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The International Comparative Legal Guide to:

Cartels & Leniency 2008

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THE CARTEL PROHIBITION

1 The Legislation

1.1 What is the basis and general nature of the cartel prohibition?

Section 11 of Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition ("Competition Act") contains the fundamental Hungarian rules on cartel prohibition (see question 1.2) and the sanctions for the infringement thereof.

In case of infringement of the cartel prohibition, the rules of the Hungarian Civil Code regulating the consequences of the conclusion of contracts contradictory to any legal regulation (including the Competition Act) and the tort rules thereof also apply.

As for criminal law concerns, the Hungarian Criminal Code provides for sanctions against activities which result in the restriction of competition, in case the purpose of such activity is to influence the result of a concession tender or a public procurement procedure ("Criminalised Cartel Activities").

1.2 What are the specific substantive provisions for the cartel prohibition?

Section 11 of the Competition Act contains the following definition for cartel prohibition:

"(1) Agreements and concerted practices between companies, as well as the decisions of the social organisations of companies, public bodies, unions and other similar organisations of companies, unions (hereinafter referred to collectively as "agreements"), which are aimed at the prevention, restriction or distortion of economic competition, or which may display or in fact displays such an effect, are prohibited."

Further, Section 11(2) of the Competition Act refers to certain examples of anti-competitive conduct comparable to Art 81(1) EC Treaty, such as price fixing, restricting manufacture, distribution, technical development or investment or market allocation, etc.

Finally, the Competition Act provides for exemptions to the cartel prohibition if the agreement restricting competition within the meaning of Section 11(1) of the Competition Act fulfils certain criteria. Namely the exemptions apply if such agreement is of minor importance or is concluded between related undertakings or - comparable to Art 81(3) EC Treaty - among other requirements contributes to the improvement of production or distribution of goods while allowing consumers a fair share of the resulting benefits.

1.3 Who enforces the cartel prohibition?

Generally, the Hungarian Competition Office ("Competition Authority") a body directly subordinate to the Parliament of Hungary enforces the cartel prohibition.

Courts should also be taken into consideration for the application of consequences for restrictions of competition via cartels with regard to the civil law claims and criminal sanctions referred to under question 1.1.

1.4 What are the basic procedural steps between the opening of an investigation and the imposition of sanctions?

The stages of the competition control proceedings are:

a) investigation (the investigator upon conclusion of their investigation, prepares a report and presents it, together with the relevant documents, to the Competition Council);

b) proceedings conducted by the Competition Council (as an independent decision making body of the Competition Authority, in certain cases after hearing the parties, the Competition Council renders a decision on the merits of the case);

c) follow-up investigation (possible in all cases decided by the Competition Council); and

d) enforcement (conducted by the Competition Authority).

1.5 Are there any sector-specific offences or exemptions?

Sector-specific exemptions provided by government regulations can be found in the following areas: certain categories of (i) insurance; (ii); technology transfer; (iii) specialisation; (iv) research and development; and (v) car manufacturing agreements.

1.6 Is cartel conduct outside Hungary covered by the prohibition?

The Competition Act applies to market conduct displayed in the territory of the Republic of Hungary. As far as cartel conduct is concerned, the market conduct displayed by companies abroad also falls under the scope of the Competition Act, if the effect of such conduct may manifest within the Republic of Hungary.

2 Investigative Powers

2.1 Summary of general investigatory powers.

Table of General Investigatory Powers

Investigatory power	Civil / administrative	Criminal
Order the production of specific documents or information	yes	yes
Carry out compulsory interviews with individuals	yes	yes
Carry out an unannounced search of business premises	yes*	yes
Carry out an unannounced search of residential premises	yes*	yes
■ Right to 'image' computer hard drives using forensic IT tools	yes	yes
■ Right to retain original documents	yes	yes
■ Right to require an explanation of documents or information supplied	yes	yes
■ Right to secure premises overnight (e.g. by seal)	yes	yes

Please Note: * indicates that the investigatory measure requires authorisation by a Court or another body independent of the competition authority.

