



# EFFECTIVENESS OF COMPETITION LAW SANCTIONS – THE HUNGARIAN EXPERIENCE

FINDINGS OF THE EMPIRICAL-BASED RESEARCH, PPCU CLRC

Püнкösty, András

Webinar, November 11, 2020.  
Competition Law Research Centre  
Pázmány Péter Catholic University

# SANCTIONS IN GENERAL

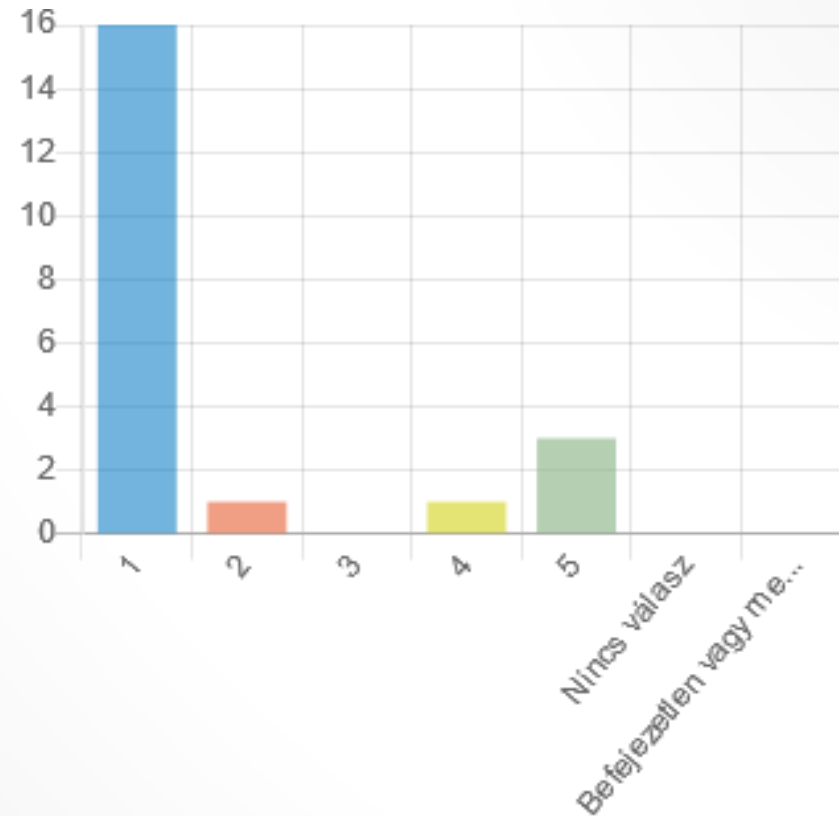
- Aim of sanctioning
- Sources of fining
- Principles of fine setting

# EMPIRICAL-BASED RESEARCH ON FINES

- The methodology
- The structure
  - Sanctions in general
  - Sanctions in practice
  - Further sanctions
- Survey results and findings
- In cooperation with Magyar Versenyjogi Egyesület (the Hungarian branch of the International League of Competition Law)

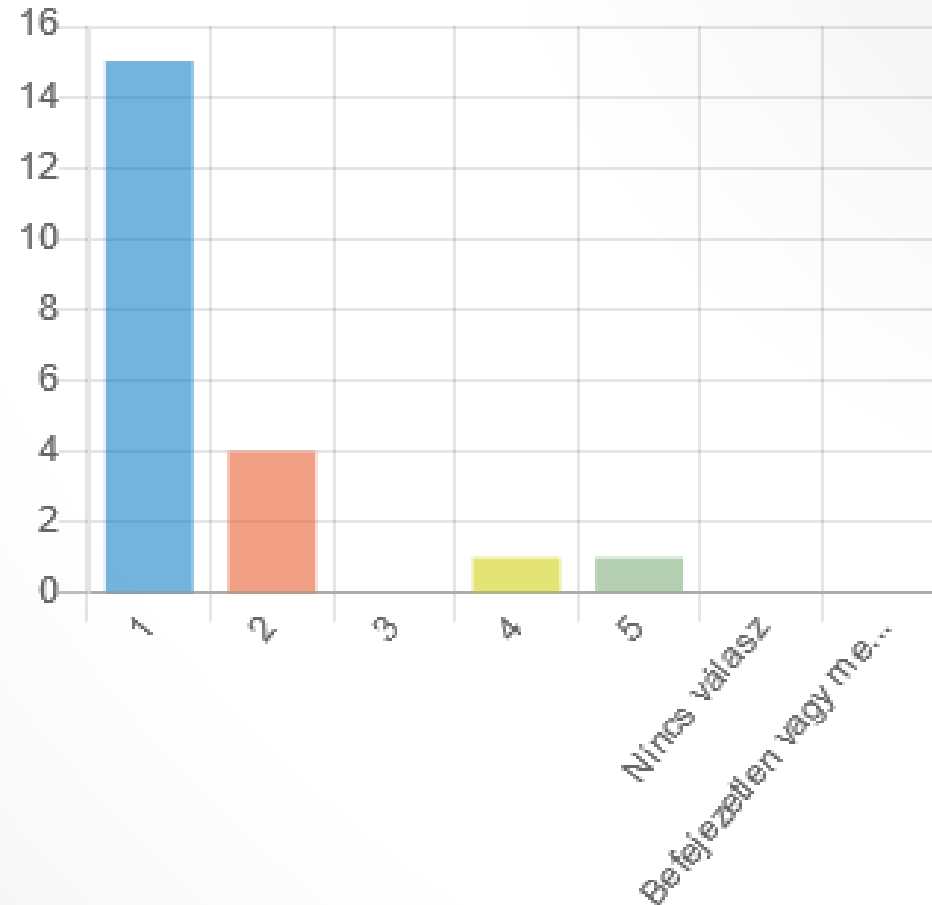
# SANCTIONS IN GENERAL – G1

- How do you grade your knowledge of competition law rules?
- (Please mark your answer in a 1-5 scale where “1” excellent, “2” good, “3” average, “4” satisfactory, and “5” poor.)
- **76% of the respondents estimated themselves as having excellent competition law skills**



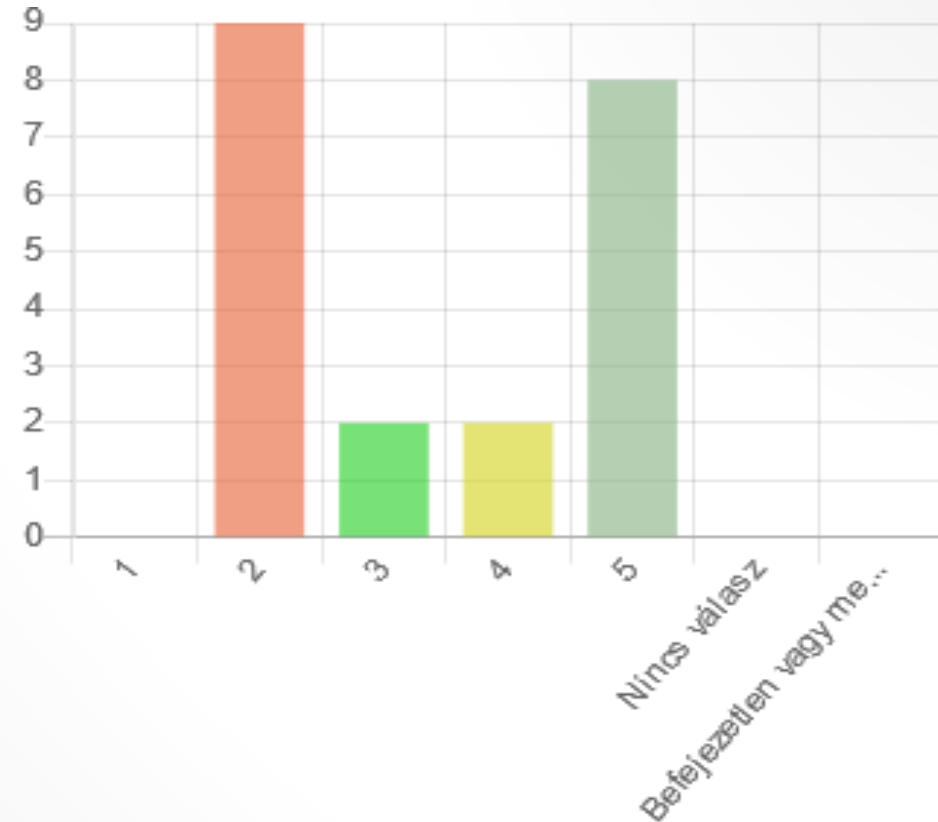
# SANCTIONS IN GENERAL – G2

- To what extent do you think that your company's decision-makers are law-abiding even if lawful action yields to less profit?
- ("1" means law-abiding, "2" rather law-abiding, "3" neutral, "4" less law-abiding, and "5" not law-abiding)
- **71.43% of the respondents consider their company's decision-makers as law-abiding**



