



Organisation for Economic Co-operation and Development

**DAF/COMP/AR(2017)31**

**Unclassified**

**English - Or. English**

**14 November 2017**

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

## **Annual Report on Competition Policy Developments in Hungary**

**-- 2016 --**

**5-6 December 2017**

This report is submitted by Hungary to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-6 December 2017.

**JT03422866**

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

### 1.1. Changes to the narrower legal environment - Amendments to the Competition Act in 2016

1. Parliament enacted a number of major amendments to the Hungarian Competition Act in December 2016. Several of these amendments entered into force on 16 December 2016, with the rest entering into force in January 2017.
2. The amendments entering into force in December related to the legal instrument of settlement. Pursuant to the amended rules, the Competition Council, the decision making body of the GVH (Hungarian Competition Authority), will reduce the amount of the fine otherwise to be imposed pursuant to other regulations of the Competition Act by no less than ten, and no more than thirty per cent, in respect of undertakings that have submitted a settlement statement.
3. One of the amendments transposed into Hungarian law Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

### 1.2. Changes to the broader legal environment

4. On 2 January 2016 an amendment to the Act on 'Unfair Trading Practices' entered into force. This amendment stipulates that the regulations governing undertakings with substantial market power are to be supplemented by the provision that for the purposes of the Competition Act, in the market of the retail sale of consumer staples as the relevant market, a dominant position exists if the turnover of the undertaking, or the combined net (consolidated) turnover of the connected undertakings from the retail sale of consumer staples in the previous year exceeded HUF 100 billion.
5. A number of new measures have been introduced to protect consumers in the course of the sale of goods through product demonstrations. Even though the provisions are enforced by the consumer protection authority and the National Bank of Hungary as the supervisor of the financial intermediary system rather than by the GVH, the provisions still affect the proceedings of the competition authority, which also takes action against such infringing undertakings for the violation of the prohibition of unfair commercial practices against consumers.
6. Furthermore, the legislative amendment which entered into force on 1 January 2016 relating to the reduction of red tape in public administration, also affected the administrative deadlines applicable to the GVH. Pursuant to the regulation aimed at simplifying and accelerating proceedings, the authority must make a decision within 8 days in cases to be settled in less than two months (so-called summary proceedings), which affects the so-called simplified merger proceedings of the competition authority.
7. The same amendment also modified the legal instrument of national legal assistance. Since the amendment, other institutions may be contacted exclusively through means of electronic communication considered to be in writing or through e-mail, and responses to requests for national legal assistance from the GVH must also be in such format. Furthermore, the amendment reduced the time limit for responding to a request for national legal assistance from the former 8 days to 5 days, and stipulated that such time limit may not be extended.

8. The regulation of the suspension of proceedings has also changed, as proceedings may not be suspended at the request of the party following the entry into force of the amendment.

9. Another amendment is aimed at reducing the number of proceedings initiated for a legal remedy; it provides that in the future the second-instance authority may not instruct the first-instance authority to conduct a new proceeding to clarify the facts of the case and thus double the duration of the proceeding. For the GVH, this legislative change affects proceedings where the competition council proceeding in the case overturns decisions of investigators imposing fines in competition supervision proceedings or terminating proceedings.

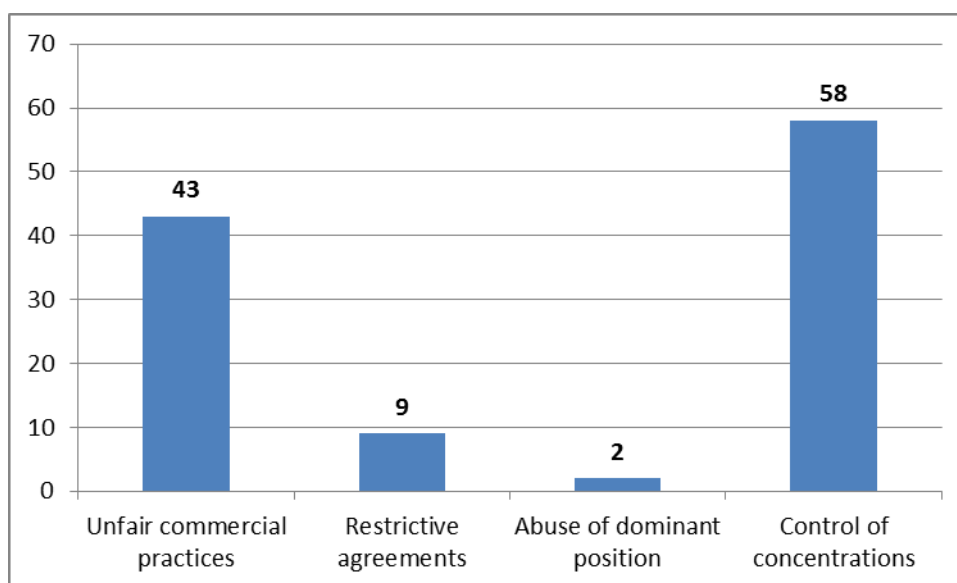
10. The Act on ‘General Rules of Electronic Administration and Trust Services’, which aims to expand electronic administration, entered into force on 1 January 2016. As a result of this enactment, since 4 January 2016 the GVH has been able to offer its clients the option of electronically reserving appointments when requesting access to the file.

11. Electronic litigation and communication, including in case of administrative litigation, was introduced by an amendment to the Act on the ‘Code of Civil Procedure’. The amendment set out detailed rules regarding electronic communication. Since the amendment, in administrative lawsuits public administration bodies may submit to the court the documents specified in law as well as any other submissions and documentary evidence exclusively in electronic form, and the court may only deliver official documents to public administration bodies in electronic format.

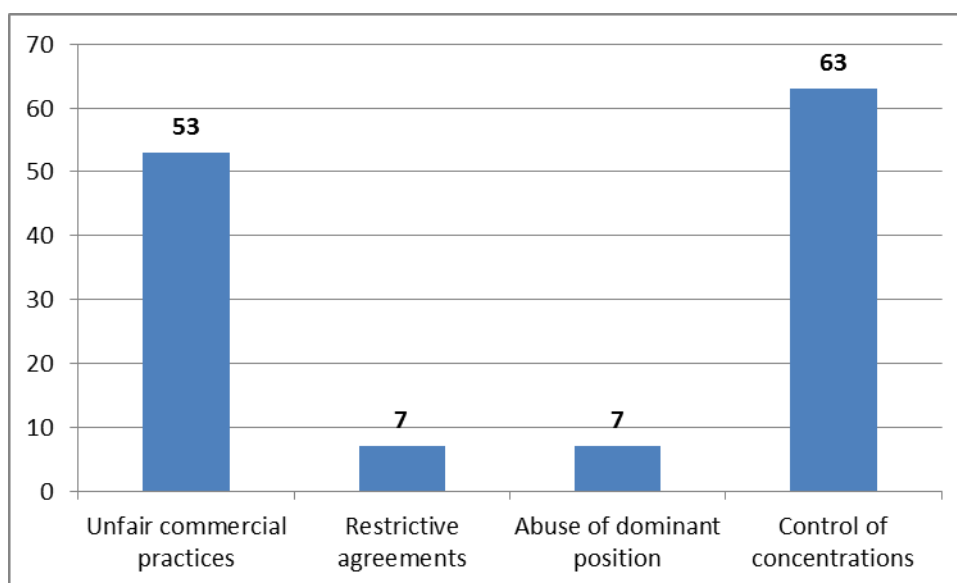
## 2. Proceedings

12. In 2016 the Authority’s Client Service was contacted, orally or in writing, on more than 2000 occasions and further numerous written communications were handled by the GVH’s case handlers.

13. In 2016 a total of **112 new cases** were initiated. In previous years consumer protection cases represented the highest share in the portfolio of the Authority, but this has changed. In 2016 the number and ratio of merger cases became even more dominant, with control of concentrations representing the highest share within the proceedings of the GVH (in 2016 58 such proceedings were initiated, compared to 36 in 2014 and 54 in 2015). In 2016, 43 proceedings were initiated relating to unfair commercial practices, 9 relating to restrictive agreements, and 2 because of abuses of dominance.

**Figure 1. Number of cases initiated by the GVH in 2016**

14. Altogether 130 proceedings were closed (this is almost identical to the number of closed cases in 2015, which was 125). Similar to case initiations, most of the closed proceedings were merger cases. Of (all) the cases closed in 2016, there were 63 merger cases (compared to the 49 merger cases closed in 2015). 53 cases were related to consumer protection, 7 to restrictive agreements and 7 to abuse of dominance.

