ANNUAL REPORT
ON COMPETITION LAW AND POLICY
DEVELOPMENTS IN HUNGARY

(January – December 2000)

Gazdasági Versenyhivatal
(the Hungarian competition authority)
2001

Contents

1. AMENDMENTS OF THE HUNGARIAN COMPETITION ACT IN DECEMBER 2000 5

2. THE EXPERIENCE OF APPLICATION OF LAW IN 2000 6

2.1. Restrictive agreements 6
2.2. Abuse of dominant positions 8
2.3. Concentrations 10

3. THE EXPERIENCES OF THE JUDICIAL REVISIONS 12

4. PRACTICE OF COLLECTING FINES 13

5. COMPETITION ADVOCACY 13

5.1. Participation in actions concerning competition related issues 13
5.2. Giving opinion concerning draft legislation 15
5.3. Other kind of competition advocacy 15

6. RESOURCES OF THE COMPETITION AUTHORITY 16

7. PUBLICATIONS ON COMPETITION LAW AND POLICY 17

1. Amendments of the Hungarian Competition Act in December 2000

1. In December 2000 Act No. LVII/1996 on the Prohibition of Unfair and Restrictive Market Practices – the Hungarian Competition Act – was substantially amended by Act No CXXXVIII/2000. The amendments which entered into force in February 2001 were motivated by the four-year experiences collected with the enforcement of the 1996 Competition Act, indicating the necessity for fine-tuning certain provisions of these rules. The incorporation of some principles established by the law enforcement practice into the Competition Act and the wording and rewording of some definitions proved to be rational, moreover, the investigative powers of the Office of Economic Competition (OEC) were also increased. The most important items of the amendments were as follows:

2. In the field of **substantive law**:

- hard-core restrictions among competitors (price-fixing, market allocating agreements) cannot qualify as agreements of minor importance (*de minimis*),
- individual exemptions are granted exclusively for a definite period of time,
- under certain circumstances the OEC is authorised to withdraw the benefits of block exemption regulations and deprive agreements of the benefits attached to the application of *de minimis* rules,
- the definition of 'dominant position' has become simpler,
- the definition of 'part of an undertaking' has been added,
- it is stipulated clearly, that an acquisition of control within the same economic entity does not qualify as concentration,
- a distinction between conditions and obligations has been made in order to facilitate the more frequent application of these means both in the case of exempting restrictive agreements and authorising M&As.

3. In the field of **procedural rules**, the most important goals of the amendments were to foster and make more efficient the work of the OEC. In the framework of this, items as follows are worth mentioning:

- deadlines were increased from 90 to 180 days in the case of proceedings initiated ex officio (concerning hard-core cartels and abusive practices),
- concentration cases which do not show any competition concerns will be decided within 45 days instead of 90,
- in the case of more sophisticated concentration cases, the deadline for decision-making increased from 90 days to 120 days,
- the period for submission of notification of M&A cases to the OEC has become longer,
- a possible maximum level of fines which can be imposed by the OEC has been defined,
- the amount of disciplinary fines which can be imposed on persons participating in the proceedings and obstructing them has been increased,
- inquiries into sectors of the economy offer possibility for the OEC to obtain information on 'suspicious' markets, consequently the competition authority may ask for information without initiating formal proceedings in order to get knowledge of facts in the background of certain market processes,
- easier interpretation of law can be assisted through the publication of 'guidelines' elaborated by the OEC about certain issues of competition law enforcement and elements of policy followed by the OEC.

4. Some of the amendments have been initiated in connection with the recommendations of the 1999 OECD Regulatory Reform Survey (such as for example the introduction of more severe rules on horizontal activities, the steps taken toward the introduction of a two-stage concentration control, the differentiation of deadlines depending on the types of the cases, etc.). At the same time, although these amendments of the Hungarian competition law were motivated by factors other than law approximation to the EC competition regime, since already the previous rules were in a great harmony with the European system, many of the changes show harmonisation character as well - for example the prohibition of hard-core restrictions irrespective of market shares, the codification of supply-side substitutability, and the establishment of the possibility to inquire into sectors of the economy.

