

## **ANNUAL REPORT ON COMPETITION LAW AND POLICY DEVELOPMENTS IN HUNGARY**

(January – December 2013)

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

### **1.1 Changes to the narrower legal environment**

#### **Amendment of the Competition Act in 2013**

- 1 In 2013 the Hungarian Competition Act (*HCA – Competition Act*) was amended 4 times. One of these amendments was implemented as a part of the judicial reform which set up the Administrative and Labour Courts. This amendment has affected the provisions of the HCA since 1 January 2013 by authorising this court to be the first instance review court in competition cases. A second amendment, which entered into force on 22 November 2013, enables the Government to declare certain mergers to be of strategic importance at a national level, if such mergers are in the public interest, or to be more specific, if they are essential for preserving jobs and ensuring the security of supplies. For such mergers the authorisation of the Gazdasági Versenyhivatal (*GVH – Hungarian Competition Authority*) is not required. The third amendment concerns a small adjustment due to the amendment of the Act of 2004 on the General Rules of Administrative Proceedings and Services (entered into force on 1 February 2013), while the last one relates to the amendment of the conflict of interest rules of office managers and Competition Council members to ensure conformity with the new Criminal Code (which entered into force on 1 July 2013).
- 2 An Act modifying the HCA still in 2013 and entering into force in 2014 has the most significant impact on the activities of the GVH and will contain several substantive and procedural modifications. The changes will affect the status of the officials of the GVH and will also clarify the rules relating to the merger procedure, data management and access to files.
- 3 In 2013 the main provisions relating to the GVH's procedures, powers and responsibilities were modified to a lesser extent. It is important to mention the amendment to the Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers (*Fogyasztókkal szembeni tisztességtelen kereskedelmi gyakorlat tilalmáról szóló törvény – UCP Act.*) according to which not only those behaviours are regarded as unfair commercial practices if the business entity claims that a product has been approved, endorsed or authorized by a public or other body or administrative authority, but also if it refers to private organisations.

### **1.2 Changes to the broader legal environment**

4. The new Criminal Code that entered into force on 1 July 2013 introduced substantive changes in respect of several infringements with competitive or consumer protection relevance. In particular, the rules governing restrictive agreements in public procurement and concession procedures, though remaining effectively unchanged in terms of their content, have been supplemented with provisions specifically aimed at ensuring harmonisation with the leniency policy of the GVH (and other competition authorities). Essentially, if a leniency application is submitted before the competition authority gains knowledge of the case, which gives rise to eligibility for immunity from a fine, criminal liability may cease to apply, while if other applications are submitted which give rise to eligibility for immunity from or reduction of fines, punishment may be reduced without any minimum limit or, in cases deserving special consideration, may be dispensed with altogether. This is applicable to persons who were, at the time of the criminal act, officials, members, supervisory board

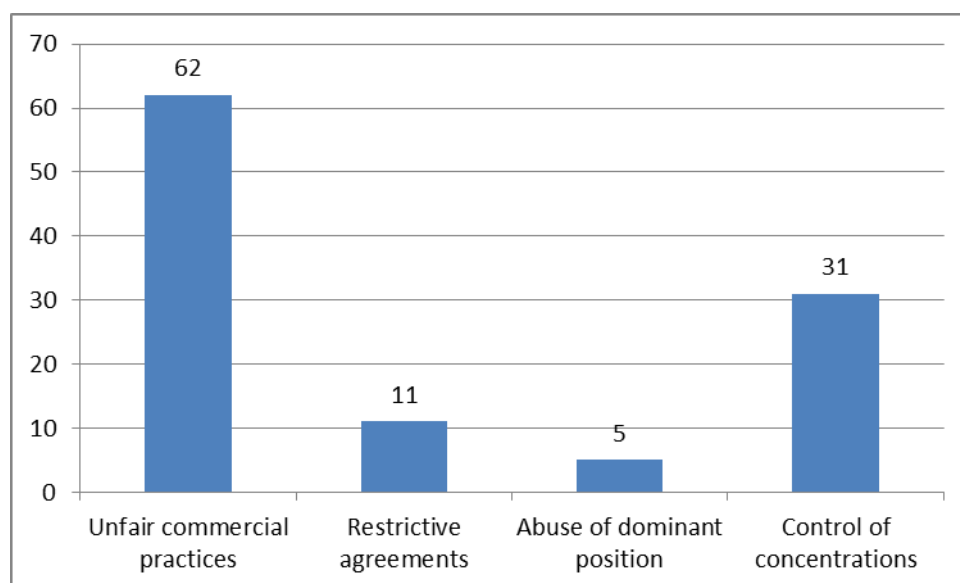
members or employees of the company filing the leniency application, or agents of such persons. Furthermore, criminal offences harming the interests of consumers or the fairness of economic competition have been brought together in a separate chapter of the Criminal Code. The violation of business secrets has been introduced as a new, separate infringement, while the former infringement of the false marking of goods has been replaced by the imitation of a competitor, a more adequate term from the perspective of competition law. Other infringements, in particular the deception of consumers and false claims of conformity, have been clarified and harmonised with the relevant administrative standards.

5. Even though it has no substantive bearing on the powers of the Hungarian Competition Authority, the adoption of Government Decree 530/2013. (XII. 30.) on purchasing groups, which entered into force on 1 January 2014, is worth mentioning due to the large number of cases relating to purchasing groups that the GVH deals with.
6. In 2013 the Constitutional Court decided on several constitutional complaints which claimed, inter alia, harm to economic competition. However, the Constitutional Court rejected all of these complaints as their content did not satisfy legislative requirements, due to the lack of direct concern, the lack of specific claim or the absence of constitutional reasoning.

## 2. Proceedings

7. In 2013 the Authority was contacted, either orally or in writing, on more than 2700 occasions and further 2043 written communications were received by the GVH's investigators.
8. The numbers of 2013 are in line with the figures from recent years. In 2013 a total of 109 new cases were initiated. There were 118 proceedings and 2 post-investigations, i.e. 120 cases were closed.
9. Regarding initiated proceedings, in line with previous tendencies, consumer protection proceedings made up the largest proportion of the proceedings, with 62 cases. In 2013, 31 merger cases, 5 related to abuse of dominance and 11 to restrictive agreements were initiated.

