Executive Summary

Purpose of the survey

1. The President of the Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter GVH) launched a sectoral inquiry on 24 July 2007 on the wholesale, retail and TV advertising market of TV broadcasting (content providing and packaging) classified in the economic sector of electronic media in order to understand and evaluate the market processes related to the sale of TV spots, access to sports and filming rights and the terms and conditions of broadcasting TV channels.

2. At the start of the sectoral inquiry, the GVH identified three market conditions which arise concerns about the potential distortion of competition. The first condition was the assumed disproportionality of the viewing and advertising market share of programme providers, in relation to which it was suggested that this phenomenon could/might be the result of the advertisement sales practice of the national/Hungarian commercial channels or a potential competition distorting effect of some other market condition. The other two conditions were mentioned in relation to the programme distribution market and the role of the cable television platform in Hungary. For programme providers, the major role of the cable television platform may lead to a consequence that the success of their entry into the market depends only on their appearance on cable TV networks, especially considering that the programme providers, relying primarily on advertisement revenues, are typically not present in Hungary at the moment, therefore programme fees received from programme distributors could be important for any new entrant. On the other hand, it could also be assumed that the fact, whereby programme packages of the cable networks may be purchased only from platform providers, integrated vertically to a certain degree (i.e., there are no content packagers independent from network operators) also makes the entry into the market more difficult for programme providers, and may also reduce the intensity of competition.

3. During the sectoral inquiry, the identification and analysis of the programme providers' value chain was an objective to an extent in which it was required for the valuation of the conditions triggering the launch of the survey and the issues identified during the research, and therefore HCA analysed in more detail the broadcasting and advertising markets, because the initial problems indicating potential distortion of the competition relate to them.

4. The purpose of the sectoral inquiry was to conclude whether or not a competition supervision procedure should be launched or a regulatory intervention should be proposed on the analysed markets.

5. The full analysis and criticism of the current media regulation was not the objective of the sectoral inquiry. The inquiry covered and evaluated only certain regulatory aspects

related directly to the issues involved in the research. The GVH used the relevant results of the sectoral inquiry in the current preparations of the revised regulations applicable to audio-visual media services. The GVH's opinion expressed on the potential drafts of the new Media Act circulated for consultation forms an annex of this report.

6. The contents of this sectoral inquiry report do not affect the conclusions of the GVH's competition supervision proceedings. This is primarily due to the fact that the sectoral inquiry is conducted and supervised by the President of the GVH, while the competition supervision proceedings are decided by the Competition Council of the GVH, in compliance only with the provisions of the Competition Act.

Main findings concerning the analysed markets

7. **The market of programme providers** is a two-sided market. The programme providers have two separate groups of customers with interrelated demand: they are the advertisers and broadcasters (and indirectly the viewers/subscribers). The two main sources of revenues of the programme providers related to the two groups are advertising revenues and programme fees.

8. There were/have been major changes in the Hungarian programme broadcasting market in the last few years: the number of channels available on the market has increased, and the number of households with the capacity of receiving many channels has also increased.

9. At present, approximately 75 Hungarian-language television channels can be received in Hungary as a result of an increase in the number of theme-based channels financed primarily from programme fees in the last few years.

10. It is a general tendency observed in relation to programme providers (i.e., it does not apply only to new entrants) that they tend to rely more on programme fees, and several companies, already active on the market, (have started to) apply programme fees as well, although earlier they lived only on advertising revenues.

11. The coverage of the channels and the number of households reached by them depend on which broadcasting company contains them in its choice (and the actual package). The biggest coverage relates to three channels (m1, RTL Klub and TV2) which can also be received with analogue terrestrial broadcasting.

