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(1999)

I. Changes to competition law and policy proposed or envisaged**1. Summary of new legal provisions of competition law**

1. The Hungarian Competition Act being in force during the reported period is Act No. LVII/1996 on the Prohibition of Unfair and Restrictive Market Practices, which entered into force on 1 January 1997 replacing the previous Act No. LXXXVI/1990 on the Prohibition of Unfair Market Practices. There hasn't been any amendment of the Competition Act since the last report.

2. The most important elements of the Act to be applied for proceedings commenced after 1 January 1997 are as follows:

- the *scope* of the Act [Art. 1] covers market practices carried out by natural and legal persons and companies without legal personality, including branches in Hungary of undertakings domiciled abroad. Market activities of undertakings carried out abroad in respect of anticompetitive practices are also covered by the Competition Act if they may have effects on the territory of the country. Nevertheless, the Act does not cover practices, which are differently regulated by statutes;
- the Act covers not only the three traditional areas of antitrust but it also contains provisions relating to 'consumer fraud' and other 'unfair market practices', however, in this latter category the law enforcement falls under civil court's competence;
- the Act prohibits all kinds of *anticompetitive agreements* [Art. 11] including vertical-type ones. Agreements violating the provisions of the Act are automatically void;
- in the field of *abusive control* the definition of dominance builds on the ability of the undertakings to act independently to a great extent from other market participants [Art. 22]. Costs and risks of market entry and exit, financial strength of the undertakings, the structure of the relevant market and market shares are among the factors to be taken into account assessing the existence of dominance in a particular case. The Act contains a general prohibition of abuse [Art. 21];
- *mergers and acquisitions* have to be notified in advance if they fulfil certain turnover thresholds. Temporary acquisitions by financial institutions do not fall under the scope of M&A control. The authorisation of the concentration may not be refused if it does not create or strengthen a dominant position, does not impede the formation, development or continuation of effective competition on the relevant market or on a considerable part of it, or if the concomitant advantages outweigh the concomitant disadvantages [Art. 30]. The Hungarian competition authority may decide about separation or divestiture of the merged undertakings if the parties failed to apply for authorisation and the authority may not have authorised the transaction [Art. 31].

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3. Since the Competition Act empowers the Government to adopt regulations exempting automatically certain groups of agreements, the work aiming at the completion the series of block exemption regulations continued in 1999 and regulations as follows entered into force:

- 85/1999. (VI.11.) on specialisation agreements,
- 86/1999. (VI.11.) on technology transfer agreements and
- 84/1999. (VI.11.) on research and development agreements.

4. Similarly to the five other block exemption regulations which have been adopted before, those adopted in 1999 took the relevant EC group exemption Commission regulations as models, nevertheless all of them were adjusted to the special national circumstances.

II. Enforcement of competition law and policy

5. During 1999 the HCO received 561 complaints on the basis of which 144 investigations were launched. Further 83 cases were commenced on applications for individual cartel exemptions or M&A authorisations. As a result of these and further 21 cases initiated on its own, the HCO started altogether 248 proceedings. The number of final decisions made by the Competition Council (the decision-making body of the HCO) was 161 out of which 96 fell into the antitrust category. The ratio between the consumer fraud/antitrust cases was similar to that in the previous years.

1. Actions against restrictive agreements and abuses of dominant positions

a) Restrictive agreements

6. In 1999 in connection with agreements 19 investigations were commenced, 15 decisions on the merits of the cases were made, 4 of which were in connection with applications for individual exemptions. One of these 4 was exempted, in two cases it was found that the notified agreements did not have any restriction at all and one agreement was of minor importance under the Competition Act. During the year in connection with restrictive agreements the HCO concentrated on the activities of chambers and interest groups - ethic codes and self-regulations of 11 organisations of this kind (chambers, professional organisations) were investigated. Five cases were finished during the year, out of these there were four condemnations and in one case the effects of the conduct were found of minor importance. The general lesson of the investigations showed that these organisations have not always been aware of the restrictive nature of some of the provisions of their self-regulations. This underlines the necessity to increase the competition culture in general and among the members of these organisations in particular.

