



COMPETITION COMMITTEE

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN HUNGARY**

2003

Summary of the major developments

1. Introduction of competition into certain sectors of the economy was partly successful in 2003. Positive changes were accomplished, for instance, with the opening up of the electricity market. Consumers over 6.5 GWh may now enter the free market for electricity and are no longer required to purchase at prices set by the Ministry of Economy and Transport. Although 2003 was only the first year of the new system, 50 of the 320 eligible consumers – representing 20% of the overall consumption and including all of those with consumption over 100 GWh – entered the free market. Based on our assumptions, these undertakings enjoyed a 6-12% reduction of electricity costs amounting to 6-10 billion HUF (30-50 million USD). Change to supply from the free market, however, slowed down in the second half of the year and even some return to the regulated market occurred.

2. Significant efforts were made during the preparations for the 2004 opening up of the gas market. A necessary condition for the introduction of competition was completed, namely the structural separation of the incumbent MOL. Eligible consumers representing 42% of the overall gas consumption will be able to purchase from the free market for gas.

3. In the agriculture sector, farmers still could not effectively withstand the purchasing power of the concentrated processors. The market was characterized by oversupply in pork, and milk. It is estimated that the accession to the EU will cause a significant reduction in the number of farmers and suppliers in general.

4. The overall turnover of the retail sector increased by approximately 8-9%. Competition among the retailers remained fierce, with grocery chains being unable to increase their share on the market despite the opening of new outlets. Competition problems arose concerning sales activities of hypermarkets. The feared disappearance of small-scale retailers however did not occur.

5. The effects of the 2001 liberalization of the fixed telecommunications market also remained weak in 2003. On the market for business users, alternative suppliers were striving to stay on the market but possibilities for expansion were restricted. The main reason for this was the lack of number portability (to be solved in 2004) and the restriction of carrier pre-selection applied by the incumbent in its preferential tariff packages.

6. Competition in mobile telecommunications remained lively despite the actual reduction in the number of competitors. The analogue service provider finally quit the market. The rate of mobile penetration reached 80% and, due to this, it is mainly the pre-paid segment which is now seeing growth. For certain levels of the society, the mobile phone has become a substitute product for the fixed phone.

7. Concentration of credit institutions continued in 2003. It is expected that concentrations will beneficially affect competition as merged undertakings can more effectively compete with incumbent retail banks.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

8. The Competition Act was amended with the aim to implement Regulation 1/2003/EC. Implementation was necessary to clear up certain, mainly procedural, aspects.

9. Due to changes in EC law, two Block Exemption Regulations (“BERs”) were amended relating to the sectors of insurance and distribution of vehicles. The new BERs are now fully in line with their EC counterparts again.

1.2 *Other relevant measures, including new guidelines*

10. Article 36(6) of the Competition Act empowers the President of the Gazdasági Versenyhivatal (GVH – the Hungarian competition authority) together with the President of the Competition Council to issue Notices describing the basic principles of the law-enforcement practice of the GVH. In 2003, three Notices were issued relating to the imposition of fines, leniency and mergers. The draft versions were subject to consultations with professionals, lawyers and the business community and the Office took into account a number of the recommendations received. The Notice on the Imposition of Fines determines the factors that are taken into account in setting a fine. In future, the reasoning of the decisions is to indicate how the notice was applied in the given case. The Notice on Leniency establishes the conditions under which undertakings party to restrictive agreements may apply for full immunity or for the reduction of fines. The Notice on Mergers gives guidance on considerations in differentiating between concentrations subject to authorisation in simplified or full procedure. All three Notices are available at the website of the GVH in English.

1.3 *Government proposals for new legislation*

11. A major revision of the Competition Act might be expected for 2005. The preparations, through the identification of the relevant items started in 2003. The amendment might include the abolition of the notification system applied for restrictive agreements and the reshaping of the merger notification system as well. The amendment will take into account experiences to be gained in the application of EC competition law as from 1 May 2004 as well as the Recommended Practices of the ICN Notification and Procedures Subgroup for Mergers.

