The European Lawyer Merger Control Book – Questionnaire

Chapter on HUNGARY[1]

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Legislation and jurisdiction

1. ***What is the relevant merger control legislation? Is there any pending legislation that would affect or amend the current merger control rules described below?***

   Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (the "Competition Act") contains the rules on merger control regarding all concentrations which do not meet the EU notification thresholds under the rules of the EU Merger Regulation (Council Regulation No 139/2004 of 20 January 2004). Since May 1st, 2004 Hungary is a member state of the European Union, therefore, all EU Regulations, including the EU Merger Regulation, have to be applied directly in Hungary.

   The Competition Act has been modified several times since its original enactment. Minor modifications of the Act are under elaboration which may come to effect during 2012, but no major changes are expected at this point of time with respect of the merger regulations of the Act.

2. ***What are the relevant enforcement authorities, and what are their contact details?***

   The Hungarian merger control authority is the Office of Economic Competition ("Competition Office") situated in Budapest having jurisdiction over all mergers which fall under the scope of the Act. Since Hungary is a member state of the European Union, for any concentration which under the scope of the EU Merger Regulation meets the thresholds contemplated in the Regulation, the European Commission has exclusive authority.

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The contact details of the Hungarian Office of Economic Competition are:

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Tel: 00-36-1-478-8900
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www.gvh.hu
The website is available in Hungarian. Some documents (e.g. the merger clearance request form) are available in English.

3. ***What types of transactions are potentially caught by the relevant legislation?***

Each transaction that results in concentration of companies falls under the merger control regulations and needs to be cleared by the Competition Office in case other legislative conditions of the merger clearance requirements are met. According to Section 23 of the Act a concentration is deemed to arise where:

"a) two or more previously independent companies merge, or one merges into another, or a part of a company becomes a part of another company which is independent of the first company; b) where one or more companies jointly acquire direct or indirect control of the whole or parts of one or more other, previously independent, companies; c) several independent companies jointly set up a company to be controlled by them that is capable to function in all respects as an independent company." More specifically these rules cover the following situations:

aa) Based on the above merger clearance is required in case of different methods of mergers amongst independent companies, whether one company or part thereof is merging into another, or when two companies are merging together into a new third company.

ab) The other typical area of transactions where merger clearance is required is where direct or indirect control is acquired by a company over another company by purchasing shares, assets, voting rights, or management rights. It typically occurs when purchasing shares, business quota, stocks or voting rights in another company. Merger rules apply also in case of an asset purchase transaction if the acquisition results in taking control over an entire business unit of another company. A business unit is defined by the Act as assets or rights, including clients and customers, that if acquired, enable the acquiring company to enter a market by itself or together with the assets and rights in its disposal.

ac) Establishing a new company by several others which then will be under their control and will be capable of functioning as an independent company falls also under the merger clearance regulations.

In all of the above circumstances the Act distinguishes between “direct” and “indirect” control. Direct control is exercised by a company (or more companies acting jointly) if a) it holds over 50 per cent of the shares, stocks or voting rights in the controlled company; or b) it has the power to designate, appoint or dismiss the majority of the executive officers of the other company; or c) it has the power, by contract, to assert major influence over the decisions of the other company; or d) it acquires the ability to assert major influence over the decision of the other company. A company shall be deemed to have indirect control over another company when the latter is controlled, whether independent or jointly, by one or more companies under the control of the former.

A joint control of two or more companies may occur with or without a specific agreement, e.g. in the event when two companies hold 50-50% ownership of the votes in a company, consequently they can pass valid resolutions only together. Joint control whether by agreement or de facto is considered as concentration under Hungarian law.

4. ***Are joint ventures caught, and if so, in what circumstances?***

Joint ventures may be caught under Hungarian merger rules and practice under two different scenarios.

a) One scenario is when as a result of a contractual arrangement or otherwise, two or more companies jointly exercise control over another otherwise independent company. This may be the case when companies, regardless of their ownership ratio in a company come to a voting agreement according to which they will pass resolutions together, or appoint or dismiss the majority of the executive officers or assert major influence over the decisions of the other company.

b) Establishing a new company by several others which then will be under their control and will be capable of full functioning as an independent company falls also under the merger clearance regulations. This concept is similar to the full function joint venture known under the EU regulations and have similar requirements, most importantly it has to have the ability to function independently and autonomously on a lasting basis.