**Figure 2. Number of cases closed by the GVH in 2016**

15. The effectiveness of the operation of the GVH is not solely based on the amount of the sanctions imposed, as the basic task of the GVH is to maintain the public interest in fair competition and maintain a culture of compliance with the law. However, the total amount of the fines imposed in a competition authority's competition supervision proceedings is an important measure of the effectiveness of its activities. The GVH

imposed fines amounting to a total of 5.4 billion HUF (approx. 17.3 million EUR) in 2016.

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

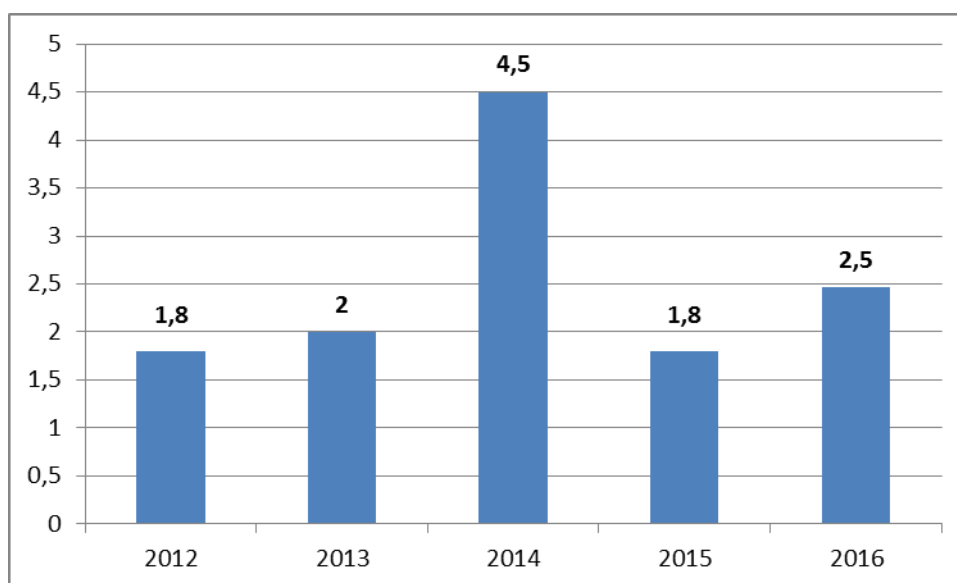
16. The enforcement of the legislation on consumer protection is divided among public authorities along their competences. Besides the Hungarian Authority for Consumer Protection (Nemzeti Fogyasztóvédelmi Hatóság – NFH), the GVH and the Central Bank of Hungary (Magyar Nemzeti Bank – MNB) – this latter as 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 by violating the information requirements set out in other legal norms. The MNB has jurisdiction in connection with practices carried out by those financial institutions that fall under its supervision in accordance with the law. In all other situations, it is the NFH that has jurisdiction to proceed. 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 (UCP Act) 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.

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

18. B2C cases are covered by the UCP Act, 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”).

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

20. In 2016 the GVH closed 53 consumer protection proceedings, this amounts to 40% of the all closed cases. On 35 occasions the Competition Council, the decision-making body of the GVH, established an infringement, in 3 cases adopted a commitment decision, since the GVH found that the public interest may be guaranteed by accepting the commitments offered by the parties. The remaining 15 cases were closed by an injunction of the case handler. In 2015, the GVH imposed fines amounting to a total of 769.2 million HUF (approx. 2.5 million EUR) in this category of cases.

**Figure 3. Fines imposed in consumer protection related cases (million EUR) 2012-2016**

21. 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.

22. 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.

### *2.1.1. Financial services*

23. The significant information asymmetry that the GVH has experienced in its practice on the market of financial services can be traced back to the low level of financial knowledge of consumers, the abundance and complexity of financial services and the huge volume of contractual documents associated with financial services. As a consequence of the information asymmetry and taking into account the fact that consumers rarely make decisions related to financial services, often contract for long periods of time, and make decisions concerning large amounts of money as compared to their every-day transactions, there is usually a significant risk to consumers on this market.



24. The GVH's decisions relating to financial services with a consumer protection angle concerned two insurance products in 2016. In these cases – over and above the need to take into account the aforementioned circumstances – the increased uptake of online sales and electronic communication in financial services was also observable.

### **2.1.2. K&H case**

25. K&H Biztosító Zrt. (K&H) engaged in unfair commercial practices when promoting its travel insurance product on its online premium calculation interface, in its online advertisements, and in its direct marketing letters as it claimed that the product contained a 10% discount relative to the standard price, when in practice the standard price was never actually applied. Online purchasers could make use of the promotional price, while consumers purchasing off-line had other discounts available. The undertaking never applied the standard price indicated in the calculator; the 10% online discount was fictitious, that is, no discount existed in reality. The insurance company stated in its other commercial communication tools that it was selling its travel insurance product with a 10% online discount; however, it never employed the non-discounted insurance premium. The GVH based the calculation of the fine on the cost of the advertising tools. During the determination of the amount of the fine the GVH regarded as aggravating factors that the infringing commercial practice was continued for an extended period of time, on several types of advertising media and thus it reached a broad range of consumers. The GVH considered as mitigating factors that K&H voluntarily changed its commercial practice, albeit in a late stage of the competition supervision proceeding, following receipt of the preliminary position, and that it submitted a detailed and reasoned commitment application.

### **2.1.3. “Otthonangyal Group Insurance” – commitment case**

26. The GVH accepted the commitments of E.ON Energiakereskedelmi Kft. and AEGON Magyarország Általános Biztosító Zrt. regarding the communication of “Otthonangyal Group Insurance”. The GVH did not state any infringement in the case and no fine was imposed. The GVH examined whether the companies had noticeably (in an observable and understandable manner) informed consumers about the duality of the service, that is, the emergency relief service (in the event of electrical repairs, plumbing, gas pipe repair and unblocking drain pipes, available only in emergency situations and with other restrictive conditions) and the assistance service (which entails information provision and the recommendation of craftsmen). In accordance with the commitments undertaken by the firms, the GVH imposed an obligation on the companies that they must inform, in writing, their clients who purchased the Otthonangyal insurance product in particular periods about the terms of use of the insurance policy. The enterprises must also publish such disclosure on their websites, together with a list of at least 3 examples each of common cases of emergency relief and other cases not qualifying as emergency situations. The GVH took into account the following factors: the enterprises abandoned the communication practice in question before they undertook the commitments; the commitments goes beyond the specific case, thus it may also serve as guidance for competitors when designing their communication activities; the commitments satisfy the requirement of controllability; neither the GVH nor any other authority found any infringement in the practices of the two undertakings in the five years before the

decision was adopted that would have been relevant for the purposes of the competition supervision proceeding.

#### ***2.1.4. Comparative advertising***

27. Comparative advertising may be an efficient communication tool for both consumers and enterprises; however, in light of the nature of the tool, above average care must be taken when employing this tool. The decisions of the GVH may provide guidance in the matter.

#### ***2.1.5. Unilever Case***

28. The GVH examined whether, from May 2015 onwards, Unilever Magyarország Kft. compared its DomestosPower5 product with the Bref Power Active Lemon product objectively in its television commercial and on the www.domestos.hu website. In its order terminating the proceeding the GVH stated the following: If a comparison relates to a single feature (of a general nature, with positive connotations), the advertisement may suggest to consumers that the other, essential characteristics of the products are identical or similar. It is important that non-infringing comparative advertisements should present an objective picture to consumers; however, consumers may not gain an objective view if the characteristics featured in the comparison are not essential for consumers or such features are highlighted that are not relevant for the products presented. Such comparative advertising is illegal because it unreasonably and without justification distorts or misdirects the perception of consumers. The characteristics featured in the comparison are impossible to verify: consumers are unable to check the characteristics or differences, and are unable to test, verify or in general interpret the differences presented in the advertisement, and authorities are unable to verify the similarity or difference of the characteristic in an investigation. The objectivity of the comparison is undermined in general because, for instance, the comparison in the advertisement does not use the same benchmark, the results regarding other essential characteristics are concealed (which may be less favourable), the comparison unreasonably suggests general benefits beyond the scope of the compared characteristic, by focusing on a single (advantageous and relevant) feature. The GVH concluded that in the present case the difference in the shape, number, size, volume, colour etc. of the active substance goblets of the two products in itself does mean that the advertisement constitutes an infringement.

