

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

Personalised Pricing in the Digital Era – Note by Hungary

28 November 2018

This document reproduces a written contribution from Hungary submitted for item 1 of the joint meeting between the Competition Committee and the Committee on Consumer Policy on 28 November 2018.

More documentation related to this discussion can be found at:

www.oecd.org/daf/competition/personalised-pricing-in-the-digital-era.htm

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1. Regulatory framework

1. The Hungarian regulations on competition law and consumer law are enforced by numerous institutions, such as the GVH as the competent competition authority, the consumer protection authorities, as well as supervisory authorities. The GVH itself is an integrated law enforcement body. Consequently, similarly to a number of other EU competition authorities, it is bestowed with a number of consumer protection functions in order to ensure the fairness of competition in addition to its traditional competition supervision roles (antitrust, merger control).
2. In the field of consumer protection the local consumer protection authorities have competence to investigate a broad range of cases, with the exception of those cases that are handled by supervisory authorities due to the specific characteristics of particular sectors/activities.
3. The GVH is competent in cases having a substantial effect on competition¹. The GVH shall in B2C relations:
 - Apply the provisions of Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices (hereinafter UCP Act) that ensure compliance with Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices.
 - Verify compliance with the information requirements set out in certain additional pieces of sectorial legislation, if it can be determined that competition is materially affected. In cases where an undertaking also infringes other sector-specific information requirements (enforced by another authority) through an unfair commercial practice, and the practice has not exclusively been applied through the latter conduct, the GVH shall also apply the rules with regard to the information requirements.
4. The GVH shall in B2B relations:
 - Apply the rules concerning unfair business practices, and in case of comparative advertising, it shall apply the relevant provisions of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter Competition Act) that transposed Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising into the Hungarian national legislation.

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

5. Both the local consumer protection authorities and the GVH have powers to conduct investigations and pursue enforcement proceedings.

2. Policy Goals

6. As set out in its Medium-term Institutional Strategy 2015-2018, the GVH, as an independent public administrative authority watches over the fairness and freedom of competition in order to improve consumer welfare. It takes action against unfair and restrictive market practices and safeguards market structures promoting competition. It contributes to the establishment of a pro-competitive regulatory environment and the broad acceptance of competition, and promotes the conscious market conduct of consumers and undertakings.

3. Enforcement experience

7. According to the Mid-term Digital Consumer Protection Strategy² of the GVH published in 2018, digitalisation is especially attractive to consumers as it enables them to have a custom-made, private shopping-experience. According to the GVH, it is necessary to ensure that undertakings do not use algorithms or other forms of artificial intelligence at consumers' expense. In other words, steps must be taken to ensure that consumers who lack digital knowledge will not suffer disadvantages as a result of the existence of informational differences. Nevertheless, it is also important that undertakings are able to innovate whilst complying with the law. On the other hand, the executive bodies should be aware that as regards to digital markets, the economic environment, business models and consumer preferences differ from those of traditional markets.

8. Even though the GVH has both competition law and consumer protection enforcement tools, as a first step, the GVH believes that consumer protection enforcement can ensure a faster, more active intervention and enforcement in a timely manner. Consequently, the GVH has taken steps in the area of consumer protection enforcement, and it is for this reason that the present contribution deals with the topic of personalised pricing from a consumer protection perspective.

9. Two cases that have been dealt with by the GVH are mentioned below. In the first case the GVH became aware of the fact that different offers were being made available on different devices without any obvious reasons for these discrepancies, possibly as a result of personalised pricing. In the second case the undertaking explicitly stated in the investigated practice that the offer was unique and was only addressed to the particular purchasing consumer.

10. The GVH launched a procedure in October 2016 against Airbnb Ireland, private unlimited company (hereinafter Airbnb) operating an online marketplace for renting and booking travel accommodation, on the presumption that the information provided by

² http://www.gvh.hu/en//data/cms1039453/GVH_Strategia_Digitalis_fogyved_startegia_2018_09_27_a.pdf

Airbnb in connection with its fares and costs was misleading to consumers, especially as regards to the following.³

- The www.airbnb.com website and the Airbnb mobile application were likely to withhold, or improperly show accommodation costs, i.e. the price of the accommodation, additional fees, as well as information on how these were calculated.
- The costs of bookings made on various IT devices (desktop computer, tablet, mobile phone, etc.) regarding the same contents– same dwelling, time, number of guests – were different.
- Incomplete and non-transparent information provided by Airbnb on the costs of accommodations and the criteria used to determine these costs, in particular search history currency exchange rate used; furthermore, in relation to the possible differences applied to bookings made by consumers depending on the various computing devices used.
- The prices and related fees that were presented to consumers at the beginning of the booking process were later modified; therefore the actual costs of the bookings were unlikely to have been provided in a timely way.
- Fees that were subject to change during the booking process were only displayed at a later point in time, as well as the information on how their amounts were determined, which made it unclear as to whether they in fact had to be paid by consumers. Consequently, information on fees provided by Airbnb was unlikely to be updated and unambiguous.

