

December 2016

Amendments to the Hungarian Competition Act

A new bill, passed on December 6, 2016 amending Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (the Competition Act), is poised to significantly change the Hungarian merger control regime, introducing:

- (i) the obligation to *report* a merger (as opposed to immediately applying for clearance);
- (ii) increased merger control thresholds;
- (iii) the possibility to investigate mergers below thresholds; and
- (iv) dawn raids in merger cases.

In addition, the bill also introduces rules on the enforcement of private damage claims for the breach of competition rules.

I. Merger Control

I.1 Fast-track review of non-problematic mergers

The new regime introduces a fast-track review for non-problematic mergers. As opposed to applying for an approval, the parties will now be required to only submit a *report* to the GVH of any merger that triggers the thresholds, accompanied by a reduced filing fee of HUF 1 million.

Based on such initial report, the GVH will decide, within eight days, whether to (i) close the case in the apparent absence of any significant competition issues; or (ii) initiate an investigation in the presence of potential competition concerns.

The rules of the current merger control procedure, however, remain in essence unchanged. The deadlines and filing fees applicable to Phase I and Phase II procedures are the same as before (including the time period and filing fees spent on the initial review).

I.2 Increased merger control thresholds

The bill introduces new merger control thresholds: (i) the combined net turnover of all the undertakings concerned must exceed HUF 15 billion (same as before), and (ii) the net turnover of at least two undertakings concerned must exceed *HUF 1 billion* (increased from HUF 500 million).

When calculating the turnover figures, only the revenues generated in Hungary will have to be taken into account, as opposed to the current method where the worldwide turnover is taken into account in the case of undertakings registered in Hungary.

I.3 Investigation of mergers below the thresholds

Mergers not triggering the above increased thresholds may nevertheless be reviewed by the GVH if (i) the merger may have a significant effect on competition in particular by creating or strengthening a dominant position, and (ii) the parties' combined net turnover exceeds HUF 5 billion. The GVH will be vested with the power to investigate such mergers within six months of the date of implementation of the merger.

The availability of post-closing review will undoubtedly bring an element of uncertainty to the merger control regime. Thus, parties will likely notify the GVH of mergers that trigger the HUF 5 billion threshold (irrespective of the significance of the effect of the mergers on competition) in order to avoid the risk of post-closing GVH investigations.

I.4 Dawn raid in merger cases

The powers of the GVH will be extended to conducting unannounced inspections in merger control cases as well. This means that, in the course of investigating a concentration, the GVH may search any premises, vehicle or data carrier, enter any premises without the consent of the

owner, tenant or any other person on the premises, and open any sealed-off area, building or premises.

II. Antitrust Damages

The bill also implements the EU's Antitrust Damages Directive (Directive 2014/104/EU) regarding compensation for damages suffered in connection with infringements of Articles 101 (anti-competitive agreements, cartels) and 102 (abuse of a dominant position) of the TFEU by (i) incorporating the principle of full compensation into the Competition Act, (ii) allowing the GVH to participate in court proceedings initiated for the payment of antitrust damages as "*amicus curiae*", (iii) prescribing that the courts shall be bound by the GVH's final and binding decision regarding the existence of a competition infringement, and (iv) allowing injured parties access to GVH files (save for the leniency applications) and evidence held by third parties.

III. Status of the Bill

The parliamentary voting to approve the amendments to the Competition Act was held on December 6, 2016 and the amendments are expected to enter into effect in January 2017.

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