

A last chance for those who grasp the opportunities

The leniency policy applied by the Hungarian Competition Authority to companies participating in an anti-competitive agreement offers a chance for avoiding part or the whole of the sanction. The point is that the GVH rewards participants of a secret agreement, that are ready to quit the cartel and to provide information for the authority on the existence and activities of the cartel, by reducing the amount of or granting immunity from the fine. The word 'leniency' may lead some to believe that the GVH forgives those who confess to their violations, but that is not the case. The competition authority does not exercise fairness or a pardoning power when it does not fine a firm. The leniency policy is simply a means for breaking the silence surrounding cartel agreements by offering an incentive to participants for cooperation with the authority. The GVH aims to uncover the largest possible proportion of such infringements and to impose heavy punishments on perpetrators. The leniency policy is just one of the instruments applied to attain this goal by exploiting internal tensions existing within cartels, through generating distrust among participants.

Granting immunity or reducing the fine

A firm participating in a cartel may apply for full immunity from the fine if it is the

first one to provide meaningful information on a cartel hitherto unknown to the authority, on the basis of which the GVH can start an investigation. No fine is imposed either, if in an already ongoing proceeding a participant of the cartel is the **first one** to supply the GVH with crucial evidence and information for establishing the infringement, provided the GVH did not have enough information for proving the infringement at the time of the submission. In addition to sanctions under the competition regulations, the first participant to supply information is also released from possible criminal sanctions.

The fine imposed on a cartel member may be reduced if, although it is not the first participant to supply the authority with crucial evidence, it delivers information that provides **definite added value** in addition to the body of evidence already available for the GVH. In practice this takes the form of documentary proof making a significant contribution to establishing the facts. If the pieces of evidence submitted by a cartel member meet this criterion, then after the disclosure of the cartel, for the participant that was the first one to provide the authority with meaningful information the fine is reduced by 30-50 percent, for the second one by 20-30 percent and by up to 20 percent for any other cartel member that has provided such information.

These reductions are often quite substantial in absolute terms, given the large amounts of fines. Another pre-requisite for immunity from the fine or for the

reduction of its amount, however, is that after delivering evidence the company promptly terminates its cartel activity and it cooperates continuously and fully with the GVH in the course of the proceeding. Moreover, immunity may be granted only if the cartel participant did not do anything to force others to get involved in the violation or to force them to operate the cartel, i.e. 'ringleaders' cannot avoid the consequences under any circumstances.

The wall of silence: the one who demolishes it, wins

The biggest ever international cartel that has been revealed to date – the vitamin cartel which operated between 1989 and 1999 – gives a good illustration of the operation of the leniency policy and of how much the first participant to 'come to' and submit information on the cartel may win. Thirteen vitamin manufacturers paid fines of a total of EUR 790 million in the European Union, 20 million dollars in fine and 30 million dollars in compensation in Australia and almost USD 900 million in fine and more than USD 1 billion in damages in the USA, after one of the members of the cartel quit and blew the whistle on the alliance. Roche (Switzerland), BASF (Germany), Rhône-Poulenc (France) and a number of other international companies allocated the worldwide vitamin market for almost ten years. When a suspicion on the existence of a cartel operating on the vitamin market arose, it was denied by the participating manufacturers but one of them – Rhône-Poulenc – applied for leniency as the first one to make a report and supplied information for the competition authorities. It was well worth for the whistle blower, for while other participants of the cartel paid hundreds of millions of euros in fines, the French company got away with a symbolic fine both in the United States of America and in Europe.

In Hungary Kemira GrowHow and the Tessenderlo group participated in a price coordinating and market allocating agreement for thirteen years up to 2003, almost completely dominating the Hungarian

Highest ever fines imposed on cartelists by the Competition Council

Name of case	Firm	Fine (nominal)	
		million HUF	million € (1€=263HUF)
1 Motor vehicle repairers and insurers (Vj 51/2005) *	Allianz Hungária	5 319	20.2
2 Motorway construction in cartel (Vj 27/2003)	Strabag Rt	2 468	9.4
3 Motorway construction in cartel (Vj 27/2003)	Betonút Rt	2 212	8.4
4 Motorway construction in cartel (Vj 27/2003)	Hídépítő Rt	1 371	5.2
5 Motor vehicle repairers and insurers (Vj 51/2005) *	Generali-Providencia	1 046	4.0
6 IT system for universities (Vj 162/2004)	SAP Mo. Kft.	690	2.6
7 IT system for universities (Vj 162/2004)	IBM Mo. Kft.	690	2.6
8 Motorway construction in cartel (Vj 27/2003)	Egút Rt	496	1.9
9 Motorway construction in cartel (Vj 27/2003)	Debmüt Rt	496	1.9
10 AREVA et al. - switchgear (Vj 102/2004)	Alstom	440	1.7

* The insurers in this case did not form a cartel between themselves: they accepted the cartel of their car dealer partners, in exchange for substantial advantages.

market of fodder phosphate. The durable alliance came to an end when Kemira turned to the authority. While the competition council imposed a fine of HUF 131 million (€ 500 thousand) on Tessengerlo, Kemira was granted immunity from the whole amount of the fine which would have exceeded HUF 1 billion (€ 3.8 million).

By contrast, the motorway construction companies caught cartelling in Hungary in 2002 failed to apply for leniency. Throughout the proceeding they stood by their competitors and the billion forint bill had to be paid by their shareholders. Hídépítő Rt., Betonút Rt. and Strabag Rt.,

which paid the biggest fine, could have saved almost HUF 1.4 billion (€ 5.3 million), HUF 2.2 billion (€ 8.4 million) and HUF 2.5 billion (€ 9.5 million), respectively, by cooperating with the GVH as the first member to turn in information on the cartel. To illustrate the scale of the fine imposed on Strabag: if this amount were to be paid in 1000 forint notes – like in a crime story – counting the notes aloud would take one person a whole month without leaving time for meals and taking a nap every now and then.

So there is a way out of a cartel, but only for the quickest. Information on the authority's leniency policy is available on

the GVH homepage and the Cartel Section of the GVH is also ready to answer questions.

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Fighting cartels – Why and how? Cartel conference

Friday, 16 February 2007

Morning session

09:30-10:00	Registration
10:00-10:20	Welcoming remarks, Mr. Ferenc GYURCSÁNY, Prime Minister of Hungary
10:20-10:50	Busting cartels: A European priority, Mr. Philip LOWE, European Commission, Director General of DG Competition
10:50-11:05	Questions and Answers
11:05-11:20	Coffee break
11:20-11:50	The Hungarian Competition Authority's cartel enforcement activity, Mr. Zoltán NAGY, President of the GVH
11:50-12:20	State involvement: The success factor of Dutch cartel enforcement, Mr. Pieter KALBFLEISCH, Netherlands Competition Authority, Director General
12:20-12:40	Questions and Answers
12:20-14:00	Lunch

Afternoon session

14:00-14:40	The fully fledged cartel policy of the US, Mr. Gerald F. Masoudi, Department of Justice, International, Appellate, and Policy matters, Deputy Assistant Attorney General
14:40-15:10	Cartels also hurt business – the business view, Mr. Gusztáv BIENERTH, President of the American Chamber of Commerce in Hungary
15:10-15:40	Fight against Cartels - a Non-theoretical Approach, Mr. Miklós MERÉNYI, State Secretary of the Ministry of Economy and Transport
15:40-16:00	Questions and Answers
16:00-16:10	Closing remarks, Mr. Zoltán NAGY, President of the GVH
16:10-17:00	Reception