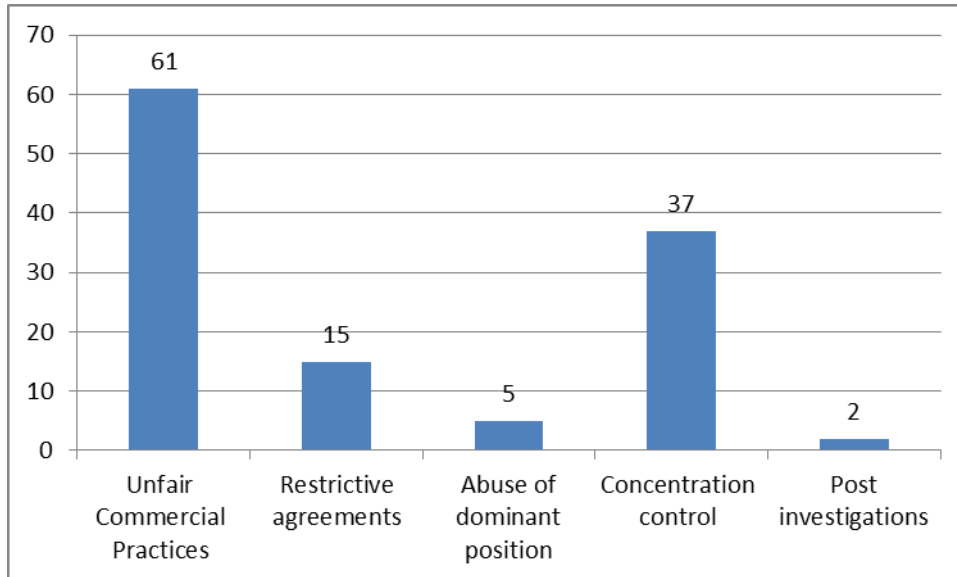
### Number of cases initiated by the GVH in 2013



10. Similar to case initiations, most of the closed proceedings were consumer protection cases. The GVH considers consumer protection and the fostering of fair market behaviour to be of

high importance for ensuring that consumers are able to benefit from the advantages of competition and are able to make the right decisions. Of (all) the cases closed in 2013, 61 were related to consumer protection, 15 to restrictive agreements and 5 to abuse of dominance. The Authority assessed 37 merger applications and conducted 2 post-investigations.

### Number of cases closed by the GVH in 2013



11. A proceeding can be terminated if no infringement can be established on the basis of the evidence obtained in the course of the proceeding, or if pursuing the case further is not in the public interest.
12. In 2013 5 proceedings were closed by commitment decisions.
13. Although the effectiveness of the operation of the GVH is not only characterised by the severity of punishments, because the protection of public interest attached to fair competition and fostering the culture of compliance with the law are also tasks of the GVH, the amount of fines imposed in the competition supervision proceedings is an important measure of the activity. The GVH imposed fines amounting to a total of 11.2 billion HUF (approx. 37.3 million EUR) in 2013, and imposed procedural fines amounting to a total of 19 million HUF (cca. 63.3 EUR).

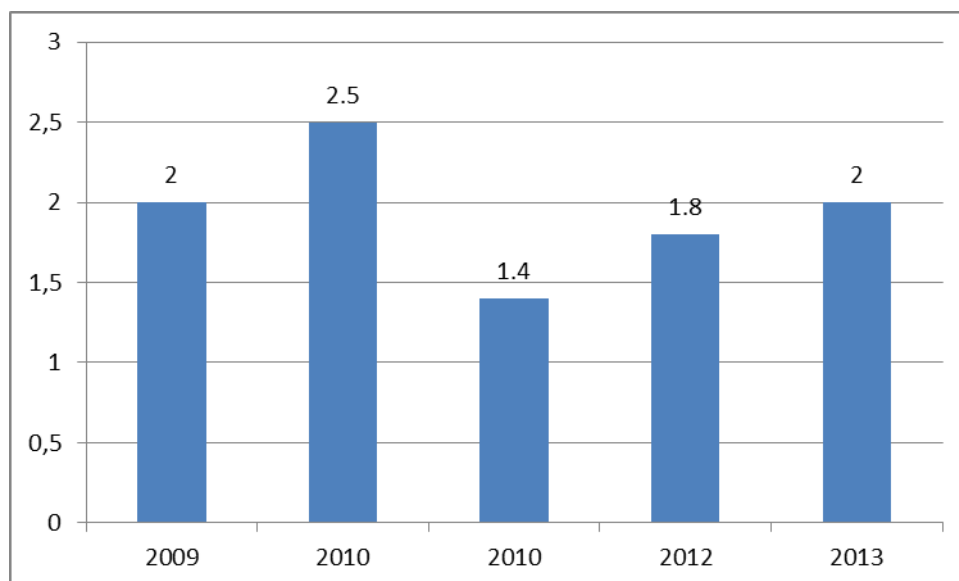
### 2.1 Unfair manipulation of decisions of trading partners, and unfair commercial market practices against consumers

14. The GVH's antitrust and consumer protection activities complement each other by serving consumers' interests: competition makes it possible for consumers to choose the most suitable option from the maximum number of choices. However, if consumers are not able to make rational decisions they cannot gain from the benefits of competition. In this regard the protection of competition and the protection of consumers cannot exist without each other and the best result can only be achieved if they are able to complement each other.
15. The main goal of the GVH's consumer protection activity is to assure undistorted competition and to maximise consumer welfare through the freedom of consumer choice. The GVH's consumer protection activity primarily focuses on the demand side of the

markets: by investigating the communication activity of the supply side its aim is to protect the free and undistorted choice of the consumer. If it can be established that the choices of consumers in a given market have been unfairly manipulated by an undertaking, for example by inducing consumers to make a decision which they would not have otherwise made, the competition processes may be distorted as a consequence of the distorted decisions of the consumers.

16. Accordingly, in the competition supervision proceedings in this field, the GVH examines whether the consumers had the opportunity to search for information, and whether they had access to the information necessary for making a reasoned decision. Furthermore, it is also examined whether the undertakings have taken all reasonable steps to ensure that consumers are provided with relevant and decisive information.
17. Market competition is normally capable of remedying consumer harm. However, in certain situations this is not the case, and state intervention is needed.
18. The enforcement of the legislation on consumer protection is divided among authorities along their competences. Besides the GVH, the Hungarian Authority for Consumer Protection (Nemzeti Fogyasztóvédelmi Hatóság – NFH) and the Central Bank of Hungary (Magyar Nemzeti Bank – MNB) – this latter as the board having financial supervisory authority – have consumer protection related competences. If an infringement targeting end consumers (B2C practices) exerts material influence upon competition, then the GVH is in charge of applying the law, unless the infringement occurs on labels, in user manuals (warnings and instructions) or violates the information requirement set out in other legal norms. The MNB has jurisdiction in connection with practices carried out by those financial institutions the supervision of which belongs to its competence. In any other situation, it is the NFH that has competence. In defining the material influence on competition, the extent of the practice or the size of the undertaking liable for the infringement is to be taken into account. For the sake of guaranteeing legal certainty, the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices sets forth cases when the material effect on competition shall apply without prejudice to any other circumstances. This is the case, for instance, when the commercial practice is carried out through a media service provider providing national media services, or when the commercial practice is carried out through a periodical of nationwide circulation or a daily newspaper distributed in at least three counties.
19. Practices in B2B relations – targeting businesses – belong to the sole competence of the GVH and are assessed under the relevant provisions of the HCA.
20. B2C cases are covered by the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices (UCP). The UCP Act prohibits unfair commercial practices on three grounds (unfairness, deceptive or aggressive commercial practices, “black list”).
21. Comparative advertisements are subject to special regulation: pursuant to the HCA, the GVH is competent to proceed against non-objective comparative advertising both in B2C and B2B cases.
22. The GVH closed 61 consumer protection proceedings in 2013. On 52 occasions the Competition Council, the decision-making body of the GVH, established an infringement, in 4 cases adopted a commitment decision while 5 cases were closed with an order of a case handler. In 2013, the Authority imposed fines amounting to a total of 587.4 million HUF (approx. 2 million EUR) in this category of cases.

