



## COUNTRY STUDIES

# Hungary - The Role of Competition Policy in Regulatory Reform 1999

### Introduction

The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers. This report on the role of competition policy in regulatory reform analyses the institutional set-up and use of policy instruments in Hungary. This report was principally prepared by Mr. Michael Wise for the OECD.

### Overview

### Related Topics

## **BACKGROUND REPORT ON**

### **THE ROLE OF COMPETITION POLICY IN REGULATORY REFORM\***

\*This report was principally prepared by **Michael Wise** in the Directorate for Financial and Fiscal Affairs of the OECD. It has benefited from extensive comments provided by colleagues throughout the OECD Secretariat, by the Government of Hungary, and by Member countries as part of the peer review process. This report was peer reviewed in October 1999 in the OECD's Competition Law and Policy Committee.

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## Executive Summary

### Background Report on The Role of Competition Policy in Regulatory Reform

Is competition policy sufficiently integrated into the general policy framework for regulation? Competition policy is central to regulatory reform, because (as Chapter 2 shows) its principles and analysis provide a benchmark for assessing the quality of economic and social regulations, as well as motivate the application of the laws that protect competition. Moreover, as regulatory reform stimulates structural change, vigorous enforcement of competition policy is needed to prevent private market abuses from reversing the benefits of reform. A complement to competition enforcement is competition advocacy, the promotion of competitive, market principles in policy and regulatory processes. This report addresses two basic questions: First, is Hungary's conception of competition policy, which will depend on its own history and culture, adequate to support pro-competitive reform? Second, do national institutions have the right tools to effectively promote competition policy? That is, are the competition laws and enforcement structures sufficient to prevent or correct collusion, monopoly, and unfair practices, now and after reform? And can its competition law and policy institutions encourage reform? The answers to these questions are assessed in terms of their implications for the strategies and sequencing of regulatory reform.

Ten years after Hungary made the formal change from a centrally planned economy to a market system, the competition issues that appear in Hungary's markets are comparable to those in other OECD countries in Europe. The general competition law is already 15 years old. It has been revised twice, most recently in order to mirror EU standards more closely. Competition policy institutions played a central role in creating the conditions for a healthy market economy by ensuring fairness and consumer confidence. The leading role of competition policy in reform is embodied in the *esprit* and vigour of the Hungarian Competition Office ("HCO"). This institution 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. Desirable technical corrections include removing the tight deadlines that could cripple the HCO in contested enforcement matters.

Now that Hungary's market economy is well-launched, competition policy resources and priorities should concentrate more on policing horizontal restraints and anti-competitive mergers and on the competition problems of regulation. As in other OECD countries, Hungary is moving to introduce competition into formerly regulated or monopolised infrastructure sectors and services. Progress is uneven, with liberalisation proceeding in telecoms and trucking, while energy reform is still being studied and buses, rail transport, and natural gas are lagging behind. The HCO has been an important voice calling for competitive reform in these sectors; that role should be sustained and strengthened.

Other competition issues that commonly appear in other OECD countries are appearing in Hungary as well. Actions by local government entities in areas from buses and utilities to funeral and cemetery services, which often combine regulatory functions with providing services, can harm competition. Professions, such as pharmacists and notaries, enjoy legal privileges that prevent competitive entry or inhibit advertising or price competition. And small shop owners are beginning to demand protection against competition from larger, more efficient operators. On these and other issues, the HCO must sustain its already active advocacy and enforcement roles.

## 1. FOUNDATIONS OF COMPETITION POLICY

1. Hungary's adoption of a modern competition law in the 1980s was a principal step in re-establishing the institutional foundations for a market economy. Hungary's post-communist constitution recognises the right to engage in business and calls for the protection of free competition. The competition law is interpreted and applied to promote efficiency, to ensure fairness, and to protect consumer interests. In pursuit of those goals, competition policy institutions have supported and promoted continued reform.

*Hungary's competition policy institutions have developed in an active process of shifting from socialism to a market economy.*

2. Hungary's basic laws and institutions about competition policy follow familiar European models. Before the communist period, Hungary adopted laws much like those of other European nations at the time. A 1923 law<sup>1</sup> provided for private remedies against unfair marketing practices. In addition to specific provisions about business secrets, pyramid schemes, and commercial disparagement, it contained a "blanket clause" prohibiting business practices contrary to morals or business fairness, foreshadowing the current law's general substantive standard. A law to regulate cartels among larger firms, adopted in 1931,<sup>2</sup> provided for a notification process and for public enforcement by the minister of industry and private relief in the courts. But this law, like most of the other cartel laws in Europe, was not applied much before 1945 (OECD, 1996; HCO, 1999c).

3. Hungary anticipated the transition from a centrally directed state to a market economy long ago. An entrepreneurial sector began to re-form in the late 1950s, and reforms in 1968 encouraged it further. With increasing market-based activity came a recognised need for rules about competition. Thus, the civil code addressed exploitative contracts and abusive exercise of contract rights. Special fines applied to business activity against the public interest, that is, to practices that gave an enterprise an unfair advantage and damaged a customer or consumer. Other rules dealt with foreclosing customers from suppliers and with agreements on prices, either to drive another firm out of business or to obtain an unfair gain. A criminal code decree addressed unfair prices. Another decree provided for compensation to firms that were damaged by improper government interference. The goal of most of these rules was to improve performance under the planned economy, more than to protect competition. Still, the rules tended to encourage efficiency and greater reliance on the price mechanism, thus facilitating the transition to a competitive economy (HCO, 1999c).

4. Co-existence of elements of the planned economy with new, independent firms created regulatory problems. Independent firms introduced products whose prices were not part of the plan. The price office—which served as the basis for the competition office—had to take account of the two spheres of circulation in trying to regulate trade flows. In the "free" sector, the price office supervised fairness in a way that tried to mirror the market; that is, a price that balanced supply and demand was presumptively fair. The office also enforced notification requirements and administered rules requiring calculations to justify prices.

5. By the 1980s, Hungary had already taken major steps to create the institutions of a market system (Kovács *et al.*, 1997). In 1979, following a period of retrenchment after 1972, Hungary began to reform consumer prices. In 1980, it adopted a policy about small and medium sized enterprises. Hungary joined international financial institutions in the early 1980s. Where prices were set by reference to import prices in some major industrial sectors, even many prices that were not officially free had adjusted to world price levels by the mid-1980s (HCO, 1999c). An ambitious legislative program eventually produced a new

commercial code, a modernised tax system, new laws on companies and capital markets, and a law on foreign investment (WTO, 1998, p. 53).

6. The first part of this legislative program to be adopted was a comprehensive competition law, which was passed in 1984.<sup>3</sup> This law prohibited unfair market practices, cartels, and abuse of dominance. All the substantive categories of a standard competition law were present except merger control. But the 1984 competition law lacked enforcement structures. The few court cases had little effect, because court enforcement was (and remains) inefficient. The 1984 law's principal achievement was the introduction of the basic legal categories, establishing a basis for the more effective competition law that followed (HCO, 1999c).

7. The competition law was strengthened substantially in 1990, as Hungary moved decisively to shift the basis of its economy and politics. Substantive additions to the law included merger control and rules against consumer deception. Even more important, the law established enforcement procedures and a new enforcement body, the Office of Economic Competition, independent from the government (This body is referred to below as the Hungarian Competition Office, or HCO). The competition law was the first economic law adopted in this wave of reform—just as the 1984 competition law had been the first item adopted in a package of proposed reforms. The draft competition law had already been prepared as of February 1990, before the regime change to the first post-communist government in May 1990. It was thought that the law would have more legitimacy if it was a product of the freely elected government, so it was submitted in August and adopted, nearly unanimously, in November. The Prime Minister called the law the “constitution” of economic life (HCO, 1999c).

8. As Hungary's market economy has matured, Hungary has embraced the goal of membership in the European Union. The most recent revisions to the competition legislation are motivated principally by the goal of approximating Hungary's law to that of the EU.

#### Box 1. Competition policy's roles in regulatory reform

In addition to the threshold, general issue, whether regulatory policy is **consistent** with the conception and purpose of competition policy, there are four particular ways in which competition policy and regulatory problems interact:

- Regulation can **contradict** competition policy. Regulations may have encouraged, or even required, conduct or conditions that would otherwise be in violation of the competition law. For example, regulations may have permitted price co-ordination, prevented advertising or other avenues of competition, or required territorial market division. Other examples include laws banning sales below costs, which purport to promote competition but are often interpreted in anti-competitive ways, and the very broad category of regulations that restrict competition more than is necessary to achieve the regulatory goals. When such regulations are changed or removed, firms affected must change their habits and expectations.
- Regulation can **replace** competition policy. Especially where monopoly has appeared inevitable, regulation may try to control market power directly, by setting prices and controlling entry and access. Changes in technology and other institutions may lead to reconsideration of the basic premise in support of regulation, that competition policy and institutions would be inadequate to the task of preventing monopoly and the exercise of market power.
- Regulation can **reproduce** competition policy. Rules and regulators may have tried to prevent co-ordination or abuse in an industry, just as competition policy does. For example, regulations may set standards of fair competition or tendering rules to ensure competitive bidding. Different regulators may apply different standards, though, and changes in regulatory institutions may reveal that seemingly duplicate policies may have led to different practical outcomes.

- Regulation can **use** competition policy methods. Instruments to achieve regulatory objectives can be designed to take advantage of market incentives and competitive dynamics. Co-ordination may be necessary, to ensure that these instruments work as intended in the context of competition law requirements.

***The goals of Hungary’s competition policy are efficiency, fairness, and promoting the interests of consumers; a new goal is approximating the law of the European Communities***

9. Hungary’s 1989 constitution “recognises and supports the right of entrepreneurship and the freedom of economic competition.”<sup>4</sup> The Constitutional Court has held that these constitutional provisions protect competition against state interference, and that the right to undertake a business is a basic right. State regulation of free competition must be proportional, and the state must not give itself undue advantages when it participates in the market (HCO, 1999c). Free competition in itself is not treated as a basic constitutional right that could support an individual’s claim for legal relief; rather, it represents a constitutional objective.

10. More specific policy goals appear in the preamble to the competition law. Three elements of the “public interest” motivate the law to protect “fairness and freedom of economic competition”: competition to ensure economic efficiency and social progress, fairness among businesses, and consumers’ interests (Competition Act (1996), preamble). The HCO restates these objectives as the maintenance of fairness as a general social value, the preservation of freedom of competition, and the promotion of efficiency. Among these objectives, the HCO contends that the objective of efficiency or welfare is becoming increasingly prominent in competition policy. In the HCO’s view, efficiency should also be the primary objective of regulatory reform (HCO, 1999b, Part 3.1).

11. Efficiency is the objective listed first in the law. That position and the context imply that efficiency may have logical priority over other goals. The preamble states that there is a public interest in maintaining market competition, because competition ensures economic efficiency and social progress. Other values can thus be conceived as supportive or derivative of efficiency. The emphasis on efficiency, in comparison to the other values, is more pronounced in the 1996 revision (HCO, 1999b, Part 3.1). But in the law and in the practice of the HCO, there is evidently no clear effort to differentiate between various conceptions of efficiency—static, dynamic, allocative, productive, or innovative.

12. Freedom of competition is also an explicit statutory objective. The HCO does not interpret freedom of competition to mean an unconditional right to operate in a market. Instead, it interprets “free” competition within the framework of efficiency. To promote “free competition,” the HCO may advocate the elimination of unjustified barriers to entry, especially administrative and regulatory barriers.

13. Fairness is at the centre of the legislation’s history and structure. The title of the 1990 law referred only to “unfair market practices.” That law classified all of the standard antitrust issues (except merger control) under the heading of “unfair market practices,” along with consumer fraud and unfair competition. The preambles of both the 1990 and the 1996 competition Acts name fairness as an objective. The 1996 Act draws finer distinctions, though, implying a modest shift in policy priorities. The 1996 law’s title differentiates between unfair and restrictive practices, and the substantive provisions are no longer all classified as matters of “unfairness.”

14. The “interests of consumers” are to be promoted by protecting marketplace fairness and freedom of competition. More specifically, the second substantive section of the law, after the rules about unfair competition, addresses “unfair manipulation of consumer choice,” that is, deceptive or unfair marketing methods aimed at consumers. Implementing this part of the law has taken a major share of the HCO’s attention, and cases about consumer deception are still the most numerous single category.

15. Combining the elements implies that the positive effects of increased efficiency, which are achieved by ensuring that businesses compete fairly, must be shared with consumers. In addition to these three objectives, the 1996 Act “takes into consideration” the need to approximate Hungary’s laws to the EU’s competition rules. Thus, the objectives of EU competition law (other than creation of a single European market) should also inform the objectives of Hungary’s competition policy (HCO, 1999*b*, Part 3.1).

***The reform process has emphasised the efficiency element of competition policy, while enforcement has concentrated on fairness and consumer interests.***

16. Competition law developed before sectoral regulatory laws, which were not taken up until 1992. In Hungary, strengthening competition policy was not part of a program of regulatory reform, in the sense of improving or removing regulations of private business. But Hungary’s transition reform program, to shift economic policy toward competitive markets and away from state ownership and central direction, paralleled regulatory reform programs in countries with market economies subject to government controls. Competition policy played a role in Hungary’s transition reforms similar to the role it has played in regulatory reform in other Member countries.

17. A process of “deregulation” had begun in 1989, but it was intended to dismantle regulatory requirements and eliminate bureaucracy, rather than to eliminate economic regulation (HCO, 1999*c*). Nevertheless, elements of the program promoted competition policy goals. A 1989 government resolution<sup>5</sup> called for reviewing and reducing regulations, to adapt public law to suit the new structure of society and to open up the economy towards entrepreneurs. An omnibus act of Parliament<sup>6</sup> repealed and modified several laws about public administration and economic regulation. The objectives of this 1990 legislation included breaking down state monopolies and opening up some previously state-controlled sectors to competition and private sector participation. The law’s other objectives were probably more significant, though: to implement the new Constitution, to strengthen democratic local government institutions, to protect constitutional rights, and to eliminate constraints on citizens’ relationships with the public administration (HCO, 1999*b*, Part 1). A 1992 check list, designed by the Economic Deregulation Council to review existing regulations, required that every regulation “not retain or lead to a monopoly position”

18. Dismantling the structure of state ownership was a fundamental transition reform. The privatisation process called for re-organising firms into corporate forms and breaking them down into the smallest independently-viable units before they could be privatised. The result was that only a few large firms had to be further split up for competition policy reasons. Privatisation of public assets has been essentially completed in industry, services, and agriculture. The percentage of assets that are publicly owned has dropped below 30%, and about 85% of GDP is now generated in the private sector (HCO, 1999*b*, Part 2). The state is legally obligated to retain holdings in 92 companies, many of which are in infrastructure sectors or natural resources, although a few are in manufacturing (two traditional national products, porcelain and sausage, and buses), retailing, distribution, and other services (OECD, 1999, pp. 76-80).

19. From 1991 to 1997, the competition authority had only an advisory role about most acquisitions in privatisation settings, as a “permanent invitee” at the privatisation body’s decision-making meetings. (As of 1997, the competition act’s rules about concentrations cover all of these privatisation transactions, too.) Taking this advisory role, rather than seeking a veto power or even a vote in the privatisation matters, was reportedly a deliberate decision, to solidify the political consensus in support of competition policy by avoiding controversies where competition policy was likely to lose many battles (Fingleton *et al.*, 1996, pp. 155-56). About 11 “merger” cases arose as a result of privatisation; only one resulted in a legal challenge. In one case, an open tender procedure permitted a competitor to make an acquisition that the HCO would



not have approved. After that experience, the HCO suggested using closed tenders, to exclude particularly problematic buyers (Fingleton *et al.*, 1996, p. 156). This would be similar to the process used in Mexico, where the competition body has the power to determine which firms are included and excluded from the tender process.

20. In some other cases, the results of privatisation were problematic. In sugar refining and road construction, the post-privatisation industry was too concentrated. By contrast, retail trade privatisation, which included breaking up territorial groupings into individual outlets, anticipating that they would then re-combine into more efficient and competitive groups, resulted in a too-atomised industry (HCO, 1999*d*). Investment by multinational firms did introduce efficient larger-scale retail operations, while Hungarian firms remain mostly in the micro end of the market. In some food processing sectors, such as dairy processing, privatisation did not eliminate excess capacity, and that has accommodated excess production because the government supports the milk price. Privatisation preserved market power in some sectors, such as vegetable oil and wire and cable. In agricultural processing, some buyers shut down local plants in order to supply Hungary from elsewhere, and there have been complaints that this shift has disadvantaged Hungarian producers. By contrast, market power problems were avoided in privatising tobacco and frozen food, because the previous groupings were separated before being privatised and, in the tobacco industry, some last-minute “fine tuning” ensured that the formally independent firms would indeed be competitive (HCO, 1999*d*). Remaining state-owned firms in otherwise private industries may be in a position to distort competition in poultry packing, textbook publishing (where one state-owned firm has a 50% market share), and distribution of pharmaceuticals (where one large state-owned firm faces dozens of private firms). On the other hand, in steel, the state-owned firm is reportedly adapting to the market better than the private ones have (HCO, 1999*d*).

