

2013 Annual Activity Report

*OECD-GVH Regional Centre for
Competition in Budapest
(Hungary)*

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Annual Activity Report, 2013

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Foreword

The OECD-GVH Regional Centre for Competition in Budapest (Hungary) ("RCC") has successfully completed its 9th year of operation and is now a well-established institution for the provision of training and seminars for competition law enforcers of the Eastern and South-Eastern European Region as well as for judges from all over the EU.

The 2013 programme reflected the increased maturity and experience of the targeted audience of enforcers. In advanced level seminars on exclusionary and discriminatory practices and on complex mergers, economic methods played an increasingly important role. Seminars on electricity markets and on intellectual property rights gave deeper insights into the complete range of competition law related problems and the current state of debate. A seminar on cartel investigation techniques and procedures presented a good opportunity for the exchange of experiences and for practising enforcement techniques.

The seminars bring together OECD experts and enforcers from very different regions of the world and one observation can always be made: whenever these kinds of persons get together and start exchanging their experiences they tend to have a lot of common ground and a lot of shared understanding, regardless of the exact legal provisions they execute and the languages they speak. This creates a cross-border team spirit and provides lasting motivation and useful contacts for all participants – experts and country representatives – in addition to the learning experience.

In the framework of the seminars for judges, a new series of three "competition law fundamentals" seminars for national judges with limited experience in competition law was launched. The aim of the series is to provide an overview of fundamental concepts and ideas in the area of EU competition law, while also offering case studies and advice on how to deal with problems judges might face in competition law cases.

The RCC activities were widened in 2013 by the publication of the first two issues of a biannual newsletter. The newsletter intends to be another forum for the exchange of experiences and for mutual learning. Reports on the RCC activities and on OECD meetings as well as articles on topical issues in competition law with links to relevant papers and judgments are complemented by articles written by beneficiary countries which highlight their experiences, cases and legal developments. As is the case with all RCC materials and seminars, the newsletter is published in both English and Russian and can be found on the relevant RCC and OECD websites.

All the activities reflect the excellent co-operation between the Gazdasági Versenyhivatal (GVH, Hungarian Competition Authority) and the OECD, whose member countries are always ready to support the activities by providing experts. We are truly grateful for the confidence in our work and, with this in mind, we will continue our determined mission.

I. Introduction and organisational setup

The OECD-GVH Regional Centre for Competition in Budapest (Hungary) ("RCC") was established by the Gazdasági Versenyhivatal (GVH, Hungarian Competition Authority) and the Organisation for Economic Co-operation and Development (OECD) on 16 February 2005 when a Memorandum of Understanding was signed by the parties.

The main objective of the RCC is to foster the development of competition policy, competition law and competition culture in the South-East, East and Central European regions and to thereby contribute to economic growth and prosperity in the involved regions.

The RCC provides capacity building assistance and policy advice through workshops, seminars and training programmes on competition law and policy for officials in competition enforcement agencies and other parts of government, sector regulators, and judges. The RCC also works to strengthen competition law and policy in Hungary and in the GVH itself.

The RCC's work **focuses on four main target groups**. The **first group of beneficiaries** are the competition authorities of South-East Europe and the majority of the CIS countries, namely Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The work targeting these economies is regarded as the core activity of the RCC. These economies have all progressed with the development of their competition laws and policies, but are at different stages in this process. As a consequence, the needs for capacity building differ among the involved non-OECD member economies and this necessitates a broad approach to competition outreach work. Major capacity building needs in these regions include (a) enhancing analytical skills in competition law enforcement, (b) raising the awareness of the judiciary regarding the specific characteristics of competition law adjudication, (c) pro-competitive reform in infrastructure sectors, (d) competition advocacy, (e) relations between competition authorities and sector regulatory agen-

cies, (f) legal and institutional reform in the area of competition, and (g) building international co-operation and networking.

Judges represent the **second target group** of the RCC's activities. The judges seminars provide judges with an opportunity to improve their understanding of competition law and economics, to exchange views on the latest developments in EU competition law, and to discuss the key challenges arising in competition law cases. These GVH programmes are supported by the European Commission and the OECD.

The **third group of beneficiaries** of the work of the RCC are the competition authorities which belong to the Central European Competition Initiative (CECI). This Initiative aims to provide a forum for co-operation on competition matters and was established by the Central European competition authorities in 2003. It is a network of agencies and operates via workshops and informal meetings. Involved are the competition authorities of Austria, the Czech Republic, Poland, Slovakia, Slovenia and Hungary. These countries all belong to the same geographic region, share fundamentally similar cultural traditions and historical experiences and are, more or less, at the same stage of development. As a result, their competition authorities face several common challenges and difficulties. Moreover, from time to time these authorities deal with markets which are regional, overlapping or which are connected to each other, and they may also on occasion deal with the same parties (the same companies within the region).

The **fourth beneficiary of the RCC's work** is the GVH itself. The agendas of the RCC workshops that are organised for the staff of the GVH are related to ongoing projects or "hot" topics and provide an excellent opportunity for staff to learn about state-of-the-art antitrust theory and enforcement practices.

*Workshop on Cartel
Investigation
Procedures*

*11–13
June 2013*



Concerning the functioning of the RCC, the Memorandum of Understanding of the RCC provides that the GVH and the OECD are to make major decisions on their activities and work jointly. For this purpose, the parties meet on an annual basis to review the operation and performance of the RCC and to prepare the annual work plan.

Regarding the financing of the RCC, the GVH is responsible for providing most of the necessary funding for the functioning of the RCC, including an annual voluntary contribution to the OECD for the costs associated with the staff position in Paris. The OECD helps to co-finance the RCC's

operation and activities. In addition to this, both the GVH and the OECD co-operate in efforts to raise additional financial support for the RCC from third parties.

II. Overview of the activities for the year 2013

2013 was the ninth year of the RCC's activity. The RCC organised a total of nine events in 2013.

Seminars focused on some important core competences of competition authorities as well as on best practices in the area of competition law. In addition to its regular seminars, the RCC continued with its special initiatives: a seminar organised in one of the beneficiary economies, and a seminar organised jointly with the FAS Russia.

table no 1

Total number of speakers per country or institution

S P E A K E R S		
COUNTRY OR INSTITUTION	NUMBER	PERSON-DAYS
GVH	7	17
OECD	9	24
Belgium	5	10
Czech Republic	1	1
EU Commission	6	16
Finland	1	3
France	3	7
Germany	4	10
Israel	2	6
Hungary	1	3
Netherlands	2	6
Poland	1	1
Russian Federation	2	6
Slovakia	1	1
Switzerland	1	3
United Kingdom	2	5
United States	4	11
AGGREGATE	52	130

Altogether, over the course of the year, the RCC invited 291 participants and 52 speakers to its events. Through the RCC's core events it delivered 702 person-days of capacity building. All in all, participants from 37 economies or institutions attended the RCC's programmes, coming from Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Latvia, Lithuania, FYR of Macedonia, Moldova, Montenegro, Netherlands, Poland, Portugal, Romania, Russian Federation, Serbia, Slovenia, Tajikistan, Ukraine, United Kingdom, Uzbekistan and the GVH. Meanwhile, experts from 17 countries and institutions attended

as panel members: Belgium, Czech Republic, EU Commission, Finland, France, Germany, Israel, Hungary, Netherlands, Poland, Russian Federation, Slovakia, Switzerland, United Kingdom, United States, the GVH and the OECD.

