

**BASIC PRINCIPLES
APPLIED BY THE GVH IN CONNECTION
WITH THE FREEDOM
OF CONSUMER CHOICE/
FUNDAMENTAL PRINCIPLES OF THE
FREEDOM OF CONSUMER CHOICE AS
APPLIED BY THE GVH**



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BASIC PRINCIPLES

In this document, the Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter referred to as GVH) explains its basic principles applied in its activities related to the freedom of consumer choice.

Objectives

In terms of the freedom of competition, the GVH's role in the operation of the market economy is to enforce the provisions of the Competition Act falling within its scope of competence in the interest of the general public, enhancing consumer welfare and hereby competitiveness in the long run and to support competition (also) generally with all the instruments available to it or, wherever competition is not possible, to promote the creation of competition or the introduction of state regulations replacing it.

Competition on the market is a mechanism of the market economy which in general conveys the best the needs of the society and efficiency constraint towards the companies, thus contributing to the increase of social welfare. Consequently, the ultimate goal is long-term consumer welfare, competitiveness and efficiency (which also contributes to economic growth and employment, i.e., the increase of living standards), while competition is the tool. The role of the GVH is to safeguard the appropriate operation of this mechanism and to prevent any restriction or distortion thereof. On the other hand, in the case of a market failure, competition does not lead to the best result; in this case competition does not need to be supported in an autotelic way, as it would reduce welfare and efficiency in such cases.

Principles for the protection of the freedom of consumer choice

1. The activities of the GVH based on the Unfair Commercial Practices Act¹ and the provisions of the Advertising Act² concerning deceiving and comparative advertisements and on Chapter 3 of the Competition Act relate to fair competition between the demand and supply sides of the market, the information provided by companies and the decision-making process on the demand side.³
2. Competition is also an effective tool of protecting consumer interests. The freedom of consumer decisions contributes to the effectiveness of competition. A consumer decision is not free if an undertaking unfairly manipulates the information searching process either in the form of a deceiving or of an aggressive commercial practice.
3. The GVH protects the whole process of consumer decisions. Even if a consumer can learn all the information required for his or her decisions prior to the conclusion of the contract, the communication may still violate the law. The GVH notes that a consumer is not fully informed and

¹ Act XLVII of 2008 on the Prohibition of Commercial Practices that are Unfair to Consumers

² Act XLVIII of 2008 on Certain Restrictions of Commercial Advertising Activities.

³ Below the document will concentrate on certain issues of consumer decision-making and consumer conduct, although the GVH's activities need to protect also the decision-making mechanism of non-consumers (business partners).

it may not be expected from him or her either to doubt the truth of the information published by the undertakings.

4. Consumers do not form homogeneous groups, thus the GVH takes into account the level of consumer awareness on a case-by-case basis. The degree of information asymmetry between the consumer and the undertaking is different on each market, and therefore the GVH takes into account the nature of the market and the relevant product in each case.
5. The GVH does not necessarily require an undertaking to indicate all details related to a product or service in their commercial practices, but it requires from them to provide true and accurate information.
6. The GVH takes into account the specificities of the various marketing communication forms and manages them in a consistent theoretical framework, taking into account the efficiency differences between the various instruments.
7. The GVH considers the information of undertakings and the use of communication towards consumers as part of the market strategy of undertakings. Consequently, the GVH responds only to such types of conducts which may be classified general information providing practices of the undertaking. In the opinion of the GVH, ad hoc and individual consumer information providing not falling within the above category cannot influence the competition processes itself.
8. The information asymmetry between a consumer and an undertaking consists of avoidable and unavoidable lack of information for a consumer. The GVH tries to reduce the avoidable lack of information.
9. The phenomenon whereby a consumer though trying to make a decision that is the best for him or her, is not able to achieve due to external circumstances, is called consumer decision discrepancy. Consumer decision discrepancy leads to two types of loss – consumer disadvantage and long-term reduction of consumer welfare. The GVH is trying to minimise the long-term reduction of consumer welfare.
10. The legal regulation of the information providing practice of the undertakings works in two directions: on the one hand, it specifies all the information which is subject to mandatory disclosure by the undertakings and it also specifies the prohibited forms of information by subject matter, targeted consumer groups and content.

11. There are public law and private law instruments protecting consumer interests against violation/The violation of consumer interests is protected by public and private law instruments as well. If an authority does not/cannot manage a problem, then the consumer may directly seek remedy through private law instruments, i.e. at the court.
12. Out of the items listed in point 10, the GVH is responsible for controlling the prohibitions applicable to unfair commercial practices, misleading advertisements and unfair manipulation of business partners, as well as the regulations on comparative advertisements, using the instruments available under the public law/by means of public law instruments.
13. Apart from competition supervision proceedings, smooth co-operation with public agencies and social organisations protecting consumers is of fundamental importance for the GVH.

EXPLANATION OF THE PRINCIPLES BEHIND THE PROTECTION OF THE FREEDOM OF CONSUMER CHOICE

1. The GVH describes the principles applied to its application of law in two documents. The first document deals with the traditional competition policy or anti-trust discipline and institutional and operational issues under the title of *'Fundamental Principles of Competition Policy as Applied by the GVH'*. This second document covers issues concerning the freedom of consumer decisions, i.e. the overlapping aspects of fair competition and consumer protection under the title of *'Fundamental Principles of the Freedom of Consumer Choice as Applied by the GVH'*.
2. All basic principles applied by the GVH are described in the document under the title of *'Fundamental Principles of the Freedom of Consumer Choice as Applied by the GVH'*, while this document contains them in a shortened form, although supplemented to the required extent.
3. In this context, this document reviews the fairness of competition⁴ from the point of undertakings and consumers and describes the main issues related to the information providing activity of the undertakings and consumer choice and the wider correlations thereof accepting that a consumer decision is one of the elements of the operation of the economy and is also an interdisciplinary phenomenon⁵, approachable from several directions; this document does not intend to become an encyclopaedia covering all details or a textbook.
4. The theoretical background of this document, as well as the practice of the GVH concerning the freedom of consumer choice are determined by very special concepts focusing on competition and embedded into the anti-trust approach.
5. Almost all explanations in this document are expressed with simple verbal expressions. The order of coverage of the various issues is determined by didactic considerations instead of encyclopaedic ones. The GVH has tried to use precise, clear and understandable language, although in order to facilitate easy reading, in some cases it has applied the method of simplification without affecting the important subject matter. For similar reasons and for considering the length of the document, certain correlations and phenomena are not explained or described in detail, only referred to them in a generally accepted sense.

⁴ The word-by-word translation of the English 'unfair competition' and the German 'unlauteres Wettbewerb' concepts is unfair competition in Hungarian. In expressions with attributes, competition does not refer to the whole competition process, but to the unfair nature of the particular conduct, i.e. competition – as a conduct not complying with the requirements of objective good faith and fairness that arise from the trade morale. (See e.g. Timothy J. Muris: *The Interface of Competition and Consumer Protection*, 2002.)

Hereinafter we shall use the concept of unfair competition in such sense, yet we shall prefer the expressions of unfair market practices and fair competition. The latter expression separates the area discussed by us from the topic of the freedom of competition in the Hungarian terminology.

⁵ Consumer decisions and the various aspects thereof may be approached from the fields of economic psychology, cognitive sciences, economic ethics, decision-making theory and information economics. Apart from the theoretical thoughts on consumer conduct, the analysis of these phenomena is directly important also for the applied sciences, among which naturally stands out marketing as a discipline which researches the instruments of manipulation of the consumers' conduct and the applicability and efficiency of the various instruments.

6. The purpose of the intensively used footnotes is to ease, at least partially, the contradiction between the easy following of the text and the accurate and detailed description of the information. Footnotes are used for various purposes, i.e., they contain specific references to basic principles, references to other parts of the document, explanations, supplementation and examples explaining the content in more detail. The original terms in foreign languages are also provided in footnotes⁶.

⁶ There are a lot of terms used in the field of the freedom of consumer choice which have developed in the related Anglo-Saxon or German law or have been borrowed from marketing or from various segments of economics.

