

ASSESSMENT AND COMMUNICATION OF BENEFITS OF COMPETITION INTERVENTIONS

NOTE BY HUNGARY

- 1 This contribution briefly discusses two topics that are relevant when it comes to the accountability of the Hungarian Competition Authority (GVH):¹ (a) its general reporting practice, and (b) its *ex-ante* impact assessments, aimed at quantifying the benefits of its operation. For the latter, it describes the methodological framework and its origin, the use and presentation of the assessment and its results, as well as their evolvement. Finally, it explains considerations and the experience of the GVH concerning further options of impact assessment.

1. General reporting

- 2 The Hungarian Competition Act (Competition Act)² requires the President of the GVH to report to Parliament, on a yearly basis, on the activities of the GVH and on its experience about the state of competition in Hungary.³
- 3 The exact content and format of the report is not specified by law, and the practice of the GVH has changed over the more than three decades of its existence. Nevertheless, the reports have always contained information and data on cases (including their judicial review), on advocacy, on international affairs, and on budget. In most cases, annual reports also include proposals to the government with regard to policies influencing competition.
- 4 The annual reports of the GVH are discussed and adopted by one or more standing committees of Parliament, such as the Committee on Economics (economic affairs), and the plenary sitting (session) of Parliament. GVH leaders are invited to those events and heard by the committee(s). Annual reports are available on the website of the GVH.⁴ The GVH issues a press release and sometimes it even holds a press conference on its annual report at the time of its publication.
- 5 In addition, in 2020, the GVH started publishing so called flash reports. These are compact leaflets on recent GVH activities and achievements with an emphasis on plain language and visualisation. They are also available on the website of the GVH.⁵

2. Assessment of benefits

2.1. Origin and method

- 6 It is not mandatory for the GVH to quantify the benefits of its activity; nevertheless, it has been committed to do so since 2011. At that time, the GVH launched a research project to overview international best practices and to evaluate the feasibility of *ex-ante* impact assessment of its own activity.⁶ The first assessment was performed in 2012-2013 for the period of 2008-2012, and it was made public in 2014.

¹ In Hungarian: Gazdasági Versenyhivatal (GVH).

² Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices (Competition Act).

³ Section 36 (2) point c) of the Competition Act.

⁴ Annual reports are available on the thematic website of the GVH:
https://www.gvh.hu/en/gvh/annual_reports/annual_reports

⁵ Flash reports are available on the thematic website of the GVH:
<https://www.gvh.hu/en/gvh/flash-reports>

⁶ Also known as evaluation for accountability or for advocacy purposes.

- 7 The approach of the GVH was primarily inspired by similar assessments performed by the OFT and the NMa,⁷ and it is in line with similar activities of other competition authorities, such as DG Competition of the European Commission. It was also influenced by contemporary activities of the OECD,⁸ leading to the adoption of the respective OECD guide,⁹ which it is largely in line with.¹⁰
- 8 Accordingly, our assessments are back-of-the-envelope style conservative calculations of consumer saving, monetising the prevented harm that consumers would have been suffered in the absence of the intervention of the GVH. (Consistent with the maxim that undue restrictions of competition are at the expense of consumers.) These calculations are performed at the level of individual cases, then aggregated, and ultimately compared to the budget of the GVH. The assessments cover mergers and agreements (both horizontal and vertical), as well as abuse of dominance cases. Other activities of the GVH, such as sector inquiries and advocacy, are not covered.
- 9 Calculations of consumer saving for each case rely on three parameters: (a) what was the size of commerce affected by the anticompetitive practice in question (relevant turnover), (b) how much higher the price would have been, and (c) for how long in the absence of the intervention of the GVH. While ideally all three variables are case specific in the calculation, individual values of price difference and expected duration are substituted by default values when case-specific information is not available, which is most often the case. Those default values are generic conservative estimates/assumptions derived from empirical literature and international best practices.
- 10 By design, this method captures only the static, direct price impact. Indirect impact, such as deterrence is uncovered. Dynamic and non-price effects, however, are not necessarily ignored completely. Naturally, cases with known zero price effect end up with zero calculated benefit (or are left out of the calculation in the first place), even if they had a likely non-price effect. However, the frequent reliance on presumed price difference results in a tendency of translating any restriction of competition into a price effect.¹¹ Similarly, we presume that an impact emerging at an upper level of the supply chain will ultimately, in some form, reach the final consumer.
- 11 There are minor differences between the calculations for merger cases and non-merger cases. A smaller default price difference value is applied for mergers than for non-merger cases (5% and 10% respectively, and there are no default values for exploitative abuses). On the other hand, in merger cases the relevant turnover is the turnover of the whole relevant market, while in non-merger cases it is the turnover of the party/parties realised on the relevant market.

