisher: Tevanné dr. Südi Annamária

Visualization: Vizi Balázs

Printing company: Printmanager Kft.

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