



International
Competition
Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

HUNGARY
November 2015

ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning (hardcore) cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

A. Law(s) covering cartels:

1. Primary source:

- **Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices** (in Hungarian: 1996. évi LVII. törvény a tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról; *hereinafter: Competition Act*)

The Competition Act in English is available at:

http://www.gvh.hu/en/legal_background/rules_for_the_hungarian_market/competition_act

- **EU Competition law rules (Articles 101 and 102 of the Treaty on the Functioning of the European Union; hereinafter: TFEU)**

2. Background rules on procedures:

- **Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services** (in Hungarian: 2004. évi CXL törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól; *hereinafter: Administrative Procedures Act*)

The Administrative Procedures Act in Hungarian is available at:

http://njt.hu/cgi_bin/njt_doc.cgi?docid=85989.222073

| | |
|--|--|
| | <p>The Administrative Procedures Act in English is available at: http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=a0400140.tv&dbnum=62</p> <ul style="list-style-type: none"> • Act C of 2012 on the Criminal Code (in Hungarian: 2012. évi C. törvény a Büntető Törvénykönyvről; <i>hereinafter: Criminal Code</i>): Article 420 on Agreements Restricting Competition in Public Procurement and Concession Procedures The Criminal Code is available in English at: http://www.refworld.org/pdfid/4c358dd22.pdf • Act CXLIII of 2015 on Public Procurement (PPA – in Hungarian: 2015. évi CXLIII. törvény a közbeszerzésekről): Article 36 (2) on Promoting Competition and Article 62 (1) n) and o) on grounds for exclusion from participation in a tender |
| <p>B. Implementing regulation(s) (if any):</p> | <p>N/A</p> |
| <p>C. Interpretative guideline(s) (if any):</p> | <ul style="list-style-type: none"> • Explanatory Note of the President of the GVH on the application of the rules concerning leniency pursuant to Articles 78/A and 78/B of the Competition Act Available on the homepage of the GVH in English at: http://www.gvh.hu/en/for_professional_users/leniency_policy/5863_en_explanatory_notes_of_the_president_of_the_hungarian_competition_authority_on_the_application_of_the_rules_concerning_leniency_pursuant_to_articles_78a_and_78b_of_the_pura_2009.html |
| <p>D. Other relevant materials (if any):</p> | <ul style="list-style-type: none"> • Decisions of the Competition Council (summaries): Available on the homepage of the GVH in English at: http://www.gvh.hu/en/resolutions/resolutions_of_the_competition_council • Block exemption regulations: Available on the homepage of the GVH in English at: http://www.gvh.hu/en/legal_background/legislation_in_force/4323_en_legislation_in_force.html • Court decisions: Available on the homepage of the GVH in Hungarian at: http://www.gvh.hu/letoltheto_dokumentumok/dontesek/birosagi_dontesek/birosagi_dontesek_2014 • Information about the cartels in public procurements: Available on the homepage of the GVH in Hungarian at: http://www.gvh.hu/szakmai_felhasznaloknak/kozbeszerzesi_kartellek/5272_hu_kozbeszerzesi_kartellek.html |

2. Scope and nature of prohibition on cartels

| | |
|---|---|
| <p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p> | <p>The term “<i>agreements restricting economic competition</i>” is in use.</p> <p>The Competition Act does not explicitly use the term “cartel”; instead the term “<i>agreements restricting economic competition</i>” is used in accordance with Article 11 (1) of the Competition Act. Article 11 (1) defines cartels as agreements or concerted practices between undertakings and decisions by organisations of undertakings established pursuant to the freedom of association, public corporations, associations or other similar organisations (<i>hereinafter collectively: agreements</i>), which have as their object or potential or actual effect the prevention, restriction or distortion of competition.</p> |
| <p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p> | <p>Yes, the Hungarian regulation differentiates between hardcore cartels and those that are not qualified as such.</p> <p>The Competition Act provides an indicative list of the conducts that it considers as cartels in Article 11 (2). This provision corresponds to Article 101 of the TFEU.</p> <p><i>The prohibition shall, in particular, apply to:</i></p> <ul style="list-style-type: none"> - <i>the direct or indirect fixing of purchase or selling prices or other business terms and conditions;</i> - <i>the limitation or control of production, distribution, technical developments or investments;</i> - <i>the allocation of sources of supply, or the restriction of the possibility to choose from them as well as the exclusion of a specified group of trading parties from purchasing certain goods;</i> - <i>the allocation of markets, exclusion from sales, or restriction of the choice of market outlets;</i> - <i>the hindering of market entry;</i> - <i>cases, where, in respect of transactions of identical value or character, there is discrimination between trading parties, including the application of prices, time limits for payment, discriminatory selling or purchase terms or methods which place certain trading parties at a competitive disadvantage;</i> - <i>making the conclusion of contracts subject to the acceptance of obligations which, by their nature or according to commercial usage, are unrelated to the subject matter of such contracts.</i> <p>Nonetheless Article 13 (2) of the Competition Act clarifies that:</p> <ul style="list-style-type: none"> - <i>the fixing of purchase or selling prices, whether directly or indirectly, between competitors; or</i> - <i>the sharing of the market among competitors</i> <p>shall not benefit from the “<i>de minimis</i>” rule.</p> <p><i>[An agreement shall be deemed to be of minor importance if the</i></p> |

¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

| | |
|--|---|
| | <p><i>joint share of the participating undertakings and of undertakings which are not independent of them does not exceed ten per cent on the relevant market except if its object is a) to fix, directly or indirectly, purchase or selling prices between competitors; or b) to share markets between competitors.]</i></p> <p>These cartels are the ones that are considered to be hardcore cartels.</p> <p>The current Hungarian regulation is in line with the legal framework supported by the OECD:</p> <p>http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=193&InstrumentPID=189&Lang=en&Book=False</p> |
| <p>C. Scope of the prohibition of hardcore cartels:</p> | <p>As specified under 2/B., according to Article 13 (2) of the Competition Act, hardcore cartels cannot benefit from the “<i>de minimis</i>” rule.</p> <p><i>Block exemption</i> is only applicable to a very precisely determined set of agreements or concerted practices as regulated in Article 16 of the Competition Act.</p> <p>Certain agreements in the following groups of restrictive agreements are exempted by government decrees from the general prohibition:</p> <ul style="list-style-type: none"> • <i>Vertical agreements</i> [Government Decree 205/2011. (X. 7.)]. • <i>Insurance agreements</i> [Government Decree 203/2011. (X.7.)]. • <i>Motor vehicle distribution and servicing agreements</i> [Government Decree 204/2011. (X. 7.)]. • <i>Research and development agreements</i> [Government Decree 206/2011. (X. 7.)]. • <i>Specialisation agreements</i> [Government Decree 202/2011. (X. 7.)]. • <i>Technology transfer agreements</i> [Government Decree 86/1999. (VI.11.)]. <p>All of these exemptions are based on the EU legislation and reflect the respective EU Block Exemption Regulations. However, they do not apply where there is a cumulative effect of similar agreements on the relevant market.</p> <p>As for <i>individual exemption</i>, in theory any agreement or concerted practice might benefit from individual exemption if the conditions set out in Article 17 of the Competition Act are fulfilled; however, case law shows that the more severe the infringement is, the less chance there is that the conduct in question will be exempted. (See Competition Council decision: No Vj-151/2009 Sec. 261) [Pursuant to Article 17 of the Competition Act an agreement is exempted from the prohibition pursuant to Article 11 provided that</p> <p>a) it contributes to a more reasonable organisation of production or distribution, the promotion of technical or economic progress, or the improvement of competitiveness or of the protection of the environment;</p> <p>b) it allows final trading parties a fair share of the resulting benefit;</p> <p>c) the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified</p> |

| | |
|--|--|
| | <p><i>common goals; and</i> <i>d) it does not enable the exclusion of competition in respect of a substantial proportion of the goods concerned.]</i></p> <p>The individual exemption described above must be differentiated from the former practice of the GVH (until 14 July 2005; see Competition Council decision No Vj-135/2005) which entitled the GVH to give a priori negative clearance on agreements on a case-by-case, individual basis. Since then the GVH may not adopt a formal decisions on the exemption of an agreement. The conditions set out in Article 17 of the Competition Act shall be proven by the party who claims that the agreement under supervision falls within the criteria in the course of the competition supervision proceeding.</p> <p>A <i>sector-specific exemption</i> was introduced by a new law amending the Competition Act that entered into force on 1 September 2015. Pursuant to 93/A of the Competition Act, in the case of agricultural products, an infringement of Article 11 of the Competition Act (<i>i.e. prohibition of agreements and concerted practices restricting competition</i>) may not be established if, (i) as a result of such an agreement the distortion, restriction or elimination of competition does not exceed the extent necessary to achieve an economically justifiable and reasonable income and (ii) the market players on the relevant market are not excluded from achieving such an income, and (iii) if Article 101 of the TFEU is not applicable in the given case. <i>The Minister responsible for agricultural policy</i> shall determine whether the above conditions are met. As a result of this, the GVH shall obtain the opinion of the Minister if it investigates a case involving a suspected infringement of Article 11 of the Competition Act in connection with agricultural products and shall act in accordance with the opinion received. The Minister shall issue its opinion within 60 days of the receipt of the GVH's request. In addition to this, the proceeding Competition Council shall suspend the imposition of fines in the case of an agreement infringing Article 11 of the Competition Act, which concerns agricultural products. In such a case, the proceeding Competition Council shall set a deadline for the parties to comply with the statutory rules. Should the deadline unsuccessfully expire, the proceeding Competition Council shall impose a fine.</p> |
| <p>D. Is participation in a hardcore cartel illegal <i>per se</i>²?</p> | <p>Participation in a hardcore cartel is not considered to be “illegal <i>per se</i>” under either EU law or Hungarian regulation. However, it is worth mentioning that the Hungarian regulation – in line with the European model – applies the distinction between agreements having a preventive, restrictive or distorting <i>object</i> or <i>effect</i>. Hardcore cartels are considered to be agreements having a preventive, restrictive or distorting object. While in theory in the case of these agreements only individual exemption is available, it is highly doubtful if a hardcore cartel could ever be exempted individually.</p> |
| <p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a</p> | <p>It is a general rule that participation in a hardcore cartel is considered to be an administrative infringement. However, under special circumstances, namely in public procurements or concession proceedings, cartel activity may qualify as a criminal offence punishable by up to 5 years of imprisonment as</p> |

