

# Cartel Regulation

The application of competition regulation  
in 46 jurisdictions worldwide

**2012**

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# Hungary

Gábor Fejes and Zoltán Marosi

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## Legislation and jurisdiction

### 1 Relevant legislation

What is the relevant legislation and who enforces it?

The most important piece of legislation is Act LVII of 1996 on unfair market practices and restraints of competition (the Hungarian Competition Act or the HCA), which is supplemented by a set of Hungarian block exemption regulations, generally mirroring the relevant European legislation (on general vertical agreements, motor vehicle vertical agreements, insurance agreements, specialisation agreements and R&D agreements). As a result of Hungary's membership of the European Union, European competition law (in particular article 101 of the Treaty on the Functioning of the European Union (ex article 81 of the EC Treaty)) is also applicable in Hungary when trade between member states is affected, in accordance with the rules set out in EU Regulation No. 1/2003.

As regards procedural issues, the issues not regulated by the HCA are governed by Act CXL of 2004 on the general rules of administrative procedure and service (the Hungarian Administrative Procedure Act or APA).

In respect of bid rigging in public procurement and concession procedures, an additional sanctioning and procedural regime exists in the relevant public procurement and criminal laws (see section 296/B of Act IV of 1978 on the Hungarian Criminal Code and section 61(1)b of Act CXXIX of 2003 on public procurement).

The agency in charge for enforcing competition law is the Hungarian Competition Office (Gazdasági Versenyhivatal or GVH, whose website is [www.gvh.hu](http://www.gvh.hu), and includes some text in English). The GVH is an independent authority and is a member of the European Competition Network (ECN).

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### 2 Proposals for change

Have there been any recent changes or proposals for change to the regime?

In November 2011 the GVH launched public consultation on its new draft guidelines on the method of setting fines in antitrust cases. The 'old' guidelines published in 2003 and amended in 2005 were withdrawn by the GVH in May 2009. The new draft guidelines aim at introducing a more stringent regime in concession and public procurement cartels than the general rules of the 'old' regime. Some other amendments concern the method of setting fines for undertakings being member of a group of undertakings. For a more detailed description of the new draft, please see question 19.

As of July 2011 special provisions were created in the Hungarian Civil Code for all civil law claims whose value exceed 400 million forints. This also includes all claims initiated in front of Hungarian courts that are based on the infringement of Hungarian or European competition laws (such as claims for damages against cartelists) and that reach the above value threshold. As compared to ordinary

civil law cases, the amendments introduce, among other things, significantly shortened procedural deadlines and statutory periods for the courts in all parts of the litigation, and even expressly allow hearing dates to be set in 'blocks' (ie, on subsequent calendar days).

An amendment to the HCA effective as of April 2010 – as a unique solution in continental Europe – introduces a 'reporting fee' for private individuals that deliver 'indispensable documentary evidence' to the GVH, which makes it possible for the GVH to establish a hard-core infringement of competition law (price fixing, market sharing or the allocation of quotas between competitors). The amount of the 'reporting fee' equates to 1 per cent of the total amount of the fine imposed by the GVH at the end of its proceedings (but in any case not exceeding 50 million forints).

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### 3 Substantive law

What is the substantive law on cartels in the jurisdiction?

Section 11(1) of the HCA – whose wording in almost all respects is identical to article 101(1) TFEU (ex article 81(1) EC Treaty) – prohibits all agreements and concerted practices between undertakings, as well as decisions by associations of undertakings, that have as their object or potential or actual effect the prevention, restriction or distortion of competition.

Section 11(2) of the HCA also provides a list of examples of agreements that are illegal, which are very similar to those contained in the corresponding European competition law provisions. The non-exhaustive list includes a very wide range of horizontal and vertical restrictive agreements, such as price fixing, market sharing, limitation of production, allocation of quotas, territories and customers, market sharing and group boycotts.

The HCA also provides that such agreements only fall under the HCA if they are concluded between undertakings that are independent from each other (ie, if they belong to different company groups) and if such agreements have an appreciable effect on competition (ie, that they are not considered *de minimis*). As to this latter requirement, section 13(2) of the HCA states that for an agreement to be considered *de minimis* it is necessary that the market share of the undertakings concerned remains below 10 per cent of the relevant market and that the given agreement does not entail price fixing or market sharing between competitors. It is important to note that as a result (in contrast to EU law), the market share threshold is the same for both horizontal and vertical agreements and even vertical agreements (between non-competitors) entailing price fixing or market sharing may still fall under the *de minimis* exception.

