Balázs Timár

The Focal Points of Competition Authority Activity

Summary: The present study seeks to uncover what the reason was for the downturn in competition authority activity as observed in the past decade, and whether the drop in the number of competition authority cases had any significant impact on competition in domestic markets. The study was based primarily on data taken from reports prepared annually, from 2002 until 2012, by the Hungarian Competition Authority for the National Assembly, and relied greatly on the study on the same subject prepared in October 2013 by associates of the State Audit Office of Hungary. Starting from the halfway point of the past decade, the figures related to the operation of the Competition Authority showed a continuous drop in volume of the aforementioned activity with respect to both competition supervision and competition advocacy. The only signs of increase were observed in connection with the activity aimed at developing competition culture and the culture of consumer decision-making. Based on my research, I came to the conclusion that this decrease can be primarily traced back to the low level of synergy effects between certain 'activity pillars' of the Competition Authority, the changing of regulations by the State, and the re-assigning of competition authority powers to sectoral authorities in the sectors most at risk from abuse of economic dominance.

Keywords: competition authority, protection of competition, competition advocacy, sectoral inquiry, cartel
JEL codes: D41, D42, D43, K21, K42

I INTRODUCTION (THE DEFINITION OF COMPETITION)

According to modern economics, competition is the medium through which demand-supply and price relationships, and the balance of produced and sold goods are realised and where market players can conduct economic activities while realising respectable profit. Furthermore, competition ensures that consumers may purchase the highest quality products and services possible at the lowest price possible. From the aspect of the examination of the above aspects, *P. A. Samuelson* (2009) distinguishes between perfectly competing and imperfect markets, also known as monopoly markets. One of the main criteria for distinguishing between the two market types is the price influencing ability of companies: while on perfect markets, given their small size, market players typically exhibit a practically price-taking behaviour; the participants of the monopoly market have active influence over the pricing of the products of the given sector. Another characteristic of perfect competition is the high number of companies in a given sector producing the same products, as well as the low barriers of entry to (and subsequent exit from) the market. It makes sense for new players to enter the market as long as the marginal cost of the production of goods does not exceed market price. The perfect nature of competition can only be distorted by certain external impacts (such as environmental pollution), or by certain exclusive rights

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(such as concessions and patents) that lead to imperfect competition.

In contrast with the purely theoretical model, in reality "competition among the few" is much more frequent in the markets, as there are effective (technological, regional, due to high capital requirements, etc.) entry barriers to the markets of the various industries, which shift the markets in a monopolistic direction. At a given level of the development of monopolies, market players themselves (and the interest representation groups founded by them) put up barriers to hinder further entries. This is the point where state intervention becomes necessary in the interest of competition, and the creation of pre-emptive regulations in order to put a stop to the dominance of monopolies.

We can, therefore, describe competition by stating that it is the activity of market players, within the framework of certain rules, aimed at maximising profits and gaining other advantages.

The importance of competition, protection of competition

There is no simpler way to prove the importance of competition than presenting its impact on the other significant indicators of the economy.

Competition and inflation Without the market regulating intervention by the state, monopolies – in the manner illustrated in the theoretical model – strive to achieve their profit maximising objectives not by increasing production efficiency and reducing production costs – since there is no external incentive to do so – but primarily by raising prices. If the barriers of entry to the market that are hard to begin with (limited network connection opportunities for example) soften subsequently and more participants begin operating in the given sector, automatic price increases become a less utilisable tool for companies to improve their economic positions. However, as long as the market is 'transparent' and competitors can be taken into account, maintaining high prices becomes easily achievable through an agreement between participants. The price-driving effect of the lack of competition is, therefore, directly realised either through monopoly prices or price cartels.

Competition and employment The more companies are given the opportunity to enter the market of a given sector, the greater the labour force the market is able, in theory, to employ, at the same time though, cost-effective operation may also encourage downsizing and payroll savings. The EU's Lisbon Strategy launched in 2000 set a no lesser goal than to make Europe the world's most dynamic and competitive knowledge-based economy by 2010, in which continual growth brings about growth in employment. The increase in the number of jobs, therefore, can primarily be accomplished by communicating the 'quality' dimension of competition and improving competitiveness, however, as a result of competition on the global market, less competitive regions have to face increasing unemployment.

Competition and gross domestic product The question is: is there a significant chance for GDP growth in an economy walled in by monopolies, or is this, for the most part, typical of countries where a large number of market participants are engaged in battle with one another for consumers buying their products. Well, if we consider what was written above about inflation and job creation, it is easy to understand that internal consumption also increases in the case of increasing employment and a suppressed inflation rate, while increasing demand also pulls GDP upwards.

The interest related to maintaining and increasing the above briefly described fruitful effects of competition, and in the end, to

increasing social welfare is what gave rise to the protection of competition, which in most countries, at a higher level of development of the democratic order, was by law made a mandatory responsibility of the state. The history of modern competition law began in the US with the "Sherman Act" of 1890, which put in place criminal law sanctions for "collusion or conspiracy" during business activities. This was followed by the so-called Clayton Act in 1914, which sought to prevent and prohibit mergers and acquisitions – realised through the acquisition of the majority of shares – that restrict or exclude competition. After World War II, prohibition by the authorities was gradually replaced by an anti-trust regulatory model based on a system of authorised mergers, and the so-called Hart–Scott–Rodino Antitrust Improvements Act, passed in 1976, was created in this spirit. The very first competition law regulation in Europe was created in Germany in 1957.

The protection of competition is a two-way activity: on the one hand, it is the prohibition the distortion of competition and the prohibition of monopolies by way of maintaining already existing competition as well as various state tools and powers prescribed by law; and on the other, the restriction and regulation of the competition-suppressing behaviour of existing monopolies through administrative measures.

From time to time, the question arises as to what sort of balance the state should seek between its interventions aimed at protecting domestic economic players and those that serve to support competition, and also what role competition authorities should play in all this. There is no concrete recipe for this. One thing is for certain, in today's economic environment, burdened with prolonged global crises, the state must exhibit a high degree of flexibility when it comes to creating competition policy.

