



HUNGARY

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1. Relevant legislation

The relevant merger control legislation is Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition, especially part I chapter 6. The Hungarian Competition Act determines both substantive and procedural rules of merger control proceedings. As the Hungarian Competition Authority is a public administrative authority, Act CL of 2016 on the General Administrative Procedural Code may also be applicable. Additionally, relevant guidelines of the Competition Authority shall be noted as well.

2. Authority

The relevant authority is the Hungarian Competition Authority (Gazdasági Versenyhivatal, website: <http://www.gvh.hu/en/>) and its decision-making body, the Competition Council.

3. Types of transactions caught

The Competition Act lists the following cases:

- 1) acquisitions of sole or joint control over the whole or a part of previously independent undertakings;
- 2) merger of two or more previously independent undertakings; and
- 3) creation of full-function joint venture.

4. Thresholds

The total net turnover of the group of undertakings from the previous financial year exceeded **HUF 15 billion** (approximately EUR 48 million) and at least two undertakings from the groups of undertakings involved had a total net turnover **over HUF 1 billion** (approximately EUR 3.2 million). The HCA may also examine concentrations below the above thresholds if the combined net turnover of the undertakings concerned exceeds HUF 5 billion and there are concerns that the concentration may significantly reduce competition. In calculating the net turnover of companies, the net turnover generated in the previous business year from goods sold in the territory of Hungary shall be taken into account.

5. Exceptions

- 1) A special '**public interest exemption**' - allows the government to qualify a merger as 'strategic' at a national level and exempt it from the merger control filing requirement.
- 2) Temporary acquisition of control or assets by **an insurance company, credit institution, financial holding company, mixed-activity holding company, investment firm or property management organization**, if such acquisition is made in preparation of resale,

and if the company acquiring control does not exercise its rights of control, or if such rights are exercised only to an extent that is absolutely necessary, and **if the duration of the acquisition of control or assets does not exceed one year.**

3) Where concentration is implemented through an equity scheme set up for that purpose, by way of financing transaction required as a result of COVID-19 coronavirus with the involvement of a venture capital fund or private equity fund under direct or indirect majority State ownership shall not be reported to the Hungarian Competition Authority if the venture capital fund or private equity fund under direct or indirect majority State ownership acquires control rights by self or jointly with other companies for the purpose of investment protection.

4) Concentration of companies where a venture capital fund under direct or indirect State control acquires joint control rights in a company - whose net turnover for the previous year did not reach one billion forints - through an equity investment carried out with State aid that has been declared by the European Commission compatible with the internal market shall not be notified to the Hungarian Competition Authority.

6. Notifying party(-ies)

If the thresholds and other requirements laid down in the Competition Act are met, filing for an authorisation from the Competition Authority is needed. The **direct participant** shall notify the authority if the concentration is realized by way of merger by formation of a new company or merger by acquisition, or by way of setting up a joint company. The merger shall be notified by the direct participant, or by the party acquiring the business unit or direct control, or the company having direct control thereof in all other cases.

7. Submission deadline

There is no specific deadline for the submission, however the Competition Act stipulates that the notification shall be submitted **following the time of publication of the public bid bringing about the concentration, the conclusion of the contract, or the acquisition of the right of control**, whichever occurs the earliest.

8. Filing fee

1 million HUF (EUR 3,200).

9. Proceedings timetable

The notification of concentration shall be submitted on a duly completed concentration notification form posted on the website of the Hungarian Competition Authority. The notification of concentration shall contain all the facts and data necessary for processing the notification, and shall be accompanied by the documents specified in the form. After the parties submit the notification, the Competition Authority has a deadline of 8 calendar days to assess the merger. If no complication occurs, i.e. all documents the Competition Authority needs to have are available, a clearance certificate may be simply issued. In cases where the concentration may imply competition issues or the filing is insufficient, the Competition Authority initiates a formal merger control proceeding within 8 calendar days. The filing is sent back within 15 calendar days at request of providing more information by parties within a specific time period.

An appeal against the decision of the Competition Authority may be filed within 30 calendar days from the receipt of the decision with the court of administration (judicial supervision

procedure). The court proceedings generally takes 1-1.5 years and the court judgement may also be appealed before the appeal court.

10. Availability of pre-notification/informal consultation

Initiating a pre-notification procedure is supported by the Hungarian legislation. Prior to the notification of concentration, the companies required to submit such notification may enter into prior negotiations with the Competition Authority for the purpose of clarifying the data and documents required to be enclosed to the notification of a concentration that has already been decided. In case of mergers that do not raise any competition problems, the matter will be examined on substance in the context of prior consultation. In such cases, after the notification, the Competition Authority would provide a certificate within one day during a so-called express procedure.

11. Test for clearance/prohibition

The Competition Authority operates with the significant impediment to effective competition (SIEC) test for its assessment of mergers, and allows transactions that do not result in a SIEC, particularly in consequence of creating or intensifying a dominant position in that market, and if the combined net turnover of all groups of companies involved exceeded five billion forints in the previous financial year together with the net turnover of companies controlled by members of the same group jointly with other companies.

12. Conditional clearance - remedies

Ex ante and ex post conditions or obligations in connection with the concentration of companies can be imposed by the Competition Authority in its decision, which could be based on the undertakings' voluntary commitment or it could take place even in the absence of the commitment.

13. Stand-still obligation

If a transaction meets the turnover thresholds (HUF 15 billion), a standstill obligation shall be applied, which means that the undertakings must not implement the transaction without an approval by the Competition Authority.

No standstill obligation applies to the transactions if they meet the soft thresholds (HUF 1 billion). This means that the parties are free to implement them without the risk of any fines.

14. Failure to notify/obtain clearance

The Competition Authority may impose fine:

- a. for the execution of a merger in spite of the prohibition imposed by the competent competition council by way of a resolution;
- b. for non-compliance with the obligation prescribed in the resolution for the concentration, or if the concentration is carried out without compliance with the condition prescribed in the competent competition council's resolution; and/or
- c. for carrying out the concentration in spite of the prohibition, also if the competent competition council declared in its resolution that the concentration does not significantly reduce competition in the relevant market;

- d. upon any person who supplied any incorrect or false information that were considered material with respect to ordering the examination of concentration in a manner imputable to him, and in consequence the official instrument has to be withdrawn.

The maximum fine is 10% of the company's net sales revenue, or the net sales revenue of the group - of which the company penalized is identified in the resolution as a member - for the financial year preceding the year when the resolution was adopted.

The fine shall be determined with regard to all applicable circumstances, in particular, to the gravity and duration of the infringement, the advantage gained by such conduct, the market position of the offenders, the degree of responsibility and any cooperation in the investigation, and repeated occurrence and frequency of the infringement. The gravity of the violation shall be determined, in particular, on the basis of the degree of obstructing competition and the scope and extent of the violation of the interests of final trading parties.

If the transaction is not approved by the Authority after the closing has already taken place, the NCA may apply, under article 31 of the Competition Act, restorative measures – such as divestiture – in order to restore effective competition.

The NCA can also impose a fine for failure to submit the notification. In this case, regardless of whether authorisation is granted at a later stage, a penalty of a maximum of HUF 200,000 per day may be imposed.