



GAZDASÁGI  
VERSENYHIVATAL

**Office of Economic Competition  
Budapest, Hungary**

## **Annual Report on Competition Law and Policy Developments in Hungary (January – December 2002)**

*According to Article 36(2) point c) of the Hungarian Competition Act the President of the Office of Economic Competition (Gazdasági Versenyhivatal – GVH) submits annual reports to the Parliament on the activities of the GVH on the basis of the law enforcement practice of that year. On its plenary meeting of 8 April 2003 the Parliament discussed and approved the report of the competition authority about its 2002 year's activity.*

*This report below is built on the annual report of the GVH prepared to the Parliament.*

### **1. Brief introduction about the Hungarian market developments**

The effect of the concentrations of multinational undertakings carried out in 2002 was appreciable on the Hungarian market proving its integration into the world economy. Greater changes characterised especially, as worldwide, the markets, which are *capital-intensive and have high entry barriers*, i.e. the R&D focused *car and pharmaceutical* and the *oil and oil-derivative* markets. In the *pharmaceutical industry* competition remained sharp and the concentration process on the wholesale level also continued. While there were deficiencies in the regulatory background, the entry of several new commercial undertakings was observed on the market of *electricity*. The *market of construction industry* could still be characterised as a supply-oriented market due to the great number of suppliers and fierce competition. There were no significant changes in the *food industry*, the number of competitors on the *chicken and meat market* had not changed for years. There was a change in the ownership of some of the undertakings of the *vegetable oil and sugar* market. The volume of the *retailing* sector changed significantly with an increase of more than 10 per cent measured on constant price level.

The effect of the decline on the world market was appreciable in the *infocommunication sector* as well. The structure of the *mobile phone market* was still oligopolistic with three digital and one analogous service providers – which latter was (and still is) losing its market importance continuously. The *market of Internet access* was characterised by the separation of retailing and business segments. The intensity of competition in these segments depended on the system of ownership of and the access to the transmission network. Unfortunately the number of retail Internet users did not increase significantly in 2002, it was promising, however, that beside broadband access services the GPRS based Internet access provided by mobile phone operators had become an appreciable factor on the market. In the *cable TV sector* the previously extensive development seemed to slow down and the intensity of network purchasing decreased. Providers present on several distinct areas started to standardise their services.

On the *market of financial services* due to the universal banking system banks advanced on the market of *investment services*. Some minor changes appeared on the market of *credit services*. Two commercial banks exited the market, a specialised credit institution merged with another and the concentration process of the cooperative credit institutions also continued. Although the number of competitors increased on the *insurance market*, concentration was still very high, with the five greatest undertaking realising 81 per cent of the total income of the sector.

## **2. Changes to competition law and policy, proposed or adopted**

### **2.1. Summary of new legal provisions of the competition law and the related legislation**

Due to the amendment of the ‘Act on Public Procurement’ the scope of its application was extended to the Hungarian Development Bank and to the undertakings controlled by it. This state owned bank entrusted with the mission to help the development of the national economy was previously exempted from the rules on public procurement.

The most important change in the field of competition was the settlement of the constitutional concerns relating to the implementation of the competition rules of the Hungary/EC Europe Agreement. In 1998 the Constitutional Court declared the unconstitutionality of some of the provisions of the Government Decree establishing the implementing rules for the competition-related provisions of the Europe Agreement. As a resolution, new implementing rules serving as a special legal basis in respect of antitrust cases affecting trade between Hungary and the EC were accepted in January 2002.

Following changes in the legislation of the European Community the relevant Hungarian block exemption regulations were also amended in the framework of a gradual law-harmonisation process. These block exemption regulations follow in a simplified manner the patterns of their EC counterparts with some adaptations at the same time to the special Hungarian circumstances (e. g. they do not have any expiry date, the turnover thresholds of the „vertical” regulation are significantly reduced in comparison to those of the related regulation of the Community, etc). The last adopted of them are as follows:

- Gov. Regulation 53/2002. (III.26.) on specialisation agreements,
- Gov. Regulation 54/2002. (III.26.) on research and development agreements and
- Gov. Regulation 55/2002. (III.26.) on vertical agreements.

All the three government regulations entered into force on 10 April 2002 but allowed a one-year period of grace for the adaptation of the agreements which were exempted under the „predecessor” regulations but which did not satisfy the provisions of the „new” ones.

## **2.2. Other relevant measures, including the publication of new guidelines**

In 2002 the Hungarian Office of Economic Competition (Gazdasági Versenyhivatal – in the following: GVH) started the drafting of a series of notices in order to highlight its policy in certain law enforcement areas. The first drafts of documents as follows have been prepared during the year:

- guidelines on fining policy,
- a leniency notice and
- procedural questions related to merger cases.

The finalisation of these planned notices can be expected in 2003.

## **2.3. Government proposals for new legislation**

The liberalisation process continued in the sector of energy last year, and as a result the draft of a new Gas Act was elaborated. The opening of the gas market planned for 2004 has not had any impact on market structure so far. As regards the market of electricity, the elaboration of the implementing decrees of the new Electricity Act of 2001 went on too slowly. That delay not only significantly hindered the preparation of the actual or potential actors to market liberalisation starting on January 2003, but it also helped some incumbent actors to keep their strong market positions.

