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The International Comparative Legal Guide to:

Merger Control 2017

13th Edition

A practical cross-border insight into merger control issues

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the thirteenth edition of *The International Comparative Legal Guide to: Merger Control*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of merger control.

It is divided into two main sections:

Four general chapters. These chapters are designed to provide readers with an overview of key issues affecting merger control, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in merger control laws and regulations in 50 jurisdictions.

All chapters are written by leading merger control lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Nigel Parr and Catherine Hammon of Ashurst LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The relevant merger authority is the Hungarian Competition Office (*Gazdasági Versenyhivatal* "GVH", website: www.gvh.hu) and its decision-making body, the Competition Council. The GVH is a state administrative authority that is independent from the Government and only reports to the Hungarian Parliament.

Decisions of the GVH may be challenged before the Budapest-Capital Administrative and Labour Court ("*Fővárosi Közigazgatási és Munkaügyi Bíróság*").

1.2 What is the merger legislation?

The relevant merger legislation is the Hungarian Competition Act (Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, "Competition Act"); in particular, part I chapter 6. The Competition Act sets out both substantive and procedural rules of merger proceedings. As the GVH is part of the public administration, Act CXL of 2004 on the General Rules of Administrative Proceedings and Services is applicable to the GVH's procedure when the Competition Act does not contain special provisions regarding the issue in question.

In addition, there are relevant guidelines, so-called "position statements" and notices of the GVH, such as the notice on "differentiating between concentrations subject to authorisation in simplified or full procedure", the notice on "conditions and obligations in merger clearance decisions", or the notice on "preliminary consultation in connection with merger proceedings".

1.3 Is there any other relevant legislation for foreign mergers?

The Competition Act applies to any transaction that meets the stipulated turnover thresholds. There is no other relevant legislation for foreign mergers.

1.4 Is there any other relevant legislation for mergers in particular sectors?

Sectors regulated by specific legislation include the financial, media and telecommunication, energy (electricity and gas industries), pharmaceutical and railroad transport sectors.

Merger rules for these particular sectors are partly contained in the Competition Act and partly in the sector-specific regulatory acts (e.g. Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises, Act LXXXVI of 2007 on Electric Energy, Act C of 2003 on Electronic Communications, Act XL of 2008 on Natural Gas). In the case of a merger of financial institutions, a special approval from the Hungarian Central Bank as financial supervisory authority ("MNB") is required, in addition to obtaining authorisation from the GVH. Also, in other sectors (e.g. energy, railroad-transportation) the approval by the respective authorities (e.g. the Hungarian Energy Office, Hungarian Railway Office) is required in addition to the GVH's authorisation. For specific media mergers, the preliminary opinion of the Media Council is required, which is binding on the GVH in the sense that it may not approve a concentration which has not been approved by the Media Council.

The Competition Act contains special provisions for the concepts of "key business entities for the national economy" and "mergers of strategic importance at national level".

The Hungarian legislature has empowered the Hungarian government to issue decrees in order to qualify specific mergers as strategically important at national level (i.e. in order to preserve jobs or to secure supplies). These transactions do not require a merger control proceeding or authorisation of the GVH. The government has used this tool to exempt direct or indirect state acquisitions in various sectors (e.g. acquisition of the MKB Bank and of Budapest Bank Zrt., the merger of Takarékszövetkezeti Bank Zrt. and Magyar Takarék Zrt. in the bank sector, acquisition of FŐGÁZ in the energy sector, acquisition of Antenna Hungária in the media sector, and acquisition of majority ownership in Bombardier MÁV Hungary Kft. in the transportation sector).

The acquisition in a liquidation proceeding over a key business entity for the national economy (in the following: "key business entity") is entitled to preferential treatment, whereby the GVH's prior approval for the derogation from the suspension clause is not required, i.e. the acquirer may exercise control prior to the GVH's final decision. However, the GVH may restrict these rights in a separate decision, or prohibit the concentration in its final decision.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught – in particular, what constitutes a "merger" and how is the concept of "control" defined?