#### ***2.1.6. Sale of timeshares***

29. Timeshare contracts for periods of 20, 30 or even more years have become widespread in the last decade. The promise that timeshares already owned by consumers will be resold but that eventually an additional timeshare will be sold to consumers has become “popular” in the last few years. However, in the cases that the GVH examined the timeshares were not actually sold contrary to promises that were made and the whole commercial practice was based on false information. As a result of this alarming practice the GVH already submitted a legislative proposal to the Parliament in 2015 and the proposal is still relevant. In 2016 the GVH made decisions in 7 timeshare cases.

### 2.1.7. Failed sales of timeshares

30. HuPont Kft., Dial Tone Kft., Well4U Kft. and Electronic Exchange and Earnings LLC misled consumers with their offers relating to the sale of timeshare holidays. The GVH fined the undertakings and ordered them to discontinue the infringing conduct. The undertakings created the false impression in consumers who already owned timeshares and whom they contacted that they would resell their existing timeshare contracts. The undertakings informed consumers, in a solely verbal manner, that the companies would purchase the timeshare holidays from the consumers in exchange for a higher entry/membership fee, and that they would thereby become members of certain systems established for this purpose and receive “points” for their timeshares, which could later be used to purchase various products and services on particular websites. However, in the overwhelming majority of cases the points could not be redeemed due to the lack or pricing of products and services or because consumers would incur additional costs, and they were eventually unable to “get rid of” their timeshares. For the calculation of the fines the GVH started from the revenues (entry fees, commissions) derived from the sale of timeshare holidays subject to the infringing practice. The GVH regarded as aggravated factors, inter alia, the following: the retail operation of the undertakings relied on misleading information and constituted several infringements; the infringing practice was maintained for a long period and consequently reached a significant number of consumers; it targeted vulnerable consumers; and each undertaking gained significant benefits from the infringements. The GVH imposed a fine of 11.7 million HUF (approx. 38 thousand EUR) in aggregate on the undertakings.

31. Royal Marketing Európa Kft. misled consumers with its offers concerning the sale of timeshare holidays. The GVH imposed the maximum possible fine, 12.2 million HUF (approx. 40 thousand EUR) on the company. The firm promoted its timeshare-related offers through discussions over the telephone and in person and on its website. In its decision the GVH established that the company had falsely claimed that it engaged in the secondary sale of timeshare holidays and that it was successful in those activities, while in reality it did not engage in such activities; furthermore, it failed to satisfy the information provision requirement laid down in sectoral legislation, namely, that consumers have a right to withdraw from a contract after its conclusion. Consequently, taking all these factors into consideration, the company did not employ practices in line with the principles of good faith and fairness in its communications with consumers.

32. Timeshare Market INC Kft. ‘in.liq.’ (Timeshare Market) misled consumers with its proposal relating to the sale of timeshare holidays. The GVH imposed the maximum possible fine, 35.1 million HUF (approx. 113 thousand EUR) on the company. The firm promoted its timeshare-related offers through discussions over the telephone and in person, in other online advertisements and on websites. In its decision the GVH established that the undertaking falsely claimed that it engaged in the resale of timeshare holidays as it failed to demonstrate any attempt at such activity to the GVH; it provided misleading information about the market value and resale potential of timeshare rights and on the effectiveness of such resale; it made false claims relating to the possibility of redemption of the sum paid in a credit system and on the special benefit of the reimbursement of the price if the resale is unsuccessful. The offers targeted consumers who already held timeshare holidays, which they intended to sell. For the calculation of the fine the GVH started from the revenues derived from the sale of the service subject to the infringement. The GVH

regarded as aggravating factors, inter alia, the fact that the promise of resale is of confidential nature; the commercial practice was infringing from several aspects, it reached a wide range of consumers and was extended in time; a substantial proportion of the targeted consumers were elderly persons who wanted to sell their existing timeshare rights as soon as possible and with significant sacrifices, if need be, and who were therefore explicitly open and vulnerable to such messages; and finally that the undertaking gained substantial benefits from the infringement.

#### *2.1.8. The market of cosmetics*

33. The GVH ordered Procter & Gamble RSC Regionális Szolgáltató Kft. and Procter & Gamble Magyarország Nagykereskedelmi Kkt. to undertake the commitments listed below.

- The companies undertook to refrain, after receipt of the decision, from general references relating to the hair loss reducing effect of the Head and Shoulders Anti-Hairfall product family.
- Furthermore, the companies undertook to remove the Head and Shoulders Anti-Hairfall product family from the Hungarian market by 1 October 2016, by introducing a product family of a different name (not referring to hair loss in its designation) instead, so that neither the name nor the advertisements of the new product family would refer to hair loss in general, and the companies would instead emphasise protection against split hair in their product communications.
- The GVH concluded that the consumer protection and competitive concerns that might arise relating to claims such as “effectively reduces hair loss” used in the context of the Anti-Hairfall products could be remedied; consequently, the effective protection of the public interest could be ensured. Furthermore, the GVH established that the information necessary to assess whether claims such as “No.1 around the world, the calculation of P&G, based on the sales figures of Nielsen in the [...] period” and the “up to 100% dandruff-free hair” slogan may deceive consumers was unavailable in the proceeding in question and would not be able to be obtained even if the proceeding were to be continued; therefore, the GVH terminated the proceeding with regard to such claims.

#### *2.1.9. Medicinal products, food supplements, food products*

34. Non-prescription drugs that are not subsidised from the social security budget may be advertised as long as legal provisions are observed. In such cases, the proceedings of the GVH focus on ascertaining whether the information disclosed in advertising relating to pharmaceuticals is in line with the product characteristics of the drugs in question.

#### *2.1.10. Misleading information relating to the mode of action of medicinal products or medicinal preparations*

35. The GVH established that SAGER Pharma Szolgáltató Kft. (SAGER Pharma) infringed the law in its advertising of the Seractil Dolo 300 mg product, because the non-prescription drug was not presented in accordance with the product characteristics and it created the false impression that the effects of the medicine would be immediate. The GVH imposed a fine of 10 million HUF (approx. 32 thousand EUR). The “starts acting immediately” slogan suggested to consumers that the product would have immediate effect, thus the pain inhibitor action of the drug

would be felt very quickly. In the course of its investigation the GVH asked the National Institute for Pharmacy and Nutrition (NIPN) to provide a professional assessment of the claim under review. According to the specialised authority, the pain relieving effect of the film-coated tablet cannot be felt immediately after it is swallowed. After oral consumption the medicine first needs to be absorbed, and any effect can only be realised after absorption and cannot therefore be felt immediately. Consequently, the GVH concluded that SAGER Pharma engaged in illegal advertising between January and June 2015. The GVH based the calculation of the fine on the cost of the advertising tools. During the assessment of the infringing conduct the GVH regarded as aggravating factors that the misleading commercial practice reached a broad range of consumers and was maintained for an extended period. The GVH also took into account that the advertising tools also contained non-infringing messages and that SAGER Pharma gained only modest revenues from the product concerned.

36. The GVH concluded that Pfizer Gyógyszerkereskedelmi Kft. (Pfizer) engaged in unfair commercial practices when promoting its Multi-tabs Multi Kid dietary supplement product, because it created the misleading impression, in contravention of the sectoral rules, that the product is capable of replacing a balanced and varied diet, and the company also violated the requirement of professional due diligence. The GVH imposed a fine of 50 million HUF (approx. 161 thousand EUR) on the undertaking. The GVH considered that the combined effect of the textual and visual presentation of advertisements (television and cinema spots as well as posters, fliers and displays) communicated to consumers that the Multi-tabs Multi Kid vitamin product could replace a varied diet. The former suggested that if a child does not follow a healthy and balanced diet, for example, if he/she dislikes vegetables, but the parent would like to ensure a sufficient intake of vitamins and minerals, then the solution is the Multi-tabs Multi Kid vitamin product. While the undertaking disclosed in small print the mandatory phrase that “no dietary supplement, including Multi-tabs Multi Kid, may replace a balanced, varied diet and a healthy lifestyle”, this was contrary to the main message featured in the advertisements. The GVH established that the undertaking made unsubstantiated health claims in its advertisements and that it failed to fully comply with the special sectoral regulations governing foodstuffs, thereby also violating the requirement of professional due diligence. The GVH based the calculation of the fine on the advertising costs. The GVH considered as mitigating factors that the undertaking changed its commercial practices by increasing the font size of the information in small print and that its fliers also contained additional information. The GVH considered it to be an aggravating circumstance that the infringement was sustained for an extended length of time and reached a significant number of consumers in the target group.

## 2.2. Restrictive agreements

37. In 2016, similarly to the trends seen in previous years, a substantial proportion of the complaints relating to cartel activities (approx. 60-65%) concerned public procurement procedures, primarily public procurements relating to EU-financed programmes. Within this category, the number of proceedings and information relating to the procurement of medical devices stood out.