Some professional interest representations argue that as a result of the ongoing concentration in large-scale retail trade of recent years, the big supermarket chains gained such an extent of buyer power vis-à-vis their suppliers – mainly food processing undertakings – and other retail companies that these latter have become to a large extent defenceless. Therefore they urge the regulation of large-scale retail trade. Usually two solutions are proposed: the prohibition of sale below costs and the introduction of certain restrictions regarding contractual practices. The GVH has already examined this question at previous legislation initiatives. However, based on relevant international literature and experiences it decided not to back such legislation. When the issue came up again, the GVH assigned an independent market research company to conduct a survey in this field. The research showed that buyer power was not significant and apart from some striking cases the suppliers were also satisfied with their relationship to the large-scale traders. Taking into account the empirical survey and international experiences, the GVH still firmly opposes the prohibition of sale below costs, which prohibition is deemed to constitute a real danger to competition.

## **3. Enforcement of competition law and policy**

### **3.1. The institutional and procedural background of the law enforcement**

#### ***3.1.1. The competition authority***

The GVH is a public, budgetary institution, which constitutes a separate chapter in the central budget. The GVH reports on its experience gained in the course of its law enforcement practice and issues relating to the development of competition to the Parliament annually.

The President of the GVH is appointed by the President of the Republic, upon the proposal of the Prime Minister. The Vice-Presidents are proposed by the President and appointed by the President of the Republic upon advice of the Prime Minister. One of the Vice-Presidents is the President of the Competition Council (CC), the decision making body of the GVH. The President of the GVH and the President of the CC may issue non-binding notices/guidelines. Beside the law enforcement in individual cases, the GVH President may initiate investigations of whole economic sectors as well.

### ***3.1.2. Procedural rules***

A case before the GVH may be started upon the initiation of the parties to an agreement covered by the Competition Act, upon the complaint of undertakings or natural persons whose interests are affected by the anticompetitive behaviour of certain actors of the market or upon the own initiation of the GVH based on formal or informal information.

At the first phase of the proceedings initiated ex officio (own initiation and complaints) the investigator of the designated investigating unit evaluates the facts and may close the file without scrutinizing the case if it is clear that no infringement was committed, the complained behaviour does not fall under the Competition Act or it does not affect public interests. In all the other cases the investigator issues a decision on the initiation of the proceedings. Decisions of the investigator about the non-initiation of proceedings can be challenged by an interested party (the complainant) at the Competition Council.

During the investigation, the investigator

- may enter any of the premises of the party, including vehicles and any land used for the purpose of business activities,
- may oblige the party or its representative or former representative, employee or former employee to provide information and explanation orally or in writing, or
- may collect information on the spot in any other way,
- may make copies of or abstracts from documents and furthermore, for this purpose, take possession thereof for a period of maximum 8 days.

In the course of investigations started ex officio, the subject matter of which is a secret cartel or abusive behaviour, the investigator is entitled to search with a particular purpose and enter to this end on his own the premises of the party and the undertakings having connections with the party, including vehicles and any land used for the purpose of business activities. In the course of investigations of this kind, the investigator is also entitled to enter and search with a particular purpose the premises of any executive official of the party or of any other person who de facto exercises control used for private purposes or privately used, including vehicles and other land. The GVH is bound by professional secrecy.

After the investigation the investigator issues a report on the case and forwards it to the Competition Council. The report contains the name of the parties, the definition of the relevant market, the evaluation of the facts and presentation of the proofs. The report ends by proposing the termination of proceedings or the establishment of the infringement etc.

The whole text of the Hungarian Competition Act is available in English at the web site [www.gvh.hu](http://www.gvh.hu).

### ***3.1.3. The decision-making process of the GVH***

Decisions in the merits of the case are made by the Competition Council, which is a separate decision-making body within the GVH.

The decision of the Competition Council is mainly based on the report of the investigator and the Council has the right to return the files for further investigations. The Council may adopt interim measures as well. The ultimate decision is reached in or out of trial. The Council may state the violation of the Competition Act, may prohibit the continuation of the conduct which violates the Competition Act, may impose fine on the parties, may oblige them to fulfil certain conditions or obligations or to divest certain assets.

## **3.2. Law enforcement experiences in 2002**

In 2002 the GVH conducted 174 competition supervision proceedings, out of which 169 ended with a decision of the Competition Council. These proceedings concerned 52 consumer fraud and 117 antitrust cases. The trend of the previous years – slightly decreasing number of consumer fraud cases compared to the increasing share of antitrust cases – continued. Parallel to the slowdown in economic growth, the weight of merger cases within antitrust cases decreased to some extent, while the weight of abuse cases increased and that of anticompetitive agreement cases considerably increased. Of the proceedings that ended with a decision of the Competition Council 65 were initiated upon application and 104 ex-officio. The GVH intervened on 64 occasions via competition supervision proceedings (in 36 consumer fraud cases and 28 antitrust cases), which was twice as many by number as in 2001. The significant increase is due to the number of interventions in antitrust cases. The GVH imposed a fine in 40 cases; these fines amounted to HUF 444.2 million (Euro 1.8 million, USD 1.9 million) contrary to the HUF 73.9 million (Euro 0.3 million, USD 0.32 million) total of the fines imposed the year before. Of the decisions imposing a fine 33 became final – these fines amounted to HUF 338.4 million of which HUF 320.9 was actually paid by the undertakings condemned. This significant rise, in comparison to the figures of the year 2001, shows the end of a “transitory period” of 12 years during which the Competition Council imposed smaller fines on the grounds that undertakings have to get familiar with and adjust themselves to the competition law.