² For the purposes of this template the notion of ‘per se’ covers both ‘per se’ and ‘by object’, as these terms are synonyms used in different jurisdictions.

| | |
|-----------------------|---|
| combination of these? | prescribed by Article 420 of the Criminal Code. |
|-----------------------|---|

3. Investigating institution(s)

| | |
|--|---|
| <p>A. Name of the agency, which investigates cartels:</p> | <p>It is only the Hungarian Competition Authority (in Hungarian: Gazdasági Versenyhivatal; <i>hereinafter: GVH or Authority</i>) which enforces the cartel prohibition. The GVH is an administrative authority having jurisdiction for the whole territory of Hungary. The Competition Act applies to the market conduct of undertakings carried out in the territory of Hungary. The market conduct of undertakings carried out abroad may also fall under the scope of the Competition Act, if the effect of such conduct may manifest itself within Hungary.</p> <p>As it was mentioned in section 2/E., in case there is an alleged violation of competition law in public procurement or concession proceedings, the competent criminal authorities are entitled to proceed as well.</p> |
| <p>B. Contact details of the agency:</p> | <ul style="list-style-type: none"> • Hungarian Competition Authority Address: Alkotmány utca 5, H-1054 Budapest Postal address: PO Box 211, Budapest 62, H-1391 Telephone: +36-1 472-8900 General contact e-mail address: ugyfelszolgalat@gvh.hu Website address: http://www.gvh.hu/ (available languages: Hungarian, English) • International affairs contact e-mail address: Mr József SÁRAI, sarai.jozsef@gvh.hu |
| <p>C. Information point for potential complainants:</p> | <ul style="list-style-type: none"> • Customer Service Section (in Hungarian: <i>Ügyfélszolgálat</i>) Address: Alkotmány utca 5, H-1054 Budapest Postal address: PO Box 211, Budapest 62, H-1391 Telephone: +36-1 472-8900 E-mail address: ugyfelszolgalat@gvh.hu |
| <p>D. Contact point where complaints can be lodged:</p> | <p>Any person may submit a <i>formal or informal complaint</i> to the GVH as prescribed by Article 43/G-43/H of the Competition Act. Both of them can be submitted free of charge. Upon the request of a person submitting a formal or an informal complaint, the GVH will not reveal the identity of the complainant to the undertakings concerned. The person who submits the informal or formal complaint does not become a party to the proceeding; however, in case the GVH terminates the proceeding initiated due to the informal or formal complaint, the person shall be informed about the termination. Both the formal and the informal complaint can be submitted only in Hungarian language.</p> <p>A <i>formal complaint</i> may be lodged by duly completing the form issued by the GVH. This form can be downloaded from the website of the GVH as well (available only in Hungarian):</p> <p>http://www.gvh.hu/fogyasztoknak/hogyan_fordulhat_a_gvh_ho</p> |

| | |
|--|---|
| | <p>z/bejelentesi_urlapok</p> <p>The form must contain all the relevant facts needed for the assessment of the formal complaint, including, in particular, the data necessary for the identification of the complainant and the undertaking(s) complained of, the identification of the alleged infringement, a description of the particular conduct through which the alleged infringement was committed, essential information required to define the relevant market, an indication of the duration of the alleged infringement, as well as facts and evidence supporting the statements made concerning the alleged infringement.</p> <p>An <i>informal complaint</i> can be submitted without any formal requirements, it can be a report or letter written by hand or an email message, etc. It must be noted, however, that if no competition supervision proceeding is launched on the basis of the informal complaint then the complainant may not seek a legal remedy.</p> <ul style="list-style-type: none"> • The Consumer Service Section of the GVH has the following opening hours: Mon-Thu: 8:30-16:30, Fri: 8:30-13:30 • Informal/formal complaints can be sent to the following address: Address: Alkotmány utca 5, H-1054 Budapest, Postal address: PO Box 211, Budapest 62, H-1391 E-mail address: bejelentes@gvh.hu |
| <p>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</p> | <p>In the event that dawn raids are necessary (for instance coercive measures), assistance can be obtained from the police as prescribed by Article 65/A of the Competition Act. GVH case handlers may request police assistance when carrying out an unannounced targeted inspection, in the course of which the police is entitled to take measures and use force in a manner permissible in accordance with Act XXXIV of 1994 on the Police.</p> |

4. Decision-making institution(s)³ [to be filled in only if this is different from the investigating agency]

| | |
|---|--|
| <p>A. Name of the agency making decisions in cartel cases:</p> | <p>The Competition Council is the independent decision making body within the GVH (in Hungarian: <i>Versenytanács</i>)</p> |
| <p>B. Contact details of the agency:</p> | <p>Please see the answer provided for question No 3/B.</p> |
| <p>C. Contact point for questions and</p> | <p>Please see the answer provided for question No 3/B.</p> |

³ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

| | |
|--|--|
| consultations: | |
| D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct. | The GVH is empowered to proceed <i>ex officio</i> in competition supervision proceedings relating to (i) consumer protection cases, and (ii) classic antitrust cases. In the investigative phase of the cases belonging to category (i), only the so-called <i>Consumer Protection Section of the GVH</i> proceeds. The (ii) type cases, especially cartel cases, are detected by the so-called <i>Cartel Detection Section of the GVH</i> and the investigation of the cases is carried out by a special group formed within the <i>Antitrust Section</i> , the so-called <i>Cartel Investigation Team</i> . The investigative phase of both types of cases [(i) and (ii)] concludes with a so-called investigation report which is delivered directly to the Competition Council. The Competition Council may consider the investigation report in the course of its own work while delivering the so-called statement of objection (under the Hungarian terminology: <i>preliminary position</i>) but it shall be not bound by it. |
| E. What is the role of the investigating agency if cartel cases belong under criminal proceedings? | The GVH needs to actively cooperate with the criminal authorities (i.e. police, public prosecutor) in charge. |

5. Handling complaints and initiation of proceedings

| | |
|---|---|
| A. Basis for initiating investigations in cartel cases: | <p>Based on the Competition Act, cartel cases are initiated <i>ex officio</i>. Even those cases are considered to be initiated <i>ex officio</i> which are detected due to either a leniency application or information obtained from an informant in return for a reward. However, it must be stated that the number of leniency applications is relatively modest but increasing and since the introduction of the so-called informant reward (regulated in Article 79/A of the Competition Act under the title '<i>Reward for the supply of Indispensable Evidence</i>') in 2010 only two informants have signed up for a reward.</p> <p>Case numbers in which the informant reward resulted in substantial information for the initiation of the competition supervision proceedings: <i>No Vj-43/2011, No Vj-29/2011.</i></p> <p>English press releases about the cases are available at: http://www.gvh.hu/en/press_room/press_releases/press_releases_2014/en_gvh_has_imposed_fines_of_over_huf_1_billion.html http://www.gvh.hu/en/press_room/press_releases/press_releases_2014/2_2_billion_fine_on_several_ready_mix_concrete_man.html</p> |
| B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? | Formal complaints are required to be submitted on a form available both on the website of the GVH and at the premises of the Customer Service Section. |

| | |
|--|--|
| <p>C. Legal requirements for lodging a complaint against a cartel:</p> | <p>No legal requirements for lodging a formal or informal complaint are set out in the Competition Act; neither a legitimate interest, nor any special standing is needed.</p> |
| <p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</p> | <p>Case handlers must consider every formal complaint and informal complaint submitted to the GVH. Repeated complaints (informal complaints) having the same content as a complaint previously submitted by the same complainant (by the same person or by anonymous persons) do not need to be considered. It must be noted that in case the GVH refuses to launch a competition supervision proceeding based on a formal complaint, the complainant may seek a legal remedy against the decision of the GVH. Complainants submitting informal complaints are not entitled to seek a legal remedy.</p> |
| <p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p> | <p>Please see the answer provided for question No 5/D.</p> |
| <p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p> | <p>Pursuant to Article 43/H of the Competition Act, <i>within two months</i> from the day following the receipt of the formal complaint, the case handler shall</p> <p><i>a) order the opening of an investigation or</i></p> <p><i>b) establish that, based on the data contained in the formal complaint or obtained in the proceeding conducted on the basis of the formal complaint, the conditions for the opening of a competition supervision proceeding are not fulfilled; or</i></p> <p><i>c) terminate the proceeding if, regarding the subject matter of the formal complaint,</i></p> <p><i>ca) a competition supervision proceeding is already in progress against the organisation or person to whom the complaint pertains, or</i></p> <p><i>cb) the GVH has already considered the subject matter of the formal complaint on the basis of the same facts and under the same legal regulations; or</i></p> <p><i>d) for lack of jurisdiction, refer the case to another authority with appropriate jurisdiction and competence.</i></p> <p>Based on Article 43/I (5) of the Competition Act, (i) if the GVH decides to open a competition supervision proceeding in relation to the conduct complained about in the informal complaint or (ii) a competition supervision proceeding is in progress or has already been closed at the time of receipt of the informal complaint, the person making the informal complaint shall be notified to that effect. If no further action is required in connection with the informal complaint, the complainant need not be specifically informed thereof, and in such an event the proceeding relating to the informal complaint shall be considered closed after one year from the date of receipt of the complaint.</p> |

6. Leniency policy⁴

A. What is the official name of your leniency policy (if any)?

Articles 78/A - 78/D of the Competition Act contain the leniency policy of the GVH.