PROTECTION OF COMPETITION IN HUNGARY

Introduction of the Hungarian Competition Authority (GVH)

Organisational data

The activity of the Hungarian Competition Authority (GVH) focuses on maintaining market economy competition as defined by Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (Competition Act) and enforcing adherence to competition rules by players of the economy. It accomplishes this goal primarily by exercising its competition supervision function, which in itself is a highly diverse activity: it includes competition supervision proceedings launched ex officio following receipt of consumer (by competitors or civil organisations) notifications and complaints, authorisation of merger requests, as well as market analyses and assessments concerning entire sectors. The performance of tasks by the GVH, however, is far from exhausted in exercising this eye-catching activity – which often ends with significant fines imposed against "renitent" players of the market, and which due to considerable public interest, is highly publicised. Article 33(3) of the Competition Act assigns a very important mandate for the GVH: as part of its so-called competition advocacy activity, the GVH provides opinions on and assesses, prior to their being passed, all draft statutes that concern its tasks, powers and competition in general, with the exception of local government decrees. The development of competition culture and the culture of conscious consumer decision making are set out for the GVH in Article 33(4) of the Competition Act. In the case of the realisation of ideal competition policy, these three pillars of the GVH's activity (competition supervision, competition advocacy, development of

competition culture) are activities that mutually reinforce and support each other.

In the second half of 2013, the State Audit Office of Hungary (SAO) – parallel to the regularity audit of the operation and financial management of the GVH for 2008–2012 – published a study on the activities of the GVH between 2002 and 2011 [State Audit Office of Hungary (2013) – hereinafter: SAO Study], primarily detailing its activity in the fields of competition advocacy and competition culture, and the development of consumer decision-making culture. The authors of the study utilised public data only – for the most part taken from the GVH's Parliamentary Reports –, presenting the trends regarding the main indicators of GVH activity. The objective of the analysis was determined by the consulting role of the SAO – as the supreme financial-economic auditing body – in supporting audits, and thus it primarily focused on examining whether the GVH utilised the tools and powers granted in order to enforce competition policy with the greatest efficiency possible, in other words, whether it met the requirements set in connection with the efficient utilisation of public funds. In the spirit of these objectives, the study reviews and rates the enforcement of competition policy as observed in the past 10 years from the aspect of the institutional operation of the competition authority.

Some of the studies published in earlier years also focused on the efficiency of institutions performing competition authority tasks. *Cseres* (2012) for instance analyses the distribution of the enforcement means of competition regulation and consumer protection, and its legal consequences realised in various institutional solutions. Factors such as the proportionality of legal sanctions, the timing of interventions by the authorities and those related to the performance of institutions are considered to be significant by the author. These are, for example, expertise and efficiency during the administration of cases, the independence and accountability of institutions and the participation of consumers in proceedings launched by the authorities. The author also examined the practices of European Union Member States, according to whether competition authority and consumer protection tasks are performed jointly, under the aegis of a single authority or by establishing separate institutions, or perhaps even within the framework of a partially merged model, combining in a particular way, the two types of law enforcement. Ten countries can be placed in the first group, thirteen in the second group, while four Member States in the category applying the partially merged model. This shows that most countries created an institutional model where consumer protection and competition law are separated, the benefits of which the author sees in the statutory background of consumer protection which requires specialised knowledge, as well as in the fact that the dominance of aspects of competition law is not apparent during the enforcement of the law (as practical experience showed in multiple cases in the case of the merged model). At the same time, he acknowledges that the different systems of enforcement of the two legal areas are paired with very similar systems of objectives, and an institution operating within the framework of a merged model is much better equipped to select and apply the appropriate legal remedy and/or sanction for a given market failure. The study also highlights the fact that Hungary is one of the few Member States that follows the partially merged model, as three authorities [the GVH, the Hungarian Authority for Consumer Protection (HACP), HFSA] perform consumer protection tasks which means that between them, in order to avoid clashes of competence, intense cooperation is required on the one hand, and on the other a clear separation of powers set out in statutes. Accordingly, the HACP acts as a body with general con-

sumer protection powers, while the HFSA is the competent body with respect to the financial organisations supervised by it. (The HFSA (Hungarian Financial Supervisory Authority) ceased to exist as of 1 October 2013, and its powers were assumed by the National Bank of Hungary.) Among the conduct aimed at (end) consumers (B2C – Business to Consumer), in the case of those significantly impacting competition the GVH is the competent body, except if the infringement in question appears only on labels, or instructions and manuals for use or by infringing on certain special information provision requirements set out in separate statutes.

Muraközi – Valentiny (2012) seeks the answer to what alternatives there are to competition authority regulation by the state; namely what the chances are for the self and co-regulation of market players. In respect of self-regulation, the authors draw the conclusion based on empirical research that major market players show a greater willingness to set up restricting regulations regarding themselves in order to avoid an expected strict measure by the authorities or as a consequence of an industrial catastrophe. In the end, the authors are unable to provide a clear answer as to whether in the future, the supplementary or substituting nature of self-regulation compared to classic regulation by the authorities will become more dominant.

The advantages of self-regulation are a more flexible ability to enforce the law and on the part of market players, greater voluntary compliance with the law. At the same time, it is a disadvantage that as a result of voluntariness, the regulatory norms laid down are not necessarily enforced in the whole of sectors, especially in the case of self-regulation against unfair trading practices (Nagy, 2012). In the end, quoting American authors, the researcher dealing with the subject comes to the conclusion that the key to the success of self-regulation lies in the regular auditing and enforceability of regulations.

Tátrai (2009) attempted to map out competition restricting factors in the public procurement market through empirical research, during which she regularly referred to the SAO's 2008 study on the system of public procurements. The author attempted to draw conclusions from the changes over time of the ratio of certain bidder groups (domestic large corporation, foreign-based, domestic SME) and contracting authority groups (central budgetary institution, subsidised organisations, public service providers), and the responses given in connection with reasons for evading public procurement. According to these conclusions, the reasons why public procurement is not very popular in Hungary are increasing administrative burdens, the outdated institutional system, the often used legal remedy, the prevalence of the negotiated procedure form (viewed as a hotbed of corruption) and the underdeveloped nature of the innovative forms of public procurement (e.g. e-auctions, e-catalogues).

