

TRENDS AND RESULTS
ASSOCIATED WITH THE DECISIONS
OF THE HUNGARIAN COMPETITION AUTHORITY

2010-2020



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I. THE COMPETITION COUNCIL OF THE HUNGARIAN COMPETITION AUTHORITY

The Competition Council is a decision-making forum operating separately within the organisation of the Hungarian Competition Authority (GVH), which is similar to a court of law in many ways.¹ With respect to competition supervision cases, only the Competition Council is entitled to adopt the final decisions that conclude proceedings, and it is also responsible for their publication and execution. In addition to adopting final decisions, it issues some of the injunctions terminating the supervision proceedings and assesses appeals submitted against interim orders issued by case handlers in the course of competition supervision proceedings.

The work of the Competition Council is organised and supervised by the Chair of the Competition Council; its members are appointed by the President of the Republic for six years, based on the recommendations of the President of the Hungarian Competition Authority. The Competition Council investigates cases as either a three- or five-member council, thus ensuring the adoption of well-substantiated and independent decisions. The Chair of the Competition Council and its members act independently during the decision-making process; they cannot receive instructions or be influenced in this regard and they must act in accordance with their own convictions and the applicable legislation. Their decisions may be reviewed by a court of law within the framework of an administrative lawsuit.

Furthermore, the independence of the Competition Council and its exclusive subordination to the applicable legislation is ensured, among others, by the following measures: the hearings being public as a general rule, the strict code of ethics applicable to the members of the Competition Council, the publication of resolutions on the authority's website, and the compilation of notices and notifications aimed at increasing the transparency of law enforcement; the latter measure facilitates the interpretation of the Council's decisions and contributes to their predictability, in addition to ensuring that market players act in compliance with the applicable legislation.

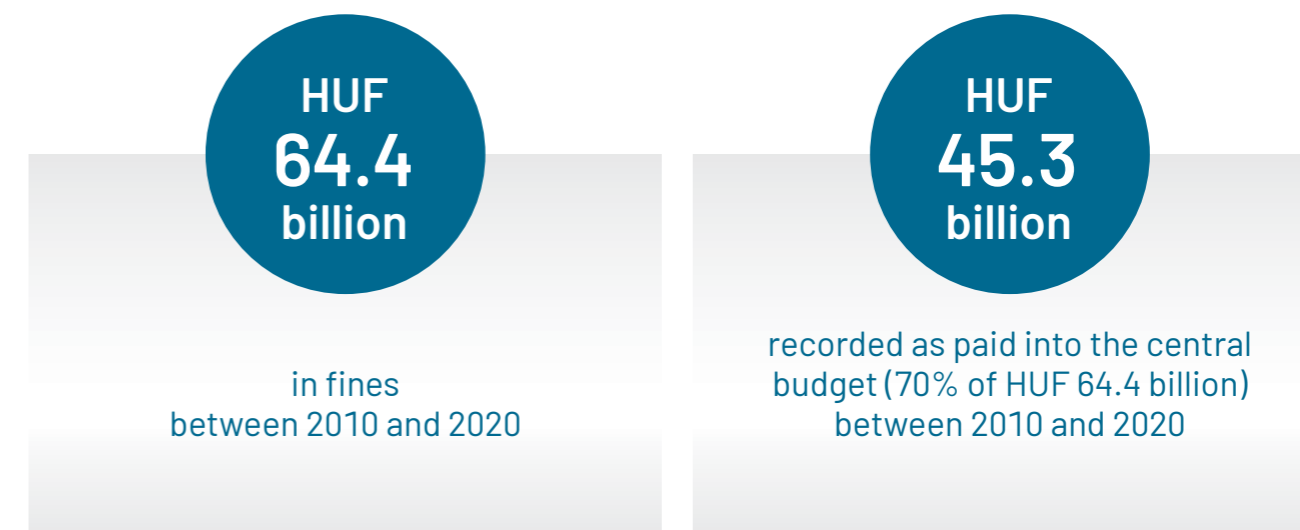
In 2020, the Competition Council adopted 48 final decisions or injunctions which concluded a competition supervision proceeding, as well as 409 interim decisions (e.g., during appeal and application-based proceedings).

