



GAZDASÁGI
VERSENYHIVATAL

**HUNGARIAN COMPETITION AUTHORITY
BUDAPEST, HUNGARY**

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

(January – December 2010)

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

1.1. Changes to the narrower legal environment

1. The most important amendment to the 'Act on the Prohibition of Unfair and Restrictive Practices'¹ was enacted in 2009, namely the introduction of the informant award in cartel cases, and came into force on 1 of April 2010. The core of this new enactment is that any natural person, who provides the Gazdasági Versenyhivatal (Hungarian Competition Authority – GVH) with written evidence or information which serves as the basis for the seizure of written evidence that qualifies as indispensable for proving a hardcore cartel, may require 1 percent of the fine imposed (but this amount may not exceed fifty million HUF– approx. 185 thousand EUR). This new opportunity has not had a big influence on the detection results of the GVH, though interest towards this possibility has been perceivable.
2. Several other smaller amendments of a legal technical nature or connected to the budget of the GVH also entered into force during 2010.
3. In respect of the 'Act on the Prohibition of Unfair Commercial Practices against Consumers'² and the 'Act on Essential Conditions of and Certain Limitations to Business Advertising Activity',³ no major amendments were made during 2010, but rather minor changes of a technical legal nature were introduced. However, the amendment through which the legislator made it crystal clear that the *amicus curiae* activity of the GVH extends also to cases taking place at civil courts under the 'Act on the Prohibition of Unfair Commercial Practices against Consumers' is worth mentioning.
4. In the course of 2010 the Constitutional Court (CC) made several decisions which had an effect on competition law on the one hand, and on the operation of the GVH, on the other hand. Among them it is worth mentioning, in particular, that the CC rejected the submission which stated that the provisions of the Competition Act are anti-constitutional by allowing the Competition Council to oblige undertakings, which are members of an association, to pay the fine jointly and severally if they participated in a decision of the association restricting competition and the association did not pay the fine and the effective enforcement of the decision did not result either.
5. The CC pointed out that on the one hand, the possibility of joint and several liability is not the result of the membership in the association in itself, but expressly the consequence of the participation in the violation. On the other hand, the GVH based its findings on an evaluation of the evidence found during the competition supervision proceeding and the fact that there are appropriate rights of defence for the parties, including the possibility of a court review of the decision.
6. Based on submissions challenging the rules on the advertisement of tobacco products, the CC annulled those provisions of the 'Act on Advertisement', according to which the proceeding authority – in the case of misleading and comparative advertisement the GVH itself – or court could prohibit even non-published advertisements, provided that publishing the ads would violate regulations on economic advertisements. The CC held that this preliminary prohibition is based on a rule which has overly vague and general wording, that does not contain any clarification or tightening and that would, therefore, have been suitable to restrict freedom of opinion and freedom of press.

¹ Act LVII of 1996 – the Competition Act

² Act XLVII of 2008

³ Act LVIII of 2007

1.2. Changes to the broader legal environment

7. The 'Act 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'⁴ was amended. Following a moratorium introduced on 17 August 2010, the provisions⁵ of the Act relating to the mergers of pharmacies changed⁶. The new rules, entering into force on 1 January 2011 state that a concentration cannot be authorised if it would give - direct or indirect - control to a given business association or company group over more than four pharmacies, moreover, a concentration shall not be authorised if it would give – direct or indirect – control to a given business association or company group over three or more pharmacies in a community with a population of less than twenty thousand. In parallel with this, provisions of the Act referring to the Competition Act or to the authorisation proceedings of the GVH were repelled from the Act. According to Paragraph (3) of Article 53, the government body in charge of the healthcare system has to verify compliance with the provisions of Section 75 in the course of the proceedings for the authorisation of public pharmacies. This means that in the future the GVH investigates all pharmacy mergers under the Competition Act only.
8. One of the most essential changes concerning the regulation of financial services is manifested by the 'Act on Consumer Credit'⁷ which was enacted in the last few days of 2009 and which entered into force in January 2010. This Act, on the one hand, transposes the provisions of Directive 2008/48/EC on credit agreements for consumers into the Hungarian legal system and, on the other hand, it provides similar regulation also for mortgage loans, which although do not fall under the scope of the directive, form a larger part of credits in Hungary. The Act contains detailed rules on communication concerning credits and about the content of information to be provided before the credit contract is concluded – these provisions have to be applied in parallel with the relevant rules of the 'Act on the Prohibition of Unfair Commercial Practices against Consumers'.
9. The 'Act on Public Procurement'⁸ was supplemented by Article 20/A in 2008, which aimed to reinforce the fight against cartels. According to this provision, where during the contract award procedure the contracting entity perceives a clear and manifest anticompetitive agreement on behalf of the bidders, or there is a reasonable suspicion of such a violation of the Competition Act, it has to notify this practice to the GVH. This provision of the 'Act on Public Procurement' was further supplemented⁹ in 2010 by a new provision which, listing all the examples, determines the circumstances from which the contracting entities can conclude that the bidders are submitting a coordinated bid.

2. Proceedings

10. In 2010, the GVH conducted 132 competition supervision proceedings out of which 94 cases were concluded by resolution on the merits (decision or order imposing commitments) of the Competition Council, and 38 cases were terminated either by the case handler or the Competition Council. In 2010, the GVH initiated 123 investigations of which in 97 no decision was made in 2010, and four were stayed. The total number of cases initiated in 2010, and those initiated earlier and still under investigation is 233. Twelve post-investigations were held in 2010.

⁴ Act XCVIII of 2006

⁵ Article 75 of Act XCVIII of 2006

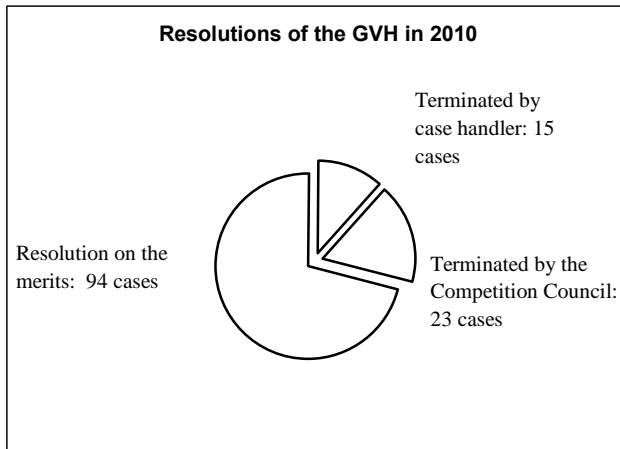
⁶ Act XCVIII was supplemented with a new Article 85, according to which authorisation for the concentration of business associations engaged in the operation of pharmacies may not be granted before 1 January 2011 under Act XCVII of 2006 or under the Competition Act either. This provision did not affect cases already in progress.

⁷ Act CLXII of 2009

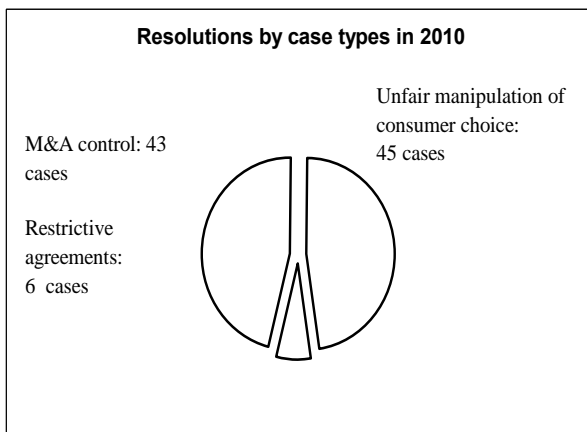
⁸ Act CXXIX of 2003

⁹ Act LXXXVIII of 2010

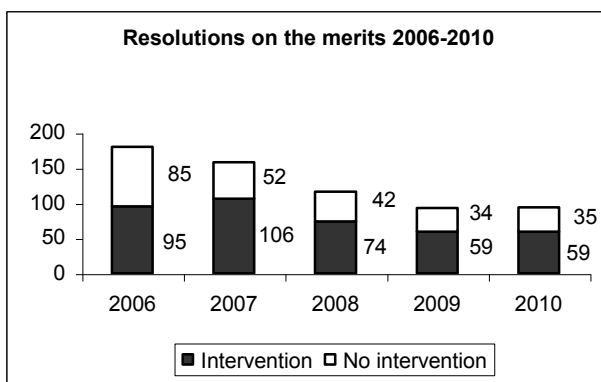
11. The proceeding can be terminated if no infringement can be established on the basis of the evidence obtained in the course of the proceeding, or if pursuing the case further is not in the public interest.



12. The resolutions of the Competition Council broken down according to case types.



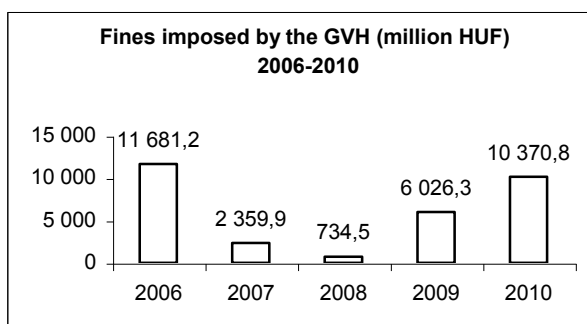
13. Out of the 94 cases concluded by resolution on the merits, 41 were initiated based on complaints, and 53 ex officio.¹⁰ The GVH intervened in 59 cases. The number of interventions in the last five years is illustrated by the following chart.



14. The Competition Council of the GVH in 49 cases out of the 94 resolutions, imposed a total fine of HUF 10.4 billion (approx. EUR 37.5 million), which contains the fines imposed

¹⁰ 'Intervention' is a generic term which covers all enforcement measures which result in competition on the market being different to that which it would have been without the intervention.

for failures to submit, and delays in submitting, applications for authorisations of concentrations – HUF 38.8 million (approx. EUR 140 000).