### ***3.2.1. Restrictive agreements***

#### ***3.2.1.1. The substantive rules on restrictive agreements***

- The Act prohibits all kinds of *anticompetitive agreements* (agreements or concerted practices between undertakings and decisions by social organisations and associations of undertakings, which have as their object or potential or actual effect the prevention, restriction or distortion of competition) including vertical-type ones [Article 11]. Anticompetitive agreements are declared by the Act automatically void. Agreements concluded between non-independent undertakings are not covered by this Article and there is also a provision about the *de minimis* principle in the Act [Article 12]. Article 13 defines the notion of *de minimis* agreements, it makes an exception from the prohibition for all restrictive but non hard-core agreements between parties, whose joint market share does not exceed 10 per cent on the market. If the cumulative effect of such agreements is significantly distorting competition, the GVH may revoke the exception granted by the Act.
- The Act empowers the Government to issue block exemption regulations. Although the GVH has no general authorisation to revoke in individual cases the exemption given by such a regulation, but in the case of the above mentioned cumulative effect it may decide that in the future the agreements in question are caught by the prohibition.
- The GVH may, upon notification of the parties, grant individual exemption if the agreement fulfils the four conditions laid down in Article 17 of the Act. These conditions are similar to those of Article 81(3) of the Treaty of Rome. The GVH may impose conditions and obligations on the parties in its exemption decision.
- The parties can apply for a negative clearance of the GVH as well, in which the GVH establishes that the parties' agreement does not fall under Article 11, because it is subject of an exception under Article 13 or falls under one of the block exemption regulations of the Government. The GVH is not bound by its negative clearance.
- Exempting decisions are made by the GVH within 120 days, while in hard-core cartel cases the deadline for making the ultimate decision is 180 days, which can be extended twice by the same period.

### 3.2.1.2. Enforcement

As regards the enforcement in the field of anticompetitive agreements, the Competition Council made 18 decisions, in ten of which it decided to intervene. It happened in three proceedings initiated upon application, that the Competition Council exempted agreements for a limited period of time, in one of its decisions it attached commitments to the exemption. Of the 13 proceedings initiated ex-officio the Competition Council found in seven cases that an infringement had been committed, it imposed fines (amounting to HUF 182,5 million, Euro 0,74 million, USD 0,79 million) in three cases, accepted commitments in one case, withdrew an exempting decision in one case and in two cases it prohibited the continuation of the conduct examined.

	<b>2002</b>
Restrictive agreement cases	18
<i>Horizontals</i>	<i>11</i>
<i>Vertical</i>	<i>6</i>

<i>Mixed</i>	<i>1</i>
<i>Notification</i>	<i>5</i>
<i>Ex officio</i>	<i>13</i>
Interventions of the GVH	10
Fines imposed (million HUF )	182.5

In 2002 the “cement cartel” was the most important case of this category of practices. In this case, the Competition Council found an infringement, as the parties to the agreement operated an information system that served for concerting their market conduct. Furthermore, an agreement between the BKV<sup>1</sup> and some wholesale newsagents is to be mentioned, where substantial fines were imposed as well. The Multipoint-Card cooperation between the OTP, MOL and MATÁV<sup>2</sup> and the buyers’ co-operative of CBA retailers’ network members also belonged to the most significant agreements which were exempted for a limited period of time.

The Competition Council imposed a fine of HUF 150 million (Euro 640.000, USD 684800) in total on Holcim Hungaria Rt. (Holcim), Duna-Dráva Cement Kft. (DDC), BÉCEM Cement és Mészipari Rt. (BÉCEM) and Magyar Cementipari Szövetség (MCSz)<sup>3</sup> for concluding and implementing an agreement on information exchange and abusing their dominant position. The undertakings concerned established an information exchange system called ‘monthly database’, operated by the MCSz. To assess this information exchange system the Competition Council examined the subject matter of the information exchange, the extent to which that information went into details, the “age” of the information provided as well as the market structure. The information exchange was obviously anticompetitive in so far as it related to future plans and data. However, the provision of data relating to the past may also have been anticompetitive if they were not of historic kind, consequently businessmen with great experience could forecast, based on them, future behaviour of competitors. In certain industries where demand is stable and predictable, even data relating to the past may serve anticompetitive objectives. The Hungarian cement market is highly concentrated and transparent with huge capacity surpluses, furthermore, executive officials know very well each other, as well as the technology, capacity, etc. of the other firms. The regular exchange of confidential data had the object or at least the effect of promoting coordination of market conducts.

The OTP Bank Rt. (National Savings Bank), the MOL Rt. (Hungarian Oil Ltd.) and the Matáv Rt. (Hungarian Telephone Ltd.) asked the GVH for a negative clearance relating to the issuance of Multipoint Card by the parties. The three undertakings entered into an agreement to operate a customer fidelity system. The Competition Council found that the Multipoint Card was not merely a system of fidelity cards of the parties’ customers but also a co-branded bankcard with fidelity customer functions for the customers of the OTP. Taking into account the significant market power of the parties the Competition Council found that the Multipoint Card programme would have a rather deleterious effect on

<sup>1</sup> The Budapest Transport Limited

<sup>2</sup> OTP is the leading Hungarian commercial bank. MOL is the Hungarian Oil and Gas Company and MATÁV is the ex-monopolist telecommunications company.

<sup>3</sup> Manufacturers of the cement industry and their association

competition in the long run. On the one hand for this reason the Competition Council did not give a negative clearance to the agreement. But on the other hand, with the condition that the number of issued Multipoint Cards should not exceed 250.000 an individual exemption was granted to the agreement till 31 December 2004. Furthermore the Council obliged the parties to report on the turnover of the Multipoint Cards and the bankcards in every six months.

