



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

HUNGARY

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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

A. Law(s) covering cartels:	<p>Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (the Hungarian Competition Act)</p> <p>Homepage address: www.gvh.hu</p> <p>Languages: Hungarian, English</p> <p>The Competition Act on the homepage: http://www.gvh.hu/domain2/files/modules/module25/106575843CF4A02EE.pdf (in Hungarian)</p> http://www.gvh.hu/domain2/files/modules/module25/111800F01E6BB149F.pdf (in English) <p>Background rules on procedures: Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services (in Hungarian: "2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól"; not available in English)</p> <p>Act IV of 1978 on the Criminal Code Article 296/B</p> <p>Act CXXIX of 2003 on Public Procurement Article 61(1)b</p>
B. Implementing regulation(s) (if any):	<p>None</p>
C. Interpretative guideline(s) (if any):	<p>Notice No 3/2003 of the President of the GVH and the President of the Competition Council of the GVH on the application of a leniency policy to promote the detection of cartels (governing for the leniency applications submitted until 31 May 2009)</p> <p>On the homepage: http://www.gvh.hu/domain2/files/modules/module25/9386607B9C942473.pdf</p>

	<p>(in Hungarian)</p> <p>http://www.gvh.hu/domain2/files/modules/module25/pdf/2003_3_engedekenyseg_a.pdf</p> <p>(in English)</p> <p>Explanatory Notes of the President of the GVH on the application of the rules concerning leniency pursuant to Articles 78/A and 78/B of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (governing for the leniency applications submitted after 1 June 2009)</p> <p>On the homepage:</p> <p>http://www.gvh.hu/domain2/files/modules/module25/922492062FE14A3A.pdf (in Hungarian)</p> <p>http://www.gvh.hu/domain2/files/modules/module25/1077605771388846A.pdf (in English)</p>
<p>D. Other relevant materials (if any):</p>	<p>Decisions of the Competition Council:</p> <p>http://www.gvh.hu/gvh/alpha?do=2&pg=10&m17_act=3&st=1</p> <p>(in Hungarian)</p> <p>http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=112&m171_act=3</p> <p>(summaries in English)</p> <p>Block exemption regulations:</p> <p>http://www.gvh.hu/gvh/alpha?do=2&st=1&pg=84&m5_doc=4323&m57_act=22</p> <p>(in Hungarian)</p> <p>http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=129&m5_doc=4323&m176_act=22</p> <p>(in English)</p> <p>Court Decisions:</p> <p>http://www.gvh.hu/gvh/alpha?do=2&pg=24&m20_act=19&st=1</p> <p>(in Hungarian)</p> <p>Information on cartelling activity in public procurement procedures:</p> <p>http://www.gvh.hu/gvh/alpha?do=2&st=1&pg=77&m5_doc=5272&m81_act=3 (in Hungarian)</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>The Hungarian Competition Act does not use the term “cartel” explicitly, cartels are covered by the term “agreements restricting economic competition”. According to the Competition Act, agreements or concerted practices between undertakings and decisions by social organizations of undertakings, public corporations, associations or other similar organisations, which have as their object or potential or actual effect the prevention, restriction or distortion of competition are prohibited.</p> <p>Agreements concluded between undertakings which are not independent of each other do not qualify as such kind of agreements.</p>
<p>B. Does your</p>	<p>According to the Competition Act, “hardcore cartels” (price fixing and market</p>

<p>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”?</p>	<p>sharing cartels) cannot benefit from the “de minimis” rule set in Articles 13(1)-(2) of the Competition Act:</p> <p>Agreements, which are of minor importance, because the joint share of the participating undertakings and undertakings which are not independent of them does not exceed ten per cent on the relevant market, are not prohibited unless their object is</p> <p>a) to fix, directly or indirectly, purchase or selling prices between competitors, or</p> <p>b) to share markets between competitors.</p> <p>Hardcore cartels are not likely to benefit from the advantages granted in the block exemption regulations either.</p> <p>In the case-law of the Competition Council higher fines are imposed on hardcore cartels. The Criminal Code foresees sanctions on bid rigging in public procurement and concession tenders.</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>Article 17 of the Competition Act defines a general exemption from the prohibition of cartels:</p> <p>Agreements restricting economic competition are not prohibited, provided that</p> <p>a) they contribute 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;</p> <p>b) they allow consumers or trading parties a fair share of the resulting benefit;</p> <p>c) the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified common goals;</p> <p>d) they do not create the possibility of excluding competition in respect of a substantial part of the products concerned.</p> <p>However, hardcore cartels do not fulfil these criteria, thus they are generally not exempted.</p> <p>In principle, agreements, which are of minor importance, are not be prohibited according to Article 13 of the Hungarian Competition Act. An agreement is deemed to be of minor importance if the joint share of the participating undertakings and undertakings which are not independent of them does not exceed 10 per cent on the relevant market unless its object is</p> <p>a) to fix, directly or indirectly, purchase or selling prices between competitors, or</p> <p>b) to share markets between competitors.</p> <p>Therefore, hardcore cartels cannot be exempted under Article 13 either.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>?</p>	<p>Yes.</p>
<p>E. Is participation in a hardcore cartel a civil or</p>	<p>In general it is an administrative offence.</p> <p>A cartel agreement qualifies as a criminal offence if it is committed in a public procurement or concession procedure, with a maximum sentence of five years of imprisonment.</p>

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.

administrative or criminal offence, or a combination of these?	
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3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	<p>Hungarian Competition Authority (Gazdasági Versenyhivatal - GVH)</p> <p>Criminal offences are investigated by the criminal authorities.</p>
B. Contact details of the agency:	<p>Hungarian Competition Authority (Gazdasági Versenyhivatal - GVH)</p> <p>Address: 1054 Budapest, Alkotmány u. 5 Mail: 1245 Budapest 5, Pf. 1036 Tel.: (+36 1) 472-8900 Fax: (+36 1) 472-8905 E-mail: webmaster@gvh.hu inquiries@gvh.hu ugyfelszolgalat@gvh.hu (Inquiries) gvh@gvh.hu (Inquiries) sarai.jozsef@gvh.hu (international affairs)</p> <p>Website: www.gvh.hu (in Hungarian and English)</p>
C. Information point for potential complainants:	<p>Inquiries Service</p> <p>Address: 1054 Budapest, Alkotmány u. 5 Mail: 1245 Budapest 5, Pf. 1036 Phone: (+36 1) 472-8851 Fax: (+36 1) 472-8905 E-mail: inquiries@gvh.hu</p>
D. Contact point where complaints can be lodged:	<p>Complaints can be submitted only in writing, personally at: 1054 Budapest, Alkotmány u. 5 (Mo-Thu: 8.00-16.30, Fri: 8.00-14.00) or by mail: 1245 Budapest 5, Pf. 1036 fax: (+36 1) 472-8905 e-mail: bejelentes@gvh.hu</p> <p>The form issued by the GVH has to be completed in Hungarian language (complaints). It is also possible to submit another complaining document (informal complaints). Forms can be requested from the Inquiries, or downloaded from the website of the GVH .</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.	<p>In case of need, the assistance of the police can be requested for dawn raids (coercive measures).</p>

4. Decision-making institution(s)² [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases:	(Competition Council of the) GVH Criminal courts (see 2/E above).
B. Contact details of the agency:	See 3/B above.
C. Contact point for questions and consultations:	See 3/B above.
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>The investigators (who are under the supervision of one of the vice-presidents of the GVH) are responsible for the investigation of the case. During the investigations they can use the investigatory powers indicated in 7 below. After completing the investigation, the investigator prepares a report which he/she submits to the Competition Council, together with the file of the case.</p> <p>The Competition Council, the resolution making body of the GVH, makes the resolution on the merits of the case after the evaluation of the investigator's report. (The investigator's report does not bind or restrict the Competition Council.)</p> <p>Before making this resolution, the proceeding panel of the Competition Council informs the parties to the case about its preliminary assessment (by a document similar to the SO in the European Commission's procedures).</p> <p>The Competition Council makes its decision on the merits of the case in a trial in so far this is requested by the party or considered necessary by the Competition Council itself.</p> <p>Relating to criminal matters no special procedure involving the Competition Authority was created.</p>
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	There are no special rules. Under Act XIX of 1998 on Criminal Procedures there is a possibility for the Competition Authority to be invited to provide expert opinion.

² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases:</p>	<p>Investigations are normally commenced on the basis of a complaint or informal complaint, a leniency application or ex officio.</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</p>	<p>Complaints or informal complaints can be made by the submission to the GVH of a properly completed form issued by the Authority or in any other way in writing, respectively. A form completed/filled in contains the important facts, which are required for the assessment of the complaint, including, in particular, the data necessary for the identification of the complainant and the undertaking(s) complained of, a description of the particular conduct through which the alleged infringement was committed, the basic information required to define the relevant market, an indication of the duration of the alleged infringement, furthermore facts and evidence supporting the statements made on the alleged infringement.</p> <p>In the case of applications for leniency, undertakings also have the possibility to present their application orally, per legal representative or proxy, in person. The investigator makes a record or sound recording of the oral application or makes a memorandum of it, which has to be signed by the applicant.</p> <p>Form for the submission of complaints on the homepage: http://www.gvh.hu/domain2/files/modules/module25/jogi/friss_bej_urlap_szam_kitolt_m.pdf (in the case of complaints concerning practices before 1 September 2008) http://www.gvh.hu/domain2/files/modules/module25/536570DB4D3AAF23.pdf (in the case of complaints concerning practices after 1 September 2008) (in Hungarian) http://www.gvh.hu/domain2/files/modules/module25/jogi/szakmai_felh_urlap_versenytv_bejelentes_a.pdf (in the case of complaints concerning practices before 1 September 2008) http://www.gvh.hu/domain2/files/modules/module25/10972F0FF04E99A44.pdf (in the case of complaints concerning practices after 1 September 2008) (in English, serving information purposes only)</p>
<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?]</p>	<p>Any person may make a complaint or an informal complaint to the GVH upon observation of a conduct falling within the competence of the GVH and infringing the provisions prohibiting agreements of the Competition Act or Article 101 of the TFEU.</p>
<p>D. Is the</p>	<p>The investigator must consider every complaint and informal complaint</p>

<p>investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</p>	<p>submitted to the GVH. Repeated complaints (informal complaints) having the same content as a complaint (informal complaint) previously made by the same complainant (by the same person or by anonymous persons) do not need to be considered.</p>
<p>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>	<p>Complainants must be informed of the order of the investigator about not pursuing a complaint in all cases. If the investigator does not deem it necessary to open an investigation, he/she must state, based on the data supplied by, or obtained in the procedure conducted on the basis of, the complaint that the conditions for the opening of an investigation are not fulfilled. The complainant may seek legal remedy against the order, within eight days of the conveyance of the order, from the Municipal Court of Budapest.</p>
<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>	<p>In the case of complaints, within two months of receipt of the complaint, the investigator must issue an order:</p> <ul style="list-style-type: none"> a) to open an investigation, or b) to state, based on the data supplied by, or obtained in the procedure conducted on the basis of, the complaint that the conditions for the opening of an investigation are not fulfilled, or c) to refer the complaint to another authority, where that other authority has the power to proceed in the case concerned by the complaint. <p>The time limit may be extended by two months where justified.</p> <p>Informal complaints must be assessed twenty-two working days of the date of receipt of them. Where laying the foundations for the assessment of an informal complaint is expected to take more than twenty-two working days, the investigator notifies this fact to the person making the informal complaint before the expiry of the original time limit for settlement, indicating at the same time the likely date for settlement.</p>

6. Leniency policy³

<p>A. What is the official name of your leniency policy (if any)?</p>	<p>Articles 78/A and 78/B of the Hungarian Competition Act are governing for the leniency policy</p> <p>Furthermore, „Notice No 3/2003 of the President of the GVH and the President of the Competition Council of the GVH on the application of a leniency policy to promote the detection of cartels” is applicable for the leniency applications submitted until 31 May 2009.</p> <p>Leniency applications submitted after 1 June 2009 are to be assessed</p>
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³ 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>pursuant to the "Guideline of the President of the GVH on the application of the leniency provisions laid down in Articles 78/A and 78/B of Act LVII of 1996 on the prohibition of unfair and restrictive market practices".</p> <p>For availability see 1/C above.</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Our jurisdiction offers both full leniency (immunity from fines) and partial leniency (reduction of fines, up to 50%).</p>
<p>C. Who is eligible for full leniency?</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 in the Competition Act (see 6/F).</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>The aim of the leniency policy is the disclosure of any kind of cartel activity, thus it is highly appreciated by the GVH the leniency applicants revealing unknown information.</p> <p>In the case of full leniency the submission of evidence is required, either enabling the GVH to obtain a judicial authorisation to carry out investigative measures or to be able to prove the infringement.</p> <p>The fine may be reduced if the undertaking provides the GVH with evidence of the infringement that constitutes significant added value (SAV) relative to the evidence already available to the GVH at the time when the application was submitted.</p> <p>If an undertaking provides evidence relating to facts in connection with the infringement, which are unknown to the GVH and which have a direct importance with respect to the circumstances to be taken into account when determining the amount of the fine, the competition council will not take such aggravating evidence into account when setting the fine to be imposed on the undertaking which provided this evidence.</p> <p>Applications may be submitted, at the latest, on the day before the date of service of the preliminary position or the day before the starting date for the access to the files, which of the two is the earlier.</p> <p>In case the GVH has already brought a conditional resolution on full leniency, the leniency application of the next undertaking to come forward will not be able to achieve immunity from fines anymore, only a reduction in the amount of the fine.</p> <p>The level of the reduction in the amount of the fine will be, as follows. For the:</p> <ul style="list-style-type: none"> a) first undertaking to meet the SAV-requirement: a reduction of 30-50%; b) second undertaking to meet the SAV-requirement: a reduction of 20-30%; c) subsequent undertakings that meet the SAV-requirement: a reduction of up to 20%.
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Only undertakings can be beneficiaries of the leniency policy as no sanctions are imposed on natural persons in the competition proceedings. On the other hand the Criminal Code foresees a possibility to get immunity from criminal sanctions. However this latter possibility under criminal law has no connection to the leniency policy.</p>

<p>F. What are the conditions of availability of full leniency:</p>	<p>The GVH grants an undertaking full leniency from any fine which may be imposed if it is the first to submit an application for immunity and submit evidence</p> <p>a, which enables the GVH to obtain in advance a judicial authorisation to carry out investigative measures in connection with the infringement, provided that the GVH did not, at the time of application, already have sufficient information constituting the ground for the authorisation or had not already carried out such investigative measures; or</p> <p>b, which enables the GVH to prove the infringement, provided that it did not, at the time of the application, already have sufficient evidence to prove the infringement and none of the undertakings meets the conditions set out in point a,.</p> <p>Leniency may be granted only to undertakings which, in addition to those set out above, meet the following conditions:</p> <p>a, it ends its involvement in the infringement immediately following its application or the providing of evidence, except for what would, in the GVH's view announced by order to the undertaking, be reasonably necessary effectively to carry out investigative measures and</p> <p>b, it cooperates genuinely fully and on a continuous basis with the GVH until the conclusion of the proceeding.</p> <p>An undertaking, having coerced other undertakings to participate in the infringement, cannot be granted full immunity.</p> <p>In the case of criminal sanctions the first person who comes forward with a detailed testimony on the infringement enjoys a statutory exemption from criminal sanctions supposed that the authority (competition authority, financial supervision authority and the body conducting remedy procedures in connection with public procurement contracts) had no knowledge on the offence before the testimony was given.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>Under the Hungarian Competition Act fine reduction may be granted as a form of partial leniency.</p> <p>Fines may be reduced on application if the undertakings do not qualify for full leniency but provide the GVH with evidence of the infringement, which constitutes significant added value (SAV) relative to the evidence already available to the GVH at the time when the application was submitted.</p> <p>In the case of fine reduction, the undertakings also have to fulfil the above-mentioned conditions of ending their involvement in the cartel and cooperation with the GVH. (For further details see 6/F. above.)</p> <p>It is worth mentioning that according to the new Hungarian leniency rules, undertakings, which took steps to coerce other undertakings to participate in the cartel, also may be granted fine reduction.</p> <p>As a special form of fine reduction, if the undertaking provides evidence relating to facts in connection with the infringement, which are unknown to the GVH and which have a direct importance with respect to the circumstances to be taken into account when setting the fine, the GVH will not take such aggravating evidence into consideration when setting the fine to be imposed on the undertaking which provided this evidence.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>Leniency applicants have to end their involvement in the cartel following the submission of evidence, no later than the time agreed with the GVH. Moreover, they have to co-operate genuinely, fully, on a continuous basis throughout the procedure, with the GVH and provide the GVH with all the evidence and information in their possession without altering the content thereof.</p>