¹ Person-days are defined as the number of days a person attended a RCC seminar. Thus, if 10 people attended a course for 5 days and 4 people attended a course for 3 days the number of person days delivered is 62 (10x5 + 4x3 = 62).

III. Detailed review of the activities in the year 2013

Table No2 provides a brief overview of the topics of the seminars held in 2013 as well as the participating economies and institutions.

table no 2
Summary of activities in 2013

EVENT TOPIC	DATE	TOTAL NUMBER OF PARTICIPANTS AND SPEAKERS	ATTENDING ECONOMIES / INSTITUTIONS
Heads of Authorities' Meeting	21 January	17+4	Participants: Albania, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Kosovo, FYR of Macedonia, Moldova, Romania, Russian Federation, Serbia, Ukraine <i>Speakers: Czech Republic, GVH, OECD, Poland, Slovakia</i>
Seminar on European Competition Law for National Judges on Restrictive Agreements: Cases, Trends and Open Questions	22–23 February	30+4	Participants: Bulgaria, Croatia, Cyprus, Czech Republic, Finland, Germany, Greece, Hungary, Latvia, Lithuania, FYR of Macedonia, Netherlands, Poland, Portugal, Romania, Slovenia <i>Speakers: Germany, GVH, OECD, United Kingdom</i>
Workshop on Exclusionary and Discriminatory Practices: Tying/Bundling, Price discrimination and Loyalty Rebates	19–21 March	30+6	Participants: Albania, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Kazakhstan, Kosovo, FYR of Macedonia, Moldova, Montenegro, Romania, Russian Federation, Serbia, Ukraine <i>Speakers: France, GVH, Israel, OECD, United States</i>
Training Seminar for GVH Staff on Recent Case Law in Antitrust and the UCP Practice in Member States	17–18 April	79+10	Participants: GVH <i>Speakers: Belgium, EU Commission, France, OECD, United States, UK</i>

Workshop on Analysis and Procedures of Complex Mergers	14–16 May	30+5	Participants: Albania, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Kazakhstan, Kosovo, FYR of Macedonia, Moldova, Montenegro, Romania, Russian Federation, Serbia, Ukraine <i>Speakers: EU Commission, Germany, GVH, OECD, United Kingdom</i>
Workshop on Cartel Investigation Procedures: Leniency Programmes, Dawn Raids and Public Procurement Issues, held in Rovinj, Croatia	11–13 June	25+5	Participants: Albania, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Kazakhstan, Kosovo, FYR of Macedonia, Moldova, Romania, Russian Federation, Serbia, Ukraine <i>Speakers: Germany, GVH, Israel, OECD, United States</i>
RCC – FAS Russia Joint Seminar for CIS Countries on Competition in the Electricity Markets, held in Kazan, Russian Federation	1–3 October	23+9	Participants: Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Ukraine, Uzbekistan <i>Speakers: EU Commission, Finland, GVH, Netherlands, OECD, Russian Federation</i>
Seminar on European Competition Law for National Judges on Restrictive Agreements: Basic Economic and Legal Concepts	15–16 November	28+4	Participants: Austria, Belgium, Croatia, Denmark, Estonia, Germany, Greece, Hungary, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovenia, United Kingdom <i>Speakers: EU Commission, Germany, GVH, OECD</i>
Seminar on Intellectual Property Rights and Competition Law	10–12 December	29+5	Participants: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Kazakhstan, Kosovo, FYR of Macedonia, Moldova, Romania, Russian Federation, Serbia, Ukraine <i>Speakers: EU Commission, Hungary, OECD, Switzerland, United States</i>

A) Standard programmes in the framework of the core activity

a) 19–21 March, Workshop on Exclusionary and Discriminatory Practices: Tying/Bundling, Price Discrimination and Loyalty Rebates

The RCC conducted a workshop on exclusionary and discriminatory practices for thirty competition law enforcers from fifteen beneficiary authorities.

The workshop consisted of a series of presentations focusing on a special subset of exclusionary and discriminatory practices, namely tying and bundling, discriminatory pricing and rebates. Throughout the seminar speakers and participants discussed the theoretical framework, real cases and jurisdiction relevant to the subject matter. It was a recurring theme that the headline or name given to a certain abusive con-

*Workshop on Exclusionary and
Discriminatory Practices*

19–21 March 2013



duct was less relevant than having a consistent story of harm to tell. For instance rebates might well turn out to be a form of predation and tying or bundling could in some cases be considered to be an exclusionary conduct, depending on the circumstances of the case and the likely motives of the economic actors.

The topics were addressed and discussed in lectures and case studies by competition experts from OECD countries, as well as in four case studies presented by participant authorities. A roundtable discussion followed each presentation. A hypothetical case was worked on in breakout groups to allow the participants to apply the concepts and experiences that had been presented during the seminar.

On the first day of the workshop Eric Emch, consultant to the OECD, gave an introductory presentation on common economic themes of exclusionary and discriminatory practices. In his presentation he gave an overview of intervention rates and highlighted the concept of dominance in competition law, before providing a summary of economic frameworks to be considered as well as common elements of offense and defence in these cases. This was followed by a presentation by Sabine Zigelski from the RCC in which three small case examples were used to demonstrate that equal treatment as the standard competition law answer to abusive discriminatory practices cannot always be determined easily and that in some cases equal treatment claims by de-

endants may be deceptive. Nóra Váczi of the GVH presented a case study on price discrimination and described the proceedings against a large commercial channel broadcaster that had started to charge a broadcasting fee to multi-channel programme providers.

In the afternoon Ori Schwartz of the Israel Antitrust Authority talked about the proceedings which had been initiated against the largest daily newspaper in Israel for its use of exclusive agreements and targeted discounts in order to further strengthen its already dominant position. He highlighted the underlying economics and described the measures suc-



cessfully adopted by the competition authority. James E. Rhilinger from the US FTC ended the day with a presentation on the FTC's investigation of Google and compared the harm done to competitors and the harm done to competition, the latter of which was deemed to be non-existent by the FTC after a comprehensive investigation involving an intensive document search and interviews with numerous complainants and the defendant's executives.

Day two began with an introduction to the economics of tying and bundling by Erich Emch. Before going into more detail on anticompetitive tying and bundling he explained the generally procompetitive or neutral nature of these business practices and then described those circumstances in

which the scales tip and bundling might be considered an act of predation or tying might be used as a means of foreclosure, taking into account the “one monopoly rent”-logic. Nóra Vácz then illustrated the difficult tying and bundling issues by presenting three cases of the GVH which had three different outcomes, thus demonstrating the importance of undertaking a thorough investigation and analysis of all the affected markets.

split into three groups to discuss and analyse a hypothetical case before reporting back to the group as a whole.