2. The experience of application of law in 2000

2.1. Restrictive agreements

5. The Competition Act prohibits agreements or concerted practices between undertakings and decisions by social organisations of undertakings, which have as their object or potential or actual effect the prevention, restriction or distortion of competition. Agreements might be exempted by individual or block exemptions.

	1997	1998	1999	2000
Restrictive agreement cases	5	15	15	18
Interventions of the OEC	0	2	7	11
Fines, million HUF	-	5	7	96

6. The Competition Council granted three individual exemptions, two of them with conditions.

- In one of the cases the condition was that membership in professional chambers of undertakings or entrepreneurs willing to join a quality securing agreement, concluded by the electricity supplier ÉDÁSZ and professional chambers, cannot be a precondition for the participation in this agreement.
- The other exemption granted with conditions is related to an agreement concluded by financial institutions in order to secure the safety of using bankcards. The Competition Council had one of provisions of the agreement deleted because it contained unnecessary restriction.

2.1.1. Market of pharmaceutical products

7. The events experienced on the market of pharmaceutical products in 2000 threw light on the fact that, although the drug producers got familiar with the requirements of market economy and they were able to enforce their interests against the weaker consumer side, the economic regulation could not react on market changes, which led to tension between the two sides and to the freeze of prices by a government decree. The regulatory environment changed to some extent during the year (certain rules concerning subsidies were amended), but this did not yield real changes which would produce effects in the long term. The solution, making the regulation transparent and predictable, is still to come.

Price-fixing agreement of associations of pharmaceutical undertakings (Vj-97/2000)

8. *The association of mainly foreign pharmaceutical companies, the association of Hungarian pharmaceutical companies and wholesalers and the association of Hungarian producers and distributors of generic pharmaceutical products (hereinafter jointly referred to as the associations), recommended the member undertakings to raise the producer prices of the subsidised medical products to an identical extent.*

9. *For many years the determination on the range of subsidised drugs, the extent of the subsidisation and the prices were made in a price bargain between the government and the producers. The main aspects of the bargain were fixed year by year in a decision of the government. In 1999 the government declared its intention to change this system. However the government missed the deadline set out in its own decision for preparing a proposal. A month later the presidents of the associations wrote a letter to the Minister, announcing that they recommended a raise of 8.5 per cent to the member undertakings. The price rise was realised by more than half of the undertakings.*

10. *The Council stated that the recommendation of the associations constituted an indirect price fixing. The decision was made by the chief representatives of the competitors and not by the employees of the associations. 67 out of the 99 undertakings followed the recommendation word by word, moreover they covered the costs of the application of the new prices.*

11. *The Competition Council stated in its decision, that the agreement of the three associations violated the Competition Act and imposed a fine on them.*

2.1.2. Food industry

12. The agriculture and the food industry has been characterised by declining production for years. While the structure of undertakings did not change in the agriculture, the concentration increased in the processing industry. Concentration in the food industry is a result of voluntary market exits and measures taken by undertakings with long term market strategy. Well capitalised undertakings are gaining increasing market share through take-overs, however these concentrations, authorised by the Office of Economic Competition, did not distort competition.

Fixing the price of some seasonal meat-products by Délhús and other undertakings (Vj-64/2000)

13. *It was supposed that 10 Hungarian meat processors, a service provider for these processors had agreed to restrict competition between them in a meeting where they fixed the recommended price of certain typical seasonal meat-products of the Easter time. Two distributors joined the deal later. They agreed that they would not undercut this minimum price with more than 5 per cent and subsequently they applied their agreement. The parties had a share of 50 per cent on the Hungarian smoked pig-meat market.*

14. *The parties invoked the de minimis principle. They based their opinion on a wider definition of the relevant market (row and smoked pig and poultry meat market that extends beyond the borders of Hungary due to the parties' export activity) than that determined by the investigation (raw, smoked pig meats' market of Hungary). The respondents denied that a document which was found by the investigation proved the existence of the consensus among the parties, and they alleged that if it was contract-like than it was void because it failed to fulfil the formal requirements.*

15. The Council stated that the parties' agreement – as it was illegal – was not bound by formal requirements of the Hungarian Civil Code therefore it could not be considered as invalid on this ground. The absence of any sanctions in case of non-compliance did not mean that the parties did not considered the agreement obligatory. The Council also stated that the indirect price fixing was sufficient to establish the breach of the competition rules.