According to the Competition Act, a concentration occurs when:

- two or more previously independent undertakings merge; or part of an undertaking is acquired by another independent undertaking;
- one or more persons already controlling at least one undertaking, or one or more undertakings acquire, whether by purchase of shares/securities or assets, by contract or by any other means, direct or indirect control right(s) of one or more other undertakings (which were previously independent but not from each other); or
- two or more undertakings create a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

Control shall be constituted by rights, contracts or any other means which, either separately or in combination, confer the possibility of exercising decisive influence over an undertaking; in particular, by way of:

a) holding over 50% of the shares, stocks or voting rights in the controlled company;

b) having the power to designate, appoint or dismiss the majority of the executive officers of the other company;

c) having the power, by contract, to assert major influence over the decisions of the other company; and

d) acquiring the ability to assert major influence over the decisions of the other company (*de facto* control).

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

The acquisition of a minority shareholding amounts to a merger only if it confers (sole or joint) control over the target undertaking.

2.3 Are joint ventures subject to merger control?

A joint venture which is capable of performing all the functions of an autonomous business entity on a permanent basis (full function joint venture) is subject to merger control, except if the joint venture has as its object or effect the coordination of the activities of the joint venture partners. Such coordinative joint ventures must be assessed against cartel provisions.

2.4 What are the jurisdictional thresholds for application of merger control?

A merger must be notified to GVH if:

- the total net group turnover of the undertakings concerned exceeded HUF 15 billion (approximately €48 million) in the previous business year; and
- there are at least two undertakings concerned whose total group turnover in the preceding business exceeded HUF 500 million (approximately €1.6 million) each.

Please note that for the purpose of calculating the turnover thresholds:

- Intra group revenues must be disregarded. The notion of "intra group" refers to revenues from sales within the same group of one undertaking concerned.
- In the case of foreign undertakings, only the net sales revenues generated from the goods sold or services rendered in Hungary are to be taken into account.
- Special rules apply for the calculation of turnover for financial institutions and insurance companies.
- For the purposes of calculating the HUF 500 million threshold, turnovers of undertakings that were acquired from the same group within two years preceding the acquisition of control by the acquirer group must also be considered, if such acquisitions were at that time not subject to authorisation.

2.5 Does merger control apply in the absence of a substantive overlap?

Yes, all concentrations must be notified to the GVH if the relevant thresholds are met.

2.6 In what circumstances is it likely that transactions between parties outside your jurisdiction ("foreign-to-foreign" transactions) would be caught by your merger control legislation?

All foreign-to-foreign transactions that meet the turnover thresholds have to be notified. In order to avoid having to notify too many transactions without actual relevance for the Hungarian market, the Competition Act uses a special method for calculating turnover thresholds for foreign undertakings whereby only Hungarian turnover of undertakings established outside Hungary must be considered; please see question 2.4 above.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

Temporary acquisitions of control for a period of up to one year by insurance undertakings, financial institutions, investment companies or property managing organisations do not have to be notified, if the purpose of the acquisition was resale and if the exercise of control is limited to the extent to what is absolutely indispensable. The period of one year may be extended by one more year upon request, if the undertaking can prove that it was not possible to divest within one year.

Moreover, the GVH generally has no competence to assess transactions that have a Community Dimension, pursuant to the European Merger Regulation ("EUMR").

In the case of concentrations which are considered as being of strategic importance at national level by way of a government decree, the GVH's authorisation is not required. For details, please see question 1.4.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

The principles are similar to the ones under the EUMR: if the steps together constitute an economically linked (single) transaction, only one "joint" filing is necessary. The GVH issued a notice in this

respect in 2015 (Notice issued in 2015 on treating interdependent transactions as one concentration or assessing more concentrations in the same proceeding). The Notice deals with two types of cases: i) those which are deemed as one concentration (e.g. transactions which are interdependent on each other and linked by the same economic goal; or series of acquisitions (whereby different companies in one group of undertakings acquire several companies in another group of undertakings); and ii) those transactions which do not classify as one concentration, but nevertheless assessed in the same proceeding (provided both are conditional on each other and are concluded on the same day and the applications for authorisation are submitted on the same day).