11. The competition supervision procedure against Airbnb was closed with the acceptance of the commitments submitted by Airbnb. According to the commitments undertaken in the proceeding, the company committed to modifying the information that it provides to consumers relating to its fares. As a result of the commitments undertaken by Airbnb, the GVH did not establish an infringement and therefore no fines were imposed in the final decision.

12. The GVH may terminate a competition supervision proceeding without establishing that an infringement has been committed based on the voluntary commitments made by an undertaking. In the present case, the GVH required Airbnb on several occasions to amend and complete the commitments it had proposed during the proceeding, in order for the given commitments to be deemed by the GVH as being sufficient to make the undertaking's behaviour comply with the relevant legal provisions, thereby enabling the public interest to be protected.

13. Airbnb undertook, among others, that on its Hungarian websites

- consumers (after stating their date of travel) would be provided on all electronic devices (desktop computer, tablet or mobile phone) with the total price, including all the charges (e.g. cleaning charge, and the price to be paid for each additional guest);

³ Case Nr. VJ/89/2016., press release and decision: http://www.gvh.hu/en/press_room/press_releases/press_releases_2018/the_competition_supervision_procedure_against_airb.html

- consumers would receive, when searching for accommodation without providing the exact date, a warning message highlighting the fact that the shown final price, that may increase as a result of tourist taxes, will only be provided once the exact date and number of guests have been stipulated.

14. Furthermore, the submitted commitments also required the undertaking to bring to an end the differences resulting from the application of a conversion fee and the use of rounding. The price may change only in the case, when after logging in it becomes clear that the country of residence differs from the country of the IP address and so a different tax rate has to be applied.

15. Airbnb was obliged to implement the steps prescribed in its commitments within 120 days of receipt of the decision of the GVH, and to prove its implementation to the GVH. Compliance with the commitments will be checked within the framework of a post-investigation by the GVH.

16. Based on the abovementioned, it can be seen that it was possible to bring the investigated conduct in line with the applicable legal provisions in a specified way through amendments of a technical nature.

17. In the second case referred to above, the GVH investigated⁴ the conduct of Manna Natúr Kozmetikum Kft. and Manna Natúr Kozmetikum Európa Zrt., which in 2015-2016 advertised individual offers and published other advertisements as well, such as:

“Individual offer just for you! Fly to a Mediterranean orange grove with the enchanting aromatic Dolce Vita Soap, now only 990 Ft instead of 1270!”

“Attention, this is an unrepeatable, one-off offer, when the time expires, this window disappears! Our offer is available until seconds” (the text appeared in a red frame, and the timeframe was counted backwards from 2 minutes)

18. The GVH established that the two above-mentioned companies had misled consumers

- when claiming that their offers were unrepeatable, as it was established through the use of an IT expert that the offers were in fact not individualised and were entirely independent from the content of the particular basket, and from previous purchases and preferences;
- by stating that the limited offer was only available for 2 minutes, thereby depriving consumers of the time and opportunity to make an informed choice.

19. The GVH imposed a fine in case of Manna Natúr Kozmetikum Kft. However, in case of Manna Natúr Kozmetikum Európa Zrt. the GVH issued a warning and ordered the company to implement a compliance programme.

20. As we can see from the cases of the GVH and of other competition/consumer protection authorities as well, there have been no enforcement cases so far in which authorities have established infringements in this area; nevertheless, investigations are still initiated in this area if personalised pricing is suspected. In a number of these cases, alternative reasons have been established other than personalised pricing for the differences

⁴ Case Nr. VJ/140/2015., press release and decision: http://www.gvh.hu/sajtoszoba/sajtokozlemenyek/2017_es_sajtokozlemenyek/megtevesztette_a_fogyasztokat_a_manna.html

existing between offers, thereby highlighting that we need to be open to these possible explanations as well. Even in such cases, investigations can result in solutions for the identified problems. Furthermore, even if consumers are informed about the personalised nature of offers, the information that is provided to consumers about the pricing practices employed needs to be accurate. The GVH has launched further investigations using this experience, which are currently still ongoing.