2. **Enforcement of competition laws and policies**

2.1 *Action against anticompetitive practices, including agreements and abuses of dominant positions*

12. In 2003, 20 decisions were taken on restrictions of competition. 14 proceedings were initiated *ex officio* and 6 were based on notifications for exemption. The GVH intervened in 12 cases and it imposed fines in 9 cases. The total amount of the fines was 638.5 million HUF, amounting to 3.2 million USD, an amount almost 3.5 times greater than that imposed in the preceding year. The increase in the fines is attributable basically to the new, more severe approach of the Competition Council according to which a systematic and conscious fining policy was elaborated and put into practice during the year (the notice on the GVH's fining policy was built on this policy and was officially published in December 2003). The higher amount of fine can partly be owed to the fact that more hardcore cartels were discovered than in the previous years.

13. The GVH proceeded in 31 cases relating to the abuse of dominance. Dominance was established in 21 cases but abusive behaviour was proved in only 8 of these cases. All but one, considered insignificant, of the cases ended with prohibition. In four cases, fines were imposed in an overall amount of 55.5 million HUF, approximately 0.28 million USD.

a) *Summary of cases on restrictive agreements*

14. During the period of 1998-2001, the mobile phone companies applied a concerted pricing strategy in which, contrary to the actual costs, the prices of mobile-mobile and mobile-fixed calls were artificially low while the prices of fixed-mobile calls were established at a higher level. The investigators stated that the mobile companies, which enjoyed a monopoly on the market of calls terminating in their own networks, practised discrimination against those who called mobile phones from fixed ones and that

the extra profit gained through the discrimination was used to cross-finance services provided on the competitive segment of the market. Since no cost calculations were available, the abusive behaviour was not proved. However the aim, the existence and the distorting effect of the concerted practice were clear so the infringement was established and a fine was imposed in this regard. It should be added that, due to the change in the regulation in 2002, service providers are now obliged to collect data on costs and that the establishment of the prices are supervised by the regulator.

15. The GVH initiated proceedings in June 2002 against four motion picture exhibitors in Budapest for an alleged collusion on price rises. The cinema market of the Hungarian capital can be described by three major characteristics: the radical reduction of cinemas; the appearance of multiplexes at the expense of traditional “one-hall” cinemas; and the rise of chains instead of the stand-alone facilities. Due to the higher level of service and the special multiplexes, a separate market from traditional cinemas was identified. The capacity of multiplexes is designed to cover peak hours, which practically means Friday, Saturday and Sunday evenings and holidays. In these periods, capacity utilisation is near 100%. However, for weekdays this drops to 15-20% and in the mornings to 5-10%. Consequently the market is characterised by a huge overcapacity, with operators working at a loss. Low utilisation and high fixed costs induce cinemas to a loss minimisation strategy in the form of constant price rises. In April 2002, one of the parties prepared a price plan for Budapest and the countryside with detailed breakdowns according to days, parts of the day, and discount days. The document ended with the sentence – “it needs consultation with the competitors.” The data of April and May was circled and it was written on “with P. from April 25” (Mr. P. is the CEO of a competitor). The distribution manager of this firm spoke with Mr. P. twice about the price rise and its details. On 22 April, this distribution manager informed several of his colleagues by e-mail about the anticipated price rise through a detailed breakdown with the notice “as a result of multilateral consultations.” As of 25 April 2002, 35 price categories were identical for different days, part of days and discount days, in the cinemas of Budapest. The parties were fined.

