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Regulatory framework

As a member of the European Union, Hungarian competition rules comprise both EU and domestic competition rules. The most important source of domestic competition rules is Act LVII of 1996 on the Prohibition of Unfair Market Behaviour and the Restriction of Competition (the Act).

The Act's rules regarding the restriction of competition regulate the prohibition of agreements restraining competition (both horizontal – that is, cartels – and vertical restraints), the prohibition of abuse of dominance and merger control. Regarding the prohibition of horizontal and vertical restraints, the domestic Hungarian rules are based on article 101 of the Treaty on the Functioning of the European Union (TFEU) and the secondary EU legislation and practice in relation thereto, while article 102 has a Hungarian domestic counterpart in the Act's rules concerning the prohibition of abuse of dominance. The ECMR (both the previous and the current) provided the basis for the Act's provisions on domestic merger control.

In addition to the above, there are numerous government decrees in effect providing block exemptions regarding the prohibition of horizontal and vertical restraints in relation to certain types of agreement, such as the block exemptions in relation to certain insurance agreements, motor vehicle distribution agreements, technology transfer agreements, specialisation agreements, research and development agreements and vertical agreements, which have been recently amended.

Furthermore, the Hungarian Competition Authority (HCA), within the framework of its regulatory role and that of developing a competition culture in Hungary, has issued several pieces of 'soft law'; namely, legal instruments that are not binding on the courts but that provide guidance on the HCA's interpretation of the Act. These include:

- the HCA's Principal Guidelines on the application of the Act, the latest actualised and compiled set, which was issued in 2011 by the HCA, and which are based on the HCA's practice regarding particular cases, but are communicated as principles intended to be followed by the HCA in similar cases in future;
- the Notice and related Guidelines of the head of the HCA in relation to the differentiation of Phase I and Phase II cases in merger control procedures (which were reissued in line with the amended regulatory framework in 2009 and 2012);
- the HCA's leniency policy (which remains applicable only with regard to applications filed by 31 May 2009, with the Act containing the relevant rules applicable from 1 June 2009);
- a Notice on remedies in merger control cases:
    - the Notice on the method of setting fines in antitrust cases, which in 2012 replaced the former notice of the HCA on the same subject matter after the original notice was repealed in 2009; and
    - the HCA provides a general policy framework in relation to its activities – meaning its regulatory role as well as its role in the enhancement of competition and a competition culture – because of which two General Policy Guidelines were published in May 2007 by the HCA: one on ensuring freedom of competition and the other – involving unfair business practices – on ensuring freedom of consumer choice, the latter of which was reissued in 2009, due to the implementation of Directive 2005/29/EC on Unfair Commercial Practices (the UCP Directive) in 2008.

Besides the above core domestic competition legislation, further rules regarding the regulation of competition can be found in sectoral legislation such as the telecommunication rules, the rules regarding public utility services, and so on. Finally, since 1 September 2005, the Hungarian Criminal Code (1978) has also contained very important rules criminalising bid rigging in public procurement procedures and activities subject to concession.

In addition to the above, the HCA, as a member of the ECN, applies EU competition law in cases falling within the scope of articles 101 and 102 of the TFEU.

Horizontal and vertical restraints

The Act currently provides for the following:

- The basic prohibition of horizontal and vertical restraints of competition is, briefly: agreements, concerted practices and decisions of associations of undertakings that may have as their object or effect the prevention, restriction or distortion of competition, are prohibited, with special regard to, for example, market sharing, price fixing, and so on, and any agreement falling within the scope of this prohibition will be invalid. As of 1 January 2012, the text of the basic prohibition was amended. The amendment did not introduce any substantial change to the prohibition, but harmonised the text with the practice of the HCA regarding the notion of associations of undertakings. Accordingly, an association of undertakings is an association of undertakings established based on the right of association, public bodies and other similar organisations of undertakings.
- There may, however, be agreements that do not per se fall within the scope of the above restriction (eg, certain forms of franchise and selective distribution agreements, in line with the practice of the ECJ adopted by the HCA).
- Agreements between related parties, a similar notion to a single economic unit, per se fall outside the scope of the above restriction. (As of 1 November 2005, 'related parties' are those undertakings that belong to the same group of undertakings as defined by the Act.)
- Agreements of minor importance fall outside the scope of the general prohibition; however, the de minimis threshold, both in relation to horizontal and vertical agreements, is a 10 per cent market share, while the exceptions regarding the de minimis threshold are only concerned with hard-core horizontal restraints such as market sharing and price fixing (and network effects may also remove the agreement from the scope of minor importance).
- If the agreement concerned falls within the scope of the basic prohibition set forth above, it may still be exempted either via an available block exemption or an individual exemption. In line with the respective EU competition law, the parties themselves,

