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Competition and the Hungarian competition policy

Tendencies in the changes of the competition status quo of the Hungarian economy from the point of view of the legislative regulation of competition

My paper is the result of inner motivation. Having spent almost half a decade in the Competition Supervisory Board of the Hungarian Competition Authority I have felt an increasingly frequent and strong urge to answer the questions: what is the tangible result of the legislative regulation of competition, does it have specific bearing on the formation of competition situations, and has it contributed/is it contributing to the creation, or, indeed, the development of the competitive sector of the economy? I therefore request the Reader to regard my paper as a stage in my process of thinking. The author will try to summarise how far he has come in answering the original question. Meanwhile – naturally – he realised that he may not be seeking the answers to his original problems but has come upon some other, more important one in the course of his reflections.[1]

SOME BASIC PRINCIPLES

I cannot undertake to include in my investigations all areas of the economy important from the point of view of competition. I will therefore concentrate in my study on those sectors only that the Hungarian Competition Authority (GVH) has most frequently dealt with during its mission of regulating competition. That does not mean that in other markets and other areas our competition landscape should be free of problems, and not even that I will expand on each area where there are major competition related difficulties.

Let us stop for a second over the meaning of the term: competition related difficulties. What does it refer to in conjunction with economic sectors, or individual markets? There are two major threats to competition: the state, and the competitors themselves. There are some branches in which no competition can come about or no competitors may enter by way of a natural process. That is called monopoly by technical literature. Such markets are (for various reasons) closed to competitors, and so there is one single undertaking to reap all the benefits of the monopolistic situation. For a long period we thought landline telephony, rail transport, gas, electricity, basic public utilities (water, sewage, waste collection, lighting of public areas, etc.), postal services, cable television services – to name only the most important ones – were such areas. In these areas competition related problems result from the closed nature of the market, i.e. the fact that unless the state acts upon it (institutes regulation), no undertaking other than the incumbent[2] ones protected by monopoly can find

their way to the consumers. That also has a simple technical reason: the incumbent firm owns some of the indispensable equipment (primarily the network) access to which is instrumental for competition to be present. Without such access there is no competition, thus competition related problems are similarly disabled.

Competition begins when these markets open, i.e. when appropriate legal regulation and action by a public administrative body create the conditions of access to such indispensable equipment. That is usually a complex regulatory challenge in which the general aspects of the competition must materialise in the specific context of the branch. Which are these aspects, and how are they realised in the given branch? What, how, and when to regulate (or not to regulate)? Such questions constitute the set of competition issues related to opening the market. When preparing, developing, and implementing market opening, the GVH may first come up against the state (and legislators) if the latter do not or do not appropriately take account of the general aspects of competition, and so market opening fails to result in effective[3] competition in the given sector.

The other set of competition related problems could be labelled traditional, classic issues of competition. It is about sectors without natural monopoly, without indispensable equipment, and, consequently, without naturally created problems of access to be resolved by either the state or some other regulatory authority. One could even phrase it as follows: in such cases the conditions of competition are or could be present. Of course, organisations already in the market would like to alter these to their benefit or to the detriment of their actual or potential competitors. Market actors are able to hamper, distort or eliminate competition in any market because competition cannot defend itself. However, competition as an institution must be defended rather than just individual competitors.

The following are the traditional groups of competition related problems:

- use of unfair competition techniques by competitors against each other
- deception of consumers, abuse of dominant economic power, and finally the gravest one:
- collusion of market actors, i.e. the cartel.

The present study aims to investigate whether the efforts of the GVH have had any influence on modifying the overall situation of competition, and if so, what way such influence surfaces. In the following chapters we wish to answer the following major questions:

❶ Which were the more significant economic sectors or markets in which competition related difficulties emerged following the political changes? What intervention and with what frequency was instituted?

❷ Can any tendency be observed after an analysis of the nature and the frequency of these instances of intervention from which assumptions could be made concerning the status of the competition in the given economic sector/market?

❸ Which were the economic sectors whose competition related problems were given extra attention?

During the approximately 15 years that passed since the political changes there were two processes of change of fundamental significance in the legislative standards of competition regulation. Act LXXXVI of 1990 on the Prohibition of unfair market behaviour (PUMB) was replaced by Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (PURMP), effective 1 January 1997, a piece of legislation considerably more up-to-date, and closer to EC legal standards. It brought about changes of even more significance following 1 May 2004 whereafter the domestic bodies of competition regulation (GVH, courts of law) can, and, in certain cases are even obliged to apply

the EC's provisions concerning competition law.

While the two dates referred to above fail to coincide with the segmentation of the transition process as recognised by several sources, they are not far apart from each other, either. As regards that segmentation, I can most easily identify with the views of *László Csaba*, who claims that the Hungarian economy mostly resolved its tasks in conjunction with the first phase of the restructuring (transition) process by 1996–97[4]. Most experts relate the second phase – at least in the East-Central European region – with the preparation process to EU accession. This is why the two dates in question essentially overlap with the early (first) and later (second) phase of the economic transition process. Another question I seek an answer to is what major differences emerge as one compares the two phases in terms of the appearance and the handling of competition related problems. As part of that discussion I will try to answer briefly what one may expect on the basis of experience so far regarding the appearance and handling of competition related problems following our EU accession, and, based on the same, what is the present competition landscape, and what expectations are justified concerning its future.[5]

I would like to discuss briefly the way in which competition regulation correlates with the status of economic competition labelled either competition landscape/status of competition or competition climate. The first and perhaps most important statement is that competition regulation cannot establish competition where the requisite conditions are not in place. If in a particular market an undertaking is in a natural monopoly, then – due to the given technical, economic, and regulatory conditions – that single undertaking can more cheaply manufacture a product that does not have a close replacement product than any combination of two or more companies.[6] That well-known thesis of economics holds true to the present day, but technical conditions in numerous sectors – previously thought to be natural monopolies – have changed so that an artificial change in the market's competitive conditions became possible (branch level regulation). Thus my first thesis is that competition regulation does not create or bring about competition in the market.

My second thesis: it is not a requirement against competition regulation to determine the conditions of competition in a given sector, how large the competing companies should be, what factors (price, quality, etc.) should form the subject of competition, what the desirable (competitive) price should be, etc. And that thesis is far less self-evident, sometimes not even for economists. There is no thesis of economics to suggest that the more companies in the market, the more intense, and the more effective the competition. The competitive conditions of a sector, or of a market may be best modified by economic policy. Provided that these changes take place within the frameworks of applicable legislation, the GVH is entitled to add its observations to draft laws, but it fails to have the right of veto even in a case where the legislative provision to be passed is obviously of an anti-competition nature.[7]

What is then the duty of competition regulation in conjunction with the competition landscape? The primary role of the GVH in the functioning of a market economy, and the freedom of competition is to give effect to the provisions of the Competition Act to the benefit of the public, in a way which increases social welfare and competitiveness, and to help bring about a situation in which there is branch-level legislation[8] creating the conditions of competition even in areas where competition is not possible.

The operation of the GVH, and thus the implementation of competition policy princi-

ples followed by it rest on two pillars, namely on competition supervisory procedures, and on efforts encouraging competition. Competition supervisory procedures stand for the implementation of the financial and legal provisions of the Competition Act in accordance with established processes. As for the encouragement of competition, it means the activity of the GVH whereby it tries to influence decisions by the state so as to protect competition.