When summing up the one-year experiences of the crisis of 2008, the question arose: why didn't the state (in Hungary or anywhere else) pursue a consistent competition-stimulating policy to mitigate its negative effects (Voszka, 2009). In fact, in most cases, competition restricting measures were observed as these were required in order to preserve jobs or to restore financial stability. The budget deficit and the rise of debt created a barrier to the application of market stimulation means while the direct grants provided to those in trouble switched off the so-called "market self-correction mechanisms", thereby disguising the low competitiveness of certain market players.

Among the relevant literature, we must mention the article on the transformation of postal markets and the impact of the competition generated by channels of electronic and

digital communication on traditional mail (Kiss, 2012), the study depicting the correlations of the limited rationality apparent in the decisions of households and consumer protection in the financial markets (Vince, 2011), the competition-oriented analysis of the first phase of the liberalisation of the rail freight market (Édes – Gerhard – Micski, 2011), the examination of the development of the gas and electricity market following the full opening of the market (Vincze, 2011), and the empirical study presenting the intensity of the service switching of consumers following the liberalisation of the Hungarian retail electricity market (Paizs, 2011).

The foundations of Hungarian competition supervision

Article 33(2) of the Competition Act states that *"the responsibilities concerning the supervision of competition are performed by the Hungarian Competition Authority, except if stipulated otherwise by law.* Competition supervision tasks set out by the Act:

- sectoral inquiries (Competition Act, Article 43/B-F),
- complaints and informal complaints (Competition Act, Article 43/G-I),
- competition supervision proceedings (Competition Act, Article 44-80), and
- procedure for the application of European Community competition rules (Competition Act, Article 91/A-G)

The sectoral inquiry is a particular combination of activity by the authority and market analysis activity, where the GVH requests information from the players of the sector to be investigated in order to perform a competition-oriented analysis, and the companies are obliged to provide the requested information, otherwise the GVH may impose fines. Having performed the analysis, the GVH prepares a report which assesses the state of competition in the given sector, and depending on its assessment, either launches competition supervision proceedings or – in case this is insufficient to treat the market disturbance uncovered – informs the competent committee of the National Assembly, the Minister or other authorities in order for further measures to be taken.

The GVH classifies as notifications all submissions submitted on its standardised form regarding possible infringements of law, concerning which it either issues an order to launch competition supervision proceedings or determines the lack of criteria to launch such proceedings. If the subject of the notification falls under the competence of a different authority, the GVH employs a referral of cases.

The GVH treats all submissions that do not qualify as notifications as complaints and takes the necessary steps (interviewing complainant, referral of cases, etc.).

During its competition supervision work, the GVH enforces the provisions of the Competition Act and other statutes under its competence, as well as those of EU competition law. Competition supervision proceedings are launched on request or ex officio. Proceedings upon request are fundamentally aimed at the authorisation of concentrations. Proceedings based on consumer reports (submitted by competitors or civil organisations, etc.) or those based on the GVH's own detection are launched "ex officio". The criteria for launching competition supervision proceedings are the probable infringement of law and the existing mandate of the GVH, or in the case of the Competition Act, for the competition supervision proceedings to be justified by the efficient protection of public interest. Proceedings are launched ex officio in the case of suspicion of the unfair manipulation of consumer decisions, the violation of the prohibition of unfair trading practices against consumers, prohibited competition restricting agreements and abuse of a dominant position. Proceedings may also be launched ex officio if the request

for proceedings would have been justified, but was omitted. With respect to the objective of the Competition Act, it can be determined that the violation of the prohibition of the unfair manipulation of consumer decisions in itself does not warrant action by the competition authority. In order for the authority to launch proceedings, it is also required that in addition to infringing on consumer interests, the behaviour unfairly influencing consumer decisions also has a distorting impact on competition.

One of the recurring observations in the presidential reports prepared for the National Assembly is that *"ex officio proceedings are launched based on perception and detection by the GVH, including complaints and notifications, as well as experiences from sectoral inquiries, requests submitted as part of leniency policy or the referral of cases within the framework of the ECN."* In case of notifications, the investigator initiates a decision on whether to launch ex officio competition supervision proceedings or refrain from doing so. In the 2008–2012 period, three sectoral inquiries were closed, but none of these served as basis for competition supervision proceedings. The aim of the cooperation with other members of the ECN is for the case, in case of potential involvement, to be assigned to the authority in the best position to conduct proceedings. The number of cases referred within the ECN is typically low, in other words, in the majority of cases, the competition authority proceeding in the case is the one that initially launched proceedings. As of 2006, the number of proceedings launched ex officio that ended with a competition council decision declined considerably.

During the clarification of facts, the investigator and the Competition Council proceeding in the case applies the provisions of the Competition Act and Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (ket.) concerning the clarification of facts and audits by authorities. At the same time, pursuant to the Competition Act, the GVH in essence has investigating powers during competition supervision proceedings. These powers are characterised by the following:

- investigative actions may be taken anywhere, where there is sufficient evidence to clarify facts,
- the investigator – under certain conditions – is entitled to seize the documents without drawing up a report,
- the GVH – in connection with the economic activity investigated – is entitled to familiarise itself with and manage the personal data of the client as well as other participants of the proceedings,
- the witness may be questioned regarding the client's business secrets even if he/she has not been exempted from confidentiality,
- as part of certain proceedings opened ex officio, the investigator may search any locations and premises; may enter such locations and premises arbitrarily despite the will of the owner (holder) and the persons residing there; and may have locked areas, buildings and premises opened up for this purpose.

