

# Competition Law Compliance in the SMEs Sector – The Hungarian Experience

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# Overview

- Why should NCAs focus on the SMEs' compliance?
- What can the NCAs do?
- Should NCAs reward compliance programs?
- Conclusions

Why should NCAs focus on the  
SMEs' compliance?

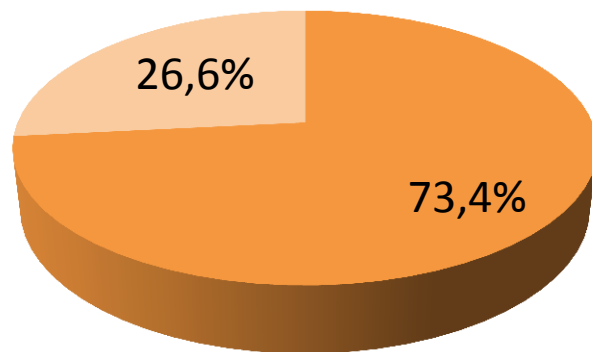
# SMEs are the backbone of the economy

- **SMEs: less than**
  - **250** employees and
  - **50 m EUR** income
- **SME sector** in the Hungarian economy:
  - **99,9%** of the total registered companies
  - **54%** of the **GDP**
  - **73%** of the **employment**