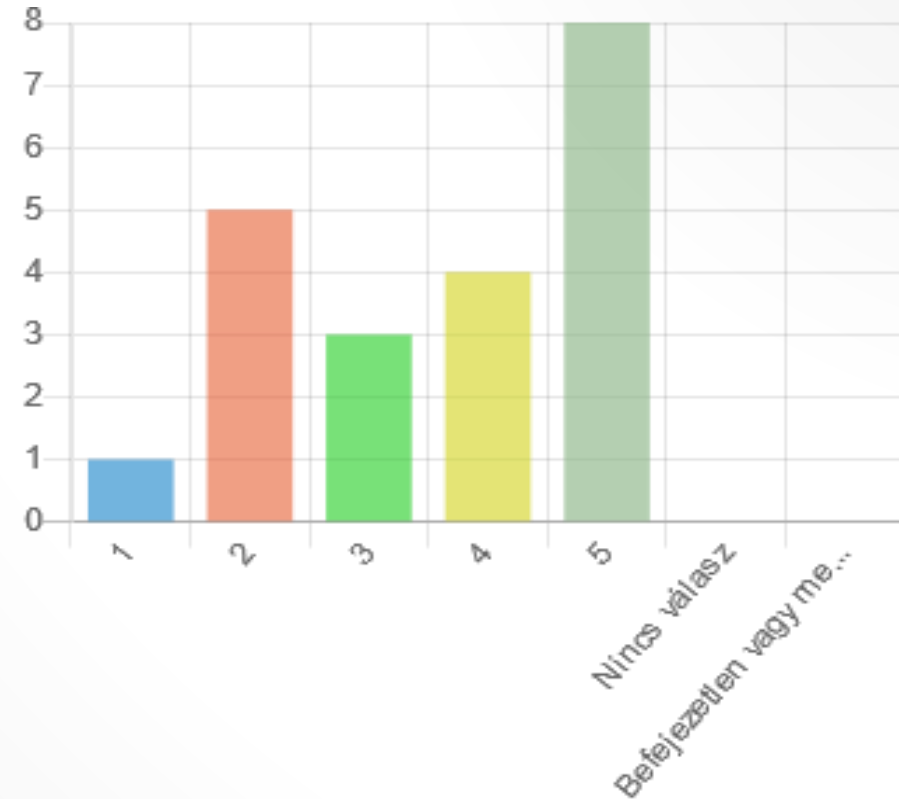
# SANCTIONS IN GENERAL – G3

- To what extent do you think that the competition law sanctions and the application thereof are *effective enough to reach their policy aims* (i.e. general and special deterrence)?
- (“1” means very effective, “2” effective “3” neutral, “4” ineffective, and “5” very ineffective)
- **It is interesting that there is a contradictory pattern:**
  - **42.86%** consider sanctions effective
  - **38.10%** consider them very ineffective



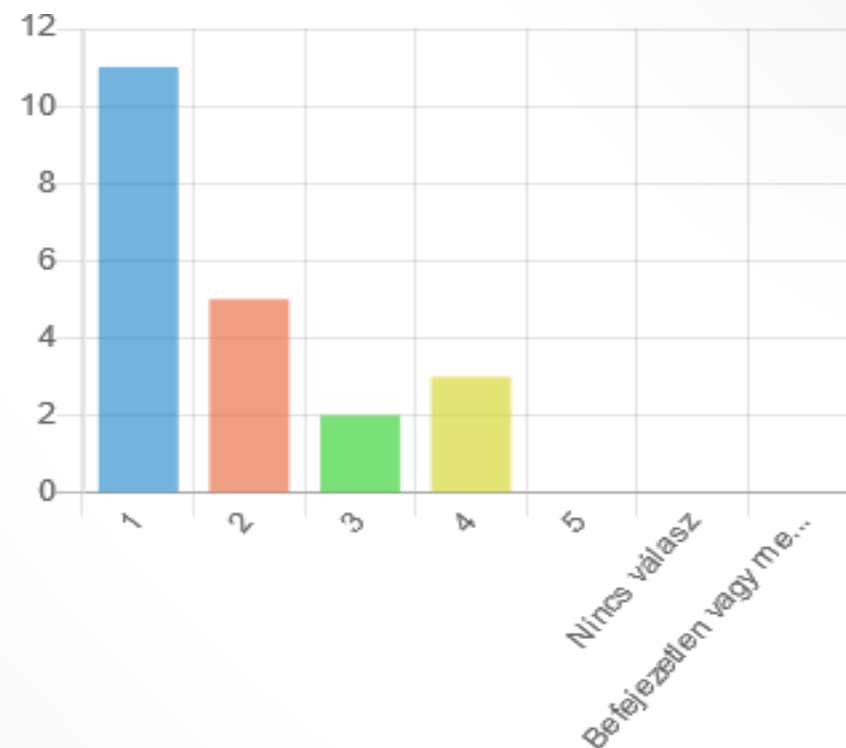
# SANCTIONS IN GENERAL – G4

- In many cases, employees explain that they were not aware of the competition law implications of their conduct and some form of collusion (information sharing, activities of association) are not obvious to them. *Do you agree that employees of your company have imperfect knowledge of what constitutes a cartel?*
- (“1” means agree, “2” rather agree, “3” neutral, “4” rather disagree, and “5” disagree)
- **57.14% disagree, while 28.57% agree with the statement altogether**



# SANCTIONS IN GENERAL – G5

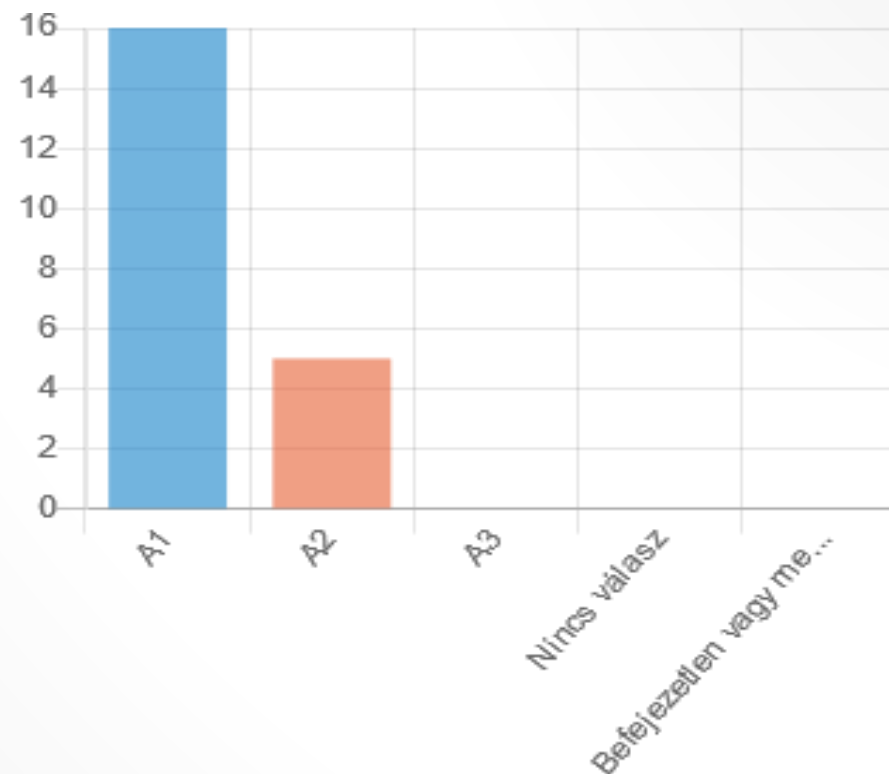
- What degree of transparency does the GVH's Antitrust Fine Notice (Notice no 11/2017) provide?
- ("1" means transparent, "2" rather transparent, "3" neutral, "4" rather obscure, and "5" obscure)
- **76.19% consider the Antitrust Fine Notice as transparent**





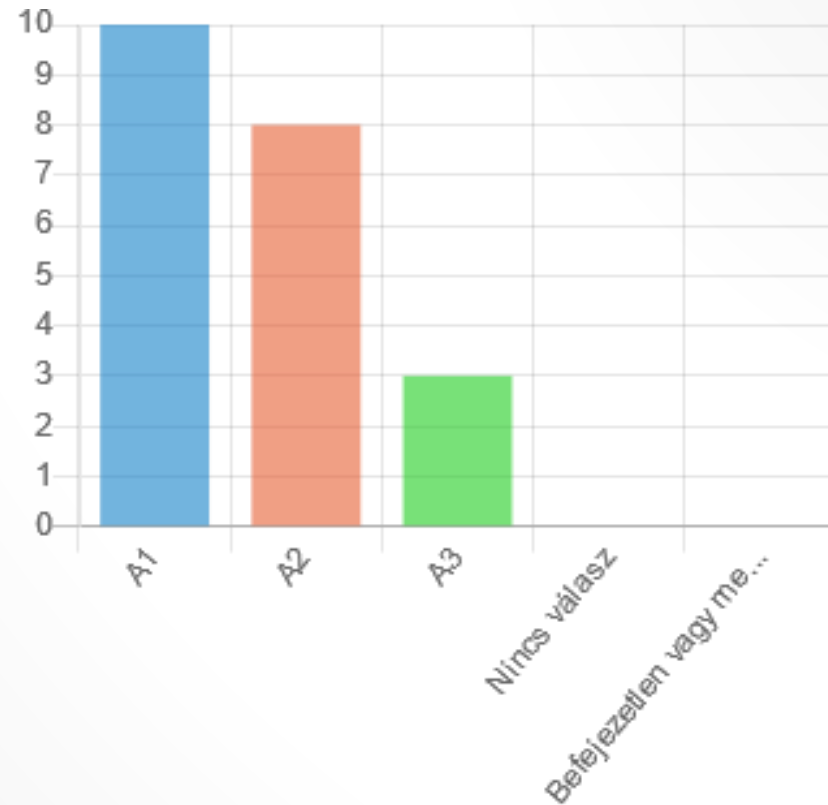
# SANCTIONS IN GENERAL – G6

- Do you think that the application of the Antitrust Fine Notice by the GVH makes the competition law sanctions predictive in Hungary?
- (Yes./No./Don't know. No answer.)
- **76.19% think that applying the antitrust sanctions are predictive in Hungary**



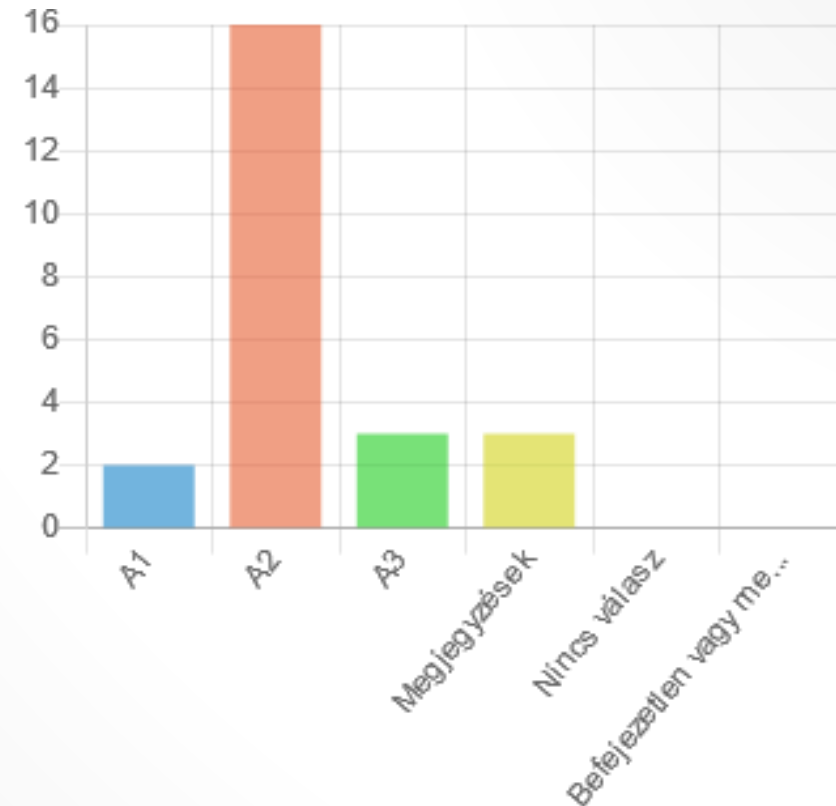
# SANCTIONS IN GENERAL – G7

- Do you agree that a reliable predictive sanctioning regime (i.e. the transparent manner of setting fines) may also lose its deterrent effect by reducing its unanticipated nature?
- **47.62% think that a predictive sanctioning regime may lose its deterrent effect**