<p>I. Are there formal requirements to make a leniency application?</p>	<p>Leniency applications may be submitted by the filing of the leniency form available on the homepage of the GVH. The form itself contains guidance on the formal requirements the application must fulfil (eg. name of the applicant, description of the infringement, the provisions of the Hungarian Competition Act justifying the leniency, list of evidence at hand). Anonymous and joint leniency applications are inadmissible.</p> <p>If an undertaking wishes to present its application orally, it has the possibility to do so per its legal representative or proxy, in person, on the date agreed with the GVH in advance. The investigator makes a record or a sound recording of the oral application, or makes a memorandum of it.</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>The procedure in leniency cases is specified by the Explanatory Notice of the President of the GVH on leniency provisions.</p> <p>An application for full leniency can be submitted in three forms:</p> <ol style="list-style-type: none"> a. Complete application (containing all information required by the application form) b. Non-final application (containing fewer data than the complete application) c. Provisional application (submitted parallel to a leniency application submitted to the European Commission) <p>After receiving the application, the Cartel Unit of the GVH makes a record of the receipt of the application, which certifies the exact date (year, month, day, hour, minute). The Cartel Unit examines the application and submits the gathered information together with its opinion to the Competition Council for resolution. If the Competition Council deems it necessary, it may hear the applicant prior to its decision-making. The proceeding Competition Council assesses the applications received in their time sequence, and it will not consider other applications before it has conveyed its resolution in respect of an existing application in relation to the same infringement. In this phase only the decision on conditional leniency will be made, the Competition Council decides on the immunity from / reduction of fines in its decision on the substance of the case (depending on whether the applicant has fulfilled the requirements of granting leniency in the course of the proceeding).</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>The final decision on the leniency application is included in the decision on the merits of the case, thus the applicant is given certainty only after the closing of the proceeding.</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</p>	<p>The decision making body of the GVH, the Competition Council decides about granting full or partial leniency in its decision on the substance of the case.</p>

applications?	
M. Does your legislation have a marker system? If yes, please describe it.	If an undertaking decides to submit an application for immunity from fines, however the evidence available for it is not yet sufficient, it may submit a non-final, so called marker application containing the minimum information specified by the application form. The GVH may consider such applications as being submitted, even if the required evidence was not submitted at the time of the application. In such cases a time limit is set for the completion of the non-final application. If the undertaking completes its application fully within the time limit, it is deemed as if a complete application would have been submitted on the date when the non-final application was submitted. If the undertaking fails to complete its application, the GVH deems it to have been withdrawn.
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	No.
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	The GVH assures the secrecy of the identity of the beneficiary and the fact of its co-operation until the starting date for the access to the files. Until that time, only the investigator appointed to deal with the case, the proceeding Competition Council and the court may have access to the leniency files.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	No.
Q. Contact point where a leniency application can be lodged:	GVH (Hungarian Competition Authority), Kartell Csoport (Cartel Unit) Address: 1054 Budapest, Alkotmány u. 5 Mail: 1245 Budapest 5, Pf. 1036 Tel.: (+36 1) 472-8871, (+36 1) 472-8872 Fax: (+36 1) 472-8905 E-mail: kartell@gvh.hu
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be	It may happen that the GVH decides on conditional leniency in the course of the proceeding, but the applicant fails to meet the conditions of leniency later (e.g. it does not co-operate fully with the GVH), in such cases the undertaking will not be granted leniency in the final decision. The actual decision about granting full or partial leniency is made in the decision on the merits of the case and it cannot be revoked. However, parties are always granted the possibility to appeal the decision on the merits of the case before the court.

⁴ 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.

made against a decision to revoke leniency?	
S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?	No.

7. Investigative powers of the enforcing institution(s)⁵

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>Parties are obliged to supply, at the request of the investigator or the proceeding Competition Council the data which are necessary to decide on the merits of the case, including personal data. Parties cannot be obliged to make statements admitting an infringement, however, they cannot refuse to supply incriminating evidence of any other kind.</p> <p>Investigative measures may be carried out on any sites where evidence necessary to clarify the facts of the case is kept. For the purposes of the clarification of the facts of the case, any persons or organisations are obliged to provide the necessary information in writing too and send any documents relating to the subject of the investigation to the GVH.</p> <p>Parties or other persons possessing documents are obliged, at the request of the investigator, to display, in a readable form or a form which is eligible to be copied, of information recorded on data carriers.</p> <p>The investigator and the proceeding Competition Council are entitled to make copies of documents. The investigator is entitled to make forensic images of data carriers and to scrutinize, by means of the back-up copies, the data stored on those data carriers where the data carriers are likely to store data relating to the infringement of the law.</p> <p>The investigator can seize the documents also without writing a memorandum, by putting them in a storing device suitable for keeping them or in a separate room, to be closed and sealed by him subsequently.</p> <p>In cases where pieces of physical evidence may be seized in accordance with the provisions of Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services, they may be put under seal in place of being seized.</p> <p>The GVH is authorised, in connection with the economic activity under review, to have access to, and manage, the personal data of the party and of other persons participating in the proceedings; it may seize records or data bases containing data of this kind.</p> <p>The GVH may use documents, data, records or any other information, which were lawfully collected in its cartel procedures, in its other</p>
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⁵ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁶ “Searches/raids” means all types of search, raid or inspection measures.

	<p>competition supervision proceedings.</p> <p>In the course of proceedings based on the cartel prohibition of the Competition Act (or on Article 101 of the TFEU), the investigator may search, and enter on his own, against the will of the owner (possessor), any site or open to this end any land, buildings and premises closed. It may oblige the party or its agent or former agent, employee or former employee to provide information and explanation orally or in writing, or collect information on the spot in any other manner.</p> <p>In premises used for private purposes or privately used, including vehicles and other land, investigative measures of this kind may only be carried out, if those premises and facilities are in the use of any executive official or former executive official, employee or former employee, agent or former agent of the party or of any other person who exercises or exercised control as a matter of fact.</p> <p>Carrying out the investigative measures mentioned in the last two sections are subject to the attainment in advance of a judicial authorisation.</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>In premises used for private purposes or privately used, including vehicles and other land, dawn raids may only be carried out, if those premises and facilities are in the use of any executive official or former executive official, employee or former employee, agent or former agent of the party or of any other person who exercises or exercised control as a matter of fact. Such investigations require the authorisation of the court in advance.</p>
<p>C. 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. When taking an investigative measure during an inspection (dawn raid), the investigator is entitled to make copies of, or seize, pieces of evidence, which are not related to the subject of the investigation and are not covered by the authorisation of the court, but which are indicative of an infringement of the cartel prohibition of the Competition Act (or of Article 101 of the TFEU). In respect of such pieces of evidence, the authorisation of the court must be obtained subsequently. Where a subsequent authorisation of the court cannot be obtained, the piece of evidence in question may not be used.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorised by the courts? If yes, please briefly describe them.</p>	<p>The measures taken by the GVH during dawn raids can be challenged by filing an objection to the investigation within three days of the irregular action alleged.</p> <p>In most of the cases the investigative measures taken by the GVH are not challenged by the parties.</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<ul style="list-style-type: none"> - The party must be notified of a suspected violation of law and of the examined facts, at a time early enough to enable the party to make a statement of its position concerning them. - The party has right to legal representation. - The party and other persons participating in the proceedings may request limitation of access to the documents or to the making of copies or to the taking of notes thereof, with reference to the need of protection of business secrets. - The party may have access to the documents after the completion of the investigation, following the date set by the competition council and he may make copies or take notes thereof. The starting date for the access shall be set early enough so as to enable the party to prepare for making a statement. - The party cannot be obliged to admit an infringement of the law. - The party has the right to be heard. - Documents prepared for the purposes of, or during, the exercise of the rights of defence of the parties or prepared in the course, or for the purposes, of communication between the parties and the lawyers appointed by them, furthermore documents containing statements made in the course of such communication, provided in each of these cases that this character is directly manifested by the document concerned, may not be used in evidence, examined or seized in the course of the competition supervision proceedings, and the owners of such documents may not be obliged in the course of inspections to present those documents, except where otherwise provided by the Competition Act. Parties may waive the application of this prohibition. <p>(Articles 55 and 65/B of the Competition Act)</p>
<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?</p>	<p>There is no difference between the treatments of business secrets on the basis of the way of their collection.</p> <p>Relevant provisions on business secrets and access to the file:</p> <p>For the purposes of the Competition Act the term "business secret" has the meaning defined in Subsection (2) of Section 81 of the Civil Code, namely: business secrets comprise all of the facts, information, conclusions or data pertaining to economic activities that, if published or released to or used by unauthorised persons, are likely to jeopardize the rightful financial, economic or market interest of the owner of such secrets, provided the owner has taken all of the necessary steps to keep such information confidential.</p> <p>A foreign authority may request that a part or the whole of the content of their response to a request for information be treated as a business secret.</p> <p>For further details see 8/A above and Article 55 (3) of the Competition Act.</p>