12. Apart from coverage, the viewing of a channel (and hereby its success on the distribution and advertising market) is influenced also by the content and target group orientation and the amount of resources spent on the purchase and production of contents. In the recent years, the aggregate viewing of thematic channels has been gradually increasing parallel with a decline in the viewing of the two national commercial channels, which still boast with the highest viewing figures. However, as the number of thematic channels is increasing, the viewing of the specific channels is still low. Viasat3 is an exception, the

viewing of which reached, and occasionally exceeded, the viewing of m1 by 2007, although earlier m1 was always the third most viewed channel.

13. Due to regulatory limitations, the two national commercial programme providers cannot establish new channels in Hungary, but there are several companies and groups on the market which broadcast several thematic programmes. The market actor which has the largest channel portfolio, the UPC group, is also vertically integrated: it broadcasts on several platforms and in total it is the broadcaster possessing the highest market share.

14. Digitisation is a process that intensively affects the broadcasting value chain, therefore within the framework of the sectoral inquiry, the GVH tried to assess the impacts of digitisation, although the actual impacts cannot be seen clearly yet in many cases. For the consumers, the impact of digitisation may bring higher quality and several supplementary and comfort services on a longer term, which may even change the TV viewing habits.

15. The **content market** is the input market of programme providers. The programme providers try to purchase contents from this market, with which they can be effective on the two interrelated areas of their markets, i.e., on the broadcasting and advertising markets. The availability of valuable contents is one of the most important conditions for promoting entry into the market and increasing coverage and viewing (and also the market share).

16. Apart from the increase in quality, digitisation may also increase the production and purchase costs on the content market.

17. The information collected during the sectoral inquiry suggests that the ratio of Hungarian contents is not significant among the valuable contents of the programme providers, not produced by themselves. In addition, it can also be concluded that exclusivity is less typical with regard to Hungarian sports and film rights.

18. In Hungary, the cable television networks form the main platform of the **broadcasting market.** However, during the last three years the number of households with the capacity of receiving a lot of channels has increased significantly parallel with the number of new entrants, and the broadcasting competition has also increased, which also has an impact on the relationship between the programme providers and broadcasters. The biggest change occurred when DigiTV appeared, which became the second largest broadcaster after the UPC group in two years. In addition, IPTV, which expands on telephone/DSL networks, also has significant development potential.

19. In relation to broadcasting, it is generally true that digital technology will bring more broadcasting opportunities, yet the advantages of digitisation in this field have only been partially exploited so far.

20. The already achieved increase of broadcasting options are partly due to digitisation, because the subscription-based satellite services and IPTV both use digital technology.

21. Contrary to the expectations and intentions, the launch of the digital terrestrial broadcasting platform (DVB-T) does not provide a better choice than the analogue terrestrial broadcasting for the time being, and therefore it cannot be considered a multi-channel broadcasting service, although considering the options involved in it, it could become a relevant competitor on the broadcasting market and, as a platform with national coverage, it could also promote the competition of programme providers on the advertising market.

22. Digital services were introduced on the cable networks while analogue services were kept partly in order to make gradual transition, and partly because this way households operating several TV sets can use the analogue packages without any further fees or receiving devices (set-top-box[1]). The capacity problems of the analogue cable network are definitely eased by digitisation, but until the analogue services are eliminated, the capacity increase caused by digitisation will only be affected to a limited extent (influenced also by the choice and quality of the other services provided on the network). Through digitisation the package forming options of the cable providers will also increase in technical aspects, yet the programme providers are not necessarily interested in establishing packages with fewer channels or individually selected packages.

23. Technically, programme packagers, independent on network operators, can also operate on the fully digital systems. However, the re-sale of programmes and the appearance of wholesale-type market actors are currently limited also by the contracts of programme providers.

24. In relation to the end consumer receiving devices, used in the digital broadcasting services, i.e., set-top-boxes, we can conclude that they are currently different not only by distribution technology, but also by service provider.

25. The **TV advertising market** is a market separated from the other segments of the advertising market in several aspects and still represents a considerable, approximately 40% share of the total advertising market.

26. The majority of the TV advertising market transactions are not established directly between programme providers and advertisers, but media agencies and, in relation to certain programme providers, the selling house also participate in the process.