38. In addition to the leniency programme and the informant reward, the Kartell-Chat has become a new and important way for the GVH to obtain information in order to detect cartels.

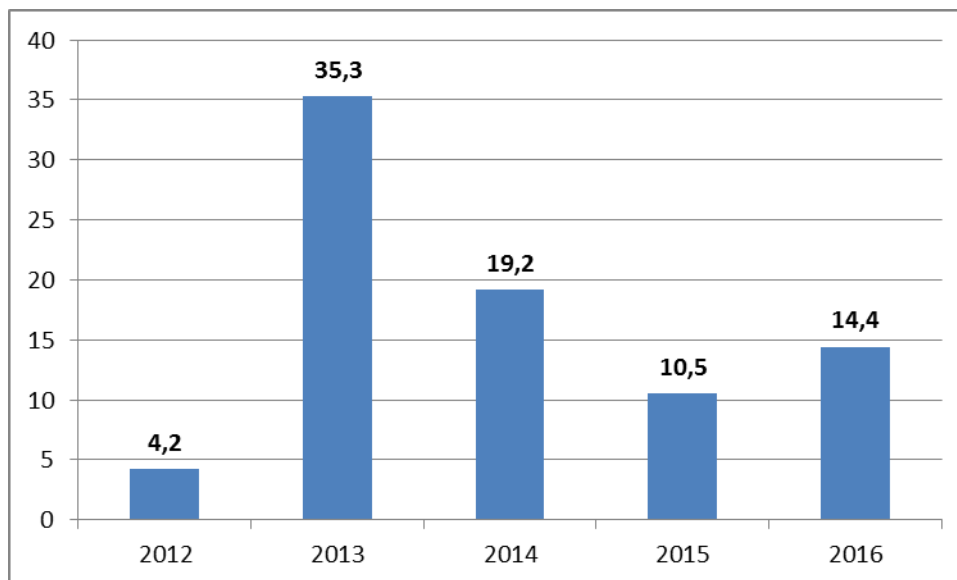
39. The three sources of information supplement and reinforce one another. In 2016 the 20 queries registered on the Kartell-Chat corresponded to the average number of contacts under the informant reward scheme. Two proceedings were initiated as a result of the information obtained via the Kartell-Chat forum, and one as a result of the informant reward scheme. In 2016 two leniency applications were accepted.

40. The submission of leniency applications may be particularly significant in the case of public procurement cartels because co-operation with the GVH has a substantial effect on the level of the fine imposed in the initiated competition supervision proceeding; indeed, persons affiliated with companies submitting leniency applications are in a significantly more favourable position in any criminal proceeding that may be initiated due to cartel activities. If an undertaking making use of the leniency programme also participates in the settlement proceeding, it may benefit from a fine reduction of up to 80% in aggregate.

41. In 2016 the GVH adopted 7 decisions in proceedings relating to restrictive agreements, one of which constituted the post-investigation of an earlier procedure. Infringements were found in five cases, while one procedure was terminated.

42. In the five cases where infringements were found, fines of 4.5 billion HUF (approx. 14.5 million EUR) were imposed in aggregate.

**Figure 4. Fines imposed in restrictive agreement cases (million EUR) 2012-2016**



### *2.2.1. Surgical catgut suture cartel case*

43. In its decision the GVH established that in order to influence the tender notice, share the market and fix prices, B. Braun Medical Magyarország Orvostechnológiai Kft., CHIRMAX HUNGARY Kereskedelmi Kft., Johnson & Johnson Egészségügyi és Babaápolási Termékeket Gyártó és Forgalmazó Kft., SurgiCare Kereskedelmi és Szolgáltató Kft. and VARIOMEDIC Kereskedelmi és Szolgáltató Kft. had co-ordinated

their bids concerning four public procurement projects of hospitals. A total fine of 270 million HUF (approx. 843.800 EUR) was imposed on the undertakings for the infringement. In the case the GVH investigated tenders that were published by hospitals between 2011-2014 relating to the procurement of surgical sutures and surgical equipment. These products are medical devices that are used in hospitals for operations. The buyers of the undertakings under investigation distribute medical products and medical devices and their activities give them a combined decisive share of the domestic surgical sutures and surgical gown sewing machine market. The case was initiated based on the leniency application of Johnson & Johnson Kft. in 2013. During its proceeding the GVH extended its investigation several times and all in all more than 30 public procurement actions were analysed to ascertain whether the bidders had co-ordinated their bids for supplying surgical products for tenders. Johnson & Johnson Kft. received full immunity from the imposition of a fine, thereby avoiding a fine of more than 115 million HUF (approx. 360 thousand EUR), due to the fact that the GVH became aware of the infringement through the leniency application of Johnson & Johnson Kft. In addition to Johnson & Johnson Kft, CHIRMAX HUNGARY Kft., and B. Braun Medical Hungary Medical Technology Co. Ltd. submitted leniency applications, and having regard to their active participation in enabling the cartel to be discovered, they received a 30 percent and a 20 percent reduction in their fines respectively. When determining the fines, the GVH took into account as aggravating factors that bid-rigging amounts to one of the most serious competition law infringements and the fact that the undertakings are collectively significant market participants that must have been aware of the unlawfulness of their behaviour. The fine imposed on Surgicare Kft. was further increased because the role it played as the organiser in the cartel was established in connection with further infringements.

### *2.2.2. Information cartel in the banking sector*

44. In its decision in the Vj/8/2012 case the GVH established that Magyar Bankszövetség (Hungarian Banking Association) – with the collaboration of Nemzetközi Bankárképző Központ Zrt. (International Training Centre for Bankers Ltd.) – had been operating the so-called “BankAdat” database for 12 years in a way that was likely to restrict competition, as it had made it possible for the banks to share private, confidential and strategic data with each other. The GVH imposed a total fine of 4.015 billion HUF (approx. 13 million EUR) on the undertakings for the infringement. According to the decision of the GVH, the information flow that took place in the operation of the BankAdat database amounted to a horizontal information exchange, thereby infringing the competition law of both Hungary and the European Union. The private, confidential and strategic data (e.g. data relating to quantities, costs, demand, profit) which was shared in the database by the members of Bankszövetség ensured that the banks obtained up-to-date information about the market, market processes, efficiency, business policies and strategies of competitors. The concerned banks particularly used the available information for making business plans, creating strategies and for product development. When setting the fines, in the case of Bankszövetség, the GVH regarded as a basis the sum of the interest, fee and commission incomes of the members providing the data in their reporting period from 2001, which were realised as relevant market turnover on the retail and business segment; while in the case of Bankárképző the GVH considered as relevant turnover the turnover realised in relation to the operation of the database. When establishing the amounts of the fines, the GVH regarded as aggravating circumstances – among others – the following: the uncovered information exchange led to an exceptionally wide range of data sharing and it also affected competition in the

dimensions of price, quality and innovation; furthermore, that the undertakings participating in BankAdat covered the domestic bank system almost entirely and their collective market share exceeded 80%. The GVH took into account as mitigating factors the following: Bankszövetség and Bankárképző voluntarily abandoned the operation of the database after the initiation of the supervision proceeding and that the database is only partially unlawful. Bankszövetség was an active member of the information cartel, while Bankárképző played the role of a contributor. The GVH did not establish the direct responsibility of the member banks that provided data, as the decisions relating to the establishment and operation of the database were made by Bankszövetség itself.

