

Unclassified

DAF/COMP/AR(2015)38

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

21-Oct-2015

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2015)38
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN HUNGARY

-- 2014 --

27-28 October 2015

This report is submitted by Hungary to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.

JT03384601

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

TABLE OF CONTENTS

1.	Changes to competition laws and policies, proposed or adopted	3
1.1	Changes to the narrower legal environment	3
1.2	Changes to the broader legal environment	4
2.	Proceedings.....	4
2.1	Unfair manipulation of decisions of trading partners, and unfair commercial market practices against consumers	6
2.2	Restrictive agreements.....	9
2.3	Abuse of dominant position.....	12
2.4	Control of concentrations	13
3.	Lessons of the court reviews of the GVH's decisions	14
4.	Amicus curiae work.....	15
5.	Competition advocacy – commenting on regulations and other drafts.....	15
6.	Competition Culture	16
6.1	The activity of the Competition Culture Centre	16
6.2	The activity of the OECD-GVH Regional Centre for Competition in Budapest	18
7.	Cooperation with other organisations.....	19
8.	International relations	19
9.	Technical conditions and other information	20

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

1.1 Changes to the narrower legal environment

Amendment of the Competition Act in 2014

1. Parliament enacted a major amendment of the Hungarian Competition Act¹ in November 2013, with a number of its provisions – mostly those affecting the legal status of the GVH and its legal relationship with its employees – entering into force on 1 January 2014, and the remaining majority of amendments, typically relating to procedural law, entering into force on 1 July 2014.

2. The amendments were required primarily to assure the coherence of the legal system. Furthermore, recent experience gained in the practical enforcement of the law and the trends taking place in international competition law, the latter of which are continuously closely monitored by competition law and enforcement experts in Hungary, coupled with advances in the work of competition authorities (in particular, relating to the competition law of the European Union) also rendered the review of Hungarian competition law and of some other related relevant legislation necessary and necessitated changes to the existing procedural rules.

3. The Competition Act contains new or modified clauses concerning the following main regulatory areas:

a) In the field of the control of the concentrations of undertakings, the amendments aim to enhance the efficiency, transparency and predictability of merger control and to make it more customer friendly, while assuring at the same time that the GVH has effective and adequate tools to use against undertakings that fail to abide by the rules applicable to the authorisation of concentrations.

b) As an important substantive change, the legal instrument of the prohibition of putting measures into effect was introduced: the amended Act clearly states that concentrations can only be implemented after the clients have received the authorisation of the GVH.

c) Pre-notification, which had already been present in the practice of the GVH, was reinforced in the legislative change. According to the applicable rules, the GVH provides assistance to competent legal practitioners involved in proposed concentrations regarding the data that must be disclosed and the documents that must be attached to specific applications for authorisation.

d) Other important changes include the shortening of the time limit of Phase I procedures, as well as the fact that time limits are counted from the date of receipt of the application rather than the date following the receipt of further information required to remedy deficiencies. In the Phase I (so-called simplified) procedure the former 45-day time limit was reduced to 30 days.

e) Pursuant to the Competition Act, since 1 July 2014 the Competition Council has had the power to initiate consultations with other stakeholders in the concentration (commonly known as ‘market test’) in order to gauge their position concerning the condition or obligation to be imposed.

f) Amendments also affect the types of procedures (upon application or on own initiative), stages of proceedings and the procedural position of the persons entitled to access documents, as well as establish a coherent system of access to documents that is sufficiently differentiated to accommodate various types of data.

1 Act CCI of 2013 on the Amendment of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices and Other Regulations Relating to the Proceedings of the Hungarian Competition Authority

g) In the context of the protection of business secrets the amended Competition Act allows the GVH to grant access to business secrets or certain other privileged information of the other party, with due consideration to the rights of the data owner and to the protection of other privileged information and the statutory rights of the party requesting access, in particular the conflicting rights to defence and to a legal remedy, with appropriate practical restrictions and secrecy obligations where required and following consultation with the parties concerned.

h) The new rules expressly authorise the GVH to access and manage all personal and privileged information to the extent and for the duration necessary to perform its duties, except where this is precluded, or conditions are imposed by a separate act.

i) In respect of public service officials employed by the GVH, a uniform classification system and a predictable promotion regime have been implemented: in future the promotion system will be more gradual and will be based on the professional experience that has been gained by the employee in question during his or her term of public service.

j) Under the new regime, the rules governing misleading and comparative advertising that fall within the competence of the GVH have become incorporated in the Competition Act.

1.2 Changes to the broader legal environment

4. In 2014 the Constitutional Court adjudicated one complaint against the judgment of the Curia on competition matters:

a) The Constitutional Court analysed in detail the human rights jurisprudence of the EU and of the Strasbourg court and established that in terms of fundamental rights, the competition supervision proceeding complied with the standards enshrined in international legal safeguards. It found that due to the blanket nature of the regulation of competition, jurisprudence plays a major role in competition cases, putting flesh on the facts of competition cases. The Constitutional Court confirmed the procedural principle that the GVH has been following in its competition supervision proceedings, namely that the Authority must prove all the material facts that support liability under competition law; which in practice means that the Authority must ascertain beyond any doubt that there is a causal relationship between the infringement and the supporting evidence.

b) Furthermore, the Constitutional Court stated that the right to a fair procedure must be enforced in full in the judicial review procedure rather than in the GVH's proceeding; in other words, in the course of the judicial review of an administrative decision adopted in a competition case the court conducting the judicial review must guarantee the right to a comprehensive review of the decision.

c) The Constitutional Court underlined that the requirement of fair procedure must be assessed in light of the entire proceeding and all its circumstances. There is no other fundamental right or constitutional objective that can be assessed in the context of this right because it is the result of the assessment itself. A proceeding may be inequitable, unjust or unfair despite the absence of certain details or compliance with all the detailed rules.

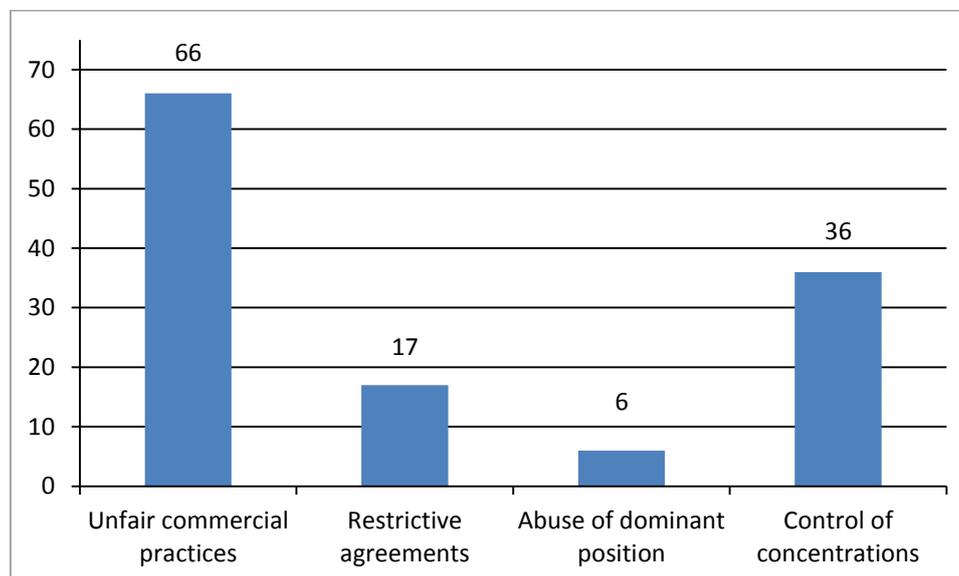
2. Proceedings

5. In 2014 the Authority was contacted, orally or in writing, on more than 2500 occasions and 1910 written communications were handled by the GVH's investigators.