5. ***What are the jurisdictional thresholds?***

Authorization of the Competition Office to a concentration is required if the combined net sales revenue of all groups of companies involved in the previous financial year exceeded fifteen billion forints, (app. EUR 55 million), provided that there are at least two groups of companies involved, each with net sales revenues of five hundred million forints (app. EUR 1,8 million) or more in the previous year. When considering the five hundred million threshold, those mergers will also need to be taken into account which took place during the two-year period preceding the merger - and which were not subject to authorization - between companies that used to be part of the group that lost control due to the merger with companies of the group that acquired control. In other words: in case there was another merger between the same company groups during the last two years prior to the merger in question now, the net sales revenues of the companies acquired previously will need to be added up and taken into account in case such previous acquisitions between the same groups were made without a merger clearance procedure. This rule aims to deprive the merging companies from the possibility of avoiding a merger clearance by dividing the transaction into separate acquisitions, i.e. “slicing up” the transaction into smaller units. Previously this rule affected all previous acquisitions of the purchaser regardless from which company it acquired shares or assets. As a result of the modification of the Act in 2005, only those previous acquisitions need to be counted which were made between the same company groups (i.e. the purchaser acquired control over a company or company unit from the same seller group).

With respect of companies with registered seat in Hungary, their world-wide revenue needs to be calculated.

In the course of calculating the net sales revenues of companies whose corporate domicile is abroad (not resident in Hungary), the net sales revenues generated in the previous business year from the goods sold in the territory of the Republic of Hungary shall be taken into account (Section 27.§ (2)).

Revenues within the groups on each side of the transaction as well as revenue between the participating company groups are to be deducted. On the side of the company taking control, revenues of all direct and indirect participants need to be calculated and their aggregate amount needs to be added to the revenue of the target. The revenue of the company losing control is irrelevant. In the event of partial control in a subsidiary, the same percentage of the revenue counts as the interest of the given company in the subsidiary.

6. ***Are these thresholds subject to regular adjustment?***

No, the thresholds are rarely adjusted. The thresholds discussed above have been in force since their last modification made in 2005. No modification is expected in the near future.

7. ***Are there any sector-specific thresholds?***

The threshold is the same in each sector, nevertheless, different rules of calculation apply when acquiring control over insurance companies, investment service providers, investment funds and credit institutions. In case of merger of insurance companies, the value of the gross insurance premiums shall be taken into account instead of the net sales revenue. For the merger of investment service providers and investment funds, the revenue from investment services and membership fees, respectively, shall be taken into account. In connection with the merger of credit institutions and financial enterprises the following items of income shall be taken into account instead of the net sales revenue: a) interest income and similar income; b) income from securities (i.e. income from shares and other variable yield securities, participating interests and income from shares in affiliated companies); c) commissions receivable; d) net profit on financial operations; and e) other operating income (Section 24. § (3)).

8. ***In the event the relevant thresholds are met, is a filing mandatory or voluntary?***

Filing is mandatory in case the above thresholds are met, except when the exceptions listed under point 9 below apply.

9. ***Can a notification be avoided even where the thresholds are met, based on a "lack of effects" argument?***

Once the thresholds are met, notification is mandatory. “Lack of effects” arguments may be made in the notification documentation, but such circumstances will be carefully investigated and valuated by the Competition Office before passing its resolution to approve or disapprove the concentration.

There are two legislative exceptions from filing the ground of which can be brought back to a “lack of effects” theory: a) the activity of a liquidator or receiver shall not be considered as control (Section 23.§ (4)); b) the temporary acquisition of control or assets by an insurance company, credit institution, financial holding company, mixed activity holding company investment firm or property management organization shall not be deemed as concentration, if such acquisition is made in preparation of resale, and if

control is not exercised, or it is limited to an extent that is absolutely necessary (Section 25.§). Such control is exempted from filing only for one year that can be extended by the Competition Office if the company in question proves that alienation could not be accomplished within one year. It is important to note that the exception applies only in case the purchaser took control with the specific goal of a temporary ownership with the aim of reselling the shares or assets and such sale within one year has economic and technical (organizational) reality.