### Fines imposed in consumer protection related cases (million EUR) 2009-2013



23. As in previous years, also in 2013 a large proportion of the consumer protection proceedings of the GVH were competition supervision proceedings against organisers of purchasing groups. While it is prescribed by law that no purchasing group may be established, the already existing groups did not comply with the rules and infringed the prohibition of unfair business-to-consumer commercial practices on several occasions. The GVH received a significant number of complaints in connection with the activities of large department stores, concerning misleading and therapeutic health claims, and other misleading marketing practices including misleading payment forms disguised as an invoice for services that the trader has purportedly already ordered when in fact he has not.
24. As in previous years, many of the competition supervision proceedings of the GVH revolved around advertising claims relating to health or curative effects used to promote various products or services. Other cases relating to commercial practices unfair to consumers mostly involved financial services, the food market, the info-communication sector, solicitations disguised as invoices of the energy sector and certain areas of service sectors.
25. In recent years, with the raising of health consciousness, more and more products have been marketed to satisfy this kind of consumer demand, and the GVH has been receiving increasing numbers of complaints regarding information supplied in connection with various products or devices promising medicinal effects. Consequently, the GVH has been paying special attention to these markets for years, and it initiated and concluded several proceedings in this sector in 2013 as well.
26. Consumers are particularly vulnerable to advertising containing claims of curative effects as persons suffering from ill health are driven primarily by their desire to be cured, and they tend to put this ahead of any other consideration when making a decision. In a number of cases, consumer decisions are hindered by the absence of special expertise necessary to assess promises of positive health effects. The GVH pays special attention to this requirement in the course of its competition supervision proceedings.

### **Products affecting health or promising the prevention or treatment of illnesses**

- 27 In the case of claims of medicinal effects, members of the target consumer group can be expected to be less reasonable than the average consumer due to their sensitivity to such stimuli. Consequently, factual and unexaggerated information is particularly important in this field. The production, distribution and advertising of such products are subject to parallel, strict sets of rules; advertising must also comply with the relevant sectoral legislation.
- 28 Below we describe a number of cases representing typical categories of product groups subject to investigations of the GVH relating to health or medicinal claims.

### **Advertising of pharmaceuticals**

- 29 Pursuant to Act XCVIII of 2006 on the General Provisions Relating to the Reliable and Economically Feasible Supply of Medicinal Products and Medical Aids and on the Distribution of Medicinal Products, it is forbidden to advertise medicinal products and dietary supplements that can be dispensed from a pharmacy solely with a prescription and that have been approved for social security subsidies, as well as medical aids subsidised under the social security system, with the exception of campaigns for the promotion of vaccination programmes. However, the advertising of medicinal products that can be dispensed from a pharmacy without a prescription and that are not approved for social security subsidies, as well as of medical aids not subsidised under the social security system is allowed as long as the advertisements comply with legislative requirements.

### **Hungarian Product / Hungaricum**

- 30 In their communications, retail chains have been placing increasing emphasis on the identification of certain products as ‘Hungarian Products’ or ‘Hungaricums’ because of the consumption-increasing effect of such markings.
- 31 In 2013 the GVH continued its work on examining the ‘Hungarian Product’ marking or related graphic sign in the communication of retail chains. In a particular case the GVH decided that the practice of a nationwide store chain was infringing. The chain employed the ‘Hungarian Product’ marking on its advertising media while it paid no heed to its potential interpretation by consumers (including the most frequent interpretation of place of origin of the raw materials); furthermore, it did not even fully adhere to its own written set of requirements. In the latter case the GVH found objectionable the practice that the store sometimes promoted products with the ‘Hungarian Product’ label that did not originate in Hungary.

### **Solicitations disguised as invoices**

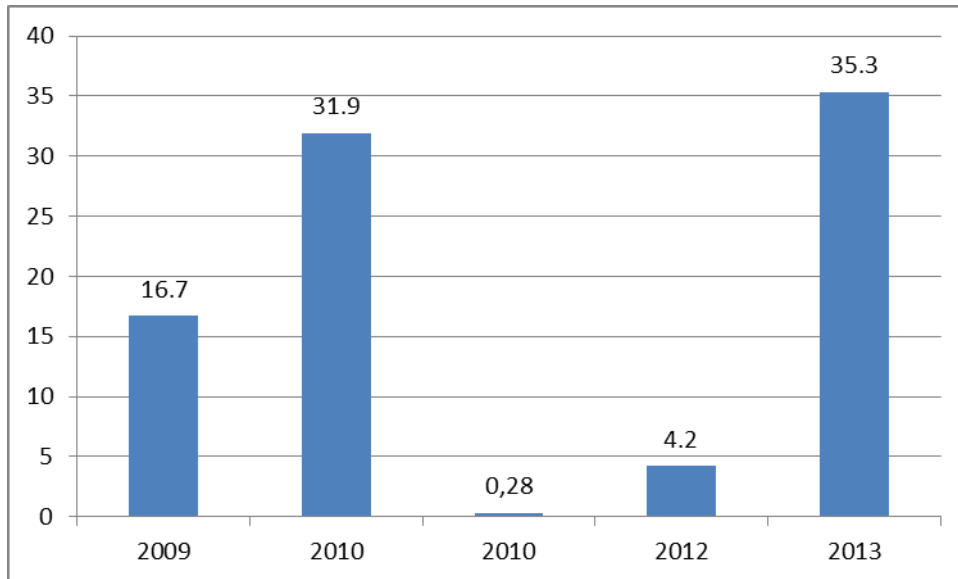
- 32 In 2013 the GVH adopted decisions in five cases involving the market of online business databases, establishing false advertising practices in each case. In recent years the GVH has received numerous complaints from persons who have received letters from undertakings with which they have had no contractual relationship. These letters have contained invoices, or documents deceptively similar to invoices, which may have led the recipients to believe that they needed to pay consideration for services already provided to them. The senders disclosed in very difficult-to-read attachments that the letters were in effect solicitations.

## 2.2 Restrictive agreements

- 33 The acquisition of information about cartels, which typically conceal their identity, has fundamental importance in the work of the GVH in detecting restrictive practices. To reinforce this effort, the GVH established an independent Cartel Detection Section. The Section has been set up solely to gather and analyse economic data and market information relevant for cartels, that is, it engages in business intelligence work. The Cartel Investigation Team operating within the Antitrust Section is responsible for conducting investigations and preparing the decisions of the Competition Council.
- 34 The tools employed by the GVH in its business intelligence work rely on sources that are publicly available. Such tools ensure that the Authority is able to obtain as much market information as possible, because sufficient information is needed to move the case forward to the initiation of competition supervision proceedings and the detection of cartels.
35. Tools of detection include the leniency programme and the informant reward scheme set forth in legislation. Under the two-tier leniency programme, immunity is granted to informants who disclose a cartel previously unknown to the Authority, and a reduction in the amount of the fine is available to those who provide additional valuable evidence in respect of a known cartel. While in 2013 the number of leniency applications increased substantially relative to previous years, only an insignificant number of these applications related to cartels that solely affected the Hungarian market and that were previously unknown to the GVH. The other applications were filed in respect of the EU market or cases already ongoing at the GVH.
36. The institution of the informant reward, introduced in 2010, continues to be an important tool in the cartel detection work of the GVH, and it partially offsets the disadvantages arising from the limitations of the leniency programme. In 2013 the GVH held meetings with 25–30 potential applicants, and accepted one application which prompted a competition supervision proceeding. In the other cases either the information failed to satisfy the legislative criterion of being indispensable evidence, or the informant withdrew from cooperation due to personal concerns. Considering that the contribution of informants has a significant added value to the GVH in enforcing compliance, it is important to offer compensation for the risk they take, and it should be noted that the Authority acts with utmost care when handling such applications. 2013 saw the closure of the first competition supervision proceeding which had been initiated largely relying on the information provided by a person applying for an informant reward. In the proceeding involving the stationery market, the GVH imposed a total fine of over 1 billion HUF on eleven undertakings. The maximum reward that can be paid to the person supplying indispensable evidence is one percent of the fine imposed but not more than 50 million HUF (approx. 165 thousand EUR), which in this case exceeded 10 million HUF (approx. 33.3 thousand EUR).

