ANNUAL REPORT ON COMPETITION LAW AND POLICY DEVELOPMENTS IN HUNGARY

(January – December 2011)

1. Changes to competition laws and policies, proposed or adopted

1.1. Changes to the narrower legal environment

1. At the end of 2010, and in 2011, Parliament adopted several acts which contained amendments to the Competition Act. On 1 January 2011, the amended provisions of the Competition Act which deal with the handling of complaints and *actio popularis* and special new merger procedures concerning economic organisations classified as having outstanding importance for the national economy, entered into force. Furthermore, a number of other minor amendments, mostly of a technical legal nature or relating to the budget, also entered into force in 2011.
2. The purpose of the - mostly technical - amendments to the Competition Act relating to the handling of complaints was to simplify the complaint handling process and to accelerate procedures.
3. The rules governing *actio popularis* (action in the public interest)[1] were amended by the Act on the Hungarian Financial Supervisory Authority in order to ensure that they complied with the corresponding rules contained in the legal system, in particular the rules governing the similar powers of the Hungarian Financial Supervisory Authority. The most important change, which entered into force on 1 January 2011, gives the GVH 3 years from the date that an infringement is committed, or in the case of an on-going infringement, the termination of the infringement in question, to launch an *actio popularis*.
4. In October 2011 new group exemption decrees were issued (relating to vertical, specialisation, RCD agreements as well as certain groups of insurance agreements and agreements concerning the after-market of motor vehicles). The purpose of the new decrees was to ensure harmonisation with the new block exemption regulations adopted in the EU in 2010.

1.2. Changes to the broader legal environment

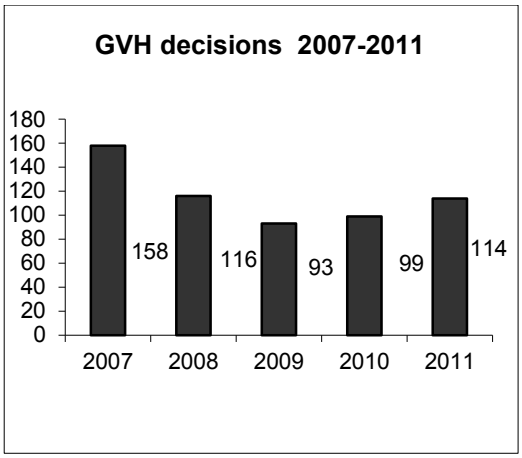
5. In the broader legal environment, notable changes having an impact on competition law occurred in the markets of media services and electronic communication. Market surveillance tasks have been delegated to the National Media and Infocommunications Authority of Hungary (NMIAH) or, in respect of media services, to the Media Council of the National Media and Infocommunications Authority. Pursuant to an act adopted at the end of 2010, since 1 January 2011, the NMIAH has also been participating as a competent authority in proceedings for the authorisation of concentrations of undertakings or groups of undertakings the members of which have editorial liability and which have the primary purpose of delivering media content to the public through an electronic communication network or printed media.
6. In addition, since 2011, the NMIAH has been authorised to conduct sectoral inquiries in the markets under its supervision if price movements or other market circumstances indicate that competition is being distorted or restricted. A proceeding can be initiated by the Media Council on the market of media services and by the president of the NMIAH on the

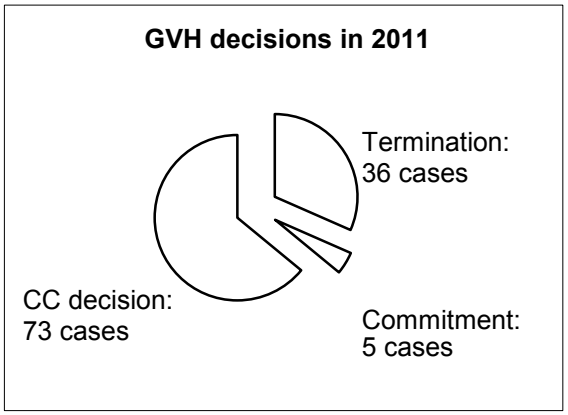
[1] Pursuant to Section 92 of the Competition Act, the Hungarian Competition Authority may file an action to enforce the civil law claims of consumers if the practices of an undertaking violate the provisions of the Competition Act or of the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices and the infringement concerns a large group of consumers that can be defined based on the circumstances of the infringement though the identity of the individual consumers is not known.

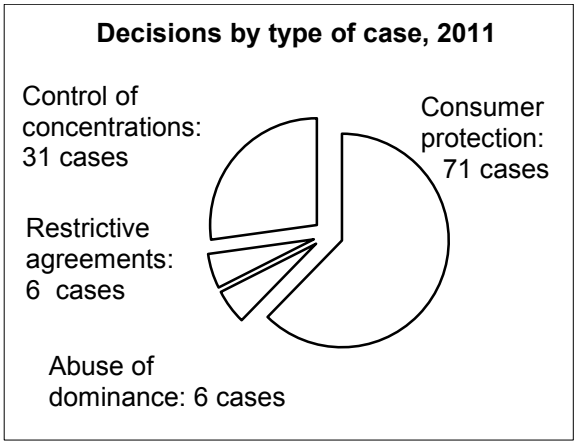
communications markets. If the Media Council or the president of the NMIAH consider that after a sectoral inquiry the identified problems can only be addressed in a competition supervision proceeding, they/he/she may initiate the launching of such a proceeding with the president of the GVH.

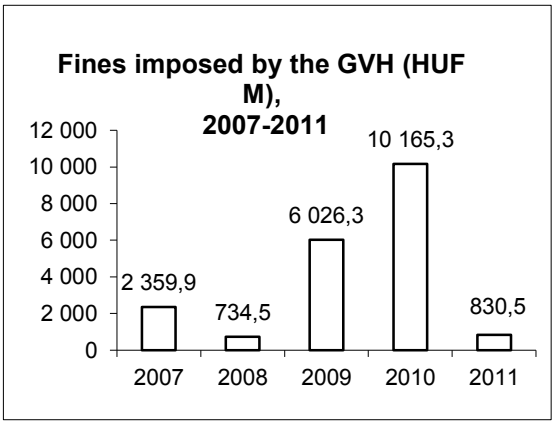
2. Proceedings

7. In 2011, the GVH concluded 114 competition supervision proceedings with resolutions of the Competition Council on the merits of the case, decisions of the case handlers or orders imposing commitments. Ten post-investigations were held. 109 proceedings were started in 2011.