21. Liberalising trade and inviting foreign investment were probably the most important policy changes to stimulate development of a new competitive, market culture (Kovács *et al.*, 1997). Hungary accounts for 40% of the stock of FDI in central and eastern Europe. Investment is concentrated in processing industries, gas and electricity, retail trade, and banking. Of the largest 200 companies, about two-thirds are foreign owned. Firms with foreign participation account for 14% of GDP and 70% of industrial exports (WTO, 1998, pp. 9, 27-28). Despite crises in the 1990s, governments have generally continued to reduce tariffs and to invite foreign investment. As imports from the EU rose, Hungary did increase tariffs in the mid-1990s, as a temporary macroeconomic stabilisation measure (Fingleton *et al.*, 1996, p. 35). But steps are reportedly being taken to reduce further the remaining restrictions on foreign trade (Hungary, 1999, Part 2).

22. Disruptions in the process of transition encouraged some industrial policy measures to revive or reorganise firms in trouble. But industrial policy did not resort to such tactics as rationalisation cartels, and the government did not grant industrial policy benefits to limit or hinder competition significantly (Vissi, 1999).

23. Although the HCO now wants to stress the objective of efficiency, a strikingly high proportion of its workload has dealt with consumer deception. From 1992 through 1995, over 40% of the HCO’s decisions were in cases about consumer deception, and in some years, that proportion rose to nearly one half (Fingleton *et al.*, 1996, p. 108). As recently as the first half of 1999, 35% of HCO decisions are about consumer deception (HCO, 1999*a*). Focusing on consumer deception and unfairness was a sound approach during the most difficult early period of transition. Actions against those abuses can prevent or remedy direct consumer harms from market abuses and demonstrate the value of competition laws and principles to police market behaviour. It may have been more important in the long run to use the law in such a “demonstration” role at the outset, rather than to be too concerned about the precise application of doctrines about restrictive practices or competitive market structures.

24. Now, one of the goals of competition policy has become approximation to EU norms in preparation for accession. Greater consistency between the national rules and the European rules will simplify compliance for firms that operate both inside Hungary and elsewhere. It is less clear that conforming Hungary's rules EU norms is necessary to improve Hungary's competition policy. In some respects, notably the treatment of vertical restraints, Hungary's approach was more sensitive to economic analysis and less formalistic than the EU structure of prohibitions and exemptions. The European Commission has announced the intention to adopt new rules and presumptions about vertical restraints, so perhaps the EU and Hungary are on a long-term path of convergence and it will not be necessary for Hungary to make substantial changes in its historic policies.

## 2. SUBSTANTIVE ISSUES: CONTENT OF THE COMPETITION LAW

25. Hungary's law now closely follows that of the EU. In its association agreement with the EU and its member states, Hungary assumed responsibility to harmonise its legal system with that of the European Community. To that end, the 1990 competition law was comprehensively revised in 1996. In addition to changes conforming Hungary's rules to EU norms, other changes extended the law's reach. The Act (Art. 1) now covers the conduct of companies without legal personality, including associations, as well as the conduct of natural and legal persons. The revision also extended the law to investment activity, by deleting the restrictive definition of "economic activity" (OECD CLP, 1997*b*). And the law now deals with conduct that distorts competition, as well as conduct that restricts or prevents it.

### Box 2. The competition policy toolkit

General competition laws usually address the problems of monopoly power in three formal settings: relationships and agreements among otherwise independent firms, actions by a single firm, and structural combinations of independent firms. The first category, **agreements**, is often subdivided for analytic purposes into two groups: "horizontal" agreements among firms that do the same things, and "vertical" agreements among firms at different stages of production or distribution. The second category is termed "**monopolisation**" in some laws, and "**abuse of dominant position**" in others; the legal systems that use different labels have developed somewhat different approaches to the problem of single-firm economic power. The third category, often called "**mergers**" or "**concentrations**," usually includes other kinds of structural combination, such as share or asset acquisitions, joint ventures, cross-shareholdings and interlocking directorates.

**Agreements** may permit the group of firms acting together to achieve some of the attributes of monopoly, of raising prices, limiting output, and preventing entry or innovation. The most troublesome **horizontal** agreements are those that prevent rivalry about the fundamental dynamics of market competition, price and output. Most contemporary competition laws treat naked agreements to fix prices, limit output, rig bids, or divide markets very harshly. To enforce such agreements, competitors may also agree on tactics to prevent new competition or to discipline firms that do not go along; thus, the laws also try to prevent and punish boycotts. Horizontal co-operation on other issues, such as product standards, research, and quality, may also affect competition, but whether the effect is positive or negative can depend on market conditions. Thus, most laws deal with these other kinds of agreement by assessing a larger range of possible benefits and harms, or by trying to design more detailed rules to identify and exempt beneficial conduct.

**Vertical agreements** try to control aspects of distribution. The reasons for concern are the same—that the agreements might lead to increased prices, lower quantity (or poorer quality), or prevention of entry and innovation. Because the competitive effects of vertical agreements can be more complex than those of horizontal agreements, the legal treatment of different kinds of vertical agreements varies even more than for horizontal agreements. One basic type of agreement is resale price maintenance: vertical agreements can control minimum, or maximum, prices. In some settings, the result can be to curb market abuses by distributors. In others, though, it can be to duplicate or enforce a horizontal cartel. Agreements granting exclusive dealing rights or territories can encourage greater effort to sell the supplier's product, or they can protect distributors from competition or prevent entry by other suppliers. Depending on the circumstances, agreements about product combinations, such as requiring distributors to carry full

lines or tying different products together, can either facilitate or discourage introduction of new products. Franchising often involves a complex of vertical agreements with potential competitive significance: a franchise agreement may contain provisions about competition within geographic territories, about exclusive dealing for supplies, and about rights to intellectual property such as trademarks.

**Abuse of dominance or monopolisation** are categories that are concerned principally with the conduct and circumstances of individual firms. A true monopoly, which faces no competition or threat of competition, will charge higher prices and produce less or lower quality output; it may also be less likely to introduce more efficient methods or innovative products. Laws against monopolisation are typically aimed at exclusionary tactics by which firms might try to obtain or protect monopoly positions. Laws against abuse of dominance address the same issues, and may also try to address the actual exercise of market power. For example under some abuse of dominance systems, charging unreasonably high prices can be a violation of the law.

**Merger control** tries to prevent the creation, through acquisitions or other structural combinations, of undertakings that will have the incentive and ability to exercise market power. In some cases, the test of legality is derived from the laws about dominance or restraints; in others, there is a separate test phrased in terms of likely effect on competition generally. The analytic process applied typically calls for characterising the products that compete, the firms that might offer competition, and the relative shares and strategic importance of those firms with respect to the product markets. An important factor is the likelihood of new entry and the existence of effective barriers to new entry. Most systems apply some form of market share test, either to guide further investigation or as a presumption about legality. Mergers in unusually concentrated markets, or that create firms with unusually high market shares, are thought more likely to affect competition. And most systems specify procedures for pre-notification to enforcement authorities in advance of larger, more important transactions, and special processes for expedited investigation, so problems can be identified and resolved before the restructuring is actually undertaken.

### ***Horizontal restraints are receiving increasing enforcement attention.***

26. The general prohibition against anti-competitive agreements follows the model of the EU prohibition of competitors' agreements or concerted practices that have the actual or potential effect of preventing, restricting, or distorting competition in any manner (Art. 11(1)) The particular practices named in the statute follow the EU listing, with some added elaboration of details about what typically counts as output restraint or allocation and about the subjects of discrimination (Art. 11(2)(c), (d), and (g)) In addition, the Hungarian law specifically prohibits agreements about bid rigging and "hindering market entry." (Art. 11(2)(e), (f)) Agreements prohibited under this law are treated as void and hence unenforceable under the Civil Code (Art. 11(3); Civil Code, Art. 200) No *per se* prohibitions appear in the Act itself, but in practice the HCO applies a *per se* enforcement approach to price fixing and market allocation (HCO, 1999b, Part 3.8).

27. Agreements of "minor importance" and agreements among firms that are under common control are exempted from the prohibition (Arts. 12, 15). The *de minimis* exemption applies if the joint market share of all the adherents to the agreement is under 10%. Whether that threshold is met may be re-determined annually (Art. 13). In defining product and geographic markets for this and for other purposes, the HCO follows the "best substitutes" approach. The product market includes goods that are reasonable substitutes, considering intended use, price, quality, and terms and conditions of sale. The geographic market is determined by considerations of feasibility of substitution for consumers and suppliers (Art. 14). A firm that is uncertain about its status can ask for negative clearance. Few cases have applied the *de minimis* exemption, evidently because few firms or agreements that were close to the limit have asked for clearances (HCO, 1999c). This kind of exemption is consistent with an efficiency-based approach, because it is intended to avoid expending enforcement resources on practices that are unlikely to have competitive effects. But because it tends to make the rules less clear, it can also lead to some uncertainty and even invite abuse. Firms may collude but refrain from asking for clearance or exemption, anticipating that any penalties will be light if their market share can be made to look close to the limit. Hungary does not have a

proviso to its *de minimis* exemption, such as Denmark and the Netherlands have adopted, that the exemption is only from the prohibition, so enforcement action could still be taken against agreements that have an actual anti-competitive effect, perhaps because the industry follows a pattern of similar agreements. Under such a proviso, the burden would be on the competition enforcement agency.

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### Box 3. The EU competition law toolkit

The Hungarian law follows the basic elements of competition law that developed under the Treaty of Rome (amended by the Treaty of Amsterdam):

- **Agreements:** Article 81 (previously Article 85) prohibits agreements that have the effect or intent of preventing, restricting, or distorting competition. The term “agreement” is understood broadly, so that the prohibition extends to concerted actions and other arrangements that fall short of formal contracts enforceable at civil law. Some prohibited agreements are identified explicitly: direct or indirect fixing of prices or trading conditions, limitation or control of production, markets, investment, or technical development; sharing of markets or suppliers, discrimination that places trading parties at a competitive disadvantage, and tying or imposing non-germane conditions under contracts. And decisions have further clarified the scope of Article 81’s coverage. Joint purchasing has been permitted (in some market conditions) because of resulting efficiencies, but joint selling usually has been forbidden because it amounts to a cartel. All forms of agreements to divide markets and control prices, including profit pooling and mark-up agreements and private “fair trade practice” rules, are rejected. Exchange of price information is permitted only after time has passed, and only if the exchange does not permit identification of particular enterprises. Exclusionary devices like aggregate rebate cartels are disallowed, even if they make some allowance for dealings with third parties.
- **Exemptions:** An agreement that would otherwise be prohibited may nonetheless be permitted, if it improves production or distribution or promotes technical or economic progress and allows consumers a fair share of the benefit, imposes only such restrictions as are indispensable to attaining the beneficial objectives, and does not permit the elimination of competition for a substantial part of the products in question. Exemptions may be granted in response to particular case-by-case applications. In addition, there are generally applicable “block” exemptions, which specify conditions or criteria for permitted agreements, including clauses that either may or may not appear in agreements (the “white lists” and “black lists”). Any agreement that meets those conditions is exempt, without need for particular application. Some of the most important exemptions apply to types of vertical relationships, including exclusive distribution, exclusive purchasing, and franchising.
- **Abuse of dominance:** Article 82 (previously Article 86) prohibits the abuse of a dominant position, and lists some acts that would be considered abuse of dominance: imposing unfair purchase or selling prices or trading conditions (either directly or indirectly), limiting production, markets, or technological development in ways that harm consumers, discrimination that places trading parties at a competitive disadvantage, and imposing non-germane contract conditions. In the presence of dominance, many types of conduct that disadvantage other parties in the market might be considered abuse. Dominance is often presumed at market shares over 50%, and may be found at lower levels depending on other factors. The prohibition can extend to abuse by several firms acting together, even if no single firm had such a high market share itself.

28. Block exemptions are issued by the government, and case-by-case exemptions can be granted by the HCO (Arts. 16, 17) Hungary’s law includes two criteria for individual exemption in addition to those of the EU system: agreements can be exempted if they contribute to improvement of competitiveness or to protection of the environment (Art. 17(a)). These two additional criteria have evidently never been used, though. For horizontal agreements, block exemption decrees have been adopted concerning on insurance activities,<sup>7</sup> research and development, technology transfer, and specialisation. Firms can ask for negative clearances, to determine that an agreement does not have prohibited restrictive effects or that it satisfies the criteria set out in the block exemption (HCO, 1999b, Part 3.8).

29. The HCO is paying increasing attention to horizontal agreements. From 1994 through 1997, the HCO only opened 15 matters that were clearly about horizontal agreements; in 1998, it opened 15 in a single year. To be sure, some of the early cases were highly important. The single horizontal matter in 1994, against co-ordinated coffee price increases, resulted in a huge fine of nearly HUF 400 million. Unfortunately, that fine still has not been collected, because of delays in the court system.

30. Direct enforcement action against horizontal restrictions organised by trade associations and similar bodies is possible since the law was extended in 1996 to decisions by a “social association” of firms, a public corporation, or an association (Art. 11(1)). Before that change, enforcement was only possible against the members, which was much less efficient. Trade and professional associations are relatively new in Hungary. (There was an older tradition, interrupted by the communist era: the 1923 legislation about unfair competition called for self-regulation by the Chamber of Commerce and Industry, which issued a code of ethics and established a “jury” to resolve disputes.) As in other countries where such associations have been established longer, associations’ so-called “codes of ethics” that restrict competition are frequent targets (HCO, 1999*b*, Part 3.8). For example, the auditors’ and veterinary surgeons’ codes restricting advertising were recently struck down because they hindered market entry.

31. Associations may adopt codes about minimum fees, but these can only be used as guides. That is, the associations may not enforce them. A recent decision permitted the association of veterinary surgeons to issue recommendations about minimum fees, but prevented them from applying the sanctions of the association’s ethical procedure to discipline members who did not observe them (HCO, 1999*b*, Part 3.8). Permitting even these agreements about recommended fees may hinder price competition, though, because the association’s fee schedule can become a focal point for tacit collusion. Other countries, such as Denmark and Spain, have adopted the same middle-ground approach. Experience elsewhere is mixed. In some locations or professions, the fee recommendations are routinely undercut, but in others, the members of the associations appear to be resisting the urge to compete over price.

32. Although they present competition problems, associations and similar bodies may also serve important functions. The Hungarian government has encouraged privately-directed economic self-government, to reinforce the shift away from central direction and control.<sup>8</sup> Several comprehensive bodies—the Chamber of Commerce, the Chamber of Trade and Industry, the Chamber of Artisans, and the Chamber of Agriculture—have been established by law to perform some registration and other functions (HCO, 1999*b*, Part 2). The (independent) public prosecutor can go to court to ensure that self-regulation by these and other bodies is consistent with the public interest (HCO, 1999*c*). Some sectoral ministries have similar oversight powers; for example, the Minister of Justice supervises the Bar Council (HCO, 1999*b*, Part 2.11).

#### Box 4. Horizontal restraints and regulation

Three cases illustrate the application of the law to horizontal agreements affected by regulation or official action.

- Agricultural product councils, composed of both sellers and buyers, are permitted by law to set recommended prices. The product council for sugar beets proposed recommended base prices, which the growers did not accept. Three sugar companies nonetheless used these recommended base prices for their purchasing, and the sellers complained. The HCO found no violation, but not because the recommended price arrangement was outside the scope of the competition law. Rather, the HCO found that actual transaction prices differed substantially due to the application of premium factors. Based on those differences in transaction prices, the HCO concluded that the arrangement had not limited competition (HCO, 1999*b*, Part 2.11).
- The Hungarian Tax Office encouraged private firm co-ordination in pricing and distribution of tax forms, which the public must purchase from retail shops. A tender resulted in awards of exclusive rights to four firms. The Tax Office and the firms reached an agreement under which the Tax Office recommended the wholesale and retail prices; moreover, the recommended retail prices had to be printed on the forms. Also at the request of the Tax Office, ostensibly to ensure continuous supply, the firms had to co-ordinate their manufacturing and marketing. The HCO did not object to the price recommendations, because there was no showing that adherence to the recommended prices was actually enforced. But it did find the co-ordination of production and distribution to be anti-competitive, despite the Tax Office’s encouragement. Perhaps because the Tax Office was involved, though, the fine was nominal: HUF one million (OECD CLP, 1999).