10. ***Are there special rules by which a notification of a "foreign-to-foreign" transaction can be avoided even where the thresholds are met?***

"Foreign to foreign" transactions are not exempted merely due to the fact that the parties involved in the transaction are foreign companies having a seat outside of the territory of Hungary. The calculation test regarding net sales revenue has to be made in each case in accordance with the Act. As discussed under question 5 in more detail, in the course of calculating the net sales revenues of companies whose corporate domicile is abroad (not resident in Hungary), the net sales revenues generated in the previous business year from the goods sold in the territory of the Republic of Hungary shall be taken into account (Section 27.§ (2)).

In the recent past there have been two cases where a smaller amount of fine was imposed in foreign-to-foreign transactions in the amount of HUF 1,1 million (app. EUR 4,000) and HUF 500,000 (app. EUR 1,800), respectively.

11. ***Does the relevant authority have jurisdiction to initiate a review of transactions which do not meet the thresholds for a notification?***

The Competition Office may initiate a proceedings for the review of any transaction which was not notified for merger clearance in order to receive sufficient information based on which it can conclude whether filing should have been made. In the event the information received in the proceedings proves that no filing was required, the Competition Office terminates the proceedings. On the other hand, in the event the Competition Office has no reason to believe that the concentration was made in violation of law, there is no legal basis for the commencement of a proceedings and it is unlikely that the authority will commence such proceedings.

Notification requirements, timing and potential penalties

12. ***Is there a specified deadline by which a notification must be made?***

The application for authorization has to be submitted with the Competition office within 30 days from a) the conclusion of the contract; b) the publication

of the public tender; or c) the acquisition of the right of control, whichever occurs earlier (Section 28.§ (2)). In the event of failing such deadline, the Competition Office may impose a fine in the maximum amount of HUF 200,000 per day for each day of the delay.

13. ***Can a notification be made prior to signing a definitive agreement?***

No notification can be made prior to signing the agreement aiming the concentration. The agreement duly executed by the parties must be filed for review with the Competition Office together with the other documents required for filing.

14. ***Who is responsible for notifying?***

In the case of merger or fusion, the direct participant(s), in all other cases the person acquiring the business unit or direct control must apply for authorization (Section 28.§ (1)). In the case of acquiring joint control, by two or more companies and in the case of a joint venture, the parties involved have to file. Filing together with the seller is not possible. Nevertheless, in all cases the target also qualifies as a "party" in the merger control proceedings and has to be represented in person or through a power of attorney.

15. ***What are the filing fees, if any?***

The filing fee, in the case of a simplified proceedings, equals to HUF 4,000,000 (app. EUR 15,000) that has to be paid simultaneously with the filing of the request for approval of the concentration. In the event the Competition Office concludes that no simplified proceedings is possible in the given case, it passes a resolution about the extended proceedings, in which case further HUF 12,000,000 (app. EUR 45,000) has to be paid as procedural fee within 15 days from receipt of such resolution. Payment has to be made to a specified account of the Competition Office.

16. ***Where a notification is necessary, is approval needed before the transaction is closed/implemented (is there a waiting period or a suspension requirement)?***

According to Section 29 of the Act, the approval of the Competition Office is required to the "coming into being" of the agreement targeting the concentration (in the event other conditions of filing are met). Although there are different views in literature how this wording affects the possibility of an early closing, we believe that the proper interpretation of the Act and the relevant rules of the Civil Code is that in the event filing is necessary, no closing or completion of the transaction is allowed without the authorization of the concentration by the Competition Office. In practice the Competition

Office so far has not imposed a fine on companies for early closing, provided that the merger clearance request was filed in a timely manner and the authority – post facto - approved the concentration. Nevertheless, closing prior to approval is a very dangerous step and cannot be encouraged, since in the event the Competition Office does not approve the concentration, it most likely will order the reversion of the transaction.

17. ***If there is a suspension requirement, is it possible to apply for a derogation in order to close before approval is granted? If so, under what circumstances?***

No derogation from the merger authorization requirement is possible. Authorization has to be actual, or under certain circumstances authorization is deemed due to lapse of the procedural deadline (discussed in detail under question 22).

