



International
Competition
Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTEL WORKING GROUP
Subgroup 2: Enforcement Techniques

HUNGARY

December 2021

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

<p>A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>1. <u>Primary source:</u></p> <ul style="list-style-type: none"> • Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (<i>hereinafter: Competition Act</i>) Available in English at: https://gvh.hu/pfile/file?path=/en/legal_background/jogihatter_tpv_t_hataly_20190101_a.pdf1&inline=true • Act C of 2012 on the Criminal Code (<i>hereinafter: Criminal Code</i>) Available in English at: https://www.njt.hu/translated/doc/J2012T0100P_20200331_FIN.PDF • Act CXLIII of 2015 on Public Procurement (<i>hereinafter: Procurement Act, PP Act</i>) Available in English at: https://www.njt.hu/translated/doc/J2015T0143P_20180808_FIN.pdf <p>2. <u>Background rules on procedures:</u></p> <ul style="list-style-type: none"> • Act CL of 2016 on the Code of General Administrative Procedure (<i>hereinafter: GRAP Act</i>) Available in English is available at: https://www.njt.hu/translated/doc/J2016T0150P_20190710_FIN.pdf
<p>B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>N/A</p>
<p>C. Interpretative guideline(s) (if any):</p>	<p>Please note, notices are legally non-binding.</p>

<p>[name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<ul style="list-style-type: none"> • Notice No. 14/2017 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the application of the rules on leniency pursuant to Article 78/A of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices <p>Available in English at: https://gvh.hu/pfile/file?path=/en/for_professional_users/notices/14_2017_leniency_notice_en_final&inline=true</p> <ul style="list-style-type: none"> • Notice No 10/2017 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the settlement procedure (consolidated version with amendments made by Notice No 2/2018.) <p>Available in English: https://www.gvh.hu/pfile/file?path=/en/for_professional_users/notices/10_2017_settlement_notice_consolidated_en_final&inline=true</p> <ul style="list-style-type: none"> • Notice No 11/2017 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 for infringements of the prohibitions of anti-competitive agreements and concerted practices, abuse of a dominant position and abuse of significant market power (hereinafter: Antitrust Fine Setting Notice) <p>Available in English: https://www.gvh.hu/pfile/file?path=/en/for_professional_users/notices/Szakmai_felhasznaloknak_kozlemenyek_11_2017_a&inline=true</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<ul style="list-style-type: none"> • Resolutions of the Competition Authority (hereinafter: GVH or the Authority): <p>Available in English at: https://www.gvh.hu/en/resolutions/resolutions_of_the_gvh</p> <ul style="list-style-type: none"> • Court decisions: <p>Available only in Hungarian at: https://www.gvh.hu/dontesek/birosagi_dontesek</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>Yes. The term ‘cartel’ appears in the Chapter IV of the Competition Act. and its definition is used as a synonym for prohibited agreements pursuant to Article 11 of the law and for agreements prohibited pursuant to Article 101 of the TFEU as well, therefore in a narrower sense than agreements restricting economic competition. In that sense, “<i>agreements or concerted practices between undertakings not independent from each other and decisions by organisations of undertakings established pursuant to the freedom of association, public corporations, associations or other similar organisations of undertakings (hereinafter collectively: association of undertakings), which have as their object or potential or actual effect the prevention, restriction or distortion of competition, shall be prohibited.</i>” (Art. 11(1) Competition Act)</p>
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	<p>Article 11 (2) of the Competition Act provides an indicative list of conducts in respect of which agreements and concerted practices between undertakings are considered to be prohibited in particular. However, the list is not exhaustive, it only includes the most important examples.</p> <p>Furthermore, pursuant to Article 13 (3) and (4) of the Competition Act explicitly states which agreements shall not benefit from the “<i>de minimis rule</i>”: <i>agreements or concerted practices of competitors which have as their object the prevention, restriction or distortion of competition, in particular the direct or indirect fixing of purchase or selling prices or other business terms and conditions, the limitation of production or distribution, the allocation of markets including bid-rigging and the restriction of imports or exports as well as other agreements or concerted practices aimed directly or indirectly at fixing purchase or selling prices, and agreement which significantly prevents, restricts or distorts the competition by its and other similar agreements' cumulative effect.</i></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”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>Yes, please see the answer to Question 2/A.</p> <p>The agreements listed in Article 13 (3) of the Competition Act considered as hardcore cartels.</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p>	<p>Please see the answer to Question 2/A.</p> <p>Block exemption is only applicable to a very precisely determined set of agreements or concerted practices as regulated in Article 16 of the Competition Act.</p> <ul style="list-style-type: none"> - 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 the case law shows that the more severe the infringement, the less likely it is that the conduct in question will be exempted. The specified 4 conditions are conjunctive, that is, they must be fulfilled together. The conditions are as follows: <i>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;</i> - <i>allows trading parties not participating in the agreement a fair share of the resulting benefit;</i> - <i>the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified common goals; and</i>