TENDENCIES OF COMPETITION IN THE PERIOD 1991–1996

Competition legislation was developed in the late 80s, prior to branch level legislation. Our model in the course of legislative efforts was the German competition law, and we likewise took into account the provisions concerning competition law of the Treaty of Rome, i.e. the EC model. That decision was justified partly by historical antecedents, and partly by traditions. The law was drafted in 1989 by the parties of the Opposition Round Table, experts, and renowned scholars of the subject. Although there was no consensus concerning the content of the Act[9], yet the newly formed Parliament passed it in 1990. The creation of laws on branch-level competition began long after that.

The application of the first competition law began under very tight, and tense conditions from both economic and political points of view. Following a period of 40 years of the state's overweight the law was very restrictive concerning the manoeuvring space of the GVH. The GVH was faced with a double task: on the one hand it had to protect competition as an institution from direct state interference, and, on the other, it had to protect competition, then unfolding, from the restrictive moves of market actors. These tasks had to be implemented in a rigid market structure formed several decades before, and controlled decisively by monopoly organisations. Another objective of the 1990 PUMB included breaking state monopolies, and the opening up to competition and the private sector some branches previously controlled by the state.

In the first years of the transition there was an immediacy to re-engineer the laws created for regulated markets for a market economy context. So the GVH concentrated its competition encouragement efforts especially on separating authority functions from entrepreneurial functions, and on creating the accounting, transparency, and institutional conditions of regulation suitable to enforce efficiency.

Experience of the first six years of competition regulation

Upon assessing the first Hungarian competition law one has to emphasise that competition legislation is a new area in law, and a new legal institution that is mostly capable of producing its ful effect in a context of a set of standards of a relatively developed market economy[10]. In that sense the PUMB law may be characterised as a premature birth. It was forced to develop, and prove its operability and viability simultaneously to the transition of the economy, while it could not – and, in fact, was not in a position to – work a significant influence on the process of economic transition, especially on privatisation. It is due to that relative 'immaturity' that the GVH sometimes had basic values such as the protection of the interests of the public, of the competitors, and the consumers intermingled in its operation.

The Competition Act is essentially a sector and branch neutral set of standards applicable to any actor of the market regardless of economic policy priorities. The principle of sector neutrality may cause confusion of roles to the GVH especially if some branch level regulation derivable from the principle of the public inter-

est is not available or is deficient. In such cases economic actors frequently expect (up to the present day) the GVH to fill in the legislative vacuum. That, however, is not a justified expectation because if a certain branch requires specific regulations, then those logically cannot apply to other branches; thus competition regulation cannot assume that role. During the first six years of the transition the creation of sectoral regulations only just started.

The PUMB embraced two bodies of legislation: one about fighting unfair competition that served the integrity of competition, and the body of legislation to counter restrictions of competition that protects the freedom of competition. Part of the legislation to counter unfair competition are the so-called classic acts of competition including denigration, breach of business secret, instructions to boycott, servile simulation, and integrity of tendering as well as the prohibition to deceive consumers. One may state post facto in conjunction with the latter that the competition law must also play a role of making up for missing legislation because nearly 8 years had to elapse before Act CLV of 1997 on Consumer protection was enacted.

New enterprises entering the market in large numbers with deficient or plainly lacking knowledge of standards of market behaviour brought with them a long series of cases of deceiving consumers. Suffice it to mention the pyramid scheme type of games, lottery games or mail-order firms. Entrepreneurs trying to profit almost exclusively from deceiving consumers caused significant social damage to Hungarian consumers by abusing the latter's inexperience. Regarding that group of cases the primary duty of the GVH is the protection of the public interest associated to the integrity of competition, i.e. remedying the distortion of competition and the market that concerns most consumers. However, complaints by individual consumers are not the competency of the Office as sanctioning these is specifically the task of consumer protection agencies, although one has to admit that these did not exist at the time. That circumstance also contributed to the problem that even with a large number of cases processed, many complaints remained unremedied.

The number of so-called *consumer protection* cases grew steadily in the first ten years. With that number growing the number of actionable cases (i.e. where the fact of infringement was established) also grew. Among infringement cases consumer protection cases (even today) amount to about triple the cases of abuse of dominant power, and are one magnitude more than cartel cases.

Consumer protection cases in the first years began at the request of the competitor. Most cases related to misleading advertisement or concealing an unfavourable quality of the product. Condemnatory decrees were issued most frequently in conjunction with mail-order services, lotteries, or the illegitimate use of the adjectives 'best', 'cheapest', or 'fastest'. 1994 saw the appearance of advertisements by multinationals, followed by pyramid schemes. A similar case gave rise to the sum by far the highest to be paid in fines by MIKROKER Kft. sentenced to pay a penalty of 400 million HUF. And in 1995, cases of time sharing holiday arrangements began.

Another decisive body of legislation concerning competition is the one against restricting competition, and these together are named antitrust legislation[11]. The provisions of these apply to cartels, abuse of dominant economic power, associations created by entrepreneurs, i.e. areas of a weight where defence may no longer be left to handle by the parties of such infringements. The assessment of the individual cases, and the decisions require complex investigations of an economic and legal nature, and the institutional defence in these cases must be the tasks of the Hungarian Competition Authority.

So-called horizontal agreements aimed at restricting competition were regulated by the provision on the prohibition of cartel in chapter III of the PUMB. The law gave individual names to the cartels depending on whether the underlying agreement concerns price or the market, and among vertical agreements the law handled specifically the re-sale price. So-called *bagatelle agreements* or agreements with little significance were taken off the blacklist; such agreements are ones where the parties involved have a market share below ten percent. Similarly off the blacklist were cartels aimed at preventing the formation of dominant economic power. The price and market cartel transactions of the last 6 years in which gross infringement was established, some of which reached legal effect included the meat cartel (Vj–49/1991), the sugar cartel (Vj–224/1992), and the coffee cartel (Vj–185/1994).

The so-called meat cartel started when 20 state owned meat processing companies founded the Budapest Meat Wholesale Joint Venture (BHKV) with the purpose of securing meeting meat and meat product needs of the capital city in the framework of the then customary economic management practices. The board of managers of the BHKV decided that in 1991 only the BHKV was allowed to sell pork and beef in Budapest. Simultaneously to that it discontinued the Budapest sales by the manufacturing companies in a direct manner in a period of general oversupply in the market. Companies involved in the sugar cartel announced identical producers' prices which they raised at identical rates four times in 1991, and in the summer of 1992 they continued to raise their prices at almost identical amounts mostly on identical dates despite significant unsold stocks accumulating by then. The coffee cartel involved three price raises on identical dates by the five major trading houses controlling a decisive part of the market, a move affecting the consumer prices of roasted coffee on the domestic market between 15 June and 1 October 1994.

As regards the situation of dominant economic power chapter IV of the Competition Act does not object to its development or its existence, only its abuse. The objective of the legislation is to control the activities of companies of an exploitative nature, restricting competition, and distorting the market. In the first six years there were 52 condemnatory judgements in economic dominance cases by the Competition Supervisory Board. Most of these were representative of the rocky road that leads to a market of competition. Service providers in a monopoly situation and companies rendering local public services were for instance regular actors of that type of case. Controlling the activities of natural monopolies would have been particularly important in the early stages of the transition period. It is partly the merit of exactly the Hungarian Competition Authority that regulatory issues of gas distribution and electric utility, and telecommunications companies attracted public attention along with some other companies that had exclusive ownership of essential facilities or services indispensable in a particular branch[12]. However, let us see other examples as well:

The overwhelming majority of the cases starting in 1991 involved buying up of agricultural produce (cereals, sugar-beet, milk) as a result of the distortion of power relations resulting from sales difficulties. In 1992 one of the major dilemmas was the coexistence of 'market/non-market'. In 1994 e.g. it gave rise to 6 condemnatory decrees, even though each involving low fines, for unjustified refusal to contract.