- The Budapest Electricity Works (BEW), three associations, and the National Alliance of Private Entrepreneurs in the Electricity Sector applied for an exemption for a system of qualifying private electricians to operate in households. Qualification would depend on taking a training course and passing an exam. Although limiting electricians' access to the market could restrict competition, the system could actually improve availability because customers could quickly identify qualified electricians whose work the BEW would not object to. Entrepreneurs who joined the system could offer and perform higher quality work. The HCO exempted the agreement until 31 December 2002 (OECD CLP, 1999).

***Hungary's approach to vertical agreements was more refined than the EU-based approach it has now adopted.***

33. All kinds of vertical restraints that could prevent, restrict, or distort competition are now prohibited. Before the 1996 revision of the law, only agreements on minimum resale prices were prohibited. All other kinds of vertical agreements were not prohibited as such, but received a "rule of reason" treatment (OECD CLP, 1997b). Agreements fixing maximum resale prices had generally been permitted, and even agreements fixing minimum prices were subject to a "net competitive effects" test. Agreements that did not involve parties with market power were unlikely to violate the law, and arrangements to deal with "free rider" problems, under which resellers undertook to provide marketing services in exchange for maintaining prices or margins, also could be justified (OECD CLP, 1997a).

34. Block exemption decrees, paralleling those adopted by the EU, regulate the most typical forms of vertical agreements: exclusive distribution, exclusive purchasing, franchise agreements, automobile distribution and servicing, and technology transfer.<sup>9</sup> (HCO, 1999b, Part 3.9; OECD CLP, 1999). Agreements of minor importance, that is, those affecting less than 10% of the relevant market, are not prohibited. But there have not been many occasions to consider how the *de minimis* exemption applies to vertical restraints, because parties with vertical issues are likely to claim protection under a block exemption (HCO, 1999c).

35. Shifting to a blanket prohibition (subject to regulations setting out exemptions) marks the largest change Hungary has had to make in its law in order to approximate to EU norms. The previous head of the HCO criticised the formalistic aspect of the EU's rules as being inconsistent with sound economics, while recognising that Hungary would have to accept them in order to approximate its laws to the *acquis communautaire* (Vissi, 1999). Now that the EU is re-examining its own approach to vertical relationships, in the long run Hungary may not have to change its approach very much.

***The law about abuse of dominance can be used to promote competition in deregulated network industries, but not to restructure them.***

36. The statutory prohibitions against abuse of dominance are more detailed than those in the basic EU legislation. Where the EU treaty has four subparagraphs, the Hungarian law has ten. Hungary explicitly prohibits refusing to deal, influencing others' business decisions to gain an unfair advantage, withholding goods from circulation to increase prices or gain an unfair advantage, predatory pricing, hindering market entry, and creating disadvantageous market conditions (Art. 21(c), (d), (e), (h), (i), and (j)). These provisions of the statute accompany paragraphs restating, with some elaboration, the EU provisions (Art. 21(a), (b), (f), and (g)).

37. Dominance is now determined based on general principles, rather than specific market share thresholds. Under the previous law, dominance was found if a single firm had a market share over 30% or if three firms together had a share over 50%. Repealing those numerical thresholds in 1996 marked a reform of the competition law, away from formalism toward more sensitive economics-based analysis. An

informal “safe harbour” is applied now, which leads the HCO not to find dominance where the market share is below 25-30%. Except for this, the HCO no longer has rules or internal guidelines relating market share to dominance.

38. Two conceptions of dominance are in the law. One formulation is based on the absence of alternative sources of supply or opportunities for sale. This has been used in all of the HCO’s decisions so far (HCO, 1999c). Another formulation, added in the 1996 revision, characterises dominance as a condition in which firms can pursue their business independent of other market participants, without need to take into account the reactions of customers, suppliers, and competitors (Art. 22(2); HCO, 1999b, Part 3.10). This conception, taken from EU jurisprudence, logically includes the other one.

39. Finding dominance calls for understanding market structure and conduct, examining the costs, risks, and technical conditions of entry, and assessing the firm’s financial position and experience (Art. 22(3)). The market definition criteria used for identifying dominance, like those used for applying the *de minimis* test for agreements, are based on the notion of “reasonable substitution” (Arts. 12–14). The criteria for finding dominance are slightly more stringent, for they also include the principle that those substitutes cannot be bought (or sold) elsewhere except under considerably less favourable conditions than are usual for the trade (Art. 22(1)). This approach should avoid a common analytic difficulty, of failing to identify market power where the dominant firm is already exploiting it and thus forcing customers (or suppliers) to look to substitutes that would not be reasonable under competitive prices or conditions. Recent actions about abuse of dominance have targeted cable TV firms for increasing prices or changing terms for customers who did not have realistic alternatives, a home-loan program for reducing the interest rates it paid to customers who could not switch to alternative investments (because they were locked-in by a tax break), and a town newspaper for taking advantage of a municipal subsidy to under-price its commercial competitors (OECD CLP, 1999).

40. For firms in dominant positions, actions that would otherwise be within the normal range of contractual freedom may constitute abuse. Thus infrastructure natural monopolies may not have complete discretion to deny service in the event of disagreement about price. But the legal treatment may depend on whether the issue is regulated. In an electric power case, the HCO acknowledged that the monopolist had a legal right to deny services for technical or economic reasons, but it could not deny service because of disagreement over the rate. By contrast, the HCO held that a telecoms monopolist (with an exclusive concession territory) was not subject to the Competition Act in a dispute over the fairness of rates; instead, the issue would have to be decided by another regulator (HCO, 1999b, Part 3.10).

41. Some residual statutory powers call for controlling prices of dominant firms, but since 1995 no products or services have been covered by this power. In theory, the HCO may apply sanctions if another agency finds that a firm has violated its official price rule; in fact, the HCO has never used this authority. Where dominance appears in the form of abusive pricing, such as cable TV, the HCO has applied price-based relief, in responding to complaints in particular cases (HCO, 1999c). The HCO has developed a rule about predatory pricing that is designed to shield strong competition from liability (Fingleton *et al.*, 1996, pp. 123-26). The dominant firm’s price must be below its average production cost, the firm must have substantially greater financial strength than its competitor, and barriers to entry must be high enough that new competitors are unlikely to enter if prices are later raised (HCO, 1999b, Part 3.10).

42. Divestiture is not an available remedy for dominance under Hungary’s law. In this respect, it differs from its neighbours Poland, the Czech Republic, and Slovakia (Fingleton *et al.*, 1996, pp. 96, 113). The lack of divestiture authority makes the Competition Act less useful as a tool for structural reform. And limiting the available remedies to conduct-based orders increases the likelihood of resort to price-based remedies, despite the HCO’s historic reluctance to become too involved in price control.



***Merger law has been applied to promote competition in the course of deregulation.***

43. All kinds of structural changes that may increase concentration, in all economic sectors, are covered by the provisions about concentration control (Art. 23; HCO, 1999b, Part 3.11). Authorisation is granted if the merger or acquisition does not create or strengthen a dominant position or does not impede the formation, development or continuation of effective competition in the relevant market or a considerable part of it (Art. 30(2)). This basic substantive test is closely related to the assessment criteria of the EU Merger Regulation (OECD CLP, 1997b). The law contains an “efficiencies” test, so the HCO can authorise a transaction if its advantages outweigh its disadvantages. And application of the law is subject to a “failing firm” proviso, so the HCO can authorise a transaction if the parties show that the continued operation of one of the participants would be in jeopardy without the merger and there are no other realistic bidders for it (HCO, 1999b, Part 3.11).

44. Parties may not merge without applying to the HCO for authorisation, and indeed their contract for the transaction is not valid until approval is given (Art. 28(1), Art. 29). This provision about the validity or effectiveness of the contract may present some technical inconsistencies with other laws. Although transactional uncertainties can be reduced somewhat through careful lawyering, some costs could be avoided if the inconsistencies were resolved. The HCO has begun to use an informal “two step” review process to help reduce uncertainty.

45. The threshold for applying for authorisation is aggregate net turnover in excess of HUF 10 billion. (For financial institutions, 10% of their total assets must exceed this threshold.) The 1996 amendments deleted the alternative, and unworkable, threshold of 30% market share. If a direct participant in the transaction is part of a group, the relevant turnover is that of the whole group; on the other hand, transactions within groups are not covered (HCO, 1999b, Part 3.11). Temporary acquisitions by financial institutions are not covered, either, so purely financial investments and intermediate steps in restructuring can avoid the burden of application (Art. 25; OECD CLP, 1997b).

46. The deadline for HCO to complete its review of an application is 90 days. This can be extended, in exceptional cases, by no more than 60 days. In obvious cases, where market shares are low (which represent a high proportion—75% in 1998), the HCO tries to make its decision quickly. Failure to comply with the notification requirement can result in a fine of up to HUF 10 000 per day (HCO, 1999b, Part 3.11). The law evidently does not forbid the parties from proceeding to close the transaction before the HCO authorises it, as long as they have applied for authorisation. Of course, the parties would do so at their own risk, for the HCO retains the power to order divestiture (Art. 31; OECD CLP, 1999). The 1996 law makes it explicit that the HCO may impose other conditions, too, such as requiring partial divestitures (Vissi, 1999).

47. Product and geographic markets are defined based on the principle of reasonable substitution, considering price, quality, terms and conditions of trade (Art. 14(2)). The market definition approach for merger analysis may differ from that used for abuse of dominance, to the extent that in merger matters it is necessary to consider conditions in the post-merger future (HCO, 1999c). The parties’ joint market share is the analytical starting point. The Competition Act specifies no thresholds, but in practice the HCO does not object to a transaction if the joint market share is below 30%. (This level corresponds to the now-deleted statutory threshold for finding dominance.) If this share is exceeded, then the investigation assesses entry conditions and potential competition. A merger may be authorised even if the market shares are high, if the transaction causes little or no increase in the parties’ market share. Because the Hungarian market is small and relatively open, imports are often a significant source of potential competition. If imports are free from administrative restriction or significant financial burdens, a combination may be authorised even if the joint market shares within Hungary are relatively high (HCO, 1999b, Part 3.11).

48. If a merger involves a regulated sector, the simple fact of regulation has no special significance, but the regulatory situation may be highly relevant to the competition analysis (HCO, 1999b, Part 3.11). For example, the HCO prevented the national telecom operator, MATÁV, from acquiring a small regional operator, JÁSZTEL, even though companies are not actual competitors because their concessions cover different territories. Looking ahead to anticipated changes in regulations, the HCO was concerned that, if MATÁV were allowed to buy up strategic assets that would facilitate new entry, then there would be no effective competition when legal barriers were dropped in 2002 (OECD CLP, 1999; HCO, 1999b, Part 3.11).

49. The HCO may grant or deny authorisation only on the basis of statutory competition policy criteria, including the balance of efficiencies (Vissi, 1999). The government does not have power to veto or override the HCO's merger decisions on other policy grounds. Mergers in some regulated sectors, such as banking, telecoms, insurance, and energy, may require authorisation from other agencies as well as the HCO (HCO, 1999b, Part 3.11). Most transactions that implement privatisation are now covered by the Competition Act and notification procedures, although privatisation is now largely completed (Vissi, 1999). Under an agreement with the privatisation board, since 1995 the HCO has used a streamlined procedure for reviewing concentrations that result from a privatisation decision (HCO, 1999b, Part 3.6).

50. Merger activity is increasing. In 1997, the HCO made 25 decisions in merger matters; in 1998, it made 49. Over those two years, only one merger was blocked completely. Several notifications involved international transactions, which were generally authorised since they had only marginal effects on the Hungarian market. In food processing and in retail trade, firms were permitted to consolidate in the face of entry by a host of SMEs at one end of the scale and by powerful multinational firms at the other (OECD CLP, 1999).

51. Early merger cases were criticised for confusion and inconsistency in analysis, exemplified by considering support from competitors and the industry ministry as reasons to support a merger, rather than to be more sceptical about it. Conclusory reports about decisions did not contain enough market facts to explain the effects on competition, and failed to distinguish efficiency and market effects from factors of political support (Fingleton *et al.*, 1996, pp. 127–29). The HCO now tries to include in the decision a complete description of the status of the parties and the legal and economic reasoning. More detail is likely to be provided when the HCO is rejecting the parties' plans and they may thus appeal (HCO, 1999c).

### ***Unfair competition rules occupy a prominent place in the law.***

52. Hungary's rules about unfair competition are in the Competition Act itself. Perhaps reflecting the law's historic lineage, these rules come first, before consumer deception and the three traditional subjects of competition policy. The general rule prohibits "unfair economic activities" if they infringe or jeopardise the legal interests of competitors or consumers or if they are contrary to "business fairness." (Art. 2). Specific articles address common subjects of traditional unfair competition law: injury to reputation, misuse or disclosure of trade secrets, disrupting existing or prospective business relationships, trademark abuses, and impairing the fairness of open bidding processes (Arts. 3–7; HCO, 1999b, Part 3.12). The general rule is residuary; that is, it applies in the absence of a more specific rule. For instance, there are no specific rules about sales below cost, abuse of dependence, or passing-off, but this conduct can be challenged under the blanket rule.

53. The unfair competition rules are enforced by private actions in court, rather than through the HCO's own processes (Arts. 45, 86). Because the HCO does not participate or follow developments in private lawsuits, there is some risk that the law about unfair competition could become inconsistent with the other parts of the Competition Act. The HCO contends that the objective of the unfair competition rules

is to protect competitors and consumers and to ensure the efficient operation of the market (HCO, 1999*b*, Part 3.12). But a court may not necessarily use the HCO's efficiency-based tests about predatory pricing when deciding a unfair competition complaint about sales below cost (HCO, 1999*c*). There is some indirect evidence that the courts have not created a broad remedy for sales below cost: representatives of smaller retailers have lobbied for a new statutory rule against sales below cost, to protect them against competition from hyper-markets and from the bargaining power of large suppliers.

54. Trade associations' efforts to forestall supposedly unfair competition frequently conflict with the policy objectives of efficiency and the interests of consumers. So-called "ethical" rules about co-operation with competitors, fair prices, and advertising disguise restrictive co-operation behind the façade of fairness. Of course, these trade association rules are not typically enforced through private suits under the general "unfair competition" rule of the Competition Act. On the contrary: the HCO has taken a number of enforcement actions against self-regulating bodies under the other provisions of the Act (HCO, 1999*b*, Part 3.12).

***Preventing deception and protecting consumers' choices have been the HCO's highest priorities.***

55. The Competition Act prohibits unfair manipulation of consumer choice through deceptive advertising and other practices that restrict consumers' freedom of choice without justification. These matters are under the HCO's exclusive jurisdiction. The HCO believes that ensuring that consumers can make informed decisions free from unfair influences is essential to achieving the social benefits of economic competition. To that end, the HCO has made more decisions about these consumer issues than about any other subject under its jurisdiction. The "consumers" to be protected include users or purchasers at any stage, not just final consumers (Art. 8(1)).

56. Deception is measured by reference to the meanings of terms that are customary in everyday life or in the trade at issue (Art. 9). Representations about prices or essential features that are either actually false or that may possibly deceive are presumed to violate the law. "Essential features" include the composition and use of a product, its effects on health or the environment, or its handling, origin, source, designation, or even method of procurement (Art. 8(2)(a)). Deception about issues related to the sale of a product (as well as about the product itself), such as terms, discounts, gifts, or the odds of winning a contest, is illegal." (Art. 8(2)(c)). The Competition Act's rule against deception might supplement enforcement of other regulations, because concealing the fact that a product does not meet legal or "usual requirements for such goods" is also prohibited (Art. 8(2)(b)).

57. Another potentially broad principle prohibits business methods that restrict consumers' free choice "without justification." One such method is making it more difficult for a consumer to do an objective appraisal of a product or to compare a product objectively to others (Art. 10). This provision would appear to encourage comparative advertising. Another rule bars creating "a false impression of an especially advantageous purchase" (Art. 8(2)(d)). Complying with this rule may require a firm to make, or at least possess substantiation for, detailed comparisons with other firms. There is a risk, though, that overly aggressive enforcement might waste resources on efforts that discourage harmless "puffery" or encourage an unhealthy amount of information sharing that could dampen competition.