18. ***Are any other exceptions (carve-outs, etc.) available to allow parties to close/implement prior to approval?***

There are no statutory carve-out provisions in the Act. Under Hungarian law it is very difficult to find a method through a carve-out or otherwise whereby authorization can legally be avoided or closing would be possible prior to the authorization. In the case of international multijurisdictional transactions, under certain circumstances the transaction can be restructured in order to allow the closing of the rest of the transaction and to reach that the completion with respect of shares or assets relevant to Hungary can be delayed (for example by setting up a project company by seller that temporarily holds the Hungarian assets or shares until authorization of the Hungarian Competition Office is issued).

19. ***What are the possible sanctions for failing to notify a transaction?***

Different sanctions may apply, depending on the circumstances.

a) A fine may be imposed by the acting Competition Council on the company responsible for filing the amount of which is maximum HUF 200,000 for each day of delay. The aggregate amount of the fine may not exceed 10% of the net sales revenue of the company or company group - of which the company penalized is identified in the resolution as a member - for the financial year preceding the year when the resolution on the illegal conduct was adopted. The fines imposed in the recent past varied in the range of HUF 500,000 and 27,000,000 (app. EUR 1,800 – 100,000).

b) In the event in a competition control proceedings it is established that the concentration that was implemented without the authorization of the authority

could not have been authorized, the Competition Office, in order to restore effective competition, may prescribe the separation of the merged companies, the alienation of companies, assets or business units, the termination of joint control or some other obligation, or may order the diversion of the entire transaction, each to be accomplished within a deadline prescribed in the resolution (Section 31.§)).

c) Although some writers are of a different opinion, theoretically, the agreement resulting in concentration without authorization may be considered as "not being in existence" that has the same consequences under Hungarian civil law as if the contract were null and void. This conclusion could be driven from the general rules of the Hungarian Civil Code (Act IV. of 1957) according to which an agreement that requires the approval of an authority will not be considered as "being in existence", until such approval is duly issued (Section 215.§). This potential consequence is not related to the proceedings of the Competition Office, but based on this argument either of the parties or even a third person may, theoretically, challenge the transaction.

d) The authority initiates proceedings ex officio when it learns from information received in another proceedings or from public news that an unreported merger was completed, if there is a reason to believe that merger clearance proceedings was required. The fine is always imposed on the party which was responsible for filing under the Act.

20. ***What are the possible sanctions for implementing a transaction prior to receiving approval (so-called "gun-jumping")?***

In the event the responsible party has not filed for merger clearance at all, it may result in the sanctions as discussed above under question 19.

In the event filing was made properly but the parties complete the transaction without waiting for the authorization of the Competition Office, the situation is different. The Competition Office concluded in different cases that since the sanction of fine under the Act is attached to the fact that no filing was made, the daily maximum HUF 200,000 fine can not be imposed in those cases where a timely filing was made but the parties completed the transaction prior to the receipt of the authorization. In these cases if the Competition Office comes to the conclusion that no authorization can be issued, it may in its resolution oblige the parties to reverse the transaction or may oblige the purchaser to sell the assets or shares acquired as a result of the transaction. In the event the party obliged does not comply with the obligation within the given deadline, the Competition Office can, under the general rules of the Act impose a fine on the company for being in violation of the Act and disobeying the order of the Competition Office.

It is always the party that is responsible for the filing which can be fined or sanctioned otherwise. So far there were no cases where in an early closing situation the authority disapproved the transaction. However, it cannot be excluded that the Competition Office orders to reverse the completed transaction. Primarily the purchaser will be obliged by the Competition Office in its resolution.

Foreign-to-foreign transactions fall under the same rules and sanctions as discussed above.

21. ***What are the possible sanctions for implementing a transaction despite a prohibition decision or in breach of a condition/obligation imposed by a conditional clearance decision?***

Implementing a transaction despite a prohibition decision of the Competition Office may trigger a resolution of the Competition Office ordering the enforcement of its resolution by ordering the reversion of the transaction, and imposing a fine. The amount of the fine is HUF 50,000 for each day of the delay of compliance and HUF 100,000 for each day if the company requests an extension of the deadline. The potential civil law consequence discussed under question 19 (that the transaction may be considered as null and void since it was completed in violation of law) cannot be excluded either.