457
resolutions
in 2020

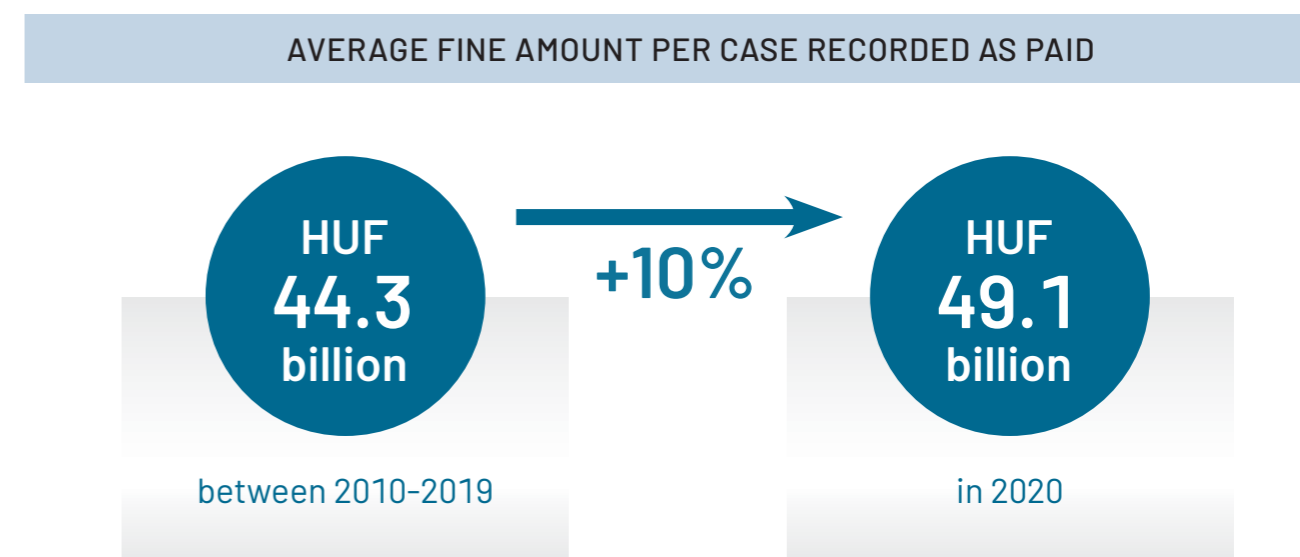
on average
65 resolutions / Competition Council member

¹ Curia decision No. Kfv.III.37. 690/2013/29, 20 May 2014 (proceeding No. Vj-174/2007, the so-called railway builder cartel), Section 127

II. FINES IMPOSED BY THE COMPETITION COUNCIL OF THE GVH



Since 2010, the Competition Council of the GVH has imposed fines totalling HUF 64.4 billion, 83% of which, that is HUF 53.5 billion, has been challenged before a court by the fined undertakings. Sixty-nine per cent of the remaining unchallenged HUF 10.9 billion can be attributed to the period following the introduction of the **legal institution of settlements** in 2015.

