The secret of the efficiency of the cartel chase as reflected by the comparison of Hungarian and German cartel law

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Preface

In Hungary, the framework of the fight against cartels is laid down in Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (hereinafter referred to as: "UMPA") and Section 296/B of the Criminal Code, which regulates the prohibition of competition restraining agreements related to public procurement and concession procedures. German cartel law is comprised of the Act against Restraints of Competition ("Gesetz gegen Wettbewerbsbeschränkungen") and the relevant provisions of the German Criminal Code ("Strafgesetzbuch").

The regulations relating to cartels of both legal systems have been significantly affected by the example set by the Community, however, the pressure exerted by the EU could not guarantee the application of identical regulatory solutions. The question is how the differences between the regulations in Germany and those in Hungary influence the efficiency of persecuting such actions.

The foundations of the story

In Hungary and Germany, two branches of law include rules related to the prohibition of cartels. Paragraph (1) of Section 11 of the UMPA provides about it as follows:

"Agreements between undertakings and coordinated practices, as well as the decisions of the social organizations of undertakings, public corporations, unions and other similar organizations of undertakings (hereinafter collectively "agreements"), which are aimed at the prevention, restriction or distortion of economic competition, or which may display or do display such an effect, are prohibited. (...)"

The Criminal Code evaluates the concession and public procurement procedure related aspects of cartelling as follows:

"Section 296/B. (1) Any person who reaches an agreement aiming to fix the prices (charges) or any other term of the contract or rather to divide the market or takes part in any other coordinated practices in order to manipulate the outcome of an open or restricted tender published in connection with a public procurement procedure or concession requirement and through this acts causes the restriction of competition is guilty of felony punishable by imprisonment for up to five years.

(2) Any person who takes part in making decision of an social organizations of undertakings, public corporations, unions and other similar organizations of undertakings,

and adopting any decision that has the capacity for restraining competition aiming to manipulate the outcome of an open or restricted tender published in connection with a public procurement procedure or concession requirement shall be punished as set forth in Subsection (1).

(3) The punishment shall be imprisonment for up two years, public works, or a fine for a misdemeanor, if the act is in accordance with Subsections (1) and (2) and the value of the public procurement is not above substantial value.

(4) The perpetrator of a criminal act defined in Subsections (1)-(3) shall be exonerated from punishment if he confesses the act to the authorities, before the authorities get informations from the act and reveals the circumstances of the criminal act. Authorities shall also mean the bodies supervising competition and financial operations and the body of legal remedy in connection with public procurement contracts.

The statutory definition of the German competition-law does not differ much from the Hungarian solution:

"Agreements between undertakings, decisions by associations of undertakings and coordinated practices which are aimed at the prevention, restriction or distortion of competition, or which do display such an effect, are prohibited."[1]

The criminal law approach of the prohibition of cartels is not even slightly similar to the Hungarian regulation. There are two facts dealing with this act. If cartelling is not accompanied by the risk of causing material damage, or no damage is caused, the "reaching an agreement aiming at the restriction of competition in connection with invitation for tender" must be established if the following legal facts are realised:

(1) Whoever, upon an invitation for tender in relation to goods or industrial services, submits an offer based on an unlawful agreement which is aimed to force the tender announcer into accepting a particular offer, shall be punished with imprisonment for up to five years or a fine.

(2) Subsection (1) is applicable to the procedure of competition for participation in tender.

(3) Whoever voluntarily prevents the tender announcer from accepting the offer or from providing the service, shall not be punished under subsection (1) and (2). If the offer is not accepted or the service is not provided independently from the contribution of the perpetrator and the perpetrator voluntarily and earnestly makes efforts to prevent the acceptance of the offer or the providing of the service, then he shall be exempt from punishment. [2]

If cartelling also causes material damage, those applying the law have to classify the act as fraud based on the following provision:

"Whoever leads or keeps somebody in error by pretending that false facts are true or by distorting or suppressing true facts with the intent of obtaining for himself or a third person an unlawful material benefit and causes loss, shall be punished with imprisonment for up to five years or a fine."

