

Versenytekör



Presidential Welcome



Dear Readers,

What you have before you is a special thematic leaflet of *Versenytükö* ("Mirror of Competition"), a quarterly published by the Competition Culture Centre of the Hungarian Competition Authority (the GVH). It is the international conference held today about "Fighting cartels – Why and how?" that has given us the opportunity of publishing this leaflet. As you may see from the programme, the subject of the conference is very timely and complex. The adverse effects cartels exert on competition and hence on consumer welfare need to be analysed to make it clear how much a comprehensive action to combat cartels is necessary. Illegal co-operations of undertakings to prevent competition hinder the lowering of prices, innovation, quality improvement and the diversification of assortment. Objective of the conference is to identify the ways and methods available for competition authorities and other state organs challenging cartels and, on the other side, for competitors that wish to keep away from agreements of this kind or to eliminate

cartels. Conference speakers from both Hungary and abroad will make known their views and experience on how to destroy cartels.

In addition to the oral presentations, the GVH has issued the publication you hold in your hands as a written contribution to a further analysis of the topic.

Apart from analysing cartels, the leaflet briefly introduces you the Competition Culture Centre (CCC) and the OECD-Hungary Regional Centre for Competition in Budapest (RCC), an institution jointly operated by the OECD and the GVH, by means of which it brings you closer to and gives an insight into the activities other than competition supervision of the GVH. The CCC is a unit within the GVH, the sole responsibility of which is to promote the spread and development of competition culture. The tasks of the CCC are defined in its annual work plan, which can be found on the Internet homepage of the GVH. It gives me great pleasure to see and greet heads, sitting in the audience, of competition authorities also from RCC target countries.

It is our intention to be seen from the programme, repeatedly to grant possibility (altogether three times in the course of the conference) to the participants for putting their questions or making oral contributions to the discussion, promoting in this manner the creation of a common understanding. In the hope that we will get far ahead on the way towards this objective, I wish all of us much success in achieving this.

Budapest, 16 February 2007

A handwritten signature in blue ink, which appears to be 'Nagy Zoltán'.

Zoltán Nagy
President of the Hungarian
Competition Authority

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Activities of the Hungarian Competition Authority for the purpose of developing competition culture

As an authority representing public interests, it is a responsibility of the Hungarian Competition Authority (GVH, the Authority) to ensure protection of free and fair competition on the market enforcing economic efficiency. The competition protection activities of the GVH can be classified based on three pillars: *as a competition supervisory agency*, it safeguards compliance with the Hungarian and Community competition regulations but *competition advocacy* and *development of competition culture* are also equally important among its activities. Using all instruments available for competition advocacy, the Authority is trying to influence, in favour of competition, government decisions; in addition to participation in the development of public policies from the aspects of competition, it also tries to influence the individual administrative measures adopted by the government and other public agencies.

Below we will describe the third pillar of the core activities of the Hungarian Competition Authority, i.e. the development of competition culture.

The concept of competition culture comprises general information about competition, competition policy and competition law, the general attitude to competition, as well as competition-related legal and economic activities of public interest.

General information about competition, competition policy and competition law includes not only having basic knowledge related to competition and the recognition of its positive impacts (e.g. that competition generally results in lower prices, better quality and bigger choice rather than higher prices, lower quality and more limited choice), but also awareness and understanding of the functions of competition regulation and the competition authority (e.g. that the purpose of the competition authority is to protect competition instead of protecting domestic companies from the 'excessive competition' generated by foreign companies).

The *general attitude to competition* reflects the extent to which the society and its particular groups (companies, public administration employees, political decision-makers, the population and the media) accept competition as a basic feature of the market economy, and to which they attach positive associations and expectations to it. Naturally, this is in connection with the basic knowledge persons have about competition because if this knowledge is erroneous, the concept of competition may also be distorted (e.g. the belief that competition leads to reduction of competitiveness and loss of jobs), which may even lead to its rejection.

The *scientific works about competition policy and the related activities* are connected to researchers and tutors, university departments and subjects, research programmes, institutions, journals and articles, books and technical events etc. focusing on the issues of competition policy, both in terms of law and economics. By keeping competition policy issues on the agenda, science contributes to a creative approach to various problems and the applicable responses, and it also improves the general level of understanding of competition policy issues.

Competition culture in a wider sense means *'the culture of competing'*. Using an analogy, this indicates a kind of

sportsmanlike conduct on the market but, as competition policy focuses on long-term consumer welfare, the 'culture of competing' by no means suggests inclination towards 'friendly', less intensive competition (in which the interests of participants are not infringed), but in fact it means strong, sometimes aggressive competition respecting the competition rules though, averse to any collusion with other competitors. Any other understanding of 'fair' competition in fact indicates lack of competition culture and may clearly lead to competition restriction (e.g. in the case of certain professional organisations which tend to encourage, and often even oblige, their members to refrain from competition by introducing ethical rules, and referring to the interests of 'fair' competition).

Using all instruments within its competence, the GVH has always tried to have a fair share in the actions related to the development of competition culture. In this context, the Authority primarily has provided and still provides general information and performs PR activities, including information on the advantages of competition, the nature and provisions of the competition law as well as the description of the general activities and responsibilities or particular decisions of the Authority and their





results in the form of various brochures, leaflets and other publications, press releases and press conferences as well with the help of its enquiries. Participation of the members of staff of the GVH and their presentations delivered in various professional events also form part of the same category. Another aspect of the same activity is that the decisions of the GVH and its major competition advocacy documents are available for the general public. Similarly, the Authority tries to summarise its general experiences and approaches related to its law enforcement practice in the form of public communications, and that the Competition Council of the GVH also publishes its conclusions relating to principles crystallised in its legal practices in the form of position statements. As the Authority tries to involve into its work, as much as possible, the participants in competition-related legal and economic activities of public interest, it does not only inspire scientific research, but also generates a demand for it. On the other hand, we must also see that it is also in the interest of the GVH to improve the condition of competition culture, because it assists competition, the enforcement of the competition policy and competition law, as well as the activities of the Authority (i.e. it also has an impact on the competition supervision and competition advocacy activities of the Authority).

The activities of the GVH focusing on the development of competition culture have become increasingly determined and target oriented in the last five years. It was also supported by a series of surveys conducted by TÁRKI Társadalomkutató Zrt.¹ upon an OEC assignment for three years starting in 2002. The purpose of the surveys was to pre-

pare an empirical overview of competition culture in Hungary for the GVH enabling it to take the result into account in its activities and various decisions and to define the actions required for developing competition culture. The research focused primarily on the awareness of and opinion about the competition rules and the GVH, as well as the assessment of the accuracy and depth of the knowledge of the competition law. The surveys repeated yearly among the population, companies, lawyers (attorneys-at-law, company lawyers, public administration lawyers), as well as economic journalists clearly indicated that many actions were still required in the area of developing competition culture, in which process the GVH would have to play the role of a catalyst as a 'knowledge centre' of competition law and competition policy. In order to regularly monitor the condition of competition culture and development trends as well as identify current problems, the Authority would like to continue these surveys in the future as well, using them as a kind of indicative measurement of its activities in this area without forgetting though that any perceptible change will occur and can be detected in the survey only on a longer term.

Since November 2005, the Competition Act² has also expressly defined the responsibility of the Authority and its president in the development of competition culture, outlining also the content of this responsibility. Within the framework of development of competi-

tion culture, the Act defines dissemination of competition policy information to increase the acceptance of competition within the society (including information about advantages arising from competition and for the purpose of promoting compliance with law and development of a competition-friendly regulatory environment), as well as contribution to the development of competition-related economic and legal activities of public interest as the main tasks of the GVH. At the same time, the amendment of the Competition Act has also created a financial basis for the increased participation of the GVH in the dissemination of competition culture, as a result of which the efforts of the Authority in this area can now reach a wider target audience and, in addition to the activities of the GVH in this field, it can also support other organisations participating in the development and dissemination of competition culture. In contrast with the other two core responsibilities of the Authority, i.e. competition supervision proceedings and competition advocacy, in which the GVH has a leading or even exclusive role, the role of the GVH, similarly to any other competition authorities, is significantly more limited in the development of competition culture. The development and maintenance of an advanced competition culture depends on numerous individuals and organisations from participants in science and education, through the civilian sector and economic stakeholders all the way to political decision-makers and of course it cannot be achieved without the involvement of the GVH. The degree and nature of this involvement will necessarily decrease as competition culture is developing and the number and role of the organisations involved in the dissemination of competition culture are increasing, but at the current level of competition culture development, the involvement of the GVH is still crucial.

Within the framework of development of competition culture, the president of the Authority established a separate organisational unit within the General Secretariat in 2005 for the pur-

¹ The survey documents (including the summaries, detailed research reports and methodology description) can be found on the website under the "Analyses".

² Article 36(1) point f) of Act LVII of 1996 on the prohibition of unfair and restrictive market practices, inserted by Act LXVIII of 2005 effective from 1 November 2005.

pose of the in-house coordination and execution of the tasks of the Authority. This unit is the **Competition Culture Centre** (CCC, Centre), which is headed by the general secretary. The CCC has its own budget within the Authority, the disbursements of which are earmarked in accordance with the statutory objectives indicated above.

The tasks of the CCC are defined in its **annual work plan**. Apart from the activities focusing on the development of competition culture with the technical support of the GVH, the work plan also contains programmes in the implementation of which the GVH relies on the contribution of other organisations to which it provides financial and, as circumstances may require, also technical support from its available budget. Apart from the experiences collected by the GVH in its competition supervision and competition advocacy work, the tasks deemed necessary are defined with the help of the surveys on the condition of competition culture, indicated above. Consequently, apart from the tasks to be performed by the CCC on behalf of the Authority, the programmes through which the CCC intends to focus, complementing its own role, on the involvement of a large number of external organisations in the development of competition culture, the promotion of the integration of commitments to the development of competition culture in the society and the establishment and strengthening of the bases of competition culture development outside the competition authority, are equally important in achieving the set targets.