8. A proceeding can be terminated if no infringement can be established on the basis of the evidence obtained in the course of the proceeding, or if pursuing the case further is not in the public interest.

2.1. Unfair manipulation of decisions of trading partners, and unfair commercial market practices against consumers

9. The GVH's antitrust and consumer protection activities complement each other by serving consumers' interests: competition makes it possible for consumers to choose the most suitable option from the maximum possible choices. However, if consumers are not able to

make rational decisions they cannot gain from the benefits of competition. In this regard the protection of competition and the protection of consumers cannot exist without each other and the best result can only be achieved if these are able to complement each other.

10. The main goal of the GVH's consumer protection activity is to ensure undistorted competition and to maximise consumer welfare through the freedom of consumer choice. The GVH's consumer protection activity primarily focuses on the demand side of the markets: by investigating the communication activity of the supply side its aim is to protect the free and undistorted choice of the consumer. If it can be established that the choices of consumers in a given market have been unfairly manipulated by an undertaking, for example by inducing consumers to make decisions which they would not have otherwise made, the competition processes may be distorted as a consequence of the distorted decisions of the consumers.

11. Accordingly, in the competition supervision proceedings in this field, the GVH examines whether the consumers had the opportunity to search for information, and whether they had access to the information necessary for making a reasoned decision. Furthermore, it is also examined whether the undertakings have done everything in their power to provide consumers with relevant and decisive information.

12. Market competition is normally capable of remedying consumer harm. However, in certain situations this is not the case, and state intervention is needed.

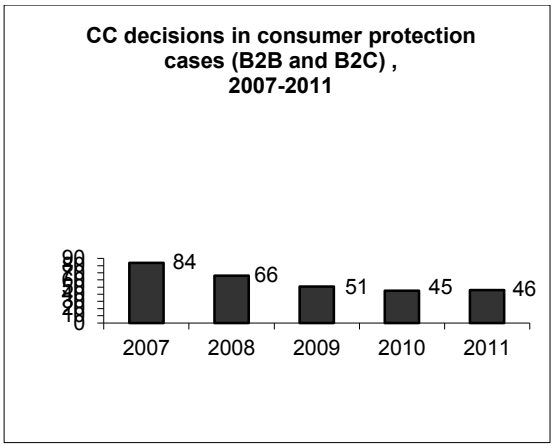
13. The enforcement of the legislation on consumer protection is divided among authorities according to their competences. Besides the GVH, the Hungarian Authority for Consumer Protection (Nemzeti Fogyasztóvédelmi Hatóság – NFH) and the Hungarian Financial Supervisory Authority (Pénzügyi Szervezetek Állami Felügyelete – PSZÁF) have consumer protection related competences. If an infringement targeting end consumers (B2C practices) exerts material influence upon competition, then the GVH is in charge of applying the law, unless the infringement occurs on labels, in user manuals (warnings and instructions) or violates information requirements that are set out in other legal norms. The PSZÁF has jurisdiction in connection with practices carried out by those financial institutions which it has the competence to supervise. In any other situation, it is the NFH that has competence. In defining the material influence on competition, the extent of the practice or the size of the undertaking liable for the infringement is to be taken into account. In order to guarantee legal certainty, the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices sets forth cases when the material effect on competition shall apply without prejudice to any other circumstances. This is the case, for instance, when the commercial practice is carried out through a media service provider providing national media services, or when the commercial practice is carried out through a periodical of nationwide circulation or a daily newspaper distributed in at least three counties.

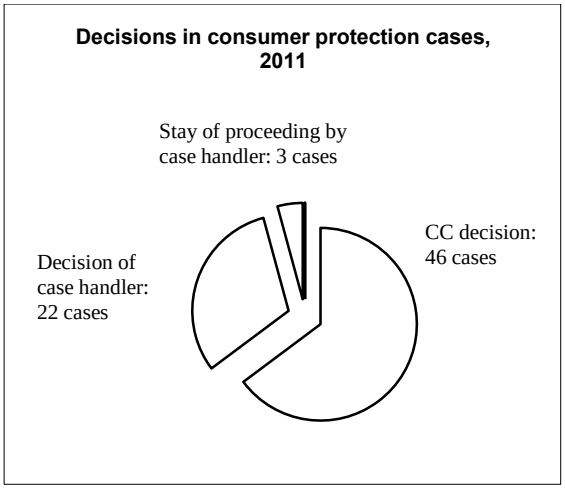
14. Practices in B2B relations – targeting businesses – belong to the sole competence of the GVH.

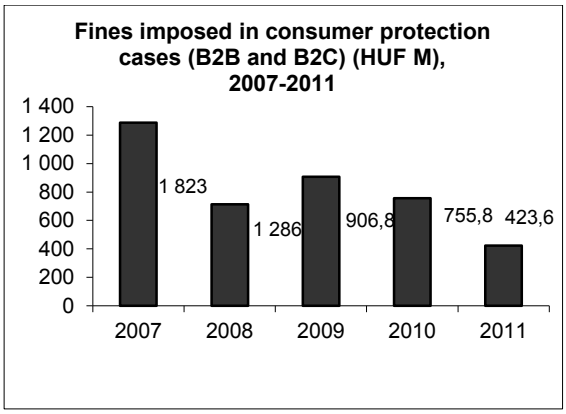
15. B2C cases are covered in the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices, while B2B cases are assessed under the relevant provisions of the Competition Act and the Advertising Act. The Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices prohibits unfair commercial practices on three grounds (unfairness, deceptive or aggressive commercial practices, "black list"). The Advertising Act prohibits misleading advertising and also sets out the conditions for the publication of comparative advertisements, while the Competition Act covers deceptive and aggressive conducts relating to information other than advertising.

16. Comparative advertisements are subject to special regulation: pursuant to the Advertising Act, the GVH is competent to proceed against non-objective comparative advertising in both B2C and B2B cases.

