

**Notice No 11/2017**  
**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 for infringements of the prohibitions of anti-competitive agreements and concerted practices, abuse of a dominant position and abuse of significant market power\***

**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) and the Chair of the Competition Council may jointly issue notices detailing the basic principles of the law enforcement practice of the GVH.
2. Such notices have no binding force; their function is to lay down the principles that the law enforcement authority follows when applying legal provisions, whilst also providing summaries of well-established past practice and outlining the practice that is to be followed in the future.
3. This notice provides a detailed explanation of the principles set out in Article 78 (3) of the Competition Act that the GVH follows when calculating the amount of the fines to be imposed pursuant to Article 78 (1) point (a) of the Competition Act in the course of its proceedings concerning the application of the prohibitions relating to anti-competitive agreements, concerted practices, decisions of organisations of undertakings (hereinafter: anti-competitive agreements) and abuse of a dominant position, pursuant to Articles 11 and 21 of the Competition Act and Articles 101 and 102 of the Treaty on the Functioning of the European Union (hereinafter: TFEU). Furthermore, the GVH follows the same principles in proceedings concerning the application of the prohibition of abuse of significant market power pursuant to Article 7 of Act CLXIV of 2005 on Trade (hereinafter: Act on Trade).
4. This notice details the steps taken when imposing a fine, the factors considered, the content thereof and their relative weight to one another, thereby setting out the method of calculation of a fine. By publishing this notice, the GVH aims to promote legal certainty, transparency and predictability of its activity, thereby contributing to uniform and non-discriminatory law enforcement. In view of this notice, undertakings can assess the gravity of the possible consequences of their anti-competitive behaviour. Furthermore, in view of the published method for the setting of fines, those who follow the decisions of the GVH will find it easier to evaluate whether the fines imposed as set out in the decisions are justified.<sup>1</sup> Consequently, in

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*\*In case of discrepancies between the Hungarian and English versions of this Notice, the Hungarian version shall prevail.*

<sup>1</sup> Pursuant to the position of the Supreme Court, in the course of the judicial review of a decision adopted via administrative discretion, the court is entitled to analyse whether the administrative authority took into account all of the factors that should have been considered and whether it accounted for the acceptance or refusal of these factors. If a breach of law cannot be established, then there is no possibility to change the amount of the fine, as the court is

the reasoning part of its decisions the GVH shall provide a detailed explanation as to how the fine to be imposed has been determined based on the principles set out in this notice. It must be emphasised that circumstances having an impact on the setting of fines are not assessed and justified by the GVH in general, but always with reference to the facts of the case in question.<sup>2</sup>

5. In relation to the application of the method of setting fines, it must be noted that pursuant to Article 73 (1) of the Competition Act, the competition council proceeding in the case shall send its preliminary position on the case to the parties subject to the proceeding. This shall include, inter alia, a review of the known factors that will be taken into account when imposing a fine. Thus, the parties subject to the proceeding have the opportunity to familiarise themselves with the factors that will be considered in the given case before the final decision is adopted.
6. No predefined set of criteria or calculation method can provide full certainty and predictability. The GVH – within the framework of the applicable legislation and the method described in this notice – shall have discretion when setting fines even in the case of a seemingly straightforward calculation method. In exceptional cases, the calculation method may not be applicable, or may only be partially applicable, to the particular circumstances of the case in question. In such cases the GVH may depart from the content of this notice, by disclosing the underlying reasons in the part of the decision of the competition council proceeding in the case that justifies the imposition of the fine.<sup>3</sup>
7. This notice may be amended or further elaborated upon, clarified or supplemented if the GVH considers it necessary in the light of its law enforcement experience.

## **II. Factors of fine setting**

### **II.1. Principles of fine setting**

8. Pursuant to Article 78 (3) of the Competition Act the amount of the fine shall be established taking into account all of the circumstances of the case, in particular the gravity of the infringement, the duration of the infringing situation, the benefit gained by the infringement, the market position of the party infringing the law, the culpability of the conduct, the cooperation of the undertaking during the proceeding and the repetition and frequency of the infringement. The gravity of the infringement shall be established, in particular, on the basis of the extent of the threat to economic competition and the range and extent of the harm to the interests of ultimate trading parties.

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*not entitled to overrule the decision.* (See the judgment of the Supreme Court No. Kf.V.39.361/2001/4. (VJ/30/2000).) In another decision, the Supreme Court stated that *during the application of the Notice it is significant which criteria were taken into account by the GVH when determining the fine. When 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 Supreme Court No. Kfv.IV.37.058/2009/12. (VJ/102/2004).)

<sup>2</sup> See the following judgments: Budapest Capital Regional Court No. 2.Kf.649.927/2013/3. (VJ/022/2011.), Budapest Court of Appeal No. 2.Kf.27.623/2008/6. (VJ/119/2006.), Budapest Court of Appeal No. 2.Kf.27.057/2008/15. (VJ/045/2006.).

<sup>3</sup> 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, according to which *in case of specific relevant circumstances arising from an individual case, the individual decision may be different from the notice; however, the decision must be accompanied by a detailed reasoning of the circumstances justifying the individualisation.* (See the order of the Supreme Court No. Kvf.II.37.497/2010/14. (VJ/102/2004).)

9. Article 78 (3) of the Competition Act contains a non-exhaustive list of the circumstances that must be assessed when imposing a fine. Thus, this provision does not preclude the consideration of other factors.<sup>4</sup> It is not necessary to evaluate and take into account all the listed circumstances in every case, as only those circumstances that are relevant to the case in question must be considered.<sup>5</sup>
10. The aim of imposing a fine is to deter undertakings from unfair market practices, while at the same time ensuring fair economic competition. When setting a fine, the GVH bears in mind that the purpose of the imposition of fines, which has also been acknowledged by the Constitutional Court<sup>6</sup>, is both to serve as a punishment and to provide specific and general deterrence. The amount of the fine imposed must be appropriate to provide an adequate punishment for the infringing conduct of the undertaking, which means that the fine must also reflect the economic importance of the infringement. In addition, the amount of the fine must serve to prevent the undertaking in question, as well as other undertakings in similar situations, from committing (further) infringements,<sup>7</sup> while at the same time strengthening compliant undertakings in the belief that fair business behaviour is appropriate. This goal can only be achieved if the amount of the fine imposed places a considerable financial burden on the undertaking committing the competition law infringement, thereby leading to a significant financial disadvantage.<sup>8</sup>
11. The GVH considers it important that any fine imposed is proportional to the infringing conduct. Therefore, a fine that is imposed on an undertaking pursuant to this notice reflects the gravity of the infringement and the mitigating and aggravating factors attributable to that undertaking, and does not reflect any other fines that may be imposed on other undertakings possibly involved in the infringement.<sup>9</sup> The GVH also respects the principle of equal treatment in its law enforcement, according to which comparable situations cannot be treated differently, and different situations cannot be treated identically, unless this is objectively justified by the circumstances.<sup>10</sup>
12. At the same time the GVH also considers, as priorities, the investigation of infringements and the prevention of new ones, the possible compensation of consumers and undertakings that have suffered harm or that are in a less advantageous position due to infringements, and the most efficient use of its own resources. The fining practice also contributes to the above-