The BKV Rt. (Budapest Transport Ltd.), the Hírker Rt., the Buvahír Rt. and the Lapker Rt. (publishers of papers) concluded an agreement in December 2000, according to which the BKV would lend to the other parties some of its news-stands located at the most important stops of the public transportation. The Competition Council found that certain stipulations of the agreement were caught by the prohibition of agreements restricting competition. These stipulations were as follows: firstly the co-lessees had the right of first refusal to enter into the lease agreement for each other's rental property; secondly the lessor undertook that he would not set up new news-stands without the approval of the lessees at the stops where the news-stands in question were standing. The Competition Council prohibited the application of the said stipulations and imposed a fine of HUF 30 million (Euro 122000, USD 130000) on each of the parties.

The Competition Council exempted until 9 April 2003 the exclusive distribution agreements made between Philip Morris Magyarország Kft. (PMHU) and seven tobacco wholesalers (hereinafter: the Agreements). PMHU, the second biggest tobacco manufacturer in Hungary and seven tobacco wholesalers operating in Hungary requested on 29 January 2002 the exemption of an exclusive distribution agreement made between themselves, having regard to the provisions of the Hungarian Competition Act and the Block Exemption Decree No 53/1997 of the Government on the exemption from the prohibition on restriction of competition of certain groups of exclusive distribution agreements (hereinafter: the Decree). Through seven similar Agreements, PMHU divided the whole territory of Hungary between the seven wholesalers without overlaps. The wholesalers were granted exclusive right to distribute PMHU's products in their respective territories. On 9 April 2002, a new Decree<sup>4</sup> concerning the block exemption of vertical agreements in full conformity with a new EC regulation<sup>5</sup> entered into force. Above a market share threshold of 30 per cent, the new Decree did not apply. Therefore, as PMHU's market share was 32 per cent, no exemption could be granted to the Agreements under the new Decree. Nevertheless, the new Decree exempted for a period of one year from its entry into force the agreements exempted by the previous Decree but to which the new Decree did not apply. This was the case for the agreements in question.

### ***3.2.2. Abuse of dominant position***

#### ***3.2.2.1. The substantive rules on abusive practices***

In the field of the control of the *abuse of dominant positions* the Act prohibits these kinds of practices in general and in addition to this, it contains some particular prohibitions, like that on excessive pricing practices, discrimination, tying, etc. [Article 21]. The definition of dominance builds on the ability of the undertakings to act

<sup>4</sup> Regulation of the Government no 55/2002. (III. 26.)

<sup>5</sup> Commission Regulation (EC) No 2790/1999 on the application of Article 81(3) of the Treaty to certain categories of vertical agreements and concerted practices, OJ L 336, 29.12.1999.

independently to a great extent from other market participants [Article 22]. Costs and risks of market entry and exit, financial strength of the undertakings, the structure of the relevant market and market shares are among the factors to be taken into account at assessing the existence of dominance in a particular case. In abusive practice cases the time limit is 180 days for the investigations, which can be extended twice by the same period.

### **3.2.2.2. The enforcement**

In this category of cases the Competition Council made 36 decisions. In 30 cases the existence of a dominant position could be established, and in 15 cases an abuse was also found, therefore an intervention of the GVH was necessary. In 12 cases the Competition Council found a serious infringement and condemned the undertaking, on 11 occasions it also imposed fines that altogether amounted to HUF 218.5 million (Euro 0.89 million, USD 0.95 million). Similarly to the 2001 experiences, the most common complaints related to the excessive price increase of cable TV providers and their policy of determining the content of their programme packages. The dominant position of the cable TV providers could indeed be established in most cases, although an abuse was demonstrated only on four occasions.

	<b>2002</b>
Dominant position cases	36
Interventions of the GVH	15
Fines imposed (million HUF)	218.5

Of the proceedings initiated for suspected abuse of dominant position the decisions relating to TITÁSZ and DÉMÁSZ are to be mentioned, where the two regional public electricity distributors in dominant position set entry barriers to their competitors on the market of modernization of street-lighting. The proceedings pursued against the Diákhitel Központ Rt. because of granting student-credit exclusively through the bank Postabank Rt. was terminated.

In September of 2002, the Dél-magyarországi Áramszolgáltató Rt. (hereinafter DÉMÁSZ) was found to have abused its dominant position on the market of services related to street-lighting and was fined HUF 45 million (Euro 183000, USD 196000). DÉMÁSZ is a monopolistic electricity distributor in the region of South Hungary. Although the liberalisation of the Hungarian electricity market have started in January 2003, some related markets, as the market of services related to street lighting (1./ planning, construction and modernisation; 2./ operation; and 3./ maintenance of the street lighting system) was already legally liberalised a few years ago. In this recently opened market the monopolistic electricity distributors are present on their respective territory and occupy a strong position. According to the standpoint of the Competition Council, in the present case it was not necessary to prove that the DÉMÁSZ had a dominant position on the market of street-lighting services. It was sufficient to take into consideration that the undertaking had a significant market share, it had a monopoly on the related market of

electricity distribution and that every market participant was dependent on the DÉMÁSZ in many ways.

The Competition Council ruled that DÉMÁSZ abused its dominant position by:

- making its consent to the modernization plan of street-lighting dependent not only on technical or security aspects, but also questions relating to the ownership and operation of the system. This behaviour not only caused significant delays to modernisation but also put the other party in an unfairly difficult situation during negotiations,
- giving its consent to the modernisation of the street lighting system only in the event if the old lamps were purchased by the company that intended to take part in the modernization of the street lighting,
- unreasonably hindering the conclusion of contracts necessary for the operation of the modernised street lighting system,
- offering electricity and repairing eventual faults under terms and conditions that were more favourable than its general conditions to municipalities. DÉMÁSZ had been charged with the modernisation of street lighting, and it did not offer these favourable conditions to municipalities, which assigned the same task to other companies. This was a discriminatory behaviour,
- concluding with certain municipalities long-term contracts on providing all the services related to street lighting with penalty provisions that impeded or at least limited the municipalities' possibility to purchase as eligible customer electricity for street-lighting from other distributors after the liberalisation.

