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ANNUAL REPORT
ON COMPETITION LAW
AND POLICY DEVELOPMENTS
IN HUNGARY

[January - December]

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I. GENERAL EXPERIENCES

1.1. DEVELOPMENTS OF MARKET CONDITIONS IN 2005

For the purposes of competition policy, the terms market situation and conditions of competition fundamentally mean market structure and the conditions of market entry and exit, since these factors mainly determine the intensity and other characteristics of competition. The assessment below is based alone on the experiences of the Hungarian Competition Authority ("GVH"), obtained especially during the application of the Competition Act, so it does not necessarily give a full or scientific picture, and the description of the development of market conditions is not equal to the assessment of the development of the economy as a whole or of its competitiveness.

In 2005 the intensity of competition has appreciably grown in several areas, that manifested for consumers both in the extension of the variety of products and services and in a strengthened conduct of undertakings to acquire markets and customers (which is often a less consumer-friendly conduct). By this time, accession to the European Union, which significantly facilitated entry for foreign and Hungarian undertakings onto the Hungarian and foreign markets respectively, had a marked influence on several markets, first of all on the food market and also on the area of transportation of goods by road. The change of market environment demands enhanced adaptation and competitiveness of undertakings that resulted in the concentration of undertakings and certain activities in several sectors.

1.1.1. The effects of state interventions

On the Hungarian **electricity market** in 2005 all consumers, except residential ones, had the legal possibility voluntarily to leave the public utility and to satisfy their demand for electricity from the liberalised market. Non-residential consumers potentially had a 67% share in the total consumption on the liberalised market; however, only 33% of their annual electricity demands were actually satisfied in this way. The market structure changed significantly in 2005 since, through the amendment to the Act on Electricity,¹ the system operator MAVIR Rt. – which had previously been independent and state owned – was re-integrated into the majority state-owned MVM Rt., which acts as producer and public utility wholesale trader of electricity. Due to this amendment, the previous proprietary

separation was replaced by the legal separation of the system operator and its owner, which was also active as a market player. The GVH did not support this modification since, regarding the development of competition, it could be seen as disadvantageous compared to the earlier solution. From the point of view of competition supervision in 2005, it was a negative outcome in that the number of complaints, submitted because of a deterioration in the conditions of complementary services related to electricity supply and distribution activity for household consumers, increased so that the authority had to take measures against several suppliers.

Similar to the electricity market, on the **natural gas market** all consumers, except residential ones, could purchase natural gas, according to their choice, both from the public utility or on the liberalised market. Nevertheless only the large customers, which together accounted for 8% of total annual gas consumption, grasped the opportunity and left the public utility supply. In the energy sector, the first concentration concerning a Hungarian undertaking took place in 2005 where, instead of the GVH, the European Commission carried out the competitive assessment of the transaction. By means of the authorisation of the concentration, the German E.ON Ruhrgas AG acquired control over the natural gas wholesale trade, supply and distribution business of MOL Rt. The Commission, in accordance with the opinion of the GVH, approved the merger with commitments remedying its detrimental effects on competition. There were also some smaller concentrations with the participation of the E.ON group, which concerned gas suppliers. In connection with the complementary services of natural gas supply, the number of complaints increased: these necessitated an institutionalised and consumer-friendly manner in dealing with the problems of the same kind that arose in connection with the supply of public utility electricity and gas. As a result of joint action of the authorities involved, a settlement of the matter by regulation was launched in 2005.

In the **railway industry** in 2005 (following the market liberalisation of the previous year), the number of market players increased, but competition on the merits could not develop on the market, partly because of the insufficient statutory background of the liberalisation, and partly as a consequence of the practices of the undertakings already on the market. The operational troubles of new railway companies threw the spotlight on the deficiencies and inconsistencies of the regulation, that made inevitable the re-regulation of the market and the elaboration of a new

¹ Act CX of 2003.

Railways Act. The power relations were unchanged in 2005: MÁV Zrt. and GySEV Zrt. still dominated almost the whole market, Central-European Railway Zrt., which began its operation in April of 2005, obtained a nearly 1% market share in a short time, while the other railway companies which started in 2004 could achieve only some thousandth percents of market share in transportation of goods by rail. All private railway companies faced the same problem in 2005: access to the railway infrastructure managed by the state railway company. The private railway companies could not rely on legal redress from the railway authority, therefore they submitted complaints to the GVH. A competition supervision proceeding was launched in this field, which will be finished in 2006. There was a further step in market liberalisation: based on a decision of the government, the transport activity of MÁV was organised into a separate company at the end of 2005. Hence, from 1 January 2006, the freight-transport business of MÁV functioned as an independent legal person under the name MÁV Cargo Zrt.

In the **air transport** sector in 2005, the first whole financial year ended on the market of low-cost airlines, characterised by cut-throat competition. Within their advertising campaign, market players were in an intensive price competition, consecutive "free ticket" actions took place, while market players tried to compensate their resultant losses by means of other tariff rates, sometimes in a non consumer-friendly way. During the first half of the year, the supply side was characterised by increased growth in capacity that seemed to be consolidated by the end of the year.

At the end of 2005 the Budapest Airport Zrt., operating Ferihegy International Airport, was privatised. Prior to the sale of the state-owned Budapest Airport Zrt., the ground-handling had been separated from the **airport operating service**, and its operation was taken over by Budapest Airport Handling Kft., which was an independent legal person but owned almost 100% by Budapest Airport Zrt. As a result of the privatisation, the British BAA (International Holdings) acquired a share package of Budapest Airport Zrt. representing 75%-1 of the votes and the state privatisation agency, ÁPV Zrt., retained a minority shareholding. Not concerned by the transaction, the land of the airport and the buildings and facilities on it are still exclusively owned by the Hungarian State. Budapest Airport Zrt. runs Ferihegy Airport on the basis of a property management contract concluded with Treasury Property Directorate representing the state as owner. In parallel with the privatisation, the expiry of this contract was modified from an indefinite period to 75 years.

On the **credit institution markets, establishment of** branches on the Hungarian market and cross-border activities became notably simplified after EU accession. The effects of actual service activities had still not been felt in 2004, but by 2005, about 100 credit institutions had registered for cross-border service provision and three of them had actually launched the operation of their branches in the second half of the year. Thirteen banking groups operated on the market at the end of 2005. Members of the banking groups – banks, investment companies, financial companies, fund management institutions, collateral undertakings, insurance companies, funds – work in close co-operation. Concentration is still high in the bank sector, seven large banks and their groups share as much as 80% of the balance-sheet total of the sector. The banks could preserve the wide margin – even in international comparison – which is related to the reduction of the central bank base rate. The banks could compensate moderate growth in retail loan demand through the development, inter alia, of low-interest currency credit products. They intended to reduce the resultant growth in credit risk by collateral insurance products tied to the credit products. By this tying, the risk was shared between the credit institution and the insurer and – at the same time – the tying was also a demand-increasing tool for insurance companies. The crucial part of the resources in the sector still originates from the deposits of domestic clients but the percentage of foreign resources is also growing. The co-operative financial sector grew only slightly, due to the slower extension, then reduction of the credit-placing activity. The net assets of investment funds showed a significant increase in 2005, resulting both from the introduction of new investment funds and from the fact that pension funds increasingly entrusted the handling of their assets to fund-management institutions.

In 2005 the operation of the Hungarian **insurance market** was balanced but the dynamic market growth, which had been typical in the preceding years, slowed down significantly. Insurers introduced ever more complex products in order to obtain new clients or to entice them away from competitors. Numerous new products were tied to bank products, such as collateral insurance products or insurances linked with payment cards – as a tendency, more and more banks established insurance companies, while insurers increasingly expanded into banking areas with their products.

Of the **funds**, health funds showed an outstanding growth in 2005, since the number of their members grew dynamically due to employers' contributions.

In the field of **motor vehicle trading** in 2005, the termination of the provision about territorial protection of the EC block exemption regulation on motor vehicle distribution² brought a significant change. After this change, selective distribution agreements, restricting distributors in the establishment of sales outlets in any area within the Community belonging to the selective distribution system of the supplier, were no longer covered by the block exemption regulation. This new provision, which entered into force later than the other provisions of the regulation, is intended to improve price competition and intra-brand competition between distributors and to enhance independence of the authorised dealers, by the accomplishment of the liberalisation of motor-vehicle distribution. The supply side of the market is saturated, there are about 650 trading companies maintaining 993 passenger car sales outlets on the Hungarian market. As a result of the new regulation, a consolidation process began as in other countries. Dealers selling expensive luxury cars were new entrants onto the market in 2005. Independent car dealers distributing mainly defective vehicles also appeared, but their share was still insignificant (1%-1.5%). During 2005, the total sales of motor vehicles were stagnant while, at the same time, the online second-hand car market and the motorbike market grew.

On the market of **motor vehicle repairs**, the independent repairers service networks (Bosch Car Service) also appeared and spread. At the same time, due to the presence in Hungary of various subcontractors of car manufacturers, the market of motor vehicle parts distribution also grew.

In the field of **waste management** there are several legal norms³ requiring manufacturers and importers to ensure the gathering, re-use and environmentally friendly recycling or elimination of wastes emerging on the markets concerned by their products (packaging materials, motor vehicles, electric and electronic equipment). The legal norms make it possible for the companies to fulfil their obligations through a commissioned undertaking. In order to perform their waste management duties, manufacturers and importers may establish a co-ordinating organisation. At the same time, based on special interpretations of the law, some other co-ordinating organisations were established with the participation of companies dealing with waste recycling and waste gathering. Typically three-five co-ordinating organisations operate on each of the markets of packaging material waste, electrical equipment waste and tyre waste. All these markets can be charac-

terised by the dominance of one or two co-ordinating organisations, which have as their members 50%-80% of the manufacturers and importers of the primary products. The minor co-ordinating organisations share 5%-15% of the markets. In the case of the major ones, a kind of network effect can be seen: the larger the organisation with more important members is, the stronger it attracts companies, which have not yet been accessed. These matters demand that the authority should pay close attention to market developments.

1.1.2. Developments based on business decisions

The access to the EU brought significant changes in the **agriculture** and in the agriculture-based **food industry**. The dismantling of tariffs and of other administrative trade barriers facilitated the importation of agricultural products and in this way strengthened competition between domestic and foreign suppliers. In 2005 the imports of agricultural products still grew more dynamically than the exports and, as a consequence, competition pressure on the Hungarian suppliers became greater. In answer to this new competitive situation, market concentration in the agricultural sector might increase, especially in the form of vertical integration that could have a positive effect on food production. During 2005, the first signs of this effect already appeared in agriculture and in some segments of the food industry, though to differing extents.

The **dairy farming and milk processing industry** can be characterised by a high investment demand, a relatively long recovery period, the large number of market players, the strong under-exploitation of milk-processing capacities, an intense competition, an accelerating concentration process and a difficult position for the producers. In 2005 it happened for the first time that a federation of small dairy farmer enterprises bought up a milk processing plant.⁴ The imports of dairy products of low-added value (e.g. fresh milk, UHT milk, semi-hard cheese, natural yoghurt) grew in 2005 and as the content of these products only slightly differed by producer, a cutthroat price competition developed. In the case of dairy products of high-added value (e.g. fruit yoghurts, dessert products, special cheeses) the novelty of the goods, the strength of the brand and the marketing practices applied remained factors determining the choice of consumers, at least to the same extent as prices. On the market of milk processing in

² Regulation (EC) No 1400/2002.