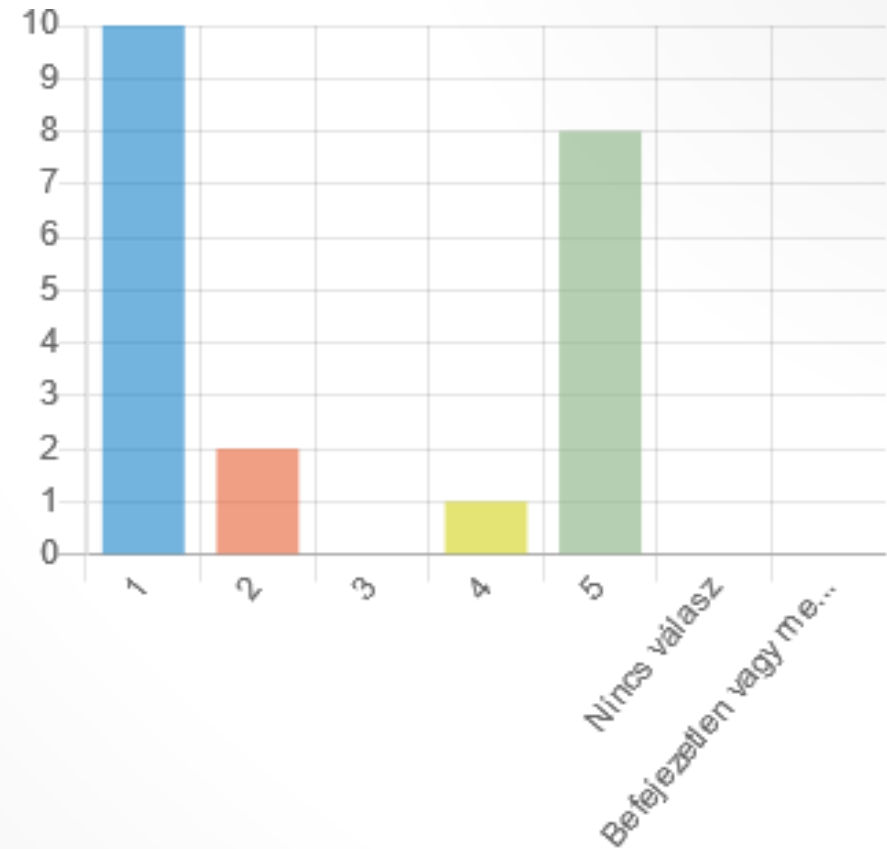
# SANCTIONS IN GENERAL - G8

- Do you have any experience/knowledge when your company made any cost/benefit analysis, even in a simplified manner, regarding the possible sanctions before entering into an unlawful cartel?
- Honest answers!
- **9.52% experienced cost/benefit analysis already**



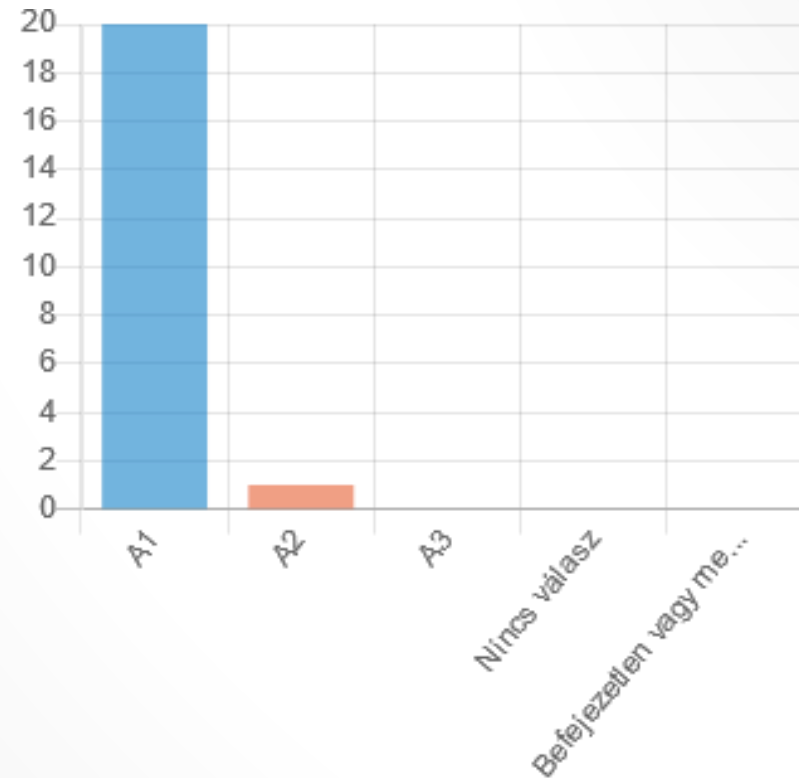
# SANCTIONS IN GENERAL – G9

- Respect for competition law may strongly be related to the general rule of law situation of the country.
- (“1” means agree, “2” rather agree, “3” neutral, “4” rather disagree, and “5” disagree)
- **Divergent opinions on the relationship between the rule of law situation and market behaviour**



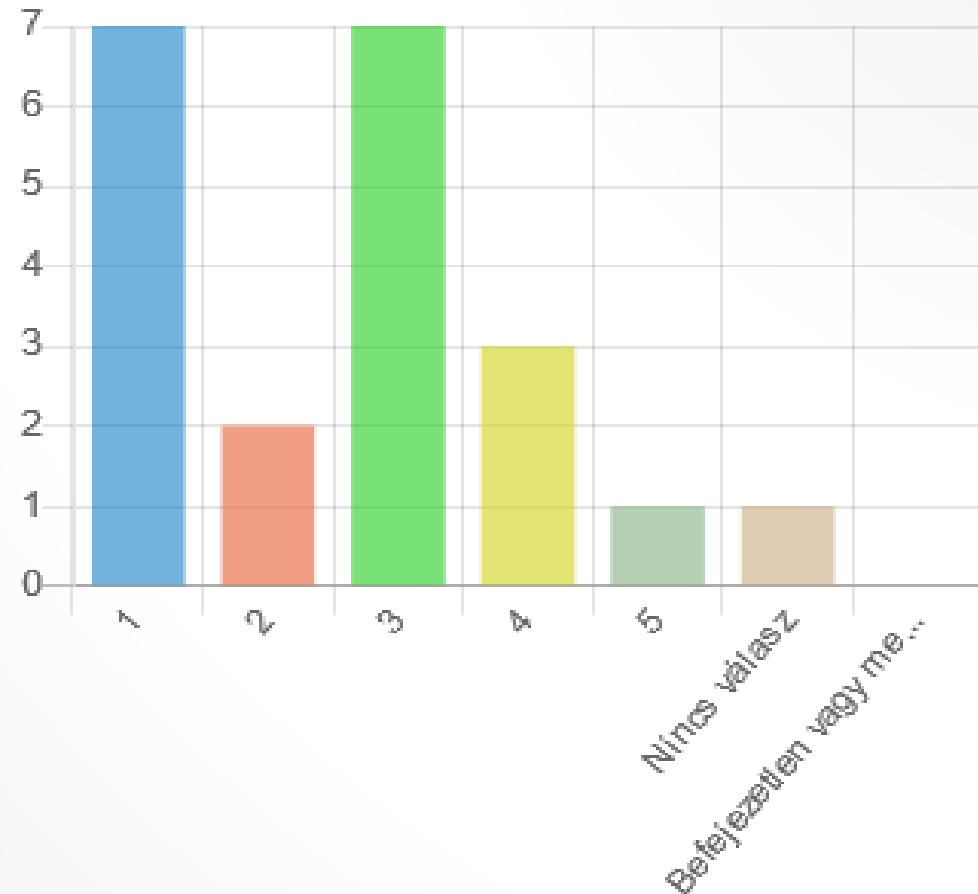
# SANCTIONS IN GENERAL – G10

- Do you agree that intense media activity of a competition authority increases awareness of the importance of competition rules, and contribute to the general deterrence?
- **95.24% consider that intense media activity is essential**