[1] Gesetz gegen Wettbewerbsbeschränkungen 1.§
[2] Strafgesetzbuch 298.§

The perpetrators can expect to be sentenced with imprisonment from six months to ten years in case of businesslike conduct, or in case they are engaged in a criminal conspiracy, or they cause a loss of assets of great magnitude, or if the intent of placing a large number of human beings in danger of loss of assets exists, or if they abuse their powers or their position as public officials.[3]

As the provision on the crime of fraud aims the protection of assets, and the criminal-law prohibition of reaching an agreement aiming at the restriction of competition in connection with invitation for tender aims the protection of free and fair competition, the two crimes can be cumulated with one another,[4] and what is more, in case of the realisation of fraud, the establishment of the cumulation of the two crimes is statutory.

The targets of the hunt

According to Hungarian competition law provisions, undertakings may be held liable for cartelling. The specialty of German competition law is that it allows the fining of not only undertakings but natural persons participating in cartelling as well. [5] This is how German legislators have tried to prevent that it be worth participating in the conclusion of competition restricting agreements for employees. I believe that Hungarian legislators should also consider the possibility of making natural persons accountable under competition law too.

There is a significant difference between the German and Hungarian solution respecting the definition and interpretation of the scope of persons imposable by criminal-law sanctions as well. The subject of the act according to the Hungarian criminal-law definition can be anyone. This entails the criminal accountability of persons participating in the announcement, assessment of the tender who show factual conduct.[6] From the aspect of the efficiency of the pursuit of cartelling, bringing the side of the tender announcer to accounts is essential because they often collaborate in influencing the outcome of the tender.

The subject of the German statutory definition of fraud is also a general subject, therefore it is possible in principle to bring the side of the tender announcer to accounts, although in case of the establishment of reaching an agreement aiming at the restriction of competition in connection with invitation for tender the text of the statute only provides for the accountability of the bidders, those who make an offer. Although it is not clear from the text of the statutory definition, the literature clearly indicates that both statutory definitions relate to the same cartelling behaviour, the possibility of bringing the persons engaged in cartelling from the tender announcer's side only depends on the existence of a risk of causing damage to the tender announcer[7]. This reflects a substantial inconsistency of legislation.

It is also an interesting difference that Hungarian legislation provides special criminal-law protection only to public procurement and concession procedures, while German provisions deal with tendering procedures in general, thus under the relevant statute texts,

[3] Strafgesetzbuch 263.§

[4] Hefendehl, Roland: Vorlesung Wirtschaftsstrafrecht (WS 2005/2006). http://www.strafrecht-online.org/index.php?dl_init=1&id=2618 [2010.07.20.]

[5] Gesetz gegen Wettbewerbsbeschränkungen 81.§ (4)

[6] Molnár, Gábor: Gazdasági bűncselekmények. HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2009 p. 80.

[7] Submissionsbetrug. http://de.wikipedia.org/wiki/Submissionsbetrug [2010.07.20.]

even agreements relating to private invitations to tender can form grounds for criminal proceedings.[8]

Prohibited acts

Both German and Hungarian competition law determine three different actions of perpetration: reaching agreements, coordinating practices, and making decisions. Hungarian legislation includes the mentioned actions in the criminal-law definition too, while the solution in German criminal law is not similar to the competition law roots at all, and what is more, the German crime definitions are not even similar to each other even though the only difference between the two crimes is the element of risk of causing damage or the occurrence of damage. As with regards to the definition of the action of perpetration, keeping the competition law provisions in mind would have been important as the crime definition not evaluating the occurrence of damage makes criminal accountability possible only in case of making an offer whereas not only persons making an offer but those failing to make an offer on request may also contribute to the tender announcer's decision in favour of the cartel members. It is not a coincidence that under the relevant provisions of competition law, those withholding offers also have to reckon with the prospective sanctions. In principle, persons withholding offers can be held to account under the statutory definition of fraud due to "collective" nature of said crime, which means that it is realised not through making an offer but by leading or keeping somebody in error, and these conducts of perpetration can be established even in the case of withholding an offer.