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>it does not enable the exclusion of competition in respect of a substantial proportion of the goods concerned.</i></p> <p>Regarding the sector-specific exemptions, in the case of agricultural products, the infringement of Article 11 of the Competition Act may not be established if: (i) the distortion, restriction or prevention of competition does not exceed the extent necessary to achieve an economically justifiable and legitimate income; (ii) the relevant market players are not excluded from achieving such an income; and (iii) Article 101 of the TFEU is not applicable in the given case.</p> <p>The fulfillment of the above conditions shall be determined by the minister responsible for agricultural policy in accordance with the procedure laid down in Article 93/A (3) of the Competition Act.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>²? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>Participation in a hardcore cartel is neither under EU law nor under Hungarian regulation considered to be “illegal <i>per se</i>”.</p> <p>However, it is worth mentioning that the Hungarian regulation – in line with the EU model – applies the distinction between agreements having a preventive, restrictive or distorting <i>object</i> or <i>effect</i>. The former is considered hardcore cartels. In case of such agreements, individual exemption is available in theory, nevertheless it is highly doubtful that a hardcore cartel could ever be exempted individually in practise.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</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 pursuant to Article 420 of the Criminal Code.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</p>	<p>It is only the GVH 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: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>Hungarian Competition Authority Address: Alkotmány utca 5, H-1054 Budapest Postal address: PO Box 211, Budapest 62, H-1391 Tel.: +36-1472-8900 E-Mail: ugyfelszolgalat@gvh.hu Website: https://gvh.hu/ and https://gvh.hu/en (available both in Hungarian and in English)</p> <p>International affairs contact e-mail address: Ms Gabriella Szilágyi</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.

	(Head of the International Section): Szilagyi.Gabriella@gvh.hu or international@gvh.hu
C. Information point for potential complainants:	<p>Customer Service Section</p> <p>Address: Alkotmány utca 5, H-1054 Budapest Postal address: PO Box 211, Budapest 62, H-1391 Tel.: +36 1 472-8851 Email: ugyfelszolgalat@gvh.hu</p>
D. Contact point where complaints can be lodged:	<p>Any person may submit a formal or informal complaint to the GVH pursuant to Article 43/G-43/H of the Competition Act.</p> <p>A <i>formal complaint</i> shall be submitted on a form provided for this purpose by the Authority:</p> <p>https://www.gvh.hu/fogyasztoknak/hogyan_fordulhat_a_gvh_hoz/bejelentesi_urlapok</p> <p>In case of formal complaint, a copy of the form and the attached documents shall be submitted to the GVH in one of the following ways:</p> <ul style="list-style-type: none"> - original signed copy by post or in person: at 1054 Alkotmány utca 5, 1054 Budapest, - via email: ugyfelszolgalat@gvh.hu signed (only if the applicant has an appropriate electronic signature) - through one's client site. <p>An informal complaint can be submitted orally or in writing (via email or by post at the addresses specified above) without any formal requirements. 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 any legal remedy.</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.	In the case of dawn raids, assistance can be obtained from the police pursuant to Article 65/A of the Competition Act.

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

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	The Competition Council is the independent decision-making body within the GVH (in Hungarian: <i>Versenytanács</i>).
B. Contact details of the agency: [address, telephone and fax including the country code, email, website]	Please see the answer provided for question No 3/B.

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

address and languages available on the website]	
C. Contact point for questions and consultations:	Please see the answer provided for question No 3/B.
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>The GVH is empowered to proceed <i>ex officio</i> in competition supervision proceedings.</p> <p>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 the <i>Cartel Section</i>. The investigative phase concludes with a so-called case report (i.e., report of the case handler), which is submitted to the Competition Council. After completing the investigation, the case will be in the proceeding of the Competition Council. The Competition Council prepares its preliminary position.</p>
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	The GVH cooperates 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: [complaint, ex officio, leniency application, notification, etc.]	<p>Based on the Competition Act, cartel cases are initiated <i>ex officio</i>.</p> <p>Even those cases are considered to be initiated <i>ex officio</i> which are detected due to either a leniency application, complaint, market signal or information obtained from an informant.</p>
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]	<p>A <i>formal complaint</i> is required to be submitted on a form available on the website of the GVH (see also 3/D).</p> <p>An <i>informal complaint</i> can be submitted without any formal requirements (see also 3/D).</p>
C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]	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.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this	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

respect? [Please elaborate.]	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 in court. Complainants submitting informal complaints are not entitled to seek a legal remedy.
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>Yes. If the GVH intends not to pursue a formal complaint it adopts an injunction. The injunction shall be delivered to the complainant. [Article 43/H (9) of the Competition Act]</p> <p>Pursuant to Article 43/H (2) of the Competition Act the provisions of Article 81 (1) of the GRAP Act relating to the content and form of decisions shall be applied, unless the Competition Act provides otherwise.</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>Pursuant to Article 43/H (7) of the Competition Act, within two months from the day following the receipt of the formal complaint, the case handler shall order the opening of an investigation or establish that, the conditions for the opening of a competition supervision proceeding are not fulfilled or terminate the proceeding.</p> <p>In the case of informal complaints, the person making the informal complaint shall be notified of the initiation of competition supervision proceeding or the fact that competition supervision proceeding is already in progress or has already been closed at the time of receipt of the informal complain. If no further action is required in connection with the informal complaint, the complainant need not be specifically informed thereof, and the proceeding shall be considered closed after one year from the date of receipt of the complaint. (Article 43/I (5) of the Competition Act).</p>

6. Leniency policy⁴

A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]	<p>There are two main sources on this subject:</p> <p>Articles 78/A - 78/D of the Competition Act; and</p> <p>Leniency Notice - Notice No. 14/2017 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the application of the rules on leniency pursuant to Article 78/A of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (which is legally non-binding)</p> <p>Available in English at: https://gvh.hu/pfile/file?path=/en/for_professional_users/notices/14_2017_leniency_notice_en_final&inline=true</p>
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Yes. Articles 78/A - 78/D of the Competition Act regulate both the full and partial leniency.