similarly to article 101(3) of the TFEU, should assess whether the four conjunctive conditions for the applicability of an individual exemption are met.

In addition to the above, as of 1 September 2005, section 296/B of the Criminal Code (1978) establishes a crime punishable with imprisonment of up to five years for any person who, to influence the result of either an open or closed tender in relation to either a public procurement procedure or a concession activity, concludes an agreement regarding the fixing of prices (fees) and other contractual conditions, or regarding market sharing, or commits other concerted practices, and therefore restricts competition. The same section is applicable regarding a person who commits the above crime as a member of an association of undertakings. However, a person may be exempted from criminal liability provided he or she reports the crime to the public authorities before they gain knowledge thereof and divulges the circumstances of the crime. The notion of 'public authority' means not only criminal prosecutors, but also the HCA, the financial supervisory authority and the public procurement supervisory authority.

A 'person' within the meaning of section 296/B is any natural person representing the undertaking, which encompasses not only any executive thereof, but also any employee who participates in the crime. Nevertheless, this does not mean that the participating undertakings cannot be punished under criminal law via their executives, employees, and so on; namely, Act CIV of 2001 on Sanctions Against Legal Persons seems to be applicable in relation to section 296/B of the Criminal Code.

As of 22 October 2011, new block exemption regulations (BERs) were introduced, replacing former regulations on the same subject matter in order to create compliance with recent changes in EU competition law legislation. Accordingly, five out of the six Hungarian BERs were replaced (namely, the insurance, motor vehicles, professional services, research and development sectors BERs) and most importantly, only the BER on technology transfer and the vertical BER (VBER) remained in effect out of the former BERs. The new BERs contain a transitional period, according to which agreements concluded prior to 22 October 2011 that complied with the provisions of the former BERs may still benefit from exemption for a term of one year. The most important changes were introduced by the new VBER, which in fact implements the provisions of the effective EU Vertical Block Exemption Regulation (Commission Regulation (EU) No 330/2010 of 20 April 2010) almost word-for-word. These changes can be summarised as follows:

- Both the market share of the supplier and the buyer have to be equal with or remain below 30 per cent on the relevant market to qualify for exemption (in contrast to the former VBER where – as a general rule – only the supplier had to meet the 30 per cent market share requirement).
- In the case of multilateral vertical agreements, if a party buys and sells products or services from and to another party to the agreement, the market shares of such undertaking must meet the market share requirements both as a buyer and as a supplier.
- Grace periods have been introduced if the market share of a party to the agreement temporarily exceeds 30 per cent (between more than 30 per cent and 35 per cent: 2 years; beyond 35 per cent: 1 year, with an aggregate maximum of 2 years).

HCA's leniency policy and informant reward programme

Alongside the path the European Commission opened in 1996 regarding the introduction of a leniency programme with respect to cartels, the HCA, based on the Commission Notice on leniency of 2002, introduced its own leniency programme regarding cartels in 2003, which was amended in 2006 due to the criminalisation of certain types of bid rigging as described above. As of 1 June 2009, the leniency policy rules were incorporated – with slight modifications – into the Act, and therefore became binding on the HCA and most importantly enforceable by the courts. The leniency rules in the Act contain the following principles (practically maintaining the principles that were already applied via the relevant Notice): there is a possibility for a full exemption from or a reduction of the fine, depending on the rank the reporting entity obtains via its report, with the caveat that only the first reporting entity providing unknown and conclusive evidence can avail itself of a full exemption. In addition, the size of the reduction may be from 30 per cent up to 50 per cent; from 20 per cent up to 30 per cent; and up to 20 per cent, depending on the rank that the reporting entity obtains. It is also possible to submit either a preliminary or a non-final report.