16. *The Council, after consulting the parties and after the examination of the existing evidence on the competitors' and the parties' turnover, estimated the parties' market share at over 10 per cent. Consequently the de minimis principle was not applicable, although the Council accepted the parties arguments made in favour of a wider relevant product market. Therefore the Competition Council established the infringement, and imposed a fine on the parties.*

2.2. Abuse of dominant positions

17. The Competition Act prohibits the abusive behaviour of the dominant undertakings. The rules laid down in the Act are harmonised to the EC competition law.

	1997	1998	1999	2000
Dominant position cases	45	44	35	56
Interventions of the OEC	8	5	7	19
Fines, million HUF	17.8	29.0	13.5	11.8

2.2.1. CableTV sector

18. In 2000 there was an increasing interest by telecommunications companies in the cableTV business, significant rise in concentration could be observed. CableTV is an area of fixed telecommunications services, where due to the fact that investments and fixed costs to create a network are high, the possibility of market entry by competitors is limited and the network operators have dominant position. It is typical of cableTV services that the operator can reach economies of scale only when highly concentrated markets come into existence and large number of subscribers appear, so where a cableTV operator has been active already, the market entry is restricted from an economic point of view. Due to the full liberalisation by 2002 of the telecommunications sector, even the legal barriers to entry will disappear with the termination of exclusivity. By the time of the termination of exclusivity, several undertakings will be likely to possess the infrastructure needed for an entry but considering the local networks, the concession holders, who formerly had exclusive right, will have to face competition only from cableTV networks.

19. In 2000, the Competition Council found a dominant position in each of its 22 proceedings but proved an abuse of it only in 11 cases. The cableTV service agreements generally stipulated unilateral rights for the operators to amend prices.

20. Considering unfair pricing, the Competition Council stated that in the absence of the calculations of an undertaking, the indirect, and direct costs, other cost-factors and the profit reached in the previous year increased by inflation could serve as a basis to determine the fair price. In the cases where the applied

prices showed little difference with this price, the Competition Council found no infringement. The Competition Council stated that this difference was not to be determined generally, but all the circumstances have to be taken into consideration on a case by case basis. The Competition Council found that the market was characterised by enormous requirements of technological development, which justify the increase of prices, so no infringements by the application of excessively high prices could be established in any of the cases.

2.2.2. Fixed telecommunications services

21. Among the abusive practice cases the practice of Matav Rt was regarded as the most serious abuse in 2000. Matav (the national telecommunications service provider having dominant position) provided international fax and telephone voice transmissions on the 'Internet Protocol-based network' exclusively to service providers who had concessions. Defining the relevant market the Competition Council stated that the service provided by the defendant cannot be substituted by any other telecommunications service, in particular by the public voice telephony. It was also established, that the position of Matav in the field of public voice telephony made it possible that, by offering more favourable fees in the long run, the undertaking expanded its dominant position to the relating market, obtaining this way independence to a large extent of its competitors' behaviours.

2.2.3. The Philips case

22. Bearing in mind the interest of the final consumers the Competition Council made its condemning decision against Philips Magyarország Kft, because the undertaking refused to supply original Philips spare-parts for service stations others than those within its own service network.