One of the most important cases of 1995 was conducted against ELMÜ (Electric Works, Vj–38/1995). The reason was that the company charged disproportionately high fees for reconnecting customers disconnected for payment arrears, and failed to notify the consumer in

advance of that fact. In the HÍRKER Rt. case the infringement was hindering the entry of the competitor in the market (Vj–135/1995).

In 1996 another OTP bank affair ruffled many feathers. The bank unilaterally raised the administrative charges on housing loans retrospectively (Vj–12/1996). OTP infringed the law by notifying its customers too late, only in November 1995 of the raising of administrative charges taking effect on 1 September 1995. There were three other proceedings against OTP, all involving housing loans. From 1996 so-called cable television cases came increasingly frequently most usually involving excessive increases of charges or the unilateral changes of the programme packages.

Control of organisational association of entrepreneurs (control of mergers) was regulated by chapter V of the Competition Act. There were few interpenetrations (69 cases) until the mid 90s as *Table 1* indicates. The reason – other than the organisational decentralisation process referred to earlier – was the narrow specification of territorial scope. Thus from among the interpenetrations investigated there was only a single case in which the licence application was refused, namely when the Gastrolánc Kft. of French interest wanted to buy up Junior Vendéglátó Rt. (Vj–172/1994). Due to the two firms' high share in the Budapest student catering market the GVH saw no proof that the quoted advantages of concentration (e.g. improvement of quality, cutting down on costs, etc.) could materialise in practice.

The activity of GVH to foster competition in the first six years of transition

As early as the first moves of its operation, the competition authority had market analyses prepared to identify the sectors that it found particularly sensitive from the point of view of competition. However, the institution of sectoral analysis was still missing from the PUMB This is why findings based on the studies mentioned above to be taken seriously by market actors were available much later, in the framework of the Competition Supervisory Board process following the 2000 amendment of the PURMP law. The GVH initiated 12 such investigations during that period. That series of investigations, even though it was not a priority at the time, could be after all interpreted as a preparatory stage of later proceedings. This is e.g. how the cement industry, the construction industry or the car repair sector was investigated, along with all other areas where former state monopolies or state owned trusts were characteristic, and so competition did not have its institutional barriers stemming from the economic system. The role of the investigations was partly exactly to encourage companies to shift from their habitual automatisms to a competitive attitude.

Table 1

CONTROLLING ORGANISATIONAL ASSOCIATIONS

Case type	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Deceit of consumers	6	24	29	50	53	56	74	72	65	86	59
Agreement restricting competition	21	5	3	1	5	9	5	15	15	18	10
Abuse of superior power	28	32	26	28	46	52	45	44	35	56	33
Controlling interpenetratic	5	8	3	4	24	25	30	49	46	70	81
Other	17	31	39	36	29	22	16	–	–	–	–
Total	77	100	100	119	157	164	170	180	161	230	183

A further basic element of the reforms implemented in the course of the transition process was the de-composition of state property. The privatisation process required the transformation of large state owned companies into some other legal form, in some cases even prior to the privatisation. That required only few companies to be broken (further) up for competition policy considerations. The privatisation of state assets was virtually fully completed in industry, in services, and in agriculture. The share of state owned assets sank below 30% by 1996, at which time about 85% of the GDP was generated in the private sector.

From 1991 to 1997 the competition authority as a permanent guest at the meetings of the privatisation decision making body had consultant status in the majority of acquisitions completed in the course of the privatisation process[13]. It was a conscious decision by GVH management at the time to choose the role of consultant[14] instead of requiring veto rights or even just voting rights in privatisation matters. The reasonability of that decision was questioned by many later on. That decision then served the purpose of helping the political consensus supporting competition policy to solidify. They therefore wanted to avoid controversial situations in which competition policy would most certainly have lost numerous battles. As a result of the privatisation process the GVH eventually had 11 merger cases on its desks, and refused the license only in one single case.

■ However, privatisation did not always deliver the results associated to it. In the sugar industry and in road construction the post-privatisation market became excessively concentrated. Meanwhile privatisation in the retail sector – during which geographically arranged networks were broken up to individual shops (assuming that these would reorganise into much more effective and competitive groups later) – resulted in an excessively fragmented structure. Multinational companies set up immediately big-size retail firms through their investments while their Hungarian counterparts could continue their operations mostly as the small actors of the market. And in some sub-sectors of the food-industry such as the dairy industry privatisation failed to fend off surplus capacities, which, due to the governmental subsidy on milk resulted in and stabilised overproduction. Privatisation in some sectors even re-instituted excessively fierce power struggles e.g. in the vegetable oil or the cable manufacturing sectors. In the food industry some privatising firms closed down the local plants with the sole purpose of replacing the supplies to Hungary by some alternative source. Yet, the problem of concentration of market power was successfully avoided in both the tobacco and the refrigeration industry as the members of earlier groups were split up prior to the privatisation process. The companies that remained in state ownership, however, even in the otherwise privatised branches, could remain in a position which could perhaps bring competition related problems into play. Such a situation evolved in the poultry sector, in schoolbook publication (where the only state owned company, the National Schoolbook Publishing House privatised as late as 2004 held 50% of the market), and in pharmaceuticals wholesale (where the only major state owned company, Hungaropharma privatised in 2002 had to compete with a dozen privatised but smaller firms)

■ In the energy, telecommunications, and transportation sectors the shift toward open, competitive market structures was not even beginning. Businesses that were to be statutorily operated by the state, or a local authority, or a public benefit association or through a concession tender included pharmaceutical supply, postal services, telecommunication, management of broadcasting frequencies, the railway, mining, gas distribution, and electricity supply.

The term of the concession could range from 5 to 35 years, and even individual pricing regulations were sometimes applied to it. That time privatisation related considerations were much more powerful than competition related ones. The best example here is the 8 year telecommunications concession monopoly granted to MATÁV in 1993 in an attempt to attract investment.

■ In the agricultural sector the system of specifying guideline prices was based on the activity of the National Product Board, a body consisting of producers, processing plants, and sales organisations. Changes in prices, and other terms required the consensus of the parties interested. The agrarian market regulations[15] provided that the prices stated, and restrictions of quantity adopted by the Product Board could be exempted from under its provisions prohibiting agreements restricting competition. Exemption depended/depends on whether the Minister of Agriculture was/is of the opinion that the economic advantages of guideline prices, and quantity restrictions exceeded the disadvantages resulting from restricting competition. While the Minister had to observe the provisions of the competition Act, the standard applied by the Minister of Agriculture turned out to be much more general than the essential exempting criteria provided by the Competition Act. Due to more relaxed assessment, the result could differ from what the GVH would most probably have decided.

■ In the banking sector the branch supervision authority was responsible for enforcing competition policy until 1994. (That duty is today under the GVH fortunately). That change was necessary as noteworthy competition related problems emerged in the sector already in 1994. Part of them concerned the OTP whose dominant power was still evident at the time. It was a source of concern in the banking sector in this period that the price of banking services was higher than would have been justified in a real competitive market. In case Vj–188/1994 e.g. it qualified as abuse of dominant power that the OTP required a public notary statement before it granted the so-called Start-loan.