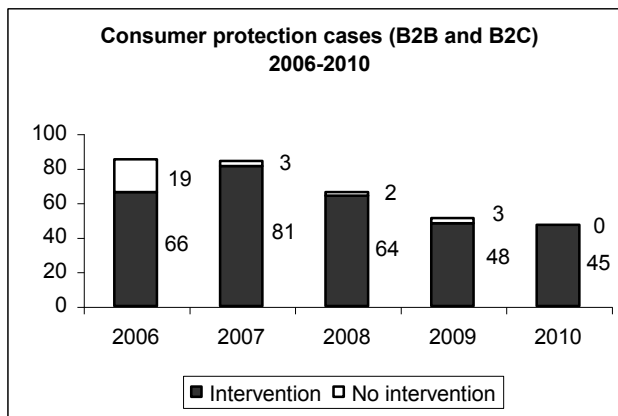
15. The vast majority of the fines (about HUF 9.6 billion, approx. EUR 34.5 million) were imposed in three cartel cases.
16. The Competition Council makes commitments binding on the parties and at the same time terminates the proceeding (without concluding in the order whether or not there has been or still is an infringement of the Competition Act) if the commitments offered by the parties meet the requirements of the law, namely it is ensured that the practices of the parties comply with the provisions of the Competition Act, and at the same time the effective safeguarding of public interest can be ensured. In cases of serious infringements, it is rare that the GVH would make commitment decisions.
17. Commitment decisions constitute an important part of the law enforcement activities of the GVH, as in these cases the anticompetitive behaviour is eliminated by the commitments of the undertakings.
18. The commitments made in 2010 covered, amongst other things, the modification of contractual relationships, the compensation of customers, and in the case of misleading advertisements, the modification of the practice of communication campaigns.
19. In the Annual Report only those cases are summarised, which are of high importance as a matter of principle with regard to law enforcement or market development.

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

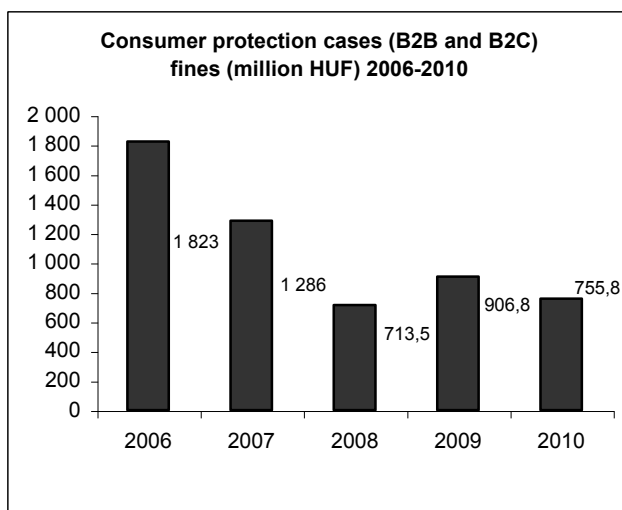
20. The GVH's antitrust and consumer protection activities complement each other by serving consumers' interests: competition makes it possible for consumers to choose the most suitable option from the maximum possible choices. However, if consumers are not able to make rational decisions they cannot 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 these are able to complement each other.
21. 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.
22. 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 done everything to provide consumers with relevant and decisive information.

23. Market competition is normally capable of remedying consumer harm. However, in certain situations this is not the case, and state intervention is needed.
24. 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 Hungarian Financial Supervisory Authority (Pénzügyi Szervezetek Állami Felügyelete – PSZÁF) 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 by violating the information requirement set out in other legal norms. The PSZÁF has jurisdiction in connection with practices carried out by those financial institutions the supervision of which belongs to the competence of the authority. 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 Fttv. (Act XLVII of 2008 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.
25. Practices in B2B relations – targeting businesses – belong to the sole competence of the GVH.
26. In 2010, the GVH conducted 61 consumer protection related proceedings out of which 45 cases were concluded by resolution on the merits, while 16 cases were terminated either by the case handler or the Competition Council.
27. In all the 45 cases which were conducted by resolution on the merits, the Competition Council intervened.



28. The Competition Council established the infringement in 43 cases, out of which in 38 it imposed a total fine of 755,8 million HUF (approx. 2.47 million EUR).



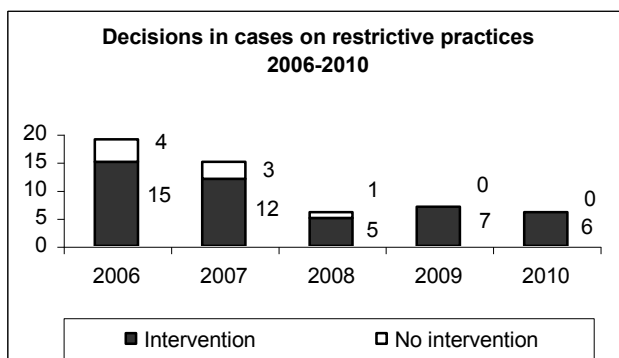
29. In two cases, as a result of commitments made by the undertakings, the GVH terminated the proceedings
30. The most important consumer protection cases in 2010 were the interventions for the benefit of **consumer groups**. What is common in the communications of the undertakings organising consumer groups is that based on these communications their target group – typically not creditworthy, and inexperienced in financial matters – takes their services as loan services. At the same time, their members are not informed fully about the costs, restrictive conditions, and the lottery like features.
31. The GVH imposed a fine of 44,2 million HUF (approx. 142,000 EUR) on Euro Correct Consulting Kft., Group Center Krt, Group Saving Kft., and New Face Media Kft. in case Vj-111/2009. These undertakings organised consumer groups, and in the course of 2008 and 2009, in their advertisements appearing in the press, they concealed the fact that consumers may get the amount of money advertised not immediately, but only by lottery, by accepting prepayment or after 15 years. Furthermore, it was also omitted that as a precondition, members are required to make payment. The Competition Council underlined that not only the outcome of the information process has to be correct, but every element of it, and especially the advertisement. The Competition Council added that an infringement was committed by the disclosure of the advertisement, as the aim of the advertisement was to increase the willingness to purchase.
32. In case of **financial services**, consumers face information asymmetry, beyond the financial difficulties. Experiences and studies, both in Hungary and abroad, underline the significance of this phenomenon. Therefore, market surveillance and, when need be, interventions are appropriate even in case of undertakings pursuing normal market activity.
33. The GVH investigated the communication of Allianz Bank Zrt. and Allianz Hungária Biztosító Zrt. in relation to the combined investment product HozamMix (Vj-137/2008). The product had various features that resembled deposit, investment, and life insurance. The statements made in August and September 2008 regarding the interest were false, as the advertised declaration of “savings with up to 17% interest” was not true in relation to either of the products. Furthermore, the undertakings omitted some of the essential features of the product: the consumers were only informed about certain, in themselves favourable, characteristics, while no information was provided on the ratio of the bank deposit and the investment unit related life insurance, and on the term of the deposit. The Competition Council was of the opinion that this communication practice made it significantly more difficult for the consumers to make a reasoned decision. Furthermore, it was emphasised in the decision that the decision of the consumer might be manipulated simply by the fact that the undertakings used common technical terms with meanings

differing from their originals. Therefore, the Competition Council established the infringement, and imposed a fine on the undertakings.

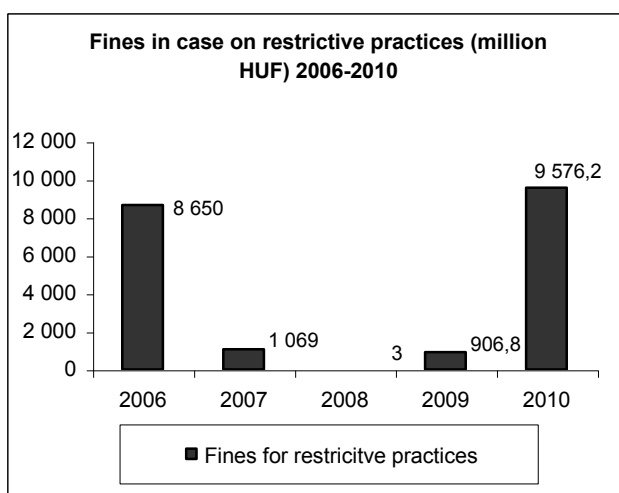
34. The GVH lays stress upon **health** related statements, and information on products and services related thereto. Besides the strong information asymmetry (due to the empirical and confidential nature of the products and services), there are two other aspects to be taken into account. First, the potential consumer harm is likely to be great, as the damage has not only financial but health consequences, even irreparable ones. (The latter may occur even in case of harmless products and services, since trusting their effectiveness, the consumer might not seek medical help.) Furthermore, these consumers are vulnerable: their hope of recovery often blurs their reasonable judgement.
35. The GVH has kept a close eye on these markets for years. Its role is less important in case of products classified as medicinal products because these products are subject to comprehensive regulation. However, in case of commercial practices advertising therapeutic substances and preparations, which are not classified as medicinal products – especially in case of dietary supplements and medical technical devices – its role is significant. There are market players in this field, which base their entire business model on unlawfulness.
36. The GVH imposed a fine of 15 million HUF (approx. 48,000 EUR) on Larasan Limited for its statements in connection to the product Artrosilium (Vj-105/2009). The communication stated that the product has therapeutic effects, eases pain, and cures arthrosis. The undertaking, however, could not provide any evidence in support of these statements, and subsequently acknowledged the lack of proof. The GVH underlined the high importance of factual information void of exaggeration because of the defencelessness of consumers in this field.
37. Statements with regard to **diet and weight loss** belong to a separate infringement group, which at the same time have connections with health effects. Lately, the number of undertakings offering products and diets promising such effects has grown rapidly. Since being overweight is becoming more of a problem in Hungary, the GVH closely observes the market practices of undertakings promising the prevention and curing of being overweight.
38. A number of proceedings of the GVH considered **interactive television games** (dial-up gaming services), and winning games (sending private messages).
39. Certain **telecommunication** operators emphasised the attractive features of their services in comparative advertisements. In two instances the GVH suspected that the comparative advertisements did not meet the requirements of objectivity, especially in connection to features highly relevant to consumers, e.g. the length of loyalty period, and the guaranteed down- and upload speed in case of Internet services. The Competition Council held that in case of comparative advertisements the advertiser has to compare all the relevant features of the compared goods and services, and these need to be communicated appropriately.
40. As a consequence of the liberalisation of the **gas market** the new market players and the incumbents started to advertise their services. While the entrants emphasised the price discount they were to give, the incumbents highlighted the safety and quality of their services, and the difficulties with changing providers. Not having any experience in this, the consumers who encountered these comparative advertisements were not familiar with the possibilities of changing providers, let alone the existence of such possibilities. The complaints both from market players and consumers made the intervention of the GVH necessary in his situation.