There are two main sources of law on this subject:

- *Leniency programme of the GVH*, regulated by the Competition Act and
- *Explanatory notes on the applicability of the leniency policy* issued by the President of the GVH in order to give practical guidance about the applicability of the statutory norms.

This document is available on the homepage of the GVH in English at:

http://www.gvh.hu/en/for_professional_users/leniency_policy/5863_en_explanatory_notes_of_the_president_of_the_hungarian_competition_authority_on_the_application_of_the_rules_concerning_leniency_pursuant_to_articles_78a_and_78b_of_the_pura_2009.html

In accordance with the leniency regulation in force in Hungary, a leniency application may take three main forms. The leniency application is either filed as (1) a *full application*, or (2) *non-final application (also known as marker) aiming at full immunity from the fine*, or (3) a *summary application marker*.

The GVH accepts *summary applications* in English; however the English version should be translated into Hungarian at a later stage and the translation fee should be paid by the leniency applicant. Moreover, Article 78/B (4) of the Competition Act prescribes that undertakings submitting the summary application marker may file their application either *in English, French or German*. It is only possible to file a leniency application in one of the above mentioned three foreign languages in cases initiated after 1 July 2014. The leniency programme is in line with the revised ECN Model Leniency Programme.

[The revised programme for ECN member National Competition Authorities is available in the following page:
http://ec.europa.eu/competition/ecn/mlp_revised_2012_en.pdf

The document – as revised in November 2012 – explicitly describes each of the forms of leniency application.]

The most recent press release concerning the Hungarian leniency policy to detect cartels is available in English at:

http://www.gvh.hu/en/press_room/press_releases/

[press_releases_2015/leniency_policy_to_detect_cartels.html](http://www.gvh.hu/en/press_room/press_releases/press_releases_2015/leniency_policy_to_detect_cartels.html)

The GVH had developed a new *anonymous contact system* (so –

⁴ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

| | |
|---|---|
| | <p>called cartel chat) for replying to questions about cartels. The only other system of this kind that exists is that of the German Bundeskartellamt. More information about the contact system is available at: (only in Hungarian).</p> <p>https://www.gvh.hu/kartellchat/kcfaq</p> <p>http://kartell.gvh.hu/</p> |
| <p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p> | <p>Yes.</p> <p>Full leniency is awarded to the first undertaking that provides the GVH with relevant information about the alleged infringing practice and which fully cooperates with the GVH throughout the whole competition supervision proceedings.</p> <p>An undertaking that participates in a cartel does not pay a fine if it is the first to submit a leniency request and to provide evidence to the GVH that enables the GVH to:</p> <p>a) obtain a judicial authorisation in advance to conduct dawn raids in connection with the infringement, provided that the GVH did not, at the time of the application, already have sufficient information giving grounds for dawn raids or had not already carried out such investigative measures (<i>application type 'A'</i>); or</p> <p>b) prove the infringement, provided that it did not, at the time of the application, already have sufficient evidence to prove the infringement and none of the undertakings meet the conditions set out in point a) (<i>application type 'B'</i>).</p> <p>Partial leniency is awarded to the undertaking(s) that is second or subsequent in the row to provide the GVH with information about the conduct that the GVH was not aware of before and which fully cooperates with the GVH in the course of the whole proceedings.</p> <p>Another situation where a fine may be reduced is if the undertaking provides evidence (relating to facts in connection with the infringement) that the GVH previously had no knowledge of and which is of direct importance to the circumstances to be taken into account when determining the amount of the fine. In such case, the GVH shall not increase this undertaking's fine for providing the aggravating evidence.</p> <p>The percentage of the reduction in the amount of the fine that may be given to the first undertaking is 30-50%, for the second undertaking in the row 20-30%, and for the third or subsequent undertakings up to 20%.</p> |
| <p>C. Who is eligible for full leniency?</p> | <p>Full leniency can only be granted to the undertaking, which (1) is <i>the first to submit a leniency application</i> and (2) <i>fulfils the conditions set out in the Competition Act</i>.</p> |
| <p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the</p> | <p>Yes, in order for full leniency to be granted the GVH must not have sufficient information about the cartel activity.</p> <p>As a general rule, only the first undertaking to submit a leniency application may be rewarded with full leniency if it submits its application before a competition supervision proceeding has been launched. However, (while uncommon) it is also possible that there is an ongoing competition supervision proceeding but no undertaking has yet filed a leniency application. In such a case, it is still possible for an undertaking to file a leniency application and to be awarded with full immunity from the fine that may be imposed.</p> |

| | |
|--|---|
| <p>date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p> | <p>As for the importance of timing: the ranking of the applications is based on the date when the evidence deemed to be “considerably more valuable” is supplied. Furthermore, the fine may be reduced upon an application submitted on the day immediately preceding the date of service of the preliminary position or the report of the case handler, or the starting date for the access to the files of any of the parties, whichever occurs earlier, only if the undertaking presents prima facie evidence relating to facts or circumstances that have a <i>substantial impact on the assessment</i> of the infringement which was not previously known to the GVH.</p> |
| <p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p> | <p>The leniency policy is designed to exclusively award undertakings. Hence, individuals cannot be beneficiaries of the leniency programme.</p> <p>It has to be clearly stressed that it is not possible for several independent undertakings together, or for one undertaking on behalf of other independent undertakings, to apply for immunity from, or the reduction of, a fine. This restriction does not, however, prevent members of a group of undertakings that participated in the infringement from applying for immunity from fines.</p> |
| <p>F. What are the conditions of availability of full leniency:</p> | <p>The undertaking that files the leniency application shall</p> <p><i>(i) reveal the infringement and</i> <i>(ii) share information about its own participation in that particular infringement. Besides the aforementioned two conditions it is also important that</i> <i>(iii) the GVH shall have no knowledge of the infringement prior to the leniency application or</i> <i>(iv) the GVH shall not have such sufficient information about the infringement that would enable the Authority to file a claim for an order to conduct a dawn raid.</i></p> <p>It is also important that the infringement must qualify as a cartel, i.e. fixing of prices, allocation of markets, etc.</p> <p>The Competition Act only requires the applicant to acknowledge the above conduct and does not expressly require the applicant to acknowledge its liability. Whether the acknowledgment of liability is a prerequisite of leniency is an open question, which has not yet been ruled upon by the Hungarian courts.</p> <p>It is not a precondition of a successful leniency application that the applicant undertakes to indemnify third parties. To the contrary, Article 88/D of the Competition Act enables the applicant which has received immunity from fines to reject the payment of damages as long as such damages may be recovered from the other participants in the infringement.</p> <p>For the conditions of full leniency, please see the answer provided for question No 6/D.</p> |
| <p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p> | <p>Partial leniency can be provided to the undertaking that is not the first to submit an application for immunity but (i) still files an application and (ii) the evidence that the undertaking supplies is accepted as being considerably more valuable than any proof that the GVH has in its possession at the time the evidence is provided.</p> |
| <p>H. Obligations for the beneficiary after the leniency application has been accepted:</p> | <p>In order to obtain immunity from fines, four conditions must be fulfilled:</p> <p><i>(i) The undertaking (i.e. leniency applicant) must cease any involvement in the infringement immediately following its application.</i></p> |

| | |
|--|---|
| | <p>(However, if the GVH believes that the undertaking's continued involvement in the infringement is necessary to preserve the integrity of the dawn raids, in some exceptional cases the GVH may allow the continuance of the undertaking's involvement, to the extent, in the nature, and until the time limit specified in its order. The GVH takes such measures exclusively to preserve the integrity of the targeted inspections; the undertaking cannot be obliged to continue to take part in the infringement in order to collect any further evidence that is needed.)</p> <p><i>(ii) The leniency applicant must cooperate genuinely, fully and on a continuous basis with the GVH in good faith until the competition supervision proceeding is concluded.</i></p> <p><i>(iii) The undertaking must keep confidential the fact that it filed a request to obtain immunity from fines and the contents of the evidence provided and it is prohibited to make these accessible to third parties (with the exception of similar requests filed with other NCAs) without the GVH's express consent.</i></p> <p><i>(iv) An undertaking that undertook steps to coerce other undertakings to participate in the infringement shall not be eligible for immunity from fines.</i></p> <p>From the above listed four conditions, the first three must also be fulfilled in order to obtain a fine reduction or to avoid the higher fine after providing evidence in respect of an aggravating circumstance. Hence, an undertaking that took actions to coerce other undertakings to participate in the infringement is not excluded from benefiting from the fine reduction.</p> <p>In the case of a breach of the above conditions, the undertaking risks losing its immunity or a reduction in the amount of the fine.</p> |
| <p>I. Are there formal requirements to make a leniency application?</p> | <p>In principle there are no formal requirements, meaning that the leniency application can be made both in an oral or written way. Only substantial requirements as to what the leniency application shall contain on the merits of the alleged infringement are set out.</p> <p><i>As of 1 July 2014 it is not required by law to use the form for lodging a leniency application. The most essential requirements of leniency applications are set out in Article 78/B of the Competition Act.</i></p> <p>The undertaking may present its oral application on the date agreed in advance with the GVH case handler. The case handler records it in writing, makes an audio recording of the oral application, or prepares a memorandum thereof. Audio recordings must subsequently be transcribed into a memorandum, which must be signed by the applicant. What is more, according to the Explanatory Note on Leniency, the leniency applicant may request the GVH to communicate its decision on leniency orally.</p> |
| <p>J. Are there distinct procedural steps within the leniency program?</p> | <p>No.</p> |
| <p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p> | <p>Depending on the type of application ("A" or "B") in question, according to Article 78/C (5):</p> <ul style="list-style-type: none"> - <i>a full leniency application shall be assessed without delay, while</i> - <i>a partial leniency application resulting in the reduction of the fine shall be assessed at the latest when the statement of objection is sent to the undertaking(s). It is the proceeding Competition Council that issues the order on the eligibility of</i> |