As of 1 April 2010, an Amendment of the Act introduced a new tool – existing only in one other EU member state, the UK – in the fight against cartels: the informant reward programme, the aim of which is to encourage private persons to report price-fixing or market-partitioning cartels, and cartels whose participants intend to stipulate production or sales quotas (ie, hard-core cartels).

According to the new rules, any natural person who has knowledge of a hard-core cartel and provides the HCA with essential written evidence on such infringement in secret will receive an informant's reward amounting to 1 per cent of the fine levied against the participants in the cartel, but in no case more than 50 million forints. The identity of the reporting person is to be kept secret upon request, but such a request may deprive the evidence of its essential character. Multiple reporting is possible in this case; each person meeting the requirements becomes entitled to the full amount of the reward, provided that the informants did not share the evidence in question among themselves in order to multiply the reward. In the latter case, one single reward will be divided into equal shares. Parallel application of the leniency policy and the informant reward programme is excluded; for example, if one of the representatives of the participants in the cartel requests leniency, he or she will not be entitled to an informant's reward. Evidence obtained through the means of an established crime or misdemeanour will not entitle its provider to a reward and any dispersed reward in such a case must be repaid. If the criminal proceedings are initiated before payment, the payment will be suspended until the proceedings have been concluded.

Abuse of dominance and abuse of buyer power

Section 21 of the Act states that the abuse of dominance is prohibited. Dominance has to exist on the relevant market as established on the basis of interchangeability or substitutability, both on the supply and demand sides, while the Act defines dominance in accordance with the ECJ definition in the United Brands, Continental Can and Hoffman La Roche cases.

Abusive behaviour may either be exclusionary or exploitative, similarly to the law regarding article 102 of the TFEU.

The law regarding section 21 of the Act has not changed in substance, despite some minor and rather technical amendments effective from 1 November 2005. But this does not mean that there have been no statutory developments in this field of competition law. The implementation of the UCP Directive in 2008, as noted above, caused a significant decrease in the number of cases concerning the abuse of dominance within Hungary, due to the fact that, before implementation, the HCA often considered cases that

actually involved consumer protection or unfair competition law as abuses of dominance. This tendency has not entirely disappeared, although due to the peculiar reasons noted in this paragraph, this does not involve any policy concerns of the HCA regarding the anti-competitive effects attributable to monopoly conduct.

The Hungarian legislature, in Act CLXIV of 2005 on Trade (the Trade Act), introduced a concept akin to abuse of dominance – the 'abuse of significant market power' – which in fact tries to catch an abuse of buyer power in certain cases, but by means of different and stand-alone legislation separate from the Act regarding abuse of dominance. The legislation on abuse of buyer power came into force on 1 June 2006.

The Trade Act prohibits the abuse of significant market power against suppliers. The Trade Act stipulates that the enforcement of the above prohibition falls within the competence of the HCA, which, in its procedure, applies the Act's provisions as applied in abuse of dominance cases.

As the Trade Act created a similar but distinct system from the law regarding abuse of dominance, the HCA introduced a separate form for notifications based on the Trade Act, which must be used from 1 June 2006.

Merger control

As of 1 June 2009, Hungary introduced the SIEC test as the substantive test in merger cases. The thresholds for a notifiable concentration are that the aggregate annual turnover of the participating undertakings must exceed 15 billion forints, and among the groups of undertakings involved there are at least two groups with net revenues exceeding 500 million forints in the previous year together with the net revenues of undertakings controlled by members of the same group jointly with other undertakings.

