ANNUAL REPORT 2007 ON COMPETITION LAW AND POLICY DEVELOPMENTS IN HUNGARY

The Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) is an independent administrative authority of nationwide competence having the power to apply both Hungarian competition law[1] and Articles 81 and 82 of the EC Treaty. The task of the GVH, which started its operation on 1 January 1991, is the safeguarding of fair and free competition in the interest of the public. Its activities are based on three pillars: the supervision of competition, the competition advocacy (by commenting on draft pieces of legislation having an effect on competition and also initiating advocacy actions on its own motion) and the development of competition culture (by raising public awareness about competition and contributing to the development of competition related legal and economic activities performed in the interest of the public).

The investigative sections of the GVH are organised by economic sectors (industries) and case types. They commence investigations and collect information that is needed for the Competition Council, the resolution making body of the authority, to make its resolutions on the substance of cases. Parties to the cases concerned, and other persons concerned, by those resolutions may seek a court review of the resolutions.

This report is intended to give Readers an overview of the activities of the GVH in 2007. Describing in detail the many areas of those activities would have gone beyond the framework of it. Instead, the report focuses on prominent cases (including trends observed in and lessons drawn from them) and the major developments in competition advocacy, competition culture and the institutional and international relations of the authority.

Budapest, 30 April 2008

Dr Zoltán Nagy
President of the GVH

[1] In addition to the Hungarian Competition Act, the several times amended Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, first of all Act LVIII of 1997 on Business Advertising Activity, Act CLXIV of 2005 on Trade, Act LXXXVII of 1990 on Price Setting and (relating to the procedural framework) Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services need to be mentioned here.

1. CHANGES TO COMPETITION LAW AND POLICY, PROPOSED OR ADOPTED

1. In 2007 the **Competition Act** was not affected by any substantive amendment except some deregulation and conceptual refinements.

2. Following the notice on method of setting fines in antitrust cases, in October 2007 the President of the Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) together with the Chair of the Competition Council of the GVH issued a **notice on the method of setting fines in consumer protection cases**[2]. This notice details the considerations set out in law and used by the GVH to determine the amount of competition supervision fines imposed in cases concerning unfair manipulation of consumer choice.

3. Two decisions of the **Constitutional Court (Alkotmánybíróság, AB)** related to the field of competition law or the functioning of the GVH. In its decision 25/2007. (IV. 20.) the Constitutional Court accepted the standpoint set out in a submission, which questioned the constitutionality of some points of the instruction concerning the internal procedure of the GVH issued by the President of the GVH. The AB established that – although the President directs the activities of the GVH, establishes the organisational and operational rules of the GVH and exercises the rights of employer – the President does not have the power to determine obligations for the members of the Competition Council through defining deadlines for the completion of competition supervision proceedings. The AB took into consideration the provision of the Competition Act, according to which the members of the Competition Council are only subjected to the law in the course of a competition supervision case. The AB abrogated the provisions of the instruction, which contained these kinds of obligations. However at the time of the decision-making the objected provisions were no more in force.

4. The AB rejected the submission[3], which complained that the Competition Act determines as a maximum level of the fine, which may be imposed by the Competition Council on social organisations of undertakings, public corporations, associations or other similar organisations, 10% of the total of the net turnovers in the preceding business year of undertakings, which are members of those organisations[4]. In the propounder's opinion this is unconstitutional in relation to public corporations since in this way the contribution to welfare charges of the public corporation is not proportional to its income and property status. According to the AB the fine is a sanction, that is to say a legal consequence of an unlawful conduct. The competition supervision fine is the sanction of an unfair or anti-competitive conduct the aspects of the imposition of which must be determined under the Competition Act. Thus in this context it cannot be considered as a welfare charge and cannot be judged under the constitutional scale of proportionate sharing of welfare charges.

5. **The Act on the Rules of Broadcasting and Digital Transition**[5] has given a new task to the GVH. In the future the National Communications Authority (Nemzeti Hírközlési Hatóság, NHH) and the GVH will share between them – with respect to the rules concerning data protection and business secrets – the available data, information and documents for the observance of the principles and the attainment of the purposes of the Act. Thereto, upon

[2] Notice No 1/2007 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the method of setting fines in cases of unfair manipulation of consumer choice. Its antitrust "counterpart" is Notice No 2/2003 (amended in 2005).
[3] Decision 239/B/2005.
[4] Article 78(1) of the Competition Act
[5] Act LXXIV of 2007

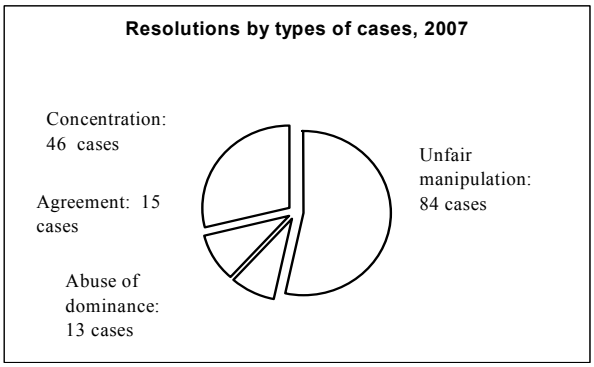
request of the other authority, each of the two authorities will give opinion or take position in professional questions concerning its responsibilities, powers and competence.

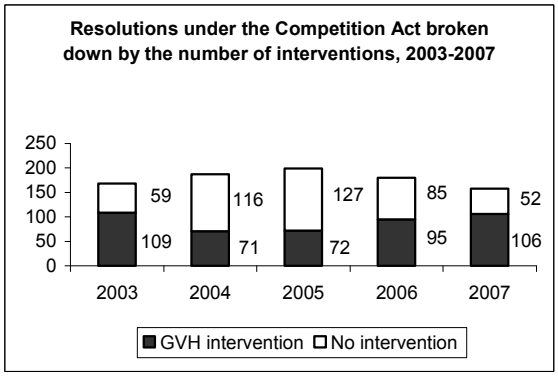
6. The new **Act on Electric Energy** (Act LXXXVI of 2007 – passed on 25 June 2007) is the most important element of the legal framework for the completion of liberalization on the electricity market in Hungary. It introduced the concept of significant market power in the electric energy sector with the necessary rules and regulations. The Hungarian Energy Office (Magyar Energia Hivatal, MEH) is in charge of enforcing these regulations while taking into consideration the opinion of the GVH.

2. ENFORCEMENT OF COMPETITION LAW AND POLICY

2.1. Summary of activities of the competition authority and of the courts

7. In 2007 the GVH conducted 204 competition supervision proceedings, out of which 158 cases were finished by a resolution on the subject of the case (decision or order imposing commitments) of the Competition Council. 84 of the latter related to unfair manipulations of consumer choice while 74 of them to antitrust (in 15 restrictive agreement, 13 abuse of dominance and 46 concentration cases).





Of the total number of the cases concluded by a resolution 114 cases were commenced ex officio, while 44 started on application. The total number of the interventions of the GVH was 106, they were made mainly in consumer fraud cases (81 cases), and the rest were in cases with antitrust relevance (25 cases). The GVH terminated 9 of the unfair manipulation of consumer choice proceedings and 14 of the antitrust proceedings after it had made, by its orders, commitments offered by parties to those cases to remedy competitive problems, binding to the parties.

8. In 2007 the GVH imposed fines by 68 decisions. The total amount of the fines imposed was HUF 2359,9 million (approx. EUR 9,3 million), including HUF 5,2 million imposed for the missing of the deadline set for the submission of merger-notifications. Around 45% of the total amount was imposed in cartel and 55% of it in consumer fraud cases. No abuse of dominance was established in 2007. Only 530 million HUF (2,1 million EUR) was enforceable at the end of the year as in the cases of the highest fines (Vj-140/2006* [6]: 936 million HUF, Vj-113/2007: 200 million HUF, Vj-114/2007*: 132 million HUF) the deadline for payment did not expired, or the court did not decide about the requests for the suspension of the fines. Almost the totality (over 97%) of the enforceable fine was paid by the end of the year.

[6] Further (generally more detailed) information about cases, the number of which is marked with an asterisk throughout the Annual Report, can be found in the Appendix.

9. The GVH initiated 12 cases on Community law basis in 2007. Thus the number of cases commenced on Community law basis had been increased to 54 since Hungary's accession. As practice shows, the GVH initiates one third of its restrictive-agreements and abuse-of-dominance cases on Community law basis or on parallel legal basis (i.e. against suspected infringements of both the Hungarian and the Community competition rules).

10. In 2007 the GVH decided in 10 cases initiated on Community law (or on parallel) basis. Five of these cases resulted in an intervention of the authority: three of them were finished after a suspension of the proceeding or by the acceptance of a commitment offered by the undertakings parties to the case with both kinds of these outcomes resulting in a change of the practice under examination, while in the two other proceedings unlawful practices were prohibited and undertakings fined. In these two cases the GVH imposed a total fine of HUF 941 million (approx. EUR 3.8 million) for the infringement of the Community (or both the Community and the Hungarian) competition rules. In the five remaining cases the GVH terminated its proceedings (partly because it could not be proved that trade between Member States might have been affected by the case).

11. Since its establishment in 1991, until 2007 the overall amount of the fines imposed by the GVH was 29,8 billion HUF (114 million EUR). The rate of enforceable fines significantly increased as compared to it in 2006, mainly due to the fact that courts decided more swiftly and usually they rejected the requests of parties to suspend the enforceability of fines.

12. Resolutions of the GVH made on the substance of cases can be reviewed by the Municipal Court of Budapest, the judgements of which can be further appealed before the Court of Appeal Budapest. At a third level the Supreme Court can also make a judgement should one appeal the judgement of the Appeal Court in the form of a request for exceptional review. According to the Act on Civil Procedures a decision can be appealed by any party to the proceeding, or by any person whose rights and obligations are directly affected by the case underlying the decision. Such a person might be e.g. the complainant or other participants of the proceeding. The reviewing court may alter the decision or dismiss it and order a new proceeding to be initiated.

13. Despite a slight decrease in the proportion compared to recent years, around a half of the decisions establishing an infringement are submitted to court for review. The slight decrease is mainly due to the fact that within the prohibition decisions the number of consumer fraud cases has significantly increased (as from 75% in 2006 to 94% in 2007) and due to the relative simplicity of the cases and the lower level of fines imposed the rate of appeal in such cases is generally lower.

14. More than two thirds of the 412 appeals of the resolutions made under the present competition law have become final. The underlying resolutions of the GVH were altered in part or in their entirety in 20 cases. In another 17 cases the amount of the fine was reduced to certain extent. It can therefore be assumed that there is still harmony in the application of the competition law between the GVH and the courts.

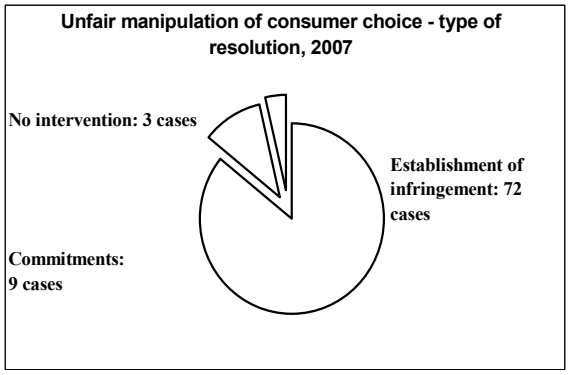
15. Among the judgements made in 2007, that closing the cinema cartel case is worth to be mentioned first. The judgement of the Supreme Court upheld the decision of the GVH establishing the existence of the cartel. The judgement confirmed that cartels could be proved indirectly should indirect evidence form a logical argument that substantiates the existence of the infringement. In another judgement on the highway construction cartel, the Court of Appeal Budapest also upheld the decision of the GVH. This case however still continues in the form of an exceptional appeal before the Supreme Court. The Municipal Court of Budapest upheld the first „credit card" decision of the GVH. The GVH conducted a

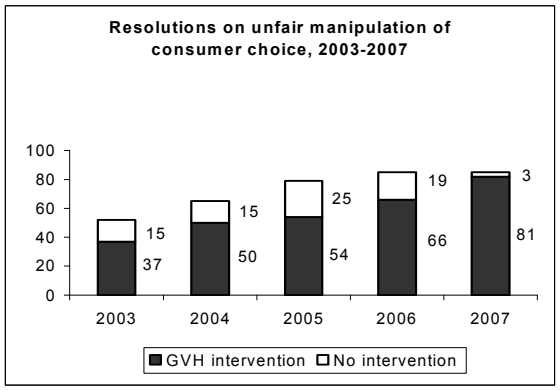
number of proceedings for misleading credit card advertisements and this judgement in relation to the first of these decisions, confirmed the approach of the GVH applied in all these cases. Perhaps influenced by this judgement, the parties in the other proceedings accepted and did not appeal the decisions of the GVH.

2.2. Unfair manipulation of consumer choice

2.2.1. Case statistics

16. In 2007, the Competition Council adopted 84 resolutions in unfair manipulation of consumer choice cases. It imposed fines by 60 of those 84 resolutions. The total amount of the fines imposed was HUF 1285,7 million (approx. EUR 5,1 million).





2.2.2. Cases – trends, conclusions, resolutions

17. In the course of giving information to consumers undertakings adjust themselves to the given market environment and apply **different communications techniques**. Beyond the traditional means – the so-called above-the-line (ATL) means –, which are typically used in the mass media, less conventional below-the-line (BTL) means such as on-line marketing are used more and more extensively. Both the selection of the means and their linking together form part of the marketing strategy of undertakings.

18. The GVH has realized the significance of the communications methods and the fact that they play different roles in influencing consumers. However, this does not mean a communication, which is of high professional quality form the perspective of the **advertising business,** cannot infringe the provisions laid down in Chapter III of the Competition Act. The GVH does not object in its decisions that a communications method (in particular an advertisement) cannot usually be expected to provide a comprehensive product description. However, if an advertisement highlights certain essential features of the good, than it has to do it in a precise manner, not concealing facts that are necessary for the proper interpretation of the communication. This means that the **requirement to provide objective information** relates only to the elements connected to the highlighted features of the product concerned by the communication rather than to all the elements connected to the features of the said product. (Vj-127/2007*)

19. The GVH has the opinion that advertising is an essential tool of drawing consumers' attention to a product or service. Accordingly, in line with the consistent practice of the GVH, an advertisement qualifies as an **eye-catching** one if it does not contain information on the essential features of the good or service (Vj-114/2007*). However, if the advertiser decides to

convey information on any of those essential features – i.e. to apply, from a competition law perspective, an advertisement other than an eye-catching one – than it has to do so in such a way, which ensures that consumers are informed about all the conditions that are interdependent or inseparable (Vj-127/2007*). Accordingly, while eye-catching advertisements lawfully convey an only minimum amount of information (on the existence of the good or service), **advertisements conveying more detailed information** have to contain information on all the essential features – i.e. on those that have relevance to consumers' choice between competitors or competing products. (Vj-147/2006)

20. The GVH does not/cannot express its **standpoint** relating to communications campaigns in any other way than only by its resolutions. At the same time, advertisers are free to ask for the opinion of, as a service provided by, a.o. the Hungarian Advertising Self-Regulatory Board or the Hungarian Advertising Association, in respect of advertisements not completed yet. However, also the GVH is ready to provide information, upon request of individual market players or interest representing organisations, about the lessons drawn from competition supervision proceedings and to make known in this way its expectations.

21. Parallelism between the services provided by undertakings in the **financial** and in the **infocommunications sector** exists in so far that **information asymmetry** benefiting providers is a decisive element on the markets of both sectors. The services on these markets appear to be sophisticated to consumers, and the markets are characterised by the introduction of new, previously unknown services (such as WAP, home TV, credit card products and combined deposit-, investment- and savings-related products). Distinction can be made between consumers by their knowledge of the advertised product or service (**laymen or consumers without expert knowledge**). In this regard it is unimportant whether the consumer is a natural person or not. What matters is the presence or absence of expert knowledge. Accordingly, the mere fact that a subscriber is one of the business subscribers does not mean that he/she has the necessary special professional knowledge. (Vj-127/2007*)

22. Integrated communications campaigns in the field of **financial services** are designed with an eye on the strict rules of the provision of these services. On this market the supply of precise and appropriated information to consumers is of high importance, as mutual trust between the parties plays a special role due to the characteristics of the goods/services. Consumers cannot be expected to remedy the unlawfulness of a market communication by digging around for additional information. The mutual creation of contacts between parties is an essential step in business/market processes. When the creation of such contacts is based on unlawful, misleading information then it is obvious that further information cannot eliminate the infringement. The infringement is committed even if afterwards all the relevant information is available, as the Competition Act prohibits the supply of information, which is capable of unfairly influencing consumers and such unfair influencing is committed by the conveying of misleading information. Consequently, advertisements must be authentic, truthful and accurate in themselves. (Vj-114/2007*)

23. In the course of a proceeding against OTP Bank (Vj-56/2006) it turned out that several banks engaged in misleading advertisement activities in connection with the **popularisation of their credit card products**. Therefore, the GVH decided to initiate market clearance proceedings in order to suppress the unlawful practice. Proceedings were initiated against more than ten banks, and the proceedings against nine of them (Vj-190/2006 – CIB Bank Zrt., Vj-17/2007* – MKB Bank Zrt., Vj-47/2007 – Kereskedelmi & Hitelbank Zrt., Vj-48/2007 – Erste Bank Hungary Nyrt., Vj-49/2007 – Citibank Zrt., Vj-76/2007 – Budapest Bank Nyrt., Vj-78/2007 – Raiffeisen Bank Zrt., Vj-79/2007 – Magyar Cetelem Bank Zrt., Vj-

113/2007 – OTP Bank Nyrt.) were also finished. In some of the advertisements popularising their credit cards the banks misled consumers by stating that “consumers can interest-free use the card even up to X days”, but not informing consumers about the preconditions that were to be met for the interest-free usage. The GVH emphasized in its decisions that advertisements, which did not inform or only partly informed consumers about the preconditions mentioned above, might be capable of misleading them.

24. In some proceedings **housing loan** advertisements of financial institutions, in respect of their capability of misleading consumers (Vj-17/2007* against MKB Bank, Vj-53/2007* against Erste Bank Hungary and Vj-129/2007* against Raiffeisen Bank); the interpretation of the wording “up to” in communications of OTP Bank (Vj-114/2007*) and Magyar Telekom (Vj-127/2007*); the interpretation of the phrase “offering a service for free” used in communications campaigns of the electronic communications sector (case Vj-120/2006* against Pannon GSM), the role of fidelity statements/contracts from the perspective of the advertising practice of the undertakings of the infocommunications sector (UPC Magyarország, Vj-85/2007* and Magyar Telekom, Vj-127/2007*) and the misleading nature of practices of TV content providers and broadcasters of call TV quiz games (cases Vj-5/2007*, Vj-14/2007*, Vj-16/2007* and Vj-74/2007*) were examined.

25. The problems detected concerning call TV quiz programmes showed established market practices, which have been applied for several years. Nevertheless, based upon the facts of the cases and considering all circumstances, the Competition Council came to the conclusion that though remedy to the problems would be a regulatory solution, in the particular cases the public interest attached to competition could be safeguarded in the most efficient way by the accepting of commitments offered, and hence, after doing so, it terminated the proceedings.

26. The practice of the GVH in 2007 provides other examples, in other sectors too, for the application of the instrument of **commitment resolution (order)**.

27. Price discount actions/campaigns on markets of **daily consumer goods** and **specialised trade** are characterised (e.g. in the retail trade of DIY products, electronics, perfume and chemical products), similarly to previous years, by advertising papers (leaflets) being delivered in large quantities to households. In 2007, the GVH initiated several proceedings in this area.

