2014 Annual Activity Report

OECD-GVH Regional Centre for Competition in Budapest

(Hungary)

OECD

Gazdasági Versenyhivatal
The Hungarian Competition Authority

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

Annual Activity Report, 2014

Contact: Andrea Dalmay
OECD-GVH Regional Centre for Competition in Budapest (Hungary)
Gazdasági Versenyhivatal (GVH)
Hungarian Competition Authority
H-1391 Budapest 62, POBox 211

Hungary
Tel.: (+36-1) 472-8880
Fax: (+36-1) 472-8898
E-mail: dalmay.andrea@gvh.hu
Website: www.oecdgvh.org

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, Azerbaijan, 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 judges seminars 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. These GVH programmes are supported by the European Commission and the OECD.

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 2014

2014 was the tenth year of the RCC's activity. The RCC organised a total of eight events in 2014.

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.

GVH Training Seminar: Recent Developments and Case Law Under Art. 101 TFEU and Practical Training for the Council, Merger, Cartel and UCP-Staff

10–11 April 2014

table no 1
Total number of speakers per country or institution

	Speakers	
Country or institution	Number	Person-days
Belgium	3	6
EU Commission	4	9
Finland	1	3
France	1	3
FYR of Macedonia	2	6
Germany	8	22
Greece	1	3
Ireland	1	3
Israel	1	3
Luxembourg	2	5
Portugal	1	2
Romania	1	3
Russian Federation	6	18
United Kingdom	4	8
United States	1	3
GVH	6	17
OECD	10	27
Aggregate	53	141

Altogether, over the course of the year, the RCC invited 269 participants and 53 speakers to its events. Through the RCC's core events it delivered 141 person-days of capacity building.[1] All in all, participants and speakers from 33 economies or institutions attended the RCC's programmes, coming from Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Estonia, FYR of Macedonia, Georgia, Germany, Greece, Ireland, Kazakhstan, Kosovo, Kyrgyzstan, Latvia, Lithuania, Moldova, Montenegro, Netherlands, Poland, Portugal, Romania, Russian Federation, Serbia, Slovenia, Tajikistan, Ukraine and the GVH. Meanwhile, experts from 17 countries and institutions attended as panel members: Belgium, EU Commission, Finland, France, FYR of Macedonia Germany, Greece, Ireland, Israel, Luxembourg, Portugal, Romania, Russian Federation, United Kingdom, United States, the GVH and the OECD.

[1] *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*5 + 4*3 = 62).*

III. Detailed review of the activities in the year 2014

Table №2 provides a brief overview of the topics of the seminars held in 2014 as well as the participating economies and institutions.

table no 2
Summary of activities in 2014

Event Topic	Date	Total Number of Participants and Speakers	Attending Economies/Institutions
Seminar Series on European Competition Law Fundamentals for National Judges; Seminar II: Abuse of Dominance Basic Economic and Legal Concepts	14–15 February	28 + 5	Participants: Austria, Belgium, Bulgaria, Croatia, Denmark, Germany, Greece, Ireland, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovenia *Speakers: EU Commission, Germany, GVH, OECD, United Kingdom*
Seminar on Practice and Procedures in Merger Investigations	11–13 March	34 + 5	Participants: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Montenegro, Romania, Russian Federation, Serbia, Ukraine *Speakers: EU Commission, Germany, GVH, OECD, United States*
GVH Training Seminar: Recent Developments and Case Law under Art. 101 TFEU and Practical Training for the Council, Merger, Cartel, and UCP Staff	10–11 April	79 + 13	Participants: GVH *Speakers: Belgium, EU Commission, Germany, OECD, Portugal, United Kingdom*
Seminar Series on European Competition Law Fundamentals for National Judges Seminar III: Quantification of Damages in Competition Cases	9–10 May	29 + 4	Participants: Belgium, Bulgaria, Croatia, Denmark, Estonia, Germany, Ireland, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovenia *Speakers: Belgium, Germany, OECD*

Seminar on Bid Rigging and Public Procurement	3–5 June	26 + 7	Participants: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Kazakhstan, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Romania, Russian Federation, Serbia, Ukraine *Speakers: Finland, GVH, FYR of Macedonia, OECD, Romania*
Seminar on Competition Topics in Retail Markets	16–18 September	32 + 5	Participants: Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Romania, Russian Federation, Serbia, Ukraine *Speakers: France, Germany, GVH, Greece, OECD*
Airport Competition Topics	14–16 October	19+5	Participants: Armenia, Belarus, Kazakhstan, Kyrgyzstan, Macedonia, Russian Federation, Tajikistan *Speakers: Germany, GVH, Ireland, OECD, Russian Federation*
Seminar on Evidentiary Issues in Establishing Abuse of Dominance	2–4 December	31 + 5	Participants: Armenia, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, FYR of Macedonia, Moldova, Russian Federation, Serbia, Ukraine *Speakers: Belgium, EU Commission, GVH, Israel, OECD*

1. Standard programmes in the framework of the core activity

a) 11–13 March, Seminar on Practice and Procedures in Merger Investigations

The seminar conducted by the RCC on practice and procedures in merger investigations was attended by 34 competition law enforcers from 17 SEE and CIS countries.

The seminar focused very specifically on investigation techniques and procedures in merger cases with a special emphasis on their immediate practical applicability in the merger investigations conducted by the participants. Subjects such as essential planning and investigation steps, questionnaires, market surveys and econometric data, conducting state of play meetings and remedy discussions were covered. The OECD experts gave introductory presentations on each of the topics. Throughout the seminar the participants worked intensely on a hypothetical case and tried to solve relevant problems in breakout groups, supported by the OECD experts. The group results were then presented and discussed with all of the participants.

Seminar on Practice and Procedures in Merger Investigations

11–13 March 2014

The hypothetical merger case was designed by Sabine Zigelski from the RCC. It dealt with a merger of two producers of alcoholic beverages. The participants had received the hypothetical merger notification and additional documents in advance. The hypothetical raised some formal questions but more importantly focused on market definition and on techniques for collecting and evaluating information, defining markets, internal decision making and remedy discussions. In seven breakout sessions over the course of the seminar the participants worked in four parallel groups, facilitated by the OECD experts, on case specific questions. Additional material and case information was provided as the hypothetical case progressed.

Patricia A. Brink from the US DOJ kicked off the workshop with a presentation on project planning in merger cases, highlighting topics relevant to every jurisdiction active in merger control, such as time management, sources of information and planning and use of staff resources. This was followed by a presentation given by Georgiana Capraru Ianus, European Commission, on theories of harm in mergers. She focused in particular on unilateral and co-ordinated effects analysis and also covered vertical and conglomerate mergers. In the first breakout session of the seminar the participants were then asked to discuss the likely theories of harm arising in the hypothetical case and to design the first investigative steps.

The afternoon began with the next breakout session, which involved the participants drafting a number of questions that would be sent to the merging parties in order to clarify the notification and to obtain additional information for the following investigative steps. Elke Zeise from the Bundeskartellamt then presented on best practices for requests for information and highlighted different approaches in preliminary and in-depth investigations. In the last breakout session of the day the participants were asked to draft an investigation plan and to review a questionnaire that related to the hypothetical merger case.

The second day began with Boris Martinovic of the GVH giving a presentation on economic evidence in merger analysis. He provided an overview of the types and sources of economic evidence, such as scanner and panel data, transaction level data, bidding data and company data. In the second part of his presentation he explained market definition techniques, such as the hypothetical monopolist test, critical loss analysis and correlation analysis as well as the methods that can be used to estimate unilateral merger effects, for example, elasticities, merger simulation, diversion ratios, upward pricing pressure indices and illustrative price rises, while providing case examples for each point. In the following breakout session the participants received the results of the economic analysis in the hypothetical merger

case and were asked to discuss the reliability of the data used, the diversion ratios and the GUPPI-analysis results.

In the afternoon the participants received the preliminary investigation results in the hypothetical merger case and had to prepare different roles for the following role play on internal decision making. Half of the participants prepared the role of the case handlers and argued in favour of a prohibition decision, while the other half prepared arguments that spoke against a prohibition in order to take on the role of the internal "devils' advocate". Representatives of two of the groups then "held" a meeting and discussed the case, while the other groups commented and added arguments in the following discussion. In the next presentation Georgiana Capraru Ianus discussed essential procedural steps and rights in merger investigations, which should be universally applicable in all merger regimes. She focused on the right to be heard, third party rights, the presentation of facts and evidence, access to file and oral hearings. Patricia A. Brink closed the day with a presentation on merger remedies, thereby providing preparation for the following morning's breakout session. She talked about the guiding principles for merger remedies, and in particular the relevance of structural remedies and divestitures, but also pointed out where conduct remedies might play a role. The presentation closed with remarks on the agency approval process and the relevant timelines.