³ Government Decree 94/2002. (V. 5.) Korm. on the detailed rules of packaging and packaging waste management; Government Decree 267/2004. (IX. 23.) Korm. on motor vehicle waste; Government Decree 267/2004. (IX. 23.) Korm. on the disposal of waste of electrical and electronic equipments

⁴ Vj-172/2005.

2005, the merger of Sole Rt. and Új-MiZo Rt.⁵ resulted in the creation of Sole-MiZo Rt. with an almost 30% market share which became the most significant market player, outpacing Friesland Hungaria Rt. which had been the market leader for years.

The **poultry industry** was characterised by the difficult financial position of producers and processing enterprises, an under-exploitation of the processing capacities and a dropping demand at home and from abroad. The merger of Bábolna Baromfitenyésztő Farm (Poultry-farming) Kft. and Pannon Baromfifeldolgozó (Poultry Processing) Kft.⁶ indicated that a concentration process had already begun in the sector. In this merger, undertakings, which were active on non-neighbouring levels in the production and distribution chain of the poultry industry – the broiler baby chick incubation and the processing of poultry for slaughter – integrated their activities.

In the **milling industry**, considerable excess stocks and significant under-exploitation of mill capacities exist, which are strongly affected by the growing amount of grain stock for intervention purposes, low domestic consumption and the reduction in livestock. Prices are determined by the intervention price level, which is advantageous for the producers on the market of oversupply – also considering the subsidies. The concentration process which began in 2004 on the markets of milling products and fodder products has continued but there are still many players in the sector.

The considerable changes on the European **sugar market** in 2005 also concerned, due to proprietary relations, Hungarian market conditions. As a result of WTO negotiations, ever larger quantities of non-European sugar were admitted into the European market. Hence, the subsidies to the producers decreased. In the long run, poorer arable lands might drop out of production, then the processing capacities would also shrink because of the falling sugar beet production.

The most dynamically developing sector of the food industry is the **fodder industry**. The production and distribution markets of dog food and cat food have considerably grown in recent years in the whole East European region. This can be attributed to the lifestyle changes of people in the area. In Hungary, exports of fodder products quadrupled in the last 5 years while imports grew by 80%. This result caused Hungary to be one of the four-five largest fodder exporters in the EU which is mostly due to the fact that – in a unique way in Eastern Central Europe – two

⁵ Vj-143/2005.

⁶ Vj-140/2005.

global market leaders, Masterfoods and Nestlé Purina, each established a regional production basis in the country. In 2005, a further multinational enterprise (Provimi) having global activity with a significant financial base, joined them by entering the market.

In the **retail trade**, a transition of the professional structure of the networks of stores could be seen in recent years. The change related especially to shops selling food, and of them, mainly the food-distributing stores having a mixed profile (hypermarkets, supermarkets, small-surface shops with a mixed product range). The typical tendency was the gradual and firm decrease in the number of units, especially in the case of small-surface shops with a mixed product range. The biggest fall was registered in the case of shops specialising in electric household appliances, but there was also a reduction in the number of shops selling clothing and textiles, agricultural and apicultural products, photographic and optical products, household fuels and chemicals. At the same time non-food shopping networks spread out, especially the networks of outlets and department stores selling industrial products. The number of outlets selling books, newspapers, stationery, motor vehicles, second-hand products, telecommunications articles, computers, office machines, software, fodder, watches and jewels and sports equipment increased significantly. In addition to the growing territorial concentration, an increase in the concentration of operators could also be seen. The concentration process lead to companies' gaining ground continuously. By the end of the third quarter, companies ran more and sole proprietorships ran fewer shops each as an average in comparison to the number of shops run per operator in the economy as a whole. The proportion of shops operated by sole proprietorships decreased in all fields of activity, particularly in respect of food and food-distributing mixed-profile shops. The number of one-shop operators continuously decreased in parallel with an increase in the number of operators with more than one shop – a phenomenon that also indicated the tendency of concentration in operation.

During 2005 in the **info-communications sector** processes indicating convergence intensified. This convergence could be seen between telecommunications, informatics and media branches, along with the value-adding processes of networks and terminals, as well as on the levels of technology, market and regulation.

On the **market of fixed-line telephone services**, the number of analogue fixed lines continued to drop. This can

be explained by the spread of Internet Protocol (IP)-based voice services offered by cable television providers, in addition to the competition caused by mobile phone service providers. In order to retain clients, the fixed-line service providers also offered IP-based services for consumers. In 2005 numerous telephone tariff packages appeared in the offers of fixed-line service providers, where subscribers for their subscription fees could take advantage of traffic services for a defined period. In another typical tariff package the fixed-line service provider ensured a discount price for subscribers if they did not take the opportunity to select a carrier. In order to protect competition, action of the authority is especially justified on the markets where competition is developing, e.g. on the consumer market of fixed-line services. As an example, the GVH launched an investigation to establish whether or not such a package, creating practices of service providers, might restrict competition. Recently on this market, alternative service providers could increase the number of their subscribers just by offers submitted within the framework of carrier selection. The gradual reduction in traffic charges and the aggressive advertising campaign of service providers are signs of lively competition. The GVH conducted several proceedings⁷ against unfair manipulations of consumer choices. The alternative service providers could also expand, first of all by means of number portability, in the field of services they offered to business subscribers. In 2005, the National Communications Authority ("NCA") completed the market assessment procedure relating to the markets of fixed-line services and, in order to establish or improve effective competition, the NCA imposed various remedies on the service providers identified as players with a significant market power. The GVH hopes that these measures will ensure the strengthening of competition, but for the time being the actual market effects of all the regulatory interventions cannot as yet be evaluated. One of the reasons for this is that only a short time has passed since the imposition and application of the remedies, the other is that the respective markets and the remedies imposed on them are closely related, and the remedies have not been enforced on every market. Previously the service providers had considered interconnection the most critical point and, after the approval of reference interconnection offers, it will become clear whether the present requirement of remedies related to interconnection could hit the expected target. In 2005, a positive development was that Matáv Rt. voluntarily reduced the fees it charged for the unbundling of local loops, though NCA has not yet approved the reference offers concerning local loop unbundling. In 2005 there were

⁷ Vj-32/2005, Vj-80/2005, Vj-125/2005, Vj-133/2005.

⁸ Vj-42/2005.

⁹ The market assessment and SMP identification procedures completed by the NCA in 2005 and the detailed comments made by the GVH can be found in Chapter 3.1 (Commenting on draft pieces of legislation).

considerable changes in the life of the biggest fixed-line service provider, Matáv Rt.: first, following the full introduction in Hungary of the brand structure of the Deutsche Telekom group, it changed its name to Magyar Telekom; then a decision was made that Magyar Telekom would integrate T-Mobile. This was the most important change on the Hungarian market of fixed-line voice services but, in the region, it was a notable development that Magyar Telekom gained control over Telekom Crne Gore AD,⁸ the biggest telecommunications service provider in Montenegro.

In the field of **mobile services**, there is still lively competition between the three network owner service providers on the retail markets, but virtual mobile service providers have not yet entered the market. On the mobile market, the penetration achieved as much as 90%, but number portability has still no significant effect on the move of subscribers between service providers. In 2005 market players continued their aggressive advertising practices, which were typical of them in recent years. This triggered the intervention of the GVH, which was necessary to protect consumers. Of the mobile service providers, Vodafone's and T-Mobile's new service packages offered discount minute charges in the direction of domestic fixed-line calls without charging a monthly subscription fee. There was a definite attack to win more clients from the fixed-line phone service providers. In 2005, the service providers began to introduce 3G services. Due to regulatory measures of the NCA, termination charges continued to decrease. The regulatory authority intends to achieve a further gradual fall in those charges as a priority objective.

On the market of **Internet services**, the number of broadband (ADSL- and cable-based) accesses continued to grow considerably and at an accelerated pace. Since ever more cable service providers introduced voice services, the competition between the two different technologies increased. The bandwidth of both ADSL-based and cable services widened and, at the same time, some service providers began to enforce data flow limitations against consumers. As far as the wholesale broadband access market is concerned, in 2005 the NCA identified incumbents as service providers with significant market power and it required them to ensure countrywide IP-bit flow access and to apply the retail minus pricing principle. The actual market effect of the regulator's intervention⁹ cannot be judged yet.

On the market of **programme dissemination**, in 2005 Swisscom Broadcast AG, as the winner of a privatisation

process, acquired control of Antenna Hungária Rt. Beside broadcasting as the main line of its activity, Antenna Hungária Rt. provides programme distribution services, which have been digital since 1 December 2005. On the market of **fixed-line programme distribution** (cable television) services, considerable developments were that several service providers began to introduce digital cable television services; cable modem Internet services became available for an increasing number of consumers; and ever more service providers also offered an IP-based voice service within their networks (triple play). The realisation of triple play in the cable television network definitely means that this infrastructure, also having an outstanding penetration at the European level, is an actual alternative to the fixed-line telephone networks for consumers. As a consequence, the possibility is given in Hungary for the development, even in the medium term, of an infrastructure-based economic competition in electronic telecommunications, which can maximise consumer welfare in the long term. This favourable process can be hindered by the partitioning of the cable television market and by the scarcity of capital of a large part of market players that might result in a lack of the innovation necessary for the development of a competitive situation.

1.2. LEGISLATIVE AMENDMENTS

1.2.1. Amendments of the Competition Act

The Competition Act was amended in 2005 due to three main reasons. First, the need for practical amendments identified by the practice of the GVH required changes in the Competition Act. As will be presented below, e.g. the provisions on complaints and on sectoral inquiries were substantially restructured. The amendments affected the merger procedure and the notification threshold as well. A number of ambiguities challenged before court by parties fined by the GVH were also removed by new provisions.

Secondly, the Act IV of 1957 on the General Rules of Public Administrative Procedures, which formed the background legislation of the Competition Act was repealed and new legislation was adopted. It was therefore necessary to adjust the provisions of the Competition Act to the new background legislation. This meant a thorough revision of a score of provisions in structural and substantial terms.

The third main reason was to adjust the legislation to the changes of the EC competition regime (which abolished the ex ante individual exemption possibility for restrictive agreements), and also to experiences gained in the application of EC competition law and in co-operation within the European Competition Network ("ECN"). Most of the amendments entered into force on 1 November 2005 but the system of individual exemptions was abolished already in July.