1. Market, competition, consumers-consumer decisions

1.1. Protection of the freedom of consumer choice and competition policy – the two sides of the coin

7. Competition on the market is a mechanism of the market economy which conveys the best the needs of the society and efficiency constraint towards the companies, thus contributing to the increase of social welfare.⁷
8. Based on this, we consider it an axiom that **competition is (also) an effective tool of protection of consumer interests.**
9. Protection of consumer interests, the concept of consumer protection and even the word itself all suggest that the consumer is a passive subject and 'sufferer' of the provisions that protect him, although consumers are not only passive beneficiaries of the welfare impacts ideally arising from competition for them, but are also market actors actively forming the competition process.
10. The GVH argues that the analysis of a competition process cannot stop at the question asked in the competition policy, i.e., what competition can do for consumers in order to ensure long-term consumer welfare. It may be a source of major welfare losses, leading even to a market failure on the demand side if the demand side does not react properly to the stimuli coming from the supply side and if consumers do not make the use of the choice provided by the segmentation of the supply side or reward producers generating lower prices and higher quality with purchases and do not deprive their trust from those showing bad performance. We also need to ask the question **what a consumer does and, in an ideal case, he or she can do in order to form and maintain the competition process based on his or her decisions.**
11. The analysis of the decision-making process of consumers can give an answer to this question, because although competition policy analyses and shapes the supply side of the market, the competition of undertakings cannot be effective if it is not driven by real consumer demand and well informed deliberate free consumer choice made based on such demand. It is clear that competition policy and the fairness of competition, analysing the relationship between undertakings and consumers⁸, as well as the freedom of consumer decisions, are closely correlated with each other and are also affected by each other. Competition enhances long-term consumer welfare, yet the relationship also works in the reverse direction: competition can also be enhanced as a result of free and deliberate consumer decisions.

⁷ See Chapter 1 of the background paper written for the 'Fundamental Principles of the Freedom of Consumer Choice as Applied by the GVH'

⁸ This aspect of fair competition is the analysis of the so-called Business to Consumer, i.e., B2C relations.

12. In relation to the freedom of competition remaining within the conceptual framework of the Structure-Behaviour-Performance model (SBP model⁹) which describes the operation of the market and competition, further useful conclusions may be drawn concerning the freedom of consumer choice.
13. These concepts are practically based on the findings concerning the communication conduct of undertakings and their information managing techniques. Such corporate behaviours practically determine the information environment, in which consumers must find their ways efficiently while making their decisions, as the market structure concepts explain the behaviour of undertakings, it also serves as the starting point for explaining consumer conduct and also affecting the nature of the search for information by consumers.
14. Using the known concept, the consumer and the consumer's choice stand on the demand side of the information market, required for a consumer's decision, while the supply side includes the undertaking and the marketing techniques applied by it. In this context, market balance is established at the point where the consumer is able to make a deliberate and free decision based on the information provided by the undertaking and having conducted the adequate search for information. Putting it in a different way: the market balance is formed jointly by the search for information by the consumer and the marketing strategy of the undertaking. The point of market balance contains the consumer's decision, i.e. the contract for the purpose of the law and further consumer decisions concerning the term of the contract.
15. Based on the above, the objective of the GVH is to promote ideal consumer decisions. If the GVH feels that consumer decisions are not made freely on any market, it intervenes in the competition processes, assuming that consumer choice is distorted by commercial practices, which are suitable for influencing competition.
16. Consumer choice is not free if a) the consumer does not conduct an adequate search for information, or b) the undertaking unfairly (in a deceiving way or aggressively) intervenes in the consumer's information search process. A deceiving intervention of the undertaking may be an active action (disclosure of deceiving or inadequate information) or a passive conduct (concealment). In both cases, so-called information asymmetry develops between the consumer and the undertaking. The undertaking knows more about the subject matter of the consumer decisions than the consumer himself/herself. The underlying reasons must be eliminated in order to avoid inadequate consumer decisions. So below we shall analyse the consumer's decision-making process and the information provided by the supply side.

⁹ See Chapter 1 of the background paper written for the "Fundamental Principles of the Freedom of Consumer Choice as Applied by the GVH".

1.2. Demand side: consumer choice

17. In the analysis of economic decisions, our basic assumption is that a consumer is not his own enemy, and is trying to gain the most from any situation — (1) by trying to choose the ideal solution in his/her decisions, and (2) by searching for information to a reasonable extent.

CONSUMER DECISION	ATTEMPTS FOR OPTIMISATION: the consumer chooses the option that seems best for him, optimising based on subjective probability
	REASONABLE BEHAVIOUR: the consumer searches for information to a reasonable extent

18. A consumer decision reflects the choice of the consumer from the various options deemed feasible by him/her, thus connecting demand and supply on the market.
19. The decision's moment is a moment in the decision-making process, which can only be interpreted if it is analysed embedded in its environment, i.e. the entire decision-making process. Below we shall describe the process of the so-called 'extended', 'true' or problem-solving consumer decision. However, before illustrating the extended consumer decision-making process, we shall also mention other consumer decision types, distinguished in the marketing science: decisions based on limited problem solving and impulse decisions.
20. Decisions based on limited problem-solving may be considered deliberate, simplified decisions, in which consumers are not motivated in searching for information and/or the evaluation of the available options, and instead simplify the decision-making process as much as possible by adopting various rules of the thumb and ready samples provided by the environment. The main reasons leading to such decisions may include the problem of absorption of too much information ('exhaustion effect'), the low motivation of the customer (he or she does not think it is important to solve the decision-making situation and he or she does not enjoy it either) as well as strong environmental influence.
21. Awareness is present only to a limited extent, or is even completely missing from the so-called impulse decisions and routine decisions (decisions based on limited problem solving). An impulse decision is made when a consumer feels an unexpected strong and irresistible urge to make a purchase immediately and spends money based on the positive emotional reaction generated by the external stimuli, practically without any internal information processing. Routine decisions, habitual decisions are in fact not decisions, but a kind of automated processes, in which the

consumer recognises the problem, accepts the result of internal mental search for information automatically and takes home the usual brand.¹⁰

22. We can see that a decision based on reasonability can clearly be applied to routine and habitual decisions, because the extended consumer decision preceding them may be adopted on a reasonable basis. In the case of an impulse decision, the question is on what the consumer bases his decision. If the external stimulus forming the basis of the decision refers to some feature of the product or the undertaking offering the product, then the economic model building on the consumer's reasonability may be maintained. If, e.g., a consumer makes a decision about a product based on an extremely favourable price, then, although to a limited extent, he or she makes his/her decision on the basis of the information obtained before decision-making and other information which may have been obtained earlier and has become internal information.
23. Naturally, in the above case the role of reasonability is limited, although obviously it applies also to this case that the consumer chooses the best from the options available and known to him. This also means that the phases of the consumer decision to be outlined later are separated from each other. The phase of problem recognition appears earlier (perhaps parallel with regard to different products) and it is followed by the phases of search for information and evaluation of the options, which can be clearly separated in time. In addition, the evaluation of options may also take place in phases and, due to the former information which has already become internal information, the consumer makes his decision extremely fast, on impulse with regard to the last option promising very favourable opportunities.

Recognition of the problem

24. The first step of the decision-making process is the recognition of the problem, i.e. the appearance of the need or purchasing intention. The need in the economic sense is the difference between the perceived current situation and the desired situation, which may be overcome in the form of tangible goods and services. The consumer experiences this difference as a feeling of shortage, the degree of which strongly depends on the importance of the solution of the problem for the consumer and the time available for him to find a solution. The (ex ante) usefulness expectations related to the desired situation prior to decision-making express the consumer's

¹⁰ With regard to impulse decisions and decisions made on limited problem solving, the decision-making situation may be approached based on the analysis of whether the systematic use of potential benefits arising from the nature of the decisions form part of the business policy of the undertaking. It is an example of an impulse decision if an undertaking forces impulse decisions even in cases when an extended consumer decision should be adopted based on the nature of the goods (e.g. loan taken within 30 minutes).

Routine and habituation decisions are preceded by a real extended consumer decision, the so-called brand decision, which is then followed by automatic purchase decisions. In the analysis of the freedom of consumer choice, in such cases the first true decision is also a subject of the analysis.

expectations about the subjective value of enjoyment and usefulness and utilisation of the consumer arising from consumption.

25. It will be mentioned later that the communication tools applied towards a consumer are suitable not only for detecting actual needs, but also for generating the feeling of shortage, potentially urging for unnecessary consumption. At this point, we cannot judge the true or justified nature of the needs, and we consider anything needs that the consumer experiences as a lack which may be satisfied with tangible goods and services.
26. In relation to the needs, there is an important difference between consumption categories. According to a simple model, consumption can be classified according to whether the satisfied need was dominated by functional or symbolic nature. **Consumption** in which the benefit of the selected goods is primarily in its eligibility for consumption and actual consumption **is functional**, and the consumer does not expect any more from it than fulfilling this role¹¹. In **symbol consumption**¹² the need focuses not only and primarily on the product, but on the related feelings. For such consumption, the judgement of the quality of the communication about the product may be difficult, because it is rather cumbersome to prove the deceiving nature of any communication generating a feeling.
27. The sources of the need and basic situations of the recognition of the problem vary a lot, although researches have already identified some typical forms: inadequacy of stocks (... has run out), need for variation (fashion), changes of environmental circumstances, changes of income and finally, last but not least, dissatisfaction with the existing product or service.

