



## REGULAR QUESTIONS ABOUT THE CARTEL INFORMANT REWARD

The latest amendment of the Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter Competition Act) entered into force on 1 April 2010. Based on the amendment, those persons (hereinafter informants) who provide indispensable information about hardcore cartels may be entitled to obtain a reward under conditions specified by law. Hereinafter we are going to provide brief information about the informant reward in the form of questions and related answers.

### **1. Why does the GVH pay reward for the informants who provide information about hardcore cartels?**

Hardcore cartels cause serious harm to consumers, business partners, competitors and to the whole economy without any benefit. Hardcore cartels are often created clandestinely and even in the course of their functioning they strive for keeping it secret, that is why it is very difficult to detect such collusions.

Considering that hardcore cartels cause serious harm and it is very complicated to detect them, according to the legislation, it is justified to reward those informants who provide the Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter GVH) with indispensable information for revealing and detecting hardcore cartels. The informants who disclose the existence of a cartel (e.g. employees, business partners) take financial risk because of the cartelists' possible revenge; this risk has to be counterbalanced in order to maintain their motivation to assist in the enforcement of the law.

### **2. What is a “hardcore” cartel?**

Hardcore cartels mean the following types of agreements and concerted practices between competitors (hereinafter: agreements):

- Such agreements between competitors which have as their object the direct or indirect fixing of purchase or selling prices of a product or a service, i.e. the competitors agree on what price they are about to sell a certain product or service to consumers instead of determining their prices independently of each other. (This behaviour is known as price fixing.)

- Such agreements between competitors the aim of which is to share markets, i.e. the competitors agree in advance among themselves which undertaking is going to sell a certain product or service to which consumer group or potential consumer group and agree not to compete among themselves in this area. (This behaviour is known as sharing of markets.)
- Such agreements between competitors which aim at fixing production or sales quotas, i.e. according to the agreements the competitors limit how much to produce from a certain product and how much to sell on the market.
- Bid rigging of the competitors: e.g. the competitors – before submitting their respective bids – exchange information among themselves about the way they are about to submit their bids in reply to an invitation to tender, or make a secret agreement that one of them does not submit a bid at all, submits a false bid or a bid that is far more expensive than the other's in order to help the latter in winning the tender. (For further information about bid rigging in Hungarian, you can click [here](#).)

The creation of hardcore cartels is prohibited by Article 11(2) of the Competition Act and also by Article 101 of the Treaty on the Functioning of the European Union (hereinafter TFEU).

Cartel agreements constitute egregious harm to the functioning of market economy since they restrict competition or even exclude it completely, and they hereby lead to increase in prices and/or decrease in the possibility of consumer choice. The undertakings participating in a cartel cause loss of efficiency by restricting competition since they eliminate the external driving force that would result in product development, and the use of more effective production technologies, business models. Their behaviour might even finally lead to lost competitiveness and to decreased employment, and influence the development of the whole economy in a negative way. Consequently fight against cartels constitutes a high priority for the GVH.

### **3. What type of information must be provided in order to get rewarded by the GVH?**

Reward is only offered in case information is provided in connection with the most egregious competition law offences, i.e. hardcore cartel conducts. Based on the Competition Act two types of information are rewarded: a) written evidence qualifying as indispensable in connection with hardcore cartels and b) under certain conditions, information qualifying as indispensable substantiating the basis for the on-spot inspections. These categories can be interpreted as follows:

a) Providing evidences about cartels is not all the time rewarded, only “written evidences qualifying as indispensable” are rewarded by the GVH. These are evidences qualifying as documents specified by Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services (hereinafter Public Administration Act), i.e. every object that

carries recorded data. This kind of evidences must qualify as indispensable for proving the infringement. This usually means that the informant must share “internal information” in connection with cartels, it is not sufficient to disclose general signs referring to the cartel activity. As a main rule, reward may be offered if the informant reveals evidences that can be related to the elements of the statement of facts concerning the hardcore cartel (e.g. the undertakings being parties to the cartel, the restrictive practice); it is not sufficient providing evidences that may facilitate the identification of the aspects relevant for sanctioning the infringement concerned.

