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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN HUNGARY

-- 2004 --

This report is submitted by the Hungarian Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting (1-2 June 2005).

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

1. Summary of new legal provisions of competition law and related legislation

1. The changes in the legal environment in 2004 were dominated by accession to the European Union, this was the primary source of new legislation in the field of competition law. At the beginning of the year due to the then existing harmonisation requirements, new block exemption regulations were adopted concerning certain insurance and car distribution agreements.

2. With EU accession, the competition rules contained in the EC Treaty and the relevant secondary legislation became directly applicable to Hungarian undertakings. On the same day as accession, the reform of the EU procedural rules entered into force enabling the decentralised application of the competition provisions. After 1 May, the Office of Economic Competition (hereinafter referred to by its Hungarian acronym, "GVH") has had to apply Articles 81 and 82 in every case where it applies the Hungarian Competition Act and the alleged infringement might have an effect on trade between Member States. Of course it is possible to apply only Articles 81 and 82 or, in cases without any effect on trade, then the Hungarian provisions alone.

3. EU accession also brought changes in the field of merger control. As a consequence of the EU having jurisdiction in cases with a Community dimension under the EC Merger Regulation, these transactions do not have to be notified to the GVH, even if they would exceed the thresholds set out in the Competition Act. Under the "one-stop shop" principle, cases with a Community dimension are dealt with by the European Commission without the need for national competition authorities to proceed.

4. In addition, the provisions of Act XXXI of 2003 modifying the Competition Act entered into force. The modification contained rules allowing the GVH to perform its tasks as a competition authority of a Member State were therefore mainly of a procedural nature.

5. Before accession, during the first four months of the year, the Europe Agreement[1] was still in force. In this period, as a consequence of the law harmonisation obligation of Hungary, two block exemption regulations were enacted in the form of government decrees (on the exemption from the prohibition on restriction of competition of certain groups of insurance agreements, and on the exemption from the prohibition on restriction of competition of certain categories of vertical agreements in the motor vehicle sector). These decrees completed the approximation of Hungarian competition law to European competition rules.

6. After Hungary's accession to the European Union and under the circumstances of membership, the law harmonisation obligation of the country was replaced by the approximation rationale. This means that unless it is otherwise justified in the national interest, it will be worth to continue to align national competition norms to those of the EC in the future. Legal certainty would be best promoted by national and European competition laws being the same or at least very similar to each other.

7. As a result of the decentralisation of the enforcement of Community competition rules, national competition authorities are not only authorised but also obliged to apply Community rules to restrictive agreements and abusive practices in every case where the behaviour in question may appreciably affect interstate trade.

[1] EC/Hungary Europe Agreement – the Association Agreement of Hungary with the EC.

2. Other relevant measures

8. Besides the developments resulting from EU accession, the President of the GVH together with the President of the Competition Council issued a Notice describing the basic principles of the law enforcement practice of the GVH. With this Notice, the GVH temporarily relaxed the conditions of its leniency programme announced in 2003. The GVH had expected undertakings to be ready to reconsider their activities and restrictive practices pursued before Hungary's accession in order to enable them to start with a clean sheet. The temporary relaxation of the conditions therefore only concerned agreements concluded before 1 May 2004 and notified before 1 October 2004. Based on the Notice, undertakings giving information as second or third in line could still receive reductions in fines greater than under the normal leniency programme.

9. Finally, the GVH published its draft Notice on the method of imposing fines in cases of unfair manipulation of consumer choice. The document will be finalised taking into consideration the comments which have been submitted.

3. Proposals for new legislation

10. Preparations started for the 2005 amendments of the Competition Act. The proposals aim at further harmonisation of the national procedural rules to the reformed EC system. The institution of individual exemptions are to be abolished and other adjustments are to be introduced to facilitate co-operation within the European Competition Network ("ECN"). In order to reduce the workload, the procedure relating to the treatment of complaints will also be renewed/updated/revised?. Merger notification thresholds are to be increased. The final adoption of the amendments by Parliament is expected by September 2005.

