

Notice No 1/2012 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the method of setting fines in case of market practices infringing Articles 11 and 21 of Act LVII of 1996 on the Prohibition of Unfair Restrictive Practices (Competition Act), and Articles 101 and 102 of the Treaty on the Functioning of the European Union *

(Consolidated version including the modifications of Notice No 5/2014 and Notice No 3/2015)

I. Introduction

1. Pursuant to Article 36 (6) of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter: 'Competition Act'), the President of the Hungarian Competition Authority (in Hungarian: 'Gazdasági Versenyhivatal'; hereinafter: 'GVH'), jointly with the Chair of the Competition Council, may issue a notice explaining the basis of the application of the law by the GVH.
2. Such notices shall not have binding force; their function is to lay down the principles that the law enforcement agency follows when applying legal provisions, whilst also providing summaries of well-established past practise and outlining the practice that is to be followed in the future.
3. This Antitrust Fine Setting Notice (hereinafter: 'Notice') explains in detail those factors, as set out in Article 78(3) of the Competition Act, that the GVH takes into account when calculating the amount of the fines to be imposed in its proceedings¹ aimed at enforcing the application of the prohibitions pursuant to Article 78(1) point (a), relating to anti-competitive agreements, concerted practices (hereinafter: 'anti-competitive agreements') and abuses of dominant positions prohibited by Articles 11 and 21 of the

* Only the Hungarian version of this Notice is authentic.

Competition Act and by Articles 101 and 102 of the Treaty on the Functioning of the European Union (hereinafter: 'TFEU') [previously Articles 81 and 82 of the Treaty establishing the European Community (EU Treaty)]*.

4. Article 78 of the Competition Act deals with the fine that can be imposed by the GVH for an infringement of the substantive provisions of the Competition Act. Article 78(3) contains a non-exhaustive list of factors to be taken into account in the calculation of the fine, which means that additional, unlisted factors can also be considered.² It is not necessary to assess each of the factors listed in every case, only if they appear among the relevant circumstances of the case in question.³
5. This Notice sets out the basic principles of the GVH's fining policy and furthermore, it presents the process for imposing a fine and the factors which must be taken into account. In addition, it also evaluates the content of the abovementioned factors and clarifies their relative weight to one another. By publishing this Notice, the GVH aims to promote legal certainty and the transparency and predictability of its activity, thereby contributing to the uniform and non-discriminatory application of the law. In light of this Notice, undertakings can assess the gravity of the possible consequences of their anti-competitive practices. Furthermore, by having knowledge of the published method of fine calculation, those who follow the decisions of the GVH will find it easier to evaluate whether the fines imposed by the decisions are justified.⁴ In order to facilitate this evaluation, the decisions of the GVH shall include explanations of the fines imposed in the level of detail provided for in this Notice.
6. No predefined set of criteria or calculation method can provide full certainty and predictability. In course of the calculation of the fine the enforcer shall be allowed to deliberate within the framework of the method used for the calculation of fines, regardless

¹ Inclusive of abuse under Article 7 of Act No CLXIV on Trade.

* Point 3 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

² See the judgment of the Supreme Court (*in Hungarian: Legfelsőbb Bíróság*) No Kfv.II.37.453/2009/5 (Vj-114/2007).

³ See the judgment of the Supreme Court No 7.K. 32.143/2004/7 (Vj-16/2004).

⁴ Pursuant to the position of the Supreme Court, *the court is entitled to analyse in the course of the review of the decision made at its discretion, whether the administrative authority has taken into account all factors that should be considered; and has accounted for the acceptance or refusal of these factors. If the breach of law cannot be determined, then the fine cannot be changed, and the court is not entitled to review the decision. (See the judgment of the Supreme Court No Kf.V.39.361/2001/4. (Vj-30/2000).) The Supreme Court stated in its other decision that during the application of the Notice it is significant which criteria were taken into account to determine the fines. In case of applying the Notice, the fine will be calculated pursuant to the criteria of the Notice; thus in the course of the court review, the same criteria will also be evaluated by the court when it is determining whether they were sufficiently applied by the GVH. (See the order of the*

of how unambiguous it may appear to be. In exceptional cases, the method may not even be applicable or may only be partly applicable due to the special features of the case. In such cases the GVH may depart from the contents of this Notice, the reasons for this being disclosed by the reasoning attached to the fine setting in the explanatory part of the decision of the proceeding Competition Council.⁵

7. In case of restrictive agreements which directly or indirectly fix selling or purchase prices, share the market or allocate production or quotas (hereinafter: 'hardcore cartels'), this Notice is applied in line with 78/A and 78/B (hereinafter: 'leniency policy') as well as 73/A of the Competition Act (hereinafter: 'negotiated settlement')*.
8. This Notice may be reviewed in the future or its contents may be elaborated upon or clarified if the GVH deems this necessary as a result of the experience it has gained through its enforcement practice.