On all three days participants contributed case studies from their national practices and discussed exclusive dealing agreements in the cosmetics industry, discriminatory pricing for airport rental space, discriminatory practices by national post incumbents and anticompetitive discounts for cargo



Ronan Perrotte of the French Autorité de la Concurrence started the afternoon session with a report on a recently finished investigation into the French railway freight sector. The report showed that there are high risks involved in transferring some of the regulator’s tasks to the regulated, the SNCF. In this case this gave room to SNCF to deny its competitors access to essential facilities and to engage in exclusionary pricing vis-a-vis its competitors. Ori Schwartz then gave another presentation on an Israeli case dealing with the relationships between food suppliers and retailers. The food suppliers had engaged in a variety of exclusionary practices and rebates targeted at keeping competitors off the shelves of the supermarkets. He also pointed out the anticompetitive nature of category management agreements in this setting.

On day three James E. Rhilinger gave a concise presentation on the antitrust analysis of loyalty discounts and showed under which circumstances discounts could be considered either predatory or as effectively resulting in exclusive dealing arrangements and what the required elements of proof and the legal standards in the US are.

The seminar ended with a hypothetical exercise on loyalty discounts and exclusive arrangements. The participants were

handling at seaports. All of the cases generated vivid discussions and helped to further clarify questions concerning investigatory methods, market definition and consistencies of theories of harm.

b) 14–16 May, Advanced Level Workshop: Analysis and Procedures of Complex Mergers

The RCC conducted a workshop on analysis and procedures of complex mergers for 30 competition law enforcers from 16 beneficiary authorities.

Enforcers with experience in merger control from the participating countries were the target audience. In total there was approximately 250 years’ worth of experience in merger control present at the seminar. The workshop covered a broad range of issues, all relevant to more complex merger cases and provided a forum for the exchange of experiences and for the further improvement of practical and analytical skills. The planning and structuring of investigations, market definition, market surveys, economic methodology in merger analysis, theories of harm and remedies were central topics. The objective of the seminar was to provide the participants with a



Analysis and Procedures of Complex Mergers

14–16 May 2013

better understanding of the analytical and practical methods that can and have successfully been used in merger investigations, especially in more difficult and multifaceted cases. Competition experts from OECD countries gave presentations on cases and fundamental merger related competition law problems. These were accompanied by five case studies presented by participant authorities. Each presentation was followed by a roundtable discussion where the difficulties, problems and lessons learnt from the presented cases were discussed openly.

Sabine Zigelski from the RCC started the workshop with a presentation on the planning and conduction of merger investigations. In her presentation she highlighted topics such as time management, investigations, filing, communication and evaluation. This was followed by a case presentation given by Katika Komlós, European Commission, on the merger of Hutchison 3G and Orange. She provided an introductory overview of EU merger procedures and the complicated technical and regulatory framework of the case. When explaining the competitive concerns and the underlying theory of harm she illustrated the use of the economic analysis in this case and explained the results of the analysis of the Herfindahl-Hirschman Index (HHI), diversion ratios and Upward Pricing Pressure indices (UPP). This case was of particular interest as it represented one of the very few real gap cases between the dominance test and the SIEC test.

In the afternoon Szabolcs Szendrő from the GVH presented a case study on a Hungarian newspaper merger and detailed the analysis carried out by the GVH, explaining the use of the SSNIP-Test and of a market survey for the purpose of delineating the relevant product market and for the determination of the competitive harm to be expected from the merger. Simon Chisholm from the UK Office of Fair Trading then gave a more detailed presentation on the use of diversion ratios to support the competitive assessment of mergers and introduced various methods for calculating or

estimating diversion ratios through the use of econometric analysis of demand, use of win/loss data, event studies and surveys. He explained the UK guidance on survey design and the survey experience.

The second day started with Katika Komlós who continued the presentation on the EU Hutchison 3 G – Orange case. Katika focused on the cooperation between the different authorities involved in the merger case, the Commission, the Austrian Competition Authority and the Austrian Telecoms



regulator. She explained how this facilitated and enabled the complex commitments package that was finally accepted in this case and detailed the commitments focused on facilitating entrance and the follow up work that is to be expected. She was followed by Simon Chisholm who provided an introduction to pricing pressure analysis and explained the calculation and use of the Gross Upward Pricing Pressure Index (GUPPI) and of the Illustrative Price Rise (IPR). By illustrating the UK practice he managed to provide a good idea of the uses and limitations of the methodologies and encouraged their use. The morning session was concluded by Christian Bongard from the German Bundeskartellamt. He presented a case study on a recent merger prohibition in the German cable-TV industry, the Kabel Deutschland – Tele Columbus case. The case was based on a collective dominance theory of harm and he gave an overview of the established criteria for collective dominance and how these

applied in the case. This was supplemented by a detailed bidding analysis that had been conducted in the course of the merger proceedings.

International aspects of complex merger proceedings such as investigations abroad and cooperation among competition authorities were the topic of the first afternoon presentation given by Sabine Zigelski. She explained when and how investigations outside the authorities' jurisdictions were useful and presented on international cooperation with and without the exchange of confidential information between competition authorities, detailing the use of waivers and institutions like the European Competition Agencies (ECA) and others that facilitate the inter-agency exchange. Szabolcs Szendrő then presented another case from Hungarian practice, the Bertelsmann/IKO TV RTL case, which was particularly interesting as it dealt with regulatory frameworks, two sided markets (broadcasting and advertising), portfolio effects and commitments intended to open up markets to competition.

On the third day Christian Bongard gave a presentation on the fundamental aspects of remedies and the German experience with structural and behavioural remedies, concluding that the learning process has led to a general preference for structural remedies. He illustrated his statements with a discussion of the remedies that had been in negotiation in the German cable TV case and that had finally been rejected by the Bundeskartellamt. To provide a deeper understanding of the design and use of remedies and commitments in merger cases the participants were asked to discuss in smaller breakout groups a case that was presented by Sabine Zigelski. The real case example gave the participants the opportunity to discuss possible structural or behavioural remedies, the extent of proportionate remedies, necessary ancillary restraints and time frames as well as the use of trustees. The solutions found were then compared with the commitment package that had been chosen in the real case.

On all three days of the seminar the participants also gave presentations on their merger experience. The cases were highly relevant to the other participants and covered industry sectors such as retail, steel trading, production and processing of iron ore, production and sale of agricultural products and dialysis products. These case studies resulted in further discussion of procedural aspects, market definition and remedies.

c) 10–12 December, Workshop on Intellectual Property Rights and Competition Law

In December the RCC held an advanced level workshop on the topic of intellectual property rights and competition law for 29 competition law enforcers from 15 beneficiary authorities.