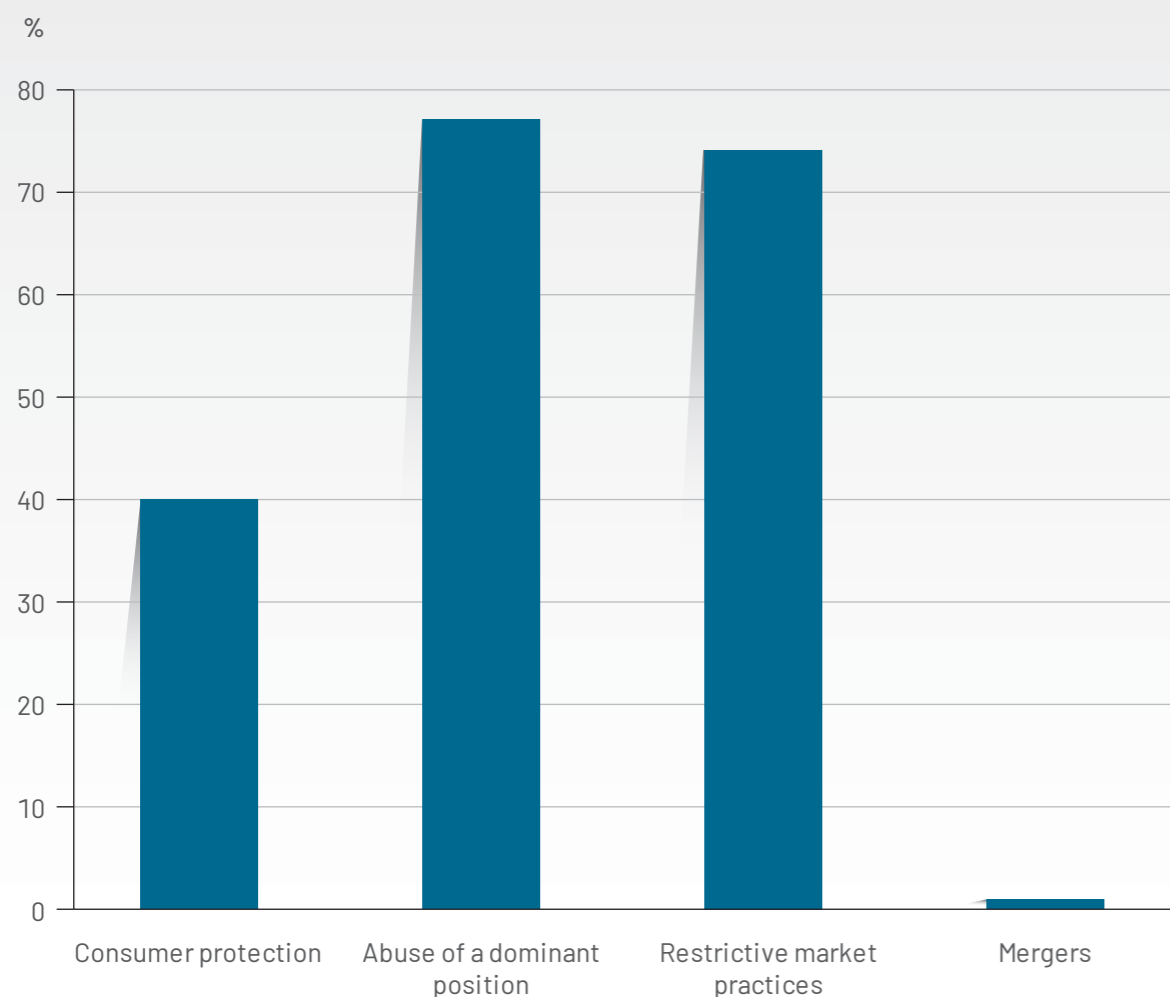


With respect to cases concluded during 2020, an average fine of HUF 49.1 million was recorded as paid, meaning that this amount was not challenged in court. This is 10% higher than the average amount of a fine per case recorded as paid for cases concluded in the period between 2010 and 2019.

III. APPEALS AGAINST THE DECISIONS OF THE HUNGARIAN COMPETITION AUTHORITY

In the period between 2010 and 2020, following the proceedings of the GVH conducted with respect to behaviours which allegedly infringed the law, the affected undertakings opted to appeal 45% of the resolutions. If this percentage is broken down into case type, the figure is the lowest in the case of consumer protection cases (40%), it is 74% in the case of proceedings concerning restrictive market practices and it is the highest for cases related to abuse of a dominant position (78%). However, this figure is only 1% in the case of merger control decisions, which require close cooperation between the Authority and the undertakings.

**Percentage of lawsuits broken down by case type
2010-2020**

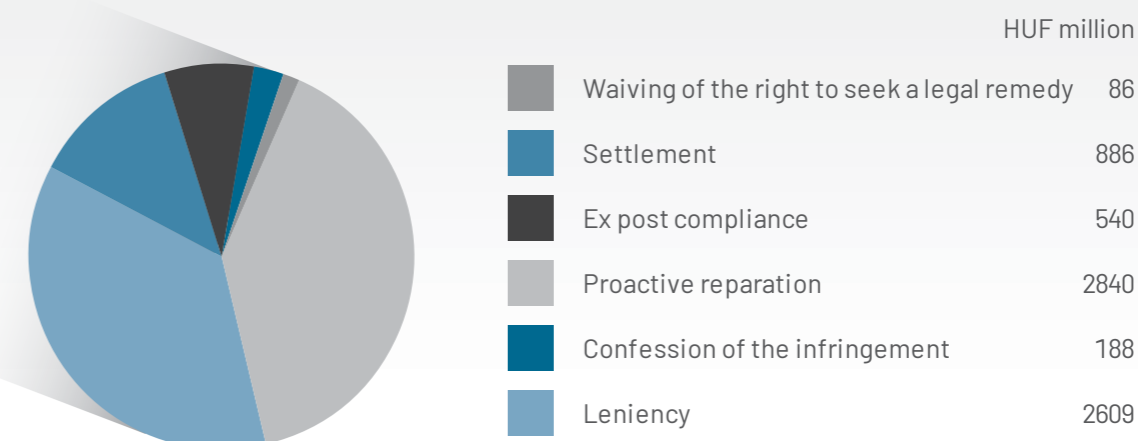


IV. FINE REDUCTIONS FOR THE COOPERATIVE BEHAVIOUR OF THE UNDERTAKINGS SUBJECT TO THE PROCEEDINGS

The Competition Act permits up to 10% of the annual net revenue of the infringing undertaking (or group of undertakings) in the previous year to be imposed as a fine. This significantly high upper limit is meant to deter undertakings from committing infringements and ensure that the punishment is proportionate to the infringement committed by the undertaking in question. However, the imposition of a fine is not an end in itself as the GVH wishes to ensure future compliance with the law. In light of this fact, cooperation with the Authority during proceedings plays an especially important role. Furthermore, the GVH offers several options for cooperation for undertakings that wish to ensure their compliance with the law, which may also serve as grounds for self-cleaning before the Public Procurement Authority in the future. These cooperation options are as follows:

- leniency: those providing evidence of cartel activity may be granted full immunity from a fine or a fine reduction of up to 50%,
- settlement: those who admit to committing an infringement and waive their right to seek a legal remedy may receive a fine reduction of up to 30% or up to 80% when combined with the leniency-related reduction,
- in case of an ex post compliance programme a fine reduction of up to 5% will be granted if the programme is implemented together with participation in the leniency policy, the settlement procedure and/or with proactive reparation,
- if the undertaking subject to the proceeding waives its right to seek a legal remedy, it may receive a fine reduction of up to 20%,
- proactive reparation: if the undertaking compensates consumers for the damages caused in the course of the relevant GVH proceeding, the fine may even be eliminated. An example of this is a commitment that results in the case being concluded without the fact of the infringement being established.