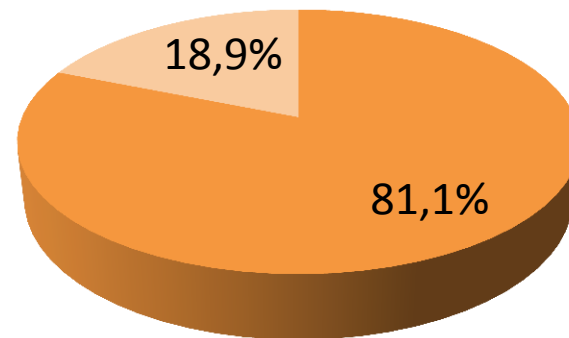
# SMEs in the GVH's practice

**Cartels**  
2002-2012



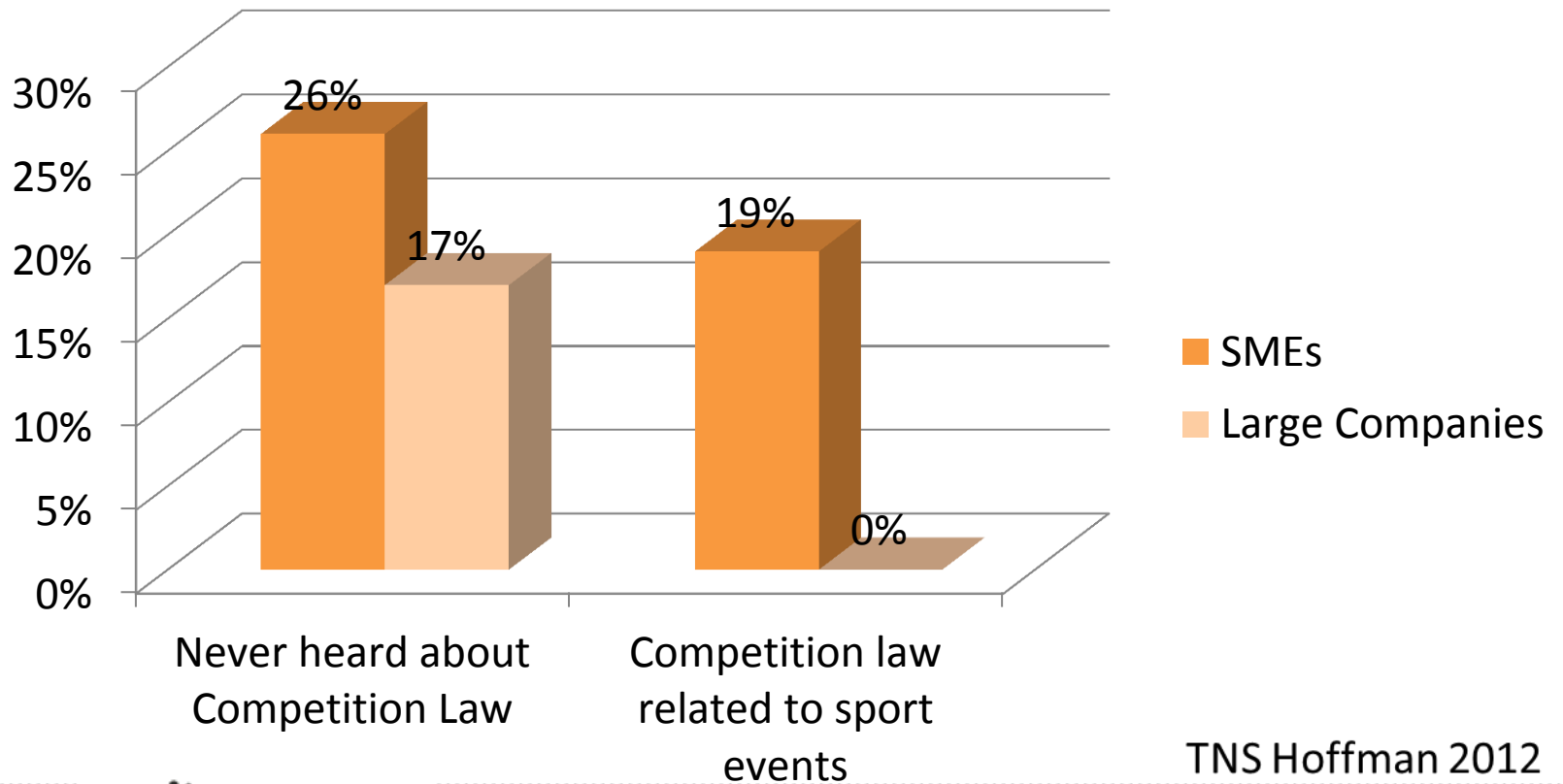
■ SMEs ■ Large Companies

**UCP Cases**  
2010-2012

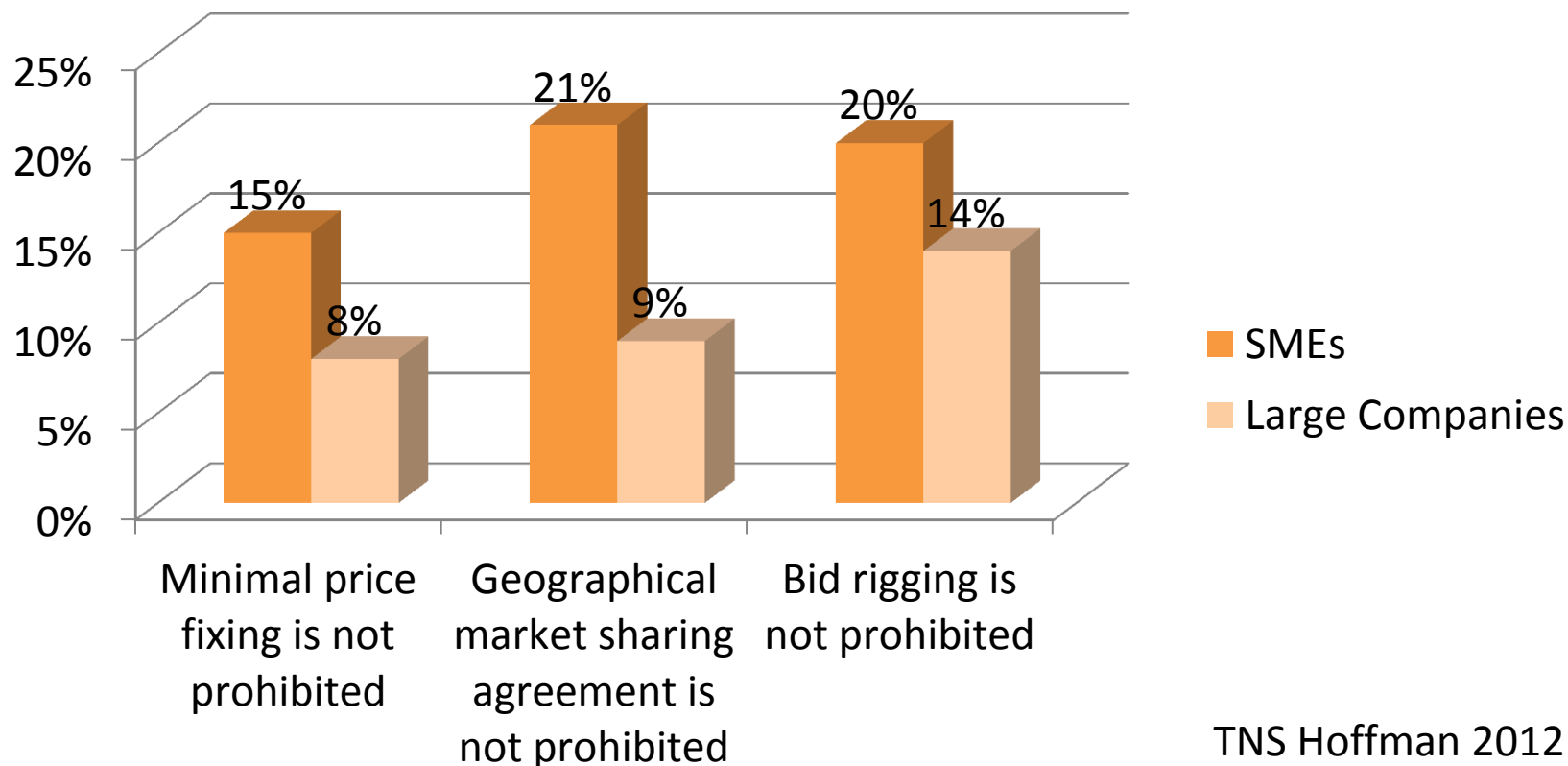


■ SMEs ■ Large Companies

# Scope of Competition Law

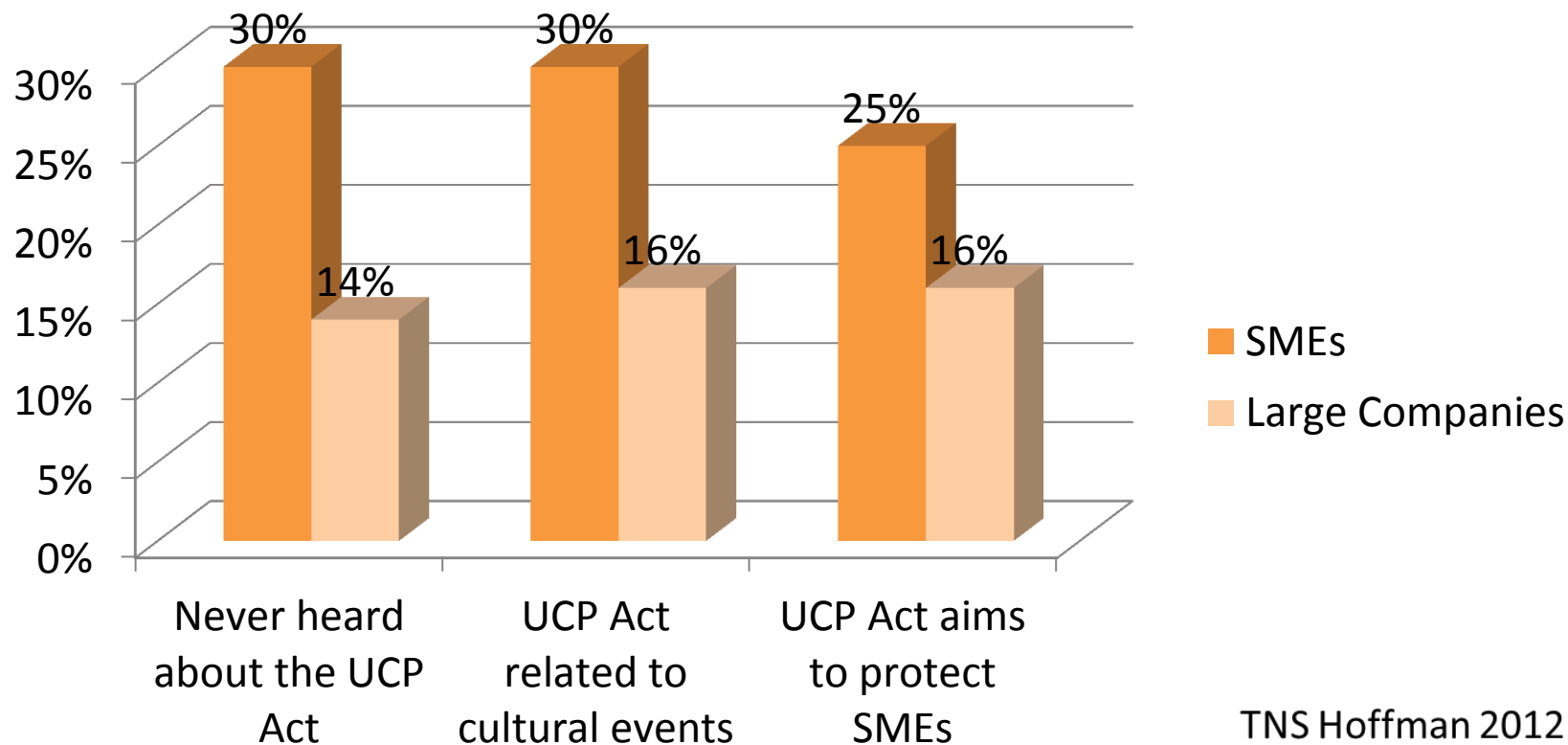


# Content of Competition Law



TNS Hoffman 2012

# Scope of the UCP Act





# Large Companies

- **Higher competition awareness**
- **More resources and incentives** to adopt the modern and ethical company management tools like competition compliance programs, in order to **keep their reputation** and **avoid administrative fines, criminal offences, damages claims**, etc.

# What can the NCAs do?

# Compliance Programmes

- **Transparency International:** (low level of competition culture increases the risk of corruption): **management influence** (their commitments to be compliant) on smaller organization is more effective or