In my opinion, complying with and applying the law are both difficult because the wording of the German statutory definitions respecting cartel crimes do not reflect the system of concepts of the competition law. Moreover, it is unnecessary to keep in effect two types of crimes respecting cartels, it would be sufficient to apply only one statutory definition related to cartelling.

The precondition of being held liable for cartelling under Hungarian competition law is that the above analysed actions of perpetration be anti-competition. An action is anti-competition if its objective or possible effect is the prevention, restriction or distortion of competition. [9] The examination of the actual effects of the agreement is not necessary if it aims at the prevention, restriction or distortion of competition by its nature.[10] In lack of a competition restricting objective, the anti-competition effects of the agreement do have to be examined. [11] The anti-competition effect exists even if there is only a possibility that the agreement may restrict, distort or prevent competition.[12] What has been said in connection with the Hungarian legal system substantially applies to the German competition law as well with the difference that without a competition restricting objective, the competition-law

[8] Pasevald, David: Zehn Jahre Strafbarkeit wettbewerbsbeschränkender Absprachen bei Ausschreibungen gemäß § 298 StGB. http://www.zis-online.com/dat/artikel/2008_2_211.pdf [2010.07.20.]
[9] Nagy, Csongor István: Kartelljogi kézikönyv. A közösségi és a magyar kartelljog joggyakorlata. HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2008 p. 342.
[10] Tóth, Tihamér: Az Európai Unió versenyjoga. Complex Jogi és Üzleti Tartalomszolgáltató Kft., Budapest, 2007, p. 119.
[11] Tóth, Tihamér: op. cit. p. 121.
[12] Nagy, Csongor István: op. cit. p. 344.

definition does not evaluate risking the fairness of the competition but only the effects caused by the action under the statutory definition.

The Hungarian criminal-law definition does not examine the existence of the competition restricting objective and the existence a potential competition restricting effect as alternatives but the realisation of a cartel crime depends on the two cumulative conditions that both the intention to influence the outcome of the tender and the competition restricting effect have to be established.

There has been criticism in Hungary that there is not any competition-law or criminal-law definition available to the appliers of law with respect to the competition restricting result.[13] This is a serious difficulty indeed in the determination of the criminal-law phases of the act. There is known such an opinion whereby the restriction of competition takes place only upon the announcement of the outcome of the manipulated tender or upon the conclusion of the agreement based on the announcement of the result of the tender,[14] while according to other opinions, the restriction of competition is the inevitable consequence of the realisation of the acts of perpetration and the establishment of the phase of consummation is independent of the announcement of the outcome or the actual conclusion of the agreement. [15] If we interpret the restriction of competition literally, we are forced to identify with the latter opinion as from the nature of the procedures protected by the criminal-law definition it follows that competition automatically becomes more restricted upon the performance of the acts of perpetration. If the cartelling activity does not come to light until the announcement of the results, or if everything goes according to the plan of the persons engaged in cartelling, meaning that no unexpected bidder outside the cartel agreement shows up in the last minute, then the exclusion of competition is realised but the analysed criminal-law definition settles for the restriction of competition. It is a different matter that it was unnecessary include the competition restricting effect automatically accompanying the performance of the acts of perpetration as a result, the uncertainty caused by this only made the application of law more difficult. Of course, it is possible that the legislator wanted to associate the consummated phase with the occurrence of the announcement of the outcome but due to the inaccurate wording, it failed to achieve its objective.