28. In its advertisements, Tesco-Global Áruházak concealed that the marketing of bicycles advertised by it differed from that commonly applied in bicycle stores, as consumers had to pay an extra fee for the assembling of the bicycle in order to get the warranty. The undertaking concerned committed itself to provide adequate information for all the consumers (both in the advertisements and in the premises of the supermarket) with regard to all such products where the warranty was not provided unless recourse had been made (for a given fee) to a specialised service nominated by the manufacturer/seller. (Vj-148/2006)

29. The hypermarket chain Cora, for the same conduct as that described above in connection with Tesco-Global, offered the same commitment, which was accepted by the Competition Council. (Vj-64/2007)

30. The competition concerns phenomena on this market are still connected to **availability problems** (consumers seek in vain the promoted products) and to **misleading price indications** (e.g. prices are higher than what is indicated in the advertisements). (e.g. Vj-143/2006, Vj-145/2006, Vj-149/2006, Vj-180/2006, Vj-6/2007, Vj-22/2007, Vj-36/2007, Vj-67/2007)

31. An advertisement of a supermarket on its discount actions is deemed as a factor that influences the decision made by consumers. (Vj-6/2007)

32. Bait advertisings are suitable to attract consumers into the supermarkets, and those consumers buy not only the advertised products but other goods as well. Thus, with these kinds of campaigns consumers may be won over from competitors.

33. According to the legal practice of the GVH, **discount advertisements** are misleading if the rebate is not or not to the promised extent available in the supermarket. It constitutes a violation of the Competition Act if beside the discount price the undertaking indicates the original price, which was, however, not applied directly before the rebate period, or was only exceptionally applied. Similarly, the advertisement in unlawful if despite the fact that the higher price was applied directly before the rebate period, it was applied for an unreasonable short period of time, or it was not applied at all beforehand, or if consumers have to pay, in fact, a price which is higher than discount price.

34. The GVH has the opinion that the practice of a supermarket to advertise a product, which is not available in the supermarket, is unlawful. According to consistent practice of the GVH, even in this case, the practice may be effective as a kind of bait advertising for the attracted consumers buy other goods. At the same time, it is not unlawful if the product is available only for a period, which is shorter than the rebate period advertised. However, it is underlined by the GVH that inserting the phrase “subject to stock availability” in the advertisement is not always sufficient for the practice to be accepted. This information is not enough to prevent a breach of the law, if the product concerned was not in stock at all or the stock was unreasonably low at the beginning of the campaign.

35. It cannot be held lawful either when a popularised product is not available in a given store at the beginning of the discount period. Based on the “subject to stock availability” information, consumers would namely tend to do their purchase at the beginning of the discount period fearing that the goods would soon be sold out.

36. The GVH examined the **“recruitment” of consumers via sales agents** in its investigations concerning Tele2 Magyarország Kft. (Vj-94/2007) and Invitel Távközlési (Telecommunications) Zrt (Vj-103/2007). The GVH assessed these cases in line with the resolutions it adopted in previous cases (e.g. in Vj-17/2006), where it established that only communications relating to essential features of the goods and services and able to generate market effects have competition law relevance. All kinds of the provision of information (e.g. training materials about the recommended content of future talks with consumers or sample contracts) may have competition law relevance, if they convey information in a regularized form to consumers on the market to support their decision-making. At the same time, individual communications by agents fall outside of the competitive assessment. What matters for the Competition Council is the overall nature of the sales by agents and the realization of those sales across the market.

37. In the former case the proceeding was initiated based on the suspicion that agents of Tele2 may have made the false impression on consumers that they would conclude contracts with Magyar Telekom. In the latter (Invitel-) case, agents were suspected of supplying on several occasions, both in oral communications and on the phone, information about the conclusion of contracts and its significant preconditions to consumers, which may have mislead consumers.

38. With regard to Tele2, the Competition Council arrived at the conclusion that the advertisements of Tele2 were not capable of misleading consumers. However, consumer complaints shed light on practices followed by agents in getting customers, which constituted

the main subject of the investigation and the misleading nature of which could not always be ruled out. At the same time, the investigation did not give any answer to the question of whether the consumer complaints related to individual conducts of the agents that were outside the reach of competition law, or they could be attributed to practices with a competition law relevance of the undertaking concerned. Further related investigation would have been needed; however, the Competition Council did not expect the investigation to result in a clear-cut conclusion. Therefore the case was terminated.

39. The Competition Council arrived at the same conclusion in the proceeding against Invitel, in which the training materials prepared for the agents, the system of supervisory calls introduced by Invitel, and the system devised to make agents interested in increasing the sales, were regarded as means, the aim of which was, apart from appropriately informing consumers, to enable consumers to correct their decisions, which they have possibly made based on misleading information.

40. Direct marketing is getting more and more popular due to its low costs and the high number of consumers who can be contacted by means of it. However, its misleading potential is utilised as well. **Direct mail**, a specific form of direct marketing, has also been dealt with in competition supervision proceedings.

41. This tool is the typical communications channel of undertakings **advertising health related products**. Health preservation, prevention and healthy lifestyle are ranked high among consumer priorities. Accordingly, more and more products concerning these priorities are marketed. However, also the number of products increases to which attractive, but scientifically not verified features are attributed.

42. Certain producers pursue their advertising activities without remaining within the boundaries set by the regulation relating to their product market. Instead, but with reaching other markets too, they provide misleading information in connection with their products (e.g. they create the false impression that a foodstuff is a medication or vice versa).

43. All this is done in a manner through which they target groups of ill people, who can be, as a consequence of their situation, easily persuaded. Similarly to previous years, the corner stone of the evaluation of “health marketing” – which, on the one hand, gives an answer to the higher demands and, on the other hand, also generates demands – is the categorisation of products by their **curative effects**, also taking into consideration the relationship between the special rules for the provision of information about such products and the competition law assessment.

44. With regard to its communications channels, health marketing shows a varied picture. The widest group of consumers is reached through the printed press. Further typical forms of advertising are the flyers and leaflets spread by herb shops and pharmacies. Additionally, oral communications in multilevel marketing (MLM) are made as well.

45. Undertakings, which intend to distribute curative products that, at the same time, also may endanger health, have the duty to get their **products examined by the relevant authorities**. As a necessary consequence of this rule it may happen that possibly effective and good products can hardly enter the market or cannot enter it at all without being examined even if they are very good or, though they may enter, they may not be referred to as products having curative effects. Accordingly, undertakings that circumvent the relevant law may not claim that their products have curative effects. If they do so, then they gain unfair competition advantage vis-à-vis those rivals that have gone through the processes required by law. (Vj-12/2007)

46. The practice of the GVH, confirmed by the courts, with regard to health products is to compare the content of the information within the meaning of Article 9 of the Competition Act with the content claimed by the request for license, as licenses are given by the National Institute of Pharmacy and the National Institute for Food and Nutrition Science rather than by the GVH, in the licensing processes of which the classification, ingredients and intended use of products can be examined (Vj-3/2007)

47. In the case Vj-3/2007 it was established that in the second half of 2006 PROPHARMATECH® Egészségügyi és Műszaki Kutató-fejlesztő ("Health-care and Technical Research and Innovation") Kft., HELIOGRÁF Kereskedelmi és Szolgáltató ("Trading and Service Provider") Kft, and OMKER Orvosi Műszerkereskedelmi ("Medical Instruments Trading") Zrt. made statements about the curative effects of R47-PROTUMOL body lotion that were capable of misleading consumers. Due to changes in the regulation in 2005, the possibility to qualify a product as a "non-medication product with curative effect" no more exists, which implies that any product with curative effects may only be licensed as being a medication. Accordingly, the manufacturer PROPHARMATECH had two choices: to get its product qualified, in a time-consuming and expensive procedure, as a medication, or to chose the qualification procedure for cosmetics with the involvement of the National Institute of Pharmacy or the National Institute for Food and Nutrition Science respectively. The undertaking decided for the latter procedure. Hence, it was prevented from claiming any curative effect of its product; however, it did not observed the rule providing so.

48. The information provided by Manufaktura Bt. about the "SPA detoxification device" and the dietary supplement „SymBioGel" was governed by the effort to attribute curative effects to the products. No qualification procedure was initiated in relation with the said products. Moreover, the undertaking could not substantiate its claims. (Vj-12/2007)

49. In the case Vj-73/2007, in addition to establishing that the conduct was unlawful and imposing a fine, the Competition Council obliged Biovit Pharma Kft. to publish a corrective statement about the information it published about Erdic tablets having been capable of misleading consumers.

50. In case Vj-112/2007, the Competition Council examined the information provided by AVON Cosmetics Hungary Kft. in its catalogues 2006/1-2006/7. A number of its advertisements contained statements about the efficiency of the products in question, which was underpinned by percent-values obtained by clinical testing. However, the efficiency tests supporting the claims were carried out abroad. When determining the content of the advertisements, AVON neglected the fact that with respect to skin types, there are differences between countries and geographical areas. Therefore, the tests conducted under different geographical and climatic conditions, and concerning a population with different eating habits do not provide results that would allow conclusions to be drawn relating to the efficiency of the products in Hungary. Therefore, the information based on tests carried out abroad was capable of misleading Hungarian consumers. In setting the fine, the GVH took into consideration that consumers were free to return the products with which they were not satisfied; furthermore, that AVON was willing to modify the content objected to of the advertisements.

51. The Internet plays a central role in the communications and marketing strategy of **airlines**. The intensive price competition in this sector during recent years has forced and forces companies to apply dynamic communications strategies. The GVH emphasised in several cases (Vj-4/2007, Vj-25/2007, Vj-43/2007, Vj-75/2007) that in choosing the service provider, consumers try to find the best price based on the price of a return- and not of a

one-way ticket. Therefore, if an undertaking fails to provide information about price elements influencing the total amount of the price to be paid, its practice is capable of misleading consumers. Another typical problem was that the number of tickets advertised in the framework of actions was limited by flights. Therefore, in the decision-making of consumers quickness was a relevant factor. Hence, consumers who did not obtain knowledge of this circumstance could believe tickets would be available until the end of the booking period, but at least under the whole campaign and for all the flights/destinations.

52. As in previous years, the Competition Council decided about a number of inappropriately worded **comparative advertisements** in 2007.

53. Comparative advertisements, and **superlative statements of similar effect about market leadership** (which depict a given product as the best, in respect of one of its characteristics, of all the products available on the market) are still typical subjects of competition supervision proceedings[7]. It also applies to advertisements containing superlative statements about market leadership, that claims must be substantiated by the undertakings making the claims.

54. In the case against Electro Computer Kereskedelmi Zrt. (Vj-6/2007) the Competition Council established that the slogans "Cheaper than anywhere else!" and "Cheaper is available!" conveyed the information that the products of the undertaking concerned (TVs, refrigerators, stoves, etc.) were cheaper than those of other undertakings. Accordingly, the undertaking must have been able to prove that the products concerned available in the period of the advertising campaign in any of the Elektro Pont outlets were in fact cheaper than in any of the outlets of the competitors. The substantiation would have been required to cover all the rivals. The undertaking party to the case could not prove the claims, and did not have any (monitoring) mechanism through which a continuously performed comparison could have been made. At the time of setting its prices indicated in the advertising material, and during the advertising campaign the undertaking concerned, obviously, could not lawfully obtain information on its competitors' prices (i.e. on the prices of all of them).

55. In May 2006, Vodafone Magyarország Zrt. advertised its 'Vitamax Joker Plusz' tariff package with the slogan "the most competitive card tariff". Moreover, in the advertising campaign it was claimed that Vodafone offered "the best" and "the most beneficial available nowadays" prices. In the proceeding Vj-142/2006 it became clear that the superlative statements about the market leader position were not well founded.

56. Also statements made by Aquarius-Aqua Kft. were held by the Competition Council to be capable of misleading consumers. The company popularized its Veritas Gold mineral water with the slogans "at the top of the world", "the best Taste Award winner mineral water", and "the best Taste Award winner Hungarian mineral water", which could not be substantiated. (Vj-139/2006)

57. From the aspect of competition law assessment the interpretation given to the objected claims by the undertaking and the intention followed by it when communicating the claims have no relevance. What matters are the **consumers' interpretation and understanding of the information communicated**. Dm-drogerie markt Kft. used the slogan "quality available at the best price" in its "dm magazin" during the year 2006 and in January 2007. In accordance with the established practice of the Competition Council, the use of adjectives in the superlative is unlawful in itself if the conditions for an objective comparison

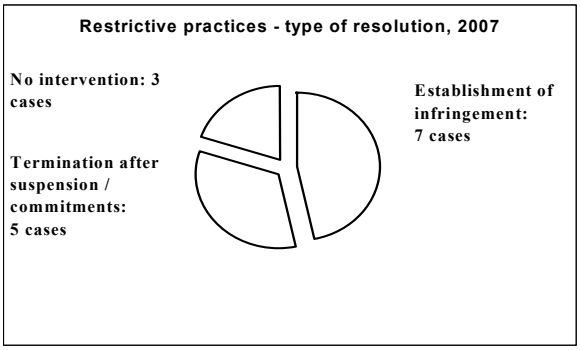
[7] Act LVIII of 1997 on Business Advertising, which contains provisions on comparative advertising, designates the GVH as the authority with power to assess the legality of comparative advertisements.

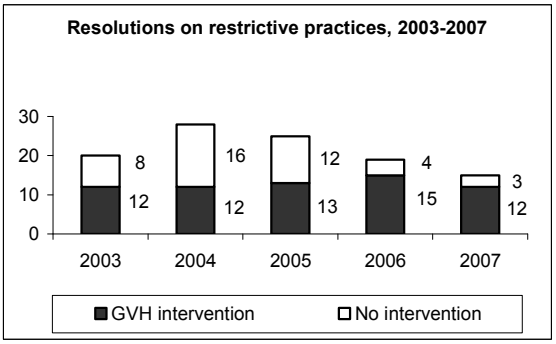
are missing. Dm-drogerie markt could not provide evidence for the prices of its own branded products displayed in the magazine to be the lowest not only in its own stores but also in comparison with the prices of similar products of its competitors. (Vj-36/2007)

2.3. Restrictive agreements

2.3.1. Case statistics

58. In 2007, the Competition Council adopted 15 resolutions in restrictive agreement cases. It imposed fines by 6 of those 15 resolutions. The total amount of the fines imposed was HUF 1069 million (approx. EUR 4,2 million).





2.3.2. Cases – trends, conclusions, resolutions

59. In the supervision proceeding against five undertakings dealing with currency exchange (of which Northline Kft. and AND NOW Kft. were found guilty), the Competition Council underlined in its decision that in addition to those directly relating to prices also agreements and concerted practices relating to **other kind of information influencing price setting** may infringe the freedom of competition. Information exchange that aims at, or has the effect of, lowering the risks arising out of the unforeseeable behaviour of competitors is contrary to the requirement of undistorted competition. If an undertaking regularly informs its competitors about its intended daily prices, that practice is anticompetitive in two respects. First, it might serve as a tool for operating a classical price cartel; second, even in cases in which the existence of a price cartel cannot be proved, it can influence autonomous decision-making relating to price setting. (Vj-83/2005)

60. In its decision concerning an **agreement about the non-contesting** of newspaper distribution markets, the Competition Council emphasized that in the course of competitive assessment of an agreement it has no relevance whether the restrictive part of the agreement, afterwards, is considered by the parties as an important or unimportant part of the entire agreement, as a binding or non-binding rule, or whether there are sanctions attached to the breach of that rule. Neither can parties refer to the lack of a concurrence of wills by alleging that the non-contesting of each other's markets is only recognition of the status quo, or unilaterally given information. Unilateral statements incorporated in a contract qualify as an agreement from a competition law perspective, and they especially qualify as such if the contents of such statements made by the parties are similar or if one of the parties makes its statement in exchange for financial benefits. As far as the capability of restricting competition of such non-contest agreements and as their potential effects are concerned, it can be established that an important element of the risks motivating undertakings to attain

better performance is the circumstance that they do not know the plans and intentions of the existing market players and of the potential entrants. Coordination between potential rivals about the date from which or until which they will or will not enter, respectively, each other's traditional markets is an anticompetitive influencing of market processes. The Competition Council set forth that an agreement on non-contesting the competitor's market also qualifies as a market allocation. In 2007, the largest fine was imposed in this proceeding conducted against Hungarian Post Zrt. and Magyar Lapterjesztő Zrt. (Lapker) for market allocation. The amount of fine was HUF 936 million (approx. EUR 3,7 million). (Vj-140/2006*)

61. **Hardcore cartels** (price fixing, market sharing, quota setting) including **bid rigging** continued to be a priority field of cases in 2007. In detecting secret hardcore cartels **down raids** (inspections of the premises of the parties without a prior notification, subject to the attainment in advance of a judicial authorization) constitute a core technique. Another important tool used against hardcore cartels is **leniency policy**, which was applied in one case finished in 2007.

62. In the course of the reconstruction of Bajcsy-Zsilinszky Hospital, the Municipality of Budapest announced a three-phase open **public procurement** procedure in August and December of 2005, for a contract value of HUF 3 billion (approx. EUR 11,9 million) relating to the purchase of specified medical equipments. The winner of every phase of the public procurement procedure, the engineer bureau Kortex employed Olympus Hungary, an undertaking delivering endoscopes and accessories, as a subcontractor. In September of 2005, Kortex and Olympus entered into a cooperation agreement with regard to the public procurement procedure. The Competition Council found that an exclusive supply stipulation of the cooperation agreement, by which Olympus undertook to supply the equipments in question exclusively to Kortex in connection with phases II and III of the procurement procedure, restricted competition to such an extent that could not be considered to be of minor importance and prevented the agreement from being exempted. In international and Hungarian legal practice, leniency policy is applied to horizontal agreements. Under the special circumstances of the given case, the Competition Council found the leniency notice of the GVH to be applicable to this vertical agreement case too. Accordingly, Olympus was granted immunity from fine and Kortex was fined HUF 77 million (approx. EUR 27,7 million). (Vj-81/2006*)

63. Cases on retail **price maintenance** (RPM) come more and more in sight of competition authorities on international level as well. In the practice of the GVH, the first case of this type, in which a considerable amount of fine was imposed, is case Vj-26/2006*. In this proceeding, the GVH suspected that Navi-Gate Kft, which was both a wholesaler and a retailer of the market leading Garmin products on the market of GPS equipments, and other retailers had entered into an agreement fixing the retail prices of Garmin products. Later, the GVH extended the proceeding also to cover the reseller agreements concerning the marketing of I-Go navigation software. The reseller agreements concluded by Navi-Gate for the I-Go and Garmin products were obviously worded with the aim of applying the recommended resale price as a fixed price. This is evidenced by the fact that any deviation from the recommended price was subjected to a written approval of Navi-Gate. The GVH imposed a fine of HUF 43 million (approx. EUR 169 thousand) on Navi-Gate. In the light of their minor role in the anticompetitive conduct, no fine was imposed on the other undertakings.