6. The 2014 numbers reflect the usual figures from recent years. In 2014 a total of 125 new cases were initiated, this exceeds the number of case initiations in 2013 by 14.5%. Altogether 124 proceedings were closed (in 2013 the number of closed cases was 120).

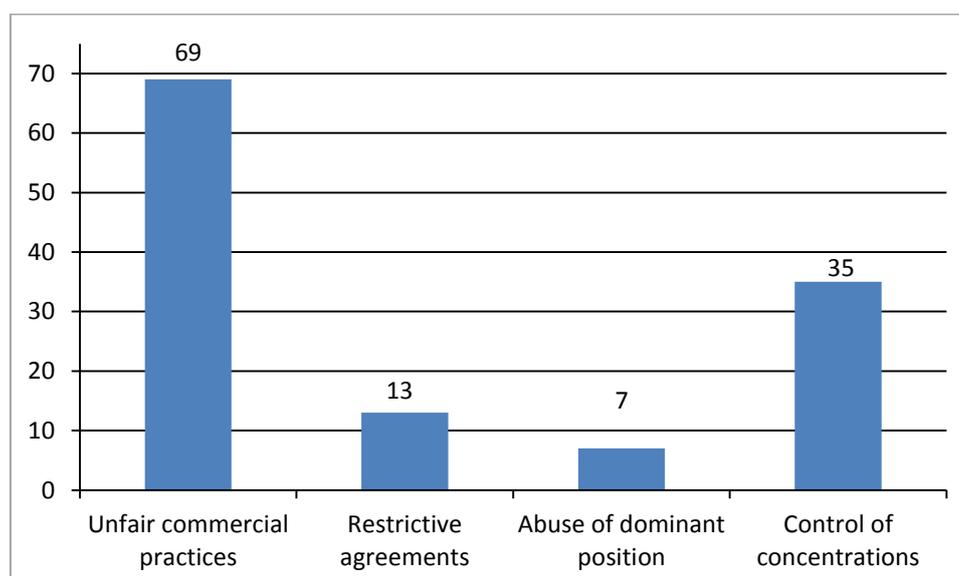
7. Regarding initiated proceedings, in line with previous tendencies, consumer protection proceedings made up the biggest proportion of the proceedings, with 66 cases. In 2014, 36 merger cases, 6 related to abuse of dominance and 17 to restrictive agreements were initiated.

Number of cases initiated by the GVH in 2014



8. Similar to case initiations, most of the closed proceedings were consumer protection cases. The GVH considers consumer protection and the fostering of fair market behaviour to be of high priority so that consumers can benefit from the advantages of competition and make the right decisions. Of (all) the cases closed in 2014, 69 were related to consumer protection, 13 to restrictive agreements and 7 to abuse of dominance. The Authority assessed 35 merger applications.

Number of cases closed by the GVH in 2014



9. The effectiveness of the operation of the GVH is not solely based on the severity of the punishments imposed, as the basic task of the GVH is to maintain the public interest stemming from fair competition and to maintain a culture of compliance with the law. Nevertheless, the total amount of the fines imposed by a competition authority in its competition supervision proceedings provides an important

measure of its activity. The GVH imposed fines amounting to a total of 7.2 billion HUF (approx 24 million EUR) in 2014, with the biggest procedural fine it imposed being 22,000,000 HUF (cca. 74 thousand EUR).

2.1 Unfair manipulation of decisions of trading partners, and unfair commercial market practices against consumers

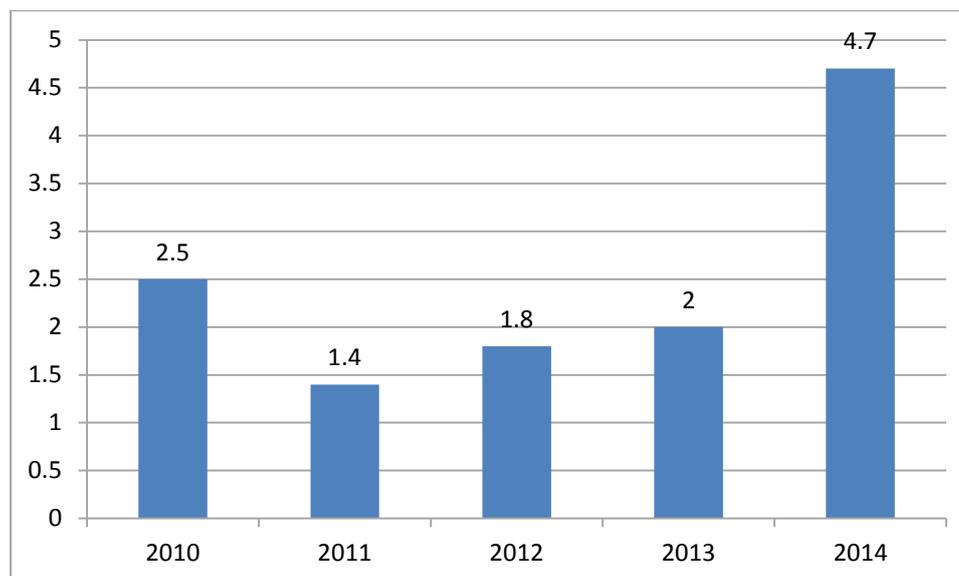
10. The enforcement of the legislation on consumer protection is divided among authorities along their competences. Besides the GVH, the Hungarian Authority for Consumer Protection (Nemzeti Fogyasztóvédelmi Hatóság – NFH) and the Central Bank of Hungary (Magyar Nemzeti Bank – MNB) – the board having financial supervisory authority – have consumer protection related competences. If an infringement targeting end consumers (B2C practices) exerts material influence upon competition, then the GVH is in charge of applying the law, unless the infringement occurs on labels, in user manuals (warnings and instructions) or violates the information requirements set out in other legal norms. The MNB has jurisdiction in connection with practices carried out by those financial institutions the supervision of which belongs to the competence of the authority. In any other situation, it is the NFH that has competence. In defining the material influence on competition, the extent of the practice or the size of the undertaking liable for the infringement is to be taken into account. For the sake of guaranteeing legal certainty, the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices sets forth cases when the material effect on competition shall apply without prejudice to any other circumstances. This is the case, for instance, when the commercial practice is carried out through a media service provider providing national media services, or when the commercial practice is carried out through a periodical of nationwide circulation or a daily newspaper distributed in at least three counties.