**Amount of fine reduction provided due to cooperation
HUF 7.149 billion in total
2010-2020**



LENIENCY

**HUF
2.609
billion**

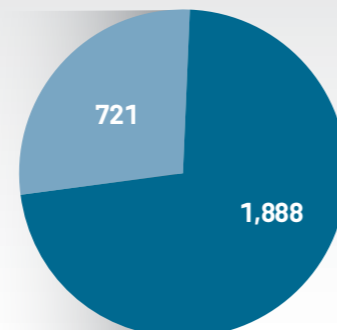
fine reduction
due to leniency
between 2010 and 2020

In the case of the competition-related infringements that are the most difficult to uncover, that is cartel cases (meaning agreements or coordinated behaviour between competitors aimed at restricting the market) or other agreements or coordinated behaviour aimed at fixing sales or purchase prices, the undertakings in question can submit a request for leniency to the GVH even before a proceeding has been initiated, in which they can ask the GVH to grant them immunity from a fine in light of them voluntarily admitting that they have committed an infringement. A leniency request may also be submitted during a proceeding. The Competition Council of the GVH may grant an undertaking full or partial immunity depending on the level of cooperation, the significance of the evidence provided, and when the relevant actions are taken.

Since 2010, the Competition Council has waived HUF 1.888 billion in fines by granting full immunity, and it has granted total fine reductions of HUF 721 million; this adds up to HUF 2.609 billion in total fines waived in favour of the undertakings subject to the proceedings.

Fine reductions due to leniency (HUF million)

■ Full immunity
■ Fine reductions



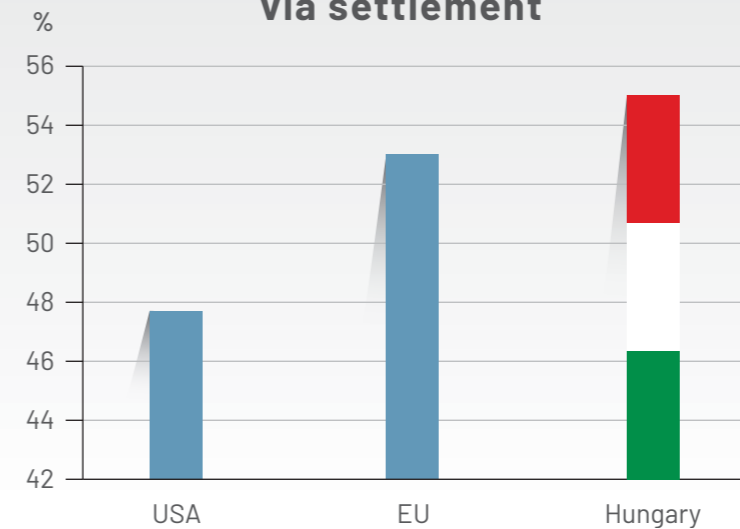
SETTLEMENT PROCEEDINGS

**HUF
886
million**

fine reduction due to
settlements
between 2016 and 2020

As part of a settlement proceeding, the Competition Council may reduce the amount of a fine by 10 to 30%, provided that the undertaking subject to the proceeding admits to committing the infringement based on the evidence presented, agrees to exercise its right of access to the file in a simplified way, waives its rights to make a statement, to a hearing, and to an appeal before a court, thereby contributing to a faster proceeding and the use of less resources. The successful conclusion of a case with a settlement is also beneficial for the undertaking subject to the proceeding, as it is able to save significant expenses (e.g., legal fees) in addition to benefiting from a reduced fine. Settlements may be supplemented with other fine reducing factors as well, such as a leniency request, which may result in the further reduction of the amount of the fine to be imposed.

Proportion of cases closed via settlement



The proportion of cases closed via settlement is higher in Hungary than in the EU or the USA.

The proportion of cases closed via settlement was on average 53% in the EU and 47.6% in the USA over the past five years.² In Hungary, a settlement was agreed on in 55% of cartel cases between 2016 and 2020.

INCREASING COMPETITION AWARENESS AND FACILITATING COMPLIANCE AMONG UNDERTAKINGS

The GVH has been encouraging the implementation of competition law compliance programmes by undertakings since 2017. Between 2016 and 2020, fine reductions of at least HUF 540 million (approximately HUF 500 million between 2019 and 2020) were adopted in order to reward undertakings for their compliance efforts. The GVH rewards an undertaking's commitment to establish and implement an ex post compliance programme with a fine reduction, provided it is established and implemented together with participation in the leniency policy, the settlement procedure and/or with proactive reparation. The GVH attaches even greater importance to ex-ante compliance programmes since undertakings' introduction of such programmes demonstrates their commitment to voluntarily comply with the applicable legislation. However, the existence of a compliance programme cannot in itself be considered as a fine reducing factor; the undertaking in question must also demonstrate adequate compliance efforts and cease the infringing practice upon its detection and, finally, it must provide objective and credible evidence that the infringing practice was brought to an end due to or in relation to a compliance programme voluntarily implemented by the undertaking or prescribed by the GVH within the framework of an earlier proceeding.

