

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**RECENT DEVELOPMENTS IN RAIL TRANSPORTATION SERVICES**

**-- Hungary --**

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## **1. Introduction**

1. Hungary's rail network is an important part of the EU rail market as a result of its location in Central-Eastern Europe. The liberalisation process started soon after the Hungarian accession to the EU in 2004, primarily in the market of freight transportation. This submission aims to describe the current regulatory framework based on the Railway Act<sup>1</sup> adopted in 2005, as well as the structure of the railway market. Due to a lack of real competition in the passenger service market, this paper primarily focuses on the structure of the rail freight market.

2. As the opening up of the rail freight market resulted in a serious conflict of interest for the incumbent companies, they tried to minimise their losses by restricting competition. The Gazdasági Versenyhivatal (the Hungarian Competition Authority, hereafter referred to as GVH) initiated competition supervision proceedings against the incumbent companies and found that they were engaged in a cartel agreement; moreover one of them had abused its dominant position. These cases will also be dealt with as part of the present submission.

## **2. Regulatory framework**

3. The EU legislation governing the railway industry requires that the essential functions relating to the management of the infrastructure are independent of railway undertakings in order to ensure that there is no discrimination between operators. To satisfy this requirement, Hungary created the following system.

### ***2.1 Infrastructure management***

4. The Hungarian railway network infrastructure is managed by two incumbent companies: MÁV Magyar Államvasutak Zártkörűen Működő Részvénytársaság (hereafter referred to as MÁV) and Győr-Sopron-Ebenfurti Vasút Zártkörűen Működő Részvénytársaság (hereafter referred to as GySEV).

5. The open access railway network is owned by the Hungarian State (with the exception of around 300 km which belongs to GySEV), but MÁV and GySEV are entrusted with the maintenance and management of the network for an indefinite period of time.

6. The most important duty of the infrastructure managers is to operate the open access railway network and provide those services which are set out in the Network Statement for authorised applicants. In case of emergency the infrastructure managers are authorised to revoke the allocated train paths.

### ***2.2 Capacity allocation***

7. In the event that the infrastructure managers are not independent companies, the capacity allocation of the railway network shall be undertaken by an independent entity in accordance with the relevant EU legislation. Due to the fact that MÁV and GySEV operate the railway network as non-independent and integrated companies in their roles as infrastructure managers, an independent state owned company. The VPE Vasúti Pályakapacitás-elosztó Korlátolt Felelősségű Társaság (Rail Capacity Allocation Office Limited Liability Company) (hereafter referred to as VPE), was established in 2003.

8. In accordance with the Railway Act, VPE shall perform the following tasks:

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<sup>1</sup> Act CLXXXIII of 2005 on Rail Transport

- the capacity allocation of the railway network;

The open access railway network can be used by the infrastructure managers and authorised applicants. Authorised applicants need to apply to an infrastructure manager for train paths and services.

- the development of the Network Statement of the non-independent infrastructure managing railway company;

The objective of the Network Statement is to lay down the conditions and the order of procedures for accessing the open access rail network, for the use of the rail network, and for the use of basic, supplementary, additional and ancillary services.

The rules laid down in the Network Statement apply equally to the infrastructure managers, the authorised applicants using services which are provided within the framework of the open access to the railway network, and VPE.

An organisation authorised to open access or a non-independent infrastructure managing company may bring a case at the rail regulatory body if it thinks that the Infrastructure Manager or VPE has failed to fulfil any of its obligations set out in the Network Statement.

- the determination of the Charging Methodology and Charging Document, and the determination of the network access charges that must be paid by authorised applicants.

The VPE prepared by 31 August 2008 the Charging Methodology in compliance with Regulation No 83/2007 (X.6) GKM-PM on the frameworks of the network access charging system. VPE determines the concrete network access charges for the given timetable year on the basis of the Charging Methodology and the data from the last closed business year of the infrastructure managers.