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

If the thresholds and other requirements of the Competition Act are met, a filing for an authorisation of the GVH is compulsory (for exceptions, see question 2.7 above).

The deadline for the notification was abolished with effect on 1 July 2014, with the introduction of the suspension clause. However, the Hungarian Competition Act clarifies that the notification may only be submitted following the time of publication of the public bid, the conclusion of the contract, or the acquisition of the right of control, whichever occurs the earliest. For further details please see questions 3.3 and 3.7.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

Please see the answer to question 2.7.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

Prior to July 2014, the Hungarian Competition Act did not contain a specific suspension clause or a sanction for implementing the merger prior to the GVH's authorisation (a fine was only available for missing the filing deadline).

The introduction of the suspension clause also resulted in the introduction of a specific fine for breach of the suspension clause. Accordingly, the competition council may impose a *daily* fine of a minimum of HUF 50,000 (approximately €160) and a maximum of HUF 200,000 (approximately €640), up to 10% of the net turnover of the group of undertakings in the business year preceding the violation, from the day of the occurrence of the first of the following events: the publication of the invitation tender; the conclusion of the binding contract; or the acquisition of the control rights by any other means, provided no authorisation of the GVH was requested and the concentration was implemented, regardless of whether the GVH has later approved the concentration.

The Hungarian system also sanctions undertakings for acquiring control despite the GVH's prohibition decision, or for not fulfilling the imposed commitments.

In these cases the GVH may impose a fine of up to 10% of the net turnover of the group of undertakings in the business year preceding the violation. The authority indicated that it would also apply the general fining rule (of up to 10% of the group turnover of the undertaking concerned in the previous financial year) if a concentration has been notified to the authority, but has been implemented prior to the clearance decision (for which the daily fines would not apply, as the undertaking complied with the notification obligation, but breached the non-implementation obligation). Moreover, when the transaction is closed prior to the authorising decision and the authority finally prohibits the concentration, the authority may impose all measures necessary to restore effective competition (including divestments).

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

In the past, there was no express requirement for a "hold separate" solution in the absence of a suspension clause; and case law is still not available on this issue. For possible risks of closing before clearance, please see question 3.7.

3.5 At what stage in the transaction timetable can the notification be filed?

A notification may be filed as soon as (but not earlier than) the transaction agreements have been signed, the public bid is announced or the controlling interest has been acquired. Unlike under European competition law, prior notification (e.g. on the basis of a good faith intention to conclude an agreement) is not permitted under Hungarian law. No formal procedure is available during which an unsigned contract could be pre-reviewed and evaluated by the GVH. However, as a result of the 2014 amendments to the merger control system, an already existing informal procedure, the pre-notification contact was implemented to the Hungarian Competition Act. An amended notice on pre-notification talks was also issued, which emphasises that the concentration must already be decided (i.e. not hypothetical) before pre-notification talks are requested.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

Following the submission of a notification, the GVH may return the filing within 15 calendar days and request that the parties provide further information within a time period specified by the case handler, usually around one month (which may be extended once at the request of the parties). Issuing such data request stops the clock for the GVH until receipt of the applicant's response. The GVH may issue such data request more than once during the proceeding.

Once the GVH has received the filing, it has 30 calendar days (in which the time for answering the data request, and other facts which stop the clock, are not included) to assess the impact of the transaction (Phase I). As of 1 January 2016, the GVH has to decide within eight calendar days whether to clear the transaction in a summary procedure. In case the notification is complete and contains all the necessary data, the GVH issues the clearance decision within such eight-day deadline which does not have to contain a detailed reasoning. In other cases, if the GVH does not find the case sufficient for a summary procedure, it notifies the parties accordingly and continues the Phase I assessment.