II. Factors when setting fines

9. The setting of the substantive fine imposed, according to point 3 of this Notice, is a multi-step process: the GVH first determines a basic amount by calculating the turnover of the infringing undertaking and the turnover stemming from the prohibited market activities of the members of the association of undertakings on the relevant market (relevant turnover), which may then be modified in several steps in order to take into account additional factors.
10. When setting a fine in a particular case, the GVH takes into account the fact that the purpose underlining the imposition of fines, is both to serve as a punishment and to provide (case) specific and general deterrence. The amount of the fine imposed must be suitable to correct the infringing market practice of the undertaking and must also serve as a deterrent to prevent the undertaking in question, as well as other undertakings in similar

Supreme Court No Kfv.IV.37.058/2009/12. (Vj-30/2000.)

⁵ See Chapter III of the decision of the Constitutional Court No 1392/B/2007. The GVH thus meets the requirement set by the Supreme Court, that *in case of relevant circumstances arising from an individual case, the individual decision may be different from the notice. However, to support this differential a detailed reasoning must be provided at the same time which highlights the circumstances justifying the individualisation of the decision. (See the order of the Supreme Court No Kvf.II.37.497/2010/14. (Vj102/2004).)*

* Point 7 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

positions, from committing further infringements.⁶ This goal can be achieved by setting the fine at an amount that places a considerable financial burden on the undertaking committing the competition law infringement.⁷

11. The GVH considers it important that any fine that is imposed is proportional to the infringing practice. To this end, a fine that is imposed on an undertaking pursuant to the Notice is commensurate with the gravity of the infringement in question and the mitigating and aggravating circumstances, and not with the fines imposed on other undertakings possibly involved in the infringement.⁸

12. The mitigating and aggravating circumstances to be taken into account when calculating the fine do not serve as elements correcting directly the amount of the fine evolved as a result of the application of the method set out in this Notice, rather they shall be taken into account in the course of the determination of the basic amount of the fine among other factors described below in a complex way so that aggravating circumstances effect in the increase in the amount of the fine (for instance because they increase the scores belonging to a given factor), while mitigating circumstances decrease the amount of the fine. A lack of aggravating circumstances does not in itself qualify as a mitigating circumstance.

II.1. Determination of the basic amount of the fine

13. The GVH determines the basic amount of the fine based on the gravity of the infringement, and the attitude of the infringing undertaking towards the infringement, in accordance with the formula detailed below. The basic amount is the sum of the scores received, divided by 1000 and then multiplied by the amount of the relevant turnover, as follows:

$$\varepsilon = r \times \frac{N}{1000}$$

where

ε is the basic amount of the fine,

r is the relevant turnover,

⁶ See the judgment of the Supreme Court No Kfv.III.27.599/1999/3. (Vj-200/1992.), and the judgments of the Budapest Court of Appeal (*in Hungarian: Fővárosi Ítéltábla*) No 2.Kf.27.531/2007/6. (Vj-180/2006.) and 2.Kf.27.314/2007/9. (Vj-193/2001.).

⁷ See the judgment of the Supreme Court No Kf.III.27.599/1995/3. (Vj-200/1992.).

⁸ See the judgment of the Supreme Court No Kfv.II.37.291/2009/29. (Vj-45/2006.) and the judgment of the Budapest Court of Appeal No 2.Kf.27.665/2008/3. (Vj-181/2006.).

N is the score based on the gravity of the infringement and the attitude of the infringing undertaking towards the infringement (maximum of 100 points).*

14. The GVH places greater importance on the gravity of the infringement, and therefore it is given a weight of 60 percent, while the undertaking's attitude towards the infringement is given a weight of 40 percent.
15. In determining the basic amount, the GVH starts from 10% of the relevant turnover, which means that in the most severe case possible - in case of reaching a score of 100 - the fine would equal 10% of the relevant turnover.**
16. The relevant turnover used in calculating the basic amount is generally the net sales revenues of the undertaking on the relevant market for the total duration of the participation in the infringement***.
17. In case of bid rigging, which constitutes an exception to the general rule laid down in point 16 of this Notice, the amount of the relevant turnover is three times the value of the tender (which is typically equal to the value of the winning bid)****.
18. In case of a lack of credible data, the relevant turnover of the undertaking is estimated by the GVH. The method of the estimation is set out in the decision of the GVH.

