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Recent Developments in Hungarian Competition Policy

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I. INTRODUCTION

The developments of Hungarian competition policy in the last two years have been motivated by endeavours to make the operation of the Hungarian Competition Authority (“GVH”) more effective. In other words, the GVH has sought to strengthen the “client-friendly” features of the Authority, specifically by speeding up procedures, increasing the predictability of its law enforcement, and securing a competitive level playing field—especially at a time when an economic crisis has diminished society’s confidence in the power of competition. Due to the agency competencies of the GVH in the enforcement of UCP-related consumer protection issues, the Authority also has a special responsibility to foster efficient markets by counterbalancing possible information deficiencies.

This article focuses on developments of the Hungarian competition policy in the period of November 2010 – October 2012. In addition, changes to the organization of the GVH are also described.

II. PRIORITIZATION

Unfortunately, only a very limited number of consumers are aware of the GVH’s scope and power. Accordingly, more than two-thirds of the complaints received are rejected without the initiation of a competition supervision proceeding. The pre-investigation of a great number of irrelevant complaints (1500-2000 per year) has burdened the Authority’s case handlers with unnecessary work. As a result, in March 2011 a new unit was set up at the Authority, the “Consumer Service Unit” (“CSU”).

The GVH also initiated a new prioritization system which enables the CSU to decide whether to forward a complaint to case handlers, or to close the case using its own discretion on the basis of a lack of public interest. Under the new prioritization system, the CSU forwards those complaints meeting the “public interest” test, e.g. the seriousness of the subject complained of, the affected sectors, effects on consumers, etc.

The basic goal of the renewal of the complaint-handling system was to improve the allocation of resources that may be used for competition supervision proceedings. The new regime for complaint handling has proven to be efficient, as the case handlers can now dedicate a lot more time to those cases which have a serious impact on the markets (e.g. cartels).

III. RESPONSES TO THE ECONOMIC CRISIS

Although it seems that the economic crisis did not affect Hungarian competition law enforcement to an appreciable extent, the GVH has actively taken steps to alleviate any potential future impacts. These steps were taken in three areas, namely M&A control, the fight against cartels, and reforming the fining policy of the Authority.

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A. Simplification and Speeding Up Concentration Control

The basic aim of the revision of the merger control system was to increase the transparency of merger control proceedings, speed the process, and ease the administrative burdens on parties to concentration transactions. As the most essential result of the review—also taking into account the opinions obtained in the course of the public consultations that were organized in the framework of the review—the **notification form has been substantially modified**. Introduced for transactions notified after February 1, 2012, the new form actually consists of two forms (2-in-1 Form), since only the first half of the form has to be completed in the case of simplified cases when concentrations do not result in significant overlaps.

Also on February 1, 2012—in line with administrative procedural provisions—the possibility of the so-called “**simplified decision**,” which does not contain a reasoning of the decision, was introduced. According to the relevant guidelines, a simplified decision is applicable when the GVH clears a transaction using the simplified procedure without imposing any remedies.

The GVH realized that in merger cases, where the Authority’s role as a public authority is more like a partnership than an investigating antitrust authority, there is greater need for consultation before a merger clearance decision is made. For this reason, the GVH issued guidelines **on pre-notification contacts** relating to merger procedures, with the aim of informing parties and their representatives of the practices applied by the GVH within the course of the pre-notification process. The pre-notification contacts guidelines aim to increase the efficiency and the productivity of the control of concentrations procedures and—if possible—to also speed them up. In our experience, the early identification of potential future problems significantly accelerates the procedure.

B. Measures Taken in the Field of Fight Against Cartels

Despite the economic downturn, the GVH has upheld the high standards it applies to its cartel investigations and has continued to rigorously enforce cartel rules. Certain competition issues arising from market circumstances in the agricultural sector moved the Authority to take firm enforcement measures against suspected hard-core restrictions in the food sector. The GVH initiated an *ex officio* investigation against the undertakings involved, and intensified its advocacy work with regard to competition provisions in the agricultural sector, especially provisions concerning Art 39 TFEU and Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products.

As cartels are likely to be unstable in times of crisis, the GVH has placed more emphasis on the detection of cartels. The cartel unit of the GVH was supplied with modern high-tech IT equipment, and the effectiveness of unannounced inspections was improved by the knowledge of colleagues who had previously served as police investigators before joining the GVH. In 2011, the GVH launched 14 cartel investigations and held unannounced inspections at 32 locations.