Based on all the above mentioned, the informant may be entitled to receive reward for revealing the agreement establishing the cartel, submitting written correspondence exchanged in the course of the functioning of the cartels or, in a competition supervision proceeding already launched, providing documents proving that further participants - unknown for the GVH until that time - were also involved in the cartel, or the cartel was created even earlier than the GVH has supposed so or it extends to other product groups as well. However there are no grounds for reward if the information is relevant concerning the jeopardy of competition, the impact of the infringement on the market, the attitude of the (infringing) undertaking committing the infringement towards its practice.

The question whether the document of the potential informant is presumably able to substantiate the claim for reward of course requires individual consideration. Though (implicitly) the indispensable nature of a document can only be assessed in the light of the entire proceeding, all the evidences and the decision on the merits on the legal qualification of the case, the Competition Act enables - for further informing the potential informant - that without revealing his or her personal identity the informant can ask the GVH for information whether a certain document or information may presumably qualify as such an indispensable evidence (for details see also the answer given to question 9).

*b) Also a piece of information – maybe even oral – based on which the court grants authorisation to investigative measures specified by Article 65/A of the Competition Act in the course of which the GVH takes possession of written evidence that is in connection with cartels and that – based on the above mentioned – qualifies as indispensable written evidence, qualifies as indispensable.*

In the fight against cartels, investigative measures specified by Article 65/A of the Competition Act, the so-called dawn-raids are of key importance. Within the framework of these dawn-raids, the GVH may hold on-spot inspections without any preliminary notification at any premises where it may scan for documents or electronic documents and may also seize them. Dawn-raids may also be held at private premises under specified conditions. In

cartel proceedings, dawn-raids are very important since the GVH may obtain most of the evidences necessary for proving the existence of a cartel this way. Dawn-raids held by the GVH are subject to judicial authorisation that can only be obtained when possessing information about a cartel.

That is the reason why the Competition Act prescribes that the informant is not only entitled to the reward if he or she submits indispensable written evidence directly concerning the cartel to the GVH, but also if he or she furnishes the GVH with other information (even in oral) with the help of which the GVH is able to substantiate authorization for conducting dawn-raids and the dawn-raid proves to be successful, i.e. the GVH finds indispensable written evidence in connection with the cartel in the course of the dawn-raid.

As for indispensability, it is to emphasize that in the course of the proceeding of the GVH, the same evidence may originate from different sources or the same relevant conditions may be supported by different evidences. That is why, in favour of the informant, the Competition Act introduces the rule of chronological order. According to this rule, the evidence provided by the informant also qualifies indispensable even if it can be replaced by another evidence that the GVH obtains posteriorly.

It must be highlighted that the Competition Council proceeding in the case decides on the establishment and payment of the reward in a separate resolution within thirty days from the decision on the closure of the proceeding at the end of the competition supervision proceeding.

#### **4. Who can provide the GVH with information?**

Any natural person may furnish the GVH with information that entitles him or her to reward. He or she may be any person who has been in direct contact with the cartel (for instance he or she has been an executor of the cartel), or a person who without any direct contact possesses information about the infringement (e.g. a secretary who organises appointments, someone who is responsible for organising (business) trips, an employee of an association representing the interests of undertakings or of a chamber).

It is important though to emphasize that no reward is granted in a case where general information referring to an alleged infringement is provided by undertakings or by consumers about undertakings in connection with them. These pieces of information usually do not qualify as indispensable evidence substantiating the infringement.