II.1.1. The gravity of the infringement

19. The first factor to be taken into account in the calculation of the basic amount is the gravity of the infringement, which is divided into the following two parts, each having equal importance: the threat to competition and the impact of the infringement on the market.

A) Threat to competition (0-30 scores)

20. In assessing the threat to competition of the anti-competitive conduct or agreement in question, the degree to which the conduct or agreement lessens competition, or whether competition has been completely eliminated, is taken into consideration.

* Point 13 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

** Point 15 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

*** Point 16 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

**** Point 17 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

21. The most egregious infringements are the hardcore cartels which are purely anti-competitive in nature, having as their aim the restriction of competition (as opposed to those where the restriction of competition is a secondary effect), and which at the same time result in no efficiency or welfare gains. Typically such behaviour includes price fixing, the sharing of markets or customers, and bid rigging. In such cases the scores given by the GVH will be the highest possible.
22. In case of abuses of dominant positions which do not, or only very slightly, restrict competition by their very nature (i.e. exploitative abuses), the score given by the GVH will be the lowest possible.
23. In the framework of assessing the threat to competition, the GVH assesses which or whether all dimensions of competition that are relevant or determinant in the given case (e.g. competition relating to price, quality, or innovation) are affected by the conduct under investigation.

B) Impact of the infringement on the market (0-30 scores)

24. The impact of the anti-competitive behaviour on the market is closely connected to the position of the undertaking on the market and depends on its market share, and in case of practices falling under Article 11 of the Competition Act or Article 101 of the TFEU, on the joint market shares of the undertakings concerned. The bigger the market share, the more severe the sanction imposed by the GVH will be. Though to a lesser extent, other factors are also taken into consideration, in particular, circumstances determining the market position of the undertaking (e.g. contestability of the market, whether the undertaking is a new market entrant), and the characteristics of the relevant market, and that of the products and customers (basic goods, vulnerable groups of consumers, repercussion effects on other markets).
 25. In assessing the effect of the conduct on the market, the GVH takes into account not only the effect that has already affected the market, but also the likely effect, though less weight is attached to it. A further circumstance that the GVH takes into account is the extent to which the conduct (e.g. price fixing agreed upon by the parties) has materialised.
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II.1.2. Attitude to the infringement (+/- 40 scores)

26. The attitude of the undertaking to the infringement is a further factor that is taken into account in the calculation of the basic amount. In the assessment of this factor the GVH considers the possible active reparation provided by the undertaking, the imputability of the behaviour of the undertaking, other factors influencing the undertaking's attitude to the infringement and its role in the anti-competitive agreement or abuse of joint dominance. In the context of this assessment, the points associated with the undertaking's role in the infringement may increase by 40 points, or – on the basis of titles B) - D) below – may decrease to the same extent.

A) Degree of imputability

27. As regards imputability it is important to emphasise that although the finding of an infringement in competition law is based on objective criteria⁹, when calculating the amount of a fine pursuant to Article 78 of the Competition Act, the imputability of the behaviour in question is among the factors to be considered. Behaviour may be imputed if it differs from behaviour which may generally and reasonably be expected and accepted in a society¹⁰. Imputability may be stated if the party under investigation was aware of the violating nature of its behaviour, or, this could have been expected. Stemming from the objective viewpoint, imputability increases the amount of the fine, at the same time the lack of imputability may not result in a decrease in the amount of the fine, i.e. when assessing the imputability the GVH never calculates a negative score.

B) Role in the infringement

28. An assessment of the role of the party under investigation in the infringement is relevant in cases involving anti-competitive agreements and abuse of joint dominance. Parties to an agreement – mainly in the case of hardcore cartels – frequently play different roles, they may be instigators or leaders of the infringement by contributing actively to the operation and maintenance of the agreement, while other undertakings may be in a defenceless

⁹ See the judgement of the Budapest Court of Appeal No 2.Kf.27.531/2007/6 (Vj-180/2006).

¹⁰ See the judgment of the Budapest Court of Appeal No 2.Kf. 27.798/2006/7 (Vj-74/2004).

situation and participate or stay in the anti-competitive agreement only due to the threat of the leading party/parties.