27. Advertisements may be sold by selling advertising seconds (the so-called spot-based sales) and, in the case of larger programme providers, by the sale of viewing. The viewing-based sale is based on the GRP indicator (gross reception point) indicating the actual access of certain target group of viewers in a particular programme band and not on the basis of the proportion of the time spent on the particular channel within the total time of TV viewing (which is the most general indicator of viewing).

[1] Set-top-box: an adapter, which enables TV sets, suitable for receiving analogue signals only, to receive digital programme signals as well.

28. The two national commercial channels apply a so-called flexible price sales system (RTL Klub from 2004 and TV2 form 2007), with which they can handle also excess demand and the prices vary within a certain range depending on the actual demand and performed GRPs.

29. The national commercial channels are still the market leaders on the commercial advertising market, but their share calculated according to the aggregate revenues and delivered GRPs has decreased. Viasat3 has become the third largest market actor on the advertising market and advertisers also use the thematic channels in higher proportions these days than a few years ago.

30. Because of the viewing-based advertising sales, the role of the audience measurement , which provides the indicators representing the settlement unit of sales, is of major importance. According to the market signals, sometimes the smaller thematic channels and the more limited target groups accessed by them cannot be measured , or the measurements are not reliable enough. The practice of audience measurement has been changing since the autumn of 2008 in accordance with a multi-step panel expansion. However, its impact on the advertising sales and the assessment by the market actors cannot yet be seen.

31. At present, the impacts of digitisation on the TV advertising market cannot be assessed accurately. The comfort services of the set-top-boxes, used in digital programme distribution, with which advertisements may be avoided, will probably not influence the market significantly on the short term according to the statements of the market actors. With digitisation and a certain degree of increase of distribution capacities, access to channels by subscribers may become easier, but the increase of the packaging options and the use of packages aimed at the requirements of certain groups may reduce the number of households reached by the various thematic channels, and therefore the programme fee as a source of revenue may be appreciated. Terrestrial digital broadcasting provides an opportunity (which is not yet used) to extend the coverage of several channels to national coverage instead of the current three channels, based on which more intensive competition could develop on the advertising market with the two national commercial channels.

Competition policy conclusions

Conclusions related to the conditions triggering the launch of the inquiry

32. In relation to the problems which launched the inquiry, the GVH did not identify any circumstance in its investigation which would call for the start of an individual competition supervision proceeding or the proposal for a regulatory intervention.

33. Among the conditions triggering the sectoral inquiry, two related to the cable networks as the major programme distribution platform. The GVH also analysed the opportunities of access to cable networks of programme providers, who rely (also) on programme fees. In this context, the GVH drew the conclusion that due to the intensification of competition between platforms the unjustified reluctance of cable providers to distribute programmes will become less and less probably, and therefore there is no need for any intervention under the competition law or any further regulation concerning the relationship between the programme providers and broadcasters. Stronger competition on the retail market will eliminate the interest of broadcasters to refuse the broadcasting of channels on the wholesale market without a good reason (contrary to the programme providers), this interest is also reduced by the existing regulations, intended to enforce media pluralism.

34. As the analogue services have remained on the cable TV platform, digitisation has resulted only in limited capacity increase, but specifically due to the impact of the inter-platform competition referred to above, it still does not cause any competition problem requiring intervention.

35. Based on the sectoral inquiry, the GVH does not think that a competition supervision proceding should be launched now, but with regard to the relationship between the programme providers and broadcasters, individual competition supervision procedings cannot be excluded. The GVH will take such actions if it is required on the basis of the market information related to an individual conduct.

36. Naturally, the smooth access of programme providers to the broadcasting networks will only be achieved on a long term if competition between platforms continues to increase. According to the GVH, the terrestrial digital platform can significantly contribute to the intensification of this competition.