¹¹ Fast moving consumer goods (FMCG) products or the use of electricity are examples of functional consumption.

¹² The difficult concept of symbol consumption is also described as incomprehensible consumption, because it refers to consumption of such goods, where it is difficult to derive the decision from the consumer's status in life or his former behaviour. It is a typical area of brand choice, where, apart from the functional characteristics of the product, there is also some emotional surplus, the (external or internal) desire to be absorbed in the message conveyed by the brand.

28. This latter aspect, dissatisfaction with the existing product, generating a new need, is especially important for us, because it captures the specific experiences of a previous decision. A consumer decision always reflects a choice, whereby the consumer must waive something (the other options or the possibility of a better decision later).
29. With regard to a service or repeated consumption; the modification of the original decision involves expenses, which are described as the consumer switching costs.¹³ The switching costs are affected by harmony with other products held by the consumer, the transaction cost of changing the trader (the specific costs involved in leaving a trader and entering into a contract with another trader, time and efforts), learning of the features and use of new products and brands, the uncertainty related to the quality of products not yet known in own experience, consumer loyalty programmes (so-called regular customer benefits) psychological expenses of the change caused by loyalty to a product or a brand.

Search for information and evaluation of the options

30. Search for information by the consumer is based on mental knowledge, arising from own experience and memories, but typically it is insufficient, and therefore external sources of information also need to be involved. The following question arises: how much information needs to be collected in a particular situation, determined also by subjective components, by the consumer in order to make an ideal consumer decision.
31. Is there perfect consumer information? Perfect information means that the consumer has obtained all information about the options suitable for fulfilling his or her needs which is relevant for his decision, he or she understands his/her own preferences and financial opportunities, i.e., he or she possesses all information that is available at the time when he or she makes his/her decision.
32. In theory, perfect consumer information may be reached, but on the real market consumer decisions are made based on limited information: there is uncertainty with regard to one or several variables, which are important for the purpose of the decision. The concept of perfect information as a theoretical endpoint is still interesting for the GVH, because perfect information¹⁴ is one of the prerequisites of perfect competition, one of the ideal types of market structures, where all market actors possess all relevant information.
33. There are several reasons behind the limited information of consumers, of which the most important one is that the pieces of information which are relevant for a consumer in decision-making cannot be considered free goods, as they can only be achieved by sacrificing another

¹³ Consumer switching costs

¹⁴ See Chapter 1 of the background paper written for the 'Fundamental Principles of the Freedom of Competition as Applied by the GVH'

useful thing. The collection of valuable information in a particular situation involves time, money, mental and physical efforts¹⁵, and it is not worth for a consumer continuing to collect information if he or she cannot expect further benefits from it.¹⁶ Consequently, taking into account the costs of search, which cannot be expected from a consumer behaving reasonably to try and obtain perfect information – therefore a reasonable consumer is not perfectly informed. The statement, according to which a consumer would be obliged to verify all information disclosed by the undertakings is not acceptable for the GVH.

34. In summary, the essence of reasonable consumer conduct in a particular situation is the search for information to an extent that reflects the specificities of the market and the product. This can be described as an iterative approaching process¹⁷, in which the consumer continues searching for and processing information until the proceeds from obtaining the last piece of information equal to the cost of obtaining the specific information. No general measure can be applied to the level of consumer awareness, because it depends on the personality of the consumer, the nature of the product involved in the consumer decision, the market structure, the position of the undertaking offering the product on the market, and therefore it must be assessed separately in each particular case.
35. Referring to the previous points, free and deliberate consumer decisions may result from the consumer's search for information and the disclosure of adequate information by the undertaking.
36. The information which is primarily targeted by the search for, and processing of, information, can be classified into some main categories: (1) price (the price of the goods itself or its substitutes (and the related services), (2) quality¹⁸ (and the quality of the substituting products), (3) the conditions and circumstances of the purchase of the product and use of the service (location of

¹⁵ Based on the practice of FTC (Federal Trade Commission), reasons of limited information may include the following:

(1) change in the reliability of information: the consumer does not equally trust information arising from various sources, and information which used to be correct at some time may become obsolete by the time,

(2) consumers can remember only a limited volume of information,

(3) in some product categories, certain consumers cannot properly process the available information due to lack of applicable knowledge,

(4) a consumer applies simplified rules and heuristic solutions (limitation of the group of information used, reduction of decision-making criteria) for processing information, thus trying to reduce the costs of information processing, in which case he or she is practically limited,

(5) certain consumers do not receive proper training or are not intelligent enough to properly process the available information for all products.

¹⁶ It is an obvious example that a housewife living in the capital city will not visit all food stores in the district in order to compare the prices if she needs only baking powder and vanilla sugar for a cake.

¹⁷ Search for information is a complex cognitive process, during which so-called orientation preparatory decisions are made which, based on the already obtained and processed information, determine any further need and direction of the search.

¹⁸ With regard to quality, the primary issue for the GVH is to what extent the features of the goods and the consumer's needs are identical.

the sources of purchase, the expected delivery deadlines, etc.), (4) the related risks¹⁹ and (5) the costs of a potential switch or exercising of the related rights.

37. According to the marketing science, a consumer perceives various types of risks. The functional risk describes the risk that the selected product cannot achieve the expected performance. The financial risks include, among others, the costs of maintenance if a certain product is chosen. The physical risk factors affect the consumer's safety, health and environment. The social and psychological risks relate primarily to symbol consumption, because the social risk expresses whether the family, opinion formers and the status group accepts the result of the decision as expected, while the psychological risk involves the possibility that the selected product will not generate the expected positive consumer feelings.
38. Consumers do not form a homogeneous group. Individual differences may occur already at the beginning of the decision-making process, in the perception of the situation, i.e., in the perception process related to the recognition of the same need (selection, classification and interpretation of the information obtained from the external world). The estimated usefulness related to the desired situation may be described as relative individual importance determined by the personality of the individual and his social, cultural conditions, which are rendered to the estimated consequences of the potential decision-making options by the consumer.²⁰ Based on these, we can see that the costs of search may be rather different for each consumer and the individual preferences and opportunities also vary a great deal in the evaluation of the options. However, there are clear consumer categories, so-called target groups, in which the consumers share the same preferences and reactions to the communication of the undertaking.²¹

¹⁹ By risk we mean the uncertain negative consequence of a consumer decision, or, in other words, the estimated negative usefulness of any undesirable consequences of a decision. The dimensions of this risk for the consumer is determined by the probability of any unpleasant experience which may occur during the selection of the goods (probability), and the severity of the consequences of the potential loss in the consumer's opinion.

Risk also occurs as an important evaluation aspect in the comparison of options, and at this point we would like to point out that the risk mitigating aspect of brand loyalty is an important aspect. Some communication tools, such as guarantee testing, price guarantee, money return guarantee, free sample, etc., rely specifically on the consumer's risk perception

²⁰ In these subjective probability assumptions, the expectation of usefulness relates directly to the consequences of the optional actions instead of the action itself (use of the product or service). These consequences occur in the form of gains and costs for the consumer. The consumer compares the available opportunities to his/her actual financial situation, which especially influences his/her willingness to take risks.

²¹ Market segmentation is used as the basis of a marketing strategy, in which the groups having certain individual demand features (segments) are defined, which is followed by the positioning and target group forming process, during which the undertaking assigns the appropriate segments to his product and puts them into the centre of his/her marketing activities

Within target groups, there are so-called quantity target groups, which may be quantified primarily based on occupation types, geographic and socio-demographic criteria, and there are also quality target groups, where groups are formed based on consumer expectations and interest, lifestyle, etc., as well as psychological and sociological criteria.

39. Consequently, the search process is based on the set of expectations and assumptions influenced by subjective components. The assumptions and probabilities that form the basis of a consumer decision are subjective.
40. For the evaluation of consumer conduct we must accept the existence of subjective assumptions, regardless of how close they are to reality. In this context, striving to the best solution may be explained as the consumer relies on his/her subjective initial assumptions and expectations (hereinafter initial knowledge²²) and conducts a reasonable search for information, then chooses the option that seems the most advantageous for him/her (by objective preferences and opportunities) from the options resulting from the search. The concept of decision-making options means the consequences of the decision, through which the consumer can reach the desired condition.
41. The state, in which the search for information starts, was defined as the concept of initial knowledge. The actual level of knowledge expressing the information obtained by decision-making is the set of the information actually possessed by the consumer at the moment of decision-making.