Similarly to the European system, it is possible for an agreement to be exempt from the cartel prohibition under section 17 of the HCA, provided that:

- such agreement rationalises production or distribution, adds to technical or economic development, or helps environmental conditions or competitiveness;
- consumers will be granted a fair share of the benefits;

- the limitation or elimination of competition does not exceed that which is necessary to attain the set goals; and
- the agreement does not enable the elimination of competition regarding a significant proportion of the relevant products. There is no system for notifying agreements for exemption; the parties would have to assess the competitive effects of their agreement for themselves.

#### 4 Industry-specific offences and defences or antitrust exemptions

Are there any industry-specific offences and defences or antitrust exemptions?

Although general competition law is in force, applying to all industry sectors, a legislative change to Act XVI of 2003 on agricultural market organisations, effective as of July 2009, expressly authorises that professional bodies acting in the interest of agricultural markets may conclude self-regulatory agreements in relation to the purchase, sale and procurement of relevant agricultural products. The same amendment also enables professional bodies acting in the interest of suppliers of agricultural products to undertake surveys, provide information and undertake ‘coordinative consultations’ in order to promote the market situation of such products, provided that the economic and social advantages of such activities outweigh the advantages stemming from the ensuing restrictions of competition on the market. It is still unclear how these provisions would be applied in practice by the GVH and the courts.

#### 5 Application of the law

Does the law apply to individuals or corporations or both?

Section 1 of the HCA specifically states that the substantive provisions of the HCA apply to undertakings, namely all entities that are engaged in market activities, irrespective of whether such market activities are pursued by a natural person or a corporation. It is also not required that the undertaking pursues a profit-making activity.

#### 6 Extraterritoriality

Does the regime extend to conduct that takes place outside the jurisdiction? If so, on what legal basis does the authority claim jurisdiction?

Section 1 of the HCA provides that the HCA not only applies to market practices carried out on Hungary but also ‘to market practices of undertakings carried out abroad if they may have effects on the territory of the Republic of Hungary’. Foreign undertakings therefore may be subject to the HCA, provided that their conduct has a potential effect in Hungary.

### Investigation

#### 7 Steps in an investigation

What are the typical steps in an investigation?

Cartel proceedings are started ex officio by the GVH. The decision to initiate such proceedings is typically based on a complaint by a third party, a leniency application by a cartel member or the collection of relevant information from other sources (media, industry reports, investigations by other competition authorities, etc). If, based on these sources of information, the GVH can establish that the relevant conduct restricts competition and there is sufficient public interest for it to act, the GVH brings its decision to initiate proceedings; such decision cannot be challenged in court.

The proceedings of the GVH are divided into two distinct phases: the investigative phase and the Competition Council phase.

In the investigative phase, the case handlers (typically from the Cartel Bureau of the GVH) collect the necessary evidence to verify whether there was indeed a breach of the cartel prohibition. In using

their investigative powers as detailed in question 8, the case handlers first usually conduct an unannounced inspection at the premises of the undertakings concerned (a ‘dawn raid’), issue several rounds of requests for written information to the parties and then hear the witnesses to the case and the relevant executives of the undertakings concerned.

At the end of the investigative phase, the case handlers prepare their report on the investigation, which is then forwarded to the decision-making body – the Competition Council – which issues its detailed legal assessment of the case to the parties (in Hungarian: *előzetes álláspont*); this document is very similar to the statement of objections at the European Commission. After receiving the observations of the undertakings concerned, the Competition Council makes the final administrative decision of the GVH in the case (either at a hearing – where further issues may be clarified and defence statements made – or in camera).

#### 8 Investigative powers of the authorities

What investigative powers do the authorities have?

The GVH has a wide range of investigative powers, which are largely identical to that of the European Commission. In particular, the GVH has the power to conduct on-site inspections and to seize or copy relevant documents (this power includes the possibility to conduct dawn raids).

