

Questionnaire concerning Statutory Framework for Criminal Prosecution in Cartel Cases and Case Selection

HUNGARY

Due to the fact that criminal sanctions for cartel agreements are only available since the recent amendment of the Penal Code, the GVH can not provide a detailed answer for the questionnaire. However the GVH considers it important to inform the OECD about recent developments so the applicable questions are answered below.

The newly introduced Section 296/B of the Penal Code established the felony of "Restriction of competition in public procurement proceedings and concession tenders". The amendment is in force since 1st September 2005. As to our knowledge no criminal proceedings were initiated yet.

I. Statutory Authority

1. Are cartels subject to criminal prosecution and criminal penalties under the competition act?

The Competition Act does not foresee sanctions of criminal nature.

2. Are there other options to criminally prosecute cartels, either in addition to criminal prosecution under the competition act, or as the only option? This could include, for example, general criminal laws concerning fraud that could be used to prosecute cartels (such as bid rigging cartels), as well as other specific criminal statutes.

The only option to proceed on a criminal law basis is provided by the Penal Code. This provision sanctions the restriction of competition in public procurement proceedings and concession tenders.

3. In jurisdictions where both options exist (criminal prosecution of cartels under competition laws and general criminal laws), what are the most significant differences between the two options? Is one generally preferred over the other, are they applied cumulatively in certain cases?
4. Can criminal prosecution in cartel cases occur for "other" reasons, such as withholding or destruction of evidence, false testimony, witness tampering, etc.?

The Penal Code sanctions false testimony in administrative procedures.

5. For each of the above applicable in your jurisdiction, what is (are) the penalty (penalties) (fine and/or imprisonment; corporate and/or individual)?

Natural persons participating in the restrictive agreement may be sentenced to up to 5 years imprisonment. Legal entities might face measures under the act on Criminal Responsibility of Legal Entities.

False testimony in administrative proceedings may be sentenced to either up to one year imprisonment, or community service or fine.

6. Which authority is responsible for criminal investigations, and, if different, for the prosecution of cartels?

Investigation of the mentioned cartel offences would be the responsibility of the criminal authorities.

II. Case Selection

7. Is there a choice between criminal prosecution and bringing a civil/administrative case against cartels?

There is no possibility for such a choice. Under the Act on Criminal Proceedings the GVH is obliged to inform the criminal authorities about all infringements of this section of the Penal Code. Though it is not prohibited to conduct administrative and criminal proceedings parallel, it is not yet clear how the two procedures would relate to each other.

8. If there is a choice between criminal and civil/administrative cases, which authority decides whether a case should be criminally prosecuted?
9. What factors does the competition authority take into account when deciding whether to refer a case for criminal prosecution?
10. What factors does a prosecutor take into account when deciding whether to pursue a case?