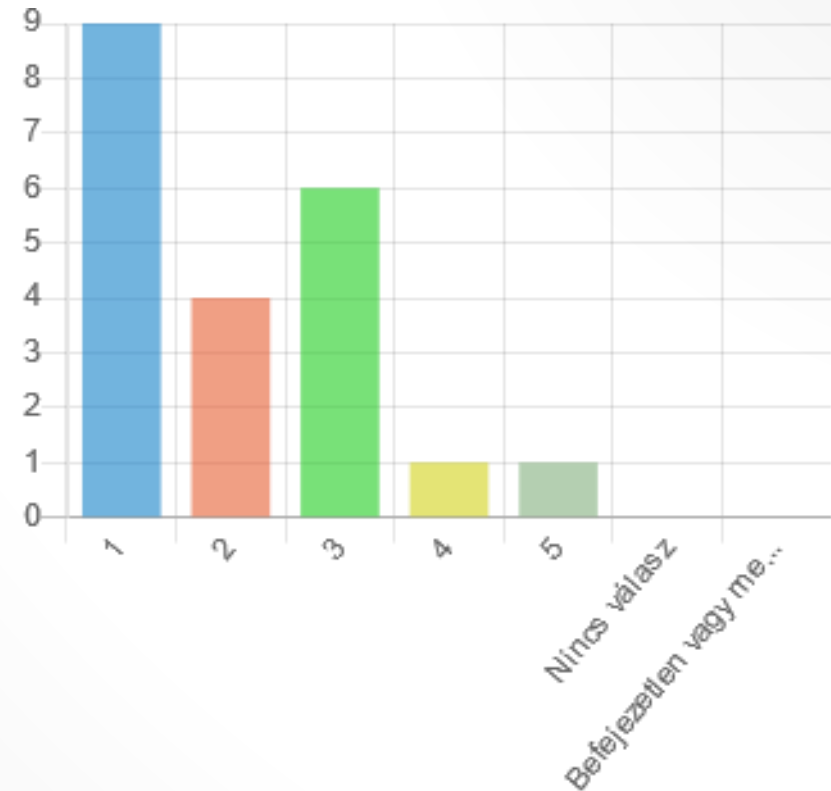
# SANCTIONS IN PRACTICE – P1A

- Do you think that the GVH is well equipped to enforce competition rules, or is there is a need for improvement in the following areas: **sufficient number of staff?**
- (“1” means very good standard, “2” good standard, “3” average standard, “4” poor standard, and “5” very poor standard)
- **33.33% estimate that there is a very good standard as to sufficiency of staff**



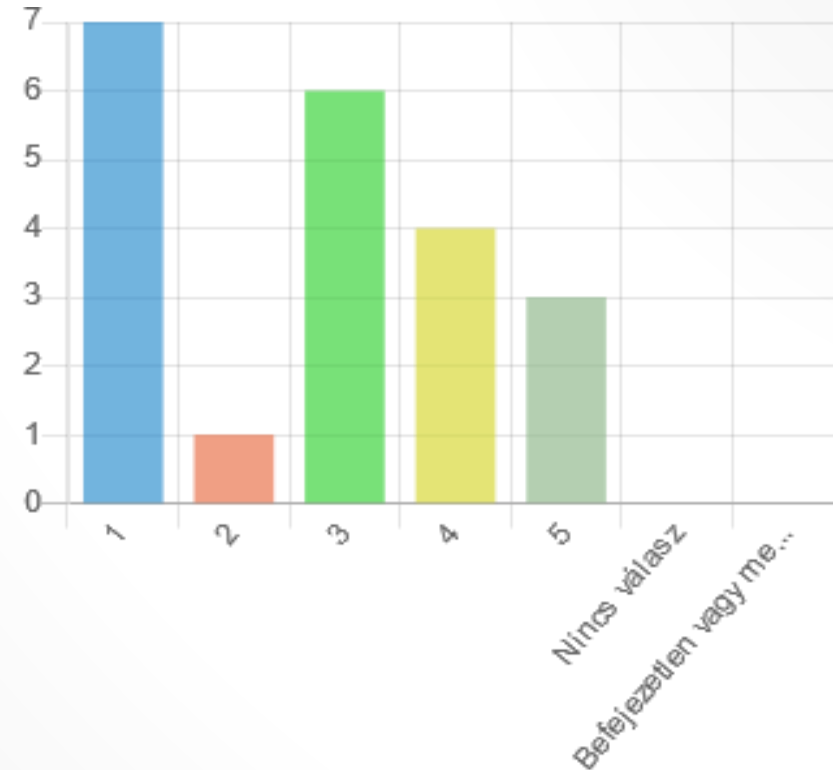
# SANCTIONS IN PRACTICE – P1B

- Do you think that the GVH is well equipped to enforce competition rules, or is there a need for improvement in the following areas: **skilled decision-makers**?
- **61.90%** perceive that GVH's decision-makers skills are above the average standard



# SANCTIONS IN PRACTICE – P1C

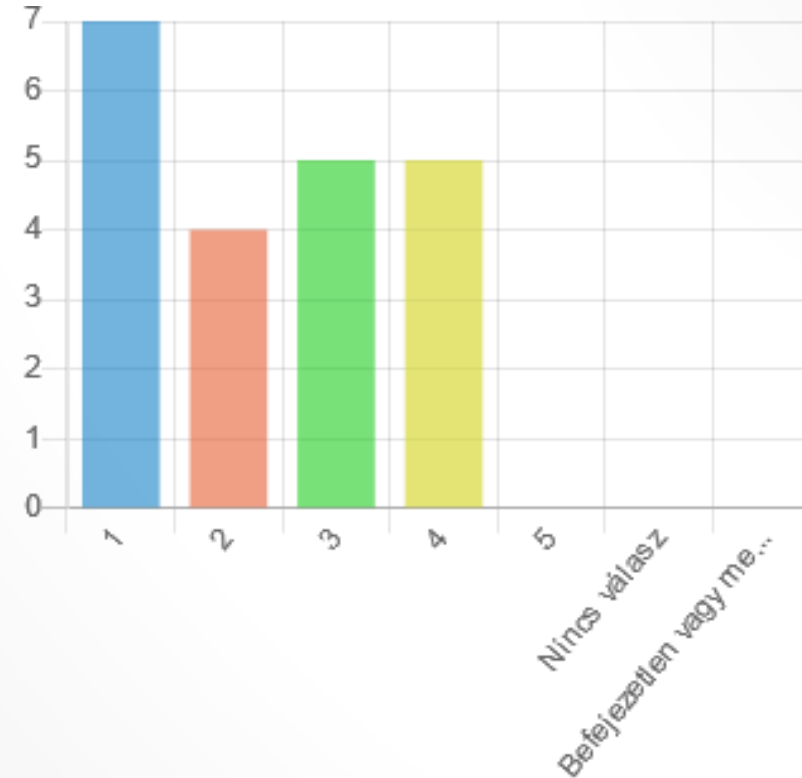
- Do you think that the GVH is well equipped to enforce competition rules in the following areas: ***independence from business and politics?***
- **Evenly distributed responses regarding the independence of the GVH from business and politics**





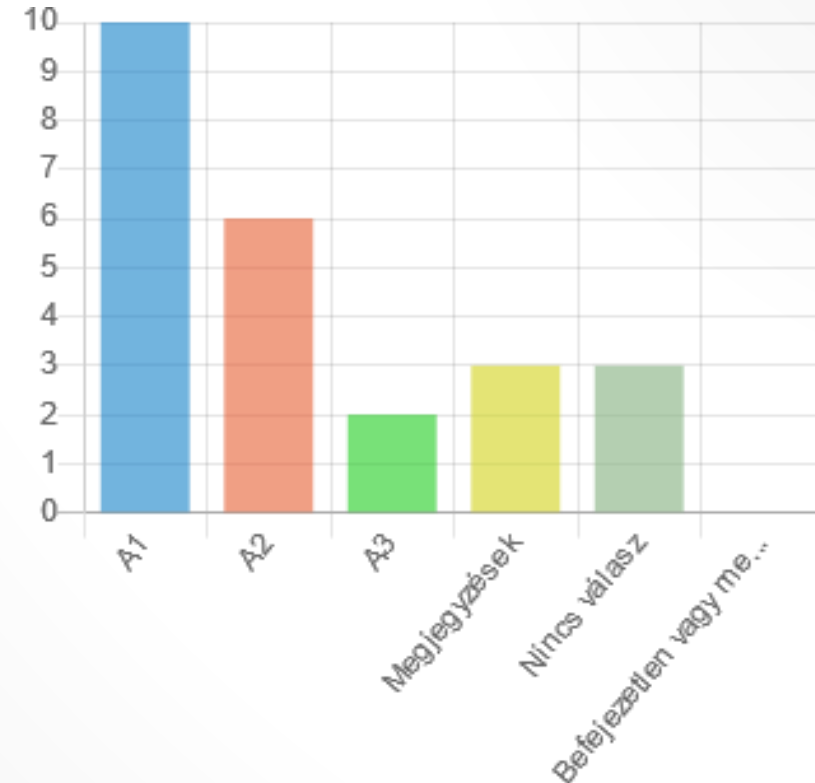
# SANCTIONS IN PRACTICE – P1 D

- Do you think that the GVH is well equipped to enforce competition rules in the following areas: **timely interventions?**
- **33.33%** estimate a very good standard in timely interventions



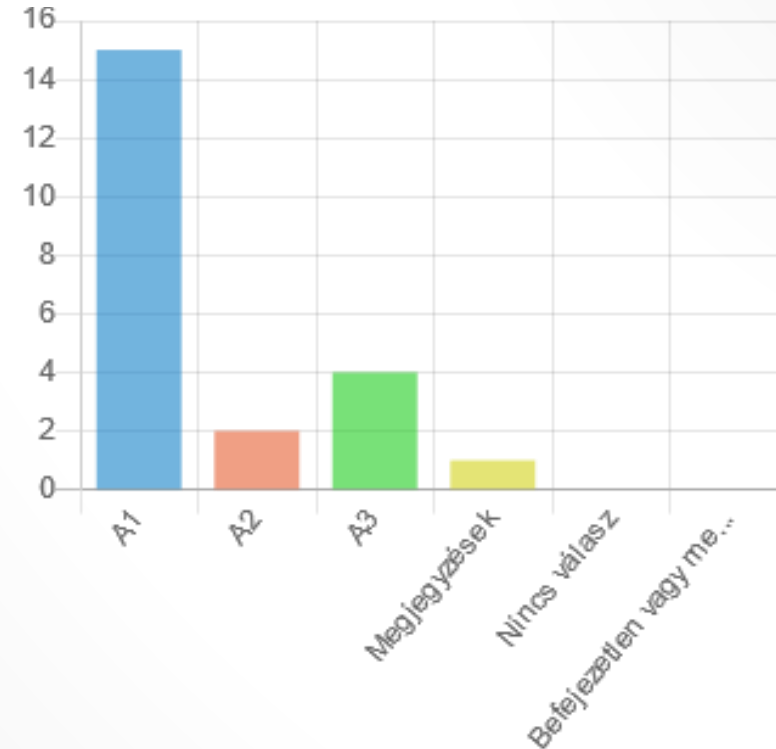
# SANCTIONS IN PRACTICE – P2

- Do you think that the GVH's fines in cartel cases are able to deter the companies from cartel activity effectively?
- (Yes./No./Don't know. No answer.)
- **47.62% perceive that the GVH's fine in cartel cases deter companies effectively**