The CCC opened a public discussion about its draft work plan for 2006/2007 in May 2006, enabling the professional public to extend by its ideas and suggestions the range of the tasks defined by the Authority. The work plan was finalised taking into account the received proposals and remarks and was published at the end of September outlining the tasks for nearly eighteen months (September 2006 – December 2007), the actions related to the performance of those tasks, as well as the general operational principles of the Centre. The **tasks projected for 2006/2007** include

– translation and publication of a foreign specialist book (Massimo Motta: Competition Policy – Theory and Practice);

- compilation of general educational publications describing the institutions of competition law in general, and focusing on certain markets and the phenomena experienced on them;
- organisation/support of professional events;
- support of development of libraries (in terms of professional literature);
- invitation of research tenders focusing on competition law, competition policy and market theory issues;
- support of scientific and educational projects;
- development of cooperation with consumer protection NGOs and supporting their work, and
- elaboration of the ‘day of competition’ and ‘competition culture award’ concepts.

As it is clear from these tasks, the work plan intends to reach, through its specific activities, a **very large target audience**, including students and tutors of higher education institutions, teachers and students in primary and secondary education, dealing with/interested in competition law or competition-related economic analysis; theoretical experts and researchers, small and medium-sized enterprises having any contact with the proceedings and competition supervision activities of the Authority, NGOs performing an important role in the development of consumer culture and information supply to consumers as well as public administration employees and decision-makers engaged in one way or another in competition-related issues during their work, including members of Parliament and their consultants too.

The **main operational principles** of the CCC focus on regulated and transparent operation, in which the power of publicity is an important guarantee. The CCC can achieve it by making available to the public its work plan, the presidential directives setting out the internal organisation and operation of the Centre, the major data and use of any support paid from the CCC’s budget (name of the supported organisation, programme, support amount followed by a technical report), as well as the annual report describing the activities of the CCC on its website.

In order to control the use of its available financial resources, the CCC has

developed a **tendering system** within the framework of which applicants with sufficient references may receive support for their projects that have a good professional basis and a reasonable budget.

The first specific invitations for tendering were issued on the GVH’s website in October 2006 in relation to four points of the CCC’s work plan. Accordingly, support may be requested for

- the organisation of various professional events promoting the development of competition culture and dealing with competition law and competition policy issues (presentations, conferences, training programmes, seminars, technical fora, etc.) as well as participation in such professional events (tender invitation VKK/3/2006);
- competition law, competition policy and market theory research defined by the CCC, covering both timely economic and legal issues related to competition (tender invitation VKK/4/2006);
- other competition law, competition policy and market theory research that the applicant considers justified for the purpose of developing competition culture (tender invitation VKK/5/2006);
- activities and programmes of NGOs focusing on consumer protection and the development of consumer culture (tender invitation VKK/7/2006).

The CCC can grant support only based on the principles defined in its work plan by means of tenders submitted by using the appropriately completed tender documentation. This documentation can be downloaded from the GVH website. The tenders received are formally checked by the staff members the CCC and then the tender offers are technically and financially evaluated by a three-member evaluation committee. The members of the evaluation committee are mainly executive officers of the GVH, but occasionally external experts may also be involved. The CCC enters into a support contract with the winner based on the decision of the evaluation committee. This contract defines in detail the terms and conditions of the use of support, the time schedule of implementation and financing, as well as the controlling and settlement procedures. The non-repayable support is disbursed in the form of post-financing but, if it is requested, it

can also be made available in instalments, following the approval of the technical and financial report.

The initial principles of the CCC also included that the CCC would provide support to tenderers as a co-financier, therefore tenderers had to provide a certain amount of own funds in order to gain the support. However, on the basis of the experiences of the first months, the CCC modified the invitations for tendering on 1 January 2007 and tenders submitted after that date and satisfying the objectives announced may receive even full support (up to 100% of the cost budget) should need arise. However, the highest amount available for one application has not been changed by the modifications. The modifications were introduced in order that the difficulties of raising own funds should not impose any barriers on the submission of tenders, yet applicants should not feel encouraged to request support in a higher amount than it is justified.

The activities and tendering opportunities of the CCC have been accompanied by increased attention and interest from the very beginning. The CCC staff has received a large number of questions in writing and by phone and approximately 40 tenders were submitted in three months after the issue of the first invitations for tenders.

The CCC achieved important **results** in 2006 in some other areas too, not only in the issue of tender invitations and the evaluation of the first tenders.

By contacting Hungarian **higher educational institutions** providing training in competition law, competition policy and market theory (15 universities and colleges as well as libraries) and supporting their purchases of academic and professional books and periodicals in Hungarian and foreign languages, the CCC has made a valuable contribution to the extension of their specialist library providing a wide access to background material needed for the educational work in various specialised higher educational institutions. Each contacted library used the opportunity offered by the CCC and appreciated the support. The CCC intends to contact specialist colleges engaged in competition law and competition policy subjects soon too.

Another important objective, expressly mentioned in the CCC's work plan, is the dissemination of knowledge

on competition policy aspects to **public administration employees** which may help experts involved in legislative activities in taking into account and appropriately enforcing competition aspects in their activities in drafting legislation and law application, especially in those sectors where the market is currently being opened. Within the framework of this activity, the CCC supported participation of public administration experts in foreign professional events, including the participation of members of staff of the Ministry of Health and the Hungarian Energy Office in events in which the connections between their respective areas (sectors) and competition policy were dealt with. The experts prepare a report on the events in question sharing their experiences gained on their study tours not only with their own colleagues, but also with staff members of the GVH as well as with other interested persons.

By issuing various **publications**, the CCC intends to increase awareness of competition law: apart from a booklet describing the GVH and the effective Competition Act published in Hungarian and in English, in 2006 the CCC prepared an illustrative and well understandable booklet about the issues of substantive and procedural law related primarily to cartels. This may assist mainly public administration employees whose work includes procurement and the invitation of offers, in recognising and avoiding potential infringements of law, as the booklet describes the suspicious signs of bid-rigging in public procurement procedures. Although there is increasing press coverage, if the GVH launches its proceedings with a site inspection without a preliminary notice (generally known as a 'dawn-raid'), the undertakings concerned and their legal representatives are very often unfamiliar with the rights of the investigators of the Authority during a site inspection, therefore a separate booklet describes the applicable investigative powers of them.

The CCC does not only issue one-time publications, it also launched a competition law-competition policy periodical in September 2005 under the title of **Mirror of Competition ("Versenytüskör")**. The majority of the authors of the quarterly Mirror are staff members of the GVH, but the periodical applies a wider

approach to competition policy and therefore, apart from the issues of the activities of the GVH and the courts in relation to law enforcement, it also introduces adjacent subjects influencing the functioning of competition, based on studies prepared by experts of the given subject. The Mirror of Competition always reports on the major decisions made by the Competition Council and the courts in the last quarter, the competition advocacy activities of the Authority and the latest developments in Community competition law; each number of the periodical contains also news and reports relating to the GVH. Naturally, the periodical also covers the latest events of the CCC and the OECD-Hungary Regional Centre for Competition in Budapest. The CCC distributes the periodical free of charge a. o. to undertakings, legal buros engaged in competition law, representatives of the professional press, trade associations, municipalities, public administrative authorities, educational institutions and libraries, but the articles will also be available on the CCC's website to be launched soon.

The CCC has established an **Award 'For Competition Culture'** to recognise the activities of experts working outside the Competition Authority but making major contributions to the development of competition culture. This award was presented for the first time on 1 December 2006 by GVH president Zoltán Nagy to Éva Voszka, doctor of the Hungarian Academy of Science and scientific collaborator of Péntzügykutató Rt. in a ceremonial framework. The recent works by Éva Voszka, focusing on issues related to competition, reflect outstanding professional qualities and also satisfy the requirements of dissemination of competition culture.

The CCC will soon launch its own website presenting its results in the development of competition culture and providing easier access to all information concerning its operation. Until then, should you need information about the activities or tender invitations of the CCC, you can contact staff members of the CCC by e-mail at the following address: versenykultura@oec.hu.

OECD-Hungary Regional Centre for Competition in Budapest

I. Foundation and purpose

The OECD-Hungary Regional Centre for Competition in Budapest (RCC) was established on the 16 February 2005 in Paris, at the Permanent Delegation of the Republic Hungary to the OECD, when Zoltán Nagy President of the Gazdasági Versenyhivatal (GVH, Hungarian Competition Authority) and Richard Hecklinger Deputy Secretary-General of the Organisation for Economic Co-operation and Development (OECD) signed the charter of foundation. According to this Memorandum of Understanding, the jointly founded RCC provides assistance to Central, Eastern and South-East European countries based on the professional background given by the GVH and the OECD.

The promotion of competition law and policy in the Central, Eastern and South-East European region was the main purpose of setting up the RCC. Thus the main objective of RCC's foundation is to foster the development of competition policy, competition law and competition culture as well as to give guidance for the competition authorities, contributing this way to the enhancement of competition and promoting economic growth in the region. An established institutionalised background entrusted with the organisation of events concerning a given geographic area provides a number of advantages. Target countries benefit from the stability, continuity and reliability of the projects as they can count on long term co-operation. By the institutionalised relations it is possible to give relaxed feedback on quality and actual needs.

II. Countries involved and functioning

Countries from Central, Eastern and South-East Europe involved as beneficiaries in the work of the RCC are Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The Central European Competition Initiative (CECI) being a special target group of the RCC is a forum for co-operation in competition matters established by Central European competition authorities in 2003. Participating countries of this project are Poland, Czech Republic, Slovak Republic, Slovenia and Hungary. Austria acts as a permanent participant.

The RCC provides assistance with capacity building and policy advice through workshops, seminars and training programmes on competition law and policy for officials in competition enforcement agencies and other parts of government, sector regulators, judges and others. The RCC also works to strengthen the knowledge of competition law and policy in Hungary and the GVH itself.