### **Fines imposed in restrictive agreement cases (million EUR) 2009-2013**





37 In 2013 the biggest fine was imposed in the financial sector in the banking cartel procedure. In this case the GVH imposed a fine of 9.5 billion HUF (cca 31.6 million EUR) on financial institutions involved in the coordination of practices concerning the restriction of the full prepayment of foreign currency loans on fixed rates. In its decision concerning the stationary market, the GVH established that six stationary distributor undertakings had concluded strategic cooperation agreements and that eleven undertakings had taken part in discussions in which they agreed to share the market and concert their prices in relation to tenders for supplying stationaries. The GVH imposed fines amounting to a total of 1.36 billion HUF (cca 3.34 million EUR) on eleven undertakings. The GVH terminated its procedure concerning the agricultural sector (watermelon market) after the amendment of the Act CXXVIII of 2012 on inter-branch organisations and on certain issues relating to the regulation of agricultural markets (Inter-branch Organisation Act) adopted in November 2012, because the authority was of the opinion that the continuation of the proceedings would not serve the public interest.

### **The bank cartel**

38. From the mid-2000s to 2008 mortgages based on foreign currencies became more popular in Hungary. This was due to the fact that these loans had better interest rates than those based on the HUF. Due to the financial crisis the whole mortgage market became three times smaller than it was prior to 2008. As a result of a ban on foreign currency based mortgages from 2010, the HUF based mortgages rose in popularity. From the autumn of 2011 the conditions attached to mortgages in Hungary significantly deteriorated. Continuous changes in the regulatory and economic environment resulted in higher financing expenses, weaker exchange rates and increased the costs associated with risk taking.

39. Due to the increased exchange rate in 2010-2011 the Hungarian Government aimed to ease the burdens placed on the foreign currency based mortgage debtors (in particular those which were based on CHF). A new law was introduced on 29 September 2011, which allowed the debtors to pay back their real estate mortgages in Hungary at a fixed, preferential exchange rate of 180 HUF, at a time when the market rate was around 230-240 HUF. It was intended that the resulting incurred losses would be borne by the banks. The new law stipulated the following fixed exchange rates: 180 HUF/CHF, 250 HUF/EUR, 200 HUF/100 JPY.

40. Consumers were permitted to repay their loans via two methods: a) they could repay the full amount of their loan using their own resources or b) they could apply for a refinancing HUF loan.
41. The 11 banks which participated in the cartel developed coordinated strategies and exchanged information qualifying as business secrets in order to restrict the full prepayment of foreign currency loans on fixed rates. This behaviour constituted a single, complex, continuous and multi-level infringement.
42. In its decision the GVH established that the financial institutions in question were involved in cartel activities, which lasted from 15 September 2011 to 30 January 2012 and imposed a fine of 9.5 billion HUF (cca 31.6 million EUR).

### **Cartel on the stationary market**

43. In its proceedings concerning the stationary market, the GVH came to the conclusion primarily supported by written evidence that the undertakings under investigation had concluded strategic cooperation agreements with the aim to share the market, to exchange information qualifying as business secrets and concert their prices in relation to tenders for supplying stationaries. According to the agreements the aim of the undertakings was to uphold the status quo in relation to the public procurements and tenders and to increase their market shares.
44. The strategic cooperation agreements were implemented in practice by the undertakings, as in accordance with the principles set out in the agreements, regular bilateral and multilateral consultations were held in connection with tenders to allow the undertakings to discuss whether they would bid on certain tenders and if so, to agree on the details of these bids.
45. Three undertakings under investigation pursuant to the principles of the strategic cooperation agreements, carried out trilateral consultations aiming to share the market outside of these agreements.
46. In the course of its proceedings the GVH established, based primarily on written evidence that between 2008 and 2011 eleven stationary distributor undertakings had taken part in discussions in which they agreed to share the market and concert their prices in relation to a total of 19 tenders (including several public procurements).

### **Progress in the “watermelon saga”**

47. In a proceeding launched in 2012, the GVH investigated whether the undertakings and other parties under investigation had breached the prohibition of restrictive agreements when they presumably agreed on the selling prices to be applied from July 2012 to domestically grown watermelons and that they would sell watermelons that were produced outside of Hungary with discriminatory prices or not distribute them at all. During the investigation EU law was also applied as the investigated conduct affected trade between Member States.
48. According to an amendment of the Act CXXVIII of 2012 on inter-branch organisations and on certain issues concerning the regulation of agricultural markets (Inter-branch Organisation Act) enacted in November 2012, now the GVH must obtain the assessment of the Minister of Rural Development when it intends to initiate a competition proceeding. This means that the Minister of Rural Development may establish the conditions for any exemption, by assessing, whether the restrictive agreement contributes to the attaining of a fair income to producers and that no market actor is prevented from joining the agreement. In the

watermelon case the Minister established that the conditions were met and that the alleged cartel agreement was exempted from the prohibition of the Competition Act.

49. This amendment, in the case of agricultural products, practically makes the sanctioning of infringements impossible, regardless as to whether it is a farmer, a distributor, an industrial company or a supermarket chain that is engaged in the unlawful behaviour. In light of this, the GVH found that a proceeding that merely states that an infringement has been committed without the possibility of a sanction being imposed cannot result in the conditions of competition being substantially improved as there would be no deterrent effect. Consequently, the GVH terminated the competition proceeding as the effective protection of the public interest could not be achieved by continuing the proceeding.
50. According to the GVH's position on the case, the purpose of the cartels was to gain extra profits by excluding competition, by limiting output and raising prices. A coordinated price increase results in consumers having to pay higher prices and consumption drops, furthermore, some consumers will not be able to buy the product at all. Artificially high prices eliminate the efficiency of competition that would (otherwise) motivate producers to improve their technology to maintain a stable distribution market, a reasonable revenue and safe production to provide professional, advanced services. This causes a loss in efficiency for the whole market. With special regards to the effect of the existing, foreign markets, this loss in efficiency results in an increasing disadvantage for the members of the cartel as well. Due to the increasing competitive disadvantage in the EU the export position of farmers may further deteriorate.
51. While competition law does recognise the situation that arises from the increasing vulnerability of farmers and producers in agriculture, the Inter-branch Organisation Act unfortunately does not distinguish between producers and the other members of the supply chain, such as traders or supermarket chains.