11. Practices in B2B relations – targeting businesses – belong to the sole competence of the GVH.

12. B2C cases are covered by the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices (UCP), while B2B cases are assessed under the relevant provisions of the Competition Act. The UCP Act prohibits unfair commercial practices on three grounds (unfairness, deceptive or aggressive commercial practices, “black list”). In July 2014, in order to increase transparency in the area of consumer protection, the provisions of the Act on Business Advertising Activity regarding the prohibition of misleading and unlawful comparative advertising were incorporated into the Competition Act.

13. Comparative advertisements are subject to special regulation: pursuant to the Hungarian Competition Act, the GVH is competent to proceed against non-objective comparative advertising both in B2C and B2B cases.

14. In 2014 the GVH closed 69 consumer protection proceedings. On 55 occasions the Competition Council, the decision-making body of the GVH, established an infringement, and in 2 cases adopted a commitment decision as the GVH found that the public interest could be guaranteed by accepting the commitments offered by the parties. The remaining 12 cases were closed with an order of the investigator. In 2014, the Authority imposed fines amounting to a total of 1.4 billion HUF (approx. 4.7 million EUR) in this category of cases.

Fines imposed in consumer protection related cases (million Euro) 2010-2014

15. The GVH's antitrust and consumer protection activities complement each other by serving consumers' interests: competition makes it possible for consumers to choose the most suitable option from the maximum number of choices. However, if consumers are not able to make rational decisions they cannot gain from the benefits of competition. In this regard the protection of competition and the protection of consumers cannot exist without each other and the best result can only be achieved if they are able to complement each other.

16. The consumer protection work of the GVH focuses primarily on the demand side of the market. Its objective is to guarantee the conditions that are necessary to enable consumers to engage in conscious decision-making, or to put it differently, to ensure the freedom of decision making of consumers through scrutinising the effects of the communication of supply-side actors on consumer behaviour. If it is established that the decisions of a significant proportion of the consumers in a particular market are being unfairly influenced by an undertaking or that consumers are being forced to make decisions that they would not have otherwise made, then market processes and competition may be being distorted by the distorted decisions of the consumers.

Health-related claims, attribution to food products of the ability to prevent, treat or cure human diseases or reference to such qualities

17. In recent years, with the raising of health consciousness, more and more products have been marketed to satisfy this kind of consumer demand, and the GVH has been receiving increasing numbers of complaints regarding information supplied in connection with various products or devices promising medicinal effects or other positive health effects. Consequently, the GVH has been paying special attention to these markets for years, and it initiated and concluded several proceedings in this sector in 2014 as well. This category represents one third of all the cases examined.

18. Non-prescription drugs that are not subsidised from the social security budget may be advertised as long as the applicable legal provisions are observed. In such cases, the proceedings of the GVH focus on ascertaining whether the information disclosed in the commercial communications (advertisements) relating to the pharmaceuticals is in line with the accompanying packaged leaflets and product characteristics summaries approved in the marketing authorisations of the drugs.

19. In the proceeding involving Foodorgany Kft. the GVH established that between 17 August 2011 and 12 April 2013 the company in its commercial communications illegally attributed medicinal effects to its Update products, made false *health* claims, made false claims regarding the *ingredients* of Update products and made false *market leader* claims. The GVH ordered Foodorgany Kft. to pay a fine of 15,000,000 HUF (50 thousand EUR).

20. In the proceeding involving *MAX-IMMUN Rák- és Immunkutató Kft.* the GVH found that the company had engaged in unfair commercial practices when it made claims that can be considered false in certain commercial communications regarding the curative or preventive effects of its dietary supplements containing medicinal mushroom extracts. Furthermore, in its communications on television it made statements concerning the medicinal and preventive effects of certain medicinal mushrooms under circumstances that allowed consumers to connect them with the products subject to the investigation. The competition council proceeding in the case established the infringement, prohibited the continuation of the illegal conduct of *MAX-IMMUN Rák- és Immunkutató Kft.* and imposed a fine of 21,000,000 HUF (70 thousand EUR).

21. In the proceeding against *Culevit Rákkutató és Gyógyszerfejlesztő Kft.* the GVH established that between March 2011 and 4 November 2013 the undertaking committed an infringement by making claims in certain commercial communications in which it attributed to Culevit, a special nutrition product intended for medicinal purposes, the ability to cure or treat cancer. The GVH ordered *Culevit Rákkutató és Gyógyszerfejlesztő Kft.* to pay a fine of 25,000,000 HUF (83 thousand EUR) and to discontinue the infringing conduct.

Financial services

22. The significant information asymmetry on the market of financial services is due to the low level of financial literacy of the general public, the variety and complexity of financial services and the large volume of related contractual documentation. As a result of the information asymmetry, and also because consumers rarely face similar decisions involving such large sums and resulting in such long-term commitments, there is an increased consumer risk on these markets.

23. In the proceeding No VJ/75/2013. the GVH established that *Netrisk.hu Első Online Biztosítási Alkusz Zrt.* had engaged in commercial practices capable of deceiving consumers when it claimed that the cost of switching insurers would be considerably higher the following year, that the best offers and cheapest MTPL policies were to be found on its website, that consumers were guaranteed to win if they made use of the services offered by the company subject to the proceeding, and that all offers were available on its website. It also made claims relating to the lowest price and alleged savings. The GVH established an infringement, imposed a fine of 50,000,000 HUF (167 thousand EUR), and ordered the discontinuation of the infringing practices.

24. In the proceeding No VJ/25/2014. the competition council proceeding in the case imposed a fine of 80,000,000 HUF (267 thousand EUR) and established that *Kereskedelmi és Hitelbank Zártkörűen Működő Részvénytársaság* had engaged in practices capable of deceiving consumers when in its advertising campaign concerning the savings product '*K&H Mix*' it categorically claimed that an annual interest and APR of 7.8% could be earned on the *K&H MIX* savings, though in reality this was only true if consumers satisfied certain special conditions. Furthermore, it deceptively suggested that the *K&H MIX* saving plan was a deposit plan.

Purchasing groups

25. In the proceeding No VJ/75/2013. the GVH established that *Netrisk.hu Első Online Biztosítási Alkusz Zrt.* had engaged in commercial practices capable of deceiving consumers when it claimed that the cost of switching insurers would be considerably higher the following year, that the best offers and cheapest MTPL policies were to be found on its website, that consumers were guaranteed to win if they made use of the services offered by the company subject to the proceeding, and that all offers were available on its website. It also made claims relating to the lowest price and alleged savings. The GVH established an infringement, imposed a fine of 50,000,000 HUF (approx. 167 thousand EUR) and ordered the discontinuation of the infringing practices.