| | |
|---|---|
| | <p><i>the leniency application.</i></p> <p>The proceeding Competition Council decides on the application on the basis of the proposal of the case handler. While the Competition Act provides no deadline, based on the established practice, the proceeding Competition Council should adopt its order immediately, taking only the time necessary for carrying out its assessment.</p> |
| <p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p> | <p>Please see the answer provided for question No 6/K.</p> |
| <p>M. Do you have a marker system? If yes, please describe it.</p> | <p>Yes.</p> <p>Immunity from the fine may be granted if at the time of the submission of the relevant application, the applicant is unable to submit to the GVH all the evidence pertaining to the infringement available. However, the applicant must undertake to supplement the application within a time limit, provided that it surrenders all the evidence substantiating its claim for immunity from the fine.</p> <p>However, only a complete application may be submitted when filing a <i>type 'B' application</i> for immunity from fines or when applying for a reduced fine.</p> |
| <p>N. Does the system provide for any extra credit⁵ for disclosing additional violations?</p> | <p>No.</p> |
| <p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p> | <p>The leniency application itself is deemed as restricted access data meaning that only other undertakings involved in the competition supervision proceeding in which the leniency is used may be informed about the identity of the beneficiary.</p> |
| <p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p> | <p>No, however if the Competition Council rejects a partial leniency application, the application can be revoked by the undertaking within 8 days.</p> |
| <p>Q. Contact point where a leniency application can be lodged:</p> | <p>Please see the answers provided for questions No 3/B and 3/C.</p> <p>An English summary about the leniency policy of the GVH is available at:</p> <p>http://www.gvh.hu/en/for_professional_users/leniency_policy</p> |
| <p>R. Does the policy address</p> | <p>Yes, there are two main circumstances in which a leniency</p> |

⁵ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

| | |
|--|--|
| <p>the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p> | <p>application may be revoked:</p> <ul style="list-style-type: none"> - <i>prior to its assessment by the Competition Council or</i> - <i>in case the Competition Council rejects the application. This latter case is only possible for full leniency applications.</i> <p>Prior to the assessment of an application, both full and partial leniency applications may be revoked.</p> <p>In case the Competition Council refuses to accept a leniency application, only a full, firstly submitted leniency application may be revoked.</p> <p>In case a leniency application is revoked, the GVH shall return the evidence to the undertaking revoking its application.</p> |
| <p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p> | <p>No.</p> |
| <p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</p> | <p>The law amending the Competition Act (<i>in force as of July 1, 2014</i>), brought a comprehensive change in respect of the disclosure of evidence to third parties.</p> <p>The new rules clarify that third parties cannot access leniency corporate statements. These documents shall be treated similarly to documents qualifying as protected data (including all kinds of secrets, among others business and private secrets). This means that they may only be accessed by other parties to the same procedure (i.e. alleged participants of the cartel) if this is required in order for them to be able to exercise their statutory rights in the procedure, for instance their right to a defence.</p> <p>In addition to the above, there are strict rules which control the use of such documents by the other parties to the procedure.</p> <p>According to such rules, as per the applicant's request, the GVH may restrict the access to corporate statements so that such documents may not be photocopied or photographed and only notes may be taken. Furthermore, the parties are allowed to use such documents only for the purpose of that particular procedure and the related judicial review procedure (review of the decision of the GVH on the merits of the case).</p> <p>As a general rule, access may be permitted only after the preliminary position of the GVH or the investigation report has been delivered to the party.</p> <p>As concerns further documents in the files of the GVH, as a general rule third parties may request to have access to them only after the final and binding closure of the competition supervision proceeding. Access prior to this may only be requested if this is required in order to enforce statutory rights or to perform statutory obligations or obligations based on the decision of an authority.</p> <p>However, in line with Article 55(4) of the Competition Act access to documents may be refused if disclosure of such documents would jeopardise the legitimate operation of the GVH, the discharge of its duties and competences without any undue external influence, the efficiency of its actions in the public interest against practices prohibited in Article 11 or 21 of the Competition Act or in Article 101 or 102 of the TFEU, in particular the application of leniency.</p> |

| | |
|--|---|
| | <p>Such further documents or parts of them may qualify as protected data, e.g. business secrets, if they fulfil the statutory conditions and if the party whom the business secret belongs to submits a justified request to the GVH to qualify such documents as a business secret. In the request, a detailed and specific justification must be included in respect of all data that, according to the applicant, qualifies as a business secret. As mentioned above, data or documents qualifying as a business secret cannot be accessed by third parties.</p> <p>However, if access to documents is requested, the GVH may review whether documents that already qualify as a business secret still comply with the relevant criteria and, if not, the GVH will decide on the termination of the qualification of the document as a business secret and thus allow access to such a document.</p> <p>However, the beneficiary of the business secret may seek a legal remedy against this decision before the court and third parties cannot access the document until a final and binding decision is made on the subject, or until the deadline to file the request for such a legal remedy has elapsed without its filing.</p> |
|--|---|

7. Settlement

| | |
|---|---|
| <p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability!</p> | <p>Yes. The amendment to the Competition Act effective from 01 July 2014 introduced a settlement procedure into Hungarian competition law.</p> <p>The relevant rules of the settlement are prescribed in Article 73/A of the Competition Act.</p> <p>Notice No 3/2015 of the President of GVH and the President of the Competition Council of the GVH on Settlement entered into force on 02 November, 2015.</p> <p>The Notice on Settlement is available in Hungarian at:</p> <p>http://www.gvh.hu/data/cms1032521/jogi_hatter_kozlemenyek_egye_zsegi_kiserlet_2015_11_02.pdf</p> |
| <p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> | <p>All types of restrictive agreements are eligible for settlement. In line with Article 73/A of the Competition Act, if in proceedings opened ex officio pursuant to Article 11 or 21 of this Act or Article 101 or 102 of the TFEU, based on the report completing the investigation, having regard to the discovered facts of the case and the supporting evidence the Competition Council proceeding in the case deems it appropriate for the swift and effective conclusion of the proceeding, the Competition Council may invite the party to indicate in writing whether it is interested in engaging in the settlement procedure.</p> |
| <p>C. What is the reward of the settlement for the parties?</p> | <p>As a reward, the Competition Council proceeding <i>shall reduce the amount of the fine to be imposed by 10 %</i>, with respect to an undertaking that made a statement of settlement.</p> <p>The amount of reduction does not depend on the number of the parties taking part in the proceeding.</p> |

| | |
|---|---|
| <p>D. May a reduction for settling be cumulated with a leniency reward?</p> | <p>Yes.</p> <p>The 10 % is the maximum amount of the reduction, as the leniency cannot be compromised by the settlement. Therefore, it is considered that where leniency is applied, settlement also occurs (typically in case of the second or third undertaking in the row).</p> |
| <p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p> | <p>No legal criteria determining the cases which are suitable for settlement are set out in the Competition Act.</p> <p>The Competition Council may decide if the proceeding, having regard to the established facts of the case and all the supporting evidence, should be initiated in order to facilitate the swift and effective conclusion of the proceeding.</p> <p>The decision making body of the GVH may propose to the undertaking to file a settlement declaration. The Competition Council may do so once the investigation report has been prepared but the statement of objections has not been finalised. This also means that the undertaking which makes a settlement declaration is not obliged to assist the GVH in investigating its own or other parties' misconduct. If the Competition Council makes such a proposal, the undertaking has to respond within the deadline determined by the Competition Council, which cannot be more than 15 days pursuant to Article 73/A (2) of the Competition Act.</p> |
| <p>F. Describe briefly the system!</p> | <p>Once the GVH has established the relevant facts, it has the right to offer the party the opportunity to engage in settlement discussions. To file a settlement submission, the undertaking under investigation has to undertake not to challenge the case, thereby waiving its right to seek any legal remedy against the GVH's decision. Hence, the settlement decision immediately becomes binding and final. In return, the GVH grants a settlement reduction of 10% from the fine. If common ground is not found, the proceedings shall be resumed in accordance with the general rules.</p> <p>The undertaking may revoke its declaration admitting to a breach of law during the settlement procedure only until the expiry of the deadline open to seek a legal remedy against the GVH's decision, and only if the GVH's preliminary position and decision is materially different from the content of the undertaking's declaration, including the level of the proposed fine. If the undertaking's declaration is revoked, it cannot be used as evidence.</p> <p>In damages action cases the decisions of the GVH are binding on the national courts.</p> <p>If the undertaking makes a settlement declaration, it has to indicate to the GVH what it considers as the acceptable maximum amount of the fines. If the GVH imposes a fine in excess of this amount or if the statement of objections or the final decision significantly differs from the settlement declaration, the settlement declaration may be withdrawn. In such case, the undertaking's previous acknowledgement of the infringement may not be used as evidence.</p> |
| <p>F. Describe the procedural efficiencies of your settlement system!</p> | <p>The above described settlement system enables proceedings to be swiftly and effectively terminated.</p> <p>The GVH is convinced that the settlement procedure contributes to a more efficient use of resources. The administrative procedure is less</p> |

| | |
|---|--|
| | lengthy and in case of settlement there is no court review due to the waiver made by the parties. The GVH believes that this is an effective method of influencing the conduct of undertakings thereby orienting other market players. |
| G. Does a settlement necessitate that the parties acknowledge their liability for the violation? | Yes. Article 73/A (3) a) of the Competition Act declares that the statement of settlement shall also contain the statement of the party explicitly admitting the undertaking's participation in the infringement. |
| H. Is there a possibility for settled parties to appeal a settlement decision at court? | No. Article 73/A (3) f) of the Competition Act declares that the statement of settlement shall contain the statement of the party containing a waiver of the party's right to seek a legal remedy against the decision. |