Within Phase I – which may be extended by 20 calendar days – the Competition Council (on the basis of a report prepared by a case

handler) decides whether to clear the transaction or open Phase II proceedings in order to assess the transaction in more detail. A final decision in Phase II has to be adopted within four months. Phase II may be extended by another two months.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

Since July 1 2014, the Hungarian Competition Act includes a suspension clause which explicitly prohibits completion of a transaction (especially the exercising voting rights, appointing the management) or, prior to its clearance, by the competition authority. However, the prohibition to complete the transaction does not prevent the signing of the underlying agreement or any necessary action under the agreement, provided the control rights of the acquirer are not exercised.

The Hungarian system has also introduced derogation from this prohibition similar to that under the European Merger Control Regulation. Upon its request, the GVH may permit the acquirer to exercise its control right prior to the GVH's final decision on the concentration, particularly if it is necessary to protect the value of its investment. In the request, the applicant has to provide justification, including the circumstances resulting in the necessity to exercise the control rights prior to the authorisation. The applicant must also demonstrate the form, extent and detailed framework in which he or she intends to exercise such rights.

The GVH may impose an obligation of a limitation of control rights in the context of the derogation. Such a request must be submitted at the same time as the filing of the application for the authorisation of the concentration, or at the latest within eight days from acquiring knowledge of the fact that the control rights need to be exercised prior to the authorisation of the transaction (in the latter case, justification for the delay must also be provided). The GVH issues its decision within 15 days from the submission of the request.

The fines which may be imposed for breach of the suspension clause range from HUF 50,000 to HUF 200,000 per day (from the signing of the contract, issuance of the public bid until the start of the competition supervisory proceeding against the company). This special fining basis is applicable if an undertaking has failed to request the authority's authorisation for the concentration and has implemented the concentration. The authority has indicated that it would apply the general fining rule (of up to 10% of the group turnover of the undertaking concerned in the previous financial year) if a concentration has been notified to the authority, but has been implemented prior to the clearance decision. In 2016, the GVH has imposed fines for the violation of the suspension in two cases, where concentrations were notified voluntarily, however, after implementation. The amount of these fines were HUF 1 million and HUF 16 million.

Furthermore, any contract resulting from the exercising of control rights in violation of the suspension clause is null and void and the undertaking exercising such rights is responsible for the damages. However, the undertaking in breach of the prohibition may not rely on the nullity.

In June 2015 the Hungarian Competition Act introduced a special immunity from fines for small and medium-sized enterprises (SMEs). In the case of first-instance infringement of SMEs, the competition council may refrain from imposing a fine on the undertaking, and shall issue a warning instead.

3.8 Where notification is required, is there a prescribed format?

Yes, the notification must be submitted on a filing form which can be downloaded from the website of the GVH (www.gvh.hu). The filing form is available in Hungarian and English, but may only be submitted in Hungarian. A new filing form – in fact, an amendment of the previous filing form – was issued by the GVH and is to be applied from 1 July 2014.

Since 1 July 2014 original documents in English, German or French may be submitted as annexes to the filing form without a Hungarian translation. However, the GVH may order the parties – *ex officio* or at the request of the parties – to submit a Hungarian translation or summary of such documents. If the documents are in any other language, the parties must submit Hungarian translations as well.

3.9 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

A *short filing form* (i.e. the last sections of the full filing form do not have to be completed if certain conditions – regarding the market shares – are fulfilled) has been available since 2012. As a result, less data has to be provided for non-problematic cases, which accounts for most cases before the Authority. The conditions of a short form filing and Phase I, although similar, do not overlap.

There is a possibility for the GVH to issue – under certain circumstances – a so-called '*simplified decision*' which does not contain the reasoning of the decision. Even if the requirements for a simplified decision are met, it is at the authority's discretion to decide whether to resort to a simplified decision or to conduct a regular proceeding. A simplified decision may speed up the proceeding by saving time for the Authority from having to provide a detailed reasoning of its clearance decision.

