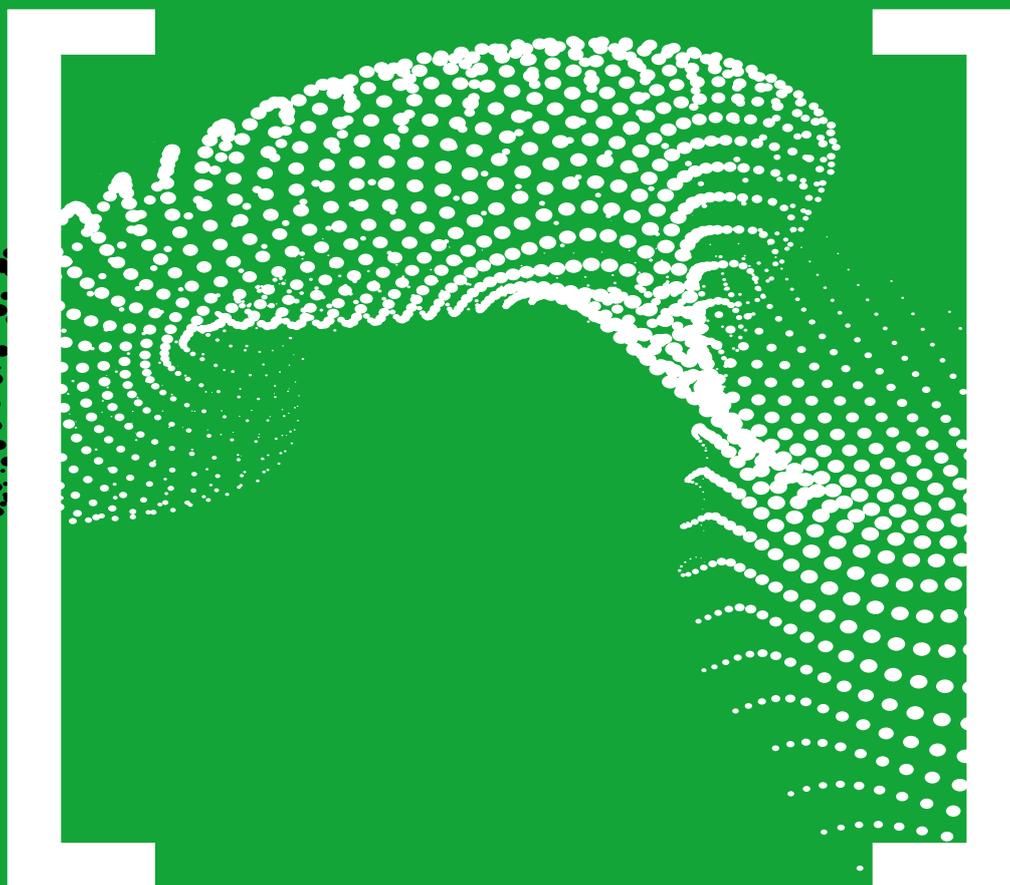
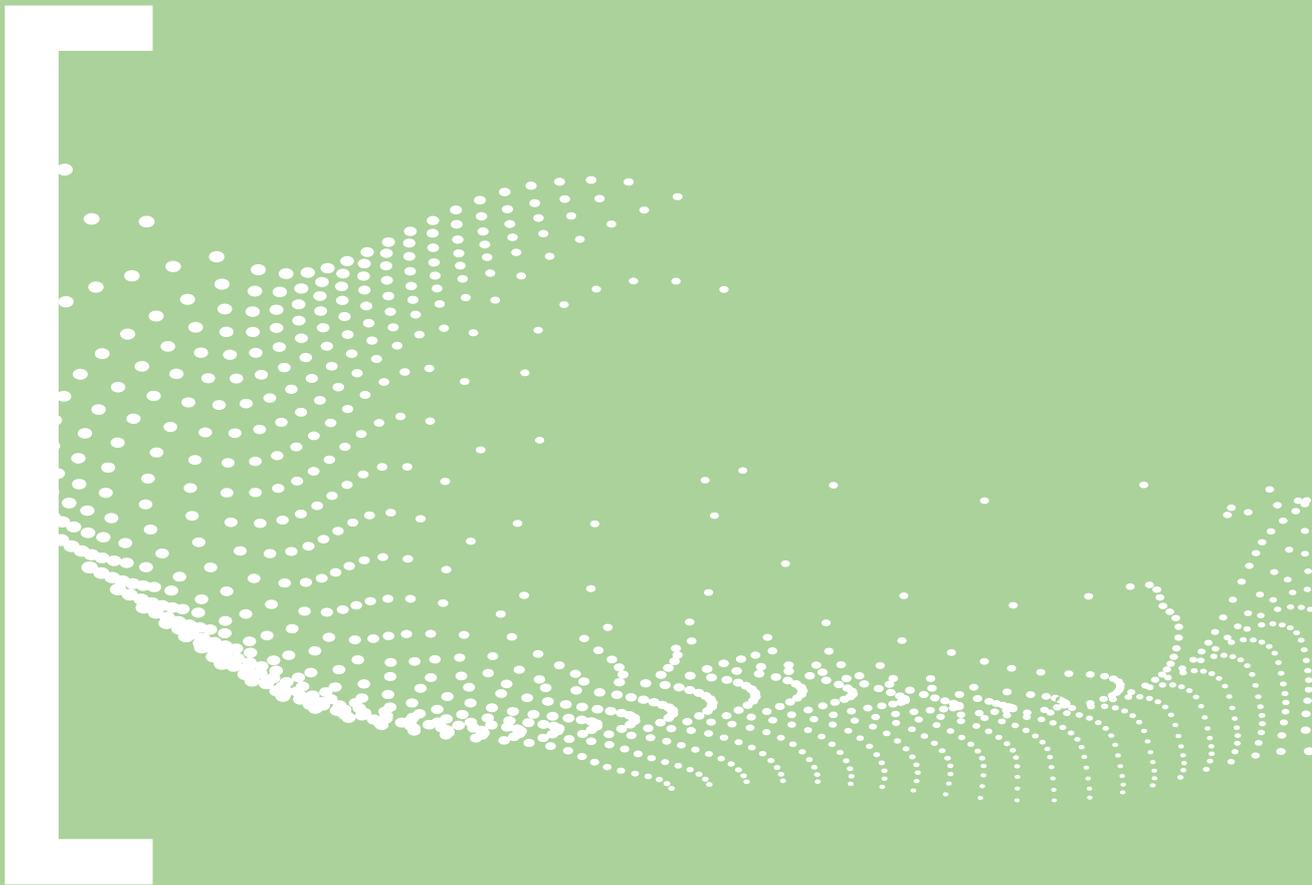
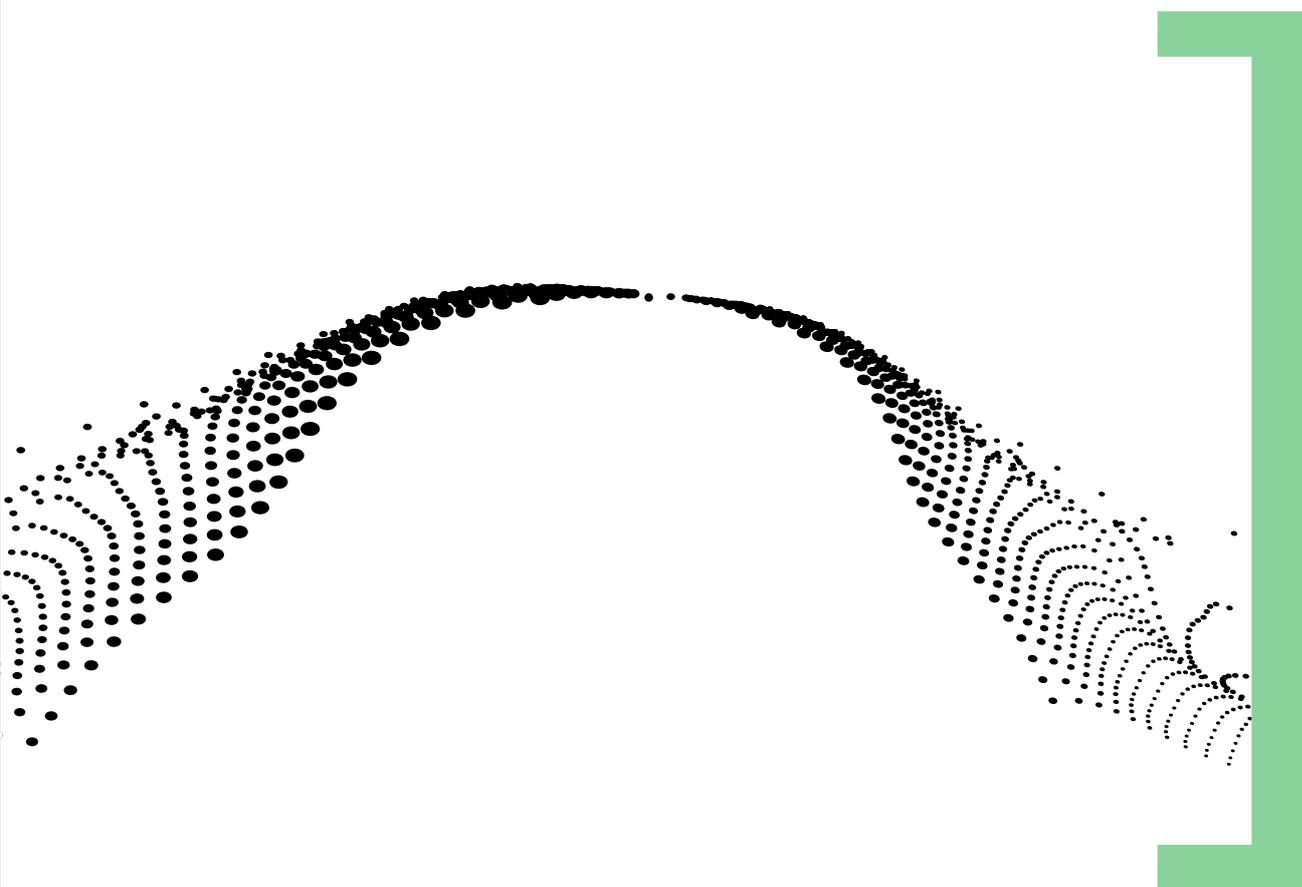


# Annual Activity Report, 2017

OECD-GVH Regional Centre  
for Competition in Budapest (Hungary)









RCC OECD-GVH

Regional Centre for Competition  
in Budapest (Hungary)

## I. Introduction and organisational setup

The OECD-GVH Regional Centre for Competition in Budapest (Hungary) (“RCC”) was established by the Gazdasági Versenyhivatal (GVH, Hungarian Competition Authority) and the Organisation for Economic Co-operation and Development (OECD) on 16 February 2005 when a Memorandum of Understanding was signed by the parties.

The main objective of the RCC is to foster the development of competition policy, competition law and competition culture in the South-East, East and Central European regions and to thereby contribute to economic growth and prosperity in the involved regions.

The RCC provides capacity building assistance and policy advice through workshops, seminars and training programmes on competition law and policy for officials in competition enforcement agencies and other parts of government, sector regulators, and judges. The RCC also works to strengthen competition law and policy in Hungary and in the GVH itself.

