



GAZDASÁGI
VERSENYHIVATAL

The Hungarian Competition Authority in 2008 in the light of figures

The Hungarian Competition Authority (GVH) deems its work in 2008 successful, which manifested in numerous competition supervision proceedings and in the strengthening of competition advocacy work and the development of competition culture.

The number of competition supervision proceedings has somewhat decreased in comparison with that of the previous years: 165¹ proceedings were closed by the decision of the Competition Council. Infringement of the Competition Act was established in 59 cases by a decision made in the course of a competition supervision proceeding, and the GVH imposed a total fine of HUF 716,7 million. This amount is much less than the total fine of HUF 2,2 billion imposed in 2007; which is primarily due to the decrease of cartel cases that were closed by imposing significant fines since their lead-time exceeds one calendar year.

In 2008 the GVH was mostly engaged in **consumer deception** cases. There were a record number of complaints and informal complaints submitted to the GVH in these cases, therefore it is not surprising that in 59 decisions a total fine of HUF 698,7 million was imposed by the GVH. Although the GVH imposes more and more significant fines for consumer deception, there are sections where infringements are repeated year by year:

- In the telecommunications sector fixed and mobile telephone service providers were under investigation and called into proceedings several times by the GVH since they provided misleading advertisements on Internet services.
- Taking advantage of people striving for a healthier life, many undertakings advertised their products by assigning unfounded curative power and health preserving effect to them.
- Pieces of information provided in connection with products in leaflets of big supermarket chains proved to be capable of deceiving consumers several times.

Decisions made by the GVH in **cartel** cases have generally the widest media coverage. In 2007 in this type of cases the GVH imposed a total fine of somewhat more than HUF 1 billion. In 2008 there were 28 investigations initiated for cartel activity, however there were no proceedings terminated with the imposing of fines last year. On the one hand, the reason for the decrease is that the undertakings that are parties to cartels fight now in closer order, thereby making the task of the GVH more difficult. On the other hand lead-time of this kind of cases (based on deadlines determined by law) exceeds one calendar year depending on

¹ This press release contains figures from the beginning of December 2008, the accurate figures and sums will be published in the annual report to be presented to Parliament.

their complexity. In 2008 the GVH also managed to unveil some hardcore cartels. The alleged taxi, miller and cement producer cartels are still under investigation by the GVH.

In 2008 no **abuse of dominance** was established and therefore no related fines were imposed, similarly to 2007. However, this does not mean that this type of cases would not have been before the GVH. The most significant cases were not closed with the imposition of fines, but with commitment decisions. In the authority's opinion this way the consumers benefit more than by the fines flowing into the central budget. It was a significant achievement among others that Tesco, as a result of the GVH's intervention, was obliged to revise its supplier contracts.

In 2008 the GVH assessed 46 applications for **authorisation of a concentration**. Business players seem to have learned in which cases the authorisation of the GVH for an acquisition is required, since there was only one precedent that infringement of the law was established because of failure to apply for authorisation.

In the two **sector inquiries** that had been launched in 2007 by the GVH, preliminary reports were prepared in which the GVH disclosed its establishments to the market players concerned and the experts. The aim of the sector inquiry on residential and retail banking, which was closed in the first quarter of 2009, was to collect information and to assess the processes in connection with switching in the banking sector. At the hearing on the draft report the market players concerned and the experts shared their views with those who had prepared the report. The other sector inquiry concerns the media sector. The GVH collected information and evaluated market processes in connection with TV advertising sales, access to sport and film rights and conditions for transmitting TV channels on the retail and wholesale markets of television broadcasting and on the television advertising market. The experts and market players concerned are still working on the draft report.

Similarly to the preceding years, the GVH was also successful in 2008 in defending its decisions **before the courts**, that means that only in less than 10% of the cases did the court change the legal basis of the decisions by its final decisions. In 2008 nearly 80 cases were closed at the courts in the first or second instance, there are nearly 90 pending proceedings in the first or second instance or before the Supreme Court for review at the moment. More importantly, in 2008 decisions made by the GVH became final by the judgement of the courts in a number of significant cases that are of theoretical importance – or even beyond.