For the start of day three the participants were again asked to prepare different roles in their breakout groups. One half had to prepare the role of the authority in a discussion on remedies and the other half had to prepare the role of the notifying undertakings and their legal advisors. Both had to devise strategies for the following role play: a meeting between the authority and the undertakings in order to negotiate a remedy in the hypothetical case. Representatives of two groups acted out the role play and this was then discussed by the other participants. In the final breakout session the participants had to come to a decision – clearance or prohibition – and to present their result and the major reasons for it to the group. Sabine Zigelski concluded the day and the seminar with a short presentation on a real merger case involving alcoholic beverages that showed close similarities to the hypothetical case.

b) 16–18 September, Seminar on Competition Topics in Retail Markets

The seminar on competition topics in retail markets was attended by 32 competition law enforcers from 16 SEE and CIS countries.

The seminar was held as an event focusing on the retail sector. Various competition problems on retail markets that are of common interest to many competition authorities were explained and discussed. With regard to mergers, market definition and remedies as well as practical case studies were presented. Being a topic of increasing interest to many jurisdictions a full day was dedicated to the topic of buyer power and sector enquiries. The latter were presented as a tool for identifying structural problems on various market levels and for acquiring better insights into the functioning of markets and the typical behaviour of market players. In the last part of the seminar vertical competition restraints and abuses of dominance as they might typically be found in the retail context were discussed. In addition, participants and experts presented case studies and worked on two hypothetical exercises, thereby deepening their understanding of the retail related competition problems and the potential approaches that can be employed to resolve them.

Birgit Krueger (Bundeskartellamt, Germany) kicked off the seminar with a presentation on market definition in the German food retail sector. Based on the rich German experience with mergers and other competition law proceedings in the retail sector she explained the importance of market definition and the approaches to it. With regard to downstream markets, the concepts of product market definition and geographic market definition were explained. For the upstream procurement markets she provided closer insights into the discussion on private labels and branded products, exports and distribution channels.

Seminar on Competition Topics in Retail Markets

16–18 September 2014

Moldova then presented its first merger case since the recent changes to its competition law. Being a still on-going case, the participants from Moldova focused on investigative steps and on the potential competition problems they have identified and are following up on. The horizontal and vertical issues of the case were also discussed.

As retail mergers are often cleared conditionally, Sabine Zigelski (OECD) gave a presentation on merger remedies in general, while placing a particular focus on the typical remedies that may be found in retail cases. Retail cases seem to be very suitable for structural remedies as it is easier in these cases than in many other cases to identify regional competition problems and to solve them by the targeted sale of specified outlets to appropriate buyers in a meaningful bundle.

The afternoon session began with the presentation of a Romanian case study. Romania presented an ex-post evaluation of a merger case that the Romanian Competition Council (RCC) had cleared in 2012, the Lidl-Plus merger case. The RCC was interested in the changes to the market structures, retail prices and purchasing prices post-merger and as a result a before and after analysis was conducted as well as a differences-in-differences analysis. The evaluation focused on the regional markets with the highest concentration levels and on basic food products. The result confirmed the original merger decision. There were no unforeseen increases in market shares and the merger did not give rise to higher consumer prices or a superior bargaining power, as compared to the merging parties' competitors.

The last presentation of the day was given by Anne Rossion (Autorité de la Concurrence, France). She discussed the Casino-Monoprix merger case. While the merger was a nationwide merger, it particularly affected Paris. Anne explained the screening approaches that the Autorité had applied in order to determine the markets that needed closer examination. The arguments that had been brought forward by the merging parties in favour of widening the product and geographic markets were very typical and Anne explained how the Autorité had dealt with them. The case clearly demonstrated the need to analyse retail mergers on a case by case basis and to pay attention to the specific regional conditions. Further interesting aspects of the case were the structural remedies that had been imposed and an economic analysis, a GUPPI analysis.

Finally, the participants were asked to work in small groups on a hypothetical merger case. The case raised questions of geographic and product market definition. The discussions focused on which investigative steps should be taken and which questions should be asked in order to determine the market definition. In addition, two proposals for remedies were discussed, in case the merger was considered to be a problematic one.

The next day was dedicated to the discussion of buyer power problems and the related analysis. Márton Kocsis (GVH, Hungary) gave an instructive presentation on the concept and the Hungarian approach to it. He also presented the current trends in the EU. By showing the evolution of the legal framework in Hungary over the years and the case law he drew a good picture of the approaches a jurisdiction might take. The presentation also demonstrated that buyer power is not always dealt with by competition authorities.

Kyrgyzstan then presented its experience as an economy in transition. After the detection of the superior market power of retail chains, high bonuses and other contract terms forced upon suppliers and decreasing room for food products in retail outlets, the Kyrgyz government decided to regulate the conduct of retailers. It introduced pricing rules, regulated unfair purchasing conditions, limited intervention by retailers into their suppliers' business relations and enabled entry of new suppliers. So far Kyrgyzstan considers the regulation to be successful. The participants discussed the risks that go along with price regulation and price caps.

Since Germany was struggling with investigating buyer power related competition problems in the limited time frame given in merger proceedings, the Bundeskartellamt had initiated a sector enquiry into the food retail sector. Birgit Krueger explained the concept and the set-up of the enquiry and stressed the importance of getting all of the parties affected by this very burdensome exercise involved in the investigation early on. She also provided insights into the selection criteria for the product groups that were investigated and the benefits and results that the Bundeskartellamt expects to achieve.

In the first session of the afternoon, the participants were asked to work on a hypothetical case involving two retailers which had imposed a number of conditions on their suppliers after they had merged. The discussions centred around questions of the appropriate legal framework to deal with the behaviour in question – competition law or unfair trading practices – and on potential and valid justifications and/or efficiencies for the behaviours in questions as well as the first steps that should be taken in an investigation.

Another sector enquiry with a focus on the functioning of the food supply chain in fruit and vegetables markets in Greece was presented by Lefkothea Nteka (Hellenic Competition Commission, Greece). It investigated all of the levels of the chain from production, to wholesalers, to retailers, and identified a number of rigidities and inefficiencies in particular on the wholesale level of trade. As a result the HCC issued a number of recommendations to the government for transforming the institutional framework. Again the set-up of the study and the economic and econometric methodology used were of particular interest to the audience.

In the final session of the day Croatia presented its continuous market research of the retail market structure of the country. The Croatian Competition Authority has gained insights into retail market structures and concentration trends over the course of a number of years and considers the instrument to be highly useful. On the basis of the data gathered a number of proceedings have been initiated and in two cases fines for illegal cartel behaviour have been imposed. One proceeding is still pending.

The third day concentrated mainly on vertical competition restraints and abuses. Sabine Zigelski gave an introductory presentation and provided an overview of the common competition constraints that can be found in the relations of suppliers and retailers. She elaborated on the analysis of vertical restraints and the European legal framework. With regard to abuse of dominance the concept of market power and the most common exclusionary abuses were discussed, using examples of European cases such as the Coca Cola case, the Tomra and the Intel cases.

Lefkothea Nteka then presented a case from the Greek practice, namely the Tasty Foods case. The case was exemplary for a classic exclusionary strategy applied by a dominant undertaking. Lefkothea explained all the investigative steps that were taken to define the relevant markets and to assess the

market position of Tasty. She then elaborated on the practices that had been applied, which included exclusivity contracts and exclusionary practices such as cabinet exclusivity and also other means of driving a competitor out of the market. In the end the case was won in court because of a strong set of facts, direct evidence from Tasty's exclusionary strategy, good data on market structure and market positions and the complementarity of Tasty's actions, all leading up to competitor foreclosure.

The final case study of the seminar was given by Ukraine and it focused on horizontal competition restraints between a large number of retailers in a region of Ukraine. The practices had been strongly facilitated by the involvement of a market research firm which acted as an intermediary for the exchange of competitively sensitive information. The Antimonopoly Committee of Ukraine (AMCU) has conducted a large scale econometric analysis to prove anticompetitive conduct and effects. The case is currently being decided by the AMCU.

c) 2–4 December, Seminar on Evidentiary Issues in Establishing Abuse of Dominance

31 competition law enforcers from 17 SEE and CIS countries attended the seminar on evidentiary issues in establishing abuse of dominance.