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<sup>4</sup> See the judgment of the Supreme Court No. Kfv.II.37.453/2009/5. (VJ/114/2007.), the judgment of the Curia No. Kfv.VI.37.232/2011/13. (VJ/025/2004.) and the judgments of the Budapest Court of Appeal No. 2.Kf.650.032/2015/28. and No. 2.Kf.27.525/2009/9.

<sup>5</sup> See the judgment of the Capital Court No. 7.K.32.143/2004/7. (VJ/016/2004.)

<sup>6</sup> See paragraph 60 of Constitutional Court decision No. 30/2014. (IX. 30.) according to which *the aim of the fine is [...] partly the sanction for the committed infringement (repression) and the prevention of future infringements (prevention)*. A similar position was taken by the Budapest Court of Appeal in its No. 2.Kf.27.314/2008/8. judgment (VJ/28/2006.), in which it stipulated that *the defendant must, having regard to the aspects to be taken into account, consider that the fine has not only a punitive role, but also serves as a general prevention beyond the punishment, which must be capable of deterring others from committing an infringement*.

<sup>7</sup> 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 No. 2.Kf.27.531/2007/6. (VJ/180/2006.) and No. 2.Kf.27.314/2007/9. (VJ/193/2001.).

<sup>8</sup> See the judgment of the Supreme Court No. Kf.III.27.599/1995/3. (VJ/200/1992.).

<sup>9</sup> 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.).

<sup>10</sup> See the judgment of the Supreme Court No. Kf.II.37.923/2010/5. (VJ/40/2005.) in which it stated that *in a competition supervision proceeding the requirement of equal treatment of parties can be raised only in connection with cases which are completely equivalent, both legally and factually*.

mentioned policy goals by taking into account undertakings' various forms of cooperative behaviour as a fine-reducing factor. In this context, the GVH rewards undertakings' participation in the leniency programme pursuant to Article 78/A-78/D of the Competition Act (hereinafter: leniency programme), participation in the settlement procedure pursuant to Articles 73/A and 79 of the Competition Act (hereinafter: settlement procedure), proactive reparation, compliance efforts, and other forms of cooperation, and ensures that they strengthen each other's effect where possible.

## **II.2. Fine calculation method**

13. The determination of the fines imposed in cases which are initiated on the basis of practices as defined in paragraph 3, is a multi-step procedure. First, the GVH determines the starting point of the level of the fine which reflects the gravity of the infringement and which is based on the turnover achieved by the infringing undertaking on the relevant market. In case of an infringement committed by an association of undertakings the starting point is determined in relation to the activities of its members based on the total amount of the turnover achieved by the members of the association on the relevant market. In case of infringements committed in the course of a procurement procedure, it is based on the value of the tender(s) concerned (hereinafter: relevant turnover). The starting point of the level of the fine can then be modified by the GVH in several steps taking into account additional aspects, while at the same time ensuring that each factor is only taken into consideration once during the assessment.
14. The mitigating and aggravating factors that are taken into account when setting a fine are considered in different ways and are assigned varying weights through a number of steps in order to enforce the underlying policy goals behind the imposition of fines. Consequently, aggravating factors increase the amount of a fine, while mitigating factors decrease the amount of a fine. The lack of aggravating factors does not in itself qualify as a mitigating factor.<sup>11</sup>

### **III. The starting point for determining the level of the fine**

15. The GVH determines the starting point of the level of the fine by taking into account the gravity of the infringement in a way that the basic amount can reach a maximum of 30% of the relevant turnover. The determination of the ratio reflecting the gravity of the infringement is carried out in a complex manner using a scoring system. This scoring system reflects the threat to competition and the impact of the infringement on the market, the value of which is the sum of the scores obtained which is then divided by 60 and multiplied by 30%. However, in order to achieve the purpose of the imposition of fines (see paragraph 10), the GVH applies minimum scores to the various types of infringements, in a way that if the score calculated in the above manner would be lower than the minimum value determined for the given infringement type, then the GVH will calculate with a given minimum value. The starting point of the level of the fine will be the multiplication of the ratio as defined above and the relevant turnover. It can be represented by the following formula:

$$B_{ind} = RF * Q$$

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<sup>11</sup> See, for instance, the judgment of the Budapest Court of Public Administration and Labour No. 5.K.34.049/2014/22. (VJ/002/2010.).

$$Q = \max \left( \frac{P}{60} * 30\% ; q \right)$$

In which

$B_{ind}$  = the starting point of the level of the fine

RF = relevant turnover

Q = score based on the gravity of the infringement

P = the score obtained based on the threat to competition and the impact of the infringement on the market (max. of 60 points),

q = the minimum score determined on the basis of the given infringement.

### III.1. Relevant turnover

16. The relevant turnover used in calculating the fine is, as a general rule, the total value of the net sales revenues of the infringing undertaking achieved from the sales that were affected by the infringing conduct on the relevant market for the duration of the infringement. This value properly reflects the economic importance of the infringement and the relative significance of the undertaking. The turnover achieved from the infringing conduct of an undertaking includes revenues stemming from the sale of products<sup>12</sup> that were affected by the infringement either directly or indirectly. In case of vertically integrated (groups of) undertakings internal sales must also be taken into account.<sup>13</sup>
17. Tenders/bids<sup>14</sup> constitute an exception to the general rule laid down in paragraph 16 of this notice. In case of a tender the relevant turnover is equal to the net value of the tender (which is typically equal to the value of the winning bid).
18. In the absence of audited data, the relevant turnover of the undertaking is estimated by the GVH, with a method set out in the decision adopted by the GVH in the case in question. Likewise, the turnover will also be estimated in the absence of audited turnover data for the entire duration of the infringement. In such cases the values for the missing period can be approximated – after applying the necessary corrections – to the turnover data of the period for which data is available.