The RCC is a "virtual" centre, thus it does not have a central office but is accommodated in the headquarters of the GVH. The RCC is run, on the one hand, by one single full-time person who is at the same time employee of the GVH and, on the other hand, by another full-time person at the OECD headquarters in Paris. Three further staff members of the GVH and one more staff member from the OECD is also involved, on a part-time basis, in the actual work of the RCC. This virtual existence of the RCC allows to concentrate funds on the real purpose of its setting-up, thus organising seminars, inviting and training more and more participants. The virtual structure also gives the possibility of an easy adaptation to changing situations.

Concerning the functioning of the RCC, the Memorandum of Understanding of the RCC regulates that major decisions on the activities and work are made jointly by the OECD and the GVH. For this purpose, the parties meet on an annual basis to review the operation and performance of the RCC, to prepare the annual plan and budget statements.

The work of the RCC is based on the expertise of both the OECD and the





GVH. The GVH is responsible for organising all practical arrangements for the RCC's programmes. The employee at the OECD invites speakers to the seminars and sets up the content of the programmes. There is no event without the GVH delegating speakers or panellists. Other speakers are invited from different OECD member states.

Regarding the financing of the RCC, the GVH is responsible for providing the necessary funding for the functioning of the RCC and also for making an annual voluntary contribution to the OECD for costs associated with the staff positions. In addition to this, both the OECD and the GVH co-operate in efforts to raise additional financial support for the RCC from third parties.

III. Activity of the year 2005

Although 2005 was the start-up year for the RCC, it succeeded in organising a very rich programme of events on various competition topics for a wide range of audiences involved in competition policy matters. During the first year, the RCC conducted nine events, of which two were GVH staff training seminars, and seven were seminars or conferences for an international audience from Central, Eastern and South-East Europe. In all, 312 people attended events in Budapest in

2005 either in the capacity of an expert or as a participant. Experts from eleven and participants from seventeen countries attended the RCC's programmes.

Workshop on merger analysis and procedure, 28 February – 2 March 2005

The workshop was organised for Western Balkans competition authorities in Budapest on merger enforcement procedures and techniques. The programme combined practice-oriented lectures by experts on merger control law, the review of a hypothetical case based on realistic documentation and the discussion of merger cases dealt with by the participating agencies in their practice. This format proved to be very successful in fostering discussions and practical exercises in an interactive atmosphere. The workshop was partially funded by the RCC.

Seminar on supermarket related issues: buyer power and sale below cost, 21 April 2005

The Central European Competition Initiative (CECI) workshop was organised in co-operation with the GVH, the RCC and TAIEX. It aimed at enabling participants from Central European agencies to become acquainted with the theoretical background of sales below cost and buyer power, and to exchange views on this issue. The topicality of the workshop

was provided by the legislative process linked to the preparation of the Hungarian Trade Act. The objective of the workshop included familiarising the participants with the versatile experience of the UK Office of Fair Trading on the topic.

Seminar on supermarket related issues: buyer power and sale below cost, 22 April 2005

The seminar of 22 April was the continuation of that held on 21 April, with the only difference that the audience consisted of members of Hungarian public administrative bodies – Ministry of Economy and Transport, Ministry of Agriculture and Regional Development, Ministry of Justice, Ministry of Finance – as well as experts from the political groups of the parliamentary parties rather than of staff members of other competition agencies.

Seminar on abuse of dominance, 7-10 June 2005

The seminar was dedicated to competition authorities of seven countries of the western CIS (Armenia, Azerbaijan, Belarus, Georgia, Moldova, the Russian Federation and Ukraine). The seminar focused on the "Abuse of dominance" by discussing case studies and giving lectures. Abuse of a dominant position can arise either in markets where enterprises are subject to regulation or in markets which are not regulated. Even where enterprises are regulated, they retain certain economic freedom which can be misused through the abuse of dominance. This seminar aimed to improve the legal and economic analysis in cases involving either regulated or unregulated markets.

Opening Conference of the RCC in Budapest, 26 September 2005

The Opening Conference celebrated the launch of the RCC, which had started its operations already earlier that year. It was attended by high level speakers, including the Hungarian Prime Minister, the Deputy Secretary General of the OECD as well as the Chief Competition Economist of the European Commission, and an audience comprising the heads of the competition authorities of the countries involved in the RCC, ambassadors of these countries, as well as repre-

representatives of politics, business, academia and the media in Hungary. Presentations on "Competition policy and economic growth – competition as the main driving force of competitiveness and growth in a dynamic economy" underlined the role of competition policy for economic growth from various perspectives. The event gained considerable and very positive media coverage and was reported in prime time TV news. In sum, it was a great success in promoting the RCC and its visibility in the region.

GVH staff training, 24 October 2005

The training provided both theoretical and practical knowledge for the participants by covering the topic of quantitative methods and their role in competition policy analysis; the topic of possible methods of data gathering, the most frequently occurring difficulties and the method through which those difficulties are dealt with; and also the topic of the correlation analyses related to several issues of market definition.

Judges Seminar, 18-19 November 2005

The seminar was the first event organised for national judges in co-operation by the OECD, the Association of European Competition Judges and the RCC. It was funded by the European Union and the RCC. The seminar was attended by more than 70 judges – with ten of them being Hungarian – from 24 European countries (from all EU Member States – with the exception of Cyprus, Malta and Poland – and from Bulgaria and Switzerland). The aim of the seminar was to provide judges the opportunity to improve their understanding of competition law, and especially the implications for national judges of the modernisation of the application and enforcement of EC competition law under Regulation (EC) No 1/2003. This first seminar focused entirely on the topic of abuse of dominance pursuant to Article 82 EC. An important goal of the event was to encourage judges to consider Article 82 issues from a legal and an economic perspective, and to understand how economic principles can inform the application of legal rules.

2nd SEECAN seminar, 5-7 December 2005

SEECAN is a network of competition authorities in South-East Europe, which was initiated with the support of the OECD Investment Compact and the Competition Division 2 years before the event. The second annual meeting was attended by representatives from Albania, Bulgaria, Croatia, FYR of Macedonia, Romania and Montenegro, together with experts from Turkey, Slovenia, Hungary, the OECD Investment Compact and the Competition Division.

Lectures at the event focused on how to improve the efficiency and effectiveness of a competition authority and on setting enforcement priorities. The topics were deepened in working groups where participants formulated three core reform objectives for 2006 for their authorities.

GVH staff training, 7 December 2005

The seminar was the continuation of the previous one, held on 25 October 2005. It dealt with the concept of critical loss analysis and its possible use in the definition of the relevant market. Then the concept of diversion ratio, its applicability and its connection with critical loss analysis were outlined, such as the topic of merger simulation and damage calculation principles in cartel cases.

IV. Activity of the year 2006

In 2006, similarly to the previous year, the RCC offered a great number of topics and programmes. The RCC organised a total of eight events which focused on some of the most important core competences of competition authorities as well as best practices in the area of competition law. An additional ninth event was organised for the colleagues of the GVH as staff training. In 2006, the RCC invited – taking into account all its events – altogether 184 participants and 50 speakers.

Programme planning meeting, 26 January 2006

The meeting was designed for planning the seminars of the year 2006 by discussions between and proposals made by the heads of the competition authorities, the Competition Division of the OECD and the GVH. The discussion was followed by a professional programme focusing on the topic of the liberal professions. The EU concept and the Dutch experiences were presented in the subject, as well as the Hungarian experiences in the field of advocacy and proceedings.





CECI workshop on merger remedies, 21-22 March 2006

The aim of the Central European Competition Initiative (CECI) workshop was to provide expert contributions in the field of merger remedies for the CECI countries, which they can utilise on when deciding on individual cases and on shaping of their respective regulation. This seminar managed to explore from various angles a variety of issues related to the design, negotiation and enforcement of merger remedies, which constitute a unique tool in competition authorities' toolkit. The workshop's topic was a very timely issue for the GVH itself as well, as a complex project on merger remedies was under preparation.

Anti-cartel enforcement in practice, 10-12 April 2006

The workshop was organised for authorities from the South-Eastern-European countries. It explored the key issues relevant to effective anti-cartel enforcement with sessions focusing on practical topics such as the identification of potentially cartelised markets, investigative techniques including dawn raids and interviews as well as efficient sanctioning and leniency. As a contribution to the seminar, each authority presented case studies in the subject.

The assessment of market power – seminar for CIS countries, 15-18 May 2006

Assessing the market power of companies is an essential element of anti-trust analysis, particularly in the field of abuse cases and merger control. The workshop covered the key features of this assessment including market definition, the calculation and analysis of market shares, barriers to entry, and market power analysis in bidding markets. Case studies from various jurisdictions provided illustration and opportunities for practical discussions. Work on a hypothetical case on market definition gave illustration and opportunities for practical discussions. This seminar was also designed as the first module of a series of events dedicated to the assessment of abuse cases.

Merger remedies – GVH staff training, 27 June 2006

The GVH was in the course of developing a guidance paper on the authority's approach in merger remedies. Against this background, the objective of this training was twofold: first, to discuss the draft guidance paper prepared by GVH staff by using patterns of EC and international best practice. Second, to share case experience on the basis of case studies from the GVH and recent case law on merger remedies of the EC

and the European Courts in order to build up remedies expertise within an informal network of GVH staff.

Cartels and other restrictive agreements – seminar for CIS countries, 7-10 November 2006

This seminar covered the field of multilateral restrictive practices. The first part focused on key issues relevant to effective anti-cartel enforcement, such as the identification of potentially cartelised markets, investigative tools including dawn raids and interviews as well as efficient sanctioning and leniency. The second part explored the most relevant non-cartel restrictions to competition in horizontal and vertical relationships, such as co-operation agreements and exclusive and selective distribution systems. Techniques and best practices were illustrated by case studies from various jurisdictions and by a hypothetical case on a horizontal agreement scenario.

Programme planning meeting for the year 2007, 16 November 2006

The meeting aimed at introducing the new working structure of the RCC of the year 2007 with its newly set up matrix system and the programmes to be organised next year. The meeting also had a professional side with presentations on co-operation between regulators and competition authority.