II. Enforcement of competition laws and policies

11. Action against anti-competitive practices, including agreements and abuses of dominant position

a) Summary of activities of

Competition authorities

12. In 2004 the GVH conducted 186 competition supervision proceedings, 185 of which were closed by a decision of the Competition Council. These proceedings concerned 63 cases brought against unfair manipulation of consumers' choice, and 121 antitrust and merger cases. There was one mixed case, too.

13. In its decisions on the substance of the case, the Competition Council of the GVH imposed fines in 48 cases. These fines amounted to HUF 8,888.9 million (EUR 36 million), rising significantly above the fines of the preceding years (HUF 444.15 million equal to EUR 1.8 million and HUF 792.4 million equal to EUR 3.2 million imposed annually in 40 cases in 2002 and 2003, respectively).

14. The exceptionally high amount in fines can be attributed in the first place to the fact that the motorway cartel case *Vj-27/2003* ended with the imposition of a HUF 7.043 million (EUR 28.6 million) fine. The total of the amount of the fines imposed in the other cases was, however, a record in itself, too.

15. Due to Hungary's EU accession, in addition to the application of competition law as a part of Hungarian law, the GVH also fulfils duties in connection with the application of Community competition law. None of the four competition supervision proceedings launched in 2004 on the basis of Community competition law have yet been closed. Through the co-operation within the ECN, the GVH receives direct

and up-to-date information about the cases launched by the Commission and by other Member States, and supplies information about its own cases.

16. In connection with Community mergers, the GVH may provide an opinion on the concentration, especially regarding their effect on the Hungarian market and, when market effects focus on the Hungarian market, the GVH expresses its intention that it would like the judgment of the case to be transferred from the Commission. In 2004 there were no cases asked to be referred back to it by the GVH.

17. Through accession, the GVH also became a member of the two advisory committees operated by the European Commission and comprising the competition authorities of the Member States, which assume responsibilities in respect of merger, restrictive agreement and abuse of dominant position cases.

Actions against restrictive agreements

18. In 2004, 28 decisions were made on restrictions of competition. Twenty proceedings were initiated *ex officio* and eight were based on applications for exemption. The GVH intervened in 12 cases and it imposed fines in 8 of those cases. The total amount of the fines was HUF 8397.7 million (equal to EUR 33.59 million), an amount almost 13.5 times greater than that imposed in the preceding year.

19. The Joint Notice No. 3/2003 of the President of the Hungarian Competition Authority and the President of the Competition Council on the application of a leniency policy to promote the detection of cartels was applied in one case.

20. In 2004, the most important cases concerned public procurement proceedings in the construction sector where bidders concluded restrictive agreements. Seven competition supervision proceedings were initiated in order to discover restrictive agreements concluded prior to the submission of a bid between potential bidders.

Abuse of dominant position

21. Thirty decisions on the substance of the case were reached during the year 2004 in proceedings conducted against suspected abuses of dominant position. In 19 of these cases the existence of a dominant position was proven, and in 7 of these latter cases an abuse of the position could also be proven which thus made intervention by the GVH necessary.

22. Out of the 19 proceedings, which concerned service providers, 9 were initiated against cable TV companies. As with earlier years, complainants objected to the extent of increase of monthly subscription fees and to changes of the composition of programme packages which they said were disadvantageous to them.

Consumer fraud

23. Sections 8-10 of the Competition Act prohibit the deception of consumers. Deception of consumers is presumed, for example, if false declarations are made with respect to prices or essential features of the goods, or if the fact is concealed that the goods fail to meet legal requirements or if a false impression of an especially advantageous purchase is created. It should be underlined that these provisions are not aimed at consumer protection in general but are rather restricted to those deceptions which may influence the process of competition. The interventions of the GVH further ensure the appropriate functioning of the market. In 2004, 64 decisions were made, in 50 of which an intervention of the GVH was necessary. This meant a considerable increase compared to 2003.