Refusal by Philips Magyarország Kft to supply components outside the brand service network (Vj-8/2000)

23. *Philips Kft (hereinafter the Kft) is specialised in supplying imported and domestically produced Philips products. As a supplier, the Kft is obliged by an amended Decree to ensure the supply of components necessary for the repair and to supply accessories of imported products. The Kft set up a service and component-supply network to ensure the fulfilment of the obligation laid down by the Decree. The Kft refused to supply components outside the network since it was not as profitable as its other activities. Therefore consumers had to turn to the Kft's competitors for Philips components. These competitors had very small shares on the market and none of them could provide the full scale of the components.*

24. The Competition Council stated that the Kft had a dominant position on the market of components used for small Philips household machines and entertainment electronic devices. The Kft's practice went against the consumers' interest, as their only possibility for repairing was to turn to the brand services or to buy components from the competitors, whose prices were significantly higher then those of the Kft. The practice constituted an abuse of the dominant position. The consequence of the decision is that the Kf may not refuse the service in the future but it may determine conditions for supplying Philips components outside the network.

2.2.4. Assessment of free services

25. Local governments frequently publish information in "official" newspapers. In 1998 in one of its decisions the Competition Council stated, that these papers were to be regarded as market products and as

such they fell under the scope of the Competition Act. Based on a complaint the presumption was made, that the Mayor's Office of the town of Érd strives to drive out the only other newspaper having to some extent similar character published in the town from the market of local newspaper publishing by abusing its dominant position. In the course of the proceedings it was extremely important to properly define the relevant market of the free newspaper, in order to establish whether a municipality-published newspaper is competitor or not for another local newspaper. Having considered that in addition to official news of the municipality and information attracting public interest the local government's newspaper published advertisements, articles, comments, notes, advice on how to grow plants and flowers, horoscopes, cross-word puzzles, etc. the Competition Council took the view, that this newspaper may be deemed as competitor of the other local newspaper. The dominance was stated, since the issued number of copies of the newspaper published by the Mayor's Office was far higher than that of the other newspaper, and, in addition to this, the subsidy provided for it from the budget of the local government made possible the avoidance of insolvency in the long run. The abuse was manifested by the fact, that the free nature of the newspaper based on the gradually increasing subsidisation of the Mayor's Office and not on the effectiveness of this newspaper. Consequently, the Competition Council stated the infringement, prohibited the continuation of the practice and a symbolic fine was imposed.

26. The decision of the Competition Council was fulfilled in a peculiar way. The municipality maintained the high number of copies issued, as well as the free of charge character of the newspaper, but it limited the scope of the content to municipality news. In this way the Mayor's Office left the relevant market and the newspaper became 'official journal' of the local government. In its post-investigation the OEC found that the magazine-type character of the newspaper was terminated, so the free of charge publication of the newspaper cannot be challenged any more. The decision has not become effective, since the municipality requested the revision of the decision from the court.

2.3. Concentrations

27. The Competition Act establishes turnover-thresholds and if the parties' turnover exceeds them than the agreement on a merger or acquisition has to be notified to the Competition Office. The authority has the power to prohibit the concentration or to impose obligations or conditions on the parties.

28. Market effects of concentrations are assessed according to the dominance test.

	1997	1998	1999	2000
Merger cases	34	49	46	71
Prohibition of the concentration	0	1	0	1
Conditional approval	0	0	0	3

2.3.1. Telecommunications sector

29. Both in respect of the number of the transactions and in respect of their influence on the market structure, the most important concentrations emerged in the telecommunications sector – more closely within this in the field of cableTV and mobile telephone services –, energy sector, car industry, trade of pharmaceuticals and food industry.

30. There were 17 cases in the market of telecommunications (three times more than one year earlier), in these one blocking decision was made and in two cases the authorisation was made subject to conditions. The majority of the cases concerned the market of cableTV services. In 9 cases the Matav Rt extended its market influence through the MatavKabelTV Kft.