Moreover, practice shows that *preliminary consultation (pre-notification talks)* can speed up the proceeding, as the parties can incorporate the GVH's recommendations and requests into the formal filing form, and thereby reduce the chances or scope of an additional data request.

Under certain circumstances two concentrations can be assessed in the same proceeding. Detailed rules are contained in the Notice issued in 2015 on treating interdependent transactions as one concentration or assessing more concentrations in the same proceeding.

3.10 Who is responsible for making the notification?

The responsibility for submitting the filing rests with the acquirer. In case of a merger or a joint venture (as opposed to other types of control, such as acquisition of control), both undertakings concerned are obliged to file the notification. Recent amendments provide that the indirect acquirer (the undertaking owning the acquiring subsidiary/SPV) may also take the position of the notifying party, since in several cases international undertakings only establish subsidiaries for the purposes of the acquisition. In these cases, the mother company may submit the notification instead of the directly acquiring entity.

Regardless of who is responsible for submitting the notification, a Power of Attorney has to be provided both from the acquirer(s) and from the target.

3.11 Are there any fees in relation to merger control?

A filing fee of HUF 4 million (approximately €12,800) is payable together with the submission of the notification. An *additional* fee of HUF 12 million (approximately €38,000) is payable if Phase II proceedings have been opened, i.e. the total Phase I + Phase II proceeding costs HUF 16 million (approximately €51,000). The Phase II fee has to be paid within eight days of the Authority's decision to open Phase II proceedings.

3.12 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

The rules governing a public offer applicable to the public offer at hand are relevant in a merger control clearance process from the perspective of determining the date of the publication of a public bid (from which date the notification may be submitted). If the public bid is published outside Hungary, the national (takeover) laws of the country where the public bid is published will be applicable.

3.13 Will the notification be published?

The recent amendments to the Hungarian Competition Act contain a statutory obligation for the GVH to publish a short summary of facts (without revealing business secrets) on the website of the GVH based on the summary which the parties provide in the notification. However, the parties may prevent such publication by indicating that the fact of the transaction as such also constitutes a business secret.

After the final decision a press release, as well as the non-confidential version of the (final) decision of the Authority on the concentrations, are published on the Authority's website.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

The GVH may not prohibit a transaction if it does not lead to a substantive impediment of competition in the affected market. The substantive test was introduced with effect from 2009, which replaced the previously applied dominance test. The explanatory notes of the amendment introducing the effective competition test refer to both the SLC tests ("significant lessening of competition", used in the USA) and the SIEC ("significant impediment of effective competition", applied in the European Union). The wording of the Competition Act is not identical to that of the EUMR but reflects more the SLC test: "the GVH authorises the transaction if it does not lead to a substantive impediment of competition [and not the significant impediment of effective competition – remark by the author] on the relevant market, in particular as a result of the creation or strengthening of a dominant position". This test affords the GVH wider possibilities to take economic considerations into account when assessing a transaction.

4.2 To what extent are efficiency considerations taken into account?

The Hungarian Competition Act does not explicitly mention efficiency considerations, but they can be deducted implicitly from the wording of the Competition Act when referring to the "advantages and disadvantages [which] must be taken into account" when assessing a merger. A guideline on the general methods for assessing a merger contains a reference to the efficiency considerations and defines the criteria similarly to those of EU law: "If the concentration reduces the production costs of the undertakings concerned, this may lead to a decrease in price. When assessing these efficiency considerations it is important that they should be merger-specific, numerically verifiable, and must benefit the consumers to the appropriate extent." It is the task of the undertakings concerned to demonstrate the above criteria, and the notification form contains a related section. The Hungarian Authority is expected to follow European competition law with respect to efficiency considerations.

4.3 Are non-competition issues taken into account in assessing the merger?

Non-competition issues are not taken into account in the GVH's assessment. Such issues are assessed by the respective authorities (e.g. the Central Bank as financial supervisory authority) in separate procedures.