In case of ordering certain actions or setting certain conditions to the completion of the merger, the Competition Office may order a follow-up investigation in order to collect sufficient information evidencing that the conditions set out in the authorization have been fulfilled to the satisfaction of the authority. In the event the investigator finds that the conditions or obligations were not satisfied or fulfilled, the Competition Office may withdraw its previous ruling authorizing the merger and may oblige the party to reverse the transaction or sell the acquired assets or shares. In case the company disobeys, the CO may set a fine on the party that breached the ruling of the authority.

22. ***What are the different phases of a review? Is there any way to speed up the review process?***

The phases of the competition proceedings in general are: a) the investigation phase conducted by the investigator; b) the decision making phase conducted by the Competition Council; c) in the event the approval was issued upon the fulfilment of certain conditions, the decision may be followed by a follow-up investigation phase; d) in those cases where necessary, the phase of enforcement.

Upon receipt of the filed documents the investigator reviews the received information and documents and orders the commencement of the proceedings. In the event the investigator finds that certain information or documents required by the Act are missing, it will order the filing party to complete its filing with the missing information within a given deadline. When the file is completed and the investigation has been finalized, the investigator prepares its report and sends it to the chamber of the Competition Council acting in the case. The report, in addition to the facts and the finings, includes the recommendation of the investigator how to decide in the merits of the case.

The Competition Council may issue its resolution without further proceedings if it finds that the concentration may be authorized in accordance with the request filed without any conditions or obligations. In all other cases the acting chamber of the Competition Council issues and sends to the parties its preliminary opinion that includes the relevant facts, the evidences, the valuation of the circumstances and the explanation of the grounds and criteria on the bases of which the case is to be resolved. The parties may respond to the preliminary opinion. A hearing is held in the case the parties request so or the Competition Council considers it necessary. The hearing is open for the public. The Competition Council may exclude the public from the hearing or a part thereof ex officio or for the request of the parties if the circumstances meet the requirements prescribed in the Act.

The resolution of the Competition Council is announced at the hearing, if any, and will be distributed to the parties in writing.

23. ***Is there a possibility for a "simplified" procedure or shorter notification form and, if so, under what conditions would this apply?***

The Competition Office passes its resolution in a simplified proceedings in the event if it concludes that a) there is no concentration in the meaning of the Act; or b) the merger remains below the threshold value specified in the Act; or c) authorization cannot be denied under the rules of the Act, i.e. the concentration does not significantly reduce competition in the relevant market, particularly in consequence of creating or intensifying a dominant position in the market. (Usually this is the case if the combined market share of the parties after the merger remains under 20%.)

In case of a simplified proceedings, the Competition Office has to pass its resolution within 45 days from the filing of the request, provided that the filing was complete. In the event the investigator concludes that certain data or documents are missing from the filing, it orders the completion of the documents and information within a deadline specified in the resolution. In this event the 45 days deadline for the completion of the proceedings will be

calculated from the date when the file was completed with the missing documents and information. In justified cases the 45 days administrative deadline may be extended at one occasion with a maximum of 20 days. In the event no resolution is passed by the Competition Council within such deadline, the authorization of the concentration is deemed to be given, provided that the Competition Council has not passed a resolution within such deadline according to which no simplified proceedings is possible in the case.

Even in the event if a simplified proceedings has a likelihood, the same (complex and complicated) notification form needs to be completed and filed.

In those cases where no simplified proceedings is possible, the Competition Office has to pass its resolution in the merits of the case within four months from the date when the information provided by the party is complete. This deadline may be extended in justified cases at one occasion with a maximum of two months. In the event if no resolution is passed by the Competition Council within such deadline, the authorization of the concentration is deemed to be given.

24. ***What types of data and what level of detail is required for a notification?***

When filing a merger clearance application, the properly completed copy of the notification form prescribed by the Competition Office for this purpose has to be submitted along with the application. Applications submitted without the aforesaid form will not be accepted. The application has to contain all facts and data necessary for the assessment of the case.