The RCC's work **focuses on four main target groups**. The **first group of beneficiaries** are the competition authorities of South-East Europe and the majority of the CIS countries, namely Albania, Armenia, Azer-

baijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia and Ukraine. The work targeting these economies is regarded as the core activity of the RCC. These economies have all progressed with the development of their competition laws and policies, but are at different stages in this process. As a consequence, the needs for capacity building differ among the involved non-OECD member economies and this necessitates a broad approach to competition outreach work. Major capacity building needs in these regions include (a) enhancing analytical skills in competition law enforcement, (b) raising the awareness of the judiciary regarding the specific characteristics of competition law adjudication, (c) pro-competitive reform in infrastructure sectors, (d) competition advocacy, (e) relations between competition authorities and sector regulatory agencies, (f) legal and institutional reform in the area of competition, and (g) building international co-operation and networking.

Judges represent the **second target group** of the RCC's activities. The seminars for judges provide judges with an opportunity to improve their understanding of competition law and economics, to

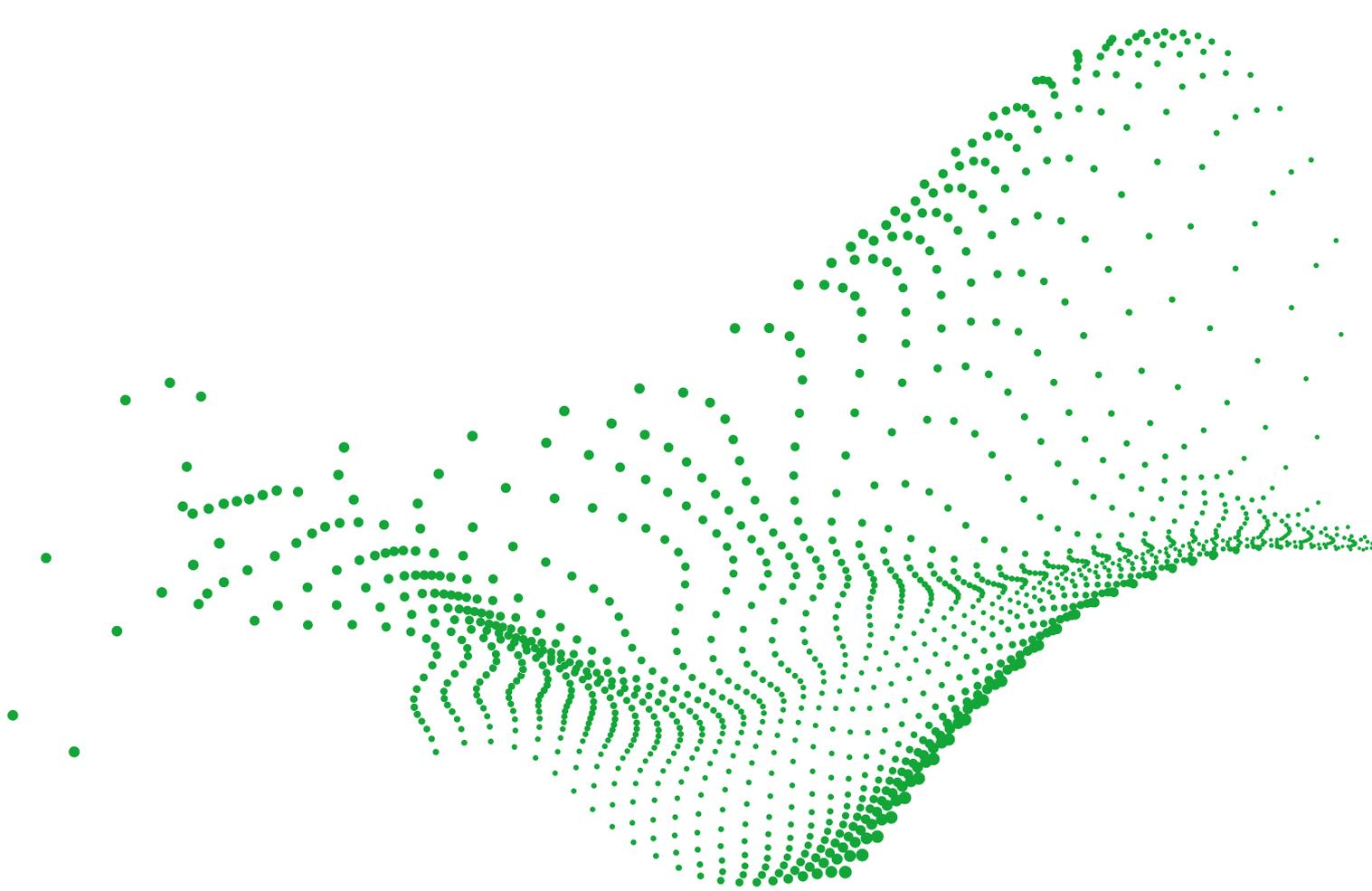
exchange views on the latest developments in EU competition law, and to discuss the key challenges arising in competition law cases.

The **third group of beneficiaries** of the work of the RCC are the competition authorities which belong to the Central European Competition Initiative (CECI). This Initiative aims to provide a forum for co-operation on competition matters and was established by the Central European competition authorities in 2003. It is a network of agencies and operates via workshops and informal meetings. Involved are the competition authorities of Austria, the Czech Republic, Poland, Slovakia, Slovenia and Hungary. These countries all belong to the same geographic region, share fundamentally similar cultural traditions and historical experiences and are, more or less, at the same stage of development. As a result, their competition authorities face several common challenges and difficulties. Moreover, from time to time these authorities deal with markets which are regional, overlapping or which are connected to each other, and they may also on occasion deal with the same parties (the same companies within the region).

The **fourth beneficiary of the RCC's work** is the GVH itself. The agendas of the RCC workshops that are organised for the staff of the GVH are related to ongoing projects or "hot" topics and provide an excellent opportunity for staff to learn about state-of-the-art antitrust theory and enforcement practices.

Concerning the functioning of the RCC, the Memorandum of Understanding of the RCC provides that the GVH and the OECD are to make major decisions on their activities and work jointly. For this purpose, the parties meet on an annual basis to review the operation and performance of the RCC and to prepare the annual work plan.

Regarding the financing of the RCC, the GVH is responsible for providing most of the necessary funding for the functioning of the RCC, including an annual voluntary contribution to the OECD for the costs associated with the staff position in Paris. The OECD helps to co-finance the RCC's operation and activities. In addition to this, both the GVH and the OECD co-operate in efforts to raise additional financial support for the RCC from third parties.





## II. Overview of the activities for the year 2017

The RCC organised eight events in 2017. Seminars focused on some important core competences of competition authorities as well as on best practices in the area of competition law. In addition to its regular

seminars, the RCC continued with its special initiatives: a seminar organised in one of the beneficiary economies, and a seminar organised jointly with the FAS Russia.

**Table № 1**

**Total number of speakers per country or institution**

Speakers		
Country or institution	Number	Person-days
Austria	3	7
Belgium	2	5
Canada	1	3
EU Commission	4	11
France	1	3
Germany	2	5
Greece	1	3
Israel	2	2
Italy	1	3
Lithuania	2	6
Luxembourg	3	6
The Netherlands	2	4
Russian Federation	2	6
Spain	1	3
United Kingdom	3	7
United States	2	4
GVH	6	13
OECD	11	27
Aggregate	49	118

Altogether, over the course of the year, the RCC invited 302 participants and 49 speakers to its events. Through the RCC's core events it delivered 759 person-days of capacity building.<sup>1</sup> All in all, participants from 35 economies and institutions attended the RCC's programmes, coming from Albania, Armenia, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Finland, the OECD, Georgia, Germany, Greece, Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Latvia, Lithuania, FYR of

Macedonia, Moldova, Montenegro, the Netherlands, Poland, Portugal, Romania, Russian Federation, Serbia, Slovenia, Sweden, Tajikistan, Ukraine, Uzbekistan and the GVH. Meanwhile, experts from 18 countries and institutions attended as panel members: Austria, Belgium, EU Commission, Canada, France, Germany, Greece, Israel, Italy, Lithuania, Luxembourg, the Netherlands, Russian Federation, Spain, United Kingdom, United States, the GVH and the OECD.

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<sup>1</sup> Person-days are defined as the number of days a person attended a RCC seminar. Thus, if 10 people attended a course for 5 days and 4 people attended a course for 3 days the number of person days delivered is 62 ( $10 \times 5 + 4 \times 3 = 62$ ).



### III. Detailed review of the activities in the year 2017

#### 1. Standard programmes in the framework of the core activity

##### *a) 7 – 9 March 2017, Seminar on Market Definition*

The definition of a relevant product or geographic market is a necessary step in most competition cases, particularly in merger cases. The seminar explored analytical and investigative steps and the basic economics of market definition. Experts from OECD member countries as well as seminar participants presented cases and engaged in hypothetical exercises.

The seminar was attended by 38 competition law enforcers from 18 SEE and CIS countries and Hungary.

In the introductory presentation, Sabine Zigelski (OECD), explained basic concepts and the use of some economic instruments like the SSNIP test and critical loss analysis, while also touching on the ongoing debate surrounding market definition and its interplay with competitive assessment.

Serbia then presented a case study on market definition in the outdoor advertising market. In this case the definition of the product market had been very controversial and the Serbian authority also wanted to reconsider a previously applied broad market def-

inition. With the help of the analysis of similar cases in other jurisdictions, the Serbian CPC decided on a narrow market definition.

In the next session the participants were asked to engage in a hypothetical case exercise, involving the merger of two producers of mattress springs. They were given some basic information and were then asked to discuss necessary investigative steps, including addressees of questionnaires and relevant questions to be asked. The exercise finished with a short presentation of the real life case that had served as the blueprint for the hypothetical, and that had successfully applied the SSNIP test.

The afternoon started with a presentation by Joao Azevedo (European Commission) on geographic market definition in EC merger control. Joao outlined the principles of geographic market definition and the use of the SSNIP test and also explained where and how market definition relates to competitive assessment and what types of evidence can be used: geographic patterns, trade flows and switching costs, basic demand characteristics, economic evidence and views of customers and competitors. He provided case examples of where this kind of evidence had been used and finished with a short overview of the Fletcher/Lyons study on the EC's geographic market definition practice.

Table N°2 provides a brief overview of the topics of the seminars held in 2017 as well as the participating economies and institutions.