Courts

24. By the end 2004, all the 290 appeals against decisions brought under the previous Competition Act of 1990 had been judged. The last of these cases was the Coffee cartel case (*Vj-185/1994*). The first step in the long-lasting judicial procedure was the decision of the Municipal Court of Budapest which upheld the decision of the GVH establishing the infringement and imposing fines. At the second instance, the Supreme Court also ruled – though with a reduction of the fine – in favour of the GVH. However afterwards, in a revision decision, the Supreme Court overruled its previous judgement and ordered the recommencement of the judicial review at the Budapest Municipal Court. The revision decision maintained that, in the previous judgement, it had not been properly argued/reasoned as to why the opinion of the expert, hired by the parties, had not been accepted. In the second proceedings, the Municipal Court dismissed the decision of the GVH. On appeal, the Court of Appeal (which had in the meantime been set up as a forum for the revision of judgements of the Municipal Court and county courts) upheld the decision of the GVH and ruled in favour of the GVH but reduced the level of the fine. On a revision appeal against this judgement, the Supreme Court dismissed the judgment of the Court of Appeal and ruled that the decision of the GVH was not well founded.

25. Among the judgements made in 2004, one of the Budapest Municipal Court is especially worth mentioning. In its judgement, the Court dismissed the decision of the GVH declaring the concentration of Tabora, a member of the Ringier group, with *Népszabadság* (a political daily newspaper) as incompatible with the Competition Act. The Court ordered the recommencement of the proceedings. In order to speed up the procedure, the GVH has not appealed against the decision. By its decision reached in 2004, the Competition Council terminated the proceedings against MOL because, in respect of the period 1997 to 1999, it could not establish respectively the existence and the abuse of a dominant position in setting the resale and wholesale prices of fuels.

b) Description of significant cases

Restrictive agreements

26. In 2002, four public procurement procedures were published for the road and tram-track reconstruction in Budapest of the junction of Bartók Béla Boulevard and Bocskai Street in connection with the preparation of Line 4 of the Underground. The GVH commenced competition supervision proceedings[2] against eight undertakings in the construction industry following the rousing of the suspicion that they had displayed a conduct which restricted economic competition in the offering phase of these tenders. The bidders had submitted their bids in different capacities: either in the capacity as competing bidders or as legal co-operative partners (e.g. as main or subcontractors or consortium members, etc.).

27. The Competition Council established unlawful concerted action in relation to the bidding process among bidders, because it was proven that three of the eight undertakings (Strabag, Ring and EGUT) had used the legal forms of co-operation in order to give and receive information to/from each other. Moreover the three mentioned undertakings had contacted each other directly before submitting their bids in a way that was apt to have an influence on the market conduct of the competing bidders. In the view of the Competition Council, business interest in creating and governing competition presupposes that each bidder of a tender ("the competitors"), where they observe the provisions of the law, decide their market conduct independently. That is to say, they preclude all direct or indirect connections which, by their object or effect, influence or may influence or are intended to influence the market conduct of competitors.

2 *Vj-138/2002*.

28. Considering all these aspects the Competition Council found the abovementioned conduct to restrict economic competition and hence to infringe the Competition Act. Therefore it imposed a total amount of HUF 245 million (equal to EUR 0.98 million) in fines on the three parties to the case.

29. In 2002, public procurement procedures were conducted, in the framework of which the National Motorway Co. ("NM") invited undertakings to submit offers for the construction works for particular motorway-sections which concerned, in total, a length of 59.91 km and a growth value of HUF 160 billion (approximately EUR 64 million). After the invitational public procurement procedure published in July 2002 had been declared inconclusive, the NM started four open pre-qualification public procurement procedures in August 2002. As a result of these procedures, different bidders won each of the tenders.

30. The GVH commenced an *ex officio* proceeding in February 2003[3] in order to establish whether the undertakings submitting bids (Betonút, Strabag, EGUT, Hídépítő and DEBUT) colluded during the open pre-qualification procedure (with a qualitative preliminary selection of the candidates). The proceeding was later extended to the invitational procedure in which the same works had been put out to tender in July.

