

Merger Control in Hungary

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SUMMARY

The present study presents the findings of the most comprehensive research that has ever been conducted in relation to the 30-year-old Hungarian merger authorisation process that has been in place since the political transition in Hungary. The aim of the research is, in particular, to present to the wider professional public the development of the authorisation process for mergers (or concentrations) in Hungary, which started in the last decade, and the resulting public value returns that have been achieved. The most important results to emerge from the research are that – compared to 2010 data – the average procedure time for full-scale merger proceedings in 2020 was reduced by 62%, and the administrative time limit for simplified cases decreased by 82.5%. Furthermore, the research revealed that today one-third of the Hungarian Competition Authority's market interventions in connection with mergers take a verbal/informal form. This study was conducted using the methodology of data processing and analysing that are at the disposal of the Hungarian Competition Authority.

KEYWORDS: competition law, concentration, merger trends, administrative procedure, authorisation

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While the 1990s were characterised by the development of the Hungarian competition law framework, support for privatisation,¹ and preparations for joining the EU, and the 2000s were marked by EU accession, the conclusion of the transition into a market economy, and the ‘sharpening’ of the available competition law toolset, the 2010s were dominated by the recovery from the economic crisis and the simultaneous improvement of the effectiveness of the competition supervision institutions. In this study, we are going to discuss the latter period through the lens of the Hungarian merger authorisation regime.

THE ESSENCE OF MERGERS AND THEIR IMPACT ON THE ECONOMY

Merger is essentially an umbrella term² that refers to

- the merging of independent undertakings (or business units of undertakings),
- one undertaking acquiring control rights over another undertaking,
- the setting up of a joint venture, or
- undertakings combining certain parts of their activities in the form of a joint venture, or even
- the acquisition of assets (rights, brand names, patents), provided that such assets solely or together with assets and rights which are at the disposal of the acquiring undertaking is sufficient for the pursuit of market.

Several concrete examples of mergers have proven that undertakings are able to develop new products or services and reduce their production, logistics, or marketing costs more successfully by combining their activities.

Market competition increases as a result of the more efficient operation of the newly merged undertakings, the winners of which are consumers, who are thus able to acquire

higher quality products and services at lower prices. In addition to increasing efficiency, the merger may also help undertakings become national champions in their own field.

However, certain mergers may also hold back competition if they allow the undertakings involved to achieve a dominant market position or further strengthen their dominance. In such cases, prices are likely to increase and consumer choice is likely to be reduced to the detriment of consumers’ interests. This leads us to a point where governments, shareholders, and private individuals as consumers may all oppose certain mergers. Merger control legislation exists to prevent the abuse of a dominant position and to maintain a market structure that is considered to be beneficial. Consequently, these laws lay down the principles for the evaluation of proposed mergers and the procedural rules applicable to their implementation. The tasks related to merger control are typically assigned to national competition authorities (the competition authorities of Member States in the case of the European Union); however, the Council Regulation on the control of concentrations between undertakings also entitles the European Commission to prohibit concentrations which may result in a significant reduction of competition (European Commission, 2016).

In Hungary, the aim of the provisions on merger control included in Chapter VI of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter referred to as Competition Act) is to ensure that all concentrations (mergers and any other acquisitions of control) important from the point of view of the national economy can be supervised by the Hungarian Competition Authority. For the selection of significant transactions, the Competition Act uses a system of criteria based primarily on turnover data: if the combined net turnover of the involved

groups of undertakings exceeds HUF 15 billion and the turnover of at least two groups exceeds HUF 1 billion, the parties are obliged to notify the GVH of the concentration. In the event that the combined net turnover of the involved groups of undertakings does not reach HUF 15 billion but exceeds HUF 5 billion, the transaction is required to be reported only if the concentration can reasonably be expected to significantly reduce competition in the relevant market.

The Hungarian Competition Authority (hereinafter referred to as GVH) prohibits mergers in the event that they would reduce competition to a significant degree in the affected market, in particular through the creation or strengthening of the dominant market position of an undertaking (the so-called competition impact assessment). Otherwise, following the evaluation of the advantages and disadvantages of the effects on the efficiency of the market, it only acknowledges the merger by issuing an official certificate based on the notification or a resolution on the conclusion of the *ex officio* proceeding initiated on the basis of the notification. The GVH is also entitled to specify preliminary or *ex post* conditions and obligations in order to limit the negative impact of the merger (e.g., the prohibition of the sale of certain business units or assets or the elimination of control over an indirect subsidiary).

From the point of view of measuring the impact of a merger on competition, it is especially important whether the merger is between competitors (horizontal) or between a seller and a buyer (vertical). Horizontal mergers typically directly modify the structure of the market, while vertical mergers may have a negative effect on related markets. Some transactions cannot be unambiguously classified as either since they possess the characteristics of both horizontal and vertical mergers. It can also happen that there are no markets where

both undertakings are active. Even these types of mergers can have negative effects on competition. When the manufacturers or distributors of complementary products (players active on adjacent markets) are acquired by a single group of undertakings, this is called the portfolio effect. This is due to the fact that if a group of undertakings controls a large market share on the market of a product or several products, this group may be able to implement restrictive practices (such as tie-in practices) on the markets of other products as a result of the merger.

FACTORS PRECEDING AND FACILITATING THE RENEWAL OF THE MERGER CONTROL PROCEDURE

The global economic crisis that erupted in 2008 resulted in a large-scale recession; the willingness to invest was reduced, and the trend of direct foreign capital investments ended (Hungarian Central Statistical Office, 2010), which also led to a decrease in the number of mergers. Following the 2008-2009 global economic crisis, the focus was on state measures aimed at promoting the economy. After the low point of the crisis, economic growth began, which brought about an increase in the number of market transactions, which necessarily affected the number of mergers falling under the supervision of the GVH. Based on data from the Hungarian Central Statistical Office (2019), the value of the gross domestic product (GDP) increased by approx. 73% in Hungary from 2010 up to and including 2019; the number of mergers reported to the GVH has also been increasing steadily over the past 10 years but only to a limited extent – the number of merger notifications increased by 42% by 2020 compared to the 2010 figures.³ The increase

in the number of merger notifications was not halted by the raising of the threshold value in 2017 either, which implies that the growth of the economy resulted in an increased desire to merge among Hungarian undertakings.

The slowdown of economic growth caused by the COVID-19 pandemic had an impact on the composition of transactions investigated by the GVH as well: the mergers reported to the GVH involved the acquisition of control over smaller undertakings (GVH, Flash Report, 2020). This is due to the fact that during times of economic decline, undertakings think twice about their investments; therefore, financial investors and undertakings seek out smaller undertakings as the targets of their acquisitions, which carry lower risks in terms of return on investment. In addition, the experience of recent years suggests that financial investors and capital funds primarily acquisitions aimed at the procurement of some new piece of technology, meaning that the rate of mergers reported to the GVH with the aim of implementing financial investments into so-called start-up undertakings has significantly increased and these undertakings typically do not possess significant turnover at the time of the acquisition. (Deloitte Report, 2020)

The institutional system of merger authorisation used by the GVH prior to 2010 would have been unsuitable for handling the economic recovery following the 2008 crisis. The case-law of the European Court of Justice acknowledges that prolonged competition law cases can negatively impact the financial interests of investors.⁴ Based on the above data, there is a clear correlation between the growth of the economy and the number of mergers. Since the merger authorisation regime of a given country affects the financial interests of investors, its effectiveness plays an essential role in a growing economy and in the competition for investors. This is particular-

ly true for an open economy such as Hungary and is evidenced by the fact that the Hungarian Competition Authority applied EU competition law the third most frequently among all Member States of the EU in proportion to the GDP of the country (GVH, Flash Report, 2020). In comparison, the GVH handled 43 merger notifications in 2010 and the procedures of 90% of these notifications were completed within 103 days on average. By 2020, the GVH was able to adopt a decision within 4 days on average in 80% of the 69 cases. It should be noted that the merger authorisation process is a type of sampling; therefore, its effectiveness can be measured using three indicators. The first is how fast it authorises mergers without issues, the second is how credible and reliable the necessary data are, and the third (closely related to the second) is whether it is able to identify problematic mergers and handle them in accordance with the public interest. In this study, we are going to describe how these requirements were satisfied during the development of the merger authorisation procedure in Hungary.