Another case raised similar questions and was dealt with by the GVH in parallel with the DÉMÁSZ case and the decision was taken on the same day. In that case, another regional electricity distributor, the Tiszántúli Áramszolgáltató Rt. (TITÁSZ) was found to have similarly abused its dominant position and was fined HUF 65 million (Euro 265000, USD 283000).

Based on a statutory measure a special student loan system was introduced in Hungary. The organizing institution of this loan programme was the Diákhitel Központ Rt. (DHK – Student Loan Center). The loan was accessible only through one of the Hungarian banks, namely Postabank Plc. The question, which arose in this particular case, was whether the fact that the loan was accessible only through Postabank constituted an abuse of dominant position. After having given special attention to the legal background of the programme the Competition Council took the position that the service offered by the DHK could not be regarded as a market product. In the view of the Competition Council the relevant product market was the market of loans for students. The disbursement itself was not a separate market as Postabank held a merely assistant position and the loan in fact was marketed by DHK. Furthermore, the Competition Council noted that the DHK was not an "undertaking" for three reasons: firstly it was established for the fulfilment of a specific public utility goal, secondly it operated under governmental regulation and surveillance, and thirdly it had rights similar to those of the public authorities. Therefore, the possible competition lessening or distorting effect of the disbursement on the market of keeping bank accounts was not investigated by the Competition Council. All in all, it was a fact that the DHK – as a state owned company – did not have the power to decide about the opening of accounts at Postabank. Accordingly the Competition Council found the case was not one to be assessed under the rules of the competition law. Hence, it terminated the proceedings.

The Competition Council found that Gyertyaláng Kegyeleti Szolgálat Temetkezési Kft (Candlelight, hereinafter Gyertyaláng) has abused its dominant position by setting excessively high prices for the funeral services in the cemetery of Ócsa, therefore it fined Gyertyaláng HUF 1 million (Euro 4000, USD 4350). The Act on cemeteries and funerals states that cemeteries may be owned either by municipalities or churches, and that the owner has the obligation to ensure the maintenance and the operation of the cemetery. The operator of the cemetery should provide without discrimination the funeral parlour, storage and refrigerator facilities to other funeral operators. The owners of the cemetery of Ócsa, four churches, concluded an agreement with Gyertyaláng concerning the operation of the funeral parlour and the cemetery itself. According to the agreement Gyertyaláng was entitled to cover its costs by the service fee and was obliged to build a new funeral parlour, which would be transferred to the owners of the cemetery after the expiry of the agreement. Under the agreement, it was not excluded that relatives of the deceased arrange the funeral with the help of other funeral operators. In 2001 there were only 7 occasions that a different funeral operator organized a funeral in Ócsa. Gyertyaláng invoiced altogether around HUF 90000 (Euro 365, USD 390), including HUF 40000 (Euro 160, USD 175) for the use of the funeral parlour, in the case of third party operators, while for the own funeral service it charged a so called complex fee of a considerably lower amount not individualizing different items. During the proceedings Gyertyaláng argued that the HUF 40000 was calculated by the payback period of the investment, which was 7 year long due to the fact that the agreement would expire in 7 years although the amortisation period would justify only 16-17 years. According to the view of the Competition Council Gyertyaláng operated on two markets, which were connected. On the market of cemetery operation as a result of the agreement Gyertyaláng was the only market player, while on the market of funeral services it competed with other funeral operators. Each funeral operator had to turn to Gyertyaláng in order to have access to the facilities of the cemetery if they wanted to be active on the latter market. By abusing its dominant position on the market of cemetery operation, Gyertyaláng could extend its dominance to the second market. The Competition Council found that Gyertyaláng created without justification disadvantageous market conditions for its competitors.

### ***3.2.3. Mergers and acquisitions***

#### ***3.2.3.1. The Hungarian M&A regime***

Concentrations must be notified in advance if they reach certain turnover thresholds. Concentrations among non-independent undertakings are not subject to authorisation. Temporary acquisitions by financial institutions do not fall under the scope of M&A control. Dominance test forms the basic assessment criterion: the authorisation of a concentration may not be refused if it does not create or strengthen a dominant position, does not impede the formation, development or continuation of effective competition on the relevant market or on a considerable part of it, or if the concomitant advantages outweigh the concomitant disadvantages [Article 30]. The GVH may impose obligations or conditions on the parties or may decide about the divestiture of certain assets. The GVH may apply the same provisions if the parties failed to apply for authorisation and the authority may not have authorised the transaction [Article 31]. The investigation has two

stages in concentration cases. In complex cases the decision is reached by the GVH within 120 days while in the simple ones this deadline is only 45 days.

### 3.2.3.2. Enforcement

In this field 65 final decisions were taken by the Competition Council: in 60 cases the decisions were made upon application of the undertakings concerned and in 5 cases the proceedings were started ex officio by the GVH because of suspected failure of submitting an application for authorisation in due time. In 59 of the 60 cases decided on the merits, an authorisation was granted by the Competition Council, where in two cases the authorisations were subjected to conditions and in one case to obligations, consequently an intervention by the GVH occurred in three cases. (In a further case the proceedings was terminated.) In the ex officio proceedings the suspicion mentioned above was proved in three cases. In one case in which the law relating to undertakings connected to credit institutions was interpreted the first time at all, the GVH refrained from imposing fines. In two other cases, however, fines amounting to HUF 1.6 million (Euro 6500, USD 7000) as a total were imposed. Because of failure to observe the time limit set for submission of the application for authorisation fines were imposed in eight cases in a total of HUF 8.2 million (Euro 33500, USD 35600). The mergers having the most significant influence on the market structure were carried out in 2002 in the energy, cement and pharmaceutical industry and on the telecom market.