9. Previously the industrial rail infrastructure which connected industrial areas to the main infrastructure network was not owned by the State and as a result VPE could not allocate the capacity. This regulatory environment caused competition concerns, which can be seen in the case Vj-22/2005 of the GVH. The new Railway Act resolved these concerns by providing that connected trains are deemed to be part of the open access railway network regardless of their ownership and the management.<sup>2</sup>

### **2.3 Rail regulatory body**

10. The independent railway regulatory body (Hungarian Railway Office, hereafter referred to as HRO) was set up in 2006. In 2008 the HRO was terminated and its tasks and responsibilities were transferred to the National Transport Authority (hereafter referred to as NTA). The main regulatory tasks of the NTA are as follows:

#### **Licensing**

11. In order to provide freight, passenger or traction services, or to manage the railway infrastructure, an *operation licence* must be obtained from the NTA.

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<sup>2</sup> Act CLXXXIII of 2005 on Rail Transport 49 § (4)

12. Railway undertakings which are registered in Hungary may only use the railway network if they hold a *safety certificate* that has been issued by the NTA. In order to ensure the safe operation of the railway network such a certificate confirms that the railway company in question has established a safety system that satisfies the requirements set out by the technical specifications of interoperability (TSI) and national safety rules.

### ***Market monitoring***

13. The NTA continuously checks whether infrastructure managers, railway undertakings, and the capacity allocation body comply with the railway legislation that is in force. The purpose of these checks is to identify the non-compliant operations. When monitoring the market the NTA also collects data on the railway market and analyses market developments. The NTA participates in the EU-wide data collection of the Rail Market Monitoring Scheme and in the market monitoring activity of the Independent Regulators Group – Rail (IRG-Rail).

14. The NTA annually issues reports summarizing its activity in market monitoring.<sup>3</sup>

### ***Market supervision***

15. As part of its market supervision the NTA ensures that infrastructure managers, railway undertakings and the capacity allocation body comply with the legislation governing the operation of the market. It also oversees non-discriminatory access, the content of the Network Statements and track access contracts and the setting of the charges, in particular regarding the costs of the infrastructure managers.

16. According to the Railway Act, the railway regulatory body and the GVH shall cooperate in the supervision of the railway market. The Hungarian Railway Office and the GVH concluded a cooperation agreement in 2006 and have maintained their beneficial cooperation over the years. Due to the organisational changes that have taken place within the railway regulatory body, an amendment to the cooperation agreement needs to be made. The conclusion of the amended agreement is currently in progress.

### ***Enforcement of rail passengers' rights***

17. The role of the NTA in the area of the enforcement of passengers' rights is to ensure whether the railway undertakings are complying with the national legislation. The NTA is also responsible for investigating complaints lodged by rail passengers. Complaints can be submitted if a complainant is not satisfied with the decision of a railway undertaking.

## **3. ECJ judgment in the case C-473/10.**

18. When evaluating the Hungarian regulatory system it is important to take into consideration a recent judgment of the European Court of Justice (hereafter referred to as ECJ). An action was brought against Hungary before the ECJ by the European Commission (hereafter referred to as Commission) for a failure to fulfil its obligations under Article 258 of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU). In the opinion of the Commission Hungary had failed to completely implement Directives 91/440/EEC and 2001/14/EC.

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<sup>3</sup> See: <http://www.nkh.hu/Vasut/tevekenysegek/vasutitarsmuk/piacijelentesek/Lapok/default.aspx>

19. In its first complaint, the Commission criticised Hungarian legislation for entrusting the task of **traffic management** to the two management infrastructure companies, namely to MÁV and the GySEV, and not to VPE, because, in its view, traffic management covers, to an extent, train path allocation, in particular in the event of disruption to the service or danger.

20. The ECJ found that in Hungary, VPE, as an independent body, solely allocates train paths and infrastructure capacity. The traffic manager has no decision-making powers in this area and has no control over train paths or capacity allocation. Consequently, traffic management includes activities forming part of infrastructure management and consists not in the adoption of decisions concerning the allocation of train paths but in implementing or enforcing such decisions. It was apparent from these considerations that traffic management cannot be regarded as an essential function that must be entrusted to an independent entity. Since according to EU rules for infrastructure management outside essential functions may be entrusted to railway undertakings, traffic management may therefore be assigned to an infrastructure manager which is also a railway undertaking, as is the case in Hungary. As a result, the first complaint relied on by the Commission in support of its action was not accepted by the ECJ.

