

The case of motor vehicle repairers with insurers

The largest fine ever paid by a single company in Hungary was imposed by the GVH in late 2006, when the authority fined Allianz Hungária HUF 5.3 billion (€ 20 million). The total of HUF 6.8 billion (€ 26 million) imposed on those involved in the case altogether was only slightly below the HUF 7 billion (€ 26.6 million) record fine imposed on the motorway cartel. This case was a combination of a number of contested practices, each of which restricted competition.

Two large insurance companies – Allianz Hungária and Generali-Providencia – agreed with the Hungarian Association of Automobile Dealers (Hungarian abbreviation: GÉMOSZ), an

association of 600-700 car dealers, on ‘recommended prices’ (actually: on overpriced hour rates) between 2003 and 2005. The Competition Council found that GÉMOSZ – though it was a civil society organisation – was functioning as a cartel enabling its members to restrict price competition and to apply higher, uniform prices. As a consequence of the concerted conduct of the participants motor vehicle repairers managed to increase their prices by over 10 percent a year between 2003 and 2005 – exceeding the inflation rate – but there were negotiations about hour rate increases which would have gone up to three times of that extent.

The insurers accepted the increased hour rates in exchange for the repair firms making up for it by getting new insurance contracts for them. More-

over, the insurers brought the level of the hour rates paid to repair shops in line with the performance of the repair shops in getting them new insurance contracts. Other insurers on the market also had to pay the artificially increased repair rates to the repairers without the latter getting them new insurance contracts. The two insurers mentioned above did not set up a cartel between themselves, but they accepted the price cartel built up by motor vehicle repair firms and so they tried to restrict competition on the market of motor vehicle insurance.

The GVH imposed fines on the insurers, authorised dealers and intermediaries (insurance brokers) playing a key role in operating the insurance market, which were parties to the restrictive agreements.

Is it worth cartelling?

„The decision hit [... company] hard. A procedure has been started within the company and the managers found guilty of participating in price-coordination should expect sanctions.”

Népszabadság, 30 November 2006:
Cartel companies caught (information on the Slovakian competition authority's decision against public procurement bid rigging cartel)

„I will be steadfast in applying **zero tolerance** for those who operate cartels.”

Neelie Kroes, European Commissioner for Competition Policy (in her acceptance speech)

Participating in cartels offers substantial advantages for businesses at the expense of consumers (see ‘Rich booty...’ above). This is the reason why competition authorities are adopting increasingly tough approaches to uncover and eliminate cartels. Thus when a cartel is brought to light, the participating companies and their managers have to face serious negative consequences.

One of the most severe consequences of having been caught cartelling is **bad publicity** resulting from the company's

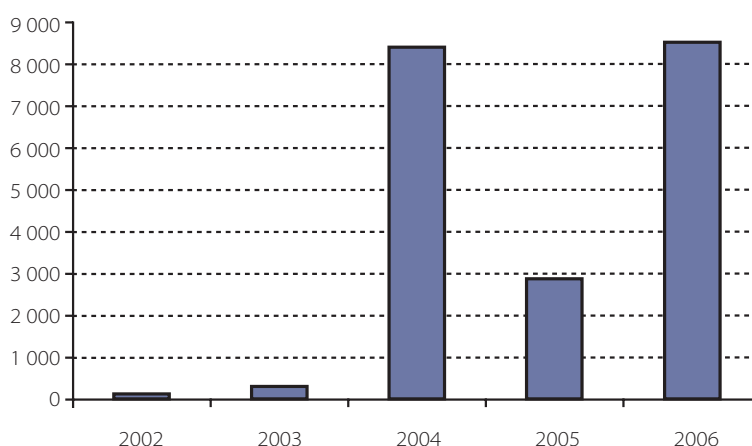
name appearing in a negative context in relation to the cartel. This may destroy the results of years of PR efforts and spoil the image of the company for quite a long period. (Since 2002 the daily Népszabadság and the weekly Figyelő has published articles on cartels discovered by the GVH in more than thirty and in twenty cases, respectively.)

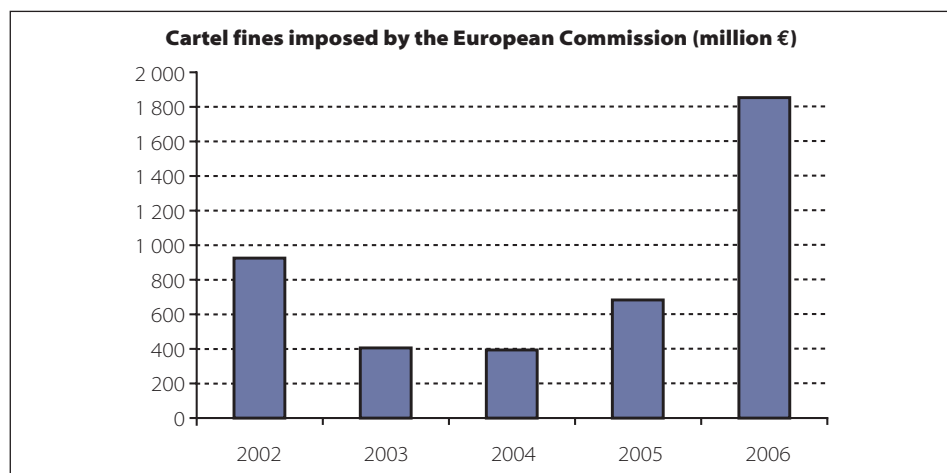
Participating in cartels is the most serious infringement of competition law and a company found guilty of cartel activities is heavily **fined** by the GVH. Between 2002 and 2006 the authority