	<b>2002</b>
Merger cases	65 <sup>6</sup>
<i>Horizontal</i>	51
<i>Vertical</i>	4
<i>Mixed</i>	10
<i>Notified</i>	60
<i>Ex officio</i>	5
Authorised	59
Not subject to notification	-
Notification withdrawn	-
Conditional authorisation	3
Fines imposed (million HUF)	8.2

In the Südzucker case, as a result of the acquisition of Financiere Franklin Roosevelt S.A.S. by Raffinerie Tirlémontoise S.A., Südzucker – having controlling rights over the latter – would have acquired a 50 per cent ownership also over Eastern Sugar BV. (99,7 per cent owner of the Hungarian sugar factory Kabai Cukorgyár Rt). However, Südzucker had already had indirect control over another Hungarian sugar firm, Magyar Cukor Rt. (Béghin Say, the third market participant on the Hungarian sugar market controlling three sugar plants, was not concerned by the planned transaction.) In its decision the Competition Council found, that the Hungarian sugar industry was in a tight oligopolistic situation already before the planned transaction would have been carried out. It was

<sup>6</sup> For an explanation of the figures see the text above.

stated, that the transaction would have created an even tighter structural relationship between Magyar Cukor Rt. and Kabai Cukor Rt, i.e. between two of the three Hungarian market participants. Consequently, the strengthening of the joint dominance of the two remaining market participants might be expected to strengthen the ability of the firms of the duopoly to use their market position by harming the consumers' interest, e.g. by increasing or by maintaining the high level of their prices. So, the Competition Council attached a condition to its authorisation: it was ordered that Südzucker had to sell Eastern Sugar BV to Tate & Lyle Plc, its other 50 per cent owner.

In the field of the chemical industry the acquisition by **Bayer AG** of **Aventis Crop Science Holding SA** was cleared by the Competition Council with the precondition that Bayer AG would sell its Metamitron (Goltix) branch within six months of receipt of the decision. This commitment of Bayer was in line with its commitment to the Commission, where the Commission required sale of the whole European branch of Metamitron insecticide business inclusive the Goltix trademark. This eliminated the anticompetitive effects of the strengthening of the dominant position. Bayer AG met the condition.

### ***3.2.4. Consumer fraud***

#### ***3.2.4.1. Substantive rules***

The Competition Act prohibits *the unfair manipulation of consumer choice* and as such the deception of consumers and the application of business methods, which restrict without justification the freedom of choice of consumers. Deception is presumed in particular, if false declarations are made about the essential features or the price of the goods, the information given about factors related to the sale of goods is or may be deceptive or a product does not meet the legal or usual requirements for such goods. The Office's aim is to ensure that consumers are sufficiently informed on the product or service offered, which not only protects the consumers' interests but also serves indirectly the protection of competition. It should be noted, however, that the GVH is competent only in the event that a larger group of consumers is concerned and not in cases affecting only individual (personal) interests.

#### ***3.2.4.2. Enforcement***

Although the importance of such cases decreased substantially over years, these cases still form a significant part of the proceedings of the Office, in 2002 they represented almost one-third of the case-related workload and 52 final decisions were made by the Competition Council in this category of cases. In 36 cases of the 52 an intervention of the GVH was necessary because of the infringement of law and in 17 of these interventions the Competition Council imposed fines in a total of HUF 35 million (Euro 142000, USD 152000). Compared to the previous years the amount of unlawful information and advertisements concerning goods maintaining and/or recuperating human health and claimed to be "panacea" in the fight against serious diseases increased. The infringements of law in the form of providing misleading information by time-share undertakings as well as about campaigns, rebates and competitions of retail chains were present in 2002 too. It is to be noted, however, that the number of infringements of this kind has decreased in the past one-one and a half years and also their gravity has clearly showed a decreasing tendency.

<b>2002</b>	
Consumer fraud cases	52
Interventions of the GVH	36
Cases where fines were imposed	17
Fines imposed (million HUF)	35.0

Similarly to the previous years, in 2002 there were three typical areas of misleading practices. The “traditional” timesharing cases forms one category of these returning practices – in spite of the consequent decision making practice of the GVH, there was a case of this kind also in 2002. **Proinvest 2001 Kft.** and four other undertakings – two of which have already been subject to similar investigations of the GVH before – failed to inform their potential consumers about the possibility to have discount on the services, did not give sufficient information about the price-setting of weekly fees for visiting holiday resorts, all in all they created a false impression of especially advantageous business. This practice might have discouraged the consumers from exercising their right to terminate the contract, since the clauses about the deposit and penalty did not mention the fact, that consumers using their rights to terminate the contract would not be penalised. The information on how the annual modification of fees to be paid for the use of the holiday resort facilities were also misleading and false, stating that consumers have the right to participate in the decision-making about this issue. The Competition Council imposed fines in a total of HUF 10 million (euro 40800, USD 43500).

Typical means of consumer fraud are the advertisements targeting a specific audience (e.g. ill people), where the average consumer’s view depends on the effect of the advertisement in question on the reasonably thinking member of that group. These advertisements are usually about “medical products” that cure basically every type of illness; which is so to say a miracle. The solid proof is always missing in these advertisements. In the case of **Nap kristály Flavin 7** (fruit based aliment) the Competition Council imposed a fine of HUF 3 million (EUR 12250, USD 13000) on the company, which supplied this product. According to the label the product, without being a medicine, was an aliment-supplement, which had the effect of preserving health, furthermore it was anti-allergic, good for the cardio-vascular system and against cancer. The deception was conducted over a rather long period. The company was ordered to publish corrective announcements in two daily newspapers.