Assessment of the GVH's activity

Competition supervision activity

Amongst other things, the SAO Study examined the annual development of certain typical indicators of GHV activity in the decade under review. As regards the number of cases, the GVH's competition supervision activity was characterised by a continuous drop – with slight periods of fluctuation – from 2006 on. One of the typical indicators of operational efficiency could be the number of closed cases per GVH employee. In this respect, the GVH's "most efficient" year was 2005, when 199 cases were closed with the

help of 119 employees, bringing the said indicator to 1.67. The lowest number of cases in proportion to average headcount was closed in 2009: in this year the GVH had 124 employees and closed 106 cases: (0.85 cases/person). We must note, that the value of the indicator never exceeded 1 after that. *(See Chart 1)*

The budgetary expenditures utilised during operation and the change in headcount is shown in *Chart 2.*

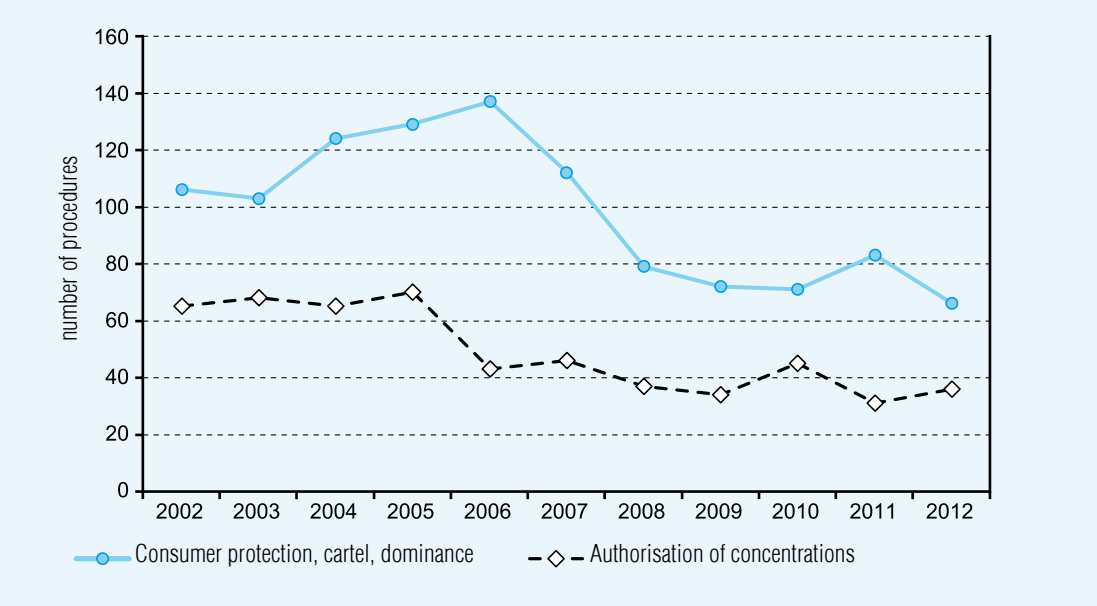
Even more interesting is the ratio of annual operational expenditures to the number of closed cases. While in 2002, an average of HUF 6.6 million of public funds was spent on a closed case, in 2012, a single procedure cost in excess of HUF 22 million. It would naturally be misleading to assume that the GVH carried out its proceedings in an increasingly costly manner (as competition advocacy and the development of competition culture also drew on funds), however, the increasingly significant expenditure paired with declining performance is certainly thought-provoking.

Besides the general and significant decline observed in competition supervision activity, there were also two positive developments in 2012: firstly, the GVH imposed a fine against a retail chain for abuse of economic dominance against suppliers, and prohibited further unfair practices. This is all the more welcome news as the GVH was unable to prove earlier abuses, and in fact, its competition advocacy activity in this area did not generate the desired result either. The second welcome news is that the GVH, in its function of "the friend of the court[2]", provides opinions on court cases in progress.

As from the public's perspective, the most eye-catching and well-known element of the GVH's activity is imposing fines, the SAO Study presented the year-on-year development of the fines collected in the period under review. It must be emphasised, that no significant

Chart 1

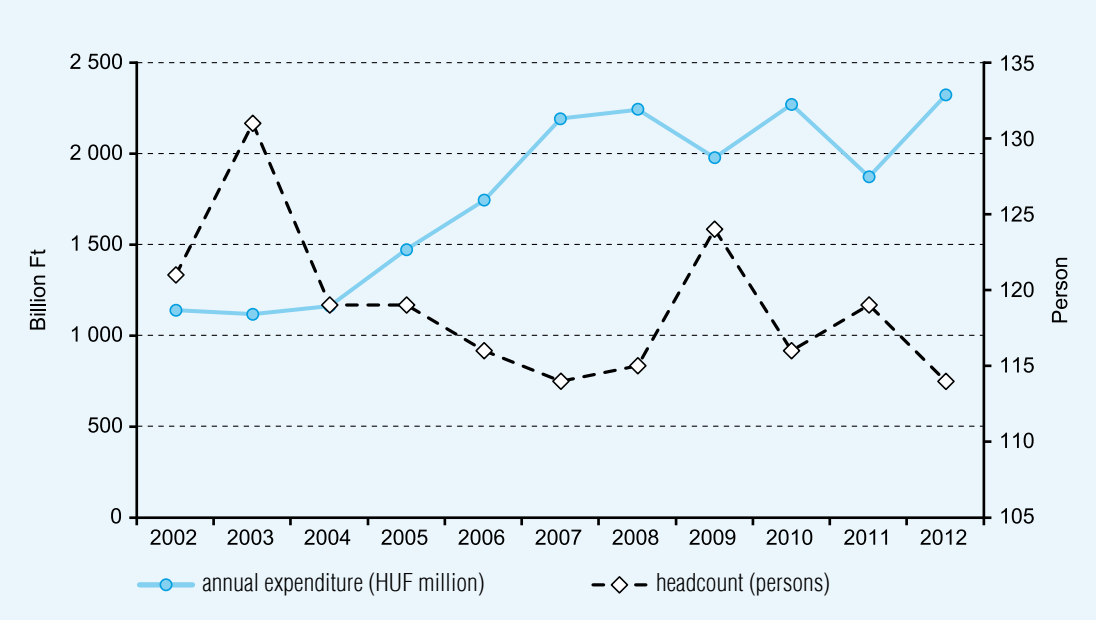
COMPETITION SUPERVISION PROCEEDINGS CLOSED BY THE GVH PER YEAR, PER CASE TYPE (2002–2012)