21. According to the Commission, the Hungarian legislation conflicted with the provisions of the governing EU Directives in so far as the **detailed invoices** for the charges to be paid for the use of infrastructures **are drawn up** by the infrastructure managers, namely by MÁV and GySEV, which are also railway undertakings. Since, in Hungary, the specific calculation of the amount of the charge that is payable is carried out by the VPE, the Commission's first argument, to the effect that invoicing forms part of the determination of charges, was not accepted by the ECJ.

22. The Commission also claimed that Hungary had failed to lay down conditions to ensure that the **accounts of infrastructure managers are balanced**, contrary to the requirements of Article 6(1) of Directive 2001/14. It noted that the Railway Act provides that the minister responsible is to undertake, by contractual agreement, to fund all expenditure that is justifiably incurred in the management of the network by the railway undertaking entrusted with infrastructure management. Since the draft contractual agreement was in the process of being prepared at the time, the ECJ found that Hungary had failed to comply with its obligation.

23. Since then Multi Annual Contracts have been concluded between the Ministry of National Development and the infrastructure managers (MÁV and GySEV) for a period of five years, which contain the rules on the financing of the infrastructure management.

24. Moreover, the Commission claimed that the Hungarian legislation did not contain any measure which ensured the application of the 'direct costs' principle, contrary to the requirements of EU law. Since it was common ground that Regulation No 83/2007 (X.6) GKM-PM had not introduced any method for calculating charges based on the direct costs principle at the expiry of the period laid down in the reasoned opinion, the complaint raised by the Commission was well founded according to the judgment of the ECJ.

25. Having regard to the decision of the ECJ it can be concluded that the implementation of Directives 91/440/EEC and 2001/14/EC has been duly performed with the exception of the abovementioned issues. Taking into account the fact that the criticised deficiencies of the Hungarian legislation (lack of a contract between the minister and the infrastructure managers and the application of the direct cost principle) are currently implemented, the railway regulation and organisation system can be considered to be mainly in conformity with EU law.

#### 4. The Hungarian railway market

##### 4.1 Railway undertakings

26. Historically there are two incumbent railway companies in Hungary.

27. **MÁV** is one of the incumbents in Hungary, and with its 20,000 employees, it is one of the country's largest employers. In 2003 MÁV was split into 5 business units (Traction, Passenger Services, Freight Services, Engineering services and Infrastructure management) and the accounts of all the business units of MÁV were separated.

28. MÁV Cargo Zrt. was founded as a subsidiary of MÁV in 2005, which became the successor of the freight business of MÁV. Two years later MÁV Cargo Zrt was privatised and Rail Cargo Austria purchased its shares in 2008. Since this time MÁV has not provided freight services.

29. From 2007 MÁV continued their operation as a separate branch of companies. Passenger transport is operated by MÁV-START Zrt., traction services are provided by MÁV-TRAKCIÓ Zrt and vehicle maintenance and servicing is operated by MÁV-GÉPÉSZET Zrt.

30. **GySEV** is an integrated rail and infrastructure company with its own rail network of 287 km located on the territory of both the Republic of Austria and Hungary. It is active in rail transport of both passengers and freight (GySEV CARGO Zrt.) in Austria and in Hungary, and focuses on rail freight cross-border transport between Austria and Hungary. GySEV is jointly controlled by Hungary (65.6 % of the shares), the Republic of Austria (28.2 % of the shares) and STRABAG SE (6.1 of the shares).

31. GySEV strongly focuses (over [90-100] % of its overall activity) on cross-border rail freight transport between Austria and Hungary as it was historically founded to facilitate cross-border rail transport in the Dual Monarchy of Austria-Hungary. In Sopron, GySEV operates a logistics centre with a marshalling yard and a handling terminal and offers all logistics services in relation to freight transport (e.g. warehousing, shipment and transshipment from road to rail traffic, customs clearance, and arrangements for transport) primarily from Western to Eastern and South-Eastern Europe.

32. **GySEV CARGO Zrt.** was established by GySEV based on the decision of the Competition Directorate General of the European Union relating to the acquisition of control over MÁV Cargo Zrt., as well as on the commitment of Hungary and the Republic of Austria as owners of GySEV.