31. Based on evidence, the Competition Council established that the abovementioned firms had previously agreed among themselves on the identity of the tenderer acquiring the construction works contract for the particular motorway sections and on the tenderer which would be let in by the general contractor as a subcontractor into the construction work. The market distorting effect of the collusion was significant since every large undertaking participated that could be expected to meet the conditions to be fulfilled by candidates set out in the invitation. The Competition Council imposed a total amount of HUF 7.043 billion (equal to EUR 28.17 million) in fines on the parties to the case, since cartels of this type are considered as such to merit sanction in the most severe way and it was also taken into consideration, in compliance with the earlier decisions of the Competition Council, that the infringement concerned the utilisation of public means.

32. In April 2002 the Ministry of Education published a call for public procurement for the construction of a multifunctional centre – including educational and service buildings and an IT centre – for the students of Kaposvár University. Among other undertakings, Középületépítő and Baucont made bids. Baucont made its bid in a consortium with Klima-Vill.

33. During the competition supervision proceeding[4] it was found that, before they were to make their final bid, Baucont and Középületépítő had entered into an agreement according to which, were either of them to be the winner, then the winner would compenste the loser by concluding a subcontract with it or by granting it financial compensation. The GVH obtained the subcontracting "mirror contracts" of this agreement which had the same content but had the position exchanged of the same parties to them. The Hungarian Act on Public Procurement does not prohibit undertakings from making bids in the same tender procedure by involving competing bidders in the fulfilment of the project if reasons of technological or capacity utilisation render this a rational approach and this practice in itself does not violate competition law. However such an involvement can only be initiated after the publication of the public procurement decision. These secret mirror contracts concluded during the public procurement procedure or before the publication of the decision, could not be justified by reasons of technological or capacity utilisation, consequently their aim was clearly to reduce the risk of losing. Therefore the Competition Council imposed a total fine of HUF 149 million (equal to EUR 1.19 million) on Baucont and Középületépítő.

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3 *Vj-27/2003*.

4 *Vj-154/2002*.

34. The GVH found similar a infringement in connection with the open pre-qualification public procurement procedure for the complete reconstruction, renovation, building contractors' and sub-construction works of the headquarters of the Hungarian Pensions Insurance Authority.[5] The first public procurement procedure was conducted in January 2002 but it was declared inconclusive and a new tender was announced later in the same year. Four undertakings put forward their application for the tender, three of which (Középületépítő, Baucont and ÉPKER) were invited to submit their bids. However the company KÉSZ, the fourth participant of the first round of the public procurement procedure, objected to the decision of the Public Procurement Arbitration Committee.

35. The investigation found that Baucont and ÉPKER had concluded an agreement before the second round of the tender, which provided that the losing party, in case the other party would be the winner, with a subcontractor assignment and financial compensation. Later, Baucont and ÉPKER also involved KÉSZ in their agreement which, in return, withdrew its objections; it thereby became a party to the agreement. Finally, Baucont won the tender and it involved KÉSZ and ÉPKER Kft. in the realisation of the project. The investigation also discovered that there had been intensive communications between Baucont and Középületépítő during several tenders. However, this could not be proven in connection with the abovementioned tender and therefore the competition supervision proceeding was terminated in respect of Középületépítő.

36. The Competition Council established that the collusion of Baucont, KÉSZ and ÉPKER in the bidding process seriously infringed economic competition. Therefore, the Competition Council imposed a fine of HUF 590 million (EUR 2.36 million) on the undertakings.

37. The local government of Budapest's Sixth District conducted a public procurement procedure for the construction of a block of flats in 2002. The GVH had the suspicion that bidders had colluded in the course of the public procurement procedure and therefore it initiated a competition supervision proceeding.[6] The investigation found that Construm and Royal Bau Rt., two of the bidding companies, had agreed that Construm had to withdraw its bid in order to allow Royal Bau to win the tender. In return, the two undertakings were required to co-operate during the construction work and they also agreed about the sanctioning of the infringement of the agreement. Later, a supplemental agreement was also entered into between them in which they agreed that the winning undertaking would include the other in the realisation of the project where either of them received a new order for construction work from the local government of the Sixth District. The parties put their agreement in a notarial document and moreover opened a common bank account. Later, Construm infringed the agreement and therefore Royal Bau brought an action against it before the civil courts and further notified their agreement before the GVH and applied for immunity from fines. The immunity application of Royal Bau was accepted. On the basis of the testimony and the evidence submitted by Royal Bau, the Competition Council could prove the infringement of the law and imposed a fine of HUF 16.5 million (EUR 66,000) on Construm.