The price plays an important role in the decision-making process of the consumers. For this reason rebates and discounts are very common means of competition on the market. Advertisements on huge discounts are present day-by-day in the throw-aways of the large scale retail traders. The Competition Council imposed a fine of HUF 5 million (euro 20400, USD 21700) on **Tesco Globál Áruházak Rt.** (case No Vj-184/2001) because the said company marketed a bicycle of a much worse quality compared to which was advertised in it’s throw-aways. As the effect of this advertisement the gouged consumers purchased other products of Tesco, which is likely to have resulted in some further injuries of consumers’ interests.

### **3.3. Summary of the court activities**

In parallel with the increase of the number of GVH interventions, in 2002 the proportion of **cases appealed before courts** increased compared to the figure of 2001. As in the preceding year, around half of the condemning decisions were brought to courts, while only every fourth or fifth decision terminating the proceedings was appealed by the complainant. In 2002 only one of the Competition Council's decisions was overruled by the first instance court and two further by the second instance court. Besides, the fines were reduced on one occasion by the first instance court and on four by the second instance court. Courts are also entitled to annul the Competition Council's decision and order new competition supervision proceedings. During the last year the first instance court passed such an annulling judgement on five occasions. Four of these cases were appealed by the GVH (the outcome is not yet known), and one case was reinitiated. On the other hand, the fact that the legal basis applied by the Competition Council is rarely modified by the court shows that there was a harmony between the courts and the GVH, like in the previous years.

## **4. The role of the competition authority in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

### **4.1. Effects of state interventions**

Regulatory interventions by the state did not have substantial effects on market processes in 2002. To some extent this was the result of the less intensive regulatory activity, which could be attributed to the fact that there were elections in 2002. The law approximation process went on to make the Hungarian undertakings getting accustomed to the competition and operational conditions existing in the European Union, since all these conditions would prevail after the accession. In 2001 the main elements of the role of the state were determined by the Széchenyi Plan (national venture incentive project). Since for 2002 the resources of this project were exhausted, moreover social measures got priority among the goals of the new government and the governing political will also changed, the supportive methods influencing directly the investment decisions of undertakings and the preferential treatment for SMEs against large scale businesses lost their importance.

An improvement of the competitive conditions can be expected as a result of the planned sale of two important players in the financial sector (FHB Land Credit and Mortgage Bank Ltd. and Postabank Plc. – both will be sold in 2003). There has been a further positive development in this sector, namely replacing the earlier exclusivity granted to Student Loan Center offering loans through the Postabank Plc., from February 2003 this can be done through the accounts of any Hungarian credit institutions.

In the telecommunications sector the expiry of the exclusivity clauses in the concession contracts concluded for telecoms services was the most essential change. However, the sometimes too high expectations of the small consumers regarding the market opening proved to be unfounded. Large consumers could benefit from the changes in an indirect way (price decreases, wider choice possibilities) – after all these had some positive effects also for the general public. The results were modest due to the negative consequences of

the recession that begun in 2000 and 2001, in addition to this, there were also some failures committed by the legislators and law-enforcers. The regulatory environment was unable to create an appropriate background for a regulatory intervention, which could have been adjusted to market circumstances. In certain cases the regulations were overly rigid, contained inflexible framework and this phenomenon did not allow interventions which could have served the interest of the market taking into account the existing circumstances.

#### **4.2. Competition advocacy**

During 2002 in the framework of its competition advocacy the GVH gave its opinion to more than 200 submissions and draft bills/regulations. Similarly as in the earlier years also in 2002 the main endeavours of the GVH were to avoid excessive barriers restricting the competitive markets by state interventions and to find the appropriate solutions proportional to the planned regulatory aims (e.g. the regulation of insurance services, and the regulation of law-exhaustion or IPRs, etc.). In respect of sectors which can be characterised by a limited level competition or market failures, the GVH's comments aimed at increasing the success of the justified regulatory interventions and the advocacy of the GVH was directed towards the initiation of or calls for the elaboration of well-prepared professional solutions which could result in efficiency pressure (e.g. agricultural regime, legislation aiming at the liberalisation of the sectors of electric energy, gas, health care services, etc.). The problems of impartial competitive behaviour of the state and municipalities stemming from the Janus face of these institutions (they are public regulatory bodies on the one hand and owners of state properties on the other hand) raise concerns repeatedly. There are also returning debates concerning the setting of service/management fees for organisations having special and exclusive rights (to some extent these debates are about the VAT obligation of these services – sometimes the situations lack the conceptual solution).

In 2002 the GVH looked for the possibilities of further developing competition culture, by widening knowledge of the society about competition law. The Office attaches special importance to its activity devoted to the education of and discussions about competition law and policy in universities and on scientific fora. Some of the GVH's staff members held regular competition law courses in universities. Lectures for interested professional groups are organised regularly. Communications and publications by staff members of the GVH on issues of competition policy are quite frequent.

The institutionalised co-operation of the GVH has been extended and made more intensive mainly with the regulatory authorities (Hungarian Energy Office, Communications Authority, Communication Arbitration Committee, Hungarian Financial Supervisory Authority), furthermore the GVH keeps regular connection with interest groups of undertakings as well.

