

**Intergovernmental Group of Experts on Competition Law  
and Policy**

**Geneva, 9-11 July 2012**

**Cross-Border Anticompetitive Practices  
by  
Hungary**

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

A brief description of the experience of the GVH (the Hungarian Competition Authority) concerning cross-border anticompetitive practices:

Hungary has an open economy, in 2009 the value of the export of products and services amounted to almost 80% of the GDP. Most of the foreign trade of the country is done with EU Member States, in 2009 80% of the export sales were realised in the EU.

As a consequence, for Hungary, cross-border anticompetitive practices arise mainly in the EU context.

### **International cartels**

As regards the antitrust field (anticompetitive agreements and unilateral conducts) it is important to mention that the GVH participates in the European Competition Network (ECN), which has its own rules for cooperation. Council Regulation (EC) No 1/2003<sup>1</sup> and the Commission Notice on cooperation within the Network of Competition Authorities<sup>2</sup> (“Cooperation Notice”) determine how the members of the ECN – and among them the GVH – cooperate when they proceed in a case which may affect trade between the Member States (i.e., which may have cross-border character).

Two of the cases reported in Table I. below (*“International Cartels Investigated and Completed by the Hungarian Competition Authority between 2000 and 2011”*) were investigated by the GVH under the TFEU<sup>3</sup> (and also at the same time under national competition law in parallel). This means that the GVH applied all the cooperation mechanisms described and regulated by the Council Regulation and the Commission Notice, to the extent that was necessary in the given cases.

The most essential elements of the cooperation mechanisms cover the following obligations/possibilities:

- the ECN members inform each other when they initiate a case under the TFEU competition provisions;
- cases may be allocated among the ECN members;
- information (also including confidential information) may be exchanged and if certain conditions are met the information exchanged may be used as evidence; exchanges of information can take place either formally (e.g. under Article 12 of Regulation 1/2003/EC) or informally;
- ECN competition authorities may request each other to carry out inspections or any other necessary fact-finding measures (under Article 22 of Regulation 1/2003/EC);
- ECN members inform each other if they have sent their Statement of Objections (SO, or SO-equivalent document, like in the case of Hungary: preliminary position) to the parties, and also if ECN members have already closed their case.

---

<sup>1</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Official Journal L 1, 04.01.2003, p.1-25)

<sup>2</sup> Official Journal C 101, 27.04.2004, p. 43-53

<sup>3</sup> Treaty on the Functioning of the European Union (Official Journal C 83 of 30.3.2010)

In the cases reported in the table below, the GVH fulfilled its obligation to inform all the other ECN members about the initiation of the cases under the TFEU provisions. Case allocation did not occur and there were no exchanges of information or requests for investigative measures. In spite of this a certain degree of coordination took place between the GVH and the other competition authorities when we dealt with our cases under either EU law or domestic laws.

A specific feature of one of the cases reported in the table (Vj-102/2004) is that it was dealt with by both the GVH and DG Competition at the same time. The Commission investigated the violation on the whole European market, but since Hungary only became an EU member in May 2004, the Commission could only proceed against the Hungarian-related elements of the violation for the period of time after the Hungarian accession date. Consequently, the GVH also proceeded in the case against those elements of the violation that occurred prior to May 2004. Obviously in this case the GVH purely applied national law (and not the relevant TFEU provisions).

It is also important that the ECN cooperation mechanism covers leniency related matters as well. This means that ECN members have to coordinate all those cases they are dealing with if there is a leniency applicant (e.g. the Cooperation Notice requires ECN members receiving a leniency application to encourage the leniency applicant to consent to the transmission of its leniency related information to another ECN member). The GVH has its own leniency policy. Originally the first leniency programme entered into force in 2004, but – in the framework of the commitment made by the GVH to approximate its leniency regime to the ECN Model Leniency Programme – in 2009 a new leniency system entered into force. As a result of this, the Hungarian leniency programme is now fully harmonised to that of the ECN.

The existence of these rules allow the members of the ECN to cooperate very closely, something which would be extremely difficult if these rules were not in place. Moreover, it is a further advantage that these rules form a uniform basis, valid equally for each ECN member (i.e. in the absence of these rules it seems likely that the ECN members would have entered into different bilateral cooperation agreements with each other, which would have further complicated the cooperation of the same countries). From this point of view the ECN is a unique and specific regional cooperation.