European judges seminar, 23-24 November 2006

As the first event in November 2005, the seminar provided judges with an opportunity to improve their understanding of European competition law and economics, and to exchange views and discuss their experiences in competition cases. The programme focused on the analysis of cases involving anti-competitive agreements (Article 81 EC and national law equivalents), except for hard core cartels, such as price fixing. A second focus was the use of economic evidence before national courts in competition cases. The seminar was attended by 60 judges, with seven of which being Hungarian.



Competition law enforcement in regulated sectors – seminar for regulators of SEE countries, 5-7 December 2006

The seminar focused on “The interface between Competition Policy and Telecom Regulation”. The seminar was designed to bring together participants from telecom regulators and competition authorities. The aim of the seminar was to discuss common issues concerning regulators and competition authorities alike, and to exchange best practices in terms of co-operation between the two agency groups.

For the year 2007, the RCC is planning ten events. One of the advanced level seminars will deal with merger issues focusing on vertical and conglomerate scenarios. The other advanced level seminar’s main issue will be cartels and agreements. An intermediate seminar will be held on the topic of abuse, and another one on competition policy and enforcement in regulated sectors. The RCC also aims at organising the continuation of the conference for European judges. Two workshops for the Central

European Competition Initiative are also planned, of which one is about energy. As every year, a programme planning meeting will be dedicated for the heads of the authorities involved, and two staff trainings for the staff members of the GVH.

From January 2007, more information can be found on events organised by the RCC and on its structure and function on the newly opened website: www.OECDHungaryCompetitionCentre.org.

V. Activity of the year 2007

In 2007, as a novelty, most of the seminars of the RCC will be organised in the building of the Hungarian Judicial Academy. This new building was erected with particular training-purposes, that is why it provides advantages which cannot be found when hotels are used for the same purposes. Another new feature of the year 2007 will be the introduction of intermediate-level and advanced-level seminars. The split between levels will replace the former country-oriented division of the events.



Rich booty – how much harm is caused by cartels to the Hungarian economy?

Introduction

*“Our competitors are our friends.
Our customers are the enemy!”*

These were the words of the head of the international lysine cartel which operated for three full years from 1992, when he called his competitors to collude against their consumers. These words sum up the essence of why cartels should be regarded to be the worst enemy of consumers and why the disclosure of cartel activities is the most important task for all competition authorities. By allocating markets or by agreeing on prices and other terms of sales, firms forming cartels eliminate or strongly restrict competition between themselves, which enables them to operate like a monopoly and dictate higher prices.

Consumers suffer a variety of different forms of damage and loss directly and indirectly as a result of the operation of cartels. It is very difficult or even impossible to identify the amounts of such damage and loss in any specific cartel case. Based on international experience, in view of the conduct of hundreds of cartels, it is possible to form some picture of the scale of the damage that has and is being caused by cartels together in Hungary. Cartel overcharges observed in international and domestic cases make it possible to show the proportions of the extra costs paid by consumers as a consequence of cartel activity. This paper will use such rules of thumb to illustrate the damage caused by cartels to consumers by cartels uncovered by the Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) since 2002.

The damage caused by cartels to the society as a whole, however, is even greater. Higher prices reduce the quantity of products sold on the market – in comparison to what could be sold under competitive conditions – and the elimination of the competitive pressure on the market strips companies from the incentives to widen their product ranges or to

improve quality. Nevertheless, as a consequence of the difficulties of quantifying these factors we will now focus on the price increasing impact of cartels, putting aside their numerous other effects.

The extent of price increase achieved by cartels – theoretical background

In essence, all we need to answer this question is only two data: the cartel price and the competitive price. A comparison of these reveals the rate of the price increase resulting from the restriction of competition, i.e. the cartel overcharge. The difficulty in assessing the scale of the damage caused by cartels lies in the very fact that while the high price maintained by a cartel is very clearly visible indeed, generally there is no information on the competitive price. The main question, therefore, is this: what would the prices have been if there had been competition. A variety of approaches can be taken to estimating the unknown competitive price, with each of them having its advantages and disadvantages.

One such approach is comparing the average price in effect during the existence of a given cartel to the average price that was observed on the same market before the establishment or after the termination of the cartel. Another approach is whereby the researcher collects data on markets which are similar to that dominated by the cartel but on which competition on the merits may be supposed to prevail. In the case of local cartels such similar markets may include, for instance, markets of other regions. Another technique is based on reviewing the costs underlying the price and the margins applied by firms operating on the relevant market. Yet another method is attempting to assess the overcharge received by cartels through econometric modelling using data that are becoming available in increasing detail in recent years.

United Kingdom – cartel in the market of replica football kits

The Office of Fair Trading (OFT) – the competition authority of the United Kingdom – tracked down an anti-competitive agreement involving a considerable number of firms on the market of football kits. The companies involved in the cartel (including Umbro and Manchester United) agreed to set minimum prices for their products. In August 2003 the OFT concluded that this agreement was contrary to the law and imposed a fine exceeding £ 18 million on the firms participating in the infringement. This was followed by an over 30 percent drop in prices, a welcome change for football fans.

Sweden - asphalt cartel

Scrutinising the asphalt market the Swedish competition authority revealed a number of collusive agreements between asphalt manufacturing companies. The most interesting fact is that one of the subsidiaries of the Swedish public road management agency (Vägverket) putting out the tenders also participated in the collusion against its own parent company. In the wake of the Swedish competition authority's intervention prices fell almost immediately by nearly 20 percent.

Cartel overcharges in the economic literature

Publications on cartels set the damage caused by cartels at a minimum of **10 percent** of the sale price. US and UK competition authorities alike estimate cartel overcharges based on this 10 percent rule, admitting though that this should be considered as a very conservative estimate. Cartels observed on various markets have typically increased prices by much higher rates.

operated included motorway and sewerage construction, school-milk supply, frozen fish and markets of various chemical products. In these cases the cartels applied an average overcharge of 21 percent, with the typical rate equalling 18 percent.

Perhaps the **most comprehensive study** on overcharges achieved on the markets by cartels has been prepared by John M. Connor, professor of the Purdue University. The author reviewed all sources of literature published since 1770 and available in English language,

25 percent over what may be considered to be 'competitive price', while the average overcharge was some **49 percent**. Almost one third of the total of over 600 cartels under scrutiny had sold their products at prices which were 20-40 percent higher on an average in comparison to prices prevailing in competitive markets. Only about a fifth of the cartels raised their prices by less than 10 percent above the competitive price, while another fifth received overcharges which were greater than 60 percent.

Studies on cartel overcharges

Connor, John M. (2005): Price-Fixing Overcharges: Legal and Economic Evidence, Purdue University Staff Paper No. 04-17

Griffin, James M. (1989): Previous Cartel Experience: Any Lessons for OPEC?, in Lawrence R. Klein & J. Marquez, Economics in Theory and Practice: An Eclectic Approach, Kluwer Academic

Levenstein, Margaret & Valerie Suslow (2002): What Determines Cartel Success? Working Paper 02-001 University of Michigan Business School (January 2002).

OECD (2003): Hard Core Cartels – Recent Progress and Challenges Ahead, Organisation for Economic Co-Operation and Development

Posner, Richard A. (2001): Antitrust Law (Second Edition). Chicago: University of Chicago Press

Werden, Gregory J. (2003): The Effect of Antitrust Policy on Consumer Welfare: What Crandall and Winston Overlook, EAG 03-2. Washington, DC: Economic Analysis Group, Antitrust Division, U.S. Department of Justice (January 2003).

Research carried out by	Number of cartels	Average overcharge (percent)	Typical overcharge (percent)
1 Posner (2001)	12	49	38
2 Levenstein and Suslow (2002)	22	43	25
3 Werden (2003)	13	21	18
4 Griffin (1989) *	54	46	44
5 OECD (2003) **	38	16	13
6 Connor (2005)	674	49	25

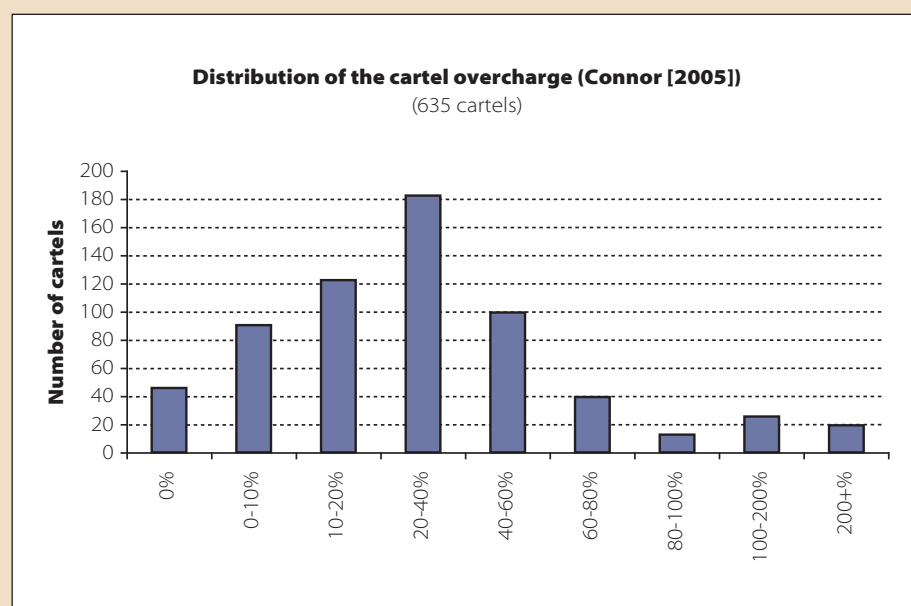
* The overcharge relates to 38 private cartels
 ** Information on overcharge was available in the case of 12 cartels
 Source: Connor (2005)

In their study produced in 2002 Valerie Suslow and Margaret Levenstein analysed a number of cartels that operated after World War One, focusing on the duration of their existence, their stability and profitability. In the cases studied by the authors the average overcharge was 43 percent and the typical overcharge equalled 25 percent. These data are far in excess of the 10 percent overcharge assumed by the British and the American competition authorities.