■ In the early 1990s the insurance sector worked practically as a duopoly of the Hungária and the Állami Biztosító insurance companies as the two market actors enjoyed exclusive rights in certain insurance sub-sectors. When these markets were privatised, the market opened to other enterprises as well, and new insurance sub-sectors, and with them new insurance arrangements could be introduced. Numerous foreign insurance companies entered the market, so the members of the former duopoly lost to them some of their market share.

■ The privatisation of pharmacies is largely over, yet, that market is not essentially characterised by competition. Following 1990 the number of pharmacies grew by 50%, and soon there were 74 wholesalers instead of a single one until then. Retail prices still remained fixed and uniform, even though they were not subject to the VAT Act. The wholesale price of pharmaceuticals was technically free, but the Ministry of Health decided on the statutory amount of subsidy on some pharmaceuticals. The Ministry, and the National Health Insurance Fund (OEP) conducted annual negotiations with the sector's representatives on wholesale prices to identify the proportions of budgetary expenditure, and the subsidy. There was a statutory maximum to the aggregate margin between wholesale and retail prices. In practice the customers came across uniform and fixed prices. On one occasion the GVH recommended the relaxation of the restrictions on the products sold so that the pharmacies could generate profit from selling other products as well, and to have the other restrictions – apparently applied with the aim

of ensuring profits, and the provision of the minimum statutory service – also eased. That recommendation was not accepted.

■ In the Hungarian domestic bus transport market both entry and the charge of the services are regulated, but in international transportation there was competition. The earlier monopoly of Volán was broken up into regional companies in 1989, and market entry from 1989 to 1991 was free. When the state owned firms went bust, some jobless bus drivers decided to go it alone. The competition thus launched was found clearly excessive by some, so in 1991 they reinstated the regulation whereby the service may be provided in the framework of a concession or directly by local governments. Maximum prices were thenceforward set by the government. In the stead of the concession system, the GVH recommended a license-based system, but the ministry failed to approve it. The GVH presented similar arguments for international personal transportation as well, and was successful this time. This is how in the international arena there are private firms providing scheduled transport services.

Long-distance haulage services were essentially liberalised meanwhile, and there are numerous small companies in the market even at the present moment. The former national haulage firm, Hungarocamion was privatised. The domestic market, however, was still dominated by state owned, and subsidised haulage firms.

■ Since August 1994 the electricity sector has been under the direction of the Hungarian Energy Agency (Magyar Energia Hivatal, MEH), itself under the umbrella of the Ministry of Economic Affairs. The GVH argued for placing the sector in the hands of an independent body rather than a ministry, and Parliament was in favour of the argument. The MEH had its obligations as well as its rights in areas important from a competition point of view including entry, behaviour, and exit, and even in the area of consumer protection. The Ministry has, however, insisted on its discretion of deciding on issues of pricing and entry. The law enabled direct retail trade with regard to the individual large consumers. Industrial power stations, however, which generated the power for their own functioning could feed their surplus back in the grid same as the public thermal plants could do. To serve this purpose, the law enabled – but not obliged – the owners to grant also other companies access to its assets. Although prices had to be set keeping competition considerations in mind, the Minister held full authority, and so the Competition Act could not be enforced. The branch level law applicable at the time – Act XLVIII on Generating, transmitting, and distributing electric energy – specified transmission and distribution as natural monopolies requiring state regulation that grants exclusive rights, and imposes the obligation of distribution.

Despite that sectoral regulation the Competition Act could be applied in the electricity sector as long as it was not indirectly/implicitly substituted by other legislation. The GVH investigated and approved four mergers on that basis that concerned power stations, and a mine. With mergers concerning electricity, distance heating, and gas two licences were required, i.e. both the GVH, and the MEH could halt the process. There were no cases during the period in which the sector supervisory section GVH and the MEH should not have agreed. In one of the mergers the GVH was perhaps excessively lenient as they gave the green light on a share transaction (Vj–241/1995) that resulted in the intertwining of various rights of direction among regional distributors, and which the MEH had previously permitted. One of the investors, the Electricité de France directed two distribution businesses ÉDÁSZ, and DÉMÁSZ. The other investor, Bayernwerk AG, in turn, directed a

third one, DÉDÁSZ. They therefore agreed to divide ownership in ÉDÁSZ so as to end up with identical stakes, and would jointly manage ÉDÁSZ. The GVH found that just because due to the concessions the areas were too far away from each other geographically, the distribution companies were not competing with each other. So the competition generated by the new investments was probably too limited to influence the decisions. Further, both distribution companies were dependent on the monopoly of the national transmission company. The Competition Supervisory Board failed to take account of the fact that upon liberalising the market these companies could become the likeliest new entrants in each other's markets. And joint management guaranteed exactly that this threat should not materialise. The Competition Supervisory Board was of the view that the prospects of retail level competition were not readily apparent in the sector at the time. One has difficulties understanding, however, that the GVH, based on the same logic, prevented a similar acquisition in telecommunication because the liberalisation programme was more detailed in that case, and the new competitors were truly about to enter.

THE COMPETITION LANDSCAPE FOLLOWING THE CONCLUSION OF THE FIRST STAGE OF THE TRANSITION PROCESS TO A MARKET ECONOMY (1997–2005)

The second generation Competition Act – Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (PURMP) – extended the application of the scope of the law from 1 January 1997 onward to Hungarian acquisitions of foreign businesses. The number of corporate interpenetrations grew steadily between 1995 and 1998, when the GVH had to process just below 100 license applications. Nearly one third of the interpenetrations granted were associated to privatisation. Such privatisation cases were sped up by a technical cooperation agreement concluded by the managers of ÁPV Rt. (State Privatisation and Holding Company), and the GVH in October 1997. That agreement enabled an accelerated the decision making process by GVH in merger cases relating to privatisation thereby ensuring a rapid conclusion of the individual cases.

In accordance with the merger provisions of the Competition Act the GVH could rubberstamp the transaction as soon as its advantages outweighed the disadvantages resulting from restricting competition. As an added feature, the law contained failing-firm-defense provisions. That meant that the GVH could okay mergers of otherwise anti-competition effect against proof by the parties that without merging, the continued operation of one of them could come under threat.

Privatisation related duties shrank by 1998 in spite of the fact that privatisation was put off in some areas. Such deals included the still unsold companies related to cultural assets, broadcasting, postal services, and transportation of persons on public roads. An increasing role was given within ÁPV Rt. to asset management, and reorganisation as part of that function. Such reorganisation concerned partly the set of privatisable companies that required to be kept eligible for privatisation, and companies remaining in long-term state ownership where the reinforcement of companies was justified by national economic considerations as well as the improvement of the sectoral policy positions. The ÁPV Rt. as owner was charged with the double duty of selling the decreasing entrepreneurial assets to private owners, and to safeguard, utilise long-term state owned assets, and maintain, and improve their operating potential. In 1998 ÁPV Rt. did more inspections, control, and holding services. It was a new phenomenon that – for the first time since the political

changes – the amount of state property was again on the increase. Thus Postabank, BÁV, and Malév were returned to state ownership, and the re-nationalisation of the gas business line of Mol Rt. was again under consideration.

Mergers

While privatisation opportunities and duties reduced significantly by 1998, mergers reflect an opposite trend. The Competition Supervisory Board responded to 49 applications in 1998, 46 in 1999, and 42 until 31 July 2000. As elsewhere in the world, we also witnessed the continued process whereby companies tried to reinforce their market positions by mergers. In 2000 most of the mergers took place in the telecommunications sector with 13 applications coming in from various market actors. The Competition Supervisory Board approved most mergers except for the one whereby Matáv wanted to acquire the Tata cable television network as there were three other well capitalised firms applying for the cable television network, and the competition by the three companies was expected to effect beneficially future consumer prices.