- **No resources for adopting comprehensive compliance programs**
  - *"In small and medium-sized enterprises, both development of a compliance system and substantive efforts to promote compliance are significantly insufficient. This seems to be due to the recognition of the burdensome work to develop a system to promote compliance." [OECD (2011)]*
- **Compliance leverage:** larger companies often require adopting their compliance and ethics rules by supplier SMEs

# Educational campaign

- **Clearly explaining the competition rules** related to the SMEs' businesses to reach strong management commitment
- **Channels to reach them:** Public surveys show that when SMEs leaders seek information regarding the legal aspects of their business they rely on the
  - Internet
  - their accountant
  - their lawyer
  - chambers, professional organizations where they are members

# Educational campaign

- **GVH's Centre for Competition Culture**
  - concluded **cooperation agreements** with SMEs' organizations, accountant associations to promote the campaign through e.g. hosting seminars, delivering brochures prepared by the GVH
  - launched compliance **webpage** ([www.megfeleles.hu](http://www.megfeleles.hu)) in order to provide general guidance on compliance issues
  - is going to make **advertisement** to disseminate the competition law compliance and to promote the competition culture



# GVH's competition compliance webpage [www.megfeleles.hu]



tiszta verseny • tiszta nyereség



MEGFELELÉS



VERSENYFELÜGYELET



VERSENYJOG



AMI NEM FELEL MEG



KARTELL



GAZDASÁGI ERŐFŐLÉNY



JELENTŐS PIACI ERŐ



BEJELENTŐVÉDELEM

## MEGFELELÉS

Megfelelni – de minek?