C. Certain Changes in Fining Policy

At the end of 2011 the GVH completely renewed its fining system. Some of the changes were inspired by anticipating possible effects from the current economic crisis. For example, the new fining notice allows the GVH to accept the payment of a fine in instalments if the

undertaking(s) in question is in a difficult economic situation. A fine can be paid in instalments if the requirement to pay the fine in a lump sum would result—having regard to the payment opportunities available to the undertaking at the time—in an extremely disproportionate burden being placed on the undertaking(s) concerned.

Another new element of the fining notice allows the GVH **to reduce the amount of a fine**, taking into consideration the difficult economic situation of the undertaking concerned. This may only be applied if the undertaking concerned proves its inability to pay, and this inability cannot be alleviated by allowing the undertaking to pay in instalments. Fine reduction can be granted if the proposed fine—due to the social and economic context—will significantly eliminate the structural circumstances of competition by resulting in a “failing firm” effect, i.e. disappearance of the company’s assets. The undertaking has to provide “objective, primarily documented and detailed evidence” reflecting its economic situation.

IV. COMPLIANCE

Unfortunately, the level of companies’ competition awareness is very low in Hungary. As a result, this year the GVH has initiated a company compliance program and campaign to explain the scope of the competition rules, especially as regards the prohibition of price-fixing, bid-rigging, and market portioning.

V. ADVOCACY

Within the framework of competition advocacy, every year the GVH expresses its opinion on approximately 200 draft pieces of legislation. In this way the Authority helps legislators take into consideration competition policy issues, and exercises influence on governmental decisions to support competition.

One example deserves special attention. In accordance with the Hungarian Criminal Code, collusive tendering in public procurement procedures (bid-rigging) has been punishable since 2005. The GVH has applied a leniency regime since 2004. This regime was fully harmonized with the ECN leniency program five years later, in 2009. Due to inconsistencies between the criminal and competition (leniency) regimes, the GVH realized that the low number of leniency applications was probably due to the fact that applicants feared that they would not be exempted from criminal prosecution. In order to remove these inconsistencies, the Authority emphasized to the legislature the importance of reconciling the criminal provisions with the Competition Act. Pursuant to the newly adopted Criminal Code of Hungary, which is due to enter into force in July 2013, an acceptable legal solution has been found which will hopefully facilitate future leniency applications.

VI. INCREASED PREDICTABILITY OF LAW ENFORCEMENT

One of our most important roles is to increase the predictability of our enforcement activities. This is the reason why the GVH adopted new fining guidelines and other soft laws on pre-notification meetings and simplified decisions. All of these documents have been publicly consulted with stakeholders. On October 2, 2012, the GVH published guidelines on the remedies that are applicable in cases that deal with unfair commercial practices. The guidelines clarify, on the basis of the GVH’s previous enforcement practice, the discretionary powers of the GVH with respect to the approval or dismissal of remedies.

VII. DEFENDING THE COLLECTIVE INTERESTS OF CONSUMERS

At the end of 2011, the GVH made a decision in a consumer protection case involving undertakings that were jointly operating several websites with the aim of facilitating real estate advertising. The GVH established that the undertakings were engaged in unfair commercial practices and, therefore, the authority prohibited the continuation of the activity. As regards the General Terms and Conditions applied by the undertakings under investigation, the GVH initiated—for the first time in its enforcement history—a public interest action (class action type lawsuit) for the protection of the collective interest of the affected consumers in line with the Hungarian Civil Code. According to the Metropolitan Court, which was acting as the court of first instance, the claim was admissible and well-founded.

VIII. FOSTERING COMPETITION CULTURE

In 2005, the Organisation for Economic Co-operation and Development (“OECD”) and the GVH started a joint initiative, the Regional Centre for Competition (“RCC”) in Budapest (Hungary). The aim of the RCC is to foster the development of competition policy and competition law and culture in the Southeast, East, and Central European regions, and to thereby contribute to economic growth and prosperity in these regions.

The RCC’s work is based on the intellectual and financial contributions of both the GVH and the OECD. Since 2005 the RCC has organized over 67 events (seminars, workshops) for 1941 participants with 406 expert speakers from OECD institutions, members, and other countries. The Authority has also organized 11 seminars for judges on competition law, which have been attended by almost 500 judges from several EU countries. RCC seminars are completely free. There is no participation fee and the RCC covers the costs of the participants’ and speakers’ travel and accommodation.