The form includes questions regarding the following issues:

- company data of the direct and indirect participants
- detailed description of the planned transaction and all related agreements which contain restraint of trade,
- description of the control structure of the company groups involved prior to and after the merger
- net turnover data of the company group acquiring control as well as that of the target company(ies)
- description of the economic activities of the companies involved in the merger, including the products manufactured and traded or services offered
- detailed description of the relevant markets affected by the merger, including information on market shares, biggest purchasers, clients and suppliers, mobility of the markets, possibilities of new entry to the market, etc.
- description of relation between competitors

- evaluation of the merger, describing the horizontal, vertical, portfolio and potential conglomerate effects on the relevant markets and competition, naming the advantageous effects of the merger on competition
- naming potential undertakings offered by the applicant
- international aspects of the transaction.

25. ***In what language(s) may notifications be submitted?***

The notification form needs to be filled out in Hungarian. Most accompanying documents have to be filed in certified Hungarian translation, some documents are accepted in English or in original language (only those which are indicated as such in the filing form). The executed transaction agreement has to be filed in original language and in certified Hungarian translation. In case the agreement contains provisions which are irrelevant from a merger control perspective, only the relevant parts of the agreement need to be translated to Hungarian.

26. ***What documents must be submitted along with a notification?***

The documents required for filing in general are the following:

- notification form completed
- power of attorney from all direct participants
- certificate of incorporation for all parties
- a certified copy of the signed transaction agreement
- any other agreement related to the transaction that may affect competition
- company group chart showing control relations before and after the merger
- financial statements for the previous business year for each party in the concentration as well as for their Hungarian subsidiaries
- financial statements for each affected group members as well as their Hungarian subsidiaries
- declaration signed by each filing party and direct participant that the data and information provided is complete and correct
- all merger clearance decisions adopted by foreign competition authorities in the same transaction (if any)
- the bank certificate proving the payment of the procedural fees.

27. ***What are the possible sanctions for providing incorrect, misleading or incomplete information in a notification?***

a) When filing a merger clearance application, the properly completed copy of the notification form prescribed by the Competition Office for this purpose has to be submitted along with the application. Applications submitted without the aforesaid form shall not be accepted. The application has to contain all facts

and data necessary for the assessment of the case. In the absence of complete information, the investigator may send back the application to the applicant, requesting the provision of the missing information within the deadline specified in such ruling. The deadline may be extended once in justified cases. In the event the acting chamber of the Competition Council finds that the information provided in the investigation phase is incomplete, it may give back the file to the investigator to request the missing information from the applicant. When so requested by the investigator, or by the Competition Council, the party is required to supply all information as it may be necessary for reaching a conclusive decision. In the event the applicant fails to provide the completion of the information or does not provide it adequately, the investigator shall terminate the proceedings. Such ruling may be appealed by the applicant. The appeal shall be adjudged by the Competition Council acting in a chamber. The ruling of the Competition Council may be challenged at court in which case the Metropolitan Court of Budapest shall review the case according to the provisions on the judicial review of rulings adopted in administrative proceedings (Sections 24.§, 65.§, 68.§ and 82.§.).

b) In the event the authority discovers *during the merger clearance proceedings* that the information provided is incorrect or misleading, an administrative penalty may be imposed on the party. Such penalty may be imposed upon the party to the proceedings or any person who is required to cooperate in the process to ascertain the relevant facts of the case if, during the proceedings, they perform acts or engage in conduct which are aimed at or result in the protraction of the proceedings or making it impossible to reveal the relevant facts of the case. The minimum amount of the administrative penalty is HUF 50,000, while the maximum amount of the penalty in case of companies is one percent of the net sales revenue of the previous financial year, or in case of natural persons HUF 500,000 (Section 61.§ (3)).

c) In the event the Competition Office *discovers following the issuance of its resolution authorizing the merger* that granting of the approval was based upon misleading communication of a fact of importance for the purposes of making the decision, it shall revoke its previous decision. Such revocation resolution may be made only in the event if the original resolution has not been reviewed by court, and in any event only within five years of statute of limitation commencing from the date of issuance of the original resolution authorizing the merger (Section 32.§). The Competition Office may impose a fine on the party or any person that violates the Act or provides untrue statements or data in the proceedings.

