

Mid-term digital consumer protection strategy

1. Strategy toolbox

1. In order to ensure more efficient actions, the Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter GVH) finds it appropriate to issue mid-term guidelines on a cyclical basis, which contain operative considerations of a strategic nature that fit to the GVH's mid-term strategy plan. Hence, these guidelines are in line with the principles of the GVH's mid-term strategy plan (e.g. conscious and coherent actions, targeted investigations, transparent and predictable operations, effective external communication).
2. The content of the present evaluation has been formulated based on the past experiences of the GVH and on certain market and international law enforcement tendencies.
3. The aim of the present strategy is to explore the necessity and justification (possibility) of certain actions of the authority. Furthermore, the present strategy seeks to determine the aims and instruments of these actions.
4. Based on the GVH's experiences, in order to effectively protect the public interest, the actions shall be based on various aims and different resources.
5. The actions primarily relate to competition supervision proceedings (e.g. the initiation of several competition supervision proceeding at the same time dealing with the same topic). However, other types of actions may also facilitate the achievement of the aim of the strategy. Consequently, the use of active and intrusive actions other than those used in competition proceedings may sometimes be justified (e.g. competition advocacy development, the raising of consumer awareness and the issuance of soft law instruments, such as communications and guidelines). Furthermore, actions taken after the conclusion of proceedings may also be justified (e.g. criminal charges, the initiation of the proceedings of the commercial court, the public procurement authority or the tax authority, litigation or amicus curiae involvement) including the press releases relating to competition supervision proceedings.
6. According to the GVH (i) the prevention of competition law infringements (e.g. via educational means, incentives for compliance, competition advocacy) can be as effective as (ii) the investigation of infringements (e.g. via market research, market analysis, sectorial inquiry, international experiences, trends, tendencies, seeps) and as (iii) reparation (e.g. commitments in a competition supervision proceeding).
7. Furthermore, when dealing with proceedings related to digital markets, it is not only up-to-date technology that is required, but also the use of novel and new communication channels and methods, both during and after the proceedings. In general authorities shall make use of social media networks. Furthermore, the GVH shall communicate in an understandable manner with its target audience. Where possible, the GVH shall use its LinkedIn or Facebook accounts for communication purposes.

2. Importance of the digital market

8. According to the GVH, the dynamics of affected markets, the special features of supply and demand, and in particular the unique characteristics of consumers' decisions, which differ from other markets, justify the existence of an autonomous digital market strategy.

9. In unequal competition relations, consumers are vulnerable. Such competition relations are characterised by economic asymmetry, where the ability of consumers to enforce their interests is weaker and undertakings have greater legal and professional knowledge.

10. The widespread and increased use of artificial intelligence, deep learning and algorithms is resulting in far reaching changes in the commercial practices of undertakings, as these tools are partly taking over the decision process of individuals. Competition authorities must prepare themselves to deal with the new challenges posed by platform-based digital markets, where the most critical factor is the great speed with which decision making takes places. In the digital world it is algorithms that decide the products and prices that undertakings provide to consumers, or how self-driving cars work. The GVH welcomes the improvements that digitalisation has provided for consumers in the form of, for example, the availability of a wider range of products, lower prices, more convenient solutions, improved consumer welfare, and the creation of incentives for undertakings to encourage consumers to shop online

11. Digitalisation is especially attractive to consumers as it enables them to have a custom-made, private shopping-experience. According to the GVH, it is necessary to ensure that undertakings do not use algorithms or other forms of artificial intelligence at consumers' expense. In other words, steps must be taken to ensure that consumers who lack digital knowledge will not suffer disadvantages as a result of the existence of informational differences. Nevertheless, it is also important that undertakings are able to innovate whilst complying with the law. On the other hand, the executive bodies should be aware that as regards to digital markets, the economic environment, business models and consumer preferences differ from those of traditional markets.