Court rulings on restrictive agreements

16. The last litigation initiated under the 1990 Competition Act on the coffee cartel has finally ended. In its 1994 decision, the Competition Council held on indirect evidence that coffee suppliers concerted their price rise and were severely fined. The Budapest Metropolitan Court upheld the decision as did the Supreme Court on appeal. However, on the final appeal, the Supreme Court dismissed the previous judgements and referred the case back to the Metropolitan Court. In the reasoning of the decision, it was stated that the first judgement neither gave detailed justification for the reason it refused to take into account the opinion of an expert nor did it ask for another expert’s view. In the repeated procedure, based on the opinion of the expert, the Metropolitan Court dismissed the decision of the Competition Council. On appeal the Court of Appeal (a new judicial level introduced in the meantime between the Metropolitan and the Supreme Court) in the final judgement upheld the decision of the Competition Council but reduced the amount of the fines imposed.

b) Summary of cases on abuse of dominance

17. The Competition Council established that the cable TV service provider abused its dominant position when it changed the content of the programme packages without taking into consideration consumer preferences and the ratio of the cost of the different programme channels. The Council also established in this case that the mere fact that a dominant firm cross-finances among different areas covered by its service or among the different programme packages is not unlawful in itself. However if cross-financing is used to compensate lower incomes on competitive markets the activity is considered illegal.

18. The activity of a gas supplier was considered illegal by the Competition Council because at the qualification of pipeline constructors, beside technical capabilities and security standards, it also took into account other circumstances belonging to business connections. This behaviour made impossible for certain undertaking to participate in the process.

Court ruling on abuse cases

19. A highly significant decision was taken by the Court of Appeal when, overruling the judgement of the Metropolitan Court, it dismissed the decision of the Competition Council relating to the cable TV sector. The judgement was based on a product market definition (more substitutes for cable TV) that went against the established jurisdiction of the Competition Council and the courts (generally no substitutes for cable TV). The GVH appealed the judgement and asked the Supreme Court for clarification in the issue.

20. Another important decision was that the Supreme Court obliged the GVH to re-examine the price-setting mechanism of the incumbent oil company, MOL. Originally, the GVH used a bench-mark approach in order to clarify excessive pricing allegations, and could not prove an abuse. The complainant appealed against the decision of the GVH and subsequently the court instructed the GVH by its judgement to carry out a full cost analysis in order to examine whether the wholesale petrol prices were cost based.

2.2 *Mergers and acquisitions*

21. Out of the 68 merger cases closed by a formal decision, one was prohibited and another one was cleared with conditions. Fifty-one horizontal, 2 vertical and 15 complex mergers were considered by the GVH. In 5 of these cases, the parties failed to notify their agreement and, in 4 of these cases, a warning-type low-level fine was imposed on them.

a) *Summary of significant M&A cases*

22. The merger of UTA Pharma Beteiligungs GmbH and Pharma Concept Kft. was cleared with conditions. Both undertakings operated pharmacies in Hungary. Due to the existing regulations, the establishment of pharmacies is restricted and depends on the number of habitants in a given locality. The parties were present together on two markets, in one of which they owned both of the two existing premises and there were no possibility to establish a third one. The Competition Council cleared the acquisition with the condition that one of the pharmacies would be sold.

23. B.V. Tabora, a member of the Ringier group, intended to purchase *Népszabadság*, the market leader among political daily newspapers. The Ringier group already owned the only national sports daily, the largest-circulation national tabloid and the third-largest national political daily. The relevant product market was analysed from both the readers' and the advertisers' point of view. As to the readers' side, the Council established that printed media is not substitutable with other forms of media. It also made a distinction between political and non-political papers and between dailies and periodicals. The Council further considered that national dailies could not be substituted with regional ones. It also identified some peculiarities on the market of national political dailies but a further subdivision of the market based on the political orientation of the papers was not necessary for the analysis. As to the advertisers' segment, the Council established that although undertakings had a great discretion in selecting the appropriate media for their advertisements, the majority of advertisement campaigns were organised through the so-called "media mix" which includes the use of all kinds of media and therefore printed media as well. Through the merger, Ringier would have created a large portfolio of national dailies, on the market of advertisements in the printed media. The Council established that the share of the parties would have been raised from 13% to 87% on the market of national political dailies (or from 10% to 55% for left-wing political dailies). The Ringier group was already in a dominant position on the markets of national sports dailies and tabloids and

it would have become a dominant undertaking on the market of national political dailies as well. Such a strong portfolio would have reinforced its position on the market of advertisements and this latter position would have had the same effect on the former. The Competition Council prohibited the planned concentration on these grounds.

