



Hungary ❖

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Hungary is a landlocked country located in Central Europe. It is bordered by Slovakia to the North, Ukraine and Romania to the East, Serbia and Croatia to the South, Slovenia to the South-west and Austria to the west. In 1956, following a revolt, it announced withdrawal from the Warsaw Pact. This was met with massive military intervention by Moscow. Hungary began to liberalise its economy as early as 1968, introducing the so-called ‘Goulash Communism’. After the social-economic changes of 1989, Hungary held its first multiparty elections in 1990 and initiated a free market economy. It joined North Atlantic Treaty Organisation (NATO) in 1999 and the EU in 2004.

Economy*

Hungary has made the transition from a centrally planned to a market economy, with a per capita income nearly two-thirds that of the EU-27 average. The private sector accounts for more than 80 percent of Gross Domestic Product (GDP). Foreign ownership of and investment in Hungarian firms are widespread, with cumulative foreign direct investment worth more than US\$70bn.

In late 2008, Hungary’s impending inability to service its short-term debt – brought on by the global financial crisis – led Budapest to obtain an IMF/EU/World Bank-arranged financial assistance package worth over US\$25bn. The global economic downturn, declining exports, and low domestic consumption and fixed asset accumulation, dampened by government austerity measures, resulted in an economic contraction of 6.8 percent in 2009.

In 2010 the new government implemented a number of changes including cutting business and personal income taxes, but imposed “crisis taxes” on financial institutions, energy and telecom companies, and retailers. The IMF/EU bail-out programme lapsed at the end of the year and was replaced by Post Programme Monitoring and Article IV Consultations on overall economic and fiscal processes.

PROFILE

Population:	9.944 million**
GDP (Current US\$):	124.6 billion**
Per Capita Income: (Current US\$)	12,380 (Atlas method)** 16,088 (at PPP)**
Surface Area:	93,030 sq. km
Life Expectancy:	75 years**
Literacy (%):	99* (of ages 15 and above)*
HDI Rank:	37**

Sources:

- World Development Indicators Database, World Bank, 2013
- Human Development Report Statistics, UNDP, 2013

(*) For the year 2011

(**) For the year 2012

The economy began to recover in 2010 with a big boost from exports, especially to Germany, and achieved growth of approximately 1.7 percent in 2011.

At the end of 2011 the government turned to the International Monetary Fund (IMF) and the EU to obtain financial backstop to support its efforts to refinance foreign currency debt and bond obligations in 2012 and beyond, but Budapest’s rejection of EU and IMF economic policy recommendations led to a breakdown in talks with the lenders in late 2012.

Since joining the EU in 2004, Hungary has been subject to the European Commission’s Excessive Deficit Procedure; Brussels has requested that the government outline measures to sustainably reduce the budget deficit to under 3 percent of GDP. Ongoing economic weakness in Western Europe as well as lack of domestic investment and demand caused a GDP to fall 1.7 percent in 2012. Unemployment remained high, at more than 11 percent.

❖ Original paper submitted in December 2004, first revised in September, 2005, and second revision done in March 2006.

* CIA World Factbook

Box 1: Misleading Advertising and Bait and Switch by Tesco Thwarted

Hungary's competition regulator fined Tesco Plc, Britain's biggest supermarket chain, and Auchan SA, France's third-largest grocer, for charging customers more than advertised. Tesco Plc was fined Ft 50 million (\$269,542) and Auchan SA Ft 30 million, the regulator said in an e-mailed statement. Tesco was found to have misled clients for the 10th time, according to the statement. The two retailers are competing for Hungarian customers at a time when the government's austerity measures are sapping disposable incomes. They both violated regulations when not actually offering discounts they advertised in direct mailing material, the regulator ruled.

"Both Tesco and Auchan displayed conduct conducive to misleading customers when discounted products were not available contrary to information in advertising", the competition office said.

Source: <http://www.bbj.hu> March 20, 2007, 4:29 PM CET

Competition Evolution and Environment

Hungary was the first Eastern European country to embrace aspects of the free market with a per capita income one-half that of the Big Four European nations. This helped smoothen the economic transition. Within four years of the collapse of Communism, nearly half of the country's economic enterprise had been transferred to the private sector, and by 1998 Hungary was attracting nearly half of all FDI in its region.