In its report published in 2003 on the fight against cartels the OECD listed 38 international cartel cases, describing the turnover of goods affected by the infringement, the amounts of the fines and in some cases the established or estimated overcharges as well. Information on the rates of the overcharges achieved by the cartels was available in twelve cases, where the average and the typical overcharge equalled 16 percent and 13 percent respectively.

Gregory Werden, economist of the US Department of Justice (DoJ) quoted thirteen cartel cases in his study published in 2003, where information was available on the cartel overcharges. The markets on which these cartels

hundreds of books and periodicals and decisions of American and foreign courts and competition authorities, seeking for evidence on the average extent to which cartels increased prices. The author found information on average cartel overcharges with respect to a total of 674 cartels that had been in existence during the two centuries covered by the review. He found that the typical cartel overcharge was



Damage caused by cartels discovered in Hungary

International examples show that cartels almost certainly put up prices by at least 10 percent, indeed, it is not unreasonable to assume overpricing as high as 49 percent; since a number of research publications show the likelihood of this rate as an average price increase effect (See *Cartel overcharges in the economic literature*, in the box above). Based on such experience it is possible to estimate the damage caused to the

Hungarian economy by cartels brought to light by the GVH. This approach to estimating the harm is also supported by the fact that cartels in Hungary are also similar in terms of the sectors and products concerned to those disclosed abroad. Moreover, there have been several cartels in Hungary as well, where communication between competitors shed light on the difference between cartel prices and production costs or between cartel prices and market prices. In view of the estimated 28 percent overcharge in the motorway cartel case and 46 percent in the bid-rigging

for the payroll accounting system of the Paks Nuclear Power Plant, it does not seem unreasonable to use the rule of thumb drawn from literature to describe the harm caused by the biggest cartels uncovered by the GVH. In these Hungarian examples the overcharge rate achieved by cartels is closer to the upper end of the 10-49 percent range described in literature. Based on the cartel overcharge and the relevant turnover it is possible to develop an estimate of the damage caused by cartels to consumers.

The biggest cartels discovered in Hungary (2002-2006)

Title of case	Affected turnover		Invitation to tender	Period of the operation of the cartel
	million HUF (October 2006)	million € (1 € = 263 HUF)		
1 Paks Nuclear Power Plant, improvement of the economic information system (Vj 97/2006)	420	1.6	Yes	2004
2 Egg cartel (Vj 199/2005)	12 039	45.8	No	2002-2005
3 Motor vehicle repairers and insurers (Vj 51/2005)	177 103	673.4	No	2000-2005
4 Synergon, HP Mo. KFKI, Montana - IT cartel (Vj 40/2005)	1 416	5.4	Yes	2003
5 Payroll accounting system - IT cartel (Vj 21/2005)	311	1.2	Yes	2004
6 IT system for universities (Vj 162/2004)	15 872	60.3	Yes	2004
7 AREVA et al. - switchgear (Vj 102/2004)	9 408	35.8	No	1991-2004
8 Kemira-Tessenderlo - fodder phosphate (Vj 101/2004)	46 369	176.3	No	1991-2003
9 Graphic designers (Vj 98/2004)	1 150	4.4	No	1997-2005
10 Renovation of freehold block of flats (Vj 74/2004)	354	1.3	Yes	2002
11 Road construction firms in rural Hungary (Vj 56/2004)	29 136	110.8	Yes	2001-2002
12 Road construction in Budapest (Vj 25/2004)	14 967	56.9	Yes	2001
13 Kaposvár University Building (Vj 154/2003)	3 799	14.4	Yes	2002
14 Game meat price coordination (Vj 132/2003)	974	3.7	No	2000-2003
15 Hunting (Vj 89/2003)	3 221	12.2	No	2001-2004
16 Pension Fund Building (Vj 28/2003)	5 826	22.2	Yes	2002
17 Motorway cartel (Vj 27/2003)	157 738	599.8	Yes	2002
18 Renewal of Bartók Béla street (Vj 138/2002)	13 362	50.8	Yes	2002
19 Budapest cab companies (Vj 114/2002)	3 356	12.8	No	2002
20 Examination of origin (Vj 72/2002)	2 599	9.9	No	1999-2003
Total	499 420	1 898.9		

*In case the collusion took place at a tender, the period of cartel operation relates to the time of the tendering

Hungarian cartel overcharges – had there been available price information

Documents of the companies concerned provide some information – in two of the cartel cases investigated in Hungary – concerning the level of hypothetical competitive price to which the cartel prices can be compared.

The motorway cartel

One such case is the **motorway cartel**, which brought in the largest

amount of fine in the history of the GVH. In February 2003 the authority started a proceeding against the companies that entered the August 2002 open public procurement tender with a pre-qualification procedure for the construction of the Balatonszárszó section of the M7 Motorway, the Görbeháza section of M3 Motorway and the section of M7-M70 Motorway/ main road between Becsehely and Letenye, put out by Nemzeti Autópálya Rt. The com-

petition authority suspected that the bidders coordinated their bids and allocated among themselves the construction of the altogether about 60 km long road sections. In the course of the on-site inspection of the companies the GVH seized a number of documents, which enabled it to establish the infringement. A note seized from one of the managers of Strabag indicated some 'cost-based prices' that could be used as a guideline in respect

of the competitive price in the case. According to the note the 'cost based' price would have been HUF 90 billion (€ 342 million), which would be the centre of gravitation for the market price as well, had there been perfect competition. If we add profit corresponding to the average margin of construction companies in 2002 (5.2 percent) to the 'cost based' price and regard this as the competitive price, we find that in a competitive market the road sections concerned could have been built up for some HUF 94-95 billion (€ 357-361 million). Even if we - quite generously - take twice the above margin, the project could have been implemented with HUF 100 billion (€ 380 million). The cartel undertook to carry out the assignment for a **28 percent higher** net price of HUF 128 billion (€ 487 million). This illegal alliance of road constructors therefore caused a direct damage of at least HUF 28 billion (€ 107 million) to consumers. This amount exceeds the annual budget of the town Pécs.

The payroll accounting system for the Paks Nuclear Power Plant – 46 percent overcharge

The anticompetitive agreement between two IT firms – SAP and Synergon – also contained a reference to the competitive price. The Paks Nuclear Power Plant put out to tender the IT improvement to upgrade its payroll accounting system in April 2004. The investigation by the GVH found that during the tendering period the two firms conducted negotiations and mutually agreed on the roles to be assumed by each, coordinating their offers. Under such conditions SAP won the right to provide the service at a price of HUF 365 million (€ 1.4 million). The competition authority obtained a message, sent by an employee of one of the companies concerned, which read:

„At normal price the project would cost HUF 200-250 million. The contract price is about HUF 360 million which is quite a substantial extra profit [...]”

Although in this case 'normal price' is not necessarily identical with competitive price in the sense the latter term is used by economists, the message still gives a good indication of the scale of the price increase achieved by the cartel. Even if the maximum of the 'normal price', that is HUF 250 million (€ 950 thousand), is taken as the competitive price, the cartel price is higher than this by HUF 115 million (€ 437 thousand), or 46 percent. To illustrate the size of the damage suffered by customers: this amount would be enough to install WiFi relay stations providing full-range Internet access in 15-20 villages, or to purchase 700-800 new computers which could have been enough to supply quite a number of schools with a sufficient number of PCs.

When calculating the amount of the damage, closer estimates were taken into consideration whenever data for making such estimates were available (see 'Hungarian cartel overcharges...' above).

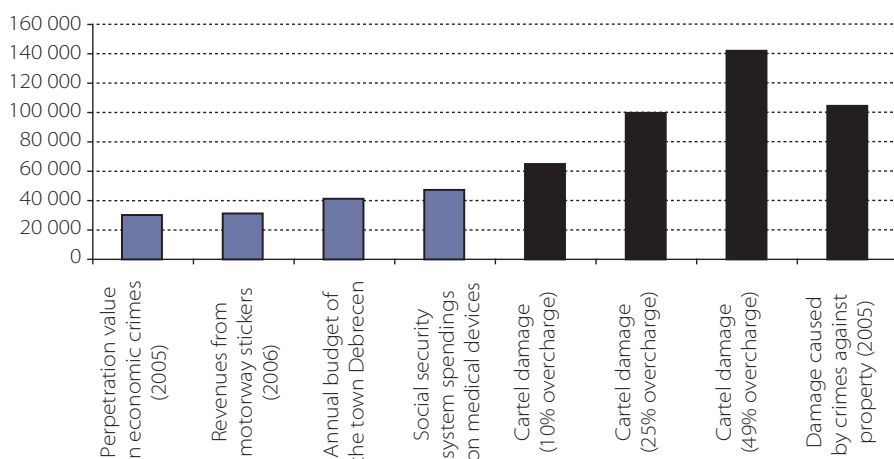
The twenty biggest cartels discovered by the GVH since 2002 have caused a loss of some HUF **64 billion** (€ 243 million) in real terms to consumers even according

to the most conservative estimate, based on an assumed 10 percent overcharge rate. Taking into account the higher – 49 percent – average overcharge observed by Connor shows a loss of HUF **142 billion** (€ 540 million) in real terms. The amount of loss based on a medium 25 percent overcharge equals HUF **100 billion** (€ 380 million). Apply-

ing this to the total Hungarian population reveals that the activities of the cartels revealed during the past five years cost every single Hungarian citizen some HUF **10,000** (€ 38). Even on the basis of the lowest assumed overcharge, the damage is twice as high as the size of all economic crimes detected in Hungary in year 2005. The magnitude of the damage caused by the biggest cartels brought to light in Hungary during the five years under review is indicated by the fact that even the HUF 64 billion (€ 243 million) that is the amount of loss calculated using the lowest likely overcharge would be enough to operate the competition authority for 40 years with its current budget.