33. GySEV CARGO Zrt. is a legally independent company engaged in freight transport and has been carrying out the freight transport and logistics activities of GySEV since the beginning of 2011.

34. **Rail Cargo Hungaria Zrt.** (hereafter referred to as RCH) is the largest company in the railway freight market. Due to the privatisation of MÁV Cargo Zrt in 2008, RCH became the subsidiary of the state-owned Austrian-based railway company ÖBB Holding AG, which is engaged in freight transport as well as freight forwarding. RCH is active, inter alia, in Austria, Germany, Slovenia, Hungary and Slovakia.

35. **Others:** Until now 37 railway undertakings (out of which 10 companies were founded in EEA countries other than Hungary) have obtained operation licences for nation-wide freight transport services. Immediately after the opening of the market in 2004 four undertakings applied for operation licences: MVM Magyar Magánvasút Zrt., CER Zrt., Floyd Zrt., MÁV-Hajdú Kft. They were all granted licences and have acquired a remarkable market share in the freight market, especially MVM Magyar Magánvasút Zrt. and CER Zrt.. A few years later other companies entered into the market eg. AWT Rail Hu Zrt., Eurocom Rail Cargo Zrt, Train Hungary Kft, DB Schenker Rail Hungária Kft, Swietelsky Vasúttechnika Kft. The first piece of negative news to come from the newly liberalised freight market was the bankruptcy

of Eurocom Rail Cargo Zrt, which highlighted for the competitors the dangers of excessive rebates and favourable paying conditions.

## 4.2. *Freight transport services*

### 4.2.1 *Market-structure*

#### *Segmentation of the rail freight market*

36. In Hungary the railway companies provide services under both of the two basic forms of rail freight transportation: transportation by **block trains** and by **single-wagon trains**.<sup>4</sup> The provision of single-wagon services requires a more complex organisational structure than the provision of block train services. It requires specific infrastructure such as marshalling yards in order to allow for the efficient assembly of the individual wagons. In Hungary primarily the incumbents run a comprehensive (nation-wide) single-wagon system for reasons of economies of scale and because the previous entries into the Hungarian market focused to the area of block train services.

#### *Market shares, level of concentration*

37. The new undertakings that entered into the market acquired remarkable market shares. The joint market share of the two incumbent companies (RCH and GySEV Cargo Zrt.) decreased to about 85%. While this is still a very high market share, in the block train transportation business (which amounts to about 50% of the freight transport market) the decrease of the market share of the incumbents is even higher (about 20-25%), due to the performance of the new entrants.

38. Based on estimations, the market shares of the companies involved in the rail freight market were the following in 2010: RCH: 73%, GySEV Cargo Zrt 11. 5%, MMV Magyar Magánvasút Zrt: 5%, CER Zrt.: 3.2, others 7% (AWT: 1.6%, Floyd: 1.6%, Train Hungary: 1.3%).

39. According to a market research study published with the support of the GVH, the results of the liberalisation can be observed primarily in single-wagon transportation. The new private companies are able to increase competition by offering services which are of a higher quality than those which are provided by the incumbents. Although prices also decreased, in the opinion of the new private companies they could acquire clients by focusing primarily on enhancing the quality of their services rather than on price competition. In addition, some of them emphasised that they have new clients which they did not acquire from the incumbents. They did not forecast the significant increases in their market shares as the incumbents are effective at retaining their clients.<sup>5</sup>

40. The NTA publishes its market report quarterly. In this report it measures the concentration of the rail freight market by calculating the Herfindahl-Hirschmann Index (HHI) thereof. In the first quarter of 2012 the HHI was 4930 with respect to the turnover of the companies, 4674 with regards to the weight of the cargo, and 4762 concerning the performed ton-kilometer. According to this data it can be concluded that the concentration is still high in the freight market but that it is continuing to decrease.

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<sup>4</sup> Block trains are entire trains running from a single point of origin to a single point of destination. Single-wagon trains are assembled in a marshalling yard in the region of origin, transported to a marshalling yard in the region of destination and disassembled into single-wagon loads for transport to their final destination.

