



GAZDASÁGI
VERSENYHIVATAL

New leniency and merger regulation

The Hungarian Competition Act was amended by 1 June this year. Due to legal changes the enforcement powers of the GVH (Hungarian Competition Authority) will be increased. The GVH has had its hands full in order to assure the smooth application of the new Act.

The amended Competition Act mostly increases the enforcement powers of the GVH in the field of fighting against cartels. Most importantly, from now on the leniency policy applied by the GVH will be regulated in the Competition Act. Under the leniency programme, if an undertaking involved in cartelling activity discloses the existence of the cartel and simultaneously submits evidence to prove the infringement, the GVH rewards that with the non-imposition or reduction of the fine, which would otherwise have been imposed.

Undertakings putting an end to their participation in a cartel and contacting the GVH in time, can count with several advantages from their co-operation with the authority: non-imposition or reduction of fines, co-operation with the authority constitutes a ground for the exclusion of punishability in a potential criminal proceeding and in the case of damages undertakings granted immunity will not bear joint and several liability.

In the leniency cases opened after 1 June 2009, not the former notice, but the provisions of the amended Competition Act will apply for the non-imposition or reduction of fines. Besides the Act, the rules relating to leniency and practical information can be found in the leniency form and guideline; both documents will be published by the GVH on its homepage. The leniency application form contains the formal and substantial criteria for the submission of the application for receiving full or decreased immunity of fines and the guideline provides help in connection with the filling of the form.

The foundations of leniency policy have not seen any changes, thus the rule stating that only the undertaking to be the first to contact the GVH will be granted full immunity still applies. However, the new leniency system contains numerous beneficial rules for undertakings. One of them relates to the possibility to submit non-final applications (so called marker applications) and provisional applications, both adopted from the EU law. These types of applications are simpler and can be prepared in a shorter time than the full leniency application, and thus enable undertakings to assure their first position among the applicants as soon as deciding on the submission of the application. It is also more beneficial for the undertakings that the new application form – compared to the former ones - contains detailed instructions on the type and quality of information to be submitted for a successful application. The transparency and predictability of the leniency policy are also increased by the guideline analysing the way the GVH interprets in its practice the additional conditions for leniency prescribed in the Competition Act, e.g. the obligation to put an end to the infringement at a definite time and the co-operation obligation of the applicant. Furthermore,

undertakings that have coerced other undertakings into participating in cartel activity will not be excluded from the possibility of fine reduction anymore.

The amendment entering into force on 1 June 2009 will also change the authorization of the concentration of undertakings. From 1 June 2009, the GVH will apply in the control of the concentration of undertakings the “significant lessening of competition test” (also applied by the European Commission), instead of the “dominance test” applied before. Thus, in the future while assessing the merger application of the undertakings the GVH will also examine whether they would significantly reduce competition on the relevant market. Competition cannot only be weakened by a group of undertakings achieving dominant position, but also if the market power of the latest increases significantly in the new situation. As a consequence of the legal changes, the GVH has modified its forms for merger application. A new provision affecting undertakings is that the Competition Act entering into force on 1 June 2009 increases the maximum amount of fine imposed for failure to submit an application for authorization from fifty thousand to two hundred thousand Hungarian forints (approx. 667 euros) per day. The procedural fees for merger proceedings will also be increased.

The rules relating to the development of competition culture will also be amended (by 1 June 2009), widening the scope of activity of the GVH. The promotion of competition culture and consumer culture within the EU will be included in the Act as development objectives.

The Competition Act has gone through many changes recently. In the opinion of the GVH, by now the Act has fulfilled the criteria according to which competition increases consumer welfare and promotes economic efficiency. Moreover, the Hungarian Competition Act is in line with the European norms and contains all the principles that a modern competition law regime is supposed to. As a consequence, the GVH hopes that a further amendment of the Competition Act will not be necessary in the upcoming years, thus legal certainty of market players will also be strengthened.

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