The weight of construction-related public procurement procedures in the above cases is shown by the fact that the collusions in seven road and building construction works account for almost half of the turnover affected by the cartels under review. Public procurement cartels qualify as particularly serious violations of the EU and Hungarian competition law since in these cases – with the procurement being implemented from public money – cartels steal from all taxpayers.

The damage caused by the biggest cartels discovered in Hungary (million €, October 2006)



Motorways 40 percent cheaper?

The public procurement procedure for the construction of the section of M7 Motorway between Balatonkeresztúr and Nagykanizsa clearly illustrates the importance of competition. Changes introduced to the earlier motorway construction tendering regime resulted in unprecedented competition and, consequently, a lower price.

In the early 2000s the same state-owned consortium enjoying a monopoly position was invariably commissioned to carry out motorway construction projects and there was practically no competition on the market of motorway construction. Although after 2002 companies capable of constructing motorways were invited to bid for contracts, those participating in tendering often colluded to form cartels and eliminate competition and instead of trying to offer more favourable terms and conditions than others, they shared the tasks and put up prices. The GVH started proceedings in a number of cases and in 2004 alone, the Competition Council made decisions on five cartel cases relating to public procurement on the construction market.

In its procedure for the award of public works contracts for the construction of the last section of the M7 Motorway, Nemzeti Autópálya Zrt. – which invited the tenders – transformed the tendering conditions in comparison to its previous practice. The number of bidders increased significantly as a result of the elimination of or changes in the rules restricting participation. As a consequence of increased competition, the construction price was reduced in comparison to the prices observed in public

procurement procedures that had taken place after 2000 and the winner of the procedure undertook to construct the road section at a price of HUF 43.8 billion (€ 167 million), way below all expectations and earlier prices. In the media the minister of economy spoke about a 40 percent price cut in comparison to previous prices of motorway construction. Without specific knowledge of the separate impacts of the increased price competition and the easing of the technical requirements, we can declare that by means of these two factors the Hungarian state saved some HUF **30 billion** (€ 114 million) on the construction of the last section of the M7 Motorway. This amount is more or less equal to the annual revenue from motorway tolls. Without the Balatonkeresztúr-Nagykanizsa section of the M7 Motorway the motorways constructed since 2000 cost about HUF 1000 billion (€ 3.8 billion) at current prices. If all construction projects could have been completed at 40 percent lower prices, this could have saved HUF 400 billion (€ 1.5 billion) for the state.

By applying the 28 percent overcharge estimated to have been charged by the motorway cartel (see *Hungarian cartel overcharges* in the box above) to the motorways constructed since 2000, we see that competition could have enabled the Hungarian state to save almost HUF **220 billion** (€ 837 million). This amount – in view of the kilometre price of the last section of M7 – would have been enough for constructing up to 180 km more motorways. Or if the same amount were to be used for bicycle road construction, it would be enough for completing some 11,000 kilometres. This would result in a six times more extensive network in comparison to what exists today in Hungary.

The cartels detected by the GVH must be but the tip of the iceberg: according to the estimate of the British competition authority only approximately 15 percent of cartels are discovered in any given year. In view of this detection rate and the known duration of the operations of the biggest cartels in Hungary, the total amount of the damage caused to the society by **all operating cartels** may amount to many times the HUF 64-142 billion (€ 243-540 million) damage caused by the cartels reviewed in this paper and it may amount to HUF **160-356 billion** (€ 608 million-1,35 billion), equalling 0.7-1.6 percent of Hungary's GDP.

Summary

These examples and simple calculations are presented with the aim of illustrating the magnitude of the social damage caused by cartels. The largest cartels discovered by the GVH caused a greater than HUF 64 billion (€ 243 million) harm to consumers even according to the most conservative estimate. This amount may actually be taken as a lower bound of the damage, since it has been calculated, where no individual estimates were available, by using an overcharge rate of only 10 percent, whereas the actual average overcharge rate – as it is shown by the pricing practices of hundreds of cartels – is much higher than that. Furthermore, this estimate takes account only of the damage suffered by consumers in the form of higher prices, disregarding a variety of other detrimental effects of cartel activity. Be it the market of eggs, driving school lessons, graphic design services or motorway construction, just buying practically anything in the grocery store or conducting public procurement procedures, cartels are here and they are causing huge damage to the society as a whole. Collusion between competitors is the most serious violation of competition law and efficient investigation and proper sanctioning of such practices is in the interest of the public.

The case of motor vehicle repairers with insurers

The largest fine ever paid by a single company in Hungary was imposed by the GVH in late 2006, when the authority fined Allianz Hungária HUF 5.3 billion (€ 20 million). The total of HUF 6.8 billion (€ 26 million) imposed on those involved in the case altogether was only slightly below the HUF 7 billion (€ 26.6 million) record fine imposed on the motorway cartel. This case was a combination of a number of contested practices, each of which restricted competition.

Two large insurance companies – Allianz Hungária and Generali-Providencia – agreed with the Hungarian Association of Automobile Dealers (Hungarian abbreviation: GÉMOSZ), an

association of 600-700 car dealers, on ‘recommended prices’ (actually: on overpriced hour rates) between 2003 and 2005. The Competition Council found that GÉMOSZ – though it was a civil society organisation – was functioning as a cartel enabling its members to restrict price competition and to apply higher, uniform prices. As a consequence of the concerted conduct of the participants motor vehicle repairers managed to increase their prices by over 10 percent a year between 2003 and 2005 – exceeding the inflation rate – but there were negotiations about hour rate increases which would have gone up to three times of that extent.

The insurers accepted the increased hour rates in exchange for the repair firms making up for it by getting new insurance contracts for them. More-

over, the insurers brought the level of the hour rates paid to repair shops in line with the performance of the repair shops in getting them new insurance contracts. Other insurers on the market also had to pay the artificially increased repair rates to the repairers without the latter getting them new insurance contracts. The two insurers mentioned above did not set up a cartel between themselves, but they accepted the price cartel built up by motor vehicle repair firms and so they tried to restrict competition on the market of motor vehicle insurance.

The GVH imposed fines on the insurers, authorised dealers and intermediaries (insurance brokers) playing a key role in operating the insurance market, which were parties to the restrictive agreements.

Is it worth cartelling?

„The decision hit [... company] hard. A procedure has been started within the company and the managers found guilty of participating in price-coordination should expect sanctions.”

Népszabadság, 30 November 2006:
Cartel companies caught (information on the Slovakian competition authority's decision against public procurement bid rigging cartel)

*„I will be steadfast in applying **zero tolerance** for those who operate cartels.”*

Neelie Kroes, European Commissioner for Competition Policy (in her acceptance speech)

Participating in cartels offers substantial advantages for businesses at the expense of consumers (see ‘Rich booty...’ above). This is the reason why competition authorities are adopting increasingly tough approaches to uncover and eliminate cartels. Thus when a cartel is brought to light, the participating companies and their managers have to face serious negative consequences.

One of the most severe consequences of having been caught cartelling is **bad publicity** resulting from the company's

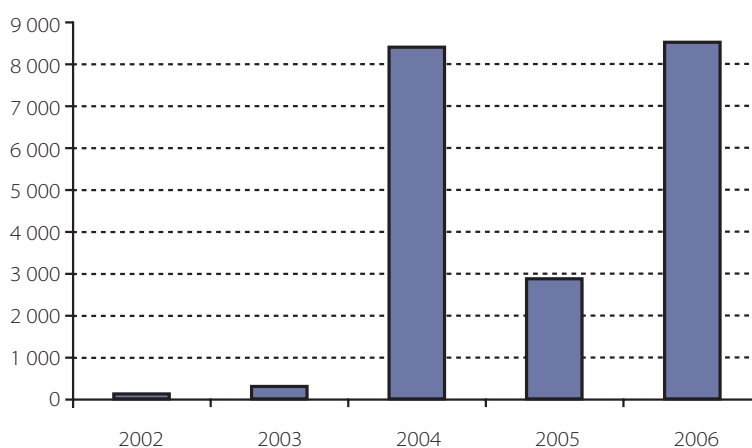
name appearing in a negative context in relation to the cartel. This may destroy the results of years of PR efforts and spoil the image of the company for quite a long period. (Since 2002 the daily Népszabadság and the weekly Figyelő has published articles on cartels discovered by the GVH in more than thirty and in twenty cases, respectively.)

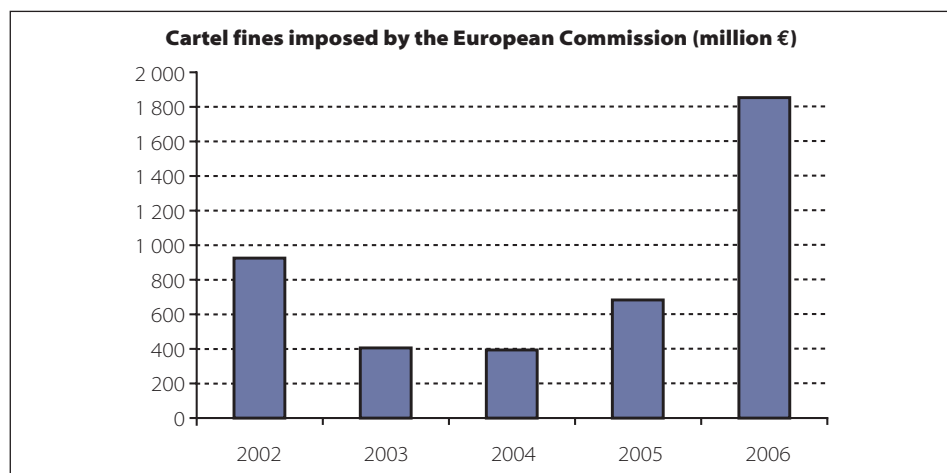
Participating in cartels is the most serious infringement of competition law and a company found guilty of cartel activities is heavily **fined** by the GVH. Between 2002 and 2006 the authority

imposed fines totalling in HUF 20.2 billion (€ 76.8 million), in nominal terms. One of the companies was fined HUF 5.3 billion (€ 20.2 million) in a single cartelling case.