2.2. Restrictive agreements

41. The GVH closed 13 cartel cases in 2010. Six cases were concluded by resolutions on the merits, while seven cases were terminated either by the case handler or the Competition Council.
42. In all six cases, concluded by resolutions on the merits, the GVH intervened. Out of the six cases, three concerned horizontal, two vertical agreements, and one was of a mixed nature.



43. In the six cases where the GVH intervened, a total fine of HUF 9.6 billion (approx. EUR 34.5 million) was imposed.



44. A very significant case, which was initiated by a dawn raid, was the **railway reconstruction cartel** (Vj-174/2007), in which the GVH imposed a fine of HUF 7.2 billion (approx. EUR 25.6 million). The members of the cartel were Colas Zrt. that belongs to the Colas-group, MÁVÉPCELL Kft. belonging to the Swietelsky- group, MÁV MTM Rt. (was under liquidation), and Szentesi Vasútépítő Kft. that is a member of the STRABAG-group. The fifth member of the cartel was not fined as it applied for leniency, and disclosed valuable information on the agreement.
45. The principle aim of the undertakings taking part in the restrictive agreement was to ensure that the winner of the tenders mentioned would be one of them. As part of the agreement they decided to either involve the other participants as subcontractors in the implementation of the projects or to choose one of them to win the tender in another public procurement proceeding. Consequently, the aim of the practices investigated was also to exclude the other potential tenderers, maybe those which were registered in the other Member States of the EU, hereby stabilising their market shares in Hungary and preventing new entrants from entering the market. Furthermore, it was also envisaged to weaken the “negative” effects of

competition in the fight for the projects (e.g. lower prices which mean less profit for the undertakings) or even to exclude competition completely.

46. When determining the amount of the fine, the GVH took into consideration the fact that the fine has to be proportionate to the infringement committed, on the one hand, and that it also has to have a deterrent effect, on the other hand. The GVH considered, as an aggravating factor, that the restrictive practices revealed – market sharing and price fixing committed within the framework of public procurement procedures – qualified as extremely serious infringements of the law, took place for a long period of time and covered the whole territory of Hungary.
47. A similarly important case was the **mill-cartel** (Vj-69/2008), in which a fine of HUF 2.3 billion (approx. EUR 8.4 million) was imposed. The cartel, which was detected by the GVH, primarily affected the market of wheat flour that is reckoned among the basic food industry products in the Hungarian consumption patterns. The 16 fined undertakings that are specialised in Hungarian grain processing, committed a persistent and complex infringement between February 2005 and April 2008, with the aim of restricting economic competition on the market concerned. They colluded and agreed on the prices of certain whole-grinds, the alteration of their prices, and in addition, they shared the market among themselves with the commitment that they would refrain from entering into each other's market.
48. The mills, which were significant market players at national level, played a decisive role in the cartel; the agreement, which was concluded between them, would form the main stream of the restrictive practices under investigation. Generally the most relevant mills, which possess 70-80% of the capacity of the Hungarian mill industry, participated in the national meetings. These undertakings typically own several mills around the country, and considering the location of those mills and the control relations between the undertakings, the majority of those undertakings are active in several regions of Hungary.
49. Evidence showed that meetings were held not only at a national, but also at a regional level, with the participation of further representatives of the industry. At these regional meetings, next to those significant market players which were present at the national level meetings, appeared representatives of smaller mills operating at regional level. (The regional meetings targeted the involvement of smaller mills, in order to convey and reinforce the agreements that had made at national level. By doing so, the undesirable phenomena that smaller mills "pick" from the market to the detriment of larger mills by applying lower prices, could be avoided. As a result, the agreed price increase was forced on the customers on the whole geographic territory of Hungary). The GVH revealed many meetings at which discussion took place on these subject matters.
50. The subjects of the collusion were to agree on the prices of whole-grind, flour and bran, and the possible increase in the prices and the issues of implementation (method, timing) in relation to them. From time to time an agreement was made at the meetings about whether the colluding parties would increase the prices of flour products – white flour and other types of flour -, in case of affirmation, what the new price would be and from what date they would take effect. As regards the by-product of whole grounding, namely the bran, the colluding parties primarily informed each other on the amount and the specific price of the distributed products, and also sometimes agreed on the prices among themselves.
51. There was a lot of evidence indicating that the mills aimed to maintain the "status quo", thus they refrained from entering into each other's markets, and additionally they undertook to respect the existing customer relations (namely, which customer belongs to which certain mill). As regards those larger customers that carried key importance, mills forced them to comply with the existing "status quo".
52. With their conduct, the undertakings that usually have diverse leadership structures (i.e. some undertakings have Hungarian private or institutional ownership, some of them are owned by municipalities, while others operate under foreign management) have obviously caused harm to Hungarian consumers, because due to the price-fixing and the market-

sharing there was no effective competition on the market with regard to prices. Therefore the bakeries, which purchase baking products, the food-industry distributors and also the customers, could only obtain the products at a higher price.

53. Besides infringing Hungarian competition law, the parties have also breached the competition rules of the EU. By organising meetings both at national and regional level, the restrictive agreements concerned the whole territory of Hungary, one of the Member States of the European Union. Flour is mainly imported to Hungary from Slovakia, but there are some other neighbouring countries that transport flour to the country. The agreements covered the whole territory of Hungary; furthermore they could have an effect on the movement of goods and the economic activity affecting at least one other EU Member State directly, and thus would be able to have an affect on trade between the Member States.
54. When setting the amount of the fine, the GVH took into consideration the fact that the fine has to coincide with the seriousness of the committed infringements and in addition, that it has to convey a clear deterrent message. The decision has to make it clear that it is in no way rewarding for the participating parties and for other undertakings representing other sectors to organise and to maintain cartels.
55. When evaluating the amount of the fine, the GVH has paid special attention to the fact that the infringement is regarded – due to its price-fixing and market-sharing attributes – as an extremely serious competition law infringement. The undertakings were pursuing their complex and infringing activity in a persistent manner, over a long period of time and over the whole territory of Hungary. The GVH also paid attention to the fact that a lot of the parties or their predecessors were recidivists, as they had already participated in an infringing collusion of the same kind. These kind of infringements are regarded as special recidivism, namely if the undertaking breaches the competition law rules by the same or almost the same kind of infringement several times. According to the GVH, the recidivism and the special recidivism have to be regarded as serious aggravating circumstances. This approach has been upheld by the courts, which are authorised to review the decisions of the GVH. According to the above-mentioned circumstances, it is not rewarding for the undertakings to participate in repeated infringements because if they do the imposed fines may be significantly increased.
56. In the **newspaper distribution case** (Vj-195/2007) the GVH scrutinised a cartel which was operating openly, and which restricted competition through the shareholders' agreement between Magyar Lapterjesztő Zrt. (Hungarian newspaper distributor – hereinafter Lapker) and the publishers having shares in Lapker. The non-compete clause in the agreement was in force between 1998 and 2008, according to which Lapker undertook not to pursue any publishing activity, while the publishers undertook not to pursue distribution activity (other than that which they had already done). The GVH imposed a total fine of HUF 100 million (approx. EUR 360 000).
57. The GVH assessed several economic and competition law issues. Though the shareholders' agreement was entered into between parties in a vertical relationship, the competition constraint was of a horizontal nature. It aimed to divide the market between the parties.
58. The shareholders' agreement was negotiated in connection to the privatisation, in 1998, of Lapker. Then, in the tender, the state favoured those bidders who had publishers as members. These circumstances did not influence the competitive assessment in the case, but were taken into account when setting the amount of the fine.
59. The concentration in connection to the privatisation was authorised by the GVH. However, the authorisation did not cover the shareholders' agreement, as the GVH did not know about it. For it to be authorised, the shareholders' agreement would need to have satisfied the conditions applicable to ancillary agreements. An ancillary agreement is indispensable to the implementation of the agreement, and the restraints must be effective under a specified time period for the purpose of safeguarding the investment. The above-mentioned shareholders' agreement did not meet any of these conditions.