The Act reorganised the system of complaints distinguishing between complaints (made by submission to the GVH of a properly-completed form issued by the GVH) and informal complaints (submitted in any other way). Any person may lodge either of them and the Act makes it clear that the procedure relating to complaints or informal complaints is not part of the competition supervision proceedings. The Act regulates the extent to which the provisions of Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services govern the procedures relating to complaints (similarly as they govern, to different extents, sectoral inquiries and the competition supervision proceedings). The complainant may seek a legal remedy against an injunction of the investigator rejecting the complaint with reference to the fact that it does not fulfil the conditions for the opening of an investigation. The costs arising in the procedures relating to complaints are advanced and borne by the State. If, in the course of the competition supervision proceedings, an infringement committed by the conduct specified in a complaint is established, the costs of the procedure relating to the complaint must be borne by the parties whose conduct was found to infringe the law.

The threshold of merger notification was raised: accordingly, "an authorisation shall be sought in cases where the aggregate net turnover of all the groups of undertakings concerned and the undertakings jointly controlled by undertakings, that are members of the groups of undertakings concerned, and other undertakings exceeded HUF 15 billion equalling to EUR 60 million" (as opposed to HUF 10 billion under the provision in force until the end of October 2005) in the preceding business year.

The Act regulated the operation of the legal institution of sectoral inquiry in a separate new Chapter, further expressing in this way the increasing importance of this institution. Some new rules were introduced in addition to those already in force. Under one of the latter, the GVH has the duty to publish its report about the investigation and the

parties concerned have the right to make observations and orally to express their views about the report. The communications between the party and its legal representative are protected by legal privilege from being disclosed and are not accessible for the GVH until they are in their possession.

When carrying out an inspection (e. g. in premises of an undertaking), the investigator has become entitled to make copies of, or seize, pieces of evidence, which are not related to the subject of the investigation and are not covered by the authorisation of the court, but which are indicative of an infringement of the provisions of the Competition Act or of Articles 81 or 82 of the EC Treaty. In respect of such pieces of evidence, the authorisation of the court must be subsequently obtained.

The rule on limitation of actions was amended and, instead of three years, the lapse of five years is now required as from the end of the infringement before the undertaking can avoid having an infringement proceeding commenced against it.

The Act introduced the possibility of private enforcement of the Hungarian competition law. Courts must notify the GVH about legal proceedings. As the institution of *amicus curiae* – introduced by Regulation (EC) No 1/2003 relating to actions based on EC competition law – was extended to purely national law actions as well, the GVH may submit observations to the court in each and every case. If the GVH also takes up the cases, the courts are obliged to suspend their proceedings.

The President of the GVH has a new task: the responsibility for the development of competition culture. This task contains in particular the need to raise public awareness of competition by means of the dissemination of knowledge about competition policy (including the provision of information about the benefits resulting from competition or with the aim of assisting compliance and the creation of a competitive regulatory environment), and the contribution to the development of competition-related legal and economic activities of public interest. Certain capacities of the Centre for Competition Culture, which has been established within the GVH, are now dedicated to these aims. The Centre receives as a budget 5% of the fines imposed by the GVH and already paid into the Treasury.

A number of minor amendments also affected the procedure of the GVH. For instance in the course of GVH pro-

ceedings, the party and other persons participating in the proceedings may not have access to internal documents of the GVH and to correspondence between the GVH and other authorities, or between the latter, unless those internal documents are used in evidence when establishing the facts of the case.

The Act, on the basis of Regulation (EC) No 1/2003, introduced as a new type of decision the so-called "commitment resolutions". Where, in the course of competition supervision proceedings started ex officio, parties undertake commitments to ensure, in a specified manner, compliance of their practices with the provisions of the Competition Act or of Article 81 or 82 of the EC Treaty, the competition council proceeding in the case may – by means of injunction – make those commitments binding on the parties and, at the same time, terminate the proceeding, without thereby having concluded in the injunction whether or not there has been or still is an infringement of the Competition Act. In order to check compliance with the commitments specified in the injunction, the investigator will hold a post-investigation. Where the parties are found to have failed to comply with the commitments, the competition council proceeding in the case may impose fines.

Act LXVIII of 2005 amending the Competition Act abolished the individual exemption system but at the same time retained the criteria for exempting agreements from the prohibition on restrictive agreements. The abolition of the system served to avoid possible conflicts stemming from individual exemptions granted under national competition law to agreements that might later be considered illegal under Community law by the Commission or any of the Member State authorities.

1.2.2. Amendments of related legislation

The Act on General Rules of Public Administrative Procedures and Services entered into force on 1 November 2005. As mentioned above, it brought a number of changes in the legal background to the procedures of the GVH.

The prohibition of cartel agreements concluded in public procurement and concession procedures was introduced into the Criminal Code. The Code foresees a term of imprisonment of up to five years for the infringement of the provision. In order to secure the effective functioning of the leniency policy of the GVH, no sanctions can be im-

posed on the first person notifying the infringement of the Criminal Code to the authorities, also including the GVH. The Act on Public Procurement was amended as well. According to a previous provision of it, undertakings found to be party to an infringement of the Competition Act could have been excluded from the tender. The amended legislation foresees this possibility only if a fine was also imposed on the undertaking. The amendment served to reduce further the negative consequences for whistleblowers.

A new Act on Trade was also adopted in 2005. It introduced specific rules on undertakings of significant market power and empowered the GVH to apply the procedural rules on abuse of dominance in cases of infringements of the prohibitions enumerated by the Act on Trade.

1.2.3. Other relevant measures

Following changes in legislation, the notices of the GVH on merger procedure and on the imposition of fines were also amended.

The GVH published for the fourth time a collection of principles established in its case-law. Though courts are not obliged to follow these statements, the collection serves as guidance for the business community.

II. PROCEEDINGS

2.1. INITIATION OF CASES

2.1.1. Complaints and informal complaints

The dual system of complaints and informal complaints, which was introduced by the latest amendment of the Competition Act in 2005, is unique in the Hungarian administration. The complaint is a special legal institution in the Competition Act. Complaints can be submitted to the GVH by a properly completed form containing the important facts required for the assessment of the complaint.¹⁰ Informal complaints can be submitted in other less formal ways. Both complaints and informal complaints can serve as the basis of the initiation of competition supervision proceedings. However, there are differences between them regarding the time limits of settlement and the rights of persons submitting a complaint or an informal complaint (hereinafter together, unless otherwise indicated: "complaints").

In 2005 the GVH assessed 1046 complaints. This figure shows a 22% increase compared to the 847 complaints in 2004.

A majority of the complaints (67%) were submitted by natural persons. Nevertheless, a minority of the complaints referred to the GVH by other administrative organs mostly came from the General Inspectorate of Consumer Protection as in previous years.

In 2005 the GVH rejected 800 complaints (76%), while a further 246 complaints (including four informal complaints) served as the basis for 131 competition supervision proceedings (where the facts of the case or the identity of the undertaking affected by the complaints justified it, the GVH joined together more than one complaint). The majority of the competition supervision proceedings (86 cases – 65%) concerned consumer fraud practices, 35 cases concerned abuse of dominant position and 10 cases related to agreements restricting competition.

The complaints concerned similar sectors and behaviour as in previous years: the pricing and contracting practice of cable-television service providers, and the advertising practice of hypermarkets, other retail chains and financial providers. A number of complaints related to services of gas, electricity and district heating providers, the prices of which could be determined freely by those providers (measuring, installation or change of meters, etc.).

Out of the 800 injunctions by which the GVH rejected complaints, 106 were appealed. In 13 cases, the appeal was found justified.

Where the GVH is not authorised to proceed in respect of the statements made in a complaint, it refers the complaint to the body competent to proceed in the case, if such a body exists, and informs the person submitting the complaint of this measure. Where the case falls under the competence of the court, the GVH informs the person submitting the complaint of this fact. In 2005, the GVH referred 45 cases to the body competent to proceed in the case, most of them to the General Inspectorate of Consumer Protection and its regional offices, to the National Communications Authority and to the Hungarian Energy Office.

In the field of consumer protection, a number of cases were referred to the GVH by the General Inspectorate of Consumer Protection. However, in some of these cases the GVH did not initiate any competition supervision proceed-

ing, as the complained behaviour did not have an effect on competition in the market, which was a precondition for launching a proceeding. This means that some cases were not assessed by the authorities at all. This phenomenon can be regarded as a consequence of the fact that the rules of the **Act on Business Advertising Activity and of the Competition Act are built on each other**. In order to reduce the number of unsolved cases, an amendment to the legislation and/or an enhanced co-operation between the competent bodies are needed.

The number of players on the market of **dietary supplements** significantly increased with the accession of Hungary to the EU. In several cases, the undertakings eluded the Hungarian legislation by referring to previous measures in other Member States.

Several complaints concerned **advertisements offering jobs that could be done from home**. After a client had contacted the undertaking and had paid different sums of money, it turned out that there was no real job offer or the advertisement covered an agency contract. The GVH could only have proceeded against such practices if they would have qualified as practices of employment agencies misleading consumers, but they could not be considered as such. This phenomenon does not fall into the competence of any other administrative organ either. In the absence of suitable legislation, further perpetration of such abuses is to be expected.

In particular the subscribers of dial-up Internet access services are endangered by so-called **dial-up fraud**. The essence of the fraud is that – when surfing on the Internet – special programs can install themselves onto the computer, without being noticed by the user. These programs then initiate telephone calls with international tariffs, and later these calls appear in the invoice to be paid by the subscriber/user. Consumers who also suffered from such frauds contacted the GVH. The GVH found that the behaviour of the communications service providers did not constitute an abuse of dominant position within the meaning of the Competition Act, since fees of such telephone calls went for the most part to the undertaking owning the international telephone number and, as a result of the frauds, the encashment costs of the domestic service provider increased. Furthermore questions of data protection would also have arisen, had the service provider – without permission or authorisation given by the subscriber – investigated the direction of and intention behind the international call. In the opinion of the GVH, it fell

under the competence of the courts to decide whether the service provider fulfilled its obligation to co-operate with the subscribers in order to avoid dial-up frauds and whether the practice of the service providers was fair in passing all liability in relation to an unrestricted telephone line onto the subscriber.

Complaints relating to the **enforcement of guarantee rights** build a recrudescing group, in particular those relating to durable goods. A distinction is to be made between cases where the danger of losing the guarantee rights stems from stipulations restricting competition (for example if the condition of the guarantee is that the installation of a piece of equipment is made by an authorised repairer) and cases where the complaints relate to certain behaviour of those repairing the good.

Complaints concerning **public areas** (use of public areas, parking, advertising in public areas) are a special group of cases. Unfortunately, having regard to the legislative circumstances, competition law typically cannot treat these problems.

An interesting group of complaints related to abusive behaviour of **undertakings providing services in a relatively closed space** (for example cafeterias in schools or hospitals). With regard to the fact that alternative supply sources – though restricted – are available for the consumers, a dominant position cannot be established in these areas. Nevertheless, the behaviour of the service providers concerned undoubtedly show "skimming-like" pricing strategies.

A new difficulty in the enforcement of the competition rules arose in the last quarter of 2005. **Undertakings domiciled abroad** can directly enter the Hungarian market, and some of them indeed entered by advertising their services. These advertising practices would have given ground to competition supervision proceedings in several cases: however, effective action would only be possible after the legal framework has been established by the end of 2006.