In the course of a dawn raid, the GVH has the authority to enter and search the business premises not only of the undertaking concerned but also private premises, vehicles and other areas in connection with any executive officer or employee of the undertaking concerned. Before such investigation, a court order must be obtained in advance upon written and reasoned request of the GVH. The GVH may also request the assistance of the police. During the course of the investigation of business or private premises, the GVH is entitled to copy and seize documents and also to make electronic mirror (forensic) copies of data. The undertaking concerned can be ordered to provide the relevant information and explanations on the spot.

The GVH also has the power to issue obligatory requests for written information to the parties, which may include requests for specific documents. These requests typically concern information on the relevant markets, the background and specificities of the alleged conduct, etc. The GVH further has the power to hear witnesses (typically managers, current or former employees of the undertakings concerned) on the relevant facts of the case.

Third parties may also be required to give any necessary information and make documents available to the GVH (these may include customers, competitors or possible whistle-blowers).

### International cooperation

#### 9 Inter-agency cooperation

Is there inter-agency cooperation? If so, what is the legal basis for, and extent of, cooperation?

The GVH has bilateral cooperation agreements with the following Hungarian sectoral agencies:

- the National Communications Authority;
- the Hungarian Energy Office;
- the Hungarian Financial Supervisory Authority;
- the General Inspectorate for Consumer Protection; and
- the Ministry of Economy and Transport.

The GVH has bilateral cooperation agreements with a number of Hungarian sectoral agencies, including the Hungarian Energy Office and the Hungarian Financial Supervisory Authority.

On the international level, the GVH – being a member of the ECN – is in close cooperation with the national competition authorities of the EU member states as well as the European Commission.



The OECD also has its Regional Centre for Competition in Hungary, opened in association with the GVH.

#### 10 Interplay between jurisdictions

How does the interplay between jurisdictions affect the investigation, prosecution and punishment of cartel activity in the jurisdiction?

Cartel investigations are basically in the exclusive jurisdiction of the GVH. Parallel competences may emerge in case of concession and public procurement cartels, which are not only administrative law violations but are also pursued under criminal law. Nevertheless, for the time being there is very little experience as regards the interplay between GVH and criminal investigations, as the few relevant criminal investigations are only at a very early stage.

With respect to parallel investigations on an international level, it is Regulation No. 1/2003 that contains the relevant rules, in particular, that the GVH is required to liaise with the other members of the ECN in order to allocate the case to the best-placed authority; if the European Commission has initiated its own investigation, the GVH can no longer investigate the given case. The GVH may also suspend its own proceedings if another national competition authority has initiated its proceedings.

#### 11 Adjudication

How is a cartel matter adjudicated?

As explained in question 7, the decision on the merits of the case is made by the Competition Council. The Competition Council bases its decision on the report of the investigators, its own statement of objections, the comments by the parties to the statement of objections, as well as the outcome of the hearing of the case (if any).

Private claimants may also bring separate (stand-alone) proceedings in civil courts against undertakings that have violated the cartel prohibition (eg, for damages), where the courts may also have jurisdiction to adjudicate on cartel matters.

#### 12 Appeal process

What is the appeal process?

The appeal or judicial review proceedings consists of several stages.

The GVH decision is first challenged at the Metropolitan Court. The court has the power to fully review the GVH's decision, both in terms of facts and law, and may uphold, amend or quash the GVH's decision and order the GVH to initiate new proceedings (eg, if there was a serious and irreparable procedural flaw in the GVH's procedure).

Second, the judgment of the Metropolitan Court is then subject to appeal to the Court of Appeal of Budapest; the appeal is generally based on points of law (although points of fact may also be brought up in limited circumstances). The second-instance judgment of the Court of Appeal is final and binding.

The final and binding judgment may be challenged to the Supreme Court of Hungary, in a judicial revision procedure, but strictly on points of law. There is no further judicial remedy against the judgment of the Supreme Court in Hungary.

#### 13 Burden of proof

With which party is the burden of proof?

In administrative proceedings, such as the competition proceedings, it is the GVH that principally bears the burden of proof. There is one exception to this general rule: the undertaking has to prove that the requirements for the exemption contained in section 17 of the HCA or in article 101(3) of the TFEU have been fulfilled.