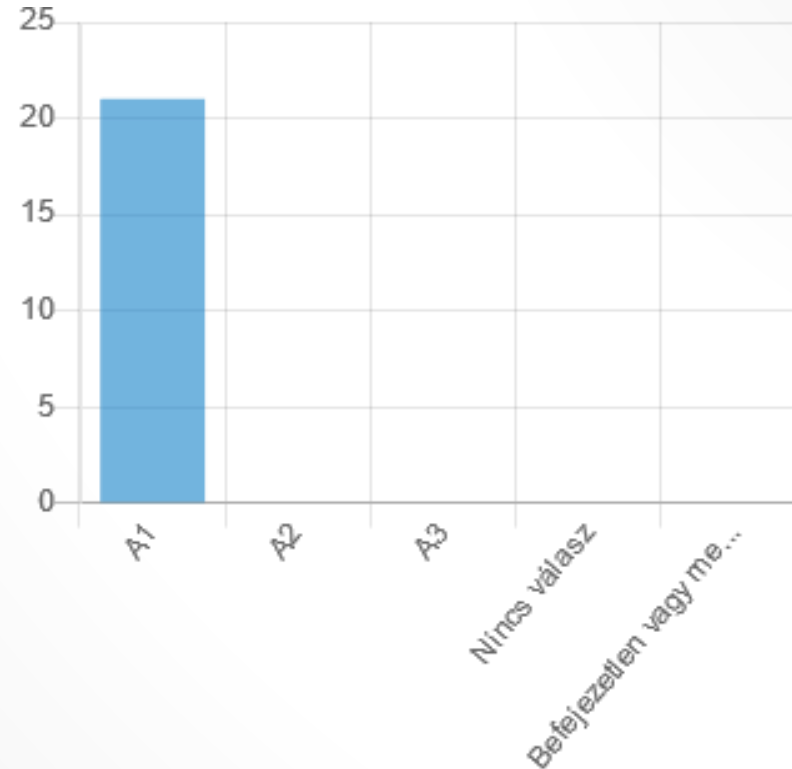
# SANCTIONS IN PRACTICE – P3

- Do you think that settlement procedure contributes to the goals of effective sanctioning (i.e. through adopting a more timely sanctioning decision, even at the expense of a discounted fine)?
- (Yes./No./Don't know. No answer.)
- **71.43% think that the settlement procedure contributes to effective sanctioning**



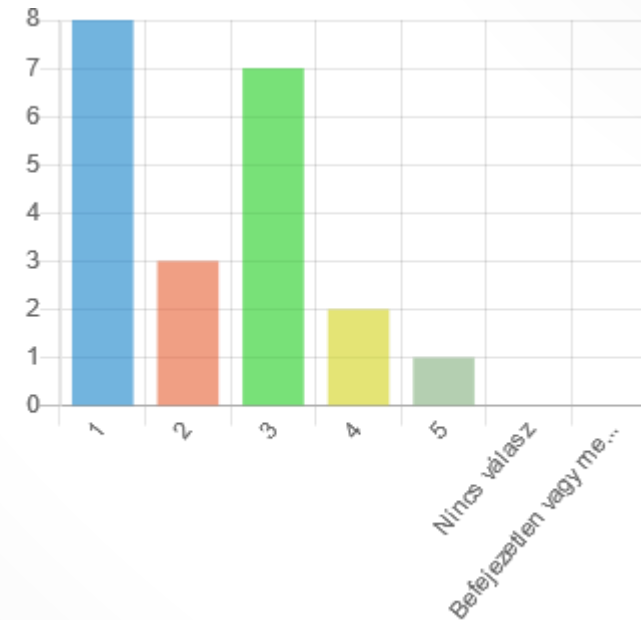
# SANCTIONS IN PRACTICE – P4

- Do you have any experience with a competition law sanction that changed the behaviour of a company making it more law-abiding?
- **All the respondents already experienced that competition law sanction made a company more law-abiding**



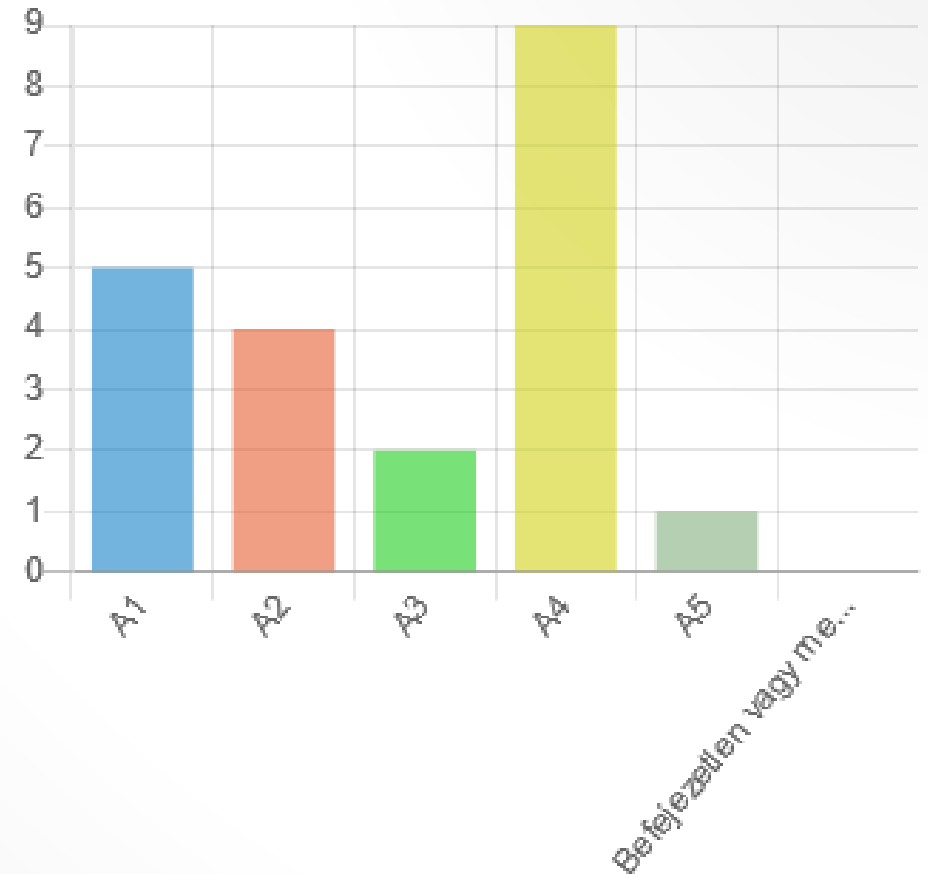
# SANCTIONS IN PRACTICE – P5

- To what extent in your opinion, do competition law sanctions affect the reputation of the company negatively?
- (“1” means very serious negative effect, “2” serious negative effect, “3” considerable negative effect, “4” some negative effect, and “5” no negative effect)
- **38.10% consider that competition law sanction has a very serious negative effect on the company reputation**



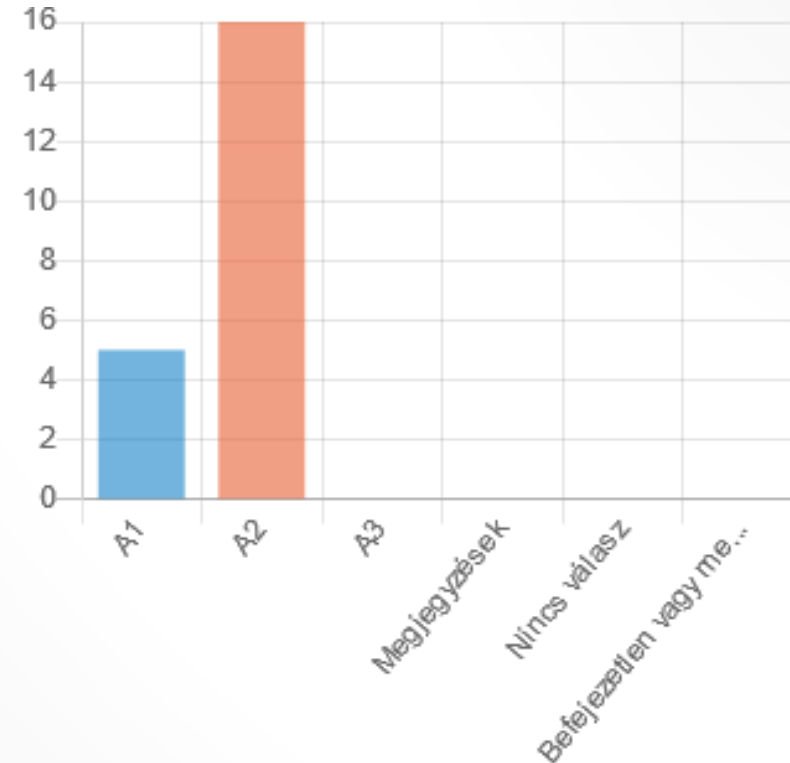
# SANCTIONS IN PRACTICE – P6

- In your opinion, which of these competition law breaches is considered more morally wrong? (Please, put it in order from the most morally wrong (no. 1) to the least morally wrong.)
- Price cartel price cartel (A1) - information exchange about future price increases (A2) - charging exploitative prices to consumers (A3) - charging low prices to drive out a competitor (A4) bid-rigging during public procurement (A5)
- **42.86% consider that charging low prices to drive out a competitor is the most morally wrong infringement**