58. Because improving consumers' choices and information promotes efficient competition, the HCO supports regulations based on consumer education, such as disclosure requirements and measures to reduce information asymmetry. Examples include regulations about travel contracts, distant selling contracts, door-to-door sales, time sharing arrangements, and standard interest rate disclosures. The HCO also supports regulations that improve consumers' bargaining position in such settings as price regulation in the regulated sectors and standard "boilerplate" conditions in contracts (HCO, 1999*b*, Part 3.13).

59. For other kinds of regulation that are promoted as defending consumer interests, such as safety, the HCO tries to ensure that decision-makers also consider costs and such competitive effects as raising entry barriers. The HCO tries to ensure that regulations are proportionate with legitimate objectives. For example, the HCO suggested that Parliament not apply new, stricter professional qualifications to simple construction design projects, because previous standards appeared adequate and the proposed restrictions would raise an entry bar (HCO, 1999*b*, Part 3.13).

60. The primary consumer protection agency, the Consumer Protection Inspectorate, and non-governmental consumer organisations maintain contacts with the HCO, although no formalised co-operation has emerged and the two agencies have not undertaken joint actions or projects (HCO, 1999*b*, Part 3.13). Some 15-20% of the HCO's cases originate in complaints forwarded from the Consumer Protection Inspectorate; the HCO reciprocates, referring several cases to it each year. A new framework law on consumer protection was adopted in 1998, establishing basic rights concerning product safety and some rules about consumer credit, contract terms, and price representations. Under the 1997 law on commercial advertising, the Consumer Protection Inspectorate has responsibilities about advertisements concerning tobacco products, alcoholic beverages, and pharmaceuticals.<sup>10</sup> It is possible that the Consumer Protection Inspectorate may be assigned responsibility for other advertising issues, including deception, so that the HCO can concentrate its resources on competition policy.

### **3. INSTITUTIONAL ISSUES: ENFORCEMENT STRUCTURES AND PRACTICES**

61. The HCO, charged with principal responsibility to oversee and apply competition policy, is well established and widely respected. Careful design, strong staffing, and political support for competitive markets have permitted the HCO to act independently in enforcement yet participate vigorously in policy debate. The HCO has the tools, resources, and motivation to prevent abuses in developing markets as regulation gives way to competition.

62. The HCO is unusually independent, in structure and operation.

63. The HCO President and the two Vice Presidents serve for fixed six year terms and can be removed only for cause. They are nominated by the Prime Minister and appointed by the President of the Republic, subject to a hearing by a committee of the Parliament (Art. 35(2)). They can be removed by the President of the Republic, on the initiative of the Prime Minister, (Art. 35(4)(d)) but the statutory grounds for removal are limited to criminal conviction, disability or poor performance, or conflict of interest. Stable tenure is the rule: one individual served as HCO president from the time the office was created until 1998. The HCO President has the legal status of a minister, and the Vice Presidents have the status of a state secretary (Art. 41).

64. Independence in law enforcement is reinforced by the separate independent status of the decision-making body. After investigations by the HCO staff, decisions in individual cases, of violations or requests for authorisations or exemptions, are the sole responsibility of the Competition Council, which is a separate part of the HCO. The Council's President is one of the HCO's Vice Presidents. The Council's other members are HCO staff, appointed to the Council by the President of the Republic upon nomination by the President of the HCO, for indefinite terms (Arts. 37(1), 38(1)). Their tenure is protected, because the grounds for removing a member of the Council are essentially the same as for removing the HCO President or Vice Presidents (Art. 38(3)). The Competition Council is now comprised of five lawyers and two economists. A particular matter is decided by a panel of at least three members, with a lawyer as chairman (Arts. 47, 48; OECD CLP, 1997*b*). Their actions are subject "only to the law" (Art. 38(2)); that is, the Council is independent, not only of the government, but also of the President of the HCO. Council

decisions are not subject to review or change by the HCO President. They may only be challenged in court, in accordance with the rules governing administrative lawsuits (HCO, 1999b, Part 3.6).

65. The HCO's political independence is facilitated by institutional design, but independent institutions were also part of the original political intention, and it has been sustained and strengthened by policy choices (Fingleton *et al.*, 1996, pp. 164-65). Its position outside the government reflects an early, deliberate political decision. When the revised law was being prepared in 1990, the original draft would have made the office responsible to the government, with its head appointed by the prime minister. But to achieve a wide consensus in the legislature in support of the competition policy institutions, it was decided to move the office outside the government and put it somewhat above politics (HCO, 1999c). The HCO does not have an independent source of revenues, so its financial capacities and manoeuvring room are determined by the central budget (HCO, 1999b, Part 3.6). To preserve its independence, the HCO avoided early confrontations about privatisation where backing a losing side could have undermined its credibility in enforcement or policy. The HCO has been reluctant to become a regulator of public utilities (as the competition office in Poland is), probably because it wants to emphasise the break from its predecessor's role in price control (Fingleton *et al.*, 1996, p. 95).

66. In developing general competition policy, the government has principal responsibility, but the HCO has statutory power to participate in the consideration of laws and regulations that affect competition. The HCO President may take part in Parliamentary deliberations, advise Parliament about issues related to economic competition and report to it about the performance of the HCO, and attend and consult (but not vote) in meetings of the Government where the HCO's responsibilities are discussed (Art. 36(2)). The President of the HCO has attended the weekly meetings of the Economic Cabinet, which deals with policy issues at the "concept" level. As those issues are incorporated into formal drafts, they appear on the agenda of the weekly meeting of the ministries' administrative state secretaries. Since late 1998, a Vice-President of the HCO has regularly attended the state secretaries meetings (HCO, 1999b, Part 3.7).

67. The HCO has no formal institutional relationships with sectoral regulatory bodies. Only the HCO has authority to apply the Competition Act itself, but in one sector, agriculture, the ministry applies standards like those of the competition law, in supervising the process of setting indicative prices and quantitative regulations. And in the energy sector, the HCO's decision power over mergers under the Competition Act is shared with the Hungarian Energy Agency's powers under the Energy Act (that is, each body has the power to reject a proposed transaction). To promote co-ordination of competition policy, the HCO may delegate representatives to other bodies, such as the Public Procurement Council and the Customs Tariff Committee. The HCO is represented at the meetings of the Board of Directors of the privatisation agency, though without voting rights. In general, the HCO maintains contacts with other agencies that promote co-ordination and that permit some influence over the drafting of other rules, but that do not involve formal responsibilities that might compromise the HCO's decision-making independence (HCO, 1999b, Part 3.6).

#### ***Enforcement uses formal trial-type processes.***

68. Particular matters, including applications for exemptions, negative clearances, merger authorisations, responses to complaints, and *ex officio* investigations, are handled by experts in the HCO's Directorate of Investigations. The HCO may make a preliminary inquiry and even hold a hearing to determine whether a formal investigation is justified (HCO, 1999b, Part 3.14). Unless the Competition Act provides otherwise, the general law setting procedures for administrative agencies<sup>11</sup> applies to competition matters.

69. HCO investigators have the power to obtain documents, to perform site inspections, and to require parties to provide information, in writing or orally. They may take custody of original documents if there is reason to believe there is a serious violation and the documents might be tampered with (Arts. 55, 66). Investigators may also require documents and information from third parties. Confidentiality rules apply to documents containing business secrets. To ensure timely compliance with investigative process, the HCO may impose disciplinary fines ranging from HUF 10 000 up to HUF 100 000 (HCO, 1999b, Part 3.14; Art. 61). The HCO may request information from other public agencies, which must respond within 15 days. Information from other public agencies has been particularly important for cases involving the insurance and financial markets. Information or documents may also be requested from the courts, but the courts, unlike the other agencies, are not obliged to respond (HCO, 1999b, Part 3.14).

70. Deadlines are strict. For some proceedings, they are too strict. The Council must reach a decision within 90 days after the HCO receives an application. If it does not, the application is deemed to have been granted (Art. 63(2)(a), Art. 64). Investigators must forward reports on matters within 50 days after they are opened; the president of the Competition Council may extend this time limit, once, by a maximum of 30 days (HCO, 1999b, Part 3.15; Art. 71). Even *ex officio* matters must be concluded within 90 days after they are opened (Art. 63(2)(b)). The time limit to reach a decision may be extended, by the president of the Competition Council, by a maximum of sixty days (up to 30 days for the investigation stage, and up to 30 days for the decision stage). The deadlines encourage certainty, particularly by forcing resolution of matters involving applications and approvals. But inflexible deadlines can prevent thorough investigation in other settings, and targets of investigation can abuse the deadlines to avoid enforcement against them. This effect is greatest in just those cases where investigation is likely to be most difficult, such as horizontal cartels, where the firms are not willing to provide information without a fight. Firms may resist investigation until the deadlines run out. Disciplinary fines for refusing to provide evidence may be a small price to pay, compared to the much larger fines or other sanctions that might be imposed on the anti-competitive conduct being investigated.

71. Decisions are reached after a public trial before a board of the Council, although the trial may be omitted if all parties consent (Art. 74). The Council may order interim relief, before the trial and final decision, if competition is severely impeded or jeopardised or the market is seriously injured in some fashion (HCO, 1999b, Part 3.14; Art. 72(1)(c)). If the Council finds that the law has been violated, it may prohibit the continuation of the illegal conduct, order the parties to eliminate the violation, and impose fines (Art. 78). Where the violation involves consumer deception, the Council may order the parties to publish corrective statements. The amount of fines is flexible and is not subject to a statutory maximum. The level is determined by considering the seriousness of the threat to economic competition and the effect on consumers, the duration of the violation, the benefit obtained from it, the parties' market positions, and whether the violation was repeated (Art. 78(2)). In cases that were undertaken at the HCO's initiative, the Council may also put parties on probation. That is, proceedings may be suspended for up to six months if the conduct has only a minor impact on competition and the defendant agrees to refrain and to prevent any damage if the conduct recurs. If further investigation shows that the suspension has been effective, the proceeding may then be terminated without a remedial order (Arts. 75–76; HCO, 1999c).

72. Decisions are published in the HCO Bulletin. Announcements of decisions are also posted on the HCO's website.<sup>12</sup> The fact that a matter has been opened may be disclosed, by publishing the resolution ordering the investigation (Art. 80; HCO, 1999b, Part 3.15). This happens most often for mergers affecting the national market. Another avenue of publicity about decisions is trade associations and business groups. These groups receive the Council's decisions involving their members, so they can inform other members and take the decisions into consideration in their internal rules (HCO, 1999b, Part 3.14).

73. Appeals from Competition Council decisions, both interim and final, may be taken to the Metropolitan Court of Budapest, and from there to the Supreme Court (HCO, 1999b, Part 3.6). (The

HCO's decision to open proceedings in response to a complaint is not appealable, so the objects of investigations cannot go to court to impede the HCO's processes). Appeal to the court does not delay the enforcement of an order to cease a violation or to publish a correction. But appeal does delay the payment of fines.

74. Decisions that impose significant penalties or sanctions are often appealed, and appeals are time-consuming. In 1998, over 60%—25 out of 39—of the findings of liability were appealed. From 1997-1998, 64 Council decisions were taken to court. Over 90% were affirmed. The high rate of affirmance is encouraging, but the delay is not. The courts had reached decisions in only 21 out of those 64 matters by mid-1999. Appeal to the Metropolitan Court typically takes a year to a year and a half, and a further appeal to the Supreme Court takes three years. Parties subject to large fines routinely appeal, anticipating that delays in court would permit them to avoid payment for years. In response to this problem, the law was revised so that the Competition Council may now order immediate collection of a fine if it finds that to be in the public interest (HCO, 1999b, Part 3.15).

75. The HCO has no power to issue rules or guidelines with legal force (OECD CLP, 1997b). Nonetheless, the Competition Council publishes so-called "position statements" each year in the HCO Bulletin. These statements, which are based on the Council's enforcement experience, offer guidance about enforcement practices (HCO, 1999b, Part 3.15). The HCO staff is also willing to give informal advice about issues that these position statements and the statute do not answer. Unlike the securities regulator, though, the HCO will not give a written, binding answer to a hypothetical question. The HCO generally will not give negative clearances for mergers, either, except concerning threshold issues such as jurisdiction.

**Box 5. Are sanctions effective?**

Delay dilutes the effectiveness of sanctions. Financial penalties and sanctions of all types are collected by the tax authority, at the HCO's request (HCO, 1999b, Part 3.14). But the obligation to pay does not become final until all appeals are exhausted. Thus, there is a discrepancy between the amount that the HCO has ordered and the amount that firms have actually had to pay so far. For example, very large fines that were imposed in 1995 against coordinated price increases in the coffee industry still have not been paid because the appeals are not final. In addition, some firms may have gone bankrupt before the fines could be collected (OECD CLP, 1999). As of mid-1999, the HCO had imposed fines totalling HUF 1 977.3 million; of that total, about two-fifths (HUF 756 million) had been affirmed by courts, and about one-sixth (HUF 311.9 million) had been collected (HCO, 1999c). The record seems to have been improving since the earliest years. Although the proportion of proceedings in which fines are actually paid remained about constant (at 75%), the proportion of the monetary value collected increased substantially, from about 30% in 1991-93 to nearly 90% in 1993-96 (HCO, 1999c).

But, perhaps because of the difficulty the HCO experienced in actually collecting large fines, the aggregate amount of sanctions imposed has dropped sharply.

***Inefficient courts hamper the use of judicial processes to aid enforcement.***

76. Firms or persons who believe they are injured must take their complaints to the HCO, because there is no legal provision for an independent private suit under the Competition Act. Complainants do have some powers to ensure that the HCO takes their complaints seriously, though. The HCO must decide whether to open an investigation within 30 days after receiving a complaint, and it must notify the complainant if it decides not to pursue an investigation (Art. 69(6)). The complainant may appeal that decision to the Competition Council; if the Competition Council also declines to order an investigation, the complainant may appeal that decision in court (Art. 69(7), Art. 82(3); HCO, 1999b, Part 3.15). Complainants are not formal participants in the HCO's investigation and decision process (Art. 69(1)). That means complainants do not have to bear the costs; in fact, those are borne by the violator, if a

violation is ultimately established (Art. 69(4)). (Under the 1990 law, complainants had to pay a fee; that fee was modest, and was refunded in the event a violation was found (Competition Act (1990), Art. 40)).

77. Disappointed complainants often appeal, but the HCO's decisions not to open investigations are rarely overturned. In 1998, the HCO received 523 complaints, 63% of them submitted by private individuals. Nearly 70% were rejected. About a quarter of the rejected complainants appealed to the Competition Council; the Competition Council overruled the investigator and ordered proceedings opened in 12 of these cases, or about one out of six appeals. Of the remaining 66 cases that the Council also turned down, one-sixth of the complainants appealed to the courts, which issued one order for the HCO to open an investigation (HCO, 1999*b*, Part 3.20). In all the years since the appeal route has been available, only three matters have been opened after appeal and instruction from the court (HCO, 1999*c*).

78. Complainants may, in theory, obtain relief in court after the Council finds a violation. Aggrieved parties may claim compensation under the Civil Code, for example. But no such claims have been filed, perhaps because suitors are discouraged by the costs and delays of the judicial system. Private parties may also seek contract remedies. If a dominant firm has been found liable for refusal to deal, the disappointed party may seek a court order to establish the contract. If an agreement is found to be in violation, yet the firms nonetheless persist in trying to enforce it, parties may go to the court for an order nullifying the agreement under the Civil Code (HCO, 1999*b*, Part 3.20).

79. The law provides for representative suits on behalf of large numbers of consumers. In practice, this analogy to a "class action" process has not proved useful. The HCO, consumer protection organisations, and the Chamber of Commerce may bring an action in court against persons who have put consumers at a substantial disadvantage even if the identity of particular consumers affected cannot be established. The HCO may bring such an action only after the Council has decided that the conduct violates the Competition Act (HCO, 1999*b*, Part 3.20). The court may order the offender to reduce prices, to repair or replace goods, or to refund purchase prices, and to notify the public of the actions taken (Art. 92). The HCO has only used this process once, in 1991, against a car distributor for taking cars off the market before a planned price increase. The case illustrates the problems in Hungary's court system: the case is still not finally resolved, even though the firm has disappeared. The case has already gone to the Metropolitan Court, then to the Supreme Court, then to a special panel of the Supreme Court, and then back to the Metropolitan Court. The Consumer Protection Inspectorate reports one representative action, which was also delayed by the slow court system. Even though this history strongly suggests that the process is futile and thus the remedy is an illusion, it will probably remain in the law.