26. In the proceeding No VJ/25/2014. the competition council proceeding in the case imposed a fine of 80,000,000 HUF and established that *Kereskedelmi és Hitelbank Zártkörűen Működő Részvénytársaság* had engaged in practices capable of deceiving consumers when in its advertising campaign concerning the savings product 'K&H Mix' it categorically claimed that an annual interest and APR of 7.8% could be earned on the K&H MIX savings, though in reality this was only true if consumers satisfied certain special conditions. Furthermore, it deceptively suggested that the K&H MIX saving plan was a deposit plan.

27. In 2014 the GVH established infringements in four proceedings involving purchasing groups (Credit Medical Kft., Best Life Center Kft. / GENERÁL FUTURE Kft., Aegis Invest Kft., and CL Brokers GROUP Kft.).

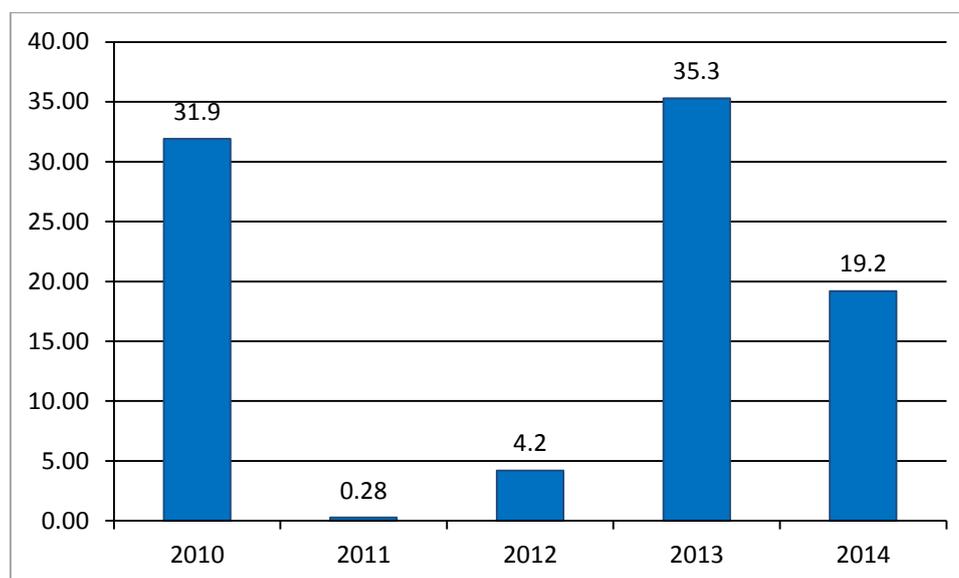
Trade

28. In 2014 the GVH adopted decisions in 12 proceedings involving the trade sector, including retail chains, distributors of medals, distributors of cash registers, distributors of construction products, distributors of motor vehicles, establishing infringements due to the deception of consumers or trading parties.

29. The GVH established that *Aldi Magyarország Élelmiszer Bt.* had engaged in unfair commercial practices against consumers when, in a campaign between 29 September 2013 and 2 October 2013, in its advertisements of the *CANON PIXMA MG2255* multifunctional printer contained in its promotion leaflets, on posters displayed in its stores, and on its website and electronic newsletter, it failed to reveal that it would be unable to assure the supply of the product concerned or a substitute product at the advertised price in the appropriate quantity and for the advertised duration or procure it from another vendor. (bait advertising) The GVH imposed a fine of 10,000,000 HUF (approx. 33 thousand EUR) on the undertaking.

2.2 Restrictive agreements

30. In 2014 the GVH adopted 13 decisions in proceedings involving restrictive agreements. 8 of these related to hard core cartels. The Authority discontinued 4 cases because the information obtained during site searches and by other means of information collection were insufficient to substantiate an infringement.

Fines imposed in restrictive agreement cases (million EUR) 2010-2014

31. In 2014, similarly to previous years, a substantial proportion of the complaints relating to cartel activities (approx. 60-65%) concerned public procurement procedures, primarily because of the so-called '3-bid' procedures (negotiated procedure without publication of a contract notice). After a decline in 2013, 2014 brought increased activity in enquiries concerning informant rewards. Of the 20 enquiries by potential informants, the GVH eventually accepted 2 applications.

32. As has been the case in previous years, the leniency policy is still 'unpopular' with undertakings. They are reluctant to report on their partners in illegal cooperation. This is the reason that the GVH accepted no such application in 2014.

33. A comparison of the informant reward and the leniency programme still shows that the informant reward scheme, which targets employees, is more helpful in detection than the 'self-denunciation' of cartel members, i.e., a leniency application.

The Hungarian leg of the cathode-ray tube cartel

34. After an unusually protracted procedure, the GVH also closed the case of the globally investigated cartel of cathode ray tube (CRT) manufacturers. The infringement, which had a direct bearing on Hungary because of the television set manufacturers established in our country, had the objective of fixing the price of the most important component of traditional computer screens and televisions using the now practically abandoned CRT technology. The practice started early in the 1990s and lasted until 2006. However, because of our EU accession the cartel activities conducted in Hungary after 1 May 2004 were assessed by the European Commission. Consequently the GVH could establish that an infringement had occurred only in respect of the 1998-2004 period. The infringing undertakings had fixed their prices, allocated market shares and restricted the volume of production. The price fixing, market allocation and restriction of production volumes were also monitored; the cartel was very well organised. Regular multilateral meetings were held, with the participation of representatives from the top management of the members. The multilateral meetings were supplemented by bilateral meetings and other forms of exchanges. The GVH imposed fines of 303,000,000 HUF (approx. 1 million EUR), in view of the significant fine reductions under the leniency programme and the fact that several undertakings benefited from the statute of limitations because of the interruption of the powers of the GVH to investigate the case due to Hungary's EU accession.

Car refinishing paint cartel

35. The GVH adopted a decision in which it found that several importers of car refinishing paints had concerted their practices in an anticompetitive manner by indirectly fixing the average price of car refinishing paints used in Hungarian loss calculation software at an artificially inflated price over a period of six years. The GVH imposed fines totalling 175, 900, 000 HUF (approximately 586, 300 EUR) on the seven undertakings concerned.

36. For most motor vehicle repair work completed under Casco or third-party liability insurance, insurance companies and repair shops use a so-called ‘vehicle repair estimating systems’ to determine the price of repairs. These systems are developed to calculate the cost of repairing damage to motor vehicles and are acquired by the vehicle repair shops and insurance companies. Part of the cost of car repairs is the cost of refinishing paints. In the repair estimating systems, the average cost of refinishing paints is calculated based on the refinishing paint importers’ list prices sent to Eurotax Glass Hungary (Eurotax) by the paint importer companies. These are then forwarded by Eurotax to an independent company which estimates the average cost of refinishing paints.