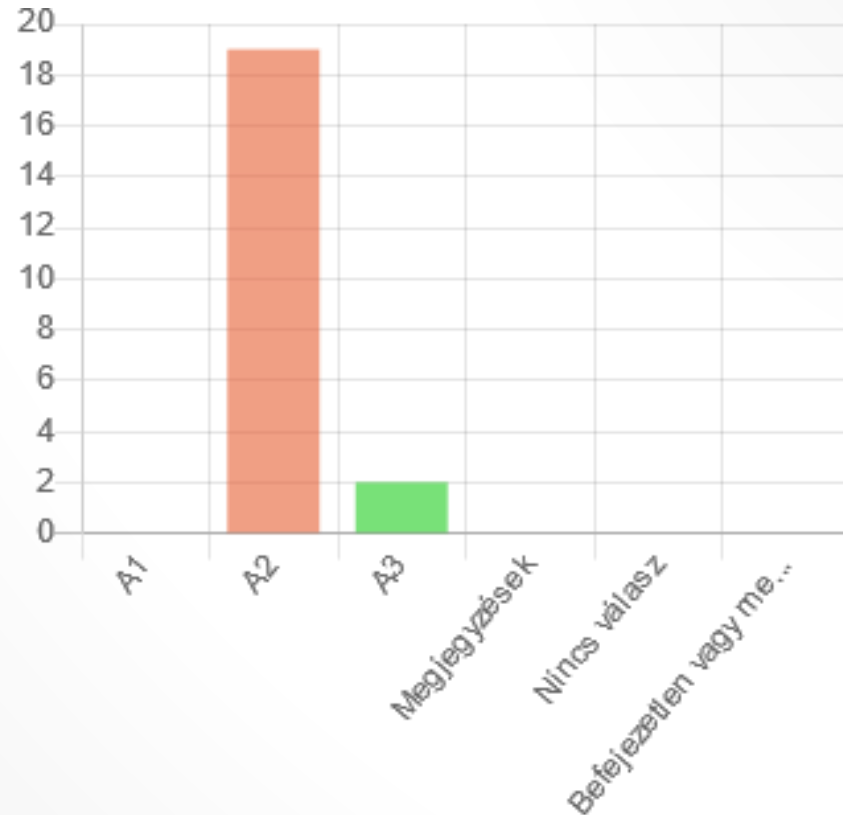
# SANCTIONS IN PRACTICE – P7

- Do you have any experience with follow-on damage actions used in practice so far?
- **Limited experience with private law enforcement so far (23.81%)**



# SANCTIONS IN PRACTICE – P8

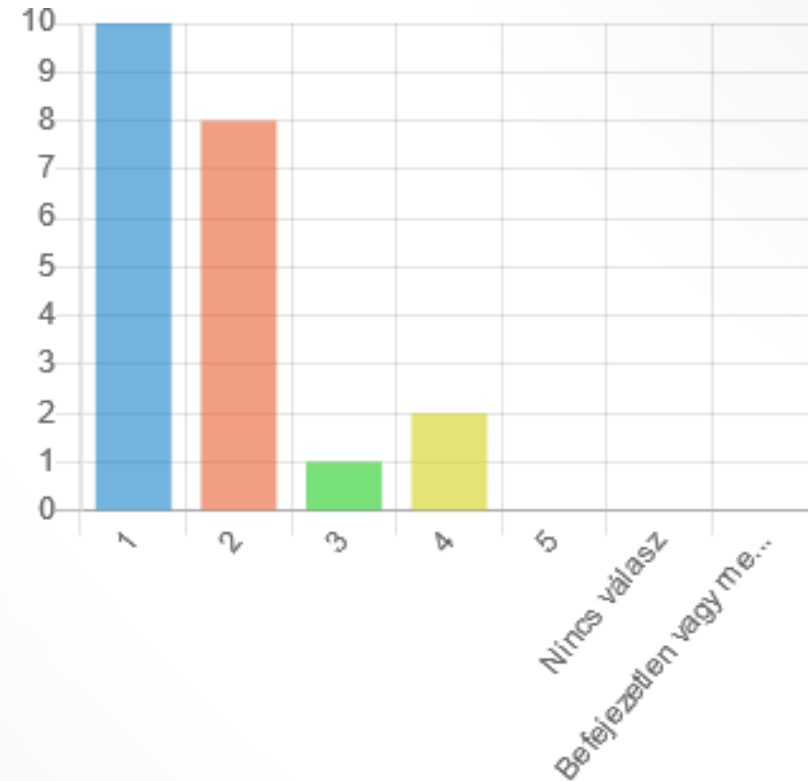
- Could you report about any litigation where damage was awarded to injured parties so far?
- **No successful damage claim reported so far**





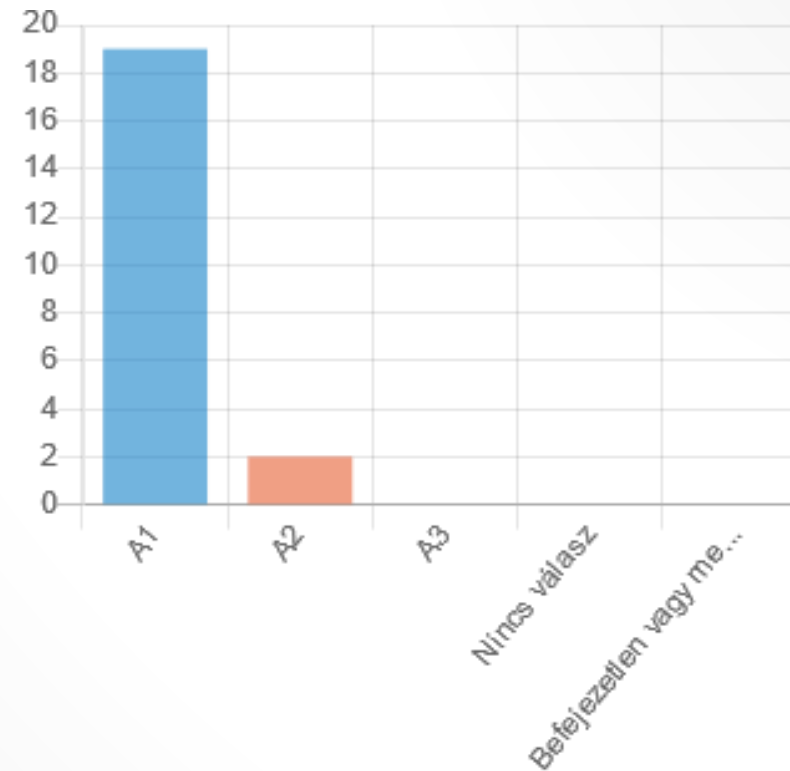
# SANCTIONS IN PRACTICE – P9

- To what extent do you think that the deterrent effect of the exclusion of a cartel participant from the public procurement procedure prevails?
- (“1” means very effective, “2” effective “3” neutral, “4” ineffective, and “5” very ineffective)
- **85.71% recognize the exclusion from public procurement as an effective/very effective deterrent**



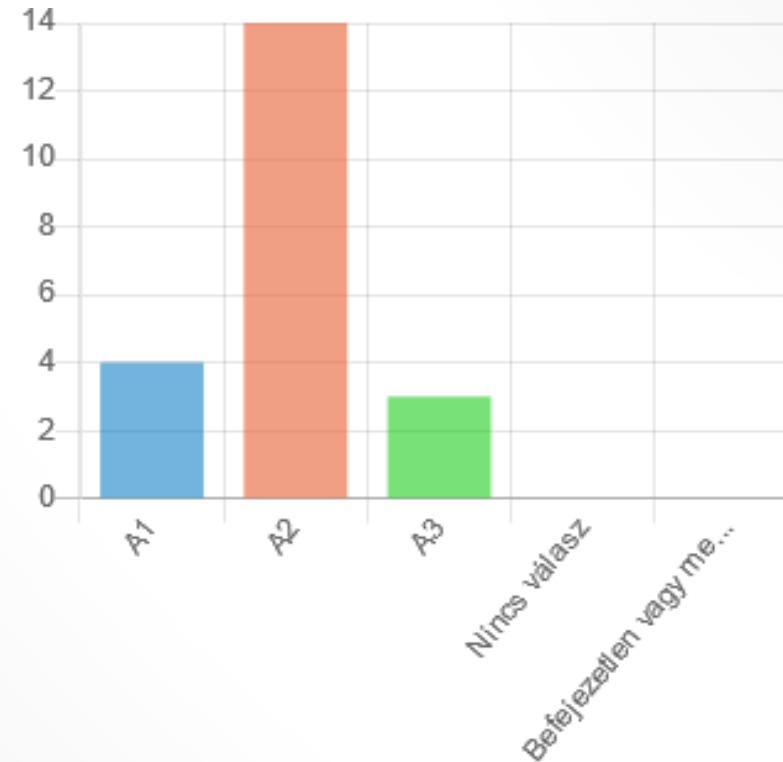
# SANCTIONS IN PRACTICE – P10

- Do you consider the exclusion of the cartel participant from the public procurement procedure as a fair sanction?
- **90.48% think of the exclusion of a cartel member from public procurements as a fair sanction**



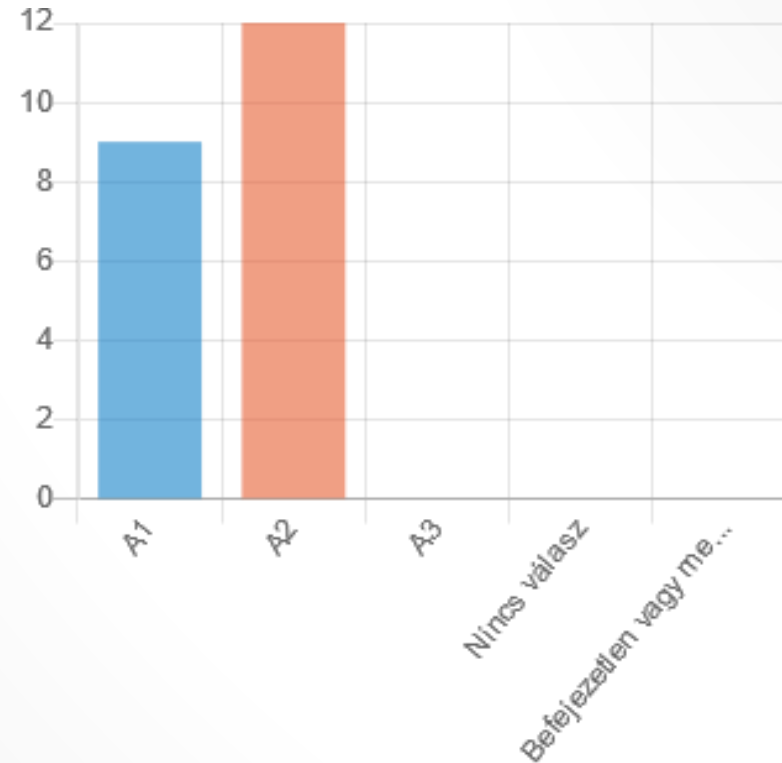
# SANCTIONS IN PRACTICE – P11

- Do you have any knowledge or awareness of any hint that the mere possibility of exclusion from public procurement deterred a company from cartel activity?
- Yes. (A1)/No. (A2)/I don't know./No answer. (A3)
- **19.05% has an actual experience where the mere possibility of being excluded from public procurement deterred cartel activity**