17. The GVH closed 71 consumer protection proceedings in 2011. The Competition Council established the existence of infringements in 40 instances, terminated proceedings in the absence of any infringement on one occasion and terminated proceedings because commitments were undertaken in 5 cases. In 25 instances the case handler closed the proceedings with his decision; three of those proceedings were stayed. In these cases the Authority imposed fines amounting to a total of 423.6 million HUF (approx. 1.5 million EUR) in 2011.







Some high-profile case categories

Purchasing groups

18. In 2011 a large number of undertakings offered fast and simple-looking arrangements to consumers with difficulties in obtaining credit or in paying their instalments; the advertising of such products was misleading due to the insufficient knowledge and financial vulnerability of consumers. Organisers of purchasing groups also typically targeted persons no longer eligible for bank credit ("BAR listed") or "pensioners"; such groups entered the market in increasing numbers because of the financial crisis.

19. In practice, the members of purchasing groups extend credit to each other. Members make regular payments of predefined amounts and the accumulated savings are then used to purchase the product (car, home, etc.), which is given to one of the members based on a lottery drawing arrangement or other criteria. Regardless of whether a member gets lucky or not, he must continue to make the predefined instalment payments until each of the group members obtains their desired product or service. Purchasing groups offer a right to purchase rather than cash. The value of the desired car or home is the amount advertised. However, the advertisement misleadingly suggests that the members of the purchasing group will receive cash.

20. In recent years the GVH has conducted a number of proceedings against undertakings organising purchasing groups, and such interventions continued to constitute one of the major categories of consumer protection cases in 2011. To improve the efficiency of proceedings, in addition to establishing an infringement and imposing a fine, the GVH also prohibited the continuation of the infringement (before the conclusion of the proceedings, through an interim measure) and imposed an obligation to publish announcements.

Medicinal preparations / weight loss products

21. Consumers are particularly vulnerable in this area: their desire to be cured may distort their judgement. When searching and processing information, consumers tend to prioritise the promised curative or preventive effects of such products over other factors. Consumers may also have difficulty assessing information relating to these products due to a lack of special expertise.

22. As a result, objective, unexaggerated information is particularly important in this field; consequently, the production, distribution and advertising of such products are subject to strict conditions. From the cases closed in 2011, the following general conclusions can be drawn in connection with the examination of the promise of medicinal effect and in particular claims of curing cancer. The GVH considers that the effect of information about the product on consumer decisions can be established based on the overall effect of the information, as indicated by judicial practice (the effect also relies on the fact that the product is generally known to the public as an anticancer product).

23. If commercial practices attribute a curative effect to a product, a false impression may arise that the product is distributed with the authorisation of the OGYI (Directorate General of the National Institute of Pharmacy). Consequently, it is not only terms expressly describing the product as a medical drug or referring to the licensing role of OGYI that are unfair but also claims attributing curative effects to the product. Furthermore, the information provided by the respondent undertakings about products theoretically falling into the category of food would not have been legal even if they had evidence to prove the validity of their claims as to the medicinal effect of the products. This is because they failed to highlight that they had not complied with a legal requirement, i.e., the relevant licensing procedure, which has a material effect on consumer demand.

24. It is misleading to suggest that the product contains ingredients not used in Hungarian medical practice where the medicinal herbs, additional to ingredients found and used in Hungary, are contained in a number of other preparations on the market.

25. Claims relating to slimming and weight loss constitute a separate category, though they are increasingly linked to the issue of health effects. In the course of the assessment of the results of independent clinical laboratories referred to by undertakings, the GVH, in line with its established practice, found that the information summarising the two test documentations was unsuitable for substantiating the advertising claims due to its brevity and the absence of supporting data.

Retail chains - Hungarian product / Hungaricum

26. In their communications, retail chains have been placing increasing emphasis on the identification of certain products as "Hungarian products" or "*Hungaricums*". The use of such terms by undertakings has been shown to be an important feature which influences consumer decisions. The unsubstantiated and misleading use of these terms may therefore distort the result of consumer decisions on what (and in which shop) to buy.

27. When the investigation of the commercial practices concerned was on-going and the substantive decisions were taken, the concept of "Hungarian product" was not defined in law. Based on complaints submitted relating to Hungarian products, Hungarian quality and the *Hungaricum* designation, the GVH started one proceeding in 2010 and three in 2011.

28. An undertaking sold several hundred – mostly food products – with a slogan which claimed that they were of "Hungarian quality" and associated them with the Hungarian national colours in its advertising (billboards, printed media, campaign brochures). In addition to the advertisements, the "Hungarian quality" slogan was generally also featured on the packaging of the products and most of the products were also shown on the "Hungarian quality" page of the website of the undertaking. During the proceeding the GVH established that the undertaking had no clear-cut criteria (internal procedures) for deciding when a product could be considered to be Hungarian and whether the "Hungarian quality" label should be

displayed on a product. By using a product designation emphasising the Hungarian character without a uniform set of criteria, the undertaking had committed an infringement.

Ingatlandepo

29. The use of online services is becoming increasingly common; consequently, this field has become subject to more intense scrutiny. In response to a large number of complaints from consumers, the GVH examined the commercial practices relating to the following websites: www.ingatlandepo.com, www.ingatlanbazar.com and www.ingatlanbazar.net.

30. On the websites examined, consumers may place advertisements relating to real estate and, following registration, they may search for real estate. The advertisements are free for 30 days, then consumers must pay for the service unless they cancel it.

31. Some consumers complained that they were required to pay for a service that they had not intended to use after the initial, free 30-day period. Many consumers first became aware of the onerous nature of the service when they received a demand for payment, while the respondents charged an additional fee even for electronically sent dunning letters as well as a "penalty interest". They also threatened litigation and the cost of expert testimony in the event of non-payment. Consumers were unable to cancel their advertisements until they had paid their debts, thus their debts kept increasing while the website continued to display ads that were no longer current. The undertakings left the complaints of consumers effectively unanswered - they essentially only responded to urge payment.

32. The GVH established that the undertakings engaged in unfair commercial practices because

- they neglected the complaints of consumers relating to the service,
- they neglected a court ruling on the invalidity of certain points of the general terms of contract employed by undertakings operating websites before 14 August 2009,
- consumers intending to contact persons who advertised on the websites were given misleading information about the currency of the advertisements for certain real property displayed on the websites,
- the obligation of registration relating to the advertisements was concealed from the consumers advertising on the websites,
- they exhibited aggressive commercial practices to make consumers meet their demands raised in connection with the advertisements placed on their websites.