2.1.2. Co-ordination relating to the application of EC law

As a consequence of Hungary's accession to the EU, the GVH is required to apply both the Hungarian Competition Act and the Community competition rules. The GVH con-

¹⁰ The form can be found on the web-site of the GVH in Hungarian and in English, however, complaints can only be submitted in Hungarian.

tinuously analyses the experiences, which came from its co-operation with the Commission and with other ECN members and which will be taken into consideration in its work. An increase can be noticed in the number of cases, which were initiated on a Community law basis or with a simultaneous application of the Hungarian law – on a parallel legal basis. At the beginning of 2005, there were 4 cases in progress, and these 4 cases were afterwards coupled with a further 19 cases. The choice of the legal basis – especially in the cases about cartels and other horizontal agreements – was determined by the circumstance whether the conduct affected the entire territory of the country because this could result in the application of Community law.

Many different types of restrictive agreements – cartel, horizontal co-ordination, vertical distribution agreements, conduct concerning selective distribution systems – and abuse of dominance, etc. can be found in the GVH's portfolio regarding to processes based on Community law. Through co-operation in the ECN, the GVH receives indirect and up-to-date information on the cases initiated by the Commission and by other Member States, and it provides information on its own cases as well.

As a consequence of the mutual information sharing, the ECN co-operation makes it possible for a national competition authority ("NCA") to initiate a proceeding in a case in which another authority from a different Member State has already initiated its proceeding. There is also a possibility to refer a part of the investigation of infringement to the Commission, in a case, which was originally initiated by the GVH, if the Commission also conducts a proceeding against the undertaking parallel to the GVH proceeding. In 2005, no cases were initiated parallel to those of other NCAs, nor were cases referred to the Commission. On the other hand, the Commission made two inspections in Hungary with the participation of the Hungarian authority.

EU accession brought changes in the field of merger control. As a consequence of the EU having jurisdiction in cases with a Community dimension under the EC Merger Regulation, these transactions do not need to be notified to the GVH, even if they would exceed the thresholds provided by the Hungarian Competition Act. Under the "one-stop shop" principle, cases with a Community dimension are dealt with solely by the European Commission. The GVH may express its opinion on the effects on the Hungarian market, and it may initiate the case to be referred to it, if the effects of the transaction concentrate on the

Hungarian market. No precedent for that could be found in 2005, but in two merger cases dealt with by the Commission, the GVH co-operated with the Commission considering that the target companies were Hungarian ones.

In one of the cases, the Wiener Börse AG, the Österreichische Kontrollbank AG, the Raiffeisen Zentralbank Österreich AG, the Erste Bank der Österreichischen Sparkasse AG and the HVB Bank Hungary jointly bought up the Budapesti Értéktőzsde (Budapest Stock Exchange), the Budapesti Árutőzsde (Budapest Merchandise Exchange) and the Central Clearing House and Depository ("KELER").

In the other case, two affiliated companies of MOL (one of the biggest Hungarian company), namely MOL Földgáz-ellátó Rt. and MOL Földgáztároló Rt. (natural gas supply and storage companies), were acquired by E.ON Ruhrgas. In this two-phase merger case, the Commission involved the GVH in the elaboration of the conditions for the authorisation, and completely took into consideration the observations of the GVH.

On the basis of the Merger Regulation of the Community, it is possible for undertakings to initiate the referral of cases to the GVH, or to the Commission from the GVH, but in 2005 there were no such examples.

Based on Regulations (EC) Nos. 1/2003 and 139/2004, the GVH became a member of the two advisory committees operated by the European Commission. The committees play their respective advisory roles in respect of restrictive agreement and abuse of dominance issues, and in respect of mergers.

2.2. MAIN PROCEEDINGS

2.2.1. Unfair manipulation of consumer choice

Chapter III of the Competition Act prohibits unfair manipulation of consumer choice, that is the misleading of consumers and the application of business methods that restrict, without justification, the freedom of choice of consumers.

Article 8 provides a non-exhaustive list of the deceptive practices. A practice is deceptive if false declarations are made or facts are declared in a manner which is likely to

deceive consumers with respect to prices or essential features of the goods; furthermore, if the designation of goods is likely to deceive, or if any other information which is likely to deceive pertaining to the essential features of the goods is disseminated. It is also deceptive if it is concealed that the goods fail to meet legal or other usual requirements for such goods, or that the use of the goods requires conditions, which are significantly different from those, which are customary. Further, it is prohibited if information that is deceptive or may possibly be deceptive is given about factors related to the sale and distribution of the goods influencing the decision of consumers, in particular, about the method of distribution, terms of payment, gifts associated with the goods, discounts, or the chance of winning. Finally, it is prohibited to create a false impression of an especially advantageous purchase.

As to the clarification of expressions in everyday life, Article 9 provides that the meaning of terms customarily accepted in daily life or in the respective trade must be taken as a guide when establishing whether the information is likely to deceive consumers.

Article 10 prohibits the application of business methods that restrict, without justification, the freedom of choice of consumers. Making the objective appraisal of goods or offers, or the objective comparison between them and other goods or offers more difficult must be deemed, in particular, to be such a method.

It is important to highlight the fact that the aim of the above Articles of the Act is to protect fair and undistorted competition and the public interest attached thereto rather than to remedy individual harms. The provisions advance the freedom of consumer choice; hence competition and the economic interests of consumers are protected.

In respect of unfair manipulation of consumer choice, there were 79 Competition Council decisions on the substance of the case in 2005, out of which the Competition Council intervened in 54. There was an increase in the number of cases as compared to 2004.

In 50 of the 54 cases mentioned above, a serious violation of the law was established. The fines imposed in 42 of these cases amounted (altogether) to HUF 439 million. In eight of the violation cases, however, the Competition Council did not impose any fine.

Of the 79 cases, 74 concerned misleading of consumers

and 5 concerned restriction of the freedom of choice of consumers.

The following case summaries provide an overview of the main bearings of the assessment of the cases.

In the course of communication to the public in the meaning of Chapter III of the Competition Act, the undertakings use various communication methods adjusted to the features of the given market. Beyond the common forms of advertisements also known as "above-the-line" advertisements, which use the mass media, ever more so-called "below-the-line" advertisements appear on the market, which use tools such as the online marketing. Further, in certain markets, the substantial and procedural elements of the communications to consumers are restricted by sectoral and/or product specific communications rules.

In the course of **integrated communications campaigns**, the undertakings reach consumers by using both above-the-line and below-the-line communications methods. Besides winning new customers, the aim of these campaigns is to win away customers from competitors. This behaviour is typical in saturated markets such as the telecommunications market.

The use of integrated communications campaigns is typical for huge market players as these campaigns are costly.

In case Vj-133/2005 regarding the advertisements on the mobile phone tariff packages "Favorit" and "Favorit Plusz" of T-Com, the Competition Council held that there was a difference between marketing communications tools and channels in their ability to communicate information that attract attention or provide detailed guidance.

In the case of **printed advertisements**, matters have relevance such as the location, the highlighting or hiding of information and pictures, the measure of the text and everything else what might have an influence on the overall impression of the advertisement. The titles and the highlighted text have special significance in printed advertisements.

In **television advertisement**, due to the time limits, the amount of information presented is much less than that found in the printed press.

In the case of **hoardings**, a driver has about one second for perception, and a pedestrian has about three. As a con-

sequence, to be effective a hoarding cannot use more than three patterns (the main line, a picture and an emblem). Therefore small-letter messages have practically no effect. The problem with advertising on the **Internet** lies not with the lack of information but with the opposite. The immense amount of information makes it difficult to select the relevant information. Therefore, from a competition point of view, it is important that all the necessary information is readily available for consumers in order to enable them to formulate a realistic judgement about the product.

The Competition Council declared the practice unacceptable where not all information necessary for the proper interpretation of the advertising was provided or the information provided could not be perceived well by consumers.

In the course of advertising campaigns in the sector of financial services, the advertiser has to take into consideration the strict rules for the provision of services. In case Vj-111/2005 on the placing of loans to private persons by the National Savings Bank ("OTP"), the Competition Council had to establish whether OTP provided appropriate market information for consumers so as to enable them to arrive at a correct product choice. According to the Competition Council, such kind of information was not provided in the marketing campaign, neither by its particulars nor in general. The advertisements in the press made mention of the fact that the loan was foreign-currency denominated, but it did not inform consumers that the rebate was available on condition that it was foreign-currency denominated. The advertisement in the radio did not refer to the loan being CHF denominated and to the repayment instalment; they mentioned at the same time the conditions of transfer to the current account. This gave the false impression that during the period of the rebate, the conditions of the HUF- or EUR-denominated credits were the same as those being CHF denominated. Although the press advertisement contained the information that the propagated personal credit was CHF denominated, the attachment of the 1% rebate typically remained hidden from consumers (not to mention the conditions of transfer to the current account). In turn, this gave the false impression that the 1% came with every contract agreed upon within the rebate period, regardless of the denomination of the credits.

The **fidelity discounts**, which target existing consumers, play an important role in the decision-making process of consumers, particularly in their decision as to which trademark to choose. In the "Pick fidelity programme" (Vj-65/2005), the Competition Council established that a

long-term programme and the information referring to it were capable of manipulating consumer choice.

The distributors of foodstuffs and non-foodstuff products (perfumes and products of the chemical industry), i.e. products belonging to so-called "fast moving" consumer goods, try to attract consumers by strong sale incentive promotions. It is typical of this market that some of the advertised products are not always available to consumers (Vj-45/2005 – Tesco-Global Áruházak (Stores) Rt., Vj-126/2005 – Magyar Hipermarket Kft.). It happens that the actual price is higher than that in the advertisement (Vj-41/2005 – Auchan Magyarország Kereskedelmi és Szolgáltató (Trading and Service Providing) Kft.), or that the statements made on the essential features of the goods are not true (Vj-45/2005 – Tesco-Global Áruházak Rt., Vj-41/2005 – Auchan Magyarország Kereskedelmi és Szolgáltató Kft.).

In its leaflets containing information about its rebates, Tesco Global Áruházak Rt. (Vj-45/2005) provided information not only on the actual rebates but on a so-called price guarantee as well. Tesco stated that the products with the price guarantee were the cheapest on the market and, at the same time, it guaranteed that were the consumer to find the same product with a lower price elsewhere, then Tesco would pay double the price difference to the consumer. However, Tesco failed to inform the consumers about certain conditions that considerably influenced the enforceability of the guarantee. These conditions were that both products had to be purchased, both receipts had to be presented, and further no more than 72 hours could elapse between the two purchases.

Leaflets disseminated free of charge to households accomplish a significant communications function not just in the fast moving consumer goods sector, but also in manufactured goods, furniture and DIY (Vj-49/2005, Vj-70/2005, Vj-73/2005, Vj-106/2005, Vj-146/2005). It is noticeable that the non-price factors such as marketing and distribution-related conditions gain an increasing importance in the making of the leaflets.

The widespread use of the well-known notion of price guarantee shows that the content of the leaflets not only refers to the prices available in the given time period but also tries to provide an extra element to consumers, which suggests the feeling of security. In this respect, see the decision of the Competition Council in the Electro World Magyarország Kft (Vj-49/2005) and the Bravotech

Kereskedelmi Szolgáltató (Commercial Service Provider) Kft. (Vj-52/2005) cases.