**HUF
540
million**

fine reduction due to the development of compliance
programmes by the undertakings
between 2016 and 2020

The GVH also considers the introduction of ex post compliance programmes, that is compliance programmes implemented after the initiation of a competition supervision proceeding or proposed during a proceeding, as a fine reducing factor. However, these lead to lower fine reductions since they cannot meaningfully contribute to the success of the proceeding at hand but can help ensure compliant behaviour in the future.



in case of compliance programmes since 2017

OTHER COOPERATION OPTIONS

The Competition Council of the GVH may also take into account additional fine reducing factors, such as the significant cooperation of the undertaking during the proceeding which contributes to uncovering the infringement, e.g., by voluntarily providing evidence of the infringement, clarifying the circumstances of the infringement, **admitting to committing the infringement, voluntarily waiving the right to seek a legal remedy**, or not disputing the facts.



fine reduction for other types of cooperation between 2019 and 2020

SUPPORTING SMES

In the case of first-time offences committed by small and medium sized enterprises, taking into account the limited amount of funds available to SMEs, the GVH issues a warning instead of imposing a fine, together with an order to develop a set of internal rules that ensure compliance with competition laws, provided that the infringement is not related to a public procurement cartel, does not violate EU law, and does not harm vulnerable consumers. The GVH conducts a follow-up investigation in order to verify that the undertaking has complied with the decision and may impose a fine in the case of non-compliance.



warnings issued between 2016 and 2020

SELF-CLEANING OPPORTUNITIES FOR UNDERTAKINGS BEFORE THE PUBLIC PROCUREMENT AUTHORITY AS PART OF A GVH PROCEEDING

It may be beneficial for undertakings to actively cooperate with the GVH not only in order to receive a fine reduction in the GVH's proceeding, as explicitly set out and acknowledged in **Notice No 1/2020 on Antitrust-type Prohibitions**, but also because their active cooperation may result in self-cleaning before the Public Procurement Authority, meaning that the undertakings are allowed to submit an application for a certificate of reliability under Act CXLIII of 2015 on public procurement procedures (hereinafter referred to as the Public Procurement Act) to the Public Procurement Authority despite the existence of a reason for exclusion established as a result of an earlier infringement. This institution of self-cleaning was introduced in Hungary on 1 November 2015 in line with the applicable EU regulations. Pursuant to Section 64 of the Public Procurement Act, the bidder, applicant, subcontractor, or market player participating in a suitability certification process **may not be excluded**

from a public procurement procedure in spite of the existence of any reason for exclusion with the exception of the reasons for exclusion specified in Sections 62 (1) b) and f), provided that a decision of the Public Procurement Authority, which has become final and enforceable under Section 188 (4), or in the case of an administrative lawsuit challenging such a decision, a final and enforceable decision of the court under Section 188 (5) establishes that before the submission of the bid or the application, the market player in question implemented measures that sufficiently verify its reliability in spite of the existence of the reasons for exclusion.

This is due to the fact that the forms of cooperation shown during the competition supervision proceeding (leniency, settlement, waiving the right to seek a legal remedy, proactive reparation commitment to the implementation of a compliance programme) can act as circumstances to be considered with respect to the active cooperation required from the undertakings for the purpose of self-cleaning pursuant to the Public Procurement Act. In order to prove their reliability, undertakings must prove to the Public Procurement Authority that they have **paid compensation for the damages caused, actively cooperated with the competent authority** in order to ensure the comprehensive clarification of the facts and circumstances related to the case, and **implemented technological, organisational, or personnel measures** that are suitable for the prevention of future acts of crime, non-compliance, or other infringements.