**Table N° 2:**

**Summary of activities in 2017**

Event Topic	Date	Total Number of Participants and Speakers	Attending Economies/Institutions
Seminar on European Competition Law for National Judges on "The Role of National Judges in Antitrust Litigation in the light of the EU Damages Directive"	24-25 February	32 + 6	Participants: Belgium, Bulgaria, Croatia, Estonia, Finland, Germany, Greece, Hungary, Latvia, Lithuania, FYR of Macedonia, Montenegro, the Netherlands, Poland, Portugal, Romania, Slovenia, Sweden the OECD  Speakers: Austria, Belgium, Luxembourg, United Kingdom, GVH, OECD
Seminar on Market Definition	07-09 March	38 + 5	Participants: Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Montenegro, Romania, Russian Federation, Serbia, Ukraine, GVH  Speakers: France, United States, EU Commission, GVH, OECD
GVH Staff Training	26-27 April	81 + 11	Participants: GVH  Speakers: Austria, EU Commission, Germany, Israel, Luxembourg, the Netherlands, United Kingdom, OECD
Heads' Meeting	16 May	17 + 5	Participants: Albania, Armenia, Belarus, Bosnia and Herzegovina, Georgia, GVH, Kazakhstan, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Romania, Russian Federation, Serbia, Ukraine  Speakers: GVH, OECD, United States
RCC – FAS Seminar in Russia on Market Studies	07-09 June	25 + 7	Participants: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Uzbekistan  Speakers: EU Commission, Germany, Russian Federation, Spain, OECD, GVH
Outside Seminar in Bosnia and Herzegovina – The OECD Competition Assessment Toolkit	12-14 September	36 + 5	Participants: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Kazakhstan, Kyrgyzstan, FYR of Macedonia, Moldova, Romania, Russian Federation, Serbia, Ukraine  Speakers: Greece, Italy, Lithuania, Serbia, OECD
Seminar on Best Practices in Cartel Procedures	17-19 October	38 + 5	Participants: Participants: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Montenegro, Romania, Russian Federation, Serbia, Ukraine, GVH  Speakers: Austria, Canada, Lithuania, GVH, OECD
Competition Rules and the Pharmaceutical Sector	12-14 December	35 + 5	Participants: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Montenegro, Romania, Russian Federation, Serbia, Ukraine  Speakers: Belgium, United Kingdom, EU Commission, OECD



*Seminar on Market Definition, 7-9 March 2017*

The participants then had the chance to directly apply their learnings from Joao's presentation to a hypothetical case. The case involved a merger of two producers of beverage cans and involved different players and different effects in different areas of Europe. The breakout groups discussed the merits of different suggested geographic market definitions, and the information needs necessary to reach conclusions in the case. As the case was again based on a real merger, Joao concluded the day with a short presentation of the geographic market definition in the Ball/Rexam case.

On the second day, Eshien Chong (Autorité de la Concurrence, France) presented the Fnac/Darty merger case. This case had many interesting aspects, among which was the geographic market definition for the Paris region and the rest of France. Eshien explained the use of catchment areas and isochrones. Another highly interesting aspect was the treatment of online and offline sales in market definition and the computation of market shares. The Autorité used qualitative, as well as quantitative evidence, and concluded that both belonged to the same market in this case. Eshien finished the presentation with a very open review of the lessons learnt in this case.

The next country case study was presented by Romania. The RCC has been increasingly dealing with the acquisition of asset portfolios consisting of non-performing loans. The RCC has examined what markets need to be considered in these cases and if, as the products change in character, new markets dif-

ferent from the general loan markets need to be defined in order to assess the potential competition effects properly.

Boris Martinovic (GVH) then provided an overview of three cases, two involving product market definition and one on geographic market definition. He outlined the very practical steps that had been undertaken to understand the markets in question better and what kind of qualitative evidence had proved to be most helpful. One of the cases had used a very impressive series of SSNIP type questions and the GVH was rather satisfied with the results. On geographic market definition he presented a case that had used the mapping of sales areas and had come up with a large number of overlapping isochrones. Together with the available qualitative evidence, this had led to the delineation of a wide geographic market.

In the afternoon another hypothetical case exercise was undertaken. This time the groups were asked to investigate a complaint of a producer of football trading cards, alleging anticompetitive, as well as abusive behaviour on the part of a competitor. The aim of this case was to highlight the approach to market definition in horizontal restraints as well as abuse of dominance cases, and the case also raised interesting questions relating to temporal market definition as well as sources of information on the behaviour of specific groups of customers, like children.

The following case study by Ukraine dealt with a potential abuse, and concerned margin squeeze and refusal to supply in the FMCG industry. The question was raised if market definition should also look at the different stages of supply, like the wholesale and retail level of sales.

Melissa C. Hill (US FTC) presented the next case study, which concerned market definition in the Sysco case. The merger raised interesting questions on product and geographic market definition. The FTC settled on a narrow broadline foodservice distribution market, based on a range of mostly qualitative evidence, party documents and testimonies. Geographic market definition proved to be challenging as there existed national as well as local customers. Melissa pointed out what kind of information was particularly helpful, and that economic as well as qualitative evidence need to point in the same direction.

The last day of the seminar carried forward an investigation technique that had already been mentioned in the Fnac/Darty merger case study, namely, surveys. Eshien outlined the two kinds of survey questions used by the Autorité, the hypothetical monopolist and the diversion ratio survey. He also went into some detail explaining the use of price increase vs. unavailability questions and finished with some general remarks on representativeness, number of interviewees, hypothetical bias and very practical issues, such as the length and focus of questionnaires.

In another country case study Russia presented a case from the Omsk region on the sale of gas fuel on local retail markets. The competition authority had investigated an alleged pricing abuse by a gas fuel supplier and had needed to establish the relevant product and geographic markets, asking SSNIP test questions to customers. The question of valid comparator markets was raised.

The final session of the seminar gave all experts a chance to highlight best practices and also mistakes that they had encountered in market definition. The use and availability of internal documents, pre-notification talks, survey design, third party evidence and how to overcome previous market definitions that no longer seemed meaningful were discussed with the participants.

We concluded that market definition is never an end in itself but provides a structured, systematic ap-



*Seminar on Market Definition, 7-9 March 2017*

proach to handling competition cases. The information gained during the market definition process can also inform the competitive assessment of the cases at hand. While quantitative evidence can be very helpful, it should never be considered on its own, without appropriate backing by the facts observed on the market as a result of a proper investigation.

#### ***b) 17 – 19 October 2017, Seminar on Best Practices in Cartel Procedures***

Procedural laws that govern cartel cases vary from jurisdiction to jurisdiction. We can, however, identify best practices that experienced jurisdictions have developed when handling cartel cases and these will often fit different procedural frameworks. The seminar provided insights and ideas on the preparation and execution of dawn raids, the handling of evidence, forensic IT techniques and team work in complex cartel case investigations. Experts explored these topics together with the participants and the topics were illustrated with hypothetical exercises. The seminar was attended by 38 competition law enforcers from 18 SEE and CIS countries and Hungary.

The seminar began with an introductory presentation by Sabine Zigelski (OECD). She briefly defined cartels and outlined the harm done by cartels, pointing out the more or less unanimous consent about the need to fight hard core cartels. The OECD Recommendation on Effective Action Against Hard Core Cartels calls on countries to have the appropriate institutional and legal structures, as well as appro-



*Seminar on Best Practices in Cartel Procedures, 17-19 October 2017*

appropriate detection and investigation instruments to fight cartels. The seminar would focus on the latter, namely, appropriate detection and investigation instruments. Cartels can be detected in various ways and one of the seemingly easiest ways is leniency. As the leniency tool is not functioning well in most beneficiary countries, attention should be paid to more pro-active ways of detecting cartels. In this regard cartel screens, both structural and behavioural, have been a topic of discussion and research for some time. The basic characteristics, advantages and disadvantages were briefly outlined. A recommended starting point for countries that have difficulties in cartel detection is, however, public procurement. By applying the OECD Guidelines on Fighting Bid Rigging in Public Procurement, authorities can be alerted to suspicious signs in bidding processes by trained public procurement officials.

The next presentation focused on a country where cartel detection has been very successful, despite the fact that leniency is not (yet) working properly. Mr Daumantas Grikinis (Lithuanian Competition Council) outlined the strategies Lithuania pursues. The Council actively communicates with public procurement bodies and supervisory bodies across the country and this has resulted in a number of positive leads. The Council also screens the electronic procurement system for suspicious signs. While the system currently generates too many false positives, it is not very labour intensive and seems promising for the future. What has proven even more successful in Lithuania is active co-operation with public prosecu-

tors and corruption prosecutors. This has already led to good cartel cases being handed over to the Council, with interesting proof such as wire taps of competitor conversations.

In the first country presentation, Andrey Tenishev (FAS Russia) illustrated Russia's approach to detection. Russia uncovers a large number of cartels in all of the Russian Federation every year. FAS gets leads from complaints, leniency, open source information and from a systematic screening of electronic procurement data. He outlined the way some cartels operate in the electronic bidding environment and how they play the system. He also gave highly interesting insights into clues relevant to public procurement officials, that replace the paper based clues used by competition agencies, such as identical postmarks, from the past.

At the start of the second half of the day, the participants were asked to assume the roles of public procurement officials and to analyse bidding patterns for the procurement of chlorine in a country. They were divided into six groups that represented different regions of the country and had to analyse their region's bidding patterns. After some time, the groups were brought back together and each group explained the suspicious signs it had identified. Once all of the groups had disclosed their observed bidding patterns, it became clear that a systematic analysis of the whole country's bidding schemes allowed for the identification of a potential cartelised conduct by the suppliers. This exercise provided the

participants with a good idea of suspicious signs and of ways of alerting public procurement officials to them.

The next presentation shifted the attention from cartel detection to cartel prosecution. Mr Dávid Kuritár (GVH) outlined the basic steps in the preparation of a dawn raid. While he referred to the Hungarian experience, all expert speakers made it clear that they followed very similar procedures. In summary it can be said that thorough preparation is a necessary condition of a successful dawn raid. This includes good information about the targets of the raid - location, size, accessibility, IT infrastructure, but also requires excellent internal preparation. Search teams need to be composed, team leaders designated, and explanatory materials instructing the search have to be provided. At the same time the information about a planned investigation needs to be kept as restricted as possible.

Ukraine finished the day with a case study on a cartel observed in auctions for oil and gas condensate. The investigation lasted less than two years and was based purely on indirect evidence. Through information requests and interviews, the AMCU established that an elaborate bid rigging and internal compensation scheme had been established, in order to keep the price for the oil and gas condensate, purchased from the largest state owned oil producing enterprise, low. In addition, various personal links between the conspiring undertakings were found. The AMCU fined the cartel participants approximately 47 million Euro. The case is pending in court.

The second day continued the discussion on dawn raids. Ms Beatrix Krauskopf (Bundewettbewerbsbehörde Austria) presented the Austrian practice in dawn raid execution. She outlined the development of the Austrian dawn raid activity and showed impressively that after a significant number of raids had been conducted, the number of leniency applications started to increase. They have now become the most important source for cartel suspicions. Beatrix went through the different topics that should be kept in mind during an inspection – entry and beginning, scope of the inspection, statutory powers, electronic data and legal remedies. The presentation once again stressed the importance of good preparation, but also team management and back-office support.

Romania contributed another case study. The Romanian Competition Council had received information on joint action by media agencies aimed at excluding one competitor from tenders by various means. In the dawn raids that were carried out, the Romanian Competition Council found numerous documents that showed detailed action plans and communications aimed at achieving the above-mentioned desired goal of the cartelists. After the dawn raids, three undertakings came forward with leniency applications. The Romanian Competition Council did not grant leniency to any of them, as they had failed to contribute information that went beyond the information the Council had already obtained. The case ended with a fine of 3.2 million Euros.

In order to clarify what kind of documents constitute good evidence, Stephan Luciw (Canadian Competition Bureau) held a presentation on “Types of Ev-



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idence and Where to Find it”. He outlined the main elements of cartels and bid rigging schemes and explained the main characteristics of direct and indirect – or circumstantial – evidence. In practice, it is usually a combination of the two types of evidence that will enable a credible story of harm to be established and a case to be successfully proven. The probative value of different types of evidence was discussed. Stephan briefly alluded to parallel pricing and why it cannot constitute proof of an illegal agreement on its own. He finished his presentation with a case study and an “evidence quiz”.