Abuse of dominance proceedings are challenging to most competition authorities in many ways. In this seminar we focused on the evidentiary challenges that arise in establishing abuses of dominance. In order to establish a finding of dominance, competition authorities usually rely on indirect evidence such as market shares and barriers to entry. There is typically no single factor that leads to a finding of dominance, so it can be difficult to determine how much and what type of evidence is sufficient. Equally, the establishment of an abuse raises evidential complexities. The types of conduct that constitute an abuse can be difficult to establish and competition authorities face the difficult task of weighing evidence in support of an abuse against evidence suggesting that the conduct was a legitimate practice. An effects based approach will use economic methodologies to determine the abuse. The seminar explored these issues through case presentations by competition officials from OECD countries, by presentations on economic evidence and by presentations on established evidentiary standards in EU case law. In addition, case studies were presented by participants and practical work on three hypothetical case studies was carried out.

The introductory presentation was given by Sabine Zigelski (OECD), who provided an overview of the concepts and determinants of market power assessment. Market definition was presented as the starting point of an analysis, followed by a discussion of the possible legal and economic definitions of dominance. Finally, the direct and indirect evidence that may be used to establish dominance was introduced, such as barriers to entry, buyer power, market shares and economic evidence.

Moldova then presented an abuse case that involved the state enterprise Rail Road of Moldova. Rail Road of Moldova was found to have charged discriminatory tariffs for the use of rail tracks. The competition authority has investigated the abuse, the effects and

Seminar on Evidentiary Issues in Establishing Abuse of Dominance

2–4 December 2014

the damage resulting from the abusive behaviour. In the discussion that followed, possible justifications were discussed and also the merits of ex-ante regulation in these cases as opposed to ex-post intervention by competition authorities.

As many participant countries have tailored their abuse of dominance provisions closely to the EU provisions and will be confronted with standards of proof as they have been established under European law, Vivien Terrien (Court of Justice of the EU, Luxemburg) provided an overview of the EU case law on standards for establishing dominance. He gave a well-structured analysis with references to a lot of cases, pointing out the relevance of market shares, barriers to entry, buyer power and the analysis of actual competition on the market. Vivien illustrated his presentation with two case examples.

The afternoon session saw the first presentation on the economics of dominance and abusive conduct given by Vitaly Pruzhansky (RBB Economics, Brussels). Vitaly explained the efficiency losses to be expected in the case of market power. He then briefly explained and repeated the types of evidence that are used in general before moving on to explain form-based and effects-based approaches. The presentation finished with the introduction of the two basic categories of infringements – exploitative and exclusionary abuses.

Kyrgyzstan then presented another case involving abusive behaviour by the owner of a rail track vis-à-vis the users of the rail track. The case is currently under investigation and involves discriminatory as well as potential exploitative abuses.

At the end of the first day the participants worked on a hypothetical case that involved two closely related product markets and captive customers on the secondary market. The question was if dominance was a problem in the presented case and which additional information would be required in an investigation.

On the second day the focus shifted from dominance to establishing abusive behaviour. Vitaly Pruzhansky gave a thorough introduction into specific types of abuses and the economic evidence required to evaluate them. Vitaly explained the economics of price discrimination, excessive pricing, exclusive dealing and rebates, margin squeezes and the use of the "as efficient competitor test" and some cost measures. Special attention was given to the welfare effects and the balancing of the pro- and anticompetitive effects of a given behaviour.

In another case study Russia presented its experience with an intervention in the pricing practices of an airline on a given route. This caused a lively discussion on possible reasons for the particular pricing behaviour, comparable markets and structural measures to improve the competitive situation. The welfare effects of the airline simply giving up traffic on the route in question were also highlighted.

The first session of the afternoon was used to practice some of the morning's learnings. The participants were asked to prepare a role play where one side represented the authority and the other side the defendant in a case of alleged excessive pricing. Again special attention was given to the possible benign explanations of the behaviour in question and the investigative steps that should be taken.

András Vékony (GVH, Hungary) followed with a presentation on a Hungarian competition case on exclusion by bundled discounts in fixed line phone services. The case in question raised very relevant questions on the probative value of some of the evidence raised by the GVH in the course of the investigation and on how courts will receive the evidence and accept it. In the case in question the court referred the case back to the authority due to insufficient evidence and then confirmed the GVH's prohibition decision after a re-investigation. The evidence related to market definition and was vital for establishing dominance on the market.

At the end of day two Ori Schwartz (Israel Antitrust Authority, Israel) also presented a telecoms case where a margin squeeze was established by the authority. The challenging questions of the case that were discussed with the participants were an offence of only a very short duration, the need to actually establish harm by the authority and previous regulatory approval of a behaviour that was later considered to be abusive by the competition authority.

On the final day Vivien Terrien gave the second part of his presentation on EU case law for establishing an abuse. He introduced the most recent EU case law but also referenced older decisions and showed how the case law pointed in one direction or where changes in the Court's practice might be spotted. Vivien explained the practice with regard to selective price cuts with the example of the Post Danmark case, individualised target rebates with the Tomra case, exclusivity rebates and "naked" restrictions with the Intel case and margin squeeze with the Telefónica case. It was of particular interest where and in which way an economic analysis and the proof of effects were required by the Courts.

The last country case study was presented by Serbia. The Serbian authority has successfully conducted an abuse proceeding against the discriminatory, foreclosing and unfair business practices as well as illegal resale price maintenance practices of a dominant producer of ice cream on the Serbian market. The analysis that was presented included a thorough examination of the contractual terms, of barriers to entry, market shares, brand recognition and of the actual competitive situation on the market.

Ori Schwartz instigated a lively discussion by presenting an on-going case concerning retroactive, individualised target rebates and their application for a cluster of products. In this case the producer was only dominant on the markets for a few products that formed part of the cluster. In addition, these products only had a rather small share of the overall value of the cluster. The discussion centred around questions on how to tackle difficulties in defining relevant markets and investigating a potentially large number of them.

The seminar ended with a third hypothetical exercise. The case was based on the European Van den Bergh case and dealt with a number of questions that arise when examining cases of exclusionary abuses. The participants were asked to prepare the roles of the authority, a complainant and a defendant and to defend their respective positions in a hearing. This kind of exercise allows enforcers to switch roles and perspectives and to think about various aspects of a case from different sides. It shows that there is usually a larger number of arguments to be considered than an authority would initially assume, and also that arguments being brought forward by defendants might contain valid points in proving efficiencies and consumer benefits.

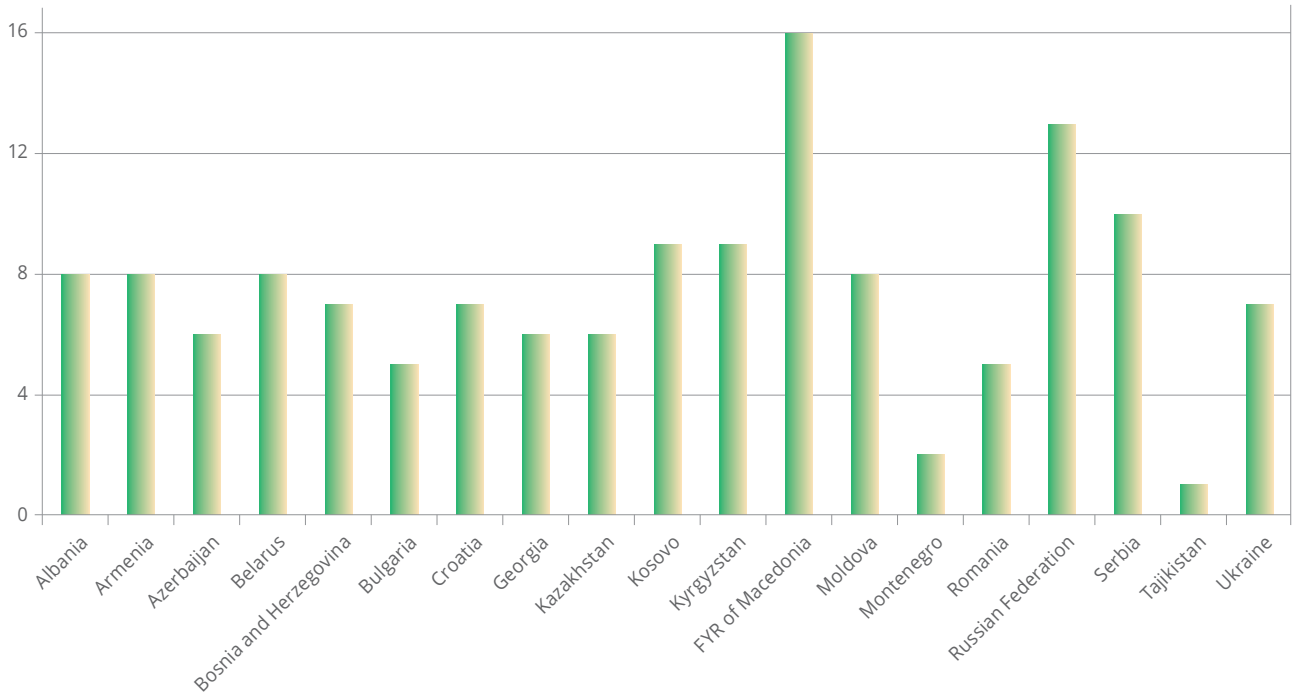
table no 3
Number of participants and events attended

Table №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.