Behaviour after a consumer decision – consumer satisfaction

42. The behaviour that follows the decision depends on the consumer's satisfaction and the ex post evaluation of the specific product. This may also be interpreted as the consumer's satisfaction expresses to what extent he or she feels that his/her ex ante expectations prior to the decision have been satisfied based on the perceived performance.
43. We should also look at this issue whether or not there is direct feedback for the consumer, i.e. whether he or she can himself/herself check the results of his/her decision and can integrate the consequences of his/her decision into the learning process. The quality features of the products which are important in terms of consumer decisions form different categories according to when and to what extent they can be understood by the consumer:
 - for search characteristics,²³ the consumer can understand the main characteristics of the product prior to the purchase by examining it.
 - for experience characteristics²⁴ the important characteristics of the product can be understood by consuming it or after a certain period following consumption.

²² The existing, so-called internal mental search for information (related to knowledge arising from former own experiences or experiences shared with acquaintances, or from memories read or seen earlier) is considered part of this initial knowledge and from now on we shall focus on the role of external sources of information.

²³ – search characteristics

²⁴ – experience characteristics

- for credence characteristics²⁵ the important characteristics of the product cannot be understood even after the consumer's decision.
44. For products where the experience characteristics dominate the decision-making process, the consumer's learning process is not closed,²⁶ while the same thing cannot happen for credence-type products.

1.3. Information management on the supply side

45. It is a fundamental thesis in the concept described in the background document²⁷ prepared for the basic principles related to the freedom of competition that the market balance developing in competition brings an ideal result also for the society, while profit maximising reasonable conduct, determining the economic decisions of market actors is a condition for competition. The same may be observed in the commercial practices of undertakings towards consumers. An undertaking will spend as much on the communication of a product so that the additional revenues generated by the communicated product be at least identical with the cost of communication related to product.
46. The forms of communication have also changed significantly in Hungary for the last few years. Having recognised the potentially different impact mechanism of the various new marketing communication forms, the GVH manages all marketing communication tools within one conceptual framework.
47. The purpose of the communication forms is to enhance sales. This objective may be approached from two different aspects. The purpose of informative communication is to offer a choice to consumers, to provide and share information about the product in order to promote choice satisfying primarily functional consumer needs.²⁸ In the world of integrated communication campaigns, apart from the existing needs, new needs are provoked and generated, the role of symbolic consumer needs increases, and the methods of emotional arguments and taste shaping push the actual statements into the background.
48. According to the limited interpretation, marketing activity involves communication of the activities of an undertaking towards the consumer. The marketing strategy covers the specification of consumer needs to be satisfied, the analysis of competition and competitors and all the communication tools, with the help of which the consumer will choose the specific undertaking

²⁵ – credence characteristics

²⁶ The pot luck choice applies especially to FMCG products.

²⁷ See Chapter 1 of the background paper written for the 'Fundamental Principles of Competition Policy as Applied by the GVH'

²⁸ Comparative advertisement is an extremely effective type of informative fact stating communication forms

and its product against any substituting products.²⁹ Whenever the GVH investigates unfair manipulation of consumer decisions, it takes into account the overall communication policy of the undertakings, i.e., not only the advertisements in the classical sense of the concept, but also other communication tools.

49. In addition, with regard to communication campaigns, the GVH also assesses the overall impact of the components in addition to the separate analysis of the specific tools.
50. The objective of the undertakings is partially identical with the objective of the consumers: to reduce the cost of consumers' search for information, while the cost of the search for information about the competitors' products remains the same. Cost reduction is also suitable for reducing the information asymmetry between the consumer and the undertaking.³⁰ (According to the technical literature), the suitable devices include guarantee or warranty, compliance with and enforcement of product liability regulations, reputation building, employment of experts and compliance with and enforcement of standards and certificates.
51. The development of a marketing strategy depends on numerous factors, such as the product promoted with marketing or the position of the undertaking on the market. Below we shall describe those aspects which are taken into account by the GVH in its proceedings in the assessment of information management on the supply side.
52. With reference to Section 1.2, the product characteristics also affect the applied communication tools. In the case of a search product, there is high probability that the undertaking will choose a communication device with high information content (e.g., informative advertisement) because for a search product there is higher probability that the consumer will be influenced by advertisements, the credibility may be verified immediately.

²⁹ Product-based communication can be described with the so-called. 'four Ps', i.e., product, price, place and promotion. The promotion devices (according to some authors, the communication policy) include advertisement, personal sale, sales promotion, direct marketing and PR. Other authors (and practice) divide the communication tools according to ATL (above the line) and BTL (below the line) tools. It also needs to be noted that according to some opinions, advertisements may be divided into the following categories: brand advertisement, corporate advertisement and product line advertisement.

³⁰ The consequences of limited information about the quality of the product are described by Akerlof's wreck market, while the impact of limited information about the price is illustrated by the tourist trap model.

53. With regard to an experience product, communications should not focus on the various features of the product, because the true content of the assets cannot be verified in the consumer's decision-making process. When a consumer makes a decision on an experience product, he or she relies a lot more on the impacts imposed on him/her by the environment. For an experience product reputation building is an obvious strategy for an undertaking for this very reason.³¹ Reputation building may take place in the form of brand building³², and by building the reputation of the undertaking itself involving for example environmentally aware conduct, sponsoring, charitably events, putting in place conditions at the workplace that satisfy the requirements of the society (e.g. no employment of children for textile goods) and the extensive communication of such facts.
54. Reputation building builds obvious results for both the undertaking and the consumers: it shortens the consumer's decision-making process and makes it easier to evaluate the options (by for example making it easier for a consumer to assess the risks), while the undertaking may build long-term consumer loyalty if it applies the strategy successfully. Loyalty building is relatively easier on those markets where consumers have frequent and close relationships with each other and the undertakings, yet it is more difficult on other markets, where consumers interact more rarely with the undertakings selling the products.
55. Brand loyalty is one of the largest values for undertakings: after the brand building and providing that the brand involves high quality, there are no additional costs related to the marketing of the brand, and consumers make the previously illustrated simplified decisions later, based on their first brand decisions³³. The brand is extremely important for the consumers, because it mitigates the open risk related to the consumer's decision. Consumers develop decision-making rules for the brand, which will simplify the consumer's decision-making process and reduce the number of options when the next purchase is made.
56. If a wholesaler or retailer³⁴ provides information to consumers about the price, characteristics of quality of the products, he or she always takes into account the specificities of the consumer target group. Naturally, by providing information the consumer's conduct will always be influenced, which also affect the market structure – the undertakings consider the disclosure of information as a variable which determines their strategic behaviour.

³¹ We hereby note that there is greater probability that information asymmetry will develop on the market of experience products than on the market of search products.

³² A brand is a complexity of all symbols, which should identify the product and services with one specific manufacturer or distributor and also distinguish the product from other products. Although the concept of a brand does not exist in the Hungarian law, trademarks are protected with guarantees, the legal definition of which is very similar to the above concept. Among brands, the special literature distinguishes among others product brand, corporate brand, cover brand, supportive brand and commercial brand.

³³ The brand value means those characteristics of the brand based on which the individual products can provide additional value for consumers. The most important components of the brand value include brand loyalty, brand awareness, the perceived quality, brand association and advantages connected to the characteristics of the brand.

³⁴ For the purpose of the GVH the point of the production cycle, at which the marketing or information handling problem occurs for selecting the applied legal regulation, because the Act on prohibited commercial practices regulates consumer information in the so-called B2B area, while the Competition Act and the Act on Advertising regulate the B2B aspect.