37. Following its investigation, the GVH established that refinishing paint importers gave price discounts in more than 90% of their sales amounting to 35-45%, compared to the retail price lists they provided to Eurotax. As a consequence list prices provided by importers to Eurotax were significantly higher than the actual prices applied, which distorted the average cost of polishing, which in turn formed the basis of calculating the cost of repairs charged by car repairers to the insurance firms. Car repairers which bought their paint from refinishing paint importers (at a significantly lower price), but used the higher prices as calculated by the ‘vehicle repair estimating systems’, therefore made a higher profit as a result of the unlawful conduct.

Information sharing agreement in the market of contact lenses

38. The GVH decided that CooperVision Optikai Cikkek Forgalmazó Kft., FOTEX-OFOTÉRT Optikai és Fotóciikk Kereskedelmi Kft., Johnson Johnson Egészségügyi és Babaápolási Termékeket Gyártó és Forgalmazó Kft. and Novartis Hungária Egészségügyi Kft. had committed an infringement when – using the framework of market research – they exchanged information that was not disclosed to other parties about their individual sales volumes and incomes. The GVH imposed a total fine of 100 million HUF (approx. 333 thousand EUR) on the involved undertakings.

Cartel of ready-mixed concrete

39. Based upon the – mostly documentary – evidence at its disposal (charts, journal entries and other records made at meetings), the GVH established that in the time period between 2005 and 2007, eight ready-mix concrete manufacturers in Budapest and the Hungarian Concrete Association divided among themselves orders on ready-mix concrete exceeding the amount of 1000 m³ in the area of Budapest according to a previously agreed quota, and also fixed the price level of ready-mix concrete, thus engaging in a single, continuous and complex infringement. The GVH imposed a total fine of 2,790,200,000 HUF (9,300,000 EUR) on the undertakings concerned and on the association.

Regional publishers shared the market of county-wide daily newspapers

40. The GVH established that Axel Springer Magyarország Kft. (Axel Springer, its new name: Mediaworks Kft.), Russmedia Kft. (Russmedia, its former name: Inform Média), Lapcom Kiadó Kft. (Lapcom) and Pannon Lapok Társasága Kiadói Kft. (Pannon Lapok) had entered into competition restrictive agreements aimed at preventing direct entry into each other’s geographical area.

41. The GVH noticed that the contracts concluded by the undertakings that were legally valid from 2000 (lasting from November 2000 and from May 2002 to April 2010) (or their legal predecessors) concerning Sunday papers contained mutual non-compete clauses and price fixing clauses.

42. The existence of competition restrictive agreements was supported by the mutual non-competition clauses contained in the contracts between Axel Springer and Indorm Média, and between Axel Springer and Lapcom, which stipulated that the parties may not invade each other's county-wide/regional market.

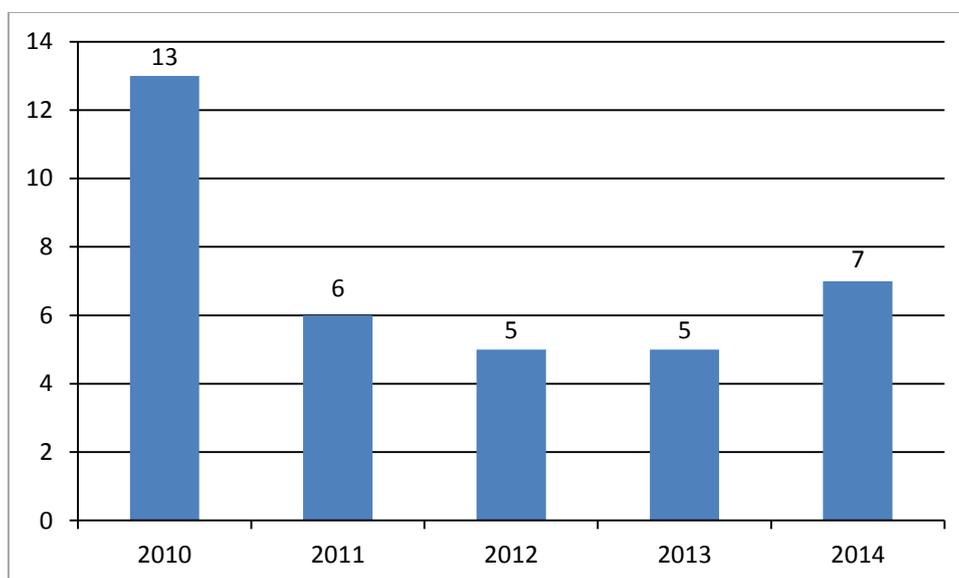
43. Based on the bilateral contracts between Axel Springer and Inform Média, Axel Springer and Lapcom, and Axel Springer and Pannon Lapok, it could be assumed that the above-mentioned undertakings were coordinating both retail prices and advertising prices.

44. The GVH imposed a total fine of 2.2 billion HUF (approx. 7.3 million EUR) for the infringement.

2.3 Abuse of dominant position

45. In 2014 the Authority initiated 6 proceedings in abuse of dominance cases and concluded 7 proceedings. Of these, 4 case were closed with commitment decisions, in one case the GVH obliged the dominant undertaking to bring the infringement to an end and imposed fine. In two further cases the procedure was terminated.

Number of decisions in abuse of dominance cases (2010-2014)



46. From the closed proceedings, the *Magyar Olaj- és Gázipari Nyrt.* (MOL) case is worth noting. The GVH started proceedings to investigate whether MOL had abused its dominance by setting its wholesale prices at an excessively high level. The Competition Council found that the commitment submitted by the investigated undertaking was suitable to allow for the effective treatment of the competitive concern, thus it terminated the proceeding without establishing an infringement and ordered MOL, in accordance with its undertaking, to set the wholesale prices of diesel oil so that in the five years following the decision, as an annual average, they would follow the changes of the reference prices of Platts more closely, within a range of +/-1%. The proceeding competition council also considered it significant that the commitments were developed through negotiations as this was more likely to result in

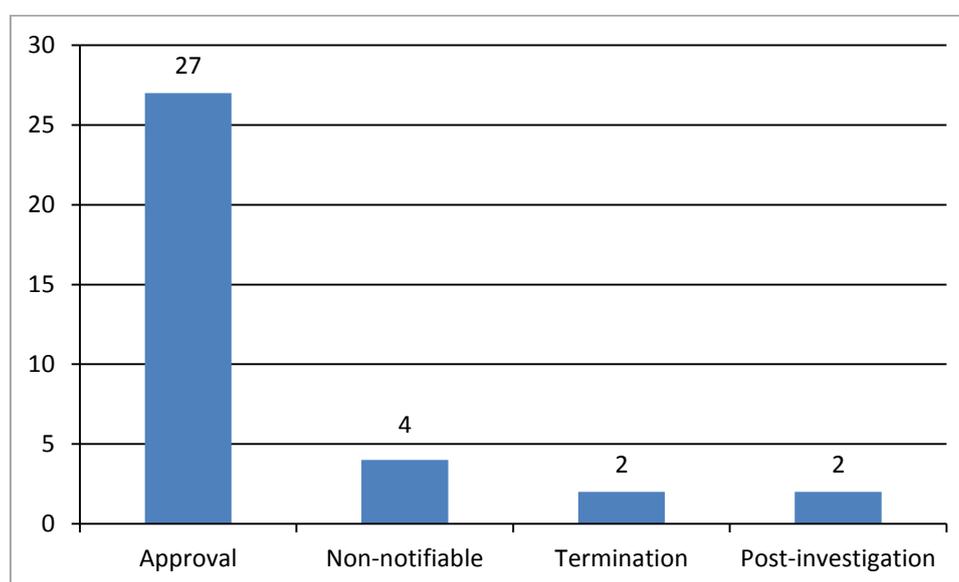
better coherence between the public policy goals (following more accurately the Platts prices, and attenuating price fluctuations) than if the Council had excluded MOL from the negotiations.

