



# Private enforcement of competition rules in Hungary – regulation and practice

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# Topics

1. private enforcement
2. amicus curiae
3. facilitation of private enforcement
  - collective action
  - presumption on the level of damage
  - liability of leniency applicant



# Private enforcement – legal background –

- under EU law: possibility introduced by Regulation 1/2003/EC & by the HCA from 1<sup>st</sup> of May 2004
- under the Hungarian competition law: since 1<sup>st</sup> of November 2005
- both in follow-on and stand alone cases
- damage claims & validity of contracts



## Private enforcement – practice –

- Follow on cases:
  - 4 cases running (maybe more)
  - inspired by the GVH
  - cartel cases only
  - no case has been closed
- Stand alone cases:  $\approx$  12 cases since 1 May 2004  
(no feedback from courts to the GVH)



# *Amicus curiae*

## – legal background –

1. Introduced into the Hungarian law from
  - 1<sup>st</sup> of May 2004 (for EU law application)
  - 1<sup>st</sup> of November 2005 (for national law application)
2. Main features of the system:
  - court notifies the case (to the GVH / EU Commission)
  - GVH may submit written observation
  - making of oral observations (it has to be preliminary notified to the court)
  - GVH may request the court to transmit documents of the case
  - GVH may initiate a case, which suspends the court proceeding
  - GVH decision binds the court



## *Amicus curiae*

– practice –

15 cases since 1<sup>st</sup> of May 2004 / 1<sup>st</sup> of November 2005

- 3 antitrust cases under EU/national law
- 7 antitrust cases under national law
- 5 cases: unfair manipulation of business decisions & mixed

no feedback on outcomes

no practice for GVH case initiation so far



# Facilitation of private enforcement - collective action -

- no any specific competition law-related rule on collective action
- under the general rules of Civil Code (joint action)
- „public interest actions” under the HUN CA:
  - the GVH may initiate them against violation falling under the CA
  - large group of consumers is affected
  - only in cases in which the GVH also proceeded (or proceeds)
  - only within 3 years of the time of the violation
  - separate individual law claims are necessary to be compensated for damages



# Facilitation of private enforcement

- presumption on the level of damage -

- the infringement influenced the price to an extent of 10 per cent
- rebuttable presumption
- only for hard-core cartels (EU and/or national law)
- both in follow-on and stand alone cases
- effective as from 1<sup>st</sup> June 2009, for civil law cases initiated afterwards
- no practice so far





# Facilitation of private enforcement

## - mitigated liability of leniency applicant -

- a solution aiming to reconcile leniency and private enforcement consequences
- in effect since 1st June 2009, applicable to practices made following this date
- beneficiary of leniency policy may refuse to pay damages until the claim may be recovered from any other cartel member
- no practice so far



## Conclusions

- the legal background has been created
  - weak practice
  - steps to be taken by the GVH towards:
    - courts (training of judges)
    - businesses
- ⇒ increased competition culture activity is necessary



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**Thank you for your kind attention!**