<sup>5</sup> Édes Balázs-Gerhardt Erik-Micski Judit [2011.]: Competitive assessment of the first period of the liberalization on the rail freight market, In: Competition and Regulation, Hungarian Academy of Sciences, Budapest.

41. In order to acquire a picture of the status of the liberalisation process it is useful to take into account the LIB Index<sup>6</sup> performed by IBM Global Business Services.<sup>7</sup> As regards to Hungary, the LIB index of the rail freight market is 780 points, which means that Hungary is in the “On Schedule” group.

#### **4.3 Passenger transport services**

42. Due to the lack of liberalisation of the domestic passenger transport, i.e. the third EU railway package only liberalised the international passenger traffic, there are still no external railway companies active in that segment in Hungary apart from the incumbents MÁV and GySEV. The domestic routes are used for services provided exclusively under public service contracts. As the public service contracts for passenger transport are still awarded directly, no competition has arisen in that segment.

43. For this reason the market concentration is incredibly high, the Herfindahl-Hirschmann Index (HHI) of the sector calculated by the NTA is 9229 according to the turnover of the companies concerned. The LIB Index performed by IBM Global Business Services is 592, which means that Hungary belongs to the “Delayed” group.

### **5. Competition Law Enforcement**

#### **5.1 Case Vj-22/2005**

44. The GVH initiated a proceeding in the beginning of 2005 to investigate whether MÁV had abused its dominant position by: (1) causing unreasonable additional costs to its competitors on the freight transport market when it required bank guarantee as a precondition of the conclusion of the 2005 network access agreements; (2) hindering, impeding and delaying access to non public industrial sidetracks; (3) concluding long term transport agreements that contained exclusivity clauses (English clauses) with the most significant bulk-shippers, thereby foreclosing the access of new entrants to a significant part of the freight transport market.

45. The findings of the GVH regarding the abovementioned three facts were as follows:

#### ***Requiring bank guarantee as a prerequisite for the conclusion of the network access agreements for 2005***

46. Since VPE’s decision concerning capacity allocation was not sufficient itself for the use of the railway network, the railway companies should conclude network access agreements with the infrastructure managers MÁV and GySEV. In 2005 MÁV prescribed a new condition for the conclusion of network access agreements with the railway undertakings. MÁV requested that each railway undertakings present an unconditional bank guarantee equivalent of 2.5 months’ portion of the annual network usage charge (20 per cent of the annual charge) in order to prove its financial credibility. In Hungary railway undertakings receive their operating licences only if they have fulfilled the conditions of financial capability. During 2004 there had been no payment difficulties and MÁV could not refer to any situation which would have indicated any increasing risk on its side. Since the operating licence was in itself a

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<sup>6</sup> The LIB Index analyses and compares the legal and practical market access barriers that exist in the EU member states from the point of view of an external railway company that is seeking and is capable of market entry.

<sup>7</sup> IBM [2011]: Rail Liberalization Index 2011, Market opening: comparison of the rail markets of the Member States of the European Union, Switzerland and Norway. IBM Business Consulting Services, in cooperation with Christian Kirchner, Brussels  
[http://www.deutschebahn.com/site/shared/en/file\\_attachments/position\\_papers/study\\_rail\\_liberalisation\\_index\\_2011\\_complete\\_version.pdf](http://www.deutschebahn.com/site/shared/en/file_attachments/position_papers/study_rail_liberalisation_index_2011_complete_version.pdf)

guarantee of an undertaking's ability to fulfil its financial obligations, there was no reason for MÁV to require any additional guarantees. Consequently, the requirement of a bank guarantee meant that there was an indirect increase of the network usage charge and this which weakened the economic position of new entrants and restricted competition on the rail freight transport markets. As a result, this behaviour qualified as an abuse of a dominant position.

47. MÁV lodged an appeal against the decision of the GVH before the Metropolitan Court of Budapest. After contradictory court rulings the Hungarian Supreme Court declared in its final decision that the requirement of an unconditional bank guarantee in the case in question was not contrary to competition law.