The purpose of the workshop was to look at the areas of interface between intellectual property rights and competition law. The workshop considered not only theoretical topics but also actual experiences in competition cases involving intellectual property rights. The issues discussed during the workshop included both traditional topics as well as some of the emerging issues in the field, such as pay-for-delay cases in the pharmaceutical sector.

The topics were addressed and discussed in presentations and case studies by competition experts from OECD countries as well as in five case studies presented by participat-



*Workshop on Intellectual Property Rights
and Competition Law*

10–12 December 2013

ing authorities. A roundtable discussion followed each presentation. The workshop concluded with the discussion of a hypothetical case in small breakout groups in order to allow the participants to experience some of the challenges involved in dealing with problems at the interface between competition law and intellectual property rights.

The workshop began with a short introductory presentation by Simone Warwick of the OECD. This presentation looked at

the reasons why this is an increasingly important topic for competition authorities around the world and provided a brief overview of the different types of intellectual property rights to be discussed during the workshop. Pál Szilágyi of the Hungarian Competition Law Research Centre followed with a presentation that highlighted the different ways in which intellectual property rights may be relevant in competition cases. He also focused on a number of important issues, including concerns that there is tension between competition law and the legal framework for intellectual property rights. The final presentation in the morning session was by Giovanni Napolitano of the World Intellectual Property Organisation. This presentation concentrated on the ways in which trademarks and brands can be relevant to competition cases. It assessed the ways in which branding activities can raise competition concerns with reference to a number of case examples.

The afternoon session saw the return of Simone Warwick, this time to talk about the ways in which intellectual property rights are relevant in the assessment of mergers. Through the use of a number of case examples, the presentation looked at some of the different ways in which intellectual property rights can be an important consideration in the substantive assessment of a merger. The presentation also highlighted the fact that intellectual property rights are often very important when it comes to merger remedies. The final presentation of the day was given by Denisa Alexandroaiei of the European Commission (DG Competition). This presentation looked back at the European Commission's abuse of dominance cases against Microsoft and focused on the intellectual property rights that were of key relevance in those cases. This presentation drew attention to one of the important issues in cases involving intellectual property rights, namely a consideration of the impact of the conduct on innovation.

Day two saw Pál Szilágyi return to give a presentation about the European Commission's decision finding that Astra Zeneca had abused its dominant position and the subsequent decisions of the European Courts. The case, which spanned almost two decades, raised some very interesting questions about the interface between intellectual property and competition law. This was followed by a second presentation from Denisa Alexandroaiei dealing with some very hot topics including standard essential patents, patent ambush, patent hold-up and FRAND obligations. The presentation looked back at some previous Commission decisions and also

provided the context for the ongoing Commission cases in the mobile telephony sector. At the end of her presentation, Denisa spoke briefly about the Lundbeck case, the European Commission's first pay-for-delay decision in the pharmaceutical sector.

The workshop then continued with the pharmaceutical theme as Dominic Vote of the United States Federal Trade Commission gave a presentation on the topic of pay-for-delay cases in the pharmaceutical sector in the United States. This presentation looked at the FTC's recent Supreme Court success in the Actavis case as well as at its previous and current cases in this area. The presentation included a discussion of the significant impact that pay-for-delay agreements ultimately have on consumers by delaying the market entry of generics.

In the afternoon session, Giovanni Napolitano returned to present on the ways in which copyright can be relevant in competition cases, particularly in the broadcast and media sectors. His presentation looked at collective rights management cases, refusals to deal in the broadcasting sector, resale price maintenance concerns in the book industry and mergers in the music industry.

The final day of the workshop included a second presentation by Dominic Vote. This presentation again returned to the pharmaceutical sector and looked at the product-hopping strategies used by pharmaceutical companies. These strategies are designed to protect the market share of existing drugs from generic competition – for example by making changes to a branded drug to prevent automatic substitution by pharmacies to a therapeutically equivalent generic. The presentation looked at a number of the different strategies being used by pharmaceutical companies and at some of the litigation on this issue.

The workshop concluded with a hypothetical exercise. During this exercise the participants split into three groups to discuss a possible abuse of dominance case involving conduct by a pharmaceutical company to extend its patent protection and prevent generic entry. The groups then came back together to report on their conclusions.

Throughout the workshop, participants contributed case studies from their own authorities. These case studies covered a range of intellectual property related issues. A number of the cases focused on trade mark related concerns, includ-

ing price fixing in the context of a franchise arrangement. Another case looked at copyright and the refusal to licence television channels. The case studies provoked a great deal

of interesting discussion and helped to highlight some of the key issues discussed during the workshop.

table no 3

Number of participants and events attended

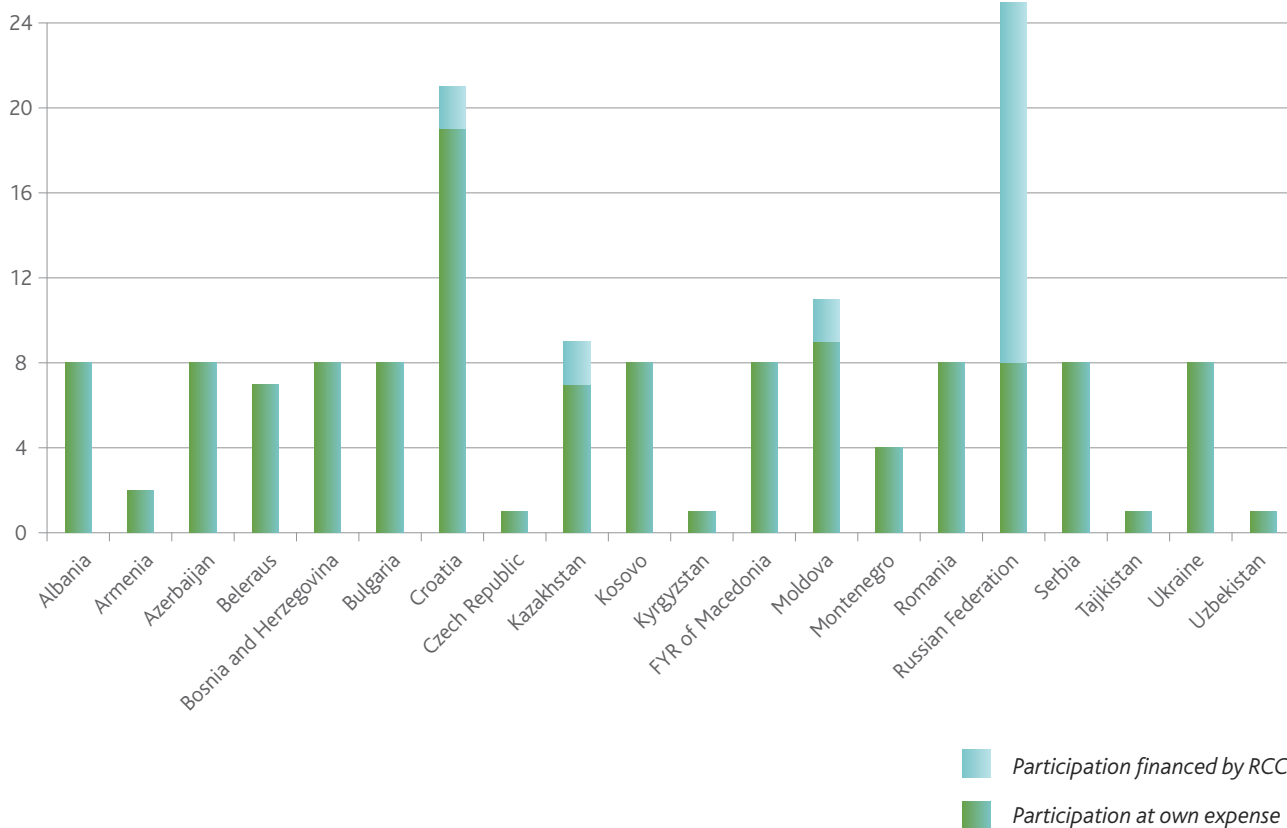
Table No3 provides an overview of the number of participants at the seminars. This summary focuses on the participants of the seminars organised as part of the core activity of the RCC.