MATÁVkábelTV Kft (Vj-212/1999)

31. *Following a tender, won by it the MATÁVkábelTV Kft. (hereinafter: MkTV) applied for an authorisation of the OEC to purchase the cable television network, owned by the local government of Tata town.*

32. *Under a concession contract, MATÁV Rt which had controlling rights over MkTV, had the right to provide public phone services in 36 primer local areas which cover 75 per cent of the market of Hungary. Under the concession contract MATÁV has exclusive right until the end of 2001. The service provider of the cable television network generally has a monopoly on its own territory. The Competition Council took into consideration the expected effect of the planned transaction in the period of ongoing liberalisation and stated that both the fixed telecommunications network and the cable television network would be the properties of MATÁV which situation would considerably impede the formation of effective competition on the relevant market after the liberalisation.*

33. *Considering these facts the Competition Council refused to give authorisation to MkTV for the purchase of the local cable television network.*

34. In December 1999 a third competitor entered the mobile telephone market, the V.R.A.M Rt controlled by Vodafone. Due to the growth of the market, mobile telephony has an increasing role in telecommunications sector. So it is particularly important that MATÁV Rt that has a concession until the end of 2001 to provide fixed telecommunications services acquired sole control over the market leader undertaking of the mobile phone market.

WESTEL (Vj-179/1999)

35. *MATÁV Rt notified to the Competition Office its planned acquisition of MediaOne International B.V. and Westel Rádiótelefon Kft. These undertakings provided mobile telecommunications services on 450, 900 and 1800MHz. As the fixed and mobile telecommunications services do not belong to the same market even in the middle term, the concentration did not raise horizontal concerns. MATÁV however, due to its position on the market can not be evaded by the mobile service providers. Therefore to balance the vertical disadvantages of the concentration, MATÁV undertook to offer its services at identical conditions to the WESTEL companies and to the other mobile service providers. It undertook further to operate the undertakings as separate entities until the accounting separation is not complete. The Competition Council cleared the concentration but in its post-investigation it stated that MATÁV breached its undertaking when it did not make possible for Pannon GSM and Vodafone to supply through MATAV's retail network used by the WESTEL companies. The parties raised objections concerning the decision and the President of the Competition Council ceased the enforcement of the decision and annulled the fine. The President argued that although the original decision did not define the scope of the obligation undertaken by MATÁV but the reasoning clarified that it related only to the necessary business connections.*

2.3.2. The MOL- Slovnaft concentration

36. 2000 was the first year when the Council had to deal with a concentration where a Hungarian undertaking acquired control over a foreign undertaking.

MOL Rt.-Slovnaft a. s. (Vj-70/2000)

37. *The Hungarian national oil company acquired joint control over the Slovakian national oil company Slovnaft through the acquisition of the 36,2 per cent of its shares. And MOL Rt. has now an option for 51 per cent of the shares as well. After that transaction, that may not be carried out before June 2002 the veto right of the present owner would still remain in certain questions. Although the transaction strengthened the dominant position of MOL the Council cleared the acquisition as the parties remained separate business entities. It was submitted that the authorisation of the Council is required for the future acquisition of sole controlling rights.*

Consumer fraud

38. The Competition Act prohibits the unfair manipulation of consumer choice and as such the deception of consumers and the application of business methods which restrict, without justification, the freedom of choice of consumers. Although the importance of such cases is low these cases form a significant part of the proceedings of the Office.

	1997	1998	1999	2000
Consumer fraud cases	74	72	65	86
Interventions of the OEC	26	30	44	47
Fines, million HUF	52.0	35.6	21.4	46.6

3. The experiences of the judicial revisions

39. The Competition Act makes possible for the parties to appeal against the decisions of the Office to the Metropolitan Court and against its judgements to the Supreme Court. The courts may amend, or repeal the decisions of the Office and oblige it to repeat the proceedings.

40. Under the Competition Acts of 1990 and 1996 425 actions for review were initiated and 335 of them have been concluded. The court reduced the imposed fines in 44 cases and amended in whole or in part the merit of the decision of the Council in 27 cases. In another 8 cases the court obliged the Office to repeat the proceedings. As it can be seen an amendment of the provisions of the decisions is rare.