12. According to the data contained in the OECD Digital Economic Outlook 2017, 57% of consumers in Hungary have concerns about online activities being recorded to provide tailored advertising. In comparison, this percentage in the 28 EU countries is 61%, while in Germany alone it is 82%.¹

13. When dealing with digital markets, the GVH shall apply its practice that it has acquired over its twenty years of operation. For instance, its practice relating to consumers' freedom of choice and informed transactional decision making shall be applied to transactions, regardless of the nature of the goods concerned; however, the new challenges arising from certain markets and communication platforms will need to be addressed via new approaches and forms of action. To deal with these challenges, the consumer protection strategy has been formulated to enable the more efficient, faster and focused handling of the already existing or potential infringements of consumer interests

14. After examining the publicly available priorities², previous proceedings³, market analyses⁴ and statements of the heads of the EU competition authorities and consumer protection

¹ <http://www.oecd.org/internet/ieconomy/oecd-digital-economy-outlook-2017-9789264276284-en.htm> (downloaded: 2018.05.08.)

² <http://www.agcm.it/en/newsroom/press-releases/2455-misleading-information-for-collection-and-use-of-data,-investigation-launched-against-facebook.html> (downloaded: 05.10.2018.), or the case of the European Commission on the Google Shopping (39740), or the Android case (40099).

authorities, it is obvious that online and digital markets are becoming the main focus of the authorities.

3. Competition supervision proceedings concerning digital markets

15. From among the tools listed in section 1, the GVH pays particular attention to the competition supervision proceedings and to further activities examining infringements in digital markets, because here the percentage of the latent and the non-obvious infringements is likely to be very high. There exists a large information asymmetry in this field. In particular, information noise, the dynamics of technological development, and the speed and complexity of the services provided make it harder for consumers to identify infringing behaviours.

16. In competition supervision proceedings related to consumer protection, a greater number of proceedings based on various objectives may be justified. These objectives are: the subject matter of the proceeding, consumers' interest, achievable aim and the timeliness of the proceeding. The present section details the rationale behind the GVH's initiation of competition supervision proceedings in the field of consumer protection, in particular, those related to the online and digital market of goods and services.

3.1. Proceedings to encourage compliance

17. These proceedings examine the commercial practices adopted in digital markets, and each year cover a hot topic. Essentially, these are competition supervision proceedings that define and set out the requirements of compliance. Given that these proceedings aim to provide guidance, they are not intended to result in sanctions but rather seek to encourage the modification of market practices in a fast and comprehensive manner.

18. The areas covered by this strategy:

3.1.1. Influencers At the end of 2017 the GVH closed its case concerning three important influencers by the acceptance of commitments. The GVH was of the opinion that while a number of competition supervision procedures could be launched on different markets, given its stance in these types of cases, the public interest could be protected more efficiently through the acceptance of commitments which would provide guidance for different market participants. In this vein, the GVH has published a guidance document based on its observations and international recommendations and guidelines, which provides assistance on how paid content on social media should be indicated.

3.1.2. Wi-Fi assistant services In April 2018 the GVH deemed it an infringement of competition law when an undertaking did not inform consumers about certain significant features of its Wi-Fi assistant function. As a result of the operation of the Wi-Fi assistant function, mobile phones automatically connected to mobile internet networks when the Wi-Fi signal was weak, which resulted in an increased use of mobile data and the possibility of additional costs. The GVH established that the undertaking had pursued an unfair commercial practice, as it had not adequately informed consumers that the Wi-Fi assistant feature was automatically activated at the time that the operating system was installed or updated, despite the fact that based on the characteristics of the platform this would not have been cumbersome.

³ https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2018/01_02_2018_SU_Online_Werbung.html (downloaded: 02.05.2018.)

⁴ See: <https://www.acm.nl/en/publications/acms-key-priorities-2018-and-2019-digital-economy-green-energy-prescription-drug-prices-and-ports> (downloaded: 19.04.2018.); https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701139/AnnualPlan-201819.pdf (downloaded: 19.04.2018.)

3.1.3. Market of online accommodation In October 2016 the GVH initiated proceedings against an undertaking operating on the online accommodation market, as it was suspected of providing consumers with misleading information regarding its prices and charges. The case was closed with the acceptance of the commitments submitted by the undertaking concerned. The GVH required the undertaking to amend and clarify the commitments on several occasions. Ultimately the GVH deemed the commitments as being sufficient to bring the undertaking's behaviour into line with the relevant legal provisions, thereby enabling the public interest to be protected.