Chamber of Hungarian Auditors

7. The HCO investigated the Ethic Code of the Chamber of Hungarian Auditors (CHA) from two competition policy points of view, to find out whether certain points of its Ethic Code breached the prohibitions of the Competition Act. Firstly, under the provision on indirect fees of the Ethic Code, the members could not apply lower prices than the minimal prices defined by the Ethic Code. Secondly, the CHA applied a prohibition on advertising, including advertising in connection with persuasion to order services, making comparison with activities of other auditors, praising the rapidity and quality of services etc. The Ethic Code also prohibited to advertise own auditorial activities for professional audience and organising programs to recruit clients.

8. At the time of the investigation the CHA had 5000 members 30 per cent of which were auditor firms and 60 per cent of the income of CHA originated from only five large international auditor firms. Other members were auditors (natural persons). All of them offered auditorial services on the territory of Hungary in a situation which could be characterised by a four times oversupply.

9. Until the time of investigation the CHA has not published the minimal prices yet and this particular part of the Ethic Code had been in effect for a few weeks only. The Competition Council considered the definition of minimum prices as restrictive since it deprived the small and unknown auditors from their sole instrument, the opportunity of price competition.

10. The Competition Council considered the effect of advertising prohibition suitable to restrict competition by hindering market entry and limiting the possibility of purchasing services. It was pointed out that the Ethic Code restricted the members in their advertising campaigns, preventing them from taking part in competition in this particular way and it applied stricter conditions also for comparative advertising than it was permitted under the Competition Act.

11. Since the Competition Council considered both restrictions as concerted practices, prohibited by the Competition Act, the CHA requested exemption from the prohibition by referring to the fact that its Ethic Code is based on the Ethic Code of the International Federation of Accountants, which organisation CHA belongs to, as well. In the view of the Competition Council, however, the relevant parts of the Ethic Code of CHA did not follow, in several respects, the international rules. The Competition Council could not verify the meeting of the four conditions of exemption and imposed a fine, amounting to HUF 5 million (about USD/Euro 20,000), on the CHA and ordered it to terminate its restrictive conditions within 30 days.

Hungarian Professional Ornamental Plant Growers and Traders Association

12. In the case of the Hungarian Professional Ornamental Plant Growers and Traders Association the Competition Council also found that some paragraphs of the Association's Code raised competition concerns, since they stated that "the Code must be considered as a replacement of the Competition Act for producers and trading companies who participated in the Association" and the observance of the announced recommended prices was compulsory.

13. However, taken into consideration the co-operative attitude of the Association and that the anti-competitive paragraphs have not yet been applied the Competition Council did not impose any fine on it but ordered the Association to remove the anti-competitive paragraphs of the Code within a short period of time.

b) *Abuse of dominant positions*

14. In this category 35 decisions were made by the Competition Council in 1999. In 21 cases the Competition Council found the respondents to be in dominant position, nevertheless they were condemned only in 7 cases. The total amount of fines was HUF 13,5 million in this category (about USD/Euro 54 thousand). In 10 cases the Competition Council suspended its decision-making, since the conduct under investigation jeopardised the competition only to a minor degree on the one hand and the respondents obliged themselves to refrain from the continuation of the conduct on the other hand. The post-investigation of these cases will be due in 2000 to control whether the respondents fulfilled their obligations.

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15. In 1999 there were 15 proceedings against CTV service providers. Although the respondents were found to have dominant positions in all cases, abuses could be proved in three cases only.

Kábelkom Nyíregyháza Ltd

16. The Competition Council found, that the cable television service provider, Kábelkom Nyíregyháza had dominant position on its geographic market and abused it by reserving itself the right to increase the service charge one-sidedly and offering one of the popular Hungarian commercial TV channels only in the most expensive program-package.