The preparation for the EU membership continued during the year of 2002. The basic aim of this process is to make the GVH suitable to meet all the conditions and criteria, which are set by the Community institutions to the competition authorities of the Member States. In addition to the preparation for membership the GVH's international relations had two main directions in 2002, namely the co-operation with the US competition authorities and with the competition authorities of the South-Eastern European countries became more

intensive. In this latter framework the GVH had the possibility to share its experience gained during the 12 years of its competition law enforcement. The GVH contributed to the work of the OECD Competition Committee and of its working parties. One colleague from the GVH joined the OECD Secretariat for a one-year period on a co-financed basis. From January 2002 on the GVH has participated in the work of the ICN.

## 5. International cooperation

The preparation of the GVH for Hungary's EU accession was regarded as a priority in 2002. In this framework several steps have been taken:

- In the framework of a twinning light project a cooperation with the Bundeskartellamt aiming at mapping the practice of the BKartA vis-a-vis oligopolies, on the one hand and its international cooperation practice in EC cases.
- The GVH begun to prepare the amendment of the Hungarian competition law taking into consideration the accession and the new EC regime introduced by the new implementing regulation of the Council. In 2002 the first steps have been taken, the majority of the work remained for 2003.
- From October 2002 the GVH has been participating in the work of the "European Competition Network" organised by the EU Commission in order to shape the framework for the implementation of the new EC competition regime.

In addition to the preparation process there were two main directions of the GVH's international relations. Financed by the USAID and in close cooperation with the GVH the US Department of Justice and the FTC organised a series of seminars in Budapest for the competition authorities of the South-Eastern European countries. These professional events offered excellent possibility for the competition authorities of this region to meet regularly and for the GVH to share the Hungarian experiences gained during the 12 years of competition law enforcement. There was another channel to cooperate with the competition authorities of the SEE region, a more direct, bilateral-type cooperation. From this point of view meetings with the Croatian and Yugoslavian authorities should be mentioned. Officials of the GVH participated regularly in professional events of the Macedonian competition authority, and there were several meetings between of the Romanian and Hungarian authorities as well both on top and expert level.

## 6. Resources of the competition authority

<b>Resources</b>	<b>2002</b>
<i>Annual budget</i>	
million HUF	1.179,6
million USD	5,2
<i>Number of employees</i>	121
lawyers	39

economists	38
other professionals	18
support staff	26
<b><i>Human resources applied to<sup>7</sup></i></b>	
law enforcement	60
advocacy efforts	17

In February 2002 the GVH moved to a new building where substantially better working conditions are provided for it. The contact parameters of the GVH are as follows:

Address:	H-1054 Budapest, Alkotmány u. 5.
Mailing address:	1245 Budapest 5., PO Box 1036, Hungary
Tel.:	(36 1) 472 89 00
Fax:	(36 1) 472 89 05

## 7. Competition culture

In 2002 the GVH continued to fulfil one of its most important tasks – to provide information to the public about its activity, the development of competition law in Hungary and about theoretical and pragmatic questions of competition policy.

<i>The GVH's role in the development of competition culture</i>		
	Number of GVH officials who regularly give lectures in higher education	6
	Number of interviews given to different means of media	13
	Number of professional publications	12
	Lectures for university students	9
	Lectures for professionals	32
	Number of theses by students in competition matters	7
<i>Articles in newspapers about the GVH in 2002</i>		
	Articles, news in nation-wide newspapers	64
	Articles, news in professional/economic newspapers	56
	Articles about the previous year's annual report	4
	Articles about the amendment of the competition law	-

The GVH puts great emphasis on communicating its activity to the public. To this end the decisions of the Competition Council are made public on the website of the GVH: [www.gvh.hu](http://www.gvh.hu). This homepage was substantially renewed and restructured in 2001. The

<sup>7</sup> The separation of responsibilities is rather difficult since some of the staff members active in law enforcement take also part in competition advocacy if e.g. a draft regulation relates to "their" industries. The figures of the chart are rough calculations based on the workload.

new site contains more information and a substantial part of the Hungarian version can also be found in English.

## 8. Some retrospective statistics

### Number of the GVH's decisions reached

state of affairs	1991 to 1996	1997	1998	1999	2000	2001	2002
consumer fraud	218	74	72	65	86	57	52
restrictive agreements	33	5	15	15	18	10	18
abuse of dominant position	212	45	44	35	56	31	36
concentration	80	34	49	46	70	81	65
other	177	16	-	-	-	-	-
<b>total</b>	<b>720</b>	<b>174</b>	<b>180</b>	<b>161</b>	<b>230</b>	<b>179</b>	<b>171</b>

### *Number of decisions establishing an intervention of the GVH*

state of affairs	1991 to 1996	1997	1998	1999	2000	2001	2002
consumer fraud	118	26	30	44	47	29	36
restrictive agreements	14	0	2	7	11	1	10
abuse of dominant position	52	8	5	7	19	3	15
concentration	1	0	1	-	3	1	3
other	66	5	-	-	-	-	-
<b>total</b>	<b>250</b>	<b>39</b>	<b>38</b>	<b>58</b>	<b>80</b>	<b>34</b>	<b>64</b>

*Fines imposed by the GVH (in million HUF)*

state of affairs	1997	1998	1999	2000	2001	2002
consumer fraud	52,1	35,7	21,4	46,6	45,2	35,0
restrictive agreements	-	5,0	7,0	96,0	-	182,5
abuse of dominant position	17,8	29,0	13,5	11,8	10,0	218,5
concentration	0	-	2,2	2,7	-	-
blanket clause of the old Competition Act	34,2	-	-	-	-	-
<b>total</b>	<b>104,1</b>	<b>69,7</b>	<b>44,1</b>	<b>157,1</b>	<b>55,2</b>	<b>436,0</b>

Exchange rates in April 2003:

1 Euro  $\cong$  245 HUF

1 USD  $\cong$  230 HUF