In Hungary, contrary to EU merger control, there is no option for prior notification, therefore an application for clearance may only be submitted after the execution of the merger agreement. However, in 2012 the HCA published its Guidance on a pre-notification contact relating to the control of concentrations, which addresses the method of entering into discussions with the HCA before the submission of the actual application for clearance. In fact, the possibility to establish a pre-notification contact was already open to applicants before the issuance of these guidelines, but it was completely unregulated. Establishing pre-notification contact with the HCA can be a useful tool in boosting the clearance procedure and also in evaluating potential remedies; however, the HCA, in its guidance, expressly excludes that its statements made within the pre-notification period have any binding force.

As a result of the introduction of the SIEC test, on 17 May 2010, the HCA published on its website draft guidelines in connection with the application of the test and the method of analysis to be followed in the course of the assessment of the non-horizontal effects of mergers.

Following the issuance of the new EU horizontal merger guidelines in 2010, the HCA, on 21 December 2011, published a new application form for clearing concentrations. This new application form is applicable to concentrations notified to the HCA from 1 February 2012 onwards. It addresses significantly more economic issues than the previous version, and requires an in-depth professional description, definition and assessment of the markets concerned by the applicants themselves.

In addition to the introduction of the new application form, as of 1 January 2012, the Act introduced special substantive rules regarding the acquisition or change of control in the liquidation proceedings of so called undertakings of strategic importance, as defined by the recently introduced section 65 of Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings, the undertakings of strategic importance themselves or any part of these. In the case of such mergers, the party acquiring control will be able to exercise the right of control to the extent required for the normal conduct of business before receiving clearance from the HCA; however, the HCA may limit or prescribe conditions to exercising this right of control in Phase II mergers. The Act also introduced a special, shorter time frame regarding the foregoing mergers.

As a further result of the introduction of the SIEC test, the new c/o form and the above amendments of the Act, the Notice and the related Guidelines of the head of the HCA in relation to the differentiation of Phase I and Phase II cases in merger control procedures had to be adapted to the new rules. The Notice was reissued in 2009 and amended in 2012, and it now provides a clear distinction between Phase I and Phase II investigations in merger cases under the new regime.

With an earlier amendment of the Act, the possibility to undertake commitments was introduced. For the public to obtain more clarity regarding the HCA's standpoint on available remedies in merger cases, the HCA issued a notice thereon explaining the nature of the remedies, their applicability and implementation.

According to the Notice on remedies, the HCA will always take into account the Act as a statutory background, but it will leave the door open for the adoption of methods applied by other competition law enforcers; for example, the concept of a divestiture trustee is expressly indicated in this regard despite the fact that trusts are not recognised under Hungarian civil law.

According to the Notice, remedies may entail either conditions (precedent or subsequent) or undertakings (commitments) regardless of the fact that, in their effects, these remedies do not differ significantly. In the case of a condition precedent, the HCA's approval will not come into effect until the condition is met, whereas in the case of a condition subsequent, the approval will lose its effect in case the condition is not met. In the case of a commitment, if it is not carried out, the HCA may withdraw it. As far as the application of the various remedies is concerned, the HCA is likely to apply commitments if they relate to behaviour that should be implemented on a long-term basis, whereas a condition precedent is likely to be applied if there are serious doubts as to the feasibility of the condition precedent. In addition, the following principles will be applicable in the course of determining the most suitable remedy in the given case:

- the remedy has to be capable of solving the competition concern;
- the HCA is bound by the undertakings of the applicants;
- the condition must be effective, executable and monitorable; and
- the applicant has to cooperate with the HCA in implementing the remedy.

Remedies can be structural or behavioural, but the HCA will strive to apply structural remedies (eg, divestiture) rather than behavioural remedies (eg, provision of access to an essential facility). The subject matter of any divestiture should be a separate and viable economic unit, and the purchaser thereof must be able to operate it (ie, there has to be a viable purchaser). Divestitures should be completed within six months, unless special circumstances justify a longer period.