Following the crisis, the focus of economic policy was on supporting economic growth, accompanied by the simultaneous restructuring of state operations. Improving competitiveness during this period was the aim of a number of structural reforms, recognizing that competitiveness ‘*cannot be based on quantitative growth, but only on qualitative development and structural change*’ (Matolcsy, 2021). The goals of the public administration development programme⁵ launched in 2011 were to ensure the customer-centric operation of service providers, the simplification of procedures, and the reduction of the burden placed on customers; this programme was realised through the adoption of specific legislative measures⁶ during the examined period as well. In line with these efforts, in 2011 the GVH set – as its strategic direction – the promotion

of the customer-friendly operation of the Authority, within the framework of which it restructured its customer service department and began to improve the merger authorisation regime, with the aim of increasing the predictability and speed of proceedings.⁷ It can thus be established that the general development incentives affecting the GVH as an autonomous administrative body with a competition supervisory function were not sufficient for jump-starting the renewal process of the merger authorisation procedure; the special economic situation following the crisis, the initiatives of

comprehensive administrative reform, and the ability of the Authority to recognise this situation, as well as its commitment to development, were also necessary.

Table 1 summarises the most important measures implemented from 2011 onwards in relation to the Hungarian merger authorisation regime.⁸

The implementation of the measures indicated in the above table – which aimed to reduce administrative burdens, speed up the administrative process, and facilitate the predictability of the process – was gradual and

Table 1

THE MOST IMPORTANT MEASURES AFFECTING THE MERGER AUTHORISATION REGIME BETWEEN 2011 AND 2020

The most important measures affecting the merger authorisation regime between 2011 and 2020		To reduce the burden on undertakings	To increase predictability and transparency	To speed up the administrative process
2011	Redesign of the notification form following public consultation	X	X	X
	Amendment of the soft law to include preliminary consultations	X	X	X
2012	Merger Department, a dedicated merger investigation unit		X	X
	Introduction of the so-called simplified decision-making process		X	X
	Amendment of the soft law to include the simplified decision-making process		X	
	Publication of notified mergers on the website		X	
2013	Amendment of the soft law (increasing the market share threshold to 30% with respect to related market)	X	X	
	Update of the notification form, bringing it in line with the relevant publications	X	X	
	Amendment of the law (Competition Act): Section 24/A: the option for the Government to grant an exemption to mergers of national strategic interest	X		

The most important measures affecting the merger authorisation regime between 2011 and 2020		To reduce the burden on undertakings	To increase predictability and transparency	To speed up the administrative process
2014	Amendment of the law (Competition Act.): introduction of the standstill obligation, modification of deadlines, statutory rules of preliminary consultation	X		X
	Amendment of the soft law		X	
2015	Amendment of the law (Competition Act): detailed rules		X	
	Amendment of the soft law regarding the handling of interconnected transactions		X	
2016	Amendment of the law (Public Administration Act): summary procedure	X		X
	Preparation for the application of the amended Competition Act from 2017 onwards, update of the form		X	
2017	Amendment of the law (Competition Act.): notification-based regime, an increase of the threshold value, voluntary threshold, fee reduction, modification of deadlines, the option to conduct unannounced on-site inspections	X		X
	The Merger Department comes under the control of the Competition Council		X	X
	Amendment of the soft law (e.g., uniform enforcement notice)		X	
2018	Option for the electronic submission of the merger notification form, update of the form	X		X
	Amendment of the soft law		X	
2019	Amendment of the soft law following public consultation (e.g., waiving other requirements for the implementation of a merger in the case of the concurrence of wills)	X	X	
2020	Amendment of the soft law (e.g., investment and start-up friendly approach to ancillary restraints)		X	
	Amendment of the law (Competition Act): Section 25/A, the exemption of financing transactions related to the pandemic	X		

Source: own edited

took into account lessons learnt from past experience; which resulted in a degree of cyclicality both in terms of the subject matter of the measures and the methods chosen. Thus, the GVH returned to certain elements of its procedural rules on several occasions (such as the form that determines the data required from the undertakings) or on a regular basis it took advantage of the scope for development provided within the regulatory framework, the measures modifying this framework or even measures aimed at developing the process and the organisation (such as the soft law, which ensures the predictability of the case law).

The most significant step towards the redevelopment of the procedure, which began in 2011, was the amendment of the Competition Act, effective from 15 January 2017. This is when the notification-based system was introduced, the essence of which is that a competition supervision proceeding is not initiated based on every single merger notification such as in the case of the earlier application-based regime, but only if the merger in question raises the possibility of a significant reduction in the scope of competition. In such cases, a so-called full-scale or phase 2 proceeding is initiated with a deadline of 4 months or if the form submitted does not contain all information necessary for evaluating the effects of the merger on competition. In such cases, a so-called simplified or phase 1 proceeding is initiated with a deadline of 30 days.

The mergers with respect to which all information requested on the form and required for evaluation is made available to the GVH and which do not raise any concerns in terms of market competition, are acknowledged and authorised by the GVH in the form of an official certificate. The GVH must decide whether to initiate a proceeding or issue an official certificate within 8 days of the notification being submitted.

TYPICAL CHARACTERISTICS OF HUNGARIAN MERGERS

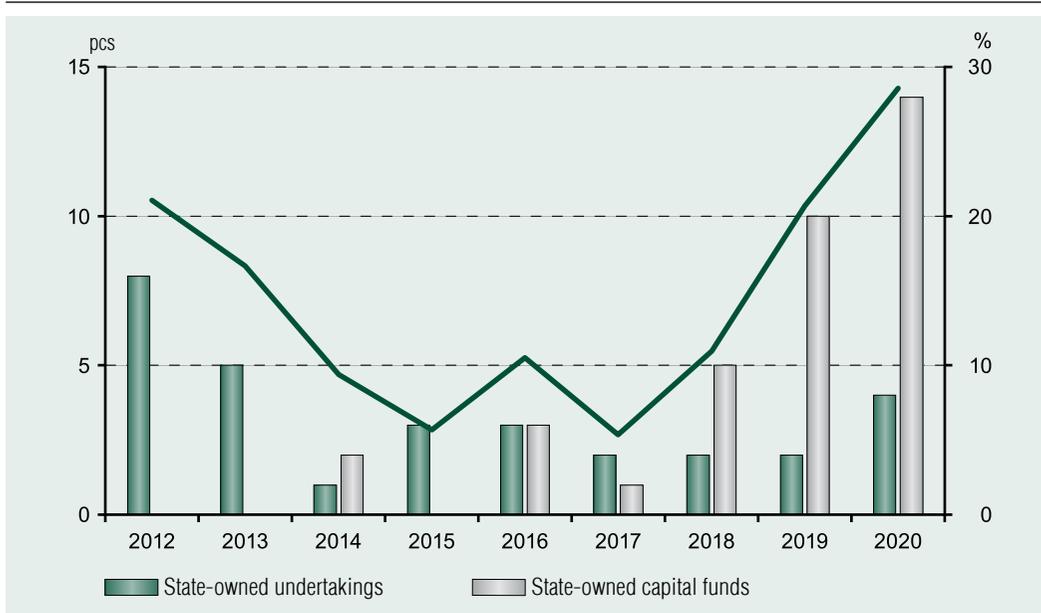
Since the Competition Act only requires mergers reaching the threshold values specified in the Act to be notified, the mergers investigated by the GVH naturally cannot provide a full picture of all of the acquisitions occurred in Hungary. However, the data allows certain trends to be identified since all significant mergers do fall within the scope of competence of the Authority.