Customers injured by a cartel may **sue the cartelist for damages** in civil law action. Damages enforced in such actions may significantly exceed even the fines imposed by the competition authority. For instance, in the case of the vitamin cartel manipulating the international vitamin market up to the late nineties, the DoJ – proceeding as one of the competition

Cartel fines imposed by the Hungarian Competition Authority (million HUF)





authorities of the USA – imposed a \$900 million fine while courts awarded another billion dollars to injured customers in private actions for damages.

Other sanctions may also be applied to bid-rigging companies participating in public procurement and concession tendering. Such sanctions include, for instance, **exclusion from the public procurement procedure** or **prohibition of access to local governmental, state and EU aids**. In addition to the cartel company the executives representing it, signing the cartel agreement, may also be punished: since September 2005 courts can impose **up to five year prison sentences** for cartel activities: this is not likely to be the most attractive point in a manager's CV. In effect, a cartel steals money from consumers: one should not be surprised to see price-fixing in the list of deadly sins under the heading 'Thou shalt not steal' on one of the most frequented English language catholic home page.

If the operations of a cartel are not limited to Hungary or if its impacts – e.g. a price increase – affects not only Hungarian but other countries' consumers as well, the **competition authority of the country concerned** or the **EU Commission's Directorate-General for Competition (DG COMP)** can also apply sanctions with regard to the impacts on foreign markets, in accordance with their own regulations. One of the main goals of Neelie Kroes, new Commissioner for Competition Policy appointed in 2004, is to intensify the fight against cartels. These efforts yielded spectacular results in 2006 already. The European Commission has been traditionally imposing hefty fines on cartels and the tightening of the sanctioning policy in 2006 indicates further increases in the amounts of fines to be expected by cartelists. The amount of a fine may equal up to 30 percent of the cartel's annual turnover of the goods concerned by the cartel activities. This

amount is multiplied by the number of years during which the violation was continued and the result is further increased in cases of repeated infringement. Criminal sanctions including imprisonment are routinely applied in the USA.

Moreover, besides the serious harm done to a company by it being found to have participated in a cartel, **avoiding detection** and the sanctions **does not even depend on that company's own skills**. A **cartelist cannot even trust its own partners in the cartel**: each of them is encouraged to be the first one to blow the whistle, for the participant who first informs the competition authority of the existence of the cartel is exempted from the fine obtaining in this way a significant competitive advantage over the other cartel members which will be fined. In many cases dissatisfied employees or employees who have already quit or been sacked take revenge by **bringing down the cartel**.

Accordingly, participating in a cartel may prove to have been a highly expensive gamble for the company and its executives and those who go in for it run very considerable risks. And once a company has made the mistake of getting involved in a cartel it is worth considering the option of providing information for GVH (or the European Commission) to alleviate the numerous negative consequences of getting caught. A responsible executive may avoid criminal sanctions by confessing to the infringement.

What is a cartel?

A cartel is a secret and definitely anti-competitive alliance between formally competing companies to restrict competition by allocating markets, limiting output and fixing prices. In contrast to some other not purely anticompetitive forms of cooperation a cartel has no positive impact on consumers at all, thus concluding cartel agreements is prohibited; indeed, participating in a cartel qualifies as the most serious breach of competition law.

The different forms of cartel activities include competitors agreeing on **divid-**

ing the market by certain criteria

(e.g. geographical area, time, product or customer segment). Another example is where competitors agree on **the quantity to be produced/sold or on their capacities or on restricting/limiting them**. **Concluding price agreements** is also prohibited. This is the case if competitors fix their prices or any elements of their prices, if they set minimum prices or standard pricing formulas, if they decide on price differences to be applied between different products or if they unify or eliminate discounts. Agreements prohibiting advertising also qualify as cartel activities.

Bid rigging is a typical form of cartel activities. In this case bidders usually agree in advance on who is to win the project put to tender by offering a high price, while the others do not submit bids, submit uncompetitive bids or even withdraw their bids.

Group boycott is considered as a hard-core cartel, and is a strictly prohibited business conduct. It is an agreement between competitors not to deal with another person or business, or to pose discriminating terms and conditions. The aim of the boycott is to drive some businesses out of the market or to force another party to pay higher prices.

How to recognise a cartel?

Cartels can dictate increased prices, causing substantial damage to their customers. Such customers may include end-consumers, other companies or institutions spending public money that may come into conflict with an illicit alliance of their suppliers. The GVH makes its best efforts to discover cartels and imposes heavy sanctions on cartelists. Breaking up a cartel requires proof of its existence, which is greatly facilitated by information provided by buyers. With due care even buyers and experts in charge of procurement can identify signs indicative of cartel activity and in addition to notifying the competition authority they can do quite a lot to protect themselves from sellers working in cartels. First of all, however, they must be able to recognise the cartel. The following list presents some of the signs that may be indicative of cartel activities in tendering procedures.

In general

In essence, any form of conduct that is different from the way of bidding and the behaviour of competitors normally to be expected and any sign that may indicate such a conduct should raise suspicion. These include, among others, the following:

- The price is falling sharply when a new bidder or one that has rarely participated in tendering (but is similar to the others) appears.
- A company submits substantially different tenders in different procedures, despite the fact that the costs concerned are highly similar.
- Identical prices, particularly when prices remain unchanged for a long period of time or become stable after a period of volatility.
- A substantial price increase that is not justified by changes in costs.
- The output declines despite great demand for the product.
- Sudden withdrawal of discounts.
- Market participants adjust – unify – their terms of sale to those of their competitors.

- Information on certain competitors' holding meetings or coordinating with one another.
- Local businesses and businesses delivering products from longer distances charge the same transport costs or calculate transport costs in the same way.

In tendering procedures, in addition to the above

- A lot fewer bids are submitted than normally before.
- One or more companies withdraw their bids (or their request for a review of the decision) and then they work for the winner as its subcontractors in the project.
- Similarities in the format and appearance of the bids submitted by different bidders, with identical errors (misprints, content errors).
- Some bidders quote identical prices, including identical price components.
- The same accessories, attachments and certificates are missing from bids.
- There is a marked difference between the cheapest price quoted and the other ones offered.
- Any of the tenderers reveals certain knowledge about the bids of its competitors even before the bids are opened.
- Bid rotation: practically the same bidders participate in several biddings and the next tender is always won by another participant.
- The winner of the contract retains the others or some of them as sub-contractors.
- The winner suddenly abandons his intention to contract the work won, forcing the person which put out the work to tender to sign a contract with the second best bidder.
- The same company wins successive biddings with almost always the same competitors submitting unsuccessful bids.

As a matter of course, these are only signs of a possible cartel, without necessarily indicating its existence.

Identifying cartels and bringing them to light serves the interest of the public. Similarly to other competition authorities the GVH has published a booklet entitled '*Collusion of bidders in bidding and its possible signs*' (Hungarian title: *Az ajánlattevők versenytárgyaláson való összejátszása és annak gyanút keltő jelei*) to help those working in procurement to recognise cartel activities. The booklet, which contains lots of details concerning factors facilitating collusion between competitors as well as signs indicating cartel activity, is available at the authority's enquiries and on its home page.

What is to be done?

When suspecting cartel activity the buyer itself can take some action against a cartel, respond to an unfair offer and thereby achieve a reduced price. When suspicion of a cartel arises in a tendering procedure it is possible to put out another invitation for tenders encouraging suppliers not involved in the cartel to submit their bids. It is also possible for those who have been injured by the operation of a cartel to claim damages in court. Contracts violating competition rules are null and void, the legal consequences of which can be enforced in civil court actions.

Delivering signs and evidence of a cartel activity to the GVH can be a very useful contribution to the actions of the authority. The GVH has its means to eliminate cartels by imposing fines or other sanctions. A suspicion of collusion between competitors may be notified to the authority and the authority's Cartel Section is ready to provide customers with relevant information. Having received a notice of this kind, the bureau's staff members will contact the notifier and decide whether to start a proceeding.

A last chance for those who grasp the opportunities

The leniency policy applied by the Hungarian Competition Authority to companies participating in an anti-competitive agreement offers a chance for avoiding part or the whole of the sanction. The point is that the GVH rewards participants of a secret agreement, that are ready to quit the cartel and to provide information for the authority on the existence and activities of the cartel, by reducing the amount of or granting immunity from the fine. The word 'leniency' may lead some to believe that the GVH forgives those who confess to their violations, but that is not the case. The competition authority does not exercise fairness or a pardoning power when it does not fine a firm. The leniency policy is simply a means for breaking the silence surrounding cartel agreements by offering an incentive to participants for cooperation with the authority. The GVH aims to uncover the largest possible proportion of such infringements and to impose heavy punishments on perpetrators. The leniency policy is just one of the instruments applied to attain this goal by exploiting internal tensions existing within cartels, through generating distrust among participants.

Granting immunity or reducing the fine

A firm participating in a cartel may apply for full immunity from the fine if it is the

first one to provide meaningful information on a cartel hitherto unknown to the authority, on the basis of which the GVH can start an investigation. No fine is imposed either, if in an already ongoing proceeding a participant of the cartel is the **first one** to supply the GVH with crucial evidence and information for establishing the infringement, provided the GVH did not have enough information for proving the infringement at the time of the submission. In addition to sanctions under the competition regulations, the first participant to supply information is also released from possible criminal sanctions.

The fine imposed on a cartel member may be reduced if, although it is not the first participant to supply the authority with crucial evidence, it delivers information that provides **definite added value** in addition to the body of evidence already available for the GVH. In practice this takes the form of documentary proof making a significant contribution to establishing the facts. If the pieces of evidence submitted by a cartel member meet this criterion, then after the disclosure of the cartel, for the participant that was the first one to provide the authority with meaningful information the fine is reduced by 30-50 percent, for the second one by 20-30 percent and by up to 20 percent for any other cartel member that has provided such information.