As I mentioned above, the German statutory definition of fraud is "collective" in nature, which means that it provides opportunity for the criminal prosecution of many acts which should have been evaluated in a separate crime definition because of their special nature. Many cases of fraud are known which are associated with separate definitions by the practice or legal literature, meaning that it is defined that what kind of actions realise the elements of the definition of a certain type of fraud. The objective of gaining benefit, similarly to the Hungarian example, is represented by the intention to influence the outcome of the tender, and the existence of such objective is reflected in the determination of the price or the division of the market. Fraud may be established subject to a further condition, the occurrence of asset loss caused by the act, which is typically the determination of an offering price above

[13] Csépai, Balázs – Ujvári, Ákos: A versenyt korlátozó megállapodás közbeszerzési és koncessziós eljárásban való büntethetőségének kérdésköre. In: Jogtudományi Közlöny 2006/6. p. 226.
[14] Csépai, Balázs – Ujvári, Ákos: op. cit. p. 227.
[15] Molnár, Gábor: op. cit. p. 77.

the market price. If the expected profit for some reason cannot be realised by the agreement aiming to obtain an offering price above the market price, the attempt of fraud can be established.

Those engaged in cartel activities not always endeavour to determine an offering price above the market price as on many occasions; the parties are satisfied with determining the tender winners themselves by dividing up the market. In such cases the tender announcer does not suffer material damage, therefore it is not possible to apply the statutory definition of fraud but criminal accountability for reaching an agreement aiming at the restriction of competition in connection with invitation for tender cannot be avoided. As mentioned above, the latter crime is in cumulation with fraud in case material damage is caused. In this case too, the objective is the intention to have the tender announcer accept a certain offer but the statutory definition does not evaluate the occurrence of a result. As the competition restricting effect is automatically created by the submission of offers aiming to influence the outcome of the competition, its highlighting in the text of the act would have been unnecessary and misguiding.

Privileged case

Neither Hungarian nor German competition law includes provisions respecting privileged cases, although the amount of the benefit generated as a result of the cartelling does have a great significance in sanctioning. The Hungarian statutory definition makes lighter evaluation subject to the value of public procurement; the perpetrators may expect such lighter evaluation below a value of HUF 50 million, while in the case of competition restricting conduct in concession procedures, the Hungarian legislator did not provide for a privileged case.

German criminal law does not include any provisions on privileged cases of cartelling whatsoever, but in case of fraud causing an asset loss of great magnitude, i.e. EUR 50,000[16], the perpetrators can expect a sentence much longer than the one defined in the basic case, they can be imprisoned up to even 10 years. Hungarian legislators aimed to achieve that the persons engaged in cartel activities try to cause as little damage as possible by promising a subdued sanction but they did not determine the upper limit pertaining to the basic case; on the other hand, German provisions give preference to nobody within the basic case, legislators reject all forms of cartel activities in connection with tendering procedures and they only distinguish bidders to be adjudged more severely. Thus the German criminal law approach of cartelling is reverse to the Hungarian approach, which reflects the difference between the approach of the two states in terms of the prosecution of competition restricting agreements. I think that German criminal law provisions conceptualise the prohibition of cartels much more definitely and authoritatively than Hungarian ones.

The fruit of the treason

Leniency policy is known in both the Hungarian and the German legal system. In Hungary, the actualisation of the institution of leniency is made significantly more difficult by

[16] BGH, Urteil vom 7. 10. 2003 - 1 StR 274/ 03 (Lexetius.com/2003,3420 [2004/3/209])