### **Other anticompetitive agreements**

52. In 2013, the GVH made several decisions in the case of agreements between vertically integrated undertakings focusing on resale price maintenance agreements/practices.
53. A condemning decision was made in the case of a dental hand pieces manufacturer and some of its distributors who were involved in a resale price maintenance agreement, which was definitely in operation from March 2008 to May 2009. Consequently, the GVH imposed a fine of 16.1 million HUF (cca. 53.5 thousand EUR).
54. Also resale price maintenance was the core issue in a few book distribution agreements. The book retailers had concluded restrictive agreements with book publishers, and as a result of this, the GVH imposed a fine of 70 million HUF (approx. 233 thousand EUR) on them.
55. The GVH established that the setting of the retail prices by the distributors amounted to anti-competitive behaviour which deprived the retailers of the freedom of determining the prices. While the setting of the prices by publishers has been a common practice for decades, originating from the commission-form sale, the GVH found that the relationship between the above mentioned decisive retailers and publishers had recently changed. In the investigated time period their relationship was not to be considered as a genuine agency agreement in the competition law sense.
56. The GVH investigated the practice of associations in the cable communications sector to establish whether the parties under investigation had applied restrictive practices in their

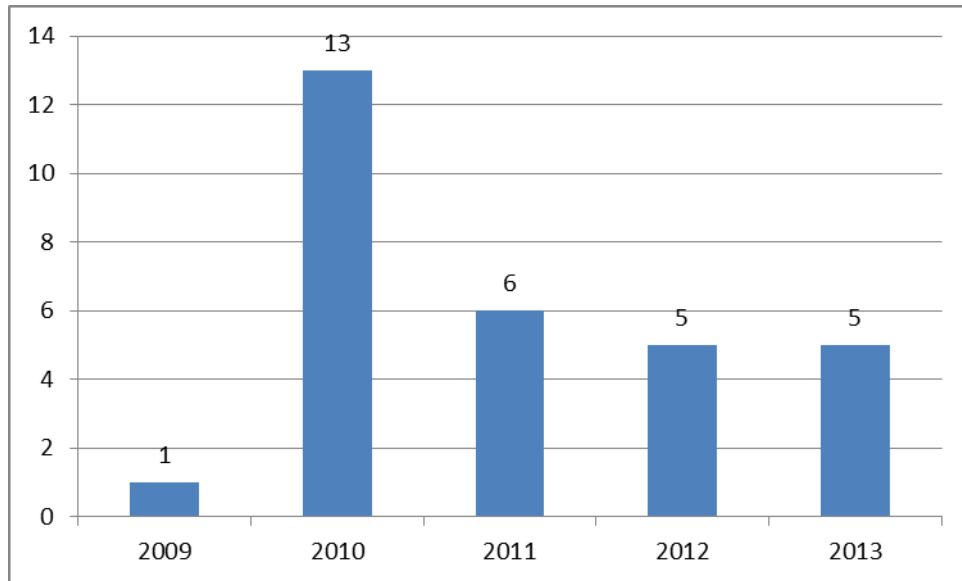
model contracts and in their practice for the admission of new members. According to the information available when the case was initiated, under the associations' model contracts members received discounts which were not available to non-member broadcasters and, at the same time, they assessed membership/selected members in a discriminative way. In addition, some of the model contracts prescribed the use of uniform distribution conditions for broadcasters regarding different platforms and methods of transmission.

57. The associations' practice of using model contracts was primarily based on the need to reduce the burdens associated with correspondence and the drafting of new contracts between hundreds of broadcasters and almost a hundred of distributors, thus resulting in both sides also benefitting from the assistance/involvement of the associations. However, according to the findings of the investigation, the model contracts negotiated and countersigned by the associations included explicit stipulations which stated that the discounts on programme fees were only to be applied to member cable operators (and that non-members had to pay the full price) and also often specified the amount of the discounts.
58. In its decision, the GVH did not object to the stipulations contained in the model contracts in relation to the discounted prices for association members, but it determined that the exclusive discounts were restricting competition, as they were unreasonably preventing/restricting non-member cable operators from agreeing on similar, reduced programme fees with broadcasters. Consequently, these – actual or potential competitive – cable operators were only able to access several channels for significantly higher prices, and the channels in question represented the vast majority of TV programmes in Hungary. The GVH further concluded that these stipulations also determined the enforceable/demandable prices that broadcasters could ask from non-member providers, and also imposed higher prices on cable operators that chose to terminate their membership (i.e. to no longer be a member of the association). Having regards to these facts, the stipulations about prices for non-member cable operators contained in the model contracts were restrictive by object.
59. Having regard to the fact that broadcasting and royalty fees represent a significant proportion of cable providers' costs, the differences in broadcasting costs have a noticeable/appreciable impact on the distributors' total costs. This causes additional costs for non-member cable operators as (potential) competitors of the members of the associations, which can hinder their access and expansion on the market, thus reducing the pressure of competition on the association members. The lack and impairment of competition also reduces the motivation of members to forward/transfer the achieved/obtained discounts to consumers, which can finally result in higher consumer prices.
60. Taking into consideration all of the above, the GVH imposed fines of 8 and 3 million HUF (27 000 EUR and 10 000 EUR) on the undertakings in question.

### **2.3 Abuse of dominant position**

- 61 In 2013 the Authority initiated 5 proceedings in abuse of dominance cases and concluded 5 proceedings. Of these, one case was closed by the case handler, one case with a commitment decision, in one case the procedure was completed with a finding of an infringement and in two cases the proceedings were terminated.

#### **Number of decisions in abuse of dominance cases (2009-2013)**



62. In recent years an increasing number of local public services have been regulated, probably because of the diversity of local solutions to local problems. Nevertheless, in 2013 the Hungarian Competition Authority treated as a priority the promotion of the efficient operation of local markets and it strived to take action where local regulation left sufficient room for competition policy intervention.
63. In the case of local public services, such as public utilities, even though the providers of the services are often local monopolists, the competition authority has limited room for action in matters most pressing for the consumers, such as pricing, due to the highly regulated nature of the market.
64. In contrast, in the water utilities sector, waterworks themselves set the fees payable for the replacement of submeters to measure individual water consumption by certified instruments and the use of the services of the technical takeover following the replacement or instalment of such submeters and the affixation of seals. In 2013 the Hungarian Competition Authority conducted a competition supervision proceeding against a regional waterworks and established that the undertaking had abused its dominant position when it applied excessively high prices between 1 March 2011 and 31 December 2011 for attaching seals to submeters when they had been installed or replaced by a different undertaking. The information obtained in the course of the proceeding served as the basis for the initiation of additional competition supervision proceedings in respect of similar fees charged by other water utility companies, which are expected to be concluded in 2014.
65. Considering that the relevant legal regulations provide that seals can be attached exclusively by the drinking water provider or an undertaking authorised by such a provider, the service provider clearly has a dominant position as a legal monopoly. In the course of the investigation the fees charged for the affixation of seals were examined using the cost analysis method and by benchmarking.
66. The examination of the fees and costs of the undertaking under investigation revealed that the undertaking placed consumers at a disadvantage through the fees it charged for the technical takeover of the submeters and the affixation of seals because they were higher than the fees applied by other undertakings in a similar position. The analysis of the costs of the investigated undertaking did indicate that the costs of the undertaking would be substantially

