

# Hungarian Competition Policy as a Model-Child

*The 11th CLaSF Workshop*

10 April 2008, Glasgow, Strathclyde University

**SZILÁGYI Pál**

Competition Law Research Centre, Hungary

Competition Law  
Research Centre (Hungary)

# Short history

- Long history
- 1984: competition act - all the basic prohibitions (but no merger control!); based on private enforcement
- 1989/90: change from socialist to market economy
- 1990: New competition act: *almost* state of the art competition act NB: Prime Minister: „*constitution of economic life*”

# Competition Act 1996

- Modern competition act
- Economic situation and environment changed
- Europe Agreement – harmonisation of competition law
- Reflecting European competition law at the time (NB: heavy discussions about vertical agreements)
- Several amendments, three major

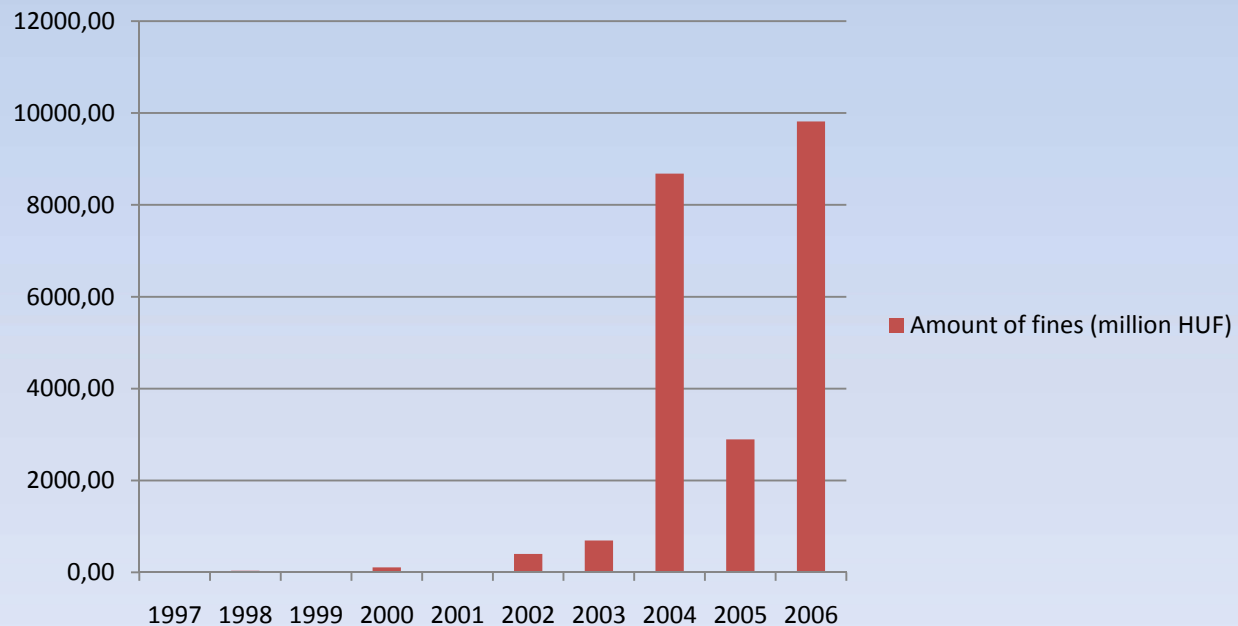
# Competition policy

- “The leading role of competition policy in reform is embodied in the *spirit* and vigour of the Hungarian Competition Office [...]. This situation was designed in a way that keeps enforcement notably independent from political influence, yet also permits it to play an active, public role in policy debate.” – OECD (2000)
- Three pillars, each of them very important:
  - Public enforcement of prohibitions
  - Competition advocacy
  - Spreading „competition culture”

# Cases and fines

- 1997-2006
  - 1100+ cases
  - 355 abuse cases; 174 „Art 81.” cases; 582 merger cases (intervention: less then 3 percent)

**Amount of fines (million HUF)**



# Three particularities I.

- GVH concentrates on bid-riggings and agreements regarding public procurements
- Market definition: if agreed on a specific project or during the last round of the bidding procedure, the relevant market is the tender itself and market shares are evenly allocated (confirmed by national courts)
- Cp. OFT Paper on „Markets with bidding processes” (DotEcon): more emphasis on supply side substitution

# Three particularities II.

- Chief Economist, but PhDs in economics in the Competition Council also
- Sign of change; e.g. abuses cases
- Excessive pricing:
  - Public interest not to interfere with prices
  - Important to protect dynamic competition and long-term consumer welfare
  - *„long-term consumer interest requires the competition authority not to indispose undertakings to invest and to enterprise by ruling high prices unlawful” – E.On (Vj-154/2006)*

# Three particularities III.

- Leniency policy not working
- One application up to date in public domain
- *Kortex-Olympus case*
  - *Vertical case (but no intention in future to do so)*
  - *„at the time of acceptance it was difficult to categorise” (concerned a bidding procedure); legal certainty*
  - the agreement under investigation was such that admitting the leniency application was *„in line with the aims of the leniency notice”*
- *Not working; socio-economic reasons (post-socialist country; small market („everybody knows everybody”))*

# Competition advocacy

- The GVH takes competition advocacy very seriously
  - It constantly follows the legislative proposals and publishes recommendations
  - Has several cooperation agreements with regulatory authorities
  - Publishes market studies
  - Sectoral inquiries (recently: banking, electronic media)

# Promoting competition culture

- Promoting competition culture was formally introduced in the Competition Act in 2005 as a task of the GVH
  - Raising public awareness
  - Dissemination of knowledge
  - Assisting compliance/creation of competitive regulatory environment
- Centre for Competition Culture was created:
  - Publishes books (Motta, Whish), studies
  - Organises events
  - Supports education, etc.

# An other side of the coin

- Well trained professionals, well equipped authority; but consumer deception cases take up most of the work recently: no time and resources for detecting serious cartels (NB: leniency policy does not seem to work either)
- GVH wins about 92 percent of the cases appealed (danger of false positives);

# Proposal 2008 – I.

- The government „published” a proposal for amendment of the Competition Act last week
- Main issues:
  - Streamlining procedure
  - SIEC test
  - Leniency (because of constitutional principles)
  - Private enforcement
  - Director disqualification

# Proposal 2008 – II.

- **SIEC test:** previously dominance test; reasons for change: harmonisation; the ‘GAP’ situation
- **Leniency:** previously conditions contained in a notice; due to constitutional reasons it had to be put in the Competition Act; harmonisation according to ECN model leniency program

# Proposal 2008 – III.

- **Private enforcement:**
  - White Paper last week
  - What Hungary already has in the Competition Act: legal possibility of private actions *expressis verbis* for follow-on and stand alone actions; GVH acts as *amicus curiae* in stand alone actions; representative actions; non-appealable decisions/judgements are binding in follow on actions.

# Proposal 2008 – IV.

- **Private enforcement II.:**

- New amendments:

- Presumption of price increase: 10 percent (only for hard-core cartels)
- If leniency policy applied: limited liability for damages (according to culpability)
- Introducing 'discovery', BUT only for unfair competition law provisions (business secret and imitation)

# Proposal 2008 – V.

- **Director disqualification**

Conditions:

- If none-appealable, final and enforceable decision/judgement;
  - Agreement on buying or selling prices between competitors; market allocation
  - Fines imposed
  - For directors during the time of the infringement
- For two years, ipso iure
  - Exception: if the director did not take part in concluding the anticompetitive agreement or opposed it BUT the exception can only be ‘granted’ by the courts!