#### **5. What are the cases where no reward is granted for information?**

The Competition Act identifies several cases where *no reward is offered* for the information provided (not even in cases where it fulfils the conditions specified at question 3). These are the following cases:

a) The legal representative of the undertaking on behalf of which an application for immunity from fines or reduction of fines (hereinafter leniency application) specified by Article 78/A of the Competition Act has been submitted is not entitled to informant reward. (For further details, see the answer given to question 6.)

b) No informant reward shall be granted in cases where the evidence has been obtained as a result of a crime or an offence. This provision aims at preventing the persons being “close” to the relevant information and motivated by the reward from committing serious violations of the law. Naturally it is not the GVH that is entitled to establish such infringements, but the authorities dealing with sanctions and administrative offences, the GVH is not even empowered to investigate such cases, except for the evident ones.<sup>1</sup>

In cases where a possible criminal or an administrative offence proceeding is initiated in connection with the manner in which the written evidence has been procured, before the payment of the reward, the GVH suspends the payment of the reward until the final closure of the criminal proceeding. In cases where the commitment of a crime or an offence is finally established after the payment of the reward, the reward must be reimbursed to the GVH. The Competition Council makes a separate resolution about the reimbursement. However it must be highlighted that the payment of the reward is not excluded in the case of any other kinds of infringements (e.g. labour law or civil law offences).

c) Informant reward may not be paid to each of more than one person if it can be established, based on the data available, that the evidences concerned originate from one single source and they have been divided only with the purpose of obtaining multiple informant rewards. (E.g. one of the informants submits the agreement of the cartel, the other one its annexes with the purpose of multiple rewards.) In such a case the simple amount of the informant reward shall be equally divided among those who are entitled to it.

d) No reward is granted if the Competition Council has not imposed fines in its decision closing the competition supervision proceeding – here including the case where it is not the GVH, but the European Commission that decides in the case, since the basis of the reward is the fine imposed by the Competition Council<sup>2</sup>.

**6. In case the informant has also taken part in the cartel, is he or she entitled to reward in exchange for the information provided?**

The answer is basically yes; the Competition Act does not exclude that the person taking part in a cartel may be entitled to reward.

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<sup>1</sup> In any doubts concerning the judgement of a crime or an offence related to the obtainment of the document, it might be justified to ask for advice of a legal expert.

<sup>2</sup> See also point 11.

However it is also to be highlighted that based on the Competition Act, if the undertaking taking part in a cartel has submitted an application for immunity from fines or reduction of fines to the GVH, then the legal representative of the undertaking is not entitled to reward for a written evidence or information provided. (For further information in English about the leniency program, please click [here](#).) Nevertheless the exclusion does not concern the other employees or ex chief executives of the undertaking applying for leniency.

## **7. Can the revealing of a cartel substantiate the exemption of the informant from criminal consequences of cartelling?**

It is important to emphasize that based on Act IV of 1978 on the Criminal Code (hereinafter: Criminal Code) cartel practices made in the course of a public procurement or concession procedure (either perpetrator, accomplice or abettor) are subject to punishment.<sup>3</sup>

However, the perpetrator may be exempted from the criminal sanctions, since Section (4) of Article 296/B of the Criminal Code regulates the case – as a reason dissolving culpability – where the perpetrator confesses the criminal act and reveals its circumstances before the authority (here meaning the GVH as well besides the investigating authority) becomes aware of it. In this case the perpetrator is not subject to punishment.

As a result, if a person participating in a cartel in a public procurement or concession procedure reports to the GVH about the cartel activity and provides indispensable evidences for conducting a procedure, then – if the other conditions also apply – it is not excluded theoretically that the informant could be exempted from the criminal sanctions. However, it is evidently not the GVH, but the authorities with competence in conducting criminal procedures and the courts who decide.

It must be pointed out that real exemption from criminal sanctions and the payment of the reward depend on several factors (e.g. what type of information does the informant provide to the GVH, when does he or she submit it and are other authorities aware of the infringement? etc.), hereby a case-by-case deliberation seems appropriate – by different authorities – to decide whether the conditions of criminal exemption and reward are met.

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<sup>3</sup> Article 296/B of the Criminal Code prescribes that “any person who enters into an agreement aiming to manipulate the outcome of an open or restricted tender published in connection with a public procurement procedure or an activity that is subject to a concession contract by fixing the prices (charges) or any other term of the contract, or for the division of the market, or takes part in any other concerted practices resulting in the restraint of trade is guilty of felony punishable by imprisonment for up to five years”. It also prescribes that “any person who partakes in the decision-making process of an association of companies, a public body, a society or similar organization, and adopting any decision that has the capacity for restraining competition aiming to manipulate the outcome of an open or restricted tender published in connection with a public procurement procedure or an activity that is subject to a concession contract shall also be punishable”.