3.1.4. False expression of opinions In 2017 the GVH initiated a proceeding in order to investigate the reasons behind a huge increase in the number of followers and likers of an official Facebook page i.e. whether the new likes and followers were bought by the page) and whether this could unfairly influence the decisions of consumers and business partners.

The GVH also investigates the behaviour of economic operators who employ unreal consumer likes.

3.1.5. Online dating services After the so-called ICPEN Sweep in 2018, the GVH announced that it wishes to place greater emphasis on the examination of the commercial practices of the operators of online dating websites. Consequently, the identification of problems stemming from these practices resulted in the initiation of competition supervision proceedings.

3.2. Actions against global actors

19. In digital markets, in a number of cases the circle of consumers concerned surpasses the domestic market: the commercial practices are international and the economic actors are global. These facts have several consequences for the proceedings of the GVH. In particular, it is inevitable that besides paying attention to trends and market developments in its competition supervision proceedings, the GVH takes into account, certain solutions, accomplishments and/or requirements (especially of other Member States and the European Commission).

20. A significant proportion of global platforms give rise to competition issues, and therefore fall within the competence of the GVH. Originally, the GVH only had competence to initiate competition supervision proceedings in relation to services provided in the territory of Hungary. However, based on the harmonised European Consumer Protection Directive and the global presence of the undertakings concerned, the correction of commercial practices in one Member State can influence the general commercial practices of an undertaking, either on a European or on an international level. An effort to be consistent and to comply with the directive, even after taking into account the justifiable differences in certain countries, is expected from undertakings that are committed to fair market behaviour.

21. In a globalised world, large undertakings are in a significantly more advantageous position compared to consumers. Consequently, authorities possessing consumer protection competences must prioritise the facilitation of equal opportunities between consumers and undertakings.

22. The GVH seeks to ensure that its actions, practices, interventions and messages are in line with the rapid development of new business models and commercial practices created by the digital economy. The digital revolution is continuously shaping the operation of the markets and the undertakings. In e-commerce, for instance, undertakings that are able to manage digital transformation can obtain huge profits in a short time. Hence, the exact topics of such proceedings cannot yet be determined.

23. The GVH also has consumer protection competence. Thus, its competence to act on behalf of consumers against anti-competitive behaviour is complementary to its competence to protect consumers' rights from unfair commercial practices. Both competences in this regard enable positive changes to be made on markets where consumers' interests are being infringed. Moreover, it allows the GVH to react to a market change on both of the above-mentioned bases. Consequently, the GVH can more successfully motivate undertakings to change their behaviours.

3.3. Priority-based competition supervision proceedings

24. When defining consumer protection priorities, the ability of the GVH to respond effectively and rapidly to identified unfair commercial practices in the digital goods and services markets is becoming increasingly important. In these markets, early interventions and quickly implemented procedures may be especially important in order to prevent further infringements of the consumers' interests and the spread of unfair practices on the markets.

25. Consequently, when the GVH notices practices with regards to the dynamics of the technological development of certain goods and services concerned with market indications, for example, in relation to continuous innovation, information asymmetry and, last but not least, the huge amount of information noise, the investigation of these practices will be prioritised, even if this necessitates the reorganisation of human resources within the GVH.

26. Regarding the investigation of unfair commercial practices concerning the digital economy, the GVH will participate in and, if necessary, initiate actions at international level related to certain commercial practices and joint actions of competition and consumer protection authorities. The GVH will also treat, as priorities, domestic market indications related to the above-mentioned activities.

27. Given that the GVH has limited resources, it aims to focus its activities on areas where it can most effectively bring about results in the field of consumer protection. Therefore, the GVH endeavours to be able to group resources together in a way that will allow it to initiate at least one type of competition supervision procedure annually that is resource-intensive, lengthy, results in new challenges, problems, investigative directions, responds to current challenges and market tendencies, and which presumably requires interventions and complex sanctions.

3.4. Competition supervision procedures based on analyses

28. In addition to initiating competition supervision proceedings, the GVH may employ other instruments, such as market analyses, to effectively and efficiently perform its tasks set out in the Competition Act. This enables the GVH to formulate the direction and nature of later interventions in the most appropriate manner.