64. Since 1997, several **codes of ethics of professional chambers** were subjects of competition supervision proceedings. By conducting those proceedings, the goal of the GVH was, on the one hand, to make it clear for the public that competition law applies to the

activity of chambers and their codes of ethics in the same way as to any other business activity and, on the other hand, to stop the infringements observed. Most of the cases ended with the termination of the proceeding due to commitments to rectify the codes.[8] In cases where serious restrictions of competition could be detected (such as efforts to operate a price cartel), apart from the establishment of the violation and the prohibition of its continuation, also fines were imposed.[9]

65. Certain provisions are not caught by the prohibition of restrictive agreements. Namely those, which, by their very nature could rationally be held by professional organisations or bodies to be absolutely indispensable for the attainment of certain goals that can reasonably be recognized on the grounds of the public interest.[10] The reference to the public interest, however, does not provide an automatic exemption for every rule of the Code of Ethics; each and every case has to be scrutinized on its own in view of the goals to be attained and the justification and proportionality of the restrictions. The Code of Ethics and Discipline, the Rules for Tariff Calculation and the Draft Competition Code of Magyar Építész Kamara (Chamber of Hungarian Architects) were anticompetitive as they practically provided mandatory minimum prices. In the course of proceeding Vj-201/2005*, the Chamber of Hungarian Architects could not identify any professional principle reflected by the documents mentioned above, which would serve the attainment of reasonably recognizable, public interest-related objectives. Furthermore, as far as preventing services from being of poor quality and offers from being unfounded, several mechanisms exist through which quality assurance and consumer protection can be guaranteed in a less restrictive manner in comparison to what was envisaged by those documents. Following its negotiations with the GVH, the Chamber amended them as of 1 February 2005. The amendments targeted the determination of provisions relating to the members according to which the stipulations and rules of the Chamber about architectural tariff calculations constitute only recommendations and derogations from them are allowed

66. The proceeding against Magyar Gyógyszerész Kamara (Hungarian Chamber of Pharmacists) with regard to its rules restricting the marketing activities of pharmacies was terminated after commitments offered by the Chamber had been accepted. Competition law is to protect public interest attached to competition; however, other public interests may overwrite that public interest in special cases. If these other public interests are protected by other statutes, then competition policy must respect the will of legislators. Therefore, in assessing the rules of the Code of Ethics restricting marketing activities of pharmacies, the starting point for the Competition Council was the opinion that only those rules can avoid being caught by the Competition Act (or by EC law), which identify as ethical misconducts activities that are prohibited, at the same time by state regulation as well. In the proceeding the Competition Council came to the position that rules of the Code, the aim of which is to preserve the *status quo*: on the market; may hamper the expansion of more efficient market players and reduce the possibility available to new entrants to popularize themselves, which is obviously in the interest of the drafters of the Code of Ethics. In the knowledge of the preliminary position of the Competition Council, the Chamber committed itself to delete the rules from the Code of Ethics, which declared a general prohibition on all the possible means

[8] Vj-119/1999 – Magyar Mérnöki Kamara (Hungarian Chamber of Engineers); Vj-136/1999 – Magyar Építész Kamara (Chamber of Hungarian Architects); Vj-134/1999 – Magyar Gyógyszerész Kamara (Hungarian Chamber of Pharmacists)

[9] Vj-148/1998 – Magyar Könyvvizsgálói Kamara (Chamber of Hungarian Auditors); Vj-137/1999, Vj-45/2001 – Magyar Orvosi Kamara (Hungarian Medical Chamber); Vj-1/1999 – Magyar Állatorvosi Kamara (Hungarian Veterinary Chamber), Vj-180/2004 – Magyar Ügyvédi Kamara (Hungarian Bar Association), Vj-16/2005 – Magyar Könyvvizsgálói Kamara (Chamber of Hungarian Auditors)

[10] In EC law, this principle is known as Wouters-exception, named after the Wouters-case, in which some stipulations of the Dutch Bar Association were examined. (C-309/99 J. C. J. Wouters, J. W. Savelbergh and Price Waterhouse Belastingadviseurs BV v. Algemene Raad van de Nederlandse Orde van Advocaten [2002] ECR, I-1577).

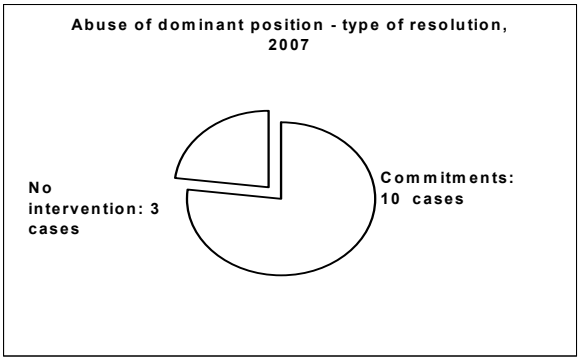
of increasing the turnover of pharmacists/pharmacies and prohibited the application of marketing means with regard to those pharmaceutical products, which were not publicly subsidised. (Vj-60/2006*)

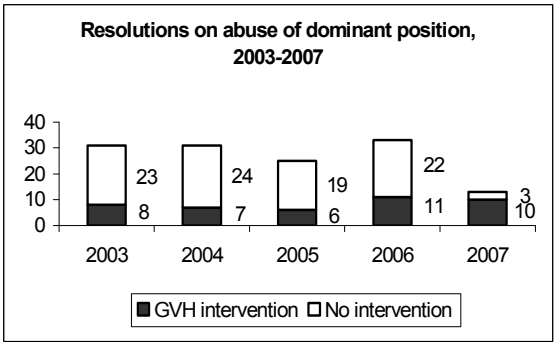
67. Three commercial and service providers founded a joint venture named. Euronics Kft. The joint venture was to join the international supermarket chain Euronics and build up Euronic's Hungarian network. In the course of this activity, its founders wished to utilize the joint venture regarding joint supply and marketing and regarding a uniform retail business image. Accordingly, it was undoubtedly established n the proceeding of the GVH, that Euronics Kft performs activities that can only be utilized by its founders. The fact that a joint venture develops business relations exclusively, on a long lasting basis, with its founders usually excludes, as it also excluded in this case, the possibility for it to qualify as a full function joint venture. However, in examining the question whether the founding of Euronics is capable of restricting competition between the founders, the Competition Council arrived at the conclusion that the activity of the Euronics, regarding both purchase and marketing, meets the requirements for being exempted. Efficiencies and appreciable savings through the joint purchase and the coordination concerning the spreading of goods to the outlets were proved, besides the fact that the founders of Euronics remained under sufficient competitive pressure on the markets of both purchases and sales. The determination of uniform discount campaign prices could be considered as being exempt from the prohibition as the price-agreement between the competitors was only a part of a much wider agreement between them. The continuous flow of goods that are on sale, in the field of technical consumer goods, is a crucial precondition of retail level competing; and the uniform image of the Euronics-network makes joint discount campaigns necessary. (Vj-191/2006*)

2.4. Abuse of dominant position

2.4.1. Case statistics

68. In 2007, the Competition Council adopted 13 resolutions in abuse of dominant position cases. No fine was imposed, but in 10 of those 13 cases commitment resolutions (orders) were made. In 7, 1 and 2 of the commitment resolution cases, the abuse that was the subject of the case was exploitative, restrictive and of a mixed type (exploitative + restrictive) by its nature, respectively.





2.4.2. Cases – trends, conclusions, resolutions

69. In the case of both exploitative and restrictive abuses of dominant positions the existence of a harm caused to consumers' interests is an indispensable precondition for the **intervention of the competition authority**. Exploitative abuses are necessarily disadvantageous to consumers in the short term; at the same time, the additional incomes of the undertaking committing the infringement that originate from the exploitation may encourage new entries to the given market and intensify in this way competition, which in turn may be advantageous to consumers in the long term. In such cases competition authorities need to assess whether possible future advantages justify a non-sanctioning under competition law of the disadvantages caused to consumers. On the contrary, those of the restrictive abuses, which are based on benefits granted to consumers are advantageous to them in the short term; at the same time, the suppression and elimination of competitors may result in a decreased intensity of competition, which is disadvantageous to consumers in the long term. In such cases competition authorities have the task to determine the conditions under which it will be justified to deprive consumers of the advantages in order to protect them from possible higher disadvantages they may suffer sometime in the future. (Vj-42/2006)

70. In 2007, it happened several times that a dominant position was suspected to be abused in a case that concerned **long-term contractual relations**. The Competition Council considers the phenomenon that in the case of a possible failure of performance of long-term contracts both parties may face problems in satisfying their respective demands (or finding new sales possibilities), not to be the manifestation of a dominant position held by any of the parties. "Dominant position" is an objective concept of law that can be traced back to the structure of the market rather to particular stipulations of contracts which parties are free to bargain between them. Consequently, at harms suspected to be done or being actually done in the course of long-term contractual relations, the question about the existence of a dominant position at the time when the contract was entered into, rather than at the time when the infringement was committed, needs to be answered.

71. On the market of **infocommunications services**, in 2007, besides the well-known cases of fixed-line broadcasting (cable TV services: excessive price increases, changes of programme packages), „naked" ADSL cases represented the other part of investigations.

72. The cases of UPC Magyarország Kft. (Vj-2/2006) and FiberNet Kommunikációs Zrt. (Vj-4/2006) concerned the undertakings' price and programme package policy. With regard to prices, both cases ended with the termination of the proceeding for the following reasons. According to the Competition Council, in order to establish an infringement by the application of excessive prices, a comprehensive in-depth analysis of the undertaking's economic activities is needed, except when the lack of an infringement can clearly be detected.[11] However, based on the experience of earlier cases, such analysis requires enormous costs and is time-consuming and even in these cases, there is little chance that the existence of excessively high prices can be proven. Consequently the amount of resources needed is not proportional to the possible harm caused to the public interest by a possible infringement.

[11] In its earlier practice, the Competition Council terminated all the proceedings where the annual price increase was lower than 15% or was only slightly over that level, which also indicated (indirectly) the lack of an infringement.

73. As to the structure of programme packages, the Competition Council also terminated the proceedings since an infringement could not be established based on the evidence available and no result was expected from the continuation of the proceedings as well.

74. In the cases ViDaNet Zrt. (Vj-16/2006) and TvNetwork Rt. (Vj-15/2006), in addition to the above-mentioned issues also the general contract terms and conditions of the parties were examined. In ViDaNet, the undertaking made a commitment to modify its general contract terms and conditions taking into account the need to inform consumers before significant modifications of the programme packages will be carried out. In the TvNetwork case, the Competition Council terminated the proceeding since no dominant position could be found as a result of competition by competing cable TV products in the service area and by similar Antenna Digital services.

75. In January 2006, the GVH initiated proceedings against five fixed line telephone operators to establish whether they infringed competition law by providing broadband ADSL Internet services only together with fixed line (PSTN) services. In course of the proceedings all operators undertook to introduce the provision of "naked" ADSL services. Based on the commitments offered by them, consumers have the choice of whether they take the package of ADSL and fixed line subscription or they subscribe only to the naked ADSL service. In view of the fact that the safeguarding of the public interest can be ensured in this manner and by making their respective commitments binding on the parties, the Competition Council terminated the proceedings. In these tied-selling cases the complementary role of competition policy and regulation came to sight. The GVH cooperated successfully with the National Communications Authority (NHH) in its competition supervision proceedings. Following the proceedings of the GVH, the NHH supervises the provision of naked ADSL service, particularly with regard to the determination of wholesale conditions and prices (cases Vj-7/2006*, Vj-8/2006*, Vj-9/2006*, Vj-10/2006*, Vj-11/2006*).

76. In 2007, two investigations ended with **commitments concerning the residential bank markets. B**oth of them related to the unilateral amendment of long-term credit agreements.

77. The Competition Council raised objections against a practice of OTP Bank, whereby the Bank unilaterally and significantly raised its early repayment fee charged at the time of the repayment of personal credits, without leaving enough time for their clients unilaterally to terminate their credit agreements. Ultimately, the Competition Council accepted commitments offered by OTP Bank to improve the quality of consumer-information, repay consumers a part of the gain the Bank achieved from the increase of the fee and provide, for a certain additional period and under certain conditions, possibility for early repayments. When doing so, the Council took into account that in this way a significant number of consumers could get financial compensation in a relatively easy procedure, which they would otherwise receive only after a lengthy and costly litigation before courts (Vj-12/2006*).

78. The other commitment-case mentioned above as a case concerning the residential bank markets had as its subject some of the mortgage loan products of OTP. Both the facts and the outcome of the case (Vj-41/2006*) were similar in several respects to those of the personal credit case. The investigation showed that the Act on Credit Institutions[12] and the general business terms of banks based on it, provided unrestricted possibilities for banks unilaterally to modify long-term agreements. It is an effective regulatory environment, which would provide adequate protection for consumers against the passing on to them of cost

[12] Act CXII of 1996 on Credit Institutions and Financial Undertakings

increases, taking place after the conclusion of a contract, by service providers through unrestricted, unilateral and practically unnotified decisions of the providers.

79. The GVH also examined the **market of liability insurances for health care services**. Nevertheless due to the unique nature of the market, neither an abuse of dominant position, nor an illegal agreement restricting competition was found by the investigation (Vj-173/2005).

80. During 2007, the GVH received numerous complaints concerning the **activity of parking companies** in the capital and in other towns. Parking on public land is a chargeable service, the utilisation of which creates a civil law contract between the owner of the area, i.e. the municipality, the parking company and the motorists using the parking place. The fulfilment of payment obligations originating from this contract is beyond the scope of competition law; it can be appraised in civil law disputes to be decided by courts and not by the competition authority. Similarly, the issue of the amount of parking fees is not subject of competition law assessment either since local governments set these fees by their regulations about the use for parking purposes of public land.

81. However, the GVH examined whether it was justified that Centrum Parkoló Rendszer Kft charged motorist, who used its parking places by settling payment via mobile phone, an additional amount of money. The proceeding was terminated as it was proved that the creation and operation of the payment system generated additional costs and the total cost of the service was not higher than the costs of the development and maintenance of the system; moreover, motorists who did not wish to incur additional costs could simply chose another, cheaper method of payment. (Vj-176/2005*)

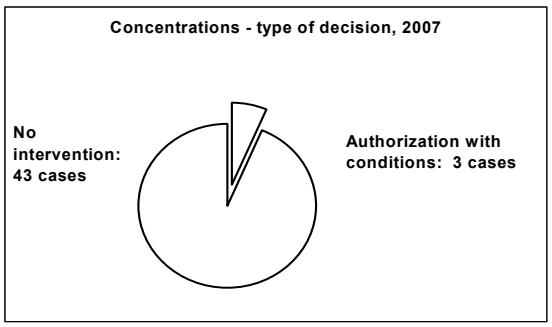
82. In another case about parking initiated against Fővárosi Parkolási Társulás ("Metropolitan Parking Association"), the GVH examined whether it was an infringement that the parking company gave no refund to motorists who left the parking place before the end of the already paid period. It was argued that car owners should get back the amount of fee for the period for which they did not utilize the service. The investigator terminated the proceeding, and this resolution was confirmed later by the Competition Council and also by the court. The creation of a possibility for providing a refund for the prepaid but not utilized parking service would have namely resulted in substantial additional costs for the parking company, which would pass on that financial burden to consumers, thereby increasing the price of the service (Vj-162/2006).

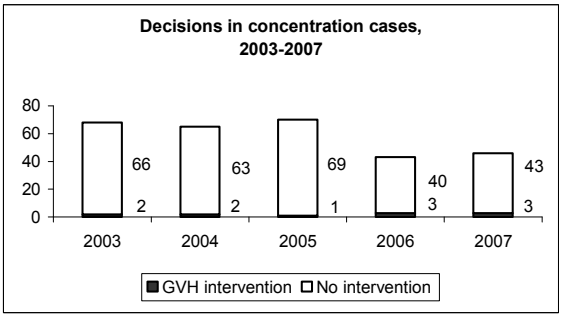
2.5. Mergers and acquisitions

2.5.1. Case statistics

83. In 2007, the Competition Council adopted 46 decisions in concentration cases. Of the 46 cases that ended with a final decision 44 was initiated upon the notification of the parties, while in the two remaining cases the GVH opened proceedings ex officio due to a failure to apply for an authorization. Out of the 46 cases 26 resulted in horizontal concentrations, one was of vertical nature, while the remaining 19 produced both horizontal and vertical effects or neither of them.

84. In three of these cases the GVH intervened: namely it imposed obligations on the parties as a precondition for the authorization of the transaction. The GVH imposed fines in three cases, in the amount of HUF 5,2 million, for the missing of the deadline set for the submission of such notifications.





85. In seven cases, there was no need to apply for an authorization or the notified transaction did not qualify as a concentration under the Competition Act.

86. Article 24 of the Competition Act determines the thresholds, which trigger the obligation of the parties to notify their transaction to the GVH. Since 1 May 2004, concentrations with a Community dimension must notified to the European Commission, even if at the same time they satisfy the conditions of the Hungarian Competition Act as well. In 2007, concerning the Mondi Packaging AG/Dunapack Zrt. case, the parties requested that, even though the concentration was to be notified in Hungary and three other Member States, the Commission should examine it due to its cross border effects. The GVH did not support this request and assessed the merger in a full, second phase procedure and finally authorized the transaction.

87. Out of the concentrations with a Community dimension decided by the Commission, only two raised significant issues in relation to the Hungarian market. In both cases the GVH communicated its opinion to the Commission. In one of the cases, Louis Delhaize SA, through its subsidiary Delparned BV, acquired control over Magyar Hipermarket Kft. thereby combining the latter undertaking with its own subsidiaries (Csemege-Match Zrt., Profi Magyarország Zrt.) on the retail distribution market of consumer goods. The concentration produced effects only on the distribution level, since on the purchase level the undertakings concerned already created a joint purchasing entity and aligned their activities. Nevertheless the Commission established that the transaction would not impede effective competition neither on the distribution nor on the purchase level, therefore it approved the deal. In the Kronospan/Constantia merger, which concerned the particleboard industry, the GVH raised the Commission's attention to possible problems on the Hungarian market. In the end the Commission authorized the deal by accepting commitments from the parties.

2.5.2. Cases – trends, conclusions, resolutions

88. Pursuant to the Competition Act[13] a concentration of undertakings is effected, where a sole undertaking or more than one undertaking jointly acquire direct or indirect control of the whole or parts of one or more than one other undertaking which have been independent of it or them respectively. According to the opinion of the Competition Council set forth in the proceeding Vj-18/2007*, this provision cannot be interpreted in a way that transactions through which sole control is transformed into joint control do not effect concentrations from the point of view of the undertaking holding alone the controlling rights up till the time of consummation of the given transaction, because the undertaking controlled is not independent of it. Transactions through which sole control is transformed into joint control

[13] Point b) of Article 23 (1)

create namely a new form of control, relating to which assessment under competition law has to answer the question of whether the change in (i.e. increase in the number of) entities exerting control will generate harmful competitive effects. Therefore, the provision in question of the Competition Act excludes, from the point of view of joint control, only cases from being qualified as concentrations in which the statement that the undertaking coming under their control is not independent of them applies to each of the acquirers.

89. In case Vj-159/2007*, the Competition Council expressed its opinion, according to which even in situations where the geographic market concerned by a concentration is broader than the territory of Hungary, the GVH may only assess that concentration based on its effects exerted on the Hungarian market rather than from the perspective of the broader market mentioned. This statement constitutes a summarisation of the related practice of the Council. In cases in which a geographic market, that is broader than the territory of Hungary, can exactly be delineated and also its main characteristics (in particular the market shares held on it) are known, it can reasonably be supposed that the competitive situation in the territory of Hungary as a smaller part of that broader geographic market is the same as on the broader market. (Vj-100/2001) In the absence of related information, it is generally sufficient for the assessment of prospective competitive effects in Hungary to consider actual imports as part of the turnover in Hungary as the geographic market and take into account further import possibilities as factors influencing potential competition. (Vj-116/1999)

90. Though the **Municipality of Budapest, Degrémont SA and OTV France SA** acquired joint control over **BKSZT Budapesti Szennyvíztisztítási Kft**. (dealing with sewage treatment), they failed to apply for an authorization of the transaction; therefore the GVH initiated an ex officio proceeding in the case. The Competition Council came to the conclusion that following the acquisition, until an amendment of the memorandum of association of BKSZT, Degrémont and OTV France had joint control over BKSZT, while afterwards also the Municipality became part of the group of the controlling entities. This implies that the examined conduct (the development of the control of BKSZT) was formally implemented through two concentrations. In the end, the Competition Council authorized the transaction since it raised no serious concerns (Vj-18/2007*).

91. In view of ownership and personal interlockings between the fodder manufacturer and distributor Bács-Tak Kft. active in the poultry industry and the waterfowl processing undertaking Hungerit Zrt., the Competition Council had the opinion that the proposed acquisition by Bács-Tak of another poultry processing undertaking, Kiskunhalasi Baromfifeldolgozó Zrt. the risk of a joint dominant position on the Hungarian waterfowl processing and purchase markets being created, would be run. For the case that Hungerit and Kiskunhalas already had a joint dominant position on the market, that would not be the result of the transaction, therefore it could not be remedied by the imposing of conditions and obligations. The Competition Council cleared the transaction on condition that the personal interlocking between Bács-Tak and Hungerit must be eliminated. In addition to this, it obliged Bács-Tak and all the undertakings directly and indirectly controlled by it, to refrain from buying Hungerit-shares and provided that one and the same person may not be elected office holder, at the same time, of both the Bács-Tak-group and the Hungerit-group, for a certain period. (Vj-91/2007*).

