
15 November 2017

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

Working Party No. 2 on Competition and Regulation

**Co-operation between Competition Agencies and Regulators in the Financial Sector
- Note by Hungary**

4 December 2017

This document reproduces a written contribution from Hungary submitted for Item 3 of the 64th meeting of the Working Part No. 2 on Competition and Regulation on 4 December 2017.

More documents related to this discussion can be found at:

www.oecd.org/daf/competition/cooperation-between-competition-agencies-and-regulators-in-the-financial-sector.htm.

Please contact Mr Chris PIKE if you have any questions about this document
[Email: Chris.Pike@oecd.org]

JT03422989

Hungary

1. This contribution discusses the cooperation between the competition authority and the financial regulators in Hungary since the financial crisis. The focal points of the contribution are the efforts undertaken by the Hungarian Competition Authority (GVH) to analyse competition problems in the financial sector, to propose regulatory changes if necessary and to use its competition law toolbox to enhance competition in the industry. First, we briefly describe the sector inquiries that have been conducted in relation to financial services, and also a sector inquiry that is currently ongoing. Then the competition enforcement and regulatory measures that have been taken in connection with the bank card and insurance market will be elaborated. Finally, we discuss an enforcement proceeding that is relevant in the context of the reactions of financial institutions to the financial crisis.

1. Sector inquiries in the financial services sector

1.1. Sector inquiry – customer mobility in retail banking¹

2. In the wake of the financial crisis the GVH was in the process of conducting a sector inquiry on customer mobility in retail banking. Of particular interest were unilateral modifications of contractual terms and asymmetric benefits in long-term contractual relationships, which took on increased importance when consumers were faced with swiftly increasing mortgage payments and deteriorating contractual conditions.

3. The GVH identified four factors that distorted competition, and made it more onerous to have ample information about financial products, and to switch between service providers and products. The GVH, after consulting financial regulators and the association of banks, proposed that amendments should be made to the regulation of the market in order to remedy the four below-mentioned identified problems.

1. The financial institutions' practice of unilaterally modifying contractual terms, which was undermining the natural restraints that could mitigate the problem of asymmetric contractual terms. The GVH found that unilateral modifications were applied too broadly, and consumers were not provided with an opportunity to challenge them. To remedy this situation, the GVH proposed the adoption of legal provisions which would only allow contractual terms to be unilaterally modified in cases where objectively verifiable events – external to the operation of the financial institution – made such modification necessary.
2. The GVH also found that consumers switching between providers were faced with significant direct expenses as a result. According to the calculations of the GVH, these expenses were particularly high, amounting to at least 4-10 % of the net present value of the loans under investigation. To solve the problem, the GVH

¹ For an English language summary, see: http://www.gvh.hu/IMPORT/import-20140110_134637/en/press_releases_old_en_links/press_releases_2009/5676_en_final_report_of_the_sector_inquiry_on_customer_mobility_in_retail_banking.html

proposed that a ceiling should be set in relation to one of the most important cost factors of switching, namely concerning the early repayment fee.

3. The GVH observed a lack of price transparency in relation to financial services. To remedy this, the GVH proposed that an independent, verifiable product-comparison website should be set-up. The GVH also proposed that foreign currency risk should be calculated into the Annual Percentage Rate.
 4. After assessing the effect of subsidised loans the GVH found that the non-transferable nature of state subsidies for mortgage loans enhanced contractual asymmetry to the benefit of lenders. If a consumer decided to switch between banks with respect to his/her subsidised mortgage, he/she could only do so under normal conditions, without being able to transfer the benefit of the state subsidy. The GVH proposed that state subsidies should be transferable, allowing consumers with state-subsidised loans to switch between banks.
4. After the GVH made its proposals, the relevant laws were modified by the Hungarian Parliament, incorporating the proposals elaborated above.²

1.2. Sector inquiry – building society market³

5. On the conclusion of the sector inquiry in the retail banking market, the GVH decided to carry out another sector inquiry in the financial services sector, with respect to the building society market.

6. There were a number of peculiarities present on the building society market that were indicative of a lack of proper competition. The market was characterised by a very low number of market players. Financial institutions active in the building society market offered noticeably low interest rates on deposits, while making a very high profit. The GVH also found out that interest rates offered by financial institutions on loans were, in comparison, high, and credit activity was low.

7. After carefully analysing the market, the GVH came to the conclusion that the identified competition problems on the market could be effectively addressed through a number of legal amendments to the existing regulation. Consequently, the GVH made regulatory proposals aimed at addressing the problems identified during the course of the sector inquiry: the GVH suggested that risk management should be improved and that the sustainability of state subsidies should be provided by means of *increasing the maximum amount* of yearly subsidy, but *decreasing the rate* of subsidy calculated by the value of the deposit. The GVH also found it essential to limit the issuance of the so-called bridging loans.

1.3. Sector inquiry – card acceptance⁴

8. The GVH and the Hungarian National Bank (MNB) had several discussions about the competition problems existing on the Hungarian card market. The GVH – partly due

² For a press release on the relevant changes, see: http://www.gvh.hu/en/press_room/press_releases/press_releases_2009/5754_en_the_amendment_of_the_law_will_result_in_increase_d_competition_of_banks_for_consumers.html

³ For a press release in English, see: http://www.gvh.hu/en/data/cms997804/2011_05_19_sector_inquiry_sk_jo.pdf

⁴ For a press release in English, see: http://www.gvh.hu/data/cms1035639/sk_2017_01_20_av_bankkartya_elfogadas_piaca_a.pdf

to the information it received from the regulator – noticed that smaller traders faced less favourable service fees than larger traders on the market of cash-substitute payment instruments, i.e. the market of accepting bank cards when initiating and maintaining payment with them. The GVH also commissioned a market study prior to initiating the sector inquiry, which confirmed the potential existence of the issue. Therefore, the GVH decided to launch a sector inquiry to investigate the current state of the card acceptance market in Hungary. The exercise is still ongoing; the final report will be published in 2018.