Economy	Number of participants	Person-days	Events attended
Albania	8	24	4
Armenia	8	24	5
Azerbaijan	7	21	4
Belarus	7	24	5
Bosnia and Herzegovina	7	21	4
Bulgaria	7	21	3
Croatia	7	21	4
Georgia	6	18	3
Kazakhstan	5	15	4
Kosovo	8	24	4
Kyrgyzstan	9	27	5
FYR of Macedonia	16	48	4
Moldova	8	24	5
Montenegro	2	6	1
Romania	5	15	3
Russian Federation	13	39	5
Serbia	6	18	4
Tajikistan	1	3	1
Ukraine	7	21	4
Total	136	408	

Chart №1: Total number of participants per economy attending seminars organised as part of the core activity of the RCC

chart no 1
Provides an overview of the number of participants per economy.



2. Special events in the framework of the core activity

a) 10–11 April 2014, GVH Training Seminar: Recent Developments and Case Law Under Art. 101 TFEU and Practical Training for the Council, Merger, Cartel and UCP-Staff

The 2014 GVH staff training conducted by the RCC provided an update on recent developments in the area of Art. 101 TFEU on day one, with a special emphasis on procedures and on restrictive information exchange agreements. On day two the focus shifted to investigation techniques and case management skills and targeted trainings were provided for different groups of the GVH staff.

After the opening address given by Miklós Juhász, President of the GVH, John Ratliff, WilmerHale (Brussels), gave the introductory presentation on recent developments in the area of Art. 101 TFEU. He covered the new Transfer of Technology Block Exemption Regulation and the Guidelines as well as the Damages Directive, commented on European Court Judgments and European Commission Cases and commented on a range of topics such as object restrictions, single and continuous infringement, repeated infringements, e-books and MFNs. This was followed by a presentation from Romina Polley, Cleary Gottlieb (Cologne), who gave detailed insights into leniency regimes, settlements and third party access to file in the practice of

GVH Training Seminar: Recent Developments and Case Law Under Art. 101 TFEU and Practical Training for the Council, Merger, Cartel and UCP-Staff

10–11 April 2014

the European Commission and also in some national jurisdictions. Cyril Ritter, European Commission (Brussels), followed by detailing the Commission's view and provided some comments on the first two presentations. He then gave a presentation on current issues in EU anti-cartel enforcement and covered in particular the developments on concerted practices and on evidential standards and evidence assessment. Jorge Fernandes Ferreira, Autoridade de Concorrencia (Lisbon), provided insights into an important Portuguese case on information exchange in the banking sector. The day was concluded by a presentation on the UK experience with hub and spoke cartels by Jennifer Reeves, Competition Appeal Tribunal (London), who gave insights into the UK dairy case and the standards of proof applied by the CAT.

On the second day an introductory presentation was given by Rebecca Threlfall, Competition and Markets Authority (London), on investigation techniques in cartel cases. Rebecca gave insights into the interview techniques and experiences of the CMA. This was followed by an overview presentation by Sabine Zigelski, OECD (Paris), on communication in competition cases that focused on the advocacy and investigation aspects of outside contacts in case investigations. The plenary session was followed by four parallel breakout group sessions for different groups of GVH staff.

The breakout session for the GVH Council was chaired by Viktor Luszcz, General Court of the EU (Luxembourg), who gave a presentation on the perspective of the European Courts on the drafting of decisions and engaged in a discussion with the Council members and staff on the subject. Sabine Zigelski gave a brief presentation on settlement strategies in cartel proceedings and discussed procedural and substantive questions with the participants.

Chris Whitcombe, Competition and Markets Authority (London), chaired the breakout session for the merger staff group. He presented on economics in phase one merger review in the UK and discussed the effective use and communication of merger economics in cases. The participants worked with him on a hypothetical case, focusing in particular on interview techniques.

The cartel breakout group was jointly chaired by Romina Polley and Rebecca Threlfall. They presented on strategy and preparation for an interview – Rebecca from the perspective of the authority and Romina from the perspective of the company. The participants then took part in a role play exercise on interview simulation in a hypothetical case.

The UCP breakout group was chaired by Basil Mathioudakis, European Commission (Brussels), and Naoko Teranishi, OECD (Paris). Basil gave a presentation on

key provisions on nutrition and health claims in the EU. This was supplemented by Naoko's presentation on the regulation against representations without reasonable grounds in Japan. During another presentation given by Basil on the use of nutrition/health claims and competition the participants engaged in a discussion with the two experts.

The seminar concluded with another plenary session where all of the groups reported back on their individual breakout group results and experiences.

b) 3–5 June, Seminar on Bid Rigging and Public Procurement in Skopje, FYR of Macedonia

The annual outside seminar of the RCC was held in Skopje, FYR of Macedonia, and it dealt with bid rigging and public procurement. 26 competition law enforcers from 16 SEE and CIS countries attended the seminar.

The focus of the seminar was on a special kind of cartel – bid rigging cartels. The characteristics of bid rigging cartels were examined, their treatment as a criminal offence in many jurisdictions and the ways in which they can be detected. OECD materials on bid rigging and also on screens for cartel detection were introduced and the interplay between the detection of bid rigging cartels and of leniency programmes was discussed. As public procurement is often the victim of bid rigging there was a strong focus on ways to alert public procurement officials to illegal cartel activities and on designing tenders. Different approaches to competition advocacy and to co-operation between competition authorities and other government agencies in this area were compared. Participants shared their experience with experts from OECD countries in lectures and case studies. Practical exercises on hypothetical cases involving all the participants complemented the presentations and served as an opportunity to apply the learnings of the seminar.

The first presentation was given by Sabine Zigelski (OECD). She introduced the various aspects of the competition law problems related to bid rigging and public procurement. Special emphasis was given to the economic theory and the allocative and productive inefficiencies caused by these anticompetitive agreements. Going from there conditions and incentives for forming cartels were discussed as well as monitoring and punishment requirements, in order to better understand the functioning of cartels and thereby to discover typical features and weaknesses. As bid rigging and public procurement often go hand in hand, strategies to fight both phenomena were briefly alluded to.

Antonio Capobianco (OECD) presented the OECD Checklist for detecting bid rigging in public procurement. The OECD Checklist is part of the OECD Guidelines for fighting bid rigging and consists of two parts – the detection checklist and the design checklist. Antonio gave a detailed overview of the seven sections of the detection checklist: warning signs when bids are submitted, in bid documents and related to pricing and suspicious statements and behaviour of bidders as well as a cautionary note about indicators and the requisite steps to take when bid rigging is suspected. Throughout the presentation he gave illustrative examples from real cases where competition authorities or public procurement officials had detected the warning signs and successfully investigated cases.

Antonio Capobianco returned in the afternoon session with a presentation on leniency regimes, bid rigging and screens. He explained why well-functioning bid rigging schemes are often found not to be susceptible to leniency, thus creating the need to introduce more pro-active detection tools. Among these tools cartel screens have been discussed for some time now and they might be an effective but very

Seminar on Bid Rigging and Public Procurement in Skopje, FYR of Macedonia
3–5 June 2014

often also very data intensive tool. Other pro-active ways of detection might be found in market studies and the identification of collusive markers and in more active advocacy and training efforts directed towards procurement officials.

The afternoon session also saw the first country case presentation given by Raluca Filip (Romanian Competition Council RCC, Romania). Raluca reported on two bid rigging cases in the sector of gas transport pipelines that were initiated on the basis of evidence provided by the Directorate Investigating Organised Crime and Terrorism. In both cases the RCC had conducted dawn raids, which had resulted in the acquisition of convincing evidence, both in handwritten and electronic form, of anticompetitive agreements between bidders. Both cases resulted in high fines for the pipeline suppliers involved. The second case raised the interesting question of how to deal with cases involving attempted, but unsuccessful bid rigging.

At the end of the first day the participants were asked to detect a bid rigging scheme in a hypothetical case. For this purpose the participants were divided into smaller groups and were each given bidding data for one specific region. Over the course of the exercise the groups were brought together and shared their analyses. This enabled them to find an overarching pattern of a geographical market division scheme. The use of the OECD Guidelines and the Detection Checklist helped in the detection of various suspicious patterns that raised red flags in individual regions, with these suspicions growing stronger when the regions were put together.