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>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>Full leniency can only be granted to the undertaking, which is the first to submit a leniency application and fulfils the conditions set out in the Article 78/A (2) a)-b) Competition Act.</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 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>Yes, in order for full leniency to be granted, the GVH must not have sufficient information about the cartel activity. As a general rule, only the first undertaking to submit a leniency application may be rewarded with full leniency provided that the GVH did not, at the time of the application, already have sufficient information or it did not have such sufficient information about the infringement that would have enabled the Authority to file a claim for an order to conduct a dawn raid.</p> <p>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>As for the partial leniency, the importance of timing is shown in the following: the ranking of the applications and the rate of reduction of the fine 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 substantial impact on the assessment 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. Consequently, an association of undertakings cannot be a leniency applicant even in the case of infringements falling under the scope of the leniency policy.</p>
<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p>	<p>The GVH grants immunity from any fine the undertaking participating in the infringement, which first submit the leniency application, that: discloses to the GVH agreements or concerted practices between competitors which infringe Article 11 of the Competition Act or Article 101 of the TFEU and which constitutes a cartel or other agreement or concerted practice aimed directly or indirectly at fixing purchase or selling prices and (2) which is the first to submit an application for immunity and supply evidence that enables the GVH to:</p> <p>a) obtain a prior judicial warrant to carry out an unannounced inspection in connection with the infringement, provided that the GVH did not, at the time of the application, already have sufficient information to substantiate the judicial warrant for the unannounced inspection (application type ‘A’); or</p> <p>b) prove the infringement, provided that it did not, at the time when the evidence was provided, already have sufficient evidence to prove the infringement and none of the undertakings meets the condition set out in point (a (application type ‘B’).</p>

	<p>Additional conditions for a successful application: The applicant</p> <ul style="list-style-type: none"> - must cease any involvement in the infringement immediately following its application; - must cooperate genuinely, fully and on a continuous basis with the GVH in good faith until the competition supervision proceeding is concluded; - 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; - undertook steps to coerce other undertakings to participate in the infringement shall not be eligible for immunity from fines. <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): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	<p>Partial leniency can be provided to the undertaking that, although is not the first to submit an application for immunity, it still provides evidence in that application, which are considered as being more valuable than any proof the GVH possesses at that moment.</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>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>In order to obtain immunity from fines, four conditions must be met which are set out in the answer to Question 6/F.</p> <p>The first three of the four conditions mentioned in the answer to Question 6/F must be fulfilled in order to reduce the fine or to avoid a higher fine following the submission of aggravating evidence. Therefore, an undertaking which has coerced other undertakings to participate in the infringement is not excluded from the reduction of the fine.</p> <p>In the event of a breach of the above conditions, the undertaking risks losing its immunity or the possibility of reducing the amount of the fine.</p>
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</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. Full applications shall only be made in Hungarian.</p> <p>The undertaking may present its oral application to the GVH case handler. The case handler records the oral application in the minutes or makes an audio recording thereof.</p> <p>The most essential requirements of leniency applications are set out in Article 78/B of the Competition Act</p>

<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</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 in question, according to Article 78/C (5) of the Competition Act:</p> <ul style="list-style-type: none"> - a full leniency application shall be assessed without delay, while - a partial leniency application resulting in the reduction of the fine shall be assessed by the time the preliminary position is sent to the parties or in the case of an application submitted thereafter, without delay. <p>Although 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>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>M. Do you have a marker system? If yes, please describe it.</p>	<p>Yes.</p> <p>In accordance with the leniency regulation in force in Hungary, a leniency application may take three main forms. The application is either filed as (1) a full application, or (2) non-definitive application for immunity which aims at the granting of immunity from the imposition of a fine (also known as marker application), or (3) non-definitive preliminary application which is submitted simultaneously with the submission of a leniency application to the European Commission (also known as summary application). In the case of non-final applications 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>In addition, the non-definitive application for immunity shall comply with the requirements set out in Art. 78/B. (1)-(2) of the Competition Act.</p>
<p>N. Does the system provide for any extra credit⁵ for disclosing additional</p>	<p>No.</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.

violations? [e.g. a hardcore cartel in another market]	
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	Yes. The leniency statement and the fact that an application has been submitted and the nature of the evidence submitted in relation to such application shall be treated as restricted access data ⁶ until the time when the parties are entitled to access to the file. After the completion of investigation, the party may exclusively have access to the applications and the leniency statement, with the proviso that no copies, only notes shall be made thereof. Third parties shall not have access neither to the application nor to the leniency statement and they shall not make copies or take notes.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	No. However, if the Competition Council refuses a full leniency application, the application can be revoked by the undertaking within eight days from the time of the notification of the injunction.
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	Please see the answers provided for questions No.3/B and 3/C.
R. Does the policy address 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?	Yes, however only full leniency applications can be withdrawn in the following two cases: -before the Competition Council proceeding in the case establishes, by an injunction, that it provides grounds for granting immunity from the fine; - in the event of refusal, within eight days from the service of the injunction of the competition council proceeding in the case containing such refusal.
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	No.
T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what protection actually means.	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.