41. Two judgements of the Supreme Court in 2000 might have influence on the future jurisdiction. The Court stated that the cable television services may be regarded substitutable by the AM-mikro service (television signal distributed by microwaves) while in the view of the Office the criteria laid down in the Competition Acts 1990 and 1996 (substitutability in price, quality) do not make possible to neglect the differentiation of the product markets. This opinion of the Competition Council is more exhaustively detailed in its decisions under recent judicial revision than it was in the previously revised ones.

4. Practice of collecting fines

42. In the case of establishment of a violation the Competition Council may impose a fine, which is – besides the prohibition of continued violation – the other legal consequence of an infringement. Fundamental interests are attached to the real effectiveness of collecting the enforceable fines.

43. 29 enforceable fines were paid of the 30, which amounts to 99 percent of the total amount of the fines imposed. Fines imposed in earlier cases were also paid where the decisions became final in 2000 in consequence of judgements of the courts. However some payments on the basis of decisions which have become final at a former date are also present in this amount. These were collected in an overwhelming majority of the cases by the Hungarian Tax and Financial Control Administration (HTFCA).

44. For failure of voluntary compliance with its decision the OEC requests the HTFCA to collect the fine on the basis of an agreement in 1997 between the OEC and the HTFCA. The fine is qualified as public debt which can be collected officially like taxes. The co-operation has beneficial impact on the payment of fines. This is indicated by the yearly increasing rate of the amount of fines paid in.

Cases with fines in 1000 HUF in 2000

	Imposed fines		**Enforceable**		**Paid**	
	Number of decisions	Total amount of fines	Number of decisions	Total amount of fines	Number of decisions	Total amount of fines
Consumer fraud	32	46.600	19	26.400	18	26.300
Restrictive agreements	3	96.000	1	14.000	1	14.000
Abuse of dominance	5	11.800	-	-	-	-
Failure to notify a concentration	10	2.740	10	2.740	10	2.740
Altogether:	50	157.140	30	43.140	29	43.040

5. Competition advocacy

45. The competition advocacy activity of the OEC has two main directions. The submitting of expert opinions concerning the legislation under preparation remain further on an important activity besides the increasingly active, initiative intervention.

5.1. Participation in actions concerning competition related issues

46. From the very beginning the OEC has attached great importance to the Communications Act (CA) which is now under preparation. According to the OEC the regulation should be regarded temporary, because it is necessary only till the development of the real, effective competition after the removal of the legislative barriers at the end of 2001. The behaviour of the market players on the fully liberalised market under the circumstances of effective competition can be estimated on the basis of the rules of the Competition Act. However in the first few years after the market opening, till the new market players besides the telecom operators in dominant position become stronger, an asymmetrical regulation is necessary which in respect of the other market players imposes additional obligations on the telecom

operators who enjoyed exclusive rights before. The purpose of the imposition and enforcement of additional obligations is to prevent the dominant market player(s) from putting obstacles in the way of its (their) competitors thereby restricting the completion of the competition on the market and the development of tariffs which are lower than the price in the case of a monopoly and which approach the competitive price.

47. A new kind of co-operation should be developed between the competition authority and the regulatory authority in the period characterised by the asymmetrical regulation. However the principle of the sharing of competencies is still the same as it was earlier, namely the control and enforcement of the sector-specific behavioural rules prescribed by law remains the task of the telecommunications authority, but the potential violations of law on the liberalised market not covered by sector-specific rules must be assessed by the competition authority. The OEC regards the continuous professional co-operation of the authorities and the mutual information as necessary. The frameworks should be laid down in an Act which is in preparation.

48. The opening up of the telecommunications and postal markets to the competition – with regard to the continuously increasing role of the sector in the national economy – will be the most important market development in the year 2002. The sectoral administration in office – becoming conscious of the importance of the liberalisation of the telecommunications sector and the sensitivity of the balance between regulation and competition – expressly called for the participation of the OEC in the whole preparation process of the proposal and not only in the checking up of the prepared proposal.

49. As regards the termination of exclusive rights the OEC argued for the largest possible liberalisation. According to the OEC this is necessary for the fulfilment of the conditions of the information society. Furthermore Hungary undertook this fulfilment of conditions for the date of the EU-accession.