17. Although the Competition Council accepted that the contents of program packages were not regulated, it stated that getting the popular Hungarian program depending on purchasing some foreign channels constituted tying of goods. As it pointed out the dominant position of Kábelkom existed since another service provider was available only for a small number of customers. The Competition Council objected to the insistence of Kábelkom on its right to increase the charges based on its profit expectations as well. The charge increase that had already been carried out by Kábelkom was considered by the Competition Council excessively high and abusive therefore unlawful, consequently a fine of HUF 500.000 (about USD/Euro 2000) was imposed on the undertaking and the termination of the anti-competitive market conduct was also ordered.

INTERCOM Rt Budapest

18. Intercom Ltd Budapest having nearly 60 per cent share on the Hungarian market of distribution of programmed video tapes denied supplying the videotape of Titanic, which was a novelty on the Hungarian market at that time, to TESCO, which advertised this videotape in advance at a price, which was 30 percent less, than the price recommended by Intercom.

19. The Competition Council imposed a relatively low amount of fine (HUF 1 million, around USD/Euro 4.000) on Intercom, since its unlawful market conduct was considered as a one-off action and it lasted for a short period of time.

2. *Mergers and acquisitions*

20. The number of M&A cases did not change substantially, compared to the 49 cases of this kind in 1998, there were 46 decisions in 1999. Comparing to the extremely low number of concentrations during the first half of the decade this is still relatively high number, which reflects to some extent international tendencies.

21. Fourty four out of the 46 cases were initiated on applications of the interested undertakings, while in two cases the HCO started ex officio actions presuming that some undertakings failed to apply for the authorisation of the competition authority. In 5 additional cases the undertakings withdraw their applications. In 42 cases the authorisations were given, but in 4 additional cases the Competition Council found that the transactions did not fall under the Competition Act (miscalculation of turnover thresholds, or temporary acquisitions by financial institutions, which did not qualify as concentrations). No blocking decision was made in 1999.

22. Several notifications resulted from international proceedings since according to the rules of the present Competition Act concentrations of foreign undertakings fall under the Hungarian law provided that

they fulfil the notification thresholds (for example: Ford/Volvo, Renault/Nissan, Volvo/Scania, BayWa AG/RWA, Exxon/Mobil, Hoechst/Rhone-Poulenc, Ransart/Julius Meinl).

RANSART S.A. /Csemege-Julius Meinl Industrial and Trading Ltd.

23. The Competition Council did not block the acquisition of Csemege-Julius Meinl Industry and Trading Ltd (CsJM) by the Belgian holding company Ransart S.A., since the joint market share of CsJM and Profi (a trading company which had tight ownership and personal links to the RANSART group) was 12,4 per cent on the Budapest retail market, 8,3 per cent on the whole Hungarian retail market and 8,9 per cent on the Hungarian purchase market.

Renault S.A. /Nissan Motor Co. Ltd and Nissan Diesel Motor Co. Ltd

24. Considering the strong competition on the Hungarian car market, the Competition Council authorised the acquisition of 36.8 per cent of shares of Nissan by Renault. The undertakings in question had 7.0 per cent joint market share (Renault 4.9 per cent and Nissan 2.1 per cent) on the market of passenger cars and 12.2 per cent joint share (Renault 4.7 per cent and Nissan 7.5 per cent) on the market of trucks. In the view of the Competition Council the notified transaction did not create and strengthen a dominant position and did not impede the formation, development or continuation of the effective competition on the relevant market.

Győri Keksz Ltd / Stollwerck - Budapest Ltd

25. Győri Keksz Ltd (fully owned by United Biscuits Investment) concluded an agreement with Stollwerck-Budapest Ltd on purchasing a factory of Stollwerck including the real estate, equipment, trademarks, design patents and labour contracts. Apart from the joint market shares - 26 per cent on the market of sweet biscuits, 20 per cent for the savoury products and 64 per cent for a special biscuit (for the purpose of baking) - the Competition Council took into consideration the favourable conditions of market entry, the strong competition as well as the custom free importation from CEFTA countries therefore it decided to authorise the transaction. (In the case of the special biscuit, where the market share became extremely high, in the Competition Council's view, the market entry was rather easy, the technology was very simple and also, the lack of protected brand names contributed to the fact, that effective competition would not be impeded by the planned transaction.)