⁶ Restricted-access data means data — with the exception of information which has to be accessible by the public as it is of public interest — which are qualified as secret in relation to the practice of a profession or qualified as other types of secrets by separate law (hereinafter collectively: privileged information), as well as personal data and other information to which access is restricted by virtue of the Hungarian Competition Act in the course of access to file.

For further elaboration, please see the answer provided for question No 6/O.

7. Settlement

<p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>Yes.</p> <p>The relevant rules of the settlement are set out in Article 73/A of the Competition Act and the Settlement Notice. See answer 1C).</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 and abuse of dominance cases are eligible for settlement.</p> <p>Therefore, in relation with any proceedings initiated ex-officio because of a conduct prohibited in 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, if the Competition Council proceeding in the case deems it appropriate for the swift and effective conclusion of the proceeding, it 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>In its decision the Competition Council proceeding in the case shall reduce the amount of the fine to be imposed under other provisions of the Competition Act by at least 10% but no more than 30%.</p>
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	<p>Yes.</p> <p>The GVH will cumulatively apply the maximum reduction of 50% achieved under the leniency policy and then 10% to 30% reduction resulting from the settlement procedure by adding the percentage of the reduction of fines based on these two items and reduces the basic amount of the fine, adjusted by any weighting, on the basis of that added percentage.</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.</p>
<p>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the</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. If the party accepts to take part in the settlement procedure within the time limit of no more than 15 days set by the Competition Council proceeding in the case, and if it reaches a common understanding with the Competition Council, it shall introduce its settlement submission within a time limit not exceeding fifteen days. The submission shall contain a statement of the party explicitly admitting</p>

investigation settlement may be initiated, etc.].	<p>its participation in the infringement; a factual description of the conduct, the objective of the conduct and the way in which it was carried out, its duration, the manner and the extent in which the party was involved; the highest amount of the fine the party deems acceptable; a statement of the party to the effect that it was appropriately informed by the GVH about the provisions and that it was given sufficient opportunity to make its arguments; a statement of the party to the effect that if the content of the preliminary position and of the decision corresponds to the content of the settlement submission, it will not apply for further procedural actions especially access to the file or hearing; and a statement of the party containing its waiver of its right to seek a legal remedy against the GVH's decision.</p> <p>If common ground is not found, the proceedings shall be resumed in accordance with the general rules.</p>
F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].	<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 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.</p>
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	<p>Yes.</p> <p>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.</p>
H. Is there a possibility for settled parties to appeal a settlement decision at court?	<p>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.</p>

8. Commitment

<p>A. Does your competition regime allow the possibility of commitment?</p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>Yes. One of the main purposes of commitment is the closure of a competition proceeding without the declaration of an infringement.</p> <p>The relevant rules of commitment are set out in Article 75 of the Competition Act; and in the Commitment Notice.</p>
<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there violations which are excluded from</p>	<p>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.</p> <p>The GVH does not consider cases suitable for commitment in which the conduct under investigation is considered to be the most serious, the most harmful from the point of view of the competition law. Such cases are those that may implement a cartel or any other agreement or concerted practice aimed directly or indirectly at fixing purchase or</p>

the commitment possibility?	selling prices - except for certain concerted practices, that are novel, especially if they are implemented by small and medium-sized enterprises (SMEs).
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.
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.
E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]	<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>
I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?	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 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.
J. Describe how your authority monitors the parties' compliance to the commitments.	Yes, 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.
K. Is there a possibility for parties to appeal a commitment decision at court?	Yes, according to Article 83 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)⁷

⁷ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁸, electronic or computer searches, expert opinion, etc. and indicate whether such measures require a court warrant.</p>	<p>Article 64/A-65/D 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 62 (1) of the GRAP Act. Both the GRAP Act and the Competition Act encompass the principle of the free deliberation of evidence as a general rule; furthermore, the GVH has the right to make forensic copies 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. Accordingly, in the course of an investigation launched ex officio, the case handler shall be empowered to search any premises, vehicle or data storage with a view to finding means of evidence connected to the infringement or concentration investigated, and to enter such premises under his/her own authority, without the consent of the owner or any other person in the premises, and to open any sealed-off area for this purpose. The GVH may request police assistance where deemed necessary for the successful and safe conduction of an unannounced inspection.</p> <p>An unannounced inspection shall only be carried out if a judicial warrant has previously been obtained. The application of the GVH for such a warrant shall be adjudged in an administrative non-litigious procedure by the Budapest-Capital Regional Court within seventy-two hours of receipt of the application. (Article 65/A (3) of the Competition Act) No revision of the order of the court shall be sought.</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. Case handlers of the GVH are empowered to inspect real estate, vehicle or data storage serving or used for private purposes, having reasonable grounds or suspicion that evidence will be found on these locations, vehicles or devices. Such inspections require authorisation of the Court.</p> <p>Please also see the answer provided for question No. 9/A.</p>
<p>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!</p>	<p>If the undertaking, involved in the unannounced inspection, has an external server, not located at the undertaking's headquarters, on which the document relevant to the investigation can be found, it is obliged to provide the case handler with the password and with the necessary permissions and paths to access the server, it cannot refuse to cooperate.</p> <p>If an undertaking stores its data as part of a virtual, non-stationary hosting service (cloud), then it is obliged to provide the password required to access the data stored in this way, as well as other rights that allow access.</p>
<p>D. 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 (e.g. is a post-search court warrant needed)?</p>	<p>Yes, such cases are regulated by Article 65/A (9) -(10) of the Competition Act.</p> <p>In the course of carrying out the unannounced inspection, 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 warrant shall be obtained subsequently</i>. In the absence of a</p>

⁸ "Searches/raids" means all types of search, raid or inspection measures.