33. As a result of the above mentioned conduct the GVH imposed a fine, prohibited the continuation of the illegal conduct and obliged the respondents to have the operative part of the decision published, without any comment, in specific daily papers.

2.2. Restrictive agreements

34. In 2011 the GVH placed special importance on the discovery of cartels. On-site inspections, without prior notification, were conducted in 14 proceedings at a total of 32 locations. The GVH adopted decisions in six cases, establishing an infringement on two occasions, terminating three cases and suspending the proceedings in one case. The GVH imposed competition supervision fines amounting to a total of 84.5 million HUF (approx. 0.3 million EUR) in 2011.

35. Experience gained over the last few years with on-site investigations indicates that electronic information exchange has lost ground and undertakings are increasingly using new, safer,

difficult-to-discover and -analyse techniques to contact one another (e.g., mostly mobile technologies). Consequently, it is much more difficult to obtain conclusive evidence.

36. In response to this development, the GVH has acquired tools to facilitate the search of mobile technologies and IT equipment and to increase the efficiency of the analysis of the collected data. Such advancements in the methods used contributed to the success of on-site investigations and the collection of evidence in dawn raids in 2011.

37. In order to increase the efficiency of "dawn raids", the GVH has procured more efficient, state-of-the-art forensic imaging devices which are several times faster than the equipment which was used in previous years, as well as other devices necessary for copying other digital data carriers.

38. As has been previously proposed by the GVH, the leniency and criminal law provisions need to be harmonised in order to ensure that restrictive agreements are discovered more effectively. To voice its concerns regarding this matter, the GVH contacted the ministry responsible for legislation and the Prosecutor General's Office. As a result of the discussions, the issue is expected to be resolved in 2012 by an amendment to the Criminal Code.

39. Since the introduction of the informant reward in 2009, persons providing essential information about hard core cartels have been eligible for a reward under the terms specified in the Competition Act. If the conditions laid down in the Act are met, the amount of the informant reward is one percent of the fine imposed by the Competition Council proceeding in the case, but may not exceed 50 million HUF. In 2011 the GVH received almost 20 applications for informant rewards, resulting in twice as many proceedings as in the previous year.

40. In the **"taxi cartel"** case (Vj-29/2008) the GVH imposed competition supervision fines amounting to a total of 34.5 million HUF (approx. 123 thousand EUR) on6 x 6 Taxi Közlekedési Szolgáltató és Kereskedelmi Kft., Buda Fuvarozó Kereskedelmi és Szolgáltató Kft., BUDAPEST TAXI Személyszállító és Szolgáltató Kft., City Taxi Fuvarszervező Szövetkezet, Főtaxi Autóközlekedési és Szolgáltató Zrt., Taxi-2000 Szállítási és Szolgáltató Kft. and Taxi 4 Fuvarozó, Kereskedelmi és Szolgáltató Kft. because they had concluded a restrictive agreement in November 2006 to acquire the contractual partners of Rádió Taxi.

41. The competition supervision proceedings examined, inter alia, whether there had been intended and/or actual cooperation between the taxi firms to acquire, in a coordinated manner, certain clients of Rádió Taxi. The competition supervision proceeding also examined whether in the 2006-2008 period the taxi companies had agreed to raise fares in 2006, and also whether they had allocated among themselves some of their contractual partners, typically the ones who selected their providers through competitive bidding. The proceedings were terminated in respect of the latter two parts of the facts of the case.

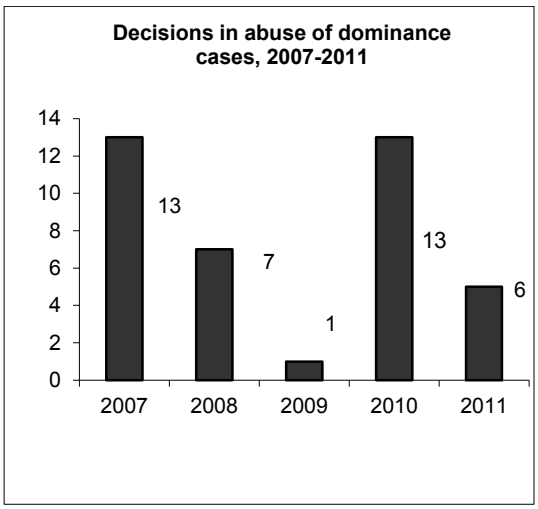
42. Based on the available evidence, the GVH established that the respondent undertakings had agreed to acquire the contractual partners of Rádió Taxi. Through their conduct, the parties reduced market uncertainties, shared information among themselves and learned about each other's intentions (which in itself is detrimental to competition). In the Competition Council's opinion, the fact that each of the respondents was aware that the conduct of its competitors focused on the clients of Rádió Taxi could in itself have influenced market conduct. In terms of its operation, the agreement between the parties was similar to a punitive mechanism that undertakings engaging in cartel activities tend to apply against rogue cartel members.

43. The Competition Council established that the undertakings concluded the agreement in order to maintain their own market positions and to drive Rádió Taxi, which employed low rates, out of the market.

44. In the **"mill cartel" case** (Vj-134/2008) the GVH imposed competition supervision fines amounting to a total of 50 million HUF (approx. 180 thousand EUR) on three milling companies for anticompetitive conduct relating to the public procurement procedure invited in July 2006 by the Agricultural and Rural Development Agency (MVH) for "The production of food aid from intervention grain stock and its delivery into warehouses specified by the client". The cartel members allocated the market among themselves for the supply of flour fortified with vitamins. The undertakings enshrined their conduct in an agreement to the effect that if any of the parties won the tender, it would conclude a subcontracting agreement with the other party to produce half of the fortified flour, the consideration being half of the wheat payable for the processed product.

2.3. Abuse of dominance

45. In 2011, in competition supervision proceedings for suspected abuses of dominant positions, the Competition Council adopted three decisions establishing an infringement, two cases were terminated by the Competition Council or the case hander, while the proceedings were stayed in one case.



