

**OPENING REMARKS FOR THE CONFERENCE ON
GREEN CONSIDERATIONS IN THE APPLICATION OF COMPETITION LAW**

BY
CSABA BALÁZS RIGÓ
PRESIDENT OF THE GVH

07/06/2023

Welcome everybody to our mini conference. I am also pleased to welcome the members of the Chief Economist Working Group of the European Competition Network, who held their meeting yesterday in Budapest. I am sure that their participation will spice up this event.

Today's topic is green considerations in the application of competition law. It is an exciting and challenging topic. Perhaps even controversial. It isn't new to the GVH, in fact we started to deal with it several years ago.

In 2021, the GVH hosted the annual conference of the International Competition Network. As a host we had the privilege to have a so-called special project. Our special project was a global survey on sustainability considerations in competition law enforcement. We collected experience, projections and plans of competition authorities and non-governmental advisors of the ICN.

We have found very little experience, limited mostly to Europe. At the same time, interest was more widespread, and the number of sustainability cases apparently surged. It seemed to be a significant topic of the future. And it seemed approaching quickly.

The majority of NGAs believed that green considerations in competition enforcement could be meaningful. They also believed that the general analytical framework should remain the same. Other results also suggest that there is no inherent contradiction between sustainability and the consumer welfare standard. The presence of welfare objectives and the lack of special provisions alone did not seem to impede sustainability cases.

For the GVH this is not a question of willingness. There is a direct reference to the protection of the environment in the Hungarian Competition Act.¹ Nevertheless, we have not encountered such cases yet. What we had encountered, so far, were a few hardcore agreements or hardcore clauses of agreements that parties still tried to label as "green" after the GVH raised concerns.

One example is the agreement between battery makers to pass-through waste management fees in the exact same way.² Basically, they collectively refused to compete on how much of the waste management fee was passed on to their customers. This was considered by the GVH as a restriction by object.

They insisted that their purpose was environmental. But they failed to explain why the restriction of competition was needed to get the environmental benefit. Not to mention the lack of quantification or supporting documents. Therefore, their sustainability defence was dismissed. The agreement could not be exempted on sustainability grounds, or in fact on any other grounds.

These types of practices are not real green agreements. It doesn't matter if parties invoke a sustainability defence. These are in fact greenwashing attempts that we do not tolerate.

¹ Competition Act, Section 17 paragraph a).

² [Case VJ/43/2015](#).

In the future, if and when business practices change in Hungary, the GVH will need to adapt.

This is not surprising in the light of our global survey. Responses suggested that to be able to analyse real sustainability cases new skills and preparation will be needed. I think that this applies to authorities but also to law firms and consultants, and perhaps to business in general. Ultimately, it's a new area. I mean, how do you compare environmental benefits with competitive harm?

That's why the GVH is closely following international developments in the field. We want to be up to date. I recommend the same to all stakeholders.

We took part in the ECN-wide project to draft chapter nine of the Commission's revised draft horizontal guidelines on sustainability agreements, and on a similar venture related to the agri-food sector. We also took part the respective OECD roundtables, to listen to others' ideas and experience. We are watching webinars and conferences.

This works both ways. We also spread what we know already. Our survey is publicly available.³ So do the articles my colleagues wrote about it. I personally have participated in several panel discussions and gave presentation at home and abroad. Other senior officials of the GVH have done the same. The GVH was involved in preparing the Hungarian national report for the 2022 Annual Congress of the LIDC (the International League of Competition Lawyers) on sustainability and competition. I was told that it would be published in a book by Springer.

A chapter of the report on agency perspective describes the current position of the GVH. It can be summarised in three points. First, we are open towards real green defences. It's in the law, and we prepare to meet the challenge they bring. Second, we believe that the new horizontal guidelines of the Commission give sufficient guidance for now.⁴ Third, we don't tolerate fake green defences. We don't tolerate greenwashing.

This is not an event to elaborate on greenwashing in a consumer protection context. It's the other domain of GVH enforcement, similarly to some other competition authorities. I only note that the GVH does not support greenwashing of any type. We issued guidance in late 2020 on green marketing.⁵ We are also performing a so-called detailed market analysis, right now, as to how various green credentials are understood by consumers.⁶ All this is aimed at helping not only the GVH, but also businesses to better identify greenwashing and to avoid it in the first place.

Turning back to our global survey, we found signs of convergence in Europe. Also, international co-operation was regarded to be useful and supported by the respondents.

Our mini conference is in the intersection of everything I just talked about in the last couple of minutes. It's about exploring experience, domestic and international. Learning from others' and sharing our own. It's about discussing analysis and measurement to be able to deal with green defences. It's about stakeholder engagement and exchanging views and perspectives. I believe that events like this are the step-stones of a European convergence towards best practices.

³ <https://www.gvh.hu/en/gvh/Conference/icn-2021-annual-conference/special-project-for-the-2021-icn-annual-conference-sustainable-development-and-competition-law>

⁴ https://ec.europa.eu/commission/presscorner/detail/en/IP_23_2990

⁵ https://gvh.hu/pfile/file?path=/en/for_professional_users/guidance-documents/szakmai_felhaszn_tajekoztatok_zold-iranymutatas_2020_a&inline=true

https://www.gvh.hu/pfile/file?path=/szakmai_felhasznaloknak/tajekoztatok/szakmai_felhasznalok_tajekoztatok_zold-iranymutatas_201217&inline=true

⁶ https://gvh.hu/en/press_room/press_releases/press-releases-2023/green-advertising-messages-are-often-confusing---the-gvh-draws-attention-to-this

<https://gvh.hu/sajtoszoba/sajtokozlemenyek/2023-as-sajtokozlemenyek/sokszor-zavarosak-a-zold-reklamuzenetek--erre-hivjafel-a-figyelmet-a-gvh>

There will be two panels today. One international and one domestic. The international panel will be composed by economists and moderated by Zombor Berezvai, Chief Economist of the GVH. They will discuss aspects of economic analysis and measurement. They will open a window for us to international best practices.

The second panel will be composed of Hungarian practitioners and moderated by Csaba Kovács, who participated in much of our research in this field. They will discuss the Hungarian state of play concerning green cases and defences. They will open a window for us to the Hungarian business reality.

I think that this co-presence of economists from our EU counterparts and the Hungarian practitioners, as well as other stakeholders gives a unique opportunity. A unique opportunity for cross-fertilisation.

I am thankful to all panel members for accepting our invitation. I also appreciate the interest of each and every member of our audience. I wish you very fruitful interactions during the panels as well as in the breaks.