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<sup>12</sup> For instance, in case of a horizontal agreement fixing the price of a certain product, the sale of those products, whose price was based on the price agreed upon or the agreed price had an effect of the final price of that product (excluding the final products where the agreement or practice relates to intermediary products).

<sup>13</sup> For instance if a vertically integrated undertaking (or group of undertakings), partly sells, or partly processes on its own an intermediary product, then, in case of an infringement which affects that intermediary product, the relevant turnover will not only be the value of sales derived from the direct, external sales of the intermediary product, but also the (estimated) value of sales of the intermediary product, which is dedicated to internal use and for further processing.

<sup>14</sup> In view of the fact that a restriction of competition can be established for unannounced or later abandoned projects (tenders/bids), the value of these tenders must also be taken into account in the calculation of the relevant turnover. In these cases in the absence of the actual value of sales, the potential value of sales must be taken into account. See the judgment of the Budapest Court of Appeal No. 3.Kf.27.195/2011/6. (VJ/102/2004.)

### **III.2. Ratio reflecting the gravity of the infringement**

19. In relation to the gravity of the infringement, the GVH attaches equal importance to the threat to competition and to the impact of the infringement on the market. Therefore, both factors equally weigh 30 points in the calculation.

#### **III.2.1. Threat to competition (0-30 scores)**

20. When 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.

21. The most egregious infringements of competition law are cartels<sup>15</sup> and particularly serious vertical restraints as recognised in Article 7 of the Government Decree No. 205/2011. (X.7.) on exemptions from the prohibition of restriction of competition of certain groups of vertical agreements and in Article 4 of Commission Regulation No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, i.e. such agreements which are purely anti-competitive in nature, having as their object the restriction of competition, while the existence of efficiency or welfare gains is typically excluded. In case of such conducts the scores given by the GVH will fall into the upper zone of the potential range.

22. In case of conducts (practices) which by their very nature do not, or only very slightly, pose a threat to competition, such as conducts that can be qualified as an abuse of a dominant position, which are not in themselves restrictive in nature (exploitative abuse) and abuses pursuant to Article 7 of the Act on Trade, the scores given by the GVH will fall into the lower zone of the potential range.

23. In case of conducts other than those referred to in paragraphs 21 and 22, such as other horizontal agreements, vertical agreements and abuses of a dominant position which are restrictive in nature (exclusionary abuse), the scores given by the GVH will fall into the middle zone of the potential range.

24. The GVH determines the actual score in the given (lower, middle, upper) zone using its discretion in a differentiated way, with respect to the individual characteristics of the case in question.

25. When assessing the threat to competition, the GVH assesses whether all of the dimensions of competition that are relevant or determinant in the given case (e.g. price competition, quality competition, or innovation competition) are affected by the investigated conduct, furthermore, the complexity and extent of the infringement are also examined, as well as its institutionalised nature.

#### **III.2.2. Impact of the infringement on the market (0-30 scores)**

26. The impact of the infringement on the market is closely connected to the market position of the undertaking(s), which in case of practices falling under Article 11 of the Competition Act

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<sup>15</sup> Pursuant to Article 13 (3) of the Competition Act agreements or concerted practices of competitors which have as their object the prevention, restriction or distortion of competition, in particular the direct or indirect fixing of purchase or selling prices or other business terms and conditions, the limitation of production or distribution, the allocation of markets including bid-rigging and the restriction of imports or exports (hereinafter: cartel) as well as to other agreements or concerted practices aimed directly or indirectly at fixing purchase or selling prices.

or Article 101 of the TFEU, and in case of the abuse of a joint dominant position, depends on the joint market shares of the undertakings concerned. The higher the (joint) market share(s) of the undertaking(s) committing the infringement, the more severe the sanction imposed by the GVH will be. Other factors, although to a lesser extent, are also taken into consideration, in particular, circumstances determining the market position of the undertaking(s) (e.g. the contestability of the market, or whether the undertaking is a new market entrant), and other characteristics of the relevant market, such as the particular product and buyers (e.g. whether it is an essential product for consumers) and whether there are any spill-over effects to other markets.

27. When assessing the impact of the infringement on the market as explained in the previous paragraph, the GVH takes into account not only the actual effect that evidently occurred and can be demonstrated, but also the potential (likely) effect, which has not been specifically demonstrated in terms of its implementation and/or its extent. In this context, the GVH takes into account the extent to which the conduct (e.g. price fixing agreement) has been implemented.

### III.2.3. Minimum scores

28. In order to fulfil the policy objective behind the imposition of fines as referred to in paragraph 10, it is necessary that the starting level of the fine – which is calculated based on the relevant turnover reflecting the economic importance of the infringement – properly reflects the gravity of the infringement in question. Consequently, minimum thresholds on scores are applied to each type of infringement. Depending on the type of infringement concerned, the GVH applies the following minimum thresholds on scores:<sup>16</sup>

<b>Type of infringement</b>	<b>Minimum score</b>
Public procurement cartel (bid rigging)	20%
Other cartels, particularly severe vertical restraints, Exclusionary abuses of a dominant position	15%
Other horizontal agreements or vertical restraints, Exploitative abuses of a dominant position, abuses of significant market power under Article 7 of the Act on Trade	10%

## **IV. Determination of the basic amount of the fine**

29. After having determined the starting point of the level of the fine – as described above – the basic amount of the fine is then calculated, taking into account the aggravating and mitigating factors reflecting the undertaking's attitude to the infringement. In the course of this assessment, the GVH takes into account the undertaking's imputability, its role in the infringement, external factors and any other possible factors that may have an effect on the infringement.

30. The GVH in its decision also assigns different weights to certain aggravating and mitigating factors, thereby indicating whether the GVH considers the given factors as being of small, medium or high importance (relevance) in the given case, in the context of the conduct and the

<sup>16</sup> In case of a single, continuous and complex infringement the applicable minimum score is adjusted to the score of the infringement element with the highest minimum score among the elements of the infringement which are part of the single, continuous and complex infringement.

undertaking subject to the proceeding. An aggravating factor of minor importance increases the starting point of the level of the fine by up to 0-5%, a factor of medium importance by up to 5-15%, while a factor of high importance by up to 15-25%. Likewise, a mitigating factor of minor importance reduces the starting point of the level of the fine by up to 0-5%, a factor of medium importance by up to 5-15%, while a factor of high importance by up to 15-25%.