2. Regulation, competition advocacy

2.1. Regulating interchange fees in Hungary

9. Significant cooperation between the GVH and the MNB has been taking place regarding the bank card sector. As a result of the development of payment systems in Hungary payment cards are the most important and widespread alternative to cash. Market problems and competition issues have therefore been dealt with in relation to payment cards, with interchange fees and card acceptance being the main topics of such discussion. As a result, the market has been subject to both enforcement actions (competition investigations) initiated by the GVH and price regulation.

10. The European Commission's proceedings on interchange fees resulted in a unique market situation in Hungary, creating a lack of a level playing field for the major market players. These developments prompted further debate over interchange fees and led to competition investigations, and later on, price regulation. The focal point of the issue was the multilateral interchange fees (MIF) and the way the two main card schemes had set their levels.

11. Firstly, the GVH investigated the conduct of the banks that set the MIF in a uniform manner. The investigation concluded that the interbank agreement was unlawful. The GVH also carried out proceedings against MasterCard in order to establish whether it had breached the prohibition against the abuse of a dominant position when it set the MIF at a considerably higher level than its main competitor (Visa). Both infringement decisions are currently under court appeal.

12. To ease the above-mentioned problems with respect to MIF, several regulatory initiatives were introduced regarding card payments. At the end of 2009, the Parliament planned to adopt a law capping both interchange fees and merchant service charges, but the law with respect to MIF did not enter into force. In 2011 the MNB became increasingly aware of the problems on the payment card market. Based on its research, the MNB came to the conclusion that card acceptance was rather underdeveloped, possibly due to the high level of interchange fees. As the aforementioned lack of a level playing field in the market also highlighted a problem related to the level of interchange fees, the MNB approached the government with a proposal to cap interchange fees. After several rounds of consultation between the GVH, the MNB and the Ministry for National Economy, a law was proposed and later passed to cap the domestic interchange fees at a level of 0.2% for debit card transactions and 0.3% for credit card transactions. The European Union later introduced similar regulation, which replaced the Hungarian law on interchange fees.

2.2. Motor Third Party Liability (MTPL) database – competition advocacy efforts

13. The framing of the regulation related to the MTPL database operated by the MNB is another example of consultation between the GVH and the financial regulators. The MNB observed prudential issues on the Hungarian MTPL market. The level of insurance fees for certain types of vehicles had become supracompetitive, partly because a number of insurance companies abstained from insuring certain types of risks that they did not have sufficient information about, which reduced the number of competitors on the market. The MNB proposed that a database should be designed which would include data on each individual MTPL contract, and that this information should be provided to insurance companies. The MNB contacted the GVH in order to engage in consultation about the proposal. The main aim of this consultation was to design the database in a way that would mitigate possible competition concerns, and which would also ensure a more competitive market.

14. The GVH's concerns were considered by the MNB when it was formulating its final proposal, and the possible issues arising in the original proposal were minimised.

15. This example clearly shows that cooperation between the competition authority and the regulator – during the design phase of legislation – may be an effective way of ensuring the *ex ante* pro-competitive nature of regulation.

3. Cartel investigation (full prepayment of loans)⁵

16. To illustrate the competition law enforcement efforts of the GVH with respect to financial institutions, and the solutions that these efforts have provided to the issues arising as a result of the financial crisis, we cite the example of a cartel proceeding against a number of Hungarian banks. The GVH fined 11 financial institutions due to their concerted practice aimed at limiting the full prepayment of foreign currency loans.

17. During the years preceding the financial crisis, mortgages denominated in foreign currencies (most notably in Euro and Swiss Franc) became popular products in Hungary. This was due to the fact that these loans had more favourable interest rates compared to those denominated in the local currency. Following the financial crisis exchange rates between the Hungarian Forint and the above-mentioned foreign currencies changed rapidly, thereby placing a substantial burden on the debtors of foreign currency based mortgages. To mitigate the negative effects of this, the Parliament adopted a law in late 2011, which allowed the debtors to pay back their real estate mortgage at a fixed, preferential exchange rate. Consumers could a) repay the full amount of their loan using their own resources in one sum or b) apply for a refinancing HUF loan.

18. In its proceeding initiated in 2011, the GVH found that the banks coordinated their strategies through the exchange of confidential information in order to reduce the full prepayment of foreign currency based mortgages on fixed exchange rates. They did so by limiting access to refinancing loans which would have been suitable to redeem these loans. On the basis of the available information, and in particular based on written evidence (emails, internal notes), the GVH found that in order to limit the intensity of

⁵ For an English language press release on the case, see: http://www.gvh.hu/IMPORT/import-20140110_134637/en/press_releases_old_hu_links/8456_en_95_billion_huf_fine_in_the_full_pre_payment_loan_banking_case.html

loan replacement and to reduce the full prepayment of loans on fixed exchange rates, the parties involved coordinated their practices in the framework of a uniform, comprehensive scheme. As part of this activity, they shared information about their strategies relating to full prepayment and about interested clients. Additionally, bilateral consultations also took place between certain banks. These actions were sufficient to enable the undertakings to coordinate their strategies concerning the limitation of full prepayment.

19. The decision of the GVH is not yet final due to a partial repeal (calculation of fines) by the Supreme Court.