80. The courts are slow and backlogged, and they may also lack necessary capacity to deal with complex issues such as competition law. Legal education has been limited to Hungarian law, and it does not incorporate economic and financial contexts. Judges and their staff from that tradition may not have the skills and perspectives needed to understand and resolve complex economic disputes. In some respects, the legal culture has been developing greatly in the last 10 years. There are now many legal professionals who have represented or dealt with firms that are engaged in European and international trade, and who thus have learned not only the norms, but also the precedents and other materials of the larger legal context. But larger, more sophisticated firms increasingly resort to arbitration, rather than the courts, to deal with disputes. The arbitration process is more efficient and flexible, as well as more open to consideration of foreign precedent. By contrast, smaller firms may be relegated to an increasingly unsatisfactory quality of justice in the national courts.

81. The only competition law that applies directly in Hungary now is the Competition Act. EU competition law does not apply formally, but Hungary has subjected itself to an obligation to comply with EU competition rules under the association agreement with the EU and its member states (the "Europe Agreement," entered in December 1991 and made public by Act I of 1994). Restrictive agreements and



abuses of dominance that may affect trade between Hungary and the European Community are considered incompatible with the Europe Agreement (Europe Agreement, Article 62(1)). In applying that agreement, conduct is to be assessed based on criteria used in the application of the EU competition law (Europe Agreement, Article 62(2)). But a Constitutional Court decision in June 1998 prevented the HCO from directly applying criteria of EU competition law when acting in cases under the Europe Agreement.<sup>13</sup> This means that those criteria are applicable only if they have been incorporated into Hungarian law and promulgated in Hungary. Diplomatic efforts to this end are ongoing (HCO, 1999b, Part 3.21). So far, at least, the issue is more theoretical than real, because Hungary's substantive law is so close to the Treaty. There has not actually been a case invoking the Europe Agreement's "effect on trade" nexus (HCO, 1999c).

***International trade and enforcement co-operation are provided for.***

82. Competition policy in Hungary is well integrated into Hungary's policies of market and investment openness. International trade effects are considered in competition analysis. Even though market definition, as a formal matter, concentrates on a national market the prospect of import competition can determine the outcome of analysis, because where a position is actually dominant depends on the prospects of market entry. An illustration is the Competition Council's treatment of the *Hollow Ware Orosháza-Glasworks Sajószentpéter* merger, which joined the only two domestic Hungarian glassware plants. Despite the high domestic concentration—the HHI would have increased from 3156 to 5340, treating all imports as one market participant—the Competition Council approved the consolidation. Barriers to imports had been removed, and duties and fees fell from 20% in early 1995 to zero by 1 July 1997 (OECD CLP, 1999). Imports doubled after 1995, reaching a share in Hungary of about 30%. Four other firms in the Central and Eastern European region, with substantial excess capacity, created competitive pressure that would deny the post-merger firm a dominant position (HCO, 1999b, Part 3.18).

83. Conduct outside of Hungary is subject to the Competition Act if it has anti-competitive effects in Hungary (Art. 1; OECD CLP, 1999). Mergers abroad must be notified and the HCO's authorisation must be obtained if the turnover in the Hungarian market exceeds the statutory thresholds. These extensions of the law's reach represent changes made by the 1996 amendments. No extra-territorial enforcement action based on these "effects" tests has been taken yet. Several foreign mergers have been investigated, but none called for action (HCO, 1999b, Part 3.19). The HCO has not yet encountered problems investigating foreign firms. Foreign firms have been represented through their Hungarian subsidiaries or Hungarian legal representatives, mostly in merger or consumer deception cases (HCO, 1999b, Part 3.18).

84. International co-operation is provided for in the basic legislation. The HCO is responsible for receiving and responding to requests for information from foreign competition authorities. Documents generated in a proceeding may be made available to foreign authorities. If they contain business secrets, they may be made available only where that is provided in an international agreement, and the foreign authority undertakes to treat the contents as business secrets (Art. 58). Rules implementing the Europe Agreement are another important basis for co-operation. No specific enforcement matters have yet called for formal co-operation under the Europe Agreement, but as a member of the implementing sub-committee, the HCO has consulted with DGIV about several cases and has commented on proposed Community legislation (HCO, 1999b, Part 3.18). Hungary has concluded several free trade agreements, with the EC, EFTA, CEFTA, Estonia, Israel, and Turkey, all of which contain competition-related rules and provide for dispute settlement forums and procedures. Hungary has not had any competition cases from these sources, though (HCO, 1999b, Part 3.19).

85. Competition policy has a role in policy and decision-making about trade matters. The Hungarian market protection decree<sup>14</sup> and antidumping regulations<sup>15</sup> are applied through an inter-ministerial

organisation. The HCO participates in the Customs Tariff Committee, which has the right to propose tariff neutralisation, and a representative of the HCO sits on the Market Protection Committee, which could order a customs surcharge as a market protection instrument (HCO, 1999b, Part 3.18).

86. Resources are adequate, but horizontal restraints should now receive higher priority.

87. Resources have remained essentially constant for several years. The apparent increase of budget expenditure is explained by inflation. The staff increase from 1997 to 1998 is attributable to the preparation for EU accession (HCO, 1999b, Part 3.16). The HCO has been spared the “brain drain” that afflicts some other parts of the Hungarian government. Staff turnover is about 10% per year, although in one year (1995) it reached 17% (HCO, 1999c). The proportion of resources devoted to policy advocacy has increased slightly, from about one-sixth of professional staff time in 1995, to about one-fourth in 1998 (OECD CLP, 1999).

88. The HCO collects fees for applications for specific and block exemptions and for merger filings. In addition, it assesses parties with procedural costs where it finds they have violated the law. Only if an *ex officio* matter ends in a finding of no violation does the HCO itself bear all the costs (Art. 62). Fee receipts are modest, though, and are transferred to the state budget rather than credited to the HCO directly.

Table 1. Trends in competition policy resources

	Person-years	Budget (HUF million)	Budget 1994 prices)
1998	111	409.8	221.4
1997	106	340.3	200.1
1996	106	297.7	196.1
1995	115	231.2	180.2
1994	110	214.4	214.4

Source: HCO (1999b), Part 3.16; OECD CLP 1999. Budget adjustment based on consumer price index changes in (OECD, 1997).

89. The bulk of the HCO’s activity, measured both in terms of numbers of decisions and matters opened and in terms of sanctions imposed, has been in consumer deception and unfair practices, and abuse of dominance. About half of the Competition Council decisions involve enforcement of the law about consumer deception (OECD CLP, 1999). Only two matters involving horizontal agreements have resulted in orders; however, the largest single fine was imposed against a horizontal co-ordination to raise coffee prices. Attention paid to horizontal agreements increased sharply in 1998, but other issues still account for more decisions.

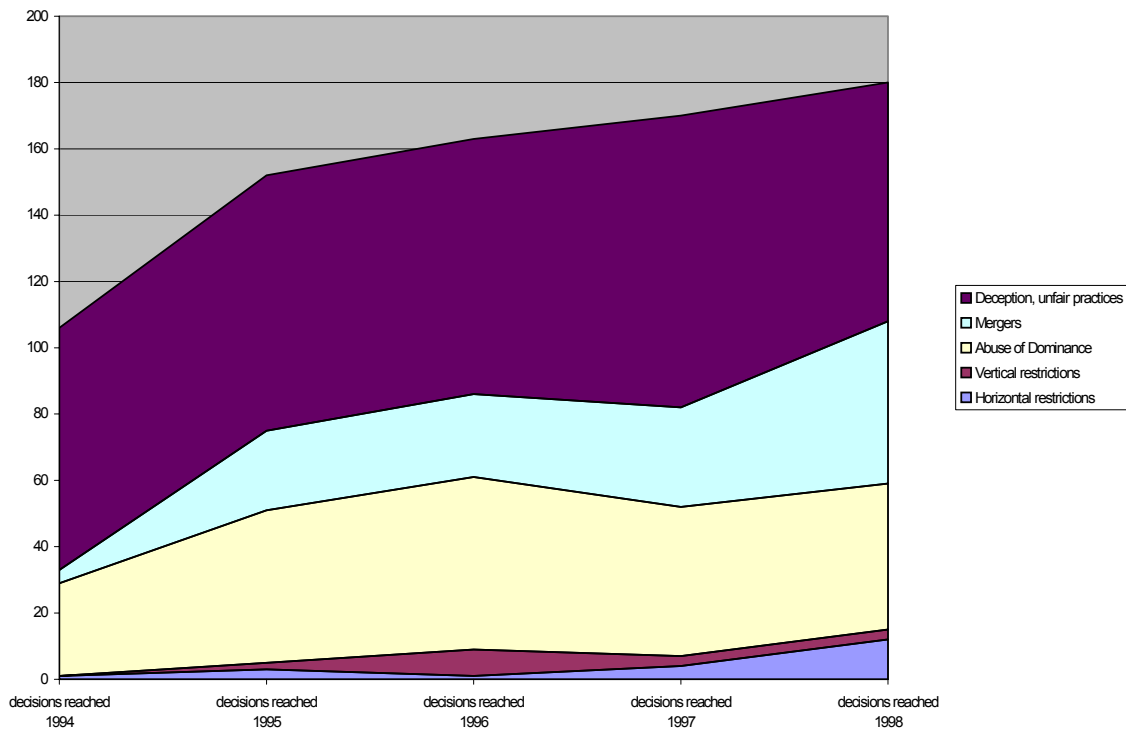
Table 2. Trends in enforcement actions

	Horizontal agreements	Vertical agreements	Abuse of dominance	Mergers	Deception, unfair practices
1998: matters opened	15	5	50	39	72
Decisions reached	12	3	44	49	72
Orders or sanctions imposed	1		5	1	30
Total sanctions imposed, HUF million	5.0		29.0		35.7

	Horizontal agreements	Vertical agreements	Abuse of dominance	Mergers	Deception, unfair practices
1997: matters opened	6		54	30	180
Decisions reached	4	3	45	30	88
Orders or sanctions imposed			7		27
Total sanctions imposed, HUF million			17.8		86.3
1996: matters opened	3	8	85	30	134
Decisions reached	1	8	52	25	77
Orders or sanctions imposed		6	8		30
Total sanctions imposed, HUF million	0.7	2.5	62.5		45.7
1995: matters opened	5	2	73	19	124
Decisions reached	3	2	46	24	77
Orders or sanctions imposed			8		31
Total sanctions imposed, HUF million			8.9		568.4
1994: matters opened	1	1	60	13	129
Decisions reached	1		28	4	73
Orders or sanctions imposed	1		6		38
Total sanctions imposed, HUF million	388.0		24.4		215.1

*Source:* HCO (1999a), Part 3.17. Before 1997, some vertical cases that were handled under the law's "blanket clause" are included in the "deception, unfair practices" column. The "sanctions and orders sought" category, used in other country reviews, is not applicable under Hungary's procedures; the number of decisions reached by the Competition Office ("decisions reached") is substituted.

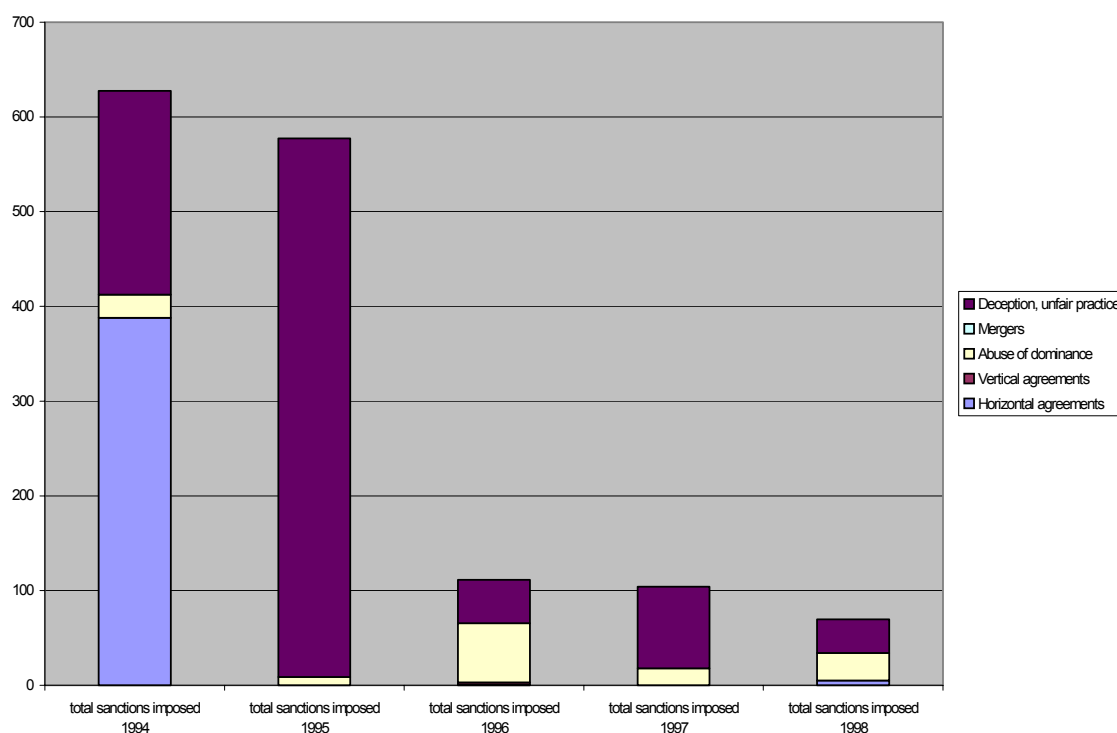
Figure 1. Changing Caseload



Source: HCO (1999a), Part 3.17.

90. The total amount of fines imposed is declining sharply. From totals in 1994 of HUF 627.5 million and in 1995 of HUF 577.3 million, fines dropped to HUF 69.7 million in 1998. Inflation over that period exceeded 100%; thus, in real terms, the total fines imposed in 1994 were twenty times greater than those imposed in 1998. The large early figures are due to isolated events, so the trend may not be as stark as that difference implies. In 1994 the HCO imposed a fine of HUF 388.0 million in a single case, for example. The fines have still not been collected because of court appeals. It may be that the HCO is awaiting the outcome of the appeals from these earlier decisions, before trying again to impose such large penalties. High fines encourage firms to appeal and delay payment. Except for the huge fine against the coffee industry, the sanctions applied to horizontal violations appear to be substantially lower than those applied to abuse of dominance. The increasing number of decisions in merger cases is in line with the expectation that restructuring would follow the end of the privatisation process and with the recent extension of jurisdiction to cover some foreign transactions (HCO, 1999b, Part 3.17).

Figure 2. Trends in sanctions imposed (HuF MM)



Source: HCO, 1999a, Part 3.17.

#### 4. LIMITS OF COMPETITION POLICY: EXEMPTIONS AND SPECIAL REGULATORY REGIMES

91. The substantive reach of the Competition Act is limited by some general and specific exemptions. The nature and scope of these exemption is generally consistent with the pattern of exemptions found in other OECD countries.

##### *Exemptions must be authorised by statute.*

92. The competition law does not apply to practices that are “differently regulated by statutes.” (Art. 1; OECD CLP, 1999). This statement governs the interaction of competition law with other regulations. Although it is brief, it contains one important principle: rules diverging from the Competition Act can be laid down only by acts of Parliament (HCO, 1999b, Part 3.2). Explicit exemptions and special provisions are discussed in the next section. Some general exemptions are implicit in statutory language and structure. One implicit exemption is for labour, which is not covered by the definition of the firms that are subject to the law (HCO, 1999c). Another is for intellectual property protected under the patent, copyright, and trademark acts (HCO, 1999b, Part 3.2). (The patent law has some competition-related provisions. Refusal to license is not abuse of dominance, but marketing constraints on patented products are null and void (HCO, 1999c).)

93. Legislation authorises price control in some circumstances; however, only a few products are still subject to controls.<sup>16</sup> The statement of legislative policy calls for direct government intervention over prices only where the Competition Act cannot prevent restrictive practices and abuse of dominance. This

principle implies that, once a decision is made to control prices, the level of regulated prices cannot be challenged on the basis of competition law. The Annex to the 1990 law listed the products and services for which some authority may specify minimum or maximum prices. These are basically utility services under exclusive-right concessions—electric power, gas, telecoms, and cable TV—and parts of the agriculture sector. The “subsidised” category now includes only scheduled road passenger transport and rail passenger transport. Items that have removed from the administered price list since 1992 include milk, bread, school books, coal briquettes, butane and propane, and firewood (WTO, 1998, p. 111). Prices for pharmaceuticals are not technically fixed under this authority, but are subject to a price subsidy system, described below, which has the effect of making prices uniform. Municipalities have price setting authority for rent, local public utilities (heat, hot water, water and sewer service, waste disposal), and passenger taxi services. Most items in the “minimum price” category are bulk agricultural products (HCO, 1999b, Part 3.2).