However, certain acts for particular sectors (e.g. media) oblige the GVH to obtain the opinion of the special sectoral/industrial body in a merger related to that specific sector. There is precedent where a special body in the industrial sector denied its consent to the transaction. The GVH signalled that it would also prohibit the transaction, as a result of which the applicant withdrew its application and the GVH terminated the proceedings.

4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

Any third person may submit a (formal) complaint about alleged infringements of the Competition Act – e.g. a failure to submit a merger notification – to the GVH, which has two months from receipt of the complaint to decide whether to open proceedings. A dismissal of the formal complaint may be appealed before the Metropolitan Court of Budapest. If the complaint does not qualify as a formal complaint, it will be treated as an informal complaint, where the GVH does not have to issue a formal decision about opening an investigation, but may do so at its own discretion.

Third parties may submit (informal) comments on a notified transaction to the GVH. Such an informal comment does not confer any rights on the third party; in particular, the third party will not have access to the file prior to the conclusion of the proceeding (except if such a third party is capable of proving that access to the file is necessary for practising its rights or to fulfil legal obligations).

In the course of the proceedings, the officials at the authority may send written requests to competitors, customers, etc. for market information. The GVH may also initiate a public consultation (by publishing the proposed remedies on its website) prior to imposing remedies in a merger control proceeding (market test). Anyone has the right to send comments, opinions and recommendations to this publication within 20 days.

4.5 What information gathering powers does the merger authority enjoy in relation to the scrutiny of a merger?

The GVH has the right to request information from the parties to the transactions and also from third parties (e.g. competitors, trade unions, customers, etc.). Failure to supply the requested

information or submission of incorrect/misleading information may entail fines from HUF 200,000 (in the case of legal persons, approximately €640) and from HUF 50,000 (in the case of natural persons, approximately €160) to a maximum of 1% of the turnover in the previous financial year. In the case of a natural person, the fine may not exceed HUF 500,000 (approximately €1,600).

As explained under question 4.4 above, the GVH has the right to request information from the public on the proposed remedies in the context of a merger control proceeding. However, this is a tool, not an obligation on either side; therefore, no sanctions may be imposed on third parties for not complying with the request published on the GVH's website.

4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The rules on access to file were amended significantly in the summer of 2014. Prior to this date, access to file (even after the end of the proceeding) was very limited.

Pursuant to the applicable rules, the parties to the proceeding may access the file at any time during the proceeding. Third parties may also access the non-confidential version of the file after the end of the proceeding. Moreover, third parties may also have access to the file prior to the end of the proceeding if they can prove a legal interest (such as an enforcement of their rights or compliance with an obligation).

In order to protect commercially sensitive information, the parties to the proceeding must specifically request, with detailed reasoning, for each piece of data or information to be treated as confidential, i.e. that third parties' access to the provided documents or to the making of copies thereof be limited.

Non-confidential versions of the summary of the transactions (provided by the parties in the filing form), as well as of the final decisions of the GVH, are published on its website.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

Both Phase I and II proceedings end with a decision of the Competition Council. In this decision, the GVH either clears (with or without conditions and/or obligations) or prohibits the transaction. The GVH's decision may be challenged by the parties within 30 days from receipt of the decision (see question 5.9).

It is also possible that the applicant withdraws the filing or that the GVH establishes that no authorisation was required. In this case, the proceeding ends with a decision of the GVH on the termination of the proceeding.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Although unconditional authorisation is granted in the majority of the cases, the Competition Act expressly provides for the possibility of clearing a transaction subject to conditions or obligations. The Competition Act entrusts the GVH with a huge discretion to determine the conditions/obligations it wishes to impose on the undertakings. The parties must accept the commitments prior to the authority imposing the commitments on them. This practice is in line with the European one, whereby it is usually the parties (and not the Authority) which offer commitments (either already in the submission of the filing or later in the course of the proceeding when the GVH confronts them with an identified competition concern) and these remedies are negotiated before the GVH includes them in its final decision.