***Hindering, impeding and delaying access to non public industrial sidetracks***

48. At the time of the investigation industrial and other kinds of side-tracks were not part of the national open access railway networks and the vast majority of them were either owned or managed by MÁV. Thus capacity allocation was not undertaken by VPE but remained under the discretion of MÁV. Consequently, the GVH established the dominant position of MÁV on the market of access services to non public tracks necessary for rail transport.

49. On the one hand MÁV refused to grant access to the industrial sidetracks, on the other hand it unduly delayed the performance of its competitors by not giving access to the side tracks for loading. MÁV had no reason acceptable under competition law for the refusal. Access cannot be denied by referring to property rights over the industrial side-tracks, since competition law should prevail over ownership rights in the case of essential facilities.

50. Since MÁV had hindered and made it more difficult for the competitor private railway undertakings to access the industrial train tracks and the belonging infrastructural services, the GVH found that it had abused its dominant position.

51. With respect to this ground, the decision of the GVH was upheld by the Supreme Court.

***Concluding long term agreements containing exclusivity clauses***

52. MÁV concluded framework agreements for three years with three major customers of the bulk shipping market (BC, MAL, MERT) within six months preceding the opening up of the market, and with a fourth undertaking (MOL) seven months after liberalisation. The quantities concerned in these agreements represent, on average, 30-40 per cent of the annual volume of this market. MÁV also intended to negotiate similar agreements with other further undertakings as well.

53. The GVH found that the long term agreements had restrictive effects for the following reasons:

- 1) The agreements were concluded with bulk shippers for whom railway is an unavoidable mode of transport; therefore they would obviously consider the offers of new entrants. These shippers would be the prime targets of new entrants as well.
- 2) The framework agreements covered a significant part of the market as they were concluded with the biggest shippers.
- 3) The English clauses worsened the situation of new entrants as they revealed sensitive information belonging to them.

- 4) The framework agreements had a duration of at least 3 years, thereby foreclosing a significant part of the market in a period particularly important for new entrants, namely when they should be establishing themselves on the market.
- 5) Shipping with another company during this period was qualified by MÁV as a quasi breach of agreement.
- 6) The framework agreements could not be terminated in an ordinary manner. Termination of the agreement and breach of agreement were sanctioned seriously, including the withdrawal of fee discounts.

54. Based on the above mentioned circumstances, the HCA established that the framework agreements had a cumulative effect of foreclosing the rail freight transport market from new entrant, private railway undertakings for 2.5-3 years following the opening up of the market and therefore qualified them as serious restrictions of competition law.

55. With respect to this ground, the decision of the HCA was upheld by the Supreme Court.

56. Since MÁV endangered, in an unjustified manner, the opening up of the market and the position of new private railway entrants on the railway freight market, the HCA found that MÁV had abused its dominant position and imposed a fine of 1 billion HUF (approx. 4 EUR million) on MÁV.

## **5.2 Case Vj-3/2008**

57. The scope of the investigation of the HCA was: (1) the uniform list prices with regard to the rail freight transport segment applied by GySEV and MÁV concerning the period between 1 May 2004 and 31 December 2005, and applied by GySEV and RCH concerning the period as of 1 January 2006; (2) and the cooperation agreement between GySEV and RCH that was in effect from 1 January 2006 and the parties' conduct related to this agreement. The proceeding aimed to assess whether the above mentioned practices were suitable to restrict competition pursuant to Article 11 of the Hungarian Competition Act and Article 101 of the TFEU.

58. Before liberalisation took place, the two incumbents integrated railway undertakings (MÁV and GySEV) were providing infrastructure services and rail freight transport services to customers. The incumbents carried their freights within their own infrastructures (their own respective railway networks), and when they reached each other's borderline, they passed the freight to their competitor (without outreaching their "traditional" infrastructures), who was then able to carry it on within its own infrastructure. As a result of the liberalisation process, the use of the public railway network became possible for railway freight transport operators that did not possess their own tracks. For the incumbent railway operators liberalisation made it possible for them to provide rail transport services outside the borders of their respective former infrastructure and service networks.