Among the changes affecting the economy, it was particularly important in terms of merger control that in 2010 significant changes were adopted concerning Hungarian economic policy, which until that point had considered state ownership to be inherently more disadvantageous than private ownership. The consequence of this was not simply that no substantial privatisation occurred after 2010 but also the fact that the State acquired majority ownership in and thus control over of previously (often overly) privatised undertakings primarily in the public services and banking sectors, which qualified as mergers. As a result of the above, 30 per cent of the mergers investigated by the GVH in 2020 were acquisitions of control involving the State. *Figure 1* shows the percentage of mergers involving the State among all mergers investigated by the GVH.

However, a significant portion of these acquisitions were mergers where a capital fund owned by the State acquired control – typically alongside other investors – over a so-called start-up (an undertaking that has either not yet entered the market or is in an early phase of entering the market) for investment purposes. Acquisitions of control over start-up undertakings, even without the State’s involvement, play a significant role in today’s economy. *Figure 2* presents the percentage of mergers involving start-ups among all mergers investigated by the GVH.

Figure 1

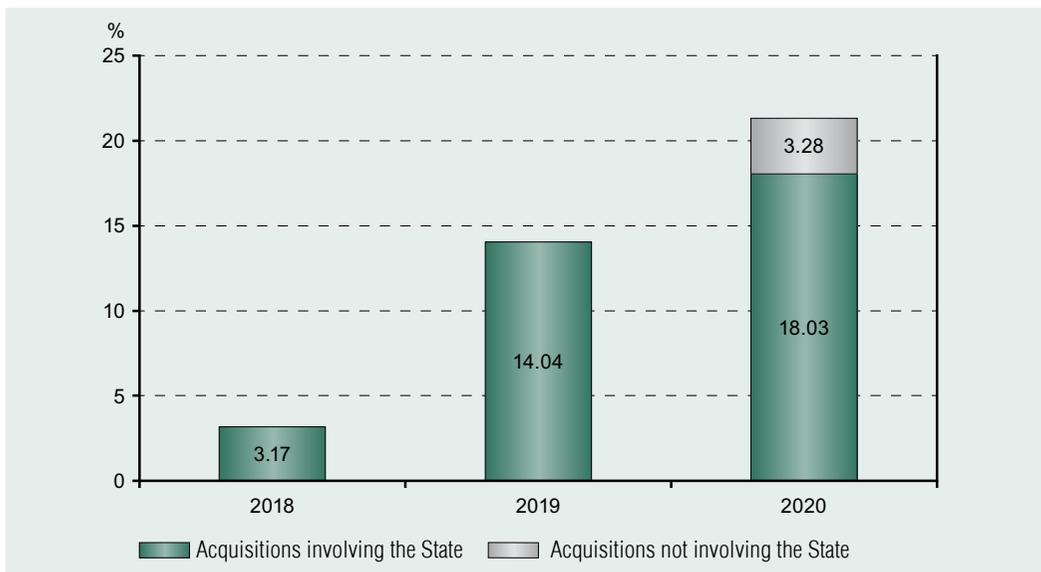
PERCENTAGE OF MERGERS INVOLVING THE STATE AMONG ALL MERGERS INVESTIGATED BY THE GVH



Source: own edited

Figure 2

PERCENTAGE OF MERGERS INVOLVING START-UPS AMONG ALL MERGERS INVESTIGATED BY THE GVH



Source: own edited

However, the GVH so far has not been required to carry out a detailed investigation in relation to any of these transactions.

Although the number and proportion of transactions involving the acquisition of formerly Hungarian-owned undertakings by foreign corporations have increased again in recent years, the proportion of such transactions has declined compared to 2011 figures. Among foreign acquisitions, the proportion of transactions involving a foreign corporation acquiring control over a Hungarian-owned undertaking was on average 10% over the course of the past 10 years. (See Figure 3)

The concentrations investigated by the GVH affected various branches of the national economy to varying degrees. The number of concentrations is especially high in the man-

ufacturing industry. Within this industry, the majority of mergers affected the automotive, food, chemical, pharmaceutical, and packaging sectors. (See Figure 4)

The number of concentrations in the energy sector remains high despite the fact that – as discussed in the next section – the Government declared several mergers in this sector to be of national strategic importance, which meant that they did not need to be notified to the GVH. Concentrations affecting the real estate sector are continuously present in the case-law of the GVH; however, no detailed investigation of the market has been carried out in connection with any of these mergers. The high number of cases related to the information and communication sector is not surprising in our ever more digitalised world, and as

Figure 3

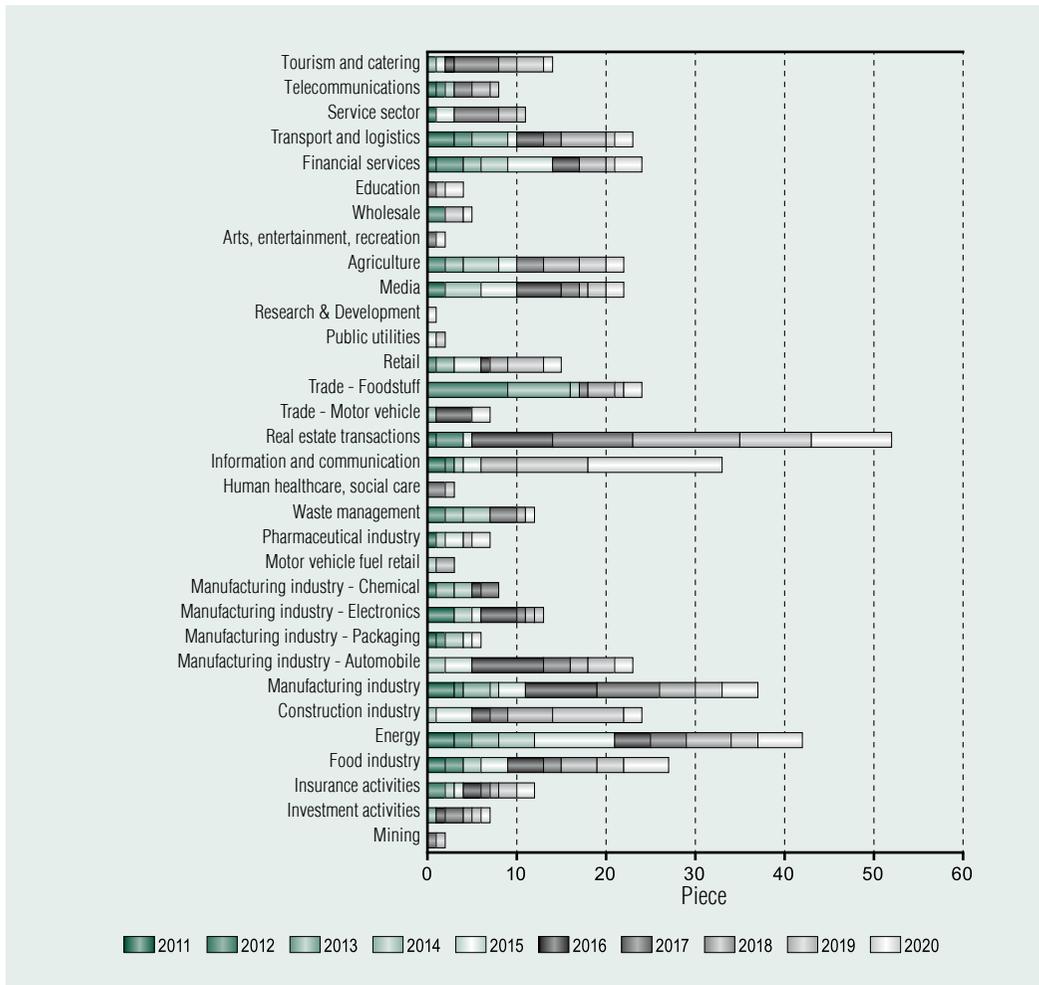
PERCENTAGE OF FOREIGN ACQUISITIONS AMONG ALL MERGERS INVESTIGATED BY THE GVH



Source: own edited

Figure 4

THE DISTRIBUTION OF MERGERS AMONG SECTORS



Source: own edited

we have previously mentioned, the growing number of investments into start-ups in this sector also contributes to the GVH’s investigation of an increasing number of mergers in this sector. The number of mergers affecting this sector is expected to rise further in the future.