31. It must be noted that when calculating the basic amount of the fine, the GVH undertakes a comparative assessment of each of the aggravating and mitigating factors, both individually and as a whole, with their order being of no relevance. Accordingly, the adjustment of the starting point of the level of the fine is carried out after the consolidation of the weights assigned to each aspect. This also means that the basic amount – in extreme cases – cannot exceed the starting point by more than 75% or cannot be less than 75%.

#### **IV.1. Aggravating factors**

##### **IV.1.1. Imputability (culpability)**

32. In terms of imputability it is necessary to emphasise that although the establishment of an infringement in competition law is based on objective criteria,<sup>17</sup> when calculating the amount of a fine pursuant to Article 78 of the Competition Act, the imputability of the conduct in question is among the factors to be considered. A given conduct is considered imputable if it is different from what is generally and reasonably expected and accepted in society.<sup>18</sup> However, imputability of this kind cannot be considered in itself as an aggravating factor, although a high level of imputability is assessed by the GVH among the aggravating factors, which can then be weighted as a small, medium or high factor depending on its degree.
33. The GVH typically considers a conduct to be of a high degree of imputability if it can be proven that the infringement was intentionally committed in the awareness of its unlawful nature. In this context, the GVH assesses whether the infringement was committed in the course of a public procurement procedure (bid rigging), which is fundamentally contrary to societal expectations given the fact that such conduct jeopardises the effective and efficient use of public funds and is prohibited and sanctioned by several laws, which undertakings can be assumed to be aware of.<sup>19</sup> The initiation of lobbying action by an undertaking in order to conceal an infringement, mitigate an infringement or avoid a sanction may also indicate that the undertaking carried out the infringing conduct in full awareness of the competition law related risks of its conduct.<sup>20</sup> Likewise, if an undertaking takes steps to keep its conduct secret or to ensure that the infringement is implemented in a more efficient manner, for example by using a computer algorithm to monitor prices, then such behaviour may suggest that the infringement was committed intentionally.

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<sup>17</sup> See the judgment of the Court of Appeal No. 2.Kf.27.531/2007/6. (VJ/180/2006.)

<sup>18</sup> See the judgment of the Budapest Court of Appeal No. 2.Kf. 27.798/2006/7. (VJ/74/2004.).

<sup>19</sup> See the judgment of the Budapest Court of Appeal No. 2.Kf.27.232/2007/14. (VJ/028/2003.).

<sup>20</sup> Of course if such lobbying action is successful and the legislature exempts the conduct in question from competition law prohibitions, in the absence of the establishment of an infringement and the imposition of a fine, such action cannot be qualified as an aggravating factor. However, if such lobbying action is proven to be unsuccessful, it shall be imputed as an aggravating factor to the undertaking, which without awaiting the outcome of the state intervention, has – in parallel with those lobbying action – engaged in an anti-competitive behaviour, as the fact that the undertaking had taken steps for regulatory action indicates that the undertaking was aware of the competition law related risks of its conduct, nevertheless it failed to refrain from the continuation thereof.



34. It may also justify the establishment of a higher degree of imputability, although it may be a less severe aggravating factor than the previous ones, if senior officials are (also) involved in the infringement due to the higher behavioural expectations that they are expected to abide by, or if the infringement was committed against a particularly sensitive or especially vulnerable group of persons.<sup>21</sup>
35. A higher degree of imputability may also be established if the GVH becomes aware during the proceeding that in a previous decision – which was adopted within 10 years prior to the case in question –, the undertaking subject to the proceeding was under an obligation to establish a compliance programme (cf. paragraph 72, and Article 76 (1) (l) and Article 78 (8) of the Competition Act) and as a consequence of this the undertaking was in possession of information which indicated an infringement and the respective decision-makers failed to take the minimum measures required to terminate the identified infringement.

#### IV.1.2. Role in the infringement

36. The assessment of the undertaking's role in the infringement is relevant in anti-competitive agreements and abuse of joint dominance cases. Participants to an agreement – especially in cartel cases – often play different roles, they can be instigators or leaders in the infringement by contributing actively to the operation and maintenance (survival) of the agreement, while other undertakings can possibly be in a vulnerable situation and participate or stay in the anti-competitive agreement due to the fear of being subjected to retaliatory or other coercive measures by the leading participant(s). Obviously, participation as the organiser/leader in the infringement or the presence of retaliatory or other coercive measures against other undertakings can be considered as aggravating factors.

#### IV.1.3. Other factors

37. Any further possible aggravating factors that can lead to an increase in the amount of the fine which are not mentioned in subchapters IV.1.1.-IV.1.2. and in chapters V-VII. of this notice, shall be taken into account under 'other factors'.<sup>22</sup>

### **IV.2. Mitigating factors**

#### IV.2.1. Role in the infringement

38. The assessment of the undertaking's role in the infringement in anti-competitive agreements and abuse of joint dominance cases is also relevant in the course of assessing the mitigating factors. If it can be proven that the undertaking was in a vulnerable position and participated or remained a participant to the anti-competitive practice due to the fear of being subjected to retaliatory or other coercive measures by other undertaking(s), then this can be considered as a mitigating factor.
39. The GVH also takes into account if the undertaking did not implement the infringement and tried to avoid applying it by adopting a competitive conduct in the market. This may be the case, for instance, if the undertaking in question participated in significantly less cartel meetings and appointments than other participants. It can also be considered a low-weight

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<sup>21</sup> See the judgment of the Budapest Capital Regional Court No. 2.Kf.650.020/2015/15. (VJ/134/2008.).

<sup>22</sup> Other factors can include cases mentioned in paragraphs 22, 92, and 93 of the Notice No. 10/2017 of the President of the Hungarian Competition Authority and the Chair of the Competition Council of the Hungarian Competition Authority on the application of the rules on settlements (hereinafter: Settlement Notice).

mitigating factor if the undertaking terminated the infringement – as a result of the initiation of a competition supervision proceeding or even before the initiation of such a proceeding – not in the context of a compliance programme,<sup>23</sup> unless the investigated conduct was a cartel.

#### IV.2.2. External factors

40. In certain cases when determining the amount of the sanction to be imposed the GVH takes into account external factors that may have contributed to the implementation of the infringement. Such external factors can be if the unlawful nature of the conduct in question was unclear or if state involvement was (also) behind the infringement.

#### IV.2.3. Other factors

41. Any further possible mitigating factors that can lead to a reduction in the amount of the fine and which are not mentioned in subsections IV.2.1.-IV.2.2. and in chapters V–VII. of this notice, shall be taken into account under ‘other factors’.