In cases Vj-52/2005 and Vj-70/2005 the undertakings concerned misled consumers in the description of certain essential aspects of electronic equipment with special features. In case Vj-52/2005, the leaflet in question contained misleading information regarding the playable formats on a JVC DVD player. In case Vj-70/2005, the leaflet described the Samsung Plasma TV of a 108-cm frame diagonal as coming with Picture-in-Picture function, though the PIP function was available only in a computer environment.

The credit arrangements put forward in a leaflet can increase the willingness to purchase and, in case of valuable goods, may stimulate an immediate purchase. Cases on the free-of-charge nature of such credit arrangements: Vj-73/2005 and Vj-106/2005.

The leaflets of KIKA Lakberendezési (Furnishing) Kft. infringed the Competition Act in many respects (Vj-146/2005). The "KIKA Collection 2005" catalogue informed consumers about the possibility that goods not readily available could be ordered upon payment of 30% of the price and the items concerned would be delivered within a few weeks. However, the home delivery service worked with an average of a 6-10 weeks' time limit. In its leaflets, besides the promotional prices, KIKA indicated the recommended price by the supplier as a reference price, which was not applied in reality.

As the cases before the Competition Council show, the **Internet** has a significant role both as part of the media (Vj-11/2005, Vj-17/2005, Vj-49/2005, Vj-74/2005, Vj-64/2005 and Vj-129/2005) and as a means of creating the possibility for a proper evaluation.

A case concerning commerce over the Internet was against Bookline Magyarország Kft. (Vj-100/2005), an operator of an online book market. On its homepage, it advertised its service as being "Hungary's largest online bookshop." The undertaking could provide solid proof of its statements in respect of selection, number of visitors and turnover. Thus, the case was terminated. Nonetheless, the investigation provided useful information on the characteristics of the online market.

A special category of cases concerns a type of **direct marketing ("DM")**, namely **direct mail**. The behaviour of both Sargaoldalak Cégnevsorkiadó (Publisher of the

Business Yellow Pages) Kft. (Vj-61/2005) and Magyar Telefonkönyvek Szolgáltató (Service Provider Hungarian Phone Directories) Kft. (Vj-90/2005) was declared to be a business method restricting, without justification, the freedom of choice of consumers. The undertakings prepared the offers they sent to consumers in a format, as if the offers were invoices based on a contract concluded earlier between the undertaking and the consumer.

The observations made in the 2004 Annual Report concerning products that affect health are still valid. As health considerations are becoming increasingly important to consumers, ever more products are available to which characteristics – professionally not proven – are attributed in order to attract the targeted group of consumers.

The fierce competition on the market of products affecting health generated misleading behaviour. The common characteristic of these types of behaviour is that the producers and distributors market these products without respecting the laws applicable to this specific segment of the market. Instead, they use the specifications of other categories of products such as medicines.

The evaluation of the so-called "**health-marketing**" – which is a response to increasing demand, on the one hand, and a generator of demands, on the other – focuses further on the categorisation of products according to their curative effect. Further, the Competition Council takes into consideration the special requirements attached to the information that is to be provided with these products.

The communications channels used for the purpose of health-marketing (Vj-8/2005, Vj-10/2005, Vj-11/2005, Vj-64/2005, Vj-74/2005, Vj-105/2005, Vj-107/2005 and Vj-131/2005) are diverse. It is the printed press that reaches the widest audience of consumers. The target audience is informed about these products in periodicals (Elixír, Természetgyógyász, Ideál és Patika magazin, Patikatükör) and free magazines (Excalibur, Családi Kör, Esszencia) specialised in the subject. Flyers and booklets in herbalists and pharmacies serve as further communications channels.

The Competition Council ordered, on many occasions, a corrective announcement to be published – a special sanction used in cases of unfair manipulation of consumer choice in connection with products affecting health.

It was established in the case against the Avalon Team (Vj-8/2005) that the undertaking attributed curative effects to

its products (Vivax, Metabol, Oxytarm, Életkristály) in advertisements and in the course of distribution. The Competition Council, besides prohibiting the continuation of the conduct, ordered a corrective announcement, equivalent both in format and size to the deceptive information, to be published within 60 days in certain Hungarian periodicals (Blikk, Metro and Budapesti Piac), and further imposed a considerable fine on Avalon.

In connection with the information and marks indicated on the **packages**, a number of proceedings were carried out by the authority (Vj-197/2004, Vj-199/2004 and Vj-13/2005). Beyond its primary function of protecting the good itself, the packaging (through the information found on it) serves as a communications tool. The regulation on the information that helps consumer choice and product comparison is to be found in consumer protection law.

2.2.2. Agreements restricting competition

Article 11 of the Competition Act provides that all agreements restricting competition are illegal and void, unless four criteria are met by the agreement. The responsibility for individual assessment of the four criteria is laid on the parties since as of mid July 2005 no formal exemptions could be requested from the GVH.

In 2005, 25 decisions were made on restrictions of competition. Nineteen proceedings were initiated ex officio and six were based on applications for exemption. The GVH intervened in 13 cases and it imposed fines in 7 of those cases. The total amount of the fines was HUF 2854.7 million (approx. EUR 11 million).

In 2005, cartels affecting public procurement proceedings in the construction sector remained a focal point for the GVH. Two proceedings were terminated this year. One case related to 40 different construction works in Budapest submitted to tender by the Municipality. The overall value of the works was around HUF 12 billion (approx. EUR 46 million). The GVH considered the rigging of the bids proved in 19 cases when 8 participating undertakings, the major construction firms in Hungary (Betonút, Strabag, EGÚT, Alterra, Hídépítő, Mota-Engil, Mélyépítő and Swietelsky) determined the winner and its subcontractors before submitting the tenders. The GVH imposed a fine of HUF 593.9 million (approx. EUR 2.3 million) on the parties. Co-operation among the parties was continuous and frequent before, during and, in certain cases, even after the

tender. The works were divided among the parties according to their shares on the national market.

Similar agreements were concluded in 2001-2002 concerning the construction of six main roads. Works and sub-contracts were divided among the parties and to this end, sensitive business information was exchanged. An overall fine of HUF 1.3 billion was imposed (approx. EUR 5 million). The GVH considered the great number of cartels characterising the construction industry as an attenuating factor.

The leniency policy of the GVH was applied in three cases in 2005. In all these cases, the infringement was a derivative of an international cartel that ceased to exist before Hungary's accession to the EU and consequently the ongoing investigation of the Commission did not cover the effects of the infringements in Hungary. The GVH therefore conducted proceedings parallel to the Commission.

One cartel affected the market of animal feed additives for 15 years. The cartel was organised on a European level and related to price-fixing and quota-sharing. It was extended to Hungary between 1991 and 2003. As the two affected undertakings Kemira GrowHow Oy and Tessenderlo Chemie and their Hungarian affiliates actively contributed to the initiation of the investigation and co-operated during the whole procedure, Kemira and its affiliate merited immunity from fines while Tessenderlo and its affiliate received a reduction of 90%.

The national manifestation of another international cartel was discovered due to a leniency application on the market of high voltage gas insulated switchers. Nine European and five Japan undertakings entered into an agreement allocating worldwide quotas. The European firms established a mechanism to secure the appropriate allocation. It was proved by the GVH that, between 1991 and 2004, at least 13 projects in Hungary were considered by the parties for allocation. Some of the projects were withdrawn, others were not allocated but, in certain cases, it was proved that the parties had actually rigged the bid. While one of the parties to the cartel, ABB, was exempted under the leniency notice, a fine of HUF 702 million (approx. EUR 2.7 million) was imposed on Alstom, Siemens, VA Tech and Areva.

The third cartel was also a Europe-wide infringement and affected one Hungarian undertaking, a purchaser of benzyl-butyl-phthalate. The cartel aimed at sharing the market between 1999 and 2002 and maintaining the market shares cartel members achieved prior to the application of

the agreement. The agreement was concluded between Bayer AG and Solutia (later, after acquisition, Ferro). The parties decided for every quarter of the year which of them would supply the Hungarian buyer and that party would offer a lower price. Actual price information was not exchanged and the parties made their offers according to the competitors' price in the preceding quarter.

A number of cases related to provisions established by professional chambers. Such provisions for example regulated the prices of the meat from game, establishing a target price for the members. The foreseen sanction of not following the target price was the termination of membership and, in fact, under that provision, procedures were actually initiated against certain members.

In another instance, the minimum prices for graphic services were also found to be illegally established by national associations. The associations also established multipliers to be applied in the case of certain services provided. The rules taken together were therefore likely to be capable to restrict appreciably price competition among the members.

A vertical agreement was concluded between the largest sport arena in Budapest and a ticket-seller agency Ticketpro. According to the exclusive agreement, only that agency was authorised to sell tickets for the events organised in the arena. Organisers of events were therefore obliged to deal with that given agency though better offers were available on the market. The GVH considered that the agreement had an unjustified exclusionary effect, covering a significant segment of the market and established its illegality both under national and EC competition law.

2.2.3. Abuse of dominant position

Abuse of dominance is prohibited by Article 21 of the Competition Act. Both exclusionary and exploitative abuses are supervised by the GVH.

Twenty-five decisions on the substance of the case were reached during 2005, in proceedings conducted against suspected abuses of dominant position. In 17 of these cases the existence of a dominant position was proven, and in 6 of these latter cases an abuse of the position could also be proven which thus made intervention by the GVH necessary. Fines were imposed in 3 cases summing up to HUF 39 million (approx. EUR 150,000).

As in the previous year, cable TV services were subject to consumer complaints in great numbers. Objections related to the extent of increase in monthly subscription fees and to changes of the composition of programme packages, which they said were disadvantageous to them. The unilateral modification of the programme package, without prior consultation with consumers, constituted an abuse of dominance in the Fibernet case. The cable TV operator, Fibernet, was found to be in breach of the Competition Act because it failed to conduct a consumer survey before introducing changes in the content of the programme packages. The GVH considered that the cable TV operator – being a dominant firm in a given locality – had no right unilaterally to amend the substance of its service without having first given consumers the possibility to present their opinions on the planned changes. It was also stated that Fibernet should in the future bear the related costs in order to facilitate the providing of opinions by consumers.

Other sectors of the telecoms market were also subject to antitrust scrutiny. The GVH initiated proceedings against two mobile phone operators, T-Mobil Magyarország and Vodafone Magyarország, concerning the operation of their voice-mail services. According to their practice the voice-mail service turned on automatically without prior warning. Consumers were therefore unable to avoid the charges of a service, not even with an immediate interruption of the call. Data underlined however that a great number of calls were terminated in the first few seconds of such calls and no messages were left for the addressee. The GVH found that such a practice was against consumer interest and qualified as an exploitative abuse. The GVH gave 90 days for the operators to amend their system and to enable consumers, in case of such preference, to avoid the use of the voice-mail services. However it also found that, having regard to the differing practice of the different mobile and fixed-telephony operators, the problem could not be solved through competition supervision proceedings and needed regulatory intervention.