proactive reparation

+

compliance

+

leniency

+

settlement

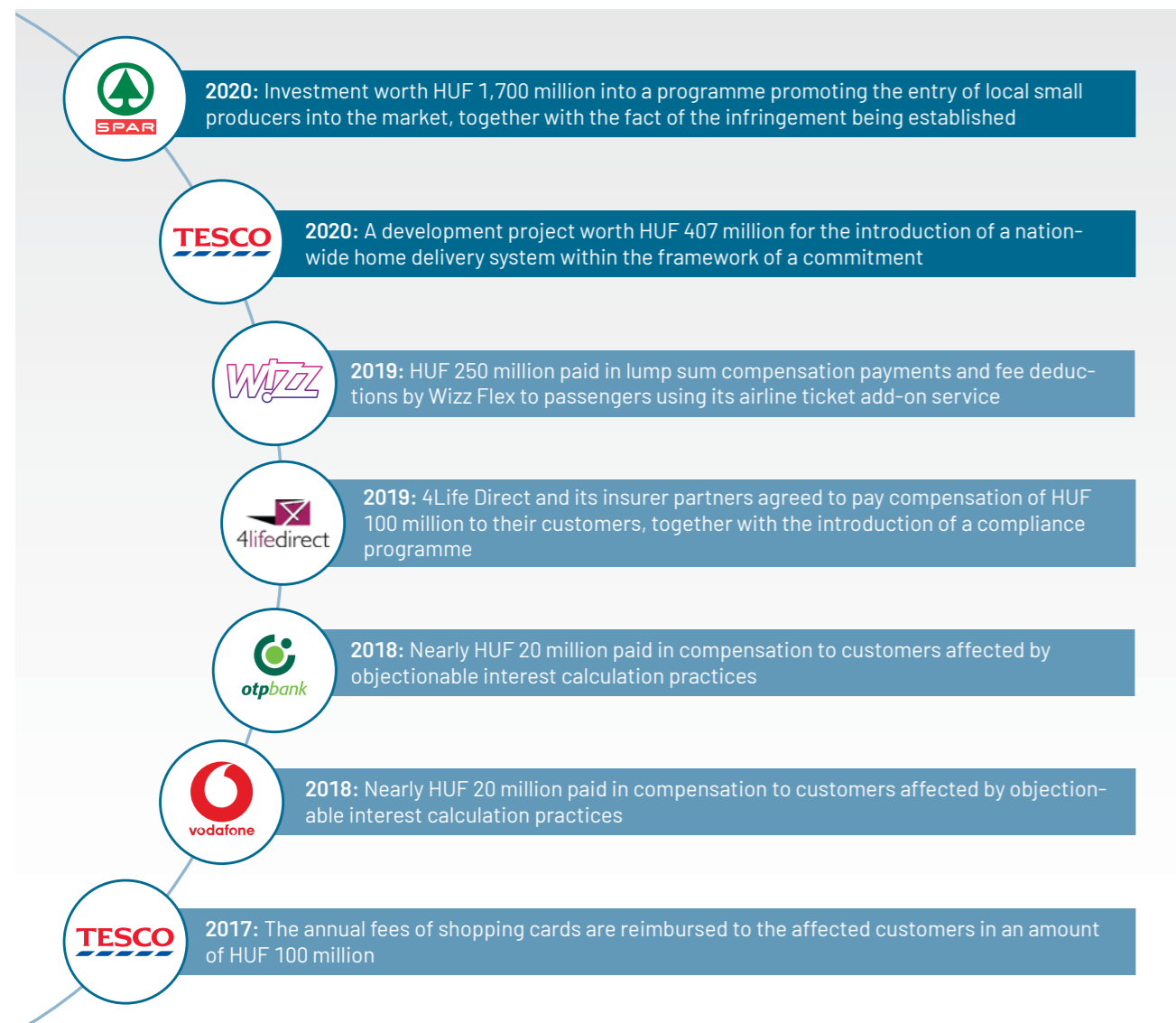
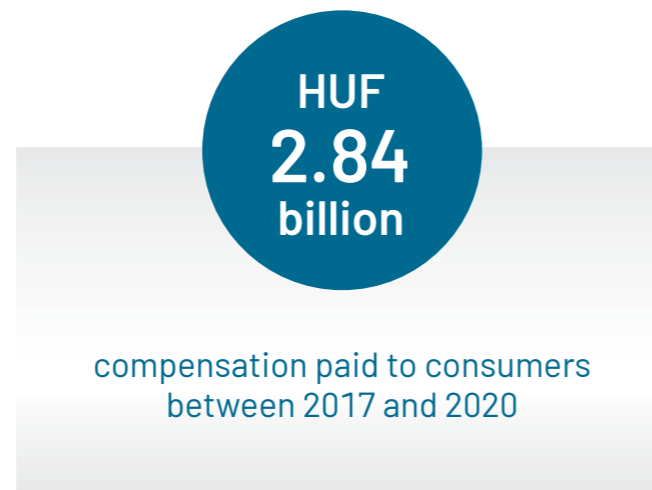
+

waiving the right to seek a legal remedy

INTERVENTIONS DIRECTLY BENEFITING CONSUMERS

The GVH considers an undertaking's behaviour aimed at partially or wholly compensating consumers for the damages arising from its infringing conduct to fall within the category of proactive reparation. The amount of the fine to be imposed on an undertaking is reduced by the amount of the proactive reparation to be paid.

In such situations, the amount to be spent on fully compensating consumers for the damages caused may be deducted from the amount of the fine that would otherwise be imposed, while partial compensation may result in a fine reduction. Proactive reparation took place in the following cases:

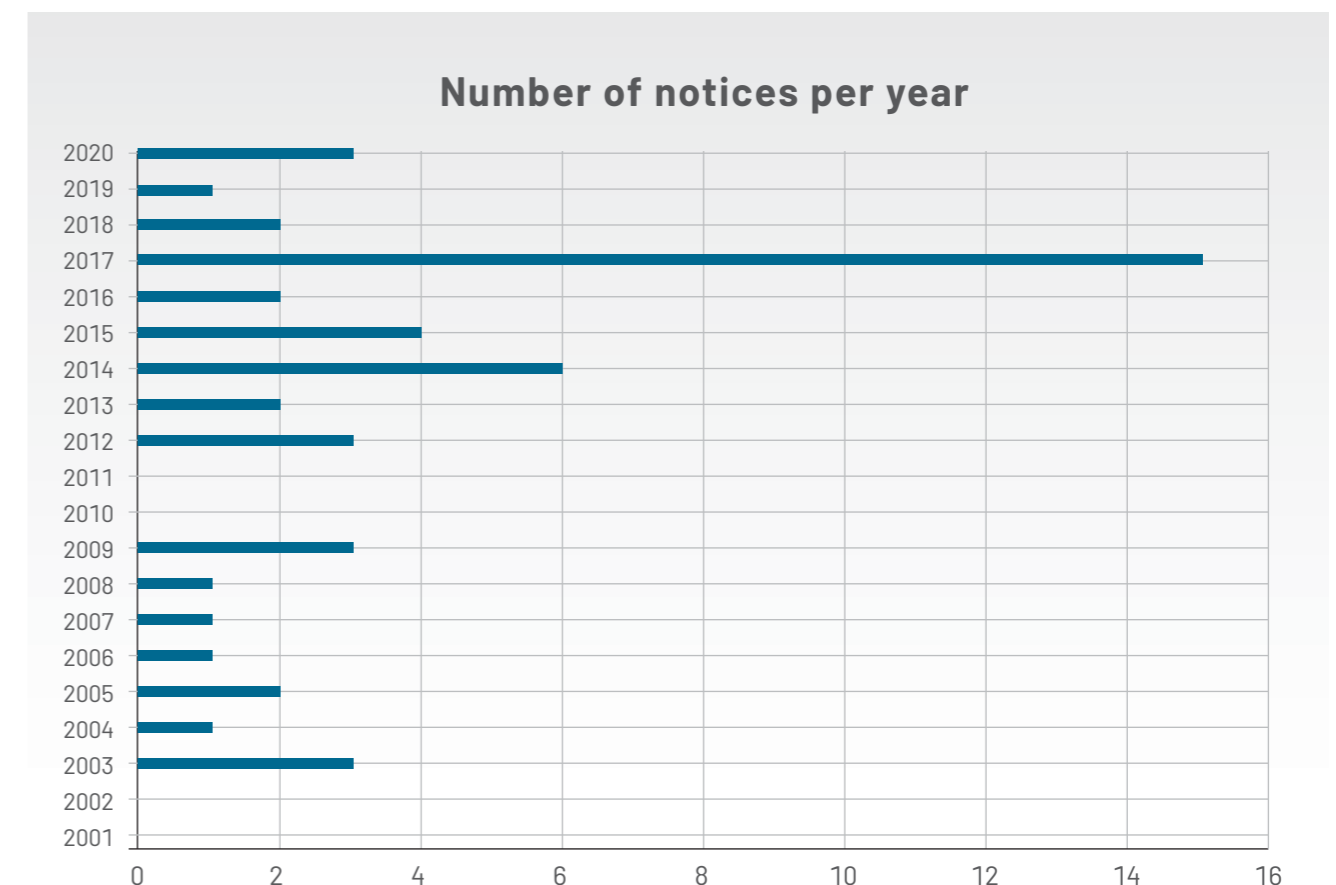


V. INCREASING TRANSPARENCY

The GVH has regularly issued notices to ensure the transparency of its law enforcement practices.

