



GAZDASÁGI
VERSENYHIVATAL

Appraising five years of competition policy

On 25 November 2009 the Hungarian Competition Authority (GVH) and its Competition Culture Centre (GVH VKK) organised a conference "Balance of five years of competition policy or else what the period since the EU accession brought to Hungary and this region". On this occasion, among others, Neelie Kroes, European Commissioner for Competition Policy held a speech.

The jewel in the crown of the European Union is the Single Market of 500 million citizens and this is an achievement that we have to maintain - claimed **Neelie Kroes**, EC Commissioner for Competition Policy at the conference organised by the GVH. She claims that without this Single Market and the Eurozone the world economic crisis would be drawn out, the MSs would be more tried. She reminded the audience that already in the 50s, in the Treaty of Rome, the founding fathers of the Union put faith in the maintenance of free competition, the limitation of state subsidies. Even these days this faith is to be followed. Even in times of crisis no one can be exempt from fair market competition rules. She admitted that there is high pressure on Brussels to allow some MSs adopting certain protectionist measures. As for her, we have to say no to protectionism in order that the Single market does not become fragmented along national lines. She did not doubt that some sectors would certainly need state subsidies. She mentioned as an example the banking sector, which as a result of state subsidies has not collapsed and could go on providing loan services. She highlighted though that equal chances have to be assured to undertakings that do not benefit from subsidies.

The crisis is not only a real challenge, but also a warning sign. In order to avoid the same mistakes in the future, the reasons for mistakes have to be revealed and we have to learn from them. For this aim, strong politicians, strong businessmen, firm market regulation and competition authorities are required - emphasized Neelie Kroes. The competition authority has the role of a football referee on an open, regulated market. The players of the game must be aware of the fact that if they breach the rules, there is no mercy for them. Neelie Kroes mentioned as an example the decision of the GVH in connection with the international payment cards and domestic banks. The message of the decision is that no one can be exempt from the rules. Even the creators of the Treaty of Rome cared about the taxpayer consumers; their example must be followed by the descendants as well. It is important to note that as a result of the actions made against cartels by the DG Comp between 2005 and 2007 EUR 7,6 billion remained in the pockets of the consumers, and in Hungary the latter could save several hundreds of HUF millions thanks to the activity of the GVH.

In the opinion of Neelie Kroes, the Single Market has to be available for everyone under the same conditions. Further market opening is required, a smart regulation and strong executive bodies. The MSs have to invest in their future in order to help the EU to find itself and to improve its global competitiveness. It is a serious task since we build the future, we work for the future generations - Neelie Kroes concluded.

Also **István Varga**, minister for national development and economy dealt with the challenges of market competition in his speech. He claimed that Hungary 20 years after the change of regime made a step forward in the field of competitiveness, however, two decades of time was not enough for completing the job. We know what competition is about, what participation is in a competition, what it means to be beaten in competition - he said. Hungary was given a unique chance to become part of the European Single Market, so the way competition is taking shape on this market is of vital importance for Hungary. The aim of the government is to create the same conditions for the Hungarian businesses by harmonising Hungarian law with the EC regulations. However, this is not enough in itself. The government also provides help in preparing for competition. It is very important for SMEs since they constitute 45 percent of the performance of the Hungarian economy; in spite of this fact most of them are not strong enough to face market competition. The measure that the government adopted industry action plans in the most important economic sectors (e.g. automobile industry, biotechnology, logistics) also contributes to the improvement of competitiveness. Mr. Varga highlighted: it is not enough that businesses are competitive, the government in power has to be competitive as well. Without being competitive, there is slight chance for Hungary to realise what it determined 20 years ago.

Zsolt Hernádi, chairman and chief executive officer of Mol Nyrt., approached the topic of competition, competition regulation from the side of the undertaking involved in market competition. He claimed that Mol has acquired abundant experiences in competition law in the recent years; it received cold and warm critics as well. It has turned out from the proceedings that EU competition policy fundamentally influences the market practices of undertakings and enables Brussels to significantly intervene in the market processes. He highlighted that competition policy is the only field in EC law where policy is uniform. At the same time Mr. Hernádi called the attention of the audience to the fact that there are fields where EC law provisions cannot be a fully enforced. The gas market is not a competitive market. The suppliers are not European states, they do not act in line with "market-conform" principles. On the contrary, the energy policy of the EU is rather inward not taking into account the above specialities - Mr. Hernádi claimed. The gas markets of the Eastern-Central European countries are not linked to each other in infrastructure, moreover all of them import energy sources from the same place. Unless these conditions alter, no competitive market can be evolved. It would be a good solution if Brussels extended the market dominance investigation outside the boundaries of the EU, and it developed its regulations in a differentiated way, by taking into consideration the special features of the individual markets.

Zoltán Nagy, president of the GVH in its closing speech summarised the GVH's recent five years since the EU accession of Hungary. In his opinion in the past five years the EU has fostered the creation of a uniform single market, where there are bigger incentives for becoming more efficient and this results in price decrease. According to the ICEG research centre, in the countries that joined the EU in 2004, increasing competition - as a result of their entering the EU Single Market, breaking down the barriers to commerce - has decreased consumer prices by 1-2,5 percents on the average. The *acquis communautaire* and the cooperation of those who apply EC law have created uniform and stable legal circumstances in the whole territory of the EU, hereby fostering legal certainty. This EC common law requires in many cases the opening of competition-friendly markets that used to be closed from competition, and thus creates new market possibilities. The EC common law does not barely remain dead letters: the European Commission also follows how EC common law is adopted in national laws, and in case of failure of the latter, it intervenes.