Abuse of dominance

38. In **FiberNet** (*Vj-42/2003*), the Competition Council found that FiberNet Communication Company abused its dominant position by setting an excessively high call-out fee, by clause 7(2) of its Business Terms/Standard Contractual Terms, and therefore imposed a fine of HUF 5 million (EUR 20,000) on it.

39. FiberNet is the third largest cable TV operator in Hungary having more than 120,000 subscribers. In this case, the relevant product market was the market of the programme packages provided by cable TV

5 *Vj-28/2003*.

6 *Vj-74/2004*.

operators. The Competition Council found that the cable TV network, as a programme package provider, could not be reasonably substituted by other broadcasting techniques, regarding prices, quality and choice. In some parts of FiberNet's operating territory (the relevant geographical market), there were other cable TV operators but FiberNet was nevertheless in a dominant position on the relevant market due to its integrated price policy, the low share of the overlapping networks, the large number of captive? consumers, the high costs of creating a new network (as a barrier to entry) and the switching costs.

40. The clause of the Standard Contractual Terms cited above proved unlawful because it entitled the company to place expensive channels into the packages at its own decision, without its subscribers' approval. The Competition Council prohibited the further application of this clause.

41. The call-out fee (the company charged this one-off fee for repair work unless such repair work became necessary to be done as the result of a fault caused by service provider itself) was found abusive (unjustifiably high) compared (by benchmark technique) with other operators' call-out fees.

42. The Competition Council established that **MATÁV** infringed the law by applying a price squeeze (in case *Vj-100/2002*) and in this way hindered market entry of other service providers.

43. The investigation against **Invitel**, a service provider of the communications sector started in connection with the "HUF 45 summer lump-sum fee action" (*Vj-121/2003*). In that action, the service provider in question announced it would automatically charge, during a two-week period, a uniform fee of HUF 45 for weekend and holiday calls within the primer district, irrespective of their length. Should the subscriber nevertheless wish, in accordance with his/her usual way of phoning, to choose the tariff of the original programme package, they first had to dial the four-digit dialling code 1767.

44. The method raised competition concerns, in particular taking into consideration that, as it was generally known, consumers were not well informed about communications-related issues. This was proved once again by the developments in the action period. Though consumers had received comprehensive information about the action, only 1.7% of them made use of the possibility to dial the code 1767.

45. According to the standpoint of the Competition Council, the defending party reckoned with certainty on the low-level awareness of subscribers when it set the terms and conditions for the action (i.e. the duration, the method of utilisation and the amount of the lump-sum fee) in a way that resulted in an unjustifiable increase of its incomes and in the disadvantage of its subscribers to pay increased amounts for their calls. This conclusion was supported by the fact that during the action, the average length of the calls made without using the four-digit dialling code (i.e. at the lump-sum fee of the action) was significantly shorter than that of the average weekend calls, that is consumers acted perfectly against rationality; on the other side during the two weeks in question the turnover reached in the primer districts doubled as a result of which the benefits derived from the infringement amounted to HUF 18 million. The fine imposed by the Competition Council was three times greater, i.e. HUF 55 million.

46. An old case was recommenced in the competition supervision proceeding against **MOL** ("Magyar Olaj- és Gázipari Rt, Hungarian Oil and Gas Industry PLC") (*Vj-33/2004*) which the GVH was required to restart by a judgement of the Supreme Court. The Court ordered the GVH to examine in the new proceeding, commenced with the involvement of an expert, whether the difference between the wholesale price charged by MOL and a wholesale price which would have been set based on the actual costs, was disproportionately high bringing in such way unjustifiable advantages to MOL. In a further step, it was to be assessed whether MOL abused, by setting that excessively high price, its dominant position. The GVH turned to an independent expert to obtain an assessment of the cost accounting prepared by MOL. The expert came to the generally valid conclusion, relating to the price-setting method, that it would