37. The other problem raised by the sectoral inquiry in relation to the cable TV broadcasting was that the lack of independent content packagers, the integration of content packaging and transmission might have a detrimental impact on competition. In its sectoral inquiry, the GVH concluded that at present the appearance of independent content packagers on the cable networks is objectively hindered and, on the other hand, integrated packaging itself does not hinder the broadcasting competition.

38. After full digitisation, the packages of other actors may also be transmitted on the cable networks, besides the packages of the cable providers. There are no legal barriers for such transmission, but in order to do so, the broadcasters must change their contracting practices. According to theGVH, there is no need for any regulatory intervention (application of access obligations with regard to cable providers) in order to promote the appearance of independent content packagers.

39. In relation to the TV advertising market, the GVH analysed the disproportion between the share on the advertising market and the viewing of the two national commercial channels, as a condition potentially distorting competition. In relation to this, the GVH concluded that the assumed disproportion may be observed only with regard to the most popular national commercial channel, the RTL Klub but, on the basis of the information obtained in the sectoral inquiry, its degree cannot be criticised in comparison to the adequate viewing indicators, due to the specificities of the advertising market and the advertising efficiency advantages of the channel. Consequently, in relation to the advertising sales system of the two national commercial channels, currently the GVH does not consider any need for the proposal of regulations or any intervention based on the competition law.

40. In relation to the selling houses, managing the sale of the advertising time of programme providers and based on the sectoral inquiry, we can conclude that the practice of selling houses may be kept within an adequate framework using competition law instruments and, based on the information obtained in the sectoral inquiry, there is no need for launching a competition supervision procedure in relation to the selling house practices.

41. On the basis of the information obtained in the sectoral inquiry, the GVH does not consider any need for launching an individual competition supervision procedure even in relation to those advertising sales conditions which involve the possibility of violation of the competition law (such as the benefits and bonuses related to the undertaken spending ratios, which may be interpreted as a loyalty preference). However, in relation to this, the GVH considers it important to note that if market conditions or changes in the conduct of market actors, or any other market information call for it, then the GVH will launch an individual competition supervision procedure at any time.

Conclusions in relation to the other conditions identified during the inquiry

42. During its sectoral inquiry, the GVH identified some potential competition problems and issues raising questions about the competition regulations in relation to which it had to draw conclusions. In relation to some of these issues (problems related to the launch of digital terrestrial broadcasting, interoperability of the measurements of reception and set-top-boxes) the GVH relied also on the remarks received in relation to the review of the sectoral inquiry report and formed its position taking into account those remarks as well.

43. According to the GVH, the rules limiting the establishment of channels need to be reviewed, because the limitation of the current Media Act applicable to national programme providers, according to which they cannot acquire an influential share in any other broadcasting company, is not necessary. It is an obvious requirement for entering the market that the programme provider should have adequate contents and programme production options, and therefore national programme providers would have better chances than the other programme providers to establish new channels, which might rely only on advertising revenues, for which there could be a demand either by the DVB-T platform and by the other platforms too. The limitation is especially unjustified considering that this provision practically forces the establishment of channels outside the territory of Hungary, which solution may involve obvious disadvantages at social level (e.g., with regard to the control of contents), it may also limit the utilisation of group-level synergies.

44. The GVH considers the **digital terrestrial platform** an expressly important factor in terms of competition of both the broadcasters and programme providers. According to the GVH, if the transformation of DVB-T into a viable platform is further delayed and its primary target group (the number of viewers currently receiving the TV programmes with analogue terrestrial broadcasting) continues to decrease, then it will be a realistic threat that the functioning of the platform becomes impossible, i.e., the opportunities involved in it cannot be used at all, or only in part. This would be favourable only for the broadcasters already operating on the market on a long term and it would be favourable for some broadcasters temporarily, but it would be detrimental to the consumers and the entire market both on the short and long term.