These reductions are often quite substantial in absolute terms, given the large amounts of fines. Another pre-requisite for immunity from the fine or for the

reduction of its amount, however, is that after delivering evidence the company promptly terminates its cartel activity and it cooperates continuously and fully with the GVH in the course of the proceeding. Moreover, immunity may be granted only if the cartel participant did not do anything to force others to get involved in the violation or to force them to operate the cartel, i.e. 'ringleaders' cannot avoid the consequences under any circumstances.

The wall of silence: the one who demolishes it, wins

The biggest ever international cartel that has been revealed to date – the vitamin cartel which operated between 1989 and 1999 – gives a good illustration of the operation of the leniency policy and of how much the first participant to 'come to' and submit information on the cartel may win. Thirteen vitamin manufacturers paid fines of a total of EUR 790 million in the European Union, 20 million dollars in fine and 30 million dollars in compensation in Australia and almost USD 900 million in fine and more than USD 1 billion in damages in the USA, after one of the members of the cartel quit and blew the whistle on the alliance. Roche (Switzerland), BASF (Germany), Rhône-Poulenc (France) and a number of other international companies allocated the worldwide vitamin market for almost ten years. When a suspicion on the existence of a cartel operating on the vitamin market arose, it was denied by the participating manufacturers but one of them – Rhône-Poulenc – applied for leniency as the first one to make a report and supplied information for the competition authorities. It was well worth for the whistle blower, for while other participants of the cartel paid hundreds of millions of euros in fines, the French company got away with a symbolic fine both in the United States of America and in Europe.

In Hungary Kemira GrowHow and the Tessenderlo group participated in a price coordinating and market allocating agreement for thirteen years up to 2003, almost completely dominating the Hungarian

Highest ever fines imposed on cartelists by the Competition Council

Name of case	Firm	Fine (nominal)	
		million HUF	million € (1€=263HUF)
1 Motor vehicle repairers and insurers (Vj 51/2005) *	Allianz Hungária	5 319	20.2
2 Motorway construction in cartel (Vj 27/2003)	Strabag Rt	2 468	9.4
3 Motorway construction in cartel (Vj 27/2003)	Betonút Rt	2 212	8.4
4 Motorway construction in cartel (Vj 27/2003)	Hídépítő Rt	1 371	5.2
5 Motor vehicle repairers and insurers (Vj 51/2005) *	Generali-Providencia	1 046	4.0
6 IT system for universities (Vj 162/2004)	SAP Mo. Kft.	690	2.6
7 IT system for universities (Vj 162/2004)	IBM Mo. Kft.	690	2.6
8 Motorway construction in cartel (Vj 27/2003)	Egút Rt	496	1.9
9 Motorway construction in cartel (Vj 27/2003)	Debmüt Rt	496	1.9
10 AREVA et al. - switchgear (Vj 102/2004)	Alstom	440	1.7

* The insurers in this case did not form a cartel between themselves: they accepted the cartel of their car dealer partners, in exchange for substantial advantages.

market of fodder phosphate. The durable alliance came to an end when Kemira turned to the authority. While the competition council imposed a fine of HUF 131 million (€ 500 thousand) on Tessengerlo, Kemira was granted immunity from the whole amount of the fine which would have exceeded HUF 1 billion (€ 3.8 million).

By contrast, the motorway construction companies caught cartelling in Hungary in 2002 failed to apply for leniency. Throughout the proceeding they stood by their competitors and the billion forint bill had to be paid by their shareholders. Hídépítő Rt., Betonút Rt. and Strabag Rt.,

which paid the biggest fine, could have saved almost HUF 1.4 billion (€ 5.3 million), HUF 2.2 billion (€ 8.4 million) and HUF 2.5 billion (€ 9.5 million), respectively, by cooperating with the GVH as the first member to turn in information on the cartel. To illustrate the scale of the fine imposed on Strabag: if this amount were to be paid in 1000 forint notes – like in a crime story – counting the notes aloud would take one person a whole month without leaving time for meals and taking a nap every now and then.

So there is a way out of a cartel, but only for the quickest. Information on the authority's leniency policy is available on

the GVH homepage and the Cartel Section of the GVH is also ready to answer questions.

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Fighting cartels – Why and how? Cartel conference

Friday, 16 February 2007

Morning session

09:30-10:00	Registration
10:00-10:20	Welcoming remarks, Mr. Ferenc GYURCSÁNY, Prime Minister of Hungary
10:20-10:50	Busting cartels: A European priority, Mr. Philip LOWE, European Commission, Director General of DG Competition
10:50-11:05	Questions and Answers
11:05-11:20	Coffee break
11:20-11:50	The Hungarian Competition Authority's cartel enforcement activity, Mr. Zoltán NAGY, President of the GVH
11:50-12:20	State involvement: The success factor of Dutch cartel enforcement, Mr. Pieter KALBFLEISCH, Netherlands Competition Authority, Director General
12:20-12:40	Questions and Answers
12:20-14:00	Lunch

Afternoon session

14:00-14:40	The fully fledged cartel policy of the US, Mr. Gerald F. Masoudi, Department of Justice, International, Appellate, and Policy matters, Deputy Assistant Attorney General
14:40-15:10	Cartels also hurt business – the business view, Mr. Gusztáv BIENERTH, President of the American Chamber of Commerce in Hungary
15:10-15:40	Fight against Cartels - a Non-theoretical Approach, Mr. Miklós MERÉNYI, State Secretary of the Ministry of Economy and Transport
15:40-16:00	Questions and Answers
16:00-16:10	Closing remarks, Mr. Zoltán NAGY, President of the GVH
16:10-17:00	Reception



Ferenc Gyurcsány
Prime Minister of Hungary

Mr. Gyurcsány has been the Prime Minister of Hungary since October 2004.

He worked as a financial consultant at the beginning of the 1990s. For a short period he was the director of EUROCORP Financial Inc. Between 1992 and 2002 he was chief executive of ALTUS Investment and Assets Management Inc., where he was Chair of the Board since 2002. In 2002 he became principal strategic adviser of Prime Minister Péter Medgyessy. From May 2003 until September 2004 he acted as minister responsible for sports, youth and children.



Philip Lowe
Director General, European Commission – Competition Directorate-General

Mr. Lowe has been Director General of the European Commission's Directorate General for Competition since 2002. As such, he is the highest ranking Commission official responsible for competition matters, and reports to the European Commissioner for Competition, Neelie Kroes.

He joined the European Commission in 1973, where his work included earlier appointments as Chef de Cabinet to Neil Kinnock, who was the Vice President responsible for the administrative reform of the Commission; Chef de Cabinet to Bruce Millan, who was the European Commissioner for Regional Policies; director of rural development in the Directorate General for Agriculture; director of the Merger Task Force in the Directorate General for Competition; Director General for Development.



Zoltán Nagy
President of the Hungarian Competition Authority (GVH)

Mr. Nagy has been President of the Hungarian Competition Authority (GVH) since 1998. He directs the activities of the Authority and is responsible for managing the duties of the GVH.

Before joining the GVH in 1998, Mr. Nagy worked as Head of the Cabinet Office in the Ministry of Finance (1991-1992); then until 1994 as Permanent State Secretary of the Ministry of Finance and as Bureauhead of the Economic Cabinet of the Government; between 1994 and 1996 he was President and CEO of OTP Garancia Insurance Company, then director of the Hungarian State Audit Office.



Pieter Kalbfleisch
Chair of the Board, Netherlands Competition Authority (NMa)

Mr. Kalbfleisch has been Chairman of the Board of Netherlands Competition Authority (NMa) since 2005, when the NMa was given autonomous administrative status. As the Board's Chairman, Mr Kalbfleisch has overarching themes in his portfolio, including legal affairs and NMa's strategy. Previously after 2003 he was the Director-General of the NMa.

Before joining the competition authority, Mr. Kalbfleisch worked as attorney-at-law in Arnhem and Haarlem (1972-1980), later as judge in criminal law and civil law in Haarlem. Between 1986 and 2003 he was the Deputy Presiding Judge and the Acting Presiding Judge of the Court of The Hague.

Gerald F. Masoudi
Deputy Assistant Attorney General, US Department of Justice

Mr. Masoudi has been Deputy Assistant Attorney General for International, Policy, and Appellate Matters of the Antitrust Division of the US Department of Justice (DoJ) since Autumn 2005.

Before joining the DoJ Mr. Masoudi was Deputy Chief Counsel at the United States Food and Drug Administration (FDA), where he also served for a time as Acting Chief Counsel. Before 2004 Mr. Masoudi was a partner in the trial and appellate litigation group at Kirkland and Ellis, L.L.P. in Washington, D.C. His practice included matters in the areas of antitrust, pharmaceuticals, telecommunications, and toxic torts.



Gusztáv Bienert
President, American Chamber of Commerce in Hungary

Mr. Bienert has been the President of AmCham, the American Chamber of Commerce in Hungary since Autumn 2006. Previously he has held various functions in AmCham, including a presidency (2001-2002) and heading the Public Sector Reform Taskforce (2005-2006). AmCham is a non-profit, independent organisation, a leading representative for US and international business in Hungary.

Mr. Bienert had been a partner and senior partner of PricewaterhouseCoopers (PwC) between 1994 and 2006. As senior partner he was responsible for the development and services to the Public Sector, including the EU & Governmental Relations in the CEE/CIS Region. Prior to joining PwC, he was founding partner of Arthur Young in Hungary and worked also as Director of Business Development for Coca-Cola Amatil's operations in Central Europe.



Miklós Merényi
Hungarian Ministry of Economy and Transport, State Secretary for International Economic Relations

Mr. Merényi has been State Secretary for International Economic Relations at the Hungarian Ministry of Economy and Transport since 2006. Previously since 2004 he was communications director, later director of strategy and communication of the Ministry.

Mr. Merényi worked as journalist of the largest Hungarian broadsheet newspaper, Népszabadság from 1990 till 1994. In 1995 he became columnist of the business weekly Figyelő, where he later worked as editor in chief till 2003. Before joining the Ministry of Economy and Transport, Mr Merényi was editor in chief of the Hungarian Television in 2003. He is the holder of several Hungarian and international awards for his activity as a journalist.



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