The amendment of the Competition Act in November 2013 gave the Government the option of declaring, by way of a Government De-

cre, that certain mergers of undertakings are of national strategic importance, in which case the concerned undertakings are not required to report the mergers to the GVH. The Government made use of this option on 31 occasions so far until the end of 2020; the majority of such Government Decrees (a total of 12) were issued in 2014. Following 2014, the number of mergers declared to be of national strategic importance decreased significantly; in

the period between 2015 and 2020, the Government declared an average of three mergers per year to be of national strategic importance. *Figure 5* shows the development of the number of mergers of national strategic importance.

Among the affected sectors, the energy industry can be considered an outlier since 13 out of the 31 mergers of national strategic importance were carried out in this sector, as it is shown on *Figure 6*.

The most important lessons of recent years

As demonstrated by the above, the GVH has prioritised and continuously developed its merger control procedures over the past 10 years. The most important steps of this process have already been described; therefore, the aim of this chapter is to summarise the most important experiences and results of this period.

AN INCREASE IN THE SIGNIFICANCE OF PRE-NOTIFICATION CONSULTATIONS

Under the merger notification regime, the most important task of the procedure related to merger notifications is to ensure the efficient filtering of unproblematic mergers, which presupposes the existence of an effective preliminary consultation (pre-notification) system.⁹ During this process, the case handlers of the GVH can point out any deficiencies in the completed notification form and notify the undertaking of the additional information and analyses that are necessary for a decision to be made regarding the obvious lack of negative effects on competition; this process enables unproblematic merger procedures to be concluded via the issuance of an official certificate. All of this played an important role in ensuring that the majority of notifications led to the issuance of an official certificate; in terms of the decisions made in the course of notification-based procedures, the

proportion of phase 1 procedures has declined significantly since 2017, while the proportion of official certificates issued has increased. (See *Figure 7*)

In connection with the above data, it is important to emphasise that due to their nature, pre-notifications primarily prevent the initiation of phase 1 proceedings; therefore, the reduction in the number of these types of proceedings is more significant than in the case of phase 2 proceedings, which required more detailed investigation. However, under certain conditions, pre-notification consultations may render the initiation of phase 2 proceedings avoidable as well, which we are going to discuss in more detail in relation to verbal interventions.

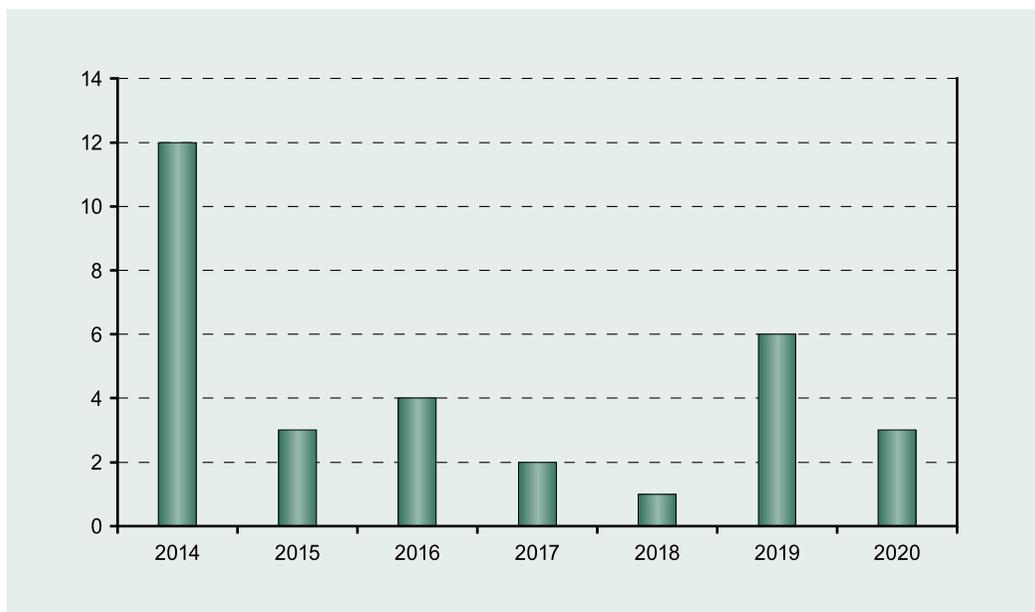
Furthermore, pre-notifications are not always suitable for preventing the initiation of a phase 1 proceeding. In light of the above, it can be said that the risk of avoidable proceedings can be significantly reduced with the help of preliminary consultations, which is evidenced by the fact that in 2020 only 7% of pre-notified cases resulted in the initiation of a proceeding (this figure includes full-scale cases as well), while this proportion was 43% in the case of not pre-notified cases. *Figure 8* presents the percentage distribution of pre-notified and non-pre-notified cases.

THE RELIABILITY OF DATA PROVIDED AND EFFECTIVE ACTION AGAINST INFRINGEMENTS RELATED TO MERGERS

However, in addition to speeding up the processing of cases, the GVH continues to pay special attention to ensuring that the data provided are reliable. The reduction of the administrative time limits to favour clients cannot take precedence over the public interest. Therefore, the system of sanctions that exists