Concerning the cooperation of the GVH with non-ECN member competition authorities, the Hungarian legal system only provides for limited possibilities. As regards the transmission of information by the GVH to any other competition authority, the Hungarian Competition Act stipulates that:

*“Documents generated in the course of the proceeding may be made available on request to a foreign authority. Documents containing business secrets may only be made available if this is provided for by an international agreement promulgated by an act. Where the requested documents contain business secrets, a condition for disclosure is a commitment by the foreign authority to treat the contents of the documents as business secrets.*

.....

*In order to contribute to the mutual promotion of the ability of the parties to perform their duties, the Hungarian Competition Authority may enter into cooperation agreements with foreign competition authorities.”*

The first provision of the Hungarian Competition Act quoted above has never been tested. As regards the second one, the GVH has concluded several bilateral cooperation agreements with other competition authorities and these documents also contain enforcement related cooperation provisions, allowing – to some extent – e.g. exchanges of information as well. These provisions, however, have never been applied in practice. Nevertheless, the GVH is contemplating reviewing the provisions quoted above and establishing the possibility of exchange of information with foreign competition authorities based on a waiver solution (like the waiver suggested by the International Competition Network).

### **Cross-border mergers**

The situation concerning mergers is similar to the situation concerning cartels: the GVH is closely connected to the EU-related cooperation system also in this field. As regards mergers there is a one-stop-shop mechanism within the Union. This means that either the EU Commission (DG Competition) proceeds in a case or one (or more) Member State(s). The GVH participates in the cooperation system in the manner which is set out in the ECMR<sup>4</sup>. There is a referral system, regulated also by the ECMR, allowing quite flexible pre- and post-notification possibilities for both the competition authorities and the parties.

Since the accession of Hungary to the European Union the GVH has tested these referral possibilities several times, but those cases are not reported in the attached Table II.

The GVH receives all the notifications made to the EU Commission and – if there is a substantial impact of the transaction on the Hungarian market – the GVH sends its observations to DG Competition.

There is a further possibility to have the national considerations represented in the European merger control process by participating at the meetings of the Advisory Committee on concentrations<sup>5</sup>.

There is also an ECN working group – in which the GVH participates – devoted to strengthen the cooperation of ECN members in the field of merger review and to facilitate those situations in which two or more ECN members investigate the same case due to the cross-border nature of the transaction.

From the practice of the GVH the European Competition Authorities' cooperation (ECA<sup>6</sup>) is also worth mentioning. In the framework of the ECA cooperation the member authorities inform each other about every case which was notified to them under their respective merger control regime when they know that the same transaction was (or will be) notified also to any other member of the ECA. This system aims to coordinate Article 4(5) and Article 22 referral initiatives of the ECA authorities at an early stage of the proceedings. The GVH receives 2-300 ECA notifications annually.

There is only one case reported in Table II below, it is a sugar merger notified to the GVH in 2001. Since the case also had a European dimension, it was notified to the European

---

<sup>4</sup> EC Merger Regulation: Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (Official Journal L 24, 29.01.2004, p. 1-22)

<sup>5</sup> See Article 19 of the ECMR

<sup>6</sup> Competition Authorities of the European Union and the EFTA Member States.

Commission as well<sup>7</sup> (M2530, Südzucker / Saint Louis Sucre). DG Comp made its decision on 20 December 2001 and at the same time accepted commitments. Südzucker had to divest its majority shareholding in Belgium's Suikerfabriek van Veurne SA and place 90,000 tonnes of sugar per year in southern Germany at the disposal of an independent trader.

Considering that at that time (i.e. in 2001) the 'one-stop-shop' system of the EU merger control did not relate to EU candidate countries, the Slovakian Competition Authority, to which the deal was also notified, proceeded in the case. As the commitments offered by the parties could not remedy the competition concerns of the Slovakian authority, it prohibited the merger.

The GVH also made its own assessment on the transaction. The merger of the two foreign mother undertakings/parent companies would have led to competition problems in the Hungarian sugar market. The GVH gave its approval for the transaction on the condition that the parties committed themselves to divest one of the Hungarian subsidiaries.

The GVH paid attention to the proceedings of both DG Comp and the Slovakian Competition Authority (both decisions were made before the GVH would have made its own decision in the case).

---

<sup>7</sup> Since Hungary only joined the EU later, in 2001 parallel merger proceedings by DG Competition and the GVH were possible.