	<p>subsequent court warrant the evidence discovered shall be inadmissible in the competition supervision proceeding.</p> <p>A request for a subsequent court order shall be submitted at the latest within 60 days (i) from the time the site inspection was carried out; or (ii) from the time the investigation working dossier was prepared; or (iii) from the time the GVH gained access to documents.</p>
<p>E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<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 unannounced inspection (the assessment of the information covered by legal professional privilege [LPP] is especially important).</p>

10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>As a preliminary remark, it must be noted that special rules of procedure for the GVH as regards competition supervision proceedings are to be found in the Competition Act (Lex specialis), and the general procedural rules of GRAP Act (Lex generalis) shall only apply if expressly provided for in the Competition Act.</p> <p>(I) KEY RIGHTS OF DEFENCE IN THE COMPETITION ACT:</p> <ul style="list-style-type: none"> - Right to access to the file (Art. 55 of the Competition Act) - Right against self-incrimination (Art. 64/B of the Competition Act) - Principle of equality of arms - right to information, the authority's obligation to inform (Art. 55 of the Competition Act) - Right to legal professional privilege (Art. 65/C of the Competition Act) - Right to public hearing (Art. 43/E. of the Competition Act) - Right to legal remedy against injunctions made in the course of the proceeding (Art. 81-84 of the Competition Act) <p>(II) THE PROVISIONS OF THE GRAP ACT SHALL APPLY TO THE FOLLOWING:</p> <p>The fundamental principles of the procedure</p> <ul style="list-style-type: none"> - Principle of legality [Section 2] - Principle of effectiveness [Section 4] - Principle of good faith, principle of trust [Section 6] - The general rules of representation and authorisation [Section 13] - The examination of jurisdiction, any jurisdictional disputes [Section 17] - The procedural protection of minors, persons with legal incapacity or restricted legal capacity and of disabled persons, advocates [Section 29] - The applications of participants of the proceeding regarding the proceeding, the application, its content, submission and assessment, remedying any deficiencies, rejection of the
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	<p>application and termination or suspension of the proceeding initiated upon the application;</p> <ul style="list-style-type: none"> - Notifications of procedural steps [Section 61] - The recording of procedural steps [Section 78] - Decisions and injunctions, the finality of resolutions, and their correction and supplementation [Section 80]
<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 restricted access data defined in Article 43/B (2) of the Competition Act. (see f.n. 7)</p> <p>Added to the notion of restricted access data is the notion of statutory secrets, which is used in the GRAP Act in Article 27(2):</p> <p>(2) The authority shall ensure that statutory secrets and other information protected by law (hereinafter referred to collectively as “protected data”) are not disclosed to the public, and cannot be obtained by unauthorized persons, and that the protection of privileged information is ensured during regulatory proceedings as well. 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 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? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	<p>Article 68 (1) b) of the Competition Act declares that no competition supervision proceedings may be initiated (with the exception of proceedings repeated due to legal remedy) if 5 years has elapsed from the time of restrictive agreements and abuse of dominance.</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 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? Please describe potential suspension or interruption opportunities of this limitation period and the</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 GRAP Act.</p> <p>According to Article 63 (2) b) of the Competition Act the administrative time limit is 6 months which starts to run on the day of the initiation of the proceeding, in case of proceedings initiated for restrictive agreements and abuse of dominance. Pursuant to Article 63 (9) b) the administrative time limit may, in justified cases, be extended twice by the President of the GVH or the President of the Competition Council up to six months</p>

<p>requirements for such rules to apply!</p>	<p>before its expiry. 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>The competition supervision proceeding may be suspended if the decision on the merits of the case is dependent on the prior adjudication of a question that is in the competence of another body or if a well-founded decision is impossible without another decision of the GVH as an authority closely linked to the case in question.</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.</p> <p>According to Article 81 of the Competition Act a party may make an objection to any irregularities in the investigation proceeding, within eight days of the adoption of the alleged irregular measure. The case handler or the competition council proceeding in the case shall explain the reasons for disregarding the objection in the report or in its resolution concluding the proceeding, respectively.</p> <p>An appeal against the case handler's injunction may be submitted within eight days from the time of the notification of the injunction, which appeal shall be adjudicated by the acting Competition Council within 30 days (in justified cases this time limit may be extended before it expires by the Chair of the Competition Council once, by up to thirty days). An injunction of the Competition Council proceeding in the case that may be contested with a separate legal remedy may be contested in an administrative lawsuit within eight days of the notification of the injunction, [Art. 82 of the Competition Act]</p> <p>As regards challenging the decision (i.e. resolution) on the merits of the case delivered by the Competition Council, the GVH shall forward the statement of claim submitted against its decision in a competition supervision proceeding initiated because of the prohibited agreements restricting economic competition and the file of the case together with its defence statement to the court within thirty days of receipt of the statement of claim. In cases where the statement of claim also contains an application for immediate legal protection the deadline is fifteen days of receipt of the statement of claim. [Article 83 of the Competition Act]</p>