8. Commitment

| | |
|--|---|
| A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability! | Yes. The Hungarian competition regime allows the possibility of commitment, one of the main purposes of which is the closure of a competition proceeding without the declaration of an infringement. The relevant rules of commitment are set out in Article 75 of the Competition Act. |
| B. Which types of restrictive agreements are eligible for commitment? Are there commitments which are excluded from the commitment possibility? | The GVH has the right to accept commitments from parties if the Authority considers that compliance with the law and the effective safeguarding of the public interest can be ensured by the commitment in the case of restrictive agreements of any kind. Those commitments are excluded from the commitment possibility, which are not suitable to (i) bring the party's conduct in a specified way into line with the applicable legal provisions and (ii) effectively protect the public interest. |
| C. List the criteria (if there are any) determining the cases which are suitable for commitment. | No list of criteria determining the cases which are suitable for commitment is provided for in the Competition Act. Based on the established practice, however, commitments are not likely to be accepted if (i) in the past the GVH has already accepted a commitment from the same party in a case with the same or similar infringement; or (ii) if the party did not perform its commitment which was accepted in the past or (iii) if the existing legislation or legal practice provides clear guidance on the conduct that is subject to the proceeding. |
| D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural] | Although Article 75 (1) of the Competition Act refers to behavioural commitments, this does not exclude the availability of structural commitments. Furthermore, Article 75 also declares that if the party has in the meantime terminated the conduct investigated, a commitment may be undertaken to comply with transparent and verifiable behavioural rules which assure that such conduct is not |

| | |
|---|--|
| | repeated. |
| <p>E. Describe briefly the system!</p> | <p>In the course of a competition supervision proceeding, a party may decide to offer a commitment; however, if the GVH foresees the possibility of commitment, it may heighten the undertaking's awareness of it and initiate negotiations on the contents of the commitment. If the commitment can bring in a specified way the party's conduct into line with the applicable legal provisions and if public interest can be effectively protected in this manner, the Competition Council may – by terminating the proceeding –, in its decision oblige the party to abide by such commitments without establishing the existence or the absence of an infringement. In this context, please also see the answer provided for question No 8/D.</p> <p>Before adopting the decision the Competition Council may, where deemed necessary, initiate negotiations with interested parties by way of posting on its website the proposed commitment, together with a notice requesting the interested parties to submit their comments, with a view to obtaining the views of undertakings operating in the relevant market and of other persons affected by the case.</p> |
| <p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p> | <p>No. Commitments become binding upon the GVH's decision to accept the undertaking's commitment proposal. This means that the undertaking which proposes commitments is not obliged to acknowledge its liability (<i>in accordance with Section 23 of Guidelines No 3/2012 of the President of the Hungarian Competition Authority and the President of the Competition Council of the Hungarian Competition Authority on commitments in procedures relating to unfair commercial practices</i>), or to assist the GVH in investigating its own or other parties' misconduct beyond the obligation to act in good faith in the course of the procedure and not to mislead the GVH.</p> <p>Moreover, if the GVH accepts the commitment, the case is terminated so that the GVH's order does not declare the liability of the undertaking and the infringement (and it does not impose any fine) but makes the commitment binding for the party to the proceedings.</p> <p>Should the GVH reject the commitments, it may impose a fine; however, there is no legal basis for conducting a negotiation of the amount of the fine with the undertaking.</p> <p>The statutory preconditions of commitment do not encompass damages to third parties. However, an undertaking may include in its commitment proposal that it provides some sort of indemnification to third parties. If the GVH accepts such a proposal, this will be binding on the undertaking concerned.</p> |
| <p>J. Describe how your authority monitors the parties' compliance to the commitments.</p> | <p>According to Article 77 of the Competition Act, the GVH shall conduct a follow-up investigation ex officio to verify compliance with the enforceable decision of the Competition Council in terms of the fulfilment of a commitment. If the commitment has not been fulfilled, the GVH may impose a fine on the undertaking or withdraw its decision. In addition, under certain circumstances, the GVH may also amend its transactional decisions.</p> <p>In the course of a post-investigation the provisions governing competition supervision proceedings shall apply mutatis mutandis. This means that a party's compliance with the commitments it has given will be monitored using the investigative tools employed in</p> |

| | |
|--|---|
| | competition supervision proceedings. For applicable rules thereof please see the answer for question No 9/A. |
| K. Is there a possibility for parties to appeal a commitment decision at court? | Yes. According to Article 83 (1) of the Competition Act, it is possible to seek judicial review of the decisions adopted in competition supervision proceedings. |

9. Investigative powers of the enforcing institution(s)⁶

| | |
|--|---|
| A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁷, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant. | <p>Article 64-65/C of the Competition Act describes the scope of the obligation of the GVH relating to the clarification of the facts of the case. Such obligation also derives from the general rules set out in Article 50 (1) of the Administrative Procedures Act. The Administrative Proceedings Act encompasses the principle of the free deliberation of evidence as the general rule, which means that the proceeding authority, in this case the GVH, can freely assess the evidence and that the evidence shall have no previously determined weight attached to it. Evidence shall, in particular, mean the client's statement, a document, a testimony, a memorandum of inspection, expert opinion, a memorandum drawn up in a regulatory inspection and physical evidence. Added to that list is the tool of the so-called request for information, the so-called dawn raid, electronic/computer searches; furthermore, the GVH has the right to make forensic images of electronic devices containing information.</p> <p>Article 65/A of the Competition Act lays down the rules for unannounced inspections without prior advanced notice (hereinafter: <i>dawn raids</i>). Accordingly, in the course of an investigation launched ex officio under Article 11 or 21 of the Competition Act or under Article 101 or 102 of the TFEU, the case handler shall be empowered <i>to search any premises, vehicle or data medium with a view to finding means of evidence connected to the infringement investigated, and to enter such premises under probable cause under his own authority, without the consent of the owner (tenant) or any other person on the premises, and to open any sealed-off area, building or premises for this purpose.</i> The GVH may request <i>police assistance</i> where deemed necessary for the successful and safe conduction of a dawn raid, in the course of which the police is entitled to take measures and use force in a manner permissible in accordance with Act XXXIV of 1994 on the Police.</p> <p>Pursuant to Article 65/A (3) an unannounced inspection may only be carried out if a court warrant, as the legal basis, has previously been obtained. The written application of the GVH for such a warrant shall be considered in a non-litigious procedure by the Budapest-Capital Administrative and Labour Court (<i>in Hungarian: Fővárosi Közigazgatási- és Munkaügyi Bíróság, hereinafter: Court</i>) within 72</p> |
|--|---|

⁶ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

⁷ "Searches/raids" means all types of search, raid or inspection measures.

| | |
|--|--|
| | <p>hours of receipt of the application. No judicial review may be sought or review procedure may be initiated against the court order. However, the legality of the inspection may be assessed in an appeal brought against the final prohibition decision. The GVH may carry out inspections within 3 months of the issuance of the court warrant. Within this period, the warrant can be used several times.</p> <p>The dawn raids shall be conducted on working days between 8:00 and 20:00 hours, unless another time is necessary to assure the success thereof.</p> <p>The Court shall authorise the site inspection requested if the GVH is able to substantiate probable cause that any other investigative measure is unlikely to produce the required results, and if there is reason to believe that the source of information - relating to the infringement investigated - indicated is in the location for which the court warrant is requested and it is presumed that this information will not be surrendered voluntarily or that it would be destroyed. If the site inspection is only partially authorised, the Court shall specify the type of procedure and the person who is the subject of such procedure.</p> <p>However, according to existing practice, the Court will only issue the warrant if it is highly probable that another type of investigative measure would definitely not lead to success, if the sought information is more than likely to be found on the site and if there are reasons for believing that the required information will not be voluntarily handed over to the GVH or that it will be destroyed. Pursuant to the established case law and practice, the conditions for the granting of the authorisation are as follows: the GVH must provide (i) grounds for the inspection to be conducted in its written application for such a warrant as well as (ii) relevant documentation supporting the necessity of the inspection (Please <i>See Judgment of the Supreme Court of Hungary No Kf. 27.399/2010/6</i>). Hence, the GVH must provide the Court with the evidence of the suspected infringement in its possession substantiating its claim, specifying the alleged infringement of competition law.</p> |
| <p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p> | <p>The possibility of inspecting non-business premises is envisaged in the Competition Act. The term “private locations” encompasses rooms used for private purposes, including vehicles and other premises as well as data storage, can be searched, when they are in the use of any executive official or former executive official, employee or former employee, agent or former agent of the undertaking under investigation, or of any other person who exercises or exercised control as a matter of fact. Therefore, case handlers of the GVH are empowered to inspect non-business premises, having reasonable grounds or suspicion that evidence will be found on the non-business premise in question. Such inspections require the advanced authorisation of the Court. Please see the answer provided for question No 7/A.</p> |
| <p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances</p> | <p>Such cases are regulated by Article 65/A (9)-(10) of the Competition Act.</p> <p>In the course of carrying out the dawn raid, the case handler shall be empowered to make copies of or seize any means of evidence indicative of an infringement of Article 11 or 21 of the Competition Act or Article 101 or 102 of the TFEU, even if such evidence is unrelated to the subject of the investigation and <i>is not covered by the court warrant</i>. In the case of such incidental evidence <i>the court</i></p> |

| | |
|--|---|
| (e.g. is a post-search court warrant needed)? | <p><i>warrant shall be obtained subsequently.</i> In the absence of a subsequent (i.e. post-search) court warrant the means of evidence discovered shall be inadmissible in the competition supervision proceeding.</p> <p><i>A request for a subsequent court order shall be submitted at the latest within sixty days (i) from the time the site inspection was carried out; or (ii) from the time the investigation working dossier was prepared, if a seizure copy is made on the means of evidence during the site inspection; or (iii) from the time the GVH gained access to documents if any procedural step is carried out or if the procedure is carried out relating to certain means of evidence.</i></p> |
| D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them. | <p>No, however an undertaking may make a claim for an out-of-court proceeding if it believes that the case handler has wrongly assessed the nature of the information seized in the course of the dawn raid (especially important is the assessment of the information covered by legal professional privilege [LPP]).</p> |