The afternoon started with a hypothetical exercise again. The participants received four scenarios for dawn raid situations, which simulated the typical process of a raid – entry, disclosure of the purpose of the visit to the management, disturbances during the raid and the appearance of lawyers. The participants were asked to play the part of the company representatives, while the experts played the role of the company representatives and lawyers. After each scene, the observations and experiences made were discussed. This mock dawn raid situation illustrated how important it is to be prepared for all kinds of situations and arguments and that it is not easy to remain vigilant at all times.

Daumantas Grikinis held the final presentation of the day on “Forensic IT (FIT) for Beginners”. He outlined necessary tools and resources and how and when to use FIT in different stages of an investigation. He introduced a number of software tools that can easily be used for the preliminary research on target locations and persons. During the dawn raids various methods can be used to copy data from sta-



*Seminar on Best Practices in Cartel Procedures, 17-19 October 2017*



*Seminar on Best Practices in Cartel Procedures, 17-19 October 2017*

tionary and mobile devices. After the dawn raid any IT material taken from the premises can be searched with forensic software that uses search terms and protocols the search.

On the third day the seminar moved on to a broader range of topics, starting with the topic of “Case Management in Major Cases”, presented by Stephan Luciw. Stephan outlined the major milestones of every investigation and the Bureau’s strategy for case selection and prioritisation. He then gave important practical advice on evidence gathering and preservation, including disclosure of evidence and parties’ rights in the proceedings.

In the final country case study, Armenia presented an abuse of dominance case that had been investigated in 2012. The Armenian competition agency does not possess dawn raid powers and has to use other investigatory tools to prove anti-competitive behaviour. In the case at hand, Coca Cola had restricted access of competitor products to the fridges Coca Cola provided to retailers. As Coca Cola had a market share of more than 50 %, dominance was established and an abuse was established on the basis of in-store observations and information requests. The case fits in a line of classical abuse cases that had been dealt with by a number of agencies in Europe. A fine was imposed and the case is pending in court. In addition, it was proposed to introduce legislation that would prevent this kind of action by large undertakings.

The seminar concluded with a panel discussion on international co-operation in cartel cases. Sabine Ziegelski started the discussion with a short presenta-

tion on international co-operation, outlining recent developments and major obstacles as well as tools agencies can use to co-operate. The importance of the protection of confidential information was stressed. Stephan Luciw then explained the rich Canadian experience in co-operation with other agencies, which goes as far as closing a case if the infringement has been sufficiently addressed by another jurisdiction. Dávid Kuritár mentioned the use of European case precedent by the GVH to inform and guide its enforcement action. Beatrix and Daumantas gave insights into actual cases of co-operation between countries in the ECN.

The seminar provided highly relevant insights into all practical aspects related to the detection and prosecution of cartels and the experts, as well as the more experienced participants, underlined the need for dawn raids as the most effective tool for obtaining useful evidence for cartel infringements. While it became clear that all this is far from simple, the experience of, in particular, Lithuania and Austria demonstrated that small agencies can become very effective in carrying out dawn raids and prosecuting hard core cartels.

### ***c) 12-14 December, Seminar on Competition Rules and the Pharmaceutical Sector***

In December 2017, the OECD/GVH annual sector workshop took place in Budapest, Hungary with this

year's event devoted to the application of competition policy to a sector that is central in all countries: the pharmaceutical sector.

This year's programme focused on enforcement and advocacy actions and there were a wide array of expert speakers with extensive experience in the sector that were kindly made available by the authorities of the EU Commission (EU), CMA (UK), as well as experts from the OECD and Mr. Giorgio Motta, a partner at Skadden, Arps, Slate, Meagher & Flom LLP in Brussels.

The event started with an examination by Mr. Ruben Maximiano of the OECD of the main features of the pharma sector, including the role of Intellectual Property Rights, the main types of regulations found in the sector considering its specific characteristics, as well as of the main competition issues found across jurisdictions. The afternoon sessions were devoted to analysing more specific issues when dealing with enforcement cases, starting with merger control and market definition, in a session presented by Mr. Giorgio Motta. Mr. Motta examined a number of cases in the EU Commission's practice and identified some common threads and principles that underwrite the identification of relevant markets in the pharmaceutical sector that can be useful more broadly. Mr. Motta's second session was devoted to the main competition issues that arise in the competitive assessment of merger cases in pharma, as



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well as the remedies that have been used to address these. Still on the topic of mergers, the Romanian RCC shared the Sensiblue / Farmaplanet merger in 2011 where the parties' activities overlapped on the pharmaceuticals and para-pharmaceutical products retail market in 19 localities in the country, leading to the identification of competition concerns in one of those cities and the acceptance of remedies to solve those issues. The case discussant in this case was Russia.

The following sessions dealt with abuse of dominance cases, and began with an overview of the main abuse of dominance issues in the pharma sector in the EU, in a session led by Mr. Harald Mische. The session included an in-depth examination of the Servier and Astra Zeneca cases. This was complemented by a case brought and presented by the Albanian representation where, following a complaint, the authority analysed whether Fufarma's practices and its exclusive right to trade the medication "Lantus Solostar", which is a necessary product for diabetic patients and at the same time is a remedy reimbursable from the Health Insurance Fund might lead to an abuse of dominance – in this case no such evidence was found. The case discussant was the delegation from Bulgaria.

The sessions on the second day continued on the issue of abuse of dominance, with Mr. Lourenço Ventura of the CMA providing a comprehensive session on the issue of excessive pricing and examining in depth the very recent Phenytoin case. This was followed by a case example presented by the delegation from Moldova on a case of refusal to deal, with the delegation from Montenegro acting as the case



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discussant. Mr. Lourenço's second session involved a presentation on the issue of rebates and discounts in the Pharma sector in the UK, analysing a number of conditional rebates and exclusive purchasing cases in the process, including EU cases. The afternoon of the second day started by putting some of the experiences that had been presented into practice, with the plenary divided into 4 smaller groups for a practical exercise, which looked at an issue of abuse of dominance in the supply of drugs to hospitals and at possible issues of tying and bundling.

The issue of anti-competitive agreements was then dealt with in 2 distinct sessions: First up was Mr. Mische, who shared the experience of the European Union in a session on horizontal agreements in the sector, including the sector inquiry undertaken in 2009 and then the recent pay for delay cases, in particular Lundbeck, which was examined in fine detail. Mr. Pedro Caro Sousa continued the theme of anti-competitive agreements by sharing a number of cases of cartels and bid rigging cases in pharma from across the world that affected the public purse by increasing the prices of medicines sold to public hospitals. The Serbian delegation then presented a case in the context of a request for an individual exemption for a pharma distribution agreement, with the delegation from Kazakhstan acting as the discussant.

The workshop's final session started with Mr. Ruben Maximiano, who emphasised the important role that a competition authority's competition advocacy activities can play, both in relation to the design



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of regulation and the public procurement of medicines. This was followed by presentations from Georgia and Armenia, with discussants from FYROM and Kosovo respectively. In the first presentation, Georgia presented the competition authority's analysis in the context of the criteria applied to parallel imports and its advocacy efforts to promote increased competition, whilst Armenia referred to an ongoing market study, which is looking at international comparisons in order to provide proposals that can be made

to the Armenian authorities aimed at improving the legal framework for parallel imports.

This was an event that allowed participants to explore in depth a sector that has many specificities and that can be rather daunting, especially for newer agencies. Drawing upon some very experienced speakers, it was possible to show that, where relevant, this is a sector where competition authorities may intervene effectively.

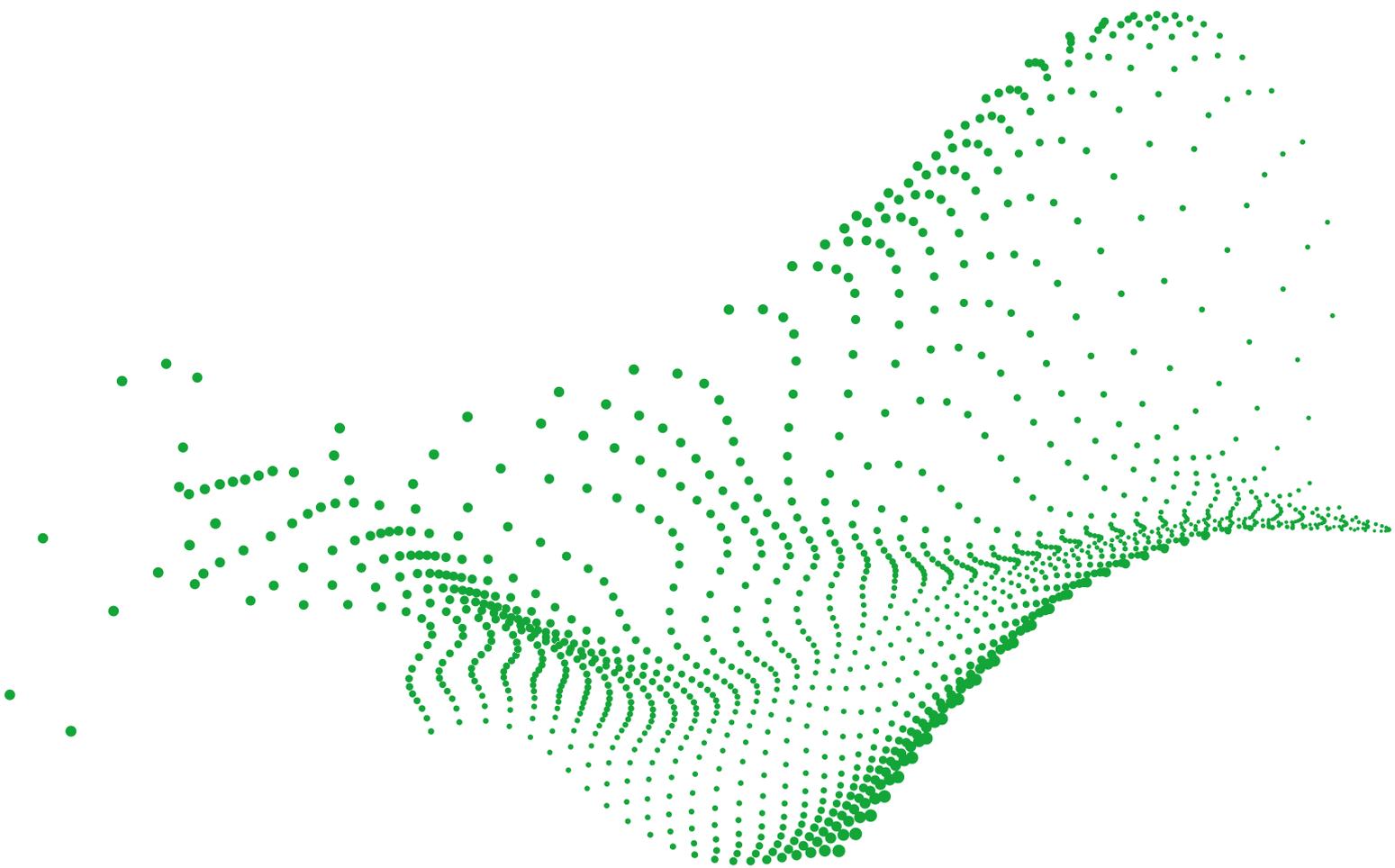


Table N°3 provides an overview of the number of participants at the seminars. This summary focuses on the participants of the seminars organised as part of the core activity of the RCC.