9. Limitation periods and deadlines

<p>A. What is the</p>	<p>No investigation may be started where five years have elapsed since the</p>
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<p>limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</p>	<p>infringement of the prohibition of agreements restricting economic competition. Where the unlawful conduct is performed continuously, the time limit starts to run from the date of termination of the conduct. Where the infringement is committed through a failure to eliminate a state of affairs or situation, the time limit does not start as long as this state of affairs or situation exists.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>A decision on the merits of a case must be made within six months of the date of the order to open the case. This time limit may be extended two times by a maximum of six months each.</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?</p>	<p>The commencement or the completion of the investigation cannot be challenged.</p> <p>The revision of a decision on the merits of a case may be requested from the court through submission of a statement of claim to the Competition Council or taken to the post as registered mail within thirty days of the conveyance of such a decision. The claim has no suspensive effect on the implementation of the decision. The court can overrule the decision of the competition council.</p> <p>Separate legal remedy may be sought against orders making commitments binding (see 10/A below) within five working days of the conveyance of the order.</p>

10. Types of decisions

<p>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</p>	<p>The proceeding Competition Council, in its decision,</p> <ul style="list-style-type: none"> a) may establish that the benefit of the application of a group exemption does not apply to the agreement, b) may establish that the conduct is unlawful or not unlawful, c) may order a situation violating the Act to be eliminated, d) may prohibit the continuation of the conduct which violates the provisions of the Act, e) may revoke or amend its earlier decision, f) may impose a fine on undertakings violating the provisions of the Competition Act <p>Where, in the course of competition supervision proceedings started ex officio, parties undertake commitments to ensure, in a specified manner, compliance of their practices with the provisions of the Competition Act (or</p>
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	of Article 101 of the TFEU) and if effective safeguarding of public interest can be ensured in this manner, the proceeding Competition Council may by order make those commitments binding on the parties, terminating at the same time the proceeding, without concluding in the order whether or not there has been or still is an infringement of the Act.
B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).	The same decisions as those described in 10/A.
C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	<p>The Competition Council may, by an interim measure, prohibit in its order the continuation of the illegal conduct or order the elimination of the unlawful situation, where prompt action is required for the protection of the legal or economic interests of the interested persons or because the formation, development or continuation of economic competition is threatened.</p> <p>The ordering of an interim measure may be requested also by a party. In this case, the Competition Council may require the providing of guarantees as a condition. The proceeding Competition Council must consider the request relating to the ordering of an interim measure immediately. (A separate legal remedy may be sought before the court against the order ordering an interim measure or the provision of a guarantee, within five working days of the conveyance of the order.)</p>

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

⁷ 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].

⁸ Only for agencies which answered “yes” to question 2.C. above

⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of

A. Grounds for the imposition of procedural sanctions / fines:	<p>A procedural fine may be imposed on the party or other persons participating in the proceedings, furthermore on persons obliged to provide assistance in clarifying the facts of the case if they engage in an act or display behaviour which is aimed at protracting the proceedings or preventing the disclosure of facts, or which has such an effect.</p> <p>A person who disrupts the trial may be called to order by the chairman of the trial. In the case of repeated or grave disruption, such a person shall be expelled from the room, and a procedural fine may be imposed.</p> <p>The Criminal Code penalises perjury committed in administrative procedures.</p>
B. Type and nature of the sanction (civil, administrative, criminal, combined):	<p>Administrative and criminal.</p>
C. On whom can procedural sanctions be imposed?	<p>On the party (undertaking) or other persons participating in the proceedings, furthermore on persons obliged to provide assistance in clarifying the facts of the case.</p>
D. Criteria for determining the sanction / fine:	<p>See 11/A above.</p>
E. Are there maximum and / or minimum sanctions / fines?	<p>Minimum and maximum procedural fines (for undertakings), respectively: HUF 50000 (€ 178) and 1 % of the undertaking's net turnover in the preceding business year).</p> <p>Minimum and maximum procedural fines (for natural persons who do not qualify as an undertaking), respectively: HUF 50000 and HUF 500000 (€ 1780).</p> <p>In the case of exceeding time limits specified for the performance of procedural obligations, the maximum procedural fines are 1 % of the undertaking's per-day net turnover in the preceding business year and (against natural persons who do not qualify as an undertaking) HUF 50000 per day.</p>

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be	<p>Administrative fines imposed on undertakings</p> <p>The Criminal Code penalizes bid rigging in public procurement procedures and concession tenders with imprisonment for up to five years. If the value of the public contract involved is below substantial value, the criminal sanction can be imprisonment for up to two years.</p>
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justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

imposed?	
B. Criteria for determining the sanction / fine:	The amount of the fine is established with all the relevant facts of the case taken into account, 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 co-operation by the undertaking during the proceedings and the repeated display of unlawful conduct. The gravity of the violation is established, in particular, on the basis of the threat to economic competition and the range and extent of harm to the interests of consumers and trading parties.
C. Are there maximum and / or minimum sanctions / fines?	The maximum fine may not exceed ten per cent of the net turnover, achieved in the business year preceding that in which the decision establishing the violation is reached, of the undertaking or, where the undertaking is member of a group of undertakings which is identified in the decision, of that group of undertakings. The maximum fine imposed on social organisations of undertakings, public corporations, associations or other similar organisations may not exceed ten per cent of the total of the net turnover in the preceding business year of undertakings which are members of them.
D. Guideline(s) on calculation of fines:	None
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?	A challenge of the decision reached on the merits of the case and imposing a fine has no automatic suspensory effect in respect of the fine in question. However, a suspension may be requested by the party in its statement of claim (challenging the decision) addressed to the Municipal Court of Budapest. In cases where the statement of claim contains an application for a suspension of the enforcement, the statement of claim and the documents of the case will be referred to the court within (instead of thirty days, see 13/B below) fifteen days of receipt of the statement of claim.