28. ***To what extent is the relevant authority available for pre-notification discussions? Are pre-notification consultations customary?***

No official pre-notification discussion is available under the provisions of the Act. Nevertheless, the investigators, as well as the members of the Competition Council are often available for a brief informal consultation in case the interpretation or the application of certain rules of the Act are not entirely clear or may be problematic. In a few and very exceptional cases the Competition Council provided written opinion on the interpretation of a given situation. Neither such consultation, nor a written opinion includes advice or indication about the potential outcome (approval or rejection) of given concentration and neither of them has binding effect, nor can be relied upon officially at court or even at a later proceedings of the authority.

29. ***Where pre-notification consultations are possible, what measures does the relevant authority take to ensure that such discussions are treated confidentially?***

Since no statutory pre-notification consultation is available, there are no special confidentiality rules in the Act. Normally, informal consultations on interpretation issues are made on a no-name basis.

In the event the authority issues a written preliminary interpretation, the same rules apply as discussed under question 31.

30. ***At what point and in what forum does the relevant authority make public the fact that a notification has been made?***

Since 2007 the Competition Office notifies the public on its website about each commenced proceedings. In the case of merger clearance requests the notification includes only the name of the applicant and the direct participants and an invitation of the market participants to express their view about the planned merger. The notification also includes the expected timing of the decision.

31. ***Once the authority has issued its decision, what information about the transaction and the decision is made publicly available?***

Typically the entire text of the decision, including its reasoning and analysis of the market is available for the public, since it is published on the website of the Competition Office. The parties are entitled to request at any stage of the proceedings, with the goal of safeguarding of trade secrets, that free access to the documents for inspection or for making copies or notes be limited. The investigator or the Competition Council issues a ruling with respect of such request. Simultaneously with adopting such decision they order the parties to supply the same documents in a version in which the business secrets are removed (Section 55.§ (3)). In case of granting such request the documents containing business secrets shall be treated confidentially throughout the

entire proceedings. In such case the Competition Council will issue two versions of the final resolution in the proceedings: one that contains the confidential information which will be treated confidentially, and another that does not include the confidential data or information and which will be published on the website of the Competition Office.

Substantive assessment of the merger, role of third parties and remedies

32. ***What is the substantive test for assessing the legality of a notified transaction?***

The Competition Office adjudges the merger application upon weighing the advantages and disadvantages resulting from the concentration. In accordance with Section 30.§ of the Act, amongst others, the following considerations are taken into account:

a) the structure of the relevant markets; the existing or potential competition, the purchase and sales opportunities on the relevant markets; the costs and risks, as well as the technical, economic and legal requirements for entering into and exiting from the market; the foreseeable impact of a concentration upon competition in the relevant markets;

b) the market position and strategy of the companies concerned, their economic and financial capability, their business policy, their competitiveness and national and foreign markets and any expected changes therein;

c) the effect of concentration upon the suppliers, business partners and consumers.

The Competition Office may not refuse the granting of an authorization of the merger if, based on all circumstances to be taken into account, the concentration does not significantly reduce competition in the market, particularly in consequence of creating or intensifying a dominant position in that market.

33. **What theories of harm are considered by the authority in assessing the transaction? How concerned are the authorities with non-horizontal (e.g., vertical or conglomerate) effects, and are any other theories of harm analyzed (e.g., coordination in the case of joint ventures)?**

The authority investigates and takes into account, in addition to the horizontal effects the vertical, the portfolio as well as the conglomerate effects.

34. **Are non-competition issues, such as industrial policy or labour policy, commonly taken into account in the assessment of the transaction?**

The Competition Office concentrates strictly on competition issues and the effect of the concentration on the market situation and not on other industrial or labour policy issues. Nevertheless, the competition issues and the market situation which are directly considered may closely or indirectly affect the relevant industry and may have effects on the labour situation.

35. **Are economic efficiencies considered as a mitigating factor in the substantive assessment?**

The potential economic efficiencies are carefully evaluated by the authority. The filing party has to prove that the merger contributes to technical development, higher productivity and cost savings which may lead to direct short-term savings to the customers. The efficiency-related benefits have to be merger specific, and the short-term reduction of prices has to be verifiable and benefit the customers directly.