### Sanctions

#### 14 Criminal sanctions

What criminal sanctions are there for cartel activity? Are there maximum and minimum sanctions? Do individuals face imprisonment for cartel conduct?

In Hungary, concession and public procurement cartels amount to a crime under the Hungarian Criminal Code with a maximum punishment of five years' imprisonment. If the cartel concerned has a value of less than 50 million forints, the punishment may be imprisonment up to two years, community service or financial penalty. There are no minimum sanctions: the precise type and amount of the sanction is subject to the judgment of the criminal court based on the individual circumstances of the given case.

#### 15 Civil and administrative sanctions

What civil or administrative sanctions are there for cartel activity?

The GVH can impose a fine on anyone violating the HCA. The maximum fine is 10 per cent of the net turnover of the undertaking concerned achieved in the business year preceding the date of the GVH decision. There is also a special provision whereby an undertaking that is member of a group of undertakings, and that can be identified as such, can have its maximum level of fine increased to 10 per cent of the turnover of the given group of undertakings.

When determining the amount of the fine, the GVH has to take into account all the circumstances of the case, in particular:

- the gravity of the violation;
- the duration of the unlawful situation;
- the benefit gained by the infringement;
- the market positions of the parties violating the law;
- the imputability of the conduct;
- the effective cooperation by the undertaking during the proceedings;
- the repeated display of unlawful conduct; and
- anti-competitive agreements (unless they are exempted) are null and void and thus unenforceable under Hungarian civil law.

The new draft guidelines on the setting of fines in antitrust cases intend to introduce a new aggravating circumstance, namely the relatively high net turnover of the group of undertakings to which the undertaking concerned belongs (see question 19).

Parties injured by the cartel may also claim damages with particularly favourable procedural conditions in front of civil courts (see question 17).

#### 16 Civil and administrative sanctions

Where possible sanctions for cartel activity include criminal and civil or administrative sanctions, can they be pursued in respect of the same conduct? If not, how is the choice of which sanction to pursue made?

Administrative, civil and criminal liability may be pursued in parallel in respect of the same conduct.

#### 17 Private damage claims and class actions

Are private damage claims or class actions possible?

Private damage claims by persons injured by a cartel are expressly envisaged and supported by the HCA. In particular, section 88/A of the HCA expressly clarifies that it is not only the GVH that has jurisdiction to adjudicate competition law infringements (such as cartels) and that the GVH's jurisdiction to protect the public interests does not preclude direct enforcement of claims based on competition law (such as claims for damages caused by cartels) in front of civil courts. In order to avoid parallel proceedings, however, the HCA:

- obliges the civil court to notify the GVH if relevant sections of the HCA are invoked in a case;
- allows the GVH to submit amicus curiae briefs to assist the court;
- obliges the civil court to suspend its procedure as long as a parallel GVH investigation is ongoing; and
- makes the GVH's decision binding on the court in terms of the establishment or absence of the infringement.

Furthermore, an amendment of the HCA effective as of June 2009 states that when a civil court wishes to establish the effect of a supply-side cartel on prices, the court shall deem that the given infringement influenced the prices applied by the cartellists to an extent amounting to 10 per cent of the price. This special provision therefore changes the general rule regarding the burden of proof applicable in civil cases initiated for the compensation of damages (where it is up to the plaintiff to prove the extent of the damages it suffered). It is important to note, however, that the amendment does not introduce a presumption as to the quantity of damages suffered as a result of the infringement, but only to the alleged effect of the infringement on prices. The damages actually suffered may thus be more than 10 per cent of the prices paid to the cartel members (if the injured party also suffered purely economic loss or loss of profits, etc) or may also be less than 10 per cent of the price (if the injured party successfully passed on parts of the price increase to its customers, etc).

For the time being, there has been very little practical experience with such private claims for damages under Hungarian law, the notable exceptions being the currently pending follow-on cases initiated by public tendering authorities (as injured parties) against construction companies after a string of decisions by the GVH condemning such companies of bid-rigging practices. An important decision has been made in relation to these cases by the Court of Appeal of Budapest. The decision established that from a civil law perspective vertical 'fruit contracts' (concluded by members of a horizontal cartel with their customers) should be clearly distinguished from the original horizontal cartel agreement: while the latter is clearly regarded as a null and void agreement, the former contracts – which do not have as their object or effect the restriction of competition – are not tainted with similar nullity.