**ANNEX**

**Table I. International Cartels Investigated and Completed by the Hungarian Competition Authority between 2000 and 2011**

The type of cartel (Price-fixing; output quotas; market sharing and bid-rigging)	Product	Start year of the cartel	End year of the cartel	Name of companies involved	Country of origin of companies involved	Countries affected	Market concentration (Worldwide and in your market)	Which other jurisdictions challenged the same cartel and when?	Start date of the proceedings in your jurisdiction and date of the final decision	Does the case involve a leniency application?	Do the cartelists have any physical presence in your country? If so, what form? (Branch, subsidiary, etc.)	Regional or international cooperation involved? If so, with which competition authorities?
Vj-69/2008 Market sharing, Price increase	grain mill production and sales	January 2005	April 2008	Cerbona Zrt., DIAMANT International Malom Kft., Első Pesti Malom és Sütőipari Zrt., Gyermely Zrt. Hajdúsági Gabonaipari Zrt. Ócsai Malom Kft. Júlia-Malom Kft. SIKÉR” Zrt., SZATMÁRI Malom Kft., ABO MILL Zrt. Cornexi Zrt. „f.a.”, GA-BO” Kft. Szécsény-Mill Kft. LAMEPÉ Kft. MÁRIA-MALOM Kft. Budai Malomipari Kft.	Hungary, Germany, Lichtenstein , Austria	HU, NL, DE, FR, BE	high, all the market players were involved	NL, DE, FR, BE	03.06.2008 28.10.2008.	Yes an application was submitted on 03.06.2008.	Yes, they have a physical presence in our country as a branch, subsidiary and independent undertaking	
Vj-194/2007 Market sharing, Price increase	Product ion and sales of Polystyrol	2004	2007	Linpac Plastics Hungária Kft. Linpac Plastics GmbH und Co. Kg., Propack Kereskedelmi Kft.	France, Italy, Slovakia, Hungary, Germany	Germany, Italy, Portugal, Spain	high, all the market players were involved	European Commission	16.01.2008 23.04.2008. (suspension of the case)	Yes, an application was submitted before the	Yes, they have a physical presence in our country	No, all the documents were submitted to the

	wrappers			Coopbox, Eastern S.r.o. Coopbox Europe S.p.A						proceeding	as a branch, subsidiary and independent undertaking	Comission
Vj-101/2004 information exchange and market sharing	Feed grade phosphate producing and sales.	1998	2002	Kemira GrowHow Kft. Kemira GrowHow Oy Tessengerlo Chemie Hungary Kft. Tessengerlo Chemie NV	Belgium, Finland	All the Member States of the EU HU, SK, CZ	high, all the market players were involved	European Commission, CZ, SK	06.07.2004. 29.06.2005.	Yes, an application was submitted before the proceeding	Yes, they have a physical presence in our country as a , subsidiary	Yes, with the Commsission
Vj-102/2004 bid rigging, price fixing	Gas insulated switchgear sector	1998	2004	ABB Power Technologies Management Ltd., ABB Switzerland Ltd., ABB Kft. Areva T&D S.A, Areva T&D Holding S.A. (Areva), Siemens AG (Siemens), VA Tech T&D GmbH (VA Tech), Areva Hungária Villamos Kapcsolóberendezések Kft. , Siemens Rt., Tessag Hungária Kft.	France, Switzerland, Germany, Austria,	All the Member States of the EU	high, all the market players were involved	European Commission	08. 07. 2004 22.12.2005	Yes, an application was submitted before the proceeding	Yes, they have a physical presence in our country mainly as a subsidiary and an independent undertaking.	Yes, with the Commsission

**Table II. Cross-Border Merger Reviews Completed by the Hungarian Competition Authority between 2000 and 2011**

The type of merger: Horizontal, vertical or conglomerate	Location of the merging parties (outside of or in Hungary)	Product	Name of companies involved	Country of origin of companies involved	Countries affected	Market concentration (Worldwide and in the Hungarian market)	Other jurisdictions which reviewed the same merger and their decision	Start date of the proceedings in Hungary and date of the final decision	Physical presence and of merging parties in (Branch, subsidiary, etc...)	Regional or international cooperation involved and with which competition authorities	Final decision and the remedies imposed
Horizontal	Transaction of merging parties outside of Hungary resulted in a merger of companies located in Hungary	Sugar	Raffinerie Tirlemont oise / Financière Franklin Roosevelt  Agrana / Eastern Sugar	Belgian / French  Hungarian	Hungary	63,3 %	EU DG Comp: Clearance was given prior to the Hungarian proceeding  Slovakian CA: prohibition	Start: 29 October 2001  Final decision: 21 March 2002	They had subsidiaries	EU Commission, DG Competition	Divestment