Over the years, Hungary has gone through radical changes to open its economy to international competition and integrate in the world economy. As some reforms, even though limited, had been introduced since the late 1960s, Hungary was a relatively more open economy in the 1980s compared to other centrally planned economies. However, a decisive step was taken in 1988 when Hungary undertook radical reforms to allow for the free establishment of companies, reduce the role of the State in the economy, and build the legal and regulatory framework of a market economy.

The trade liberalisation process was further accelerated by the international commitments Hungary took through several important trade and cooperation agreements. A major feature of Hungary's transition process towards a market economy has been the government's active policy in favour of foreign investment. The country has indeed been a leader in the region in attracting and retaining a large volume of foreign investment. The inflows of foreign capital and of new managerial techniques have played a major role in the restructuring, consolidation and development of Hungary's manufacturing and services sectors.

The opening of the Hungarian economy has been closely linked to the structural reforms undertaken since the late 1980s, and in particular to the privatisation programme. Starting in 1990, Hungary engaged a wide-ranging privatisation programme, which gained momentum following the new privatisation law in 1995. The privatisation process has included many small and medium size firms, but also large firms in strategic sectors including energy, telecommunications, chemicals, pharmaceuticals and banking.

Over the years, a huge amount of legislative activity has taken place in Hungary to remove the institutional features of a planned economy and build up the required legal conditions for the functioning of a market economy. In 1989, the constitution was revised to guarantee the right to private property and the freedom of enterprise. A wide range of laws, which affect the operation of firms, was further adopted or modified in fields, such as prices and taxes, establishment of companies, accounting, bankruptcy and Competition Law. Some of the reforms have directly affected the operation of foreign-owned firms. In addition to the liberalisation of FDI regulations, the Hungarian authorities have lifted restrictions to capital flows and established new legislation to provide for the protection of investment.

Hungary's history of Competition Law dates back to the 1980's. As a principle move to re-establish the institutional foundations for a market economy, a modern competition law was adopted in the year 1984, which prohibited unfair market practices, cartels and abuse of dominance. However, it lacked provisions on merger control as well as enforcement structures. From the inception, the Competition Laws and institutions follow European models. Though Hungary anticipated the transition from a centrally planned to a market economy long ago, it began taking major steps only in 1990.

Hungary has been attracting huge FDI. Therefore, in order to establish the trust of foreign investors, Hungary's competition legislation was strengthened substantially at the beginning of the 1990s.

Competition Law

The Competition Law of 1990 (Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices) officially and unanimously came into existence in November. Additions to the law mainly included merger control and rules against consumer deception. Moreover, it also established enforcement procedures and a new enforcement body independent from the Government namely, the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH).

Hungary interprets the goals of competition policy as to promote efficiency, to ensure fairness and to protect consumer interest. Among these, Hungary's Competition Law gives more priority to efficiency and welfare. The Preamble to the Competition Law states that there exists a

public interest in maintaining market competition, because competition ensures economic efficiency and social progress. This emphasis on efficiency is more pronounced in the Competition Act of 1996 although the law has not laid out a clear distinction on concept of efficiency.

The Act of 1996 (Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices) came into effect on January 01, 1997 and thereby repealed the earlier 1990 Act on competition. The Hungarian Competition Act covers both anti-competitive practices (antitrust law) and unfair market practices of undertakings. The Act regulates the following conducts:

- unfair competition (belongs to the competence of the court);
- unfair manipulation of consumer choice;
- agreements restricting economic competition;
- abuse of dominant position; and
- concentration of undertakings.

Though the Competition Act prohibits unfair competition, these matters are covered by the competence of the courts. As far as unfair manipulation of consumers' choice is concerned, the Competition Act condemns only those groups of deceptions and unfair manipulations, which may distort competition. It is the task of other public authorities to proceed under other relevant legislation (e.g. consumer protection law) against deceptive but not competition distorting practices.

The 1996 Act was enacted to bring Hungarian Competition Law more in line with the EU competition rules and to take into account the then developments of the Hungarian market economy. The 1996 Act and the related government decrees achieved a high degree of harmonisation between Competition Laws of the EU and Hungary, which was recognised by the EC in its opinion on Hungary's application for membership of the EU.

The 1996 Act was substantially amended in December 2000, which entered into force in February 2001, in a move to promote more harmonisation with EU Competition Law. This was the result of a four-year experience gained with the enforcement of 1996 Act and to fine tune certain provisions. Changes were made in both substantive and procedural rules. Moreover, with these changes, the investigative power of the GVH was also increased. Certain amendments were motivated by the recommendations of the 1999 OECD Regulatory Reform Survey.