C) Active reparation and co-operation during the procedure

29. When the undertaking which has violated the law acknowledges the infringement and repairs or undertakes to repair the negative effects of the infringement, this is deemed by the GVH to amount to active reparation. The latter may be made prior to the detection of the infringement or after the commencement of the competition supervision proceeding. If reparation is made prior to the detection of the infringement, and thus before the initiation of the competition supervision proceeding, the GVH looks upon this behaviour more favourably than if reparation is made after the initiation of the competition supervision proceeding.

30. Furthermore, the GVH also considers the attitude of the undertaking during the proceeding, in particular its willingness to co-operate. In the framework of co-operation the provision of data and information does not qualify as a mitigating circumstance as it is a legal obligation; consequently, it does not result in a decrease in the amount of the fine. Co-operation of the undertaking concerned to such an extent which effectively contributes to the detection of the infringement may be considered as a mitigating circumstance (excluding co-operation which takes place in the framework of the leniency policy, which is assessed in the course of the fine calculation in a separate step, applying the rules on leniency policy). The GVH considers the party's engagement in the settlement procedure as a mitigating circumstance in accordance with the provisions of the relevant notice^{*}.

D) External factors

31. In certain cases, when determining the severity of the sanction to be imposed the GVH takes into account the fact that external factors may have contributed to the realisation of the infringement. Such external factors may relate to the fact that the unlawfulness of the conduct in question was unclear or the fact that an involvement of the state may be established in relation to the infringing conduct (for instance, if a law or other state

^{*} Paragraph 30 is modified by the Notice No 3/2015. The last sentence of paragraph 30 is applied in those competition supervision proceedings initiated after 1 July 2014 in which at the time of the issuing of the Notice No 3/2015 the preliminary position has still not been sent to the parties by the competition council proceeding in the case.

measure gives the impression of an exemption from competition law). The GVH does not apply this latter approach to cases where the undertaking played a decisive role in the occurrence of the external factor, e.g. when the state influence was originally initiated by the undertaking itself in order to hide the infringement or to reduce the sanction.

II.2. Adjustment of the basic amount

32. Once the basic amount of the fine has been determined, account is taken of

- a)* whether the infringement constitutes a repeated infringement,
- b)* the gains derived from the infringement,
- c)* the deterrent effect of the fine to be imposed,
- d)* the maximum amount of the fine as set out in Article 78 of the Competition Act,
- e)* the application of the result of the leniency policy or the negotiated settlement (the co-operative behaviour of the infringing undertaking), and lastly^{*}
- f)* the financial difficulties faced by the undertaking.

II.2.1. Repeated infringement

33. The GVH imposes more severe sanctions in case of repeated infringements.

34. The GVH will consider practices to be repeated infringements in particular where the object or effect of the conduct is essentially identical with that of a previous unlawful conduct. (An example of such a repeated infringement may be a situation in which an undertaking participates in a market sharing agreement several times or a dominant undertaking attempts to restrict competition by preventing entry to its market, and to this end it first engages in restrictive tying, then in discriminative business practices with the same object or effect).

35. The GVH will also consider infringements as repeated if the previous infringements were committed not by the undertaking in question but by its legal predecessor.^{**11}

* Point 32 (e) of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

** Point 35 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

¹¹ See the judgments of the Budapest Court of Appeal No 2.Kf.27.676./2008/9. (Vj-127/2007.) and No 2.Kf.27.146/2003/6. (Vj-5/2002.)

36. The GVH may also establish the repeated infringement of the undertaking(s) under investigation if the infringement decision of the GVH, reviewed by the administrative court, has not yet been confirmed or entered into force.¹²

37. In case of a repeated infringement – if the previous conduct and the current conduct, and the statement of facts and the evaluated circumstances show significant similarities¹³ – the amount of the fine calculated on the basis of the abovementioned facts will increase by 100% (for instance, if a third - very similar – repeated unlawful conduct is identified, the basic amount of the fine will increase threefold). In other cases the fine will increase by a lower rate, corresponding to the degree of recidivism (the degree of similarity).

II.2.2. Gains derived from the infringement

38. Gains derived from the infringement can rarely be quantified with a sufficient degree of reliance. However, where this is possible, the fine imposed by the GVH is increased to three times the quantified gain, except if it would have exceeded that amount in the first place.

II.2.3. Deterrent effects

39. The GVH places a special emphasis on the deterrent (dissuasive) effect of the fines it imposes; to this end, the basic amount of the fine – established in line with the principles laid down by this Notice – can be increased in relation to those undertakings which have a particularly significant turnover above the relevant turnover, with the result that the fine imposed on the basis of the relevant turnover would not place a significant burden on their shoulders. When issuing its decision, the GVH may also take into consideration how much financial power the concerned undertaking has as a member of a group of undertakings^{13a}. However in such cases, the GVH will also present the amount of the fine calculated on the basis of the relevant turnover in its decision*.