⁷ Predecessors of the Competition and Markets Authority of the UK and of the Authority for Consumers and Markets of the Netherlands respectively.

⁸ In this context, the Roundtable on Impact Evaluation of Merger Decisions of the Competition Committee in 2011 as well as the Stocktaking on Evaluation project of Working Party 2 of the Competition Committee in 2012, and related materials are worth to be mentioned, available at the thematic website of the OECD:

<https://www.oecd.org/daf/competition/evaluationofcompetitioninterventions.htm>

⁹ Guide for helping competition authorities assess the expected impact of their activities, OECD, April 2014.

<https://www.oecd.org/daf/competition/guide-impact-assessment-competition-activities.htm>

¹⁰ The only exception that we identified is that while the guide recommends publishing results separately for mergers and cartels, the GVH does not divide results by case types. One reason is concerns about individual information (given the modest number of cases in certain categories).

¹¹ For example, in the absence of case specific information on price difference, the same 10% default value would be applied not only for a price cartel, but also for a market allocation agreement and any other restrictive agreements involving non-price parameters of competition.

- 12 For simplicity, we do not distinguish between non-merger cases. Horizontal and vertical restrictions often mix,¹² and the practical character of vertical restraints and certain abuses of dominance may greatly overlap in terms of impact assessment, making the case for the same default values.
- 13 Non-merger cases that ended with commitment decisions are left out of the calculation, as it is not clear whether an infringement would have been found otherwise, thus the existence of prevented anticompetitive harm is questionable.¹³ This and analogous situations involved roughly 30% of all GVH interventions between 2008 and 2022.
- 14 *By object* restrictions are included in the calculation, as they do not imply the lack of effect / consumer harm. In fact, it is all the more reasonable to presume effects, even if they do not need to be proven to establish an infringement, exactly because these restrictions are regarded so harmful and their link to effect is inherent.
- 15 However, when it is known that the intervention of the GVH did not prevent any direct harm, the case in question is left out of the calculation. For example, there is no direct prevented harm when the restriction ended independently of the intervention of the GVH (typically before it), even if the intervention in question may well be important in terms of deterrence (purely *ex-post* interventions). Another example is when the intervention of the GVH proves to be ineffective. These scenarios can be interpreted also within the formula presented above; for instance, in the case of a purely *ex-post* intervention, the expected (further) duration of the conduct is zero.
- 16 “No prevented harm” scenarios are defined to be narrow, and the GVH does not engage in extensive or sophisticated research when checking cases for them. Rather, the calculation does not ignore what is already known for the GVH – prime examples are information that can be found in the case file, and findings in other, related cases, such as follow-up investigations. For this reason, the fact that some of the relevant information may be *ex-post* does not change the nature of the exercise. The objective is to avoid the inclusion of cases that are obviously incompatible with the fundamental logic of the assessment. This involved roughly 5% of all GVH interventions between 2008 and 2022.
- 17 The calculation is based on the decisions of the GVH. However, it is updated according to the final results of the judiciary review of those decisions. Roughly 5% of all GVH interventions between 2008 and 2022 were left out of the calculation as a result of judicial review.
- 18 Sometimes the calculation cannot be made due to insufficient information on turnover. This involved roughly 10% of all GVH interventions between 2008 and 2022. The magnitude of this problem has sharply decreased over time. Data issues certainly would be more serious should the calculation include non-merger cases with commitment decisions, where the investigation is incomplete, and fining is off the table. Fining calculation and its input data are usually very helpful when determining the relevant turnover for the assessment, and in most cases, they cannot be replicated from other sources accessible to the GVH.

2.2. Transparency and use

- 19 For reasons of confidentiality, and due to the highly simplified nature of the individual calculations, only the aggregated results and a list of the corresponding cases, and not the case level calculations, are made public. For the same reason, and to moderate the fluctuation of results –

¹² For example, in the Yamaha musical instruments case (VJ/8/2018) it was revealed that the horizontal co-ordination efforts of dealers organically developed into resale price maintenance and remained interrelated with it.