**Table N° 3:**

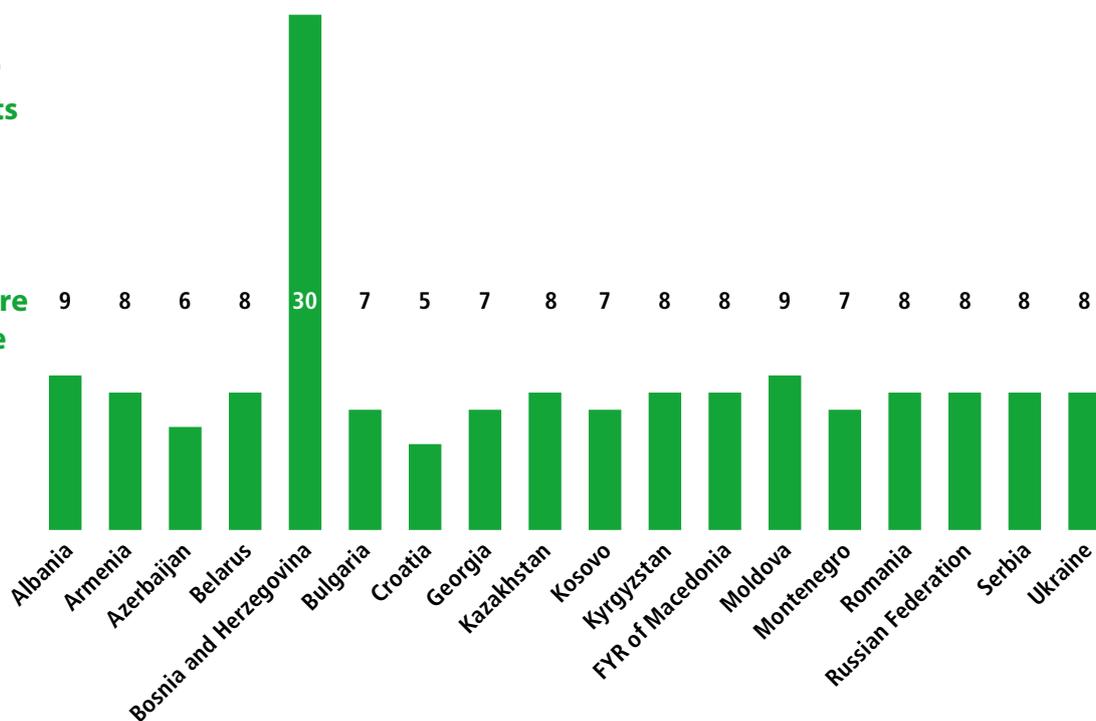
Economy	Number of participants	Person-days	Events attended
Albania	9	23	5
Armenia	8	22	5
Azerbaijan	6	15	3
Belarus	8	22	5
Bosnia and Herzegovina	30	86	5
Bulgaria	7	21	4
Croatia	5	15	3
Georgia	7	19	4
Kazakhstan	8	22	5
Kosovo	7	19	4
Kyrgyzstan	8	22	5
FYR of Macedonia	8	22	5
Moldova	9	25	5
Montenegro	7	21	3
Romania	8	22	5
Russian Federation	8	22	5
Serbia	8	22	5
Ukraine	8	22	8
<b>Total</b>	<b>159</b>	<b>442</b>	

**Number of participants and events attended**

Chart N°1 provides an overview of the number of participants per economy.

**Chart N° 1**

**Total number of participants per economy attending seminars organised as part of the core activity of the RCC**



## 2. Special events in the framework of the core activity

### *26 - 27 April 2017, GVH Training Seminar: Review of EU Competition Law and Selected Competition Topics and Trainings for Special Groups of Staff*

The 2017 GVH staff training conducted by the RCC provided an update on competition law developments in the EU, with a special emphasis on rebates, e-commerce and platform markets and consumer protection. On the first day these issues were dealt with in the form of presentations for the whole GVH staff. On the second day targeted trainings were provided for different groups of GVH staff.

Miklós Juhász, President of the GVH, gave the opening address. He was followed by Judge Ian Forrester (Judge of the General Court of the European Union, Luxemburg), who gave an overview of recent developments in EU competition law. He provided some information on historical developments and then discussed issues of co-operation and harmonisation, changes in cartel enforcement and judicial enforcement. Special attention was paid to the object/effort debate, antitrust in the digital economy and IP rights and competition law, as well as rights of defence vs enforcement efficiency. Mr Dries Cuijpers (ACM, Netherlands) then provided an overview of the structure of the ACM and explained the rationale of the merger of competition enforcers, consumer protection, energy and telecom regulation. He outlined the ACM's mission and strategy and highlighted its consumer and problem-solving focused approach; furthermore, he explained how the ACM tries to



*GVH Training Seminar: Review of EU Competition Law and Selected Competition Topics and Trainings for Special Groups of Staff, 26-27 April 2017*

measure enforcement effects and how it increasingly includes behavioural science in its enforcement work. In the afternoon Mr Vivien Terrien (Court of Justice of the EU) discussed recent case law in the area of rebates. He covered various categories of rebates and the required standards of proof and illustrated his insights with the Tomra, Post Danmark II and Intel Cases. Regarding the Intel case he sketched out the reasoning of AG Wahl in his opinion to the ECJ. The remainder of the afternoon was dedicated to internet related topics. Mr Fabian Kaiser (European Commission, Belgium) provided an overview of the e-commerce sector inquiry of the EC and its preliminary findings. The inquiry targeted, in particular, consumer goods and digital content. In relation to consumer goods, the focus was on sales channels



*GVH Training Seminar: Review of EU Competition Law and Selected Competition Topics and Trainings for Special Groups of Staff, 26-27 April 2017*



*GVH Training Seminar: Review of EU Competition Law and Selected Competition Topics and Trainings for Special Groups of Staff, 26-27 April 2017*

and sales restrictions. As regards to digital content, territorial restriction and the length of contracts were highlighted. The final presentation of the day was given by Mr Sandro Gleave (Bundeskartellamt, Bonn). Sandro presented the Bundeskartellamt's recent efforts to react to the enforcement challenges of the digital economy. He briefly described the work of the "Think Tank Internet" and how its results had been used in a number of abuse and merger cases. To explain competition problems that can be raised by online platforms, Sandro described a merger of two online dating platforms, Parship/Elitepartner in more detail. He explained the competitive environment, challenges to market definition, the concepts of multi-homing and tipping and how the overall assessment led to the conclusion that the merger did not lead to an SIEC.

The second day was dedicated to targeted trainings for the different groups of GVH staff. The first session for the GVH's Competition Council (CC) was held by Ms Natalie Harsdorf (BWB, Austria), who presented cartel settlements in the Austrian practice and discussed questions raised by the CC. In the afternoon, Judge Forrester gave an introductory presentation on Retail Price Maintenance in the EU and US and then discussed with the Council cases the GVH had provided.

The Merger Section worked through a vertical merger case in the telecoms sector. Ms Miriam Teerhuis (CMA, Netherlands) had prepared an overview of a Dutch case and led the group through the various stages of the case, including merger remedies.

The group had a number of lively discussions and exchanges throughout the day.

Ms Shahaf Yassar and Mr Assaf Dahan (IAA, Israel) provided the Antitrust Section with training on the theory and practice of interviews and interrogations. They constantly switched between a general introduction into techniques and IAA experience and practical exercises and examples. The GVH staff was very engaged in the sessions and the IAA colleagues managed to challenge a number of established practices and old beliefs, which also led to heated debates.

The Chief Economist Team benefitted from a full day of training with Mr Simon Compton (CMA, UK). Simon had prepared an extensive overview of the UK practice on designing and conducting surveys and the contract design and monitoring of outsourced surveys. The training will be used to inform the GVH's survey approach.

The Consumer Protection Section spent the day with Dries Cuijpers. Dries gave an interactive presentation on "The application of the UCPD: evaluation and tools". Various case studies triggered lively debates and questions.

### ***b) 16 May, Meeting for the Heads of Authorities***

The RCC organises a meeting of the heads of the beneficiary agencies once every two years. The meeting provided the representatives with an opportunity to discuss current and future RCC work and to discuss and shape future programmes. In the substantive

part of the meeting, e-commerce, disruptive innovations and big data were discussed.

Miklós Juhász, President of the GVH, gave the opening address. He was followed by Antonio Gomes, Head of the OECD Competition Division, Paris, who also used the opportunity to warmly thank the GVH for its ongoing commitment to the RCC work.

Antonio continued with a presentation on “Competition and Disruptive Innovation”, where he defined disruptive innovation and pointed out that it often occurred in highly regulated sectors. Competition authorities need to be aware of this context and have to keep in mind the objectives of regulations when advocating for opening up these markets. He then discussed the specific challenges faced by competition authorities in the areas of merger control, unilateral conduct and anticompetitive agreements and the need to refine traditional enforcement tools. Lastly, he pointed out the benefits of international co-operation when handling new and challenging competition problems and the current and future work of the OECD on digital economy topics.

Professor William Kovacic, George Washington University Law School, Washington, gave a number of useful examples to illustrate how competition authorities can best handle what seem to be new challenges. He started by pointing out that change and disruption are nothing new to competition law enforcers. The new feature today is the speed of the changes and the need to keep pace. After going through a number of examples relating to wine, contact lenses, the sharing industry, etc., he focused on a couple of specific competition policy issues – private restraints, public restraints and social dimensions of change and disruption.

The afternoon session was dedicated to discussions about future RCC work. József Sárai, Head of the GVH’s International Section, introduced a new instrument, the RCC Request for Information (RFI). The RFI will be launched for a one year test phase in September 2017 and will give the beneficiaries the opportunity to exchange experiences and ask enforcement related questions to the other beneficiaries. The RCC provides the platform and will collect the requests and answers, which will be accessible on the RCC website to all beneficiaries. The beneficiaries’ representatives approved the testing of the RFI.

Sabine Zigelski, OECD, Paris, then introduced the first results of the evaluation survey of the RCC



*Meeting of the Heads of Competition Authorities, 16 May 2017*

Newsletter. The overall feedback was encouraging and suggested that the Newsletter addressees were extremely interested in enforcement related articles, including special editions dedicated to a specific enforcement topic.

For the remainder of the afternoon, the representatives of the agencies discussed, first in smaller groups, and then in the plenary, their future training needs, topics of interest and the level of training required.

The meeting provided a good opportunity for the representatives of the beneficiary agencies to meet and to get to know each other better. It enabled the representatives to actively influence the future work of the RCC and ensure that the training meets the beneficiaries’ needs.

### ***c) 29 May - 01 June, Joint Seminar with FAS Russia on Market Studies***

Once a year the RCC organises a joint event with the Federal Antimonopoly Service (FAS) of the Russian Federation. The seminar was held in Moscow, Russian Federation. 19 competition law enforcers from the Russian Federation and 9 enforcers from 8 CIS countries participated in the seminar on Market Studies.