In addition to the above harmonisation measures, the Hungarian Parliament passed amendments to the Competition Act in June 2003, which entered into force in May 2004, with the aim of bringing the Act fully into line with EU rules.

An even newer, and again substantial, amendment came into effect on November 01, 2005. These changes were triggered by, on one hand, the experience gained during

the first year of membership in the EU, and on the other, the coming into effect of the background norm to the Competition Act, the Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services.

The main changes to the Competition Act deriving from this latest amendment are the following:

- abolishment of the instrument of individual exemptions;
- changes in the rules on mergers (concerning the thresholds and the time limits of settlement);
- modification of the system of complaints;
- changes in the rules on clarifying the facts of the case;
- introducing rules on legal privilege;
- new type of resolution: in case of restrictive agreements, the Competition Council¹ may make binding the commitments undertaken by the parties; and
- changes in the rules concerning sectoral inquiries

The legal framework is basically the same in respect of both horizontal and vertical agreements restricting competition. These agreements are prohibited, null and void, unless they fall within one of the exceptions set out in the Competition Act or are exempted on the basis of criteria laid down in the Act. Exemptions may be granted by block exemption regulations. Hardcore cartels, however, (as e.g. price fixing agreements between competitors) might never be subject of exemption.

The Hungarian Competition Act (Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (further on: HCA) was amended in July 2011 with Act Nr. CXV of 2011. The amendments touched upon the deadlines, changing the previous calculation of working days to calendar days. It also introduced special rules for economic organisations defined as having special importance regarding the national economy (further on: economic organisation having special importance). The special rules are that the application for authorisation has to be submitted within a shorter time period. But the most important change is that there is a new provision prescribing that in the case of concentrations concerning economic organisations having special importance, the undertaking acquiring control may before receiving the authorisation of the Gazdasági Versenyhivatal, the Hungarian Competition Authority, exercise its controlling rights to the extent that it is necessary to continue the ordinary course of business. This can be limited by the Gazdasági Versenyhivatal.²

In the case of abuse of dominant position the "abuse principle" is applied, according to which the dominant position on the market is not illegal in itself, only the abuse of such position (e.g. exploiting consumers or restricting competition) is prohibited. Merger control is based on an obligatory preliminary authorisation system. Concentrations involving undertakings with turnovers above the thresholds laid down in the Competition Act

are subject to authorisation bringing them into force in order to prevent the distortion of competition.

Institution and its Competencies

GVH, an independent body from the Government, but controlled by Parliament, is charged with the principal responsibility to supervise competition as defined in the Competition Act and the Act on Business Advertising activity adopted in 2000.

The President of the GVH is nominated by the Prime Minister and appointed by the President of the Republic. The two Vice Presidents of the GVH are nominated by the President of the authority and the Prime Minister, in turn, forwards it to the President of the Republic. The Vice Presidents are appointed by the President of the Republic, who, at the same time, charges one of the two Vice Presidents with the responsibilities to head the Competition Council. The appointments of the President and the Vice Presidents are for a period of six years.

The GVH renders expert advice and proposals relating to the competition policy and the decisions of the government affecting competition and represents public interest related to the development of competitive conditions on the markets. It promotes the development of the competition culture in Hungary.

The key elements, such as careful design, strong staffing and political support for competitive markets have permitted the GVH to act independently in enforcement yet participate in the policy debate.

After investigations by the GVH case-handler, decisions in individual cases, of violations or requests for authorisations, are the sole responsibility of the Competition Council, which is a separate part within the GVH. In the course of the competition supervision proceedings, the members of the Competition Council are subject only to the law; otherwise they are staff of the GVH. Their decisions once taken are not subject to review/change by the GVH, but may be challenged in court.

The government has principal responsibility in developing general competition policy but the GVH has statutory power to participate in the consideration of laws and regulations that affect competition. The president of the GVH may also take part in parliamentary deliberations, advise the Parliament on issues related to economic competition and report about GVH's performance etc. GVH always looks for more possibilities to further develop the competition culture by disseminating/widening knowledge among the society on Competition Law. The GVH lays special emphasis on communicating its activity to the public through making its decisions and annual reports public.