### **V. Adjustments to the basic amount**

42. After calculating the basic amount of the fine, the following factors are taken into account:

- a) repeated infringement,
- b) gains derived from the infringement,
- c) deterrent effect, and
- d) maximum amount of the fine as set out in Article 78 of the Competition Act.

43. In the context of these factors, it must be emphasised that they are taken into account successively, in the order set out in the previous paragraph, i.e. the adjustment of the fine due to any factor changes the amount of the fine resulting from the previous steps in either a positive or negative direction.

#### **V.1. Repeated infringement (recidivism)**

44. The GVH imposes more severe sanctions on repeated infringements.

45. It can be qualified as a repeated infringement if an undertaking commits the same or a similar infringement continuously or repeatedly after the GVH, Commission or other competition authority of a Member State has established an infringement of the provisions of Article 11 or 21 of the Competition Act and Article 101 or 102 of the TFEU. The requirement referring to the same or similar nature of the infringement means that the repetition can only be considered with respect to the previous infringement of Article 11 of the Competition Act and/or Article 101 of the TFEU in case of infringements of Article 11 of the Competition Act and/or Article 101 of the TFEU, while it can be considered only with respect to the previous infringement of Article 21 of the Competition Act and/or Article 102 of the TFEU in case of infringements of Article 21 of the Competition Act and/or Article 102 of the TFEU, however, within this framework, no further proof of similarity is required to establish the fact of the repetition.

46. The GVH will also consider an infringement repeated if the previous infringement was committed by a legal predecessor of the undertaking concerned.<sup>24</sup> It can also be qualified as a

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<sup>23</sup> See subchapter VI.4. in cases where the termination of the infringement took place in the context of a compliance programme.

<sup>24</sup> See the judgments of the Budapest Court of Appeal No. 2.Kf.27.676./2008/9. (VJ/127/2007.) and No.

repeated infringement if the previous infringement was committed by another undertaking within the same group of undertakings if the group of undertakings is resident in Hungary. An infringement committed by the foreign members of a group of undertakings may only be taken into account as a repeated infringement if the previous infringement falling within the scope of Article 101 or 102 of the TFEU was committed by an undertaking which controls directly or indirectly the undertaking subject to the competition supervision proceeding or if its liability was established in the previous infringement.

47. The GVH takes into account recidivism only in respect to decisions adopted within 10 years prior to the decision adopted in a given case.
48. The GVH can also establish recidivism in cases where a legal remedy is sought against the decision and the final decision of the administrative court is not yet available.<sup>25</sup>
49. The GVH considers recidivism to be a significant factor in increasing the amount of the fine in order to ensure special deterrence effects and to eliminate repeated anti-competitive conducts.<sup>26</sup> Accordingly, in case of a repeated infringement the amount of the fine calculated, as described above, increases by up to 100% per repeat (for instance, in the case of the third repeated conduct, the basic amount of the fine may increase threefold). The extent of the increase of the fine is adjusted to reflect the circumstances of the repeated infringement (i.e. the degree to which the present conduct is similar to the previously sanctioned conduct, in terms of the facts of the cases, the degree of similarity of the assessed facts<sup>27</sup>) having regard also to the fact whether a significant amount of time has elapsed between the decision adopted in the previous case and the decision adopted in the new case.

## **V.2. Gains derived from the infringement**

50. 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.

## **V.3. Deterrent effect**

51. The GVH places a special emphasis on the deterrent effect of the fines to be imposed. Therefore, the basic amount of the fine – established in line with the principles laid down in chapters III.-V.2. of this notice – can be increased in relation to those undertakings that have a particularly significant turnover beyond the relevant turnover achieved on the relevant market and which, therefore, would not face a significant burden if subjected to a fine based solely on relevant turnover. In relation to the deterrent effect, when adopting its decision the GVH can also take into account the financial strength that the given undertaking has as a member of a

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2.Kf.27.146/2003/6. (VJ/5/2002.)

<sup>25</sup> See e.g. the judgment of the Supreme Court No. Kfv.II.37.453/2009/5. (VJ/114/2007.), the judgment of the Budapest Court of Appeal No. 2.Kf.27.531/2007/6. (VJ/180/2006.), the judgment of the Curia No. Kfv.III.37.582/2016/16. (VJ/074/2011.). In the latter decision the Curia stated that if the decision which served as a reference of the establishment of the recidivism later was overruled in the absence of infringement, a new trial may be initiated or it can be taken into account in a possible retrial, if the statutory requirements are fulfilled.

<sup>26</sup> See the judgment of the Curia No. Kfv.III.37.582/2016/16. (VJ/074/2011.).

<sup>27</sup> See the judgment of the Supreme Court No. Kfv.II.37.453/2009/5. (VJ/114/2007.).

group of undertakings.<sup>28</sup> However, in such cases, the decision of the GVH will also contain the amount of the fine calculated on the basis of the relevant turnover and its justification.

52. When assessing this factor, the GVH can exceptionally reduce the amount of the fine to be imposed, if it is necessitated by the particularities of the given case, the avoidance of excessive deterrence and the requirement of proportionality. This may arise, for example, in case of a ‘mono-product undertaking’ or if it is justified by the small size of the undertaking, its modest economic importance or power.

#### **V.4. The maximum amount of the fine**

53. Following the steps above, the legal maximum (upper limit) of the amount of the fine to be imposed as set by the Competition Act is taken into account, 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 is adopted, of the undertaking or the group of undertakings, which is specified in the decision and of whom the undertaking on which the fine is imposed is a member. In cases where a group of undertakings can be identified in the given case, the turnover of the group of undertaking is applicable.<sup>29</sup> If the GVH condemns and imposes a fine on several members of the group of undertakings for the infringement, the 10% of the net turnover of the group of undertakings functions as an upper limit on the maximum amount also regarding the aggregate amount of the fine to be imposed on the undertakings belonging to the same group of undertakings.
54. When 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 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 case of a newly established undertaking 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 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 turnover achieved abroad by the members of the group of undertakings shall also be taken into account, particularly if the value of sales achieved by the infringing conduct did not occur in relation to the Hungarian, but to the foreign members of the group of undertakings.
55. The maximum amount of fine as specified in the law sets only the upper limit of the fine, which cannot be exceeded by the amount of the fine determined on the basis of the facts of the case. It does not follow from the provisions of the Competition Act that the amount of the fine must be calculated backwards on the basis of the maximum amount of the fine, taking into account the mitigating and aggravating factors. The act lays down the principle of free assessment and the consideration of mitigating and aggravating factors, thus, the maximum

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<sup>28</sup> See the judgments of the Curia No. Kfv.II.31.016/2012/28. and No. Kfv.III.37.690/2013/29. (VJ/174/2007.).