60. The GVH assessed the possibility of exemption with regard to the agreement. This is an important aspect as competition law is open to certain kinds of restrictions as long as they are necessary for, and proportional to, the protection of investment. Thus these ancillary restraints do not necessarily fall foul of the provisions on competition law. However, the exemption was excluded, amongst other things, because the agreement – together with another agreement that the GVH had already investigated – closed the market of newspaper distribution, whereas one of the conditions for exemption is that the agreement cannot eliminate all the competition on the market.
61. In the case of restrictive agreements, anticompetitive effects do not need to be proven; it suffices to prove the anticompetitive aim, which was obviously present in the given agreement. However, with regard to the gravity of the infringement, the GVH assessed the anticompetitive effects of the agreement. The assessment showed anticompetitive effects on the market in 1998 and 1999 when several publishers were planning to enter the market of newspaper distribution, while others actually pursued such activity. Later on, no such effect could be established.
62. The infringement restricted competition in the whole territory of Hungary, keeping the status quo alive, and thus resulted in the fragmentation of the common market along national borders. Furthermore, the high joint market share of the undertakings affected the possible market entry in Hungary of other newspaper distributors from other Member States.
63. The competition supervision proceeding against **GEKKO Garden Kft.**, an undertaking engaged in playschool services, concerned the franchise agreements between GEKKO and its customers (Vj-60/2009). The GVH found the franchise agreements entered into between 2001 and 2008 to be anticompetitive. Accordingly, it established the infringement but it did not, however, impose a fine.
64. GEKKO is an undertaking that supplies complex and integrated playschool services to normal children and all those children who need some form of special treatment between newborn status and the age of 14. The educational concept of the undertaking aims to survey all the function fields of the children and to then facilitate their collective development. Parents generally enrol their children for a certain period of time at the playschool (several months, one year). GEKKO is one of the leading players on this market, with an estimated market share of 30-40%.
65. In order to establish its extensive franchise-network, GEKKO concluded several standard franchise contracts with the partners who operate playschools. In these contracts, which are the subjects of the investigation of the GVH and which were concluded between 2001 and 2008, GEKKO supplied, for consideration, its self-developed integrated educational concept, the software developed directly for the concept, and also educational guidance to the contracting partners. In these contracts GEKKO applied vertical price-fixing, and in addition to a non-compete clause, territorial exclusivity was also stipulated. According to the standard franchise contracts, the contracting partners had to provide the services and supply the products mentioned above at the prices and with the discounts that were determined by GEKKO, and moreover without the prior authorisation of GEKKO the contracting partners were not allowed to deviate from these prices and discounts. It also appeared as a non-compete clause that under the scope of the standard franchise contract, and within two years from the expiry of the contract, the contracting partners were not allowed to provide or convey services and products that could compete with the services and products provided by GEKKO.
66. The GVH considered the resale price maintenance provision contained in the standard franchise contracts under investigation to be the most serious anticompetitive infringement. The GVH emphasised that in those cases where the prices are fixed or are kept down to a minimum sum by the undertaking under investigation, a violation of the Competition Act would be established because via these practices the salesman would be deprived from effectively applying of one of the most important tools of competition. GEKKO aimed to

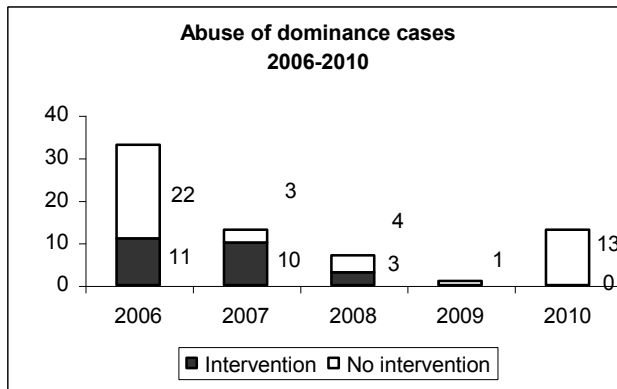
justify the need to adopt vertical price-fixing by claiming that it was necessary in order to maintain high quality and to ensure uniform marketing and business action, however, GEKKO did not provide relevant evidence to support its arguments. According to the GVH, vertical price-fixing does not in any way guarantee high quality on the market, because turnover that is fixed at a certain level cannot induce the supply of higher quality services.

67. As for the territorial exclusivity stipulated by the standard franchise contracts, the GVH referred to the fact that in a case where the undertaking does not possess an overly high market share (it is less than 30%), the territorial exclusivity that applies to a reasonable area can be regarded as justified since it is the only way to ensure that franchisees are encouraged to enter the market. This may lead to the establishment of new franchise-networks and is thus capable of contributing to the more reasonable organisation of services and to the promotion of economic growth. In this particular case the anticompetitive effects of territorial exclusivity are weakened because some GEKKO playschools could have welcomed customers from outside of their own exclusive territory, from anywhere in the country. Furthermore, high customer demand could have triggered the establishment of new playschools with new contracting partners that would have also weakened the anticompetitive effects of the territorial exclusivity.
68. According to the GVH, GEKKO has the power to control and restrict market entry and also the investments of the competitors through the stipulation of the two-year long non-compete clause. In line with competition law enforcement practice, in order to protect the owner of the intellectual property right, non-compete clauses of that kind can be regarded as reasonable in so far as they do not extend beyond more than one year after the expiry of the contract. Namely, if the right to utilise the intellectual property right was not guaranteed to the owner – at least for a certain period of time –, he would no longer be interested in developing new products or effectuating new investments. At the same time, GEKKO attempted to justify its two-year long immunity only with the general reasoning that educational concepts usually become obsolete after a longer period of time, but it did not provide any clear evidence to support this claim – moreover, GEKKO did not clarify how much information and what kind of methods it shares with its contracting partners every second year.
69. When calculating the amount of the fine, the GVH considered the following circumstances. The restriction of the potential of the contracting partners to determine the variety of prices – considering the territorial separation of the playschools and also the local feature of the market – was just one step in the course that led to the elimination of the intra-brand competition. The GVH also contemplated that due to the decrease in the number of GEKKO playschools, the anticompetitive price-fixing could only have had a minor factual effect on the market. Also, referring to the current market structure where competitors usually possess low market shares – the vertical price-fixing of GEKKO does not tend to induce collusions. Taking into account all the above-mentioned, no fine was imposed on the undertaking as the GVH considered the effects of the vertical price-fixing the field of both intra-brand and inter-brand competition to be minimal. The GVH applied the same approach when determining whether the non-compete clause in connection with the two-year long exclusivity was an infringement.
70. In line with competition law enforcement practice, the competition supervision proceeding was not extended to the behaviour of the franchisees – although they were also involved in the infringement concerning the standard franchise contracts – because they did not take the lead during the establishment and the observance of the non-compete clauses.

2.3. Abuse of dominance

71. In 2010 the GVH conducted 13 proceedings on the suspicion of abuse of dominance. Three cases were concluded by resolution on the merits, while ten cases were terminated either by the case handler or the Competition Council.

72. All the undertaking in the three cases (exploitative abuse) offered commitments to comply their practices with the provisions of competition law, therefore no infringement decisions were taken by the Competition Council.



73. All three interventions concerned banking practices in connection to **loans**. In the course of long-term contractual relationships in the loan market, the banks unilaterally modified the contracts. These modifications typically concerned the partial and full prepayments, and the amount of service charges. In accordance with the commitments, the banks made repayments to their customers (Vj-22/2008 – OTP Jelzálogbank, Vj-16/2008 – K&H Bank, Vj-181/2007 – CIB Bank).

74. Several of the terminated investigations in 2010 were regarded as important, either market developments or with regard to the application of competition law.

75. The GVH initiated a competition supervision proceeding against **MAVIR** Hungarian Transmission System Operator Company Ltd. in connection with its conduct manifested in the course of allocating Ukrainian-Hungarian cross-border capacities. In the past few years Hungary has been qualified as a net importer of electricity and it still imports a significant quantity (Vj-52/2009).

76. The success relating to the opening up of the electricity market in 2003 was almost exclusively due to favourable import prices, especially in the cases of Slovakia and Ukraine.

77. According to the information available, in the course of allocating cross-border capacities, the system operator at the Ukrainian-Hungarian interconnections – particularly between April 2008 and January 2009 – manifested a conduct that was allegedly capable of limiting electricity trade from Ukraine to Hungary. The reason for that was that during the period under investigation electric energy imported from Ukraine to Hungary could only arrive, partly or wholly, by a roundabout way, through at least one other Member State (Slovakia or Romania). The harmful effect of the potential infringement may emerge in the electricity market by making one of the most favourable import sources more expensive. Furthermore, by excluding competitors, this practice allegedly decreased the volume of current imported to Hungary, which was capable of influencing the conditions of competition in an unfavourable way on the wholesale market of electric energy, which already suffers from liquidity problems.

78. In the course of the investigation, it was established that MAVIR held a dominant position on the relevant market.

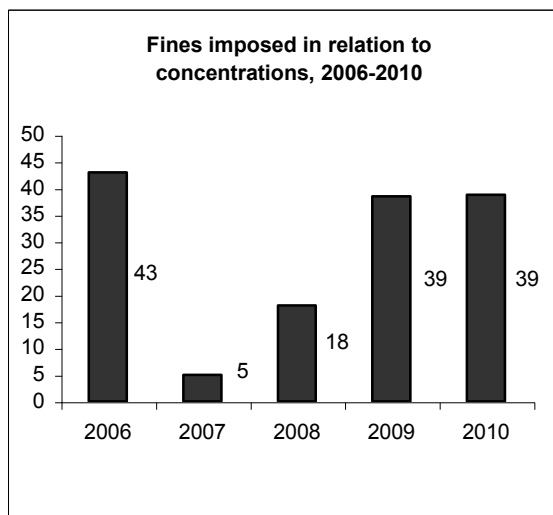
79. It was also established that MAVIR had an incentive to pursue an anticompetitive behaviour. Since MAVIR is part of the group MVM, which holds an interest in the trade of electricity, it is in competition with those undertaking, the trading activity of which is stiffened by MVM. Furthermore, MVM had a long term contract with System Consulting Zrt. which was dealing

with the import of electricity; hence it is in its interest to keep the majority of the cross-border capacity with System Consulting Zrt.

59. In the assessment of the behaviour of MAVIR, based on the available information, the GVH could not demonstrate beyond reasonable doubt the anticompetitive nature. Furthermore, the behaviour only lasted for a short period of time, and then the situation was settled by regulation. Accordingly, the effect on competition was limited; hence there was no ground for the continuation of the proceeding. The GVH terminated the proceeding.

2.4. Control of concentrations

60. In 2010 the GVH conducted 45 proceedings concerning the control of concentrations. The authority made 42 decisions on the merits, while in 3 cases the Competition Council proceeding in the case or the investigators terminated the proceedings by order.
61. Out of the 42 cases, the authority made a decision on the merits in 40 cases, which were initiated upon the request of the parties, while in 2 cases the GVH launched a proceeding ex officio as it presumed that the undertakings concerned omitted to request the permission of the GVH. The undertakings under investigation were obliged to pay a fee close to HUF 38.8 million (approx. EUR 137 thousand) for omitting to request the permission of the GVH, or for requesting the permission after the expiration of the provisional deadline.