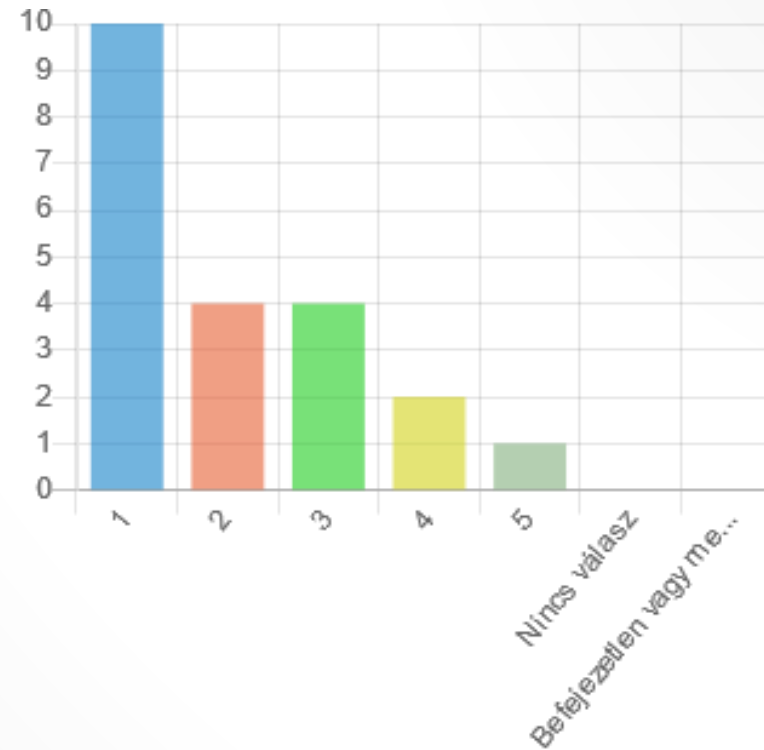
# FURTHER SANCTIONS – F1

- Have you ever experienced competition law investigation against your company/client?
- **42.86% of the respondents already experienced competition law investigation**



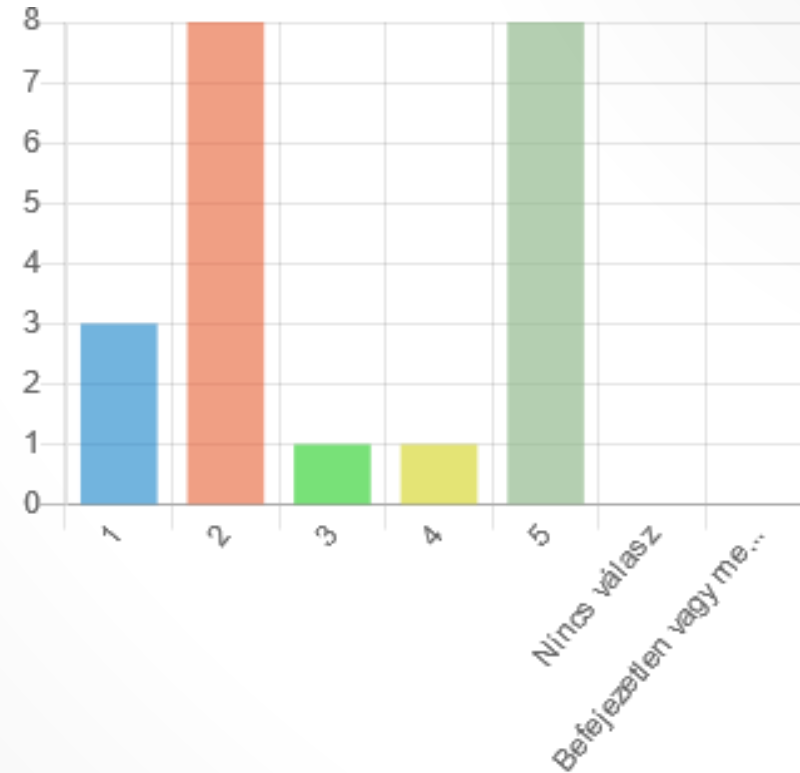
# FURTHER SANCTIONS – F2

- Do you agree with the opinion that the very existence of a burdensome competition law investigation can in itself deter companies from unlawful actions?
- (“1” means agree, “2” rather agree “3” neutral, “4” rather disagree, and “5” disagree)
- **66.67% see competition law investigations as a tool of deterrence in itself**



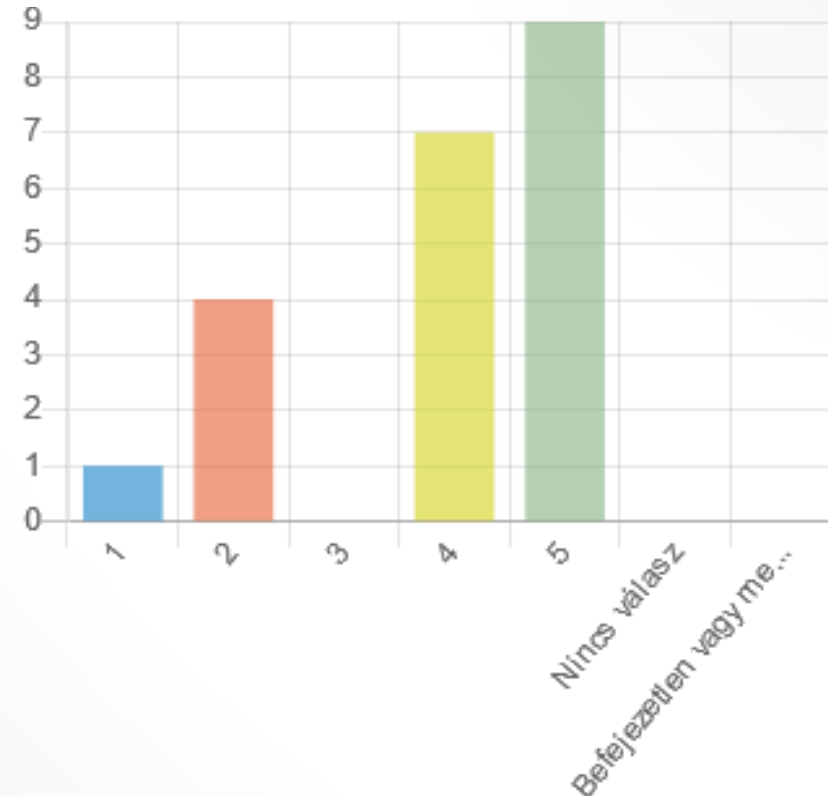
# FURTHER SANCTIONS – F3

- Do you agree that law enforcers should consider the company's structure (the knowledge of the board) more seriously before imposing a sanction?
- ("1" means agree, "2" rather agree, "3" neutral, "4" rather disagree, and "5" disagree)
- **No clear opinion on whether company structure should be taken into account more seriously in sanctioning**



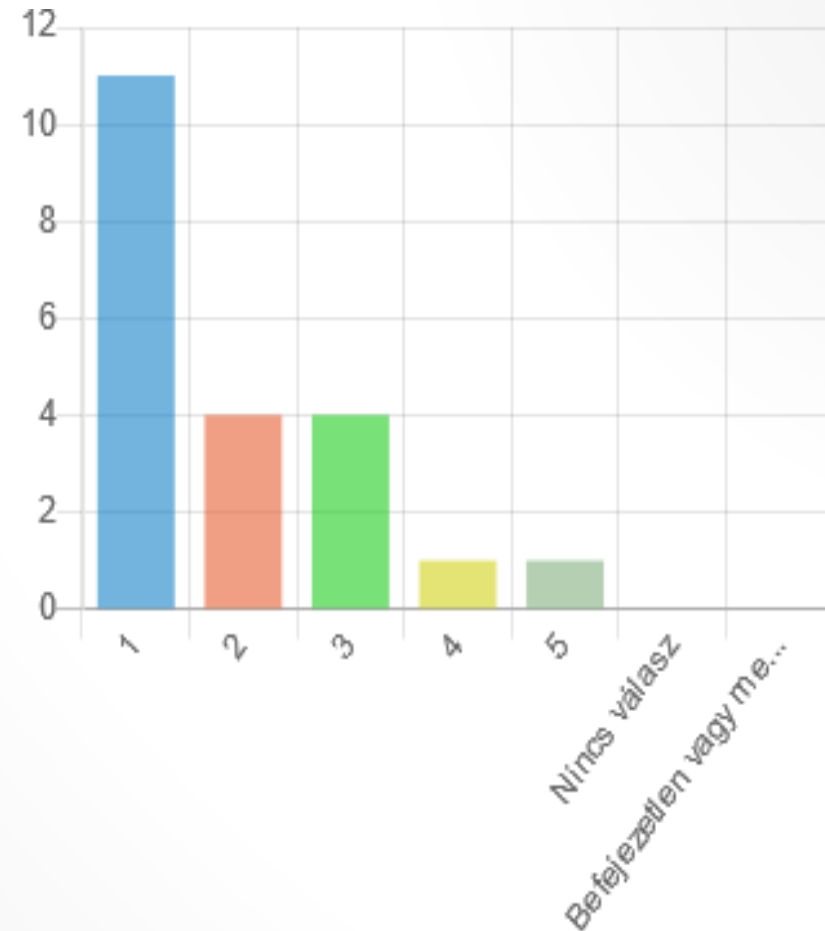
# FURTHER SANCTIONS – F4

- Closing a case with commitments may change the conduct of the targeted company. Still, it may send a message that one does not have to take competition prohibitions seriously, since even if you are caught, you can negotiate a suitable remedy. To what extent do you agree with this?
- **76.19% has a pro commitment approach**