<sup>29</sup> See paragraph 60 of the decision of the Constitutional Court No. 3100/2015.

amount can be imposed despite the presence of a mitigating factor.<sup>30</sup> The maximum amount of fine is therefore neither a starting point, nor a benchmark in the assessment of the proportionality of the fine. The amount of the fine shall not be imposed based on the maximum amount of fine, and its proportionality shall not be assessed with reference to the maximum amount of fine either.<sup>31</sup>

56. Pursuant to Article 78 (5) of the Competition Act in cases when a member of the group of undertakings which has committed the infringement fails to voluntarily pay the fine and the enforcement procedure does not result in the collection of the total amount of the fine, the competition council proceeding in the case shall by a separate injunction oblige the member of the group of undertakings concerned which has been identified in the decision to jointly and severally pay the fine or the uncollected part thereof. In such cases the member of the group of undertakings identified in the decision will also be called into the competition supervision procedure as a party.<sup>32</sup>

## **VI. Taking into account the cooperation of the undertaking**

57. The GVH considers it important that fines – besides functioning as an instrument of general and special prevention – also promote the detection and prevention of infringements, the protection of the interests of those consumers and undertakings that are in a disadvantaged position due to the damage caused by infringements, and the efficient use of available resources. In order to facilitate the achievement of these policy objectives, the GVH aims to encourage undertakings to cooperate in a variety of forms by offering the possibility of a (further) fine reduction. When determining the extent of the fine reduction for each form of cooperation, the GVH – pursuant to the provisions of the Competition Act – takes into account that each form of cooperation neither obstructs each other, nor creates disincentives for the application of any other form of cooperation, but instead, where possible, reinforces each other's effect.
58. In order to emphasise the importance of cooperation, the GVH conducts the assessment of these aspects in the final phase of the process of determining the fine. As a result, if the amount of the fine calculated on the basis of the previous steps would exceed the legal maximum (upper limit), then the application of fine reduction with regard to each form of cooperation, pursuant to chapter V.4., shall be based on the legal maximum amount of fine.
59. In addition, with regard to the factors to be assessed within the framework of cooperation, it must also to be emphasised that they are taken into account in parallel to each other, thus, each form of fine reduction given on the basis of certain factors shall be added together (with the exception of other cooperation if the factors to be assessed in this context that are –at least in part – inherent in the special forms of cooperation).

### **VI.1. Application of the leniency policy**

60. The leniency policy can be applied in case of infringements pursuant to Article 78/A (1) of the Competition Act in line with Notices No. 2/2016 and 14/2017 of the President of the GVH and the Chair of the Competition Council of the GVH on the application of the rules on

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<sup>30</sup> See the judgment of the Supreme Court No. Kfv.II.37.291/2009/29. (VJ/045/2006.).

<sup>31</sup> See the order of the Curia No. Kfv.II.37.414/2013/8. (VJ/121/2009.).

<sup>32</sup> See the judgment of the Curia No. Kfv.III.37.690/2013/29.

leniency pursuant to Article 78/A of the Competition Act. The essence of the leniency policy is that in order to promote the detection of secret agreements, the GVH – if certain conditions are fulfilled – shall grant immunity from the imposition of a fine, or reduce the amount of the fines to be imposed on the undertakings participating in the infringement.

61. In order to receive immunity from the imposition of a fine, the leniency applicant must contribute to the proceeding in a manner which proves determinant for the obtainment of a judicial warrant for an unannounced inspection pursuant to Article 65/A of the Competition Act, or if the proceeding has already been initiated, in return for a contribution that is the first to be filed and which proves to be determinant for proving the infringement under investigation in its entirety. The amount of the fine to be imposed may be reduced if the undertaking participating in the cartel provides evidence constituting significant added value relative to the evidence already in the authority's possession. The extent of the fine reduction will reflect the degree to which the cooperation of the party, in terms of its quality and timing, has contributed to the establishment of the infringement.
62. Pursuant to Article 78/A (6) of the Competition Act, where an undertaking provides unambiguous evidence relating to a fact or circumstance which was not previously known to the GVH, and which shall be taken into account when determining the amount of the fine to be imposed for the infringement, if this fact or circumstance substantively increases the amount of the fine to be imposed, the fact or circumstance in question shall be disregarded when determining the amount of the fine to be imposed upon the undertaking.

## **VI.2. Settlement procedure**

63. The settlement procedure can be applied in proceedings initiated because of a conduct prohibited in Article 11 or 21 of the Competition Act and Article 101 or 102 of the TFEU or Article 7 of the Act on Trade, at the initiative of the competition council proceeding in the case in line with the settlement notice. Pursuant to Article 79 of the Competition Act, the GVH shall reduce the amount of the fine to be imposed by at least 10, but not more than 30%, with respect to an undertaking that has made a settlement submission. When determining the extent of the specific reduction of fine within the discretion spectrum set by the Competition Act, the GVH assesses in particular the following aspects.
64. In addition to the basic 10% reduction, a further reduction of up to 10% may be granted to reward the acceleration of the procedure.<sup>33</sup> In this context, consideration must be given to the period of time within which a common understanding pursuant to Article 73/A (2) of the Competition Act can be reached (regarding cases specified in point 29 of the settlement notice, possibly already on the first hearing of the party), the amount of time spent on the hearing and the period of time within which the undertaking introduces its statement on its willingness to engage in the settlement procedure pursuant to Article 73/A (2) of the Competition Act, its settlement statement pursuant to Article 73/A (3) of the Competition Act, its statement regarding correspondence pursuant to Article 73/A (4) of the Competition Act, and whether the undertaking takes advantage of the deadline of the legal statement pursuant to paragraphs 65 and 70 of the settlement notice.

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<sup>33</sup> See, for instance, VJ/104/2014.

65. Depending on the gravity of the infringement and the size of the undertaking, a further reduction of fine by up to 10% shall be granted for those small and medium-sized enterprises, which cannot benefit from the setting aside of fines pursuant to Article 78 (8) of the Competition Act.<sup>34</sup>
66. The GVH shall also grant a further reduction of fine by up to 10% if the given case has proved to be particularly high resource-intensive,<sup>35</sup> for instance, having regard to the significant number of parties subject to the proceeding, the large number of tenders/projects concerned, the absence of certain parties from the settlement procedure (e.g. hybrid type of settlement procedure).