Public enforcement

In May 2007, to provide more clarity on the public enforcement of competition law, the HCA issued its General Policy Guidelines

regarding its role and operations, which are to serve the purpose of providing a general conceptual framework for the HCA's operations. The most important messages of these Guidelines are that:

- the HCA will operate and apply the provisions of the Act within the framework of general principles in each field of its activity, such as the enforcement of the Act as a governmental authority, the promotion of competition and the promotion of a competition culture; and
- in relation to the HCA's enforcement activities, the following principles will be applied:
  - the most important aim of the HCA as a public enforcement authority is to increase long-term consumer welfare by increasing efficiencies and, when applying EC law, the integration of Europe;
  - when the HCA is balancing the benefits and detriments of market behaviour, 'detriments' will be interpreted as the restriction of competition, whereas 'benefits' means efficiencies, and although the aggregate of the efficiencies may counterbalance the detriments, it is unlikely that in the case of hard-core cartels this will happen;
  - in the course of the HCA's market reviews, a dynamic approach will be applied, ie, the possibility of market entry and import threats will be taken into account as well as that of innovation;
  - the HCA will interfere with the operation of the markets to the least extent possible – if there are doubts that market behaviour is pro or anti-competitive, the HCA will vote for pro-competitiveness (except in cases involving monopoly or 'starting' markets, ie, where a state monopoly was recently abolished);
  - the HCA will apply both behavioural and structural remedies – however, structural remedies will be preferred (see, for example, the Notice on remedies above);
  - the HCA will strive to apply economics to the greatest extent possible in the course of making its decisions, and will also attempt to apply empirical methods and international competition practice; and
  - as far as the allocation of the HCA's resources is concerned, the HCA acknowledges that private enforcement is already available regarding cartel and abuse of dominance cases, therefore it wishes to concentrate and focus its resources on cases that are important from the public's perspective (eg, because of the effects on the relevant market, the effect on the development of competition law, etc).

As of 1 January 2011, the provisions of the Act regarding the representative action of the HCA developed significantly. According to these new rules, the HCA may file a civil action on behalf of consumers against an undertaking engaged in an infringement of the Act, where such conduct results in a grievance that affects a wide range of unknown consumers whose identity, however, can be established relying on the circumstances of the infringement. The HCA will be entitled to file such a lawsuit only after opening its own administrative proceedings regarding the infringement. Launching this action will not hinder consumers from individually claiming damages.

On 1 February 2012, the HCA issued a new Notice on the method of setting fines in antitrust cases. In mid-2011, the HCA undertook to reconsider its previous notice – which was repealed in May 2009 due to the conflicting judicial practice of the courts – and also held a public consultation regarding the new notice in late 2011. The new notice is applicable to antitrust cases where the preliminary report of the Competition Council has not been sent to the parties by 1 February 2012; therefore, it may be applicable to antitrust investigations started before the issuance of the notice. The notice introduces important differences compared to the previously repealed notice, which include, among others, that, in bid-rigging cases, the amount of the relevant turnover is now triple the value of the tender, and that the duration of the infringement (number of years) is incorporated into the basic amount of the fine instead of applying it as a multiplier during the calculation of the applicable fine.

Private enforcement

The purpose of a cartel is often the manipulation of purchase or sale prices, which can cause damage to the clients of the cartel's participants. Due to the nature of cartels, it is very difficult to prove the extent of such damage. Before 1 June 2009, legal and natural persons that suffered damage in connection with hard-core cartels were only able to initiate civil law proceedings on the basis of the general civil law regulations. As of 1 June 2009, the Act contains provisions applicable in such a case. The new rules set up a rebuttable presumption according to which it is presumed that the hard-core cartel had an effect of 10 per cent on the price and 10 per cent of the price will be awarded by the court as lump sum damages, and the claimant will only have to prove its damage exceeding this lump sum amount.

The participants in a cartel will bear joint and several liability in a private civil law procedure initiated against them by legal or natural persons suffering damage as a result of the cartel. Until the recent amendment of the Act, any participant in the cartel that was exempted from sanctions under the leniency rules shared the position of other participants in a civil law procedure and the judgment was executable against it in the same way; that is, the entire amount of damages awarded by the court was enforceable. The new private enforcement rules provide that the judgment will be executable against such an exempted participant in the cartel only if enforcement was unsuccessful against the other participants.