Figure 5

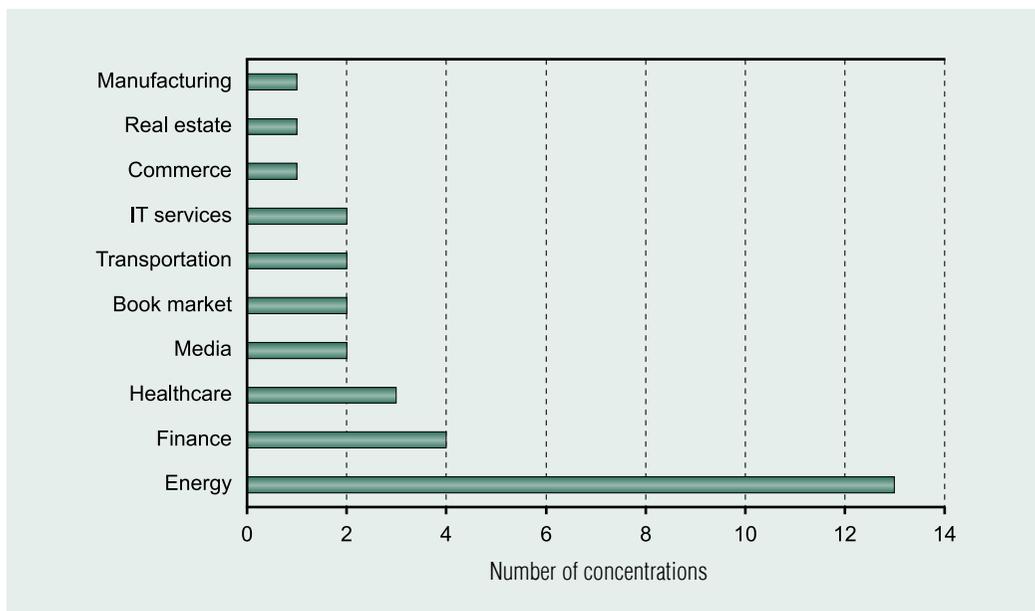
DEVELOPMENT OF THE NUMBER OF MERGERS OF NATIONAL STRATEGIC IMPORTANCE



Source: own edited

Figure 6

THE DISTRIBUTION OF MERGERS OF NATIONAL STRATEGIC SIGNIFICANCE AMONG SECTORS



Source: own edited

Figure 7

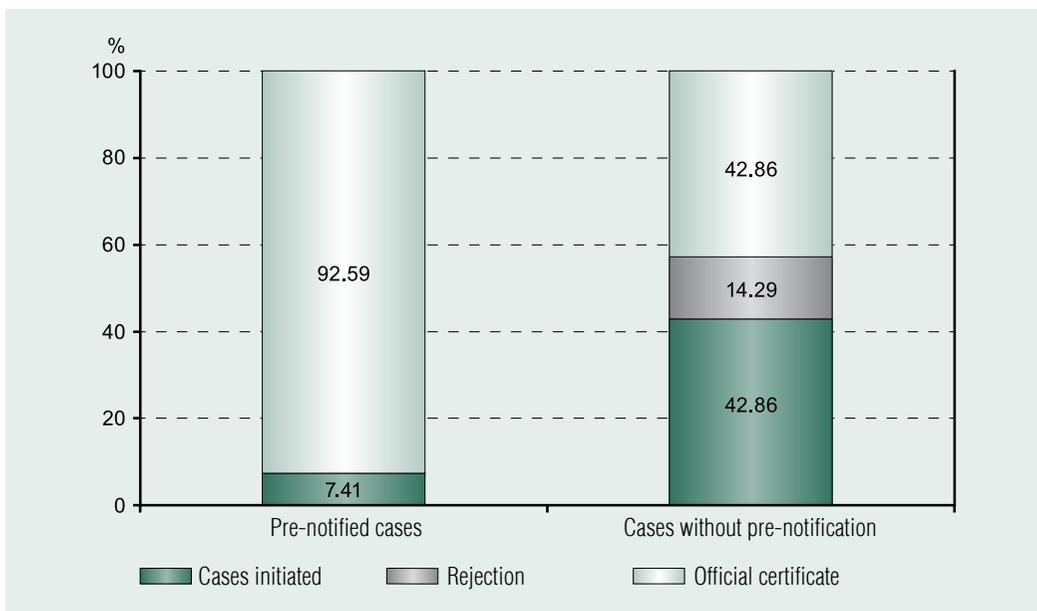
OUTCOMES OF MERGER NOTIFICATIONS BETWEEN 2017 AND 2020



Source: own edited

Figure 8

THE PERCENTAGE DISTRIBUTION OF PRE-NOTIFIED AND NON-PRE-NOTIFIED CASES



Source: own edited

against infringements committed through the provision of misleading information serves as an important tool to enable the GVH to fulfil its statutory obligations that is to conduct strict and comprehensive investigations in order to protect the interests of consumers. This is because proceedings aimed at investigating mergers heavily rely on the cooperation of clients, as it is undertakings that primarily possess the necessary data. In the course of proceedings, clients therefore have an increased responsibility to provide the GVH with detailed and complete information on all the facts necessary for investigating the merger in question.¹⁰

Action against the provision of misleading information has received special attention within the framework of the GVH case law over recent years. At the beginning of 2017, the GVH was forced to revoke its resolution authorising a merger in two cases,¹¹ and in both cases it also imposed a procedural fine of approximately HUF 83 million on the undertakings requesting authorisation for the two mergers. In addition, the Authority imposed a fine of HUF 45 million in another case, as a result of a separate proceeding.¹² This means that the GVH has imposed approximately HUF 128 million in fines related to proceedings initiated due to the provision of misleading information.

It should be noted that there are additional procedural options related to data credibility available to the GVH beyond the revocation of the resolution. Firstly, since 2017 the GVH has been able to ensure the validity of data by carrying out unannounced on-site inspections (so-called dawn raids) in relation to merger cases if it is reasonably believed that an essential fact indicated in the merger notification is misleading. The GVH has made use of this option in one case so far.¹³ If the misleading data concerns a fact that is not essential for the merger, the statutory requirements for the

revocation of the resolution are not fulfilled.¹⁴ However, in such a case a procedural fine may be imposed.

Another type of infringement related to mergers is the implementation of a merger before it has been acknowledged by the GVH. The institution of the standstill obligation was introduced in the Competition Act by the Hungarian Parliament on 1 July 2014 and its main function is to prohibit the implementation of transactions subject to a notification obligation under the relevant turnover thresholds without the authorisation of the GVH and to sanction any undertakings that proceed with the transaction without such authorisation with a fine (or even to order the restoration of the conditions that existed before the merger if justified in a case posing significant competition-related concerns). Since 2014, the GVH has established an infringement of the standstill obligation in the case of 9 concentrations¹⁵ in total and has imposed approximately HUF 42 million in fines. In all of the concerned cases, the parties, having detected the infringement, voluntarily notified the mergers to the GVH and the Authority did not identify any competition-related concerns with respect to any of the mergers. Taking these circumstances into consideration, alongside the fact that no repeat offences (a previous infringement of the standstill obligation) were identified in any of the cases and there was typically a short period of time between the implementation of the transactions and the mergers being notified to the GVH, the Authority generally imposed a fine on the undertakings that was close to the minimum provided in the Competition Act.

Prior to the introduction of the standstill obligation, the Competition Act provided a thirty-day deadline between the submission of a merger authorisation request and the implementation of the merger; between 2010 and 2014, the GVH imposed fines amounting to

a total of HUF 180 million for a failure to observe this deadline or notify a merger at all.

All in all, the GVH has imposed fines amounting to a total of HUF 350 million since 2010 due to infringements related to mergers, within which special attention was paid to infringements related to data validity: 36.5% of the fines imposed due to merger-related infringements, that is nearly HUF 128 million, was imposed on undertakings as a result of the provision of misleading information. (See Figure 9)

INTERVENTIONS

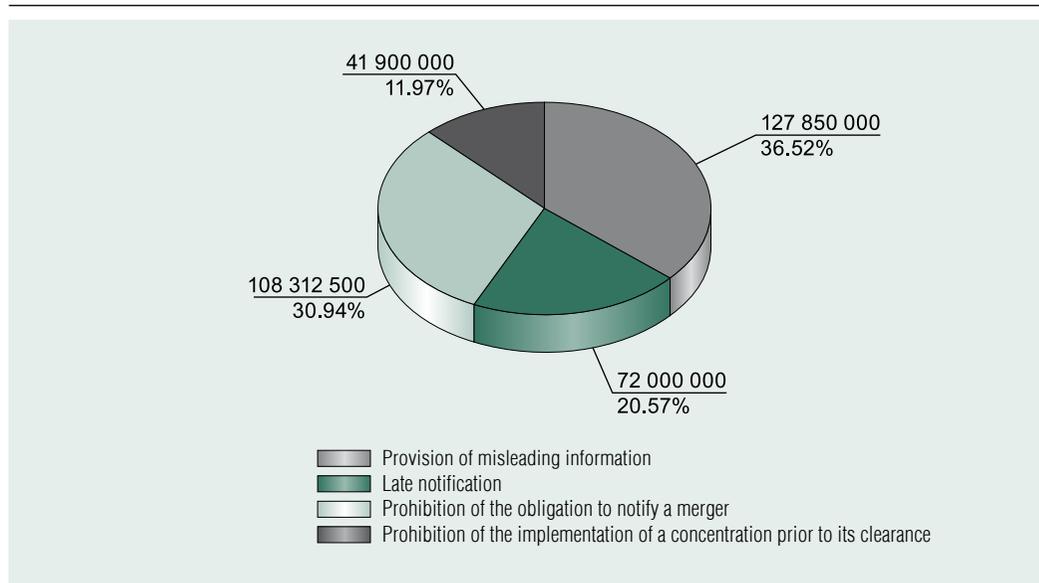
The Competition Act allows the GVH to impose ex ante or ex post conditions and obligations in its resolution in order to limit the negative impact of the merger to avoid prohibiting a transaction that give rise

competition concerns. Such remedies, which can only be implemented on the basis of the commitments of the relevant undertakings, can be categorised into two groups. The first group consists of the so-called structural remedies, while the second group is composed of behavioural remedies; however, solutions with both structural and behavioural characteristics are also possible.¹⁶ Structural remedies are measures that target the structure of the market, while behavioural remedies limit the right of ownership of the parties involved in the merger. The various commitments are often accompanied by reporting obligations related to the provision of information on the fulfilment of the commitments and the engagement of persons who can verify their fulfilment (so-called monitoring trustee).