A number of complaints derived from the allegedly abusive provision of secondary services connected to network energy markets. Prices of utilities are established according to regulation but providers are free to establish the prices of connected services such as change of metering devices, cutting off and reconnection of gas or electricity supply, etc. Consumers however cannot change supplier and often face charges considered unjustified. Complaints related to high increases in prices and to unidentifiable elements of the issued bills.

In a case initiated against the regional electricity supplier DÉMÁSZ, it was alleged that the price charged for cutting off and reconnection was excessively high. Similarly the gas supplier of Budapest, Fővárosi Gázművek applied allegedly excessive prices for certain assembling services reserved for the supplier. Though the competition supervision proceedings initiated by the GVH did not result in prohibitions, the complaints identified a number of issues requiring regulatory intervention. The GVH set out its concerns that price setting for services reserved to the supplier was without any regulatory restriction. It also expressed the view that the number of such reserved services should be limited. The GVH issued a declaration jointly with the Energy Office, the General Inspectorate for Consumer Protection and the Ombudsman, directing attention to the identified problems and possible abuses.

Cemetery services repeatedly appeared before the GVH, especially due to allegedly exclusionary pricing practices. In one case, it related to the high level of the price of funeral parlours. The vertically-integrated owner charged a high price to its downstream competitors but this cost did not appear or only partly appeared in its own cost structure. Such a practice had exclusionary effects and was found to be abusive by the GVH.

2.2.4. Mergers and acquisitions

In 2005, the Competition Council reached decisions about concentrations in 70 cases but the imposition of conditions was necessary in only one of these cases. No concentrations were prohibited.

The structure of control over Duna-Dráva Cement Kft. having a 50% share of the cement market changed as the former joint control exercised by Heidelberg Cement AG and Schwenk Zement KG ceased to exist when the latter sold a shareholding of 0.01% to the former. At the evaluation of the merger, the GVH took into account the fact that the Heidelberg Group – due to its assets in the neighbouring countries – could restrict the potential competition from cement imports. However it considered that, in view of the marginal role of imports and the great number of importers, such a possibility would not justify the prohibition of the merger.

On the milk market as Új MiZo was acquired by Sole with a share of 30%, Sole became a market leader causing an appreciable lessening of competition. This change however,

taking into account the unused capacities of competitor milk processors, did not result in the establishment of a buyer-side dominance vis-à-vis milk producers.

The first vertical integration in the milk market happened in 2005 when Alföldi Tej, a joint company of 82 milk producers, acquired certain assets of the bankrupted Parmalat Rt.

The concentration of the energy sector continued in 2005. The GVH authorised in a two-phase procedure the acquisition of control by E.ON Hungária of two gas supply companies. Through the transactions E.ON's share rose above 50% in the national market of gas distribution. The GVH primarily analysed the foreseeable portfolio effects of the merger. The concentration did not increase the market power of E.ON on the electricity market where it already had around a 50% share. Despite the increase of market power on the gas market the GVH, taking into account that a number of undertakings had similar possibilities to E.ON to enter the gas trading market, did not consider that the merger could have negative effects on competition.

The GVH made two decisions on a concentration in the newspapers market (the acquisition of Népszabadság Rt. by B.V. Tabora, a member of the Ringier-group). The first decision, prohibiting the merger, was dismissed by a court on appeal. Maintaining its opinion on possible portfolio effects, but accepting certain arguments of the court and taking into account a structural separation adopted by the Ringier Group, the GVH finally cleared the merger subject to conditions.

2.3. INQUIRIES INTO SECTORS OF THE ECONOMY

Two sectoral inquiries were completed in 2005, one concerning mortgage loans, the other the electricity sector. The report on mortgage loans is available on the website of the GVH. Being under discussion by market participants, the second report is not yet finalised as observations are still under consideration, however it would be submitted shortly.

The investigation of mortgage loans for flat purchases started in July 2004 because margins in the sector were considered high and it was suspected that price competition was not effective.

During the inquiry, the GVH distinguished three main products: the government subsidised interest rate; the mortgage loan with a maximised interest; and loans made under market conditions.

According to the sectoral inquiry, none of the credit institutions were in a dominant position on the market and the creation of such a position was not likely either. It was also excluded that joint dominance might exist. The market itself was considered transparent and the offers of the competitors were easily available. The conditions applied by market actors were so differing that the GVH considered that the existence of collusion was unlikely on the market. Similar price movements were considered to be due to the characteristics of the credit market.

However the GVH submitted a number of recommendations relating to problems of the present system, which could not be the subject of antitrust intervention. Nevertheless, the GVH did not exclude the possible initiation of competition supervision proceedings being justified in the future.

The investigation into the electricity sector had as its subject the analysis as to why so few purchasers left the utility market for the free market and what was the reason for the return of a number of these undertakings to the utility market.

The investigation was initiated with the aim of clarifying the effect of the partial liberalisation of the market in January 2003. An answer was to be found for the question as to why so few eligible consumers left the regulated market for the free market and why many of those who had left had returned. It was also unexpected to find that those suppliers, who had only made available low capacities, were in the liberalised segment. A main conclusion of the investigation was that the present regulatory model should be amended. Though it was appropriate to ensure the introduction of competition into the sector but restricts its further development. It should be accepted that the adoption of only the minimum level of liberalisation established by the EC is not suitable for the market.

2.4. COURTS

In 2005 the tendency of previous years continued that approximately 50% of prohibition decisions were appealed. However in the case of decisions terminating the

procedures where 20% of the decisions were appealed last year, this share was reduced to 10% in 2005. The reduction was mainly due to the fact that a number of appeal court decisions had been reversed at second instance because the plaintiffs' standing proved not to be well founded. In the repeated appeal court proceeding, the court applied a stricter view towards the plaintiffs which, being only complainants, were not party to the administrative procedure.

Decisions brought in consumer fraud cases were mainly accepted and not appealed. This was mainly because the level of fines imposed on the parties was rather moderate. However it should be added that the more severe sentencing policy of the GVH adopted recently is expected to bring changes in this field in 2006.

Contrary to the situation concerning the fraud cases, almost all prohibition decisions were appealed in antitrust cases even if fines were low or insignificant. In the case of cartels, only those cases were not appealed which were based on a leniency application.

Up to this time, more than two thirds of appeals concerning decisions made under the present (1996) Competition Act were concluded. Out of the 231 cases, the courts overturned the decision of the GVH in 15 cases and reduced the amount of the imposed fine in another 16 cases.

The appeal court upheld the decision of the GVH which had held that the simultaneous price increase at multiplex cinemas constituted a hard-core, price-fixing cartel. The importance of the case is that this was among the first investigations initiated on a pro-active basis and under the new sentencing approach of the GVH. The parties appealed the first instance judgement.

2.5. COLLECTION OF FINES

In 2005 the GVH imposed fines in 58 cases, totalling more than HUF 3 billion (EUR 11 million), however of which only HUF 300 million became executable as the major cases were appealed in court. Ninety per cent of the executable fine was collected. Since its establishment in 1990, the GVH has imposed an overall amount of almost HUF 16 billion (EUR 57 million) in fines, 52% of which became executable and 10% of which was actually collected. This is mainly due to the fact that considerable amounts have only been imposed

since the 2003 adoption of the sentencing guidelines and few of the major cases have reached their conclusion.

III. COMPETITION ADVOCACY

One of the most essential forms of the competition advocacy activity of the GVH is that the authority has the possibility of commenting on draft pieces of legislation. Article 36(3) expressly mentions this possibility by stating that "[T]he President of the Hungarian Competition Authority ... shall be solicited for his opinion concerning all measures drafted, and legislation in conception or drafted that have a bearing on the responsibilities of the Authority, in particular if such planned measures or legislation restrict competition, ... grant exclusive rights or contain provisions pertaining to prices or terms of sale." In certain cases or topics, the GVH does not confine itself to reacting on legislative acts of other institutions but it initiates legislative steps itself and has a pro-active approach.

3.1. COMMENTING ON DRAFT PIECES OF LEGISLATION

In 2005, more than 500 submissions were made and drafts were sent for comments to the GVH and around one quarter of them required a detailed analysis.

Forming its position towards draft pieces of legislation, the GVH always analyses the competition conditions of the market to which the legislation will apply and, if market entry conditions are also affected, the GVH focuses on whether the means of regulation achieve the original aim of the regulation or a disproportionate restriction on competition might arise. If the regulation grants exclusive rights, the question has to be posed whether this is justified by the performance of a service of general interest and, in the case where the answer is in the affirmative, whether the regulation which grants monopoly rights to the undertaking concerned is able to prevent it from abusing its dominant (monopoly) position.

The implementing rules to the **Act on Electricity** were amended concerning the purchase obligation, by public utility wholesalers and public utility suppliers, of electric energy produced from renewable energy sources. The GVH took the position that the purchase obligation seriously violated the principles of non-discriminatory and

neutral treatment. For 2007 a total opening of the electric energy market is expected, as a result of which the public utility supply chain will cease to exist. It would be a serious anomaly to stipulate a long-term service obligation one and a half years prior to this market opening. Instead, the GVH suggested the application of a pool-type solution, according to which renewable energy might be sold to any market participant active in the trade of electric energy.

Another essential intervention of the GVH concerning the amendment of the implementing rules to the Act on Electricity related to the changes of the ownership rights of Magyar Villamos Rendszerirányító Rt. (MAVIR – Hungarian Electricity System Operator Ltd.). The GVH always had the view that the guarantees of the independence of the system operator have to be granted by the legislator, meaning that the system operator has to remain independent from the market participants. To build up this system of guarantees became inevitable when the system operator MAVIR was vertically integrated into Magyar Villamos Művek Rt. (MVM – Hungarian Power Companies Ltd.). Although the regulator redefined the place and the role of MAVIR in the electric energy system of the country, it failed to create a severe and controllable separation which could guarantee that the activity and decision-making of the system operator was independent from the MVM which was responsible for public utility wholesale but had, at the same time, also free market interests. In its opinion the GVH underlined the necessity for the full independence of the system operator.

Commenting on the draft of the **Act on Trade**, the GVH did not support the introduction of a prohibition on sales below cost. It referred to the price-increasing consequences of such a prohibition. Neither did it support the provisions making the foundation of large-scale retail trade undertakings more complicated. In contrast, the authority had the view that – in spite of its debated theoretical economic background and the lack of international regulatory experience – the regulation of abusive practices of large-scale retail chains against their small suppliers could be supported. The legislators enacted a prohibition on such abusive practices of large-scale retailers with "significant market power" and the GVH was vested with the authority for the implementation.

The GVH actively participated in the review process of the **Act on Railways**. This review was basically motivated by the operational difficulties of the railway market, the backlog in development of competition and the necessity of the

adjustment to EU requirements. Organisational-institutional issues, the use of railway tracks, and the clarification of the relationship between the State and the railway providing public services were in the focus of the GVH's comments.

In the process of co-ordinating opinions on draft legislation in the public administration, the GVH commented on the new draft bills on **companies** on the one hand and on the **public company information, companies' registration procedures and voluntary liquidation** on the other hand. In its comments the GVH put emphasis on the facilitation of entry conditions, the mitigation of the administrative burdens and costs of entry and a full observance of the principles of company information.