Source: own compilation on the basis of data published in GVH annual reports

Chart 2

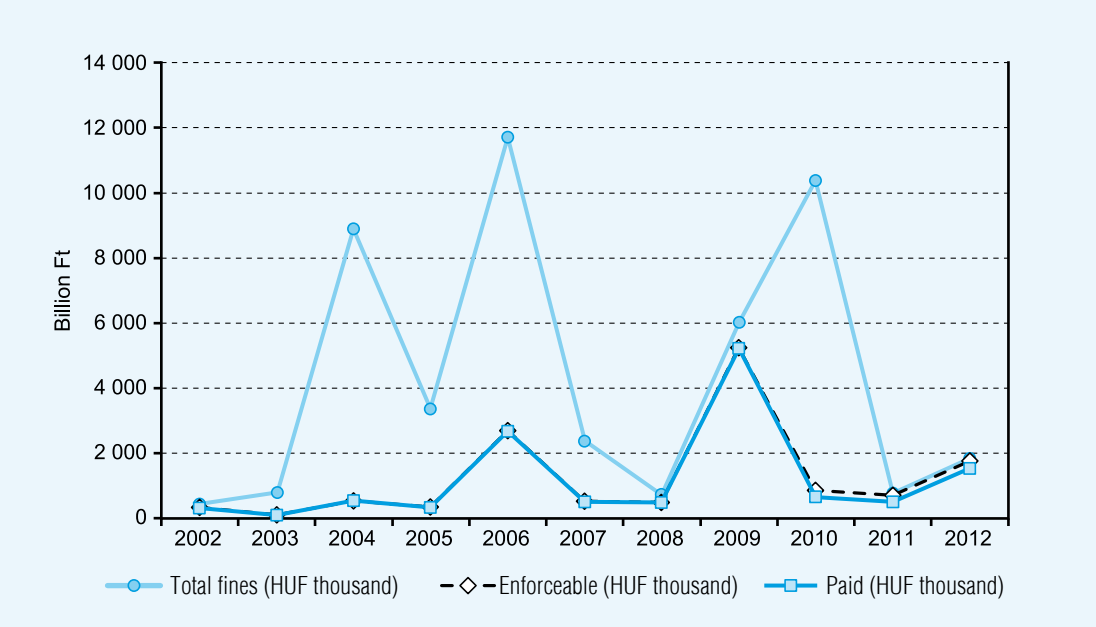
THE GVH'S BUDGETARY EXPENDITURES (HUF MILLION) AND HEADCOUNT (PERSONS) PER YEAR (2002–2012)



Source: own compilation on the basis of data published in GVH annual reports

Chart 3

FINES IMPOSED AND COLLECTED BY THE GVH PER YEAR (2002–2012)



Source: State Audit Office (2013)

conclusions may be drawn from this trend: in the years where certain large-scale cartel cases were closed with final decisions, the amount of fines collected "broke records[3]", but in the absence of such cases, this amount remained below average. *(See Chart 3)*

Based on the GVH's fining practice as observed in cartel cases, we can draw the conclusion that it failed to lead to a positive change – that would manifest itself in market players refraining from prohibited agreements –, as two competition supervision proceedings were closed in this period for example, where the some of the construction industry companies subjected to investigation were companies that had already been fined before. *(See Table 1)*

Competition supervision supporting activities

In *Table 2*, we have summarised the regulatory areas that the GVH dealt with over several years or as a recurring activity – either as part of providing opinions on draft legislation, or within the framework of signalisation[4] or

Table 1

LIST OF ORGANISATIONS SUBJECTED TO RE-INVESTIGATION

Organisation subjected to investigation	Sector	Infringement	Year of closing of proceedings
MATÁV/Magyar Telekom Rt.	telecommunications	abuse of dominance	2002, 2003, 2004, 2005
Invitel Rt.			2004, 2011
TITÁSZ/E.On Tiszántúli Áramszolgáltató Zrt.	electricity retail		2002, 2006, 2011
TIGÁZ Tiszántúli Gázszolgáltató Zrt.	gas supply		2003, 2006
Magyar Posta Rt.	postal services		2002, 2007
Strabag Építő Rt.	construction industry	prohibited agreement	2004, 2005, 2009, 2010
EGÚT Egri Útépítő Rt.			2004, 2005, 2009
Swietelsky Építő Kft.			2005, 2009
Hídépítő Rt.			2004, 2005, 2010
Vegyépszer Rt.			2005, 2010
Budai Malomipari Kft.	milling industry		2004, 2010
Cerbona Rt.			2004, 2010
Cornexi Rt.			2004, 2010
Diamant Malom Kft.			2004, 2010
Első Pesti Malom Rt.			2004, 2010
Pannonmill Rt.			2004, 2010
Sikér Rt.			2004, 2010
Szatmári Malom Kft.			2004, 2010
Magyar Pékszövetség	food industy		2004, 2009
LCP-Systems Kft.	software trade		2007, 2009

Source: State Audit Office (2013)