Market studies are research projects aimed at gaining an in-depth understanding of how sectors and markets work. A market study results in a report that sets out the problems found and issues recommendations to policy makers or leads to follow-up enforce-



*Joint Seminar with FAS Russia on Market Studies, 29 May - 01 June 2017*

ment action. The general set-up and best practices relevant for market studies were introduced, as well as available OECD, ICN and national guidance. Experts from the EC and national competition authorities gave insights into their practical experience. Special emphasis was placed on the internet economy and markets with buyer power problems.

Mr Andrey Tsyganov, Deputy Head of FAS Russia, opened the seminar and welcomed the participants to the event. In the introductory presentation Ms Sabine Zigelski (OECD, Paris) outlined where market studies fit into the work of competition enforcers, how they could help and inform enforcement and advocacy work and which challenges are likely to arise.



*Joint Seminar with FAS Russia on Market Studies, 29 May - 01 June 2017*

She also referenced recent and upcoming OECD work products related to the topic.

Mr Andrey Tsyganov (FAS Russia) introduced the legal framework for market definition and market studies in Russia. He also explained the priorities of FAS Russia and why and how markets were chosen for closer investigation.

The next session saw Ms Raquel Tárrega López (CNMC, Spain) presenting the CNMC's methodology for market studies. The methodology is based on the practice of the CNMC and provides guidance internally as well as for stakeholders, thus creating transparency and promoting better acceptance of market studies. Raquel described the different steps to be taken, from selection/prioritisation to project and resource management, and also discussed using the outcomes of market studies.

In the afternoon the participants were asked to engage in a role play. They were split in groups, three of which received descriptions for different markets with potential competition problems. A fourth group was asked to prepare the role of the decision making council of the authority and to conduct a hearing where each of the other groups had to argue why their market would be particularly well suited for a market study. The exercise led to interesting discussions on the criteria that should be used for choosing and prioritising markets or competition problems and raised the participants' awareness of the problem.



*Joint Seminar with FAS Russia on Market Studies, 29 May - 01 June 2017*

The first day finished with the first presentation of an actual market study. Mr Gábor Szabó (GVH, Hungary) explained the steps it took to launch a sector inquiry into the area of card acceptance. This case was interesting, as it required a lot of co-operation with the central bank and a preliminary investigation to identify potentially problematic issues to target with the then launched, and still on-going, inquiry.

On the second day Mr Rosario Rende-Granata (European Commission, Belgium) provided insights into the EC's e-commerce sector inquiry. He outlined the purpose, the process and the basic results, as well as possible follow-on action. Rosario placed a special emphasis on stakeholder involvement, questionnaires and repeated reality checks which can be facilitated with the publication of interim reports and public consultations. FAS Russia followed up and presented its approach to digital markets, in particular the Google case.

This was followed by a panel discussion on questionnaires, data processing and unexpected complications. The session served as an opportunity to primarily discuss and highlight very practical issues and hands-on experience. Rosario and Raquel focused, in particular, on stakeholder engagement and communication strategies, while Uli Barth (Bundeskartellamt, Germany) shared insights into the drafting of questions and questionnaires. Raquel also went into more detail with regard to data handling and processing, and Gábor focused on team and project management and how to best handle the unexpected in a market study process.

The third day started with a presentation by Mr Uli Barth. Uli discussed the German inquiry into the dairy sector. It had been triggered by widespread dissatisfaction with the way the market was working on several market stages, and also addressed farmers' boycotts of dairies. The inquiry took almost four years, resulted in an interim report, triggered another sector investigation to analyse purchasing power by the retailers, with follow-on enforcement against dairy cooperatives still to be completed. At the same time, the sector inquiry had put the Bundeskartellamt in the spotlight and helped it to raise its profile.

In the following presentation, FAS Russia, regional office of Saratov, presented their work on the fertiliser market. The Saratov office has obtained very detailed insights into the functioning of the market and can this way react to complaints easily, which are being handled very efficiently. The market also suffered from foreclosure action by one of its main players and FAS had intervened against it.

The participants were then asked again to split into three breakout groups. They were all provided with an identical description of the results of a market study into the road fuel sector. All groups had to discuss how to make the most of the market study and which enforcement action, if any, to take, which advocacy measures to favour, and were required to compare their own experiences with similar cases/markets. In the following plenary session the results were presented and discussed.



*Joint Seminar with FAS Russia on Market Studies, 29 May - 01 June 2017*

The last presentation of the seminar was given by FAS Russia. It introduced the special aspects and the implementation of the results of the petroleum market study. The market study had raised concerns about oligopolistic pricing and established a standard reference price for determining abusive pricing. The standard reference price is the stock market trading price.

The seminar finished with another panel discussion, this time focusing on market study related advocacy work and experience. Raquel provided a brief overview of the CNMC's advocacy toolkit and the many instruments included. Rosario explained how to prioritise and select the occasions to present the experience, which may be more numerous than the agency expects. Uli added some experience on the way market study results may be used in unforeseen ways by market participants and what the agency can do to prevent this. He then outlined in a little more detail the potential enforcement work that may result from a market study. Gábor elaborated on opportunities to co-operate with regulators and possible limitations, while also discussing how to engage policy makers.

The main conclusions at the end of the seminar were that it is essential to have a good idea of the potential outcomes of a market study, to be flexible in planning, to have dedicated resources set aside and to check (interim) results with reality. All of this involves constant communication and co-operation with the major stakeholders, all while ensuring that the study is conducted in the most transparent way.

#### *d) 12 - 14 September, Outside Seminar in Sarajevo, Bosnia and Herzegovina, on the OECD Competition Assessment Toolkit*

The annual outside seminar of the RCC was held in Sarajevo, Bosnia and Herzegovina, and its subject was the OECD Competition Assessment Toolkit. 36 competition law enforcers from 16 SEE and CIS countries attended the seminar.

Sometimes competition problems in markets are caused by restrictive rules and regulations. The enforcement of competition rules will often not be very efficient on these markets and will not tackle the root causes of the competition problems. The OECD Competition Assessment Toolkit (<http://www.oecd.org/daf/competition/assessment-toolkit.htm>) provides a hands-on tool for the systematic review of new and existing laws and regulations, while showing ways to evaluate and analyse laws and suggest alternatives. We introduced the Toolkit, gave examples and showed the impressive benefits from its application in a number of countries. Experienced experts also explained the role of competition assessment in the advocacy efforts of a competition authority and how it can greatly leverage the role of a competition authority vis-à-vis its government, line ministries, regulators and the general public. The participants practised the application of the Toolkit Checklist in three breakout sessions.

The President of the Competition Council of Bosnia and Herzegovina, Mr Ivo Jerkić, opened the seminar with welcoming remarks, pointing out the relevance of the topic for a country like Bosnia and Herzegovina. Ms Sabine Zigelski (OECD) gave an introductory presentation on the OECD Competition Assessment Toolkit, highlighting the need for economic reforms and the benefits of competition for consumers and undertakings, productivity and growth.

Ms Dalila Zečić, (Competition Council, Bosnia and Herzegovina) introduced the authority and the legal framework for competition enforcement. She provided an overview of the enforcement record and the resources of the Competition Council. The Competition Council has identified enforcement needs in areas that are relevant to consumers, competition advocacy and stronger co-operation with national and international partners as priorities for future work. Ms Aida Mujagić and Ms Anesa Omeferendić (Competition Council, Bosnia and Herzegovina) then presented the first case study, explaining interventions against state actors in different cantons of Bosnia



*Outside Seminar in Sarajevo, Bosnia and Herzegovina, on the OECD Competition Assessment Toolkit, 12 - 14 September 2017*

and Herzegovina. All interventions related to the health sector and targeted discriminatory and exclusionary acts of public actors against private pharmacies or suppliers of prescription drugs. In all cases, the Competition Council had ruled on the admission of pharmacies and drugs and ordered state actors to change rules and orders. In one case fines were imposed.

The afternoon started with a hypothetical exercise. Sabine Zigelski first briefly introduced Checklist question 1 from the Toolkit, rules and regulations limiting the number and range of suppliers. The participants were then asked to discuss a proposed regulation on food trucks that would restrict numbers and the range of actions of food trucks. They prepared arguments for a hearing where each of the three groups was taking on a different role, the regulator, the party suggesting the regulation and the affected businesses and consumers. In the hearing the arguments were exchanged and the regulator had to find a solution. This and the following hypothetical case exercises helped to develop a better understanding of the application of the Checklist, to differentiate between legitimate and non-legitimate goals and to balance and assess competition effects against other goals of a society.

Mr Michael Saller (OECD) finished the first day with a presentation of two large scale competition assessment projects that were conducted by the OECD in Romania and Mexico. He outlined the choices of the sectors to be investigated and described the different stages of a systematic competition assessment project. It was of great interest to hear about the les-

sons learnt in these projects. He finished by outlining a couple of recommendations issued in the Mexican assessment projects.

On the second day Ms Jūratė Šovienė (Competition Council, Lithuania) introduced the application of competition rules to public bodies in Lithuania and she presented it under the headline “mission possible”. More than 50 % of the resolutions passed by the Lithuanian Competition Council are against anticompetitive actions by public bodies and of the up to 400 draft regulations reviewed, about 50 % raise competition concerns, which were also illustrated with a few case studies.

Ms Lefkothea Nteka (Hellenic Competition Commission, Greece) then presented an inside view on another major competition assessment project involving the OECD, the Greek project. The Greek competition authority was and is closely involved in all of the three assessments projects the OECD has carried out in Greece and Lefkothea stressed that the close co-operation between the OECD and the authority, as well as ministries and government officials, helped to create openness and understanding for the suggested reforms. She explained the most important project steps, recommendations and the challenges faced and lessons learnt. Along the way Lefkothea gave examples of the restrictions found, categorising them by typical checklist violations.

Before the second hypothetical exercise, Michael Saller briefly introduced the criteria of Checklist question 2, rules and regulations limiting the ability of suppliers to compete. The exercise dealt with

new rules for taxis and the participants were again asked to assume different roles and to present the arguments of the different sides in a hearing.

On the last day, Ms Kadina Karić (Competition Council, Bosnia and Herzegovina) presented an abuse of dominance case. The case concerned a number of discriminatory practices exercised by a company offering audience measurement services in Bosnia and Herzegovina, under a licence by Nielsen. As the company was the only provider, dominance was easily established and the authority prohibited the abusive behaviour and imposed a fine. The case is pending in court. The discussion focused on ways to make the market more open and competitive, in order to find a more permanent solution to the competition problem. Many countries have similar experiences in this area.

Mr Renato Ferrandi (AGCM, Italy) provided insights into competition assessment as part of the day to day work of a competition authority. He outlined goals, priorities, and difficulties, while also emphasising that assessments and interventions against anti-competitive acts by state bodies are a regular part of the AGCM's work. The presentation was illustrated with interesting case examples featuring Uber, Airbnb and a market study into waste recycling.