2.2 Specific or unusual features of the investigatory powers referred to in the summary table.

The most debated feature of the investigatory powers referred to in the summary table is that the criminal investigation authorities do not need court authorisation to carry out any of the listed investigatory measures. Please note, however, that this is only applicable to investigations regarding the Criminalized Cartel Activities.

2.3 Are there general surveillance powers (e.g. bugging)?

The Competition Authority does not have general surveillance powers, therefore such methods of investigation cannot be used in cartel investigations conducted by the Competition Authority.

Additionally, such methods are by definition excluded from the authority of civil law courts acting in proceedings based on civil law claims related to any infringement of cartel prohibition.

Nevertheless, in criminal proceedings (which are limited to the Criminalised Cartel Activities) the public prosecutor and the investigating authority (the police in most cases) have the power to use general surveillance powers. This power is always subject to court authorisation.

2.4 Other powers of investigation.

The Competition Authority is entitled, when it conducts the investigation of business or private premises, to copy and seize documents (with subsequent approval of the court) that do not relate to the subject of the investigation. Such documents may be used as evidence in other proceedings.

2.5 Who will carry out searches of business and/or residential premises and will they wait for legal advisors to arrive?

Officials of the Competition Authority carry out the searches of business and/or residential premises. However, the Competition Authority has the right to request the assistance of the police.

The officials of the Competition Authority are not obliged to wait for legal advisors to arrive, but as far as possible, they have to carry out searches in the presence of the persons affected.

In cases of criminal proceedings (which are limited to the Criminalised Cartel Activities) such searches are carried out by the investigation authorities (the police in most cases) or by public prosecutors.

In criminal proceedings, the rules to be followed by the investigating authorities are stricter than in the case of the above proceedings conducted by the Competition Authority; if the affected person (or his/her representative or attorney) is not present, the investigating authorities or the public prosecutors are obliged to provide for the presence of a person who can be reasonably considered to be able to protect the interests of the affected person.

2.6 Is in-house legal advice protected by the rules of privilege?

Generally, authorities have no right to access or obtain certain client-attorney communications. Nevertheless, the Competition Act does not refer to in-house legal advice in this regard, therefore in-house legal advice cannot be considered protected by the rules of privilege.

2.7 Other material limitations of the investigatory powers to safeguard the rights of defence of companies and/or individuals.

The party subject to proceedings of the Competition Authority may not be forced to confess to illegal acts.

2.8 Are there sanctions for the obstruction of investigations? If so, have these ever been used in connection with a cartel investigation?

An administrative penalty may be imposed upon any party to the proceedings, and any person who is required to cooperate in the process to ascertain the relevant facts of the case if, during the course of the proceedings, they engage in conduct, which is aimed at or results in the protraction of the proceedings. The minimum amount of the administrative penalty imposed based on the above is HUF 50,000 (EUR 200), and the maximum amount is - in respect of companies - one per cent of the net sales revenue of the previous financial year, or HUF 500,000 (EUR 2,000) for natural persons. In practice similar rules apply in the case of sectoral inquiries conducted by the Competition Authority.

The administrative penalty for failure to meet the deadline prescribed for procedural obligations is - in respect of companies - a maximum of one per cent of the net sales revenue of the previous financial year prorated per day for each day of delay, or HUF 50,000 (EUR 200) per day for natural persons.

It is customary practice of the Competition Authority to impose the above administrative penalties (reaching as high as EUR 1,200,000) in cartel proceedings. The Competition Authority has previously imposed administrative penalties on attorneys as well.

3 Sanctions on Companies and Individuals

3.1 What are the sanctions for companies?

Besides the sanctions for the obstruction of investigations, the Competition Authority may:

a) declare a particular conduct to be illegal;

b) order the termination of any illegal conduct;

c) prohibit the continuation of any illegal conduct;

d) prescribe certain obligations in connection with illegal conduct, such as ordering the parties to conclude contracts in cases of unreasonable refusal to enter into a business relationship or to continue an existing one as appropriate for the nature of the transaction;

e) order the publication of a statement of correction in connection with any misleading information; or

f) declare a particular conduct to be legal.