62. In 2 cases the concentration did not meet the turnover thresholds provided by the Hungarian Competition Act, or did not constitute a concentration according to the law. Statistics still show an increasing tendency in the cases for concentrations to create horizontal (competition between direct competitors) overlaps between the merging undertakings.
63. The GVH has authorised the proposed transaction of **Prímagáz/Intergas** (Vj-146/2009), subject to conditions. As a result of the concentration, Prímagáz Hungária Ipari és Kereskedelmi Zrt. (Prímagáz) acquired 100% of the shares in Intergas Hungária Kereskedelmi és Szolgáltató Zrt. (Intergas), which was of great importance on the market of LPG products.
64. While conducting the investigation, the GVH evaluated the supply chain of the LPG, namely the retail and purchase market of butane and propane gas and moreover, the transloading market, the latter of which is closely connected to imports coming from the East and constitutes an essential logistical component in the LPG supply chain since the railway systems are of different gauges and gas products from the wagons for broad gauges are transloaded into the bulks of the wagons compatible with the standard European gauge.

65. Primagas - group and Intergas were both present on the market of transloading, and in addition to this, their business activity also slightly overlaps on the market of purchasing LPG products. According to the GVH, by acquiring Intergas, the market share of Primagas-group based on nominal transloading capacities would increase on the affected market for transloading from 18% to 39%, as a result of which Primagas-group would become the most significant player on this market. Furthermore, Prímagáz would also acquire a gas transloading facility that is currently independent from the market players and freely accessible to those undertakings that do not possess transloaders. As a result of the concentration, the segment for transloaders would become significantly concentrated: the aggregate market share of the two most significant market players, Primagas-group and MOL, would exceed 60% and only two independent transloaders would remain on the affected transloading market identified in the assessment of the concentration.
66. With Intergas becoming part of Primagas-group the concentration has vertical effects, as a consequence of which Primagas-group will be interested in directly or indirectly refusing access to the transloading capacity of Intergas to its competitors on the lower levels of the vertical chain (refusal to supply). Prímagáz, which will become stronger in the transloading segment and which is interested in the retail segment, may, after the concentration, refuse to provide transloading services to its competitors or may make those services more expensive, which - as a result of the decrease in supply available to the retailers or/and increase in purchasing prices - may lead to an increase in retail prices.
67. The GVH has established that on the market for purchases with Hungarian relevance, the only available and effective way to purchase gas from an independent source is to be involved in importing it from the East, which is not feasible without access to transloading services. Considering that after the concentration only a small proportion, an estimated maximum of 10% of the total capacity of the transloading market, would remain accessible for those competitors that do not possess transloading facilities, Primagas-group would have the ability to vertically foreclose the market.
68. Since Prímagáz is the biggest player with more than one third share of the retail market, the GVH established that the interest of Primagáz in excluding competitors on the transloading market has to be considered.
69. Considering the oligopol structure of the gas purchasing and transloading market, one cannot neglect the incentive of the market players to react to the new situation that has been created as a result of the concentration in an individual (non-coordinative) way, by maximising their profit, raising their prices and/or moderating their sales, which may strengthen the effect of the vertical foreclosing practice of Prímagáz.
70. The GVH has identified that the concentration would presumably entail harmful vertical (foreclosure) effects, horizontal effects were only identified in the vertical context while portfolio- or conglomerate effects were not presumable. In order to reduce the detrimental effects of the concentration identified by the GVH in the course of the investigation, Prímagáz offered to give monthly access to at least 20 percent of its total transloading capacity measured at the time of the remedies for two years as far as 1 May 2012, to undertakings that are independent from Prímagáz-group and that do not have direct or indirect control over PB gas transloading stations in Hungary under non-discriminatory business terms and conditions.
71. In order to make the conditions binding on Primagáz, the GVH considered whether the transloading capacity of Intergas, which is of significant status for those LPG retailers that do not possess their own transloading capacity, would be accessible to an adequate extent to the latter. The GVH also asked for the opinion of the market players potentially concerned by the remedies (market test).
72. It also took into account that the conditions imposed on the parties should be proportionate to the possible detrimental effects. Considering all the above mentioned, the GVH, which paid special attention to the circumstances revealed concerning entry into the transloading

market, considered it appropriate to determine the duration of the conditions for a limited period of time (2 years).

73. The **Fibernet/Invitel** (Vj-117/2010) and the **Fibernet/UPC** (Vj-118/2010) concentrations also belonged to the most important transactions that were investigated by the GVH in 2010. The former transaction was cleared, subject to conditions, while the latter concentration was authorised by the GVH without conditions in 2011. As a result of the abovementioned two transactions, a significant part of the Fibernet-group, which owns several cable networks and is a notable service provider, was acquired by the Invitel-group, while some of the cable networks were transmitted to the UPC.¹ The two transactions were investigated by the GVH having regard to each other.
74. The GVH revealed during the market investigation of the **Fibernet/Invitel** transaction that in certain areas of Hungary, besides the existence of the broadband service provider Invitel, it is only the WIFI-service of Fibernet that is accessible to consumers. Furthermore, there are no other independently owned infrastructures (cable TV networks) available on the market concerned, since those that are available, are basically operated by one of the members of the FiberNet – group.
75. Although ADSL-based Internet provided by some of the incumbent competitors is accessible through the Invitel network, the Competition Council of the GVH came to the conclusion that the lack of the competitive pressure generated by broadband service providers that are independently owned, can result in the significant lessening of effective competition in the areas concerned.
76. In order to eliminate the envisaged harmful horizontal effects that were established by the GVH, Magyar Telecom B.V. undertook to assist the modification of a cable service provider contract concluded between Marosnet Kft. and Dunaweb that belongs to the Fibernet-group. The aim of the modification would be to ensure the emergence of other cable service providers through the marosnet network of Marosnet Kft. Furthermore, Magyar Telecom B.V. undertook to provide the WIFI-subscribers in Nógrádsipek and Pilismarót with broadband services and moreover, in case of the failure of the abovementioned contract modification, the undertaking will provide the cable and WIFI subscribers in Nagymaros with broadband services on the lowest possible subscribers fee and on the best possible quality available at Invitel-groups' portfolio. The commitment will enter into force on the day of the authorisation of the GVH and will be in effect for a time period of 3 years.
77. The Competition Council authorised the concentration, subject to the abovementioned conditions undertaken by Magyar Telecom B.V. Therefore, Magyar Telecom B.V. is obliged to report the implementation of the commitments every six months to the GVH.
78. The **Fibernet/UPC transaction** concerned certain cable networks of FiberNet Kommunikációs Zrt. (FiberNet), Donet-Info Telekommunikációs Fejlesztő és Szolgáltató Kft. (Donet) and Dunaweb Távközlési Kft. (Dunaweb).
79. When evaluating the possible effects of the transaction on the market concerned, the GVH established that the cable networks of the parties overlap in certain districts of Budapest, thus the transaction can presumably lessen effective competition by creating common ownership to the previously competing telephone – internet and television providers – however, according to the GVH, it is unlikely that the transaction will distort effective competition. The acquired business branch was regarded on the markets concerned as a low-weight competitor (especially regarding telephone, internet and package services), and in addition to this, its market share mainly indicated a lessening tendency, thus the only field

¹ Magyar Telekom B.V., owner of the Invitel-group, acquired the whole equity capital of Fibernet Hungary Tanácsadó Kft. (which is the owner of the Fibernet-group) and afterwards, according to the original plan – passed on the cable network of the Fibernet-group (and other networks, which overlap the wired telephone network of Invitel – group) within a short period of time to UPC Magyarország Telekommunikációs Kft. in order to decrease the presumable harmful effects on competition.

in which it has demonstrated a significant customer base was the market of television services. On the market of broadcasting television, besides the services provided by telephone or cable networks, satellite and terrestrial digital options are also available to the purchasers, thus the newly emerged services (like the IPTV) generate even more significant competition against the traditional broadcasting methods.

80. Taking into consideration all the abovementioned circumstances, the Competition Council cleared the transaction without accepting commitments or imposing any conditions.
81. The **Holcim/VSH** transaction (Vj-153/2009) resulted in a significant rearrangement on the market of manufacturing cement. The GVH has authorised the acquisition of Východoslovenské stavené hmoty a.s. (VSH) by Holcim Auslandsbeteiligungs GmbH (Holcim), subject to conditions. As an antecedent to the proposed transaction the shareholders of VSH decided to increase their equity capital, therefore the shares possessed by Holcim in VSH may have risen to more than over 50%.
82. At the moment, besides the factories of the Holcim Group in Lábatlan and Hejőcsaba, the Duna-Dráva Cement Kft (DDC) - a member of the Heidelberg-Group, a decisive group in the cement industry - manufactures cement in Hungary in Beremend and Vác. The investigation conducted in 2010 - concerning the authorisation of the acquisition in question - took into consideration the establishment of a new factory in Királyegyháza (Baranya County) built by Strabag.
83. The majority of the Hungarian cement sales are related to domestic production, thus in 2009 imports accounted for a mere 15% of the total domestic sales, the majority of which come from VSH.
84. Taking into account the economical distance of cement transportation (approx. 300 km) and the geographical position of the Hungarian cement factories, the Holcim and Heidelberg groups would theoretically be able to supply the whole country. Besides, the investigation of the GVH revealed that Holcim predominantly supplies the eastern, Heidelberg the western, and VSH - as it has already been noted - supplies the eastern parts of Hungary respectively.
85. The investigation of the GVH - enquiring into the possible effects of the concentration on the cement market - concluded that in the case of the acquisition of VSH by Holcim the structure of the market would change in a way that would facilitate the so-called tacit collusions or concerted practices of the market players. The possible effect of the acquisition could have been the facilitation of the concerted action, since - by authorising the acquisition of VSH - the very market player would disappear, which, - before the proposed merger - could have rendered tacit collusion between Holcim and Heidelberg more difficult or even impossible. Several factors led us to conclude that as a result of the acquisition, Holcim and Heidelberg would presumably pursue concerted practices, since it would provide them with the means to concert their action through factors such as a transparent clientele, a lack of competitors on the market and an existing industry trade group, which would facilitate control over the whole industry. Moreover, many indicators showed that with the dissolution of VSH there would be no other outside competitor left with the capability to destabilise the market.
86. Ready-mix concrete production can be considered as a local market since the maximum transport distance of these products is 30-40 km. There are several separate regions in Hungary where both Holcim and VSH are present as cement-suppliers and Holcim is also present as a ready-mix concrete manufacturer. Debrecen, Nyíregyháza and Miskolc play a very important role with respect to ready-mix concrete production since VSH and Holcim are the two main suppliers of cement in these regions and are well ahead of the competition in terms of their combined share.
87. According to the facts revealed by the investigation of the GVH with regard to the ready-mix concrete on the market area of Debrecen, Nyíregyháza and Miskolc, through the acquisition of VSH, the increasing market power of Holcim on the cement market is likely to expand its