be an undue measure to prescribe cost-based price setting in respect of fuel where the fact that Brent crude oil price – which decisively influences the cost of fuel – moves parallel to the fuel prices quoted, and so automatically ensures that fuel prices are proportionate to costs. In the period under scrutiny, the wholesale prices for MOL fuels closely followed the Brent price-based quotation prices. Hence there was no doubt they could be considered as competitive prices. The expert said that it was economically reasonable that MOL, in setting its prices, also put world prices for its self-exploited crude oil. As a consequence, it was not possible to drain, based on competition concerns, incomes deriving from self-exploited oil being cheaper in comparison to world market-priced crude oil. The State could drain such incomes by other means e.g. in the form of mining royalties. The expert and the Competition Council were of the same opinion that, in the difference between competitive price and cost-based price, additional incomes deriving from increased efficiency could not be regarded, from the aspect of competition law, as being unjustified advantages. Therefore the Competition Council did not find the method of price-setting applied by MOL to be unlawful and accordingly terminated the proceeding.

47. Based on complaints from newsagents, competition supervision proceedings were commenced against newspaper wholesalers. The complainants expressed their grievances against practices of **Buvihír, Északhír** and **Pelsohír,** for these wholesalers, not taking into consideration the demands of the newsagents, regularly delivered them printed matter for sale which they had not demanded or delivered them such a wide assortment of newspapers which increased their current assets requirements.

The Competition Council terminated the three proceedings (*Vj-45/2004*, *Vj-46/2004* and *Vj-122/2004*) after having established that, though in practice the defending parties had no competitors on their respective markets, they were not dominant on those markets. Namely they concluded agreements with the newsagents which could be seen as a kind of agency agreement and, as a consequence of those agreements, newsagents did not run the usual risks other entrepreneurs did. (The newspapers delivered did not become the property of the newsagents and the wholesalers took back all of the unsold copies [on terms of "SOR" or "sale or return"]; newsagents were not forced to make investments as a consequence of which they would have had to incur sunk costs; newsagents were not obliged to contribute to transport or promotion costs.) Hence, a possible termination of their agreements with the wholesalers did not mean a considerable risk to the newsagents.

Mergers and acquisitions

48. In the year 2004 the Competition Council reached decisions about concentrations in 65 cases. In two of these decisions the Council made authoritative statements.

49. In the framework of a concentration between K&H and K&H Equities, **Kereskedelmi és Hitelbank** ("Commercial and Credit Bank") that was a minority owner of the securities trading company acquired further shares of K&H Equities from ABN Amro (*Vj-170/2003*). It was an interesting aspect of the case that **the proposed transaction had already been authorised** when ABN Amro merged into K&H, but the parties did not implement this transaction. As the Competition Council established, in a case where a new contract is entered into by the parties to implement an earlier unimplemented part of an authorised concentration, a new authorisation of the GVH is needed under the Competition Act, supposing the conditions provided for by the Act are otherwise met.

50. The Competition Council proved once again that market shares are of only secondary importance in the case of bidders' markets.

51. Situations may arise in bidding processes in which even a market player with a high or a low market share cannot be considered dominant or can have significant market power, respectively. According to the established practice of the GVH, for the assessment of concentrations that result in market shares

much higher than 25% in markets which are characterised by purchases through bidding processes, high market shares have only secondary importance. For instance in Group 4 Falck/Securicor, the Competition Council came to the conclusion that, though the undertaking created by the concentration would have high market shares in respect of certain activities, it would not be able to pursue its economic activity to a high extent independently from the activities of the other market players due to the fact that contracts were typically brought about in the framework of bidding processes (*Vj-55/2004*).

III. Role of the competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

52. The **pharmaceutical industry** is a regularly returning topic in the annual reports of the GVH. It was in the summer of 2002 when the GVH began to analyse the pharmaceutical industry and, after a thorough discussion with a broader professional field, the results of this analysis were published in July 2003 in the form of a Competition Office Bulletin under the title: "Key Issues of the transparency of subsidy system regulation and Pharmacy Market Liberalisation." In this Bulletin, the GVH suggested the ending of several existing state interventions in the retail trade of pharmaceutical products that reduced efficiency. At the same time, in this Bulletin, the GVG acknowledged that the complex nature of the health care system allowed for a particularly narrow room for manoeuvre for the reforms and any development could only be made gradually and with due foresight.