Table 2

THE MAIN SECTORS OF COMPETITION ADVOCACY, 2002–2012

Area impacted by competition advocacy	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Healthcare, distribution of pharmaceuticals	+	+	+	+	+	+	+	+	+	+	+	11
Electricity market	+	+	+	+	+	+	+			+		8
Regulation of the agricultural market	+	+								+	+	4
Electronic communications, telecommunications, media		+	+	+	+	+	+	+	+	+		9
Public procurement		+		+			+		+	+		5
Vehicle identity check		+	+				+	+				4
Postal services		+	+	+		+		+			+	6
Textbook market		+	+					+				3
Rail transport, track use		+	+	+	+	+	+	+				7
Natural gas supply	+	+			+	+			+		+	6
Financial services, insurance	+	+			+			+	+	+	+	7
Activity of professional chambers			+	+		+	+		+		+	6
Market status of hypermarkets	+			+						+		3
Consumer protection, consumer groups	+	+		+	+	+			+	+	+	8
Water utility sector, water management					+	+		+		+	+	5
Public road management, road tolls					+				+	+	+	4
Intellectual property, copyright protection	+	+					+					3
Air transport						+		+	+			3
Total	8	13	8	9	9	10	8	9	9	10	9	

Source: State Audit Office (2013)

Table 3

SECTORAL INQUIRIES, 2002–2011

Subject of sectoral inquiry	Closing date
Analysis of the competition conditions of the mobile telephone market 1998–2001	November 2002
Credit institution practice related to mortgage housing loans	December 2005
Experiences of the electricity market following the market opening of January 2013	February 2006
Switching in the case of certain retail and small business financial products	February 2009
Sectoral inquiry on the television broadcasting market	April 2009
The building society market from a competition aspect	May 2011

Source: State Audit Office (2013)

the assumption of a different role. One area of healthcare or another was a subject of competition advocacy activities in every year, as were, on a related note, the markets for pharmaceutical and health insurance services. Special competition supervision attention was also paid to the electronic communication market segment, as well as the competition-oriented assessment of the electricity market. More than half of the GVH annual reports also included rail transport and track use, consumer protection-related regulation, and the financial services and insurance market.

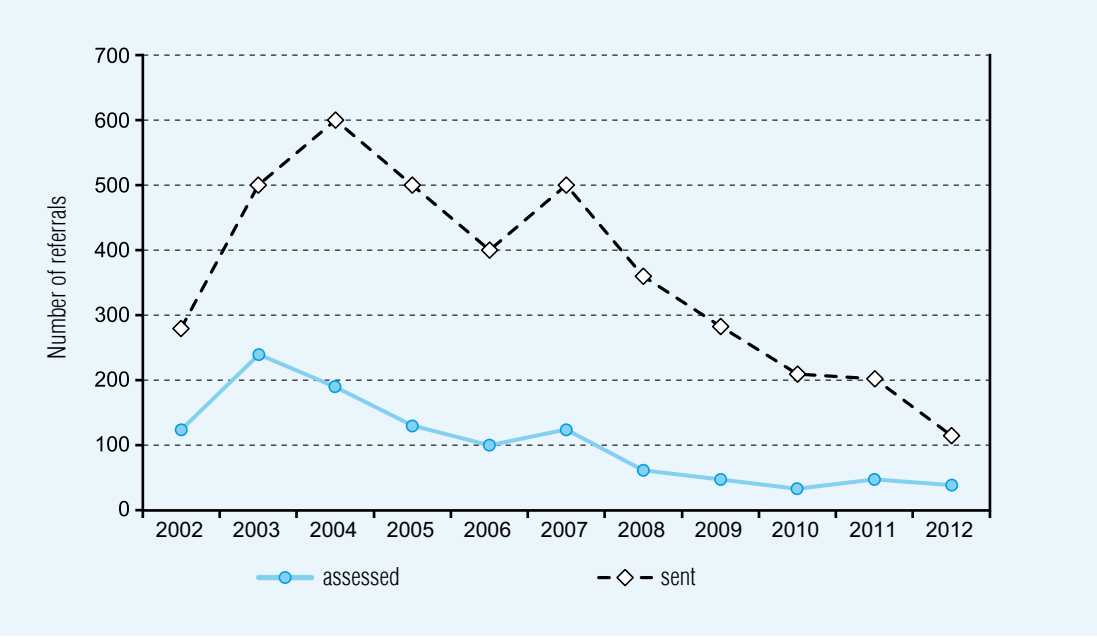
Sectoral inquiries

Pursuant to Paragraph (1) of Article 43/C of the Competition Act, *"Where price movements or other market circumstances suggest that competition is being distorted or restricted in a market belonging to the sector in question, the President of the Hungarian Competition Authority launches, by order, inquiry into the sector in order to understand and assess the processes of the market."* In the period reviewed by our paper, the GVH conducted sectoral inquiries in the areas indicated in *Table 3*.

The above compilation shows that in the period under review, the GVH exercised its power to prepare comprehensive analyses that cover entire sectors a total of 6 times. Half of these inquiries were conducted in the financial services sector. It is a striking fact that of the sub-sectors of healthcare and distribution of pharmaceuticals which have come to the fore-front so often during competition advocacy, the GVH felt that neither deserved to be subjected to sectoral inquiries. It also makes one think why the sections on sectoral inquiries in the GVH's annual reports do not mention whether the authority had identified any cir-