The Competition Authority may impose a fine for any violation of the provisions of the Competition Act. The fine is a maximum of ten per cent of the company's net sales revenue, or the net sales revenue of the group - of which the company penalised is identified in the resolution as a member - for the financial year preceding the year when the resolution on the illegal conduct was adopted. The fine for social organisations of companies, public bodies, associations and other similar organisations is a maximum of ten per cent of the previous financial year's net sales revenue of the member companies.

3.2 What are the sanctions for individuals?

Besides the sanctions for the obstruction of investigations, individuals committing Criminalised Cartel Activities can be punished by imprisonment of up to five years or in less serious cases by community service or fines.

3.3 What are the applicable limitation periods for the imposition of sanctions for cartel conduct?

No investigation may be initiated if a period of five years has elapsed since the commission of any conduct determined to be illegal under the Competition Act. Where illegal conduct occurs through failure to bring an end to a particular situation or predicament, the above mentioned period does not begin to run as long as the situation or predicament continues to prevail.

3.4 Is cartel conduct by individuals potentially an extraditable offence?

There is no particular Hungarian rule on extradition of individuals found guilty of Criminalised Cartel Activities. In most cases, the Paris treaty of December 13, 1957 (and its supplementary protocols) on European Extradition should apply, according to which such individuals are extraditable unless they are Hungarian citizens.

3.5 Can a company pay the legal costs and/or financial penalties imposed on a former or current employee?

Yes, there is no rule that forbids doing so.

LENIENCY / WHISTLE-BLOWING

4 Leniency for Companies

4.1 Is there a leniency programme for companies? If so, please provide brief details.

The framework of the Hungarian leniency policy is set forth in Notice No 3/2003 of the President of the Competition Authority and the Chair of the Competition Council of the Competition Authority on the application of a leniency policy for the detection of cartels ("Leniency Notice") (the Leniency Notice was last amended in 2006). The legal background of the leniency policy is Subsection 3 of Article 78 of the Competition Act, which provides that when setting the level of the fine the effective cooperation by the undertaking during the proceedings has to be taken into account.

The Leniency Notice offers two alternatives to cartel members: immunity from fines or the reduction of a fine. Immunity from the fine is possible if the undertaking is the first to provide a decisive contribution (e.g. in the form of disclosing direct evidence) which is sufficient for the opening of an investigation and/or, if the proceedings are already commenced, for the discovery of an infringement.

If in connection, with a particular case, the Competition Authority has already granted conditional immunity from the fine to an undertaking, the application of another undertaking for cooperation does not satisfy all above criteria. Therefore the Competition Authority will not grant it immunity from the fine but will only appropriately reduce the fine in exchange for the evidence supplied, on the condition that the undertaking provides it with evidence which represents clearly added value with respect to the evidence already in the Competition Authority's possession. In this context, added value means evidence, which will facilitate fact-finding in the case which is more complete and thorough and more in depth in its nature, or which is supplementary to the evidence already available. In practice, principally the production of written documents with probative force, in particular documents with full probative force, may give rise to the reduction of a fine.

The degree of reduction (which ranges from 50% to 20%) reflects the contribution of the applicant to discovering the infringement, in terms of content and time ranking of the information provided and the efficiency of assistance.

The Competition Authority will grant immunity or reduce a fine if, at the end of the procedure, the satisfaction of the following conditions can be established:

a) the undertaking did not take any steps to coerce other undertakings into participating in the infringement and operating the cartel agreement;

b) it co-operated fully, on a continuous basis throughout the procedure, with the Competition Authority and provided the Competition Authority with all the evidence and information in its possession without altering the content thereof; and

c) ended its involvement in the cartel following the submission of evidence, no later than the time agreed to with the Competition Authority.

