

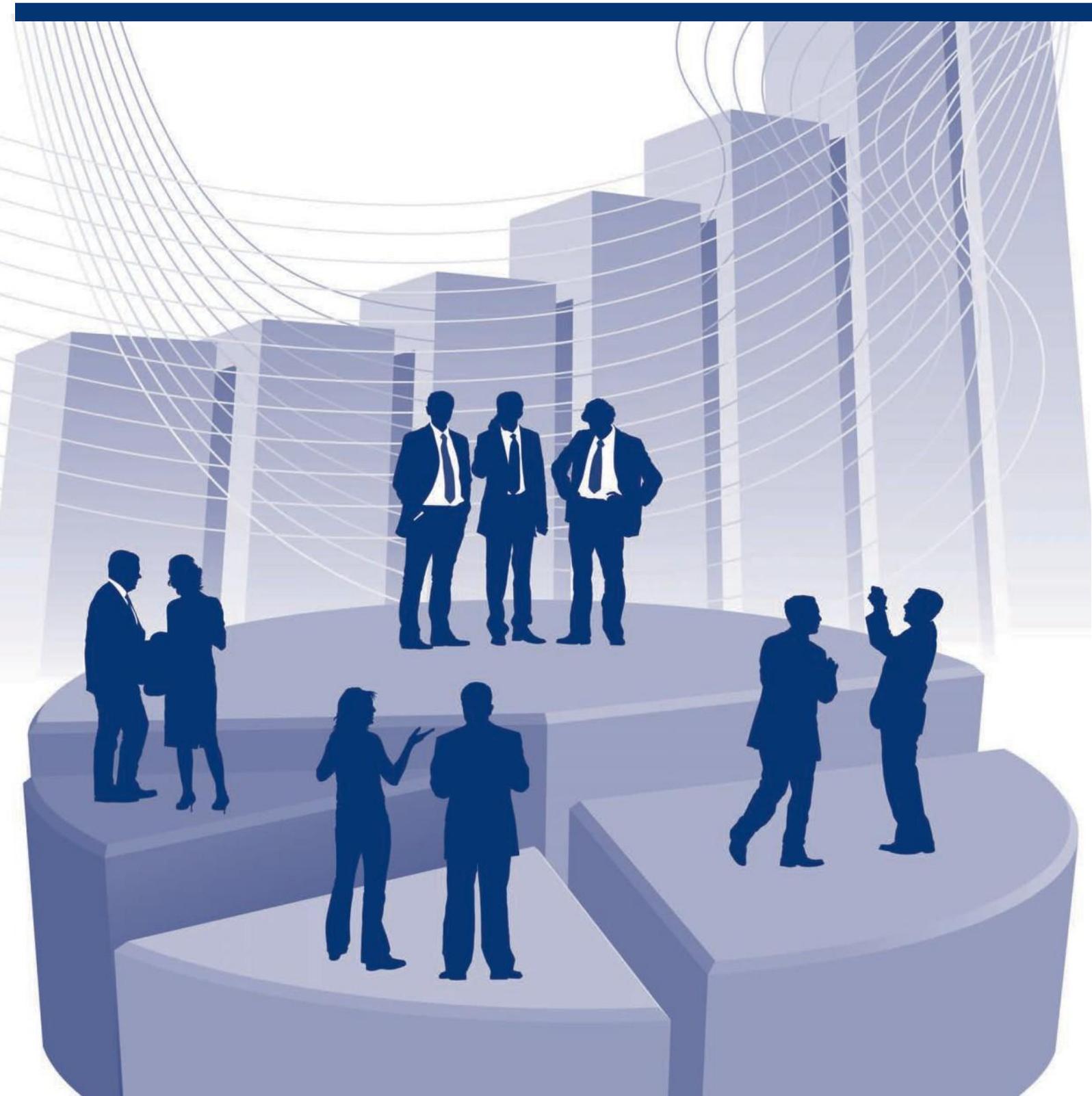


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Revised Hungarian merger proceedings – has it really become simpler?

Recently, the Hungarian Competition Authority (*Gazdasági Versenyhivatal* – GVH) has introduced several reforms to ease the administrative burden of companies that envisage a concentration.

Differentiation between Phase I and Phase II merger proceedings

Rules regarding certain thresholds have been amended in the GVH's communication concerning the differentiation between Phase I and Phase II merger proceedings. Now, in principle, if in case of a merger certain vertical, so-called portfolio or conglomerate effects may be identified but the parties' market share is below 30 per cent, the concentration may be assessed in simplified (Phase I) proceedings.

It should also be mentioned that even if certain vertical effects may be recognised and the 30 per cent market share threshold is met, the scrutiny in Phase I proceedings is still possible if the parties' market share is below five per cent and there are other significant players in the same relevant market on which the 30% market share of the parties to the merger has been identified.¹

Conditions of issuing a simplified decision

In several jurisdictions (such as Germany) it has been common practice that the enforcement agency issues a simplified decision which does not contain the detailed underlying grounds of the decision. The GVH has now issued a communication that lays down the rules under which it is possible for the GVH to make a simplified decision (eg, no horizontal, vertical or portfolio effects may be identified that would result from the notified concentration).

New rules concerning the merger notification form

The merger notification form used by the GVH seems significantly more complicated

and detailed than those applied by some Western counterparts. Therefore, recent reform simplifying the notification form was widely welcomed by market players. An important milestone in this process has been that parts of the notification form no longer have to be filled in provided that the market shares of the merging undertakings are below certain thresholds:

- in the presence of a significant horizontal overlap – where the sum of the market shares of the participants of the merger is below 15 per cent;
- in case of a significant (vertical) relation – the market share of the participant to the merger active in the market or the aggregate market share of the active participants of the merger is below 25 per cent.

A new rule, to be applied for concentrations that are filed with the GVH after 1 August 2013, is that in case of the presence of related markets (ie, there is a vertical relationship between the activities of the participants of the concentration), certain parts only have to be filled in if the parties' market share on either market of the market pair is above 25 per cent and on the other market of the market pair is above naught per cent.

The possibility of a pre-notification consultation

Recently, the GVH has introduced guidance on the possibility of informal pre-notification consultations that enable the merging undertakings to engage in informal discussions with the Hungarian Competition Authority before the notification is submitted. In my experience many of such consultations have proven to be vital in preparing complicated merger notifications.

The guidance about the possibility of a pre-notification consultation has been amended in two aspects. Firstly, it sets out that only those transactions are eligible for such a consultation which the parties are already seriously intending. Second, the assessment under competition law is to be

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presented at the consultation by the parties to the concentration. This also means that the GVH may merely express its preliminary views to the competition law analysis set out by the parties and may thus only examine the concentration on the merits in formal proceedings.

Finally, it should also be mentioned that a new merger department within the GVH

has recently been established which deals exclusively with merger notifications and so far it seems that this section's dedication makes decision making in merger cases significantly more efficient.

Notes

- ¹ This principle has already been applied in two significant merger cases: see Vj-92/2012 (*Univer-Coop / Profi / Match*) and see also Vj-29/2013 (*Express-Interfracht Internationale Speditionsgesellschaft / Hungaro-Rail*)