

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Quality considerations in the zero-price economy – Note by Hungary

28 November 2018

This document reproduces a written contribution from Hungary submitted for item 2 of the joint meeting between the Competition Committee and the Committee on Consumer Policy on 28 November 2018.

More documentation related to this discussion can be found at:

www.oecd.org/daf/competition/quality-considerations-in-the-zero-price-economy.htm

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Hungary

1. Regulatory framework

1. The Hungarian regulations on competition law and consumer law are enforced by numerous institutions, such as the GVH as the competent competition authority, the consumer protection authorities, as well as supervisory authorities. The GVH itself is an integrated law enforcement body. Consequently, similarly to a number of other EU competition authorities, it is bestowed with a number of consumer protection functions in order to ensure the fairness of competition in addition to its traditional competition supervision roles (antitrust, merger control).

2. In the field of consumer protection the local consumer protection authorities have competence to investigate a broad range of cases, with the exception of those cases that are handled by supervisory authorities due to the specific characteristics of particular sectors/activities.

3. The GVH is competent in cases having a substantial effect on competition¹. The GVH shall in B2C relations

- apply the provisions of Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices (hereinafter UCP Act) that ensure compliance with Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices, as well as
- verify compliance with the information requirements set out in certain additional pieces of sectorial legislation, if it can be determined that competition is materially affected. In cases where an undertaking also infringes other sector-specific information requirements (enforced by another authority) through an unfair commercial practice, and the practice has not exclusively been applied through the latter conduct, the GVH shall also apply the rules with regard to the information requirements;

in B2B relations

- apply the rules concerning unfair business practices, and in case of comparative advertising, it shall apply the relevant provisions of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter Competition Act) that transposed Directive 2006/114/EC of the European Parliament and of the

¹ The GVH shall have jurisdiction to act in all cases in which the commercial practices in question are capable of substantially distorting competition by distorting consumers' choices (based on Articles 10 and 11 of the UCP Act). If an unfair commercial practice that is displayed on a label is also reproduced and used on another form of communication, the GVH shall also have the power to declare that an infringement has been committed in connection with the label, if it substantially affects competition. Competition is considered to be substantially affected if, for example, an advertisement is carried out through a national media service provider or through a daily newspaper distributed in at least three counties (Hungary consists of 19 counties), or if a large number of leaflets have been distributed. However, the essential features of the market in question are also very important.

Council of 12 December 2006 concerning misleading and comparative advertising into the Hungarian national legislation.

4. Both the local consumer protection authorities and the GVH have powers to conduct investigations and pursue enforcement proceedings.
5. The GVH is not precluded from addressing any competition or consumer protection issue related to quality in zero price markets, as the general rules of consumer protection/competition law apply to investigations concerning these markets as well.
6. Since the GVH believes that consumer protection enforcement can ensure a faster, more active invention and enforcement in a timely manner, the GVH has taken steps in this filed and the further part of the contribution approaches the topic of personalised pricing from this perspective.

2. Enforcement experience

7. According to the Mid-term Digital Consumer Protection Strategy² of the Hungarian Competition Authority (hereinafter GVH) published in 2018, 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.

8. The GVH has launched a number of investigations concerning communications relating to “free” products, in connection with both offline and online products/services. In such cases it is important that even if no monetary compensation is available that consumers are informed of the exact form and extent of the available compensation, as required by the general rules of consumer protection/competition law.

9. Below we detail three cases of the GVH from different sectors. The first case concerned an offline market and in this case the GVH established that the provision of data in itself amounts to compensation. In the other two cases commercial practices regarding online services were investigated (communication practices of a dating site and of Google). Since the services were free, the infringements investigated occurred in relation to other features of the services – which were considered to be relevant for consumers by the GVH.

10. The GVH launched an investigation in 2011 regarding a commercial practice of the mobile operator Telenor Magyarország Zrt. and ING Biztosító Zrt.³ ING Biztosító Zrt., an insurance company, offered consumers a free financial survey and coupled it with a SIM card (of Telenor Magyarország Zrt.) entitling the consumers to 120 free minutes. The companies did not inform consumers about the substantial conditions attached to the use of the 120 free minutes. The GVH considered it a transactional decision that the consumer

² Available in English:

http://www.gvh.hu/en//data/cms1039453/GVH_Stategia_Digitalis_fogyved_startegia_2018_09_27_a.pdf

³ Case Nr. VJ/93/2011., decision: http://www.gvh.hu/dontesek/versenyhivatali_dontesek/dontesek_2011/7819_hu_vj-93201134.html

had to decide whether or not to participate in the survey, use the free SIM card, provide his/her personal data and agree to its use for marketing purposes. The GVH established that it was not a conceptual element of the transactional decision that the consumer would have to provide monetary compensation.

11. After the so-called ICPEN Sweep at the beginning of 2018, the GVH indicated⁴ that it wishes to place greater emphasis on the examination of online dating sites' commercial practices. The necessity of this endeavour was supported by market signals coming to the attention of the GVH in relation to the behaviour of be2. On this basis, the GVH decided to initiate a competition supervision proceeding⁵ in order to investigate several aspects of the behaviour of be2 in relation to services offered on the website www.be2.hu, which gave rise to the suspicion of the existence of unfair commercial practices against consumers.