It is important to note that until the end of the respective procedure, the preliminary promise by the Competition Authority to grant immunity or reduce fines shall be considered as conditional. Furthermore, it is also important to emphasise that although the provisions of the Leniency Notice are not binding on the Competition Authority, it is unlikely that the Competition Authority would have any reason to deprive the applicant undertaking of the

benefits specified in the Leniency Notice, provided that the applicant undertaking fully cooperates throughout the entire proceedings with the Competition Authority, and meets all the requirements determined in the Leniency Notice.

A corporate leniency application may provide benefits (immunity or reduction of fines) only to the applicant undertaking itself. On one hand, it will not protect current or former employees or directors from any personal sanctions, and on the other hand, the application does not provide the undertaking immunity from any civil law consequences of the infringement.

4.2 Is there a 'marker' system and, if so, what is required to obtain a marker?

There is a marker system in Hungarian leniency policy. An undertaking wishing to apply for immunity from a fine, apart from on the one hand contacting the Competition Authority and immediately submitting all written information and evidence in its possession together with the application, can choose on the other hand to contact the Competition Authority anonymously (e.g. through an intermediary) and present only the key elements of the cartel (e.g. price-fixing, market-sharing) and a list of the evidence in its possession, accurately reflecting the contents of the evidence, whilst not disclosing the participants in and the specific details of the infringement. In either case, the Competition Authority will provide a written acknowledgement of receipt of the application confirming the exact date (year, month, day, hour, minute).

The Competition Authority will assess submissions received in order of time, and it will not consider other submissions before it has taken a position on an existing submission in relation to the same infringement, about which it will inform the applicant.

In case of anonymous application by submitting only part of the evidence, if the application and the list meet the conditions for granting immunity, the Competition Authority will inform the cooperating undertaking accordingly within eight days and at the same time set a deadline for the submission of evidence. Following the submission of the information and evidence, the Competition Authority will verify that they correspond to the preliminarily list, examine their content and finally, if they continue to meet the conditions for granting immunity, it will declare in writing, within another fifteen days, whether it will grant immunity from the fine.

The above illustrates how an undertaking can obtain a marker. It has to be noted, however, that any notification from the Competition Authority at this stage about the provision of immunity from the fine is conditional and will be granted only if the applicant meets all conditions of the Leniency Notice throughout the entire proceeding.

4.3 Can applications be made orally (to minimise any possible subsequent disclosure risks in the context of civil damages follow-on litigation)?

Making applications orally is not excluded explicitly (in this case most probable minutes would be taken by the Competition Authority). However, only the production of written documents with probative force, in particular documents with full probative force, may finally give rise to the reduction of a fine.

4.4 To what extent will the application be treated confidentially and for how long?

The Competition Authority will assure the secrecy of the identity of the cooperating undertaking (party) and the fact of its cooperation until the starting date of the respondents' access to the file which date shall be decided by the Competition Authority (but should not be earlier than the closing date of the investigation stage of the Competition Authority's procedure). Business secrets are kept confidential if the Competition Authority approves the confidential nature in line with general access to file rules.

The application and the related responses of the Competition Authority may not be published and may not be made accessible to third persons. In line with the Competition Authority's practice, the fact that the undertaking cooperated with the Competition Authority during the procedure will be indicated in the decision on the merits of the case at the end of the proceedings so as to explain the reason for the immunity or reduction of the fine.

4.5 At what point does the continuous cooperation requirement cease to apply?

Continuous and full cooperation with the Competition Authority is required throughout the entire proceedings, thus it ceases to apply with the decision of the Competition Authority on the merits of the case.

5 Whistle-blowing Procedures for Individuals

5.1 Are there procedures for individuals to report cartel conduct independently of their employer? If so, please specify.

The Leniency Notice does not provide for the protection of individual employees who want to report a cartel activity and it does not specify a leniency application procedure for individuals wishing to report cartel activities independently from their employer.

6 Plea Bargaining Arrangements

6.1 Are there settlement or plea bargaining procedures (other than leniency)?

No, there are not.