¹² See the judgment of the Supreme Court No Kfv.II.37.453/2009/5. (Vj-104/2005.) and the judgment of the Budapest Court of Appeal No 2.Kf. 27.531/2007/6. (Vj-180/2006.).

¹³ See the judgment of the Supreme Court No Kfv.II.37.453/2009/5. (Vj-114/2007.).

^{13a} See the judgement of the Curia No Kfv.II.31.016/2012/28 and No Kfv.III.37.690/2013/29.

* Point 39 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

40. Within this factor, the GVH considers the special situation where the relevant net turnover of the group of undertakings realised in the preceding business year of the conclusion of the resolution decreases due to an organisational modification.

II.2.4. The maximum amount of the fine

41. The fine calculation steps will be followed by the application of the legal maximum of the amount of the fine provided for by the Competition Act, according to which the maximum amount of the fine shall not exceed 10% of the net turnover, achieved in the business year preceding that in which the decision establishing the infringement 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. In determining the maximum amount of the fine, the net turnover shall be determined relying on annual accounts or simplified annual accounts for the business year preceding that in which the decision is adopted. If the undertaking operated for less than a full calendar year in the year concerned, the figures shall be prorated for the full year. If there is no reliable information available on the net turnover of the undertaking in the year preceding the date of the adoption of the decision, the net turnover of the last business year with an audited annual report shall be considered. In the case of recently established undertakings with no available annual accounts, the business plan for the year in which the proceeding was initiated or in the absence of such plan, the net turnover calculated for the date of the initiation of the competition supervision proceeding as the record date pursuant to the rules on the preparation of interim balance sheets of the Act on Accounting, submitted by the undertaking at the summons of the case handler or the Competition Council proceeding in the case, shall be taken into account. When calculating the maximum amount of the fine, the net turnover realised abroad may also be taken into consideration, in particular, if the gains derived from the infringement were realised by the foreign members of the group of undertakings and not by the Hungarian members*.

41. a. The maximum amount of the fine set out in the Competition Act represents the upper limit of the fine, which may not be exceeded by the maximum amount of the fine that has

* Point 41 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

been determined considering all of the circumstances of the case. It does not result from the provisions of the Competition Act that the amount of the fine has to be calculated in a way that the legal maximum shall be considered as the starting amount and the amount of the fine in the concrete case shall be determined by increasing or decreasing that starting amount taking into consideration the mitigating and aggravating circumstances. The law ensures the unfettered assessment and deliberation of mitigating and aggravating circumstances, and as such, it is possible to impose the maximum amount of fine even in the presence of mitigating circumstances^{13b}. Consequently, the legal maximum is not a starting point, nor is it a reference point when considering the proportionality of the fine – the fine is not to be imposed in relation to the legal maximum but is to be imposed taking into account its proportionality.^{*13c}.

II.2.5. Application of the leniency policy**

42. When determining the fine, the final step that must be taken is the application of the leniency policy pursuant to Articles 78/A and 78/B of the Competition Act, and of the negotiated settlement pursuant to Article 73/A. The leniency policy may be applied in relation to agreements containing hardcore restrictions infringing the provisions of the Competition Act. The essence of the leniency policy is that the GVH provides immunity from, or a significant reduction in the amount of the fines to be imposed on the undertakings participating in the infringement in order to promote the detection of secret agreements, if certain conditions are met. The negotiated settlement may be applied in the case of ex officio proceedings pursuant to Articles 11 or 21 of the Competition Act or Articles 101 or 102 of TFEU at the request of the proceeding Competition Council. In the negotiated settlement procedure the amount of the fine to be imposed is reduced by ten per cent, possibly in addition to the simultaneous application of the leniency policy. In case the amount of the fine to be imposed based on the above-mentioned rules exceeds the legal maximum, the legal maximum shall serve as the starting point when the result of the

^{13b} See the judgement of the Supreme Court No Kvf.II.37.291/2009/29. (Vj-45/2006.).

* Point 41a of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

^{13c} See the judgement of the Curia No Kvf.11.37.414/2013/8. (Vj-121/2009.).

** Subtitle II.2.5 and point 42 of this Notice were modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

leniency policy or the negotiated settlement pursuant to Article 79 of Competition Act is applied.