imposed fines totalling in HUF 20.2 billion (€ 76.8 million), in nominal terms. One of the companies was fined HUF 5.3 billion (€ 20.2 million) in a single cartelling case.

Customers injured by a cartel may **sue the cartelists for damages** in civil law action. Damages enforced in such actions may significantly exceed even the fines imposed by the competition authority. For instance, in the case of the vitamin cartel manipulating the international vitamin market up to the late nineties, the DoJ – proceeding as one of the competition

Cartel fines imposed by the Hungarian Competition Authority (million HUF)





authorities of the USA – imposed a \$900 million fine while courts awarded another billion dollars to injured customers in private actions for damages.

Other sanctions may also be applied to bid-rigging companies participating in public procurement and concession tendering. Such sanctions include, for instance, **exclusion from the public procurement procedure** or **prohibition of access to local governmental, state and EU aids**. In addition to the cartel company the executives representing it, signing the cartel agreement, may also be punished: since September 2005 courts can impose **up to five year prison sentences** for cartel activities: this is not likely to be the most attractive point in a manager's CV. In effect, a cartel steals money from consumers: one should not be surprised to see price-fixing in the list of deadly sins under the heading 'Thou shalt not steal' on one of the most frequented English language catholic home page.

If the operations of a cartel are not limited to Hungary or if its impacts – e.g. a price increase – affects not only Hungarian but other countries' consumers as well, the **competition authority of the country concerned** or the **EU Commission's Directorate-General for Competition (DG COMP)** can also apply sanctions with regard to the impacts on foreign markets, in accordance with their own regulations. One of the main goals of Neelie Kroes, new Commissioner for Competition Policy appointed in 2004, is to intensify the fight against cartels. These efforts yielded spectacular results in 2006 already. The European Commission has been traditionally imposing hefty fines on cartels and the tightening of the sanctioning policy in 2006 indicates further increases in the amounts of fines to be expected by cartelists. The amount of a fine may equal up to 30 percent of the cartel's annual turnover of the goods concerned by the cartel activities. This

amount is multiplied by the number of years during which the violation was continued and the result is further increased in cases of repeated infringement. Criminal sanctions including imprisonment are routinely applied in the USA.

Moreover, besides the serious harm done to a company by it being found to have participated in a cartel, **avoiding detection** and the sanctions **does not even depend on that company's own skills**. A **cartelist cannot even trust its own partners in the cartel**: each of them is encouraged to be the first one to blow the whistle, for the participant who first informs the competition authority of the existence of the cartel is exempted from the fine obtaining in this way a significant competitive advantage over the other cartel members which will be fined. In many cases dissatisfied employees or employees who have already quit or been sacked take revenge by **bringing down the cartel**.

Accordingly, participating in a cartel may prove to have been a highly expensive gamble for the company and its executives and those who go in for it run very considerable risks. And once a company has made the mistake of getting involved in a cartel it is worth considering the option of providing information for GVH (or the European Commission) to alleviate the numerous negative consequences of getting caught. A responsible executive may avoid criminal sanctions by confessing to the infringement.

What is a cartel?

A cartel is a secret and definitely anti-competitive alliance between formally competing companies to restrict competition by allocating markets, limiting output and fixing prices. In contrast to some other not purely anticompetitive forms of cooperation a cartel has no positive impact on consumers at all, thus concluding cartel agreements is prohibited; indeed, participating in a cartel qualifies as the most serious breach of competition law.

The different forms of cartel activities include competitors agreeing on **divid-**

ing the market by certain criteria

(e.g. geographical area, time, product or customer segment). Another example is where competitors agree on **the quantity to be produced/sold or on their capacities or on restricting/limiting them**. **Concluding price agreements** is also prohibited. This is the case if competitors fix their prices or any elements of their prices, if they set minimum prices or standard pricing formulas, if they decide on price differences to be applied between different products or if they unify or eliminate discounts. Agreements prohibiting advertising also qualify as cartel activities.

Bid rigging is a typical form of cartel activities. In this case bidders usually agree in advance on who is to win the project put to tender by offering a high price, while the others do not submit bids, submit uncompetitive bids or even withdraw their bids.

Group boycott is considered as a hard-core cartel, and is a strictly prohibited business conduct. It is an agreement between competitors not to deal with another person or business, or to pose discriminating terms and conditions. The aim of the boycott is to drive some businesses out of the market or to force another party to pay higher prices.