Recent developments in the HCA's practice

HP/E.ON IT (merger)

On 30 June 2011, the HCA cleared an outsourcing agreement concluded between Hewlett-Packard GmbH (HP) and E.ON IT GmbH (E.ON IT) in a Phase I merger procedure. The transaction involved 14 European countries, including Hungary, where intra-group IT services provided by the subsidiaries of E.ON IT were outsourced to the subsidiaries of HP via a line of agreements. The HCA, in its decision clearing the merger, concluded that, under Hungarian competition law, service agreements where the acquirer provides a service exclusively to the seller through the acquired assets and personnel are subject to clearance by the HCA, provided that the parties did not explicitly and unambiguously exclude the possibility of entering the market and providing services to third parties with the transferred assets and employees. This practice somewhat deviates from the European Commission's practice set out in the Commission Consolidated Jurisdictional Notice on the control of concentrations between undertakings. The difference between Hungarian and EU competition law in this respect – according to the HCA – arises out of the difference between the notions of part of an undertaking articulated within the Act and the ECMR. According to the HCA, based on the wording of the Act, it is sufficient to establish that the transferred assets theoretically allow market access, while EU competition law requires that services will not only be provided to the seller immediately or within a short period after the transfer of assets and employees to qualify as a concentration under the respective

sources of law. Otherwise, the HCA cleared the merger in a Phase I procedure, since it did not raise any anti-competitive concerns.

Road construction cartel (judicial review)

On 6 February 2012, the Curia (formerly the Supreme Court of Hungary) adopted a judgment in which the decision of the HCA and the earlier judgments of competent review courts in a cartel case concerning road construction works in Budapest were upheld. The judgment of the Curia – among other issues – addressed the question of admissibility of evidence. In this respect, the Curia confirmed that a document which had been provided by an anonymous person to the HCA cannot be deemed to be obtained unlawfully as long as the document itself is authentic, and the burden of proof regarding whether a piece of evidence was collected contrary to the law by the HCA within the proceedings rests on the undertaking, therefore the HCA is not obliged to prove that the evidence was collected lawfully.

Rail cargo cartel (cartel)

On 27 April 2012, the HCA established that Győr-Sopron-Ebenfurti Vasút Zrt (GySEV), MÁV Magyar Államvasutak Zrt (MÁV) and Rail Cargo Hungaria Árufuvarozási Zrt (RCH), which was previously the rail cargo branch of MÁV, were engaged in hard-core price-fixing and market sharing, and by this, violated both Hungarian and EU competition law. The Hungarian railway market was liberalised on the day of Hungary's accession to the EU (1 May 2004), and before liberalisation took place, the two incumbents on the market, GySEV and MÁV, were allocated territories where they were exclusively providing infrastructure access services to operators without their own tracks, as well as rail cargo services to customers. The liberalisation of the market created free access for private railway undertakings to the use of the public railway network. According to the HCA's decision, some smaller undertakings entered the market, but GySEV and MÁV, and later RCH, still remained the market leaders with robust market shares. GySEV, MÁV, and later RCH, refrained from entering into price competition with each other and also from threatening each other's traditional infrastructure by

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Szabó Kelemen & Partners Attorneys is a leading independent law firm in Hungary and is the Hungarian member of the International Alliance of Law Firms, an international network of select, business-oriented law firms, with coverage in over 40 countries and more than 1500 lawyers.

The firm traces its origins to Szabó & Partners Attorneys, which was established in 1996 by lawyers working as part of the tax and legal department of Ernst & Young Hungary. The firm was the Hungarian member of the Ernst & Young Law Alliance from 1996 to 2003 and currently has a professional staff of more than 20 lawyers.

The firm's expertise has been recognised in various legal guides, including Chambers and Partners, Legal 500, PLC Which Lawyer? and Legalease's *Tax Directors Handbook*.

The firm is particularly strong in competition, employment, tax, and corporate and commercial work, including corporate restructuring and insolvency, as well as in various industry sectors, including financial services and real estate. Many of the firm's Hungarian lawyers have worked in law offices or barristers' chambers abroad and many hold postgraduate qualifications from foreign institutions. The working languages of the firm are Hungarian, English and German.