As to class actions, there is practically no legal precedent in Hungary. In theory, however, the HCA entitles the GVH to lodge a claim for damages against the undertakings violating competition rules (including the cartel prohibition) on behalf of the consumers concerned, where the infringement concerns a wide and well-definable range of consumers, or caused substantial damages to them. It remains to be seen how this provision would be applied in practice.

#### 18 Recent fines and penalties

What recent fines or other penalties are noteworthy? What is the history of fines? How many times have fines been levied? What is the maximum fine possible and how are fines calculated? What is the history of criminal sanctions against individuals?

The GVH enjoys a wide margin of discretion in setting the amount of fines imposed on an undertaking that has infringed the cartel prohibition. The sanctioning policy of the GVH has been quite vigorous over recent years: it had brought several significant fining decisions concerning alleged anti-competitive agreements, imposing fines in the amount of several billion forints:

- an overall 7.17 billion forints fine on construction companies related to alleged agreements in railway construction projects in 2010;
- an overall 2.9 billion forints fine on construction companies related to alleged bid rigging in certain road projects in Heves and Nógrád counties in 2009 (the court, however, annulled the GVH's decision and ordered the GVH to conduct new proceedings, which is pending);

- an overall 1.92 billion forints fine on Hungarian banks and two international card companies for alleged collusive arrangements in relation to interchange fees in 2009; and

The GVH had an already robust fining practice essentially ever since 2004: it imposed its largest overall fine in the railway construction case in 2010 (7.17 billion forints) and its largest individual fine in the motor vehicle insurance (vertical) cartel case in 2005 (5.3 billion forints).

The maximum fine – as described in more detail in question 15 – is generally 10 per cent of the net turnover of the undertaking concerned in the business year preceding the date of the decision. The GVH also has the possibility – in case of an undertaking that is a member of a group of undertakings – to take into account as a maximum 10 per cent of the turnover of the given group of undertakings (the precise conditions for the use of this possibility are, however, unclear, and subject to current litigation) As to the method of calculation of the fine, please refer to questions 19 and 20.

At the time of writing, although criminal proceedings have been initiated against various individuals for the breach of the criminal cartel prohibition relating to public procurement procedures, the criminal proceedings are still at a very early stage.

### Sentencing

#### 19 Sentencing guidelines

Do sentencing guidelines exist?

In November 2011 the GVH launched public consultation on its new draft guidelines on the method of setting fines in antitrust cases. The 'old' guidelines published in 2003 and amended in 2005 were withdrawn by the GVH in 2009. The new guidelines aim at applying a more stringent regime in concession and public procurement cartels than the general rules of the 'old' regime. According to the draft, in the case of concession and public procurement cartels the base of the fine would amount to 30 per cent of the contract value (instead of the general rule, according to which the base amounts to 10 per cent of the undertaking's net turnover achieved on the relevant market in the business year preceding the decision). Some other amendments concern the method of setting fines for undertakings being a member of a group of undertakings. The draft introduces a new aggravating circumstance in this respect, being the particular economic strength of the group of undertakings that the undertaking concerned belongs to. In addition, an infringement shall be regarded as repeated or recidivistic in cases when another entity belonging to the same group was convicted for a similar infringement earlier.

#### 20 Sentencing guidelines and the adjudicator

Are sentencing guidelines binding on the adjudicator?

Although the possibility of issuing fining guidelines by way of a notice of the GVH is included in the HCA itself, the HCA also expressly states that such notices and guidelines are not binding (either on the GVH or on the courts). Based on recent judicial practice, it is unclear whether these notices and guidelines have any legal weight or whether they still create certain reasonable expectations for the parties that the courts should be protecting.

#### 21 Leniency and immunity programmes

Is there a leniency or immunity programme?

Since the latest amendment to the HCA in June 2009, the cornerstones of the leniency policy are encapsulated in sections 78/A and 78/B of the HCA. These provisions are applicable to leniency applications submitted subsequent to 1 June 2009.