12. Types of decisions

<p>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. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>Pursuant to Article 76 (1) e)-k) of the Competition Act, the proceeding Competition Council in its decision shall:</p> <ul style="list-style-type: none"> • establish pursuant to Article 16/A that the benefit of the application of the group exemption does not apply to the agreement; • establish the fact of infringement; • order the termination of the infringing state; • where the existence of an infringement is established, impose obligations, including in particular an obligation to contract, in the case of an unjustified refusal to create or maintain appropriate business relations for the type of the transaction concerned; • order the publication of a corrective statement in respect of any infringing communication of information; • impose a fine; or
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	<ul style="list-style-type: none"> • issue a warning pursuant to Article 78(8) in addition to the imposition of the obligation that the party shall establish internal rules of procedures which ensure compliance with the provisions of competition law and the prevention of infringements; • oblige the undertaking to fulfil the commitments pursuant to Article 75; • establish in proceedings initiated pursuant to Article 67(7)(c) that the decision adopted pursuant to Article 75(1) was based on the misleading representation by the obliged undertaking concerning a fact which was material to the adoption of the decision and withdraw such decision; • establish that a conduct does not constitute an infringement.
<p>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).</p>	<p>All of the decisions listed under question No.12/A can be made in hardcore cartel cases <i>except the warning</i>.</p>
<p>C. Can interim measures⁹ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹⁰.) 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>Yes, interim measures can be ordered in cartel cases. In this context, the same rules apply for both hardcore cartels and other cartels. Articles 72/A (1) a) and 72/A (3) 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. 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, where necessary.</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.</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 [e.g.</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</p>
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⁹ 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].

¹⁰ Only for agencies which answered “yes” to question 2.B. above

<p>late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>establishment of the facts of the case. Those that culpably fail to meet an obligation shall be ordered by the case handler or the competition council proceeding in the case to pay the additional costs thus incurred.</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>. For further information please see the answer to question No. 13/E.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>Procedural sanctions may be imposed on both natural persons (e.g. other participants of the competition supervision proceeding) 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. As far as the disclosure of the data necessary for the clarification of the facts of the case and for the successful completion of the proceedings is concerned, <i>Notice No. 13/2017 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the procedural fines imposed in connection with failure to comply with disclosure obligation</i> as a general rule states that the GVH continues its practice with regard to the imposition of procedural fines in competition proceedings initiated before 31 December 2017, including the case law developed by the courts.</p> <p>When imposing a procedural fine, (i) the gravity of the infringement; (ii) the financial position and income of the entity concerned and the number and level of previous fines the number and amount of previous fines must also be taken into account (ii) if the fine is re-imposed in the same proceeding. (Article 61 of the Competition Law)</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>Yes.</p> <p>LUMP SUM</p> <p>The minimum procedural fine shall be 200,000 HUF [app. EUR 560], for undertakings and 50,000 HUF [app. EUR 140] 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 500,000HUF [app. EUR 1400] for natural persons not qualifying as undertakings. (Article 61(3) of the Competition Act)</p> <p>FINE DETERMINED ON A DAILY BASIS</p> <p>Where a time limit has been set for the fulfilment of a procedural obligation and this obligation has not been met, the procedural fine that must be paid by the obligor for failure to meet the specified time limit may also be calculated on a daily basis, beginning on the day on which the injunction imposing the fine becomes final, and ending on the date on which the obligation is fulfilled. In this case, the maximum daily amount of the procedural fine shall be one per cent of the net turnover in the</p>