The firm's main practice areas are:

- antitrust/competition law;
- banking and financial services;
- corporate and commercial law;
- corporate restructuring and insolvency;
- dispute resolution and litigation;
- employment;
- environmental;
- gaming and betting;
- insurance;
- intellectual property;
- mergers and acquisitions;
- public procurement;
- real estate/commercial property;
- tax; and
- technology, media and telecommunications.

The firm's diverse client base consists of multinationals, as well as large and medium-sized Hungarian companies, in a wide range of industries and fields, including apparel; banking and financial services; commodity trading; construction; data protection and compliance; energy, including renewal energy; entertainment and media, including film financing; gaming and betting, including online gambling; health care; household and consumer products; insurance; international tax planning, including company group financing and royalty payment structures; logistics and warehousing facilities; pharmaceuticals; professional services; real estate; technology; and transportation.

concluding an agreement whereby they upheld their former status quo, therefore sharing the market and applying a uniform pricing policy (common tariff system) that can be regarded as a restrictive price agreement. The HCA imposed a fine of 3 billion forints on the undertakings, one of the biggest fines ever imposed by the HCA.

Bonduelle/Corn Food/Kelet Food (merger)

On 7 May 2012, the HCA cleared the acquisition of Corn Food Kukorica Feldolgozó és Kereskedelmi Kft (Corn Food), a subsidiary of Kelet-Food 2000 Kft (Kelet-Food), and some additional assets of vegetable processing by Bonduelle Central Europe Zöldségfeldolgozó Kft (Bonduelle). Both Bonduelle and Kelet-Food were active on the market of producing and distributing tinned vegetable and fruit, with such activities of Kelet-Food being transferred to its subsidiary, Corn Food, via the use of the assets owned by Kelet-Food after launching the liquidation proceedings of Kelet-Food. In February 2012, Bonduelle concluded an agreement with Kelet-Food within the liquidation proceedings on the sale and purchase of the 100 per cent quota in Corn Food and certain assets of Kelet-Food necessary for the production of tinned vegetables and fruit. Bonduelle and Kelet-Food also concluded a so called cooperation agreement whereby the parties established joint control over the subject of the sale and purchase agreement until clearance is received from the HCA. The HCA identified horizontal overlaps between the activities of the undertakings concerned in the sale and distribution of tinned vegetables and fruit, however, the HCA established that the aggregate market share of the undertakings fell below the level that would raise competition concerns. The HCA in its decision also established that joint control over Corn Food until the clearance of the HCA created by the cooperation agreement neither qualified as the practice of control before receiving clearance from the HCA, since the quality of control established by the sale and purchase agreement is different from the one established by the cooperation agreement, nor as a concentration based on the Act, since the control established by the agreement concerns a very limited period of time, and therefore cannot be considered a change of control on a lasting basis.

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Balázs Dominek joined Szabó Kelemen & Partners Attorneys in 2010 with his practice encompassing a wide range of competition law matters, as well as work in the commercial real estate and corporate and commercial areas. Recent competition work has included a Hungarian Competition Authority (HCA) sectoral inquiry and a number of HCA cartel investigations.

Balázs is also active as a researcher and an author: he has been a researcher for the Hungarian Competition Law Research Centre since 2006 and authored various articles for the e-Competitions Project of the Institute of Competition Law.

In addition to his juris doctorate from Pázmány Péter Catholic University, Budapest, Balázs holds an LLM in international competition law and policy with research methods training from the University of East Anglia, Norwich, UK. Balázs speaks Hungarian and English.

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Geoff Bennett has worked with Szabó Kelemen & Partners Attorneys since 1997 and regularly advises on competition law matters, including merger clearance and the avoidance of anti-competitive behaviour. He is admitted to practise as a Solicitor of the Supreme Court of Queensland, Australia, and is registered with the Budapest Bar Association as a foreign legal adviser.

Geoff holds a bachelor of laws from the University of Queensland, Australia, as well as a postgraduate diploma in EC competition law from King's College, London.

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