The second day began with a case study from the host country. Valentina Nikolova (CPC, FYR of Macedonia) reported on an on-going case investigation where the buyer had alerted the CPC, which subsequently analysed a large amount of bidding data and found a number of suspicious patterns. The case will be decided solely on the basis of this indirect evidence. In an ensuing debate the role of indirect evidence and other ways of obtaining evidence were discussed.

Vladyslav Udovichenko (AMCU, Ukraine) contributed the next country case studies. In both cases importers of goods had entered into anticompetitive agreements. The winning bidder purchased the goods from the other importer, the losing bidder, involving several other intermediaries and thereby artificially raised prices considerably. In one of the cases suspicions were raised by the Directorate for Combating Organised Crime and these suspicions were then confirmed by direct evidence that was found during a dawn raid. Fines were imposed in both cases on the conspiring bidders. The ACMU had paid particular attention to various small but important details of the bidding material that enabled it to later establish a suspicion and to successfully fine the bidders in question.

The morning ended with a comprehensive overview of the Hungarian experience in fighting bid rigging, given by András Pünkösty (GVH, Hungary). András reported on an impressive number of bid rigging cases in the construction industry, but also on other markets. He highlighted the most important pieces of incriminatory evidence that had usually been obtained in dawn raids and also detailed the other instruments

the GVH uses for the discovery of cartels – leniency, informant rewards and advocacy. Using one case example he also provided valuable insights into the handling of difficult procedural questions and defence arguments, such as limitation periods, establishment of a single continuous infringement, rights of defence and the value of indirect evidence and of leniency statements. During the lively roundtable discussion many of the topics were again taken up and limitation periods and the legal concept of a single continuous infringement proved to be of particular interest. The court practice of the EU court was explained.

The OECD Guidelines and the OECD Checklist on the design of tenders were the first topic covered in the afternoon. Antonio Capobianco again shared his rich experience in the training of public procurement officials and competition authorities with the participants, encouraging them to use the Checklist to alert public procurement officials to potential instances of bid rigging. He explained the sections of the Checklist – information about the market, maximisation of bidder participation, clear definition of requirements and avoidance of predictability, reduction of communication among bidders, careful selection of award criteria and the raising of awareness among public procurement officials. For each section he gave illustrative real life examples of design changes that had triggered the required effect. The value of the use of Certificates of Independent Bid Determination (CIBD) was explained as well.

The following case study from Moldova, given by Lucia Popescu (Competition Council), detailed a case where the authority uncovered a bid rigging scheme on the basis of a thorough analysis of bidding material. This provided textbook-like identities in the structure of bids, spelling errors and grammar mistakes. The case is still on-going and a decision is pending.

Daniela Eleodor (Romanian Competition Council, Romania) then kicked off the advocacy section of the afternoon, by giving a detailed description of the comprehensive approach of the Romanian Competition Council to co-operation with other national authorities and to advocacy towards a large number of national stakeholders. She explained the concept of the bid rigging module that involves close links to all important Romanian authorities that might come across bid rigging cases. Due to the advocacy efforts of the Romanian Competition Council the use of CIBDs is now mandatory in public procurement procedures in Romania. The Romanian Competition Council also has extensive powers to investigate other public authorities if any of their measures threaten to distort competition and the Romanian Competition Council has the power to issue advisory opinions to the state. In addition, the Romanian Competition Council disseminates and advocates the OECD Guidelines and conducts sector inquiries. Future work will include the introduction and use of an electronic system in public procurement.

The final session of day 2 was dedicated to an exchange on the advocacy experiences of the authorities represented at the seminar. Sabine Zigelski began the roundtable discussion with a short overview of topics relating to advocacy, stakeholders and instruments and by providing some examples of advocacy efforts from around the world. András Pünkösty, Rainer Lindberg (KKV, Finland) and Antonio Capobianco contributed their experiences and it turned out to be a guiding theme that competition authorities should try to establish personal contacts with and to be easily approachable for public procurement officials, treating them as vital partners in the fight against bid rigging. The participants added a large variety of examples of advocacy, ranging from brochures in weekend newspapers, open door days and roadshows to text-message campaigns. The roundtable clearly showed that many authorities are very active in this field and that a large number of opportunities exist for tailoring advocacy according to the specific needs of a country.

The last day began with another country case presentation given by Valentina Nikolova (CPC) in which she reported on a bid rigging cartel in the sector of pharmaceuticals. The case was decided on the basis of indirect evidence and showed a number of "typical" bid rigging features – unexplained price increases and identical prices of the two bidders as well as a tender policy which divided the contract in case of identical offers. This case also demonstrated the viciousness of bid rigging offences. Prices for a drug for cancer treat-

ment were ten times higher than under competitive conditions. The CPC has imposed fines and is preparing guidelines on bid rigging in public procurement.

The last presentation of the seminar was given by Rainer Lindberg (KKV, Finland). His presentation focused on the last stage of a bid rigging case – the appeal – and elaborated on the co-operation with public procurement officials in court proceedings. He described the importance of having heard all relevant procurement officials during the authority proceedings, in order to avoid any surprises in the court stage, where they might be witnesses for the defence as well as for the authority. An additional advantage of the early involvement of procurement officials lies in the local data they have available and that might be supportive for the case. The presentation also touched on the topics of damage claims and public and private enforcement.

Another hypothetical case was the final exercise of the seminar. Participants were given a market scenario and three groups of participants were asked to represent the companies on the market and to design a bid rigging scheme, while one group was asked to represent the public procurement officials and to design a tender that might hinder bid rigging. The purpose of the exercise was to again encourage the use of the Guidelines in order to check the bid rigging schemes and the tender design and to create more awareness of common features of bid rigging and detection possibilities. The "winning" cartel scheme involved a gradual cartelisation and an attempt to corrupt the public procurement officials. The tender design focused on creating less predictability and on gaining more market knowledge and of course all bribes offered by the cartelists were refused.

Throughout the seminar participants engaged in lively discussions of questions of a theoretical and practical nature and showed a high level of interest in their peers' experiences.

c) 14–16 October, Seminar on Airport Competition Topics, Kazan, Russian Federation

Once a year the RCC organises a joint event with the Federal Antimonopoly Service (FAS) of the Russian Federation. The seminar was held at the FAS Centre for Education and Methodics in Kazan, Russian Federation. 19 competition law enforcers from the Russian Federation and from 6 CIS countries participated in the seminar on airport competition topics.

In this seminar we examined an industry that has a key function for economic development: airports. Airports offer services and facilities to airlines and passengers, freight handlers and ground handling agents as well as many other businesses that carry out airport related activities. Often airports are state owned or at least closely monitored or regulated by the state. The essential facilities doctrine plays an important role in the application of competition law. We compared regulatory approaches and competition cases and looked at competition problems at different levels of airport activity. Studies that analyse the competitive situation of and at airports were introduced by international experts, who also provided an overview of airport related competition case law. FAS Russia introduced its experience and relevant competition cases. In discussions and a case study we tried to gain a better understanding of the competition topics and of some approaches for resolving them.

Seminar on Airport Competition Topics, Kazan, Russian Federation

14–16 October 2014

Mr Anatoly Golomolzin, deputy head of the FAS Russia, opened the seminar and welcomed the participants to the event. He gave a brief outline of the relevant developments with regard to regulation and to the opening of airports to competition law in the Russian Federation. In the first presentation Mr Ádám Filep-Remetei (GVH, Hungary) provided an overview of the competition issues related to airports. He showed that competition problems may arise between airports, but also within airports and on different levels. Levels affected may be charges and slot allocation to airlines, including the topic of airline competition and in particular the treatment of low-cost carriers, but also the admission of providers of ground handling services and of other service providers, such as the transport of passengers to and from the airport or shopping facilities at airports. The presentation created awareness of the multiple market levels and sides affected by airport and regulatory decisions and actions.

The regulatory framework applicable to airports in the EU was presented by Mr Cathal Guiomard, former Irish Airport Regulator (Ireland). The current regulations that are in place are the regulation on slot allocation, mainly governed by grandfather rights, the ground-handling directive, applicable to all ground handling services and prescribing a minimum number of service providers for certain core services, and the airport charges directive. This directive is mainly applicable to the largest airports and aims to ensure the non-discriminatory treatment of airlines with regard to airport charges. The conclusions he drew on the basis of his 10 years' worth of experience of regulating airport activity were that the best way to ensure pro-competitive behaviour by airports was to structurally open up markets to competition, so that difficult and lengthy regulatory action would no longer be necessary.

Sabine Zigelski (OECD, Paris) continued with an introduction to the competition law concept of the essential facilities doctrine. This is applicable to all inputs or resources in the possession of a dominant undertaking on an upstream market that are indispensable in order to compete on downstream markets. It can easily be seen that the concept will often apply to airports. If an obligation to provide inputs can be established then this has to be carried out in a non-discriminatory manner for all undertakings requesting access to the input. Sabine also presented a number of competition cases related to discriminatory charges, from the denial of access to service providers, to the denial of access to other airport facilities for providers of parking services.