## **8. Who to contact within the GVH?**

In case any person would like to provide information in connection with cartels, or – without revealing his or her personal identity – wishes to inquire whether the document in his or her possession entitles him or her to the reward, the Cartel Section of the GVH has to be contacted at:

Address: H-1054 Budapest, Alkotmány u. 5.

Tel.: + 36-1-472-8871, +36-1- 472-8872

E-mail: [kartell@gvh.hu](mailto:kartell@gvh.hu)

For general information about the procedure concerning the informant reward, please contact the Cartel Section of the GVH.

## **9. What does a GVH procedure concerning information-providing look like in practice?**

Any person may ask the GVH for information – without revealing his or her personal identity – whether the document in his or her possession may entitle him or her to reward at all. Naturally the GVH cannot fully assess – may be in advance – the document for such a request concerning the claim for reward, but in a given case the GVH may provide detailed information about the rules in connection with the reward.

The document/information provided is in every case pre-examined by the GVH whether it is potentially capable of substantiating the claim for the reward, and the GVH informs the informant of this fact and the rules applying for the payment of the reward in due time in the course of the proceeding. The person who provides evidence probably establishing the claim for reward has to submit an application for reward within five days at least upon receiving information about it, otherwise he or she is not entitled to reward afterwards.

If the document provided in the course of an ongoing competition supervision procedure is incapable of proving the infringement, the GVH informs the person who has provided the document within the framework of a hearing, and upon his or her request the GVH makes a separate resolution about the refusal of the document.

It is important to emphasize that the entitlement for the reward or the capability of the information provided for substantiating the reward cannot be unequivocally adjudicated until the Competition Council makes a decision on the merit in the given case, since only by that time can the proving procedure, the entirety and the quality of the relevant evidences become complete. As a consequence, information provided by the GVH about the probable capability of evidence provided for substantiating the reward is only preliminary.

That is the reason why the Competition Act prescribes that the Competition Council decides in a separate resolution about the payment of the reward within thirty days from its decision made about the closing of the procedure. The person concerned may bring an appeal against the resolution. The reward is due within thirty days from the resolution becoming final.

**10. When does the GVH inform the informant whether it grants a reward for the information provided?**

According to those described in the previous point, the GVH may form an opinion for an anonym request whether the document possessed by the potential informant is capable of substantiating the reward. Then the GVH calls the attention of the informant providing the document/information that is supposed to substantiate the claim for the reward to submit his or her claim for the reward; however this information-providing and reminder do not bind the GVH, and they are not meant definitive standpoint of the GVH concerning the entitlement for the reward (see also point 9).

*The Competition Council proceeding in the case decides about the amount and the payment of the reward within thirty days from its decision closing the case. The reward is due within thirty days from the resolution becoming final.*

**11. What amount of reward may the informant calculate with?**

The amount of the informant reward determined is one percent of the fine imposed by the Competition Council proceeding in the case, but maximum HUF fifty million. The amount of the fine imposed in the case and hereby the amount of the reward are influenced by several factors (e.g. the duration of the infringement, the fact whether the infringement has been ceased or is still ongoing, the share of the undertaking from the relevant market etc.)

The basis of the reward is the total amount of the fines imposed, i.e. the fines imposed on different parties are to be added.

The amount of the fine paid will not change later according to the court review of the decision made by the GVH, not even in the case where the court repeals the decision of the GVH or decreases the amount of the fine imposed, except for the case where it turns out in the course of the court procedure that the evidence provided by the informant has not been legal (e.g. the party proves that the written evidence does not originate from it, the evidence is probably false) and the reason of the illegal nature of the evidence may trace back to the practice of the informant. In this case the GVH reclaims the reward paid back from the informant.

Since reward is only granted based upon the fine, evidently the informant may only receive reward if the proceeding is closed by the establishment of the infringement and a fine. This also



means that in the very rare cases where the European Commission takes over and then decides about the case launched by the GVH, there is no reward either since the GVH does not impose a fine, the fine imposed by the EC does not go into the account of the GVH. (The source of the reward is the fine imposed by the GVH.)