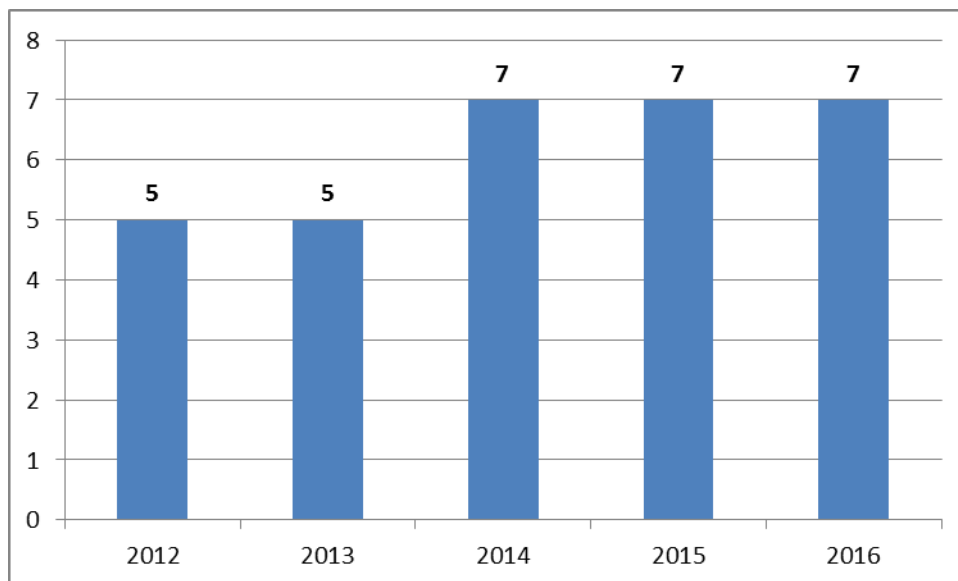
### *2.2.3. RPM case concerning meat products*

45. Vj/37/2014 – Pick Szeged Szalámigyár és Húsüzem Zrt. (Pick) determined minimum resale prices when distributing meat products processed by Pick during temporary sales (promotions) in the framework of its marketing strategy. The GVH imposed a fine of 44 million HUF (approx. 142 thousand EUR) on Pick for the infringement. Pick was able to force the recommended consumer prices on its commercial partners by threatening them with delisting and the imposition of other sanctions. However, it did not apply these threats in practice. Pick and its commercial partners (wholesalers and retailers) are undertakings on different levels in the production and distribution chains. Pick is a producer on the upstream level of the production chain, while its commercial partners are on the downstream wholesale and downstream retail level of the distribution chain. The agreements between Pick and its commercial partners amounted to vertical agreements. During the investigation, the GVH established that the agreements aimed to restrict competition, which was further supported by the motive of the parties. Pick was interested in making its brand image more attractive by forcing its commercial partners to sell its products for higher prices than those of its competitors. Pick's commercial partners were interested in excluding those competitors that were able to sell Pick-products cheaper than themselves. When determining the basic amount of the fine, the GVH took into account the net sales revenues coming from the agreements on certain promotions. As relevant turnover, the GVH only took into account those agreements that were clearly made in order to bilaterally and mutually determine the minimum level of the consumer prices. The GVH took into account, among other things, the following aggravating factors: wholesale and retail price fixing amounts to a serious competition law infringement; and due to its leading market role, Pick's behaviour may influence the behaviour and pricing practice of other undertakings operating on the market. The GVH took into consideration, as mitigating factors that the actual existence and effects of the unified minimum prices recommended by Pick were not clearly ascertained by the price analyses made on the basis of publicly available data and that Pick explicitly admitted the infringement.

## **2.3. Abuse of dominant position**

46. In 2016 the GVH initiated 2 new proceedings related to abuse of dominance and closed on-going 7 cases. Out of these closed cases, the GVH established an infringement and imposed a fine in one case, closed two cases with commitment decisions, closed one case without establishing an infringement and terminated two further post-investigation cases. The total amount of the fines imposed in this case category was 88 million HUF (approximately 280 thousand EUR).



**Figure 5. Number of decisions in abuse of dominance cases (2012-2016)**

### ***2.3.1. Abuse by MasterCard (interchange fees case)***

47. MasterCard Europe SA (MasterCard) abused its dominant position through its exclusionary practice of not decreasing its interchange fees of its consumer debit cards issued in Hungary to the level of Visa's interchange fees. An interchange fee is a fee that a merchant's bank (the "acquiring bank") pays to a customer's bank (the "issuing bank") for the acceptance of card-based transactions. As a result of the commitments offered by Visa and accepted by the European Commission, Visa has faced an upper limit since 2011 on its interchange fees on domestic transactions made through consumer debit cards, while MasterCard faces no such limitation. MasterCard was a dominant undertaking in the Hungarian debit card market in the relevant period and the upper limit placed on Visa's ability to determine interchange fees further strengthened its position so that it had an unchallengeable competitive advantage vis-à-vis Visa. MasterCard, aware of the above-mentioned facts, determined the level of its interchange fees in a manner which further weakened the already weak competition resulting from MasterCard's dominant position in the market. Consequently, the GVH concluded that MasterCard had abused its dominant position and therefore imposed a fine on it. In determining the amount of the fine to be imposed, the GVH took into account 10 percent of the relevant income of MasterCard's debit card turnover in the investigated period. As a mitigating factor, when determining the amount of the fine, the GVH took into account the novelty of the infringing conduct of MasterCard, and consequently imposed a fine of 88 million HUF (approx. 284 thousand EUR).

### ***2.3.2. Blank carrier media copying remuneration requested by a collection society***

48. The GVH has accepted the commitments of ARTISJUS Magyar Szerzői Jogvédő Iroda Egyesület, Előadóművészi Jogvédő Iroda Egyesület, Filmjús Filmszerzők és Előállítók Szerzői Jogvédő Egyesülete, Hungart Vizuális Művészek Közös Jogkezelő Társasága Egyesület and Magyar Hangfelvétel-kiadók Szövetsége Közös Jogkezelő Egyesület (hereinafter jointly referred to as 'collection societies') according to which the

blank carrier media remuneration will be more precisely determined for both its obligors and its obligees and consumers will be given the opportunity to reclaim the blank carrier media copying remuneration. The copying of copyrighted music, films, images and literary works is permitted for free for private purposes. However, ‘fair compensation’ must be paid for this freedom in the form of a lump-sum remuneration which is payable on the sale of blank video and audio carrier media. This remuneration is known as the blank carrier media remuneration. Collection societies – authorised by law – determine the blank carrier media remuneration every year in their tariff announcements. The distributors of blank video and audio carrier media are obliged to pay the blank carrier media remuneration to Artisjus (which acts as the enforcer of this remuneration among the collection societies), which divides the received amount among the authorised authors. During its inspection, the GVH found that the collection societies – authorised by law and having a legal monopoly to determine, collect and divide the blank carrier media remuneration – had not, since 2007, made any adjustments to reflect the changes to content consumption habits (e.g. when specifying the fee, copying for music purposes remained highly overrated), with the result that the determination of the blank carrier media remuneration may have been distorted due to deficiencies in the methods of their market researches and economic analyses; consequently, this may have damaged the interests of both the obligors and the obligees of the remuneration, and ultimately those of the consumers as well. The parties offered commitments to remedy the GVH’s concerns. The GVH accepted these commitments in its decision and requested the parties to remedy the deficiencies present in their market researches and economic analyses, so that when they are determining the blank carrier media remuneration that is to be paid they can take into account the changes to content consumption patterns, even if this necessitates abandoning obsolete methods and employing new content consumption technologies. Through the acceptance of the commitments, the possibility of reclaiming blank carrier media remuneration that has been paid has been established in Hungary. Furthermore, the collection societies have undertaken in the event of a legal dispute between a consumer requesting a refund and the concerned collection society, to participate in the proceeding of the Consultative Body operating under the Hungarian Intellectual Property Office in order to settle the dispute. The collection societies have also undertaken to finance the fees of the proceedings of the Consultative Body so that consumers may use the dispute settlement forum for free. Additionally, the collection societies have undertaken to commission an education campaign lasting 3 years for a budget of 45 million HUF (around 150,000 EUR) to publicise the refund opportunity.

### *2.3.3. Investigation of the drop-off charges of Budapest Airport Zrt.*

49. The GVH has accepted the commitments of Budapest Airport Budapest Liszt Ferenc Nemzetközi Repülőtér Üzemeltető Zrt. (Budapest Airport Zrt.) according to which it undertakes to reduce both drop-off fees and short-stay fees, and to change the rebates of its bonus card (Bónuszkártya). The reduced fees and rebates will be available till 31 December 2019, thereby ensuring the maintenance of the current efficient competition on the market of long-stay parking. The GVH did not establish an infringement and therefore did not impose a fine. On the basis of the commitments, the GVH obliged Budapest Airport to: reduce the price charged for using the Terminal and Premium parking lots for the first five minutes after driving in for the third time in a day and for all subsequent visits on the same day; provide rebates for Bónuszkártya owners in the form of a 15% discount when using the Terminal parking lot and a 20% discount when using the Premium parking lot; increase the maximum limit of Bónuszkártya; make it possible for undertakings which offer parking services within a 15 km radius of bus parking spots on