The last presentation of the day was given by Mr Dmitriy Rutenberg (FAS Russia). He introduced the developments in the regulatory regime in the Russian Federation. On the basis of a review of competition law cases, market analysis and the experiences of competition authorities in other countries, FAS Russia has initiated a number of important changes in the regulatory regime and has already achieved significant deregulation. Airlines are free to choose the routes they serve, airports have to admit alternative ground handling providers for a large number of services and the existence of inter-airport competition has been established. All this has already lead, and will increasingly continue do so in the future, to structural changes in the markets that are now more open to competition and need less intervention by regulators and competition authorities.

The second day of the seminar was dedicated to an analysis of competition between airports. Professor Jürgen Müller (Berlin School of Economics and Law, Germany) introduced a study on the market power of the Amsterdam airport Schiphol. The aim of the study was to establish if and where the Amsterdam airport was still in the possession of significant market power or dominance. On the basis of the study results the Dutch government was to decide whether

it was necessary to maintain or introduce regulation of Schiphol airport. The study identified a number of different markets with different degrees of competition. With regard to the provision of infrastructure to airlines, separate markets for origin/destination passengers, for transfer passengers and for cargo flights could be identified. On the markets for access to the infrastructure of the airport different markets could also be identified, such as tenancy/rentals, supply of fuel or baggage handling. The conclusions of the study and of other international investigations of airport competition were presented.

The last presentation of the day saw Cathal Guiomard return with a presentation on competition and airports. He reported on the different views that airlines and airports take on the subject, as communicated through their respective organisations, the IATA and the Airports Council. He then introduced another very intriguing concept – competition within airports by the means of terminal competition. If an airport faces no outside competition then more competitive conditions might be created by having different terminals of an airport run by different operators that compete among themselves. He gave the example of the Dublin airport where this was once envisaged but eventually not realised.

Professor Müller began the third day of the seminar with a follow up to his previous presentation. This time the focus was more on the methodology that had been applied to determine the level of competition or dominance on the markets for the provision of infrastructure to airlines. He explained which data had been used to compute the number of passengers where no or insufficient competition by other airports was established. He also alluded to the geographic market definition and to the determination of the catchment areas of an airport. A further very interesting point was the relevance of high speed rail connections in Europe. These will on the one hand increase airport catchment areas and increase competition. On the other hand they may themselves be considered serious competitors to airports as they will divert passengers from flights to train usage. The discussion also raised the interesting question of how to deal with the shortcomings of a competition analysis that due to scarce resources and time restraints will inevitably be incomplete. One conclusion was that an authority has to at least be aware of the shortcomings and of their influence on the results in the form of over or understating competition problems.

The following presentation on a violation of competition law by Sheremetievo airport and the airline Aeroflot was given by Mr Denis Stukanov (FAS Regional Office Moscow Region). Aeroflot and the airport had entered into an agreement that very openly aimed to provide Aeroflot and its alliance partners with preferential conditions at Sheremetievo airport and to place competing airlines at a disadvantage. According to Russian legislation the airport is considered to be a natural monopoly and consequently has to treat all airlines in a non-discriminatory manner. The Moscow Regional Office of FAS intervened and the agreement did not enter into effect. In the discussion the different levels of airport activity and the possible markets for transfer passengers and low cost airlines were mentioned as well as the difficulties faced by airlines in relocating to other airports in the same region.

Ádám Filep-Remetei then presented two cases, one from the EU practice and one Danish airport case. The EU case was based on a complaint that had been brought by Ryanair against Dublin airport and Ryanair's competitor Aer Lingus. The case showed many interesting aspects as horizontal as well as abuse claims were being made. Ryanair had claimed that Dublin airport had imposed identical charges on all airlines even though the use of airport facilities and their quality significantly differed between airlines. Ryanair also alleged that they were unduly denied

access to airfield parking of aircraft. The European Commission rebutted all of the allegations made by Ryanair and also looked closely at the actions of the Irish airport regulator. The letter with which the Commission closed the investigation is public and could be of interest to competition authorities dealing with similar complaints. The second case dealt with a discrimination proceeding by the Danish competition authority against Copenhagen airport. The airport had opened a new terminal but had effectively restricted its use to low cost carriers. Other airlines were denied access. An investigation of the reasons given for the denial showed no reasonable justification and the Danish competition authority required Copenhagen airport to open the facilities to all airlines on a non-discriminatory basis.

Ms Olga Kozlova (Saint Petersburg Regional Office of the FAS Russia) gave the last presentation of the seminar. This was a case study of the competitive situation on the jet fuel supply markets at the Saint Petersburg airport Pulkovo. The company CJSC Soveks which is the incumbent supplier of fuel storage facilities and fuelling services has to grant access to third party fuel service providers at tariffs that are set by the Russian Federal Tariff Service. The conditions for access are published and open to all interested parties. With one minor exception, however, no third party competitor has entered the market. Airlines have continued to use the services of Soveks. The investigation by FAS Russia did not find any anticompetitive reasons for this. In the discussion it was mentioned that a reason might be that the market is in principle open and any anticompetitive pricing or behaviour would quickly lead to the entry of competitors, thereby effectively restraining Soveks from exercising market power.

3. Events for the RCC's special audience

a) 14–15 February, Seminar Series on European Competition Law Fundamentals for National Judges; Seminar II: Abuse of Dominance Basic Economic and Legal Concepts

On February 14 and 15, 2014, the OECD-GVH Regional Centre for Competition in Budapest organised the second in a series of three "competition law fundamentals" seminars for national judges. The seminar series aims to provide judges with no or limited experience in competition cases with an opportunity to explore within a short time frame, and with participants in the same situation, the basic legal and economic concepts that are encountered in European competition cases. The February 2014 seminar focused on abuse of dominance cases under Article 102. The first seminar in November 2013 covered restrictive agreements, with the final seminar covering the assessment of damages. Although the fundamentals seminars focus on basic concepts and rules, they are also designed to discuss practical questions related to relevant evidence and burden of proof and to provide time to discuss hypothetical cases and the questions raised by participants. The seminar received funding from the European Union.

The seminar was very successful. The concept behind the competition law fundamentals seminar series worked out well, as a substantial number of the seminar participants from the first seminar attended the February event as well. The format of the seminar series allowed us to repeat some fundamental economic concepts within a short time frame, thereby hopefully making them more accessible to judges. The entire group appeared to be highly interested and motivated and several participants were willing to speak up during plenary sessions and contribute in light of their own experiences.

Seminar Series on European Competition Law Fundamentals for National Judges; Seminar II: Abuse of Dominance Basic Economic and Legal Concepts

14–15 February 2014

All of the participants considered the quality of the event to be very high or high. As with the first seminar, the evaluation of the relevance of the seminar was slightly lower than in some previous events, which can be explained by the fact that many of the participants had not yet encountered many competition cases before their courts. Comments by the participants suggested an overall high degree of satisfaction. Many had returned after the first seminar, and it was expected that most of the participants from the first two seminars would accept the invitation to participate in the May 2014 seminar.

28 judges from 15 countries participated in the event. Many of the participants contributed actively in the general discussions and breakout groups.

The seminar was chaired by Mr. Andreas Reindl. The presentations were divided among the chair and four additional speakers, including Joao Azevedo, European Commission, Alex Hiendl, UK Competition Appeal Tribunal (CAT), Gábor Szabó, GVH, and Sabine Zigelski, OECD.

The seminar focused on basic concepts in Article 102 cases and cases involving equivalent provisions in national competition laws. The goals were to make judges familiar with the key economic concepts dealt with in abuse of dominance cases, including substantial market power, harm to consumer welfare, and entry barriers, to provide an introduction to some of the most typical forms of abuse, including refusals to deal and various forms of pricing strategies, and to highlight the interdependence between economic concepts and legal standards. The seminar also sought to make judges aware of evidentiary issues in abuse of dominance cases. In addition, we wanted to inform judges about the fundamental EU cases in this area and about some of the recent developments that have taken place in the case law that are also likely to show up in national cases, such as the difficulties encountered when evaluating certain forms of pricing conduct under Article 102. Discussions in breakout groups on both days ensured that the participants had an opportunity to reflect on some of the issues covered in the presentations in a format that allowed for more active involvement.

The first day morning provided an introduction to key economic and legal concepts, including the concepts of substantial market power, harm to competition through the exclusion of rivals, and the importance of entry barriers in analysing single firm conduct cases. The morning session included a breakout session to allow for the discussion of a hypothetical fact pattern which illustrated some relevant issues.