Both the Hungarian and the international experience shows that only a small portion of transactions falling under the scope of the

Figure 9

THE PERCENTAGE DISTRIBUTION OF INFRINGEMENTS RELATED TO MERGERS WHICH RESULTED IN FINES BEING IMPOSED



Source: own edited

authorisation procedure requires an intervention (any form of remedies) and the number of prohibitions is, in particular, negligible.¹⁷

Since 2010, the GVH has considered it necessary to implement some form of remedies in the case of 10 transactions in total, and it has prohibited 1 transaction on the basis of a special authority expert opinion¹⁸, which the GVH was obliged to follow (all of these taken together are considered interventions, see *Figure 10*).

In addition to formal interventions, the case-law of the GVH shows that an increasing number of interventions aimed at remedying competition-related issues are taking place without an official resolution being issued. *Figure 11* shows the sectors affected by formal interventions.

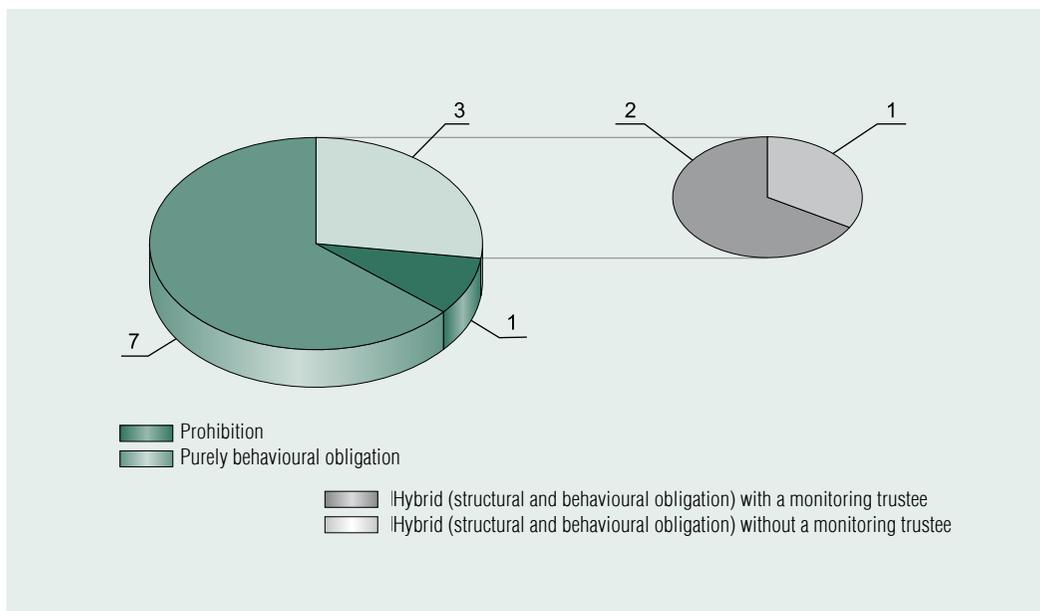
These can be divided into two main groups: the first group consists of interventions that

remedy a competition-related issue arising due to the transaction, while the second group is comprised of the so-called restrictions not directly related to the transaction.¹⁹ The role of preliminary consultations is especially significant in the case of both groups since concerns typically emerge as early as the pre-notification period; consequently, the parties are able to implement any necessary measures before they submit their notification, thereby reducing the likelihood of a longer and more time-consuming competition supervision proceeding.

In recent years, the GVH also encountered a transaction where the parties eventually decided to withdraw the transaction due to the concerns raised by the Authority during the pre-notification consultation. In addition, two mergers resulted in the eventual withdraw of the transactions and the parties revoking their notification for authorisation after being in-

Figure 10

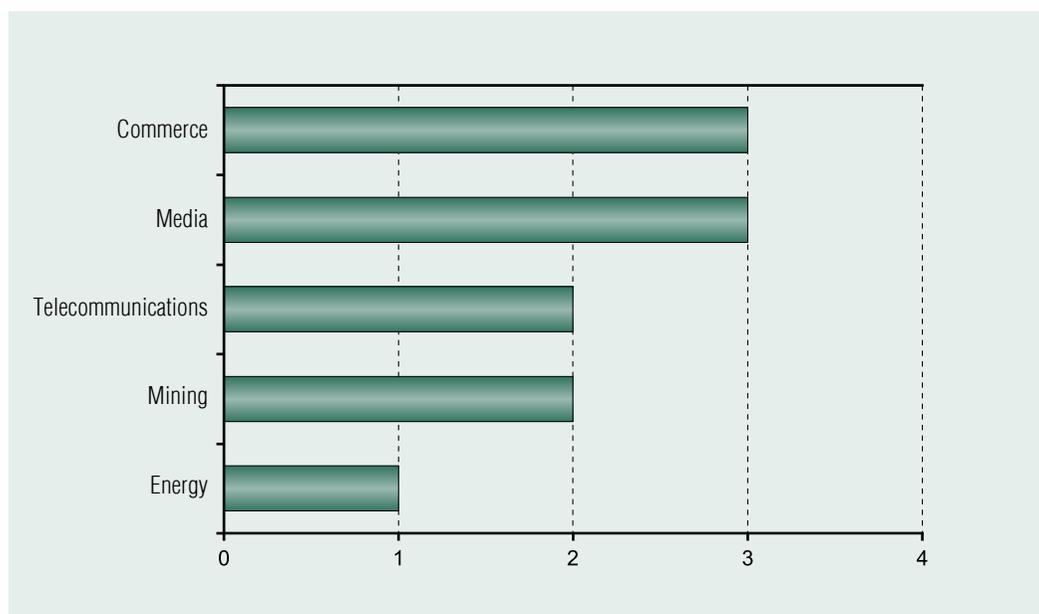
NUMBER OF MERGER INTERVENTIONS SINCE 2010



Source: own edited

Figure 11

SECTORS AFFECTED BY FORMAL INTERVENTIONS



Source: own edited

formed that the Authority was planning to prohibit the mergers in question.

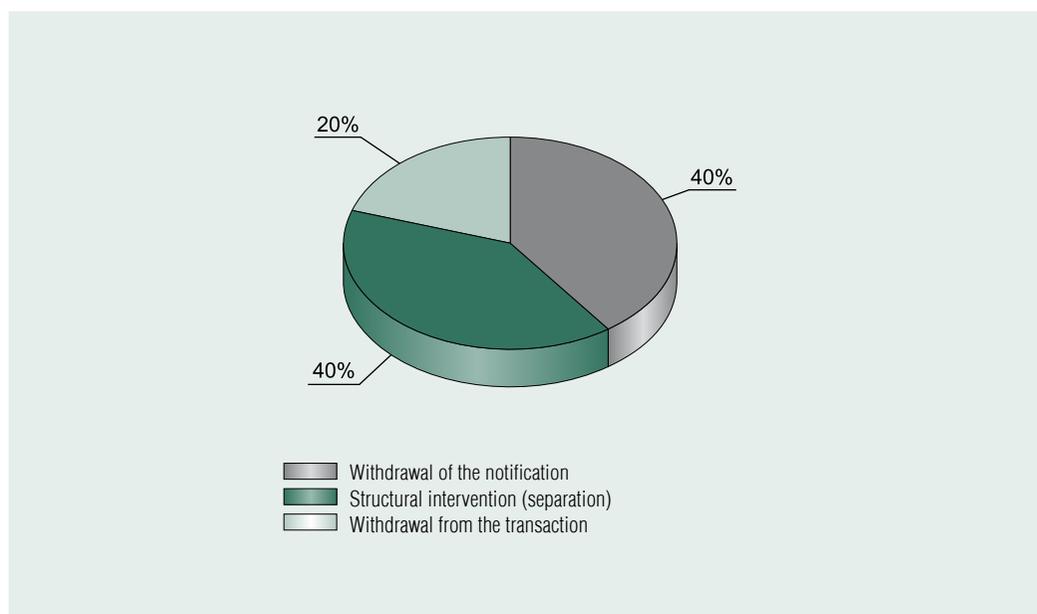
In two other cases, the verbal notices of the GVH allowed the parties to avoid a longer and more time-consuming proceeding and thus no official interventions were required in these cases in the end. This is due to the fact that in one of the cases, in light of the concerns raised during the preliminary consultation, the parties decided to sell the product which giving rise competition concerns before submitting their notification for authorisation, thus eliminating the competition concern.²⁰ In another case, taking into account the concerns voiced during the consultations preceding the procedure being declared a full-scale proceeding, the parties elected to sell the radio stations that might have constituted a competition concern to an independent third party, thus avoiding an in-depth investigation.²¹ Therefore, it can be said that verbal interventions are playing an