ECONOMY	NUMBER OF PARTICIPANTS	PERSON-DAYS	EVENTS ATTENDED
Albania	8	22	5
Armenia	2	6	1
Azerbaijan	8	22	5
Belarus	7	21	4
Bosnia and Herzegovina	8	22	5
Bulgaria	8	22	5
Croatia	21	59	5
Czech Republic	1	1	1
Kazakhstan	9	27	5
Kosovo	8	22	5
Kyrgyzstan	1	3	1
FYR of Macedonia	8	22	5
Moldova	10	26	6
Montenegro	4	12	2
Romania	8	22	5
Russian Federation	25	69	6
Serbia	8	22	5
Tajikistan	1	3	1
Ukraine	8	22	6
Uzbekistan	1	3	1
TOTAL	154	428	

chart no 1

Total number of participants per economy attending seminars organised as part of the core activity of the RCC

Chart No1 provides an overview of the number of participants per economy and to what extent participants were financed by the RCC or their institutions.



B) Special events in the framework of the core activity

a) 21 January, Heads of Authorities' Meeting

17 participants from thirteen countries attended the meeting of the heads of the authorities involved in the work of the RCC.

The meeting consisted of two sessions. In the morning there was a professional session on the topic of regional views on the institutional and procedural aspects of the relationship between competition authorities and courts and develop-

ments in procedural fairness. Speakers from the Czech Republic, Slovakia, Poland and Hungary delivered presentations during the morning session. Małgorzata Krasnodębska-Tomkiel, President of the Office of Competition and Consumer Protection, Poland, Petr Rafaj, Chairman of the Office for the Protection of Competition, Czech Republic, Tibor Menyhart, Chairman of the Antimonopoly Office of the Slovak Republic and Miklós Juhász, President of the Hungarian Competition Authority shared their experience on the topic with participants and discussed this topic in detail.



In the afternoon session on the programme planning meeting participants discussed some RCC related questions and plans for the future.

b) 11–13 June, Workshop on Cartel Investigation Procedures: Leniency Programmes, Dawn Raids and Public Procurement Issues, Rovinj, Croatia

The seminar held outside of Hungary was conducted in Rovinj, Croatia. 25 competition law enforcers from 15 beneficiary authorities took part in a workshop on cartel investigation procedures.

Workshop on Cartel Investigation Procedures

11–13 June 2013



The workshop focused on instruments for effective cartel detection and the most important investigation tool, dawn raids. A large majority of the participant's jurisdictions already have leniency programmes in place and allow for unannounced inspections to be held as part of their cartel

investigation procedures. The workshop gave the participants insights into best practices and experiences from OECD jurisdictions that operate highly successful leniency programmes. Bid rigging and public procurement were also on the agenda in order to stimulate efforts for advocacy and to increase awareness of illegal cartel activity. The exchange of experiences on the preparation and conduction of dawn raids was the other core area of the workshop. Enforcers from some of the most experienced OECD countries presented their knowledge and this was complemented by presentations by the participants on their recent practices. A roundtable discussion followed each presentation. Over the two days there were several exercises which allowed the participants to put the presented subject matter into practice.

Olgica Spevec, President of the Croatian Competition Agency, gave the opening speech of the workshop, followed by opening remarks by Miklós Juhász, President of the GVH. Jon B. Jacobs, representing the US Department of Justice, and Christof Vollmer for the German Bundeskartellamt then presented on leniency programmes in the US, Germany and the EU. They introduced different concepts like immunity, amnesty plus, fine reductions and elaborated on the cooperation requirements. It was a common theme that effective leniency programmes require a transparent and reliable application, the threat of severe sanctions and a high likelihood of cartel detection.

Sabine Zigelski from the RCC started the afternoon with a presentation on cartel detection and public procurement. In her presentation she introduced the OECD guidelines for fighting bid rigging in public procurement. Various forms of bid rigging were examined and the guideline's design and de-

tection checklists were explained in detail. During the latter part of the afternoon the participants engaged in a hypothetical marker exercise. They discussed two different marker applications in breakout groups and determined all the relevant steps to be taken in the hypothetical case after the receipt of the markers.

On the second day Haim Arbiv of the Israel Antitrust Authority gave a presentation on an IAA cartel case, the tree pruning cartel. He gave insights into the working and uncovering of a complex multicompany cartel and detailed all the steps from the first contact with the leniency applicant and evidence gathering to more elaborate investigation methods like wire-tapping and undercover investigations and the evaluation of the collected evidence. Balázs Csépai from the Hungarian Competition Authority followed up with a pres-



entation on ways of generating and obtaining information that may lead to an initial suspicion sufficient for conducting dawn raids. The morning was concluded by a presentation by Marko Brgic, representing the Croatian Competition Authority, on a Croatian bus cartel. This particular case provided an illustration of a successful cartel investigation that relied on evidence obtained through information requests. The cartel contained elements of joint bidding, market sharing, price-fixing and output restrictions. Mukhamed Khamukov from the Federal Antimonopoly Service Russia opened the afternoon session with a presentation on the Russian experience with leniency and dawn raids in cartel investigations and highlighted the successful FAS-activities with a couple of case examples. Jon B. Jacobs and Christof Vollmer concluded the day with presentations on the US, German and EU experiences with the preparation and conduction of dawn raids. Jon gave insights into the US experience with drop-in interviews and Christof also explained the use of forensic IT and talked about legal privilege and how to deal with obstruc-

tion. Both presentations had a highly practical value and showed that different legal regimes come to very similar conclusions concerning the best practices for dawn raids.

The Croatian Competition Agency gave another presentation on a cartel case on the morning of the third seminar day.