The judgement made by the Supreme Court in the highway cartel case is considered to be a milestone event by the GVH, this final decision put an end to four years of litigation and upheld the decision of the GVH establishing an infringement. The GVH had previously established that the undertakings – Betonút Rt., DEBMÚT Rt., EGÚT Rt., Hídépítő Rt. and Strabag Rt. – which submitted bids as a response to an invitation to tender in a public procurement procedure issued in July and August 2002 by the National Motorway Corporation had previously concluded an agreement infringing the Competition Act about the identity of the tenderer acquiring the construction works contract for each of the motorway sections concerned. The total of the fines imposed amounted to HUF 7,043 billion, which has already been paid in by the infringers. That was the first important cartel case in connection with road construction that was reviewed at the Supreme Court. Meanwhile court decisions were made concerning further cartel cases, final judgements were made by the Appeal Court of Budapest in the national road construction cartel case and the cartel case of Bartók Béla Avenue, upholding the decision of the GVH in both cases. Above all a number of other cartel cases of the GVH became final in the informatics sector and the Municipal Court of Budapest

upheld the GVH's decisions in which it established the infringement regarding the Council for Wild Animals Products and Services, Posta-Lapker and egg cartel cases. Appeals that were initiated against the decisions of the GVH establishing that the undertakings mentioned were found guilty of cartelling are still in progress before the courts. Regarding the insurance cartel case, judgement in the first instance by the Municipal Court of Budapest is due on 22 January 2009.

Among the decisions in consumer fraud cases we have to mention the decisions establishing infringements committed in connection with advertisements provided in the banking sector (e.g. advertising prices or conditions of credit card or other residential services in an illegal way) and telecommunications sector (e.g. failure to provide information on loyalty agreements), that became final by the judgement of the Appeal Court of Budapest.

At the same time it can be established that the Appeal Court of Budapest in nearly 30 % of the cases did not find the amount of the fines imposed by the GVH reasonable, thus it decreased the amount of the fines established in the decisions or obliged the GVH to conduct a new proceeding with the aim of reviewing the amount of the fines.

On the whole it can be established that the GVH defended its decisions before the courts with success in 2008 as well: concerning the establishment of infringements the Municipal Court of Budapest in the first instance upheld 90%, the Appeal Court of Budapest in the second instance upheld more than 93% of the decisions of the GVH.

It was a very important event in 2008 for the GVH that the Parliament accepted the **amendment of the Competition Act** on 2 June 2008. However it has not yet entered into force since the President of Hungary forwarded it - due to a part of the amendment - for review by the Constitutional Court.

In connection with the amendment of the Competition Act, changes will affect three principle fields as follows:

1. Fight against cartels:

– The leniency policy of the GVH will be regulated on a legal basis, contrary to the present notice form. This strengthens legal certainty to a great extent; therefore it will hopefully encourage the undertakings involved in a cartel to self-report. In essence, the leniency policy offers the undertakings and their general managers involved in a cartel – that self-report and hand over evidence first – immunity from fines or a reduction of the amount of the fines.

– The undertakings would be encouraged to make use of the possibilities resulting from the leniency policy by the amendment according to which – based on leniency – the undertakings which qualify for immunity from fines are not obliged to reimburse damages caused by the infringement as long as the damages claim can be collected from the other party responsible for the same infringement (but not benefiting from the leniency).

– Actions brought for damages caused by cartelling are assisted by the fact that based on the amendment it is legally presumed that the hardcore cartel has caused a price increase of 10% until the opposite is proven. It is of high importance that this presumption is only applied in the case of hard-core cartels and only in the case of cartels coming into existence on the suppliers' side. By this measure the claimant bringing an action for damages before the civil court against the cartelists gets into an easier situation, since this way the claimant is not obliged to prove the extent of the damages any more if satisfied with the 10%.