The Competition Supervisory Board set conditions, and specified obligations before it consented to the mergers. One exception was the Matáv/Westel deal. The Competition Supervisory Board saw no reason to ban the merger, but required guarantees to ensure effective competition through non-discriminatory treatment of other mobile telephone service providers.

Industrial mergers in 2000 numbered 17 including 6 from the energy sector. In addition to telecommunication there were four in the food industry, three in both pharmaceutical trade, and financial services, and one in newspaper publishing allowed by the Competition Supervisory Board.

Unfair influencing of consumers' decisions

In unfair influencing of consumers' decisions the experience of earlier years continued. Infringing the freedom of consumers' decisions continued to be a priority case type in terms of both number and importance. Misleading information in the medical aids market, deficiencies in the course of sales campaigns of trade networks, and unjustified use of adjectives in the superlative were all recurring phenomena.

■ The financial services market emerged separately as a threatened market. The increasing complexity of financial products, the appearance of new products (e.g. the bank insurance product group) would have required advertisement and promotion providing even better information on the significant features of the given product so as to achieve freedom of consumers' choice. At the same time the advertisement and promotion of financial products were often not aiming at facilitating comparison of the product to others, or communicating or highlighting its most important features even after the purchase. Significant deficiencies continue to abound in consumer information media other than advertisements. Although most of these problems appear in GVH procedures, they were only partly possible to handle within the framework of the Competition Act as some had to be remedied by the financial regulatory authority.

In its proceedings against the OTP Rt. (Vj–181/1999) the Competition Supervisory Board established that in banking services possible future changes deriving directly from the contractual relationship for an unspecified period cannot be left out of consideration. Similarly recurring is the problem caused by credit interest information published by banks. Some banks publish fixed or changing interest for their loans, advertising them as an especially advantageous deal, and list it as a potential

benefit for consumers. In its promotion material on changing interest personal loans, Citibank Rt. (Vj–68/2000) failed to publish essential information on the product. Then the bank made the performance of its contractual obligations conditional upon an undisclosed criterion such as the profitability of the arrangement, and transferred all exposure from changing interest exclusively on the consumer.

■ That time enterprises organising so-called customer groups also appeared in Hungary. Customers' groups are voluntary, temporary purchase arrangements that are based on the association of persons united by a common interest. That common interest is that they acquire certain goods at small instalments, and a relatively long maturity period. That is achieved by members of the groups committing themselves to save up, i.e. paying the specified instalment for a longer or shorter period prior to collecting the item in question. They stage draws at regular intervals to select the member who will receive the given item on the given date. Credit Center 2000 Kft. (Vj–61/2001), an enterprise organising customer groups advertised its services as if it was rendering banking services, keeping the substance of the service completely undisclosed. The advertisement highlighted the feature of 'hire-purchase without banking interest' available to customers, but failed to refer to the fact that the enterprise itself did no more than arranging and managing customers' groups. The customer could only learn that fact when contacting the enterprise. It is regrettable that the government decree regulating the arrangement of customer groups was first delayed, and was subsequently taken off the agenda, while it could have helped a great deal in enforcing consumers' rights had it regulated the compulsory content of customer information material, and rescission by the consumer in due course.

■ The infocommunication market is likewise a threatened area. Ever since the mobile phone providers entered the market, there has been fierce competition to increase market share, which is done by winning over customers by promotion/advertising. Here, too, ads began to appear comparing a provider's product to that of the competition in numerical terms along with promotion concealing one or more essential features of the product or service. Simultaneously to the opening of the telecommunications market competition is setting in more and more powerfully in the land-line telecommunication segment as well, moreover, a characteristic feature is that land-line and mobile networks may under certain conditions be in a limited competition with each other. In case Vj–67/2001 the Competition Supervisory Board established infringement on the side of MATÁV Rt. for having withheld the essential barriers, conditions of the Ritmus service package in its information leaflets, promotions, and the business regulations. It failed to communicate that those choosing the package cannot change packages within one year without detrimental payment consequences. Companies of the telecommunication sector forced to compete often introduce new services available at complicated terms. In that situation it is a particularly important requirement that the consumer should be able to have all the necessary information available before choosing the service of one competitor.

■ The subject of a larger group of cases concerns infringement by trading networks. The large number of such infringements is explained by the fact that commerce has undergone a major change in Hungary over the last 10 years. Large, and increasingly powerful retail chains enter the market with growing popularity and turnover. Saturation in the market brings about cut-throat competition, which requires the analysis of the behaviour of competitors, and integrating such information in the companies' strategies for growing market share. However, such behaviour only qualifies

as unlawful in accordance with the Competition Act if they are unfair, and/or could give rise to unfair influencing of consumers' decisions. There were a relatively large number of cases involving temporary sales campaigns of retail chains. Auchan and Tesco were fighting a price war resulting in condemnatory decrees with reference to both companies. Both of them advertised unjustified and inaccurate comparisons of the prices of the other's products, and used adjectives in the superlative to suggest particularly advantageous purchases.

In the course of an investigation (Vj–88/2002) against Tesco Global Áruházak Rt. (Tesco Global Supermarkets Ltd.) it was established that Tesco staged a sales campaign in an unfair manner by claiming a higher rate of discount in the price of a microwave oven than the actual figure, and one of the houses in the chain had a particularly low level of stocks on launch day having sold out almost all items on the previous day. As an instrument to boost demand, the sales campaign may increase demand not only for the discounted product, but may have a beneficial influence also on other products in the store as it builds on the temporariness of the discount, and the limited stocks of the product in question thereby encouraging an urgent decision on the side of consumers. That boosts demand for other products as well. The principle of staging fair sales campaigns requires that the product being discounted should be available in appropriate amounts, and should not generate consumer demand impossible to satisfy anyway.

■ In both of its decrees concerning financial services – (Vj–149/2002) regarding product loans available in the Hungarian houses of the Auchan Magyarország Kft. (Auchan Hungary Ltd.) chain granted by Magyar Cetelem Bank Rt. (Hungarian Cetelem Bank Ltd.), and (Vj–131/2003) regarding the change in the interest rate of a bridging loan placed by Fundamenta Lakáskassza Lakástakarékpénztár Rt. (Fundamenta Savings Fund for Housing Purposes) – the Competition Supervisory Board established that providing accurate, and appropriate information to consumers is particularly important in contracts concluded for a financial service where mutual trust between the parties is of outstanding significance in the light of the features of the product, and because the consumer has limited if any judgment as to whether some of the components of the service rendered by the company comply with the promises made by such company prior to the conclusion of the legal relationship. Deficient knowledge of consumers concerning financial services, and trust – with hands tied – toward the proficiency of financial organisations, and the potential of information on financial services to influence consumers' choices raises the importance of companies' competition law responsibility in informing consumers.

■ In the banking sector, competition became more powerful in retail banking services by applying new market tactics, and new market expansion schemes. OTP continues to have the strongest position, but its earlier dominant position is beginning to thaw away as strong competitors (Posta Bank, Budapest Bank, and most recently ABN AMRO Bank) are gaining ground, and increasing their market share. Another tendency likewise related to the banking sector is that banks are gradually entering each market segment related to financial services (banking services, insurance, pension funds) as major actors. That phenomenon will bring about a situation where consumers will sooner or later meet the same actors in almost all areas of financial services market. A clear progress toward universality is taking shape partly even preceding relevant legislative regulation.