The aim of the GVH is that markets operate better, in a competitive way, for the benefit of consumers. Competition is the driving force that makes undertakings work more efficiently, taking into consideration the needs of the consumers, and produce better and cheaper products. Hereby competition increases the competitiveness of the Hungarian undertakings

and the welfare of consumers. However, relying on competition processes does not mean that state regulations are unnecessary. The GVH is aware of this fact and does not strive for enforcing competition by any means, but for supporting a balance of state regulations, market self-regulation and competition conducts in order that consumers get the best services at the cheapest prices possible.

Mr. Nagy also talked about the legal instruments the GVH uses in order to achieve its goals. In 2004, five years ago when the first big cartel cases were under investigation, many people did not understand why it was a problem if competitors colluded and shared the market. This year it is not a question any more - he said, since an ex-chief executive who had been found guilty of cartelling has had to resign from his position as minister of economic affairs. Since 2004 the GVH has imposed HUF 26 billion for cartelling, out of which fines of more than HUF 16 billion are already enforceable. One must have heard a lot about cases in relation to unfair manipulation of consumer choice. In these cases the GVH even imposed fines amounting to HUF one hundred million on undertakings for providing false information about decreases in prices, advertising promotions without products on stock, unproved ad statements (for instance about curative effects of a product). These days the undertakings that care at least a little about their reputation are paying more and more attention - when preparing the messages of their advertisements - to the wording of the ads, they cannot be misleading, unfair.

The GVH has also investigated important cases in connection with abuse of dominance. The proceedings for abuse of dominance contribute a lot to the success of market openings, for instance the GVH conducted a proceeding that was launched in 2005 on the market of railway transport. The Railways of Hungary (MÁV) hindered in several ways the functioning of private railway companies that were allowed to enter the market thanks to the market opening. The intervention of the GVH and the Hungarian regulation harmonised with the EC railway liberalisation package jointly contributed to the real opening of the rail freight transport. These days those who are interested in transportation can choose from the services of 28 railway companies with nationwide license. The GVH decisions relating to mergers and acquisitions may significantly contribute to the welfare of consumers: justified prohibition of mergers hinders significant decreases in competition and hereby the increases in price.

Very often it is not the undertakings but the state itself that restricts competition - said Mr. Nagy. In these cases the GVH tries to call the attention to the detrimental effects, either by giving opinion on bills, or by directly addressing the ministry, the regulator, the parliament committee concerned. It also provides suggestions in its annual report to Parliament. These suggestions are often ignored. For instance the establishing of a regional energy market, a Hungarian or regional energy bourse is still postponed. It is highly unfortunate if the State tries to foster good and important social goals with unsuitable legal instruments as it has happened this year in the case of the food supply chain code. Agriculture does not by chance benefit from special attention within the EU in the framework of the Common Agricultural Policy (CAP). However in order to protect the farmers we have to find the most suitable tool which does not distort competition, effectiveness and the welfare of consumers.

Sector inquiries provide the necessary information about the markets for successful competition advocacy and competition enforcement activities. If the GVH perceives warning signs indicating competition problems on a particular market, it launches a sector inquiry in order to clarify the situation and makes suggestions to regulations, or launches competition supervision proceedings if necessary. Since 2004 the GVH has made sector inquiries concerning mortgages, electricity, electronic media and bank switching. The key for success in these fields was often the cooperation with sector regulators, especially in the case of market openings.

The best state intervention is when there is no state intervention since - within the framework of proper regulations - the economic players do their jobs in a fair way, and there is no need for sanctions imposed by the GVH or other authorities. The most important thing is that the undertakings obliged to comply with the provisions of the Competition Act be aware of their competition law responsibilities and recognise that there is no point in infringing the Competition Act. We have made an important step forward in raising competition awareness, in which the Competition Culture Centre - that was established in 2005 for coordinating the work of the GVH in relation to the development of competition culture - has a significant role - said Mr. Nagy.

In conclusion, the president of the GVH, Mr. Nagy talked about the questions concerning the world economic crisis. According to him, as a consequence of the crisis, lots of people have lost faith in markets. Some of them even consider that excessive competition was the trigger for the problems occurred. However it was not competition, but the lack of proper regulation that led to market malfunctions - he claimed. Hence competition, competition policy are not parts of the problem, but parts of the solution. As a result of competitive, dynamic markets productivity and economic welfare have increased all over the world. Experiences prove that competition has beneficial effects on the markets, and that competition on the merits and competition policy may contribute to the recovery of economy.

“Competition policy for me and for the GVH is a service. It is for the Hungarian and European consumers, for the Hungarian and European economy.” - said Mr. Nagy. By imposing increased fines we do not aim to fill in the gaps in the state budget, but to teach undertakings that it is no good in infringing the Competition Act. It is “money for study”, that is not to be paid by those who manage well - and do not infringe the law or ask for leniency in connection with an earlier involvement in cartel activity. It is about teaching consumers that it is worth searching for better offers and switching between service providers or banks. I am convinced that enforcing business skills, increasing creativity and competition are not only about our welfare, without them neither Hungary nor the European Union can be successful.

The programme was closed by answering the questions of the audience and finally by a press conference.

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Hungarian Competition Authority
Communication Group

Further information:

András Mihálovits

Hungarian Competition Authority

Address: 1054 Budapest, V., Alkotmány u.5.

Postal address: 1245 Budapest, 5. POB. 1036

email: Mihalovits.Andras@gvh.hu

<http://www.gvh.hu>