13. Possibilities of appeal

A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	Revision of a decision on the merits of a case may be requested by submission of a statement of claim within thirty days of the conveyance of the decision. No statutory provisions indicating the possible grounds of appeal exist.
B. Before which court or agency should such a challenge be	The Municipal Court of Budapest reviews the final decisions of the GVH. The statement of claim against the decision on the merits of the case must be submitted to the Competition Council (or taken to the post as

made? [if the answer to question 13/A is affirmative]	registered mail). The Competition Council will transfer the statement of claim, along with the files relating thereto, to the Municipal Court of Budapest. within thirty days of its receipt. The court can overrule the decision of the GVH.
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**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

HUNGARY

Date of update: 12/01/2010

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

A. Law(s) covering cartels:	<p>Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (the Hungarian Competition Act)</p> <p>Homepage address: www.gvh.hu</p> <p>Languages: Hungarian, English</p> <p>The Competition Act on the homepage:</p> <p>http://www.gvh.hu/domain2/files/modules/module25/106575843CF4A02EE.pdf (in Hungarian)</p> <p>http://www.gvh.hu/domain2/files/modules/module25/111800F01E6BB149F.pdf (in English)</p> <p>Background rules on procedures: Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services (in Hungarian: "2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól"; not available in English)</p> <p>Act IV of 1978 on the Criminal Code Article 296/B</p> <p>Act CXXIX of 2003 on Public Procurement Article 61(1)b</p>
B. Implementing regulation(s) (if any):	<p>None</p>
C. Interpretative guideline(s) (if any):	<p>Notice No 3/2003 of the President of the GVH and the President of the Competition Council of the GVH on the application of a leniency policy to promote the detection of cartels (governing for the leniency applications submitted until 31 May 2009)</p> <p>On the homepage:</p> <p>http://www.gvh.hu/domain2/files/modules/module25/9386607B9C942473.pdf</p>

	<p>(in Hungarian) http://www.gvh.hu/domain2/files/modules/module25/pdf/2003_3_engedekenyseg_a.pdf (in English) Explanatory Notes of the President of the GVH on the application of the rules concerning leniency pursuant to Articles 78/A and 78/B of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (governing for the leniency applications submitted after 1 June 2009) On the homepage: http://www.gvh.hu/domain2/files/modules/module25/922492062FE14A3A.pdf (in Hungarian) http://www.gvh.hu/domain2/files/modules/module25/1077605771388846A.pdf (in English)</p>
<p>D. Other relevant materials (if any):</p>	<p>Decisions of the Competition Council: http://www.gvh.hu/gvh/alpha?do=2&pg=10&m17_act=3&st=1 (in Hungarian) http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=112&m171_act=3 (summaries in English) Block exemption regulations: http://www.gvh.hu/gvh/alpha?do=2&st=1&pg=84&m5_doc=4323&m57_act=22 (in Hungarian) http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=129&m5_doc=4323&m176_act=22 (in English) Court Decisions: http://www.gvh.hu/gvh/alpha?do=2&pg=24&m20_act=19&st=1 (in Hungarian) Information on cartelling activity in public procurement procedures: http://www.gvh.hu/gvh/alpha?do=2&st=1&pg=77&m5_doc=5272&m81_act=3 (in Hungarian)</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>The Hungarian Competition Act does not use the term “cartel” explicitly, cartels are covered by the term “agreements restricting economic competition”. According to the Competition Act, agreements or concerted practices between undertakings and decisions by social organizations of undertakings, public corporations, associations or other similar organisations, which have as their object or potential or actual effect the prevention, restriction or distortion of competition are prohibited. Agreements concluded between undertakings which are not independent of each other do not qualify as such kind of agreements.</p>
<p>B. Does your</p>	<p>According to the Competition Act, “hardcore cartels” (price fixing and market</p>

<p>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”?</p>	<p>sharing cartels) cannot benefit from the “de minimis” rule set in Articles 13(1)-(2) of the Competition Act:</p> <p>Agreements, which are of minor importance, because the joint share of the participating undertakings and undertakings which are not independent of them does not exceed ten per cent on the relevant market, are not prohibited unless their object is</p> <p>a) to fix, directly or indirectly, purchase or selling prices between competitors, or</p> <p>b) to share markets between competitors.</p> <p>Hardcore cartels are not likely to benefit from the advantages granted in the block exemption regulations either.</p> <p>In the case-law of the Competition Council higher fines are imposed on hardcore cartels. The Criminal Code foresees sanctions on bid rigging in public procurement and concession tenders.</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>Article 17 of the Competition Act defines a general exemption from the prohibition of cartels:</p> <p>Agreements restricting economic competition are not prohibited, provided that</p> <p>a) they contribute 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;</p> <p>b) they allow consumers or trading parties a fair share of the resulting benefit;</p> <p>c) the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified common goals;</p> <p>d) they do not create the possibility of excluding competition in respect of a substantial part of the products concerned.</p> <p>However, hardcore cartels do not fulfil these criteria, thus they are generally not exempted.</p> <p>In principle, agreements, which are of minor importance, are not be prohibited according to Article 13 of the Hungarian Competition Act. An agreement is deemed to be of minor importance if the joint share of the participating undertakings and undertakings which are not independent of them does not exceed 10 per cent on the relevant market unless its object is</p> <p>a) to fix, directly or indirectly, purchase or selling prices between competitors, or</p> <p>b) to share markets between competitors.</p> <p>Therefore, hardcore cartels cannot be exempted under Article 13 either.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>?</p>	<p>Yes.</p>
<p>E. Is participation in a hardcore cartel a civil or</p>	<p>In general it is an administrative offence.</p> <p>A cartel agreement qualifies as a criminal offence if it is committed in a public procurement or concession procedure, with a maximum sentence of five years of imprisonment.</p>

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.

administrative or criminal offence, or a combination of these?	
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3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	<p>Hungarian Competition Authority (Gazdasági Versenyhivatal - GVH)</p> <p>Criminal offences are investigated by the criminal authorities.</p>
B. Contact details of the agency:	<p>Hungarian Competition Authority (Gazdasági Versenyhivatal - GVH)</p> <p>Address: 1054 Budapest, Alkotmány u. 5 Mail: 1245 Budapest 5, Pf. 1036 Tel.: (+36 1) 472-8900 Fax: (+36 1) 472-8905 E-mail: webmaster@gvh.hu inquiries@gvh.hu ugyfelszolgalat@gvh.hu (Inquiries) gvh@gvh.hu (Inquiries) sarai.jozsef@gvh.hu (international affairs)</p> <p>Website: www.gvh.hu (in Hungarian and English)</p>
C. Information point for potential complainants:	<p>Inquiries Service</p> <p>Address: 1054 Budapest, Alkotmány u. 5 Mail: 1245 Budapest 5, Pf. 1036 Phone: (+36 1) 472-8851 Fax: (+36 1) 472-8905 E-mail: inquiries@gvh.hu</p>
D. Contact point where complaints can be lodged:	<p>Complaints can be submitted only in writing, personally at: 1054 Budapest, Alkotmány u. 5 (Mo-Thu: 8.00-16.30, Fri: 8.00-14.00) or by mail: 1245 Budapest 5, Pf. 1036 fax: (+36 1) 472-8905 e-mail: bejelentes@gvh.hu</p> <p>The form issued by the GVH has to be completed in Hungarian language (complaints). It is also possible to submit another complaining document (informal complaints). Forms can be requested from the Inquiries, or downloaded from the website of the GVH .</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.	<p>In case of need, the assistance of the police can be requested for dawn raids (coercive measures).</p>

4. Decision-making institution(s)² [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases:	(Competition Council of the) GVH Criminal courts (see 2/E above).
B. Contact details of the agency:	See 3/B above.
C. Contact point for questions and consultations:	See 3/B above.
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>The investigators (who are under the supervision of one of the vice-presidents of the GVH) are responsible for the investigation of the case. During the investigations they can use the investigatory powers indicated in 7 below. After completing the investigation, the investigator prepares a report which he/she submits to the Competition Council, together with the file of the case.</p> <p>The Competition Council, the resolution making body of the GVH, makes the resolution on the merits of the case after the evaluation of the investigator's report. (The investigator's report does not bind or restrict the Competition Council.)</p> <p>Before making this resolution, the proceeding panel of the Competition Council informs the parties to the case about its preliminary assessment (by a document similar to the SO in the European Commission's procedures).</p> <p>The Competition Council makes its decision on the merits of the case in a trial in so far this is requested by the party or considered necessary by the Competition Council itself.</p> <p>Relating to criminal matters no special procedure involving the Competition Authority was created.</p>
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	There are no special rules. Under Act XIX of 1998 on Criminal Procedures there is a possibility for the Competition Authority to be invited to provide expert opinion.

² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases:</p>	<p>Investigations are normally commenced on the basis of a complaint or informal complaint, a leniency application or ex officio.</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</p>	<p>Complaints or informal complaints can be made by the submission to the GVH of a properly completed form issued by the Authority or in any other way in writing, respectively. A form completed/filled in contains the important facts, which are required for the assessment of the complaint, including, in particular, the data necessary for the identification of the complainant and the undertaking(s) complained of, a description of the particular conduct through which the alleged infringement was committed, the basic information required to define the relevant market, an indication of the duration of the alleged infringement, furthermore facts and evidence supporting the statements made on the alleged infringement.</p> <p>In the case of applications for leniency, undertakings also have the possibility to present their application orally, per legal representative or proxy, in person. The investigator makes a record or sound recording of the oral application or makes a memorandum of it, which has to be signed by the applicant.</p> <p>Form for the submission of complaints on the homepage: http://www.gvh.hu/domain2/files/modules/module25/jogi/friss_bej_urlap_szam_kitolt_m.pdf (in the case of complaints concerning practices before 1 September 2008) http://www.gvh.hu/domain2/files/modules/module25/536570DB4D3AAF23.pdf (in the case of complaints concerning practices after 1 September 2008) (in Hungarian) http://www.gvh.hu/domain2/files/modules/module25/jogi/szakmai_felh_urlap_versenytv_bejelentes_a.pdf (in the case of complaints concerning practices before 1 September 2008) http://www.gvh.hu/domain2/files/modules/module25/10972F0FF04E99A44.pdf (in the case of complaints concerning practices after 1 September 2008) (in English, serving information purposes only)</p>
<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?]</p>	<p>Any person may make a complaint or an informal complaint to the GVH upon observation of a conduct falling within the competence of the GVH and infringing the provisions prohibiting agreements of the Competition Act or Article 101 of the TFEU.</p>
<p>D. Is the</p>	<p>The investigator must consider every complaint and informal complaint</p>

<p>investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</p>	<p>submitted to the GVH. Repeated complaints (informal complaints) having the same content as a complaint (informal complaint) previously made by the same complainant (by the same person or by anonymous persons) do not need to be considered.</p>
<p>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>	<p>Complainants must be informed of the order of the investigator about not pursuing a complaint in all cases. If the investigator does not deem it necessary to open an investigation, he/she must state, based on the data supplied by, or obtained in the procedure conducted on the basis of, the complaint that the conditions for the opening of an investigation are not fulfilled. The complainant may seek legal remedy against the order, within eight days of the conveyance of the order, from the Municipal Court of Budapest.</p>
<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>	<p>In the case of complaints, within two months of receipt of the complaint, the investigator must issue an order:</p> <ul style="list-style-type: none"> a) to open an investigation, or b) to state, based on the data supplied by, or obtained in the procedure conducted on the basis of, the complaint that the conditions for the opening of an investigation are not fulfilled, or c) to refer the complaint to another authority, where that other authority has the power to proceed in the case concerned by the complaint. <p>The time limit may be extended by two months where justified.</p> <p>Informal complaints must be assessed twenty-two working days of the date of receipt of them. Where laying the foundations for the assessment of an informal complaint is expected to take more than twenty-two working days, the investigator notifies this fact to the person making the informal complaint before the expiry of the original time limit for settlement, indicating at the same time the likely date for settlement.</p>

6. Leniency policy³

<p>A. What is the official name of your leniency policy (if any)?</p>	<p>Articles 78/A and 78/B of the Hungarian Competition Act are governing for the leniency policy</p> <p>Furthermore, „Notice No 3/2003 of the President of the GVH and the President of the Competition Council of the GVH on the application of a leniency policy to promote the detection of cartels” is applicable for the leniency applications submitted until 31 May 2009.</p> <p>Leniency applications submitted after 1 June 2009 are to be assessed</p>
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³ 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>pursuant to the "Guideline of the President of the GVH on the application of the leniency provisions laid down in Articles 78/A and 78/B of Act LVII of 1996 on the prohibition of unfair and restrictive market practices".</p> <p>For availability see 1/C above.</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Our jurisdiction offers both full leniency (immunity from fines) and partial leniency (reduction of fines, up to 50%).</p>
<p>C. Who is eligible for full leniency?</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 in the Competition Act (see 6/F).</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>The aim of the leniency policy is the disclosure of any kind of cartel activity, thus it is highly appreciated by the GVH the leniency applicants revealing unknown information.</p> <p>In the case of full leniency the submission of evidence is required, either enabling the GVH to obtain a judicial authorisation to carry out investigative measures or to be able to prove the infringement.</p> <p>The fine may be reduced if the undertaking provides the GVH with evidence of the infringement that constitutes significant added value (SAV) relative to the evidence already available to the GVH at the time when the application was submitted.</p> <p>If an undertaking provides evidence relating to facts in connection with the infringement, which are unknown to the GVH and which have a direct importance with respect to the circumstances to be taken into account when determining the amount of the fine, the competition council will not take such aggravating evidence into account when setting the fine to be imposed on the undertaking which provided this evidence.</p> <p>Applications may be submitted, at the latest, on the day before the date of service of the preliminary position or the day before the starting date for the access to the files, which of the two is the earlier.</p> <p>In case the GVH has already brought a conditional resolution on full leniency, the leniency application of the next undertaking to come forward will not be able to achieve immunity from fines anymore, only a reduction in the amount of the fine.</p> <p>The level of the reduction in the amount of the fine will be, as follows. For the:</p> <ul style="list-style-type: none"> a) first undertaking to meet the SAV-requirement: a reduction of 30-50%; b) second undertaking to meet the SAV-requirement: a reduction of 20-30%; c) subsequent undertakings that meet the SAV-requirement: a reduction of up to 20%.
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Only undertakings can be beneficiaries of the leniency policy as no sanctions are imposed on natural persons in the competition proceedings. On the other hand the Criminal Code foresees a possibility to get immunity from criminal sanctions. However this latter possibility under criminal law has no connection to the leniency policy.</p>

<p>F. What are the conditions of availability of full leniency:</p>	<p>The GVH grants an undertaking full leniency from any fine which may be imposed if it is the first to submit an application for immunity and submit evidence</p> <p>a, which enables the GVH to obtain in advance a judicial authorisation to carry out investigative measures in connection with the infringement, provided that the GVH did not, at the time of application, already have sufficient information constituting the ground for the authorisation or had not already carried out such investigative measures; or</p> <p>b, which enables the GVH to prove the infringement, provided that it did not, at the time of the application, already have sufficient evidence to prove the infringement and none of the undertakings meets the conditions set out in point a,.</p> <p>Leniency may be granted only to undertakings which, in addition to those set out above, meet the following conditions:</p> <p>a, it ends its involvement in the infringement immediately following its application or the providing of evidence, except for what would, in the GVH's view announced by order to the undertaking, be reasonably necessary effectively to carry out investigative measures and</p> <p>b, it cooperates genuinely fully and on a continuous basis with the GVH until the conclusion of the proceeding.</p> <p>An undertaking, having coerced other undertakings to participate in the infringement, cannot be granted full immunity.</p> <p>In the case of criminal sanctions the first person who comes forward with a detailed testimony on the infringement enjoys a statutory exemption from criminal sanctions supposed that the authority (competition authority, financial supervision authority and the body conducting remedy procedures in connection with public procurement contracts) had no knowledge on the offence before the testimony was given.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>Under the Hungarian Competition Act fine reduction may be granted as a form of partial leniency.</p> <p>Fines may be reduced on application if the undertakings do not qualify for full leniency but provide the GVH with evidence of the infringement, which constitutes significant added value (SAV) relative to the evidence already available to the GVH at the time when the application was submitted.</p> <p>In the case of fine reduction, the undertakings also have to fulfil the above-mentioned conditions of ending their involvement in the cartel and cooperation with the GVH. (For further details see 6/F. above.)</p> <p>It is worth mentioning that according to the new Hungarian leniency rules, undertakings, which took steps to coerce other undertakings to participate in the cartel, also may be granted fine reduction.</p> <p>As a special form of fine reduction, if the undertaking provides evidence relating to facts in connection with the infringement, which are unknown to the GVH and which have a direct importance with respect to the circumstances to be taken into account when setting the fine, the GVH will not take such aggravating evidence into consideration when setting the fine to be imposed on the undertaking which provided this evidence.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>Leniency applicants have to end their involvement in the cartel following the submission of evidence, no later than the time agreed with the GVH. Moreover, they have to co-operate genuinely, fully, on a continuous basis throughout the procedure, with the GVH and provide the GVH with all the evidence and information in their possession without altering the content thereof.</p>