Box 2: Abuse of Dominance in Cable Television Market by Zelka

The Competition Council initiated its investigation in the cable television market by firstly examining the reception possibilities of TV programmes and found that there were several services substitutes to those of Zelka but they were either expensive or offered a smaller number of channels compared to Zelka.

Though the programme packages provided by Zelka could be substituted by numerous other services, the same must be compared based on their content and the types of programmes they offer apart from the price and quality. After examination it was found that such substitution could not be carried out reasonably. Therefore, Zelka dominated the cable TV market as a programme package provider.

The Competition Council found two practices of Zelka to be abusive: application of unjustified prices in Tapolca and Zalaegerszeg since January 01, 2002 and the placement of the channels RTL Klub and TV2 in more expensive packages in the system at Tapolca.

The Competition Council was of the opinion that an undertaking in dominant position should give opportunities to their consumers to express their opinion on the proposed changes in the programme packages or price increase. Regarding two commercial channels, the Competition Council established that such popular channels in an expensive package force consumers to buy it, which would have been legal if subscribers have had the opportunity to express their opinion. These actions were thus disadvantageous to consumers.

After going through the whole case, the Competition Council found that Zelka has abused its dominant position and therefore imposed a fine of HUF 5 million (US\$ 25000). Zelka was also obliged to change its behaviour and to inform subscribers of this decision and its consequences.

Source: web site of the GVH (www.gvh.hu)

Sectoral Regulation

While drafting the market regulatory laws, an attempt has been made to keep the sectoral laws and regulations compliant with the EU standards.

Telecommunications Sector

After 1989, Hungary initiated intensive development of its telecommunications sector. Under the telecommunications laws, the Minister of Informatics and Communications (IHM) is responsible for communications in Hungary for policy formation and drafting legislation by way of decrees.

Box 3: Hungary: Two new Sections at the Hungarian Competition Authority

Since 1 March 2012, two new sections, the Merger Section and the Antitrust Section, have been fully operational within the Gazdasági Versenyhivatal (GVH – Hungarian Competition Authority). These sections replace the Financial Services Section, the Production and Services Section and the Network Industries Section.

The Merger Section was established with the aim of making the GVH's merger procedures more efficient. The creation of this new section is in line with the measures that were undertaken last year by the Authority regarding merger procedures (two public consultations within the context of renewing the notification form and the merger review procedure applied by the GVH). The section will also deal with merger cases based on the new merger notification form, applied as from February 01, 2012.

With these reforms, the overall aim of the GVH is to conduct merger procedures in a faster and more professional manner, and by doing so, to reduce the amount of information required from the parties and to strengthen transparency.

The Antitrust Section was created to ensure the unified and sufficient functioning of the GVH in relation to antitrust cases. Besides the antitrust competition supervision procedures, the Antitrust Section will also be responsible for conducting sector inquiries if appropriate. While conducting case investigations and sector inquiries, the Antitrust Section will cooperate closely with the other sections of the GVH.

Source : http://ec.europa.eu/competition/ecn/brief/02_2012/hu_sections.pdf

In Hungary, telecommunications services are governed by the following legislations:

1. The Act C of 2003 on Electronic Communications;
2. The Act LXII of 1993 on Frequency Management;
3. The Act XVI of 1991 on Concessions; and
4. Several government and ministerial decrees.

The sector regulator, the National Communications Authority (*Nemzeti Hírközlési Hatóság – NHH*) is an independent central public administration body with nationwide competence, subordinated to the Government and the Minister of Information Technology and Communications. The authority is a financially independent central budgetary institution. As a regulatory authority, it supervises the communications sector and enforces sector policy, and performs administrative and supervisory duties and public proceedings. The authority is regulated by Act C of 2003 on Electronic Communications.

Energy Sector

Until the end of the communist regime, the Hungarian energy sector used to operate under state control. The current system was established following the enactment of Act XLVII of 1994 on Generation, Transmission and Supply of Electricity and other related laws. Since August

1994, this sector has been governed by the Hungarian Energy Office (*Magyar Energia Hivatal*), which is controlled by the Ministry of Economic Affairs.

The Energy Office is responsible and has powers over issues with competition significance, including market entry, conduct and exit and even over consumer protection issues. On the other hand, the Ministry of Economic Affairs retains the decision-making powers over prices.

The Energy Act provides that the sector must allow for competition; be controlled by legislation and public rules; provide services at lowest cost to consumers etc.

