



GAZDASÁGI
VERSENYHIVATAL

The new notice on the Method of Setting Fines in Antitrust cases issued by the GVH has entered into force

In the middle of the year 2011, the Gazdasági Versenyhivatal (GVH - Hungarian Competition Authority) undertook to reconsider its notice on the method of setting fines in antitrust cases, which was repealed in May 2009. As a result of this process, the President of the Hungarian Competition Authority and the Chair of the Competition Council together issued a new notice on the Method of Setting Fines in Antitrust cases that applies from today.

According to subsection (6) paragraph (36) of the several times amended Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter referred to as “**PURA**”) the President of the Hungarian Competition Authority may issue, together with the Chair of the Competition Council, notices, which describe the basic principles of the law enforcement practice of the Hungarian Competition Authority. The notices have no binding force; their function is to increase the predictability of law enforcement.

The first notice on the method of setting fines (hereinafter referred to as the antitrust fine notice) was published on 15 December 2003, and adopted the Authority’s guidelines on fine setting-methodology in the case of restrictive agreements (cartels) and abuse of dominant position. Although companies favourably welcomed the antitrust fine notice as it increased transparency, the GVH was compelled to withdraw it as a result of the conflicting judicial practice of the court of first instance. However, the Supreme Court of Hungary has approved the legality of certain elements of the fine setting-methodology implied in the antitrust fine notice. In April 2011, when the Supreme Court concluded its decision in case Vj-102/2004, stated also that the GVH is entitled to adopt a notice on the method of setting fines which is based on mathematical methods and which has a binding force on the GVH itself. The abovementioned decision of the Supreme Court of Hungary opened the door for the GVH to readopt the principles and methodology applied by the previous antitrust fine notice. The replacement of the notice was even encouraged by the public opinion of professionals/stakeholders.

It follows that the new version that has come into effect does not modify the previously applied methodology based on mathematical principles, it is only specified and developed through the international experiences and the practice of the Competition Council and the case law established by the courts. On 15 November 2011 the GVH invited interested parties (stakeholders) to submit written comments and observations. The final text has been developed taking into account all the comments received.

The new antitrust fine notice sets out the basic principles of the GVH’s fining policy and furthermore, it presents the process and the applicable considerations how to impose a fine, and moreover, evaluates the content of the abovementioned considerations and clarifies their relative weight towards each other. The GVH determines the amount of the fine in

several steps. The first step is to define the basic amount of the fine, which is calculated by taking into account the 30-30-40 percent rule. Both the impediment of effective competition and the impact of the infringement on the market count an equal weight of 30-30 percent. The undertaking's attitude to the infringement is considered by 40 percent of the Competition Council. In the worst case scenario, the basic amount of the fine reaches 10 percent of the net turnover achieved by the undertaking concerned in the relevant year.

After calculating the basic amount of the fine, taking into account the impediment of effective competition, the impact of the infringement on the market and the attitude of the (infringing) undertaking towards its infringement; the correction of the basic amount takes place. Within the framework of the correction, the GVH evaluates the following four factors: the severity of the unlawful behaviour (the so-called recidivism), the benefit obtained by the infringement, the sufficient deterrent effect and in the case of cartels, the applicability of the leniency policy is also taken into account.

In comparison to the previous antitrust fine notice, the following important modifications have been introduced:

- a) in case of public procurement transactions, depart from the general solution - the amount of the relevant turnover is the triple of the value of the tender,
- b) the incorporation of the duration of the infringement into the basic amount of the fine instead of its previous treatment as a multiplier,
- c) the possibility of considering the deterrent effect and
- d) as a result of the adverse effects of the economical crisis, the evaluation of considerations relating to undertakings in bad economic conditions that can obtain fine reduction and other allowances.

Due to the revision of the antitrust notice - according to European trends - the GVH aims to provide more space for the deterrent effect through fining those cartels, which are seriously harming competition.

It is also important to mention that the antitrust notice issued by the GVH is one of the most transparent fining guides in Europe as it allows for step by step tracking of the fining process.

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