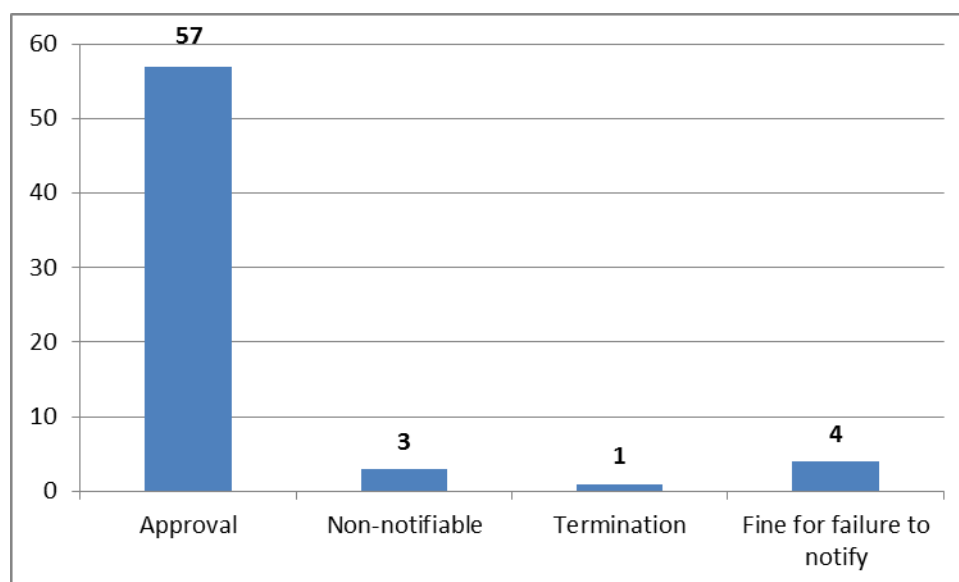
the arrival level of the airport to rent parking spots for a maximum 2 hours per occasion, with no limit on the amount of times a vehicle can drive in per day. After assessing the statement containing the commitments, the GVH established that the public interest could be efficiently protected via the acceptance of the commitments because the additional costs resulting from the increase of prices on 10 December 2013 which are borne by undertakings providing long-stay parking services may decrease as a consequence of the commitments, thereby ensuring continued efficient competition; furthermore, establishing the alleged infringement would result in delays and additional procedural costs that would be difficult to estimate, and the commitments comply with verifiability requirements.

## 2.4. Control of concentrations

50. 2016 saw the continuation of the existing trend of the growing number of merger cases. In 2016 the GVH received 58 merger notifications (compared to 54 in 2015 and 32 in 2014). The number of merger cases closed also increased, with 63 closed cases in 2016 (compared to 49 in 2015 and 35 in 2014). Out of the 63 merger cases closed, full-scale merger proceedings were conducted on 6 occasions (all concluded within the 4-month procedural time limit required by law).

51. In 2016 the institutional and regulatory conditions relating to concentrations were substantively changed as the modifications made to the applicable procedural rules also facilitated the use of the so-called summary procedure in merger cases initiated upon application. Thus, in addition to the changes made to the applicable procedural rules, the administrative time limit related to merger cases subject to a simplified procedure also substantively changed. This was one of the major factors that resulted in substantially lower administrative time limit requirements on average in relation to the merger cases of the GVH in 2016: in Phase I procedures started on application, decisions were adopted within 12 days on average (compared to the average 18 days in 2015).

**Figure 6. Number of merger cases by the types of decisions in 2016**



52. In 2016 the GVH made significant statements of principle on a number of important issues.

#### *2.4.1. Statements of principle regarding the prohibition of putting measures into effect*

53. In the context of a specific case the GVH clarified which actual situations it considers acceptable during the period of the prohibition of putting measures into effect with regard to the operation of the target company in accordance with the “ordinary course of trade” concept. In practice, the ordinary course of trade must provide the same room for manoeuvre and market operation on the side of the seller (and the target company) during the prohibition of putting measures into effect as before the conclusion of the transaction. That is, the ordinary course of trade may not mean passivity in the market and operation without taking commercial risks during that period. On the contrary: the ordinary course of trade entails in this period the undertaking of the usual commercial risks of the market operation concerned, which means not only the routine continuation of an existing market conduct and the serving of existing clients under pre-existing conditions, but it may also entail the change of prices or product selection as well as the introduction of new products or participation in high-value tenders. In general: it means the preservation of the decision making freedom of the seller (and the target company) with regard to market conduct and strategy.

54. The GVH also highlighted the general validity of the fact that the registration actions taken to formally record the ownership stakes giving rise to the control rights of the parties acquiring control (that is, the control situation following the concentration) must be regarded as the implementation of the concentration, the execution of which before the issue of the merger authorisation amounts to an infringement pursuant to the general prohibition of putting measures into effect.

#### *2.4.2. Investigation of the violation of the prohibition of putting measures into effect*

55. Pursuant to Hungarian merger legislation, there is a prohibition of putting measures into effect with regard to concentrations concluded after 1 July 2014; accordingly, the acquirer of control may not exercise its right of control before the acquisition of the authorisation of the GVH. Upon a reasoned application, individual exemption from the general prohibition may be granted before the adoption of the decision concluding the proceeding aimed at the authorisation of the right of control.

56. In 2016 the suspicion of the execution of concentrations without the authorisation of the GVH arose in four competition supervision proceedings. In the case of three competition supervision proceedings the same private individual acquired control, while the sellers in the various target companies were different private individuals. The applicant was registered as the owner of shares in the various undertakings, and the sellers were deleted from the register, on the date of conclusion of the contract in the case of two undertakings and on the date of expiry of the time limit for the exercise of the right of pre-emption of the minority shareholders in one further case.

57. Based on the facts, the GVH established infringements in all four competition supervision proceedings, considering that the concentrations concerned were executed without the authorisation of the GVH. As a result, fines of 15 million HUF (approx. 48 thousand EUR) were imposed in aggregate.

### 3. Market analysis and inquiry into sectors of the economy

58. Since 1 July 2014, the Competition Act has enabled the GVH – instead of or before initiating a sector inquiry on the observance of a market disturbance or the commencement of a competition supervision procedure – to monitor the level of the competition and the characteristics of a particular market in the framework of a market analysis. The purpose of a market analysis is to assist the GVH in the performance of its duties. To this end, the GVH makes use of the acquired information to manage the identified market disturbances, promote a more effective market operation and ultimately, through its facilitation of competition, to increase consumer welfare.

59. During a market analysis, the GVH with the help of external experts and consultants if necessary, uses public information and data collected on a voluntary basis to analyse and assess the operation of individual markets, market developments and market trends, and some market practices, as well as their particular impact on the competition and business partners, focusing especially on their impact on the final business parties. Market analysis is an efficient tool for gathering information about the operation and characteristics of a particular sector in co-operation with market participants, while avoiding the constraints associated with regulatory proceedings. During a market analysis, the GVH primarily relies on the voluntary contributions of undertakings operating in the sector in question. In order to increase the transparency of the GVH's activities, the acceptance of market analyses and to promote voluntary contributions, whenever the GVH initiates a market analysis it publishes a communication to this effect; furthermore, on the conclusion of the market analysis, it publishes a study based on its findings.

#### 3.1. Market analysis on the film distribution industry

60. In May 2016 the GVH closed a market analysis on the film distribution industry. The initiation of the market analysis was timely because the markets of film distribution and exhibition have significantly changed in the last 5 years, e.g. significant technical changes have taken place in relation to film distribution, resulting in films being distributed in reusable digital form.

61. Based on the market analysis the GVH suggested that the VPF fees (Virtual Print Fees) charged by the cinema operators should aim to recover the investment costs. On the other hand, the GVH recommended that the Parliament should increase the competences of the motion picture authority and strengthen its supervisory functions. Furthermore, the GVH suggested that merger control should also be a possibility in those cases in which the undertakings do not meet the notification threshold under the current rules, but which involve a merger that may nevertheless significantly affect the structure of the market.

#### 3.2. Market analysis on the markets of car distribution and services

62. In the framework of another market analysis the GVH examined the passenger car and LCV distribution and repair markets in Hungary, as well as the markets of certain related services. In the course of the market analysis the GVH looked into the specific design of the networks related to the sale and repair of cars and LCVs, any changes in these networks in recent years, the mutual effects of the characteristics of the markets of distribution and servicing, as well as the inter- and intrabrand competition.

63. The GVH's analysis did not find any market failure that could be remedied in a competition supervision proceeding; however, certain market issues affecting market conditions were identified. Accordingly, the GVH a) recommended the reduction of certain costs relating to the entry into service and operation of new vehicles in order to promote the sale of new vehicles, and b) recommended that consideration be given to the reduction of certain costs relating to the entry into service of used vehicles. Furthermore, it proposed that the re-introduction of the campaign period in the MTPL market is given thought. The GVH also addressed recommendations to market participants, proposing that they closely monitor the decisions of the GVH and the development of competition law trends to promote their compliance efforts.