	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 qualifying as undertakings. (Article 61(4) of the Competition Act)
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14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>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?]</p>	<p>COMPETITION LAW</p> <p>Article 76 of the Competition Act provides for the so-called administrative sanctions which were described in detail under question No. 12/A above.</p> <p>and the Antitrust Fine Setting Notice</p> <p>CRIMINAL LAW</p> <p>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 XLI of the Criminal Code, crimes against consumer rights and any violations of competition laws regulated in Chapter XLI of the Criminal Code as well) some specific crimes need to be highlighted, namely bid rigging (collusion in the course of public procurements and concession tenders).</p> <p>Pursuant to Article 420 of the Criminal Code, 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.</p> <p>The penalty for the criminal act shall be <i>imprisonment</i> for a term <i>not exceeding two years</i> 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 <i>substantial value</i> is deemed to be <i>between 5 million plus one and 50 million HUF</i>.</p> <p>Leniency application (either full or partial) may result in the lack of prosecution of perpetrators as well under the Article 420 (5) of the Criminal Code.</p> <p>In the circumstances described in Section 420 (4) and (5), the difference is that in the former case the criminal investigating authority receives the information, while in the latter case the GVH receives the information directly through the leniency application.</p> <p>In sum, 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</p>
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	<p>punished if the undertaking first submitted a leniency application to the GVH.</p> <p>CIVIL LAW/PRIVATE ENFORCEMENT</p> <p>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.</p> <p>PUBLIC PROCUREMENT ACT:</p> <p>In accordance with Article 62 (1) n) and o) of the PP Act, a competition law infringement committed under any jurisdiction results in mandatory exclusion from participation in a public procurement 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 public procurements 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 if the contracting authority is able to prove that in the given public procurement procedure the undertaking has entered into agreements with other undertakings aimed at distorting competition; 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 the undertaking has been convicted by a criminal court for bid-rigging in a public tender.</p>
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p>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. (Article 78 (3) of the Competition Act)</p> <p>The criteria set out in Article 78 (3) provide an exhaustive list, therefore not considered to be only indicative. 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 regulations on the proceeding Competition Council detailing how this right may be exercised (see also the answers provided for question No 13/D). As the Antitrust Fine Setting Notice is not binding, thus the Competition Council exclusively assess the resolution and the imposed fine on the basis of Article 78 (3) of the Competition Act.</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 fine, the starting amount is set by the GVH according to the gravity of the infringement, which may reach 30% of the relevant turnover. The ratio indicating the gravity of the infringement is determined in a complex manner which is detailed in the Antitrust Fine Setting Notice.</p> <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 (recidivism); • 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>For further information, please see the answer provided for question No14/D.</p>
C. Are there maximum and / or minimum sanctions / fines?	Yes, pursuant to Article 78 (1b) of the Competition Act the fine shall not exceed ten per cent of the net turnover, achieved in the business year preceding that in which the decision is adopted, of the undertaking or the group of undertakings which is specified in the decision and of whom the undertaking on which the fine is imposed is a member. The fine imposed on associations of undertakings shall not exceed ten per cent of the net turnover in the preceding business year of the undertakings which are members of such associations.
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]	Yes, the GVH issued an Antitrust Fine Setting Notice. Its 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 shall be followed when applying legal provisions in the future.
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	<p>Unless otherwise provided by the Kp. Act, the submission of the statement of claim shall not have suspensory effect on the administrative act becoming effective. (Article 39 (6) of the Kp)</p> <p>However, pursuant to Article 50, if a right or legitimate interest is infringed by the administrative activity, one may submit an application for interim relief to the court at any phase of the procedure with a view to averting an imminent threat of detriment, provisionally settling the disputed relationship or maintaining the status giving rise to the legal dispute.</p> <p>It is also possible to request ordering suspensory effect. The application shall be submitted to the court if it is not submitted together with the statement of claim. The court shall inform the defendant of the submission of the application without delay but not later than within three days. In the application, the reasons justifying interim relief shall be identified in detail and the documents certifying those reasons shall be attached. The facts underlying the application shall be proven presumptively. (Article 50 (2)-(3) of Kp. Act)</p>

15. Possibilities of appeal

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	<p>For preliminary remarks please see the answer provided for question No 12/C.</p> <ul style="list-style-type: none"> - The possibility for judicial review is a narrower legal remedy than the general system of appeal. It means that parties may only submit claims before the court seeking either the alteration of the resolution issued by the Competition Council or for the abolishment of the resolution and
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<p>grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>ordering the Competition Council to reopen the case and render a new decision if the original resolution and the procedure in which it was delivered by the Competition Council infringed substantive law. Therefore, a judicial review may be requested against the resolutions adopted by the Competition Council. (Article 83 of the Competition Act)</p> <p>- In addition to the Lex specialis, pursuant to the Kp. an infringement of procedural rules 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. Furthermore, pursuant to Article 3 (3), exploring the facts necessary for adjudging the legal dispute, making the data and evidence serving to support them available - if law does not provide to the contrary - shall be the parties' responsibility.</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>The statement of claim submitted against the decision of the GVH shall be submitted to the GVH which shall forward it and the file of the case together with its defence statement to the court within thirty days of receipt of the statement of claim. (Article 83 of the Competition Act)</p>

16. Private enforcement

<p>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</p>	<p>Both private enforcement of competition law and private damage claims are possible in the Hungarian jurisdiction.</p>
<p>B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</p>	<p>Laws regulating private enforcement of competition law are the following:</p> <ul style="list-style-type: none"> - Competition Act - PP Act - Civil Code
<p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>There are none.</p>
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust</p>	<p>Private actions are available on the grounds of infringement of prohibition of agreements restricting economic competition (chapter IV), prohibition of abuse of a dominant position (chapter V) and infringement of the</p>