92. Dunapack **Papír és Csomagolóanyag Zrt.** (“paper and packaging material”) and the **Mondi group** together have an approximately 90% share in satisfying Hungarian demands for industrial paper bags. Nevertheless, after a detailed analysis of its horizontal effects on the market of industrial paper bags, which covered the examination of issues such as substitutability, the distance over which industrial paper bags can economically be

transported, .the role of exports and imports in satisfying the demands, the level of the utilisation of the production capacities in Hungary and the probability of demand-satisfaction from abroad by potential competitors for the case Mondi would increase the price of its bags following the transaction, it cleared the proposed acquisition by Mondi of two industrial paper bag manufacturing plants of Dunapack. (Vj-159/2007*).

93. In 2007, there were two significant mergers increasing the concentration on Hungarian communications markets. In one of them, **Hungarian Telephone and Cable Corporation** (HTCC) acquired control over **Matel Holdings N.V.;** thereby the two biggest Hungarian local telecom providers (Hungarotel and Invitel) and together with them one of the leading alternative providers (Pantel) and the nation widely active Internet service provider Euroweb got into one and the same group of undertakings. In the course of the investigation, the GVH examined in detail a number of electronic communications markets. Nevertheless, it found a possibility for restrictive effects to appear only in relation to retail markets of business Internet and data communications services. The Council concluded that not even on these markets could such effects be expected as results of the transaction. The case drew the attention to the fact that situations cannot be dealt with under the present dominance test of the Competition Act where the market participants No 2 and No 3 merge without gaining a market leader position by this, but the number of competitors will significantly be reduced (here: from four to three) which may even generate harmful competitive effects (Vj-19/2007*).

94. The same group of undertakings was involved as a buyer when **Invitel Távközlési** ("telecommunications") **Zrt.** acquired control over **Tele2 Magyarország Kft.;** the acquisition was authorized by the GVH. Tele2 is an alternative provider offering a.o. voice telephony services through call-by-call carrier selection by means of the dialling of a prefix number. The GVH came to the conclusion that the transaction could exert negative horizontal effects only in the service provision area of Invitel and Hungarotel within the residential fixed line call service segment as the applicant Invitel, an earlier concessionaire fixed line telephone network owner, wished to acquire control of one of their main competitors in the period 2005-2006. The elimination of the competitive pressure could have resulted in an increase of prices to the earlier levels or even to higher levels. A scrutinization of market forces revealed that T-Kábel and other alternative network operators could exert a lasting and significant competitive pressure on the pricing policy of Invitel and Hungarotel, furthermore, Magyar Telekom could take over the role of Tele2 as an alternative service provider and it also has the incentives to do so (Vj-111/2007).

95. In the next two concentration cases, the buyer was the Liberty group, i.e. the group of undertakings directly or indirectly controlled by Liberty Global Inc. In the case Vj-42/2007* **LGI Ventures B.V.** acquired control over **Audiotec Médiaszolgáltató Zrt.,** the provider of the Minimax children channel. In the other case **Chellomedia CEE Holdco B.V.** purchased **Filmmúzeum Zrt.** the provider of the Filmmúzeum movie channel (Vj-123/2007*). The Liberty group is the direct owner of the largest Hungarian cable TV provider, a local telecom provider and a sport channel operator. Foreign undertakings controlled by the Liberty group sell to Hungarian programme providers several programmes. In both cases, in view of the integration of the programme provision (content) and the vertically connected programme distribution (transmission) levels, the Competition Council examined in particular the vertical effects of the transactions and accepted commitments offered by the parties to remedy the likely competition concerns.

96. Through an in-depth scrutinization of a proposed merger between the second and fourth largest pharmaceutical wholesalers in Hungary, **Hungaropharma Gyógyszerkereskedelmi Zrt.** and **Medimpex Gyógyszer-nagykereskedelmi** (medication

trading) **Zrt.**, the GVH found the transaction would not significantly change market structure and it also found the creation of neither a sole dominant position of Hungaropharma nor a joint one held by Hungaropharma and Phoenix Pharma, the other of the two most powerful groups on wholesale medicine markets, not to be likely. Furthermore, the Competition Council came to the conclusion that harmful vertical, portfolio or conglomerate effects could not be expected either and it cleared the concentration. (Vj-166/2007*).

2.6. Inquiries into sectors

97. The GVH initiated sector inquiries on two markets in 2007. These inquiries will likely be finished in 2008. On the wholesale and retail markets of television programme provision (content provision and content aggregating services) and the advertising through television, all of them belonging to the electronic media economic sector, the objective of the sector inquiry is to understand and appraise market processes concerning the marketing of TV ads, the access to sport and film rights and the conditions of the forwarding of TV programme channels. The GVH identified namely circumstances of these markets, which may suggest that the conditions for a market entry that is free of unnecessary restrictions are not given and the effects increasing consumers' welfare and ensuring a diversified multiplayer choice on the supply side of the market possibly do not assert themselves. In the field of the financial services, the objective of the sector inquiry initiated on residential markets and on the markets of small-sized undertakings is to understand and appraise market processes concerning the replacing of products of certain financial service providers by similar products of some others (i.e. market processes concerning the switch-over to other banks).

3. THE ROLE OF THE COMPETITION AUTHORITY IN THE FORMULATION AND IMPLEMENTATION OF OTHER POLICIES

98. Within the framework of competition advocacy, the GVH tries to influence state decisions in favour of competition. In these efforts the GVH makes use of the powers granted to it by the Competition Act, it may rely on constitutional guarantees attached to competition, and it may address the public. State decisions in this context include the shaping and implementation of public policies and the individual decisions and interventions of the government and other state bodies.

99. One of the most important forms of competition advocacy is the opining of legislation. However, other tools are also available; e.g. the GVH may also submit proposals and make comments on its own motion ("signal-giving") and its role is not restricted to mere reactions to others' initiatives.

100. According to the Competition Act all draft pieces of legislation that might affect the scope of duties of the GVH have to be submitted for opining to the President of the GVH. When elaborating its opinion, the GVH examines the competitive situation on the market concerned by the given regulation and in the event that there will be changes in that situation, it assesses whether the objective to be attained by the regulation is in accordance with the regulatory means applied, whether the restrictive effect of the latter is or is not excessive in comparison to the said objective. In 2007 more than 500 proposals and drafts were submitted for opinion, with a fourth of them requiring a detailed analysis from a competition perspective. A detailed description of the competition advocacy performed in

2007 by the GVH would go beyond the framework offered by this Annual report; therefore, only some of the most important aspects of this activity are described.

101. In 2007 the GVH paid great attention to the re-regulation of the **energy sector**.

102. The GVH expressed its accord concerning the objectives laid down in the **Concept on Energy Policy** for the period of 2007-2020. According to the concept, the most important strategic goal of the Hungarian energy policy is to optimize the joint ensuring of the safety of supply, the competitiveness and the sustainability as fundamental pillars and primary objectives of the energy policy. As far as competitiveness is concerned, the opinion of the GVH is that in the above context, stress must be placed on the promotion of the competitiveness of undertakings manufacturing goods of the Hungarian economy, while also the competitive operation of home energy generating undertakings is an important aspect to be taken into account. The GVH was pleased to observe that the Concept considered competition ensuring transparent conditions free of discrimination to Hungarian undertakings to be an important means contributing to the attainment of the above goals.

103. Nevertheless it drew the attention to the fact that until a key element, namely long-term agreements determining the development of the market would not be handled appropriately by the concept, the seriousness of the declarations on the need to foster competition on the electricity market remains dubious.

104. It pointed to the fact that the concept failed to enumerate, among the strategic objectives, the establishment of a regional market, though competition on a market of at least this size was a necessary precondition of the security of supply. The GVH also criticized the statements relating to energy prices, primarily because though the concept intended to provide a thorough view to energy policy, in the case of prices it dealt only with network based energies and not the whole of the sector. It was also considered problematic, that the precise role of market actors (the Government, the undertakings, and institutions) and the supervision of the fulfilment of these roles were not established in the concept.

105. During the process of enactment of the new **Act on Electric Energy** the GVH fought deliberately but without success against the stiffening long-term agreements for a market structure, which would be more beneficial for competition.

106. The GVH considers that the new Act is a step forward as compared to the previous one only partially opening the market, but it brought no breakthrough, and it contains a number of questionable or unclear solutions.

107. The natural monopoly nature of networks makes competition on the level of the infrastructure impossible. Therefore those effects that are natural when competition exists have to be introduced artificially in the case of natural monopolies, and this is the duty of sectoral regulation. However, according to the GVH, it is not clear how and to which market segments the new Act will introduce competition, and the new Act also failed to implement a toolkit for demolishing structural barriers to competition. Moreover, the Act is not based on an effects analysis.

108. The most important change is, that the new Act eliminated the public utility segment and thereby the two-level market, but it has not established a transparent new system.

109. The change in the model of the market has not solved the problem of long-term agreements, as they remained intact binding some 70-75% of the home generating capacities to the wholesaler MVM Trade Zrt.

110. Moreover the Act maintains the vertical integration between the network-owner system operator and the incumbent trader. On an electric energy market in a net importer position, which is characterized by a scarcity of the sources, the market model introduced cannot lead to a decrease in prices as it grants full freedom in determining wholesale prices to the dominant MVM possessing an overwhelming majority of the sources. Nor can competition evolve on the levels of production and wholesale, as the contracting parties of the long-term agreements are interested in the preservation of the given market structure. Nevertheless, the new Act has left the system operator and the transmission grid further on integrated with a market player pursuing commercial activities. The GVH is convinced that it is an indispensable precondition for the good functioning of a competitive market that a system operator, which is independent of all the other market players, is created by an ownership-divestiture of MAVIR Zrt. from the MVM group.

111. The GVH considers it extremely alarming that instead of fostering more intensive competition, the first legislative amendments after the enactment of the Act aimed at the strengthening and future extension of the existing dominant position. Thus, while a most important element of competition would have been the competitive pressure deriving from import, countervailing to a certain extent the dominance of MVM, the amendment of rules relating to cross border transport of energy restricted and reduced the cross-border network capacities. This reduction resulted from the fact that the cross-border network capacities of MVM were excluded from the capacities put into auction.

112. The new Act introduced the notion of significant market power, an approach previously known only in the telecommunications sector. According to the GVH, a regulatory definition is more appropriate at the early stage of liberalisation, than a competition law approach based on market analysis.

113. The GVH also welcomed the market changes introduced by the **Act on Natural Gas Supply**. It was an important step ahead that the new Act eliminated the public utility segment and thereby the two-level market and that it has reserved certain level protection by the state to only a well-defined part of consumers which needs that protection, namely to residential consumers and small enterprises. By doing so the Act makes other consumers to be real players of the natural gas market.

114. Similarly to the case of the electricity market, the widespread application of long-term agreements has raised concerns on the market of gas as well, and the new Act provides no solution for this issue. The GVH emphasised the importance of the supervisory role of the Energy Authority as the supply side of the gas market is much less competitive (i.e. it is less diversified) than that of the electricity market and therefore possible abuses of significant market power are considered more likely.

115. In the case of the media, it has to be taken into account that the market in question is one, which is governed by fundamental (constitutional) rights. At the same time, it is the position of the GVH that the satisfying of constitutional media requirements may not result in a restriction in market circumstances that would exceed the extent which is necessary to attain the constitutional objective. As an example, the must-carry obligation was appropriately settled by the **Bill on the Rules of Broadcasting and Digital Transition**, a.o. for the reason that this obligation is imposed only on channels which are of decisive importance from the perspective of public services and the evolving of media pluralism as well, rather than on every channel. It the course of the elaboration of the bill in question, the GVH could achieve that generally valid considerations, serving competition and media policy

requirements to be taken into account in future legislative decision making, were respected by the legislator.

116. In a phase of the process of enactment where the GVH had no more possibility to provide opinion on the text of the bill, certain provisions considered to be anticompetitive were introduced into the. Act. The arguments underlying these provisions, which actually make vertical integration possible are not known to the GVH. The GVH considers that a competitive market structure would be more efficient than the application of behavioural rules.

117. In 2007, two ministerial decrees[14] (on rail network access fees and on the detailed rules of rail network access) for the **implementation of the Act on Railway Traffic**[15] were adopted

118. The GVH raised concerns against provisions[16] about the procedures relating to the implementation of Regulation (EC) No 847/2004 on the negotiation and implementation of **air service agreements** between Member States and third countries. The provisions objected by the GVH set forth that, if before the entry into force of the Regulation the actual use of limited air traffic right in the case of a flight to a third country is commenced, than the revision of that right is possible only after ten IATA schedule periods (i.e. five years) have passed.

119. Having regard to the fact that according to the existing bilateral agreements only national flag carriers may be designated for the provision of limited air traffic services, the incriminated provision hinders all entry until 2012, constituting a serious restriction of competition. Due to it, MALÉV, the national flag carrier enjoys exclusivity, and even if the presence of the counterpart national flag carrier creates a duopoly for each flight, according to the experiences this does not exercise real competitive pressure.

120. Despite the opposition of the GVH, the draft provision was accepted and entered into force.

121. Though the **Act on the Retail Sale of Pharmaceutical Products** is more or less pro-competitive, certain regulations in this sector restrict otherwise legally authorized opportunities for competition. The GVH signalled these problems to the Ministry, sometimes with a positive result.

122. The GVH also expressed its reservations concerning the Act regulating the prescription of prescription medications. According to the rules, doctors are obliged to prescribe for the patient the medication that is the cheapest at the time of the visit. According to the GVH this imposes an obligation on doctors that has at least two problematic aspects. First, doctors are not perfectly informed about the prices of the different medications on the market in a given moment and second, the artificial exclusion of more expensive brands eliminates competition and thereby the competitive pressure on the cheapest price as well.

123. Concerning the **Act on Voluntary Mutual Insurance Funds** the GVH emphasised that in order to avoid the hindrance of the effective functioning of the liberalised market it is necessary to make it clear by the relevant regulations that there is no basis for discrimination among the services that can be differently financed by the funds according to the place where the service was actually provided. The terminology used in the Act does not intend to make such a distinction, and when it speaks of „products supplied in pharmacies“ it does not

[14] The Joint Decree 83/2007. (X.6.) GKM-PM and the Decree 101/2007. (XII. 22.) GKM
[15] Act CLXXXIII of 2005 on Railway Traffic
[16] In a draft Government Decree; see Article 9 of Government Decree 198/2007. (VII. 30.) adopted in the meantime.

want to exclude the same products bought in other retail premises from being financed by the funds. The terminology only aims to define the scope of products.

124. The GVH actively advocates the introduction and increase of competition in **professional services**. However in 2007 no step forward was taken, despite the obligations of Hungary under the Lisbon agenda. In some respect barriers have even increased. Despite previous plans, mandatory membership in the respective chamber remained a barrier in the provision of private detective and security services.

125. A re-regulation of accounting services was based on the Directive 2006/43/EC. The implementation took as a basis the most severe approach offered by the Directive significantly altering the existing system. The draft implementation provided wide scale powers to the Chamber in the determination of the requirements of education, the content of the exams, the applicable fees. According to the GVH such freedom enables the Chamber to restrict entry to the market through unduly severe requirements. The GVH also expressed concerns that the supervision of accounting services is not appropriately ensured.

126. The GVH actively participated in the implementation of Directive 2005/29/EC on **unfair commercial practices**. Its position was that the new national provisions should affect the whole of the legislation relating to consumer information (i.e. the Act on Advertisements, the Act on Consumer Protection, the Competition Act and some sectoral rules) because the term of the Directive „commercial practice“ should be interpreted in the widest possible sense.

127. Furthermore the GVH expressed, that unfair commercial practices might have an effect of restricting competition, so the GVH would like to maintain its present role in the supervision of infringements of such effect. According to the clear position of the GVH, practices having an effect on competition should belong to the jurisdiction of the GVH, while other practices should be supervised by consumer protection agencies.

128. The GVH participated in the working group which was entrusted to review what amendments in the overall legislation would be necessary having regard to Directive 2006/123/EC on **services in the internal market**. The GVH considers that deregulation was not given enough emphasis and ministries still consider justified the maintenance of existing provisions, constituting legal barriers to entry through different authorization procedures.

129. The GVH provided its opinion on the draft Government Decree on the **energetic characteristics of buildings**. The GVH suggested that the regulation should provide for a standardized and low cost qualification process, that relies on available information as that about the level of actual gas or electricity consumption. It should be avoided to provide for costly, individual examinations, including the check of the structure of the buildings. The GVH doubts that the model accepted really serves the prevention of the loss of energy instead of ensuring only seemingly the fulfilment of the obligation to implement the relevant directive.

130. The Ministry of Justice and Law Enforcement involved experts of the GVH in the **re-codification of the Civil Code.** There are namely several points (e.g. concerning the concept of business secret, rules relating to intellectual property, rules for consumer contracts) in which the rules of the Competition Act and those of the Civil Code are in connections with each other. Just to mention two examples of GVH-proposals that were accepted during the re-codification work:

- The GVH suggested that the Civil Code should contain a new provision pursuant to which the circle of persons, the damage caused by whom falls under joint and several

liabilities, may be limited by statutes in certain cases. Such a provision would extract successful leniency applicants from the circle of the said persons.

- Pursuant to a provision of the original draft, the contract relating to a concentration would come into existence when it is concluded but it would become effective only upon an authorization by the GVH. Given that the GVH approves the majority of the examined concentrations, such a provision would imply that for the case that the authorization of a concentration would nevertheless be rejected, the decision of the GVH would need to contain a measure about divestiture supposed the parties have already implemented their transaction. In view of the possibility of such situations arising, the GVH suggested the Competition Act should categorically prohibit the implementation, before authorization, of a concentration.

4. THE DEVELOPMENT OF COMPETITION CULTURE

131. Besides for competition supervision and competition advocacy, the GVH is also responsible for the developing and disseminating of competition culture and of the culture of consumer choice. This developing activity covers the increasing of the awareness on competition, competition policy and competition law, the facilitating of conscious consumer choice, the improving of public attitudes to competition and the promoting of competition related legal and economic activities serving public interests.

132. With the establishment in 2005 of a specialized unit of the authority, the Competition Culture Centre (CCC), the activity of the GVH relating to the development of competition culture has been institutionalised. [17]

4.1. Activities of the Competition Culture Centre

4.1.1. The annual work plan of the CCC for 2006/2007

133. The tasks of the CCC are defined in its annual work plan. Apart from the activities focusing on the development of competition culture with the technical support of the GVH, the work plan also contains programmes in the implementation of which the GVH relies on the contribution of other organisations to which it provides financial and, as circumstances may require, also technical support from its available budget. The annual work plan for 2006/2007 published in September 2006 defined as target groups of the developing activity of the CCC students and lecturers of higher educational institutions; teachers and students in primary and secondary education, dealing with or interested in competition law or competition-related economic analysis; theoreticians and researchers; small and medium-sized enterprises having anything to do with the proceedings and with competition supervision activities of the GVH; civil organisations playing a significant role in the development of consumer culture, as well as public administration employees and decision-makers engaged in one way or another in competition-related issues during their work, including Members of Parliament and their consultants too.

134. Besides the tasks to be performed by the CCC on behalf of the GVH, there are several significant programmes through which the CCC intends to focus, complementing its own activities, on the involvement of a large number of external organisations in the

[17] The CCC is also responsible for the fulfilment of the tasks of the OECD-Hungary Regional Centre for Competition in Budapest (RCC), see section 5.3. of this report.

development of competition culture. Promoting in this way the activity in the field of the development of competition culture of external organisations and persons, the CCC worked out a competition system and in autumn 2006 it issued invitations to tender relating to four points of the work plan. Within the scope of the competition system projects with a good professional basis and a reasonable budget submitted by applicants with appropriate references, may receive partial or full financial support.