3. *Experience related to court reviews*

26. Since its entry into force in 1 January 1997, 113 condemning decisions have been made under the Competition Act until the end of 1999 (this number covers decisions in respect of consumer frauds, which is regulated in a separate chapter of the Competition Act). 59 out of these were challenged before the Metropolitan Court. In 33 additional cases the complainants challenged the rejecting decisions of the competition authority. The Metropolitan Court made 55 decisions out of which 30 went into effect directly, three others went into effect following the judgement of the Supreme Court. The experience shows that there is a high level harmony between the law enforcement of the Competition Office and that of the courts. The Metropolitan Court obliged the Competition Office to launch new proceedings in 3 cases and in 1 additional case the fine was reduced.

27. The time consuming nature of the court proceedings caused problems in the past. A procedure of the Metropolitan Court required one - one and half years as an average, in the case of second challenge the

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procedure of the Supreme Court required three years. Recently the courts made their decisions more quickly than before and their backlog decreased to some extent.

4. *Effective enforcement of the decisions*

28. In 1999 there were 42 cases in which the Competition Council imposed fines. The decisions became effective in 24 cases and the fines were paid in 21 cases. To solve its earlier problems relating to the collecting of fines, the HCO concluded a co-operation agreement with the tax-office, according to which if the fines are not paid, after a 15 days time-limit has elapsed following a call of the HCO, the tax office is authorised to collect the fines imposed by HCO decisions.

III. HCO participation in the formulation and implementation of other policies

29. The Competition Act provides, that the President of the HCO has to be heard concerning all draft submissions or draft legislation that have a bearing on the responsibilities of the Office, in particular if these planned measures or legislation restrict competition. Similarly to the previous years, the HCO received around three hundred drafts in 1999, the half of which affected competition and about one-third needed detailed opinions.

30. The HCO concentrated its competition advocacy activities to areas where it found that the drafts would create market barriers (e.g. in connection with a draft government decree on pursuance of certain commercial activities), or where the lack of transparency, the discriminative nature of the planned regulation raised concerns (draft bill on plant protection, implementing rules on cemetery services, buyer groups, etc.).

31. The HCO gave its competition policy-oriented opinions among others to important issues as follows:

- share of income of telecommunications services pursued under concessions;
- possible highest fees of certain domestic postal services;
- waste management;
- implementing rules of cemetery services;
- certain services of the police offered for consideration;
- theses for passenger transport;
- preparatory work aiming at the elaboration of air transport strategy;
- preparatory work aiming at the elaboration of strategy for transport on inland waterways;
- planned amendment of the Act on Railways and thesis on the overall reform of the Hungarian Railways.

32. In some additional important areas the HCO undertook an initiative role in order to foster the creation of pro-competitive regulations:

- the state of telecommunications market and up-to-date regulatory needs of the sector was analysed for the request of the Prime Minister and a detailed survey was prepared about the topic;
- in order to create a better starting position for competition, the HCO initiated the limitation of telecommunications service providers' possibilities in offering cable-tv services;

- the HCO participates in the preparation of a new Communications Act which will cover frequency management, telecommunications and postal services;
- competition policy position of the HCO was elaborated and made public in connection with key issues of electricity market liberalisation;
- late in 1999 the interested governmental agencies, together with the HCO established the " Programme for Market Opening in Electricity" , in the framework of which the participants co-ordinate their tasks in connection with market opening;
- in 1999 the HCO participated in a preparatory work aiming at the modification of health care system. This work has continued since years and it will continue in 2000;
- the topic of self-regulating organisations (mainly chambers) was a further essential issue which has been raised by the HCO, also concerning this question a "competition policy position" was elaborated and made public by the competition authority.