### ***The cooperation agreement and related practices of the parties***

59. RCH and GySEV concluded a cooperation agreement (in force as of 1 January 2006) that allowed the parties to provide joint services to their customers. In its preamble, the cooperation agreement highlighted that the main aims of the parties were, inter alia, to (i) maintain market shares, and, if possible, to increase them, (ii) stabilise their presence on a regional level, (iii) create and reinforce strategic alliances and partnerships, and (iv) ensure a smooth transition into the era of liberalisation, while reinforcing the already existing co-operation. By this cooperation agreement the parties mutually authorised each other to conclude customer contracts on behalf of each other, which meant that the parties mutually represented each other when making offers or discussing prices with customers. The agreement also contained a

revenue-sharing mechanism which provided that the parties shared their revenues according to the size of “their” infrastructure affected by freight transportation orders jointly performed by the parties.

60. In addition to the wording of the cooperation agreement, evidence concerning the related practices of the parties showed that they did not (or only exceptionally) carry out freight transportation activities on the “other’s infrastructure. In the proceedings the HCA review was not focused on the cooperation agreement itself, but rather on the overall practice of the parties. Thus the HCA established that a market-sharing agreement existed between RCH and GySEV. According to this market-sharing agreement, RCH and GySEV undertook to refrain from entering each other's market if the transportation affected only the “infrastructure of the other party”. This meant that when a cargo had to be delivered through both the infrastructure of MÁV and GySEV, RCH and GySEV organised the transport so that each party delivered the transported cargo to the border of its service (infrastructure) network, where the other party took over and continued the transportation on the territory of its “own market” (according to the so called system of consecutive transportation).

### *Uniform price lists*

61. Between 1 May 2004 and 31 December 2005, GySEV and MÁV, and later between 1 January 2006 and 17 July 2007, GySEV and RCH, issued uniform lists on the calculation of prices for freight transport services. They published and modified their tariff systems at the same time (in general, it occurred on a yearly basis). The price lists were identical, both substantially and formally; moreover the service components, rates and the method of the pricing policy were also determined on a unified basis.

62. The HCA established that the two most significant players on the rail freight transport market applied uniform list prices based on their agreement. The parties claimed that as a consequence of the rebates provided by them, the list prices were only rarely used in practice. However, this did not eliminate the fact that they used the price lists as a common ground for action and that were still capable of influencing the pricing behaviour of close competitors.

63. As a result, the HCA established that RCH and GySEV had concluded a **market-sharing agreement** which aimed to geographically share the freight transport market among themselves. This agreement was in effect from 1 January 2006 to 25 May 2009. Additionally, the HCA also established that the - hypothetically - competing undertakings had applied **uniform list prices** that could be regarded as a restrictive price agreement.

64. Besides establishing the infringement, the HCA imposed a fine of 300 million HUF (approx 1 million EUR) on GySEV, 100 million HUF (approx 300 thousand EUR) on MÁV and 850 million HUF (approx 2.8 million EUR) on RCH.

## **6. Final remarks**

65. Due to the liberalisation of the rail freight market new railway undertakings entered into the market. These undertakings acquired a remarkable market share. Although intra-model competition increased in the rail freight transportation, its competitiveness with other modes of transport remained quite low. The share of the rail freight transportation in the entire transportation market was around 19% in 2012 (with the exception of bulk goods, where the role of railway freight transportation is more decisive) which means that there is still large room for improvement regarding intra-model competition.

66. Moreover, it should be noted that market entries focused on the block trains transportation, which is a much more profitable segment than the single-wagon train transportation conducted primarily by the incumbents. The competitiveness concerning this kind of single transportation is very weak in comparison to road haulage.

67. The Hungarian Parliament has recently passed a law on introducing an electronic, distance-based toll system for cargo vehicles, which might decrease the negative discrimination existing towards the railway freight transportation. The new system will begin on 1 July 2013.

68. Besides, it can be mentioned that the Hungarian government decided this year to build a double-track railway, so called V0 railway, which would allow international freight traffic to bypass congested lines in the Budapest area. The main purpose of the V0 would be to divert traffic on Hungary's busiest transit route from Austria towards destinations in the east and the Balkans away from Budapest. If the funds are made available, construction could begin as early as 2017 and the line would take three years to build.

69. Hopefully, the later changes will contribute to mitigating the competitive disadvantages of the railway freight market regarding intra-modal competition.