### **3.3. Sectoral inquiry in the bank card acquiring market**

64. In 2016 the GVH made preparations for the sectoral inquiry into the acquiring market, which was eventually launched in January 2017. The sectoral inquiry covers the examination of the competitive conditions in the acquiring market, and the innovative cashless payment methods that may exert pressures on the acquiring market.

## **4. Lessons of the court reviews of the GVH's decisions**

65. The court review of 19 decisions adopted by the GVH in proceedings started *ex officio* was initiated in 2016. In the same year, 30 first-instance decisions were adopted by the Budapest Court of Public Administration and Labour, 16 decisions were made by the Budapest-Capital Regional Court in second-instance proceedings and 9 decisions by the Curia of Hungary in litigious proceedings.

66. The Budapest Court of Public Administration and Labour (first instance review court) upheld the GVH's decisions in all cases that were closed with final and enforceable decisions (9 cases). Of the cases heard by the Budapest-Capital Regional Court (second instance review court), the litigation was closed with a final ruling upholding the GVH's decision in 14 instances, the Regional Court changed the GVH's decision in one case, while in two cases the Court overruled the GVH's decisions and instructed the authority to re-open the proceedings. In the Curia phase 6 GVH decisions were upheld with final effect in terms of form and substance, while the GVH's decision was altered on 1 occasion and overturned on 2 occasions, and the GVH was instructed to conduct new proceedings. In the judicial review proceedings ongoing in 2016, litigations relating to antitrust-related decisions of previous years represented the majority.

67. In 2016 the GVH's decisions were reviewed in non-litigious proceedings in only 6 procedural fine related cases, fewer than in prior years, with the Budapest Court of Public Administration and Labour in its final decisions upholding the procedural fines imposed in all cases.

## **5. Competition advocacy – commenting on regulations and other drafts**

68. In the scope of its competition advocacy activity the GVH received a total of 92 submissions and 7 draft pieces of legislation for comments in 2016, which represents a slight decrease compared to the previous year (113).

69. The GVH sent its comments in 31 cases, in some instances initiating changes. Besides the submissions officially received by the GVH for comments, the Authority delivered its opinion in a further 3 cases from the 394 draft pieces of legislation uploaded on the government's homepage. The comments of the Authority continued to focus on creating a more competition-friendly regulatory environment, reducing the administrative burden and improving the conditions of the consumer decision-making process. A smaller number of comments concerned improving the quality of codification. During the year, several draft pieces of legislation arrived at the GVH necessitating its comments in its capacity as a public administrative body.

70. In 2016 the GVH intervened on several occasions when it experienced problems on a number of markets regarding competition or consumer protection in relation to certain provisions of the monopoly control or other state interventions (e.g. on the market of broker activities) or other regulatory problems such as the abolishment of competition on a previously fully competitive market through legislative means (e.g. on the market of sightseeing buses in Budapest). The GVH responded in 21 cases requiring information about the law enforcement powers of the GVH, and was contacted by ministries, other authorities and professional organisations, thereby enabling the experiences gained by the GVH to be put to use. However, a number of requests had to be rejected due to ongoing competition supervision procedures.

71. The GVH commented on the draft version of an act and on the draft version of a decree dealing with chimney-sweep services. With regard to the draft government proposal granting the chimney sweeping professional organisation with exclusivity to provide services to households, the GVH raised objections to the fact that natural person consumers cannot seek a legal remedy, whereas other market participants may lodge complaints to the Directorate General for Disaster Management. Furthermore, the GVH objected to the registration of the territory of service of private service providers by county, which may disallow extraterritorial services provision. The comments of the GVH on the decree called for a more market friendly delineation of services subject to exclusivity and those chosen at the consumers' discretion, indicating the potential competitive effects of the decisions. The draft decree contained a number of rules affecting market actors and consumers, in particular regarding operating costs and services subject to the payment of fees or charges, in relation to which the GVH proposed alterations. The comments of the GVH were not incorporated.

72. The GVH made comments in an attempt to intervene in the draft regulation aimed at entrusting the Milk Interbranch Organisation and Dairy Board with new competences on data collection and data handling, also relating to non-members. In the view of the GVH this may lead to the establishment and operation of an information cartel. To prevent this, it strongly recommended the introduction of extensive safeguards. The proposed legislation was not promulgated during the year.

73. The GVH commented on several occasions on a proposal aimed at amending Act CLV of 1997 on 'Consumer Protection', and also on the specification, in a government decree, of the situations deemed as amounting to severe violations of the disclosure requirements relating to e-commerce services. The GVH publishes all its decisions in its website; consequently, it considered it important that the new database did not hinder its own disclosures. Furthermore, the GVH considered it important to take into account factors resulting from certain special provisions of the Competition Act so that the decisions of the GVH establishing certain severe infringements are also incorporated in the separate database. (The proceedings of the GVH rely on the principle of objective

liability and they do not examine the culpability of infringers.) Numerous important comments of the GVH were incorporated.

74. The GVH made recommendations regarding the disclosure of the fees payable for health services subject to the payment of a fee on websites and of the prices of non-subsidised prescription drugs. Furthermore, it noted that a system promoting the comparison of the prices of pharmaceuticals should be established. It objected to the proposition that pharmaceutical dispensaries operated by family doctors in small settlements should only be allowed to enter into purchasing arrangements with pharmacies within a 30 km radius. The comments of the GVH were not incorporated.

75. The GVH voiced its objections to the terms relating to distributors in the draft decree on the amendment of certain ministerial decrees on medical aids and medical devices, on the ground that they may have anticompetitive effects. For instance, pursuant to the proposed change, distributors of custom-made medical aids would be required to establish measuring rooms of at least 5 m<sup>2</sup>, as opposed to the current requirement of 1.5 m<sup>2</sup> fitting rooms, which would cause unnecessary extra expenditure in cases where the distributed product or the needs of the clientele do not justify such a requirement. Another detrimental effect of the new provisions could be to reduce the number of entities distributing and servicing such products, which would lead not only to the lessening of competition but to reduced access to a service that is essential to many consumers. The comments of the GVH were not incorporated.

76. In its advocacy role the GVH tried to intervene in order to amend and extend certain provisions dealing with conflict of interest issues arising in the Act on ‘Cemeteries and Burials’. The GVH noted on several occasions that, circumventing effective legal regulations, affiliated undertakings were performing activities that should be performed by independent operators pursuant to effective legislation. In such situations relatives of the deceased, who are vulnerable and typically under pressure to make a decision, may have suffered losses as their choice of undertaker was influenced in a manner that was to their disadvantage. The comments of the GVH were not incorporated.

77. The GVH made a recommendation regarding the re-regulation of hop-on hop-off tour bus services in Budapest, which had been the exclusive right of local governments. Making use of legislative authorisation, in the summer of 2016 the Budapest government decided to grant a concession for 20 years to a single bidder for the hop-on hop-off tour bus service, which was at that time currently offered by four market participants under different terms. The GVH addressed a competition advocacy letter to the Budapest local government to promote the public interest in competition and compliance with the provisions of the Competition Act, emphasising the use of regulated competition as opposed to the concession arrangement. As it currently stands, even though the local government went ahead with the concession tender, no winner was announced in the end, and therefore the competing market participants may continue their operation.

## 6. Impact assessment

78. The GVH performs a so-called ex-ante impact assessment every two years to assess the level of financial gain that consumers have benefitted from due to its pro-competitive efforts. The quantification is based on the premise that more vigorous competition generally results in lower prices, therefore any practice unduly restricting competition or any merger leading to a substantial lessening of competition would mean



higher prices for consumers, which would be detrimental to them. If, on the other hand, the GVH's intervention frustrates such practices and mergers, the aforementioned harm will no longer be present.

79. Most recently the GVH quantified the direct benefits derived from its competition cases closed in the 2011-2016 period related to anticompetitive practices and mergers.

80. In terms of methodology, the calculation relies on the assumption that in the absence of the intervention of the GVH, that is, if the infringements had continued or the mergers substantially lessening competition had gone ahead, the goods and services affected would have been 'only' 10% more expensive, for 'only' two years compared to the baseline.

81. The results of the calculations indicate that the direct savings of consumers derived from the competition cases of the GVH closed in the 2011-2016 period related to anticompetitive practices and mergers amounted to more than six times the total budget of the GVH in the same period. In other words, social expenditure on the GVH in this time period was recovered several times over through such proceedings alone.

## 7. Competition culture

### 7.1. The activity of the Competition Culture Centre

82. 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.