Chart 4

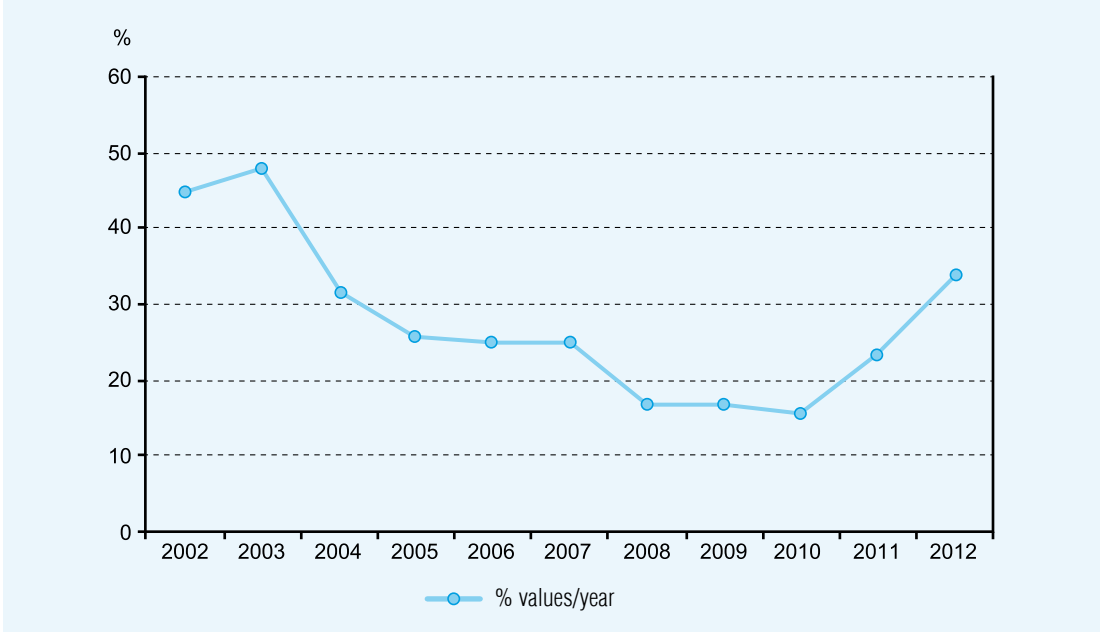
THE DEVELOPMENT OF PROPOSALS SUBMITTED AND RELATED OBSERVATIONS MADE BY THE COMPETITION AUTHORITY (2002–2012)



Source: State Audit Office (2013)

Chart 5

PROPOSALS ASSESSED AS A % OF TOTAL DRAFTS SENT



Source: State Audit Office (2013)

cumstances that would or would not warrant the launch of competition supervision proceedings.

The SAO Study conducted an in-depth examination of the competition advocacy activity of the GVH in two sectors, in the markets of electronic communication and electricity, from the aspect of the fight against abuse of dominance. The Study determined that in the case of both areas, service providers that have been present for longer periods continue to have a positional advantage over new entrants, in spite of the numerous competition supervision proceedings conducted and the full liberalisation of the market that had been completed in the meantime. Furthermore, the sector laws that ensure free market operation assigned considerable competition authority powers to sectoral authorities,[5] as a result of which, the GVH in essence was left with nothing but an "opinion-providing" role against the decisions of the former. *(For more details on the subject, see the SAO study).*

Competition advocacy

Chart 4 illustrates the direction of the activity exhibited by the GVH in assessing proposed statutes and concepts over the past 11 years.

The change in the ratio of proposals assessed in the period under review in comparison to the total number of draft statutes sent is remarkable: while in 2002–2004, this ratio was at around 30–40 per cent, by the end of the period, it dropped to 15-25 per cent, though in the past 3 years, the ratio – while the total number of drafts sent dropped considerably – improved slightly. *(See Chart 5)*

It was in its 2008 annual report that the GVH first indicated that – *"as a newly observed phenomenon" – "the submitters of proposals failed to send for assessment drafts of numerous highly significant regulations that concern the GVH's*

powers, and which as such should be consulted on with the GVH." The Authority mentions 77 legal norms per year withdrawn from assessment in 2009 and 2010, and 110 in 2011.

In addition to the general decline, fading into disinterest, in the assessment of and provision of opinions on draft legislation in the most recent period, we must also mention that between 2008–2012 , the GVH was able bring its observations to fruition in several important areas. One such area is the financial services sector. During the adaptation of the EU Directive on payment services in the internal market for example, service providers' information supply obligations regarding costs and fees were included in the regulations as an itemised list. Consumer-friendly changes have been observed in the areas of the regulation of motor third party liability insurance (MTPL) and consumer loans *(for more details see the SAO Study).* The other area that stands out is the competition-friendly amendment of the statutory background concerning inter-industry organisations and the agricultural market, regarding which the GVH had fought a long-time battle to ensure that conduct leading to prohibited restriction of competition could not be realised under special market circumstances.

The development of competition culture and the culture of conscious consumer decision making

Pursuant to the Competition Act, the development of competition culture on the GVH's part, primarily in the interest the social acceptance of competition, comprises the promotion of competition policy knowledge, as well as contribution to the development of professional public life dealing with the economic and legal issues of competition. At the same time, the amendment of law stipulated that, in order to develop competition culture, the GVH shall be entitled to utilise a maximum of 5 per cent of the total amount of fines collected in the previous year, which allowed the GVH to play an increased role from a financial aspect as well. As a first step, as of 15 July 2005, the Centre for Competition Culture was established within the GVH through a change in organisational structure, thus the activity aimed at developing competition culture was assigned an institutional framework within the GVH. Among other tasks, the responsibilities of the Centre also separately include performing the activities of the OECD-Hungary Regional Centre for Competition in Budapest. The Centre's responsibilities were set out in annual work plans which, in addition to the activities based on the GVH's professional background and aimed at developing competition culture, also included programmes, for the implementation of which the GVH counted on the work of other organisations as well, and for this reason provided financial – from the funds available – as well as professional support as needed.

Following this logic, of the GVH's numerous tasks supporting competition culture, two stand out: firstly, the development of direct customer relations, and secondly, the announcing of competition-themed tenders and the management of related applications. It is welcome news that in the spring of 2012, merging the two endeavours, the GVH announced a call for applications for "the support of the operation of a civil consulting office network", however, due to lack of interest, the tender was declared unsuccessful. At the same time, in previous years the GVH was highly active in distributing grants (SAO Study), but several errors were observed concerning the regularity of disbursement. The SAO's regularity audit for the period 2008–2012, for instance, determined that the subject of a fifth of the applications did not comply with the call for proposals; in the case of the budgets of several supported ap-

plications, it was impossible to determine the substantiation of cost requirements; and sanctions were not imposed in the case of late performance by beneficiaries or incomplete financial and professional reports.

CONCLUSIONS

By focusing on the GVH's competition supervision activity, the present paper attempts to illustrate how harmonised the various 'pillars' are and whether they support and reinforce one another or act against each other or are, perhaps, parallel activities performed independently of one another. Our objective was to assess whether during its activities, the GVH fulfills the tasks expected of a competition authority, thereby promoting the appearance and healthy operation of competition in as many economic areas as possible.