135. In 2007, 87 tenders were submitted to the CCC, all of them were assessed until the end of 2007 and a significant part of them were also executed. Of the invitations those relating to the support of scientific and educational projects and research works were the most popular, but also a significant number of tenders aimed at supporting the activity of civil organisations developing consumer culture. Only a few tenderers asked for a support for the organisation of or the participation in professional programmes. Most of the applicants were research institutes specialized in market research, companies, universities, non-profit organisations or foundations.

4.1.2. Results achieved by the CCC in 2007

136. By making its choice as far as a **foreign specialist book to be published in Hungarian language** (as the first book of such kind) was concerned, the CCC considered as a criterion that the selected work gave a comprehensive overview, from both legal and economic aspects, of timely issues of competition law and policy and it covered all the important cases, which laid the foundations of the international law enforcement practice. The CCC decided for Massimo Motta's Competition Policy - Theory and Practice (University Press Cambridge 2004) – a very useful book for everyone dealing with the functioning of competitive markets. The book was published in Hungarian in September 2007 as a result of a one-year preparatory work. The CCC sent free copies of the Hungarian edition to the libraries of universities and colleges. The book is also available in bookshops.

137. Depending on their size, **publications for educational purposes** have the form of booklets or flyers.[18] In 2007 the CCC brought out the following flyers and booklets:

- Prohibition of the unfair manipulation of consumer choice;
- Experiences of the GVH concerning the unfair manipulation of consumer choice: Products with an impact on our health;
- Experiences of the GVH concerning the unfair manipulation of consumer choice: Financial services;
- Experiences of the GVH concerning the unfair manipulation of consumer choice: Telecommunications;
- Prohibition of the abuse of a dominant position;
- Prohibition of agreements restricting economic competition;
- Private enforcement of claims - Enforcing in a civil lawsuit the legal consequences resulting from an infringement of competition law;
- Assistance provided by the police in competition supervision proceedings or in proceedings against suspected infringements of Articles 81 and 82 of the EC Treaty conducted by the GVH or the European Commission respectively;

[18] www.versenykultura.hu, at „CCC Publications"

· Legal practice – a summary, related cases and latest developments in Community legal practice in the context of the „effect on trade between Member States" concept.

138. The **CCC organises professional events** as fora for the discussion about timely issues of competition law or policy and it **promotes** both financially (through tendering) and professionally (by ensuring the participation of its staff members as lectures), **the realization of events**, presentations, conferences, professional fora, seminars, training programmes, etc. organised by other entities,

139. On 16 February 2007 the CCC held an international conference in Budapest titled „Fighting cartels - Why and how?" The aim of the conference was to demonstrate the magnitude of the damage caused by cartels to the economy, to emphasize the importance of fighting them effectively and to show related international experiences. The conference was successful: heads of undertakings concerned by cartel cases, decision makers of companies, leaders and members of economic chambers and associations, other personalities of the economy, journalists, lawyers and leaders of the competition authorities in the target countries of the OECD-Hungary Regional Centre for Competition in Budapest, altogether more than 250 persons, were present.

140. In November 2007 the CCC started a series of discussions titled „Competition law chats at noon time" (lunchtime lectures), making possible a frequent, creating regular nevertheless informal occasions for experts of the GVH and external experts to talk about timely issues of competition. In 2007 two programmes were organized: at first, the decisions of the European Commission and the European Court in Microsoft case were on the agenda and secondly, the programme dealt with the possibilities of the private enforcement of claims in Hungary.

141. Staff members of the GVH regularly take part in different professional programmes in order to make competition law and policy arguments and resolutions of the GVH understood and accepted and to get familiar with the opinion of and feedback from consumers and undertakings concerned by the operation of the GVH. Programmes organized by consumer and professional associations, chambers and other sectoral organizations enable a direct consultation, between undertakings of a sector or an organisation representing consumers and staff members of the GVH, to be carried out.

142. By inviting tenders, the CCC supported the organisation of professional events about competition law, competition policy, market theory and consumer consciousness. Tender invitations by the CCC also offered **possibility** to tenderers **to take part in professional events** and conferences organised in Hungary or abroad or to carry out study tours. A maximum support of HUF 2 million could be received in the framework of the tendering.

143. In 2007 nine tenders were submitted to and also supported by the CCC relating to organisation of professional events, while only four (in the same way successful) tenders were submitted relating to the participation in professional events and the carrying out of study tours. The programmes concerned by the tenders were manifold considering both their topics and the targeted audience: most of the events organised with the support of the CCC dealt with problems of consumer protection (awareness of the rights of consumers, instruments of consumer protection, prudent consumer orientation, increasing consumer awareness), but the CCC also supported competition-related programmes organised by universities. The study tours on the one hand helped young researchers to get familiar with latest scientific news and trends, on the other hand they supported the professional development of students studying in higher educational institutions and taking part in the activity of scientific study groups.

144. By supporting **research work dealing with competition law, competition policy and market theory issues specified by the GVH/CCC**, the CCC does not intend to finance research works and expert activities which are in direct connection with the law enforcement activity of the GVH, but it wishes to motivate researchers to focus on the examination of competition related economic and legal questions not answered yet. Researchers interested in these issues could receive a support of up to HUF 10 million. In response to an invitation to tender, 19 tenders were submitted in 2007, with the realization of most of them being finished by the end of 2007.

145. The majority of the successful tenders had as their subject the examination of a competition related economic question. There were several tenders about the relationship between competition and competitiveness or about the explanation of why prices on markets in Hungary and in other EU Member States were different. Several researches aimed at clarifying the effect of switching costs on service provider change, analysing network industries (primarily the communications sector and the energy sector) and financial markets. Other researchers dealt with the treatment of and the methodological approach to excessive prices, or made comparisons between verbal and statistical methods of market definition or explained economic principles applied in imposing fines. As far as legal aspects of competition are concerned, the private enforcement of claims proved to be the most popular issue; one of the tenderers examined the relationship between competition law and the collective management of rights.

146. In the framework of **open tender procedures to award supports of another kind**, the CCC can grant support to scientific and educational projects which contribute to the improvement of theoretical and empirical knowledge on competition law, competition policy, market theory and on consumers' conscious decision making. These supports are in the same way not intended to finance research work or expert activities, which are in direct connection with the law enforcement activity of the GVH. In the framework of the tendering procedure researchers carrying out scientific-educational projects facilitating the dissemination of competition culture could receive a support of up to HUF 10 million as a maximum. In response to an invitation, 37 tenders were submitted in 2007, with the realization of most of them being finished by the end of 2007.

147. The majority of the successful tenders were research programmes; just to mention two further examples, one of the tenders targeted the translation of a textbook and there was a tender dealing with the publication of a reference book and other brochures. Research projects dealing with the network industries and with phenomena of financial markets dominated, by their number, also the open tendering procedure.

148. As far as the **appearance on mass media channels** is concerned, in 2007 the GVH/CCC strengthened its informative activity performed via the press and started preparatory work in order to reach particular groups of the society through an increasing number of channels in 2008. Besides, staff members of the GVH regularly bring out papers and other publications in the electronic and printed press. In comparison with earlier years, in 2007 the appearance of the GVH/CCC in the newspapers dealing with consumer protection became more intensive; the goal of this appearance was to inform consumers about the experiences gained by the authority in its consumer fraud cases (both the number and importance of which was increasing) and about the lessons drawn from those experiences.

149. By supporting the activity of and professional **programmes organised by civil organisations of the consumer protection** and by other organisations working for the development of consumer culture, the CCC contributes to the dissemination of information

on the consciousness of consumer choice and to the organisation of programmes dealing with this issue. With its tender procedures the CCC also aims at raising consumer awareness relating to the enforcement of claims or, in connection with competition advocacy, at promoting the creation of a regulatory-institutional environment protecting consumers more effectively. In response to this invitation to tender, 22 tenders were submitted in 2007, with the realization of them being also finished in 2007.

150. The successful tenders acquired supports for the publication of consumer protection newspapers and brochures, the organisation of consumer protection fora and other events, the organisation of educational programmes and for the dissemination of information on consumer protection through the electronic media and the Internet. One of the tenders had pensioners as its target group consisting of more vulnerable people (as far as their consumer awareness and consciousness are concerned) than other groups of the society. Two other tenders elaborated on methods to reach students in secondary education, as a highly important target group for consumer education.

151. The CCC, just like in 2006, supported **institutions of the higher education** in Hungary, which provide knowledge of competition law, competition policy and market theory, in the **development of the related technical book stock of their libraries**, by giving them a possibility to chose Hungarian and foreign language technical books and periodicals, up to a framework amount of HUF 1 million each, from a list of the relevant publications compiled by the CCC. Each contacted library used the opportunity offered by the CCC and highly appreciated the support.

152. The CCC established a **Competition Culture Award** to recognise the activities of experts working outside the competition authority but making outstanding contributions to the development of competition culture. In 2007 the award was given out for the second time. The second winner of the award was Ms Enikő Boytha who received the award in recognition of, partly, her efforts made for the authority in the period of its establishment and during the first decade of its operation and, partly, her activity as a lecturer in competition law for many years, as a result of which a Research Centre of Competition Law at the Faculty of Law of Pázmány Péter Catholic University was founded in 2006.

153. The CCC organises **informative programmes about competition law and market theory** specifically designed for officials in public administration including MPs concerned and their consultants, governmental experts and officials and municipalities. As a part of its related activity, in 2007 the CCC organised a two-day long seminar, with the involvement of experts of the authority and from the EU, for staff members of the Ministry of Agriculture and Rural Development about the approach of competition law to conducts affecting the markets of agricultural products and the assessment of such conducts.

154. In 2007, as the single case of **supporting experts in the public administration in participating in professional events**, a staff member of the Hungarian Energy Office participated in a conference on „The Opening-up of European Energy Markets" organised by the Academy of European Law, and held in Brussels, about the package of energy policy measures proposed by the European Commission in January of that year.

155. As far as the **creation of the infrastructure of the CCC** is concerned, the own homepage of the CCC, connected to that of the GVH, started in January 2007.[19] Also the non-public professional library of the GVH is operated within the framework of, and hence, is developed by, the CCC.

[19] www.versenykultura.hu, also available by clicking on the logo of the CCC on the homepage of the GVH (www.gvh.hu)

156. In September 2005 the CCC began to publish **Versenytükör** („Mirror of Competition"), a **quarterly of competition law and policy**. The majority of the authors of the quarterly are staff members of the GVH, but apart from informing about law enforcement by the GVH and the courts, the quarterly also introduces adjacent subjects influencing the functioning of competition, based on studies prepared by experts of the given subject. Versenytükör always reports on the major resolutions made by the Competition Council and the courts in the last quarter, the competition advocacy activities of the authority and the latest developments in Community competition law; each number of the periodical contains news and interviews too. The quarterly also covers the latest events of the CCC and the OECD-Hungary Regional Centre for Competition in Budapest.

157. The CCC forwards Versenytükör as a free publication a. o. to undertakings, legal bureaus engaged in competition law, representatives of the professional press, professional associations, municipalities, public administrative authorities, educational institutions and libraries, but the articles are also available on the CCC's website. [20]

4.2. Other activities performed by the GVH for the development of competition culture

158. Also in 2007, the GVH attributed special importance to competition law and policy related **activities performed in scientific world and in education**. Several staff members of the GVH are lecturers in competition law and in subjects relating to competition regulation at establishments of the higher education or give lectures to interested audience. In 2007, GVH experts gave almost 90 lectures, the number of interviews given by them to the media was higher than 80 and they published more than 70 studies and papers in legal and economic newspapers and periodicals.

159. In 2007, 14 **students spent their traineeship at the GVH** and several students requested the help assistance of the GVH staff to complete their closing theses at the university.

160. In 2007 already for the eighth time, the GVH invited **students to compete with their competition law and policy related studies.** The studies submitted by the competitors covered five of the 12 topics announced as possible subjects of them, that about the reform of Article 82 of the EC Treaty was the most popular one (chosen by four applicants), while authors of three of the studies elaborated on Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.

161. The GVH is a **founding member of the Hungarian Association of Competition Law**, which is the Hungarian branch of the International League of Competition Law (LIDC).

162. In January 2007 both the structure and content of the **GVH homepage was renewed** in order to constitute a more updated and usable source of information. In 2007 almost 276 thousand visits were registered, which exceeds by 20% the number of visits in 2006 (230 thousand). In parallel with the renewal of the GVH-homepage, also the CCC and the OECD-Hungary Regional Centre for Competition in Budapest received their respective homepages that can be accessed directly or from the homepage of the GVH.

163. The **unit „Enquiries"** of the GVH plays an important role in providing information on the operation of the authority and its position towards competition. Besides general guidance and providing information the Enquiries ensure access to all of the forms that concern the

[20] www.versenykultura.hu, at Versenytükör

functioning of the Competition Act. In 2007 the unit Enquiries was contacted almost 3300 times, which number exceeds its predecessor in 2006 by 43%. The increase originates mainly from a multiplication, as a result of the homepage-renewal, of e-mails seeking information. Nevertheless, phone calls continued to be the most popular means of contacting the GVH, most frequently concerning consumer fraud matters.

164. The GVH continued its **information campaign relating to bid rigging** in tendering and the signs indicative of that kind of concertation. In the framework of this campaign, an economist of the GVH regularly delivers lectures and offers consultations to civil servants working in local administration.

165. The GVH regularly issues **press releases** about its activities including its proceedings finished. Furthermore, experts of the GVH regularly provide the press with background information and answer questions of public interest relating to competition; in 2007 the GVH was contacted more than thousand times on such occasions.

166. Since years the GVH has made efforts to get to know the **competition law awareness** of the public and the assessment that important target groups (lawyers, entrepreneurs, economic journalists) developed about the work of the GVH. For this reason, similarly to previous years, the GVH ordered a **public-opinion poll** from the Social Research Centre (TÁRKI) in 2007.

167. As far as the general attitude to competition is concerned, the majority of the interviewed consider a situation to be ideal in which state influence and market competition have equal weight in the regulation of economical processes. Relating to the current situation of competition, all target groups think that in certain industries a strong competition can be observed, however in other ones competition is much weaker.

168. Similarly to the results of the 2004 survey, the general public has only a meagre knowledge of the Competition Act. Among entrepreneurs and economic journalist, the awareness of the competition law is over 80%. More than half of the adult citizens have heard about the GVH, which is an increase by 11% in comparison with the 2004 data. The number of citizens who are satisfied with the performance of the GVH has increased by 17%.

5. INSTITUTIONAL AND INTERNATIONAL RELATIONS

5.1. Institutional relations

169. In the field of telecommunications in 2007, similarly to the situation in the previous two years, the cooperation of the GVH with the **National Communications Authority** (NHH) continued to focus mainly on market analyses. The cooperation became more intensive in the area of competition culture and as a part of this activity experts of the two institutions were mutually invited to each other's professional conferences and fora.

170. The Prime **Minister's Office** got central responsibility for the digital transition and for the elaboration of new audiovisual media regulation still in 2006. The series of professional consultations between the two institutions – which originally began earlier when the strategy of Hungary for the digital transformation of television and radio broadcasting was under preparation – continued in 2007, focusing mainly on the elaboration of the Act on the Rules of Broadcasting and Digital Transition, the national audiovisual media strategy and concepts for new media regulation.

171. In September 2007 the GVH renewed its membership in the **Council of Copyright Experts**.

172. During 2007 the GVH had particularly close cooperation with both the **Ministry of Economy and Transport** and the **Hungarian Energy Office** in the elaboration of the professional content of new market model and the relevant regulations necessary for a full opening of electronic energy and gas markets.

173. Since the GVH and the **Hungarian Rail Office** have concluded their cooperation agreement at the end of 2006, experts of the two institutions have synchronised their activities in several fields, like e.g. in the creating of a mechanism of case allocation between them, in the opining of draft regulations elaborated for the implementation of the Act on Railway Transport, in the coordinating of the preparation of the Network Operation Regulation' and concerning the evaluation of the operation of pilot regional railway organisations.

174. In January 2007 a new cooperation agreement was concluded between the GVH and the **Hungarian Financial Supervisory Authority**. Through the cooperation, the two authorities intend to contribute to the transparent operation of financial markets, to increase consumers' confidence in these markets and to promote that these markets develop under fair conditions; furthermore, they intend, by facilitating the access to information, to decrease the risk that consumers run when making their decisions.

175. In the field of consumer protection, similarly to the practice developed during the previous years the GVH kept direct contact with other institutions having consumer protection competence, most importantly with the **National Consumer Protection Authority** and its regional offices, the **Hungarian Financial Supervisory Authority** and the **NHH.**

176. Proceedings against misleading information about curative effects of certain products played an important role within the law enforcement activities of the GVH. In its related cases the cooperation with the **National Institute of Pharmacy** and the **National Institute for Food and Nutrition Science** had outstanding importance.

177. In 2007 intensive cooperation with the **National Radio and Television Commission** was carried out mainly in connection with investigations of the GVH (relating to interactive call TV quiz show programmes).

178. The GVH participates also in a project, which intends to foster the financial literacy in Hungary. This project is managed by **Magyar Nemzeti Bank** (the Central Bank of Hungary).

179. The GVH gave its position to the **Parliamentary Commissioner for Data Protection and Freedom of Information** in a particular case. An inquiry clarified whether it is allowed to collect information in the framework of a point-collecting marketing action about the smoking habits of people and to send subsequently, cigarette advertisements to the people concerned. According to the Parliamentary Commissioner such kind of information may not be collected or, if it has been collected, it is not allowed to use if for the purpose of sending advertisements, which prompt people to smoke.

180. The work the goal of which is the transposition of directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (the 'Unfair Commercial Practices Directive') and the directives connected to it, which form the basis of the law harmonisation, continued in 2007. In the coordinated preparatory work besides the **Ministry of Economy and Transport,** the **Ministry of Justice and Law Enforcement** and the **Ministry of Social Affairs and Labour** also the GVH played considerable role.

181. As part of the exercise described in the previous paragraph, the European Parliament and the Council adopted Regulation (EC) No 2006/2004 on **cooperation between national authorities responsible for the enforcement of consumer protection.** The Regulation sets up a system for carrying out common activities in the framework of which the cooperating authorities are authorized to take certain enforcement actions provided an intra-Community violation has been committed. The relevant Hungarian legislation, Government Decree 2083/2006. (IV.18.), designated the GVH as one of the Hungarian authorities taking part in this cooperation. In 2007 the GVH contacted other members of the network on several occasions.

182. The GVH kept close contacts with **civil consumer protection organisations** too.

183. In 2007 the GVH continued actively to participate in the work of the **Public Procurement Council**.

184. The GVH, regularly participating in the meetings of the board of directors of the **Hungarian Privatization and State Holding Company**, commented on the planned liberalisation of the activities of the Hungarian Post Plc and also on the proposed sale of the still state-owned shares of MALEV Plc (Hungarian Airlines). The GVH had contacts with **several further administrative bodies** (e.g. with ministries, municipalities and the Parliamentary Commissioner for Civil Rights) and with **professional organisations** (e.g. with the Hungarian Gas Association, Public Sanitary Association, Hungarian Petroleum Association, Association of the Hungarian Steel Industry, Hungarian Chemical Industry Association) in the context of both its law enforcement and advocacy activities.

5.2 International relations

185. In compliance with the practice which has been shaped since Hungary's accession to the **European Union**, the coordination in the enforcement of competition law, on the one hand, and the active participation in the working groups of the European Competition Network[21] on the other hand, continued. The GVH acts as the co-chairing authority in the working group responsible for the analysis of the practical operational experiences of the ECN. However, in addition to this experts of the GVH also contribute to the work of the sector specific ECN subgroups.