57. The nature of information provisions shows significant differences if it is aimed at increasing the total demand for the specific product or the market share of the specific undertaking. Obviously, the undertaking does not wish to provide information in any case which would reduce the total demand, but it would not like either not to have the expected market share within the increased total demand as a result of the published information. The external problems arising from such a situation (the public asset nature of the information) may lead to a situation where the information disclosed by the market actor remains below the ideal level.
58. In relation to the correlation between the information and the market power, earlier it was illustrated that wherever a trader has market power, he or she will try to use the strategic benefits available from information handling for example by applying price discrimination according to the search costs (higher price is applied to those consumers for whom the search for information involves higher costs). If we assume that the difference in search costs may be used as the basis of application of a discrimination technique, it may urge the undertakings to increase the information noise level by publishing a lot of unimportant data.
59. The GVH thinks that there is correlation between the various market forms and marketing activities of the companies operating on differently structured markets. With reference to the contents of the 'HCA's basic principles applied to the freedom of competition', four ideal – typical market structures can be distinguished, which offer a sufficient theoretical background and also a well-manageable set of concepts for describing the actual markets. These various market structures in use various type and intensity marketing activities, which will be described below.
60. If there is perfect competition, a lot of undertakings operate on the market and therefore the products offered by them are not distinguished and the undertakings are receptive of prices. Marketing generally does not have any role on such markets, because all market actors are fully informed, including also the price and quality of the product. Under such conditions the role of marketing devices is irrelevant³⁵.
61. On a monopolistically competitive market there are fewer market actors, and undertakings may distinguish their products and define their prices. On an oligopoly market there are very few undertakings, which, similarly to a monopolistic market, are capable of distinguishing the products and defining their prices. On oligopolistic markets the undertakings consider any information disclosed about the product or the undertaking as a strategic variable.
62. Extremely strong competition of products, the presence of brands and intensive marketing activity are typical in both market structures illustrated in the above point. Such strong marketing activities may in certain cases lead to a situation, where the cost of product distinction and marketing activities, required for building strong brands, may form a barrier of entry for undertakings

³⁵ Let us note that marketing devices may also be used on markets offering homogenous products, but in such cases marketing increases the volume of the entire industry and not the volume of specifically defined undertakings.

intending to join the market. Furthermore, product distinction may lead to a situation where the comparison of individual products becomes different because of their large number and variation.

63. In a single product monopoly one undertaking covers the supply side of the market, which determines the prices in a monopolistic way and builds strong entry barriers in order to protect its markets. On such a market the role of marketing is also insignificant, because consumers can only purchase product on the market. On such a market there is also another question as to whether consumer decisions may be manipulated at all when the possibility of a consumer decision itself is doubtful. According to the GVH in such a case a consumer decision may only involve a choice of purchasing the specific product or not, yet this decision may be manipulated by the undertaking.
64. Apart from building entry barriers, the marketing strategy can also help an undertaking to obtain market power through the consumers' brand loyalty, with which an already introduced brand can be further extended and product lines can be developed.
65. Naturally, the marketing strategy may be influenced not only by the market structure, but also by the position of the undertaking on the market. Most probably the marketing strategy of undertakings with market power focuses on the strengthening and expansion of already introduced brand, while a smaller market actor, or potential new entrant, may build its marketing strategy upon the informative, comparative advertisements. On an oligopolistic market the market leader's statements or comparative advertisements could be useful instruments for increasing the market share³⁶.
66. This short overview of the most important market structures also illustrates that a competition policy (antitrust) analysis generally, although not exclusively, focuses on the structure of the supply side. The analysis concentrates only on the competition between the sellers, while an analysis of the freedom of consumer decisions contains the analysis of the structure of the competition as the background of the review of consumer choice.

1.4. Differences in consumer decisions and their welfare impacts

67. The review of the consumer's decision-making process proved that the probabilities defined by the consumer for himself/herself, based on which he or she makes his/her decision are not necessarily identical with the objective 'external' probabilities determined by the facts of reality. In such cases the consumer makes a worse decision for himself/herself and therefore gets into a worse situation than he or she could have got into despite this effort for the ideal solution (i.e. the consumer opts for the set of actions which seems most favourable for him/her). This phenomenon

³⁶ This document does not intend to illustrate the correlation between various products and market structures and the use of various communication devices. However, there are obvious correlations, such as for example between the market of strong brands and advertisements, or companies possessing a large database and the use of direct marketing devices.

is described as a consumer decision difference, because the actual consumer decision is different from the ideal decision despite the consumer's optimisation. This leads to two types of loss – the consumer's disadvantage (as a direct loss) and a long-term deduction of consumer welfare (indirect loss).

68. The consumer decision difference is the result of two phenomena, as indicated above: on the one hand, the consumer does not search for the adequate information, and the undertaking unfairly intervenes in the consumer's information search process.
69. The consumer's disadvantage may be identified with all direct consumer losses, which result from the fact that despite the consumer's conduct aiming for the ideal decision, the consumer does not make the best decision for himself/herself, and therefore the usefulness of the product assumed prior to the purchase (ex ante usefulness) does not coincide with the actual usefulness after the purchase (ex post usefulness).
70. Basic examples for the consumer's disadvantages: (1) the consumer does not purchase a specific product at the lowest possible price, (2) the consumer does not purchase the product that satisfies his/her taste or expectations, (3) the consumer purchases a product the quality of which is lower than assumed prior to the purchase. Naturally, the consumer cannot have a perfect foresight and it does not necessarily lead to a consumer's disadvantage, because on this basis nobody would purchase for example a lottery ticket which does not guarantee any winnings.
71. If there is a consumer decision difference, the competition or the market is also distorted (not those products are purchased or not as much is purchased of the product, or the product is purchased but not at that price, as in the case of an optimal decision in an objective sense), which leads to the loss of allocation efficiency, and therefore it reduces the long-term consumer welfare, thus generating an indirect loss for the consumer.
72. As the reasons of the consumer's disadvantage and such distortion of the competition or the market are the same (consumer decision difference), if a consumer disadvantage occurs, the competition or the market is also distorted, and thus consumers suffer a direct loss and indirect welfare loss. The direct and indirect losses are consequences of the difference between the subjective probability, which is the basis of consumer optimisation and the objective probability specified by the facts of reality. In order to avoid such losses the reasons leading to the non-ideal consumer decision need to be analysed and managed.
73. There may be several reasons for the difference between the subjective and objective probabilities (and consequently, the consumer decision difference) i.e. it may be the result of the consumer's conduct, the conduct of the supply side, or the characteristics of the product (and the conditions of the purchase). These factors have close correlation with the various levels of the consumer's knowledge and the differences between them.

74. When the consumer's decision-making process was described, the various levels of consumer's knowledge were also indicated. When a consumer makes a decision, the correlation of perfect information ('everything that the consumer can know about the market), reasonable knowledge ('what the consumer should know after a reasonable degree of search for information') and actual knowledge ('what the consumer actually knows') leads to a lot of important connections.
75. A consumer makes his/her decisions based on the actual knowledge. However, the relationship between the consumer's actual knowledge and the other knowledge levels depends on several factors. In reality, it almost never happens that all knowledge levels are identical. In this situation the actual knowledge of the consumer would be identical with the perfect knowledge, i.e. the consumer would have all information that is available about the product (and the other conditions of the purchase) and the subjective and objective probabilities referred to above would also be identical. In this case, there would be no consumer decision difference (and there would be no consequential direct and indirect losses either).
76. Apart from the perfect knowledge level it applies to all other cases that the consumer is not fully informed about his/her decision, i.e. he or she faces some lack of information. In this context the lack of information does not only mean that the consumer does not have enough information, but it also means that he or she does not have enough adequate information for his/her decision.
77. The following figure illustrates the process of development of a decision difference.

KNOWLEDGE LEVELS	POSSIBLE REASONS FOR DIFFERENCE BETWEEN THE VARIOUS KNOWLEDGE LEVELS	UNDERLYING REASONS
INITIAL KNOWLEDGE: Expectations based on subjective assumptions		Inadequacy of consumer conduct
	Does the consumer execute the search for information?	
REASONABLE KNOWLEDGE: All information available as a result of search for information of reasonable degree		Inadequacy of consumer conduct
	Is there avoidable lack of information?	
	<ul style="list-style-type: none"> • artificial increase of the cost of search for information • information withholding • manipulation of information 	Conduct of the supply side ³⁷
	Is there any intervention in the process of search for information?	
	<ul style="list-style-type: none"> • aggressive sales methods • consistent use of limited reasonability • supply of untrue information 	
	Is there unavoidable lack of information:?	
	<ul style="list-style-type: none"> • originally high cost of search for information (originally too high noise level) 	Features of the product and the market
PERFECT INFORMATION: All information obtainable by the consumer on the market		
	Is there unavoidable lack of information?	
	<ul style="list-style-type: none"> • The variables which are important in decision.-making depend on future potential events • Feedback is not possible (confidence products), too slow feedback (some experience products) 	

³⁷ The freedom of consumer choice may be violated in two basic cases. On the one hand, the marketing strategy of the undertaking may contain components which do not cover the full reality in terms of the product or the undertaking (i.e. the information is misleading) or, they may also directly intervene in the consumer's decision-making process – the use of certain aggressive trading