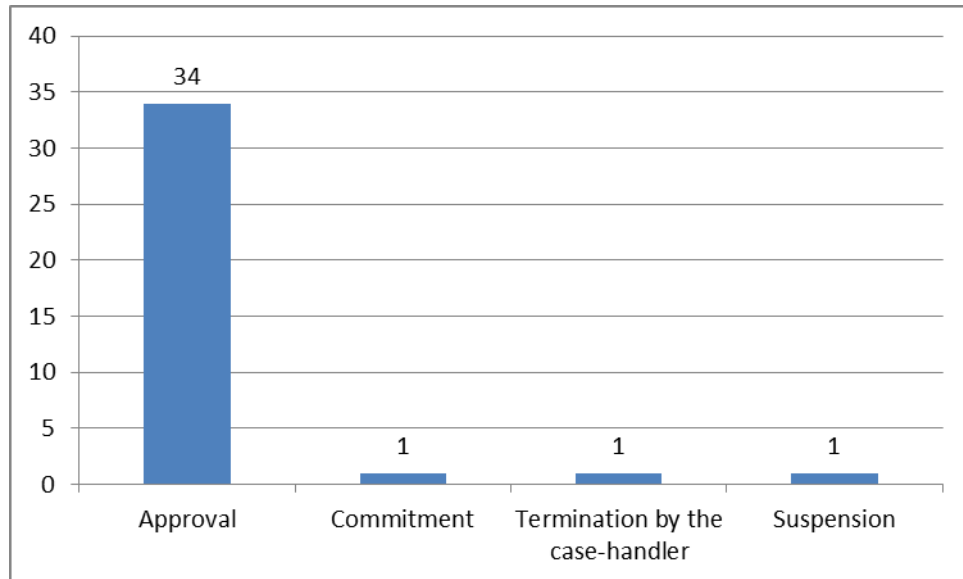
higher than the benchmark and thus justify the application of substantially higher fees. Consequently, the undertaking had unfairly set its fees for the technical takeover of submeters and the affixation of seals at an unreasonably high level.

- 67 In respect of the aforementioned home mortgage products, in the case involving the **unilateral amendment of the contract concerning partial and full early repayment charges** and closed with commitments, the investigated undertaking made the following commitments, inter alia: to repay the partial and full prepayment fees paid by the clients concerned up to a maximum of 8,000 HUF (27 EUR), to offer the possibility, free of charge, of closing the existing home mortgage contracts by early repayment, to publish the text of the commitments in a newspaper of national circulation by 30 November 2013 and disclose it on the homepage of its website in the form of a reference, and inform the Hungarian Competition Authority about the performance of its commitments. In order to verify compliance with the commitments, the GVH conducted a number of post-investigations in December 2013.

## 2.4 Control of concentrations

- 68 During the year the GVH published a notice to clarify its practice in merger control proceedings. In the amended **notice on the differentiation between simplified and full procedure**, the market share threshold for non-horizontal (vertical, portfolio, conglomerate) effects became a uniform 30%, below which simplified procedures are applied (if the required conditions are met). Furthermore, the amendment also clarified the definition of vertical effect, and additional conditions were introduced in respect of vertical and portfolio effects based on which the simplified procedure may be applied where the new 30% requirement is met. The changes reduce the administrative burdens on undertakings and are in line with EU rules as the EU's merger reform package contains the same increased threshold figure.
- 69 In 2013 a total of 37 merger cases were concluded with a decision, of which 30 were assessed under the simplified (single-phase) procedure, and in 8 cases decisions were not accompanied by a justification. Full (two-phase) procedure was required in 5 cases; commitments were imposed in one of these mergers. Like in previous years, full procedures were completed within the legislative time limit (4 months), without the need to resort to the 2-month extension. An infringement was established on one occasion due to the late submission of a merger application, and a procedural fine of 1,050,000 HUF (approx. 3,500 EUR) was imposed.

### Number of merger cases by the types of decision in 2013



70. In each of the simplified procedures the GVH adopted its decision well within the 45-day procedural time limit set by the HCA, taking 27 days on average. The procedure of the GVH took an average of 45 days from the receipt of the application, including the periods not to be considered for the calculation of the procedural time limit. The average time required for the granting of authorisations under the simplified procedure (not requiring any justification) was 21 days, or 34 days from the receipt of the application. Full procedures, which involve complex cases and typically require consultation with competitors and other market participants, were concluded in 85 days on average, or in 104 days from the receipt of the application.
71. In 2013 the GVH assessed mergers in several industries. Transactions between retail stores were of particular relevance; these started in 2012 and continued into the first half of 2013, thus 11 cases, almost one third of the cases closed last year, fell into this category. The investigation of the concentration in the Hungarian book trade was also of outstanding importance. The transaction was examined in a full procedure and resulted in the only intervention in 2013. Major transactions in 2013 also occurred in the energy market. A total of 4 merger cases concerned the energy markets, the MVM/E.ON acquisition deserving special mention. Transactions involving the state represented one fifth of the merger proceedings (7 out of 35 cases) in 2012, while in 2013, 5 out of 37 cases related to the acquisition of ownership by the state.

#### **MVM/E.ON gas merger**

72. The subject of the transaction was the takeover by the state-owned Hungarian energy group Magyar Villamos Művek Zrt. (MVM) over E.ON's Hungarian natural gas business unit, namely E.ON Földgáz Trade Zrt. and E.ON Földgáz Storage Zrt. by Magyar Villamos Művek Zrt. The acquisition of 100% of the shares of the two undertakings (EFT, EFS) by MVM was the aim of the transaction. Besides Hungary, the transaction was investigated by the competition authorities of Germany, Austria, Romania and Serbia.

#### **Libri/Shoptline merger**

73. The GVH – in addition to stipulating certain requirements – approved in a Phase 2 procedure the joint control by SQ-INVEST Kft. and Közép Európai Média és Kiadó Zrt. over the online book sales company Shopline –webáruház Nyrt. and the joint indirect control over the book sales company Libri Company. As a result of the transaction, Libri’s and Shopline’s activities on the book market merged into each other.

**Joint acquisition of Díjbeszedő Holding Zrt. by Hungarian Post and FHB Mortgage Bank / Billing Company merger**

74. The subject of the competition supervision procedure was the agreement concluded between Magyar Posta Zrt. (Magyar Posta) and FHB Jelzálogbank Nyrt. (FHB) regarding the joint control over the invoicing undertakings Díjbeszedő Holding, Díjbeszedő Üzemeltetési és Szolgáltatási Kft. (DÜSZ), Díjbeszedő Nyomda Zrt. (DBNY) related billing division (Üzletág), and Díjbeszedő Faktorház Nyrt. (DBF), Díjbeszedő Informatikai Kft. (DBIT), Díjnet Zrt. (Díjnet) and Magyar Posta Befektetési Zrt. Moreover, in the same procedure the acquisition of sole control of Magyar Posta over the non-billing activities of DBH, and the acquisition of sole control of FHB over the non-billing activities of DÜSZ were approved by the GVH.