the fact that both competition law and criminal law provide the possibility of the remittal or reduction of the fine to persons engaged in cartel activities but the conditions of receiving such alleviations are different in these branches of law. In the course of the examination of the eligibility for alleviations, the competition-law rules of the leniency policy do not consider the information of authorities other than the Hungarian Competition Authority (the "HCA"), only the information of the HCA related to the act are definitive, and the sequence of leniency applications submitted to the HCA is one of the most important aspects whereas in the course of the consideration of giving exemption from the criminal-law sanction, the information of all authorities having competence in relation to the prohibition of cartels regarding the act have to be considered. It is another important difference that according to the leniency policy regulated by competition law, the fine may also be completely remitted when the HCA has already searched the site in connection with the cartel in question if the HCA does not have the evidence necessary for the unequivocal establishment of cartel activities and others are not eligible for the remittal of the whole fine because the site search was made possible.[17] Applicants who missed the possibility of the remittal of the fine may still receive a substantial alleviation within the framework of fine reduction, even 50% of their fine may be remitted,[18] if they provide evidence representing substantial additional value to the HCA.[19] Furthermore, if the applicants provide evidence in respect of a fact of which the HCA is unaware and which qualifies as an aggravating circumstance in the determination of the amount of the fine, the HCA guarantees that it will overlook such aggravating circumstance against the company supplying the evidence when determining the amount of the fine.[20]

As with regards to the exemption from the criminal-law sanction, only one revealing testimony may be heard. There exists a view in which the Criminal Code does not exclude the possibility of several perpetrators simultaneously using the institution of grounds for the preclusion of punishability,[21] but I think that there is a quite small possibility that the "traitors", who otherwise compete against one another in who is the quickest to make a report, would risk their first place.

Leaking out the intention to make a report too early may bear a significant risk of retaliation, and also, a reporting person who does not enjoy the trust of the other members of the cartel is less useful to the authority too because if the danger of being reported becomes known, it may result in the disappearance of evidence. As the Criminal Code does not entice additional repenters with the promise of a lighter sentence, those who receive the alleviation of fine remittal from the HCA cannot expect a milder criminal-law consideration by virtue of the law. Although in the course of the infliction of the sentence, the confession of the act is taken into account as a mitigating circumstance, the evaluation of aggravating circumstances deriving from the role played in the cartelling activity will not be missed. At the same time, perpetrators who intended to influence the outcome of a tender below the fifty million public procurement value and who do not help the work of the authority with anything, may be

[17] Paragraph (2) b) of Section 78/A of Act LVII of 1996
[18] Paragraph (4) a) of Section 78/A of Act LVII of 1996
[19] Paragraph (3) of Section 78/A of Act LVII of 1996
[20] Paragraph (5) of Section 78/A of Act LVII of 1996
[21] Molnár, Gábor: op. cit. p. 87.

punished with no more than two years of imprisonment according to the privileged case instead of imprisonment up to five years.

Exemption from the criminal-law sanction therefore is subject to stricter conditions, which in this case derogates the efficiency of the leniency policy in both competition law and criminal law considering that if the HCA remits the entire fine, it does not guarantee exemption from the criminal-law sanction,[22] what is more, if the conditions of exemption from the criminal-law sanction are not met, being held accountable under criminal law cannot be avoided as the HCA has an obligation to report any cartel activities prohibited by the Criminal Code that come to its attention. Any available evidence must be attached to such report.[23] The attraction of the leniency policy lies in the possibility of being exempted from the sanctions and it is important that the conditions of exemption be clear and calculable but the provision on the grounds for the preclusion of punishability does not fulfil said requirements.