46. The proceeding against **E.ON Tiszántúli Áramhálózati Zrt.** (Vj-74/2008) was founded on a previous decision of the Competition Council (from 2001) and the decision of the Metropolitan Court of Appeal in the court review of that decision. The court had compelled the GVH to conduct new proceedings in respect of long term agreements the undertaking had concluded with local governments, and required the GVH to impose a proportional fine on the undertaking in question. In the new proceedings against E.ON Tiszántúli Áramhálózati Zrt. the Competition Council established in January 2011 that E.On Tiszántúli Áramhálózati Zrt. (TITÁSZ) had abused its dominant position in 2001 when, in the context of its public lighting service to local governments, it had attached unjustified adverse legal consequences to the termination of long term power purchase agreements by local governments.

47. According to the Competition Council, the 10-year obligation and the unrealistically burdensome terms of the termination of the contracts by local governments as contracting

parties constituted the application of disadvantageous conditions; and in respect of power companies competing with TITÁSZ, they created disadvantageous market conditions without justification. In this case, the Competition Council imposed a fine of 45 million HUF (approx. 160 thousand EUR).

48. The GVH initiated proceedings against **Invitel Zrt.** as the legal successor of Hungarotel Zrt. In the original case, dating back to 2005, the Metropolitan Court of Budapest annulled the decision of the GVH and compelled it to conduct new proceedings. In the repeated proceedings concluded in the spring of 2011 the Competition Council established that between 24 July 2002 and 30 April 2006, Hungarotel Távközlési Zrt., the predecessor of Invitel Távközlési Szolgáltató Zrt., had abused its dominant position on the markets of commercial retail land-line telephone service and telephone access by hindering the market entry of new competitors without justification. This created disadvantageous market conditions for incumbent competitors and limited the number of different carriers that consumers could choose from. In this case, the Competition Council imposed a fine of 200 million HUF.

49. The conduct of Hungarotel relating to assuring the choice of intermediary carrier was also investigated by the communications authority (NHH) in respect of the period between 15 June 2004 and 1 October 2005. In this investigation the conduct of Hungarotel was found to have amounted to an infringement and a fine was imposed. Consequently, in its original procedure (Vj-69/2005), the GVH disregarded the above-mentioned period when deciding on the sanctions, whereas in the new procedure it was established that the decision of the NHH had been annulled by the court; therefore, the Competition Council decided to impose a competition supervision fine in respect of that period as well.

50. In another case, a competition supervision proceeding (Vj-138/2009) was conducted against **Városüzemeltető és Fenntartó Kft**. (VÜF) of **Mosonmagyaróvár** and **Karolina Hospital** for abuse of dominance and a restrictive agreement.

51. The GVH imposed a fine of 500,000 HUF (approx. 18 thousand EUR) on VÜF for abusing its dominant market position when it delayed contractual negotiations with an undertaking which was considering entering the market to enter the market. The Competition Council considered that through its conduct aimed at prolonging the contracting process, VÜF had hindered entry into the market of its only potential competitor, ANUBISZ Temetkezési Kft. (ANUBISZ), a member of its own company group.

59. In the course of the proceedings the parties undertook to terminate the agreement they had made with each other. They also agreed that in the future Karolina Hospital would issue a new call for tenders for the operation of the cold-room for dead bodies every three years. As a result, the Competition Council, in view of the commitments made by the parties, terminated the competition supervision proceeding that it had initiated because of the suspected cartel in respect of the agreement between VÜF and Karolina Hospital.

2.4. Control of concentrations

60. At the beginning of 2011 the GVH launched a review of its merger procedures with a view to accelerating proceedings. At the end of the review, a new merger application form and new guidelines for prior consultation relating to mergers were published at the end of 2011. The new application form helps to differentiate between apparently unproblematic transactions and those which require in-depth analysis, as well as in the identification of issues to be analysed. The new application form also contains a number of simplifications that reduce the administrative costs of the parties For instance, information only needs to be supplied about

those undertakings involved in the transaction that are relevant for Hungarian markets; no court of registration extracts need to be submitted; documents written in a foreign language need to be translated in less cases, and in general, fewer documents need to be submitted. For a number of concentrations, applicants are required to supply less information as they do not need to answer the detailed questions concerning markets, and they only need to supply information concerning markets where there is substantive overlap or relation between the parties. In case of mergers requiring in-depth examination, the use of more specific questions assists in the economic analysis to be performed. Even though parties to such concentrations must supply more data, this reduces the volume of data which needs to be submitted at subsequent stages of the proceedings and allows the process to become more efficient.

61. The GVH closed 31 cartel cases in 2011. Of these, mergers were authorised unconditionally in 22 cases, while conditions were set on one occasion. In 5 instances the Competition Council or the case handler closed the proceedings with their decision, and three of the mergers were not subject to an authorisation requirement. The GVH imposed fines amounting to 24 million HUF (approx. 85 thousand EUR) for the failure of undertakings to comply with the obligation to apply for the authorisation of a concentration.

62. The **Axel Springer AG / Ringier AG transaction** affected the markets of newspaper publication, printing, distribution and advertising (Vj-42/2010.); the parties wanted to concentrate their Central Eastern European companies in the form of a new joint holding company.

63. For the authorisation of the concentration, the approval of the Media Council of the NMIAH as the relevant authority had to be acquired. The Media Council refused to give its approval. In its preliminary position, the Competition Council indicated that in view of the decision of the Media Council, it would reject the application pursuant to the effective legal regulations. After this, the applicants withdrew their application for the authorisation of the concentration and the Competition Council closed the proceeding.

64. In the explanation to its decision, the Media Council stated that as a result of the proposed merger, the applicants would possess such market shares on the markets of general daily papers, general periodicals and periodicals with entertaining and lifestyle content that the diversity of the content offered could become significantly limited, distorted and endangered. Consequently, the right to pluralistic information could not be ensured.