94. The method of price regulation varies, but in principle it is characterised by an effort to establish efficiency criteria consistent with the principles of competition policy (Szanto, 1998). A maximum price must cover costs and profits necessary for efficient operation, and a minimum price must at least recover the costs, in both cases taking into consideration any public dues and subsidies. Regulated prices may be set either by item or by rules for calculation (which provides the legal basis for price cap regulation). A regulated price must be set in agreement with the Minister of Finance if the price is set by a sectoral minister or is subsidised by the central budget (HCO, 1999b, Part 3.2).

95. In some markets, such as mobile phones, developing competition has obviated controls. In 1994, an invitation to tender for two national concessions was issued. For the first two years, the prices of the two concessionaires were covered by price cap regulations, and increases were limited to the rate of inflation. But competition between the two GSM service providers made even that control irrelevant. Prices increased less than inflation indexing would have allowed. Since 1997, mobile phone services have been dropped from the list of services subject to price cap regulation (HCO, 1999b, Part 3.2).

96. Legislation dating from 1991 also calls for notifications of price changes. In form, this law is a means of assisting the enforcement of the Competition Act, to the extent a dominant firm might violate that Act by charging too high a price. The scope of this notification obligation has contracted, though, and since 1995, when import liberalisation was completed, this regulatory tool has not been used. The government can in theory require firms in dominant positions to notify the HCO in advance of their price increases. The products originally subject to this obligation included edible oil, writing and printing paper, margarine, and paprika. The HCO could prohibit the price increase in whole or in part, if charging the increased price would constitute abuse of dominance. Between 1991 and 1995, 27 proposed price increases were notified, of which six were rejected (HCO, 1999b, Part 3.2).

### ***Local government actions and powers are an increasing concern.***

97. Applying competition policy to enterprises that are owned or operated by local governments is becoming a more important issue. The Competition Act applies to “undertakings” of all kinds (Art. 1). The nature of the firm’s ownership does not matter, so the law applies to publicly owned firms as well as private ones. Enterprises that are not independent of each other, such as a parent and its subsidiaries, are usually exempted from the general cartel prohibition (Art. 15). But public ownership, which might imply a “parent-subsidiary” relationship and thus common control among the enterprises owned, does not necessarily confer such an exemption. Firms in which the state or a municipality holds a majority interest are considered independent from each other, and thus their restrictive agreements are potentially subject to the law, as long as they have independent decision-making powers concerning their market conduct. The intent is that public and private ownership receive the same competition policy treatment (HCO, 1999b, Part 3.2).

98. Local governments have statutory responsibilities to provide or regulate water, sewer, local public transport, street cleaning, road maintenance, funeral services, cemeteries, and chimney cleaning. For some municipality-owned businesses, the government body charged with regulation is also involved in the business. Decisions with commercial or competitive impacts in these fields thus take the form of local government resolutions. These services may thus present the usual problems of monopoly ownership, access to essential facilities, dividing monopoly from competitive functions, regulating the monopoly part properly, and separating ownership, regulation, and management. Already, about two dozen constitutional court decisions have addressed prices of local trash hauling and waste management. In addition, local governments have some degree of discretion in using their powers, which include powers about tax subsidies and land use, which can distort market competition.

99. Processes for ensuring that local government decisions comply with competition policy and other national policies are cumbersome. The government's county or metropolitan offices, the so-called public administration offices, oversee the local governments. The local government must notify the public administration office in advance before issuing an order. If that office finds that the proposed order violates a higher level law or regulation, it may call upon the local government to amend it. If the local government refuses, the head of the office may request the Constitutional Court to quash the order. This process can take several years, during which the local order remains in effect.

100. To reduce harm from improper or anti-competitive local government actions, a proposed amendment of the Act on Local Governments would reverse the presumption. That is, it would empower the public administration office to suspend enforcement of a local government order if it would lead to material harm of public interest or cause irreparable damage. The local government would have the right to appeal the suspension, but during the appeal the order would not be in effect (HCO, 1999*b*, Part 2.11). Persuading local governments to agree to this reduction in their powers, which are now a matter of constitutional right, will probably require budgetary compensation. In this respect, Hungary may be following the example of Australia, where a budgetary incentive was needed to obtain the consent of state governments to a comprehensive review of anti-competitive regulations. Many aspects of Hungary's laws about local governments are under review. One purpose is to eliminate, where possible, the inconsistent responsibilities and incentives that can lead to local government decisions impairing competition. The HCO's most recent report to Parliament recommended a national law specifically addressed to local government competition problems (HCO, 1999*c*). The principal objective, though, of the new laws about regional governments is to establish a structure that would qualify for the EU's regional funding.

**Box 6. Local governments and funeral services**

An illustration of anti-competitive practices tied to local government action is funeral services. Under the act on municipalities, maintaining cemeteries has been a public responsibility. The responsibility was typically delegated to firms, which actually owned and maintained cemeteries. By contrast, funeral services have developed as a competitive market over the last 10 years. There are about 500 funeral providers now, half of them sole proprietors. Problems arise if municipalities, or their delegates, grant particular funeral providers exclusive rights of access to cemeteries. Other providers who need access then must pay a monopoly price to the holder of exclusive rights. Other controversies have arisen about insurance coverage for funeral providers' handling fees. There have been about 25 cases about fees for cemetery access and handling remains.

A recent statute, effective in October, 1999, addresses these problems by requiring accounting separation between cemetery and funeral services, non-discrimination in access to cemeteries, and municipal regulation of cemetery fees and terms of service. The HCO proposed requiring total separation of funeral services and cemetery operations, but small towns objected that this would be impracticable for them (HCO, 1999*c*).

### ***Sector-specific exclusions, rules and exemptions and regulated industries***

101. The Competition Act itself contains no sectoral exceptions. Other Acts of Parliament have conferred partial exemptions or special rules for some individual sectors. In some cases, these rules supplement, rather than replace, those of the Competition Act. And in energy, communications, and transport, special rules concerning competition issues are enforced by specialised regulators. In all three areas, policies are moving toward open, competitive markets, but as in many other Member countries, this program is clearest in telecoms. In several sectors, entry and hence competition are controlled by public tender. Activities that must, by law, be done by the state or local authorities or through public corporation or concession tender include pharmaceuticals, postal service, telecoms, managing broadcast frequencies, railways, mining, gas supply, and electric power. Concession terms may run from 5 to 35 years and may be subject to specific price-setting provisions (WTO, 1998, p. 68). A prime example is the eight year concession monopoly in telecoms granted to MATAV in 1993, as an incentive to attract investment.

102. In designing the relationship between the general competition law and sectoral rules that affect competition, price and entry raise difficult issues. For service obligations and operations, neutrally-applied sectoral rules could affect competitive conditions but would not necessarily lead to conflict with general competition rules. Sectoral rules that control entry often do raise issues under the competition law, though. Price too affects competitive conditions directly, but the HCO has not sought a formal role in regulating monopolists' prices (Vissi, 1999). The government's reform program calls for improving the co-ordination of regulatory responsibilities, including defining the respective roles of the HCO and sectoral regulators over analysis, advice, and decisions concerning issues of entry, price, and operation. Principles for separating the responsibilities of ministries and independent regulatory offices were set out in a May 1999 government decision. The intention is that decision-making authority over tariffs, for electric power and telecoms services, for example, would be assigned to the independent sectoral regulators.

### ***Agricultural products***

103. Hungary's system for setting agricultural reference prices is based on nation-wide product councils, combining producers, processors, and traders. Changing the prices or terms requires a consensus of the three interests (HCO, 1999c). The Agricultural Market Law<sup>17</sup> provides that prices and production limits set by agreements in these product councils may be exempted from the Competition Act's prohibition of restrictive agreements. The exemption depends on a finding by the minister of agriculture, that the economic advantages of applying indicative prices and quantity restrictions exceed the disadvantages from restricting competition (HCO, 1999b, Part 3.2). Although the minister is to take the provisions of the Competition Act into account, the standard that the minister of agriculture actually applies is more general than the Competition Act's substantive criteria for granting an exemption. The results of applying this loose standard may differ from how the HCO would apply the Competition Act's more specific criteria (Fingleton *et al.*, 1996, p. 149).

### ***Banking and insurance***

104. A sectoral regulator was responsible for competition policy in banking until 1994, but now responsibility has been assigned to the HCO (OECD CLP, 1998a). Although no particular competition problem is notable in the sector, some concerns are reported that banking services cost more than would be expected in a competitive market. In insurance, competition policy guided the process of privatisation. The industry was a duopoly in the late 1980s, and each firm had exclusive rights in some lines. When these firms were privatised, access was also opened to other firms, and firms were permitted to offer new lines and types of insurance. Several foreign insurance firms entered, and the former duopolists lost market



share. One type of premium, for obligatory third-party liability insurance, is still controlled, but controls will be phased out over the next three years (Government of Hungary, Ministry of Finance, communication to OECD June 1999).

### ***Professions***

105. About ten professional associations are authorised by particular statute, for lawyers, bailiffs, auditors, patent agents, engineers, architects, doctors, pharmacists, veterinarians, hunters, and private detectives. Associations may also establish themselves under the civil law and the general act on associations. There are three large, inclusive statutory chambers that have been delegated some administrative functions, including issuing registrations needed to engage in business, and some self-regulatory functions as well. In theory, their action is controlled by the threat of appeal to the administrative court, concerning the administrative functions, and by the ministers or even the HCO concerning their other functions (HCO, 1999c).

106. For some professional groups, statutory authority shields agreements about fees. The associations of physicians<sup>18</sup> and veterinary surgeons<sup>19</sup> are permitted by law to recommend minimum fees. The associations of engineers and architects<sup>20</sup> are permitted by law to recommend rates and service requirements. Although such agreements, being authorised by statute, are exempt from the Competition Act prohibition, the associations could violate the Competition Act if they took coercive action to enforce those recommendations (HCO, 1999b, Part 3.2). The net effect of this “compromise” position is unclear. There is evidently a sufficient supply of engineers and architects to keep prices in those fields below the associations’ recommended levels (HCO, 1999c).

107. Some statutes authorising particular associations may impose other anti-competitive constraints, such as preventing entry. The number of notaries is limited to a total of 236. The number of pharmacists is also limited, in effect, because licenses must be issued in proportion to the population. There have been 70 or 80 court cases challenging, on constitutional grounds, the numerical and location limits applied to pharmacies (HCO, 1999c).

108. The non-statutory organisations present commonly-encountered competition problems such as efforts to control prices, limit advertising, and exclude competition. For example, the real estate agents’ code of ethics admonishes against charging less than the recommended fee (and describes this as a rule against cartels!). The doctors’ code has a whole chapter about advertising, effectively limiting it to bare “tombstone” recitals. These constraints on individual physicians do not apply directly to legal entities such as clinics, so there is some competitive asymmetry, as the clinics can use more effective advertising methods. A principal control over abuse is the HCO’s power to grant or deny exemptions from the prohibition against restrictive agreements. The HCO is systematically reviewing association codes of conduct, without waiting for them to apply for exemptions. Unsurprisingly, the HCO is finding anti-competitive, restrictive agreements that ought to have been notified. In this effort, the HCO has enlisted help from the ministry of justice (HCO, 1999c).

### ***Pharmaceutical products***

109. The pharmacy sector has been substantially privatised, but it is not competitive. After 1990, the number of retail pharmacies increased 50%, and the number of wholesalers grew from just one to 74. But further entry is now barred, as a practical matter, because the number of pharmacies permitted by law has been reached. There may be no more than one pharmacy per 5 000 persons, located no closer than 300 meters from each other (250 meters in cities). Pharmacies must be controlled only by pharmacists. They may be owned through a limited partnership, but active owners must comprise at least 25% of the

ownership shares, they must all be pharmacists, and at least one of them must have a “personal right” to practice (OECD, 1999, p. 98).

110. Retail prices are fixed and uniform. But drug prices are not included in the law on price setting; rather, a different mechanism is used to accomplish price uniformity. Wholesale drug prices are technically free, but the ministry of health sets the permitted rate of reimbursement for each pharmaceutical product. The ministry and the insurance fund negotiate with the industry annually about wholesale prices, to establish the budgetary exposure and then the subsidy percentage. If a company wanted to change a price later, the consumer would pay the difference. The aggregate wholesale and retail margin are capped. As a practical matter, consumers face uniform, fixed prices. The insurance fund even distributes a floppy disc to pharmacies with the prices that result from the annual negotiation. Pharmacies have a monopoly on all drugs for human treatment, whether or not a prescription is required, and they are subject to profile limitations on what non-drug products they can carry. The HCO at one point suggested relaxing the profile requirements, to permit pharmacies to earn profits on other products so that other constraints, ostensibly intended to protect profits and subsidise the provision of necessary services, could be relaxed. The suggestion was not adopted (HCO, 1999c).

111. The government has tried to stimulate some competition among drug suppliers, with little success. One effort was a tender, but the process let the members of the industry see each others’ bids and thus increase them. The insurance fund complained to the HCO that the bids were not competitive, but the firms showed that the fund had invited them to check each others’ bids (HCO, 1999c).

### ***Tobacco products***

112. The Excise Act<sup>21</sup> authorises producers and importers of tobacco products to set a fixed retail price. Because it is thus authorised by statute, this resale price maintenance does not violate the Competition Act. Instead of authorising producers or importers to fix maximum resale prices and ensuring the collection of taxes, as required by the EU, this revision to the tax law resulted in fixed consumer prices and elimination of retail level price competition (HCO, 1999b, Part 3.7).

### ***Road transport (buses and trucks)***

113. For inter-city buses, entry and prices for service within Hungary are controlled, but there is competition in international service. The former bus monopoly was split into regional firms in 1989, and entry was free from 1989 to 1991. When the state-owned firms went bankrupt, some of the unemployed operators set up as independents. The resulting competition was evidently thought to be excessive, for in 1991 regulation was re-imposed, providing for concessions or for direct provision of service by municipalities. The government sets caps on fares. The HCO called for an authorisation system, rather than a concession, system, but the ministry did not agree. The HCO advanced the same arguments concerning international passenger transport, where they succeeded. Thus, private firms offer international scheduled transport.

114. The inter-city trucking business has been substantially liberalised over the last ten years, and many small firms now participate. The international trucking company, Hungarocamion, was privatised. But the national industry is still dominated by state-owned and subsidised trucking services (HCO, 1999c). Legislation being prepared to harmonise Hungary’s law on public transportation with EU requirements will be an occasion to complete the economic deregulation of inter-city trucking and bus services.

## *Taxis*

115. Despite efforts to re-establish regulation, this market appears generally competitive. When the government first moved to re-regulate the industry, there were about 20 000 taxis in operation. Those regulations required certification about technical specifications and established consumer protections, but did not otherwise restrict competition, and thus the number of taxis did not decline. The industry demanded curbs on allegedly excessive competition. In response, in 1993 the government authorised municipalities to limit the number of taxis. The HCO objected, arguing that the constraint was unconstitutional. Although the HCO's argument did not persuade the government, it did persuade the Constitutional Court, in a suit brought by a private party. When the Court annulled the limits in 1994, the government then authorised municipalities to set maximum tariffs. Budapest adopted such a regulation last year. The HCO was concerned that these controls could encourage firms to reach agreements restricting competition. The caps turn out not to be binding, as firms are competing at lower price levels for contracts to serve theatres, hotels, and airports. The HCO has argued that the maximum rate should apply only to on-call or roaming cabs and there should be no regulation for those under other kinds of contracts. Although its argument has not prevailed, the overall outcome appears to be generally competitive, because the regulations have not limited the number of cabs or set minimum fares (HCO, 1999c).

## *Airlines*

116. Access to the Budapest airport, the only significant one in Hungary, is restricted to some extent. The state-controlled national airline, Malev, has "grandfathered" control over the most attractive prime-time slots, and it had a monopoly on ground servicing, through a concession, obtained by tender (WTO, 1998, pp. 90-91). The airline has been structurally separated from its ground services and airport operations, but separation has not yet been followed by competition in airport services. Malev and the other ground services provider at the Budapest airport serve different terminals. Hungary has requested derogation from EU directive requirements in this respect, although compliance by 2006 is anticipated. The HCO was asked for its opinion on development of a strategy for this sector (HCO, 1999c). There is some basis for concern that maintaining the national flag identity will be more important than efficiency and consumer welfare. Even after privatisation, the state will retain significant holdings and a golden share.