10. Procedural rights of businesses / individuals

| | |
|--|---|
| <p>A. Key rights of defence in cartel cases:</p> <p>Please indicate the relevant legal provisions.</p> | <p>As a preliminary remark, it must be noted that rights of defence in cartel cases derive from a dual system of rights in the competition supervision proceeding. It means that certain rights derive from the Administrative Procedures Act which provides the basic framework of the competition supervision proceeding since it is considered to be a special type of administrative proceeding, while other – competition law specific – rights derive from the Competition Act itself.</p> <p>(I) RIGHTS VESTED IN UNDERTAKINGS UNDER COMPETITION SUPERVISION PROCEEDINGS (IN THE COMPETITION ACT)</p> <ul style="list-style-type: none"> • <i>right to make copies and notes in the course of the inspection of the documents of the proceeding (right to access to file)</i> • <i>on the basis of the protection of business secrets, right to ask for a limitation to be placed on the disclosure of documents provided by the undertaking towards third parties</i> • <i>right not to admit the alleged infringement</i> • <i>right of the parties to know the case against them (statement of objections)</i> • <i>right to lodge a complaint in the course of the proceedings</i> • <i>right to legal professional privilege</i> • <i>right to be heard</i> • <i>right to seek a legal remedy against the decisions (not the resolution on the merits of the case, but procedural decisions of the GVH) delivered in the course of the investigation and the proceeding before the Competition Council</i> • <i>right to request judicial review of the resolution of the Competition Council</i> |
|--|---|

| | |
|--|--|
| | <p>(II) BASIC RIGHTS IN ADMINISTRATIVE PROCEEDINGS (IN THE ADMINISTRATIVE PROCEDURES ACT)</p> <ul style="list-style-type: none"> • <i>right to fair proceedings</i> • <i>right for a decision to be adopted within the time limits prescribed by law</i> • <i>right for use of their native language during the course of proceedings</i> • <i>right to seek a legal remedy against administrative decisions</i> • <i>right to the inspection of the documents of the proceeding</i> • <i>right to be informed</i> • <i>right to choose the form of contact with the authority</i> • <i>right to a verbatim report if requested</i> • <i>right to have a proxy in the proceeding</i> • <i>right to initiate a presentation of evidence</i> • <i>right to demand that the authority fulfils its procedural obligations</i> • <i>right to be present during the interview of the witness and the expert except in case the interview is conducted with a witness under protection or the interview covers protected data</i> • <i>right to ask for an interpreter if necessary</i> • <i>right to be informed about the legal consequences of the proceeding</i> • <i>right to equal treatment</i> • <i>right to an impartial judge</i> • <i>ne bis in idem principle</i> • <i>principle of legitimate expectation and of good faith</i> |
| <p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p> | <p>Yes, the Competition Act provides for a complex system of protection for sensitive information. The first category is the so-called <i>restricted access data</i> defined in Article 43/B (2) of the Competition Act. The scope of the aforementioned notion encompasses - with the exception of information of public interest - secrets obtained in the course of professional activities and classified information protected by law (<i>collectively: privileged information</i>), as well as personal data and other information to which access is restricted by virtue of the Competition Act in the course of inspection of files.</p> <p>Added to the notion of restricted access data is the notion of <i>statutory secrets</i>, which is used in the Administrative Procedures Act in Article 172 <i>l</i>). Statutory secrets shall mean classified information, as well as trade, bank, insurance and securities secrets, fund secrets, payment secrets, tax secrets, customs secrets and private secrets.</p> <p>No differentiation shall be made depending on whether the information was provided on compulsory or voluntary grounds. In the course of competition supervision proceedings these major types of sensitive data shall be granted protection.</p> |

11. Limitation periods and deadlines

| | |
|--|---|
| <p>A. What is the limitation period (if any) from the</p> | <p>Article 67 (3) of the Competition Act declares that no competition supervision proceedings may be launched - with the exception of</p> |
|--|---|

| | |
|--|--|
| <p>date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?</p> | <p>proceedings repeated due to legal remedy – <i>if a period of five years has elapsed from the time of any infringement</i> of the provisions of Chapters IV-VI of the Competition Act. Chapter IV-VI of the Competition Act covers agreements restricting competition, abuse of dominance and merger cases.</p> <p>Where the infringing conduct is continuous in nature, the time limit shall begin at the time when the conduct is terminated; where the infringing conduct is committed through a failure to terminate a particular situation or state, the time limit shall not begin as long as such situation or state prevails.</p> |
| <p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</p> | <p>The Competition Act places great emphasis on the importance of the (i) thorough investigation of cases and (ii) the conclusion thereof within a reasonable time. Such principles also derive from the general rules of the Administrative Procedures Act.</p> <p>Article 63 (2) b) of the Competition Act prescribes that within six months from the day on which the investigation was ordered, if the proceeding was started pursuant to Article 11 or 21 of the Competition Act, or Article 101 or 102 of the TFEU.</p> <p>According to Article 63 (5) b) the administrative time limit may be extended before it expires in justified cases by the President of the GVH, or by the Chair of the Competition Council during the proceedings of the Competition Council in the aforementioned proceedings <i>on two occasions, by up to six months each time</i>.</p> <p>The Competition Act also regulates those periods which shall not be counted when calculating the deadlines in the course of the initiated proceedings.</p> <p>Court practice is coherent on how to assess if the time limit set to conclude the competition supervision proceedings has been exceeded. The established practice shows that courts do not find it such a severe violation of law that might imply the unlawfulness of the resolution of the Competition Council. (See Judgment No Kf.IV. 27.929/1998/4 decision of the Curia (No Vj-147/1992 case in the registry of the GVH), and No 2.Kf. 27.463/2009/5 decision of the Budapest Metropolitan Court (No Vj-201/2005 case in the registry of the GVH).</p> |
| <p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</p> | <p>It is not possible to challenge the commencement of an investigation initiated by a case handler of the GVH. However, according to Article 82 of the Competition Act, a separate legal remedy may only be sought against the injunction made by the case handler or the Competition Council proceeding in the case in the course of the competition supervision proceeding where this is allowed by the Administrative Procedures Act or the Competition Act.</p> <p>It is also not possible for the undertakings to challenge the completion of the investigation. While it is possible for the case handler's report to be sent to the undertakings, this rarely happens in practice. It is possible to send the case handler's report to the undertakings however it barely happens. It is generally the case in the competition supervision proceeding that the statement of objections (i.e. preliminary position of the GVH) is sent to the undertakings in the second phase of the proceeding (the so-called proceeding of the Competition Council). It must be noted, however, that this also cannot be challenged.</p> <p>As regards challenging the <i>decision (i.e. resolution) on the merits of the case</i> delivered by the Competition Council, Article 330 (2) of Act</p> |

| | |
|--|---|
| | III of 1952 on the Code of Civil Procedure (<i>hereinafter: Civil Procedure Code</i>) provides that the claim against the resolution shall be submitted – with reference to the infringement of substantial law - to the body having rendered the administrative decision in the first instance <i>within thirty days from the time of the publication of the decision to be reviewed, or shall be sent by registered mail.</i> |
|--|---|

12. Types of decisions

| | |
|---|--|
| A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. | <p>According to Article 76 of the Competition Act, the proceeding Competition Council in its decision may:</p> <ul style="list-style-type: none"> • <i>oblige the undertaking to fulfil the commitments pursuant to Article 75 of the Competition Act</i> • <i>determine – based on Article 16/A of the Competition Act – that block exemption shall not apply to a specific agreement,</i> • <i>establish the fact of infringement;</i> • <i>order the termination of the infringing state;</i> • <i>prohibit the continuation of the infringing conduct;</i> • <i>where the existence of an infringement is established, impose obligations, including in particular an obligation to contract, on the parties in the case of an unjustified refusal to create or maintain appropriate business relations for the type of the transaction concerned;</i> • <i>order the publication of a corrective statement in respect of any infringing communication of information;</i> • <i>establish that a conduct does not constitute an infringement;</i> • <i>impose a fine;</i> • <i>apply merely a warning instead of the imposition of a fine when closing proceedings against SMEs committing an infringement for the first time - with the exception of any infringement of law of the European Union - , while obliging the given SME to set up internal processes in order to ensure conformity with competition laws and to prevent any further wrongdoing (i.e. competition compliance programme).</i> |
| B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A). | All of the decisions listed under question No 12/A can be made in hardcore cartel cases <i>except the warning.</i> |
| C. Can interim measures⁸ be ordered during the | Yes, interim measures can be ordered in cartel cases. In this context, the same rules apply for both hardcore cartels and other |