In a case where one person provides several indispensable pieces of evidence, only the simple amount of the reward is granted. In case more than one different natural persons provide indispensable evidence, each of them shall be entitled to informant reward. One person is entitled to receive informant reward only one time.

## **12. What is the role of the informant in the procedure of the GVH?**

Those informants who provide information about cartels only cooperate with the GVH in most of the cases if they can keep their informant identity secret. That is why the GVH has numerous instruments to keep the personal identity of the informants secret. (See also the answer given to question 13). However it must be highlighted that law enables that in the course of the competition supervision proceeding the informant can be heard – depending on his or her role in the proceeding – as a client or a witness, and the informant cannot refuse it – except for the cases where he or she is exempted based on the Public Administration Act and the Competition Act.

As prescribed by the Competition Act, the client has to disclose the data necessary – here including his or her personal identification data – for a decision on the merits. The client cannot be forced to self-incrimination, however he or she cannot refuse to disclose incriminating evidence against him- or herself.

Based on the Public Administration Act and the Competition Act the person summoned as witness must appear before the GVH for a hearing and testify.

A person may not be required to testify

- a) if he or she is unlikely to provide any admissible evidence,
- b) any protected data (or privileged information) – except for the business secrets of the party under investigation – if he or she has not been released from the obligation of confidentiality by an organisation or a person authorized.

Testimony may be refused

- a) if the witness is a relative of any of the clients, or
- b) if it would implicate to accuse him or herself or his or her relative in some criminal activity.

### **13. What is the guarantee that the personal identity of the informant is kept secret in the course of the procedure of the GVH?**

The informant may be heard as witness in the course of the competition supervision proceeding, but he or she may ask the GVH to *keep his or her personal identification data confidential*. In this case the GVH handles the *natural personal identification data and address of the informant separately sealed within the documents of the case*. The GVH guarantees that all the sealed data remain secret in the course of the proceeding. Only the case-handler of the GVH, the typist and the administrator of the report, chairman of the authority, the public prosecutor with jurisdiction and the judge proceeding in the court review are entitled to inspect those sealed documents. In order to ensure the right of the parties of the competition supervision proceeding to have access to the documents for review, the GVH prepares a summary about the hearing of such anonym witnesses in order to avoid that conclusions could be drawn concerning the personal identity of the witness (informant).

However, in this latter case, it must be emphasized that the confidential handling of the informant's personal identification data might have an impact on the probative force of the evidence provided, it might hereby influence the payment of the reward.

The GVH records all the phases of the contact with the informant, however the parties of the competition supervision proceeding cannot inspect these documents – except for the evidences provided in connection with the infringement.

Here it has to be noted that the GVH reveals the evidences submitted by the informant to the parties of the competition supervision proceeding, therefore it is not excluded that a party – purely in view of the evidence – initiates the investigation of the offence or crime in connection with the obtainment of the evidences at the authorities with jurisdiction. In this case – according to the above mentioned – the GVH suspends the payment of the reward until the final closure of the criminal proceeding.

### **14. In which cases may the GVH grant informant reward?**

The amendment of the Competition Act concerning the informant reward entered into force on 1 April 2010. This means that in case of *documents and other information submitted after 1 April 2010* the provisions concerning the informant reward shall be applied irrespectively of the fact whether the competition supervision proceeding of the GVH has been launched before or after this date. Document/information provided after this date – if the other conditions apply – may also entitle the informant to reward if it refers to a cartel created before this date, in

condition that the GVH has jurisdiction to proceed, i.e. less than five years has elapsed between the termination of the cartel behaviour<sup>4</sup> and the launching of proceeding of the GVH.

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<sup>4</sup> A cartel activity pursued continuously for a long time – within the framework of a collusion at several different bids – qualifies as one continuous practice, hereby the GVH has also jurisdiction to proceed if the beginning of such a process – e.g. public procurement procedure – dates back to five years ago.