<p>I. Are there formal requirements to make a leniency application?</p>	<p>Leniency applications may be submitted by the filing of the leniency form available on the homepage of the GVH. The form itself contains guidance on the formal requirements the application must fulfil (eg. name of the applicant, description of the infringement, the provisions of the Hungarian Competition Act justifying the leniency, list of evidence at hand). Anonymous and joint leniency applications are inadmissible.</p> <p>If an undertaking wishes to present its application orally, it has the possibility to do so per its legal representative or proxy, in person, on the date agreed with the GVH in advance. The investigator makes a record or a sound recording of the oral application, or makes a memorandum of it.</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>The procedure in leniency cases is specified by the Explanatory Notice of the President of the GVH on leniency provisions.</p> <p>An application for full leniency can be submitted in three forms:</p> <ol style="list-style-type: none"> a. Complete application (containing all information required by the application form) b. Non-final application (containing fewer data than the complete application) c. Provisional application (submitted parallel to a leniency application submitted to the European Commission) <p>After receiving the application, the Cartel Unit of the GVH makes a record of the receipt of the application, which certifies the exact date (year, month, day, hour, minute). The Cartel Unit examines the application and submits the gathered information together with its opinion to the Competition Council for resolution. If the Competition Council deems it necessary, it may hear the applicant prior to its decision-making. The proceeding Competition Council assesses the applications received in their time sequence, and it will not consider other applications before it has conveyed its resolution in respect of an existing application in relation to the same infringement. In this phase only the decision on conditional leniency will be made, the Competition Council decides on the immunity from / reduction of fines in its decision on the substance of the case (depending on whether the applicant has fulfilled the requirements of granting leniency in the course of the proceeding).</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>The final decision on the leniency application is included in the decision on the merits of the case, thus the applicant is given certainty only after the closing of the proceeding.</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</p>	<p>The decision making body of the GVH, the Competition Council decides about granting full or partial leniency in its decision on the substance of the case.</p>

applications?	
M. Does your legislation have a marker system? If yes, please describe it.	If an undertaking decides to submit an application for immunity from fines, however the evidence available for it is not yet sufficient, it may submit a non-final, so called marker application containing the minimum information specified by the application form. The GVH may consider such applications as being submitted, even if the required evidence was not submitted at the time of the application. In such cases a time limit is set for the completion of the non-final application. If the undertaking completes its application fully within the time limit, it is deemed as if a complete application would have been submitted on the date when the non-final application was submitted. If the undertaking fails to complete its application, the GVH deems it to have been withdrawn.
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	No.
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	The GVH assures the secrecy of the identity of the beneficiary and the fact of its co-operation until the starting date for the access to the files. Until that time, only the investigator appointed to deal with the case, the proceeding Competition Council and the court may have access to the leniency files.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	No.
Q. Contact point where a leniency application can be lodged:	GVH (Hungarian Competition Authority), Kartell Csoport (Cartel Unit) Address: 1054 Budapest, Alkotmány u. 5 Mail: 1245 Budapest 5, Pf. 1036 Tel.: (+36 1) 472-8871, (+36 1) 472-8872 Fax: (+36 1) 472-8905 E-mail: kartell@gvh.hu
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be	It may happen that the GVH decides on conditional leniency in the course of the proceeding, but the applicant fails to meet the conditions of leniency later (e.g. it does not co-operate fully with the GVH), in such cases the undertaking will not be granted leniency in the final decision. The actual decision about granting full or partial leniency is made in the decision on the merits of the case and it cannot be revoked. However, parties are always granted the possibility to appeal the decision on the merits of the case before the court.

⁴ 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.

made against a decision to revoke leniency?	
S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?	No.

7. Investigative powers of the enforcing institution(s)⁵

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>Parties are obliged to supply, at the request of the investigator or the proceeding Competition Council the data which are necessary to decide on the merits of the case, including personal data. Parties cannot be obliged to make statements admitting an infringement, however, they cannot refuse to supply incriminating evidence of any other kind.</p> <p>Investigative measures may be carried out on any sites where evidence necessary to clarify the facts of the case is kept. For the purposes of the clarification of the facts of the case, any persons or organisations are obliged to provide the necessary information in writing too and send any documents relating to the subject of the investigation to the GVH.</p> <p>Parties or other persons possessing documents are obliged, at the request of the investigator, to display, in a readable form or a form which is eligible to be copied, of information recorded on data carriers.</p> <p>The investigator and the proceeding Competition Council are entitled to make copies of documents. The investigator is entitled to make forensic images of data carriers and to scrutinize, by means of the back-up copies, the data stored on those data carriers where the data carriers are likely to store data relating to the infringement of the law.</p> <p>The investigator can seize the documents also without writing a memorandum, by putting them in a storing device suitable for keeping them or in a separate room, to be closed and sealed by him subsequently.</p> <p>In cases where pieces of physical evidence may be seized in accordance with the provisions of Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services, they may be put under seal in place of being seized.</p> <p>The GVH is authorised, in connection with the economic activity under review, to have access to, and manage, the personal data of the party and of other persons participating in the proceedings; it may seize records or data bases containing data of this kind.</p> <p>The GVH may use documents, data, records or any other information, which were lawfully collected in its cartel procedures, in its other</p>
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⁵ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁶ “Searches/raids” means all types of search, raid or inspection measures.

	<p>competition supervision proceedings.</p> <p>In the course of proceedings based on the cartel prohibition of the Competition Act (or on Article 101 of the TFEU), the investigator may search, and enter on his own, against the will of the owner (possessor), any site or open to this end any land, buildings and premises closed. It may oblige the party or its agent or former agent, employee or former employee to provide information and explanation orally or in writing, or collect information on the spot in any other manner.</p> <p>In premises used for private purposes or privately used, including vehicles and other land, investigative measures of this kind may only be carried out, if those premises and facilities are in the use of any executive official or former executive official, employee or former employee, agent or former agent of the party or of any other person who exercises or exercised control as a matter of fact.</p> <p>Carrying out the investigative measures mentioned in the last two sections are subject to the attainment in advance of a judicial authorisation.</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>In premises used for private purposes or privately used, including vehicles and other land, dawn raids may only be carried out, if those premises and facilities are in the use of any executive official or former executive official, employee or former employee, agent or former agent of the party or of any other person who exercises or exercised control as a matter of fact. Such investigations require the authorisation of the court in advance.</p>
<p>C. 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. When taking an investigative measure during an inspection (dawn raid), the investigator is entitled to make copies of, or seize, pieces of evidence, which are not related to the subject of the investigation and are not covered by the authorisation of the court, but which are indicative of an infringement of the cartel prohibition of the Competition Act (or of Article 101 of the TFEU). In respect of such pieces of evidence, the authorisation of the court must be obtained subsequently. Where a subsequent authorisation of the court cannot be obtained, the piece of evidence in question may not be used.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorised by the courts? If yes, please briefly describe them.</p>	<p>The measures taken by the GVH during dawn raids can be challenged by filing an objection to the investigation within three days of the irregular action alleged.</p> <p>In most of the cases the investigative measures taken by the GVH are not challenged by the parties.</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<ul style="list-style-type: none"> - The party must be notified of a suspected violation of law and of the examined facts, at a time early enough to enable the party to make a statement of its position concerning them. - The party has right to legal representation. - The party and other persons participating in the proceedings may request limitation of access to the documents or to the making of copies or to the taking of notes thereof, with reference to the need of protection of business secrets. - The party may have access to the documents after the completion of the investigation, following the date set by the competition council and he may make copies or take notes thereof. The starting date for the access shall be set early enough so as to enable the party to prepare for making a statement. - The party cannot be obliged to admit an infringement of the law. - The party has the right to be heard. - Documents prepared for the purposes of, or during, the exercise of the rights of defence of the parties or prepared in the course, or for the purposes, of communication between the parties and the lawyers appointed by them, furthermore documents containing statements made in the course of such communication, provided in each of these cases that this character is directly manifested by the document concerned, may not be used in evidence, examined or seized in the course of the competition supervision proceedings, and the owners of such documents may not be obliged in the course of inspections to present those documents, except where otherwise provided by the Competition Act. Parties may waive the application of this prohibition. <p>(Articles 55 and 65/B of the Competition Act)</p>
<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?</p>	<p>There is no difference between the treatments of business secrets on the basis of the way of their collection.</p> <p>Relevant provisions on business secrets and access to the file:</p> <p>For the purposes of the Competition Act the term "business secret" has the meaning defined in Subsection (2) of Section 81 of the Civil Code, namely: business secrets comprise all of the facts, information, conclusions or data pertaining to economic activities that, if published or released to or used by unauthorised persons, are likely to jeopardize the rightful financial, economic or market interest of the owner of such secrets, provided the owner has taken all of the necessary steps to keep such information confidential.</p> <p>A foreign authority may request that a part or the whole of the content of their response to a request for information be treated as a business secret.</p> <p>For further details see 8/A above and Article 55 (3) of the Competition Act.</p>