65. The Hewlett-Packard GmbH - E.ON IT GmbH transaction (Vj-30/2001) allowed the Competition Council to make important statements of principle. For instance, in the context of this case the Competition Council stated that:

- the assets affected by the contract were to be considered as parts of an undertaking for the purposes of the Competition Act as they consisted of assets and resources which, particularly in combination with the assets, rights, experts and know-how available to the applicant, were sufficient to engage in the market activity concerned. The decision stated that it was irrelevant for the purposes of the Competition Act whether the purchaser (transferee) of the part of the undertaking concerned would actually engage in such market activity and whether it would perform such activities exclusively for the transferor (seller) or for itself; it was sufficient to establish that the assets or rights to be transferred, in themselves or in combination with the assets and rights available to the acquiring undertaking, may have been suitable for the performance of the market activity;
- there was no established and clear-cut practice concerning the minimum time frame in excess of which an operating agreement was to be considered a concentration. In the assessment of the Competition Council, the five-year tenor of the contract reviewed,

which could be extended to seven years, after which period the assets replaced by HP as required would remain in the ownership of HP, was long enough for the change resulting through the agreement to be deemed permanent (and thus to constitute an acquisition of control under the Competition Act).

66. **The acquisition of IKO Televisions (IKOT) by M-RTL Zrt.** concerned the acquisition of television channels targeting Hungary (Vj-66/2011). In this proceeding, the GVH primarily examined the groups and relevant markets that can be identified among Hungarian television channels from the perspective of viewers, broadcasters and advertisers, the state of competition in each of these as well as the changes to be expected from the transaction, taking into consideration the fact that television channels, just as media services in general, can be considered as two-sided markets.

67. The investigation pointed out that for the purposes of competition law, RTL Klub and the other seven channels proposed to be acquired are not substitutes to one another either on the broadcasting or the advertising market; instead, they have a complementary relationship. This is because channels with a larger spectator base (TRL Klub, TV2, Cool, Film+) are essential in order for broadcasters to be able to put together programme packages which are attractive to their subscribers. Consequently, due to their outstanding individual importance, channels with broad coverage and high ratings may not act as substitutes for one another, while channels with lower ratings can do so as they are less popular.

68. Looking at the market from the perspective of advertisers, the GVH concluded that television channels can be classified into two large categories, each with different advertising functions and, partly as a result, different price levels. The first category includes RTL Klub and TV2 (and potentially the public service channel m1), which help to expose a broad range of viewers quickly to advertisements as they have better coverage and ratings; consequently, they can charge higher advertising rates. The other channels, generally with lower ratings (though they may vary considerably in this respect), may contribute to the higher frequency of exposure of viewers to a particular commercial; furthermore, they may serve as a cost efficient vehicle for reaching special target groups. Exploiting this duplicity, major advertisers and their advertising agencies typically use both types of channels and this supports the assumption that the two categories of channels are not substitutes but are supplementary to each other. In view of the above, the GVH focused on the possible portfolio effects of the transaction when examining the effects of the concentration. Even though some broadcasters and channels voiced concerns about the concentration to the effect that after the merger, RTL Klub and IKOT channels could mutually promote each other's programmes or divert the mandatory programme items required by the media regulations to lower-rated channels and they could jointly procure valuable content or engage in the combined sale of channels, the GVH did not share these concerns. Having analysed the competitive effects, the GVH came to the conclusion that some of the aforementioned concerns were not merger-specific (that is, they may have existed before the concentration in question). According to the GVH, some of the concerns could be efficiently prevented or addressed by the media regulations; furthermore, in light of the characteristics of the market (in particular the expected digital conversion, the "must have" nature of channels with higher ratings and the relative ease of entry into the segment of smaller channels), the ability of the group of enterprises to drive others out of the market, and the market effect of a potential foreclosure, was also questionable.

69. In contrast, based on the available data the GVH was unable to definitively exclude the possibility of adverse effects in respect of the advertising market. It was established that as a result of the concentration two supplementary channels (family of channels) that have

substantial positions in advertising in their respective markets would become part of the same group, and in combination they would be able to fully satisfy the needs of a substantial proportion of advertisers/agencies. A "television mix" with similar advertising potential could only be created by simultaneously using practically all the other competitors, which is clearly a more expensive solution in terms of transaction costs than the one-stop-shop arrangement. All these factors could further strengthen the advertising positions of RTL KLUB and IKOT channels, which cannot be offset either by actual or potential competitors or by the countervailing purchasing power.

70. As a result, the possibility of a significant decrease in competition could not be ruled out but M-RTL responded to the concerns by offering commitments.

71. Accordingly, M-RTL is obliged to facilitate, in the two years following the concentration (in respect of contracts executed by 31 December 2013) the separate sale of the advertising slots of RTL Klub and of IKOT channels. This must be implemented in such a manner that the prices and conditions of the separate sale may be different from those of the combined sale only to an extent that is reasonable and justified, without any undue discrimination; in particular, the choice of the separate sale should be economically reasonable for advertisers/agencies either in itself or in combination with other channels outside the M-RTL group. M-RTL is obliged to inform the advertisers/agencies about prices and other terms as part of the general terms of business, and to demonstrate their reasonableness to the GVH.

72. As the commitments undertaken by M-RTL in combination ensure that the benefits of the combined sale can be realised without any adverse competitive effects, the GVH authorised the concentration, imposing such commitments as obligations. The concentration was also authorised by the NMIAH Media Council under a prior approval procedure.

3. Sectoral inquiries

73. Where price movements or other market circumstances suggest that competition is being distorted or restricted in a market belonging to the sector in question, the President of the GVH starts, by order, an inquiry into the sector in order to understand and appraise the functioning of the market. In contrast to competition supervision proceedings, sectoral inquiries provide a general overview of the competitive features of a specified sector or market and, consequently, do not focus on a specified conduct of certain undertakings.

74. In 2011, the GVH initiated a sectoral inquiry into the building society market (ág-1/2010), which was closed in 2011.

75. A sectoral enquiry into the market of building societies was launched because preliminary research conducted by the GVH indicated that the level of competition among market actors might have been low. The arrangement, which also served housing policy purposes, took up considerable amounts of government subsidies but it had limited success in achieving its original objective, which was to provide housing credit at low deposit interest rates. This is because consumers typically make use of bank products for savings purposes rather than to apply for home loans. Due to the low lending rates and the high interest rate environment, building societies achieved significant additional profits on their contracts.

