

Challenges and Opportunities in the Digital Markets

From an NCA's Perspective

Márk Pánczél
Head of Unit (Antitrust)

III. Visegrad 4 Competition Conference, Budapest
27/4/2022

The views and opinions expressed are those of the speaker and do not necessarily reflect the views of the Hungarian Competition Authority

Role of the NCAs in Digital Markets

Set of problems

- Most favoured nations clauses
- Data assets in e-commerce
- Traditional vs. online retailers (vertical restrictions)
- Foreclosure by platforms (global/regional)
- Payment systems

Tools of the NCAs

- Sector inquiries
- Market analyses
- Enforcement actions
- Advocacy



GVH's step-by-step Approach

MFN clauses

- Sector inquiry
- Enforcement action

E-commerce

- Market analyses
- Enforcement actions (vertical restrictions)

Dominant platforms/ Gatekeepers

- Enforcement action – local incumbent (motor vehicle advertisement)
- Enforcement action – Google (Lyrics case)

Most Favoured Nations (MFN) Clauses

- Sector inquiry (2013) - Online hotel booking
 - Wide MFN clauses may restrict competition
 - Largest local player (Szallas.hu) switches to narrow MFN
- Enforcement action – Delivery Hero (FoodPanda)
 - Leading food ordering platform in Hungary
 - „In-the-middle” type of MFN (covering both online and offline sales channels of the restaurants)
 - Commitment decision (April 2018): „narrow” MFN accepted
- Follow-up investigation (2019)
 - Partial non-compliance – fine

E-commerce – Market Analyses

- Digital Comparison Tools (DCT) Market Analysis (2020)
 - Consumer protection focus
 - Recommendations for DCTs
 - ✓ Display rankings
 - ✓ Transparency of sponsorship by retailers, providers

- Role of Data Market Analysis (2021)
 - Main question: how data serves as competitive advantage
 - Holistic approach: competition policy and consumer protection focus
 - Recommendations:
 - ✓ Increase digital and data related competences of SMEs (through public and/or private programs)
 - ✓ Raising awareness of consumers to data handling (in cooperation with the national DPA)

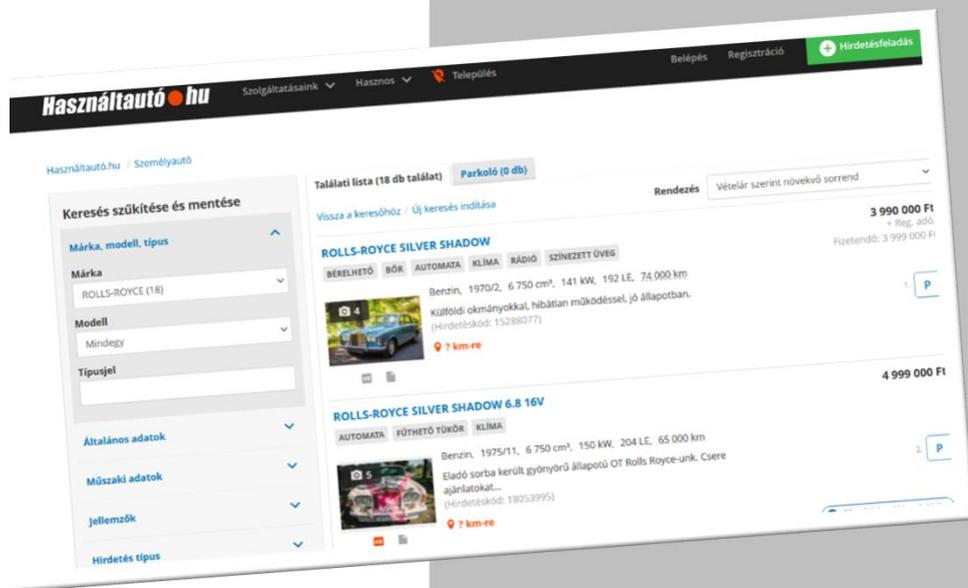
Online Retailers vs Brick-and-mortar Shops /1

- Online retailers put pressure on distribution networks (especially on offline shops facing higher costs)
- Reaction by suppliers:
 - Detailed qualitative requirements (selective distribution)
 - Hard-core restrictions (RPM, online sales, parallel trade restrictions)
- VBER 2010: focus on e-commerce
- ECJ: developing case-law towards more balanced approach
 - (Pierre Fabre → Coty)
- VBER 2022: strikes a new balance?