### **VI.3. Proactive reparation**

67. The GVH qualifies a conduct as proactive reparation when the undertaking that committed the infringement repairs the negative effect of the infringement either partially or completely.
68. If the group of consumers and undertakings that suffered damage due to the infringing conduct and the extent of the damage caused can be determined with sufficient certainty, then proactive reparation shall serve as full compensation of the parties concerned. In such cases the actual amount of the compensation will be deducted from the amount of the fine.
69. If only partial reparation is undertaken, or the parties concerned or the extent of the damage caused cannot be determined with sufficient certainty, the GVH, within the framework of proactive reparation, can consider other measures as fine reducing factors, which lessen the effect of the infringement, the caused damage or which serve the public interest in any other way. In the latter case, the GVH can take into account, in particular, such measures that – although with respect to the factual circumstances of the given case do not establish the acceptance of commitments pursuant to Article 75 of the Competition Act – specifically serve the welfare of the consumers affected by the infringement or more generally the welfare of the groups of society directly or indirectly related to the infringement.

### **VI.4. Appreciation of compliance efforts**

70. The GVH considers it a priority to promote undertakings' voluntary compliance with the law, and one of the ways in which it achieves this goal is to encourage undertakings to establish and implement internal rules of procedures which ensure the prevention, detection and handling of infringements (hereinafter: compliance). Consequently, in the course imposing a fine the GVH takes into account both the ex ante and ex post compliance efforts and programmes of undertakings.
71. The GVH places greater importance on ex ante compliance programmes, i.e. compliance efforts which were already established by the undertakings concerned before the initiation of a competition supervision proceeding. The consistent application of such programmes can be assessed as a sign that the undertakings are taking measures to voluntarily comply with the law. At the same time, the existence of a compliance programme cannot in itself be assessed as a fine reducing factor. In order to achieve this the undertaking
- a) must prove its sufficient compliance efforts,

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<sup>34</sup> See, for instance, VJ/104/2014.

<sup>35</sup> See, for instance, VJ/057/2014., VJ/074/2014. and VJ/075/2014.

- b) after noticing the infringement, must terminate the infringing conduct,
- c) must prove with objective and credible evidence that the termination of the infringement was due to the compliance programme established voluntarily or obliged by the GVH in the course of a previous proceeding.

A further condition to take into account as a mitigating factor is that no high-ranked corporate executive was involved in the infringement.<sup>36</sup> In such cases, taking into account the ex ante compliance programme, the GVH shall reduce the amount of the fine by up to 7%. If the undertaking – in addition to the above – in the context of a compliance programme, is able to provide the GVH with evidence, which is unknown or represents significant added value to the evidence already available; furthermore, if it proves with objective and credible evidence that the compliance programme contributed to the obtaining of the evidence, the amount of the fine shall be reduced by up to 10% with regard to the ex ante compliance programme.

72. Ex post compliance efforts, i.e. compliance programmes established after the initiation of a competition supervision proceeding or offered during a proceeding can neither contribute to the clarification of the investigated conduct nor to the effectiveness of the proceeding; they can only promote compliance with the law in the future. Accordingly, the GVH rewards an undertaking's commitment to establish and implement an ex post compliance programme with a lower, up to 5% fine reduction, compared to the reduction of the fine in case of an ex ante compliance programme, as long as it is established and implemented together with participation in the leniency policy, the settlement procedure and/or with proactive reparation. The GVH – if it finds it acceptable pursuant to paragraph 73 below – shall impose an obligation on the undertaking to fulfil this commitment in its final decision and shall monitor the fulfilment of the commitment in the course of a follow-up investigation.
73. In order for a compliance programme to fulfil its objectives and functions, pursuant to paragraph 70, it must conform to internationally accepted minimum requirements and standards.<sup>37</sup> In this context, when assessing compliance programmes, the GVH examines in particular the following conditions:
- a) clear and unambiguous public commitment to competition law compliance throughout the undertaking (from top to bottom),
  - b) availability of staff and financial resources that are necessary to ensure the effective application of the compliance programme,
  - c) application of measures which ensure that the undertaking's employees possess the appropriate awareness and training regarding the compliance programme,
  - d) operation of effective signalling, monitoring and control mechanisms (including: the sanctions applied in case of serious violations of the compliance programme),
  - e) use of feedback, continuous review and improvement of the programme in light of the experience gained.

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<sup>36</sup> An exception is made, for instance, if the infringement is detected in the framework of a compliance screening in connection with a merger. In this case, the involvement of the management of the target undertaking is not a ground for refusal.

<sup>37</sup> Reference materials on compliance

[http://ec.europa.eu/competition/antitrust/compliance/compliance\\_programmes\\_en.htm](http://ec.europa.eu/competition/antitrust/compliance/compliance_programmes_en.htm)



74. In order to foster the effectiveness of compliance programmes, the person intending to provide evidence in accordance with Article 79/A-79/B of the Competition Act – with respect to Article 79/A (5a) of the Competition Act – when applying to the GVH:

- a) must prove that at the time of obtaining the evidence, at the time of providing it to the GVH and in the period between, he/she was not, and is not, bound by any company compliance programme, according to which the evidence provided should have been shared with the employer who employs him/her in any form (hereinafter: organisation) in order to allow the organisation to take all the necessary and legitimate measures to explore or terminate the infringement (hereinafter: procedures), or
- b) must prove that he/she has fulfilled the commitment set in point a) of the present section in the procedure that is applicable to him/her but the organisation under point a) has infringed the prescribed procedure, or
- c) shall demonstrate that due to his/her contribution according to point a) of the present section he/she would suffer serious disadvantage.

#### **VI.5. Other forms of cooperation during the proceedings**

75. The GVH also takes into account other forms of cooperation as fine reducing factors, which are not covered in the above VI.1.-VI.4. subchapters. As a result of the factors defined below, the GVH shall reduce the amount of the fine by up to 5%.