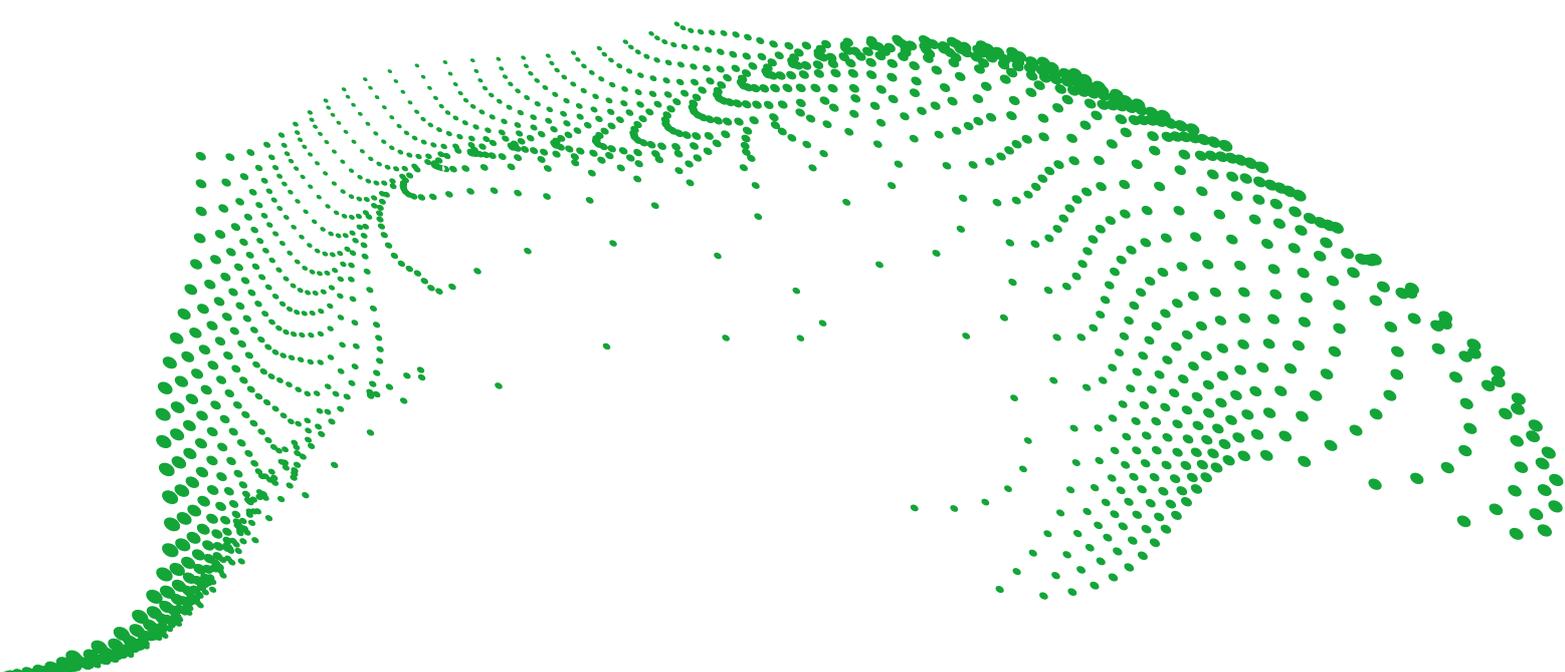
Sabine Zigelski then introduced Checklist question 3, rules and regulations reducing the incentives of suppliers to compete. In the following hypothetical ex-

ercise the participants looked at a regulation for the hotel sector of a country and discussed the various aspects of the regulation in a role play again.

The afternoon saw Michael Saller presenting Checklist question 4, rules and regulations limiting the choices and information available to consumers. He gave very informative examples from the work in Mexico that illustrated the question and subquestions.

In the final presentation of the seminar, Jūratė Šovienė explained the advocacy approach of the Lithuanian Competition Council and the often creative but also persistent ways the Council makes itself heard. The presentation offered a lot of ideas, inspiration and encouragement to the participants. It showed that the relentless pursuit of the Council's competition agenda may have actual effects and may over time change the mind-sets of policy makers.

Throughout the seminar the participants actively engaged with the speakers and lively discussions were had during and after the presentations. Many competition agencies share a sense of frustration when it comes to competition assessment work and it seemed that the participants benefitted from the open exchange and would take home fresh ideas, inspiration and most of all a renewed sense of purpose and determination.





*The Role of National Judges in Antitrust Litigation in the Light of the EU Damages Directive, 24-25 February 2017*

### 3. Events for the RCC's special audience

#### *Seminar on European Competition Law for National Judges ; The Role of National Judges in Antitrust Litigation in the Light of the EU Damages Directive, 24-25 February 2017*

On February 24 and 25 2017, the OECD-GVH Regional Centre for Competition in Budapest organised a seminar on European competition law for national judges. The seminar focused on the role of national judges in antitrust litigation in the light of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union ("EU Damages Directive"). The seminar was co-financed by the European Commission.

Given the fact that the directive had to be implemented by Member States by 27 December 2016, the seminar aimed to raise the awareness of the participants about the new rules stemming from its text, which the participants must now take into account when carrying out their duties.

The two-day seminar was organised to allow participants not only to be provided with the necessary tools and information to better understand the directive's provisions, but to also enable them to share their thoughts and experiences with their colleagues and the experts.

31 judges from 18 countries participated in the event. The wide geographical area represented allowed interesting discussions, especially with regard to the process of implementation of the EU Damages Directive. Each country was limited to a maximum of three representatives in order to reduce the risk of there being isolated groups not involved with the rest of the participants. Furthermore, representatives from the same country were separated when breakout sessions were organised.

The seminar was chaired by Mr. Vivien Terrien (Référénaire at the General Court of the European Union). The presentations were divided among the chair and five additional speakers, who were Dr. Georg Kodek, (Judge at the Supreme Court of Justice of Austria), Mr. Iestyn Williams (Partner at RBB Economics), Dr. Martin Seegers (Partner at CDC Cartel Damage Claims), Ms. Sabine Zigelski (Senior Competition Expert at the OECD) and Mr. Tamás Számadó (Head of the Litigation Section of the Hungarian Competition Authority).

The diversity of speakers pursued the aim of offering different views and expertise to the participants. EU Courts and national courts were thus represented by the chairman and Dr. Georg Kodek to provide national judges with a familiar understanding of the difficulties that the judiciary regularly faces. Given the important role of economics in the application of the EU Damages Directive, the contribution of Mr. Iestyn Williams, co-author of the study on the passing-on of overcharges delivered for the Directorate General for Competition of the European Commis-



*The Role of National Judges in Antitrust Litigation in the Light of the EU Damages Directive, 24-25 February 2017*

sion, was particularly relevant. The thorough work of the OECD in this field was presented in detail by Ms. Sabine Zigelski. Taking into account the essential role played by national competition authorities in the implementation of the EU Damage Directives, the experience of Mr. Tamás Számadó was vital. Finally, as CDC Cartel Damage Claims is the leading specialist in the private enforcement of damages claims, the knowledge of Mr. Martin Seegers was a key factor for the success of this event.

The seminar examined the impact of the EU Damages Directive on the tasks that national judges have to undertake in antitrust litigation. Pursuant to this objective, seven panels were set up to cover the most essential issues of interest with regard to national courts' competences.

The introductory panel allowed each of the speakers to present one fundamental aspect that he/she felt underlined the necessity and/or the spirit of the directive. Mr. Terrien went through the case law related to the principles of equivalence and effectiveness, now enshrined in Article 4 of the EU Damages Directive. Ms. Zigelski explained the relationship between public and private antitrust enforcement in competition law. Mr. Számadó described the negotiation and implementation processes of the directive in light of his personal involvement within these tasks in Hungary. Mr. Seegers drew the participants' attention to the obstacles that victims face when seeking compensation for damages resulting from antitrust violations. Mr. Williams underlined the important role played by economists in private competition litigation. Finally, Mr. Kodek raised the aware-

ness of national judges about their role in actions for damages after the implementation of the directive.

Three other panels were dedicated to a specific aspect of the EU Damages Directive. They were all preceded by a breakout session during which participants were asked to examine a hypothetical case and discuss it among each other under the supervision of an expert. The panel on disclosure of evidence allowed the representative of the EU General Court to discuss the relevant case law on this issue in the context of antitrust private actions. The representative of the Hungarian Competition Authority addressed the problems raised with regard to access to the national competition authorities' files. The panel dealing with the quantification of harm proposed a discussion between a lawyer (Mr. Seegers) and an economist (Mr. Williams) to clear up the legal and



*The Role of National Judges in Antitrust Litigation in the Light of the EU Damages Directive, 24-25 February 2017*

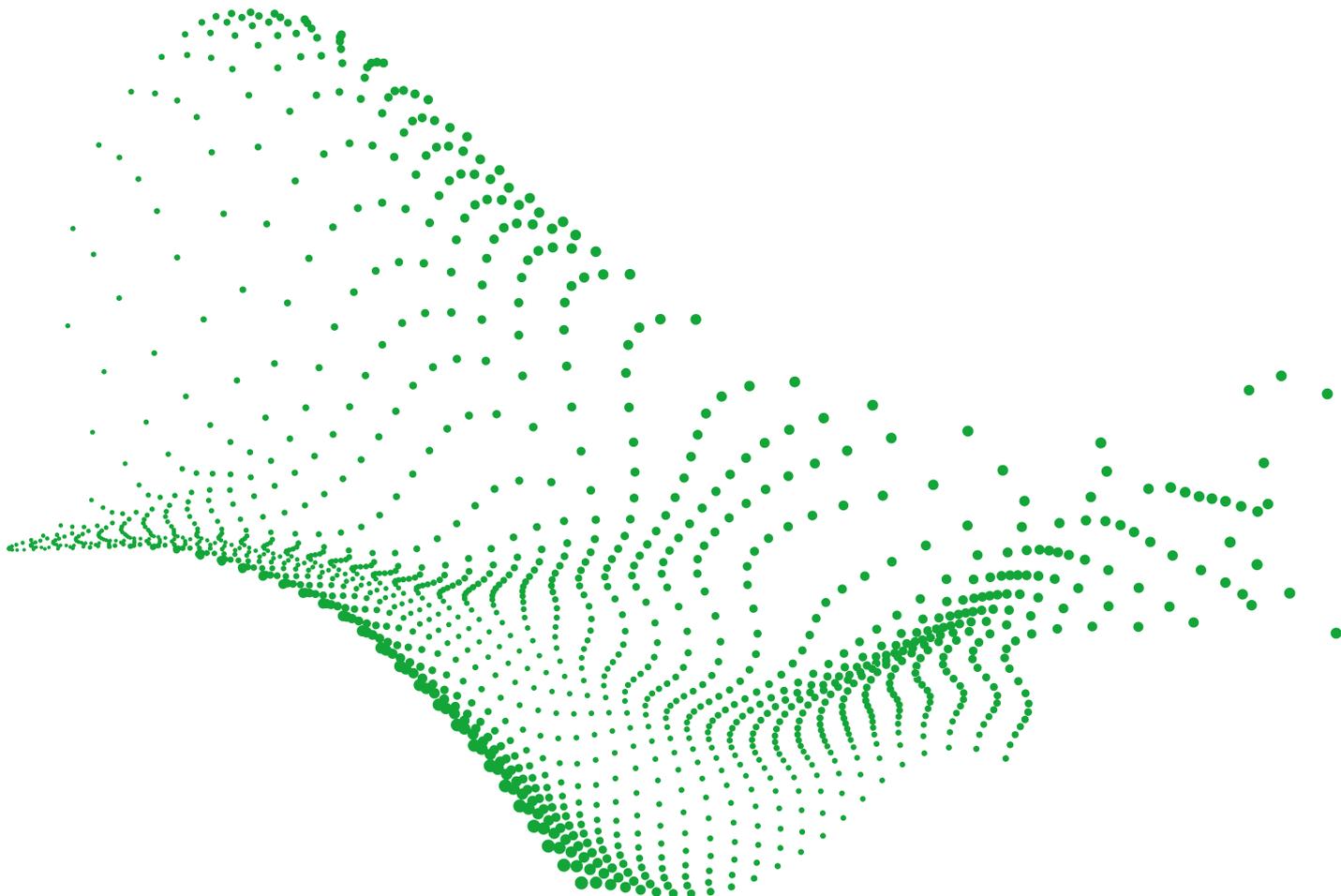
economic issues arising from this topic. Finally, a panel was reserved to the passing-on of overcharges. Mr. Williams, co-author of the study on this topic requested by the European Commission, started with a presentation of the main difficulties and how they can be solved. His intervention was followed by an explanation of the evidential burden provided by the CDC representative.