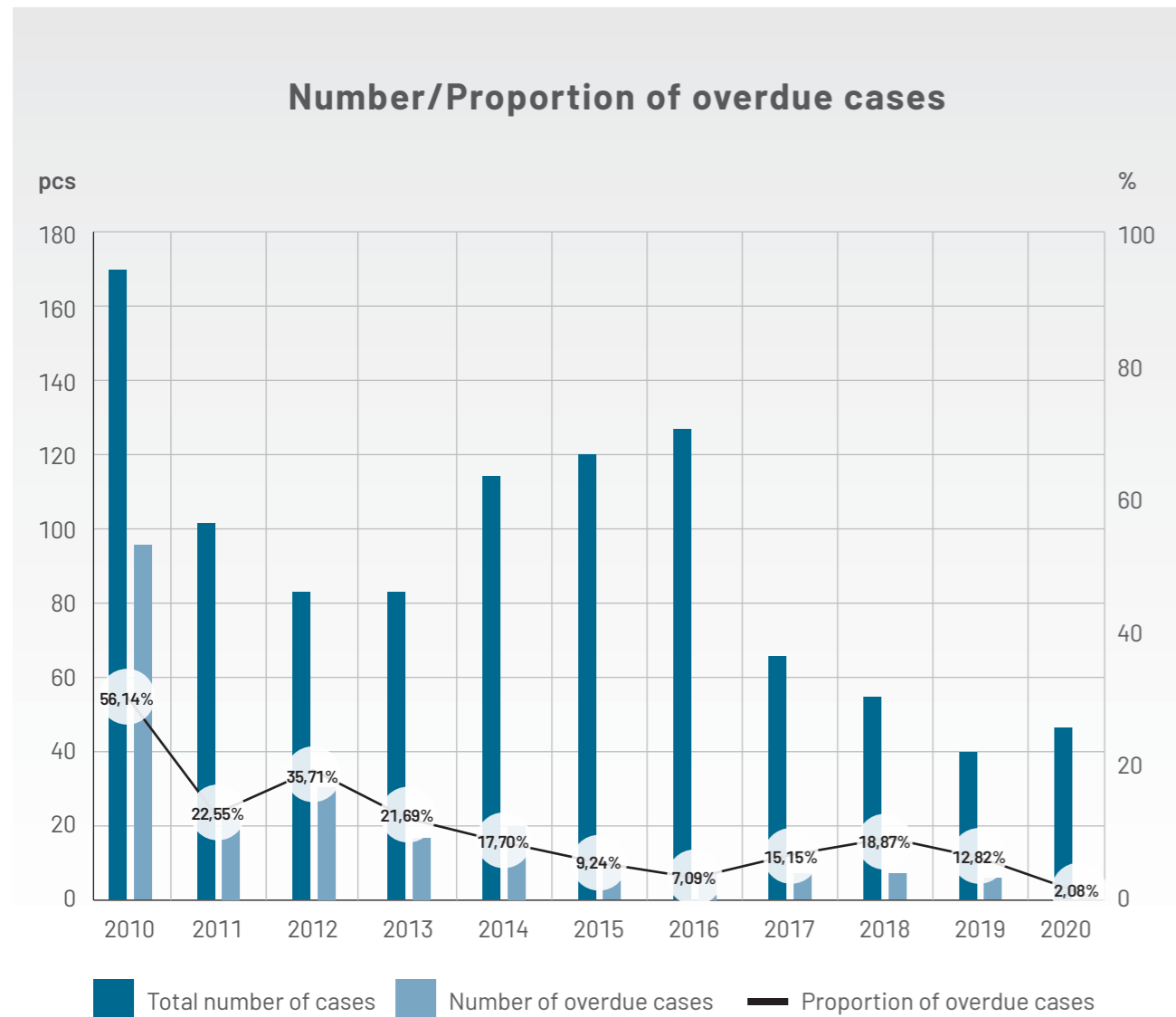


In the period between 2001 and 2010, a total of 12 notices were issued (of which 4 can be regarded as notice amendments). In the period starting in 2011, such notices have been issued in ever-increasing numbers, reaching a total of 38 notices (of which 6 can be regarded as notice amendments) issued by the President of the GVH and the Chair of the Competition Council jointly in order to provide information regarding the law enforcement practices of the Authority. The development of the annual number of notices issued is shown in the following figure.



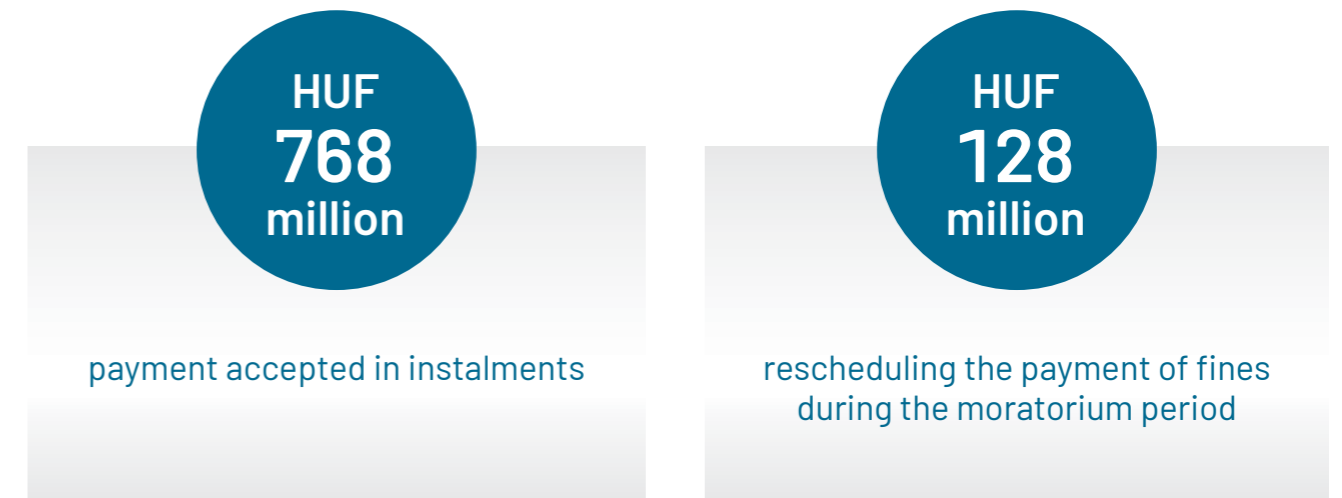
VI. DISAPPEARING BACKLOG

While in 2010 56% of the cases exceeded the relevant deadline, there was only one case in 2020 that exceeded its deadline. This outstanding improvement is the result of the introduction of strict personal accountability in May 2020 and the successful introduction of a case management system, which reduced the number of cases referred back by the Competition Council to the investigation office to zero.



VII. MANAGING THE ADVERSE ECONOMIC IMPACT OF THE COVID-19 PANDEMIC IN 2020

So far, the Competition Council of the GVH has agreed to fines of approx. HUF 768 million being paid in instalments or the fine payments being rescheduled. The rescheduling of fine payments temporarily released Hungarian undertakings from the obligation to pay HUF 128.2 million during the moratorium period.



In addition, the Competition Council has taken into consideration arguments related to financial difficulties by granting a total fine reduction of several tens of millions of Hungarian forints, primarily in order to preserve the jobs of affected employees.

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