First day afternoon focused on refusal to deal cases and the analysis of excessive pricing allegations, as well as presentations of cases that showed the possible connection between the two concepts. It included presentations on a basic conceptual framework as well as presentations of national cases in which courts or competition authorities had to evaluate evidence related to refusal to deal allegations and excessive pricing allegations. This combination should ensure that the concepts, when presented in connection with actual cases, are accessible to judges

The sessions on the second day were used to discuss predation and related low cost strategies by dominant firms, as well as the concept of price discrimination among customers. Presentations focused again on economic and legal concepts as well as on illustrative cases. Discussions of hypotheticals enabled the participants to apply some of the concepts covered to a fact pattern and to exchange experiences about judicial practices with their colleagues.

The agenda provided for a mix of different presentations and opportunities for discussion. Comments and questions were encouraged, as well as discussions among speakers and with participants. Throughout the seminar, including the coffee and lunch breaks, participants used the opportunity to raise questions and comment on cases from a practical, judicial perspective.

All of the administrative aspects of the seminar were in the hands of the OECD-GVH Regional Centre for Competition and GVH staff, including the registration of participants, arrangements with conference facilities and reimbursement of participants. The preparation and support during the seminar were as usual of the highest quality and highly appreciated by all of the participants, as also noted in the evaluations.

Although this seminar was the second seminar that was offered as a "fundamentals" seminar with greater focus on how European cases have been decided in the past and how prevailing standards can be best explained, the topic was still quite heavy for some. The agenda was especially intense for those judges who are new to this area, as the seminar offered substantial amounts of new information. As we knew from the previous seminar that processing all the new information can become difficult at times, we arranged breakout groups and case presentations so longer periods of presentations toward the end of the working day could be avoided. Some participants also commented on the complexity of the hypothetical cases, which is a result of the fact that cases in this area of the law tend to involve complex fact patterns and very often permit plausible, but conflicting claims about possible harms and efficiencies.

The group of speakers was deliberately kept small. A member of the CAT staff participated as an expert speaker which gave the panellists an opportunity to hear about selected cases from a court's perspective.

Participants were asked to fill out evaluation forms and all 28 participants returned their evaluations. The evaluations were very positive. Almost all aspects of the seminar were evaluated as highly satisfactory or satisfactory. The quality of the seminar and of the speakers and their presentations was evaluated as "very high" or "high" by all of the participants. Less than 15% of all of the participants evaluated the relevance of the topic as less than "very high" or "high". The written comments and suggestions provided encouragement that the current format should be continued. Speakers had a very positive impression of the motivation of the participants and their satisfaction with the programme, based on the conversations they had with participants and their observations during the programme and the breakout groups.

b) 9–10 May, Seminar Series on European Competition Law Fundamentals for National Judges; Seminar III on Quantification of Damages in Competition Cases

On May 9 and 10, 2014, the OECD-GVH Regional Centre for Competition in Budapest organised the third seminar in a series of three "competition law fundamentals" seminars for national judges. The seminar received funding from the European Union.

The seminar series aimed to provide judges with limited experience in competition cases with an opportunity to explore within a short time frame, and with participants in the same situation, the basic legal and economic concepts that are encountered in European competition cases. The concluding seminar in this series focused on the quantification of damages in competition cases, in both cartel and abuse of dominance cases, thus building on the topics covered in the previous two seminars that had covered the analysis of restrictive agreements and abuse of dominance cases; the recently adopted EU private

damages Directive contributed to the relevance of the topic. As was the case in the two previous seminars, the May 2014 seminar was also designed to discuss practical questions related to relevant evidence and burden of proof. It also provided ample time to discuss hypothetical cases and the questions raised by participants.

As previously observed, the concept behind the competition law fundamentals seminar series has worked out well. A substantial number of the seminar participants had attended at least two seminars, and several all three. The entire group appeared to be highly interested and motivated and several participants were willing to speak up during plenary sessions and contribute in light of their own experiences. The format of the seminar series and the short time between seminars allowed us to repeat some fundamental economic concepts within a short time frame, thereby making them more accessible to judges. This also applied to the third seminar in which these concepts were repeated and applied in the context of damages actions.

28 judges participated in the event. Despite the size of the group, many of the participants contributed actively in the general discussions and breakout groups. The fact that most of the participants were familiar with the format and with some of the speakers certainly helped in this respect.

The seminar was chaired by Mr. Andreas Reindl. The presentations were divided among the chair and four additional speakers, including Benoit Durand, RBB Economics, Rainer Nietsche, E.CA Economics, Christopher Rother, Deutsche Bahn, and Sabine Zigelski, OECD. The speakers were selected to ensure a high degree of practical experience to make the seminar as relevant as possible.

The seminar focused on damage estimation in cartel cases and abuse of dominance cases, highlighting key economic concepts as well as practical, evidentiary questions. The goal was to make judges familiar with the basic framework in damages cases so they would be able to organise cases and address the most typical questions that may come up in these cases. Thus, we focused on methodologies in damages assessment, the importance of developing a counterfactual, similarities and differences between cartel and dominance cases, and important legal aspects under current and future European law. The seminar also sought to make judges aware of practical and evidentiary issues by describing real cases and emphasising the problems arising therein. Discussions in breakout groups on both days ensured that the participants had an opportunity to reflect on some of the issues covered in the presentations in a format that allowed for more active involvement.

The first day began with a refresher on key economic and legal concepts, as applicable in private damages cases. The main topic of the morning session involved a discussion of the different methodologies that can be used to assess damages, and the difficulties that are encountered when applying them in real cases. The discussion of a hypothetical in breakout groups was used to provide an opportunity for the participants to think through some basic questions, such as the appropriate counterfactual to assess damages.

The first day afternoon focused on a number of specific questions in cartel and other damages cases, such as pass-on, umbrella effects, the role of interest payments, and lingering effects. Mr. Rother presented Deutsch Bahn's experience as a plaintiff in damages cases to draw attention to the practical problems parties face in these cases. The panel also discussed with participants the importance of leniency programmes and their effect on the access to file questions that regularly come up in damages cases. Panellists expressed different views on this subject,

highlighting for judges that they would be confronted with difficult decisions when access to file becomes an issue before them. Another main topic was pass-on and indirect purchaser standing. As for other topics, the seminar combined the presentation of basic economic concepts with a discussion of practical aspects and the effects of pass-on claims for the position of the plaintiff.

The sessions of the second day were used to discuss damages actions in abuse of dominance cases, starting with a refresher on exclusionary conduct and moving on to more specific damages assessment questions. As on the day before, a presentation of key economic concepts was accompanied by practical case presentations and work in breakout groups. In particular the discussions of hypotheticals enabled the participants to apply some of the concepts covered to a fact pattern and to exchange experiences about judicial practices with their colleagues.

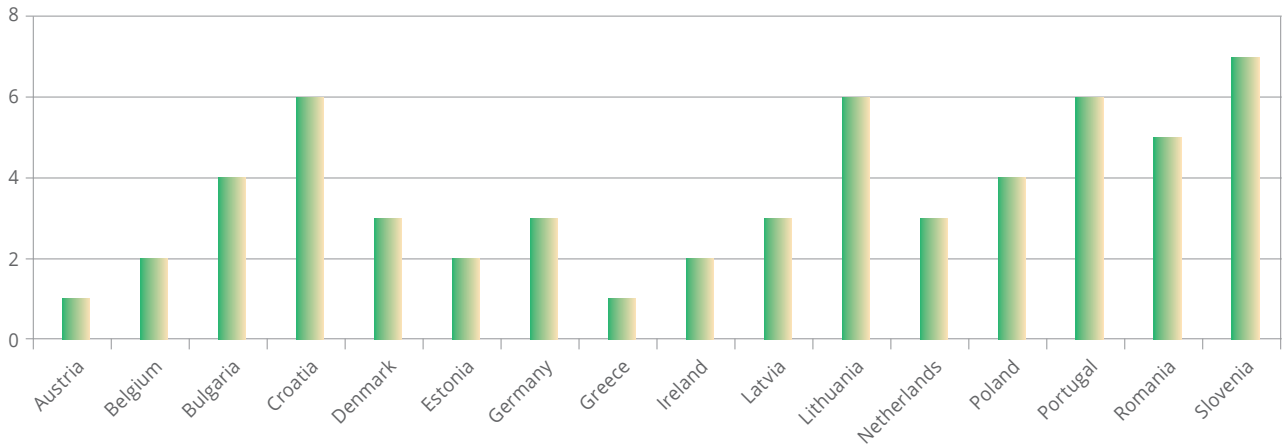
The agenda provided for a mix of different presentations and opportunities for discussion. Comments and questions were encouraged, as well as discussions among speakers and with participants. Throughout the seminar, including the coffee and lunch breaks, participants used the opportunity to raise questions and comment on cases from a practical, judicial perspective.