2.4 Control of concentrations

47. 2014 brought substantive changes in merger proceedings as the amendment of the Competition Act, which entered into force on 1 July, introduced modifications to both the substantive law and the procedural law. The most notable changes include the introduction of the prohibition of putting measures into effect and the reduction of the time limit for simplified procedures from 45 days to 30 days. As another measure to reduce the administrative burdens placed on applicants, the GVH also revised its other merger control tools (the so-called soft-law tools) simultaneously with the legislative change.

48. The GVH closed 35 merger control cases in 2014. 32 of these were started upon application, 1 was commenced on the GVH's own initiative due to a suspected failure to apply for authorisation, and 2 post-investigations were also conducted. Two cases were terminated by investigators, the others ended with decisions of the Competition Council. Of the cases closed by the Competition Council, 24 cases were assessed under the simplified (single-phase) procedure, and in 2 cases simplified decisions were made (which are not accompanied by a justification). The Competition Council found that 3 applications related to concentrations not subject to an authorisation requirement. The full (two-phase) procedure was implemented in 6 cases; however, based on the in-depth investigations that were conducted, the GVH did not need to intervene in these cases either (prohibition of concentration or imposition of conditions/obligations). In 2014, 3 proceedings were initiated as a result of a failure to apply for authorisation but out of these only one was concluded during the year, with no infringement being established. Violations were found on two occasions due to the late submission of applications, and fines amounting to a total of 34,350,000 HUF (approx. 114.5 thousand EUR) were imposed.

Number of merger cases by the types of decision in 2014



49. In merger cases the GVH adopted its decisions well within the statutory time limits. In 2014 the GVH did not make use of the statutory option to extend the procedural time limit.

50. The experience of the GVH with the pre-notification procedure has been very positive. 14 of the proceedings started upon application and closed in 2014 were preceded by such pre-notification. In a minority of cases started following pre-notification no deficiencies requiring remedying were encountered;

still, the most notable benefit from the pre-notification procedure was the reduction of the volume of deficiencies (as the procedure promotes the clarification of any issues relating to the submission of applications and the correct assessment of the transactions by the parties).

Axel Springer – Ringier – Vienna Capital Partners merger

51. The GVH authorised the concentration of two closely related undertakings in two separate proceedings. One of the concentrations involved certain Hungarian newspapers of Axel Springer SE and Ringier AG being sold to the Vienna Capital Partners group (VCP), while the second concentration involved other Hungarian newspapers of the two undertakings being placed under the jointly controlled Ringier Axel Springer Media AG.

52. The Competition Council examined the effects of the concentrations in full procedures in both cases. The reason for the use of the full procedure was that restrictive tying on the markets of daily papers of county-wide and national circulation could not be ruled out in the VCP transaction. In the KV transaction the joint market share of the parties on the markets of weekly and biweekly women's magazines and tabloids and of interior decoration magazines justified an in-depth investigation.

53. In its decisions concluding the proceedings, the Competition Council authorised both concentrations without imposing conditions or obligations because the in-depth investigations discovered no competitive concerns, and the market participants interviewed put forth no substantive concerns regarding the concentrations.

3. Lessons of the court reviews of the GVH's decisions

54. The ratio of decisions establishing an infringement that were challenged remained unchanged in 2014: similarly to the past five years, a legal remedy was sought against about half of the decisions establishing an infringement in 2014. The GVH adopted no decision establishing an absence of infringement. All but one infringement decision establishing restrictive agreements were challenged by the undertakings concerned. In contrast, less than half (24) of the 56 decisions concerning the violation of the prohibition of unfair commercial practices against consumers were challenged in court in 2014.

55. In 2014 the court of first instance (the Metropolitan Administrative and Labour Court of Budapest) delivered decisions in review proceedings on 17 occasions. 7 cases were concluded with final judgments. Apart from two restrictive agreement cases, all judicial proceedings concluded with a final judgment related to the unfair manipulation of consumer decisions, and the Court upheld the GVH's decision in each case, though on two occasions the cases were discontinued on the motion of the applicants. As regards non-litigious proceedings, the Metropolitan Administrative and Labour Court of Budapest made 9 judgments relating to procedural and enforcement fines. All of these proceedings ended with the GVH's decisions being upheld.

56. At the court of second instance, the Budapest-Capital Regional Court issued 14 judgments in 2014, upholding the decisions of the GVH in their entirety in 10 cases. In two restrictive agreement cases the Budapest-Capital Regional Court overturned the first-instance judgments, annulled the GVH's decisions and required the GVH to reopen the cases. In both cases the GVH submitted an application for review to the Curia (which is the review court of the court of second instance).

57. In 2014 the Curia decided on 5 review applications, two of them relating to restrictive agreements, two to unfair commercial practices and one to an abuse of dominance. In the two cases relating to unfair commercial practices the Curia upheld the second-instance judgments, that is, the actions of the applicants were dismissed. In one of the cases concerning a restrictive agreement the Curia annulled the second-instance judgment and required the Budapest-Capital Regional Court to reopen the case. In the

second case relating to a restrictive agreement the Curia annulled the judgment of the second-instance court and changed the first-instance judgment: it rejected the action of the applicants while deleting certain points of the GVH's decision which, however, had no bearing on the substance of the case. In the dominance case the Curia annulled the part of the second-instance judgment affected by the review and annulled the annulling ruling of the first-instance court; furthermore, it ordered the court of first instance to reopen the case and adopt a new judgment on the subject of the fine.

58. After a four-year judicial review process, one of the most significant cartel cases of recent years was concluded with a final judgement. In this case, the GVH established that five railway construction companies had participated in a restrictive agreement and imposed total fines of approximately 7.2 billion HUF (24 million EUR). The Curia examined a number of legal issues in the case, and substantively upheld the decision of the GVH.

4. Amicus curiae work

59. The Competition Act allows the direct private enforcement of claims based on violations of competition rules. Pursuant to the Act, the courts inform the GVH without delay about any cases in progress where the violation of competition rules is suspected. In the course of the civil procedure, the GVH, acting as the friend of the court (*amicus curiae*), may make comments and explain its legal position on its own initiative or at the request of the court.