Mirta Kapural talked about an office products retailer's association case that had started with a complaint by a retailer who had been excluded from the association and turned out to be a market and customer sharing agreement. The remainder of the day was spent with practical dawn raid exercises. The participants were given different scenarios – entering the premises, first contact with the CEO, protection



of evidence during the search and arrival of the external lawyer – and instructions. The experts performed the roles of company representatives and small groups of participants represented competition agency officials. Each scene was staged and subsequently discussed with all of the experts and participants.

c) 1–3 October, Seminar on Competition in the Electricity Markets, Kazan, Russian Federation

The RCC organises one seminar a year jointly with the Federal Antimonopoly Service (FAS) of the Russian Federation. The 2013 seminar was held at the FAS Centre for Education and Methodics in Kazan, Russian Federation. 25 competition law enforcers from the Russian Federation and from 7 CIS countries participated in the seminar on competition in the electricity markets.

The Russian Federation and the CIS countries are currently making strong efforts to restructure and to open their electricity markets to competition by way of regional integration, unbundling and new rules for regulatory oversight. So the seminar was highly topical and aimed to provide an overview of the state of play in competition law enforcement, regulation, regional integration and future developments in the electricity markets in the represented OECD jurisdictions. This was complemented by presentations by participants from FAS, Moldova and Ukraine who gave insights into the situations on their electricity markets and who spoke about interesting competition law cases. Both during and after each presentation lively roundtable discussions with the OECD experts and the participants took place.

The seminar was opened by Anatoly Golomolzin, Deputy Head of FAS, and Zoltán Horváth, Vice President of the Hungarian Competition Authority (GVH). Sabine Zigelski from the RCC held the introductory presentation on competition in electricity markets and gave a general overview of electricity market characteristics and the Russian electricity market as described by the International Energy Agency. She then analysed the roles of competition law enforcers and the challenges they face in the special settings of the electricity markets. Raquel Tárrega-Lopez from the European Commission followed with a presentation that highlighted the characteristics and developments of the EU electricity markets. The second part of the presentation focused on the definition of product and geographic markets as practised by the European Commission in merger cases, showing the complexity and dynamic nature of market definition in this area.

In the afternoon Anatoly Golomolzin from the Federal Antimonopoly Service Russia gave a comprehensive presentation on the Russian regulatory and competition law enforcement regime in the electricity markets as well on the develop-



Seminar on Competition in the Electricity Markets

1–3 October 2013

ments that have taken place regarding the competitive conditions in the wholesale electricity markets. He drew special attention to the interaction of all the regulatory bodies involved in the supervision of the electricity market and to the enforcement powers and instruments of FAS in general and presented the newly introduced enforcement instrument – the “warning”. He was followed by European Commission representative Károly Nagy, who gave an overview of the European Commission’s practice in establishing market power and of some of the typical forms of abuses of dominance to be expected on electricity markets. Capacity withholding strategies, market partitioning and market foreclosure were explained in more detail. Olli Kauppi for the Finnish Competition Authority held the final presentation of the first day on market power and the Nordic power market. He explained the history and motives for the integration of the Scandinavian electricity market and provided insights into the special features of the Nordic market. The characteristics of hydro-based markets and their consequences for the exercise of market power were explained. A Finnish merger case exam-



ple drew the participants' attention to the relevance of transmission bottlenecks in geographic market definition.

On day two Raquel Tárrega-Lopez and Károly Nagy presented on merger remedies and antitrust remedies in the electricity markets. Raquel introduced the basic principles of the remedy process and the special requirements for remedies in merger cases. She then gave a number of examples – divestitures, unbundling, access remedies and behavioural remedies – that had been chosen in EC merger cases. Károly stressed the special role of commitment decisions in antitrust proceedings as opposed to imposing fines and gave a number of case related examples of commitments that had been accepted. Both pointed out that structural remedies should in general be the preferred option. The regulatory side was then introduced by Debby van der Pluijm from the Dutch Competition Authority ACM. She introduced the ACM and the consumer oriented, problem solving energy oversight philosophy exercised in the Netherlands and the network regulation for transmission and distribution networks. The concept of yardstick competition was explained and the effect of the tariff regulation practice was demonstrated by the impressive savings that have been generated for Dutch households. Dumitru Girdea from the Competition Council of the Republic of Moldova ended the day by reporting on a case where a company active in the distribution of electricity had abused its dominant position on this market by imposing unjustified technical requirements on companies producing and installing electricity meters to improve its own position as a supplier on the metering market as well.

On the final day FAS representative Dmitry Vasilyev provided an overview of the Russian enforcement practice on the electricity wholesale and retail markets. An impressive number of merger and abuse of dominance cases were described, where FAS had successfully intervened. Another abuse of dominance case was presented by Vladislav Dutka from the Ukraine Antimonopoly Committee. In this case a fine was imposed on a local electricity supplier who had abused its dominant position by including unjustified tech-

nical specifications in its contracts with consumers. In this way the local electricity supplier directed all design, construction and installation work connected to household grid connection to its own subsidiary. Gábor Szabó for the Hungarian Competition Authority followed with a presentation on the MAVIR case. This case involved an alleged abuse by a Hungarian transmission system operator and was eventually closed without any abusive practices being established. The case showed the difficulties that arise from the interplay of competition law enforcement in electricity markets with other laws and regulations, especially in a cross-border transmission context and also highlighted some interesting procedural issues.

The seminar was concluded by a presentation given by Edwin Edelenbos from the Dutch Competition Authority on competition and grid development in the Dutch electricity market. Edwin described the structure of the Dutch wholesale market, the interface between regulation and competition oversight and the changes and challenges that the move to smart grids and more renewable energy production entail.



C) Events for the RCC's special audience

a) 23–24 February, European Judges Seminar on Restrictive Agreements: Cases, Trends and Open Questions

On 23–24 February the RCC organised a seminar on European competition law for judges on recent developments in the law on restrictive agreements. The seminar focused on recent developments in cases involving Article 101 TFEU or equivalent provisions in national competition laws. In addition to informing judges about recent developments in the case law, the goal was to help judges to better understand how to organise the relevant steps in the analysis, how to identify relevant evidence, and how to address uncertainties created by some recent judgments of the European Courts.

30 judges from 16 countries participated in the event. The seminar was chaired by Andreas Reindl. The presentations were divided among the chair and additional three speakers, including David Bailey, Kings College, London, Zoltán Bara, GVH, and Simone Warwick, OECD, Paris.

The first morning provided a refresher on basic legal and economic principles in the evaluation of restrictive agreements. This was followed by a discussion in breakout groups which helped participants to explore the boundaries of competition law assessment in situations where non-competition norms and policy goals may affect the analysis under Article 101. The morning session concluded with a presentation of a case involving the evaluation of a complex joint venture

*European Judges Seminar on
Restrictive Agreements*

23–24 February 2013



The presentations focused on providing an overview of recent European judgments and allowed for a detailed discussion of selected national cases where it is typically easier to illustrate evidentiary requirements. Discussions in breakout groups on both days ensured that participants had an opportunity to reflect on some of the issues covered in the presentations.

case. This case had been chosen to show participants how different decision makers can reach different conclusions when evaluating identical facts due to a different emphasis being placed on specific parts of the relevant evidence.