53. The GVH has, from time to time, drawn attention to the fact that, instead of the application of ad hoc regulatory interventions in the pharmaceutical industry, it would be high time to systematise and review the operation of the regulatory regime and to elaborate corrective measures based on this exercise. It is a particular concern of the GVH that usually the ad hoc changes in the pharmaceutical industry do not take into consideration the basic economic rules according to which this special industry operates. Consequently, these changes mostly result in effects which conflict with the desired aims and do not lead to the effective functioning of the system. The GVH has made several suggestions concerning how to regulate the system.

54. In the framework of its annual work plan, as one of its outstanding goals for the year of 2004 the GVH surveyed the regulations and practices of interest groups of **professional services** from a competition policy perspective. The main aims of this work were to explore potential anti-competitive provisions (e.g. setting and demand of mandatory fees, undue restrictions in advertising, etc.) and their abolition. Within this exercise, the self-regulation of several interest groups were analysed and bilateral discussions were held with representatives of several professional associations or chambers. The reviews and the discussions led to voluntary changes by some of the interest groups, or at least changes can now be expected in the near future (engineers, pharmacists, physicians). In the case of some other interest groups, like lawyers and auditors, the GVH was compelled to initiate proceedings, while in other cases it seemed to be appropriate for the GVH to propose legislative changes. In the framework of this continuing project, the GVH aims to initiate discussions with the relevant regulatory authorities in order to dismantle regulations which might have competition concerns and which cannot be supported in the public interest.

55. In exercising its right to give opinions to parliamentary bills, the GVH always focuses on the competitive conditions of the market affected by the particular regulatory activity. Where – as a result of the planned regulatory step – market entry possibilities would change, the GVH considers whether the regulatory aim meets the regulatory means and whether these exert disproportionate competition restrictions compared to the expected results. Regrettably, on several occasions the GVH may have the possibility to express its view only at a later stage of the preparatory work of the regulation, when the basic concept pursued by the regulation cannot be modified: consequently positive influence can rarely be reported.

56. Commenting on the submission of the Act on **Bodyguard and Security Service Activities** the GVH called the attention to a 2004 Communication of the European Commission.[7] According to the Communication, recommendations concerning the minimum level of rates can be interpreted as practice having an anti-competitive character, and the restriction of price competition in this way is unjustified. As a result of the comments made by the GVH, this authorisation was removed from the final version of the bill which was discussed by Parliament.

57. Concerning the bill on the **activity of forensic experts** and the amendment of other related regulations, the GVH managed to have its earlier comments built into the version which was submitted to Parliament. As a result, the direction of the amendments are pro-competitive in nature in the regulation of this kind of services.

58. The GVH made extensive use of its right to present an opinion on draft legislation in the field of **info communications**. In order consistently to safeguard competition and to promote the uniform application of legislation in this particular area, the Act on Electronic Communications requires close co-operation between the GVH and the National Communications Authority ("NRA"). In the framework of this cooperation the GVH participates in the analysing of communications markets and also in the designation of service providers having significant market power ("SMP"). The GVH expressed its concerns, *inter alia*, regarding the draft measure analysing the retail markets of fixed-line telephony services since, in its view, due to the problems in the methodology, improper identification of service providers with SMP might occur . The basic problem stemmed from the fact that the NRA – instead of following the uniform competition law-based principles – had not made an in-depth analysis of each relevant geographical market, and thus it necessarily could not make an adequate assessment on dominance. The GVH therefore proposed that the NRA conduct the more detailed analysis separately in each one of the relevant markets.