45. In relation to the problems related to the launch of the DVB-T platform, the GVH also took into account the remarks received within the framework of the review of its sectoral inquiry report and analysed whether or not the individual responsibility of any market actor may be suggested at all, or whether the consideration of further regulatory intervention would be possible or necessary.

46. According to the GVH, the most important problem related to the launch of the DVB-T platform is that the two national commercial channels are still not available on the DVB-T platform, because the platform operator has been unable to agree with the two relevant programme providers in time.

47. In relation to the remarks of the National Communications Authority stated in the sectoral inquiry, the currently available regulatory instruments seem adequate for controlling the conduct of Antenna Hungária group within the adequate framework. However, the regulations do not sufficiently encourage the two national commercial channels to enter into contracts for the time being. According to the GVH, despite the court appeal brought by the national commercial channels, the connection of the two national commercial channels to the DVB-T network should be guaranteed by

regulations. On a long term, when the analogue system is disconnected, these two national commercial channels will definitely be interested in the connection, yet on the short term they are not necessarily interested in being present on the DVB-T platform in order to protect their positions on the advertising market for as long as possible.

48. This is why the GVH recommended to the legislator, in its comments related to the current drafting of the Media Act, that when the programme providing rights of the two national commercial television channels were extended in 2005 without any application, the mandatory participation in digitisation could have been a prerequisite of the extension, as it was indicated also in the Digital Transition Strategy.[2]

49. In order to find the adequate regulatory incentive, the GVH indicated to the legislator in relation to the drafts of the Media Act that it considered the management of the problems related to the launch of the DVB-T platform as important as the elimination of the channel foundation barriers in order to put in place balanced conditions for the competition.

50. According to the GVH, the modification of Article 39 (8) of the Act LXXIV of 2007 on the Rules of Broadcasting and Digital Switchover could be a necessary, but inadequate regulatory action for making it clear that the national commercial channels may enter into contract even after the launch of the service.

51 According to the information obtained in the sectoral inquiry in relation to the **audience measurement,** it could not be excluded that the lack of reliable data concerning smaller channels and smaller target groups made it difficult for the thematic channels to expand on the advertising market. In addition, reliable data on the number of viewers are also required by the state for regulatory purposes (control of package formation based on subscriber requirements and assessment of the capacity and degree of influencing opinions. In relation to the audience measurement, the GVH has reached a conclusion that companies have to be selected for performing measurements in particular periods based on regular applications, because this solution could be the best for resolving market problems which cannot be excluded based on a sectoral inquiry and that the state, which becomes the user of the service, should have access to the service under the most favourable terms and conditions. Consequently, the GVH represented its position concerning the regulations aimed at applications for the audience measurement in relation to the drafts of the Media Act, and will continue to represent the same views also in the future.

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[2] Digital Transition Strategy (DÁS), http://misc.meh.hu/letoltheto/DAS .pdf) Article 97: 'Due to ORTT's (National Radio and Television Commission) decision adopted in the summer of 2005, the analogue broadcasting of the national commercial channels (RTL Klub and tv2) may only be disconnected in July 2012 in theory, because ORTT extended their programme providing rights, indirectly permitting also the use of the frequencies in the reception district without any application or specifying participation in digitisation as a prerequisite of the extension.'

52. On the basis of the information obtained in the sectoral inquiry, it also occurred that the digital **set-top-boxes**, which are different for each broadcasting company, may hinder competition between and within platforms and therefore may call for regulatory intervention. In this context, in its provisional report the GVH expressly requested for the opinion of the parties concerned, because in its views the interoperability problems observed in relation to the set-top-boxes may turn into switching barriers calling for regulatory interventions in future if the price of the digital set-top-boxes remains high, thus reducing the consumers' intentions to switch broadcasters, and the market processes do not enforce the use of devices, which are suitable for several networks. Taking also into account the remarks received for the provisional report, the GVH took the position that there is no need for any intervention based on competition law in relation to the interoperability problems observed in relation to the set-top-boxes, and currently there is no need for proposing any regulatory intervention either.