83. In 2016, the GVH also placed significant emphasis on the importance of organising professional events and being a partner in the realisation of these events. In addition, it continued to pursue actions that foster competition not necessarily among professionals, but for the wider public. Such actions are aimed, firstly, at inciting consumers to think through decisions before making transactions and, secondly, at encouraging undertakings to comply with competition law rules. During 2016 the following events aimed at developing competition culture took place, namely:

- The Hungarian Competition Authority (GVH) and the Hungarian Competition Law Association (LIDC Magyar Versenyjogi Egyesület) with the aim of establishing a long-standing tradition jointly organised a competition law conference entitled the "First Hungarian Competition Law Forum" (I. Magyar Versenyjogi Fórum). Its aim was to gather all of the stakeholders (i.e. judges, attorneys, legal counsels, representatives of companies, academia and public administration) of competition law for a day to discuss the most relevant and hottest issues. Based on the participants' feedback the event was particularly successful.
- Based on the success of the competition law history exhibition in September 2015, presenting the background behind the enactment of Act Nr. XI of 1931 on Agreements Regulating Economic Competition, in March 2016 the GVH also organised a law history exhibition on its national ancestors, the Cartel Commission, the Cartel Court, as well as on cases from the 1920s and 1930s on cartel agreements.

- As a continuous competition law compliance campaign, the GVH initiated a communication campaign to popularise its leniency policy with the following slogan “It cannot be kept secret”. The same slogan was also used on offline communication tools, such as animations on trays of canteens and restaurants of office buildings, posters placed at Budapest Airport, on lockers of Budapest thermal baths, and animations projected on the monitors of county buses. All these offline methods became a part of the public discourse, which also shows their effectiveness. The communication campaign popularises the leniency policy, the aim of which is to convince cartel participants to break their silence and to cooperate with the Authority, in order to receive total immunity from fines or a reduction of the fines that the GVH would otherwise impose on them.
- The Competition Policy Advisory Bureau Network continues its operation in five big cities (Debrecen, Eger, Szeged, Pécs and Győr) in Hungary. The Network assists the GVH in the area of consumer protection and furthers the messages/principles of the GVH through its communication activity.
- As part of the Cultural Heritage Days the GVH opened its building for public visiting for the first time in 2015, and due to the positive feedback, the “Open GVH” programme was organised also in 2016. Compared to the previous year, a larger number of visitors showed an interest in the history of the building and the daily work of the GVH, and were also able to ask questions informally from the colleagues of the GVH.

84. The GVH strives to promote compliance by stakeholders through measures assisting in law enforcement, the provision of information on the proceedings of the Authority, as well as through the use of soft law instruments. In 2016 the GVH prepared notices on certain law enforcement issues regarding the investigation of concentrations; on the use of the “non-obviousness” criterion in the course of the notification of concentrations; on the initiation of competition supervision proceedings to examine concentrations and the ordering of full procedures; on the imposition of terms or obligations in non-prohibiting decisions adopted in proceedings for the investigation of concentrations and on pre-notification in proceedings for the investigation of concentrations; furthermore, the notice on the use of leniency rules was amended. All the notices are available on the GVH website<sup>1</sup>.

85. The GVH continues to subject its notices and working papers to public consultation, and the final versions are drafted and published following consideration of the comments received.

## 7.2. Co-operation with other organisations

86. The GVH aims to establish and deepen ties with representatives of the academic community working in competition law and competition policy and with relevant professional organisations. In this context, in 2016 the Authority, while maintaining its contacts with its existing co-operating partners, entered into co-operation agreements with new entities, such as the Hungarian Brand Association, the Hungarian Public Relations Association, the KKVHAZ Community Building, Cluster and Business Organisation Zrt., with the primary objective of promoting compliance with competition regulations.

<sup>1</sup> [http://gvh.hu/szakmai\\_felhasznaloknak/kozlemenyek](http://gvh.hu/szakmai_felhasznaloknak/kozlemenyek)

## 8. The activity of the OECD-GVH Regional Centre for Competition in Budapest

87. 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, FYR of Macedonia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The RCC is financially supported by the Hungarian Government.

88. The programmes of the RCC, besides others, deal with the following topics: analysis of 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 co-operation of the competition authorities of the region, competition advocacy, tools for communication, co-operation 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 these topics in 2016.

89. In 2016 the RCC organised 6 events and hosted 254 participants from 23 economies, and 44 speakers from 15 countries.

90. 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.

91. The OECD-GVH Regional Centre for Competition in Budapest organised 3 seminars in 2016 in Budapest for its core target group (competition authorities of South-East Europe and the majority of the CIS countries). The topics dealt with at these events were: 1) "Basic Concepts and Procedures in Competition Law for Young Authority Staff", 2) "Information Exchange: Efficiency Enhancing or Cartel in Disguise?" and 3) "Seminar on Competition Rules in the Financial Sector".

92. The annual outside seminar of the RCC in 2016 was held in Belgrade, Serbia and it dealt with competition advocacy. More than 40 competition law enforcers from 17 SEE and CIS countries attended the event. Once a year the RCC organises a joint event with the Federal Antimonopoly Service (FAS) of the Russian Federation. In 2016 the seminar was held in Suzdal, the Russian Federation. 17 competition law enforcers from the Russian Federation and 9 enforcers from 8 CIS countries participated in the seminar on Bid Rigging and Corruption.

## 9. International relations

93. The international relations of 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 by bilateral co-operation.

94. 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 forms of the international co-operation.

95. Contributions to the work of the OECD Competition Committee and to its working groups continued to be of uppermost importance also in 2016. Contributions were prepared for the following topics: “Jurisdictional nexus in merger control regimes”, “Sanctions in antitrust cases”, and “Geographic market definition”.

96. In accordance with established practice, in 2016 the GVH also sent one of its experts to the OECD for a whole year as a secondee on a rotation basis.

97. Concerning co-operation with the International Competition Network (ICN), in 2016 the GVH remained an active participant, in particular, in the work of the Cartel Working Group, and was responsible for the co-ordination of the project on “Anti-Cartel Enforcement Template”. In addition to this, since April 2016 the GVH has held the position of co-chair of the Regulatory Framework Subgroup of the Cartel Working Group of the ICN and in this capacity it has also been running several other ICN CWG projects.

98. In the framework of bilateral relations, in 2016 the GVH hosted professional visits of delegations from China, Estonia and Kosovo.

## 10. GVH’s recommendations for the Parliament

99. In line with its established practice, the Hungarian Competition Authority formulates recommendations to the Parliament on identified issues affecting competition or consumers that are beyond its competence, or that are less suitable for being dealt with through the tools at its disposal. The report on 2016 contained the following recommendations:

- With regard to the market of timeshare holidays, the GVH considers it appropriate to reconsider the rules governing this market, with particular emphasis on the registration of secondary distributors, the expansion of the scope of instances resulting in their exclusion from such operations and the establishment of the liability of the operators of holiday homes through the recording of telephone communication.
- The GVH proposed that endorsements by national associations of medical, nutrition or dietetic professionals and health-related charities be regulated. The GVH finds that consumers place trust in such endorsements, which may represent useful sources of information for consumers as long as they have competitive neutrality, clear, transparent and not misleading features. In this context the GVH considers it necessary to specify which entity (possessing what characteristics) is deemed to be a national association of medical, nutrition or dietetic professionals or a health-related charity, which may be removed from the scope of general prohibition of endorsement, and to regulate the manner and framework in which such entities may recommend or endorse products, taking into consideration the principles of competitive neutrality and consumer protection.
- The GVH recommended the review of the rules governing the sale of goods through product demonstrations. The proceedings of the GVH indicate that enterprises promising a diagnostic survey or free screening but also engaging in the presentation and sale of products on such occasions fail to meet the conditions

required from traders in the Act on Commerce, by claiming that they organise their events for the purpose of health checks rather than to present and sell products. These enterprises typically fail to inform consumers that as the sale and purchase agreement regarding the product and the delivery of the product occurs on the premises of the enterprise, the consumer does not have the right of withdrawal provided for in the government decree on the detailed rules of agreements between consumers and businesses. Consequently, the GVH recommends the review of the legislative provisions with a view to preventing such commercial practices, which target a large number of typically vulnerable consumers.

## 11. Technical conditions and other information

### 11.1. Resources of the competition authority

**Table 1. Annual budget (in HUF and EUR)**

2016	billion HUFmillion EUR	3,24010.4
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**Table 2. Number of employees (person-years)**

	2016
Economists	20
Lawyers	56
Lawyer-economists	3
Other professionals	8
Support staff	35
All staff combined (actual)	122

100. In 2016 the Authority had 3,240 million HUF (approx. 10.4 million EUR) available to fund its work. The annual finances of the budget chapter were balanced, with no liquidity issues arising; the GVH honoured its payment obligations in time.