60. In 2014 fewer *amicus curiae* notifications were received than in previous years: courts contacted the GVH in four cases where it was assumed that the Competition Act may need to be invoked. The GVH initiated a competition supervision proceeding on one occasion to investigate the contents of the court's communication, while on one occasion it informed the court about its earlier proceeding conducted on the same subject but concerning a different period. Nevertheless, the GVH submitted detailed written comments on each occasion to help the court in making its decision on issues within its competence. No *amicus curiae* notification was received in 2014 concerning the application of Articles 101 or 102 of the TFEU.

5. Competition advocacy – commenting on regulations and other drafts

61. In 2014 the GVH received a total of 68 submissions and draft pieces of legislation for comments (down from 106 in the previous year) and sent its comments in 18 cases. The majority of these comments continued to focus on creating a more competition-friendly regulatory environment, reducing the administrative burdens or improving the conditions of the consumer decision-making process. A smaller proportion was geared towards improving the quality of codification. Nine other interventions aimed to improve the regulatory environment of competition in certain markets or to prevent its worsening. Occasionally an intervention was necessary to more clearly delimit the tasks and competences of different authorities or to prevent incoherence between different areas of law (for instance the intervention concerning the re-definition of the concept of dominance under competition law with respect to the trade sector). In three cases ministries or other authorities or public corporations contacted the GVH where knowledge about the powers and law enforcement practices of the GVH was required, thus the experiences gathered by the GVH could be put to use.

62. Mostly due to time constraints, the GVH rarely has the opportunity to participate in the finer details of the expert-level legislative preparation work or to formulate an opinion based on an analysis of market processes. The possibility to comment on the codified versions of draft legislation typically does not include an evaluation of the regulatory concept from a competition point of view.

63. A ministerial body engaging in the production, marketing and distribution of duty stamps wanted to make the distribution of such stamps the exclusive right of the Hungarian Post Office. The GVH expressed its concerns regarding the removal of the distribution of duty stamps from the scope of legislation governing public procurement, which generates competition for markets. It also commented that while the law would introduce specific provisions to guarantee the safety of distribution, similar safeguards are missing in the field of production. The comments of the GVH were partially incorporated into the final version of the decree. The decree enacted the exclusivity and at the same time, without any separate authorisation for price regulation, set the fee payable by the state to the Post Office for distribution; furthermore, the entities that the Hungarian Post Office may entrust with the manufacture of the stamps are subject to a special ministerial authorisation.

64. The GVH commented on the draft of the government decree on the technical and technological requirements to assure the uniformity and interoperability of data, databases and electronic data communication technologies relating to public passenger transport services, on central databases and related central services, as well as the designation of operating organisations. The draft identified *Nemzeti Mobilfizetési Zrt.* (NMF) as the exclusive operator of the National Intelligent Passenger Transport Systems Platform. The NMF may use subcontractors, and this activity is in part financed from public funds. In addition, pursuant to other legislation the NMF already enjoys exclusive rights with respect to other activities (mobile payments for services offered by certain public bodies). In its opinion the GVH explained that in general it considered it important that, if the regulation results in the creation of a monopoly – in this case if NMF becomes a monopolist because of various exclusive rights –, then the law should impose more detailed rules relative to the general competition law provisions on these activities of the monopolist to more effectively prevent abuses of dominance and guarantee the efficiency of its operation. In view of this, the GVH recommended that the various legal provisions applicable to NMF should be supplemented by appropriate monopoly regulation (accounting separation of income and expenditure by activity, ban on discrimination and cross-subsidisation to prevent any crowding-out, prevention of market distortion in the course of the use of government transfers, setting up a well-equipped monopoly surveillance institution system, including systems of control and sanctions, etc.). The final version of the government decree did not incorporate the comments of the GVH.

6. Competition Culture

6.1 *The activity of the Competition Culture Centre*

65. The work of the GVH in developing competition culture includes the tasks of the GVH itself relying on its professional resources, as well as programmes where the GVH relies on the work of other bodies for implementation and, where required, it offers professional help and financial assistance. In 2014 the most important achievements of the GVH included the preparation of the commentary taking into account the comprehensive amendment of the Competition Act effective from 1 July 2014, the establishment of the Competition Counsel Offices, the implementation of a media campaign to promote competition compliance and the related conference, as well as the organisation of an international conference for the Visegrad countries.

66. In view of the complexity of competition law and prompted by the comprehensive amendment of the Competition Act on 1 July 2014, the GVH compiled a commentary to the Competition Act with contributions from its own staff and renowned practitioners in the legal field in order to contribute to the wealth of Hungarian specialist literature in the Hungarian language. The commentary was introduced in 2015, at the Curia, in an official book launch event opened by the Chair of the Curia. In publishing the commentary, the GVH had the primary objective of promoting the uniformity of jurisprudence and the compliance of practitioners through a comprehensive and complex analytical paper that is useful for the legal field, is practically oriented and presents the law in light of practical experience.

67. With a view to promoting competition culture and the conscious decision making of consumers, in April 2014 the GVH issued an invitation to tender under the open procedure for the establishment and operation of a **Competition Counsel Office Network**. The counsel offices were set up in mid-June for a six-month period (as per contract) with the responsibility of heightening the level of literacy, competition law skills and consumer awareness of organisations and private persons seeking their help, as well as the identification of competitive problems in local markets that may otherwise remain unknown to the GVH and the expert pre-screening of consumer signals within the competence of the GVH.

68. The network, consisting of 5 offices in Debrecen, Eger, Szeged, Pécs and Győr, was contacted by customers on 233 occasions. Responses were given by mail, in person, by phone or through electronic channels. The majority of enquiries, typically of a competition law nature, related to unfair business-to-consumer commercial practices. Consumers typically complained about deceptive commercial practices, aggressive commercial practices as well as ‘blacklisted’ practices set out in the annex to the Act on the prohibition of commercial practices that are unfair to consumers. As far as undertakings are concerned, relatively few complaints were received about restrictive practices distorting competition. Representatives of companies typically sought the help of the offices regarding unlawful comparative advertising or abuses of dominance or of significant market power.