In 1999, taking into consideration the 1996 EU Electricity Directives, a new Hungarian energy policy was adopted by the Ministry of Economic Affairs and approved by the Government in the year 2000. On the basis of this policy, and subsequent extended political debates and discussions at industry level, the Hungarian Parliament passed the Act CX of 2001 on Electric Energy in December 2001, thus replacing the existing Act of 1994 referred to above. Most of the 2001 Electricity Act's provisions came into force on January 01, 2003.

Interface between Competition Authority and Sector Regulators

The GVH participated in the preparatory work of the Communications Act and the Electricity Act. The institutional cooperation of the GVH has been extended and made more intensive mainly with the regulatory authorities (Hungarian Energy Office, Communications Authority, Communication Arbitration Committee, Hungarian Financial Supervisory Authority).

For instance, in case of the telecom sector, the GVH made extensive use of its right to present an opinion on draft legislation in the field of communications. In order to safeguard competition and to promote uniform application of legislation, the Act on Electronic Communications requires close cooperation between the GVH and the National Communications Authority (NHH). Accordingly, the GVH and the NHH has entered into an agreement on cooperation. In the framework of this cooperation, GVH participates in the analysing of communications markets and also in the designation of service providers having significant market power ("SMP").

On its part, the Hungarian Energy Office cooperates with GVH in its licensing and official supervision activities.

Consumer Protection

The reason for the inclusion of rules governing consumer interests in the Competition Act is the fact that the unfair manipulation of consumer choice has a repercussion effect on competition, which, therefore, may be distorted.

Nevertheless, foreign advisors have repeatedly argued that the GVH should pass its competence in consumer related cases to another institution and instead pay more attention to essential fields of Competition Law, such as horizontal agreements and mergers. Later arguments, however, pointed out that several factors (synergies and creating goodwill in the eye of the public) suggest that the GVH should keep its jurisdiction in respect to those consumer related cases.

With the aim of a more complete protection of consumers, the primary consumer protection agency, the *General Inspectorate for Consumer Protection (Fogyasztóvédelmi Főfelügyelőség – FVF)* was created by the Hungarian administration in 1991.

The FVF and non-governmental consumer organisations maintain contact with the GVH, and a formal cooperation has been agreed upon.

The FVF is a budgetary organisation directly accountable to the Ministry of Economic Affairs, with oversight of official consumer protection and market surveillance throughout the country. It provides directions to the consumer protection inspectorate of the capital and to 19 county inspectorates.

From March 01, 1998, the activities of the FVF are determined by the *Consumer Protection Act (Act CLV of 1997)*, which delegates the management of market supervision activities to the FVF in conjunction with other

market surveillance authorities. In brief, the essential tasks of the FVF can be laid out as follows:

- protection of consumer interest;
- protection of the life, health and safety of the consumers;
- provision of adequate information to the consumers; and
- taking part in consumer protection education.

Concluding Observations and Future Scenario

Hungary's policy goal now is not just to establish a market economy but to bring its market's performance closer to those of the most developed Member States of the EU.

Though Hungary has the necessary legal framework in place and the GVH is functioning well, yet further efforts are required to raise awareness of anti-trust rules and to build up a plausible and transparent competition culture. Special training programmes still need to be designed for judges.

Regarding the enforcement, in order to ensure further strengthening, priority has to be given to cases, which distort competition on a large scale.

The relationship between the GVH and the sector regulators needs to be further strengthened. The GVH should be closely involved both in developing and applying sector-specific access regulations, to guard against obstinate results.

Indeed, Hungary has met all the requirements for accession into EU but still needs to develop a track record of proper application and implementation of state aid legislation. Special attention is required in amending its fiscal legislation, so as to introduce the agreed modifications to generate fiscal benefits.

Suggested Readings

1. Annual Report on Competition Law and Policy Developments in Hungary, www.gvh.hu
2. Website of International Law Office, www.internationallawoffice.com
3. Website of Global Competition Forum, www.globalcompetitionforum.org
4. Global Competition Review, www.globalcompetitionreview.com
5. 'Background Report on the Role of Competition Policy in Regulatory Reform' by Michael Wise, available at <http://www.oecd.org/dataoecd/3/24/2497266.pdf>

Endnotes

- 1 Competition Council is the decision-making organ within the GVH
- 2 <http://szilagyipal.wordpress.com/s>

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