1.4. State intervention

78. It is not possible to exclude anyone from the use of information assets, disclosed information, or such exclusion involves significant costs, because if any specific information is made available for someone, then it can be provided to others as well, without additional costs. The volume of information consumption cannot be controlled, and it cannot be established either how much it is worth for a consumer to obtain some particular information, and therefore consumers cannot pay for the actually used information, as everybody collects as much information as he considers necessary or is available on the market
79. The handling of information aimed at consumers by undertakings is regulated by two types of state regulations: (1) the information disclosure obligations³⁸, i.e., the obligation of the undertakings to disclose to the public certain information about the product, which is considered important in terms of the consumer's decision, (2) 'prohibitions of deception'³⁹ and 'aggressive sales methods'⁴⁰, which guarantee the true content of the information disclosed voluntarily or based on an obligation and prevents any disturbance of the evaluation of the options, i.e., guarantee that the decision-making process is not disturbed.
80. In the voluntarily disclosed information the undertaking highlights the advantageous features of the product, while information disclosed based on an obligation contains the advantageous and disadvantageous aspects, which may affect the consumer's decision. An undertaking is not necessarily interested on the disclosure of information based on obligation, a consumer cannot check quality, especially in relation to the confidential product characteristics. The civil law provisions (guarantee, warranty, product liability) related to state control adequate professional background and a guarantee of sufficient guarantee intend to maintain the equilibrium. However, it should be noted that without an adequate control mechanism the information disclosure obligation may also be reversed, because the consumer assumes that the disclosed data content is controlled and has higher confidence in the product, while any decision difference resulting from any obligation violating conduct may cause significant disadvantages to consumers. In relation to the need for, and contents of, regulations, we also point out that although a quality regulation type state intervention may increase the quality of the products and enhance the level of consumer information, it may also lead to a consequences that certain transactions simply do not take place, because products falling within certain quality categories are simply excluded from the market.
81. The GVH considers two aspects when it investigates cases with information asymmetry, suitable for the distortion of competition: a) did the undertaking manage information adequately, did the

practices may create an appearance for the consumer that he or she may make his/her decision about the product at an extremely low search cost (almost zero in some cases).

³⁸ the information disclosure obligations

³⁹ antideception rules

⁴⁰ aggressive selling methods

undertaking unfairly intervene in the process of information collection by the consumer and b) did the consumer conduct sufficient search for information before he or she made his/her decision.

82. Consequently, the GVH primarily controls compliance with the provisions applicable to deceiving or aggressive voluntary information disclosure obligation. As indicated above, it may also happen that a mandatory information disclosure practice is also investigated by the GVH, especially if it is suitable for significantly violating the consumers' confidence in the product or certain characteristics thereof.

2. Protection of the freedom of consumer choice in the system of protection of consumer interests

83. The GVH performs its interventions indicated above based on the provisions of the specific area of law, which is based mainly on the provisions of the Act on the prohibition of unfair commercial practices⁴¹
84. However, the freedom of decisions made on the demand side should be protected by an extensive set of public and private law instruments, the common objective of which is to ensure long-term consumer welfare.⁴² It is a specificity arising from the GVH's task that while considering its nature, the so-called classic consumer protection, it focuses on the reparation of individual consumer injuries suffered by laymen end users, the GVH's responsibility is to protect the competition against distortion and maximise a long-term consumer welfare.
85. When the instruments are discussed, we rely on the consumer decision-making process described above (recognition of the problem, information collection, evaluation of the options, consumer decisions and conduct after purchase), which may also be considered a kind of **individualisation process** in terms of the commercial practice, and, within that, information management. In line with the individual nature of the contract, this process may also be associated with different types of intervention objectives and instruments reflecting the nature of the specific phase.

2.1. Tools of implementation of the policy aiming at the freedom of consumer choice

86. The protection of **consumer interests** in the current sense of the concept began to develop in the 1960s-70s, before then the legislation focusing on consumer interests had not formed a consistent system. The first consumer protection programme of the EEC, approved in 1975 determined the framework of the Community level European consumer protection model, by declaring the 5 fundamental rights of consumers: (1) right to the protection of health and safety, (2) rights to the

⁴¹ We stress again that the Competition Act regulations also include the rules applicable to fair competition.

protection of the consumers' economic interests, (3) right to effective legal remedy, (4) right to information and education and (5) right to interest representation. The consumer protection policy, which is based on the system of fundamental rights, has turned into an independent community policy since the Treaty of Maastricht, while since the Treaty of Amsterdam consumer protection has also become the so-called horizontal policy, as a result of which consumer protection requirements must be taken into account whenever any other EU activity, policy, strategy or objective is specified. The so-called competition law norms for consumer protection purposes, aiming at the freedom of consumer decisions and evaluating the conduct of the undertakings towards consumers also contribute to the protection of the economic interests and right to information of consumers, interpreted as laymen end users, and therefore they are closely integrated also into the strictly interpreted consumer policy.

87. The classic contractual law concept, in which the actors of the market and trade of assets have equal rights and not subordinated to each other and in which there is full contractual freedom organising the private autonomy of the owners, may be compared to the basic concepts of classic economic thinking. It has become obvious, as also illustrated in this document, that this model based on perfect information is not at all suitable for capturing or managing the bargaining situation between the exposed laymen end users as consumers and a strong large undertaking, with the additional impact of the information asymmetry.
88. The recognition of the unequal relationship between the parties has led to the elaboration of the consumer protection concept in law: the consumer protection norms approach the legal regulation in connection with consumption, more specifically consumer choice and its freedom from the point of the law.

Public law instruments

89. **In the phases prior to consumer choice** (recognition of the problem, information collection, evaluation of the options) the decision reflecting the recognised needs and the minimum elements of the information environment facilitating the choice, as well as the related content requirements are contained primarily in the public law type norms, administrative and regulatory requirements, among which, based on their direct relationship with our topic, the most important ones are the rules specifying the disclosure obligation for the major characteristics of the product (e.g., labelling, price indication, etc.), the regulations protecting the freedom of consumer choice and prohibiting unfair trading practices, as well as the provisions of the Competition Act and the Act on Advertising.

⁴² See the contents of Section 2.1 of the background document GVH's 'Fundamental Principles of the Freedom of Competition as applied by the GVH'.

90. According to a main rule, information, communication and conduct of the supply side, falling within the competence of the public law norms related to the freedom of consumer decisions are of general nature, because the messages conveyed by them are not tailored to specific persons or addressees, but they try to capture primarily the characteristics of the specific consumer target group⁴³.
91. However, the devices directly aimed at the protection of consumer decisions are parts of a system, i.e. consumer protection in the sense of the public law, which covers all consumption regulations in which the consumer is not directly indicated as a subject. The common objective is to combine these extremely various norms into one system and create a scope of movement for the consumer, which provides adequate information and which is safe. Apart from aiming at completion, this includes market surveillance, advertising supervision, competition supervision, environmental regulation, price indication, price regulation, regulation of the opening hours of shops and performance of commercial activities, product security and quality assurance regulations, etc. These areas operate in close correlation and most of them have at least direct relationship with the freedom of the consumer decisions⁴⁴.
92. A lot of legal regulations contain provisions for the objective and true information provided to consumers, with the purpose of enabling the consumer to make a decision in a particular situation the results of which will be the closest to his/her expectations about usefulness in the right information environment.
93. The regulations on consumer information are concentrated in the Act on the prohibition on unfair commercial practices. This legal regulation implements the 2005/29/EC Directive in Hungary and as such, it intends to put in place high level consumer protection reflecting the EU legislator's intentions. The Act on the prohibition on unfair commercial practices prohibits unfair commercial practices, whereby any commercial practice is unfair if it does not fulfil the requirements of professional care and is suitable for enabling a consumer to make a decision which he or she otherwise would not have made.

⁴³ It is an increasing market phenomenon that certain communication forms, generally not applied on traditional media channels (e.g., direct marketing, database based market device, event marketing, etc.), intend to shorten the pre-decision process by trying to reach and address the consumer as an individual, encouraging him/her to make a decision as soon as possible. In this context we wish to illustrate two typical problems:

In certain forms of direct marketing (e.g. sending personalised offers in an invoice format) the legal nature of the document sent to the consumer becomes unclear based on the incomplete and misleadingly stated information.

Events marketing, which typically relates to the sale of timeshares (shared use of real properties) also raises several problems in terms of the accuracy and completeness of the disclosed information and aggressivity of the tools used for convincing people. In view of the complexity of the legal instrument and the related significant financial risk the adequate information is as important as a guarantee, and therefore, apart from the co-operation and information obligation, which generally applies to the contracting parties, the 20/1999 (II.5.) Government Decree also sets an obligation for written information about the important point and operation of this special product prior to the conclusion of the contract, and it also permits the consumer to re-consider his/her decision and its consequences within ten days and cancel the contract free of any charges.