In connection with the adaptation of the **UCP directive** (Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the Internal Market) the GVH held that the adaptation necessitates an overall review of the Hungarian legislation relating to advertisement and the GVH already began a gradual analysis of the pieces of the relevant legislation.

The GVH also had close co-operation in 2005 with the National Communications Authority ("NCA") – this mainly manifested itself in the continuation of the work which had begun in 2004. The GVH contributed to market analyses, the aim of which was the preparation of an *ex ante* regulation for the **electronic communications markets**. The work to identify service providers having significant market power ("SMP") was successfully closed in 2005 in respect of 16 sub-markets (out of a total of 18 sub-markets). With its both general and targeted comments, the GVH intended to foster the uniform application of competition policy methods and also to contribute to the reinforcement of certain statements made by the NCA.

As one of the members of the drafting committee, the GVH participated in the preparation of the new draft Bill on **Public Procurement**. It strongly supported the lightening of administrative burdens attached to the evidence for qualification and the withdrawal from the scope of Act on Public Procurement of procurements falling under national thresholds. The latter suggestion was not accepted but the increase of the overly low thresholds qualified as a positive development, even if it did not really changed the complexity of the regulation.

A draft by-law of the Municipality of Budapest concerning **taxi services** envisaged the imposition of fixed official

prices. The GVH submitted a detailed opinion in which it established that, although a number of issues required regulatory intervention on the market, a distinction had to be made among the different segments of taxi services. Certain segments are in fact competitive like those of the long-term supply contracts concluded by undertakings or of the services ordered by phone calls. In the case of these segments, regulatory intervention into the existing price competition would damage the interest of consumers. Officially set prices would not solve the present problems in the case of less competitive segments. The draft by-law was finally abandoned.

3.2. ACTIVE ROLE IN COMPETITION-RELATED MATTERS

The GVH, upon request or on its own initiative, gives an opinion about issues relating to the scope of its responsibilities. Within the framework of this exercise, it made several recommendations in its reports to Parliament during recent years, by which it urged a bolder deregulation of markets that were, for regulatory reasons, not too greatly competitive. Though these recommendations not always resulted in legislative measures, the GVH further follows – with particular attention – parliamentary or governmental (regulatory) motions concerning the areas in question.

In compliance with the recommendations made in its 2004 Annual Report, the competition-related assessment of **professional regulations** was also one of its main objectives in 2005.

Within the framework of this assessment, the GVH suggested the commencement of an **extensive regulatory reform** to all the sectoral ministries performing duties of the control of lawfulness of the provision of professional services. The aim of this measure would be the establishment of how existing rules promoted public interest, whether they were necessary to achieve regulatory objectives and whether less restrictive methods suitable to achieve those objectives could be identified. The GVH again played an active role in the assessment of the competitive effects of particular elements of the regulations, in order to assist in this way the adoption of regulatory decisions. Experience in law enforcement made by the GVH shows, namely, that regulators of professional services run into difficulties while interpreting competition policy aspects and dealing with competition law relations. In

order to examine the compatibility of regulatory rules, falling within the competence of the particular ministries, with competition-law principles, as well as to clarify the reasonableness of the existing regulatory arrangements and to determine the possible coverage of deregulatory measures relating to them, the GVH held a bilateral meeting (in co-operation with the Directorate-General Competition of the European Commission) with experts of the responsible national regulators on 29 April 2005.

On the other side, based on a recommendation about the examination of the regulation of services provided by public notaries, which recommendation was also made in the GVH's 2004 Annual Report, the Economic Cabinet of the Government reached a decision in its meeting held on 24 May 2005, according to which a suggestion should be made by the ministries concerned and under co-ordination of the Ministry of Justice on the evaluation of the **rules for the activities of public notaries**. For the purposes of this exercise, the GVH summarised its standpoint relating to the assessment under competition law of the rules for the activities of public notaries. Its suggestion on the review of some of the legal norms may have become the starting point of the inter-departmental negotiations launched in 2005. According to the opinion of the GVH, of the intellectual liberal professions, it is the activity performed by public notaries which can currently be considered the most regulated in Hungary; while regulating this activity, regulators many times intervene in the play of market conditions by limiting the use of particular competitive tools. Hence, in a competition policy approach, the limitation on the number of public notaries and the delineation of their field of activities can be considered a direct barrier to entry. The regulatory issues mentioned necessitate the creation of an advisory committee, with participation of the representatives of the competent regulatory authorities, the National Council of Justice, the GVH, local governments and economic-interest representation bodies.

A draft amendment of the Decree 15/1991. (XI. 26.) IM on the Number and Location of Public Notaries Posts envisaged an increase in the number of those posts, from 304 as of 1 January 2005 to 313 as of 1 April 2006. The reasoning to the draft did not describe, however, either the aspects of how new public notaries districts would have been created, how the number of the population of the districts concerned and other, demand-related points of view would be taken into consideration or the reasons for the allocation of the market between public notaries. Therefore, though it principally agreed with the planned

increase, the GVH was not able to form an opinion about the appropriateness, suitability and proportionality of the planned regulation. It suggested the creation in future of a comprehensive concept and procedural system to regulate the number of, and the allocation of the market between, public notaries.

As far as other regulatory suggestions made during 2005 relating to professional services are concerned, the GVH elaborated several competition policy comments and observations to them.

The GVH did not support the suggestion about the setting up of a **Hungarian Chamber for the Training of Public Road Drivers** and did not agree either with the planned responsibilities of such a new public body. The suggestion was based on the idea that the currently regulated system of the training and examination, under the control of a professional authority, of public road drivers would be delegated to a new chamber, controlled by persons who are practitioners in this trade. In this field, problems had arisen in connection with the frequency and quality of the controlling actions carried out by the professional authority and the reasonableness and appropriateness of the sanction system applied. As the GVH believed, these problems might be remedied by an increase in the level of quality of law enforcement. On the other side, as the GVH thought, some of the proposed provisions empowering the new public body reflected self-regulatory objectives restricting economic competition. The chamber would be empowered, the draft said, to establish the principles for price setting. This would, however, create a means suitable for restricting competition by price concertation, or a situation could be brought about in which recommendations of the chamber would become obligatory minimum or maximum fees of the services, without any guarantee as far as the quality of the service in question was concerned. The delegation of the competence of granting and withdrawing trainer licences to the chamber, which would also receive certain regulatory and control powers might also be disquieting (e.g. the chamber could also use its discretion in assessing applications of persons which meet the legal requirements). As a consequence, such a system might be able unjustifiably to hinder market entry of undertakings and, given its possibility to withdraw licences, to influence them in remaining on the market. The GVH underlined imperfections of the quality level of the trade could also be remedied by making state supervision more efficient and publishing information about the necessary quality level. Moreover, it could happen within their

association that practitioners of the trade maintain a quality assurance system or an indicator system of reliability or of consumers' satisfaction, and, further, that they inform consumers about new members of the association. Hence, in a competition policy approach, the creation of voluntary organisations can be preferred against a new public body the membership in which is obligatory.

The GVH has for years urged the re-regulation of the pharmaceuticals market. Based on a detailed analysis prepared in the period 2002-2003, it urged a considerable deregulation of the retail trade in pharmaceuticals (by removing the barriers of pharmacy foundation and making possible price competition on the markets of over-the-counter drugs), the introduction of an ancillary state intervention (territorial and stand-by allowances) as well as a reduction in consumers' information asymmetry. In practice, these analyses and suggestions have not resulted in an amendment to the regulation: however, the new draft Bill on Pharmaceuticals submitted to Parliament in Spring 2005 already contained elements the objective of which were to intensify competition on the domestic retail market of pharmaceuticals. The intention was to put an end, on the market of non-subsidised pharmaceuticals, to state regulation of price margins and to the existence of identical consumer prices set by a specific regulatory method. Participants in the sector (pharmacists, drug manufacturers and doctors) strongly objected to the possibility of retail price competition (i.e. price competition between pharmacies). In their argumentation, their mentioned unpredictability arising from differences in prices and expected price increasing effects of price competition, stressed their opinion according to which uniform prices of pharmaceuticals were a guarantee of equal opportunity for access to pharmaceuticals and they spoke of the risk of small pharmacies going bankrupt as a result of price competition.

In connection with the bill, the GVH tried to convince the Parliamentary Committee for Healthcare about the necessity to dismantle, at least partly, the structural barriers to competition (i.e. to remove the barriers to establishing pharmacies) to realise the positive welfare effects to be expected from the creation of price competition. The GVH suggested regulatory barriers (in particular: price margins, prohibition of discounts, power of pharmacists' chambers to publish consumer price recommendations) hindering price competition in the field of non-subsidised drugs to be removed, and consumer protection measures ensuring consumers being informed about assortment and price of drugs before they make their choice as to the ones to be taken.

The Act passed reflects a compromise. Although ministerial price margin regulation relating to the non-subsidised drugs continues to exist, the regulated price margins apply only to product levels. The possibility for the chamber to publish as information consumer prices has been retained, but the related detailed state regulation will cease to exist. The barriers to establishing pharmacies and to the retail distribution of drugs also survived. Hence, no intensive price competition in the retail distribution of drugs is to be expected.

In addition to the competition advocacy it performs within the framework of negotiations between state administrative bodies, the GVH also represents competition interests in individual cases. During 2005, it drew the attention of several ministries and public institutions to the fact ("signalisation") that the practices they followed in **inviting bids** might infringe the principle of competition neutrality and in this way they unjustifiably interfered in competitive processes.

It often happens that the experts of the GVH provide information about competition aspects of market phenomena and they offer assistance in correct interpretation of competition rules and in law enforcement in the area of competition law. In 2005 questions/problems of this kind arose in particular in connection with consumers' choosing their telecommunications service providers and the **use of domain names**.

Unwanted business letters and e-mail messages (spams) may infringe the provisions of the Competition Act in two situations. It belongs to the competence of the court to assess practices, which may violate the general prohibition or the individual prohibitions of unfair competition (as the prohibition to injure the reputation of or organise a boycott against competitors) laid down in Chapter II of the Competition Act. Another group of unwanted business letters may, however, render an intervention by the GVH necessary. These letters contain advertisements, which are misleading under the Competition Act and Act LVIII of 1997 on Business Advertising Activity. In the latter case, in addition to an unfair influencing of consumer choice, a competition distorting effect of the injury to consumers' interests can also be established. According to Act CVIII of 2001 on E-Commerce, electronic advertisements may only be sent based on the clear-cut prior consent of the addressees. The provisions of the Act on Business Advertising Activity apply to persons which infringe the prohibition on this kind of advertisements. It belongs to the competence

of the consumer protection inspectorates to proceed against those persons. Consequently, the GVH is empowered only to proceed against senders of unwanted business letters containing misleading advertisements, examining at the same time whether the misleading effect was harmful to economic competition.