We were able to determine that in the cases of abuse of dominance and cartel agreements, there were eight sectors where the competition authority fined companies for repeat offences, which shows that the fining practice failed to encourage companies to respect competition. Among these sectors, there was only one in respect of which the GVH launched sectoral inquiries. This is a very low ratio and we do not know whether the GVH's activity in this area was this low because the current leaders still have more confidence in "classic" competition supervision tools (proceedings launched against certain business associations, fining) or because of budget-austerity reasons (sectoral inquiries undoubtedly require greater capacity, cost significantly more, and results are not as spectacular either). With respect to its statute-assessing and competition promoting activities, however, of the eleven years examined, the GVH dealt with 18 sectors in at least three of these years: these are closer to covering the economic sectors intensely impacted by competition supervision proceedings.

Overall the trend of the first two pillars of GVH activity – competition supervision and competition advocacy – is characterised by decline and a drop in the number of cases.

The SAO Study presented the GVH's competition advocacy activity broken down into phases, with the break down primarily in line with the harmonisation of law due to accession to the European Union. In the first phase, which lasted until the end of 2004, the competition authority voiced its opinions on the competition law regulation of a wide range of sectors, and mostly attempted to view competition advocacy as a "supporting activity" competition supervision (for example, in addition to the cartel proceedings conducted in relation to vehicle identity checks, it also made a recommendation to amend the legal framework that regulates the service in question, but we could also mention the parallels between its opinion given with respect to the amendment of the regulation of the agricultural market and the milling cartel case). In the second phase, the GVH mainly made considerable efforts in ensuring the smooth domestic adaptation of major EU directives, and the adoption of resolutions directly impacting competition in as timely a fashion as possible. Of the former, we must mention Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (the so-called UCP Directive), while among the latter, Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws stands out. The creation of temporary regulations, concerning the market opening for large network services (electricity, water) ensuring the transition from public utilities to a wholly open competitive market also happened in this phase, which were far from successful from the GVH's perspective.

In the area most impacted by competition advocacy, namely the healthcare and the close-

ly related pharmaceutical trade sectors, the competition authority opened numerous proceedings, mostly because of the deception of consumers in a manner that influenced competition. In connection with this, it is unclear why no analysis was performed extending to the whole of the healthcare or the entire pharmaceutical market. The situation is very similar in the area of construction industry public procurement: there are many repeat offender companies, the amounts of fines are also significant, and the GVH has made recommendations on five occasions to reinforce the competition-friendly nature of the legal framework. Yet, there has been no competition-oriented sectoral analysis.

In the thoroughly examined strategic sectors of network services, given, on the one hand, the GVH's limited "opinion-providing" authority role – the right of appointing service providers with considerable market power and assigning competition-reinforcing obligations is still in the hands of sectoral authorities – and, on the other hand, the positional advantage of former monopoly service providers that continue to dominate the network even a good few years after the full market opening, competition is still unfolding at a very slow pace. This is true in spite of the fact that in the electricity market sector for example, the GVH purses a highly coordinated competition policy (in comparison with other areas), as it has opened competition supervision proceedings, has made a number of competition-promoting recommendations and has conducted a sectoral inquiry as well.

COMPETITION CULTURE

From the aspect of competition authority activity, the most important result that can be achieved by the development of competition culture (and increasing consumer consciousness) is if market players willingly adhere to competition rules. As sellers of products and providers of services, it is in everyone's interest to be able to sell at a fair profit, by excluding competitors and expressing all production costs in the sale price. At the same time, it is wholly justified for enterprises to protest loudly when, as raw material procurers or users of the services they mediate, they are faced with monopolies. Getting market players to comprehend the mutual benefits of market competition should be one of the main objectives of the third pillar of competition authority activities. If more and more companies join the path to voluntary competition law adherence, in addition to the fact that social welfare increases as a result of the price reducing effect, the GVH will be forced to intervene much less frequently as a imposing authority, which in turn saves public funds.

All in all, the volume of task performance by the GVH is shown to be shrinking in all areas, and one of the possible reasons for this is the lack of harmony between certain pillars of activity, particularly supervision proceedings and the sectoral inquiries related at an institutional-regulatory level, and competition advocacy in certain sectors.

Another striking phenomenon is that the GVH's "hand cannot reach all corners"; the strictness of the competition authority is not uniformly enforced in all sectors, and its means, in comparison with competition-restricting phenomena at a regional level, are quite limited. Large corporations with major interests in participating in cartels in critical sectors (road construction, agriculture) will return to unlawful conduct with the passage of time, and not even the increasing level of fines imposed during repeated proceedings can restrain them. The only area where the protection of competition is close to playing the role expected of it is in the field of the enforcement of the freedom of consumer decision-making.

Notes

[1] The authorisation of concentrations, in essence, is a case type that is different from the others, as the majority of cases are launched upon request, and the outcomes, depending on the impact of the contents of the request on competition, are either the authorisation or prohibition of the merger. The proceedings launched due to consumer protection, prohibited agreements (cartels) and abuse of dominance are, however, opened ex officio, and their objectives are to return market players to law-abiding behaviour, by means of fines, setting obligations, etc.

[2] The GVH's activity in support of the justice system, in the course of which it provides advisory services to judges concerning the legal area of competition law, and ensures access to relevant literature on competition law.

[3] In the given year, the total amount of fines collected was greatly increased by: in 2004, the motorway cartel1 (fine: HUF 7,043 million), in 2006, the car insurance cartel (fine: HUF 6,814 million), in 2010, the motorway cartel$_2$ (fine: HUF 7,178 million) and the milling cartel (fine: HUF 2,294 million).

[4] The GVH's signalling to legislature that in the interest of competition, a change in the legal framework is needed.

[5] In the sectors of electronic communication and the electricity market, the National Media and Infocommunications Authority and the Hungarian Energy and Public Utility Regulatory Authority are competent respectively.

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