⁸ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

| | |
|---|---|
| <p>proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁹.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p> | <p>cartels. Articles 72/A (1) a) and 72/A (3)-(4) of the Competition Act set out the conditions upon which such measures can be ordered.</p> <p>On the basis of the report by the case handler, the Competition Council proceeding in the case may, by an interim measure, prohibit the continuation of the conduct which is likely to constitute an infringement or order the termination of the situation which is likely to constitute an infringement, if it is urgently needed to protect the legal or economic interests of the concerned parties and the development, maintenance or improvement of competition is threatened. It is the GVH that has to prove that the conduct may – even in the short run – endanger competition or the interests of the parties.</p> <p>Pursuant to Article 71 (2) c) of the Competition Act, even the case handler may propose the ordering of interim measures in his/her report.</p> <p>A separate legal remedy may be sought against the injunction ordering the interim measure. The Competition Council proceeding in the case may amend or withdraw its injunction ordering the interim measure ex officio even in the absence of an infringement of the law, if this is justified by changes in the circumstances which necessitated its adoption. The injunction ordering the interim measure may be declared enforceable irrespective of any application for the suspension of enforcement if any delay in enforcement is likely to cause irreparable harm.</p> |
|---|---|

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

| | |
|---|--|
| <p>A. Grounds for the imposition of procedural sanctions / fines:</p> | <p>Pursuant to Article 61 of the Competition Act a procedural fine may be imposed on those who engage in an act or in a behaviour which has the object or result of protracting the proceeding or preventing the establishment of the facts of the case.</p> <p>The minimum procedural fine shall be two hundred thousand forints for undertakings and fifty thousand forints for natural persons not qualifying as undertakings, and the maximum shall be, in the case of undertakings, 1% of the net turnover in the business year preceding the adoption of the injunction imposing the procedural fine, and five hundred thousand forints for natural persons not qualifying as undertakings.</p> <p>The case handler or the Competition Council proceeding in the case may ex officio amend or withdraw their respective resolution imposing the procedural fine to the obligor's benefit even if no infringement has been committed.</p> |
| <p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p> | <p>The fine that can be imposed on both natural persons and undertakings in the course of the competition supervision proceedings is deemed to be an <i>administrative penalty</i>.</p> <p>Article 61 of the Competition Act differentiates between the (i) <i>lump sum</i> fine and the (ii) fine determined on a <i>daily basis</i>.</p> |

⁹ Only for agencies which answered "yes" to question 2.B. above

| | |
|--|---|
| | <p>Where a time limit was set for a procedural obligation, the procedural fine for failure to meet that time limit shall be calculated <i>on a daily basis</i> where the obligor shall pay a procedural fine for the period starting at the expiry of the time limit for performance and ending on the date when the obligation is fulfilled. The procedural fine relating to any month of non-performance after the expiry of the time limit for performance shall fall due and become payable on the day directly following such month; the procedural fine relating to the month of performance shall fall due and become payable on the day of performance. In the case covered in this paragraph, the maximum daily amount of the procedural fine shall be one per cent of the net turnover in the financial year preceding the adoption of the injunction imposing the procedural fine, prorated per day, for undertakings and fifty thousand forints per day for natural persons not qualified as undertakings.</p> |
| <p>C. On whom can procedural sanctions be imposed?</p> | <p>Procedural sanctions may be imposed on both natural persons (e.g. legal representatives) and on undertakings.</p> |
| <p>D. Criteria for determining the sanction / fine:</p> | <p>Both the case handler and the Competition Council may impose procedural fines. While Article 61 (4) of the Administrative Procedures Act gives guidance on how to determine the fine, the present answer will exclusively focus on the criteria that have occurred so far in the practice of the Competition Council:</p> <ul style="list-style-type: none"> • <i>the amount shall not exceed the maximum set out in the Competition Act,</i> • <i>the amount of the fine shall reflect the nature and weight of the violation of the procedural obligations,</i> • <i>formerly imposed procedural fines shall not be taken into consideration so that the imposition of the fine shall be carried out on a case-by-case basis.</i> <p>Article 61 (5) of the Competition Act, however, gives the case handler or the Competition Council the power to reverse or withdraw his/her or its own decision in which the procedural fine was imposed to the undertaking's/person's benefit also if no infringement has been committed. Such power is discretionary.</p> |
| <p>E. Are there maximum and / or minimum sanctions / fines?</p> | <p>Yes.</p> <p>LUMP SUM The minimum amount of the procedural fine shall be <i>two hundred thousand forints for companies</i> [app. EUR 650], and fifty thousand forints [app. EUR 160] for natural persons not recognised as business entities, and the maximum amount thereof shall be - in respect of companies – 1% of the net sales revenue of the financial year preceding the year when the ruling imposing the penalty was adopted, or five hundred thousand forints [app. EUR 1610] for natural persons not recognised as business entities.</p> <p>FINE DETERMINED ON A DAILY BASIS The procedural fine for failure to meet the deadline for procedural obligations, where a deadline is prescribed, shall be calculated on a daily basis, covering the period beginning on the date of expiry of the time limit and ending on the date of performance of the procedural obligation. As regards each month of non-conformity after the date of expiry of the deadline for performance, the procedural fine charged for such month of non-</p> |

conformity shall be due and payable on the day following such months. The procedural fine in the month of performance covering the period up to the date of performance shall be due and payable on the day of performance. The procedural fine for one day shall be - in respect of companies - a maximum of one per cent of the net sales revenue of the previous financial year prorated per day for each day of delay, or up to fifty thousand forints [app. 160 EUR] per day for natural persons not recognised as business entities.

14. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):

On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]

COMPETITION LAW Violation of Article 11 of the Competition Act and Article 101 of TFEU may imply the following sanctions being imposed on the infringing undertaking:

- Article 76 of the Competition Act provides for the so-called administrative sanctions which were described in detail under question No 12/A above.

The sanction is imposed on the undertaking concerned.

CRIMINAL LAW While a wide range of conducts may be classified as criminal offences concerning competition law related practices (e.g. use of a forged private document, Economic and business related offences regulated in Chapter 42 of the Criminal Code, Crimes against consumer rights and any violations of competition laws regulated in Chapter 41 of the Criminal Code as well), the present answer will exclusively focus on one specific crime. Bid rigging (collusion in the course of public procurements and concession tenders) is prohibited by Article 420 of **the Criminal Code** which provides for the following sanctions besides those that may be applied by the Competition Council:

1. Any person who enters into an agreement aimed at manipulating the outcome of an open or restricted procedure held in connection with a public procurement procedure or an activity that is subject to a concession contract by fixing the prices, charges or any other term of the contract, or sharing the market, or who participates in any other concerted practice resulting in the restraint of competition is guilty of a felony *punishable by imprisonment of between one to five years*. The same sanction may be applied for any person who participates in the decision-making process of an association of undertakings, a public body, a union or similar organisation, that results in the adoption of a decision that has the capacity to restrain competition aimed at manipulating the outcome of an open or restricted public procurement procedure or an activity that is subject to a concession contract.

2. The penalty for a misdemeanour shall be *imprisonment* for a term *not exceeding two years* if the value of the public contract involved in the conduct is below a substantial value. According to Article 459 (6) c) of the Criminal Code, a *substantial value* is deemed to be *between 5 million and 50 million HUF*.

The perpetrator of a criminal conduct defined above shall not be prosecuted *if he/she confesses the conduct to the criminal investigation authorities before they become aware thereof and*

if he/she reveals the circumstances of the criminal conduct.

3. *Leniency application* (either full or partial) may result in the lack of prosecution of perpetrators as well. The difference between the circumstances described in point 2 and point 3 are that in the former case it is the criminal investigation authorities which receive the information, while in the latter case it is the GVH which will directly receive information through the leniency application.

The sanction may be imposed on the following persons who are considered to be able to influence the practice of the undertaking in question (as provided for in Article 420 (6) of the Criminal Code):

(i) executive officers, (ii) employees, (iii) supervisory board members, (iv) proxies of the aforementioned persons (i-iii), all in charge of acting on behalf of the undertaking in the course of the public procurement or the concession tenders.

Individuals can be held liable under criminal law in the specific cases of price fixing and market sharing in relation to public procurement and public concession procedures, which are punishable offences under the Criminal Code. At the same time, according to the Criminal Code, the individual (e.g. employee, manager) may not be punished if the undertaking first submitted a leniency application to the GVH. The aim of introducing this provision in the Criminal Code was clearly to encourage leniency applications. As a result, an individual is protected if the undertaking has already submitted a successful leniency application.

CIVIL LAW/PRIVATE ENFORCEMENT Damages are also available for injuries suffered as a result of antitrust (cartel) actions (generally speaking they are classified as torts in civil law) as prescribed by Articles 6:518 and 6:519 of the new Civil Code. However, such actions have rarely taken place in the Hungarian legal system up until now. The current state of affairs derives from the lack of an effective collective redress system in Hungarian civil procedure.

However, it must be noted that Article 88/C of the Competition Act sets out a reversible presumption when stating that in *lawsuits instituted for the enforcement of any civil claim* against any person alleged to be an accomplice in any agreement or concerted practice between companies in violation of Article 11 of this Act or Article 101 of the TFEU aimed, directly or indirectly, at the fixing of prices, securing a dominant position in the market, or the establishment of production or sales quotas, for the purpose of determining the impact of the infringement on the price charged by the infringer, it shall be treated - until proven otherwise - that the infringement *distorted the price to the extent of ten per cent*. It is called the *10 % rule*. Up until the beginning of 2014, no litigated case had occurred before Hungarian courts related to antitrust claims based on the 10 % rule.