■ Economic regulation is missing also in the area of cable television services in spite of the

fact that even here one sees many instances of natural monopolies. That shortage is reflected in the competition supervision board procedures of the GVH. There are numerous competition related problems generated almost on a continuous basis that could be eliminated through appropriate regulation. Today, however, the only remedy of consumers in the present regulatory vacuum is turning to the GVH as competition law fails to offer solutions suitable to the nature of these problems.

Agreements restricting competition

The number of proceedings associated to agreements restricting competition has increased significantly (tripling up from 1997 to 1998) compared to previous years. Part of the increase is ascribable to the fact that the PURMP imposes more wide-ranging prohibitions to agreements restricting competition than the PUMB (and thus deregulation could become necessary in vertical restrictions, while earlier that was not the case because general ban did not extend to these). It is pointless to refer to tendencies due to the relatively low number of cases, yet it is worthwhile mentioning that in many cases it was in fact not or not only the companies that restricted competition, rather the state arranged some competition restricting agreement or created a situation with the same effect [tax form (Vj–48/1998), Dialysis (Vj–100/1998)]. In these cases, the GVH contacted the state agencies concerned in an attempt to resolve the problems.

■ Case Vj–61/1998 was related to specifying the base price, i.e. one of the factors in the buy-up price of sugar beet. An interesting feature of the case was that pricing in agriculture takes place in a setting where harmonising prices is not unusual as even the state provides assistance to that process through regulating the sector. A guideline price may be given e.g. for the buy-up price of sugar beet by the Sugar Board making a recommendation to the Minister. So the Sugar Board conducts a harmonisation talk on prices where an important characteristic distinguishing it from price cartels is that both sellers (sugar beet producers), and buyers (sugar factories) participate. There are an increasing number of cases in the course of which product boards of various agricultural sectors or some committees thereof reach agreement on and published guideline prices or minimum prices without the authorisation of the Minister which thereby became unlawful.

■ The Competition Supervisory Board found the stipulation of the joint agreement – concluded by METRO and SPAR on the one hand and the meat processing companies (Délhús and others) (Vj–64/2000) on the other – to be against the law whereby the meat processing companies committed themselves to sell to all other traders at a price minimum 5% higher than the sales prices at which they sold to METRO and SPAR as established in their agreement. So that agreement was basically a *vertical* type of agreement by trading organisations with a large market share and many production firms of large market share. Its major effect was the restriction of the competition among trading companies as the price clause objected to resulted for other trading companies in a competitive disadvantage. At the same time it had its horizontal elements as the agreement contained also an agreement on the recommended suppliers' prices, which, functioning as a centre price restricted competition among meat processing companies.

■ The Competition Supervisory Board made a total of 18 peremptory decrees in 2002 concerning agreements restricting competition, and in 10 out of these the GVH had to intervene. In the proceedings undertaken at the request of an outside party the GVH issued an exemption in three cases for a specified period,

of which in one case it set conditions to the exemption. In the 13 cases undertaken out of official duty the GVH established infringement in seven cases, and imposed a fine in three cases, stipulated a condition to exemption, revoked the earlier decree of exemption in one case, and in two cases it instructed the parties to refrain from the behaviour in question.

■ The case generating the greatest interest was the so-called cement cartel where the parties participating in the agreement were found in breach by the Competition Supervisory Board because they used an IT system whereby they could agree on a planned market behaviour. Also worthwhile mentioning is the unlawful agreement between the BKV, the Budapest Transport Company and several newspaper publishers in which significant fines were imposed. Major agreements temporarily exempted by the Competition Supervisory Board include the multipoint card cooperation of OTP, MOL, and MATÁV, and the goods procurement contract of the members of the CBA retail chain.

■ In 2003 there were 20 peremptory decrees in Competition Supervisory Board proceedings conducted in conjunction with agreements restricting competition. In certain markets the lack of demand, and surplus supply seemed for competitors to magnify the value potentially inherent in an agreement (75–80% of condemnatory decrees involved companies in such market positions), while in other cases the easily available large monopolist profit was the major attraction. In 2003 the case most in the limelight was called mobile cartel, in which mobile service providers were stated to distort the market by keeping the termination charges of calls from land lines to mobile phones artificially high (Vj–22/2002).

■ The group of cases of greatest significance in 2004 involved collusion among bidders in the construction and building industry in a public procurement process. There were seven cases fully processed by the Competition Supervisory Board in which various kinds of unlawful cooperation were identified prior to bid submission. One could highlight one of the largest investment projects in Budapest of the last years involving the renovation of Bartók Béla út, and other related traffic nodes. Eight competing companies submitted bids to the individual calls for tenders, but in fact there was no real competition in terms of either price or performance. As a result of their agreements the bidders virtually eliminated all possible risk from the race, could quote higher prices helping them share the benefits of the assignments, and the extra profits. The public procurement processes to build motorways took place in the spring, the summer, and the autumn of 2002. The investigation by the Competition Supervisory Board established that the bidding companies had agreed to divide among themselves the motorway construction subprojects worth a total of 110 billion HUF.

■ From a competition point of view the banking sector offers the most difficulties. A good benchmark is *Éva Várhegyi's* study prepared at the request of the GVH. The study was seeking an answer to the specific features on the basis of which competition may be interpreted in the banking sector, how the situation in the Hungarian banking market may be evaluated, and whether the beneficial effects of competition are any different in this sector than in others. To answer this question she investigated the relationship of stability of competition and financial stability, the applicability of various generally known models, and international examples.

She set about assessing the competition in the Hungarian banking sector by looking at market structure, and analysing the usual concentration indices, and came to the conclusion that in the 90s the degree of concentration palpably reduced in the Hungarian banking sector. From the point of view of the equalisation of

the structural balance in the banking market, and the strengthening of competition the major thrust came from the large number and early entry of foreign banks. The mitigation of concentration was much more intensive in the retail market than in the entire sector.

The structural transformation of the banking market created the preliminary condition to competition, i.e. exposure to offensive by competitors. Investigations indicated that the flexibility of interest rates in the corporate banking sector is suggestive of satisfactory competition, i.e. banks are compelled to adjust their interest rates to their marginal costs and yields, while in the retail segment the relationship between interest rates and the money market environment is much less direct, i.e. the market structure still holds the possibility of realising monopoly contribution.

The pricing behaviour of banks is characterised by downward flexibility. The corporate loan market is more balanced than the retail market where the conditions for competition are set, and the majority of banks into corporate lending have interest policies that respond sensitively to changes in both limit cost or interest of the competitors.

Banks' pricing behaviour greatly affects their profitability. Hungarian interest margin and operating costs are double the EU average. The Hungarian banking system achieves relatively high profitability at low ROA as it generates extra levels of interest and commission even in a climate of limited competition. In international comparison the effectiveness of the Hungarian banking system is still quite weak while its profitability is relatively high due to the monopolistic nature of the individual subsegments of the market.

The GVH undertook a sectoral investigation in the housing mortgage market as from 9 July 2004 against the following background: banking interest characterising the market, and greatly increasing profits, interest margins were much higher than the EU average indicating that the features of effective competition situations do not present themselves to the required extent. Besides, several reports as well as the transcript by the Parliamentary Ombudsman of Citizen's Rights claimed an investigation into the housing loan market by the GVH.