9. Limitation periods and deadlines

<p>A. What is the</p>	<p>No investigation may be started where five years have elapsed since the</p>
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<p>limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</p>	<p>infringement of the prohibition of agreements restricting economic competition. Where the unlawful conduct is performed continuously, the time limit starts to run from the date of termination of the conduct. Where the infringement is committed through a failure to eliminate a state of affairs or situation, the time limit does not start as long as this state of affairs or situation exists.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>A decision on the merits of a case must be made within six months of the date of the order to open the case. This time limit may be extended two times by a maximum of six months each.</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?</p>	<p>The commencement or the completion of the investigation cannot be challenged.</p> <p>The revision of a decision on the merits of a case may be requested from the court through submission of a statement of claim to the Competition Council or taken to the post as registered mail within thirty days of the conveyance of such a decision. The claim has no suspensive effect on the implementation of the decision. The court can overrule the decision of the competition council.</p> <p>Separate legal remedy may be sought against orders making commitments binding (see 10/A below) within five working days of the conveyance of the order.</p>

10. Types of decisions

<p>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</p>	<p>The proceeding Competition Council, in its decision,</p> <ul style="list-style-type: none"> a) may establish that the benefit of the application of a group exemption does not apply to the agreement, b) may establish that the conduct is unlawful or not unlawful, c) may order a situation violating the Act to be eliminated, d) may prohibit the continuation of the conduct which violates the provisions of the Act, e) may revoke or amend its earlier decision, f) may impose a fine on undertakings violating the provisions of the Competition Act <p>Where, in the course of competition supervision proceedings started ex officio, parties undertake commitments to ensure, in a specified manner, compliance of their practices with the provisions of the Competition Act (or</p>
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	of Article 101 of the TFEU) and if effective safeguarding of public interest can be ensured in this manner, the proceeding Competition Council may by order make those commitments binding on the parties, terminating at the same time the proceeding, without concluding in the order whether or not there has been or still is an infringement of the Act.
B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).	The same decisions as those described in 10/A.
C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	<p>The Competition Council may, by an interim measure, prohibit in its order the continuation of the illegal conduct or order the elimination of the unlawful situation, where prompt action is required for the protection of the legal or economic interests of the interested persons or because the formation, development or continuation of economic competition is threatened.</p> <p>The ordering of an interim measure may be requested also by a party. In this case, the Competition Council may require the providing of guarantees as a condition. The proceeding Competition Council must consider the request relating to the ordering of an interim measure immediately. (A separate legal remedy may be sought before the court against the order ordering an interim measure or the provision of a guarantee, within five working days of the conveyance of the order.)</p>

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

⁷ 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].

⁸ Only for agencies which answered “yes” to question 2.C. above

⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of

A. Grounds for the imposition of procedural sanctions / fines:	<p>A procedural fine may be imposed on the party or other persons participating in the proceedings, furthermore on persons obliged to provide assistance in clarifying the facts of the case if they engage in an act or display behaviour which is aimed at protracting the proceedings or preventing the disclosure of facts, or which has such an effect.</p> <p>A person who disrupts the trial may be called to order by the chairman of the trial. In the case of repeated or grave disruption, such a person shall be expelled from the room, and a procedural fine may be imposed.</p> <p>The Criminal Code penalises perjury committed in administrative procedures.</p>
B. Type and nature of the sanction (civil, administrative, criminal, combined):	<p>Administrative and criminal.</p>
C. On whom can procedural sanctions be imposed?	<p>On the party (undertaking) or other persons participating in the proceedings, furthermore on persons obliged to provide assistance in clarifying the facts of the case.</p>
D. Criteria for determining the sanction / fine:	<p>See 11/A above.</p>
E. Are there maximum and / or minimum sanctions / fines?	<p>Minimum and maximum procedural fines (for undertakings), respectively: HUF 50000 (€ 178) and 1 % of the undertaking's net turnover in the preceding business year).</p> <p>Minimum and maximum procedural fines (for natural persons who do not qualify as an undertaking), respectively: HUF 50000 and HUF 500000 (€ 1780).</p> <p>In the case of exceeding time limits specified for the performance of procedural obligations, the maximum procedural fines are 1 % of the undertaking's per-day net turnover in the preceding business year and (against natural persons who do not qualify as an undertaking) HUF 50000 per day.</p>

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be	<p>Administrative fines imposed on undertakings</p> <p>The Criminal Code penalizes bid rigging in public procurement procedures and concession tenders with imprisonment for up to five years. If the value of the public contract involved is below substantial value, the criminal sanction can be imprisonment for up to two years.</p>
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justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

imposed?	
B. Criteria for determining the sanction / fine:	The amount of the fine is established with all the relevant facts of the case taken into account, 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 co-operation by the undertaking during the proceedings and the repeated display of unlawful conduct. The gravity of the violation is established, in particular, on the basis of the threat to economic competition and the range and extent of harm to the interests of consumers and trading parties.
C. Are there maximum and / or minimum sanctions / fines?	The maximum fine may not exceed ten per cent of the net turnover, achieved in the business year preceding that in which the decision establishing the violation is reached, of the undertaking or, where the undertaking is member of a group of undertakings which is identified in the decision, of that group of undertakings. The maximum fine imposed on social organisations of undertakings, public corporations, associations or other similar organisations may not exceed ten per cent of the total of the net turnover in the preceding business year of undertakings which are members of them.
D. Guideline(s) on calculation of fines:	None
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?	A challenge of the decision reached on the merits of the case and imposing a fine has no automatic suspensory effect in respect of the fine in question. However, a suspension may be requested by the party in its statement of claim (challenging the decision) addressed to the Municipal Court of Budapest. In cases where the statement of claim contains an application for a suspension of the enforcement, the statement of claim and the documents of the case will be referred to the court within (instead of thirty days, see 13/B below) fifteen days of receipt of the statement of claim.

13. Possibilities of appeal

A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	Revision of a decision on the merits of a case may be requested by submission of a statement of claim within thirty days of the conveyance of the decision. No statutory provisions indicating the possible grounds of appeal exist.
B. Before which court or agency should such a challenge be	The Municipal Court of Budapest reviews the final decisions of the GVH. The statement of claim against the decision on the merits of the case must be submitted to the Competition Council (or taken to the post as

made? [if the answer to question 13/A is affirmative]	registered mail). The Competition Council will transfer the statement of claim, along with the files relating thereto, to the Municipal Court of Budapest. within thirty days of its receipt. The court can overrule the decision of the GVH.
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