Miért jó a verseny?

Mikor felel meg egy vállalat a versenyjog előírásainak?

Milyen cégeket érint a versenyjogi megfelelés?

Egyre gyakrabban halljuk, hogy az adott vállalat gazdasági/piaci versenyjogi megfelelésnek.

Ez a weboldal azért született, az itt olvasható információk az a cél, szolgálat, hogy a gazdasági szereplők minél pontosabb képet kapjanak a versenyszabályozásról. Azért, hogy minél jobban megállják a helyüket a versenyben, és eközben minél inkább megfeleljenek a versenyjogi előírásoknak is. Mert ha minél többen tisztán versenyeznek, azzal egyszerre nyer valamennyi vállalat, az egész magyar gazdaság. Tiszta verseny: tiszta nyereség.

## Megfelelni – de minek?

A versenyjog nemcsak a jól felfogott gazdasági érdekek tisztességes, fair érvényesítésén, hanem az általánosan elfogadott etikai normák követésén alapul. Ezért amikor versenyjogi megfelelésről beszélünk, ez alatt a jogi, valamint az ezekhez szorosan illeszkedő erkölcsi normák követését, az ezeknek való megfelelést értjük.

A versenyjogi megfelelés ilyen formán egy szemlélet: a gazdasági versenyt szabályozó törvények és normák vállalati gyakorlatba ültetését és

Should NCAs reward compliance programs?

# Why not?

- Compliance programs are adopted without reduction of fines too (ICC Antitrust Compliance Toolkit)
  - „A successful compliance programme brings its own reward. The main reward for a successful compliance programme is not getting involved in unlawful behaviour.” [Almunia, 14 April, 2011]
- Reward would put a **significant administrative burden** on authorities, namely having to check the validity of different, individually tailored compliance programs
- Reward would **discriminate SMEs** who have no sufficient resources to develop compliance programs and to afford large legal departments and expensive competition lawyers
- NCAs should encourage adopting compliance programs **but not with reduction of fines**

# The Commission's/GVH's approach

- „...I am often asked whether companies should be rewarded for operating compliance programmes [...]. The answer is no. [...] why should I reward a compliance programme that has failed? The benefit of a compliance programme is that your company reduces the risk [...]. That is where you earn your reward.” [Almunia, Competition conference in Brussels, 25 October 2010]
- “...the adoption of a compliance programme by the undertaking concerned does not oblige the Commission to grant a reduction in the fine on that account [...]. The Commission is not, therefore, bound to consider such a factor as a mitigating circumstance...” [Case T-138/07, **Schindler Holding**, para 282.]
- “the mere existence of a compliance programme will not be considered as an attenuating circumstance. [...] the existence of a compliance programme will not be considered an aggravating circumstance if an infringement is found” [“**Compliance Matters**” brochure released by the Commission on 23 November 2011]
- “[...] the mere existence of a compliance programme is irrelevant when assessing the legal assessment and the legal consequences of the behaviour.” [Appeal Court of Budapest 2.Kf.27.167/2008/22. sz.]



# Conclusions

- **Why should NCAs focus on the SMEs' compliance?**
  - backbone of the economy
  - more competition enforcement targeted them
  - lower competition awareness
  - limited resources
- **What can the NCAs do?**
  - Educational campaign
- **Should NCAs reward compliance programs?**
  - significant administrative burden
  - discriminate SMEs
  - adopted without reduction of fines too