12. The GVH, among others, investigates

- whether be2 does in fact provide the services offered on its website free of charge or whether members only have restricted access to these services for free;
- whether the average consumer is reasonably likely to notice the information relating to the automatic extension of the premium subscription and the applicable fee during the extended period;
- the manner in which the concerned undertaking employs anonymous or pseudonym profiles which are created by the undertaking itself and which do not belong to real users, and whether it appropriately informs consumers about the employment of this practice;
- whether it provides accurate information about the number of users of its service;
- whether information necessary to enable a realistic evaluation of its service is provided on its website – through the publication in an understandable manner of its General Terms and Conditions (GTCs) – thereby enabling consumers to make an informed decision;
- whether its communication employed in relation to the termination of the contract for the use of the service results in an unfair commercial practice due to the fact that while the use of the service is possible after only a few clicks, the termination must conform to formal requirements (e.g. the consumer may only terminate the contract in a valid way by sending by post or via fax a declaration to an address abroad);
- the contradictory commercial communication relating to the deadline for termination imposes an unreasonable burden on the consumer as regards to the search for information;
- the display of the possible alternative choices is uneven (e.g. the option for deleting the user's profile is displayed separately from other options, in a different location).

⁴ http://gvh.hu/en/press_room/press_releases/press_releases_2018/the_hungarian_competition_authority_screened_gtcs_.html?query=sweep

⁵ http://www.gvh.hu/en/press_room/press_releases/press_releases_2018/competition_supervision_proceeding_initiated_agai.html

13. The case is still pending.

14. The GVH investigated⁶ the communications practices of Google LLC (Google) in relation to its ‘Internet and applications’ services, ‘personalisation of advertisements’, and its data processing of ‘Allo’ chat clients and encryption among chat clients termination points.

15. The GVH investigated whether consumers had received the information necessary to be able to make well-established decisions about the data processing activity of Google, which is an essential aspect of Google’s products. The GVH did not assess the communication practice of Google’s products from a data protection point of view, but instead analysed whether the data processing practice was carried out in compliance with the applicable rules and regulations. Namely, the rights of consumers to make undistorted business decisions may be violated even if data protection rights are properly observed, if consumers are not supplied with information which would be necessary to make well-established decisions (or not supplied timely with correct information, or supplied timely with misleading information, or the information is not clear enough).

16. As regards to its communications practice concerning the data processing of applications – relating to one of the behaviours of Allo chat clients – the GVH obliged Google to fulfil the voluntary commitments it had undertaken. While the GVH did not consider it well founded to terminate the proceeding and to state a lack of infringement, it reached the conclusion that – concerning the communications in the context of the data processing of Allo – a potential violation may be efficiently remedied by the commitment package submitted by Google, thereby enabling the protection of the public interest to be guaranteed.

17. The GVH objected to the fact that Google had not provided direct information about other Google products and about the processing of consumers’ data in the advertisement, installation and application of Allo chat clients (which may be used irrespective of other Google accounts), which may be necessary to enable consumers to make well-established decisions. By not providing this information, consumers are not fully informed about the characteristics and nature of the product and about the price of the application.

18. The commitments undertaken by Google require it to set up a page on the data processing of Allo under the ‘Allo Help’ website, which will be accessible both from the installation process description of Allo and from the description available in AlloGooglePlay and iOSAppStore. Google undertook to draft this page in plain language and in a balanced manner, i.e. not exaggerating or diminishing the decision-making options, rights and potential obligations of consumers. Furthermore, it has also undertaken that in the descriptions of the webstores this information will be easily accessible, without long scrolling, in the first paragraph of the texts, immediately following the introductory paragraph.

19. In accordance with the commitments, Google is obliged to send the hyperlink of the data management’s sub-page within the application of Allo to the users of the product in Hungary. In addition, in the fourth quarter of 2018 it must publish a one-day graphical educational banner on its YouTube channel highlighting that Google collects and handles consumers’ personal data and recommending that consumers review the privacy policies and settings.

⁶ Case Nr. VJ/89/2016., press release and decision: http://www.gvh.hu/en/press_room/press_releases/press_releases_2018/competition_proceeding_against_google_is_closed.html

20. Google has also undertaken to verify that it has implemented the above-stated measures, and also that the information will not be communicated in a less noticeable way and that it will not reduce the awareness level of consumers in the future.

21. The GVH found that the other conduct of the undertaking – the statement concerning encryption between termination points – which was investigated in connection with Allo chat client, did not amount to an infringement of competition law. The GVH has also terminated its competition supervision proceeding regarding the commercial practice related to the data management of new Google features.

22. According to the GVH, the commercial practice that has been modified as a result of the submitted commitments extends beyond this immediate case, as it not only affects the information provided in Hungarian: the data management subpage will be translated in 44 languages at the same time, furthermore the undertaking can reach a larger Hungarian group of consumers with the general, data protection themed educational banner, than the users of Allo chat client.