matters are private actions available?	provisions of Articles 101 or 102 TFEU (in answers provided for questions of Section 16 hereinafter: competition law infringement).
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	<p>A finding of infringement by the GVH is not required to initiate a private antitrust action. Pursuant to Article 88/A (1) of the Competition Act, the competence of the GVH for the enforcement of the public interest shall not prevent the direct enforcement of civil claims for competition law infringement.</p> <p>Pursuant to Article 88/B (7) and (8), if the GVH has already adopted a definitive decision in the case or it has otherwise terminated its proceedings with definitive effect, and the decision of the GVH has not been contested in court, the GVH shall send to the court its definitive decision or the final, non-appealable decision of the court. The part of the decision of the GVH which contains the finding of the infringement, or if the decision was contested in court, the part of the court decision which contains the finding of the infringement shall be binding upon the court.</p>
F. Are private actions available where there has been a criminal conviction in respect of the same matter?	Criminal conviction is not an obstacle to private actions.
G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?	Pursuant to Article 88/I of the Competition Act, an undertaking covered by a leniency programme shall have joint and several liability exclusively for compensation for the harm caused to its own direct or indirect purchasers or suppliers, while it shall have such liability to other injured persons only if compensation may not be recovered wholly or partly from other infringers liable for the same infringement.
H. Name and address of specialised court (if any) where private enforcement claims may be submitted to	Pursuant to Article 88/A (3) of the Competition Act, the regional court shall have competence over actions filed pursuant to the chapter on proceeding in case of competition law infringement.
I. Information about class action opportunities	It is the Code of Civil Procedure that regulates in its Article 37 the class action opportunities, according to which multiple plaintiffs may bring an action together, and multiple defendants may be sued together if (i) the res judicata effect of the judgment adopted on the matter would apply to the co-litigants, even without their involvement in the action, (ii) the claims in the action arise from the same legal relationship, or (iii) the claims in the action arise from a similar factual and legal basis, and the territorial jurisdiction of the same court may be established with respect to all defendants.
J. Role of your competition agency in private	Pursuant to Article 88/B of the Competition Act, the court shall notify the GVH without delay if in a lawsuit the need arises to apply the provisions

<p>enforcement actions (if at all)</p>	<p>laid down in Chapters IV and V. Furthermore, the GVH may submit, until the closure of the trial, comments in writing on issues relating to the application of the provisions laid down in the aforementioned chapters. The information provided in the comments of the GVH have no binding effect on the court. The GVH shall inform the court, within a time limit of at least forty-five days of the receipt of the order of the court as specified in such order, of its legal position concerning the application of the provisions laid down in the aforementioned chapters. Upon request, the court shall send to the GVH the documents of the lawsuit that are necessary for the preparation of the comments or for the formation of its legal position. On the basis of the request of the GVH, the court may grant access to the GVH to the documents instead of sending them. The representative of the GVH may deliver an oral presentation of its comments. If the GVH intends to exercise its right to deliver an oral presentation, it shall notify the court of this fact within fifteen days.</p>
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> • Role of your competition agency in the damage calculation (if at all) 	<p>In the lawsuit the burden of proving the facts evidencing an infringement shall rest on the party claiming the infringement. (Article 88/B (9) of the Competition Act)</p> <p>Article 88/G of the Competition Act applies to the rules on the burden of proof in respect of a harm arising from the price difference resulting from a competition law infringement.</p> <p>Pursuant to Article 88/D (4) unless proved otherwise, it should be assumed that the infringement caused harm if the claimant demonstrates that the competition law infringement constituted a cartel.”</p> <p>The principle of free evaluation of evidence in proceedings shall take place. Neither the Competition Act, nor does the GRAP Act define exhaustively the possible pieces of evidence.</p> <p>The participation of the competition authority in actions for damages under competition law shall be in accordance with the provisions of Article 88/S of the Competition Act. Accordingly, pursuant to Article 88/S (1), “In an action for damages under competition law, the court may request the GVH to disclose its position on the occurrence and extent of harm and the existence of a causal relationship. In its request the court shall communicate to the GVH the issues that it is required to comment on as well as the data deemed necessary for that purpose.”</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors’ files or documents collected during investigations? • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential information by the competition agency to the court 	<p><u>Pursuant to Article 55:</u></p> <p>(3) Third parties other than the party and other participants to the proceedings, including witnesses and holders of the subject matter of the inspection with regard, respectively, to documents other than those containing the witness statements and the documents drawn up about the inspection, shall be allowed access to documents when the decision concluding the proceedings becomes final; prior to that access to the file is only possible if such third parties can demonstrate that access to such data is necessary to enforce a statutory right or to meet an obligation arising from law or from a judicial or administrative decision.</p> <p><u>Pursuant to Article 88/J:</u></p> <p>(1) Upon the reasoned request of a party, in claims for compensation under competition law the court may oblige any person to present or disclose a particular document or other means of proof available to it, or a particular scope or category thereof or a particular data or a particular scope or category of data, where the party requesting the disclosure of evidence (i) does not have possession of the document, other means of proof or data; and (ii) demonstrates the likelihood that the evidence requested to be disclosed may be suitable to prove a fact or circumstance relevant for the assessment of the claim.</p>

<ul style="list-style-type: none"> • summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>(2) Upon the request of the claimant, the court shall order the disclosure of evidence if, over and above paragraph (1), the claimant has already proved presumptively the validity of its claim and of its related factual claims in view of the evidence reasonably available and the known facts.</p> <p><u>Pursuant to Article 55/C:</u></p> <p>Documents containing restricted access data shall be handled separately in the case file so that they cannot be accessed by any person other than the case handler and other public service official participating in the handling of the case in taking procedural measures, the members of the competition council proceeding in the case, and the President and Vice-Presidents of the GVH as well as courts, other bodies or persons entitled to manage or come to learn of such data in the manner and scope set forth in an act of law.</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> • how is passing-on regulated / treated in your jurisdiction? • is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p><u>Pursuant to Article 88/D:</u></p> <p>“(2) Any person who suffered harm as a result of a competition law infringement may demand full compensation for such harm, irrespective of its position within the production-distribution chain.”</p>