The Friday afternoon session began with a short presentation on the economics of vertical restraints, followed by a presentation on recent cases on the "object/effect" analysis in Article 101 cases. The goal of these two presentations was to provide both an overview of recent cases, including Premier League and Pierre Fabre, and to demonstrate why some of these cases are considered highly controversial. The ensuing discussion was used to reflect on the impact of recent cases on future similar cases before national courts. The afternoon concluded with the presentation of a Hungarian case that raised the same type of evidentiary and analytical questions.



Saturday featured a presentation of a recent UK case involving complex vertical restraints, including evidence presented to the court and the court's selection of the appropriate analytical framework. A short case presentation on how a vertical restraints case can be used for exclusionary purposes was followed by a breakout group discussion of a complex fact pattern involving exclusivity clauses. The fact pattern was built on a case pending before a member state court to illustrate for participants what type of questions they are likely to confront in the private litigation of competition cases. The remainder of the time was used to explore with participants the issues raised in the fact pattern, including market definition, the scope of block exemptions, the assessment of harmful effects, and the assessment of business justifications. The discussion of this hypothetical case demonstrated that many participants had benefitted from the issues discussed previously in the seminar as they were able to apply a sound analytical framework and ask the right questions in a relatively complex case.

The seminar was the second seminar in a row where the RCC tried to offer a slightly more "advanced" agenda which focused less on informing participants on how European cases have been decided in the past and more on how they should approach cases before them when evidence is ambiguous, both parties make plausible claims, and the cases require a more complex assessment.

b) 15–16 November, Seminar on European Competition Law for National Judges on Restrictive Agreements — Basic Economic and Legal Concepts

On 15 and 16 November 2013 the RCC organised the first in a series of three "competition law fundamentals" seminars for national judges. The idea behind the competition law

fundamentals seminars is to provide judges with no or limited experience in competition cases with an opportunity to explore within a short time frame, and with participants in the same situation, the basic legal and economic concepts that arise in European competition cases. The November 2013 seminar focused on restrictive agreements under Article 101 TFEU. Although the fundamentals seminars focus on basic concepts and rules, they are also designed to allow for the discussion of practical questions related to relevant evidence and burden of proof and to provide an opportunity for the discussion of hypothetical cases and the questions raised by participants.

28 judges from 16 countries participated in the event. The number of participants favoured a more interactive format. Even though the seminar, the topic, and the seminar format were new for most participants, many contributed actively in general discussions and breakout groups. The seminar was chaired by Andreas Reindl. The presentations were divided among the chair and three additional speakers, including João Azevedo, European Commission, Zsófia Tari, GVH, and Sabine Zigeliski, OECD.

The seminar focused on basic concepts in Article 101 cases and cases involving equivalent provisions in national competition laws. The goals were to make judges familiar with the key economic concepts involved in competition cases such as market power and consumer welfare, with certain legal standards such as the concept of a "restriction of competition," and with the interdependence of economic concepts and legal standards. The seminar also sought to make judges aware of evidentiary issues in competition cases. In addition, we wanted to inform judges about the fundamental cases in this area and about some of the recent developments that have taken place in the case law that are also likely to show up in national cases, for example concerning restraints related to internet sales. Discussions in breakout groups on both days ensured that the participants had an opportunity to reflect on some of the issues covered in the presentations in a format that allowed for more active involvement.

Friday morning provided an introduction to key economic and legal concepts in the evaluation of restrictive agreements. The seminar opened with a hypothetical fact pattern which was used to illustrate some relevant issues in restrictive agreements cases, such as market power, exclusionary and collusive effects, and efficiencies. This was followed by a

presentation of economic concepts, and a presentation of the basic analytical framework in Article 101 cases that also introduced the distinction between restriction by object and restriction by effect. The morning session concluded with a discussion of a hypothetical case in breakout groups that allowed participants to apply some of the concepts discussed earlier and explore their practical impact in litigated cases.

The Friday afternoon session started with a short presentation on the economics of collusion, followed by a brief presentation on hard core cartels. The main topic of the afternoon was horizontal agreements, with a specific focus

framework and typical groups of restraints that likely play a role in private litigation, and focused on restraints related to internet sales. The discussion of a hypothetical case enabled participants to apply some of the concepts discussed earlier, and to appreciate the difference between exclusionary and collusive effects in vertical restraints cases. The summary of the case hypothetical was used to conclude the seminar.

The agenda provided for a mix of different presentations and opportunities for discussion. Comments and questions were encouraged, as well as discussions among speakers and participants.



on information exchanges and other forms of horizontal agreements. Although the afternoon programme relied more on presentations, there was ample reference to cases and decisions to ensure that judges would find the topic accessible and see their relevance.

The Saturday programme focused on vertical agreements with particular emphasis on intra-brand restraints. It began

*Seminar on European
Competition Law for National Judges*

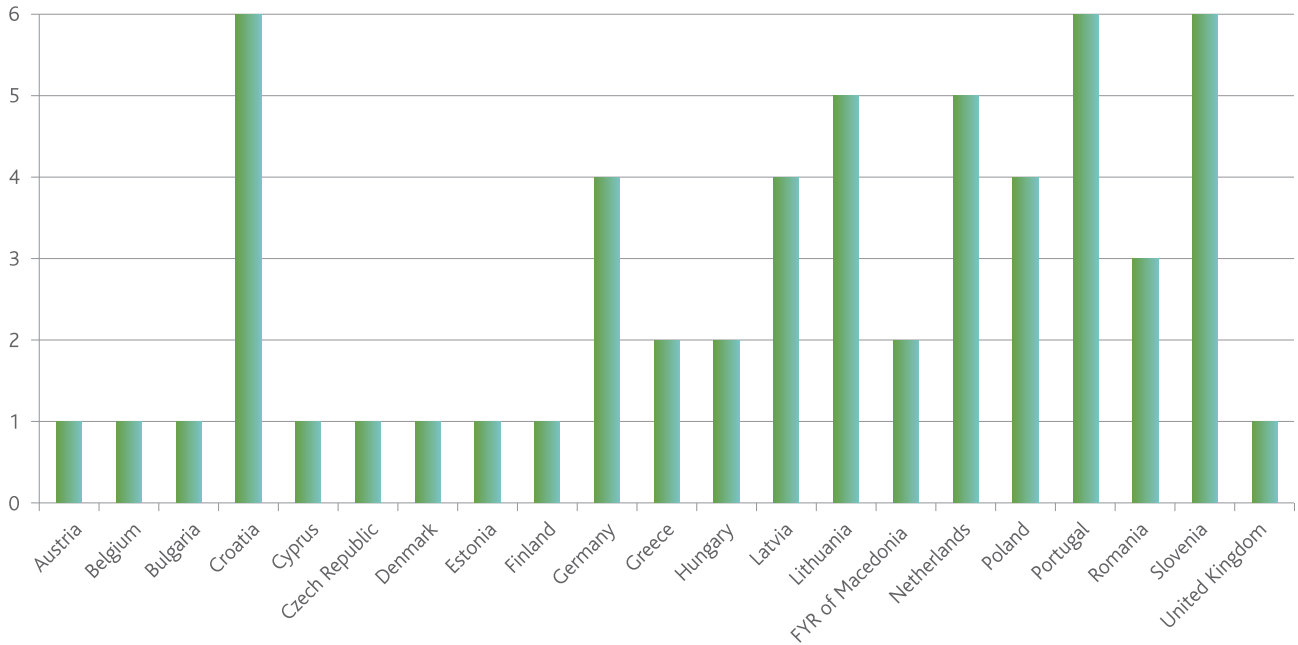
15–16 November 2013



with a discussion of short hypothetical cases that illustrated typical questions in vertical restraints cases, followed by a presentation on the economics of vertical restraints. Additional presentations provided an overview of the analytical

chart no 2

Total number of participants per country for the two seminars organised for European judges