29. The GVH has noticed the increasing number and use of digital comparison tools. In order to evaluate current market processes and features of these tools, and furthermore, to evaluate their impact on consumers, the GVH plans to conduct a market analysis on digital comparison tools.

30. Comparison tools provide a number of benefits for consumers, i.e. they can facilitate the informed decision making of consumers and transparency, thereby also enhancing competition on the markets. In order for these benefits to be realised, it is important that consumers receive adequate information when using these tools, for example in relation to the genuineness of the compared features and the considerations which are taken into account when the products are rated. Consumers are being increasingly confronted with a growing number of diverse digital comparison tools, for example in the form of price comparison websites and programmes and applications that enable comparison. The particular features of these tools may also differ, for

example in terms of whether they compare the prices and features of goods sold in broad retail sales or the prices of specific products, i.e. insurances. Furthermore, a distinction can be drawn as to whether the undertaking which provides the comparison possibility is also a market player on the market of the good concerned, or whether the good it provides is actually the comparison service itself.

3.5. Competition supervision procedures based on "Super Complaints"

31. Although the GVH does not distinguish between the sources of market indications, certain complaints may indicate a market problem which requires a stronger and faster intervention. If a market indication arrives at the GVH in relation to, a group of consumer complaints or a possible infringement of consumer interests after having already been considered by another authority, non-governmental organisation dealing with consumer protection or other professional institution, it will presumably allow for a more focused intervention, since this so-called super complaint should reach the GVH after having previously passed through a professional or advocacy filter.

32. In view of the fact that certain indications referred to above may result in consumers suffering quantifiable damages, the initiation of proceedings due to super-complaints may form the basis of effective action in the public interest.

4. Cooperation

33. According to the GVH, in order for actions to be effective it may be necessary on occasions to engage in wider cooperation, not only with domestic authorities but also with other European authorities.

4.1. Domestic cooperation

34. Regarding the issues discussed above, the GVH's cooperation with the data protection authority and the authorities responsible for consumer protection (Ministry of Innovation and Technology, government agencies, MNB) can be highlighted. Cooperation has taken place in the following forms: the taking into account of incoming market indications, joint actions (e.g. sweep, joint communication) and professional operational cooperation.

4.2. International cooperation

35. In order to ensure the efficient enforcement of EU consumer protection law when dealing with the challenges arising from digital goods and services, it is essential that competition authorities possess up-to-date knowledge and tools, and that they ideally apply identical rules when operating. The framework of this cooperation is the so-called CPC Network (Consumer Protection Cooperation Network). The members of this network, apart from exchanging information amongst themselves and occasionally asking each other to carry out procedures, also try to provide similar responses in the framework of joint actions to problems that occur in a number of Member States. The GVH will continue to actively participate in the work of the CPC also in the future. Furthermore, the work of the GVH will also be affected by the so-called "New Deal for Consumers" programme of the European Commission which was announced in April 2018. The fundamental aim of this programme is to strengthen consumer rights, to ensure the transparency of digital markets and the imposition of more effective, proportionate and dissuasive fines in cases where consumer rights are widely infringed. A further aim of this programme is to ensure that consumers will have the right to claim contractual and extra-contractual individual remedies when they are affected by cross-border unfair commercial practices.

36. In addition to the above, the GVH is committed to ensuring that the so-called new CPC Regulation is applied as effectively as possible. This Regulation is applicable from 17 January 2020 and aims to regulate and reform the cooperation among CPC Network members.

5. HR challenges

37. The digital economy poses new challenges for competition authorities also in the field of human resources. “In relation to Big Data, a competition authority with traditional competences, powers and traditional experts can no longer perform its competition supervision tasks efficiently. There is a need for well-experienced IT professionals, psychologists, data economists and data lawyers. In case an authority has limited financial and HR resources it is worth considering the outsourcing of certain sub-tasks. Such sub-tasks can be data collection for market research, primary analysis of consumer behaviour based on data collection, market definition, as well as the first-round analysis of the above effects forming barriers to market entry.”⁵

Budapest, September 2018

⁵ Pál Belényesi: Big Data and Influencing Consumers - summary of international researches of the past two years, Study for the Hungarian Competition Authority (Brussels Consulting Ltd.), Serial no. : AL / 588/2017.