186. The contribution to the work of the **OECD Competition Committee** and of its working groups had an outstanding importance also in 2007. Contributions were prepared about, e.g., the role of the competition authorities in public procurement, intervention of competition authorities against information sharing arrangements, how to assess refusals to deal from a competition law perspective, taxi services and restrictions on competition, specificities of competition law enforcement in the field of professional services, how to enhance competition in real estate transactions and the pro- and anticompetitive acts committed in connection with cartels by chambers and interest representation organisations. Furthermore, the GVH submitted its annual report relating to 2007 to the OECD. In compliance with the established practice, the GVH sent also in 2007 one of its experts to the OECD for a whole year as a secondee on a rotation basis.

187. As regards **cooperation with the International Competition Network (ICN)** two areas are worth mentioning. On the one hand, the GVH contributed to the elaboration of

[21] The European Competition Network (ECN) consists of the Directorate General for Competition of the European Commission and of the competition authorities of the Member States

methods to be followed within the ICN within the framework of technical assistance for young fledgling competition authorities. On the other hand – together with the Directorate General for Competition of the European Commission – it gives a co-chair for the ICN Cartel Working Group. One of the staff members contributed to the work of the Annual Cartel Conference organised by one of the Subgroups of the ICN Cartel Working Group. Furthermore, two experts of the GVH participated in the empirical survey the aim of which was to map the fining policies and practices of the ICN member institutions.

188. As a member of the **International Consumer Protection and Enforcement Network (ICPEN),** the GVH participated in the so-called 'Sweep Week' also in 2007. In the framework of this project the ICPEN members (consumer protection related governmental institutions of 33 countries) undertook to survey – along pre-determined aspects – websites, e-mails and also spams in order to analyse the communications practices of undertakings. In 2007 this project paid particular attention to companies, which tried to make their products more popular on a deceptive way, through confidentiality logos, quality certificates, or by using recommendations of others or by trying to guarantee an impact by abusing consumers' trust.

189. In the **bilateral relations of the GVH** assistance provided for the competition authorities of the South-East European countries continued to be the most important task. On the one hand, this is well reflected in the activity of the OECD-Hungary Regional Centre for Competition in Budapest (RCC), since in the first place the events – seminars and meetings – organised by the RCC aim at developing and assisting the competition authorities of this region. A bilateral cooperation agreement was concluded with the Bulgarian competition authority and during the year mutual visits of experts were carried out. One of the experts of the GVH was requested by the European Commission to assist the Moldavian competition authority (National Agency for the Protection of Competition – NAPC), which was set up in February 2007. The professional assistance focused mainly on organisational type issues arising in the context of the establishment of the Moldavian authority. At the end of the year, the two authorities concluded a cooperation agreement. Under this document the RCC donated a wide variety of essential textbooks to the library of the NAPC.

190. At the end of 2006, the French competition authorities and the GVH jointly became winners of a tender procedure aiming at providing technical assistance, under the umbrella of a twinning project, for the Ukrainian competition authority. Work could not start during 2007 (for the reasons for that were beyond the reach of the GVH), but the preparatory steps were made, so practical work could begin in February 2008.

191. In 2007 the GVH submitted a bid and at the end of the year it won a tender procedure the subject of which was the provision of "twinning light" type assistance to the Cyprian Commission for the Protection of Competition. The work concerning this project also began in February 2008.

192. The Chinese cooperation which began in 2006, also continued. A new Chinese Competition Act was enacted in August 2007. In 2007 three Chinese delegations (mostly experts from the State Administration of Industry and Commerce) visited the GVH. During the first half of the year a consultation targeted the fine-tuning of the draft bill on competition, while after the enactment of the Competition Act the consultations focused on the setting up of an effective enforcement structure in China.

193. In March Ms. Deborah Majoras, chairwoman of the U.S. Federal Trade Commission (FTC) visited the GVH. Ms. Majoras attended a meeting of the Hungarian Association of Competition Law and delivered a speech to the participants. The experts of the FTC who

accompanied the chairwoman also gave presentations, focusing on consumer protection-related matters and on synergies stemming from competition and consumer fraud type cases being conducted by one and the same authority.

5.3. Activities of the OECD-Hungary Regional Centre for Competition in Budapest

5.3.1. Establishment and goals

194. The OECD-Hungary Regional Centre for Competition (RCC) was established by the OECD and the GVH in 2005 with the financial support of the Hungarian government. According to its founding document the RCC, by building on the professional background of the OECD Competition Committee and of the GVH, assists first of all the competition authorities of the East, Southeast and Central European countries.

195. The primary objective of the RCC was to foster the development of competition policy, competition law and competition culture and to assist the work of the competition authorities concerned. The GVH deems essential to transmit its own experiences to the East and South-East European states, which follow a similar way of development as Hungary.

196. Just to give a few examples, the RCC focuses on topics as the analysis of particular competition cases; investigative techniques; competition policy principles in pursuing regulatory reforms; training of judges; law enforcement priorities; guidelines, policies, practices and proceedings; framework for cooperation between the competition authorities of the region; competition advocacy and means for communications; interagency relations between competition and regulatory institutions; other issues falling in the general framework of competition law and policy. On these issues the RCC regularly organises training programmes, seminars and courses.

5.3.2. Target countries and operation

197. The RCC targets **four types of programme groups**. In the first one, training for experts of competition authorities of the East European and Balkan region is organised. This practically means assistance to Albania, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Belarus, Georgia, Croatia, Macedonia, Moldova, Montenegro, Russian Federation, Armenia, Romania, Serbia and Ukraine. These countries have more or less similar historical heritage considering that they had centrally planned economies in the past.

198. Countries participating in the 'Central European Competition Initiative' (CECI) form the second group of beneficiaries of the RCC-programmes. This initiative started in 2003 and provided a cooperation forum on competition law matters for the Central European countries concerned (Czech Republic, Poland, Slovenia, Hungary and Slovakia with Austria having an observer status in CECI). The initiative is an informal network-type cooperation of the competition authorities of these countries and the form of cooperation is basically the organising of training programmes and informal meetings. The competition authorities involved in this cooperation face several similar challenges, they have to analyse geographically overlapping regional markets and it happens that they have to deal with identical parties in their respective cases.

199. The third targeted institution of the RCC's activity is the GVH itself. The RCC organises events on competition law and policy issues for the staff of the GVH. These events provide exceptional opportunity for the participating staff to get acquainted with international antitrust theories and enforcement practices.

200. Judges form the fourth target group of the RCC. The objective of the seminars organised for the judges is to ensure that judges better understand competition law and economics, exchange views on the developments in EC competition law and get a forum for discussing aspects of particular competition cases, which are important for them. Seminars for judges are organised jointly by the RCC, the OECD Competition Committee and the Association of European Competition Law Judges (AECLJ).

201. The Memorandum of Understanding of the RCC provides for the joint making, by the OECD and the GVH, of the major decisions on the activities and the work of the RCC. For this purpose, the parties meet on an annual basis to review the operation and performance of the RCC and to prepare an annual work plan of activity and budget statements.

202. Regarding the financing of the RCC, the GVH is responsible for providing the necessary funding for the functioning of the RCC – in the form of a sum separated in its annual budget for this particular goal – and the authority commits itself to make available the fund necessary for the operation of the RCC and it makes a voluntary financial contribution to the costs associated with the working of its expert in Paris to the OECD. Moreover, both parties cooperate in the acquiring of additional financial support, which is needed for the attainment of the goals determined by the establishing document.

203. The website of the RCC was created at the beginning of 2007.[22]

5.3.3. Overview of the activities in 2007 of the RCC

204. The year 2007 was the third year of the RCC's operation. In 2007 the RCC organised altogether seven events, which focused on most important powers of competition authorities as well as on best practices in the area of competition law. In 2007, the RCC continued its two successful initiatives: the seminar on competition for European judges, on the one hand, and the workshop with special focus on the interface between competition policy and sector regulation, on the other.

205. In 2007, the RCC invited altogether 158 participants and 51 speakers. Experts (in speaker-capacity) from 17 countries and participants from 21 countries attended the programmes of the RCC.

206. The first event organised for the East- and South-European countries was a **„Seminar on Merger Control** with a Focus on Vertical and Conglomerate Scenarios" (12-16 February).

207. The **„Competition Workshop on Anti-cartel Enforcement and Restrictive Agreements"** (21-25 May) put its accent on the role of competition authorities in detecting hard-core cartels and it also gave an overview of the examination of horizontal and vertical agreements, which do not qualify as cartels.

208. The **„Seminar on the Cooperation of Competition and Regulatory Authorities in the Energy Sector"** (5-8 November) dealt with the key issues of energy market

[22] www.OECDHungaryCompetitionCentre.org, also available by clicking on the logo of the RCC on the homepage of the GVH (www.gvh.hu)

liberalisation, the role of mergers in this sector, the creation of regional energy markets and the cooperation between competition and regulatory authorities.

209. The last event of the year organised for the East- and South-European countries was a **„Seminar on Exploitative Practices and Pricing Abuses"** (4-7 December).

210. In 2006, the Competition Division of the OECD decided to hold its two-week-long seminar in Budapest, instead of its previous venue in Vienna. The first two-week seminar organised by the RCC dealt with **"Topics in Competition Policy"** and it was carried out between 16 and 27 April. A characteristic of the event was that participants from countries previously not involved in RCC seminars for competition authorities were also invited (Estonia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania and Tajikistan).

211. The RCC, in co-operation with the GVH and with TAIEX,[23] was the organiser of the 2007 Central European Competition Initiative (CECI) seminar about **"Regional Electricity Markets – Possibilities and Challenges"** with the participation of experts from competition and regulatory authorities.

212. The RCC and the Competition Division of the OECD jointly organised a two-day **"Seminar on European Competition Law for Competition Law Judges"**. The seminar was attended by judges from East-, Southeast and Central European countries (new EU member countries, applicant countries and other countries in South-East Europe). Judges from civil courts and also judges acting at administrative courts reviewing decisions made by competition authorities participated on the event.

6. RESOURCES OF THE COMPETITION AUTHORITY

6.1. Resources overall (current numbers and change over previous year):

213. Annual budget (in HUF and EUR):

2000	million HUF	576.4
	million EUR	2.3
2001	million HUF	950.2
	million EUR	3.8
2002	million HUF	1179
	million EUR	4.7
2003	million HUF	1196
	million EUR	4.8

[23] Technical Assistance and Information Exchange Instrument of the Institution Building unit of Directorate-General Enlargement of the European Commission

2004	million HUF	1164
	million EUR	4,7
2005	million HUF	1522
	million EUR	5,8
2006	million HUF	1787
	million EUR	7,1
2007	million HUF	2294,4
	million EUR	9,1

214. Number of employees (person-years):

⇒ economists:

2000	2001	2002	2003	2004	2005	2006	2007
21	27	32	31	31	28	27	31

⇒ lawyers:

2000	2001	2002	2003	2004	2005	2006	2007
38	36	43	49	49	49	39	44

⇒ other professionals:

2000	2001	2002	2003	2004	2005	2006	2007
26	21	18	19	18	18	14	14

⇒ all staff combined:

2000	2001	2002	2003	2004	2005	2006	2007
104	120	120	120	119	116	114	114

5.2. Human resources (person-years) applied to:

215. Enforcement against anticompetitive practices

Approx. 60 person-years including merger review but excluding consumer protection (unfair competition). Professionals at theoretical sections (legal, international, competition policy) were counted as 0,5 person-years.

216. *Advocacy efforts*

Approx. 10 person-years. There is no explicitly dedicated staff for this task, but a number of employees participate in the shaping of the views of the GVH on draft legislation submitted for opining and on the assessment of existing norms.

APPENDIX

Prominent cases from the practice in 2007 of the Hungarian Competition Authority[24]

Unfair manipulation of consumer choice

1. In 2007, the GVH found several financial institutions guilty of misleading consumers in their discount campaigns with regard to **housing loans**. MKB Bank advertised its discount campaign between the beginning of October and the beginning of December 2006 with the slogan: „MKB housing loan in only two weeks". In the course of the advertising campaign, the bank deceived consumers several times. The favourable annual percentage rate indicator (APR) advertised in some ads did not apply to all kind of loans. The GVH established that MKB's discount campaign related to Swiss franc-, euro- and forint-denominated loans; however the ads contained only the APR of that of the three the value of which was the lowest. (Vj-17/2007)

2. Erste Bank Hungary several times promised in the second half of 2006 a full remission of disbursement commissions connected to its housing loans and freely-to-use mortgage loans. The GVH established that some of the ads were suitable to deceive consumers. (Vj-53/2007)

3. Raiffeisen Bank made an advertising campaign from 27 April to 10 June of the same year with the slogan "In the case of our new housing loan, it is you who determines the amount of monthly repayment!". The investigation of the GVH revealed that consumers would only have received a fair picture of the product, if the information provided included expressly and unambiguously that the instalment could only be determined within a range between the minimum and maximum amounts given by the bank, within the first two years and only in the case of foreign currency loans.

4. Certain advertisements included information on the minimum amount of monthly repayments to be achieved and the size of the connected APR concerning a loan of HUF 5 million. Raiffeisen Bank emphasised that the lowest value of APR could be 6.17%; however in contrast to the advertisement this value was not achievable during the campaign.

5. According to the GVH the capability of the conduct under investigation of unfairly manipulating consumer choice was reinforced by the circumstance that clients typically bound themselves by **loan agreements for long periods**. In the present case, taking account of the 35 year, i.e. 420 month, period, the values calculated for the first 2 years based on the conditions ensuring the lowest possible values did not give an objective picture of the whole product. The reduced value of APR that was available (without the relevant additional information) in the preferential period and that was highlighted in the TV and newspaper ads, played a major role in attracting extra interest of consumers for the product and made them possibly visit a branch of the bank, where bank personnel had increased possibilities to persuade them to conclude an agreement. (Vj-129/2007)

6. In accordance with the established legal practice of the GVH, when a communication underlines one of the important characteristics, that information must be accurate, to enable consumers also to become familiar with the conditions that are connected to or inseparable from it. Therefore a communication containing real data on favourable characteristics can be misleading if it fails to give **further information indispensable for the interpretation of the information provided**. This was articulated in the case against OTP Bank, which was conducted for certain of its advertisements on preferential deposit fixing offers. In its

[24] For guidance on where to find, in the Report and this Appendix, information about the cases mentioned in the Appendix, see the table at the end of the Appendix.

commercial campaign, OTP Bank offered deposit interests of „up to 8.5%" and „up to 8%" between 26 March and 27 April 2007, and between 16 June and 17 August 2007 respectively. The investigation found that certain pieces of the information provided by OTP were misleading, as it had not always communicated that the preferential interest level was only available for the client if the balance of its account was above the level on which it had been three days before the start of the campaign. Another condition was that the new balance had to be at least HUF 5 million (approx. EUR 20 thousand).

7. According to the GVH in ads in the television and on giant billboards, due to their appearance and structuring, the fact that the interest of „up to X%" was available only upon the fulfilment of further limiting conditions, could not become part of the information actually recognizable to consumers. The relevant information could be found in a footnote marked with an asterisk, separated from the main message. Though the GVH did not express doubts about **the expression „up to"** to be a reference to the existence of further conditions, but that expression and the use of the asterisk did not compensate for the lack of information needed for the assessment of the advertised feature. (Vj-114/2007)

8. Some of the **integrated communications campaigns conducted in electronic communications sector** were based on the central message of **offering something "for free"**. Pannon GSM, an undertaking providing mobile phone services, advertised its 'Djuice Card and Tariff' package" in May 2006 and wished to draw consumers' attention to the advantageous minute-rates of the package and to "free" SMS-sending. In its advertisements the undertaking used phrases like "even for HUF 17/minutes", "plus 20 SMS/month for free". However, during the investigation it became clear that none of the statements mentioned above was correct. Consumers were charged more than HUF 17 for a one-minute phone talk and the sending of SMS' was not free at all. These conditions were only available if consumers paid a monthly fee of HUF 490. The Competition Council has underlined in several of its decisions that the use of the word "even" in the advertisements does not relieve undertakings of their responsibility under competition law. The use of the word "even" is unlawful if the advantageous conditions can only be enjoyed by a limited number of consumers. The Competition Council established too that undertaking used the phrase "even for HUF 17/minutes" as a central slogan despite the fact that the related conditions could only be met in relation of a part of the possible calls. Out of the three conditions to be fulfilled at the same time some of the advertisements mentioned only two. (Vj-120/2006)

9. In the course of the promotion, the advertisements in the television and the radio as well as on billboards of UPC Magyarország did not, or not in a proper way, informed consumers about the fact, that the promised benefits could be utilised only after the signing of a **fidelity statement**. The advertisement of the undertaking was not always clear as to the programme package to be subscribed in order to get preferential monthly and entry fees. UPC Magyarország did not, or not properly, informed consumers that the promoted monthly fees were only valid for a limited period of time, nor about the duration of the promoted period. Furthermore, in the advertisements, which infringed the law, it was not, or not properly, indicated whether certain promotions exclusively applied to new or to both new and old subscribers. (Vj-85/2007)

10. The Competition Council established that Magyar Telekom mislead consumers in some of its advertisements from April 2007 onwards. Magyar Telekom provided misleading information for consumers as it alleged that with some of the tariff packages offered by it a maximum download speed of 4 Mbit/s, while with some others of 8 Mbit/s could be reached. It was proved, however, that with certain packages not even two third of the speed indicated could be reached. The Competition Council emphasized that the expression "up to" or "as a

maximum" did not relate to possibilities that would necessarily be realized in all cases; nevertheless their use in advertisements did not provide an automatic escape for the undertaking from being caught by the Competition Act. These expressions in the case at hand must mean that the availability of the indicated values is a real and not a merely theoretical possibility. It was not proved in the proceeding that consumers would have had a chance for getting the maximum speed.

11. The Competition Council found that the advertisement of the undertaking concerned might mislead consumers, as it did not informed them about the existence of two counter values; namely about the fact that, besides the payment of the price, also the making of a fidelity statement was a precondition for getting the possibility of a discounted purchase. Based on the advertisements, consumers did not have a chance to come to know all the essential features that were necessary to make a reasonable decision. In the case of "fidelity" contracts the fact that the termination of the contract within the fidelity period results in penalties constitutes an essential feature. "Fidelity" contracts (relating to a given period) efficiently prevent consumers from switching to other products, therefore, they may hinder competition on the market. (Vj-127/2007)

12. In the first half of 2007, the GVH initiated competition supervision proceedings against four call TV content providers (i.e. producers of **call TV quiz show programmes**) and the broadcasting channels of those quiz games. (Vj-5/2007, Vj-14/2007, Vj-16/2007, Vj-74/2007)

13. The GVH examined the information provided for consumers by the following programmes: „Szóda" ("Soda") broadcasted on TV2, „Többet ésszel" ("One beats the bush, and another …"), „Kvízaréna" and „Játszma" ("Game") broadcasted on ATV, „Telefortuna" broadcasted on Spektrum and „0691-33-44-55" broadcasted on RTL Klub. The competition authority raised concerns against the practice that the information provided by the answering machines and the presenters and the on-screen information gave the false impression that the winning of the prize only depended on whether the viewer knew the answer to the question concerned. A less transparent method was used, however, to select viewers getting access to the game. There were various methods used for the selection: computer drawing, random selection or the putting through of the first caller to the studio. The content providers' and the broadcasting channels' interest was the preservation of uncertainty arising from the insufficient information provided, since viewers had to call premium rate numbers, which they would not have called or would have called at least not as many times if they have had adequate information. The information on the price of calls was also objected to by the GVH.

14. After having received the preliminary position of the GVH the content providers concerned (IKO New Media Szolgáltató Kft., Telemedia Interact TV Kft., Mobilpress Zrt., the legal successor of which is M-Factory Zrt. and Eurovision Kereskedelmi és Szolgáltató Kft.) offered commitments in all the four cases. They undertook:

- To inform viewers that the knowing of the right answer and calling of the premium rate number did not necessarily result in a winning. For this purpose, the following, well readable warning will be put on the screen and be inserted among the rules of the game: „Your call gives no guarantee of your getting through to the studio";
- That the gross price to be paid by callers for the call would continuously be indicated on the screen with at least 15 pixels letter size;
- That no information provided on the phone or during the show would suggest viewers, that recalling assured getting into the game;

- That in the course of the show no statement saying nobody was calling the game's number in that moment nor statements equivalent to that would be made;
- That for the case in which more than one method or rule could be used to select callers to get into the game, the method/rule chosen would be indicated, well perceptibly, on the screen by a graphic symbol or the presenter would continuously inform viewers about it;
- The amount of the basic prize, the jackpot or the bonus prize would also be indicated, separately, during the programme-time.