**3. Lessons of the court reviews of the GVH’s decisions**

75. Since 1 January 2013, the Metropolitan Administrative and Labour Court of Budapest has been the review court of first instance, and the Metropolitan Court of Budapest has been the second instance review court. The Curia is the review court in exceptional cases, but only on legal matters.
76. As in previous years, a legal remedy was sought against about half of the decisions establishing an infringement in 2013. While in the case of decisions establishing an infringement of the rules concerning agreements restricting competition, all of the fined undertakings brought an action against the condemning decision, in the case of decisions establishing an infringement of the rules concerning unfair commercial practices against consumers, appeals were launched against less than half (23 out of 53) of the decisions.
77. In 2013 the Metropolitan Administrative and Labour Court of Budapest decided in review proceedings on 27 occasions. 8 cases were concluded with final decisions, the court upholding the GVH’s decision in each case, including the amount of the fine.
78. The Budapest Metropolitan Court adopted 11 decisions last year. It upheld the decision of the GVH in its entirety in 8 cases. The court of second instance instructed the GVH to reopen the case in full in a procedure involving unfair commercial practices, and to revisit the fine in an abuse of dominance case, and in yet another case (involving dominance in the telecommunications sector) the Budapest Metropolitan Court upheld the first-instance decision to reduce the fine slightly.
79. In 2013 the Curia decided on ten requests for reviews. In four instances it upheld the final decision rejecting the application; one case related to the authorisation of a merger, one to a restrictive agreement and two to the misleading of consumers. In another case the GVH submitted the application for review, which the Curia found to be justified and stated in its decision, in disagreement with the views of the courts of first and second instance, that the GVH adopted its decision in conformity with the law. The Curia made four decisions (in one consumer fraud case and three restrictive practices cases) approving the minor fine



reductions required by lower-instance courts and in one case overruling the GVH decision on matters of minor importance.

#### 4. Competition advocacy – commenting on regulations and other drafts

80. Last year the GVH received a total of 106 submissions and draft pieces of legislation for comments; and sent its comments in 45 cases. A large proportion of these comments were aimed at creating a friendlier regulatory environment for competition and at improving the conditions of the consumer decision-making process. A smaller proportion of the comments were aimed at improving the quality of legislation.
81. There were **eight other interventions** aiming to initiate legislative amendments to assure a better environment for the competition supervision work of the Authority or the prevention of the deterioration of the regulatory environment of competition in certain markets or the improvement of competitive conditions. In six cases ministries or other authorities contacted the GVH where answering requests or questions addressed to them required knowledge about the powers and law enforcement practices of the GVH. Thus, the experiences gathered by the GVH were put to use, for instance, when responding to proposals of trade associations (fixing of book prices, minimum fees for tour guides, etc.).
82. During the year, on one occasion the ministry responsible for the implementation of a government resolution requested the GVH to contribute an expert (on the subject of the reasonable lowering of qualification requirements). In such cases the GVH can provide assistance in the review of interventions which have no direct effect on competition but which influence the legal environment and administrative burdens of undertakings and thus the costs of market entry and exit.
83. In respect of some sectors or special regulations, the experts of the GVH regularly receive information on current developments and may also monitor the legislative process of the EU. There have been instances of participation in expert working groups operating in such fields, consultations upon the request of the GVH, and in some cases regular contacts were developed with the experts of the ministry entrusted with the organisation of the regulatory work. Mention should be made of the proposal for a Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. When the Directive is discussed in the Council, the Government will pay special attention to the comments of the GVH and the Ministry of Justice and Public Administration will closely cooperate with the GVH when formulating and enforcing the negotiating brief.

#### General Trend

84. In 2013 the GVH continued to place emphasis on commenting on proposed legislation if it gained knowledge of initiatives that could have a substantive adverse affect on competition.
85. If the GVH has conceptual comments concerning the adequacy of the legal arrangement adopted, its views may be taken into consideration only with limitations in the latter phases of the administrative circulation process. Concepts and draft proposals affecting competitive conditions in certain markets are not sent to the GVH (such as the nationalisation of the schoolbook market, interventions in the gambling market), and in

such cases the Authority has a limited capacity to exercise its right of commenting as set forth in the Competition Act.

86. There have been cases where the enactment of legislation which restructured certain markets, made certain activities a state responsibility or provided special or exclusive rights was not preceded by an impact assessment of the proposed regulatory regime, including impacts on competition. Arrangements where the framework of the growth or operation of certain undertakings (such as the opening of retail outlets with large floor space) is set in administrative or other proceedings or tenders relying on case-by-case considerations raise concerns in respect of transparency and predictability and, in some instances, competition neutrality.

### **Some comments on competition advocacy**

#### **Consumer protection rules in the Act on Credit Institutions**

87. The GVH made numerous comments on the draft version of the Act on Credit Institutions and Financial Enterprises in relation to consumer protection rules, in particular the possibility for unilateral amendment of contracts, the weak constraints on such amendments, and the weak requirements concerning the information that needs to be provided to consumers. The GVH considered the tightening of the effective regulations desirable on several points, also proposing more consumer-friendly solutions.
88. The GVH thinks that there are numerous provisions which, although primarily aimed at consumer protection, could also contribute to improving competitive conditions by strengthening the decision making capacity of consumers. For instance, despite the new regulation, a number of consumer protection problems still exist and will continue to do so in the future, thus maintaining the poor bargaining position and vulnerability of consumers for decades through the sustained lax regulation which allows the unilateral amendments of contracts by banks also in the future. The GVH made specific recommendations to change this situation.

#### **Recommended minimum prices in certain regulated industries**

89. In 2013 regulatory bodies received requests concerning certain markets (e.g., construction, security guards, tour guides) asking for authorisation to apply mandatory or recommended minimum prices, or requesting the relevant minister to do so. If such legislation is adopted, the competition authority will have less room to intervene.
90. The GVH took a stance against such regulatory arrangements, but with little success. During the year, a ministerial decree was issued, following the adoption of legislation that contained authorisation to do so, to set minimum hourly fees for the members of the construction sector and security guards. If the undertakings employ substantively lower rates, they have an obligation to explain themselves in public procurement procedures. This rule in itself may encourage companies to refrain from setting their rates below the specified minimum in their bids, and it also facilitates the coordination of bids in public procurement procedures, thereby increasing the risk of price cartels.

### **5. Competition Culture – the activity of the Competition Culture Centre**

91. The competition culture activity of the GVH is organised on the basis of a pre-defined annual work plan, which provides for, among other things, raising public awareness of

competition, the dissemination of knowledge about competition policy, and the contribution, on its part, to the development of competition-related legal and economic activities of public interest. Its operation is financed by the GVH budget.