## *Railroads*

117. Hungary moved early toward opening its rail system, but the process has stalled. Legislation<sup>22</sup> requires accounting separation between track infrastructure and rail operations. A joint decree of the Ministers of Transport and Finance in 1996 separated tracks from operations and removed non-essential activities into separate corporations to be privatised. In theory, access to the tracks must be granted to any domestic operating railway.<sup>23</sup> A similar obligation applies for non-domestic operating railways, either under international agreements or from reciprocal treatment. Concession tenders may be invited for operation, but as of 1998 the minister had not taken advantage of this possibility. Scheduled local and long-distance passenger transport services are defined as public utility activities. Passenger tariffs are regulated, by fixing maximum prices. Freight tariffs were set to be liberalised in 1998 (OECD CLP, 1998b).

118. Despite the promising framework, little has been done to introduce competition in this sector. The only investment in infrastructure has been in the Vienna-Budapest line. Inefficient branch lines have not been shut down. Rates for track access have not yet been set; a decree is not expected until late 2001. A regulatory authority responsible for allocation of track capacity is to be set up by 2002. The HCO expects to participate in the Ministry's preparation of the necessary regulations (HCO, 1999c).

## *Energy*

119. Since August 1994, the electric power sector has been governed by the Hungarian Energy Office, which is controlled by the Ministry of Economic Affairs. The HCO argued for regulating this sector through an independent agency, rather than a ministry, and the Parliament agreed. The Energy Office has responsibilities and powers over issues with competitive significance, including entry, conduct, and exit, and over consumer protection issues too. The Ministry of Economic Affairs retains decision-making powers over price and entry, though. The law permits direct retail sales to certain large customers, and industrial plants that generate their own power may sell the excess into the grid, as may municipal heating plants (Szanto, 1998). For these purposes, the law allows, but does not compel, an owner to permit other firms access to its facilities (OECD CLP, 1997c). Although prices are to be set with competition policy concepts in mind, the Minister has all the responsibility, and the competition law itself does not apply (Szanto, 1998). The sectoral law<sup>24</sup> defines transmission and supply as natural monopolies requiring state authorisation, which entails exclusive rights and supply obligations for the areas covered.

120. Despite the overlay of sectoral regulation, the Competition Act applies in the electricity sector to the extent it is not implicitly displaced by other regulation. Suppliers have brought complaints about abuse of dominance, and the HCO has examined and approved four mergers involving power stations and a mine. For a merger in electric power, district heating, or gas, two authorisations are needed, so either the HCO or the sector regulator could reject it. So far, there have been no disagreements about mergers between HCO and the sectoral regulator (HCO, 1999c). But one of the merger cases suggests that the HCO is applying a light hand. The HCO approved a share transaction that consolidated control among the regional distribution companies. The Energy Office had already approved it. One investor, Electricité de France, controlled two distribution companies, EDASZ and DEMASZ. The other investor, Bayernwerk AG, controlled a third, DEDASZ. They agreed to split the holding in EDASZ, so each would have an equal share, and to establish a committee to co-ordinate management. The HCO found that, because the concession areas were geographically separate, the distribution companies did not yet compete with each other, and competition through new investment would likely be too limited to influence decisions. Moreover, each distribution company was dependent on dealing with the national transmission monopoly.<sup>25</sup> The possibility that these firms were the most likely potential entrants into each others' territory once competition was liberalised, and that this "joint control" arrangement might have been a treaty to ensure against this threat becoming a reality, was considered too speculative, because the prospects for retail-level competition in this sector were not yet clear. By comparison, HCO blocked a similar proposed acquisition in telecoms, because the liberalisation program was more explicit, and indeed entry was imminent (HCO, 1999c).

121. HCO has participated in the development of plans to liberalise the energy sector. The HCO responded to a 1997 request from the Parliamentary Economics Committee for a report on natural monopolies and exclusive rights with a recommendation for a thorough policy review and greater reliance on competition (as well as more regulation where needed). And it has participated in the energy ministry's expert group preparing a proposal to move Hungary toward compliance with the EU directive in this sector. The HCO has argued for divestiture of the system operator and divestiture of the high-voltage grid, termination of monopoly rights in wholesale, termination of the import monopoly, and third party access at local level (in stages, if necessary). In the long run, the HCO believes distribution and supply should be separated, but that is not yet necessary to separate generation from distribution and supply (HCO, 1999c).

## *Natural gas*

122. The natural gas industry is still a monopoly, and prospects for competition are not strong. Magyar Olaj-es Gazipari Rt (MOL) is the only producer, importer, and wholesaler, and it owns and operates the

only high-pressure pipelines as well as storage facilities. It also sells at retail to large-scale users.<sup>26</sup> The six local distribution companies were privatised in 1996, and most of them are now controlled by private investors. Because licenses assigned customers to firms (including to MOL), there is no competition among the distribution companies, or with MOL, for service to those inherited customers. There is some, limited, competition for new customers and for municipalities that had not previously been served. But competition requires physical connection, since there is no obligation for MOL or for a distribution company to provide pipeline access to third parties (MOL is required to provide access for third parties to ship gas produced in Hungary, but no one has discovered gas in Hungary other than what MOL is already producing.) Rates are set directly by the government. The scope for application of competition law is narrow.

### ***Telecommunications***

123. Under the Telecommunications Law, the Minister of Transport, Communications and Water Management regulates prices of services under concession contracts; in other respects, the Competition Act applies (Szanto, 1998). Concessions govern entry into public switched voice telephony, public mobile service, nation-wide public paging, and broadcasting. Most of the public switched system is now run by MATAV, which has the concession for local service in 36 of the nation's 54 regions as well as exclusive rights in national and international long distance service. These exclusive rights run until 2002. The sectoral regulator, the Communications Authority, is separately constituted and budgeted, but it operates under the supervision of the Ministry. It issues licenses for the services that do not require concessions, such as satellite transmission (Szanto, 1998).<sup>27</sup>

124. The HCO's continuing competence in this area is illustrated by the *MATAV-Jasztel* merger decision. Under the concession agreements and the telecoms legislation, the minister had the power to authorise the transaction based on the financial and sector-specific issues. But although the minister expressed concerns about competition issues, he did not take action to block the acquisition. As part of its deliberation about the acquisition, HCO solicited public comment. Notably, the telecoms regulator did not submit a formal statement in that process (HCO, 1999c). It remained for the HCO to block the acquisition, in order to preserve the potential for competition as the market is liberalised.

125. The HCO has examined problems at the border between regulated, concession-governed services and competitive services. In 1996, when MATAV increased prices for value-added services and this action was challenged as an abuse of dominance, the first question for the HCO was whether these services were even covered by the Competition Act. If the services were included within the concession contract's exclusive right of supply, they would be exempt. The Competition Council decided that the competition rules applied, but then decided that MATAV's price increase did not violate them (Szanto, 1998). But when the issue arose as discrimination in access, the HCO found liability. MATAV set new rules for renting space in ducts, resulting in higher rates for new cables that could be used for data transmission, which MATAV was providing, than for cables for program transmission, which MATAV at that time was not providing. The Competition Council held this discrimination to be an abuse of a dominant position, intended to achieve a competitive advantage and hinder competitive entry.<sup>28</sup>

126. Relations between HCO and the sectoral regulator are not set out in the telecommunications law (unlike the electric power law, which calls for HCO advice to the regulator about competition impacts of merger cases). There is nonetheless close, though informal, co-operation between the HCO and the ministry and the telecoms authority. A more formal co-operative arrangement may be provided in the new communications law, due to be adopted in 2000. There have been some disagreements between the HCO and the sectoral authorities about policy issues such as interconnection prices. The HCO staff believes it might be better to create some framework, such as guidelines, in co-ordination with the ministry or the

regulator, to make the decision process and standards clear. Competition law would not apply to concession prices that were set by regulation. Until the exclusive rights expire, the telecoms regulator might be the better body to make the formal decision about access pricing, but subject to the opinion of the HCO (HCO, 1999*c*).

### ***Broadcasting***

127. The Act on Radio and Television Broadcasting set out sector-specific standards for mergers and similar combinations between broadcasters and among broadcasters and other media sources.<sup>29</sup> Combinations between national broadcast services are prohibited, and holdings of regional and local broadcasters are limited. For example, a single broadcaster may control no more than twelve local broadcast services. The law prohibits a combination between a national broadcast service and a national daily newspaper, and it controls combinations between broadcast services and other daily and weekly newspapers. And it prohibits the combination of non-profit and for-profit broadcast services. The policy goal is said to be to promote and protect media freedom. In effect, the law establishes conclusive presumption about market definitions and dominance. The law is administered by the National Radio and Television Board. Transactions are still subject to reporting under the Competition Act, if they meet the statutory thresholds. But the HCO may not authorise a transaction if it would violate the structural rules of the broadcasting act (Szanto, 1998).

## **5. COMPETITION ADVOCACY FOR REGULATORY REFORM**

128. By law, the HCO plays important roles in the development of policies affecting competition. Its position outside the government empowers the HCO to use many means to affect debate and encourages public expression of its views.

129. The views of the HCO must be sought about all draft proposals or legislation that could restrict competition, grant exclusive rights, or regulate prices or terms of sale (Art. 36(3)). The HCO participates in the government's regular process of policy development, despite its independent status. The staff of the HCO has provided opinions on proposed rules and legislation almost on a daily basis. In 1997 the HCO received about four hundred drafts, half of which affected competition; in 1998, there were about three hundred (HCO, 1999*b*, Part 3.7). If a ministry has failed to consult with the HCO about a proposal or draft, that omission can be corrected or at least identified, either at the meeting of the Economic Cabinet, which the HCO President attends, or at the state secretaries meeting, which the Vice President attends. The process does not work perfectly, though. Despite the formal, statutory obligation to consult with the HCO, and the potential for embarrassment at a formal meeting if a ministry has failed to do so, the HCO still encounters proposals about which it should have been consulted, but was not (HCO, 1999*c*). Particularly concerning industries or services that had not been part of the competitive sector, such as health care, education, and local public services, the responsible ministry often does not realise that the proposals would affect the HCO's responsibilities (HCO, 1999*b*, Part 3.7).

### **Box 7. An advocacy case study**

Development of the recent funeral-cemetery services legislation illustrates the HCO's ability to participate in policy making despite its position outside the government. The HCO sent a letter to the home ministry outlining the problems and the range of possible solutions. A round of inter-ministerial debate ended with a draft, which was considered at the state secretary level. The HCO criticised this draft strongly, and the ministries responded with another draft, which was still unsatisfactory. The government promised that the implementing rules would respond to the HCO's remaining concerns. When the government nonetheless accepted the unsatisfactory draft, the HCO argued to the Parliament and the home minister about the need for further improvements. An MP introduced the HCO draft

as a substitute, supported by the committee and, at that point, by the home office ministry. In this process, the HCO got strong support from MPs who are mayors of small towns and who thus are intimately familiar with the problems (HCO, 1999c).

130. The HCO's independent status means that it is principally responsible to Parliament. As a formal matter, it makes policy proposals to Parliament, sometimes through its annual report, rather than through the government. If the government has not accepted its positions and recommendations in internal consultations, the HCO may address its arguments directly to the legislature. The HCO has a long-standing, regular connection with the Parliament's Economic Committee. By contrast, there is no regular point of contact between the HCO and the Prime Minister's office. The HCO attempts to give signals on sensitive areas and competition trends in its annual reports, too. In response to those reports, the Economic Committee has taken actions such as its 1999 resolution calling on the government to take further steps toward pro-competitive reform in telecommunications, energy, transport, and local government<sup>30</sup> (HCO, 1999b, Part 3.7).

131. Backing up its power to make persuasive arguments in policy debate, the HCO can challenge anti-competitive actions by other public bodies in court (Art. 85; HCO, 1999b, Part 3.14). This power is nearly unique among OECD member country agencies. The HCO can request that another public administrative body correct a decision that impairs free economic competition, and if the other agency fails to do so in 30 days, the HCO can then seek court review. This power in the current law has never formally been used; a similar procedure under the previous law was used once, in a case about waste collection. An informal, non-public threat to use this power has occasionally been effective. This power is available only against particular decisions, though, and not against anti-competitive policy decisions or rules.

132. An anti-competitive normative act such as a statute can be challenged in the Constitutional Court, by the HCO or indeed by any citizen or legal person (HCO, 1999c). In such an action, the HCO might claim that procedures were not followed properly or that constitutional standards of proportionality were not met.<sup>31</sup> Filing or threatening Constitutional Court action has achieved results on several occasions. When limits on taxi licenses were adopted, over the HCO's objection, the HCO's view was vindicated when the Constitutional Court overturned the legislation. And a challenge to the Postal Act, to determine whether it could constitutionally support discriminatory charges for different news vendors, resulted in revisions to the Act that mooted the court case. When, in 1992, a special customs exemption turned out to apply to a single make of auto, and the Ministries of Industry and Trade and Finance had not consulted with the HCO in advance, the HCO published its critical assessment of it in the newspapers and threatened to take the Ministries to the Constitutional Court over it; the exemption was withdrawn (Fingleton *et al.*, 1996, pp. 152, 168).

133. The HCO's competition advocacy has aimed to keep barriers to entry created by other statutes or necessitated by other public interests to the minimum necessary justified by the benefits. Some of its efforts have succeeded; some have not.

- In international trade matters, the HCO lost some early controversies with other parts of the government about issuing import licenses in a way that the competition body thought was anti-competitive. The HCO argued publicly, and unsuccessfully, against tariff increases in the mid-1990s (Fingleton *et al.*, 1996), pp. 149, 152.
- In taxi regulation, the HCO did not succeed in limiting fare caps to the market segment affected by the market failure; however, the cap was set so high that it is not binding.
- In electric power, the HCO has been working to try to ensure that de-regulation in line with EU requirements results in a regulatory model that leaves more scope for competition. HCO

experts have participated since 1998 in the working groups in the electric power sector (OECD CLP, 1999).

- The HCO has participated in preparation of the public procurement law; as a result, procurement actions by public service providers with exclusive rights are now covered by the Competition Act.
- In funeral services, the HCO's advocacy of de-regulation promises to be successful. Regulations now require non-discriminatory access to cemeteries as limited resources and compel service providers to account separately for monopoly and market based activities. They also require that rates for monopoly activities be regulated in municipal by-laws.
- The recent amendment of the Act on Telecommunication prevents concession-holding companies from competing in providing cable television services and networks in their concession territories, to ensure that new market actors have a better chance to compete with the dominant service providers when total liberalisation comes. The HCO initiated this limitation, in its comment on the government's draft bill (HCO, 1999b, Part 3.7; HCO, 1999c).
- The HCO has recommended against proposals to protect small shopkeepers from the competition of large retail chains and outlets. As of mid-1999, these proposals had not been forwarded for legislative action, suggesting that the HCO's views are finding support.
- In banking, the HCO's focus has been consumer protection. The HCO participated in the working party preparing the Act on Credit Institutions. The HCO proposed uniform disclosure criteria for interest rates, which were adopted. The HCO has brought several actions against financial institutions for misleading consumers (OECD CLP, 1998a).

## 6. CONCLUSIONS AND POLICY OPTIONS

*Well-conceived competition policies and institutions support consumer interests and market openness, though court delays and technical problems may hamper implementation, and infrastructure sectors present the usual competition problems.*

134. Competition policy has motivated the development of the institutional framework for Hungary's market based economy. Competition policy has been a strong, indeed a leading, element of Hungary's long-term reform. In 1984 and again in 1990, a general competition law was the first product of a wave of reform effort, implying a recognition that competition was fundamental. To be sure, it may also have been easier to adopt laws announcing general principles, such as protecting free competition, before tackling matters of contracts, corporations, and taxation that require more attention to technical detail, and that have a more direct, widespread, and tangible impact.

135. The sequence of Hungary's major policy decisions discloses the central and pervasive importance of competition policy principles. As market institutions were developing and Hungarian businesses and consumers became accustomed to the new environment, the competition law's provisions about unfairness, abuse of dominance, and consumer deception have been particularly important. Competition law enforcement has assured the public that market competition would be fair and honest. Now, a higher priority is being accorded to the goals of efficiency and consumer welfare, which will make the competition law a solid foundation for sectoral reforms..



136. Another sound sequencing decision, to open up quickly to foreign trade and investment, was an application of competition policy principles. Liberalising trade and investment complemented reinforced competition policy. Consumers and businesses could take advantage of the choice, quality, and rivalry of competitive markets. And Hungarian businesses were quickly exposed to the discipline of efficiency. In this process, the HCO has tried to ensure that trade has actually increased competition, and that trade arrangements were not set up to reduce it by grants of special privileges. The HCO has not prevailed every time, but its ability to take its views public no doubt helped put pressure on other decision-makers.