As a general rule, the GVH will decide about the remedies during a Phase II proceeding, but it is not impossible for the GVH to decide in a Phase I proceeding when both the competition concern and its solution are easily identifiable.

The Competition Act differentiates between two types of commitments, namely conditions and obligations. The parallel application of these measures is not excluded, although the latest amendment of the act strengthened the distinction.

Whether the applicants comply with the remedies will be observed by the GVH *ex officio*. In this respect, the GVH initiates review proceedings.

5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?

There is precedent that remedies have been imposed on foreign-to-foreign mergers. In one example, the GVH cleared the acquisition on the cement market of a Slovak company by a Swiss group (the direct acquirer being a German subsidiary) subject to a divesture. The GVH cleared the transaction on the precondition that both the acquirer and the target commit themselves to divest their business shares in a Hungarian subsidiary. However, although the direct acquirer and direct target were foreign companies, both had significant presence (also in the form of subsidiaries) and sales to Hungary. Even if remedies are imposed on foreign-to-foreign mergers, they will most likely relate only to the Hungarian market.

5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

Remedies may be negotiated at any stage during the proceedings (but before the Competition Council's final decision). Although a separate notice has been issued on remedies, there are no exact deadlines or procedural steps to be taken into account, only a few general "guidelines".

Identifying the competition issue itself is a task of the GVH. In cases where the applicants have not submitted structural or behavioural proposals along with the application itself, the case handler will signal the competition issue to the applicants, providing help to work out the appropriate measures. If the Competition Council identifies the competition issue, then either the Council itself will approach the applicants, or it will decide to give the documentation back to the case handler.

However, in order to avoid a Phase II proceeding, the applicant(s) should submit the proposed remedies as early in the proceeding as possible (preferably already with submitting the application for authorisation).

5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

The principles for imposing remedies – including divestments – are laid down in the GVH's notice about conditions and obligations in

merger clearance decisions (Nr 2/2014). The notice mainly deals with various aspects of defining the object and the buyer in cases of a divestment remedy. The identity of the buyer, who is specified in advance, may be specified in the decision or found later within a time limit – usually not longer than six months – set by the GVH; in which case it has to be approved by the GVH. If the divestment cannot take place within the set time frame, an extension of the time limit may be requested.

5.6 Can the parties complete the merger before the remedies have been complied with?

If a transaction is cleared subject to a prior condition, the parties may not complete the merger before fulfilling the condition. For subsequent conditions, implementation may occur before the remedies have been complied with but the decision becomes ineffective if the condition is not fulfilled. Failure to comply with an obligation (remedy) may lead to the revocation of the clearance decisions and/or fines on the parties.

5.7 How are any negotiated remedies enforced?

The GVH conducts a follow-up investigation to verify whether remedies have been adhered to. In the case of non-compliance with the imposed remedies, the GVH may impose a fine unless the GVH establishes that, due to a change in the circumstances, compliance with the remedies is no longer reasonable, in which case the decision on the remedies may need to be amended. If the remedy has been complied with, the GVH will terminate the follow-up investigation.

5.8 Will a clearance decision cover ancillary restrictions?

Ancillary restraints are automatically covered by the clearance decision. However, referring to the practice of the European Commission, the GVH has stated several times that as a general rule, it does not examine whether the provisions on the restraint on competition contained in the transaction agreement(s) do actually constitute ancillary restraints. This has to be assessed by the applicants. Although the Competition Act itself does not contain the requirement of 'direct connection' of the ancillary restraint with the merger transaction, as EU law does, the practice of the Authority requires the above connection.

5.9 Can a decision on merger clearance be appealed?

Merger decisions may be challenged before the Metropolitan Court within 30 days from receipt of the decision.