In Germany, if the cartel activity realises the crime of fraud, exemption from the criminal-law sanction is not possible, therefore perpetrators who receive the alleviation of the remittal of the entire fine or the reduction of the fine from the competition authority, still have to face imprisonment up to 10 years. Fraud is usually cumulated with the crime definition prohibiting the reaching an agreement aiming at the restriction of competition in connection with invitation for tender. Although in case of the latter, the remittal of the sanction is possible, it is subject to two conditions: the perpetrator has to do his best endeavours to prevent the tender announcer's acceptance of the offer designated by the persons engaged in cartel activity, and regardless of whether as a result of the perpetrator's influence or not, such offer must not be accepted. The consummated form of fraud can be established only if material disadvantage is caused, which precludes the failure of the acceptance of the offer, so all things considered we can say that in case of fraud in a consummated phase, the perpetrator may not be granted any kind of alleviation under criminal law but in case of an attempt of fraud, the cumulative sentence may be lighter due to the leniency policy. The criminal-law sanction may be remitted completely if only the reaching an agreement aiming at the restriction of competition in connection with invitation for tender is established. In my opinion, it breaks the momentum of the efforts aiming the prevention of damages if in case of fraud, it matters only in the infliction of a cumulative sentence that the perpetrator has prevented the realisation of the contents of the agreement, the occurrence of the prospective damage, and the reason that the act has remained an attempt lies only in his behaviour. I think that is unnecessary to evaluate cartelling as fraud, it is sufficient to keep in force the statutory definition respecting the reaching an agreement aiming at the restriction of competition in connection with invitation for tender with modifications made in line with competition law requirements.

The two branches of law provide for the alleviations and the conditions of receiving alleviations differently. Contrary to the provisions of Hungarian regulations, German law enforcement authorities do not insist on being the first to be informed of the act. Similarly to

[22] Molnár, Gábor: op. cit. p. 87.
[23] Paragraph (2) of Section 171 of Act XIX of 1998

what has been written in connection with the Hungarian solution, criminal-law leniency knows only one type of alleviation but this has been compensated by the legislators when they connected exemption from the criminal-law sanction not to making a report but to the endeavour to prevent the acceptance of the offer, and this allows granting leniency alleviation even to multiple perpetrators. In order to receive a leniency alleviation it is not unavoidably necessary to reveal the activity before the authority, successful convincing and the refusal to implement the agreement may be sufficient. If the authority or the tender announcer gains knowledge of the cartel activity before the conclusion of the procedure, and thus before the acceptance of he offer, the persons provably fighting to prevent the implementation of the agreement may be exempt from criminal-law sanctions without "treachery", however, without a report, they may not expect the remittal of the fine imposed on natural persons because the condition of receiving a competition-law leniency alleviation is that an application for leniency be submitted and information and evidence necessary for the investigation are provided.[24] From the persons submitting an application for leniency, those perpetrators will receive exemption from the criminal-law sanction who made a report before the acceptance of the offer but those persons who submit an application for leniency after the offer is accepted will not enjoy criminal-law leniency, regardless of their assistance provided in the investigation, even if the competition authority finds them worthy of the alleviation of fine reduction or the remittal of the fine.

It is not objectionable that criminal-law leniency primarily aims to prevent the final outcome of cartelling but for the sake of the protection of public funds and of the investigation of the act, the assistance provided by the perpetrator after the acceptance of the offer should be appreciated not only by competition law leniency but by criminal law leniency as well. Consequently, in addition to the provision on the grounds for the preclusion of punishability, a paragraph respecting a privileged case that appreciates activities assisting investigation would be necessary. Creating harmony between the criminal-law aspects and competition-law aspects of the leniency policy is essential for the practical efficiency of the institution.

The types of the sanction

In Hungary, cartel activities are indictable under criminal law as of 1 September 2005 but no final judgement has been made in any case since then. Germany has much older traditions of the criminal-law pursuit of cartelling as legislation provided for the punishability of the conclusion of competition restricting agreements in 1997 so that those engaged in cartel activities can be held accountable under criminal law not only in case they cause material damage.[25] In spite of this, the infliction of sentences of longer periods of imprisonment has not been typical even in case of the establishment of multiple counts of the crime and its cumulation, sentences of imprisonment were generally between 1 and 3 years. Imprisonment is always accompanied by a fine and perpetrators have to calculate with only this latter

[24] Bekanntmachung Nr. 9/2006 über den Erlass und die Reduktion von Geldbußen in Kartellsachen-Bonusregelung Section 3, Subsection 2; Section 5, Subsection 1.