50. The OEC undertook an active role in 2000 concerning the preparation of the market opening of the electricity sector as well. The Energetic Market Opening Program (EMOP) was established in 1999 and began its activity in 2000. The EMOP served as a framework for the co-operation between the Ministry of Economy (ME), the Hungarian Energy Authority (HEA), the OEC and the Hungarian Privatisation and State Holding Company in preparation of the market opening.

51. In the meantime the preparation of a new Electricity Act (EA) has been continued. In the course of this the OEC continuously underlines the necessity of the elaborating of a – not a legislative text-like – functional model at first which discusses content issues and concerning which opinions without debates of legislative nature could be submitted, and the legal instruments of the regulation should be elaborated after that. Unfortunately it failed to materialise in 2000 as well. Lastly this is the reason why the codification of the EA came to what may be called a standstill.

52. The OEC will represent further on the competition policy aspects in the governmental activities concerning the transformation of the electric energy sector. By the end of the year 2000 however a situation has been created in which the OEC, though it participates in the programme for opening up the market of the energy sector, has no exact knowledge about the stand of the preparatory work aiming at this opening and even if it were possibly initiated in this work it would not be able practically to influence the developments in favour of pro-competitive resolutions. The reason for this is that there is no more possibility to shape a pro-competitive operation model, elaborated into its details, that would mean the most pro-competitive arrangement avoiding the deficiencies of some of the liberalisation programmes, by the original deadline (end 2001).

53. It has been continuously underlined by the OEC, taken into consideration the respective principles and aspects during its activities concerning the transformation of telecommunications and the energy sector, that the creation of independent and strong supervisory authorities is indispensable for the satisfactory operation of the regulation. this standpoint has also been underpinned by the recommendations of the OECD for the Hungarian Government made after the screening of the Hungarian regulatory reform. Further efforts are needed in order to develop, based on the existing organisational frameworks, the Hungarian Energy Office and the Telecommunications Superintendence, which were brought earlier into existence, to strong and autonomous supervisory authorities.

54. It applies for both sectors and is also in connection with the analysis of the OECD that the OEC suggested in 2000 after the conclusion of the screening of the Hungarian regulatory reform to the Office of the Prime Minister that a workshop should be created with the aim of making use of the lessons to be drawn from the screening and starting a unified new regulatory reform (i. e. continuing the regulatory preparations already in process in the frame of a unified regulatory reform).

5.2. Giving opinion concerning draft legislation

55. Concerning a provision of the Competition Act the President of the OEC shall be solicited for his opinion concerning all submissions drafted and draft legislation that have a bearing on the responsibilities of the Office. During the year 2000, similarly to the situation in the previous years, more than 400 submission and draft legislation asking for this opinion was received but approximately 40 per cent of them did not concerned the scope of duties of the Office whereas 1/3 of them made an elaboration going into details of the opinion necessary. In such cases the OEC generally analyses the competitive conditions of the market subjected to the regulation considering whether the objective of the regulation is in accordance with the regulatory tools, whether the latter are not too much restricting competition. For the grant of an exclusive right it should be analysed whether it is justified by the provision of a public service and if so, whether the regulation is suitable to prevent the new monopolist from abusing his dominant position. In connection with the possible establishment of official prices the OEC does not consider the size of them but underlines the importance of the measure to carry out a separation in the accounting, in order to avoid cross-financing which would distort competition, of the costs related to the services belonging and not belonging to the competitive sphere.

56. As an example the legal regulation for healthcare services may be mentioned here. In this field significant changes came up in 2000 which allow however the conclusion to be drawn that bringing publicly financed healthcare services closer to the market conditions results in special difficulties. Several draft legislations concerned the frames of medical services. In this respect the OEC regards as a problem that a part of the regulations makes the survival and strengthening of the territorial monopolies to be likely. In this way the regulation creates new barriers to market entry which may become even higher should the legislation support the efforts of the branch.