In addition to the general provisions contained in the HCA itself, the detailed rules applicable to leniency in Hungary are contained

in several soft-law instruments: the notice on the application of paragraphs 78/A and 78/B of the HCA (the Leniency Notice), a ‘frequently asked questions’ document (the Communication), and the leniency notification form. These legal instruments are intended to provide increased legal certainty to leniency applicants and to align the Hungarian leniency rules with those of the ECN model leniency programme.

## 22 Elements of a leniency or immunity programme

What are the basic elements of a leniency or immunity programme?

Hungarian leniency policy only applies to certain hard-core cartels, which are defined as agreements or concerted practices by and between one or two competitors (including decisions by associations of undertakings) that have as their direct or indirect object the fixing of prices, the sharing of markets (including collusive tendering) or the fixing of sale or production quotas.

Leniency applicants may either receive full immunity from fines (under the conditions set out in question 23) or partial immunity from fines (under the conditions set out in question 24), provided, in each case, that they meet the general requirements for leniency as set out in question 27.

## 23 First in

What is the importance of being ‘first in’ to cooperate?

The company coming first in may receive total immunity if:

- the applicant is the first to provide information and evidence on a cartel, on the basis of which the GVH becomes entitled to conduct a dawn raid, provided that at the time of the submission the GVH did not have sufficient information or evidence to undertake such an inspection; or
- in a procedure already initiated by the GVH, the applicant is the first to provide new evidence and information on the basis of which the cartel infringement may be established, provided that at the time of submission, the GVH did not have sufficient evidence or information to establish the cartel infringement.

## 24 Going in second

What is the importance of going in second? Is there an ‘immunity plus’ or ‘amnesty plus’ option?

Partial immunity (reduction of up to 50 per cent of the fine) is granted for applicants subsequent to the first in, provided that the evidence and information given by that applicant provides ‘clear added value’ to the information and evidence already available to the GVH (in particular written documents, especially those documents that are contemporaneous to the infringement and that directly support the existence of the cartel in question).

The rate of the reduction of the fine for any successful applicant is as follows:

- the second applicant who comes after the applicant who has been granted total immunity may expect a reduction between 30 and 50 per cent;
- the next applicant may expect a reduction between 20 and 30 per cent; and
- any further applicants may expect a reduction of up to 20 per cent.

As to ‘immunity plus’ or ‘amnesty plus’, such possibilities are not expressly provided for under the HCA or the Leniency Notice. There is also no clear practice in this respect by the GVH.

## 25 Approaching the authorities

What is the best time to approach the authorities when seeking leniency or immunity?

Since the first applicant may obtain full immunity from a fine, it is highly recommended to approach the authority as soon as possible.

## 26 Confidentiality

What confidentiality is afforded to the leniency or immunity applicant and any other cooperating party?

The Leniency Notice states that the GVH treats as confidential the identity of the cooperating undertaking and the fact of cooperation until the undertakings concerned in the given case are entitled to inspect the file (this date is set by the Competition Council in each case and it may not happen before the end of the investigative phase).

## 27 Successful leniency or immunity applicant

What is needed to be a successful leniency or immunity applicant?

There are certain general conditions that apply to all undertakings wishing to receive leniency. Thus, under the Leniency Notice, an undertaking may only receive a partial or full reduction in fines, if, by the end of the procedure of the GVH, the given undertaking:

- has not taken any steps to coerce any other undertaking to participate in the cartel (this condition is not applicable for applicants requesting a mere partial reduction of fines);
- has fully and continuously cooperated with the GVH in good faith (eg, by way of providing the GVH promptly with all relevant information and evidence relating to the alleged cartel); and
- has ceased its participation in the cartel after the submission of the evidence, except for a situation where the GVH expressly informs the undertaking that its further participation is necessary to ensure the success of an envisaged dawn raid by the GVH.

## 28 Plea bargains

Does the enforcement agency have the authority to enter into a ‘plea bargain’ or a binding resolution to resolve liability and penalty for alleged cartel activity?

Currently, no plea bargain or settlement procedures are in force within the framework of the competition procedure in Hungarian law.

## 29 Corporate defendant and employees

What is the effect of leniency or immunity granted to a corporate defendant on its current and former employees?