According to Article 85 of the Competition Act the GVH requests, where it finds in the course of its operation that any **public administrative decision violates the freedom of economic competition**, the public administrative institution in question to amend or revoke that decision. Where such a public administrative institution fails to comply with the request, the GVH may seek a court review of the decision concerned. This provision was not used in 2005.

IV. COMPETITION CULTURE

Officials of the GVH actively participated in the development of competition culture holding around 70 seminars, giving a hundred interviews and submitting 60 studies in legal and economics journals.

In 2005, 18 students participated as trainees in the work of the GVH. The usual annual competition for university students was also held. Students submitted 13 studies on 5 different topics.

The GVH regularly updates its website and its English version as well. It also issued a new quarterly paper ("Ver-seny-tükör") providing general information on procedures, studies, etc.

The amendment of the Competition Act defined the development of competition culture as one of the responsibilities of the President of the GVH. This responsibility covers, in order to raise public awareness of competition, both the dissemination of knowledge about competition policy, including the provision of information about the benefits resulting from competition or with the aim of assisting compliance and the creation of a competitive regulatory environment and, as another field of it, the contribution to the development of competition-related legal and economic activities of public interest. On 15 July 2005 a separate unit (Centre for Competition Culture) was set up in the GVH to provide an institutional framework for this task.¹²

¹² See also in Chapter 1.2.1.

V. INSTITUTIONAL AND INTERNATIONAL RELATIONS

5.1. INSTITUTIONAL RELATIONS

In 2005 the GVH co-operated – e.g. in the process of drafting legislation; in obtaining information in antitrust or merger cases, etc. – with a number of institutions at the national level. These institutions were the following.

- National Communications Authority (The co-operation agreement between the GVH and the NCA was renewed in 2005, in compliance with the Act on Electronic Communications. This co-operation agreement lays down, inter alia, rules for the co-operation of the two authorities in market analysis procedures carried out in connection with the implementation of the Act on Electronic Communications. The GVH also promoted, based on the experience gained from its competition supervision activities, the preparation of the NCA's communications regulation strategy. The close co-operation with the Commissioner of the Communications Users' Rights, who is active within the NCA, also continued.),
- Ministry of Information Processing and Communications,
- Hungarian Cable Television and Telecommunications Association and Hungarian Cable Communications Association (The GVH informs service providers, at their annual meetings, about the opinion on the markets and service providers it creates, based on its competition supervision proceedings.),
- Hungarian Energy Office (The GVH consulted the HEO before it created its opinion to the European Commission about the E.ON/MOL concentration. The HEO supplied information and gave comments to the inquiry the GVH started in Spring 2004 into the electric energy sector.),
- Hungarian Financial Supervisory Authority,
- Ministry of Economy and Transportation (In 2005, the relations of the GVH with the Ministry became more intensive in legislative, law implementation and regulatory issues, mainly in connection with the opening of the railway markets. The GVH initiated the creation of

good professional co-operation with the Hungarian Railways Office, which was founded at the end of 2005.),

- General Inspectorate for Consumer Protection,
- National Institute of Pharmacy and National Institute for Food Safety and Nutrition (Important pieces of the GVH's consumer protection work are the competition supervision proceedings in connection with drugs and products of curative effect. The relations of the GVH to these institutes play a very important role in respect of those proceedings.),
- Council for Self-Regulatory Advertisers and Hungarian Advertising Association (In 2005, the GVH joined the Hungarian Advertising Association.),
- Ministry of Youth, Family, Social Affairs and Equal Opportunities (The GVH contributed to the preparatory work aimed at the implementation of consumer protection directives.),
- Council for Public Procurement,
- Hungarian Privatisation and State Holding Company,
- several other professional organisations, such as the Hungarian Vehicle Importers Association, the Hungarian Association of Automobile Dealers, the Hungarian Chemical Industry Association, the Hungarian Petroleum Association, the Hungarian Crop Protection Association (set up in June 2004 from the members of the earlier Pesticide Industry Professional Association), the Association of the Hungarian Steel Industry, the Public Sanitary Association etc.

5.2. INTERNATIONAL RELATIONS

In 2005, one of the most important parts in the international co-operation activities of the GVH was its participation in the **European Competition Network** ("ECN"). From the date of Hungary's EU accession, the GVH had been required to apply Community competition law in every case, which might affect trade between Member States. ECN relations became ever more case oriented during 2005. The GVH continued to participate in the activities of the ECN working groups and its representative be-

¹¹ ECA – European Competition Authorities.

came co-chair of the working group which analysed the work experience of the system. Further, the GVH has membership in a number of professional (sectoral) working groups of the ECN.

It was in two fields (air transport and merger control) in 2005, that the **network of the European competition authorities**¹¹ initiated the co-ordination of the work of the partner authorities.

The GVH actively participated, in 2005 as well, in the activities of the **OECD Competition Committee** and its working groups. In addition to the 2004 Annual Report about the activities of the GVH (such annual reports are regularly prepared), Hungarian contributions were sent to a number of professional discussions, as e.g. to that analysing the experiences gained on sales below cost. The practice continued, dating back to the past few years, according to which an expert of the GVH works for a year for the OECD Competition Committee. The costs of his/her employment and stay in Paris are co-financed by the OECD and the GVH.

The **OECD-Hungary Regional Centre for Competition** (Centre) was established by the OECD and the GVH on 16 February 2005 in Budapest and is financially supported by the Republic of Hungary.

The Centre is built on the expertise of the OECD and the GVH in order to develop competition policy and competition advocacy for the competition authorities in the Central, Eastern and South-Eastern European region. The principal aim of the foundation of the Centre is to contribute to the development of competition policy, competition law and competition culture as well as to support the work of competition authorities.

It is also among the aims of the Centre to support the work of these competition agencies and thus contribute to the economic growth of the region. The main task of the Centre is to organise seminars and conferences in various themes of competition policy. The GVH attributes utmost importance to sharing its experience with those Central, Eastern and South-Eastern European countries, which are going through an economic transition similar to that of Hungary. At the beginning of the 1990s, those working for the GVH also participated at seminars and conferences in countries, which had a more developed legal system and competition policy and thereby gained substantial and indispensable knowledge for their every-day work.

The topics to be addressed at the Centre include competition case analysis; investigative techniques; competition principles in regulatory reform; judicial training; enforcement priorities; guidelines, policies, practices and procedures; frameworks for co-operation between enforcement authorities in the region; competition advocacy and communications tools; the relationships between competition authorities and sector regulators; and other themes within the general framework of competition law and policy.

MAJOR EVENTS IN 2005 WERE:

Workshop on merger analysis and procedure, 28 February – 2 March 2005

The workshop was organised for Western Balkans competition authorities in Budapest on merger enforcement procedures and techniques. It was built around a hypothetical case for which the OECD prepared a detailed case study of a hypothetical merger case. The participants had been provided with a case description and realistic documents related to the case prior to the workshop. They were asked to prepare for playing the role of the competition authority, parties to the case and third parties. A panel of experts facilitated their work during the workshop. The hypothetical case discussion format was highly successful. It provided a detailed environment for discussion and application of best practice techniques that would have been otherwise lacking. The work on the hypothetical case was complemented by presentations of real cases from countries in the region.

The Workshop was partially funded by the OECD-Hungary Regional Centre for Competition in Budapest.

Seminar on supermarket-related issues: buyer power and sale below cost, 21 – 22 April 2005

The topicality of the conference was provided by the legislative process linked to the preparation of the Hungarian Act on Trade. The conference enabled foreign and domestic participants to become acquainted with the theoretical background of sales below cost and buyer power, to exchange views on this issue.

Seminar on Abuse of Dominance, 7 – 10 June 2005

The seminar was dedicated to competition authorities of seven countries of the western CIS (Armenia, Azerbaijan, Belarus, Georgia, Moldova, the Russian Federation and

Ukraine). The seminar focused on the "Abuse of dominance" by discussing case studies and giving lectures. Abuse of a dominant position can arise either on markets where enterprises are subject to regulation or in markets where they are not regulated. Even where enterprises are regulated, they retain a certain economic freedom, which can be misused through abuse of dominance. This seminar aimed at improving the legal and economic analysis in cases involving either regulated or unregulated markets.

Opening Conference of the OECD RCC in Budapest, 26 September 2005

The Opening Conference celebrated the launch of the OECD-Hungary Regional Centre for Competition in Budapest, (which had already started its operations earlier this year). It was attended by high-level speakers including the Hungarian Prime Minister, and an audience comprising the heads of the competition authorities of the target countries of the Centre as well as representatives of economic life in Hungary. Presentations underlined the role of competition policy for economic growth from various perspectives. The event received considerable and very positive media coverage and was reported on prime time TV news. In sum, it was a great success in promoting the Centre and its visibility in the region.

Judges Seminar, 18 – 19 November 2005

The seminar was the first event organised for national judges in co-operation with the OECD, the Association of European Competition Judges and the OECD-Hungary Regional Centre for Competition in Budapest. It was funded by the European Union and the OECD-Hungary Regional Centre for Competition in Budapest. The seminar was attended by judges from all EU Member States – with the exception of Cyprus, Malta and Poland – as well as from Bulgaria and Switzerland. The aim of the seminar was to provide judges with the opportunity to improve their understanding of competition law, and especially the implications for national judges of the modernisation of the application and enforcement of EC competition law under Regulation No. 1/2003. This first seminar focused entirely on the topic of abuse of dominance under Article 82 EC.

During 2005, the GVH took an active role in the work of the **International Competition Network** ("ICN"). It already happened in 2004 that the co-chairmanship of the Working Group on Cartels was given to the representative

of the GVH, with the other co-chair being the representative of DG Competition of the European Commission. In 2005, it was under the "editorship" of the GVH that the Working Group prepared a questionnaire on the basis of which uniformly-structured, continuously-updated, comprehensive information about cartel regulations in all of the ICN member countries will be available. The Sub-group on Technical Assistance of ICN's Competition Policy Implementation Working Group had for years examined the ways and methods through which the efficiency of the provision of technical assistance would be able to be increased. At the end of 2005, the Sub-group launched a pilot project (partnership and consultation project) with the participation of both developing and developed competition agencies. The GVH was one of the agencies to be consulted within the framework of the project.

As far as **bilateral relations** of the GVH are concerned, co-operation/consultations of the Authority in 2005 with the Romanian, Ukrainian, Croatian, Bulgarian and Swedish competition authorities are worthy of note.

VI. RESOURCES OF THE ACTIVITY, OTHER INFORMATION

a) Annual budget (in million HUF and EUR)

2000	million HUF	576.4
	million EUR	2.3
2001	million HUF	950.2
	million EUR	3.8
2002	million HUF	1179
	million EUR	4.7
2003	million HUF	1196
	million EUR	4.8
2004	million HUF	1164
	million EUR	4,7
2005	million HUF	1522
	million EUR	5,8

b) Number of employees (persons-year)

economists:

2000	2001	2002	2003	2004	2005
21	27	32	31	31	28

lawyers:

2000	2001	2002	2003	2004	2005
38	36	43	49	49	49

other professionals:

2000	2001	2002	2003	2004	2005
26	21	18	19	18	18

all staff combined:

2000	2001	2002	2003	2004	2005
104	120	120	120	119	116