increasingly important role in the case-law of the GVH, with 31% of all interventions falling into this category. *Figure 12* presents the distribution of verbal intervention.

In connection with the handling of restrictions directly related to the transaction (ancillary restraints), it should be noted that in the case of merger procedures, the GVH does not assess ancillary restraints (similarly to the European Commission and other competition authorities); however, it does notify the parties about which restrictions may exceed the scope of permissible restrictions during the preliminary consultations. As a result, the vast majority of undertakings adjusts the restrictions in question to match the case-law of the GVH in order to avoid any further proceedings; therefore, the initiation of a competition supervision proceeding was avoidable in 75% of cases between 2016 and 2020. In this period, competition supervision pro-

Figure 12

THE DISTRIBUTION OF VERBAL INTERVENTIONS SINCE 2010



Source: own edited

ceedings were initiated in 3 cases in total. Of these, meaningful decisions were eventually adopted by the GVH in two cases, where taking into account the commitments of the parties, the GVH ordered the fulfilment of the proposed commitments (pertaining to the amendment or deletion of the provisions concerned) without establishing the fact or lack of an infringement.²² In one case, the GVH decided to terminate the proceeding in the investigation phase because the concerned contract was amended in the meantime.²³ Figure 13 shows the handling of restrictions not directly related to the transaction.

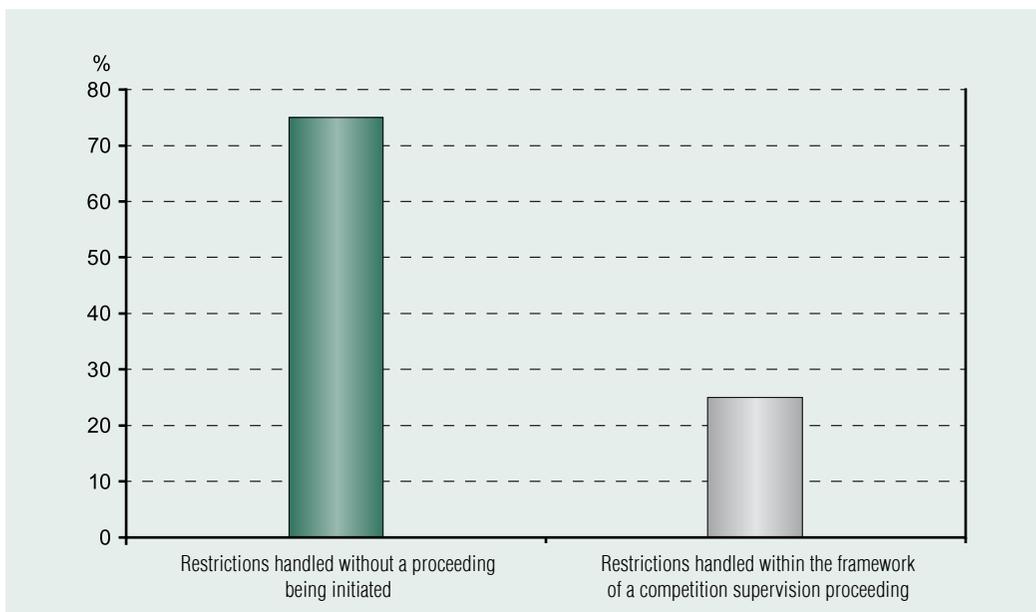
SUMMARY OF THE RESULTS

In summary, it can be established that the GVH sought to achieve three interconnected goals during the development of its merger

control procedure: reduce the burden on undertakings, increase the predictability and transparency of merger-related administration, and reduce the administrative time limits of the procedures while ensuring the validity of the data provided. Since we are talking about the improvement of an already operating system, which was required to perform its function while complying with the rules applicable during its development, it was only possible to proceed gradually and with small steps, taking into account the lessons learnt from already implemented measures and continuously reassessing and redesigning the approach to be taken. This process demonstrated the continued validity and up-to-date nature of the thoughts of Zoltán MAGYARY, who stated that the rationalisation of administration *‘is not a one-off task but a continuous goal and requires special methodology’* and that its varied toolset includes *‘above all else, criticism of the procedures and*

Figure 13

THE HANDLING OF RESTRICTIONS NOT DIRECTLY RELATED TO THE TRANSACTION



Source: own edited

solutions already used. (Magyary, 1930, 175., 180.).

An important but unquantifiable result of this development programme was the improvement of the predictability and transparency of the administrative process over the past decade, due to the publication of merger notifications and decisions, as well as the intensive supplementation of the soft law documentation associated with the merger enforcement.

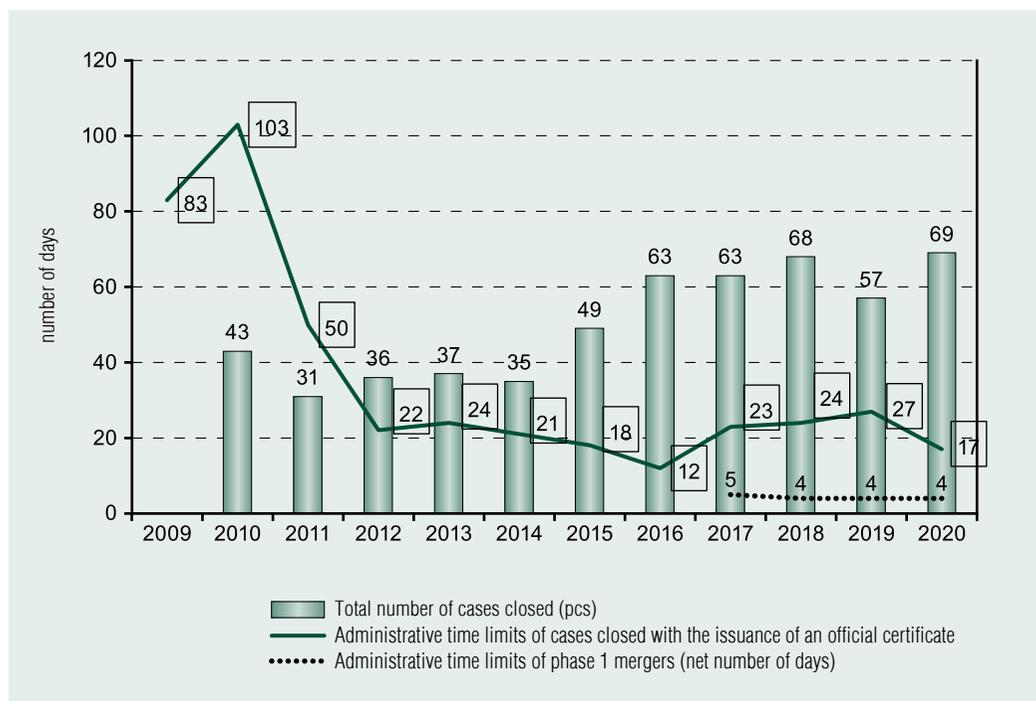
There are no estimates available regarding the quantifiable effects of the improvements in the efficiency of merger control on the macro scale (e.g. on investment and GDP); however, the GVH regularly assesses the welfare benefit of its operation.²⁴ This impact assessment evaluates the combined effects of its interventions related to anti-competitive agreements, abuse of dominant position and mergers, while applying the best international practices of es-

timisation methodology, and leads to results which – although approximate – are not exaggerated. Based on these estimates for the period between 2013 and 2018, the amount of money saved by consumers due to the interventions of the GVH was more than six times the total budget of the GVH for the same period.