As the leniency applicant is the corporate defendant itself, the partial or full reduction of fines it receives would have no bearing on its potential (criminal) responsibility. The leniency granted to a corporate defendant has no effect on its employees.

Note that the only personal sanction for a breach of the substantive law provisions of the HCA can be criminal punishment in the case of concession and public procurement cartels. Here, the person revealing the crime to the police, to the GVH, to the financial supervision authority or to the public procurement council is granted immunity from the criminal punishment.

## 30 Cooperation

What guarantee of leniency or immunity exists if a party cooperates?

The most important cornerstones of the leniency policy are now included in binding legislation, namely the HCA. Hence, such rules bind both the GVH and the courts.

**31 Dealing with the enforcement agency**

What are the practical steps in dealing with the enforcement agency?

There are three ways in which the GVH can be contacted:

- **Marker** – a non-complete application, whereby the applicant only provides the GVH with its name and address, the nature of the alleged cartel conduct and the list of evidence available to the applicant. Having received a marker, the GVH determines a period of time within which the applicant must make a full submission of all relevant evidence and information.
- **Full filing** – the undertaking submits all written information and evidence in its possession together with its request for leniency to the GVH (including details of the applicant as well as the alleged cartel and the affected markets).
- **Summary application** – a special application that may be made if the applicant considers that the European Commission is deemed 'particularly well placed' to deal with the case, while the GVH may also be 'well placed' to act. A condition for such a summary application is that a parallel application to the European Commission has already been made or is being prepared.

In all cases, the GVH provides a written certificate to the applicant indicating the time of the receipt of the submission, including the year, month, day, hour and minute.

Anonymous filing or presenting information or evidence in hypothetical terms (or both) is not acceptable to the GVH. Oral filings are possible; in this case the GVH takes minutes of the filing, which subsequently needs to be signed by the applicant.

In the framework of the 2009 changes, the GVH published a helpful leniency notification form, which provides detailed guidance as to the submission of the application. It is also useful to contact the case handlers at the dedicated Cartel Unit of the GVH, who may provide further clarifications or assistance.

**32 Ongoing policy assessments and reviews**

Are there any ongoing or proposed leniency and immunity policy assessments or policy reviews?

After the amendment to the HCA in 2009, there is no such ongoing review.

**Defending a case****33 Representation**

May counsel represent employees under investigation as well as the corporation? Do individuals require independent legal advice or can counsel represent corporation employees? When should a present or past employee be advised to seek independent legal advice?

There is no specific rule barring counsels from representing employees as well as corporations; however, the general conflict of interest

**Update and trends**

The most important development in respect of cartels is the expected issuance of new fining guidelines by the GVH, which is expected to provide useful guidance to any undertaking concerned by an investigation by the GVH. In this respect, a crucial factor would be whether and to what extent the GVH would adhere to the new guidance and would indeed be able to duly justify and reason any deviation from the guidance in the individual cases.

It also appears that the GVH continues to act as a strong enforcer of the laws prohibiting cartels in 2011, initiating important cases into the areas of banking, magazine publishing, production and sale of office equipment, production of ready-mix concrete and the sale of navigation devices.

rules of the Hungarian Act on Attorneys, as well as the applicable codes of ethics, need to be observed in each particular case.

A present or past employee may typically avail him or herself of independent legal advice if the case implies criminal responsibility of the individual (ie, in concession and public procurement cartels – see question 14).

**34 Multiple corporate defendants**

May counsel represent multiple corporate defendants?

There is no legal rule specifically excluding the possibility of counsel representing multiple corporate defendants, while the general conflict-of-interest rules of the Hungarian Act on Attorneys, as well as the applicable codes of ethics, need to be observed in each particular case.

**35 Payment of legal costs**

May a corporation pay the legal costs of and penalties imposed on its employees?

There is no specific rule barring a corporation from compensating its employees for the legal costs and penalties that may be incurred in such a case.

**36 Getting the fine down**

What is the optimal way in which to get the fine down?

First, the possibility of achieving immunity from fines under the leniency regime should be verified as soon as possible. Second, effective cooperation by the undertaking during the proceedings could be taken into account by the GVH when considering the level of fine to be imposed (provided that this cooperation amounts to more than mere compliance with the general obligation to submit to the investigation by the GVH).

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