92. The competition culture activity of the GVH encompasses various projects. E.g.
- the GVH has its own website where it publishes, among other things, all the decisions of the Authority. It also operates two microsites from this website, one about the risks of purchasing groups ([www.nedoljonbe.hu](http://www.nedoljonbe.hu)), and one about compliance ([www.megfeleles.hu](http://www.megfeleles.hu));
  - the GVH publishes a professional periodical, called *Versenytükö*r (“Mirror of Competition”). Articles to this publication are written mostly by the staff of the GVH, and the ‘*Versenytükö*r’ also offers the possibility of professional introduction for those younger colleagues who are interested in competition law issues. *Versenytükö*r is distributed free to law firms, undertakings, associations of undertakings, municipalities, professional journalists, administrative bodies, regulatory authorities, judges, libraries, universities and articles of the publications may be also read electronically on the website of the GVH;
  - as in previous years, the GVH updated and published its descriptive booklet: “What should you know about the Hungarian Competition Authority?” in English language;
  - the GVH has the objective of establishing closer ties with representatives of the academic community working in competition law and competition policy. In this context, the Authority concluded cooperation agreements with several bodies in 2013, including the Hungarian Competition Law Association, the Hungarian Advertising Association and the Hungarian Trademark Association, and continued its long-term cooperation with the Centre for Economic and Regional Studies of the Hungarian Academy of Sciences.
  - in 2013 the GVH prepared, as part of its compliance campaign, a booklet called ‘**Competition Compliance**’, which summarises the contents of the website [megfeleles.hu](http://megfeleles.hu), and which is supplemented by an interactive questionnaire on that website;
  - the GVH published two more new booklets during the year in the context of the campaign. The information booklet ‘**Suspected Cartel in Public Procurement?**’ sets out to help contracting entities by providing advice on ways to prevent and recognise the signs of cartels and other restrictive agreements in the course of public procurement procedures and to encourage them to report alleged infringements to the GVH as required by law. The publication ‘**Don’t be taken in**’ summarises the salient points of the GVH’s website of the same title, advising on the recognition of purchasing groups, their main features and the risks associated with them.
  - in 2013 the Authority examined awareness of its competition supervision proceeding investigating the concerted practice of banks aimed at limiting the full repayment of foreign currency loans at fixed exchange rates, familiarity with fundamental facts and the involvement of respondents. The research was concluded in early 2014.
  - the most recent competition culture survey was conducted by MASMI Hungary Kft. in the context of the compliance campaign among Hungarian enterprises (SMEs) employing less than 50 persons but generating an annual turnover of at least 10 million HUF. The majority of the entrepreneurs and managers (65%) preferred market competition to government regulation, even though only one fifth (20%) considered completely free competition without any state intervention to be desirable. 29% stated that the ideal

would be a balance between state intervention and market competition, while only 5% said that greater or exclusive state intervention would be desirable.

- in 2013 the GVH held its academic competition ‘Competition law in Hungary and the EU’ for university and college students for the fourteenth time;
- the GVH participated for the sixth time in the Civil Sziget at the Sziget Festival in Budapest;
- the GVH made both complex and case surveys in 2013 about the awareness of and the opinion about competition, competition rules and the GVH, and about the depth of the knowledge of selected cases or actions run by the GVH;
- a comprehensive communication campaign was initiated to foster competition law compliance and to promote the competition culture of undertakings, especially that of SMEs. In the compliance campaign, the GVH cooperates with professional organisations of lawyers, accountants and business interest groups because most business owners of the small and medium sized undertakings receive the information on legal and taxation changes from their lawyers and accountants;
- the GVH continued the cooperation with the MNB in the Financial Culture Team, which was founded by the staff of the three institutions in order to publish booklets containing information on financial knowledge for everyday people.

## **6. Cooperation with other organizations**

93. In order to assist the competition culture promotion work of other organisations, the GVH redesigned its former tendering system into a support system in 2013. The ‘Support Guide’ was published in July 2013.
94. The GVH issued its call for proposals in July 2013, offering assistance to programmes submitted by applicants in possession of appropriate references, with sound professional foundations and realistic budgets.
95. The Pázmány Péter Catholic University and the related Centre for Competition Studies (<http://www.versenyjog.com/index.php/en/>) held, with the support of GVH, its ‘First Annual Conference on the Unfair Commercial Practices Directive’ on 10 May 2013. The purpose of the event was to provide a forum for the exchange of information between law enforcement specialists, judges, undertakings and other stakeholders on the subject of misleading commercial practices.

## **7. International relations and the activity of the OECD-GVH Regional Centre for Competition in Budapest**

### **International relations**

96. The international relations of the GVH focused mainly on co-operation with the European Commission and the national competition authorities of the EU Member States, co-operation within the framework of the Competition Committee of the Organisation for Economic Co-operation and Development (OECD) and the International Competition Network (ICN), as well as by bilateral co-operations.

97. Similarly to the practice of the previous years, the case-related co-operation within the European Competition Network (ECN) in respect of the application of the competition rules of the EU continued to be one of the main fields of the international relations.
98. Concerning co-operation with the International Competition Network (ICN), in 2013 the GVH remained an active participant in particular in the work of the Cartel Working Group, since the GVH remained responsible for the coordination of the project on “Anti-Cartel Enforcement Template”.
99. Contributions to the work of the OECD Competition Committee and of its working groups were also of great importance in 2013. Contributions were prepared on the topics of rail transportation services, use of screens to detect cartels, competition in the food chain industry and definition of transactions for the purpose of merger control review.
100. In April 2013 the GVH organised a professional event for the GVH staff on the topic of “Current Antitrust and UCP related Case Law of the EU Member States”. The workshop overviewed the latest developments in the law enforcement practice of the EU competition rules, in particular the application of the antitrust rules and the provisions relating to the ‘Unfair Commercial Practices Directive’.
101. In accordance with established practice, the GVH also sent one of its experts in 2013 to the OECD for a whole year as a secondee on a rotation basis.

### **The activity of the OECD-GVH Regional Centre for Competition in Budapest**

102. The OECD-GVH Regional Centre for Competition in Budapest (RCC) was established by the OECD and the GVH on 16 February 2005. Relying on the professional background of the Competition Division of the OECD and the GVH, the Centre provides capacity building assistance and policy advice for the competition authorities of the Central, East and South-East European region, namely for Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The RCC is financially supported by the Hungarian Government.
103. Among other issues, the RCC deals with issues such as: analysis of the most important competition cases, investigative techniques, competition policy principles in the process of regulatory reforms, training of judges, law enforcement priorities, guidelines, policies, practices and procedures, framework for the cooperation of the competition authorities of the region, competition advocacy, tools for communication, cooperation between competition authorities and regulatory bodies, other general issues falling under competition law and policy. Regular meetings, training programmes, seminars and workshops were organised on all of these topics.
104. In 2013 the RCC organised 9 major events and hosted 291 participants from 37 countries, and 52 speakers from 17 countries. These nine events focused on topics which were of particular relevant and importance to the participating beneficiary authorities. One of the main aims of these events was to present good practices in the field of competition law and policy.
105. Along with other topics, topics such as competition in electricity markets, proceedings in complex merger analyses, IP law and price related abuse of dominant position appeared on the agenda of the RCC events. Two separate events were devoted to the training of European judges.

106. The line of RCC seminars organised abroad also continued. This time the Croatian Competition Agency hosted an event on the topic of “*Cartel Investigation Procedures, Leniency Programmes, Dawn Raids ad Public Procurement Issues*”. In addition to this, co-organised and co-financed with the Federal Antimonopoly Service of Russia, a further workshop was organised for the competition authorities of the CIS countries on the topic of “*Competition in Electricity Markets*”.

## 8. Technical conditions and other information

107. In 2013 the GVH spent 2.342 billion HUF (cca. 7.9 million EUR) on its operation.

108. In 2013 the confirmed number of staff working at the GVH was 122.

109. Similarly to the practice applied in previous years, the GVH placed a special emphasis on the advanced studies of its colleagues by providing them with the opportunity to get acquainted with recent European Union law practice. In 2013, one of the civil servants of the GVH worked for the European Commission as a national expert. Furthermore, one of the colleagues of the GVH was provided with a foreign employment option at the OECD centre in Paris.

## 9. Resources of the competition authority

### Annual budget (in HUF and EUR)

<b>2013</b>	billion HUF	2.342
	million EUR	7.9

### Number of employees (person-years)

	<b>2013</b>
Economists	46
Lawyers	19
Lawyer-economists	10
Other professionals	18
Support staff	29
All staff combined (actual)	122