capability to foreclose competitors since - through inflating the price of cement - it can raise rivals' costs on the ready-mix concrete market. The GVH has reached the conclusion that without the competitive pressure exercised by VSH, Holcim would be able to increase the price of cement by 5-10% without any loss in its profits; moreover, a small increase in the price of cement would make it more difficult for a new player to enter the ready-mix concrete market. Based on the foregoing, provided the merger is approved, Holcim would be in a position to foreclose its rivals.

88. However, the GVH regarded the commitments - offered by Holcim to affect the structural framework of the cement market - as satisfactory and adequate to dissolve competition concerns. Therefore the GVH accepted the commitments and approved the acquisition of VSH by Holcim.
89. The GVH authorised the transaction based on the precondition that Holcim and VSH commit themselves to divesting their business shares in DTG Optimus Kft (DTG), therefore allowing CTR to gain sole control over DTG. Furthermore, the GVH obliged the parties to guarantee a continued supply of cement to DTG for five years. As a result of this commitment a new independent competitor emerges in the market.
90. The approved commitments - namely, the commitment to procure the divestiture of DTG and the obligation to supply cement to (the already-independent) DTG in accordance with the guidelines described in the Annex to this decision - ensures the establishment of a new, independent market player capable of preventing concerted action, therefore mitigating the harmful effects of the transaction. Its own resources and the supply contract defined in the commitment will provide DTG - as the Divestment Business - with an opportunity to become an independent player on the cement market. The GVH has accepted the solution laid out by the Parties in the offered commitments and approved CTR Holding as the purchaser to acquire control over DTG.
91. The GVH shall conduct post-investigations to confirm the fulfilment of the precondition - to procure the divestiture of DTG by Holcim - and to confirm that the obligation - to ensure the continued cement supply of DTG - has been undertaken.
92. Many concentrations have taken place in the food industry. The **Bonafarm/Herz** transaction (Vj-155/2009) belonged to the latter group, which was cleared by the GVH.
93. Bonafarm Zrt. and Herz Salami Factory Zrt. signed a purchase and sale contract on 1 December 2009. Based on the contract, Bonafarm could acquire 100 percent of the shares (property rights, tangible assets, stocks and intangible assets) in Herz, which was already under liquidation.
94. There is an overlap between the activities of the parties to the concentration concerning the production of dry meat products, due to Pick Zrt belonging to Bonafarm. The GVH did not deem it necessary to further specify the relevant market for the authorisation of the present concentration, since even by investigating separately the relevant market of dry salami products and dry sausage products, it came to the same conclusion concerning the authorisation.
95. Based on their market shares in 2007 and in 2008, it is evident that the transaction affects Pick and Herz as the first and second market players of the dry product segment involving the salami segment.
96. When assessing the possible effects of the concentration, it is an important fact that production at Herz was stopped in 2008/2009 and that it has been suspended ever since. Based on the analysis of prices and quantities of salami and sausage products over several years, the market shares of the undertakings concerned and other relevant data, the GVH came to the conclusion that though the position of Pick has strengthened since Herz ceased production, supermarket own brand salami and sausage products and the products of the extant market players mean that decent competition exists against Pick.

97. Production at the Pick Salami Factory in Szeged is more efficient than at the factory of Herz in Budapest, and this condition could already decrease the prices of Herz products. According to the statement of Pick, production of goods with the Herz brand name would be performed by the already existing production capacity that is not completely exploited; as a consequence utilisation would improve, the average cost of production and finally the price would decrease. The GVH took into consideration the occurring efficiency benefits as circumstances favouring the concentration.
98. The applicant argued that without the concentration Herz would go into liquidation any way, and hereby competition with Pick would cease. In the course of its proceeding, the GVH did not find the arguments referring to the failing firm applicable. Since based on the above mentioned there are no competition concerns about such a harmful effect, the GVH cleared the concentration.
99. Although the GVH investigated many concentrations with regard to financial services in 2010, none of them required the authority's intervention and moreover, the number of the market players and their market shares has not changed significantly. Within these cases, it is worth mentioning the **FHB Jelzálogbank/Allianz Bank transaction** (Vj-66/2010), according to which FHB Jelzálogbank Rt. acquired 100% of the shares in Allianz Bank Zrt. from Allianz Hungária Biztosító Zrt.
100. The sales agreement also stipulated some of the so-called ancillary restraints, according to which Allianz Hungária Biztosító Zrt. has to undertake to refrain itself – for 3 years from the implementation of the transaction - from establishing a new financial institution in Hungary that could be regarded as a competitor of Allianz Bank Zrt. In addition to this, within one year of the implementation of the transaction, Allianz Hungária Biztosító Zrt has to undertake not to “seduce” chief executives from Allianz Bank Zrt. Furthermore, within the framework of a separate trademark agreement, Allianz Hungária Biztosító Zrt entitled FHB to use the Allianz trademark after the implementation of the transaction for a determined period of time. FHB and Allianz Hungária Biztosító Zrt have also concluded a Strategic Cooperation Agreement that aims to establish the scope of the parties' future cooperation. The trademark agreement - that is included in the abovementioned agreement – gives permission to FHB to use the Allianz trademark for different purposes in different forms.
101. The GVH conducted comprehensive research in order to specify the relevant markets. Within the market of financial services, the authority established another two submarkets: the markets of residential and corporate banking services. Within these submarkets, the GVH also took into consideration the submarkets of credit loans, deposits and investments. When evaluating the possible effects of the transaction on the market of residential and corporate banking services, the GVH came to the conclusion that the low – less than 5 % - market share of FHB will only increase slightly on the market concerned, thus it is unlikely that the transaction will result in harmful horizontal effects. In line with the broader market definition of financial services, or the abovementioned submarkets, the GVH established that the transaction will not distort effective competition on the markets concerned, furthermore, due to the low market shares of the parties, it is unlikely that the concentration will create a dominant position and will effect competition significantly on the markets concerned.
102. The GVH conducted several investigations into mergers in the **retail pharmacy sector** in 2010. Due to the regulated acquisition moratorium introduced in 2010, the number of the transactions concluded in this sector increased significantly. As a consequence of the moratorium, parties speeded up their acquisitions or brought them forward in time in order to conclude and implement them before the moratorium enters into force.
103. These kind of transactions did not raise any competition concerns.

3. Sectoral inquiries

104. Where price movements or other market circumstances suggest that competition is being distorted or restricted in a market belonging to the sector in question, the President of the GVH starts, by order, an inquiry into the sector in order to understand and appraise the functioning of the market. In contrast to the competition supervision proceedings, the sectoral inquiry provides a general overview of the competitive features of a specified sector or market and consequently does not focus on a specified conduct of certain undertakings.
105. 114. In 2010, the GVH initiated a sectoral inquiry into the building society market (áv-1/2010), which was closed in 2011. According to the preliminary research, the GVH established that the market concerned has a low level of competition, thus the authority launched a sectoral inquiry to identify the reasons for the competition concerns. There are two significant explanations for the low level of competition on the market, namely the fact that although there is a large amount of potential for growth for the building society market, no new competitors have entered the market since the establishment of the current market players, whose market activity is very profitable. Moreover, the two main players of the market offer a notably similar product mix. Consequently, the variety of products offered by the market players and also the assortment of the products should leave room for more intense competition. Furthermore, the evolution of the typical prices on the market also indicates the distortion of effective competition. Also, according to analysts at the GVH, it is especially important in the case of state-subsidised sectors that adequate circumstances for competition are guaranteed in order that the highest possible social efficiency is reached.
106. Therefore, the GVH aimed to clarify whether the presumable distortion of competition on the market concerned stems from the conduct of the market players or the insufficient regulatory environment. In the course of the sectoral inquiry, the GVH requested information from market players, potential competitors and other state institutions.

4. Competition advocacy

4.1. Commenting on regulations and other drafts

107. In 2010 the GVH received 210 draft bills and regulations to comment upon – this is around 25 percent less than it was in 2009. The tendency that the legislators did not submit draft bills to the GVH continued or rather became stronger – 77 Acts and regulations were enacted which could have been relevant from the point of view of the competition advocacy function of the GVH but those were not sent to the GVH for comments. On the other hand, around one-fourth of the drafts submitted to the GVH were irrelevant from the point of view of the operation of markets. In 2010 the GVH commented on 33 submissions – around one-sixth of the submitted materials, this was similar to the ratio of earlier years.
108. In 2010 the most important drafts that were commented on were those which were in connection with the transformation of the **health care system**. From a competition policy perspective the GVH commented on 9 drafts in this area, most of them related to the distribution of medicines. In view of certain earlier reform attempts in several areas, the GVH accepted how the drafts defined the role of the state, and in given cases its reinforcement. However, in its entirety the GVH deemed that in some areas the coordinating role of the market and competition is overshadowed and that this is not properly borne out by appropriate arguments and impact analysis. This phenomenon – especially in the area of medicine distribution – can probably negatively influence the performance of the sector by increasing the costs and deteriorating the quality of the service.