Two panels targeted broader goals, the intention being to place the EU Damages Directive within its legal environment. Accordingly, one of the panels dealt with jurisdictional issues, while the other emphasised the use of cooperation mechanisms. As to the former, Mr. Terrien first reviewed the most recent EU cases interpreting the provisions of Regulation 44/2001 (now Regulation 1215/2012) in the context of actions for damages. Second, Mr. Seegers detailed the victims' litigation strategy and the potential difficulties that national courts could face in terms of competences. As to the latter, Mr. Terrien recalled the principles underlying the preliminary ruling procedure in order to ensure that national judges would be comfortable using this tool in case of questions arising due to the implementation of the directive's provisions into national law. Mr. Számádó then discussed the cooperation mechanisms between national courts and national competition authorities.

The final panel addressed three "technical" issues covered in the EU Damages Directive that national judges have to be aware of when dealing with private actions seeking damages for antitrust violations. Mr. Seegers illustrated the articulation of joint and several liability with consensual settlements through the use of examples taken from his own practice. Mr. Számádó mentioned the possible effects of national decisions in other Member States with regard to the scope of national judges' competences. Finally, Mr. Terrien briefly tackled the issues raised by limitation periods.

Except for the final panel, Judge Kodek intervened at the end of all panels in order to provide the opinion of a national judge after having heard the other experts. In this way, participants could better grasp the relevance of the speakers' interventions in light of Dr. Kodek's comments. His contributions were also designed to clarify any points included in the hypotheticals

According to the feedback received via the evaluation questionnaires, the seminar was very successful. Participants were trained as to ensure a coherent and consistent application of EU law in this field by national courts. They acquired thorough knowledge of the issues raised by the directive and the related problems that may arise in this area of practice.





## IV. Evaluation of RCC Seminars

Participants are always asked to provide feedback on RCC seminars so that the standard of the events can be maintained and even possibly improved. According to the feedback, participants found that the seminars provided theoretical and practical information that was highly relevant to their day-to-day work and that the seminars also provided a good opportunity for the exchange of opinions between participants and experts. The average value of all of the answers for the entire year was 4.5 out of a maximum of 5.

Participants considered the overall usefulness of the programmes to be either very high or high – 97 percent of respondents rated the seminars on this basis. Based on the feedback, the current distribution of the topics is well received. As usual, participants would like more presentations on practical issues and in depth case analyses, rather than theoretical discussions.

**Table № 4:**

**Participants' evaluation of events organised by the RCC in the year 2017**

Distribution of answers	Very low	Low	Moderate	High	Very high
Overall usefulness of the event	0%	0%	3%	32%	65%
Overall usefulness of the topics	0%	0%	8%	37%	55%
Quality of presentations	0%	0%	3%	34%	53%
Usefulness and quality of materials	0%	0%	5%	42%	54%
Quality of conference facilities	0%	1%	5%	32%	62%
Workshop preparations	0%	1%	4%	36%	59%
Usefulness of hypothetical cases / country contributions / case studies	0%	1%	10%	40%	49%
Overall quality	0%	0%	5%	36%	58%

**Table № 5:**

**Detailed evaluations by events and by categories**

	Judges' Seminar in February	Seminar in Budapest in March	GVH training in April	Heads' Meeting in Budapest in May	RCC-FAS Russia joint seminar in June	Seminar in September in Bosnia and Herzegovina	Seminar in Budapest in October	Seminar in Budapest in December	Average
Overall usefulness of the event	4.7	4.6	4.3	N/A	4.5	4.4	4.6	4.6	4.5
Overall usefulness of the topics	4.5	4.3	4.1	N/A	4.3	4.6	4.6	4.3	4.4
Quality of presentations	4.8	4.6	4.4	N/A	4.6	4.7	4.7	4.6	4.6
Usefulness and quality of materials	4.7	4.5	N/A	N/A	4.5	4.5	4.5	4.4	4.5
Quality of conference facilities	4.7	4.5	4.4	N/A	4.7	4.7	4.6	4.0	4.5
Workshop preparations	4.5	4.4	N/A	N/A	4.7	4.7	4.6	4.3	4.5
Usefulness of hypothetical cases / country contributions / breakout sessions	4.4	4.3	N/A	N/A	4.4	4.6	4.5	4.1	4.4
Average	4.6	4.5	4.3	N/A	4.5	4.6	4.6	4.3	4.5



## V. Financial and intellectual contributions

According to the Memorandum of Understanding which was signed by the parties in 2005, ensuring that the RCC operates at the highest level is the task of the founding parties, the GVH and the OECD. Both institutions provide financial and intellectual contributions towards the operation of the RCC. The accumulated experience and expertise of the OECD members also contributes to the training programmes offered by the RCC.

The RCC had a budget of 438 712 EUR for 2017. This includes funds provided by the GVH and the OECD as well as grants received from the European Commission, the latter of which were used to fund the seminar on European Competition Law for National Judges.

The following tables provide details on the total costs of the operation of the RCC in 2017 by sources of funds, by events and by major categories of costs.

**Table № 6:**

**The sources of funds**

Sources of funds (EUR)	
Gazdasági Versenyhivatal (Hungarian Competition Authority)	381395
European Commission (grants for the judges seminar)	27317
OECD	30000
<b>Total funds</b>	<b>438712</b>

**Table № 7:**

**Breakdown of total expenses by items**

Breakdown of total expenses (EUR)	
<b>A) Direct organisational costs</b>	
Seminar on European Competition Law for National Judges on "The Role of National Judges in Antitrust Litigation in the light of the EU Damages Directive"	35500
Seminar on Market Definition	42500
GVH Staff Training	20700
Meeting of the Heads of Authorities	20000
Joint Seminar with the FAS Seminar in Russia on Market Studies	14400
Joint Seminar with the FAS Russia on Market Studies	29000
Seminar on Best Practices in Cartel Procedures	48200
Competition Policy and the Pharmaceutical Sector	35000
<b>Total direct organisational costs</b>	<b>245300</b>
<b>B) Overhead and operational costs of the RCC</b>	<b>20300</b>
<b>C) Staff costs transferred by the GVH to the OECD<sup>2</sup></b>	<b>173112</b>
<b>TOTAL EXPENSES in 2017</b>	<b>438712</b>

<sup>2</sup> On the basis of the Memorandum of Understanding, the GVH made a voluntary contribution to the OECD for staff-related purposes.



## VI. RCC Dedicated Staff

The RCC is a “virtual” centre, thus it does not have a central office but is accommodated in the headquarters of the GVH. The virtual existence of the RCC allows it to concentrate funds on the real purpose of its establishment, that is, organising seminars and inviting and training participants. The virtual structure also facilitates adaptation to changing situations. The RCC is run by a senior competition expert at the OECD headquarters in Paris and by a senior consultant and a consultant who are at the same time employees of the GVH in Budapest.

The work of the RCC is based on the expertise of both the GVH and the OECD. The GVH is responsible for inviting participants and organising all of the practical arrangements for the RCC’s programmes. The expert at the OECD sets up the content of the programmes and invites speakers to the seminars. The GVH provides speakers or panellists for each seminar. Other speakers are invited from different OECD member states.

## Seminar speakers of the year 2017



**Sabine ZIGELSKI**

OECD, France



**Joao AZEVEDO**

European Commission,  
Belgium



**Ulrich BARTH**

Bundeskartellamt,  
Germany



**Eshien CHONG**

Autorité de la Concurrence,  
France



**Melissa CONRADI  
HILL**

Federal Trade Commission,  
United States of America



**Dries CUIJPERS**

Authority for Consumers  
and Markets, The  
Netherlands



**Assaf DAHAN**

Israel Antitrust Authority,  
Israel



**Pedro Caro DE SOUZA**

OECD, France



**Renato FERRANDI**

Italian Competition  
Authority, Italy



**Ian FORRESTER**

General Court of the  
European Union,  
Luxemburg



**Sandro GLEAVE**

Bundeskartellamt,  
Germany



**Antonio GOMES**

OECD, France



**Daumantas GRIKINIS**

The Competition Council of  
the Republic of Lithuania



**Natalie HARSDORF  
ENDERDORF**

Federal Competition  
Authority, Austria



**William IESTYN**

RBB Economics, United  
Kingdom



**Univ.Prof. Dr. Georg  
KODEK LL.M.**

Vienna University of  
Economics and Business,  
Austria

## Seminar speakers of the year 2017



**William KOVACIC**

George Washington  
University Law School,  
United States of America



**Beatrix KRAUSKOPF**

Bundeswettbewerbsbehörde,  
Austria



**Dávid KURITÁR**

GVH, Hungary



**Stephan LUCIWI**

Competition Bureau,  
Canada



**Boris MARTINOVIC**

GVH, Hungary



**Ruben MAXIMIANO**

OECD, France



**Giorgo MOTTA**

Skadden, Arps, Slate,  
Meagher & Flom LLP,  
Belgium



**Lefkothea NTEKA**

Hellenic Competition  
Commission, Greece



**Rosario RENDE-GRANATA**

European Commission,  
Belgium



**Michael SALLER**

OECD, France



**Dr. Martin SEEGER**

CDC Cartel Damages  
Claims, Brussels



**Jūratė ŠOVIENĖ**

Competition Council of  
Lithuania, Lithuania



**Gábor SZABÓ**

Antitrust Section,  
Hungarian Competition  
Authority



**Tamás SZÁMADÓ**

GVH, Hungary



**Raquel TÁRREGA LÓPEZ**

CNMC – Spanish Commission  
for Markets and Competition,  
Spain



**Miriam TEERHUIS**

Authority for Consumers  
and Markets, The  
Netherlands



**Vivien TERRIEN**

*Court of Justice of the European Union  
Luxembourg*



**Andrey TSYGANOV**

*FAS Russia, Russia*



**Lourenco VENTURA**

*Competition and Markets Authority, United Kingdom*



**Shahaf YASHAR**

*Israel Antitrust Authority, Israel*

## RCC Team



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*Senior consultant  
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**Péter DECSÁK**

*Consultant  
OECD-GVH Regional  
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Budapest (Hungary)*

## Interpreters of the RCC's events



**Karen MELIK-SHAHNAZAROV**



**Taras KOBUSHKO**



**Oxana WAGNER-MUZYKA**



**Ingrid MESTYÁNNÉ LANDISHEV**



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