II.2.6. Taking into account the financial difficulties faced by the undertakings, reduction of the fine

43. In exceptional cases, the GVH may, upon the request of the undertaking under investigation, take account – as a fine reduction factor – of the undertaking's inability to pay in a specific social and economic context – if, the inability cannot be alleviated by allowing the undertaking to pay in instalments. Fine reduction cannot be granted if it would be solely based on the unfavourable financial situation of the undertaking¹⁴ or its secession from the market concerned. A reduction can also not be granted solely on the basis that the undertaking has a credit loan.
44. Fine reduction can be granted if the proposed fine – due to the social and economic context environment – would significantly worsen the structural conditions of the competition by resulting in a “failing firm” effect. This latter does not solely refer to the termination of the undertaking or its exit from the market – as it is imaginable that other undertakings will enter into the market –, but the proposed fine could jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value¹⁵, which would significantly worsen the position of the undertakings connected to the failing undertaking in the chain of production and would significantly increase unemployment.
45. The undertaking shall prove in detail by objective and documentary evidence, reflecting its economic situation close to the date of the conclusion of the decision, that the conditions mentioned above which are necessary for granting its request are fulfilled. However, before establishing its decision, the GVH will also take into consideration the financial sheets of the undertaking from the preceding years and the possible future indicators relating to its economic situation.

¹⁴ See the judgment of the Supreme Court No 2.K.32.916/1995. (Vj-65/1992.).

¹⁵ See the Guidance on the methods applied by the GVH in merger control procedures, as well as the necessary information and the data requirements – General Methodology 3.d.; The relevant factors when assessing the non-coordinative effects of concentrations 11.1.

II.2.7. Paying in instalments

46. Pursuant to Article 74(1) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, the authority may, in its decision containing an imposition of obligation, authorise prescribe that the fine be paid in instalments.
47. In lack of the above-mentioned exceptional and special economic circumstances resulting in fine reduction, there may be grounds to grant that the payment is made in instalments having regard to the difficult justifiable economic situation of the undertaking(s). Authorisation for payment in instalments can be granted if payment of the amount of the fine in a lump sum would result – having regard to the current paying opportunities of the undertaking – in an extremely disproportionate burden being placed on the undertaking(s) concerned. According to the provisions relating to competition supervision proceedings, payment in instalments can only be granted if the undertaking requests it before the conclusion of the GVH's decision. As Article 44 of the Competition Act excludes the application of Article 74(2) - (5) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, the GVH is not allowed to modify the decision after its conclusion, thus, an application to pay in instalments can only be submitted before the decision-making process has been concluded.

III. Application of the Notice

48. This Notice is applied by the GVH in proceedings when the preliminary position pursuant to Article 73 of the Competition Act has still not been sent to the parties at the time of the issuing of the Notice*.
49. The GVH applies provisions of this Notice modified by Notice No 5/2014. in proceedings initiated after 1 July 2014 (including repeated proceedings)**.

* Point 48 of this Notice was modified by Notice No 5/2014. The modified text is only applicable to those proceedings initiated after 1 July 2014.

** Point 49 was introduced by Notice No 5/2014.

50. The provisions of this Notice modified by Notice No 3/2015 are applied in proceedings initiated after 1 July 2014 (including repeated proceedings) in which at the time of the issuing of the Notice No 3/2015 the preliminary position has still not been sent to the parties by the competition council proceeding in the case.

Budapest, 25 January 2012

dr. JUHÁSZ Miklós
President of the Hungarian Competition
Authority

dr. TÓTH András
Vice President of the Hungarian
Competition Authority,
Chair of the Competition Council

Annex

Table 1: Factors determining the basic amount of the fine

A. The gravity of the infringement	
A.a. Threat to competition	max. 30 scores
Type of infringement (e.g. hardcore cartel or other type of restriction/exploitative practice)	
Impact on the other relevant aspects of competition in a specific case	
A.b. Impact of the infringement on the market	max. 30 scores
Market share of the infringing undertaking	
Other factors: <ul style="list-style-type: none"> • Contestability of the market • Nature of the consumers and products affected • New entrant or incumbent • Spill-over effect on other markets 	
B. Attitude to the infringement	min. -40- max. 40 scores
B.a. Imputability	
B.b. Role in the infringement (instigator-vulnerable)	
B.c. Active reparation and cooperation	

B.d. External and other factors <ul style="list-style-type: none">• Absence or different nature of prior GVH decisions• Influence of state measures	
Total	max. 100 scores