IV. Resources of the competition authority

Resources	1998	1999
<i>Annual budget¹</i>		
HUF million	409.8	524.0
USD million	1.8	2.1
<i>Number of employees</i>	111	103
economists	39	37
lawyers	35	38
other professionals	3	4
support staff	34	24
<i>Human resources applied to²</i>		
law enforcement	59	60
advocacy efforts	14	15

V. Publications on competition law and policy

Key Issues of Telecommunications Market Liberalisation

Competition Office, Bulletin Issue No 1, July 1999 (in Hungarian and also in English, see also in: www.gvh.hu)

Key Issues of Electricity Market Liberalisation I-II.

¹ The HCO pays 15 per cent of its budget as office rental fee.

² The separation of responsibilities is rather difficult since some of the colleagues active in law enforcement take also part in competition advocacy if e.g. a draft regulation relates to their industries. The figures of the chart are rough calculations based on the workload.

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Competition Office, Bulletin Issue No 2, July 1999 (in Hungarian and also in English, see also in: www.gvh.hu)

A versenyfelügyeleti eljárás - a Gazdasági Versenyhivatal
(Competition Law Proceedings - The Office of Economic Competition) (in Hungarian, Magyar Közigazgatási Jog, Osiris Publ., 1999)

Boytha, Enikő - Rácz, László: A technológia átadási megállapodások egyes csoportjainak a versenykorlátozás tilalma alóli mentesítése (Exemption from the prohibition on restriction of competition of certain groups of technology transfer agreements) (in Hungarian, Iparjogvédelmi Szemle, 1999/10)

Boytha, Enikő: Szemelvények a Versenytanács gyakorlatából - a fúziókontrol (Selected Passages from the Practice of the Competition Council Merger Control) (in Hungarian, Külgazdaság, 1999/9)

Moticska, Izabella: New Trends in the Hungarian Competition Law and Their Implications for Businesses (in English, manuscript prepared for the Forum on the Implications for Business of New Trends in Competition Law in Central and Eastern Europe, Brno, 29 November - 1 December 1999)

Vissi, Ferenc: Antitrust in Transition Economies - the Hungarian Experience (in English, manuscript prepared for the 26th Annual Conference on International Antitrust Law & Policy, Fordham Corporate Law Institute, New York, 14&15 October 1999)

VI. Statistical information on the application of the 1996 Competition Act in the period from January until December 1999

1) Types of Cases concluded by the Decisions of the Competition Council:

Type of the case	1998	1999
Consumer fraud	72	65
Agreements	9	11
Cartel notification	6	4
Abuse of dominant position	44	35
Mergers and acquisitions	49	46
Case transferred by court for imposing fine	-	-
Sum total	180	161

2) *Types of the Decisions of the Competition Council*

Type of the decision	1998	1999
1. Establishing the Violation of Law	39	60
Consumer fraud	30	44
Agreements	1	6
Omission of application for exemption	1	1
Abuse of dominant position	5	7
Imposing fine based on a court decision	-	-
Omission of application for authorisation of M&As	1	2
2. Termination of Proceedings	90	53
Consumer fraud	42	21
Agreements	7	4
Abuse of dominant position	39	28
M&As	2	-

Type of the decision	1998	1999
3. Notifications	52	48
<i>for exemptions of agreements</i>	6	4
- does not fall under prohibition	1	3
- individual exemption	4	1
- group exemption (negative clearance)	1	-
<i>of mergers or acquisitions</i>	46	44
- cannot be qualified as M&A	-	-
- does not fall under the Act	8	4
- authorisation	37	40
- blocking decision	1	-

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3) *Fines Imposed(in thousand HUF)**

Type of the case	1998	1999
Consumer fraud	35,650	21,400
Cartel	5,000	7,000
Abuse of dominant position	29,000	13,500
Omission of application for authorisation of M&As/Late notification	-	2,200
Case transferred by court for imposing fine	-	-
Total	69,650	44,100
Average sum per case	≈1,800	≈735

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Exchange rates:

1998: 1 USD ≈ 220 HUF
1 ECU ≈ 250 HUF

1999: 1 USD ≈ 250 HUF
1 EURO ≈ 250 HUF