59. An even more significant part of the GVH's statement concerned one of the obligations contained in the draft measure. By way of a price-cap-similar regulation, the NRA intended to prevent SMP operators from charging excessive prices in the **retail market of fixed-line telephony** access provided for residential customers. However the GVH found, in a competition investigation/case?/law procedure against one of the undertakings concerned by the draft measure, that prices of this type of access service were below the respective prices of local loops (due to the lack of tariff rebalancing in Hungary). So the GVH proposed that the NRA rethink the draft obligation which might lead to a price squeeze situation in the retail and the respective wholesale markets (which is the local loop unbundling market). The NRA did not follow the GVH's proposals.

60. In its earlier annual reports, the GVH has repeatedly made recommendations for Parliament on how to remedy certain anomalies experienced on the market of **cable TV services**. There have been repeated complaints of the consumers year by year, which cannot be efficiently solved by the GVH. The problems in this area stem from the specific structure of the market, since the service providers are typically in a monopolistic or dominant position. By order of Parliament, the Ministry of Informatics and Communications jointly with the Ministry of National Cultural Heritage, with the involvement of the GVH, began to analyse the scope of the necessary regulation. In the planned framework, the GVH is willing to support the idea of self-regulation (e.g. for general contractual terms). The GVH has the view that a separate Act on broadcasting is not really timely at the moment but rather the whole question should be regulated under the general rules on communications, which has to be necessarily neutral as regards different technologies.

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[7] Communication from the Commission: "Report on Competition in the Professional Services" COM(2004) 83 final.

61. The GVH basically supported the draft of the Act on **Rail Transport** which aims at further liberalisation in this sector. Commenting the draft bill, the GVH supported the planned structural separation of the infrastructure management from the train operators. At the same time, the GVH objected to the vague definition of the legal status of the Capacity Allocation Body, since entrepreneurial and regulatory elements were mixed in the planned solution concerning the activities of this body. Furthermore, the GVH stressed that the capacity allocator had to be able to operate independently, having sufficient power to fulfil its tasks, and the same applied to the sector Regulatory Body. As a consequence of the comments made by the GVH and also by certain governmental organisations participating in the co-ordination of the preparation of the draft bill, the submitting Ministry withdrew the bill for revision.

IV. Resources of the activity, other information

62. As of 1 November 2004, the President of Hungary has nominated, after already serving one mandate, Dr. Zoltán Nagy, to be the President of the GVH for six years.[8]

63. From September 2004, a new entity, the Consumer Protection Section, was formed within the GVH. The reason for the establishment of this section was, on the one hand, due to the large number of consumer cases and, on the other hand, due to the different feature of these cases from those in the area of antitrust.

a) Annual budget (in million 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
2004	million HUF	1164
	million EUR	4,7

b) Number of employees (persons-year)

⇒ economists;

2000	2001	2002	2003	2004
21	27	32	31	31

[8] See Decree 154/2004. (XI.2.) of the President of the Republic of Hungary

⇒ lawyers;

2000	2001	2002	2003	2004
38	36	43	49	49

⇒ other professionals;

2000	2001	2002	2003	2004
26	21	18	19	18

⇒ all staff combined.

2000	2001	2002	2003	2004
104	120	120	120	119

IV. References to new reports and studies on competition policy issues

64. Two sector investigations were conducted in 2004, one in the electricity sector and another concerning mortgage loans. The very first sector investigation was conducted in 2001-2002 in the field of mobile telecommunications.

Investigation of the electricity sector

65. The investigation was initiated with the aim of clarifying the effect of the partial liberalisation of the market in January 2003. An answer was to be found for the question as to why so few eligible consumers left the regulated market for the free market and why many of those who had left had returned. It was also unexpected to find that those suppliers, who had only made available low capacities, were on the liberalised segment. The data collected is still under analysis, the outcome of the investigation is to be expected by the end of Spring 2005.

Mortgage loans

66. The investigation of mortgage loans for flat purchasing started in July 2004. The aim of the investigation is to present an analysis of credit conditions, costs, credit assessment, value estimation, options, informing of consumers, etc. from the point of view of competition.

67. During the investigation the GVH has distinguished three main products: the government subsidised interest rate; the mortgage loan with a maximised interest; and loans made under market conditions. The investigation has aimed at comparing the changes in the interest rates and other conditions of these products. The first results of the investigation are expected by the end of the first quarter of 2005.