137. The HCO is active, well-staffed, and widely respected both in the government and in the private sector. Of course, this is not to say that all of the HCO's decisions have been above criticism. But on balance, the HCO is a thoroughly professional competition enforcement agency. Aspects of its structure may be a model for others. Case decisions are well insulated from improper influence. Yet the HCO leadership has access to the highest levels of government to offer advice and, in some cases, criticism about policy proposals that could impair competition. Because of its independent status, it may still feel isolated from some intra-government consultation. But its independent status also permits it to participate, effectively, in debate outside the government.

138. The HCO has had some success in preventing or removing unnecessarily anti-competitive constraints on price, entry, output, and commercial practices. As the successor to the old price control office, it had been responsible for aspects of price control in the early 1990s; those powers have fallen into disuse and show no signs of being revived. More recently, the HCO has used its enforcement powers against restraints imposed by professional associations. Some of its successes have been partial or even accidental. In taxi regulation, for example, the HCO's recommendations were not all followed, but its position was vindicated in a lawsuit brought by another party, and the market has turned out to be reasonably competitive anyway. Some sectoral constraints on competition remain, principally in infrastructure sectors of energy, gas, telecoms, and transport. The competition issues in these sectors, and the problems of transition from monopoly or regulation to competitive markets, parallel those found in other OECD Member countries.

139. Because competition policy did not play a central role in privatisation, a few problems remain that will now be harder to solve because the HCO does not have the power to order restructuring of dominant firms. Where structural market power survived privatisation, lack of enforcement tools to repair the structural problem leaves fewer options. The HCO is understandably reluctant to engage in detailed price regulation to curb abuse. Enforcing laws about access and exclusive dealing can help promote competitive entry. The most important corrective, though, is likely to be continued market opening, to competitive sellers and buyers outside of Hungary.

140. Enforcement may be impaired because court delays make sanctions uncertain. The HCO has not only the power to order firms to change their conduct, but also the power to impose financial sanctions large enough to make violation costly. Early on, the HCO evidently tried to use financial sanctions as a deterrent, by demanding very large fines against the kinds of conduct that had the greatest potential for harm but that were hardest to detect. After five years of litigation in the courts, though, the fines in the biggest case about horizontal restraints still have not been paid. Meanwhile, intervening inflation has cut the effective level of the fine nearly in half. Competition policy may not be an effective check on improper conduct if violators can avoid the consequences indefinitely. The problem of court delay is well recognised in Hungary, and some steps have been taken to address it. The 1996 revisions to the competition law authorised the Competition Council to levy fines immediately in some cases, so parties would not necessarily gain from delay. It remains to be seen how effective that new power will be.

141. Technical inconsistencies in the law may hamper cartel enforcement and increase parties' costs in merger reporting. Targets of cartel investigations may resist demands for evidence, taking advantage of the

strict deadline that the HCO and the Competition Council must meet for reaching a decision. Administrative fines, which the HCO can impose directly to assure compliance with its processes, are quite low. The maximum fine is HUF 100 000. Parties to a cartel may be willing to pay those small amounts rather than give the HCO the evidence that would show them liable for much greater substantive fines. The HCO needs more flexibility to deal with this increasingly important enforcement issue. And inconsistencies in technical language in the competition law, the civil code, and the securities law may increase uncertainties, and hence costs, for investors.

142. Hungary's competition policies and institutions are well within the mainstream practice of OECD Members. Indeed, the priority of competition policy, as measured by resource commitment and the status and independence of the competition agency, is somewhat stronger in Hungary. The HCO has about the same size staff as the combined staffs of two competition bodies in Spain, but the Spanish economy and population are more than four times larger. The head of the HCO, like the head of the KFTC, has ministerial rank and thus direct access to policy discussions at the highest levels; in most OECD Member countries, the top official solely responsible for competition policy does not have ministerial rank. And the HCO has the potentially interesting power to challenge anti-competitive actions by other agencies in court. This power is rarely found outside of Central and Eastern Europe. Although the HCO has never actually used the power, the threat probably increases the HCO's clout in policy making.

***The next important reforms, opening up monopolised sectors to competition and turning enforcement attention to horizontal issues, are consistent with Hungary's goal of accession to the EU.***

143. Increasingly, Hungary's problems look like those of the rest of Europe, and its policy goal is no longer to establish a market economy, but to bring its market's performance into line with its neighbours and peers. A frequently expressed concern has been that Hungary has adopted good laws but that implementation has been less satisfactory. To some extent, because of weaknesses in sanctions and investigative processes, that criticism might have applied to competition policy as well as other policies. Improving implementation is obviously an important task, now that the principal laws and institutions are well established. Much remains to be done in order approximate the complete *acquis communautaire*, but the competition policy elements are substantially in place. Convergence on EU substantive norms is not without problems, as Hungary has had to adopt rules about vertical practices that may bring its own policy goal of efficiency into conflict with the broader goal of EU accession. But the EU itself is revising its approach to vertical restraints, so significant conflict is unlikely.

144. Hungary, like its neighbours, is working to expand the use of market principles in formerly monopolised or regulated services. The sectors that remain subject to regulation or monopoly in Hungary are the same as those in neighbouring countries: telecoms, electric power, gas, rail transport, airport access, and national bus service. The next major task, now that the market economy is firmly established, is to bring these sectors into it. European institutions provide some guidance and impetus, to the extent that the EU is also undertaking reforms in these sectors. But the EU's directives and the models of neighbouring countries, although useful, will not be as important to achieving reform as convincing Hungarian businesses and consumers that they will benefit from more competitive markets.

145. Hungary's regulatory system is incorporating competition principles, in part because the HCO insists upon it. Commitment to competitive, market methods in other parts of the government is uneven, and oversight mechanisms to improve the quality of regulation, such as regulatory impact analysis, are still in their infancy. The HCO participates in debate within the government, but it evidently loses many of the arguments. At least, the HCO often has to continue the debate in the Parliament or the press. It is a strength of Hungary's arrangements, that the HCO is independent enough to play that role. It may be that, in the intra-government deliberations, other ministries and agencies hold out longer on behalf of industry interests, knowing that decisions remain to be made in other forums.

146. The HCO's role in advocacy will continue and even intensify, but its role in enforcement is likely to shift now from consumer protection to horizontal restraints and mergers. The HCO has paid relatively little attention to horizontal problems until recently. In the 1990s, the highest priorities were establishing the basic institutions, convincing consumers that the law would protect them against obvious abuses, and dealing with the problems and some crises of major restructuring. Paying more attention to fairness and consumer deception at first built trust and credibility, among the public at large and in the business community. Now, the HCO is ready to turn to the kinds of problems that are the highest priority in other developed economies, because they cause the most harm. This shift will test the HCO's support, as the HCO will encounter the conflicting claims and interests of consumers, small local businesses, and large multinational firms, particularly in distribution and services. So far, business groups have generally supported the competition law and enforcement policy. But this support may represent lack of opposition, rather than enthusiasm for pro-competitive reform. Sanctions imposed against violators have been modest (with some exceptions). Support for competition policy will be tested as enforcement attention focuses on agreements that are "closer to home" and meanwhile small business demands legislative protection against low-price competition from larger firms.

147. Small business interests have not yet been a major factor in Hungary's reforms, but that may change. The laws are neutral with respect to firm size. But other regulatory institutions are reportedly more tolerant of big companies' environmental and labour law violations, and some SMEs claim this unequal treatment gives larger firms an unfair advantage. The image of neutrality, which appears to be a fact in the HCO's practice, has some value, though it may incur some costs, too. If enforcement attention shifts toward horizontal issues, SMEs may well find themselves increasingly targeted. Small businesses are just as prone to collude as large ones, perhaps more so. Yet to some it appears "unfair" to apply an "antimonopoly" law against a cartel of small businesses.

148. SMEs in Hungary, like those in other countries, are increasingly calling for special rules about distribution to protect small retailers against large-store competition. Approximation to Europe is changing Hungary's rules about distribution agreements. Many European multinationals entered Hungary after liberalisation and introduced vigorous competition with the atomised and inefficient distribution system in place before. Making Hungary's rules consistent with the EU's rules will simplify legal matters for firms that operate across Europe. If that simplification reduces costs, then even more entry might be expected. On the other hand, Hungary's previous rules may have invited entry because they were relatively permissive, so that Hungary's movement toward the EU rules might slow down new entry from foreign firms. The possibility of this effect might be cited as a reason for Hungary not to adopt further special protections, such as legislation about "sales below cost."

***Policy options for the short to medium term to strengthen the scope, effectiveness and enforcement of competition policy***

149. Shift competition policy focus and priorities toward enforcement against restrictive agreements (particularly horizontal ones) and anti-competitive mergers. Some increased attention here shows in the latest data about numbers of cases. Some weaknesses in the original 1990 law made it less effective in attacking common horizontal problems, such as restraints imposed by trade associations. Now that the HCO can take action against an association as well as its members, more actions against these problems can be expected. Anticipating this change of emphasis, the HCO is concerned to improve both its analytic capacities, for defining relevant markets and assessing impacts on competition and efficiency, and its investigative tools. But changes in legislation will be needed, to transfer responsibility for consumer issues to another body.

150. Eliminate the deadlines for completing *ex officio* law enforcement matters, so that cartel enforcement will be more credible. To be sure, deadlines for completing administrative reviews and

processing applications for exemption or negative clearance improve efficiency and increase certainty. But applying the same deadlines to contested matters reduces the HCO's ability to enforce the law effectively. This will be important as the HCO shifts its attention toward more difficult cases, of horizontal co-ordination where the parties not only have not asked for authorisation or exemption, but are trying to keep their agreement secret. Some kind of deadline might still be valuable, both as an internal control and an external discipline. Options could include setting a different, longer deadline for *ex officio* matters, permitting the Council president to suspend the deadline as long as parties have not fully complied with requests for information, or greatly increasing the administrative fines for failure to comply, so that delay is less attractive.

151. Improve the efficiency of the court system, so that sanctions can be more timely and certain. This is a general problem, affecting all kinds of rights and claims. An intermediate court between the first instance courts and the supreme court has been proposed. Additional layers could just mean additional delay, though. Appeals from HCO decisions already take two stages, beginning with the administrative panel of the Metropolitan Court. A single stage appeal under streamlined procedures to judges who are specially qualified about competition issues should be considered.

152. Repeal the special exemption that permits producers to fix the resale prices for tobacco products. Although some supervision and control may be necessary to ensure tax collection, permitting RPM in this context probably increases prices to consumers as well, by preventing retail competition. Efforts to remove this special exemption will probably face opposition from small retailers, who believe they profit from the high prices, as well as manufacturers and suppliers.

153. Remove unjustified bars to entry in professional services, notably pharmacies and notaries. Fixing the number of providers of these services, without regard to their competence, inevitably dampens competition, elevates prices, and discourages innovation. Entry might be invited gradually, by permitting other providers to offer first complementary, and then similar, products and services. Achieving significant competition in the pharmaceutical sector will also require revising the system for subsidising or insuring drug expenses, to replace the present system that virtually requires uniformity.

154. Complete the process of privatising and introducing competition into infrastructure sectors and services, notably road transport and, as soon as is practicable, energy, natural gas, and rail transport. Here, the HCO must maintain and even intensify its complementary roles of advocacy, analysis, and enforcement. The HCO will need to expand its capacity for dealing with competition problems in deregulating industries, both to assist other regulators in making the transition and to handle the likely increase in enforcement matters as liberalisation proceeds. The HCO will probably face even more decisions about mergers and restructuring in these industries, as well as post-deregulation complaints about access—and post-deregulation efforts to return to co-ordinated behaviour.

155. Maintain HCO advocacy concerning anti-competitive government action, particularly at the local government level, and concerning other typical subjects of anti-competitive rules and decisions, such as protections for incumbents in distribution and commercial aspects of professional services. Steps are already underway to strengthen national government oversight of local government actions, to reduce the risk that local government orders can impede competition for extended periods of time while the national government goes to court to try to undo them. At the ministerial level, the government has called for reforms to improve the cost-benefit analysis of proposed regulations. Further enhancement of consultation process requirements, inside the administration and with the public, would also be welcomed.

156. Correct the inconsistencies that may lead to unnecessary uncertainties in the merger notification and review process. Resolving these inconsistencies will require co-ordination with agencies and ministries responsible for matters under the Civil Code and the securities and corporation laws. The legal and

accounting firms who deal with these technical problems frequently, and who have devised ways to “work around” the problems, may have useful suggestions for general solutions.

***Reform will require establishing workable transition relationships with sectoral regulators.***

157. In removing unnecessary economic regulation in infrastructure sectors, the common problem is co-ordination between generally applicable competition policies and sectoral laws and regulators. In Hungary, these relationships are developing unevenly. For example, statutes require HCO advice about regulatory decisions for electric power mergers, but not those for telecoms mergers, while in broadcasting, the statute sets out a rule based on maintaining viewpoint diversity that the HCO must follow. In agriculture, the sectoral statute refers to the competition law, but the failure to involve the HCO in the decision process, and the use of less disciplined standards for exempting large-scale agreements, increases the risk that decisions about competition in this very important sector in Hungary will be inconsistent with the general competition law. Efforts to clarify transition responsibilities should continue. (In the long run, as entry leads to significant competition, sectoral regulation can be reduced and abuse controlled under the general competition law). Giving a sectoral regulator responsibility where price is the issue helps the HCO avoid getting too involved in issues of pricing, but it can distort analysis, because price and access are often inseparable. Setting simple, industry-specific rules about access saves enforcement resources, but the rules must be drafted and applied with sensitivity to general competition principle, not just to the industry’s historic practices and technology. The HCO should be closely involved both in developing and applying sector-specific access regulations, to guard against perverse results.

## NOTES

1. Act No. V of 1923 on Unfair Competition.
2. Act No. XX of 1931.
3. Act No. IV of 1984, On the Prohibition of Unfair Economic Activities.
4. Constitution, Art. 9(2), quoted in (Vissi, 1999).
5. Resolution of the Council of Ministers No. 1143/1989 (XI. 26.) MT.
6. Act XXII/1990.
7. Resolution 50/1997 19 March, insurance.
8. Some of the other issues that this process raises are discussed in Chapter 2.
9. Resolutions 53/1997, 26 March, exclusive distribution; 54/1997, 26 March, exclusive purchasing; 246/1997, 20 December, franchise agreements; and 247/1997, 20 December, motor vehicle distribution and servicing.
10. The EU is concerned that these measures still are not in full alignment with the *acquis communautaire* (EU Commission, 1998).
11. Act No. IV of 1957.
12. <http://w2d.gvh.hu/bulletin.html>.
13. Decision No. 30/1998 (VI. 25).
14. Government Decree No. 113/1990 (XII.23).
15. Government Decree No. 69/1994 (V.5.) as amended by Government Decree No. 43/1998 (III.7.).
16. Act No. LXXXVII of 1990 on Price Setting.
17. Act No. VI of 1993 on the Regulation of the Market for Agricultural Products, Art. 16, as amended by Competition Act (1996), Art. 98.
18. Act No XXVIII of 1994, Art. 2(j).
19. Act No. XCIV of 1995, Art. 3(1)(m).
20. Act No. LVIII of 1997, Art. 11(2)(g).
21. Act No. CIII of 1997, Art. 62 Section 5.
22. Act No. XCV of 1993 on regulation of railways.
23. Act No. XCV of 1993 on regulation of railways, Article 2(6).
24. Act No. XLVIII of 1994 on Generating, Transmission and Supplying Electric Energy.

25. Case No. Vj-26/1997/10, Bayernwerk AG-EDFFI/North Transdanubian Electricity Supplier Co., Acquisition of Joint Control, discussed in (Szanto, 1998).
26. MOL was as of 1995, and may still be, the firm with the highest turnover in Hungary. The 1995 privatisation act (No. XXXIX) requires the state to retain a holding of 25% plus one share. Government decrees require it to continue operating as the national oil and gas company, although the other shares can be and have been privatised through share offerings, in Western Europe and the US.
27. Details about the regulation of telecoms are in Chapter 6 of this report.
28. Case no. Vj-157/1996, Novotron v. MATAV, discussed in (Szanto, 1998).
29. Act I of 1996 on Radio and Television Broadcasting, Arts. 86(5), 125-127.
30. Parliamentary Resolution no. 1205/1999(VI.1).
31. Constitution, Articles 9 and 70/A.

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