76. The detailed sectoral inquiry led the GVH to draw the following conclusions:

- The pricing policies of building societies leave ample room for more intensive competition in several areas. Legal regulations set rather strict constraints on the range and level of fees that building societies may charge: market actors typically set these fees at the maximum allowed, effectively not considering them to be factors in competition;

- Higher deposit rates to persons only wishing to save can be justified; however, despite the numerous international examples, none of the actors present in the Hungarian market make use of this possibility;
- The high government subsidies distort competition, both on the deposit and lending sides;
- In bridge lending, the low cost of funds of building societies provides a competitive edge in home lending;
- It would be expedient for regulations to allow building societies to offer variable interest rate products or to resort to derivatives for risk management in a broader scope;
- The sectoral enquiry found that there were no constraints in the economic environment and no strategic motives in the conduct of the two incumbents that would significantly hinder a potential competitor from entering the market.

77. The recommendations of the GVH aim to intensify competition in the market of building societies. As a precondition for this, the entry of new actors in the market should be ensured by regulations which are predictable in the long term.

- Elaboration of a profit sharing model: to ensure a more effective use of government subsidies, it would be expedient to lay down a profit sharing model in the Act on Building Societies. In the event of profits from investments exceeding a certain level, the building society should be obliged to share the profits in excess of the predetermined level with its clients each year.
- Assuring the long-term sustainability of government subsidies: In the housing subsidies system, subsidies through building societies may become an important channel of government incentives. The sustainability of subsidies must be ensured, that is, appropriate fiscal calculations must be prepared to determine what funding requirement the arrangement entails.
- In the context of the predictability of government subsidies, consideration should be given to reducing the subsidy rate while maintaining or increasing the amount. The GVH would not rule out the possibility of government subsidies in the form of tax benefits.
- Cap on the interest margin: The current regulatory limit, which sets a cap of 10% on lending rates, is less than ideal as a regulatory technique. Consumer welfare would be better served by placing a cap on the margin between deposit and lending rates.
- To facilitate the appropriate management of market risks, the GVH could envisage a more extensive use of derivatives and of variable interest rate products.
- The current regulations provide an unjustified competitive advantage to building societies over commercial banks; therefore, it would be justified to make bridge lending an option only in exceptional circumstances.

4. Competition advocacy – commenting on regulations and other drafts

78. In 2011 the GVH received 202 draft bills and regulations to comment upon. The number of draft bills sent to the GVH for comments was comparable to the previous years' figures, while as a ratio of the total number of acts adopted, a smaller percentage was sent to the GVH.

79. In the course of exercising its right to **comment on proposed legislation**, the GVH looks at the competitive conditions on the market affected by the legislation; in particular, in the event of measures directed at setting or changing the conditions of market entry, the GVH assesses whether the objective to be attained by the regulation is compatible with the selected regulatory tools and whether the proposed measure has anticompetitive effects that are unreasonable in light of the expected results. In the event of exclusive rights to be provided, the GVH examines whether the exclusivity is unavoidable for the provision of some public service, and if yes, whether the regulation of the conduct of the market actor to become a monopolist can prevent the abuse of its dominance.

80. In the case of legislation setting **regulated prices**, the GVH typically does not examine the level of the prices itself, as that is the responsibility of the regulator; instead, it focuses on the safeguards to prevent cross-subsidisation, which would distort competition, and highlights the need for the accounting separation of the costs of services in the competitive and non-competitive sectors.

81. The GVH also paid special attention to commenting on proposed legislation in 2011. If the opinion of the GVH was disregarded in the course of the inter-ministerial circulation of the draft, we generally requested the sponsor to indicate the disagreement of the GVH and to explain the dissenting opinion in its proposal. The GVH finds that sponsors rarely take it upon themselves to do so. In most cases the GVH could only see whether its comments were utilised after the legislation had been promulgated.

Some comments on competition advocacy

82. In the opinion of the GVH, as stated in connection with the government decree on the **special rules governing procurement** affecting qualified data, fundamental security or national security interests or requiring special security measures, even if the contracting entity suspects a cartel between bidders for a classified public procurement procedure, it should be required to contact the GVH pursuant to the Act on Public Procurement.

83. In connection with the draft bill on the **national higher education system**, the GVH explained that the provision of the bill stating that "the core activity of an institution of higher education does not fall within the scope of market activity as defined in the Competition Act" would remove a much broader range of the activities of higher education institutions than the currently effective regulations do as it would exempt not only their reorganisation but also their core activity. Thus these services would be removed from the scope of the prohibition of abuse of dominance and of restrictive practices. Consequently, the Competition Act would not be applicable to a potential merger of private universities, and proceedings could not be initiated against restrictive agreements [e.g. coordination (specialisation agreements)] or abuse of dominance by institutions of higher education even in the case of services offered on a fully market basis and functioning higher education service markets. The legislator took into account the comments of the GVH.

84. In the context of a provision in the Act adopted in 2011 on the amendment of Act of 2003 on the **regulation of the market of agricultural products**, the GVH explained its position that any exemption from the prohibition of restrictive agreements set out in the Competition Act should not be unconditional but subject to substantive limitations. The extension of market development measures to market actors that are not members of an inter-branch organisation should take the form of a decision of the regulatory authority,

instead of a ministerial decree, and a requirement of mandatory consultation with the GVH in the course of the official procedure should also be set forth.

5. Competition Culture – the activity of the Competition Culture Centre

85. All competition culture activities are organised by the Competition Culture Centre (CCC), which is one of the organisational units of the GVH. It works on the basis of a pre-defined annual work plan, which provides for, among other things, raising public awareness of competition, the dissemination of knowledge about competition policy, and the contribution, on its part, to the development of competition-related legal and economic activities of public interest. Its operation is financed by a separate part of the budget of the GVH.