109. As regards a draft decree of the Ministry of Healthcare, the GVH held that from a competition perspective the uncertainty of the licence system for the production of high quality therapy products in healthcare institutions would be unfavourable, namely it was not clear in the draft whether such products could be used by the same institution or also by other ones. The GVH expressed its view that it would be groundless to limit the use of these kind of products since that would limit the effectiveness of competition as well.
110. The GVH expressed its doubts that in the case of registered medicines and nutrition products, covered by health insurance, the National Health Insurance Fund can revise the measure of the subsidy only if a financial protocol has been prepared for the therapy under which the given product is utilised. The comments made by the GVH were neglected.
111. The GVH formed its opinion to several draft decrees by supporting the possibility of substitutability among medicines containing the same substances. The GVH suggested that the prescription should contain the price difference – compared to the cheapest medicine substitute – and by signing the prescription the patient would confirm the choice for the more expensive medicine. This solution would guarantee a decision-making possibility for the patient, who could be interested in the substitution also for financial reasons. Regarding medicines, which may be prescribed by specialists only, the GVH emphasised the necessity to motivate the given physicians.
112. The GVH suggested the revision of the regulation of margins. Currently retailers receive a percentage of the value of the products sold and this results in pharmacies being interested in selling medicines from the higher price category.
113. Numerous drafts and GVH comments dealt with the operation of pharmacies. The GVH pointed out that limitations of ownership are not in accordance with the real conflicts of interests.
114. In its opinion, the GVH opposed the narrowing of the product range which may be distributed in pharmacies. The GVH also challenged the requirement that pharmacists have to be present in the branch pharmacy during its whole opening hours. These measures would unduly increase the costs of pharmaceutical retail services and further worsen supply, in particular in countryside areas with a low density population.
115. Also, in connection with the regulation of **public procurement**², the GVH expressed its opinion several times. The GVH greeted all the elements of the new legislation which aimed to increase the ability of bidders to be able bid, for example, the dismantling of barriers that make it difficult to participate in public procurement, and the mitigation of the overly high guarantees that need to be granted by bidders.
116. As a directly competition law related element, the new draft identified all those cases when the bidders were requested to notify the GVH if they suspected collusion. Such an obligation may be endorsed, and helping the contracting entity to recognise suspicious behaviour coincides with domestic and international practice. But ignoring the related comments of the GVH resulted in an outcome which is inconsistent with the Competition Act: the contracting entities have to notify the GVH when they suspect a violation of law in situations where the Competition Act is not violated (e.g. when undertakings owned by the same owners coordinate their bid).
117. The regulation of the content of documentation to be prepared in the public procurement cases of building investments³ is connected to the regulation of excessively low counter-service. According to the draft, the contracting entity could determine which bids are to be deemed as falling under this category. Deviating from the general provisions of the 'Act on Public Procurement', in practice this solution would have authorised the contracting entity

² Act LXXXVIII of 2010 on the amendment of Act CXXIX of 2003 on Public Procurement

³ Government Decree 215/2010

to determine the minimum level of bid prices, below which bids would have been excluded from the procedure even if their content was well-founded. This solution would have unduly limited competition. The GVH contested it and as this opinion was accepted, finally this solution was not introduced.

118. Commenting on a draft aimed at amending some ministerial decrees on **air transport**, the GVH took the opportunity to remind the legislators of the shortcomings of the transposition of the sector-relevant EU directive. On the basis of the currently effective regulation, neither the non-discriminatory entry into the market of ground-handling nor the appropriate functioning of the market in situations characterised by capacity constraints can be deemed satisfactory. According to the GVH, taking into account the opinion of the market players is indispensable to the formation of appropriate framework conditions.
119. As regards the draft bill on the amendment to the 'Act on **Waste Management**'⁴ the GVH pointed out the absence of provisions dealing with the regulation of the activities of those companies which had received exclusive rights from the regulators, plus the fact that in other areas provisions serving the proper functioning of the markets were also missing. It was not clear from the proposal either whether the legislators had based their suggestion on an impact analysis on this important field.
120. The GVH pointed out that numerous municipalities were not well prepared to appropriately regulate local monopolies – among them to regulate waste management. The draft disregarded this problem. Furthermore, the GVH also noticed that the draft did not sufficiently deal with the issue of allocation of regulatory competencies and with problems stemming from the mix of regulatory, ownership and administrative functions coexisting at the municipalities. Namely, to regulate communal waste management the municipalities have strong discretionary regulatory rights, but at the same time they are the owners of some of the market participants – this way they are able to influence the regulation in the interest of their own undertakings and to limit competition in this way. Similar problems arose in the context of practising the administrative rights. Here the situation is even more complicated since the monopole activities are not sufficiently separated from activities exposed to competition, making anticompetitive and non-transparent cross-financing between these two types of activities possible.
121. As regards the advocacy in the field of **unfair market practices** in the context of the UCP Directive⁵ and the provisions of the 'Act on the Prohibition of Unfair Commercial Practices against Consumers', the comments of the GVH on the draft Ministerial Decree on the safety of cosmetic products⁶ and the draft on "Hungaricums"⁷ are worth mentioning. As regards the first one, the GVH commented on the allocation of implementing competences, since the draft contained provisions on information for consumers, an issue which falls within the competence of the enforcing authorities of the 'Act on the Prohibition of Unfair Commercial Practices against Consumers'. This way the uniform official regime may be guaranteed concerning the system aimed at informing consumers, irrespective of the question of which sectoral regulation regulates the given misleading behaviours. Concerning the draft on "Hungaricums", the GVH highlighted that the UCP Directive expressly prohibits the modification or widening of the items of commercial practices which are in all circumstances considered unfair (i.e. the so-called black-list clauses). This way

⁴ Act XLIII of 2000

⁵ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')

⁶ Decree 33/2011 of the Ministry of National Resources on the amendment to Decree 40/2001 of the Ministry of Health-care on the safety, production and distribution and sanitary control of cosmetic products

⁷ Draft bill on Hungarian national values and "Hungaricums"

the provision of the draft, according to which the use of the “Hungaricum” label would be misleading in any form if the product does not meet the requirements of the draft, would violate EU law. Furthermore, this provision would not be in harmony with the rules of the ‘Act on the Protection of Trademarks and Geographical Indications’ either.

122. The GVH pointed out other problems as well, e.g. the unclear definition of the content of the notions of “Hungaricum” and “Hungarian origin”. E.g. without a proper impact analysis nobody knows how an everyday consumer would interpret the notion of “Hungaricum”.
123. The GVH also commented on the draft amendment to the ‘Act on **Electric Energy**’⁸ and ‘Act on **Natural Gas**’⁹. As regards the consumer protection related provisions of the draft, the GVH called attention to the fact that the draft was not in harmony with the UCP Directive and the provisions of the ‘Act on the Prohibition of Unfair Commercial Practices against Consumers’, in particular in the context of the definition of “susceptible consumers”. The GVH urged that – in harmony with the relevant EU Directive – the regulation should guarantee that the process of switching to a new service provider will be closed within three weeks. The GVH also stressed that to foster competition and appropriate consumer protection, the competences of the regulatory authority need to be reinforced. This also means that the regulatory authority has to pursue market monitoring activity allowing it to recognise market distortion or restriction, this way it may notify such practices to the GVH. The GVH also urged the elaboration of a regulation which authorises the regulatory authority to impose effective, proportional and deterrent sanctions.
124. In its comments made on the **regulation of parking of cars** in the city of Budapest, the GVH explained that this regulation¹⁰ needs careful preparation, since the service provider enjoys a long term monopoly right. This results in the consumer being defenceless as he/she does not have an alternative choice. Consequently, it is the regulation which has to enforce effectiveness from the service provider and defend the consumer.
125. Regarding the regulation of **highway toll fees**¹¹ the GVH stressed that on the basis of the complaints received it can be stated that the determination of fees using calendar days is misleading for consumers and it would be far more appropriate to define fees for 24, 96, etc. hours.
126. Commenting on several drafts aimed at regulating **financial services** the GVH suggested the preparation of impact assessments. In particular in the case of the regulation of money transfer services and the savings of building societies, it would have been more appropriate to support these regulations by presenting the effect on society and the budget of these planned measures. The GVH held the view that the consumer protection regulation on these markets has remained weak and the drafts did not seem to change this situation. Real changes could be reached by improving the transparency and clarity of contract clauses, guaranteeing the accountability of contracts, creating transparency when changing contracts, and by diminishing the defencelessness of consumers from unilateral changes to contracts by financial institutions.
127. The GVH commented on the draft ‘**Act on Legislation**’¹², mainly on the provisions dealing with impact analysis in the context of the preparation of Acts and regulations.