The Metropolitan Court may not only annul the decision and order new proceedings before the GVH, but it may also alter the decision. The initiation of such a procedure does not have any suspending effect on the enforcement of the GVH's decision. The decision of the Metropolitan Court may be appealed before the Metropolitan Court of Appeal. There is no further right of ordinary appeal but the parties may initiate an extraordinary review procedure before the Hungarian Supreme Court.

5.10 What is the time limit for any appeal?

The time limit for appeal is 30 days from receipt of the decision.

5.11 Is there a time limit for enforcement of merger control legislation?

The limitation period is five years.

6 Miscellaneous

6.1 To what extent does the merger authority in your jurisdiction liaise with those in other jurisdictions?

The GVH is a member of the European Competition Network and thus cooperates closely with the competition authorities of other Member States of the European Union.

The GVH is also part of the International Competition Network.

6.2 Are there any proposals for reform of the merger control regime in your jurisdiction?

The last few years have seen various changes to the merger control regime (changes to substantive law in 2009, 2010 and 2014 and changes to the filing form and update/issuance of guidelines/notices in 2011, 2012, 2013, 2014 and 2015).

The amendments of the last few years signal a *ca*. annual update of the merger documents. This is to be welcomed as it is drawn on the stakeholders' and the authority's practical experience and aims at a better functioning of the Hungarian merger control system.

The latest substantial amendments (which came into force on 1 July 2014 and 19 June 2015) made considerable changes to the procedural and substantive aspects of the Hungarian merger control, implementing the suspension clause, revising the rules on remedies, and further accelerating the merger control proceeding. In the coming months/year therefore, the GVH is expected to elaborate and refine its practice based on the new tools and measures, by issuing guidelines and position statements in the coming months/year.

In 2016 so far, the Hungarian Competition Act has not been amended; however, a proposed bill contains conceptual amendments to the act. First of all, the amendment would raise the HUF 500 million notification threshold (applying to the participant undertakings' group turnover) to HUF 1 billion (approximately €3.2 million). According to the GVH, this amendment would result in a 10–15% decrease in the number of mergers to be notified.

The proposed amendments of the Competition Act intend to introduce a preliminary phase in the merger procedure to decide whether the assessment of the concentration is required. Similarly to the already applicable practice of the summary procedures, the GVH would have 8 days to (i) initiate Phase I assessment; (ii) issue a certificate confirming that assessment is not required; (iii) reject the notification on procedural grounds. If the GVH were going to fail to issue a decision within the deadline, the transactions would be considered cleared.

6.3 Please identify the date as at which your answers are up to date.

The information set out in the above sections is up to date as of 3 October 2016.

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Anna Turi is an attorney at law with Schoenherr Hungary specialising in competition law. She obtained her law degrees from the University ELTE, Budapest (Mag. Iur. 2005) and from the University of Regensburg, Germany (LL.M. 2006). She worked for the European Commission in Brussels in 2006/2007. She earned a further degree as a Competition Law Specialist at University Pázmány Péter Budapest, Deák Institute of Post-graduate Studies in 2010.

She represents clients in several ongoing merger control proceedings (including a Phase II proceeding), cartel proceedings, in a sectoral inquiry before the Hungarian Competition Authority, as well as before courts. Moreover, she runs competition compliance training for several clients. She assists clients in implementing comprehensive new compliance programmes, as well as assisting clients with on-going compliance programmes in several industrial sectors.

Anna Turi has contributed to a number of articles on Hungarian and European competition law in various international legal journals.

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Christoph Haid, a partner at Schoenherr in Vienna, joined the EU & Competition team in January 2004. Since then he has been involved in numerous high-profile merger control proceedings before the Austrian competition authorities and the European Commission and coordinated global merger control filings, particularly in CEE, where his focal point of work lies. In addition, he also advises clients on all aspects of antitrust law, including infringement proceedings before the European courts with respect to alleged anticompetitive practices. Christoph is frequently involved in supporting clients to implement comprehensive anti-trust compliance programmes.

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