APPEALS AND DAMAGES ACTIONS

7 Appeal Process

7.1 What is the appeal process?

There is no administrative appeal process regarding resolutions adopted by the Competition Authority. Decisions of the Competition Authority, however, can be challenged in court and the court may alter the decision of the Competition Authority. Any request for judicial review of the resolutions adopted in competition control proceedings shall be presented to the Competition Authority within thirty days of the date when the resolution to which it pertains was communicated, or mailed by registered post. The Competition Authority forwards the request for action, together with the documents of the case and its official position concerning the case, to the court within thirty days of the date of receipt.

If the request contains an appeal for the suspension of enforcement, it must be forwarded to the court together with the documents of the case within fifteen days of the date of receipt.

There are no competition law courts or tribunals. The above disputes are administrative law cases under the jurisdiction of specialized judges acting within general courts.

7.2 Do courts frequently adjust the level of penalty imposed by the competition authority? If so, on what grounds?

Adjustment by courts of the level of penalty imposed by the Competition Authority is not frequent. According to the public records available regarding 2006, a total of half of the decisions of the Competition Authority establishing infringement were challenged in court. Of the 369 decisions which were reviewed under the Competition Act and became final the courts altered the decision of the Competition Authority in respect of its legal basis in 18 cases and reduced the fine imposed in a further 15 cases.

8 Damages Actions

8.1 What are the procedures for civil damages actions for loss suffered as a result of cartel conduct?

As mentioned under question 1.1, rules regarding actions under the Civil Code may be applicable in parallel with (or separately from) the rules regarding the procedure of the Competition Authority. This means that the decision of the Competition Authority establishing the infringement of the competition rules is not a prerequisite for making a claim for damages based on an infringement of competition law. The Competition Authority only has to be notified of such claims for damages, and may file submissions with the court.

However, the Competition Authority's investigation has priority over the court proceedings, thus if the Competition Authority initiates separate proceedings in a given case, the court is required to suspend its proceedings until the investigation of the Competition Authority has reached a binding conclusion and the court is required to follow the Competition Authority's decision as to the existence or absence of an infringement.

In no cases are punitive damages available.

8.2 Do your procedural rules allow for class-action or representative claims?

Class-actions are not available according to the Hungarian rules on civil procedure. If the claims of the different plaintiffs are in close connection with each other, it is possible to initiate an action together by the different plaintiffs against the same defendant, but this should not be considered as a class-action as such.

As for representative claims, the Competition Act entitles the organisations protecting consumer interests, the Competition Authority (if it falls within its jurisdiction and it has substantiated the infringement by resolution) and the Chamber of Economy, on behalf of its members, to file a lawsuit against certain offenders. Such a procedure is available if the perpetrator's illegal action results in a grievance that affects a wide range of consumers even if the identity of the aggrieved consumers cannot be established. The claim lapses within one year of the time when the grievance was caused.

The offender may be ordered by the court to reduce the price, to repair or replace the goods or to refund the purchase price. The court may, in its ruling, authorise the party enforcing the claim to publish the ruling in a national daily newspaper at the expense of the offender.

The offender shall satisfy the claims of any aggrieved consumer in accordance with the ruling. This does not affect the rights of the consumer to enforce any other claims against the offender in accordance with civil law.

8.3 Have there been successful civil damages claims in the past?

To date there has been no such case.

OTHER MATTERS

9 Miscellaneous

9.1 Provide brief details of significant recent or imminent statutory or other developments in the field of cartels and leniency.

In 2005, the comprehensive amendment of the Competition Authority's Leniency Notice became necessary because of the amendment of the Competition Act by Parliament. Under the amended Leniency Notice, the Competition Authority ensures that undertakings applying for leniency may remain unidentified until the starting date for access to files which date shall be decided by the Competition Authority but should not be earlier than the closing date of the investigation stage of the Competition Authority's procedure.

In February 2006, a guide about the connections between the leniency policy of the Competition Authority, the criminal sanctioning of agreements in restraint of competition in public procurement and concession procedures, and the bidding rules of the Act on Public Procurement was published by the Competition Authority.

9.2 Please mention any other issues of particular interest in Hungary not covered by the above.

Not applicable.

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