86. To perform its tasks, the CCC uses different means and completes various projects. E.g.

- it operates the website of the GVH, by publishing among others things, all the decisions of the authority;
- the CCC is the editor of a professional periodical called Versenytükör ("Mirror of Competition"). Articles to this publication are written mostly by the staff of the GVH, while at the same time the periodical offers the possibility of professional introduction for those younger colleagues who are interested in competition law issues. Versenytükör is distributed to law firms, undertakings, associations of undertakings, municipalities, professional journalists, administrative bodies, regulatory authorities, judges, libraries and universities, while articles of the publications may be also read electronically on the website of the GVH;
- the CCC published a film (cartoon) and logo competition which aimed to inform, in plain language, the public about the harm caused by hard-core cartels. As a result, 31 films and 145 logo plans were submitted;
- in light of changes which have occurred over the last few years the GVH updated and published its descriptive booklet: "What you should know about the Hungarian Competition Authority?", both in Hungarian and English;
- the Centre held a thesis competition for researchers and university students, in the framework of which in 2011 the CCC received 142 bids, out of which 86 were accepted. Finally 30 studies were selected and financially supported – all of them may be found on the website of the CCC;
- the GVH organised a large-scale international conference on 30 May 2011, the "European Competition Day, and on the next day, in cooperation with the Károli Gáspár University of the Reformed Church, the "European Competition Day Plus", esteemed experts of competition law and policy attended both events as speakers;
- the CCC closely cooperates with other institutions as well in the organisation of professional events and in their co-financing. Two of these events are worth mentioning in particular: in June the AmCham and CCC organised their third joint conference on advertisement: "Advertisement Law Compliance – Risk Management – Self-Regulation", and in November of 2010 the CCC and the Hungarian Association for the Protection of Industrial Property and Copyright jointly organised al conference on "Values and Questions from the World of Intellectual Property". Both events attracted a widespread professional audience;
- on six occasions in 2011 the 'Napi Gazdaság' (Daily Economy) newspaper published thematic pages on competition and consumer protection related matters.

6. International relations and the activity of the OECD-GVH Regional Centre for Competition in Budapest

6.1. International relations

87. The international relations of the GVH focused mainly on co-operation with the European Commission and the national competition authorities of the EU Member States, co-operation within the framework of the Competition Committee of the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network (ICN), as well as by bilateral co-operations.

88. Similarly to the practice of the previous years, the case-related co-operation within the European Competition Network (ECN) in respect of the application of the competition rules of the EU continued to be one of the main fields of the international relations.

89. Concerning co-operation with the International Competition Network (ICN), participation in the Cartel Working Group, where besides the DG Comp of the European Commission and the Japanese Fair Trade Commission, the GVH is the co-chair, continued to be a focal field.

90. The GVH's contribution to the work of the OECD Competition Committee and of its working groups was also of outstanding importance in 2011. Contributions were prepared about regulated conduct defence, quantification of harm to competition, excessive prices, remedies in merger cases, impact evaluation of merger decisions and economic evidence in merger analyses.

91. In compliance with established practice, the GVH also sent one of its experts in 2011 to the OECD for a whole year as a secondee on a rotation basis.

92. As regards bilateral international relations, the Albanian twinning project is worth mentioning. In 2009 a consortium was formed by the Department for Business, Innovations and Skills of the United Kingdom, the Italian Competition Authority and the GVH in order to make a bid for the twining project, which is a project that is aimed at providing technical assistance for the Albanian Competition Authority. The consortium won the tender and during 2010 preparatory works were made. The actual TA projects began in 2011 and short-term experts of the GVH completed several missions during the year.

6.2. The activity of the OECD-GVH Regional Centre for Competition in Budapest

93. The OECD-GVH Regional Centre for Competition in Budapest (RCC) was established by the OECD and the GVH on 16 February 2005. Relying on the professional background of the Competition Division of the OECD and the GVH, the Centre provides capacity building assistance and policy advice for the competition authorities of the Central, East and South-East European region, namely for Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The RCC is financially supported by the Hungarian Government.

94. Among others, the RCC deals with issues such as: analysis of core competition cases, investigative techniques, competition policy principles in the process of regulatory reforms, training of judges, law enforcement priorities, guidelines, policies, practices and procedures, framework for the cooperation of the competition authorities of the region, competition

advocacy, tools for communication, cooperation between competition authorities and regulatory bodies, and other general issues falling under competition law and policy. Regular meetings, training programmes, seminars and workshops were organised on all these topics.

95. In 2011 the RCC organised four programmes in Budapest for the experts of the beneficiary competition authorities on 1/ Quantitative analysis of horizontal concentrations; 2/ Restrictive agreements; 3/ Coordinated practices – theoretical issues and testimonies and 4/ Hypothetical case study on abuse of dominance.
96. The series of RCC seminars organised abroad also continued. This time the Bulgarian Commission for Protection of Competition hosted this event on the topic of *"Coordination and Information Exchange Between Competitors and the Role of Associations"*.
97. In addition to all these events there was a further meeting organised in Budapest for the heads of the beneficiary authorities. Besides discussing RCC-related questions and plans the heads also exchanged views on the importance and methodological issues of sector inquiries.

7. Technical conditions and other information

98. The Hungarian Parliament determined the total amount of the expenditures and revenues of the GVH concerning the year 2011, which was 1275,8 million HUF (approx. 4,5 million EUR). This amount covered the administrative expenses of the GVH.
99. According to Hungarian Competition Law, in 2011 the GVH was authorised to use twenty-five per cent as a maximum of the yearly average of the total amount of fines collected in the preceding two years for the development of competition culture, the culture of conscious consumer decision-making and to finance the operation of the OECD-GVH Regional Centre for Competition in Budapest (RCC). The total amount that was at the disposal of the CCC was 843,5 million HUF (approx. 3 million EUR).
100. In 2011 the approved number of the members of the GVH was 125.
101. Similarly to the practice applied in previous years, the GVH has placed a special emphasis on the advanced studies of its colleagues by providing them with the opportunity to become acquainted with European Union law practice. In 2011, two of the civil servants of the GVH worked for the European Commission as national experts, while another colleague was taking part in short internship programmes at the DG COMP. Furthermore, one of the colleagues of the GVH was provided with a foreign employment option at the OECD centre in Paris.

8. Resources of the competition authority

Resources overall (current numbers and change over previous year)

Annual budget (in HUF and EUR)

2010	million HUF	2465,5
	million EUR	9,3
2011	million HUF	2328,2

	million EUR	8,1

Number of employees (person-years)

	2010	**2011**
Economists	37	32
Lawyers	49	51
Other professionals	25	27
Administrative	14	15
All staff combined	125	125