The concept of the fundamental seminars series worked well. It ensured continuity among participants, shorter periods between seminars, and a familiarity of participants with the framework of the seminars and recurring concepts. We will consider offering a similar seminar series after some time has passed in order to provide a new group of judges with a similar experience.

The topic of damages assessment is not trivial, and the content of the seminar certainly proved to be quite complex for many of the participants, despite the fact that our goal was to offer a "fundamentals" seminar with greater focus on how European cases have been decided in the past and how prevailing standards can be best explained. Nevertheless, the degree of attention and interaction was very high throughout the seminar, suggesting that we found a good mix between presentations building on previous seminars, presentations focusing on more complex issues, and case discussions that illustrate concepts in a way most accessible to judges. The arrangement of breakout groups and case presentations in order to avoid longer periods of presentations toward the end of the working day, as well as the decision to end the seminar in the early afternoon without a separate afternoon session on Saturday, worked well. The hypotheticals raised complex questions, but there were engaged discussions until the last session.

chart no 2

Total number of participants per country
for the two seminars organised for European judges



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 4.4 out of a maximum of 5.

Participants considered the overall usefulness of the programmes to be either very high or high – 91 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 no 4

Participants' evaluation of events organised by the RCC in the year 2014

Distribution of answers	Very low	Low	Moderate	High	Very high
Overall usefulness of the event	0%	0%	4%	45%	51%
Overall usefulness of the topics	0%	1%	14%	46%	39%
Quality of presentations	0%	0%	6%	49%	45%
Usefulness and quality of materials	0%	0%	7%	53%	40%
Quality of conference facilities	0%	0%	7%	39%	54%
Workshop preparations	0%	0%	8%	43%	49%
Usefulness of hypothetical cases / country contributions / case studies	1%	1%	13%	46%	39%
Overall quality	0%	0%	9%	46%	45%

table no 5

Detailed evaluations by events and by categories

	Seminar for Judges in February	Workshop in Budapest in March	GVH training in April	Seminar for Judges in May	Workshop in FYR of Macedonia in June	Workshop in Budapest in September	RCC-FAS Russia joint seminar in October	Seminar in Budapest in December	Average
Overall usefulness of the event	4.4	4.6	4.2	4.7	4.6	4.2	4.7	4.7	4.5
Overall usefulness of the topics	4.2	4.4	4.0	4.2	4.3	4.1	4.4	4.4	4.2
Quality of presentations	4.5	4.4	4.2	4.6	4.5	4.2	4.4	4.4	4.4
Usefulness and quality of materials	4.3	4.3	4.3	4.4	4.6	4.1	4.3	4.4	4.3
Quality of conference facilities	4.4	4.5	4.5	4.4	4.3	4.4	4.8	4.4	4.5
Workshop preparations	4.3	4.4	N/A	4.4	4.6	4.2	4.9	4.3	4.4
Usefulness of hypothetical cases / country contributions / breakout sessions	4.1	4.5	4.5	N/A	4.3	4.2	4.5	4.3	4.3
Average	4.3	4.4	4.3	4.4	4.4	4.2	4.6	4.4	4.4

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 467 274 EUR for 2014. 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 seminars on European Competition Law for National Judges.

The following tables provide details on the total costs of the operation of the RCC in 2014 by sources of funds, by events and by major categories of costs.

table no 6
The sources of funds

Sources of funds (EUR)	
Gazdasági Versenyhivatal (Hungarian Competition Authority)	393 824
OECD	30 000
European Commission (grants for the judges seminars)	43 450
Total funds	**467 274**

Table no 7
Breakdown of total expenses by items

Breakdown of total expenses (EUR)	
A) Direct organisational costs	
Seminar on European Competition Law for National Judges – Abuse of Dominance, Basic Economic and Legal Concepts	27 700
Seminar on Practice and Procedures in Merger Investigations	45 200
GVH Staff Training	16 100
Seminar on European Competition Law for National Judges – Quantification of Damages in Competition Cases	29 000
Seminar in FYR Macedonia – Bid Rigging and Public Procurement	35 800
Seminar on Competition Topics in Retail Markets	37 500
RCC – FAS Russia Joint Seminar on Airport Competition Topics for CIS Countries, Kazan, Russian Federation	18 500
Seminar on Evidentiary Issues in Establishing Abuse of Dominance	41 600
Total direct organisational costs	**251 400**
B) Overhead and operational costs of the RCC	**66 000**
C) Staff costs transferred by the GVH to the OECD[2]	**149 874**
TOTAL EXPENSES in 2014	**467 274**

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 full-time senior competition expert at the OECD headquarters in Paris and by a full-time senior consultant who is at the same time employee 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

[2] *On the basis of the Memorandum of Understanding, the GVH made a voluntary contribution to the OECD for staff-related purposes.*

Seminar speakers of the year 2014

João AZEVEDO
European Commission
BELGIUM

Alex HIENDL
UK Competition Appeal Tribunal
UNITED KINGDOM

Andreas REINDL
Leuphana University, Lueneburg
GERMANY

Patricia A. BRINK
US Department of Justice
UNITED STATES

Georgina IANUS
European Commission
BELGIUM

Boris MARTINOVIC
Hungarian Competition Authority
HUNGARY

Elke ZEISE
Bundeskartellamt
GERMANY

John RATLIFF
WilmerHale, Brussels
BELGIUM

Romina POLLEY
Cleary Gottlieb Steen & Hamilton LLP
GERMANY

Cyril RITTER
European Commission
BELGIUM

Jorge Fernandes FERREIRA
Portuguese Competition Authority
PORTUGAL

Jennifer REEVES
UK Competition Appeal Tribunal
UNITED KINGDOM

Rebecca THRELFALL
Competition and Markets Authority
UNITED KINGDOM

Naoko Teranishi
OECD
PARIS

Viktor ŁUSZCZ
Court of Justice of the European Union
LUXEMBOURG

Basil MATHIOUDAKIS
European Commission
BELGIUM

Benoit DURANT
RBB Economics
BELGIUM

Rainer NITSCHE
E.CA Economics GmbH
GERMANY

Christopher ROTHER
Deutsche Bahn AG
GERMANY

Antonio CAPOBIANCO
OECD
FRANCE

Blagoj CHURLINOV
Commission for Protection of Competition
FYR OF MACEDONIA

Daniela ELEODOR
Romanian Competition Council
ROMANIA

Rainer LINDBERG
Finnish Competition
and Consumer Authority
FINLAND

Valentina NIKOLOVA
Commission for Protection of Competition
FYR OF MACEDONIA

Seminar speakers of the year 2014

András PÜNKÖSTY
Hungarian Competition Authority
HUNGARY

Gábor SZABÓ
Hungarian Competition Authority
HUNGARY

Márton KOCSIS
Hungarian Competition Authority
HUNGARY

Birgit KRUEGER
Bundeskartellamt
GERMANY

Lefkothea NTEKA
Hellenic Competition Commission
GREECE

Anne ROSSION
Autorité de la Concurrence
FRANCE

Anatoly GOLOMOLZIN
FAS Russia
RUSSIAN FEDERATION

Irina SUHININA
FAS Russia
RUSSIAN FEDERATION

Alexey GORLINSKY
FAS Russia
RUSSIAN FEDERATION

Cathal GUIOMARD
Dublin City University
IRELAND

Olga KOZLOVA
St. Petersburg Regional Office
of the FAS Russia
RUSSIAN FEDERATION

Jürgen MÜLLER
Berlin School of Economics and Law
GERMANY

Ádám REMETEI-FILEP
Hungarian Competition Authority
HUNGARY

Dmitry RUTENBERG
FAS Russia
RUSSIAN FEDERATION

Denis STUKANOV
Moscow region Regional Office
of the FAS Russia
RUSSIAN FEDERATION

Vitaly PRUZHANSKY
RBB Economics
BELGIUM

Ori SCHWARTZ
Israel Antitrust Authority
ISRAEL

Vivien TERRIEN
General Court of the European Union
LUXEMBOURG

András VÉKONY
Hungarian Competition Authority
HUNGARY

RCC team

Sabine ZIGELSKI
OECD
OECD-GVH Regional Centre for Competition In Budapest (Hungary)

Andrea DALMAY
GVH
OECD-GVH Regional Centre for Competition In Budapest (Hungary)

Laszlo BAK
GVH
OECD-GVH Regional Centre for Competition In Budapest (Hungary)

Interpreters of the RCC's events

Taras KOBUSHKO

Ingrid MESTYÁNNÉ LANDISHEV

Oxana WAGNER-MUZYKA

Karen MELIK-SHAHNAZAROV