



Misleading campaign for deposit fixing leads to highly fixed fine

The GVH established that certain advertisements of OTP Bank relating to its preferential deposit fixing offers were misleading and imposed a fine of HUF 132 million (app. EUR 528 thousand).

The GVH discovered that in its commercial campaign between 26.03.2007 and 27.04.2007, and between 16.06.2007 and 17.08.2007 OTP offered deposit interests of „up to 8.5%” and „up to 8%”, respectively. It was dubious whether consumers were appropriately informed about the circumstances in which these interest rates applied.

The investigation established that certain pieces of the information provided by OTP were misleading, as it had not always communicated that the preferential interest level was only available for the depositor if the balance of its account was above the level on which it had been three days before the start of the campaign. Another condition was that the new balance had to be at least HUF 5 million (app. EUR 20 thousand).

According to the GVH in the ads in the television and on giant billboards, due to their formal appearance and structuring, the fact that the interest of „up to x%” was available only in further restrictive circumstances could not become an information actually recognizable to consumers. The relevant information was to be found in a footnote, separated from the main message. Though the GVH did not contest that the expression „up to” is a reference to the existence of further conditions, but that expression and the use of an asterisk standing for a footnote do not compensate for the lack of information significant for the assessment of the advertised offer.

At the determination of the amount of the fine the GVH took into consideration that in the past OTP repeatedly performed practices, which were capable of misleading consumers. It also took into account as an attenuating factor that consumers were able to get to know all the aspects of the offer before concluding an agreement.

The GVH also assessed the application of the phrase „OTP always offers you the best available saving solutions”. According to the GVH such allegations claiming market primacy must be objectively verifiable. As OTP started to refrain from the application of that sentence the GVH reduced the applicable fine.

In the present case the GVH consistently applied its principles according to which:

The accurate and appropriate informing of consumers is especially important in the case of financial services, where due to the nature of the good, the parties mutual trust plays an eminent role. The lack of consumer knowledge in this field and therefore the need for trust in financial institutions make the responsibility of the latter more acute in the communication of the relevant characteristics of their products.

Consumers cannot be expected to correct illegal market information through self-conducted market search. Mutual contacts between the parties is one of the most important parts of the market process, and if the basis of those contacts is an illegal, misleading information than it is clear that further clarifications would not eliminate the infringement. The communication is illegal even if it is later possible for consumers to get familiar with all the relevant facts as the Competition Act prohibits the provision of misleading information and the provision of such information is realized when the fraudulent advertisement has been broadcasted. Advertisements must therefore be trustworthy, true and accurate.

The essence of the advertisement is to raise attention and inform. However one should have in mind its aim as well, which is to encourage consumption and to get consumers choose a given product or service. Advertisements merit special attention in the regulation of competition, because they get to the widest public (national TV channels, giant billboards etc.), directly reaching consumers.

There are differences among marketing channels according to the amount of information that can be put through them. Based on these differences marketing campaigns are usually built on so-called media-mix solutions, using different channels at the same time to transmit messages. However as the channels used reach different consumer groups, their competition assessment should be separated instead of considering the mix as a single communication.

One cannot consider a given advertisement as purely aiming to raise consumers' attention if it contains one or more important characteristics of the product. Once a communication picks one of the important characteristics, than that information must be accurate, to enable consumers also to become familiar with the conditions that are connected to or inseparable from it. Therefore a communication containing real data on favourable characteristics can be misleading if it omits information indispensable for the interpretation of the information provided.