EU directive on Antitrust Damages Actions, however, brought a substantial change in this field. The Directive on antitrust damages actions was signed into law on 26 November 2014 and Member States have 2 years to implement it in their national legal systems.

For further information about private enforcement in this field, please find the following link:

<http://ec.europa.eu/competition/antitrust/actionsdamages/index.html>

| | |
|--|--|
| | <p>PUBLIC PROCUREMENT ACT:</p> <p>In accordance with Article 62 (1) n) and o) of the PPA, a competition law infringement committed under any jurisdiction results in mandatory exclusion from participation in a tender procedure. An undertaking will be subject to an automatic disqualification of three years if it has been fined by a competition authority for any type of restrictive agreement (Art. 101 TFEU or its Hungarian equivalent). Therefore, should the European Commission, the GVH or any other competition authority impose a fine in a final and binding decision for an infringement of the rules on cartel prohibition, the undertaking concerned shall be excluded from tenders for a period of three years. If a fining decision of a competition authority is reviewed by a court, the exclusion period starts on the date that the final and binding decision is delivered.</p> <p>Furthermore, an undertaking shall also be automatically disqualified – even in the absence of any court or administrative decision establishing a competition infringement –, if the contracting authority is able to prove that in the tender procedure in question the undertaking acted in violation of the cartel prohibition (Art. 101 TFEU and/or its Hungarian counterpart), unless the undertaking – prior to submitting its final tender bid – obtained conditional immunity from the GVH on the basis of a successful leniency application.</p> <p>Moreover, an automatic disqualification is triggered for a five-year-period if the directors, board members, other employees with powers of representation, or the sole shareholder of a company has been convicted by a criminal court for bid-rigging in a public tender.</p> |
| <p>B. Criteria for determining the sanction / fine:</p> | <p>Article 78 (3) of the Competition Act provides the general framework on how to determine the amount of the fine; the fine shall be determined with regard to all applicable circumstances, in particular, to the gravity and duration of the infringement, the advantage gained by such conduct, the market position of the offenders, the degree of responsibility and any cooperation in the investigation, and the repeated occurrence and frequency of the infringement. The gravity of the violation shall be determined, in particular, having regard to the extent that the violation obstructs competition and impacts on the interests of final trading parties.</p> <p>The criteria set out in Article 78 (3) are considered to be only indicative; they do not qualify as an exhaustive list. Since imposing a fine on an undertaking is the right of the Competition Council exercising its so-called discretionary power, it was necessary to adopt further pieces of law only binding on the proceeding Competition Council detailing how this right may be exercised (see also the answers provided for question No 12/D). By publishing its Notices on the method of calculating fines (hereinafter: <i>Antitrust Fine Setting Notice</i>), the GVH fostered predictability for the undertakings and the rule of law for the public in the field of competition regulation.</p> <p>The method of setting fines in antitrust cases is set out in the Antitrust Fine Setting Notice, according to which the GVH first determines the basic amount of the fine and then makes certain adjustments, if necessary. When determining the basic amount, the GVH starts from 10% of the relevant turnover (i.e. 10% of the turnover realised on the relevant market). Then the GVH adjusts this amount with regard to:</p> <ul style="list-style-type: none"> • the gravity of the infringement (threat to competition and impact of the infringement on the market); and • the attitude of the offender towards the infringement. <p>Once this basic amount is determined, the GVH adjusts this amount with regard to the following factors:</p> |

| | |
|--|---|
| | <ul style="list-style-type: none"> • repetition of the infringement; • gains derived from the infringement; • deterring effect of the fine to be imposed; • maximum amount of the fine as set out in the Competition Act; • application of the leniency policy; and • financial difficulties. <p>As regards judicial review of the resolutions of the Competition Council, Hungarian courts proceeding in competition law cases do not consider the Antitrust Fine Setting Notice binding on themselves. They exclusively assess the resolution and the imposed fine on the basis of Article 78 (3) of the Competition Act.</p> |
| <p>C. Are there maximum and / or minimum sanctions / fines?</p> | <p>The Competition Act only prescribes the maximum amount of the fine that can be imposed on the sanctioned undertakings. Pursuant to Article 78 (1b) of the Competition Act the fine shall be <i>a maximum of 10% of the undertaking's net sales revenue</i>, or the net sales revenue of the group - of which the company penalised is identified in the resolution as a member - for the financial year preceding the year when the resolution was adopted. The fine imposed upon associations of companies shall be a maximum of 10% of the previous financial year's net sales revenue of the member companies.</p> |
| <p>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p> | <p>Since the GVH is vested with the competence to proceed both in classic competition law cases (cartel and abuse of dominance) and consumer protection cases, the President of the GVH along with the Chair of the Competition Council issued notices about the calculation of fines in these two major case types.</p> <p>These notices have no binding force; their sole function is to provide substance to the provisions of the law that are applied by the GVH, whilst also providing summaries of the well-established past practice and outlining the practice that is to be followed when applying legal provisions in the future. The Notices draw on the experience gained from past decisions; however, when departing from concrete cases they also reflect the understanding of the GVH and, as guidelines, they can anticipate decisions in future cases.</p> <ul style="list-style-type: none"> - Notice No 1/2012 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the method of setting fines in cases of market practices infringing Articles 11 and 21 of Act LXXVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices and Articles 101 and 102 of the TFEU <p>This document is available in English under the following link : http://www.gvh.hu/en/for_professional_users/notices</p> <ul style="list-style-type: none"> - Notice No 2/2015 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the method of setting fines in consumer protection cases <p>This document is only available in Hungarian: http://www.gvh.hu/data/cms1032195/jogi_hatter_fogyaszto_birsagkozlemeny_2015_10_01.pdf</p> |
| <p>E. Does a challenge to a decision imposing a</p> | <p>If a party (undertaking found to have infringed antitrust regulation) challenges the resolution of the Competition Council, such challenge – if</p> |

| | |
|---|---|
| <p>sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p> | <p>it does not include a request for suspension – shall not have an automatic suspensory effect on the sanction.</p> <p>Suspension is only provided if the party who expressly requests it files a (i) <i>reasoned</i>, (ii) <i>justified</i> claim before the competent court, which claim (iii) must <i>contain all relevant evidences</i> justifying why the suspension should be granted. According to the practice of the competent courts, suspension is deemed to be an exceptional benefit for the undertaking on which the sanction is imposed and it is also clear from the practice that while deciding upon the request for suspension <i>the court weighs the public interest</i> related to the enforcement of the sanction and the <i>private interest of the party</i> who claims the suspension based on its individual business interests. (Article 332 (3) and Article 164 (1) of the Civil Procedure Code provide guidance on the assessment of such claims, while the practical experiences of courts are summed up in the Integrative Administrative Decision No 2/2006 of the Curia).</p> <p>Article 83 of the Competition Act prescribes that judicial review of the resolutions issued by the Competition Council may be requested before the competent court(s) (1st instance is the <i>Budapest-Capital Administrative and Labour Court</i>, 2nd instance is the <i>Budapest-Capital Regional Court</i>, while extraordinary judicial review in an even more narrow scope is also available before the highest court, the <i>Curia</i>.) Added to the aforementioned legal remedies is the possibility of filing for so-called “constitutional review” before the <i>Constitutional Court</i>.</p> |
|---|---|

15. Possibilities of appeal

| | |
|---|--|
| <p>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p> | <p>For preliminary remarks please see the answer provided for question No 12/E.</p> <ul style="list-style-type: none"> - The possibility for <i>judicial review is a narrower legal remedy than the general system of appeal</i>. It means that parties (typically infringing undertakings) may only <i>submit claims</i> before the court seeking either <i>the alteration of the resolution issued by the Competition Council or for the abolishment of the resolution and ordering the Competition Council to reopen the case and render a new decision</i> if the original resolution and the procedure in which it was delivered by the Competition Council <i>infringed substantive law</i>. - An infringement of procedural rules (set out in the Competition Act, the Administrative Procedures Act and the Civil Procedure Code) may only result in the judicial review of the resolution if the violation affected the merits of the case. This latter circumstance is always assessed by the competent court on a case-by-case basis. - The <i>Civil Procedure Code</i> regulates the administrative actions in <i>Chapter XX</i> differently. Such actions may be brought against the resolutions of the Competition Council. In addition to the general framework, <i>Article 83 of the Competition Act</i> describes such lawsuits. It is Article 83 (1) of the Competition Act that excludes the possibility of appeal and only provides the parties with the tool of judicial review. <p>Since the <i>Competition Council exercises its so-called discretionary power while imposing fines on the undertakings</i> violating antitrust regulation, Article 339/B of the Civil Procedure Code lays down that</p> |
|---|--|

| | |
|--|--|
| | <p>the competent court must evaluate whether the Competition Council <i>appropriately ascertained the relevant facts</i> of the case, <i>complied with the relevant rules of procedure</i>, the <i>points of discretion can be identified</i>, and the justification of the decision demonstrates <i>causal relations as to the weighing of evidence</i>. If in the course of the court proceedings it becomes clear that the criteria set out in Article 339/B were adhered to then the court has no power to modify the sum of the imposed fine.</p> |
| <p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p> | <p>Please see the answer provided for question No 14/E.</p> |

[GVH's final note: It is worth mentioning that a great variety of circumstances, acts and/or considerations can occur and those might not necessarily be considered in these responses. Consequently, this template is illustrative and for its nature it should not be considered as binding for any act of this institution, staff and authorities including investigations and Resolutions or Decisions issued and/or to be issued. Finally, nothing in this document should be understood as prejudging the analysis the GVH and/or its staff and authorities could perform in specific cases or as an institutional statement. GVH, November, 2015]