76. A mitigating factor is, in particular, such level of cooperation during the proceedings which serves the efficiency of the detection of the infringement, such as the voluntary provision of the evidence proving the infringement, the clarification of the facts of the infringement or the confession of the infringement and not contesting the facts. In this context, the GVH shall also consider, as a fine reducing factor, participation in the settlement procedure if the settlement submission is legitimately withdrawn or if the settlement procedure is terminated because the competition council proceeding in the case, on the basis of the facts and circumstances of the case in question, does not consider it possible to continue the settlement procedure with the result that the criteria taken into account in the selection for the engagement in settlement procedure are overruled or if the public interest does not justify the continuation of the settlement procedure.<sup>38</sup>

77. At the same time, the data provided in the context of the obligation to cooperate cannot be considered as a mitigating factor going beyond the legal obligation to cooperate, and cannot therefore result in the reduction of the amount of the fine. An undertaking's mere statement during the procedure that it will refrain from committing similar infringements shall also not result in the reduction of the amount of the fine to be imposed, as this neither affects the assessment of the past consequences arising from the undertaking's infringing conduct nor facilitates the avoidance of future infringements, furthermore, it also does not constitute a guarantee for the future. Similarly, the submission of a (not yet accepted) commitment pursuant to Article 75 of the Competition Act cannot in itself constitute a mitigating factor.

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<sup>38</sup> See the Settlement Notice, paragraph 94.

## **VII. Considering payment difficulties**

78. In order to take into account payment difficulties, the undertaking must submit a request during the proceedings for the reduction of fines or for payment in instalments. In this context, the undertaking must prove in detail, primarily by providing supporting documentary evidence, its economic situation close to the time of the decision and its fulfilment of the conditions necessary for its request. However, during the adoption of its decision, the GVH will take into account the financial statements of the previous years as well as the related forecasts.

### **VII.1. Reduction of the fine**

79. In exceptional circumstances the GVH may, upon the request of the undertaking concerned, take into account as a fine reducing factor the undertaking's inability to pay in a specific social and economic context if it cannot be eliminated by allowing the undertaking to pay in instalments or by granting a delay. Fine reduction cannot be granted if it would be solely based on the adverse or loss-making financial situation of the undertaking<sup>39</sup> or its likely exit from the market. A reduction can also not be granted solely on the basis that the undertaking has a loan or credit repayment obligation.

80. Fine reduction can be granted if the proposed amount of the fine to be imposed – due to the social and economic environment – would significantly worsen the structural conditions of competition by resulting in a ‘failing firm’ effect. The latter does not solely refer to the termination of the undertaking or its exit from the market – as it is highly likely that other undertakings would enter the market – but rather refers to a situation where the proposed amount of the fine would jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value<sup>40</sup>, thereby significantly worsening the position of other undertakings connected to the failing undertaking in the chain of production and significantly increasing unemployment.

### **VII.2. Instalment**

81. In the lack of the above-mentioned exceptional economic circumstances resulting in fine reduction, there may be grounds for granting payment via instalments having regard to the difficult justifiable economic situation of the undertaking(s). Authorisation of payment in instalments may be granted upon the request of the party, if the payment of the amount of the fine in a lump sum by the deadline would – having regard to the current financial possibilities of the undertaking – be impossible for reasons beyond its control or would impose undue difficulties. However, in case of late payment of any instalment the still outstanding total debt will be due as a lump sum.

## **VIII. Application of this Notice**

82. This notice is applied by the GVH – with the differences included in paragraphs 83 and 84 – in proceedings initiated after the date of its publication.

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<sup>39</sup> See the judgment of the Capital Court No. 2.K.32.916/1995. (VJ/065/1992.).

<sup>40</sup> See: Information on the methods of analysis used by the GVH in proceedings for the authorisation of concentrations, and the range of data required and the data requirements – General methodology 3d. The factors for assessing the non-coordinative horizontal effects of concentrations 11.1.

83. The GVH shall apply this notice in competition supervision proceedings initiated before the publication of this notice and in any proceedings repeated relating thereto, if at the time of the publication of this notice, the competition council proceeding in the case has not yet sent its preliminary position pursuant to Article 73 of the Competition Act to the parties subject to the proceeding, provided that the GVH in the course of determining the starting point of the level of the fine
- a) applies a value of 10%, instead of the 30% referred to in paragraph 15,
  - b) considers, in cases referred to in paragraph 17, that the relevant turnover is three times the tender value,
  - c) does not apply the minimum scores set out in paragraphs 15 and 28.
84. The procedural rules of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices and of the related statutory provisions modified by Act CXXIX of 2017 referred to in the present notice shall be applied in procedures initiated after 1 January 2018.

Budapest, 19 December 2017

dr. Miklós JUHÁSZ  
President of the Hungarian Competition  
Authority

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

**Annex**  
**Method of determining a fine**

1. *DETERMINATION OF THE STARTING POINT OF THE LEVEL OF THE FINE*

		<b>Points to be given</b>
<b>THE GRAVITY OF THE INFRINGEMENT</b>		
<b>a)</b>	<b>Threat to competition</b>	<b>max. 30</b>
	aa) Type of infringement	
	ab) Relevant competition-dimensions in the case	
<b>b)</b>	<b>Impact of the infringement on the market</b>	<b>max. 30</b>
	ba) Market share (joint) of the infringing undertaking(s)	
	bb) Other aspects, such as market strength, nature of the product, spill-over effect	
<b>TOTAL</b>		<b>max. 60 points</b>
<b>Rate reflecting the gravity of the infringement</b>		<b>max. 30%</b>

2. *DETERMINATION OF THE BASIC AMOUNT OF THE FINE*

		<b>Weight to be given</b>
<b>A. AGGRAVATING FACTORS</b>		
Aa)	Imputability	small / medium / high
Ab)	Role in the infringement	small / medium / high
Ac)	Other factors	small / medium / high
<b>B. MITIGATING FACTORS</b>		
Ba)	Role in the infringement	small / medium / high
Bb)	External factors	small / medium / high
Bc)	Other factors	small / medium / high

3. *CORRECTIONAL FACTORS*

<b>Repeated infringement</b>	
<b>Gains derived from the infringement</b>	
<b>Deterrent effect</b>	
<b>Legal maximum</b>	

4.

*COOPERATION*

<b>Application of leniency policy</b>	
* Entitled to immunity from fine	100%
* Entitled to reduction of the fine – first place	30-50%
* Entitled to reduction of the fine – second place	20-30%
* Entitled to reduction of the fine – third place	0-20%
<b>Benefits from settlement procedure</b>	<b>10-30%</b>
<b>Proactive reparation</b>	
<b>Compliance</b>	
* Ex ante	0-10%
* Ex post	0-5%
<b>Other forms of cooperation</b>	<b>0-5%</b>

5.

*CONSIDERING PAYMENT DIFFICULTIES*