The development of the merger legislation over the course of the last decade had tangible and accurately measurable results as well. One of the most important of these results was the increase in the speed of the administration process. The actual processing time of mergers without an impact on competition, which can be authorised by the issuance of an official certificate and constitute more than 80% of all cases handled, was reduced to 4 days; this is a particularly significant reduction since the average time it took to process unproblematic mergers was more than 100 days in 2010).

Table 14

THE DEVELOPMENT OF ADMINISTRATIVE TIME LIMITS IN MERGER CASES BETWEEN 2009 AND 2020



Source: own edited

Compared to the 2010 figures, the average duration of full-scale merger proceedings was reduced by 62% and the duration of phase 1 procedures was reduced by 82.5% by 2020. *Figure 14* presents the development of administrative time limits in merger cases between 2009 and 2020.

The figure clearly shows how the actual administrative time limits were gradually reduced as a result of the adoption of various measures that built on each other. Consequently, the processing time of proceedings was continuously carried out in less than the legally applicable deadline for the given period (for example, the law allows 8 days for the issuance of official certificates today, while the average processing time is actually 4 days).

Another concrete result is that the administrative service fee of transactions able to be authorised by the issuance of an official certificate has been reduced from HUF 4 million to HUF 1 million; as a result, approx. one-third of the revenue of the GVH related to merger proceedings (HUF 40-60 million per year on average) remained in the hands of the undertakings.

Since 2018, the GVH has allowed undertakings to submit their merger notifications to the Authority electronically, and the number of electronically submitted notifications has been increasing ever since. In 2020, this was especially helpful during the pandemic; therefore, more than 82% of the notifications were received electronically during this year. ■

NOTES

- ¹ For details, see: András Tóth: Hungarian experiences on the role of competition policy in a transitional economy - Korea Economic Law Journal, ISSN: 1738-5458, Korea Economic Law Association, 2014.,12 13(3)/ Vol. 13. No(2014), pp. 123 – 138.
- ² Ferenc VISSI: ‘The Basics of Competition Policy’, lecture series, 21.03.2019
- ³ This is qualified by the fact that the among the notification thresholds, the threshold applicable to an increase of HUF 500 million was increased to HUF 1 billion in the amendment of the Competition Act, effective as of 15 January 2017.
- ⁴ Court of Justice of the European Union, judgment of 16 July 2009 in the case of *Der Grüne Punkt - Duales System Deutschland vs European Commission*, C-385/07, EU:C:2009: 456, Section 186, [Court Reports, 2009, p. I6155].
- ⁵ Ministry of Public Administration and Justice (2011), Zoltán Magyar Public Administration Development Programme, ‘For the benefit of our Country and in service of the Public’ (Online: <https://2010-2014.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/hirek/magyar-program-a-koz-szolgalatara> (access date: 29.03.2021)
- ⁶ Such as Government Decree 1602/2014. (XI. 4.) on the establishment of the State Reform Commission, Government Decree 441/2015. (XII. 28.) on the amendment of specific Government Decrees in order to reduce bureaucracy in public administration, and Act CLXXXVI of 2015 on legislative amendments related to the reduction of bureaucracy in public administration.
- ⁷ The 2011 Annual Report of the GVH to the National Assembly, Online: https://gvh.hu/pfile/file?path=/sajtoszoba/sajtokozlomenyek/sajtokozlomenyek/2012-es_sajtokozlomenyek/219832ED1EB4492D7.pdf&inline=true (access date: 29.03.2021)
- ⁸ For details on the development project: András TÓTH: The development of our merger procedural law based on the case law of the competition council in the past three years, *Competition Mirror* 2013/2 (Season IX, Issue 2) p. 19-33.
- ⁹ In relation to the first experiences of the notification-based regime, see: András BODÓCSI: Introduction of the new merger regime and its first experiences, *Competition Mirror* 2017/2. (Season XIII, issue 2) p. 19-29.
- ¹⁰ Judgment No. 107.K. 700.016/2019/11 of the Budapest-Capital Regional Court, acting as the court of first instance, with respect to the motion to revise the resolution adopted by the GVH during competition supervision proceeding No. VJ/31/2018, pages 10 and 12.
- ¹¹ Proceeding No. VJ/14/2017 revoked resolution No. VJ/33/2016. (Diófa Alapkezelő/EURO-MALL), while proceeding No. VJ/15/2017 revoked resolution No. VJ/1/2017 (Infineon/Cree), followed by fines being imposed with respect to the original cases.
- ¹² Competition supervision proceeding No. VJ/31/2018 (DIGI/Invitel case); the originally imposed fine was HUF 90 million, which was reduced by the final and enforceable judgment of the court to HUF 45 million following the judicial review process.
- ¹³ Competition supervision proceeding No. VJ/43/2017 (DIGI/Invitel case).

¹⁴ Pursuant to Section 32 (1) of the Competition Act, the Hungarian Competition Authority is also entitled to revoke a resolution adopted under Section 30 if the resolution not subject to the judgment of the administrative court was based on the concealment of a fact essential for the adoption of the decision or the disclosure of false information (hereinafter collectively referred to as misleading information). The relevant proceeding shall be initiated within 5 years of the merger being implemented.

¹⁵ Competition supervision proceedings No. VJ/145/2015, VJ/10/2016, VJ/13/2016, VJ/14/2016, VJ/13/2017, VJ/44/2017, VJ/23/2018, VJ/5/2020, and VJ/15/2020.

¹⁶ These include, for example, commitments to provide access to various patents.

¹⁷ However, the correct interpretation of this fact requires noting that the mere existence of a merger control regime plays a non-negligible preventive role; undertakings do not even begin certain transactions if it becomes obvious to them during their preliminary assessment that such transactions would not be authorised by the competition authority.

¹⁸ Proceedings No. VJ/87/2016 and No. VJ/8/2020.

¹⁹ Ancillary restraints included in merger agreements with the purpose of protecting investments are

called related restrictive market practices and are considered acceptable (a typical example is the seller agreeing not to enter the market on which the sold undertaking is active for 3 years). This means that restrictions not directly related to the transaction are those that extend beyond the purposes of protecting the investment, which are acceptable based on the relevant case law; therefore, these can be investigated and sanctioned separately as anti-competitive agreements (e.g., the seller is required to withdraw from the relevant market for 10 years or withdraw from an unrelated market).

²⁰ In connection with merger notification No. ÖB/8/2020 (Stada/Walmak), the manufacturing and distribution rights of a pharmaceutical product were sold, thus eliminating the horizontal competition concerns raised.

²¹ Competition supervision proceeding No. VJ/45/2017 (ML/Konzum/OPUScase).

²² Competition supervision proceedings No. VJ/106/2014 and VJ/19/2019.

²³ Competition supervision proceeding No. VJ/39/2017.

²⁴ https://gvh.hu/gvh/elemzesek/tarsadalmi_haszon/gvh_mukodesebol_szarmazo_joleti_haszon_mertekerol (access date: 29.03.2021)

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