[25] Pasevald, David: Zehn Jahre Strafbarkeit wettbewerbsbeschränkender Absprachen bei Ausschreibungen gemäß § 298 StGB. http://www.zis-online.com/dat/artikel/2008_2_211.pdf [2010.07.20.]

sentence in many cases. Thus in Germany, persons engaged in cartels are often held accountable and the perpetrators have to calculate with the risk of a criminal procedure, however, the criminal law aspect is not the most emphasised one in the system of holding persons responsible.

The perpetration of the act is motivated by the aim to gain material benefit, therefore the practice of enforcement has to prevent the success of such motivation, so fining is an element of key importance in the system of sanctions. EU Member States have to observe EU regulations regarding the amount of the fine imposable on companies, therefore it is not possible to impose a fine in excess of 10% of the turnover realised in the business year preceding the making of the decision establishing the violation of the law either in Hungary or Germany.[26] In my opinion, the upper limit should not be determined because the material benefit deriving from the activities of a cartel network operating successfully for years can easily exceed the inflexible fine maximum. Moreover, the amount of the upper limit is determined on the basis of the turnover of only one year. In order to circumvent the inflexible maximum of the fine imposable on companies, German legislation has introduced a new type of legal sanction aiming the withdrawal of money. The competition authority deprives enterprises of the part of the material benefit of the cartelling activity remaining after the payment of the fine, the satisfaction of damage claims, and confiscation within the framework of a so-called skimming-off of additional proceeds. In this regard, the German competition act has worded the objective of withdrawing the entire material benefit gained through cartelling.[27] It should be noted that the sum withdrawn by the competition authority should be a multiple of the sum deriving from cartelling so that the parties entering into the competition restricting agreement would have something to lose. If this meant the payment of enormous amounts, and if the authority applying the law did not want to jeopardise the viability of the enterprise with the sanction, the enterprise in question could be granted an alleviation of payment in instalments. This practice is already known in German competition law as the applier of the law resorts to the reduction of the fine only exceptionally, it rather gives permission for payment upon the improvement of business results, or in case it is necessary, it grants a respite of payment.[28] Nevertheless, when compared to the Hungarian example, it is an important step ahead that the withdrawal of all proceeds of the cartel activities is made possible and established as an objective. The possibility of imposing a fine amounting to no more than EUR 1 million against natural persons can also serve as an example for Hungary.

Afterword

Both the Hungarian and the German provisions relating to cartels have faulty elements, however, the German system endeavours to eliminate cartels much more definitely than the Hungarian. The objective of damage prevention, which is reflected in the leniency

[26] Gesetz gegen Wettbewerbsbeschränkungen 81.§ (4), Paragraph (1) of Section 78 of Act LVII of 1996
[27] Gesetz gegen Wettbewerbsbeschränkungen 34.§ (1)-(2)
[28] Bekanntmachung Nr. 38/2006 über die Festsetzung von Geldbußen nach § 81 Abs. 4 Satz 2 des Gesetzes gegen Wettbewerbsbeschränkungen (GWB) gegen Unternehmen und Unternehmensvereinigungen-Bußgeldleitlinien, Section 24

policy and the education of enterprises, as well as the creative circumvention of the fine limit set by the EU prove how advanced the competition environment is.

The German legislators not only "testing" how to hold natural persons responsible but they consistently attack the employees standing behind cartel activities both from the side of competition law and criminal law. The need for criminal-law pursuability developed early and a proper practice of law enforcement has been formed in this relation. Although the German criminal-law regulations are no more capable of laying the foundations for holding persons responsible for cartelling effectively than the Hungarian solution, due to the advanced state of the competition environment and the determined approach of pursuit, the criminal-law sanction does have a place and function in the system of sanctions related to cartelling. Based on the enforcement practice that operates smoothly despite the serious deficiencies shown in connection with the German legal system, we can establish that the basis for changes in a positive direction would be a change of approach; this would give practical force to the necessary regulation modifications.