36. ***Does the relevant authority typically cooperate/share information with authorities in other jurisdictions?***

The Competition Office shares information to the extent required by law with the competition authorities of the European Union. To competition authorities of non-EU members information is provided only upon the receipt of the consent of the relevant party.

37. ***To what extent are third parties involved in the review process?***

The Competition Office usually requests in writing the opinion of major competitors, suppliers and purchasers of the companies involved, as well as industrial organizations and trade associations about the market, sales and purchasing opportunities, the possibilities and difficulties of entering into the market, the competition in general on the given market, etc. The scope of such organizations and companies varies depending on the industry involved.

The authority may impose a fine in the event the third party fails to respond to the questions addressed by the authority.

38. ***Is it possible for the parties to propose remedies for potential competition issues?***

The parties involved in the concentration are welcome either in their notification application or at any time during the course of the proceedings to suggest different actions or recommend certain undertakings with the goal of reducing the potential detrimental effects of the concentration.

39. ***What types of remedies are likely to be accepted by the authority (e.g., divestment remedies, other structural remedies, behavioural remedies, etc.)?***

In the interest of reducing the disadvantageous effects of a concentration, the Competition Office may render its authorization contingent upon preliminary or subsequent conditions; in particular, certain obligations, such as having to alienate certain business units or other assets within a prescribed deadline; or the termination of control over a company that is indirectly involved in the merger (Section 30.§(4)). In other cases the Competition Office ordered certain continuous behaviour, for example to provide access to the competitors to certain networks over which the purchaser gained control as a result of the planned transaction.

40. ***What power does the relevant authority have to enforce a prohibition decision?***

The Competition Office acts directly in order to enforce its resolution by issuing a resolution in which it orders the fulfilment of its previous resolution. In its enforcement resolution the authority may impose a fine on the company and may order any action in order to restore competition, including the separation of an undertaking or certain assets or cessation of control. On the other hand the authority has no power to seize assets.

Judicial review

41. ***Is it possible to challenge decisions approving or prohibiting transactions? If so, before which court or tribunal?***

The decision of the Competition Office may be challenged at court within 30 days from the date of receipt of the resolution. The Metropolitan Court of Budapest has exclusive jurisdiction to hear the case. It may nullify or modify the resolution issued by the Competition Office. In case of nullification it may order the Competition Office to repeat the proceedings. The decision of the Metropolitan Court may be appealed at the regional appellate court the decision of which is final and binding. Extraordinary judicial review is available against the decision of the appellate court from the Supreme Court in the event if the judgment is in violation of law. The challenge of the resolution at court does not suspend the obligation of the party to pay the fine imposed by the Competition Office in its resolution, unless such suspension is granted, for the request of the party by court. Suspension of the payment is ordered only in very exceptional situations.

42. ***What is the typical duration of a review on appeal?***

The proceedings at the Metropolitan Court and at the appellate proceedings may take several years (even 10 years if several court levels are involved).

43. ***Have there been any successful appeals?***

There have been very few successful cases challenging the resolution of the Competition Office rejecting the authorization of a merger. (We note that there were very few prohibiting decisions in merger cases.) In a given case the Metropolitan Court ruled that the Competition Office was wrong defining the relevant market, therefore, the court nullified the decision of the Competition Office and ordered it to repeat the proceedings.

Statistics

44. ***Approximately how many notifications does the authority receive per year?***

During the last five years, approximately 35-45 merger resolutions were issued annually by the Competition Office.

45. ***Has the authority ever prohibited a transaction? How many prohibition decisions has the authority issued in the past five years?***

To our best knowledge there was only one prohibiting resolution issued during the last five years, this was in 2009.

46. ***Over the past five years, in what percentage of cases have binding commitments been required in order to obtain clearance for a transaction?***

During the last five years annually only in two or three cases ordered the Competition Office certain obligations as the condition of the approval. This constitutes app. 5-8% of the cases annually.

47. ***How frequently has the authority imposed fines in the past five years?***

During the last five years the Competition Office imposed a fine in merger cases in app. 3-7 cases annually for delayed filing or for failure of filing.