15. The broadcasters of the games (Magyar RTL Televízió Zrt., Spektrum TV Közép-Európai Műsorkészítő Zrt., Magyar ATV Zrt. and MTM-SBS Televízió Zrt.) undertook to broadcast only games, which perfectly meet the above-mentioned requirements; furthermore, they undertook they would describe on their homepage and in the teletext

- The essence of the game from which it would become clear that the call did not guarantee the getting through to the studio;
- The rules of the game, in particular the details of entry to the game;
- The gross price to be paid per call, independently from the entry.

16. Although the revealed problems showed established market practices, which have been applied for several years, based upon the facts of the case, considering all circumstances, the Competition Council came to the conclusion that though remedy to the problems would be a regulatory solution, in the cases in question the public interest attached to competition could be safeguarded in the most efficient way by the accepting of the commitments, and hence, after doing so, it terminated the proceedings.

Restrictive agreements

17. The largest fine in 2007 was imposed in a proceeding against Hungarian Post Zrt. and Magyar Lapterjesztő Zrt. (Lapker) for market allocation. The amount of fine was HUF 936 million (approx. EUR 3,7 million).

18. The examined conduct concerned two closely related markets of newspaper distribution: the market of single copy sale (newsstands, shops, petrol stations), and that of subscriptions. Until 1998, Hungarian Post Co. Ltd used both ways of distribution. In 1998 the Hungarian Post sold its regional newspaper retailers to the French owned Hungarian Wholesale Newsagent (Lapker). Hence, it became the task of Lapker to deliver newspapers from the publishers to the retailers. At the same time, the Hungarian Post kept for itself the distribution of newspapers based on subscriptions, and until the beginning of 2007, when the company MédiaLOG entered the market, only the Hungarian Post dealt with subscriptions.

19. First, the agreement on the privatisation of the Hungarian Post's regional newspaper distribution network, which was in force between 1998 and 2001, contained a clause in which the Hungarian Post announced that it would not seek to forward newspapers from the printing house to the retailers. In exchange for this, in a Co-operation Agreement entered into by the parties for the period of 2002-2007, the Hungarian Post achieved that the commission, which it received from Lapker subject to the circulation (of newspapers) sold at post offices, rose from the former 13% to 23,5%. In the amendment to the Co-operation Agreement, effective from 2003, Lapker agreed not to enter the market of newspaper subscriptions. Lapker paid HUF 260 million (approx. EUR 1 million) in a lump sum, as a "market-organisation fee" on condition that the Hungarian Post would not enter the single copy sale wholesale market for a further five years.

20. The concertation between competitors on refraining from entering each other's market amounts to a market allocation. The agreement was not only capable of restricting competition, but in the course of concluding the agreement the parties had clear anticompetitive aims – as it is evidenced by notes, memos, strategy papers and other materials on non-competing. With the agreement both of the parties followed the objective to keep away the biggest and most likely potential competitor. (On the market, the agreement strengthened the artificially created conditions of competition.)

21. As the mutual self-restriction did not bring about efficiencies of which consumers received a fair share, the GVH did not see any possibility to assess the agreement as one being exempted from the prohibition of restrictive agreements.

22. Besides the infringement of Article 11 of the Competition Act, the Competition Council also established, for the period following 1 May 2004, the infringement of Article 81 of the EC Treaty.

23. Therefore, Hungarian Post and Lapker were fined HUF 468 million (approx. EUR 1,9 million) each. In calculating the fines, the GVH took into consideration that the agreement aimed at completely excluding competition, it was in force for years, and it had actual effects on the market. An aggravating circumstance was the fact that the parties were practically monopolists on their respective markets; therefore they must have been fully aware of the competition restricting effect of their agreement. At the same time, as a mitigating circumstance, the GVH took into account the fact that either of the undertakings expressed its intention to terminate the agreement as early as already at the end of 2005. This intention practically shortened the length of the period through which the infringement was committed from five to three years. (Vj-140/2006)

24. In the course of the reconstruction of Bajcsy-Zsilinszky Hospital, the Municipality of Budapest announced a three-phase open **public procurement** procedure in August and December of 2005, for a contract value of HUF 3 billion (approx. EUR 11,9 million) relating to the purchase of specified medical equipments. In each phase, only uniform bidding was allowed implying that no tenders relating to only some of the items (equipments) could be submitted.

25. The winner of the public procurement procedure, in all the phases, was Kortex Mérnöki Iroda (Engineer Bureau) Kft., which employed Olympus Hungary Kft. – an undertaking delivering endoscopes and accessories – as a subcontractor. The value of the products delivered by Olympus represented a not insignificant part of the bid of Kortex, and thus of the procurement. It happened only in the third phase of the public procurement procedure that, in addition to Kortex, also another undertaking submitted a tender. The competitor's offer was slightly (by 0.4%) better than that of Kortex, however the submitted offer turned out to be void.

26. In September of 2005, Kortex and Olympus entered into a cooperation agreement with regard to the phases of the public procurement procedure. Kortex undertook in the agreement to purchase endoscopes exclusively form Olympus, while Olympus undertook to sell the said equipments, in connection with the public procurement in question, exclusively to Kortex.

27. The undertaking made by Kortex might have restricted competition between the undertakings selling the given products, as one of their potential buyers, Kortex, was thereby eliminated. On the other hand, the undertaking made by Olympus might have restricted competition between those undertakings that potentially could submit a bid. It was namely a fact that as far as phase I or the other two phases are concerned, only the products supplied

by Olympus and another undertaking, or those supplied by Olympus, respectively, met the technical specification attached to the tender invitation.

28. The Competition Council established that the undertakings made in the agreement restricted competition. However, the Competition Council examined, taking into consideration the substitutability mentioned above relating to phase I and in view of the market shares, whether the *de minimis* rule applied to the stipulations or whether, in view of also other circumstances, there was a possibility for the agreement to be exempted. It found that the agreement, with regard to phase I and the undertakings of Kortex with regard to phases II and III were covered by the *de minimis* provisions of the Competition Act.

29. At the same time, the Competition Council found unlawful the agreement between the parties with regard to the undertaking of Olympus to supply the equipments in question exclusively to Kortex in connection with phases II and III. The restrictive conduct of the parties, by way of the exclusive supply, might influence the outcome of the procurement procedure. The exclusive supply obligation undertaken by Olympus could not fall under a block exemption regulation, as the undertaking held a market share over 30%. Furthermore, as the exclusive supply obligation did not produced any consumer benefit either, the said agreement could not be considered as being individually exempted.

30. The Competition Council imposed a fine of HUF 77 million (approx. EUR 27,7 million) on Kortex. In accordance with the leniency policy[25], Olympus was granted immunity from the fines, as it was the first to submit information and evidence until than unknown to the GVH upon which the GVH was able to open investigation, and it met the other conditions as well (it did not take any steps to coerce other undertakings into participating in the infringement and operating the cartel agreement; it co-operated fully, on a continuous basis throughout the procedure, with the GVH; and ended its involvement in the cartel following the submission of evidence). The Competition Council made it clear that despite the fact that according to international and Hungarian legal practice leniency policy is applied to horizontal agreements, it regarded leniency policy to be applicable and to be applied in the case at hand. Besides the fact that any deviation from the leniency notice of the GVH to the detriment of the undertaking concerned would have caused considerable harm to legal certainty, the secret nature of the agreement, and its actual and potential effects qualified it as an agreement, which is eligible for being covered by the leniency policy, in compliance with the objectives followed by the leniency notice. This does not imply, of course, the conclusion that the notice could generally be applied to vertical agreements too (Vj-81/2006).

31. Cases on **retail price maintenance** (RPM) come more and more in sight of competition authorities on international level as well. In the practice of the GVH, the first case of this type, in which a considerable amount of fine was imposed, is case Vj-26/2006. The GVH initiated a competition supervision proceeding as it suspected that Navi-Gate Kft, which was both a wholesaler and a retailer of the market leading Garmin products on the market of GPS equipments, and other retailers had entered into an agreement fixing the retail prices of Garmin products. Later, the GVH extended the proceeding also to cover the reseller agreements concerning the marketing of I-Go navigation software.

32. The reseller agreements concluded by Navi-Gate for the I-Go and Garmin products were obviously worded with the aim of applying the recommended resale price as a fixed price. This is evidenced by the fact that any deviation from the recommended price was subjected to a written approval of Navi-Gate. Some of the agreements did not made any

[25] Notice No 3/2003 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority

mention at all to prices being a recommended nature; thus any freedom of the reseller to set its own prices could not be detected in them. The great majority of the Garmin agreements authorized the importer Navi-Gate to withdraw the reseller's distributor authorization for the case of an arbitrary price modification by the latter.

33. The proceeding was soon terminated in relation to the resellers who bought no products or bought only for their personal use, and to those who did not actively participate in the implementation of the price fixing stipulations of the agreement. Subsequently, the proceeding continued against the undertakings, which actively participated in the implementation of the price fixing, furthermore against Navi-Gate, the deviser of the price fixing clause. Concerning the I-Go software, the software designer Nav N Go Kft., standing on the top of the marketing chain, was subject to the proceeding.

34. Based on the available reseller agreements, correspondence with the resellers and other evidence, the GVH arrived at the conclusion that the stipulations of the agreements fixing the retailers' price (i.e. the price which was charged to the end-users) were capable of restricting competition. The provisions of the agreements – to restrict or eliminate intrabrand competition, that is the price competition between resellers marketing the same products – were capable of actually restricting competition on the market, as these provisions were enforceable by civil proceedings. The resale price maintenance employed by the importer in relation to end-users was capable of restricting and monitoring price competition between resellers on different levels of the value chain. This qualifies as a serious infringement and does not serve consumers' welfare, neither in the short nor in the long term as it entirely suppresses production and distribution efficiency deliberations.

35. The Competition Council established that the *de minimis* provision of the Competition Act could not be applied as the undertakings concerned had a market share exceeding 10% both on the markets of software for handheld computers and on the markets of car navigation devices. A further reason against minor importance was the fact that the fundamentally vertical agreement also generated (horizontal) price restrictions between competitors. For similar reasons, the agreements could not enjoy thee benefits provided by a group exemption, nor could the undertakings concerned prove that their agreements met the conditions for being individually exempted.

36. The GVH imposed a fine of HUF 43 million (approx. EUR 169 thousand) on Navi-Gate. In the light of their minor role in the anticompetitive conduct, no fine was imposed on the other undertakings.

37. Since 1997, several **codes of ethics of professional chambers** were subjects of competition supervision proceedings. The GVH adopted an infringement decision establishing that some rules (in force between 1 March 2003 and 31 January 2005) of the Code of Ethics and Discipline and of the Rules for Tariff Calculation, furthermore, of the Draft Competition Code of Magyar Építész Kamara (Chamber of Hungarian Architects) were anticompetitive. The Chamber was fined HUF 5 million (approx. EUR 20 thousand).

38. According to the rules of the Code of Ethics and Discipline, architects had to determine the honoraria they got for their architect services in line with the Rules for Tariff Calculation and no derogations from those rules were allowed. Any derogation from the stipulations of the Rules could lead to the commencement of a disciplinary procedure. Although the Rules did not set a complete range of particular tariffs, they provided calculation methods (e.g. concerning the estimated costs of the construction or the devoted working hours) and other methods (such as formulas and multipliers) to be applied in a way through which they practically provided mandatory minimum prices. The reasons for the application

of the Rules were to ensure the quality of service, and to provide appropriate information for customers, the Chamber stated.

39. Certain rules are not caught by the prohibition of restrictive agreements. Namely those, which, by their very nature, could rationally be held by professional organisations or bodies to be absolutely indispensable for the attainment of certain goals that can reasonably be recognized on the grounds of the public interest.[26] The reference to the public interest, however, does not provide an automatic exemption for every rule of the Code of Ethics; each and every case needs to be scrutinized on its own in view of the goals to be attained and the justification and proportionality of the restrictions.

40. In the case of architectural services, a.o. the planning and safety of buildings, public safety measures in connection with quality, the harmonious adaptation of buildings in their environment and the conservation of the natural and cultural heritage may constitute public interest. In the course of the proceeding, the Chamber of Hungarian Architects could not identify any professional principle reflected in the documents in question, which would serve the attainment of the above-mentioned public interests and, at the same time, a full compliance with which would justify the price fixing.

41. The GVH underlined that more simple and more efficient means of providing information to market consumers (customers) may be available than the publication of Rules for Tariff Calculation; furthermore, the prices calculated based on the Rules do not necessarily prevent services from being of poor quality and offers from being unfounded. Several mechanisms exist through which quality assurance and consumer protection can be guaranteed in a less restrictive manner. For instance, the consistent supervision – by the Chamber – of strict conditions required for the exercising of the profession. By using such high tariffs, the Rules intended as one of its aims to restrict competition by keeping away from the market those architects who work too cheaply. By the creation of the Code, the Chamber went beyond the objectives and the scope of the authorization granted to it by the law[27].

42. Following its negotiations with the GVH, the Chamber amended, as of 1 February 2005, its Code of Ethics and Discipline and its Rules for Tariff Calculation. The amendments targeted the determination of provisions relating to the members according to which the stipulations and rules of the Chamber about architectural tariff calculations constitute only recommendations and derogations from them are allowed (Vj-201/2005).

43. The proceeding against Magyar Gyógyszerész Kamara (Hungarian Chamber of Pharmacists) with regard to its rules restricting the marketing activities of pharmacies was terminated after commitments offered by the Chamber had been accepted. In the course of the competitive assessment of the rules, the GVH took into account the practical interpretation of the Code, which was given by decisions of the Ethics Commissions of the Chamber. Albeit particular decisions relating to the infringement of the Code of Ethics may not be assessed, under Hungarian or Community competition law, in competition supervision proceedings, the method of the application (implementation) of the rules reflected by them – uncovering the anticompetitive nature of the aim – may help in identifying the actual goals of the rules. It cannot be disregarded that ambiguous wordings – furnishing a basis for actual practice – could discourage pharmacists as to the lawfulness of their practices, which in itself can be restrictive of competition.

[26] In EC law, this principle is known as Wouters-exception, named after the Wouters-case, in which some stipulations of the Dutch Bar Association were examined. (C-309/99 J. C. J. Wouters, J. W. Savelbergh and Price Waterhouse Belastingadviseurs BV v. Algemene Raad van de Nederlandse Orde van Advocaten [2002] ECR, I-1577).

[27] Article 11(2) of Act LVIII of 1996 on Professional Chambers of Construction and Consulting Engineers and Architects

44. Advertising can be an important factor in pharmaceutical activities. At the same time, with regard to the marketing and advertising of pharmaceuticals, significant legal restrictions are applied in view of the public interest attached to health and the reasonable limitation of subsidies. Competition law is to protect public interest attached to competition; however, other public interests may overwrite that public interest in special cases. If these other public interests are protected by other statutes, then competition policy must respect the will of legislators. Therefore, in assessing the rules of the Code of Ethics restricting marketing activities of pharmacies, the starting point for the Competition Council was the opinion that only those rules can avoid being caught by the Competition Act (or by EC law), which identify as ethical misconducts activities that are prohibited, at the same time by state regulation as well.

45. In the course of the proceeding the Chamber referred to the fact that restrictions provided by the Code of Ethics (those namely that aimed at extending the public interest) were otherwise in contradiction with the economic and market related individual interests of pharmacists as individuals. In contrast, the Competition Council pointed out that the said provisions restricting marketing activities of the Code of Ethics were not necessarily against the common interests of pharmacists (which, in comparison with the public interests nevertheless qualify as being "individual" interests). In fact, those rules are aiming at preserving the *status quo*: on the market; they may hamper the expansion of more efficient market players, and reduce the possibility available to new entrants to popularize themselves, which is obviously in the interest of the drafters of the Code of Ethics.

46. In the knowledge of the preliminary position of the Competition Council, the Chamber committed itself to delete the rule from the Code of Ethics, which declared a general prohibition on all the possible means of increasing the turnover of pharmacists/pharmacies, and not just on those relating to the granting of benefits expressly and exclusively prohibited by the relevant law; furthermore, to delete the rule, which prohibited the application of marketing means with regard to those pharmaceutical products, which were not publicly subsidised. (Vj-60/2006)

47. The joint venture Euronics Kft. was founded by the commercial and service provider undertakings Vöröskő Kereskedelmi és Szolgáltató Kft., Elektro-Quality Kereskedelmi és Szolgáltató Kft., and Bravotech Kereskedelmi és Szolgáltató Kft. with the objective for Euronics Kft. to join the international supermarket chain Euronics and build up Euronic's Hungarian network. In the course of this activity, the undertakings wanted to take advantage of the joint venture regarding joint supply and marketing and regarding a uniform retail business image. Thereby, the undertakings use Euronics Kft. to ensure their uniform representation when it comes to negotiations with suppliers, to the creation of a uniform image and design of the supermarkets, to a coordination of discount campaigns, further to the provision of services associated with the trade mark Euronics (training for the sales personal, home delivery, and offering loans for the purchase of goods to customers).

48. In the proceeding, the GVH examined in particular the extent to which the **establishment of the joint venture** (Euronics) could be considered **as a concentration**. The Competition Act provides that a concentration of undertakings is affected, where more than one undertaking, which are independent of each other, jointly create an undertaking controlled by them, which is able to perform on a lasting basis all the functions of an independent undertaking. Should it be proved that the undertaking is not a full function undertaking, the joint venture must be scrutinized under the provisions relating to restrictive agreements of the Competition Act.

49. The fact that a joint venture develops business relations exclusively, on a long lasting basis, with its founders, usually excludes the possibility for it to qualify as a full function joint venture. In the given case, it was undoubtedly established that Euronics Kft performs activities that can only be utilized by its founders. The Competition Council pointed out that, in theory, there might be a case where a joint venture relies exclusively on its founders only during the starting (market entry) period of its operation. However, with regard to Euronics, this possibility could be ruled out, as its business relations were taken up six years before the initiation of the competition proceeding. Therewith, neither did the Competition Council regarded the franchise partners of the founder undertakings as independent market players of the kind, the providing of services to which by Euronics could have questioned that it was not qualified as a full function joint venture.

50. In examining the question whether the founding of Euronics is capable of restricting competition between the founders, the Competition Council arrived at the conclusion that the activity of the Euronics, regarding both purchase and marketing, meets the requirements for being exempted. The joint purchase and the coordination concerning the spreading of goods to the outlets provides efficiencies and appreciable savings, besides the fact that the founders of Euronics – in view of the market share of the firm and the number of competitors – have remained under sufficient competitive constrains on the markets of both purchases and sales. The determination of uniform discount campaign prices could be considered as being exempt from the prohibition as the price-agreement between the competitors was only a part of a much wider agreement between them. The continuous flow of goods that are on sale, in the field of technical consumer goods, is a crucial precondition of retail level competing; and the uniform image of the Euronics-network makes joint discount campaigns necessary. (Vj-191/2006)

Abuse of dominant position

51. In the cases ViDaNet Zrt. (Vj-16/2006) and TvNetwork Rt. (Vj-15/2006), in addition to the **infocommunications service providers'** price and programme package policy, the general contract terms of the parties were investigated as well. In ViDaNet, the undertaking made the commitment to modify its general contract terms taking into account the need to inform consumers before significant modifications of the programme packages. In the TvNetwork case, the Competition Council terminated the proceeding due to the lack of a dominant position as a result of competition by competing cable TV products in the service area and by similar Antenna Digital services.