# FURTHER SANCTIONS – F5

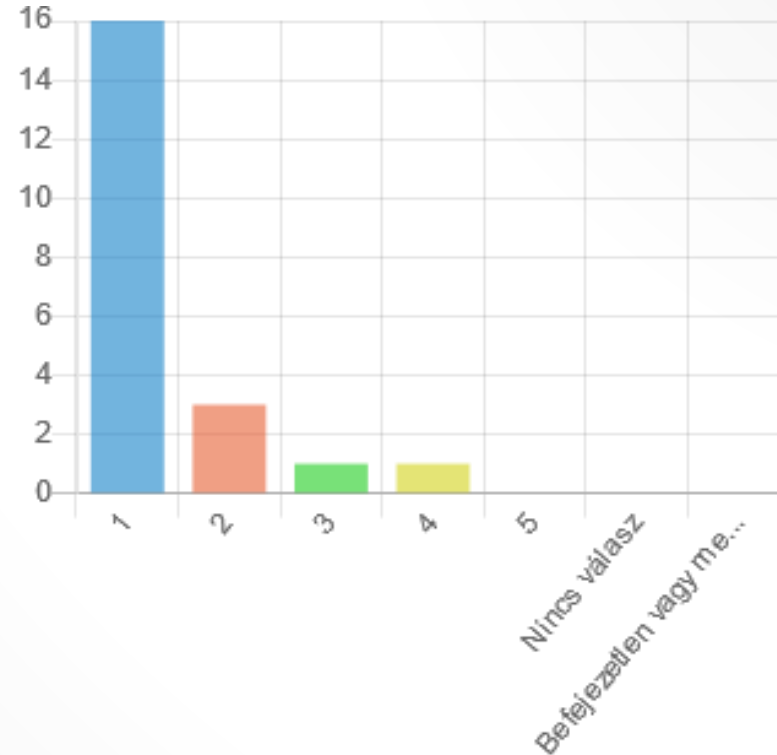
- If your company was involved in a price cartel arrangement, what do you think is the likelihood that the GVH or the EU Commission would discover the cartel within 3 years?
- (“1” means less than 10% of likelihood, “2” between 10-20%, “3” between 20-30%, “4” between 40-50%, and “5” more than 50% of likelihood)
- **52.38% think there is less than 10% likelihood of discovering a cartel activity in three years**





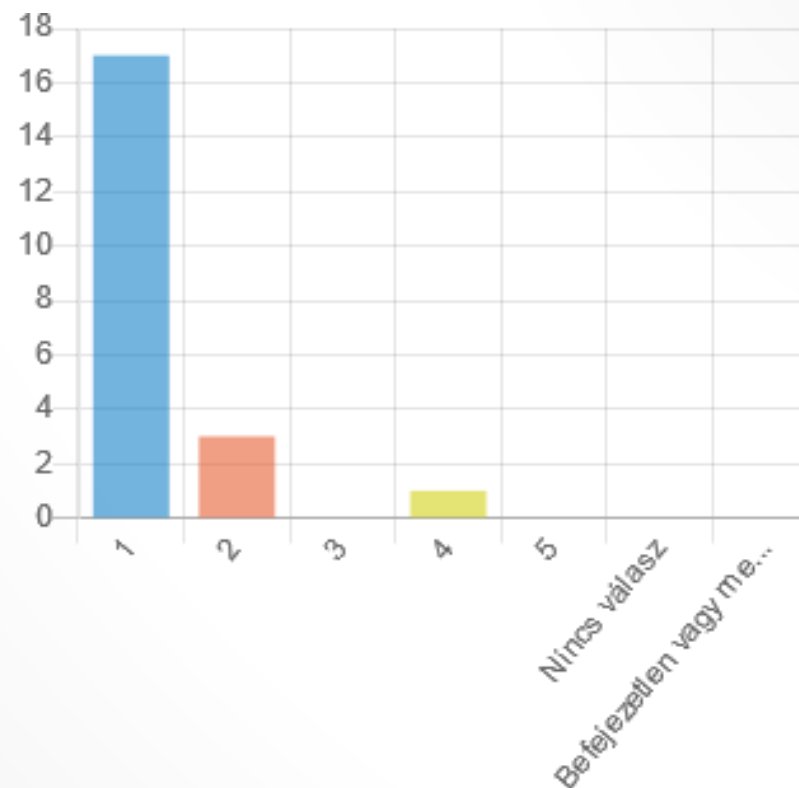
# FURTHER SANCTIONS – F6

- To what extent do you agree that the introduction of individual monetary sanctions would increase deterrence?
- **Clear support for introducing individual monetary sanctions at 90.48%**



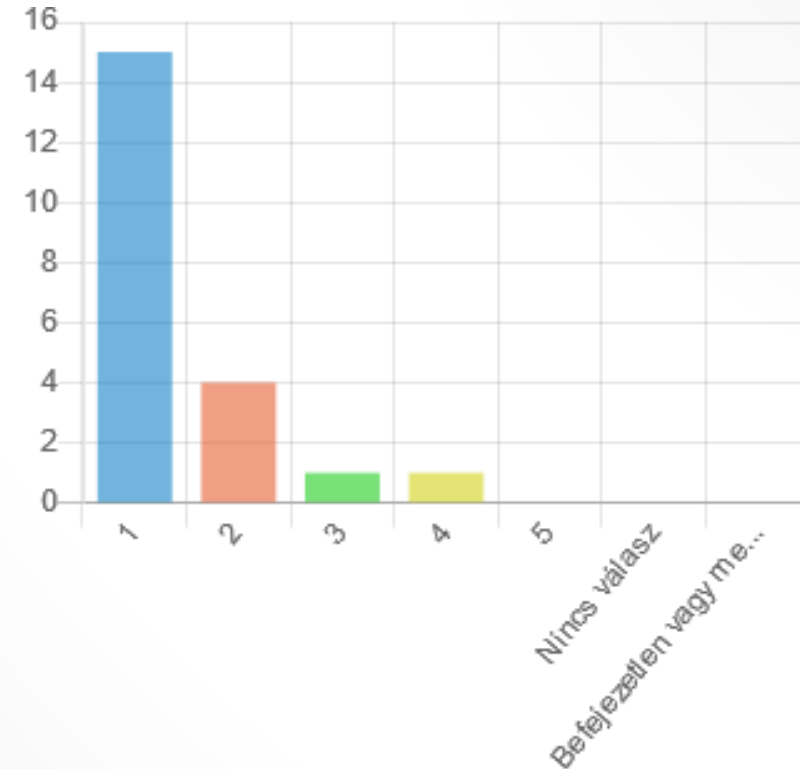
# FURTHER SANCTIONS – F7

- To what extent do you agree that the introduction of disqualification order against individuals to conduct any business activity would increase deterrence?
- **Unequivocal support for introducing disqualification order against individuals at 95.24%**



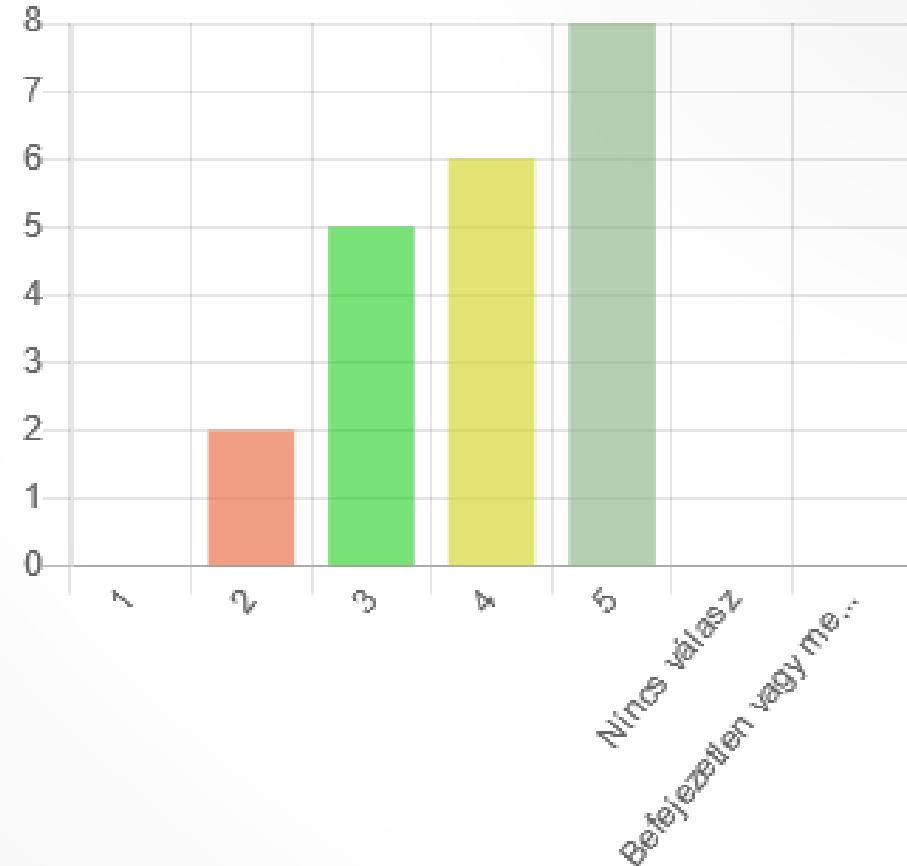
# FURTHER SANCTIONS – F8

- To what extent do you agree that the introduction of a general jail sentence (i.e. a general sanction for hard core breaches) of up to 5 years would increase deterrence?
- **90.48% agree that general jail sentence would increase deterrence**



# FURTHER SANCTIONS – F9

- To what extent do you agree with the alternative approach that the prevailing goals of competition rules (i.e. individual and general deterrence) are too ambitious, maybe improperly transplanted from a criminal law context into an administrative one?
- **No significant support of an alternative approach on sanctioning (9.52% )**





# ANY QUESTIONS?

Püнкösty, András  
[punkosty.andras@jak.ppke.hu](mailto:punkosty.andras@jak.ppke.hu)