⁴⁴ For example, the quality assurance regulation behind quality certification trademarks intend to guarantee compliance with the minimum requirements with regard to such confidential product characteristics, such as the environmentally-friendly nature of the

94. The legal regulations specifying the mandatory contents are integrated into the system of the Act on the prohibition on unfair commercial practices as any non-compliance with the obligations stated in these legal regulations must be considered a negligence of deceit.
95. Thus, the various sectoral acts (for example the food act and act on pharmaceutical drugs, which are especially in the forefront of the GVH's practices) perform a complementary role with the Act on the prohibition on unfair commercial practices. These sectoral acts contain minimum information disclosure requirements and occasional content limitations in accordance with the specificities of the various special products and service markets.
96. The overall rules of economic advertising activities are contained in the Act on Advertising, but similarly to the rules on information, the advertising law is also heterogeneous because applicable provisions are contained in many other legal regulations, and they have a *lex specialis-lex generalis* relationship with the provisions of the Act on Advertising. Such legal regulations usually cover the issues of advertising of a particular sector or a specific product or service.
97. In the GVH's application of law the problem occurs several times because the agencies applying the law need certain principles based on which they can find their way in the complicated structure of other provisions contained in other legal regulations so that they can assist consumers seeking for law to find effective legal remedy for their justified complaints.
98. On the basis of the aspect of consideration aiming at the non-distortion of competition, in a decision on the reasons for the practical order and implementation of procedures it seems useful to come up with a set of questions and answers, which can be used for all circumstances of the particular case:
- What general and specific regulations apply to the consumers' actual true information and/or advertising, or the prohibition of deceiving information in relation to the specific product or service?
 - Is there any organisation which has competence in controlling compliance with the provisions applicable to factual information and/or advertisements that comply with the law?
 - What procedural rules does the authority apply, if it capable of fast intervention and application of the law?
 - What legal consequences can the proceeding authority apply, with special regard to the issue as to whether or not it can restore true information for the future and whether or not it may impose a sanction of a size and effect, which provides remedy for the occurred consumer damages and also acts as the due deterrent?

production process and the use of raw materials arising from bio-operation, which the consumer cannot verify even after making a decision.

- Assuming that such a procedure is in progress, and assuming an effective procedure preparation and prevention, can any additional reasons be justified based on which there is a need for launching a special procedure because of the additional damages caused to competition (allocative efficiency lost) based on the deceit of the consumer?
99. It may also be stated about the information rules that the rules also follow a certain simplified order already in the process of manufacturing, trade and sales. The same order can also provide some guidance in the application of the law, because it also indicates where the error must be eliminated in order to prevent any damages occurring at the consumer, or any distortion of competition.
100. Apart from very rare exceptions, the GVH often finds even after the disclosure of the commercial practice, in the case of the violation of law taking place at a previous level (for example violation of labelling and notification regulations applicable to food supplements) that, assuming competence, another authority has already proceeded, but the damage cannot necessarily be remedied by it. Although, the disclosure did not comply with the law, in the meantime market effects could occur, which can only be evaluated based on criteria aiming at the prevention of any distortion of competition.
101. Consequently, it is important to highlight again the importance of enforcement and control of ex ante regulations, which may only be supplemented, but under no circumstances be substituted by the GVH's ex post procedural rights, which may be applied only when the law has already been violated.

Private law instruments

102. The consumer's decision, which is implemented in the form of the purchase of the actual product or use of the actual service, constitutes a contract for the purpose of law. Consequently, within the consumer's decision-making process the consumer's decision reflected in the contract and the subsequent conducts (for example options for waiving the established obligations, enforcing the rights related to faulty performance⁴⁵, etc.) fall within the scope of private law.
103. It was illustrated above that it is a feature of the search for information by the consumer that the cost of information obtained last equals exactly the proceeds resulting from the information

⁴⁵ The role of advertisements is not described clearly in private law. According to a basic approach an advertisement may also be placed in a contracting process, where it may not be interpreted in any other way, then an invitation to an offer which, apart from the contracting obligations, does not trigger any other legal consequences.

The appearance of the concept of advertisement among the rules applicable to faulty performance seems to break this logic. The performance of a contract may be considered faulty if it does not comply with the contract between the parties. As a result of the law approximation process, a new component was also introduced in the Hungarian Civil Law, whereby performance must also comply with the statements contained in the advertisement or on the label of the product, regardless whether or not the advertisement or the label is disclosed by the trader, manufacturer, importer or the representative of any of them. According to the underlying logic of this regulation, public statements of these individuals may also be considered the trader's contractual obligation, because advertising is a typical interment of influencing the intention to enter into a contract. However, in order to exercise the right to warranty, the features mentioned in the published statements must be specific. It is another component of the regulation that the obligor must prove the conditions of bale out (the obligor did not and did not have to be aware of the public statement or the public statement was

obtained last. From the point of law this is the point where the legal relationship dominated by the legal regulations concerning provisions for consumer information becomes individual and is transferred under the competence of the Civil Law. In terms of the application of the law, it is an important detail to be underlined, that as a result of the above, in the sense of the law the consumer's choice reflected in the contract, i.e. the conclusion of the contract also involves direct information between the specific parties prior to the contract, but in the decision-making process this is still the last phase of the valuation of the options.

104. Illegal relationship between the consumer and the undertaking becomes individual in the contracting process, but the point of individualisation changes from situation to situation. The regulation concerning fair consumer information protects this range if in order to protect competition against distortion it is necessary that undertakings should not be able to deceive their consumers, although the concept of a consumer, which was still an abstract and an economic actor at the beginning of the process, now gets a face and the consumer also needs his/her own individual legal protection. In other words, any deceiving conduct prior to the conclusion of the contract may be assessed by the GVH only if it is part of the undertaking's information practice.
105. The appearance of the consumer protection paradigm, the recognition that a consumer decision requires protection, has brought changes also in the contractual law, by imposing limitations on the freedom of contract, which was fundamental statement before. However, we cannot talk about any separate consumer protection private law, as intervention was made in the contractual relationships primarily in some segments, where additional guarantee components were justified by the complexity of the subject matter of the contract and/or the nature of the situation.⁴⁶
106. The extensive information obligation prior to the contract, as a unilateral obligation of the undertaking⁴⁷, detailed binding formal requirements, primarily the written format, strong limitation of the waiver of right by the consumer and unilateral right of cancellation granted to the consumer⁴⁸ are among the most important tools of consumer protection under the private law.
107. The consumer's decision-making process was illustrated above as an individualisation process, where the transactions takes place in a contractual relationship, where the consumer is the direct subject and demand and supply meet in the form of the contract in the law. In order to establish the contract, the parties must fulfil their co-operation and information obligations, which guarantee that the contract between the parties covers the actual individual consumer, needs and reflects the actual contractual intentions.

adequately corrected by the date of the conclusion of the contract, or the public statement could not influence the beneficiary's intention to enter into the contract).

⁴⁶ The private law regulations are extremely important in the following areas: product liability, warranty and guarantee, unfair general contracting terms and conditions, remotely concluded contracts, travel contracts, timeshare-based use of holiday homes, consumer loans, trading at the homes of individuals.

⁴⁷ Claudingating cogency: the contract between the parties may deviate from the terms and conditions laid down by law only for the benefit, but not at the cost of the consumer

⁴⁸ Granting of a so-called cooling-off period for the consumer, during which he or she can waive the contract without any charges

108. In the relationship determined by the specific needs of the specific parties the actual individualisation takes place in the form of the information obligation, which directly precedes the conclusion of the contract and direct communication between the parties: the disclosure of the information concerning the needs and the customisation of the conditions.
109. In the current contracting practice the prior negotiation and individualisation period has been reduced to minimum and the scope of consumers' choice has also decreased. The appearance of general contracting terms and conditions (blank contracts) practically reflects the uneven bargaining positions of the parties with the help of the law. An undertaking unilaterally dictates its terms and conditions for its contracts, which practically eliminates the possibility that the parties agree on the terms and conditions together, mutually taking into account each other's needs. In practice, consumer's choice is limited on the use of the offered service or not. The spread of the general contracting terms and conditions justified intervention into the contents of contract containing such terms and conditions and the requirement of additional information components.⁴⁹
110. Apart from challenging, the regulations also attached the legal consequences of declaring certain cases null and void as an additional guarantee with regard to the terms and conditions of the so-called consumer contracts between laymen end users and undertakings (even if they are otherwise not considered general terms and conditions of the contract).

2.2. The competition authority and its activities

111. In an environment without any market failure competition is an adequate tool for achieving the basic objectives, i.e. consumer welfare, competitiveness and efficiency, even without the involvement of the state. Competition is the most effective tool protecting the economic interest of the consumers.
112. However, the operation of a competitive market does not necessarily mean that the consumers can directly feel the beneficial impact of competition. In the current economic situation a consumer has to solve decision problems almost continuously (due to the complexity of the market structure, products, technology and sale methods) for which uncertainty and incomplete information must be managed, or at least recognised. It is the responsibility of the GVH by maintaining competition and market conditions without any distortion, thus promoting competition in this field, to safeguard the freedom of consumer choice, i.e. the right of consumers to their economic interests and adequate information.