¹³ The same issue does not arise concerning merger commitments, where a substantial lessening of competition was already identified, and the transaction would have been blocked without the commitments. At the same time, merger proposals that were withdrawn by parties are seen to be analogous with non-merger commitment decisions for the purposes of the assessment, which is more conservative than the practice of some other competition authorities.

which in Hungary is presumably more significant than in larger economies – the assessment is biannual and concerns 6-year periods.¹⁴

- 20 The public document of each assessment also includes a detailed description of the method of calculation with explanatory notes, illustrative charts and numerical examples. The primary target audience are those who have some understanding of competition law and economics. Less prepared audience, such as journalists, are supported by a summary for laymen.
- 21 All public documents are available on the website of the GVH,¹⁵ and the quantified results have been mentioned in the annual reports of the GVH,¹⁶ as well as occasionally elsewhere, such as in flash reports. The first assessment was presented at a press conference in 2014.¹⁷
- 22 Each assessment documented thoroughly, including the calculation itself, accompanied by a more elaborated internal work-document recording technical clarifications, case specific remarks and references that serve replicability as well as consistency across multiple cases, updates and assessments.
- 23 The primary objective of *ex-ante* impact assessment is to illustrate the use of competition law enforcement and public spending on it in a simple and intuitive way. Although this kind of assessment can be regarded as an “informed guessing”, it fits for purpose in part precisely because it is rough and ready, and biased to be conservative. It is always highlighted that actual benefit exceeds, perhaps greatly, the calculated consumer saving. In this context, even the fact that not all effects and activities are covered does not cause any problem, apart from extreme situations.
- 24 At the same time, in part due to its aforementioned attributes, *ex-ante* impact assessment results are not suitable for performance evaluation either alone or in comparison with the results of similar assessments over time or across jurisdictions. Interventions and judicial review may be wrong, unmeasured benefits may be large and important, and the gap between measured and unmeasured benefits may vary. Moreover, while these assessments are aimed at capturing the outcome, rather than the mere output of the activities in question, even at best they tell how much was achieved, and not whether more (and how much more) could have been achieved (and how).
- 25 For the same reasons, strategic planning and priority setting is also an area, where relying on the results of *ex-ante* impact assessment, while tempting, can easily become misguided. A particular danger is that strategic planning may prefer assessed areas, as they “produce the scores”, at the expense of those that are not or cannot be assessed. As already stated in the response of the GVH to the 2012 OECD Evaluation Stocktaking questionnaire (question No. 1.13) “*Ex ante impact assessment results certainly can improve strategic planning but only if they are applied in the right way, taking into account their inherent constraints and complemented with other inputs and considerations.*” This requires care and wisdom.
- 26 Therefore, public documents of GVH *ex-ante* impact assessments contain explicit warnings of such limitations as well as positive statements on function and proper use. Results are also framed carefully, for example, they are rounded in their main presentation to avoid the creation of an illusion of numerical precision. Nevertheless, in practice, those warnings may be perceived as fine

¹⁴ With the exception of the first assessment, which concerned a 5-year period (2008-2012).

¹⁵ *Ex-ante* impact assessments (the public documents) are available at the thematic website of the GVH:
https://www.gvh.hu/en/gvh/analyses/ex_ante_impact_assessment

¹⁶ As the assessment is biannual, new results are presented traditionally in every second year, nevertheless in the annual report on 2021 an interim result concerning 2016-2021 was presented.

¹⁷ The press release is available at the website of the GVH.
https://www.gvh.hu/en/press_room/press_releases/archive/press_releases_2014/direct_consumer_gains_from_gvh_s_activities_a_luc

print, and the mere availability of quantitative results is an invitation to comparison and overinterpretation for many.

2.3. Evolvement

- 27 So far, the GVH has performed 6 *ex-ante* impact assessments starting with the 2008-2012 period published in 2014 and ending with the 2017-2022 period published in 2023. The general framework remained the same, which indicates that international best practices provided a solid foundation.
- 28 Nevertheless, there was incremental development both in method and presentation. The first refinements were triggered by the proposals of two independent academics who reviewed the first assessment in 2014.¹⁸ As a result, a 3.5% social discount rate was introduced (both benefits and budget were already adjusted for inflation), and numerical examples were inserted in the public document.
- 29 Further developments were marginal, organic refinements driven by new cases and communication experience. Those refinements involved the method and its internal documentation and/or its presentation. For example, in a case that was closed in 2019, the subject matter was the collective passing through of a battery treatment fee by producers of portable batteries (who had to pay the fee for their battery treatment supplier) to their customers.¹⁹ This setting raised the question of what should be regarded as relevant turnover and price difference in similar cases. The answer was that for the purposes of the assessment, the relevant turnover is the amount of the fee (multiplied by the volume), and the price difference is the additional rate of passing through (as some pass-on would occur in the counterfactual as well), which was included in the public document.²⁰
- 30 Another example is the aforementioned summary for laymen, which is part of the public document since 2017 (i.e. the 2011-2016 assessment).
- 31 So far, these kinds of refinements have been incremental also in the sense that they never required recalculation of earlier cases – they contributed to the method without any retroactive implications.