The sectoral investigation by the GVH covered the period between January 2002 and July 2004, and involved 41 lending institutions. Based on the assessable answers from 25 lending institutions, the GVH examined the conditions of 250 products, grouped by type. With its findings in hand the GVH did not feel justified to instigate a competition supervisory process against any of the market actors, but decided to continue to monitor and analyse the processes in the housing loan market in the light of the feature of large housing loans whereby they – firstly – tend to tie the debtor to the creditor bank on a long term which could exceed 20 years, and – secondly – that the history of the sector is too short to make more reliable predictions concerning the behaviour of the market actors, thus one cannot preclude later patterns of behaviour by market actors with regard to contracted consumers that will necessitate further investigations by the competition authority.

The investigation has also identified problems impossible to handle through the Competition Act. In the period covered by the sectoral investigation into housing loans banks' pricing (and thus profitability of individual products) was not primarily determined by market conditions but – due to the absolute dominance of loans of subsidised interest – by changes in state regulations, and subsidy policy. That fact is well reflected by the 7–9% margin having been reduced to a band of 3.4–5.4% following the change in regulations effective as from summer 2003, ensuring excessive banking profits, and available at the level of the banking system in the first five years following dis-

bursement and refinancing. Besides, the various forms, and amounts of subsidy result in different competitive positions for not only the products, but also for market actors (commercial banks, lending associations, mortgage banks, housing saving funds).

Housing loans are subject to a series of costs on top of just interest and administrative charges that come under a long list of types and names. A main shared feature of these added costs is that – unlike administrative charges – they are not payable during the full period of the transaction, but some of them are charged several times. Another basic feature is that they are specified sometimes in percentages, sometimes as an absolute figure, and sometimes as a combination of the two, thus their comparability is rather doubtful. In addition, one is bound to believe that the consumer ends up paying multiple times for the actual banking services related to the loan. That intransparence of the situation partly hampers effective competition, and partly it may result in welfare loss to the consumers[16].

Opening the market

The GVH published its views multiple times whereby agencies enforcing legislation related to market opening must be granted a significant degree of deliberation so that they should be able to apply legislative provisions drafted necessarily in a general way to individual specific situations. In the course of applying regulations, supervisory agencies make decisions based purely on professional considerations, and in perfect disregard of current political and economic policy aspects, free from any influence whatsoever of the companies being regulated, which requires a high level of autonomy on their side.

Hungary embarked on the liberalisation of its railway system quite early, but at one point the process got stuck. There was legislation to ensure separate accounting treatment to network rail and freight rail operators, and then a ministerial decree separated one from the other, and established all non-essential functions into separate companies to be privatised later on. Access to the track had to be granted in theory to each domestic freight railway company. On the basis of international agreement or some mutual arrangement the same applies to access by non-domestic freight railway companies as well. Freight railway may be subject to concession tendering. Scheduled local and long-distance personal transport has been specified as a public service. Fares are regulated through maximum prices. Liberalising freight charges began in 1998.

Despite promising framework regulations hardly anything was done in the entire branch at the time to institute competition. The only investment in infrastructure took place on the Vienna-Budapest line. They failed to close the loss making branch lines. The supervisory authority responsible for distributing track capacity was set up in 2002 (VPSZ). The GVH actively participates in creating ministerial regulation.

The GVH likewise contributed to the creation of plans concerning the liberalisation of the energy sector. Complying with the request of Parliament's Economic Committee, it prepared a report in 1997 on natural monopolies and exclusive rights. The recommendations of the report included an in-depth revision of the sectoral policy, and increased reliance on competition (and on more powerful regulation where appropriate). The GVH participated in the ministry's energy task force that prepared a draft on the way in which Hungary should ideally come in line with EU directives applicable to the sector. The GVH argued for splitting off the signalling, and the high voltage network, and monopoly must be discontinued at a wholesale level, and (gradually, if necessary) local third-party access enabled. The GVH was of the view that in the long run

transmission and distribution must be separated from each other, but electricity generation should not as yet be separated from transmission and distribution.

Natural gas is still a monopoly, and competition is not likely to set in. MOL is the only producer, importer, and wholesaler, and it owns and operates the only high-pressure pipe, and the storage capacities. It also sells to large consumers at a retail level. The six local supply companies were privatised in 1996. As licenses tied consumers to the companies (including MOL), there is no competition among the haulage companies to win over the consumers taken over upon entry in the market. There is some limited competition for new consumers, and previously unconnected local governments. But competition requires physical connection as MOL or the haulage company is not required to allow third parties access to the pipeline. (MOL is in fact required to allow third parties access if such access is for the purposes of distributing gas produced in Hungary other than what MOL produces, but no one has so far found natural gas in Hungary.) Charges are directly determined by the government. The scope of application of the Competition Act is quite narrow.

Adoption of the Electric Energy Act (vet.) in 2003 eliminated the most important administrative obstacles from before the creation of a competitive market of electric energy generation and commerce. That encourages old and new market actors to effect capital intensive investments aiming at improving their operational standards, and effectiveness. However, before real competition could begin sometime in the future several problems must be remedied. Alternative fuel use of generators lead to pricing tensions in 2001 as costs thus increasing were not covered by authority-set prices in several power stations.

In 1 January 2003 the amendment of the Electric Energy Act enabled companies consuming over 6.5 GWh per annum to satisfy their electric energy needs from a source of their choice, and so they are under no obligation to purchase from MVM Rt. in the public utility market at prices set by the Minister of Economic Affairs. 20% of the full yearly amount of power consumption moved over to the free market as a result of that partial market opening. Market opening, however, was suddenly halted soon after, even some degree of backtracking was observable. Certain signs indicated that neither enough supply nor enough demand made its way to the free market, a fact that motivated the GVH to launch a branch level investigation in 2004 aimed at better understanding the functioning of the electricity market, the slow pace of the opening process, and the reasons of the halting as well as mapping obstacles to competition.

Prices of services rendered on the basis of the concession contracts (essentially all retail and wholesale charges) qualified as authority-set prices on the basis of the Act on Telecommunication[17]. Concessions regulated entry in public switched telecom services, public mobile services, and national public pager services and in broadcasting. The majority of the public telecom network is operated by MATÁV owning concession rights in 36 out of the 54 districts in local services, and has exclusive rights concerning domestic and international long-distance calls. These exclusive rights were in effect until 2002. The supervisory authority in the branch is the Telecommunication Supervisory Board (HIF) with its own organisation and budget, operating under the Ministry. HIF approved the services such as satellite broadcasting that did not belong under the effect of the Concession Act.

The GVH failed to approve of the merger of MATÁV and Jásztel in 1999. On the basis of the concessionary agreements and legislation concerning the telecom sector the Minister may allow the transaction in the light of finan-

cial and branch-specific considerations. The Minister did not, however, take action against acquiring management rights. The GVH eventually prohibited the merger in order to ensure the possibility of competition for the period when the market will be liberalised.

Following the opening of the telecom market[18] the GVH actively participated in drafting a uniform telecommunications law. The GVH considered it a regulatory objective to facilitate competition among service providers following the liberalisation (this is why ensuring access to the network, and opening the local loop constitute a key element of regulation), but it should materialise under conditions that do not disable later infrastructure development, i.e. the creation of competition among networks. A paradoxical feature of liberalising the telecom sector is that during the transition period until real competition sets in more complicated operating rules must be prescribed for service providers with significant market power than at the time exclusive rights were in effect. Detailed, asymmetric temporary regulation is necessary partly in order to prevent abusive behaviour by market actors toward new entrants, and partly to provide preferential conditions to new entrants so as to accelerate the establishment of the desired market structure. It is particularly important in that transitional period that the telecom authority should have the highest level of independence, discretional titles in its decisions, and authority for effective enforcement of course with the support of the required legal remedy system. Dynamic development in the sector, and changes in EU legislation brought about the necessity of the review, still in 2002, of the freshly created system in the light of market opening and competition policy objectives, a plan established in a government decree. Such a review could create an opportunity for re-considering the GVH's previously rejected recommendations.