24. In the framework of a privatisation transaction the Erste Bank der Oesterreichischen Sparkassen AG bought the stake of Postabank és Takarékpénztár RT hold by the state. This deal resulted in the establishment of the fifth largest retail bank regarding the total assets of the new entity.

25. In spite of the high post-merger market share (60 per cent) the Competition Council cleared the merger of two building societies (Lakáskassza-Wüstenrot / Fundamenta) since the transaction proved to be the only solution for the survival of the two entities. Without the support of banking activities the two building societies would have become insolvent (the third player on the market of housing savings – OTP (National Savings Bank) the largest retail bank of Hungary – with its banking activities as a background was far more viable than its competitors).

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

26. The GVH was active although not always successful in its competition advocacy role in 2003. Despite the opposition of the GVH, a legal prohibition on below-cost sale of agricultural products was introduced. A detailed analysis of the pharmaceutical sector was prepared and submitted by the GVH to the relevant authorities. The Office actively participated in the preparation of the new Act on Telecommunications as well. Few of the recommendations of the Office were incorporated into the provisions on cable TV. Despite the experience of the GVH, these provisions still do not regulate the supervision of price rises or the unilateral amendments of consumer contracts. After the slow down of the opening-up of the electricity market, the President of the GVH met the head of the regulator and the industrial consumers' organisation. Based on this discussion, and in order to facilitate the further opening-up of the market, it is possible that the GVH will conduct a sectoral investigation (an inquiry into the whole of the sector). The GVH also gave its opinion on several pieces of draft legislation.

4. Miscellaneous

27. The GVH also put an emphasis on the development of competition culture through education, and participation at conferences and seminars. Following proceedings initiated against bakers for price-fixing agreements, the association of the bakers requested a seminar on competition law in order to avoid future breaches of law.

28. The GVH issued four booklets during the year on topical issues like the effects of EU accession, and the procedures for making complaints to the GVH.

29. A survey on the awareness of different groups on competition legislation was conducted in 2003. It surveyed the knowledge of lawyers, journalists, CEOs of undertakings and the public at large. The results thereby obtained will assist in developing of the GVH's communication strategy in the future.

30. The GVH is a founding authority of the Central European Competition Initiative (CECI), the informal regional co-operation of the competition authorities of the Czech Republic, Hungary, Poland, Slovakia and Slovenia. The CECI was established and started its activity in 2003. The main objective of the CECI is to foster the member authorities' co-operation in particular cases by creating a regional network of case-handlers through thematic workshops on recent cases. Two CECI workshops were organised by the GVH in the summer and autumn of 2003 dealing with the issues of liberal professions and self regulations, and the decentralisation of the EC competition law enforcement respectively. The CECI

proved to be fruitful as it was reported in the October 2003 meeting of WP3 of the OECD Competition Committee.

5. Resources of competition authorities

1. Resources overall

a) Annual budget (in million HUF and USD)

2000		2001		2002		2003	
576.4 HUF	2.85 USD	950.2 HUF	4.7 USD	1179 HUF	5.83 USD	1196 HUF	5.9 USD

b) Number of employees (person-years)

⇒ economists;

2000	2001	2002	2003
21	27	32	31

⇒ lawyers;

2000	2001	2002	2003
38	36	43	49

⇒ other professionals;

2000	2001	2002	2003
26	21	18	19

⇒ all staff combined.

2000	2001	2002	2003
104	120	120	120