⁴⁹ Any general contracting term is deemed unfair and may be challenged, which is unilaterally and unjustifiably detrimental to one party and violate the requirements of good faith. Any otherwise even fair general contracting term becomes part of the contract only if the undertaking applying it disclosed it prior to the conclusion of the contract. Other guarantee components may be connected to the general contracting term, if they are significantly different from the ordinary contracting practice, the provisions of the contract, or the contracting terms applied earlier by the parties. Such terms and conditions may become part of the contract only if the other party expressly accepts them based on a separate notification pointing them out.

113. Based on its interventions, the GVH undertakes a major role in the minimisation of the direct losses affecting the consumers (consumer losses), which originate from the consumer decision differences observed in the operation of the market
114. Considering that the limitations violating the consumers' decision-making autonomy also distort the competition and the market, apart from the direct losses of the consumers, they also decrease efficiency and reduce long-term consumer welfare. Consequently, any intervention of the GVH aims at the operation of the market and competition without any distortion, thereby contributing to the increase of long-term consumer welfare.
115. The interventions of the GVH protecting the decision-making autonomy of consumers necessarily intend to reduce the disadvantages affecting the consumers, competition and market distortion, and hereby the violation of long-term consumer welfare, i.e. both direct and indirect consumer losses.
116. As it was described above, in its activities the GVH assesses the violation of freedom of consumer decision from the point of the entire consumer community. Consequently, this does not mean that the total consumer community or the majority of consumers must be involved in a particular case. In fact, any consistent consumer decision difference occurring at any relevant, or perhaps distant minority, portion of consumers related to a particular product or service may result in some relevant welfare loss.
117. The part discussing the consumer decision difference pointed out that any consumer decision difference distorts the competition. This is also reflected by the provisions in Article 10 (3) of the Act on the prohibition of unfair commercial practices, according to which if competition is involved, the GVH proceeds in order to enforce the prohibition of unfair commercial practices, while if there is only a direct consumer disadvantage as a result of unfair commercial practice, then either the National Consumer Protection Authority or the Hungarian Financial Supervisory Authority proceeds.
118. In addition, the involvement of a smaller consumer group is a satisfactory condition for the GVH's intervention, and naturally the involvement of all members or the majority thereof is not required here either. These groups include especially the vulnerable consumer groups. The vulnerability of a consumer group is the result of two, generally closely related reasons: (1) the members find it more difficult than average to process the information required for decision-making and (2) the potential consumer disadvantage deteriorates their situation a lot more than the average. Consequently, vulnerable consumer groups may be groups of old people, children and young consumers, consumers suffering from a long-term illness, people living in households with a low income, unemployed people and consumers with low qualifications.
119. In its activities the GVH tries to create ideal decision-making situations and choices for the consumers. Consequently, information is an important component of competition of the market

actors operating on the supply side. Information is treated as a strategic variable, while there is a need for a GVH intervention whenever the management of information on the supply side leads to the development of a consumer disadvantage.

120. In relation to a particular case the GVH investigates the complete process of the consumer decision and does not accept the argument, according to which full information must be available only directly before the consumer decision is made. In the former phases of the decision-making process (recognition of the problem, valuation of the options and information collection) the GVH also investigates whether the information management of the undertaking was a sufficient basis for a future free consumer decision. One of the reasons of the consumer decision difference could be that in an advertisement the undertaking does not provide full information to the consumer about the options available for him. Thus, the decision-making process may be distorted in its initial phase, because the consumer may not even evaluate certain options, trusting the completeness and authenticity of the information.
121. The direct and indirect consumer losses are the consequences of consumer decision differences, but a consumer decision difference may not be influenced directly. Consequently, in order to mitigate losses, the reasons leading to a consumer decision difference must be managed.
122. In the information market structure the GVH's activities may be described as ex post intervention on the supply side of the market using competition supervision instruments, and as ex ante competition advocacy and competition culture generating activities (e.g. publication of press releases) on the demand side. In addition, the GVH may also influence the regulatory environment of competition with the review of legal regulations.

2.3. Managing the reasons of consumer decision differences

123. The objective of the GVH is to prevent consumers from making the best decision within the framework of management of uncertainties and processing of information, and to prevent any distortion of competition. On the other hand, it is not justified or practical that the actors operating on the supply side should also be called to account for consumer disadvantages, which are the result of the consumer's conduct or the specificity of the product and the market. This is why **the various reasons for consumer decision differences must be treated differently.**
 - There is no need or possibility to provide remedy for the consequences of any consumer decision difference which occurs because the consumer did not search for information. In this case the consumer has caused a loss to himself/herself. Naturally, the lack of search for information itself does not exclude the possibility of the intervention, because there may be several simultaneous sources of consumer decision differences, i.e. apart from inadequate consumer information collection, the behaviour of the supplied side or the nature of the product may also cause a (additional) disadvantage to the consumer and result in a long-term consumer welfare loss.

- The avoidable lack of information and disturbance of consumer learning is the result of the behaviour of the supply side, and therefore there is a need for the intervention of the GVH in the form of a competition supervision procedure or support for the formulation (development) of the regulations.
 - Nobody can be held responsible for an unavoidable lack of information, yet there may be a consumer decision difference. Although the consequences of such consumer choice differences may not be remedied by a competition supervision intervention, there may be a need for regulation. The regulation must intend to put in place conditions, under which the relationship between the buyer and seller is in balance. The GVH contributes to the regulation ensuring that the freedom of consumer decisions is guaranteed as much as possible and consumers are protected from direct and indirect welfare losses wherever the distortion of competition and the market relations cannot be prevented, and therefore consumer autonomy cannot be implemented due to internal reasons. Naturally, the presence of unavoidable lack of information itself does not exclude a competition, supervision intervention, because a consumer decision difference may simultaneously have several sources, so the behaviour of the supply side may cause (additional) consumer disadvantages and long-term consumer welfare losses even beside the market failures.
124. The regulations focusing on the mitigation of consumer decision differences may create entry barriers, similarly to other regulations, and therefore they may contribute in some other way to the reduction of the intensity of competition and its pressure. Consequently, the same principles, which are applied by the GVH with regard to other regulations protecting consumer interests included in the system of consumer protection but are not classified as economic interests (e.g. consumer security, enforcement of consumer rights) may be applied also in this area. During the assessment of the impact on competition of the various state interventions and regulation it is extremely important that (1) they do not impose unnecessary limitations preventing the entry into the market, and (2) they should comply with the requirement of competition neutrality.
125. A competition supervision procedure is an intervention option, available for the GVH. A competition supervision intervention is required when a problem needs to be handled under the competition law as a result of the behaviour of the supply side, i.e. when the lack of information may be avoided or when the consumer's learning process is disturbed. In both cases several conducts may be envisaged. Information withholding, artificial increase of the cost of search for information, or information manipulation lead to avoidable shortage of information. Aggressive sales methods, consistent use of limited rationality and the supply of false information represent intervention in the process of the search for information.
126. In the terminology of the Act on the prohibition of unfair commercial practices, an unfair commercial practice may include a deceiving or aggressive commercial practice, or 31 specifically named

commercial practices, contained in the Annex attached to the legal regulation. A deceiving commercial practice involves the supply of false facts or the presentation of true facts in a manner suitable for deceit.

127. These concepts may be related to each other as follows:

- The concept of statement of false facts is the same as the supply of false information.
- The prohibition of an aggressive commercial practice involves the aggressive sales methods and consistent use of limited rationality.
- The concept of the statement of true facts in a way suitable for deceit (including also concealment) includes withholding of information, manipulation of information and the artificial increase of the cost of obtaining information.

128. Consequently, deceit may take place by generating avoidable shortage of information and by disturbing the consumer's learning process (false information/false fact), while an aggressive commercial practice may only be related to the disturbance of the consumers' learning process.

3. Institutional relations

129. In its activities aimed at the protection of the freedom of consumer decisions the GVH co-operates with other authorities protecting consumer decisions including especially the National Consumer Protection Authority and the Hungarian Financial Supervisory Authority. This co-operation takes place in the form of consultations related to the management of cases detected on the market and in separate discussions related to cases of major importance. Co-operation is also required under the Act on the prohibition of unfair commercial practices for all authorities responsible for its execution.

130. The GVH co-operates also with all other sectoral authorities the responsibilities of which include the protection of consumer decisions.

131. Finally, the GVH also co-operates with foreign authorities in relation to problems that occur in cross-border cases involving unfair commercial practices.