2.4. Beyond current practice of impact assessment

- 32 The GVH is experimenting to perform *ex-ante* impact assessment(s) of its sector inquiries, advocacy proposals and consumer protection cases, based on the same approach. This did not prove to be straightforward. The cases and actions in question are significantly more heterogeneous than competition law enforcement. Thus, while the concept of avoided consumer harm provides a robust general platform, it is more challenging to put the formula (of relevant turnover, price difference and expected duration) into work, and there are no broadly recognised generic default values available in the absence of empirical literature comparable to the cartel related work of Connor.²¹ Turnover data insufficiency is also more frequent in these cases.

¹⁸ Balázs Muraközy and Pál Valentiny: Review of the “*Ex-ante* assessment of the welfare gains achieved by the GVH”, MTA KRTK KTI, February 2014.

https://www.gvh.hu/pfile/file?path=/en/gvh/analyses/ex_ante_impact_assessment/GVH_Impact_Assessment_KRTK_ertekeles_-_final_PUBLIC_Eng&inline=true

The first assessment was completed in May 2013, but it was made public only in 2014, together with the review.

¹⁹ Energizer at al (VJ/43/2015).

²⁰ Paras A.18 and A.21 in the public document of the latest (2017-2022) assessment.

²¹ E.g. John M. Connor: Price-Fixing Overcharges: Legal and Economic Evidence, Purdue University Staff Paper No. 04-17. 2005.

- 33 Therefore, it seems that in these areas even *ex-ante* impact assessment can only be rather selective and more tailor-made. The current strategy of the GVH is to screen advocacy proposals (including those made in the context of sector inquiries) and consumer protection cases to identify those where such assessment could be performed on a case-by-case basis. At most, they will be only a small minority of all cases and actions. They may be illustrative as case studies, rather than to impress *en masse*. Therefore, the current position of the GVH is that their assessment and its results will not be integrated into those of competition cases, but presented side-by-side with the “traditional” results.
- 34 Deterrence comes up from time to time as an issue to be dealt with. Earlier OFT and NMA research explored the degree of deterrence by surveying firms and practitioners, asking about mergers, agreements and market practices that were planned but dropped proactively due to competition law considerations. The number of such aborted plans was then compared to actual case numbers, and these ratios could be understood, in the context of *ex-ante* impact assessment, as a kind of multiplier, although quantitative results on direct benefits were not actually multiplied by them.
- 35 The GVH has not imported those multipliers, as they do not seem to have cross-jurisdictional relevance. The GVH has not performed or commissioned its own survey either, bearing in mind the risk that the same type of questions may be prohibitively sensitive in Hungary, for it is a much smaller economy with a different business culture. A further option could be the application of a conservative assumption, such as that the benefit of deterrence is (at least) twice the direct benefit, which has emerged in literature²² and was even proposed by one of the authors in a workshop on *ex-ante* impact assessment in 2021. However, to our knowledge that is yet to be embraced by international best practices.
- 36 *Ex-post* evaluations have not been on the research agenda of the GVH, due to their resource and data intensity. The analytical capacity of the GVH has been used in ongoing investigations instead. Nevertheless, the GVH recognises that in certain situations *ex-post* evaluation does not require much additional resources and data. This may be so, for example when there is a sequence of merger cases over time in the same industry; then subsequent cases may give the opportunity (and data) to evaluate the price effects of previous mergers, as well as to take them into account.²³ In such situations the GVH would certainly be open towards *ex-post* evaluations.²⁴
- 37 So far, the GVH has not assessed the broader impact of its interventions or other activities. Probably it would be a challenge as it leads to other domains of economics, such as macroeconomics. Nevertheless, in its competition advocacy the GVH uses the argument that competition in general strengthens (genuine) competitiveness, and thus it tends to be beneficial for economic growth and employment.

²² Stephen Davies, Franco Mariuzzo and Peter L. Ormosi: Quantifying the deterrent effect of anticartel enforcement, Economic Inquiry, Western Economic Association International, vol. 56(4), pp 1933-1949, October 2018.
<https://ueaeprints.uea.ac.uk/id/eprint/66290/>

²³ For example, the assessment of the effects of earlier mergers involving Ineos played an important role when DG Comp analysed the likely competitive effects in the Ineos/Solvay/JV merger case (Commission decision of 8 May 2014 in Case M.6905 Ineos/Solvay/JV).
https://ec.europa.eu/competition/publications/cmb/2015/cmb2015_002_en.pdf

²⁴ It is worth noting that *ex-post* evaluations (in-depth empirical analyses of the actual effects of individual interventions) are primarily related to quality control (efforts to improve analysis in future enforcement and advocacy), even if they also may aid general advocacy.