69. Some other events focusing on competition culture were organised during the year, in particular:

a) In order to promote the transposition of the laws and standards applicable to economic competition into corporate practice and to foster compliance, in 2014 the GVH added a complex media campaign to its programmes that were launched in 2012 to support competition compliance. In addition to the content available at www.megfeleles.hu, where competition compliance is comprehensively interpreted and explained, the understanding and acceptance of the community of interest manifesting in fair competition and market practices was promoted through the television and radio commercials and the printed and on-line advertisements of the media campaign in order to raise awareness and promote a change in attitude. In addition to the hundreds of times that the media campaign appeared on television, on the radio and in the press, internet users clicked on the advertisements of the GVH on more than eight and a half thousand occasions.

b) In line with the objectives of the Regional Centre for Competition (RCC) and its commitment to literature on competition law and competition policy, in 2014 the RCC published Tihamér Tóth’s *The Competition Law of the European Union* in **Russian**, the language most widely used in RCC target countries. The Russian version of the book is available free of charge as an e-book. It can be downloaded from <http://www.oecdgvh.org>.

c) In 2014 the GVH continued its compliance campaign launched in 2012. Following the conclusion of the related communication campaign, a piece of research was conducted primarily among SME directors and secondarily among the adult population. The purpose of the research was to examine familiarity with competition rules, awareness of fundamental facts relating to economic competition, competition law and the GVH, as well as the achievements and efficiency of the communication campaign of the GVH geared towards compliance with competition law. The results revealed that the knowledge of the public, and in particular of managers of SMEs, about the GVH and competition rules has slightly improved as a result of the communication campaign.

d) In 2014 the GVH held its academic competition ‘*Competition law in Hungary and the EU*’ for university and college students for the fifteenth time. The Authority considers it important to raise the interest of young professionals in competition law, competition policy, market theory and conscious decision-making by consumers. The organisation of the now traditional academic competition is a

successful means to this end. The summary of the event and the award-winning submissions are available in Hungarian on the GVH's website.

e) This year the GVH continued to inform the public about its decisions, events relating to the Authority and issues of particular interest primarily in press releases. In 2014 the GVH published 82 press releases, which it sent to the media and published on its website. 209 enquiries were received from the media relating to the press materials or other issues.

f) The Hungarian Competition Authority was established by Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices to safeguard the freedom and fairness of market competition. The Authority began its operation on 1 January 1991 when the Act entered into force, which means that in 2015 it will celebrate its 25th anniversary. In order to identify the historic roots of competition law and of the work of competition authorities, the GVH published a call for proposals for research into legal history relating to the establishment and operation of the Cartel Commission and Cartel Court set up pursuant to Act XX of 1931 ('on agreements regulating economic competition') and the presentation of its overall practice. The GVH intends to publish the results of the research in 2015.

6.2 *The activity of the OECD-GVH Regional Centre for Competition in Budapest*

70. The OECD-GVH Regional Centre for Competition in Budapest (RCC) was established by the OECD and the GVH on 16 February 2005. Relying on the professional background of the Competition Division of the OECD and the GVH, the Centre provides capacity building assistance and policy advice for the competition authorities of the Central, East and South-East European region, namely for Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The RCC is financially supported by the Hungarian Government.

71. Among others, the RCC deals with issues such as: analysis of core competition cases, investigative techniques, competition policy principles in the process of regulatory reforms, training of judges, law enforcement priorities, guidelines, policies, practices and procedures, framework for the cooperation of the competition authorities of the region, competition advocacy, tools for communication, cooperation between competition authorities and regulatory bodies, and other general issues falling under competition law and policy. Regular meetings, training programmes, seminars and workshops were organised on all of these topics.

72. In 2014 the RCC organised 8 major events and hosted 269 participants from 33 countries and 53 speakers from 16 countries.

73. With a view to the needs of competition authorities, having consulted previous participants of the RCC's events and the senior officials of authorities, the RCC has established a constantly changing, evolving programme structure that responds to the training needs of participants.

74. In 2014 the OECD-GVH Regional Centre for Competition in Budapest organised three seminars in Budapest for the staff of competition authorities, its primary target group. The seminars focused on the following subject matters: 1./Practice and procedures in merger investigation, 2./ Competition topics in retail markets, 3./ Evidentiary issues in establishing abuse of dominance.

75. Upon the request of the Macedonian competition authority, a professional event was organised in Skopje on the subject of 'bid rigging and public procurement'. The RCC organised a joint seminar with the Russian competition authority in Kazan (Russian Federation) on the subject of airport competition topics for the staff of the competition authorities of CIS countries.

76. In 2014 the RCC organised competition law seminars for the judges of the European Union on two occasions. The first event ('Abuse of dominance - basic economic and legal concepts') revolved around the establishment of dominance, barriers to entry, excessive prices, refusal to deal and predatory pricing, attended by 28 judges from 15 EU countries.. The second seminar focused on the 'quantification of damages in competition law', attended by 29 judges from 14 EU countries. The event reviewed the methods of quantification of damage in actions for damages brought pursuant to the violation of articles 101 and 102 of the TFEU.

7. Cooperation with other organisations

77. The GVH has the objective of establishing and deepening ties with representatives of the academic community working in competition law and competition policy and with relevant professional organisations. In this context, the Authority concluded cooperation agreements with several bodies in 2014, including the Hungarian Competition Law Association and the PénzSztár Contest Centre, and continued its long-term cooperation with the Centre for Economic and Regional Studies of the Hungarian Academy of Sciences.

8. International relations

78. As regards international relations, the GVH focused mainly on co-operation with the European Commission and the national competition authorities of the EU Member States, co-operation within the framework of the Competition Committee of the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network (ICN), as well as on by bilateral co-operations.

79. Similarly to the practice of previous years, the case-related co-operation within the European Competition Network (ECN) in respect of the application of the competition rules of the EU continued to be one of the main fields of the international relations.

80. The contribution to the work of the OECD Competition Committee and of its working groups was also of uttermost importance in 2014. Contributions were prepared in the topics of "Competition Issues in the Distribution of Pharmaceuticals", "Airline Competition", "Changes in Institutional Design of Competition Authorities" and "Use of Markers in Leniency Programmes".

81. In compliance with the established practice, in 2014 the GVH also sent one of its experts to the OECD for a whole year as a secondee on a rotation basis.

82. Concerning co-operation with the International Competition Network (ICN), in 2014 the GVH remained an active participant in particular in the work of the Cartel Working Group, being responsible for the coordination of the project on the "Anti-Cartel Enforcement Template"

83. On 20 March 2014 the GVH organised the V4 Competition Conference under the auspices of the Hungarian Presidency of the Visegrad group. The event was prompted by the recognition that the competition authorities of the V4 countries have identical or similar concerns and may even be conducting proceedings against the same undertakings. Consequently, the GVH takes an active role in strengthening the cooperation between the competition authorities of the Visegrad Four countries. The main subjects of the conference were regional competition law concerns, legislative developments, the fight against public procurement cartels and judicial review. The approximately 140 participants came primarily from the ranks of public administration, law offices, courts, professional organisations and undertakings.

9. Technical conditions and other information

Resources of the competition authority

Annual budget (in HUF and EUR)

2013	billion HUF	3,328.4
	million EUR	11.1

Number of employees (person-years)

	2014
Economists	15
Lawyers	56
Lawyer-economists	8
Other professionals	5
Support staff	39
All staff combined (actual)	123

84. In 2014 the Authority had 3,328.4 million HUF (approx. 11.1 million EUR) available to fund its work. During the year, the modernisation of the energy system of the head office was completed, a building services automation and surveillance system was installed and a ventilation and humidification system was implemented in the building.