52. In January 2006, the GVH initiated proceedings against 5 (earlier concessionaire) fixed line telephone operators (Magyar Telekom Távközlési Nyrt., Invitel Távközlési Szolgáltató Zrt., Hungarotel Távközlési Zrt., Emitel Távközlési Zrt. and Monor Telefon Társaság Rt.) to examine whether they infringed competition law by providing broadband ADSL Internet services only together with fixed line (PSTN) services. The GVH received complaints concerning the tying of ADSL services to fixed line subscription already before 2006, nevertheless it refused to launch investigations, since taking into account the pricing of these services and the cost-levels valid at that time, consumers were practically not harmed. The ADSL service was presented earlier as a premium service built on the fixed line subscription. The costs of maintaining and operating the local loop, which is the basis of the ADSL service, were not totally included in the price of it, because the subscription fees provided coverage for those costs. In the period before 2006 all the incumbent operators offered fixed line subscriptions which provided no coverage for the reasonable costs of the

local loop, therefore consumers got ADSL through the tying cheaper than they would receive it in the form of naked ADSL, which would have contained the costs of the local loop as well. Since then the circumstances have changed because the subscription fees increased, while the access fee paid for the local loop decreased, therefore negative effects on competition could not be ruled out, making it necessary to initiate investigations.

53. In course of the proceedings all operators undertook to introduce the naked ADSL product. According to the Competition Council the safeguarding of the public interest can be ensured in this manner and by making those commitments binding on the parties, it terminated the proceedings. Pursuant to the commitments consumers have the choice of whether they take the package of ADSL and fixed line subscription as earlier or they subscribe only to the naked ADSL service, however at a higher price than the price of ADSL in the package.

54. In the case of naked ADSL the complementary role of competition policy and regulation was visible. The GVH cooperated successfully with the National Communications Authority (NHH) in order to find an effective solution for the problem. Following the investigation of the GVH the NHH supervises the naked ADSL service, particularly with regard to the determination of the wholesale conditions and prices. The NHH, in its decision on wholesale broadband access market, prescribed the provision of wholesale naked DSL services for operators with significant market power, regardless of whether they offer products like this on the retail level. Moreover, the authority regulated the prices of naked DSL as well by using as a reference the retail minus prices of non-naked DSL services (Vj-7/2006, Vj-8/2006, Vj-9/2006, Vj-10/2006, Vj-11/2006).

55. In 2007, two investigations **concerning the retail bank sector ended with commitments;** both of them related to the unilateral amendment of long-term credit agreements.

56. In the case of personal credits, OTP Bank unilaterally modified the amount of early repayment fee charged at the time of the repayment of these credits. The rise was substantial compared to the amount determined by the contracts with the clients; the fee became HUF 35000 instead of HUF 5000. Due to the modification, not only early-repaying clients were obliged to pay higher amounts, but also the upward trend in early repayments broke; this was a remarkable development in a market environment where declining interests and the appearance of plenty of new credit products enabled more beneficial refinancing.

57. The preliminary position of the Competition Council raised objections against a practice of OTP Bank, which hindered consumers in getting real possibility to know the changes in the fees, which potentially concerned them, since the information provided by the General Business Terms of OTP Bank was inadequate. According to the opinion of the Competition Council, a unilateral and significant raise in any of the components of fees/prices by a dominant undertaking, without leaving enough time for consumers to terminate their agreements and thereby forcing them into disadvantageous conditions, may qualify as an exploitation of consumers. Another harmful effect of the increase in fees was that a part of the clients reconsidered its plans for early repayment, which decreased the number of potential clients for competing financial operators on the market, thereby limiting competition.

58. In response to the preliminary position of the Competition Council, OTP Bank offered commitments, according to which it would improve the information provided by the bank before changing substantially the conditions of payment (longer deadlines, informing consumers personally) and repay consumers a part of the gain it achieved from the increase of the fee; furthermore it also undertook to provide the possibility of early repayment with the

same conditions (by charging a uniformly HUF 20000 early repayment fee) for a certain period of time.

59. When assessing the commitments, the Competition Council arrived at the conclusion that the public interest attached to competition could most effectively be safeguarded by accepting them. It took into account that in this way a significant number of consumers could get financial compensation in a relatively easy procedure, which they would otherwise receive only after a lengthy and costly litigation before courts if they were prepared to litigate (Vj-12/2006).

60. Concerning some of the mortgage loan products, OTP increased in the same manner the early repayment fees from 0% to 3.6%. In addition, OTP changed the rules on handling fee, eliminating the original HUF 9000 upper ceiling of it and charging a 2% fee. These measures of OTP resulted in a significant increase in the repayment instalments of many consumers. The conduct of OTP, similarly to the case of personal credits, had, on the one hand, an exploitative effect on consumers in the form of increased fees, on the other hand, it also had a market foreclosure effect by increasing the early repayment fees and in this way the switching costs of consumers.

61. Based on its commitments accepted by the GVH, OTP was obliged to repay consumers the difference between HUF 9000 and the amount of handling fees that were applied after the elimination of this ceiling. With regard to early repayment fees, OTP made available for a further period the possibility of early repayment of the loan under the original conditions (mostly for free). In addition, OTP had to inform in writing its clients concerned about the refunding of the excess handling fees, the possibility of early repayments and any other future amendments. (Vj-41/2006)

62. During 2007, the GVH received numerous complaints concerning the **activity of parking companies** in the capital and in other towns. In one of its related proceedings, the authority examined the payment methods of Centrum Parkoló Rendszer Kft. (“Centrum Parking System”). The undertaking party to the proceeding required motorists to pay a contracting fee and incur the costs of SMS’ verifying the beginning and closing time of the parking when they wanted to settle the payment via mobile phones.

63. The Competition Council terminated the proceeding due to lack of an infringement of the competition rules. The obligation to pay for the conclusion of contracts was not illegal because the fee was calculated based on the real costs of paper-based documents that were given to the motorists. The total cost of the service was not higher than the costs of the development and maintenance of the system.

64. The Competition Council found it acceptable that motorists had to pay for the verifying SMS too, since they had the possibility to avoid these costs by simply choosing another payment method. Furthermore, with the development of the payment method via mobile phones, the parking company incurred considerable investments; therefore it was not unfair to share the extra costs arisen with consumers. It has to be mentioned that the undertaking party to the case ceased to operate its parking system via mobile phones before the termination of the competition supervision proceeding, because another company, Első Mobilfizetés Elszámolóház Zrt. (“First Mobile Payment Clearinghouse”) built up a new, nation widely used payment system by unifying and improving already existing systems (Vj-176/2005).

Concentrations

65. On the market of water and sewage treatment services, the **Municipality of Budapest, Degrémont SA** and **OTV France SA** acquired joint control over **BKSZT Budapesti Szennyvíztisztítási Kft**. (dealing with sewage treatment) but they failed to apply for an authorization; therefore the GVH initiated a proceeding ex officio in the case.

66. The Municipality established BKSZT in 2005 for the management of the central sewage plant of Budapest. The Municipality announced a public procurement procedure for the operation for a period of 4 years of BKSZT. The winner of the tendering acquired a minority shareholding in the company with the possibility and the responsibility of professional control over its activities. The winner consortium included both Degrémont SA and OTV France SA

67. Even though the Municipality retained majority ownership in the company by 50.2%, due to the provisions of the memorandum of association and the management agreement concluded with the consortium, each decision of the company's main decision-making body, the members' meeting, needed to be adopted with unanimity. Therefore Degrémont and OTV France had veto right in respect of all important decisions concerning the operation of the undertaking. In addition, the latter two undertakings had the right to designate the only chief executive officer of BKSZT.

68. With a modification of BKSZT's memorandum of association, the decision making about the annual and midterm business plan became one of the powers of the members' meeting instead of the CEO who had this power earlier. The Competition Council therefore arrived at the conclusion that before the amendment described above of the memorandum of association, Degrémont and OTV France had joint control over BKSZT, while afterwards also the Municipality became part of the group of the controlling entities. This means that the examined conduct (the development of the control of BKSZT) was formally implemented through two concentrations. In the end the Competition Council authorized the transaction since it raised no serious concerns (Vj-18/2007).

69. In the field of agriculture and food industry, the Competition Council authorized a concentration between **Bács-Tak Takarmánygyártó és Forgalmazó** ("fodder manufacturing and distributing") **Kft**. and **Kiskunhalasi Baromfifeldolgozó** ("poultry processing") **Zrt.** only with conditions. Bács-Tak is active in the poultry industry (breeding), while the acquired undertaking, Kiskunhalasi Baromfifeldolgozó was in vertical relationship with it as a poultry (waterfowl) processing undertaking. Though the parties to the transaction do not perform the same activity, in a situation where the Bács-Tak group would include the Kiskunhalas group, there seemed to be a risk of a joint dominant position on the Hungarian waterfowl processing and purchase markets being created.

70. The creation of a joint dominance could be based on the fact that the acquisition would establish a link between two Hungarian waterfowl (duck and goose) processing undertakings (Kiskunhalasi Baromfifeldolgozó and Hungerit Zrt.). Namely, the acquirer of control over Kiskunhalasi Baromfifeldolgozó, Bács-Tak has ownership and personal interlockings with Hungerit. Bács-Tak is a minority (16.9%) shareholder of Hungerit and one of the entities, which have interests in Bács-Tak, is a member of Hungerit's supervisory board. Furthermore, the proprietor general manager of Hungerit is a member of the board of directors of Kiskunhalasi Baromfifeldolgozó; this circumstance further increases the possibility of a joint dominance. The fact that an undertaking's representative is a member in the management of its competitor can facilitate the coordination of conducts between the two undertakings. A relatively high percentage of minority shares may make the undertaking interested in getting its competitor successful on the market. The relationships described

above, the relatively high joint market share of Hungerit and Kiskunhalas (around 80%), the balanced individual market shares, the lack of significant competitors, the fact that the market is hardly contestable and the more or less homogeneous nature of the product increased the risk of the creation or strengthening of joint dominance on the market, based on oligopolistic interdependence.

71. The vertical effects of the transactions were also problematic in view of the possible joint dominant position that would have been created by the concentration of the parties. The competitors of Bács-Tak could have faced difficulties on the purchase market of waterfowls dominated by the integrated processing undertakings. In its preliminary position the Competition Council found that the elimination of personal and ownership interlockings between the Bács-Tak group and Hungerit could remedy the competition concerns resulting from the concentration. On the other hand, if Hungerit and Kiskunhalas already had a joint dominant position on the market, that would not be the result of the transaction, therefore it could not be remedied by the imposing of conditions and obligations.

72. Accordingly, the GVH cleared the transaction by attaching to its decision the condition that the person having an interest in Bács-Tak resigns his membership in the supervisory board of Hungerit and that the meeting of the stakeholders of Kiskunhalasi Baromfifeldolgozó calls back from the board of directors the proprietor general manager of Hungerit. In addition to this, for the period until 31 December 2017, the GVH obliged Bács-Tak and all the undertakings directly and indirectly controlled by it, to refrain from buying Hungerit-shares. Furthermore, also until 31 December 2017, one and the same person may not be elected office holder, at the same time, of both the Bács-Tak-group and the Hungerit-group (Vj-91/2007).

73. The acquisition of an industrial paper bag manufacturing plant in Nyíregyháza of **Dunapack Papír és Csomagolóanyag Zrt.** (“paper and packaging material”) and of another plant of the same kind of **Dunapack Ukraine Ltd.** in Zhydackev by **Mondi Packaging Vác Kft.** and **Mondi Packaging AG** required a detailed analysis of its horizontal effects on the market of industrial paper bags.

74. Industrial bags are flexible packaging materials, which are supplied to industrial and commercial end-users as finished or semi-finished products. The bags are produced from different raw materials and they are purchased by various end-users. Industrial bags are more or less homogeneous products easy to produce. The GVH conducted an inquiry among end-users of industrial bags, which revealed that the majority of them use paper bags; however there were different views as to the substitutability of paper bags by bags made of other materials (plastics). The investigation also showed that paper bags could be transported economically over a 500-1000 km distance. About 30-40% of the demand for industrial paper bags in Hungary is covered by imports, while 20-30% of the home production is exported abroad.

75. The undertakings concerned by the concentration had together a share of 90% of the industrial paper bag sales in Hungary; nevertheless the Competition Council assumed that due to the eminent role of import and export, the geographical market is broader than the territory of the country. Furthermore, the Council also took into account that potential competition can come from a distance of at least 500 km of Hungary. In Hungary considerable unexploited capacities exist. Potential competitors would be ready to increase their sales in Hungary, while customers seemed to be prepared to switch suppliers. Hence, potential competitors could probably satisfy market demand, should the Mondi group

increase the prices of industrial paper bags after the implementation of the transaction (Vj-159/2007).

76. In 2007, **Hungarian Telephone and Cable Corporation** (HTCC) acquired control over **Matel Holdings N.V.;** thereby the two biggest Hungarian local telecom providers (Hungarotel and Invitel) and together with them one of the leading alternative providers (Pantel) and the nation widely active Internet service provider Euroweb got into one and the same group of undertakings. In the course of the investigation, the GVH examined in detail a number of electronic communications markets. Nevertheless, it found a possibility for restrictive effects to appear only in relation to retail markets of business Internet and data communications services. The Council concluded that not even on these markets could such effects be expected as results of the transaction.

77. The parties' market share, calculated based on their turnover (expressed in value-data) on these markets, exceeded 25%, nevertheless, given the leading role of Magyar Telekom, no risk of the creation of a dominant position existed. However, the investigation also showed that on a significant part of the market (in the CMA segment), purchases were made by tendering, therefore the turnover-based market shares might not appropriately indicate the actual competitive situation. In addition, given the change in market structure and a decrease in the number of market players, the GVH could not exclude the possibility that coordinated effects would arise. The conducted econometric analysis identified several factors that considerably reduce the possibility of the creation of joint dominance and, in turn, of coordinated effects based on that joint dominance.

78. The coordination of behaviour is made difficult by the fact that the asymmetry of the competitors' market power and the difference in network coverage made it uncertain that in a tender procedure both parties would be able to submit offers for all data-transmission services. Furthermore, the service packages offered n tender procedures compete both in prices and quality. Besides the participants of the transaction and Magyar Telekom, also other operators like GTS Datanet have an important role in stimulating competition. Finally, even if the creation of coordination would not cause any problem to the providers, it would entail difficulties to maintain the coordination, since in the case of large, telecom providers of demanding customers would be able and have the incentive to pursue a strategy deviating from the coordinated business policy.

79. Based on the above, the Competition Council found that there was no real possibility that the concentration would create detrimental concentrative effects. (Vj-19/2007).

80. In 2007, the GVH examined two further proposed concentrations, which strengthened the process of infocommunications convergence through the combination of the levels of the provision of media content and the transmission of it. In both cases the buyer was the Liberty group, i.e. the group of undertakings directly or indirectly controlled by Liberty Global Inc. In the case Vj-42/2007 **LGI Ventures B.V.** acquired control over **Audiotec Médiaszolgáltató Zrt.,** the provider of the Minimax children channel. In the other case **Chellomedia CEE Holdco B.V.** purchased **Filmmúzeum Zrt.** the provider of the Hungarian movie channel with the same name (Vj-123/2007).

81. The Liberty group is the direct owner of the largest Hungarian cable TV provider UPC Magyarország Kft., the local telecom provider Monor Telefon Társaság Zrt., and the sport channel operator Sport1 Műsorszolgáltató (programme provider) Zrt. Foreign undertakings controlled by the Liberty group sell to Hungarian programme providers the programmes Club, Romantica, Europa, Extreme Sport and Reality.

82. The two cases were similarly treated. Negative horizontal effects could easily be excluded in the first case, since the Liberty group had no presence on the children channel market before the transaction, and even by using a broader market definition the merged undertaking's market share remained below 20%. Although in the case of Filmmúzeum the parties' market share was higher than 20% on the market of movie channels, but there are other strong competitors (Hallmark, Film+) on the Hungarian market, while the increase in their share on the advertising market could be regarded as insignificant.

83. In both cases, in view of the integration of the programme provision (content) and the vertically connected programme distribution (transmission) levels, the Competition Council examined in particular the vertical effects of the transactions and accepted commitments offered by the parties to remedy the likely competition concerns. The GVH prohibited the undertakings of the Liberty group from refusing to sell the acquired Minimax and Filmmúzeum channels to competing programme providers, if the latter were prepared to pay non discriminative prices for the content determined under usual business and technical conditions and if they could ensure the conditions which were necessary for the content-transmission.

84. The GVH examined in detail the merger between two of the main pharmaceutical wholesalers in Hungary, **Hungaropharma Gyógyszerkereskedelmi Zrt.** and **Medimpex Gyógyszer-nagykereskedelmi** (medication trading) **Zrt.**, According to the GVH, on the one hand, the merging of the second and fourth largest wholesalers may reduce significantly, in theory, competition; on the other hand, it brings no significant changes concerning the structure of the market, since the same two powerful groups of undertakings (Hungaropharma and Phoenix Pharma) will remain on the market. Though by the acquisition of Medimpex, Hungaropharma will have a market share exceeding 40% and thereby it will go before Phoenix Pharma, the difference between them will not be high enough to create a sole dominant position for Hungaropharma.

85. It could not be excluded that through the merger Hungaropharma and Phoenix Pharma would get into a joint dominant position, especially because the structure of the Hungarian wholesale of medicines is favourable for the development of oligopolistic interdependence. On the other hand, the possibility of the development of joint dominance is decreased by fact that there is a third participant, TEVA, on the market with a substantial market share (15%).

86. As regards the vertical effects of the merger, two consequences can be identified. It is advantageous to competition that the pharmaceutical companies (manufacturers) Egis and Richter have lost their direct control over the wholesaler Medimpex group. However, it is disadvantageous that Egis, Richter and Béres (a further, but much smaller manufacturer) can now jointly influence the business policy of both Hungaropharma and Medimpex. Nevertheless the Competition Council found none of these effects significant and it could not identify any portfolio or conglomerate effect either (Vj-166/2007).

Case number[28] (Vj-)	Paragraphs dealing with the case		Parties to the case
	In the Report	In the Appendix	
176/2005	81	61-63	Centrum Parkoló Rendszer
201/2005	65	37-42	Chamber of Hungarian Architects
7/2006	75	51-53	Hungarotel
8/2006	75	51-53	Magyar Telekom
9/2006	75	51-53	Invitel
10/2006	75	51-53	Monor Telefon
11/2006	75	51-53	Emitel
12/2006	77	51-53	OTP Bank
26/2006	63	31-36	Navi Gate, Nav N Go and others
41/2006	78	59-60	OTP
60/2006	66	43-46	Hungarian Chamber of Pharmacists
81/2006	62	24-30	Kortex, Olympus Hungary
120/2006	24	8	Pannon GSM
140/2006	8, 60	17-23	Hungarian Post, Lapker
191/2006	67	47-50	Vöröskő, Elektro-Quality, Bravotech
5/2007	24	12-16	MTM-SBS Televízió and others
14/2007	24	12-16	Argo TV, Magyar ATV and others
16/2007	24	12-16	Spektrum TV and others
17/2007	23-24	1	MKB Bank
18/2007	88, 90	64-67	Municipality of Budapest, Degrémont, OTV France, BKSZT
19/2007	93	75-78	HTCC, Matel Holdings
53/2007	24	2	Erste Bank Hungary
74/2007	24	12-16	Magyar RTL TV and others
85/2007	24	9	UPC Magyarország
91/2007	91	69-72	Bács-Tak, Kiskunhalasi Baromfifeldolgozó
114/2007	8, 19, 22, 24	6-7	OTP Bank
123/2007	95	80-83	Chellomedia CEE Holdco, Filmmúzeum
127/2007	21, 24	10-11	Magyar Telekom
129/2007	24	2-5	Raiffeisen Bank

[28] Of cases, the number of which has been marked with an asterisk throughout the Annual Report as the number of a case about which further information can be found in the Appendix.

59/2007	89, 92	73-75	Mondi Packaging, Dunapack
166/2007	96	84-86	Hungaropharma, Medimpex