The Telecommunications Act[19] is the fundamental piece of legislation of the liberalisation process so important in the development of the infocommunication sector. Although the opening process of the telecommunication sector did not begin – or conclude – by passing the Telecommunications Act yet it counts as a significant milestone from the point of view of creating an environment placing emphasis on competition. The law contains legal institutions specifically meant to boost competition. In grouping these provisions mention should be made of those whose objective is helping challenging actors gain foothold in the market, thereby accelerating the previous monopolised market structure, and those that aim at facilitating the choice made by consumers. The former group contains provisions related to network contracts, while the latter requirements such as the choice of the service provider and number portability.

The Act on Radio and Television[20] provided sector specific regulations concerning mergers of programme providers, and other media-sources and similar associations. Controlling stakes between programme providers of national coverage is prohibited, and ownership of regional and local programme providers is subject to limitations. For example, no programme provider is allowed to control more than twelve local programme providers. The law prohibits controlling stakes between programme providers of national coverage and daily papers of national circulation, and limits ownership between programme providers and other daily or weekly papers. It further prohibits crossovers between non-profit and profit oriented programme providers. The principal objective is promoting the freedom of and protecting the printed press. The law in fact creates an irrefutable assumption in conjunction with market definition and dominance of power. The law is enforced by the National Radio and Television Agency. Transactions con-

tinue to be reportable as required by the Competition Act as soon as they exceed statutory limits. However, the GVH must not approve the deal if it would infringe the structural regulations of the Act on Programme provision.

MAJOR TENDENCIES, AND CHANGES IN THE COMPETITION LANDSCAPE

In the early stages of the transition period the inherited corporate structure took a long time to move toward effective market competition despite the relatively fast transformation of ownership conditions. Competition regulation measures failed to affect the more significant sectors of the economy, in which abuse of dominant power was the default situation. Instruments of merger control were either not applied in conjunction with privatisation processes or did not promote appropriately the creation of more effective market structures.

The creation of fundamental market conditions was essentially completed in the second phase (1997–2005). The number of market actors dropped in certain significant sectors under the effect of transition related setbacks as a side effect of economic restructuring. That fact and the increasingly strong presence of multinationals generated growing competitive pressures in many economic sectors. Corporate behaviour restricting competition became more and more frequent as a result of strengthening competition bringing with them more interventions on the side of the Competition Supervisory Board.

Both phases were characterised by so-called consumer protection related cases if for basically different reasons. The typical cases in the first phase were gross deceptions capitalising on inexperienced consumers in the hope of fast profit (pyramid schemes, mail-order services, etc.). In the second phase, deceiving consumers was committed as a result of even more fierce competition, and with the aim of winning over consumers from competitors, i.e. it could be interpreted as a sign of intensifying competition.

Cases involving abuse of dominant power tended to be more of the so-called exploitative type in the first phase, while in the second restriction of competition prevailed. This is partly the result of the fact that in the first phase – largely because market opening did not yet take place – companies in dominant power positions were not exposed to competitive pressures by potential entrants, so they tried to take advantage of their situation by generating unfair profit to the detriment of their consumers. More and more markets become vulnerable to competitors, against which the incumbent company has to defend itself.

The increasing number and significance of cartel cases is likewise indicative of increased competitive pressure. In most economically significant branches the earlier power patterns essentially survived into the first phase with the only difference that state monopolies changed into private monopolies. Under these conditions companies are not compelled to collude in order to achieve extra profit. New actors appearing later in the Hungarian market, often with significant international weight are able to generate major competitive pressure that is bound to replace the cooperative pressure among market actors.

Increasing problems in the agrarian sector and the food industry are probably related to the changed subsidy system, involving the revocation pricing license of Product Boards, and/or refusal to issue new ones. Overproduction, or oversupply under such conditions motivated the Product Boards more and more frequently to handle the situation themselves (determine and publish minimum prices or guideline prices), whereby they transgressed the borderline between lawful and unlawful behaviour.

Market openings clearly reflect the improvement of the competitive landscape even if the

process did not proceed in each branch discussed above at the required pace. At the same time the mere appearance of the possibility of competition stimulates defence by incumbent companies, including behaviour to prevent new entries through unlawful methods, and rendering new entrants' stay in the market more difficult.

Our previous discussion of the banking sector have referred to the fact that EU accession did not in itself directly affect the competitive landscape. No quick solution of competition related problems present for some time in Hungary may be expected from our membership, and in fact no tangible signs are apparent yet. However, competition regulation took on another dimension following accession through the network (ECN) created by the member states' competition authorities and European Commission. Effectiveness of action against behaviour targeted at restricting competition affecting even trade among member states is hoped to increase with the help of the ECN.

Notes

[1] In my present effort of writing this paper, and especially in collecting the background material I have received significant assistance from *Ágnes Tóth,* inspector of the GVH, who has been working for the Office for much longer than myself.

[2] Incumbent company: technical literature uses that name to refer to companies that are already in the market, enjoying monopoly earlier on, but who have to face competition from other companies willing to enter the same market.

[3] Hungarian *hatásos* is sometimes used to translate the English word *effective* in English language technical literature.

[4] Some date the end of the first phase of the transition process from the completion of the so-called SLIP tasks (stabilisation, liberalisation, institutional restructuring, and privatisation), while others from the fulfilment date of the EC's three Copenhagen criteria of 1993.

[5] In preparing my study I have relied on the reports by the GVH delivered in Parliament, the market studies by the GVH research staff and by outside experts as well as the experience of GVH branch level surveys.

[6] This is the so-called *subaddivity* condition.

[7] A recent example is Act CLXIV of 2005 on Commerce with numerous provisions labelled anti-competitive by the GVH following its assessment. Nevertheless, Parliament passed the law, which will come into effect on 1 June 2006.

[8] All I mean here by branch-level legislation is that the conditions of competition - replacing the earlier circumstances of natural monopoly - are created by state regulations in a given branch as competition regulation is unable to accomplish it by its own legislative means.

[9] Primarily concerning the issue of whether there should be a German or an American type anti-trust law.

[10] It is no contradiction to that statement to say that in Anglo-Saxon countries the first competition laws were passed quite a long time ago. In most European countries competition laws were enacted only after WW2, i.e. in a developed period of the market economy.

[11] The two laws together are named anti-trust legislation.

[12] Essential facilities: a technical term in competition theory referring to indispensable assets and services. In these branches/industries the given undertaking has exclusive ownership of a production tool without access to which the competitors are unable to satisfy customer demand.

[13] From 1997 onward the scope of the provisions of the competition Act applicable to mergers was extended to all privatisation transactions as well.

[14] That was enabled by the narrow interpretation of *undertaking* in the law as in that version its scope failed to cover foreign undertakings not having acquired property in Hungary before.

[15] Act VI of 1993 on Agrarian market regulations

[16] The sectoral report is available on the GVH's website (www.gvh.hu).

[17] Act LXXII of 1992

[18] Act XL of 2001 (hkt.)

[19] Act C of 2003 replacing the kht. (eht.)

[20] Act I of 1996

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