IV. Evaluation of RCC Seminars

Participants are always asked to provide feedback on RCC seminars so that the standard of the events can be maintained and even possibly improved. According to the feedback, participants found that the seminars provided theoretical and practical information that was highly relevant to their day-to-day work and that the seminars also provided a good opportunity for the exchange of opinions between participants and experts. The average value of all of the answers for the entire year was 4.4 out of a maximum of 5.

Participants considered the overall usefulness of the programmes to be either very high or high – 94 percent of respondents rated the seminars on this basis. Based on the feedback, the current distribution of the topics is well re-

ceived. As usual, participants would like more presentations on practical issues and in-depth case analyses, rather than theoretical discussions.

table no 4

Participants' evaluation of events organised by the RCC in the year 2013

DISTRIBUTION OF ANSWERS					
	VERY LOW	LOW	MODERATE	HIGH	VERY HIGH
Overall usefulness of the event	0%	0%	6%	39%	55%
Overall usefulness of the topics	0%	1%	15%	41%	43%
Quality of presentations	0%	1%	7%	43%	49%
Usefulness and quality of materials	0%	0%	12%	49%	39%
Quality of conference facilities	0%	2%	9%	35%	54%
Workshop preparations	0%	0%	8%	41%	51%
Usefulness of hypothetical cases / country contributions / case studies	0%	1%	9%	49%	41%
Overall quality	0%	1%	9%	43%	47%

table no 5

Detailed evaluations by events and by categories

	SEMINAR FOR JUDGES IN FEBRUARY	WORKSHOP IN BUDAPEST IN MARCH	GVH TRAINING IN APRIL	WORKSHOP IN BUDAPEST IN MAY	WORKSHOP IN CROATIA IN JUNE	RCC-FAS JOINT SEMINAR IN OCTOBER	SEMINAR FOR JUDGES IN NOVEMBER	SEMINAR IN BUDAPEST IN DECEMBER	AVERAGE
Overall usefulness of the event	4,5	4,5	4,3	4,6	4,5	4,7	4,6	4,6	4,5
Overall usefulness of the topics	4,3	4,3	3,9	4,4	4,6	4,5	4,0	4,5	4,3
Quality of presentations	4,5	4,2	4,2	4,4	4,6	4,6	4,5	4,5	4,4
Usefulness and quality of materials	4,4	4,2	4,0	4,2	4,5	4,5	4,2	4,4	4,3
Quality of conference facilities	4,6	4,4	4,0	4,3	4,9	4,8	4,2	4,6	4,5
Workshop preparations	4,5	4,4	N/A	4,2	4,8	4,4	4,3	4,5	4,4
Usefulness of hypothetical cases / country contributions / breakout sessions	4,2	4,2	N/A	4,2	4,4	4,7	4,4	4,3	4,3
Average	4,4	4,3	4,1	4,3	4,6	4,6	4,3	4,5	4,4

V. Financial and intellectual contributions

According to the Memorandum of Understanding which was signed by the parties in 2005 ensuring that the RCC operates at the highest level is the task of the founding parties, the GVH and the OECD. Both institutions provide financial and intellectual contributions towards the operation of the RCC. The accumulated experience and expertise of the OECD members also contributes to the training programmes offered by the RCC.

The RCC had a budget of 376 400 EUR for 2013. This includes funds provided by the GVH and the OECD, as well as grants received from the European Commission, the latter of which were used to fund the seminars on European Competition Law for National Judges.

The following tables provide details on the total costs of the operation of the RCC in 2013 by sources of funds, by events and by major categories of costs.

table no 6
The sources of funds

SOURCES OF FUNDS (EUR)	
Gazdasági Versenyhivatal	303 800
OECD	30 000
European Commission (estimated, grants for the judges seminars)	42 600
Total funds	376 400

table no 7

Breakdown of total expenses by items

BREAKDOWN OF TOTAL EXPENSES (EUR)	
A) Direct organisational costs	
Heads of Authorities' Meeting in January	15 100
Seminar for Judges on Restrictive Agreements in February	30 900
Workshop on Exclusionary and Discriminatory Practices in March	44 500
Training Seminar for GVH Staff in April	19 600
Workshop on Analysis and Procedures of Complex Mergers in May	56 500
Workshop on Cartel Investigation Procedures in Croatia in June	44 900
RCC-FAS Russia joint seminar on Competition in the Electricity Markets in October	19 100
Seminar on Restrictive Agreements for Judges in November	27 300
Seminar on Intellectual Property Rights in Budapest in December	44 200
Total direct organisational costs	302 100
B) Overhead and operational costs of the RCC	34 800
C) Staff costs transferred by the GVH to the OECD²	39 500
TOTAL EXPENSES in 2013	376 400

VI. RCC Dedicated Staff

The RCC is a “virtual” centre, thus it does not have a central office but is accommodated in the headquarters of the GVH. The virtual existence of the RCC allows it to concentrate funds on the real purpose of its establishment, that is, organising seminars and inviting and training participants. The virtual structure also facilitates adaptation to changing situations. The RCC is run by a full-time senior competition expert at the OECD headquarters in Paris and by a full-time senior consultant and a consultant who are at the same time employees of the GVH in Budapest.

The work of the RCC is based on the expertise of both the GVH and the OECD. The GVH is responsible for inviting participants and organising all of the practical arrangements for the RCC’s programmes. The expert at the OECD sets up the content of the programmes and invites speakers to the seminars. The GVH provides speakers or panellists for each seminar. Other speakers are invited from different OECD member states.

² On the basis of the Memorandum of Understanding, the GVH made a voluntary contribution to the OECD for staff-related purposes.

Seminars' speakers of the year 2013



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Haim ARBIV
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João AZEVEDO
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Stephan BARTHELMESS
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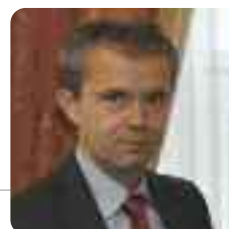
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Seminars' speakers of the year 2013



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MELIK-SHAHNAZAROV



Taras
KOBUSHKO



Oxana
WAGNER-MUZYKA



Ingrid
MESTYÁNNÉ LANDISHEV