5.3. Other kind of competition advocacy

57. Invited by the Government and based on the possibility regulated by the Competition Act[1] the OEC carried out an analysis of the domestic market of fuels and the possible governmental and

[1] As Art. 36(5) of the Competition Act says: „At the request of the Government, ministers, or international organisations, the President of the Office of Economic Competition shall report on experience gained in the course of his activities relating to economic competition and on issues relating to economic competition. For this purpose the President of the Office of Economic Competition may, on a voluntary response basis, collect data and request information."

competition law measures. It described in this analysis that, with a view to the situation where MOL as dominant player of the sector is not to be gone round by the other market participants and taken also into consideration the interests of the consumers, fuel prices may be set in two ways. On the one side certain form of price control may be introduced, based on an agreement between MOL and the Government or on compulsion by the state (the latter being either the use of the means of the competition law or the official price setting), on the other side a transformation of the regulatory environment may be thought over with the aim of enabling market entry for other undertakings. The use of competition law means would be only an incidental and subsequent resolution while official price setting would be a costly specious solution not eliminating the source of the problem. A transformation of the regulatory environment would eliminate the source of the problem but would need an appropriate preparation and the investment of financial resources and time.

6. Resources of the competition authority

Resources	1997	1998	1999	2000
Annual budget[2]				
million HUF	340,3	409,8	524,0	562,1
million USD	1,8	1,8	2,1	1,87
Number of employees	106	111	103	111
economists	38	39	37	39
lawyers	31	35	38	38
other professionals	3	3	4	6
support staff	34	34	24	28
Human resources applied to[3]				
law enforcement	57	59	60	60
advocacy efforts	10	14	15	16

[2] The OEC pays 15 per cent of its budget as office rental fee.

[3] The separation of responsibilities is rather difficult since some of the staff members active in law enforcement take also part in competition advocacy if e.g. a draft regulation relates to their industries. The figures of the chart are rough calculations based on the workload.

7. Publications on competition law and policy

Boytháné-Hargita-Sárai-Tóth:
Versenyjogi esetek – az Európai Bíróság gyakorlata
(Competition law cases – The practice of the European Court of Justice); in Hungarian language
Osiris Publ. 2000

Csépai Balázs:
Az Európai Bizottság eljárása a Római Szerződés 81. és 82. cikkeinek alkalmazása során;
(Procedure of the European Commission in antitrust cases) in Hungarian language
Jogtudományi Közlöny November 2000

Gönczöl Tünde:
A Bundeskartellamt eljárási jogosultságai és az ügyféli jogok a német versenyfelügyeleti eljárásban
(Procedural competences of the Bundeskartellamt and the rights of the parties in the German competition proceedings); in Hungarian language
Versenyfelügyeleti Értesítő[4] July 2000

Németh György:
A marketing gyakorlati esetei jogi szemmel
(Marketing cases in a jurist's view); in Hungarian language
Fogyasztóvédelem December 2000

Németh György:
Marketing gyakorlati szemmel
(Marketing in a practitioners view); in Hungarian language
2000 Raabe Klett

Sárai József:
Változási irányok a közösségi versenyjogban és ezek várható hazai hatásai;
(Tendencies of changes in the EC competition law and their possible effects on the Hungarian law) in Hungarian language
Külgazdaság, March 2000

Szántó Tibor:
Szabályozási reform és intézményrendszer
(Regulatory reform and its institutional background) in Hungarian language
Külgazdaság, November 2000

Tóth Tihamér:
A more decentralised approach to state aid control in the EU? Experience of Associated Countries – the case of Hungary (in English language)
to be published in 2001, in the EU Competition Workshop series, edited by Prof. Ehlermann and Prof. Amato)

---

[4] Official Journal of the Office of Economic Competition

Tóth Tihamér:

Igényelnek-e további jogközelítést a közlekedési szektor közösségi versenyszabályai?
(Is further harmonisation needed in competition law applicable to transport?) in Hungarian language
Versenyfelügyeleti Értesítõ, 2000/3)