– If the final decision made by the Competition Council or the courts establishes that the undertakings are guilty of cartelling and thus fines are imposed on them for the infringement,

the executive officers of these undertakings will be excluded from holding such managerial positions at corporate entities for two years. The burden of proof is on the executives concerned, they have to justify themselves in the course of a court proceeding, i.e. they have to prove not to have been involved directly or to have objected to the decision infringing the competition act. If it is the case, the disadvantageous legal consequences do not apply to them. This sanction does not threaten the executive officers of companies that are given full immunity from fines pursuant to the leniency rules. (The procedural rules of this modification made the President of Hungary express his concerns about the law and forward the amendment for constitutional review.)

2. Changes in certain legal consequences:

In the course of the authorisation process of concentrations of undertakings, instead of the earlier "dominance test" the GVH is obliged to use the "efficiency test" also applied by the European Commission. The aim of this modification is on the one hand to apply the European competition law, ensuring equal European treatment to the undertakings interested in the merger, on the other hand to ensure that the merger's effects on competition are properly assessed. Therefore, in the future the GVH will also examine the application of undertakings for authorisation of concentration in order to see whether they reduce competition on the relevant market. Competition cannot only be lessened if a group of undertakings creates a dominant position, but also if its market power significantly increases due to the new situation.

3. Changes concerning the powers, tasks, internal organisation and procedural rules of the GVH:

- The power of the GVH to impose fines in connection with authority prices is assigned to the organization establishing the infringement of the authority prices.
- The complainant is given legal remedy right to appeal the order terminating the competition supervision proceeding.
- The amending statutes according to which the GVH may contest public administration decisions infringing the freedom of economic competition on the one hand ensure that the GVH acquires information, on the other hand that the deadline for appealing the decisions is extended, it may be submitted within a year.
- The amendment of statutes relating to the development of competition culture enlarges the scope of activities of the GVH in this field. As new development goals the promotion of European competition culture and consumer culture are included into the Competition Act, and the amount reserved for the development of competition culture is raised.
- The time limit for settlement will be extended in "consumer" cases.
- Procedural fees will be raised in cases in connection with concentrations.

In 2008 the GVH was also active in **competition advocacy**. In the framework of this activity the GVH elaborated a detailed opinion on a number of draft pieces of legislation. The GVH let its voice be heard concerning the amendment to law on credit institutions, the preparation of law on tourism and the act on the prohibition of unfair commercial practices against consumers, and also the preparation of statutes on switching onto digital television.

The GVH also pays great attention to the development of **competition culture** in Hungary. The possibility to perform this activity within an institutionalised framework has been given since November 2005. For this purpose the Competition Culture Centre (CCC) was founded in 2006. The CCC among others promotes the translation of foreign professional books and

their publication in Hungarian, prepares educational materials, organises and gives financial support to professional programs and events, announces invitations to professional competitions, helps educational, scientific and research projects and cooperates with NGOs performing an important role in the promotion and development of competition culture in Hungary and also with judges responsible for making judgements in competition law cases.

Beyond the development of competition culture in Hungary, the CCC has also an important role in improving the competition culture of the neighbouring countries, since the OECD-Hungary Regional Centre for Competition (RCC) is operated – with a separate budget – within the CCC. The charter of foundation of the RCC was signed by the Deputy Secretary-General of the OECD and the President of the GVH on 16 February 2005. The main objective of the RCC is to foster the development of competition policy, competition law and competition culture in the East, South-East and Central European region and to help the work of the competition authorities concerned. All these mentioned are realised by the RCC through technical assistance programs, seminars organised for the officials working for the competition authorities concerned.

Budapest, 6 January 2009.

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

Tel: +36-30 618-6618

email: Mihalovits.Andras@gvh.hu

<http://www.gvh.hu>