Online Retailers vs Brick-and-mortar Shops /2

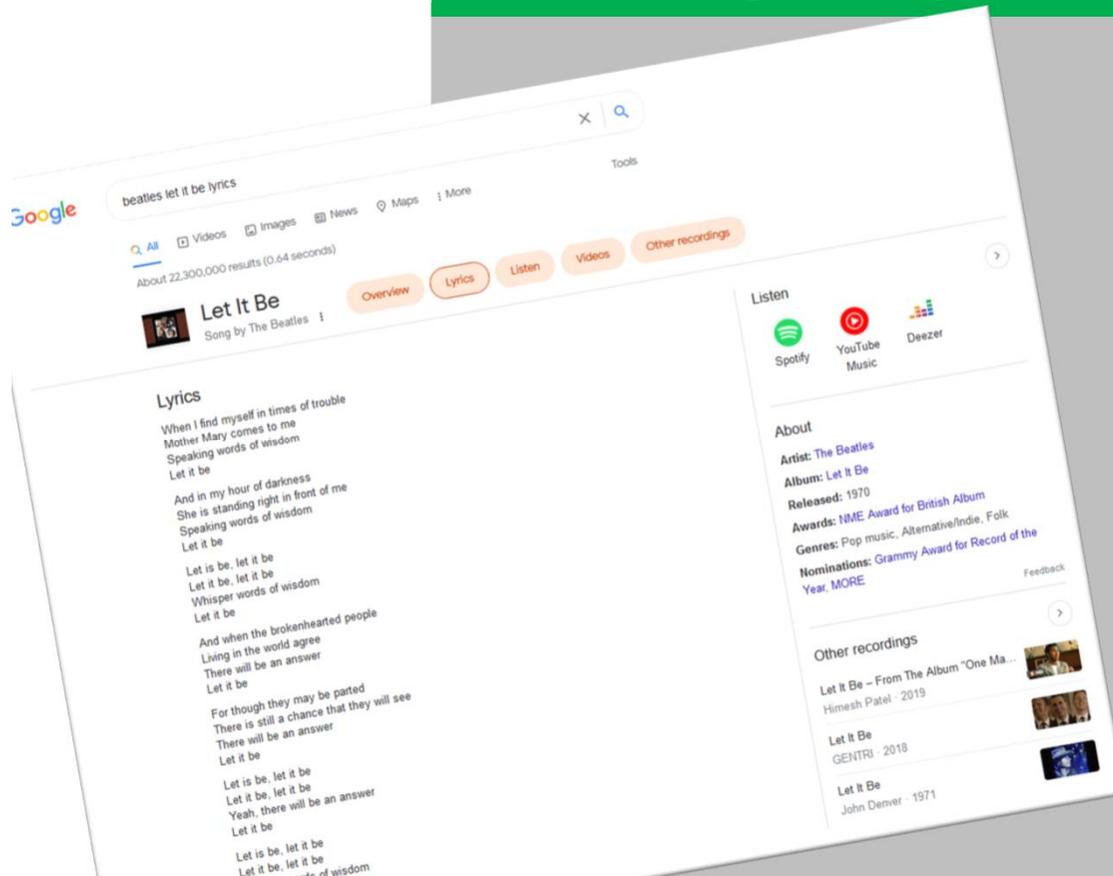
- Recent vertical cases of the GVH
 - Gardening equipment (2019)
 - Home alarm systems (2019) – under appeal
 - Nail products (2021)
 - Fishing products – ongoing
- Dos and don'ts for suppliers
 - Carefully choose the business model (selective / exclusive distribution?)
 - Avoid hard-core restrictions
 - Revise distribution contracts when VBER 2022 is out
 - Risks: void/unenforceable contracts, fines, damages
 - Find the way out: leniency / settlement

Ongoing Platform Cases - Adevinta



- Incumbent player in the Hungarian market for motor vehicle advertisement
- Discounts and other conditions are likely to exclude rivals
- Difficult question: timely ex-post intervention
- Various investigative steps carried out
 - RFI to almost 300 companies (advertisers, competitors)

Ongoing Platform Cases - Google Lyrics



- Introduction of lyrics card by Google
- Relevant content is shown before the organic search results
- A form of self-preferencing?

Effective National Enforcement in Digital Markets

- DMA is not the end of NCA's role in digital markets
- Personnel: panoramic view on issues and tools at hand
- National competition rules providing flexible set of tools
- Careful, step-by-step approach („soft” actions → infringement cases) to avoid false positives
- Strong theory of harm / contemporaneous evidence in enforcement (especially abuse) cases



Thank you!

Márk Pánczél

Head of Unit (Antitrust Unit)

Hungarian Competition Authority

panczel.mark@gvh.hu