⁸ Act LXXXVI of 2007

⁹ Act XL of 2008

¹⁰ 30/2010 Decree of the General Assembly of the Municipality of the Capital on the regulation of uniform parking possibilities in the Capital Budapest, in the administrative area of the Capital, on parking fees and on the removal of cars out of service

¹¹ Decree 33/2010 of the Ministry of National Development on the amendment to Decree 36/2007 of the Ministry of Economy and Transport on highway toll fees

¹² Act CXXX of 2010

4.2. Proactive approach towards issues on competition and freedom of consumer decisions

128. In addition to its traditional advocacy activity which is manifested in the giving of opinions on the legislation and concepts submitted to the GVH for comments, the GVH endeavours to actively influence state decisions (enforcement of various public policies in support of competition, including various regulations, other public decisions and individual administrative steps) in favour of competition.
129. In February 2010 the President of the GVH contested the contradicting regulation of the **compulsory originality control of motor vehicles**. As a background, in December 2009 significant amendments took place, including the enactment of a new law, but at that time the comments of the GVH were not taken into consideration and cars not affected by the change of ownership were also burdened with compulsory originality control. The intervention of the GVH contributed to the annulment of the amendment and costs caused by the improper regulation were reimbursed to the affected clients. But the consequent re-regulation of the issue, as the GVH suggested, has not been made.
130. The GVH received a complaint from a **conference organiser** concerning the practice followed by the Hungarian Chamber of Engineers since – according to the complaint – the Chamber discriminated between conferences organised by non-members and those organised by members of the Chamber (e.g. the Chamber, which receives the programme and other details of professional events also organises similar events). Though the GVH could not identify any violation of law, it notified the Chamber of its concerns about competitive neutrality.
131. There were several GVH interventions concerning **cemetery services**. E.g. the GVH investigated the complaint of a funeral entrepreneur against the Municipality of Ajka. The GVH found that the local decree of Ajka prevents the entry of entrepreneurs to the market of funeral services if they offer their service only occasionally. As a municipality decree contained the anti-competitive provisions (a decree which was the result of the executive power of the municipality), the GVH could not open a proceeding but exercised advocacy action by suggesting that the decree of the municipality be amended.
132. The GVH initiated advocacy action towards the **National Health Insurance Fund (NHIF)** since it unduly differentiated between two medicine product groups having the same ingredients and substituting each other – one of them enjoyed a subsidy from the fund, the other was excluded from the social insurance subsidy system. The GVH requested the NHIF to revoke its relevant decisions.
133. The GVH asked the Municipality of Tihany to revoke its decision on the winner of the tender, which was published for the construction of a station of a narrow-gauge railway. The call for the tender resulted in bids which all got the same score, nevertheless, the competition of course resulted in one winner. Accepting the request of the GVH, the municipality reassessed the bids.

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

134. The Competition Culture Centre (CCC) is the unit of the GVH that deals exclusively with the development of competition culture. It works 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 a separate part of the GVH budget.
135. To perform its tasks, the CCC used different means and completed various projects. E.g.

- it published a thesis competition for researchers and university students, in the framework of which in 2010 the CCC received 142 essays, the better ones of which have been published on the website of the GVH;
- the CCC financed the translation and publication of the sixth edition of the textbook “Competition Law” written by Richard Whish and began the same project for having another textbook “The Economics of EC Competition Law. Concepts, Application and Measurement” by Bishop and Walker translated;
- the staff of the CCC and the GVH prepared several leaflets on competition and competition law about the basic notions related to conscious consumer decision-making, and also about the specific competition law-related features of given sectors and markets. These leaflets are available in hard copy format and made public also on the website of the GVH;
- the CCC is the editor of a professional periodical, called Versenyűkűr (“Mirror of Competition”). Articles to this publication are written mostly by the staff of the GVH, at the same time the ‘Versenyűkűr’ offers the possibility of professional introduction for those younger colleagues who are interested in competition law issues. Versenyűkűr is distributed 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;
- the CCC supported the organisation of competition law related professional events by other institutions (universities or research institutions) but similar events were also organised by the CCC itself;
- on the 20th anniversary of the first really market economy oriented Competition Act of Hungary, the CCC organised a conference: “20 years of the GVH and what follows (competitiveness – competition policy – competition law)”.
- The CCC closely cooperates with other institutions as well in the organisation of professional events or in their co-financing. Two of these events are worth mentioning in particular, in April of 2010 the CCC and the European Studies Centre of the University of Szeged jointly organised an international conference on “The foreseeable reforms of Regulation 1/2003 regarding the European Competition Network and the cooperation with natural jurisdictions”; and in the early summer of 2010, AmCham and CCC organised their second joint conference on advertisement: “Financial sector is in the focus”. Both events attracted a widespread professional audience;
- the staff of the GVH are active in participating as speakers at different professional events, conferences and university courses. Colleagues of the GVH held 60 presentations and published 50 articles and essays during 2010. The GVH offered training possibilities for 13 university students;
- the CCC reinforced its information supply activity, in 2010 the ‘Daily Economy’ newspaper published thematic pages on competition and consumer protection related matters 15 times, a further 12 articles were published in other newspapers, and appearance in the different channels of the electronic media (TV, radio, online internet presentations) are also worth mentioning. During the year, around 160 articles were published in the electronic media about competition, the number of articles of this kind published in daily newspapers was more than 700, and 140 articles were published about the GVH itself in economic weekly newspapers;
- the CCC had a survey prepared about the knowledge of competition law among inhabitants, entrepreneurs, lawyers and journalists specialised in the economy. Detailed results of the survey are available on the website of the GVH.

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

6.1. International relations

136. In 2010 the international relations of the GVH could be characterised by 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.
137. The case-related co-operation within the European Competition Network (ECN) in respect of the application of the competition rules of the EU continues to be one of the main fields of the international relations.
138. Concerning co-operation with the International Competition Network (ICN), participation in the Cartel Working Group, where besides the DG Comp of the European Commission the GVH is the co-chair, continues to be a focal field.
139. As a member of the International Consumer Protection and Enforcement Network (ICPEN), the GVH also took part in the so-called Sweep Week, i.e. the unannounced scanning of websites of undertakings in 2010.
140. The European Union established the CPCS which links together national consumer protection authorities with the aim of improving cooperation in the field of consumer protection enforcement in 2006. The GVH participates in the system by implementing the Unfair Commercial Practices Directive and the national law transposing the Directive.
141. It is worth mentioning that experts from the US Federal Trade Commission (FTC) visited the GVH several times in 2010 to hold consultations and seminars on issues such as vertical restraints, mergers, and on the recently renewed "Horizontal Merger Guideline" of the US. The Hungarian Association of Competition Lawyers was also involved and this enabled some of these events to be made available to a wider professional audience. Moreover, two of the events had an international character, since competition authorities of the south-eastern European countries could also participate at them.
142. As regards bilateral international relations, it has to be mentioned that the GVH renewed the cooperation agreement it concluded in 1997 with the Federal Antimonopoly Service of the Russian Federation. Furthermore, the GVH reinforced its informal cooperation with the Taiwanese Fair Trade Commission by concluding a formal cooperation agreement.
143. In 2009 a consortium was formed by the Department for Business, Innovations and Skills of the United Kingdom, the Italian Competition Authority and the GVH in order to make a bid for the twining project aimed at providing technical assistance for the Albanian Competition Authority. The consortium won the tender and during 2010 preparatory works were made. The actual TA projects begin in 2011.

6.2. The activity of the OECD-GVH Regional Centre for Competition in Budapest

144. 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.

145. Among others, the RCC deals with issues such as: analysis of core 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 these topics.
146. In 2010 the RCC, celebrating the fifth anniversary of its establishment, organised two events. One of them was a seminar organised for 28 high level representatives of 16 national competition authorities (the head of the authorities of the beneficiary institutions). The main issue of the seminar was “agency effectiveness”, covering topics such as strategic planning of organisational structure, the appropriate establishment of work processes and methods for the prioritisation of tasks.
147. “Competition Policy after the Crisis” was the title and topic of the other conference organised on the occasion of the fifth anniversary of the establishment of the RCC, and aimed to discuss the experiences of competition law enforcement agencies in the crisis situation and the direction of the work and priorities of the competition agencies in the post-crisis period. The conference was attended by 140 participants.
148. Similarly to previous years, in 2010 there were also a large number of professional events organised, representatives of the RCC beneficiary institutions met 11 times. 69 speakers and 418 participants were hosted at these events. The RCC continued its practice which was applied for the first time in 2009, namely the organisation of a seminar in one of the beneficiary countries. In 2010 the Armenian Competition Authority hosted this event.

7. Technical conditions and other information

149. The Hungarian Parliament determined the total amount of the expenditures and revenues of the GVH concerning the year 2010, which was 1,407,8 million HUF (approx. 517 million EUR). This amount covered the administrative expenses of the GVH. Due to governmental decisions and modifications to their own competence, the GVH increased its total budget by 1057,7 million HUF (approx. 58 million EUR).
150. According to Hungarian Competition Law, the GVH is authorised to use twenty per cent as a maximum of the yearly average of the total amount of fines collected in the preceding two years for the development of competition culture and the culture of conscious consumer decision-making. The responsible unit for disseminating competition culture in Hungary is the Competition Culture Centre (CCC) of the GVH. The total amount that was at the disposal of the CCC was 1010,1 million HUF (approx. 3 million EUR) in 2010.
151. According to Hungarian Competition Law, the GVH shall be authorised to use five per cent as a maximum of the yearly average of the total amount of fines collected in the preceding two years for the operation of the OECD-GVH Regional Centre for Competition in Budapest (RCC). The total amount that was at the disposal of the RCC was 208,4 million HUF (approx. 764 thousand EURO) in 2010.
152. The approved number of the members of the GVH was 125 in 2010. Furthermore, the GVH employed 13 entrants by concluding internship agreements in 2010. The entrants are not regarded as civil servants, but they are provided with the opportunity to become acquainted with the every day tasks and operation of the GVH and moreover, to gain some work-experience.
153. Similarly to the practice applied in previous years, the GVH has placed a special emphasis on the advanced studies of its colleagues by providing them with the opportunity to become acquainted with European union law practice. In 2010, two of the civil servants of

the GVH worked for the European Commission as national experts, while another two colleagues were taking part in short internship programs at the DG COMP. Furthermore, one of the colleagues of the GVH was provided with a foreign employment option at the OECD centre in Paris.

8. Resources of the competition authority

Resources overall (current numbers and change over previous year)

Annual budget (in HUF and EUR)

| | | |
|-------------|-------------|--------|
| 2009 | million HUF | 2121.3 |
| | million EUR | 7.6 |
| 2010 | million HUF | 2465.5 |
| | million EUR | 9.3 |

Number of employees (person-years)

| | 2009 | 2010 |
|---------------------|-------------|-------------|
| Economists | 35 | 37 |
| Lawyers | 47 | 49 |
| Other professionals | 11 | 25 |
| All staff combined | 125 | 125 |