

COMPETITION AND CONSUMER LAW ENFORCEMENT IN DIGITAL MARKETS IN HUNGARY

Digital markets and online services have recently become hot topics in both competition and consumer protection laws worldwide. The European Commission has recently published its report on the e-commerce sector, as part of the digital Digital Single Market strategy. Within the EU, national competition authorities (NCAs) and consumer protection authorities are sharing their experience of cases related to the sector.

This trend has reached Hungary, and was widely discussed at two competition law conferences held in June 2017¹. At these events, the president and the two vice-presidents of the Hungarian Competition Authority (HCA) signalled that the HCA closely monitors the features of the digital space, and that issues related to the data-based economy are one of the HCA's enforcement priorities. The HCA has also created a Task Force to deal with challenges raised by digital markets.

Issues of particular interest to the HCA are:

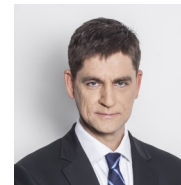
Interrelation of personal data and transactional decision of consumers. As early as 2011, the HCA started to develop the concept of the “transactional decision of consumers” relating to providing their valuable personal data. It is to be seen how the HCA will develop this concept further, with its [declared focus on online space and social media](#).

Sponsored content in social media and consumer perception. The HCA has highlighted the importance of informing consumers if online content is sponsored, as this has a significant impact on the perception of the content by consumers. According to media reports, several Hungarian celebrities with significant social media activities are involved in HCA investigations for not indicating clearly the sponsored nature of content in certain posts shared on their social media sites – which benefitted the advertisers.

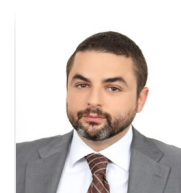
Ratings and rankings at online platforms and search engines. In line with the Italian consumer protection decision against Tripadvisor, the HCA indicated that evaluations submitted on such platforms will be considered misleading if only positive reviews appear, or if the platform communicates that the evaluations are real but does not check them. Trust marks must be based on objective evaluation or should make it clear that the user of the trust mark paid for it. For search engines, it is assumed that they provide objective results. If the ranking is sponsored, it must be indicated.

Antitrust. The HCA has recognised that the general definitions and ways to determine the relevant market seem outdated in the case of digital markets. In particular, access to data will be considered during a dominance test. Cartel enforcement is facing the challenge raised by algorithms, by dawn raids in completely paperless offices, and advanced machine learning technologies and with artificial intelligence.

¹ The [second Annual Competition Law Forum](#) and the [fifth Annual Conference on the Unfair Commercial Practices Directive](#)



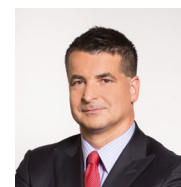
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Merger control. The HCA is likely to scrutinize transactions in the digital space that bring about high potential growth for one of the parties. This is in line with Competition Commissioner Margrethe Vestager's statement: *"if [the competition authorities] want to be able to deal with big data issues throughout the EU, then every national authority has to have the tools it needs to enforce the rules"*. The HCA is well-positioned to look into smaller transactions, thanks to the [amendment of the Hungarian Competition Act in January 2017](#). That amendment authorizes the HCA to review mergers where the combined net sales turnover of the parties in Hungary exceeds 5 billion HUF (approximately 16.1 million EUR), and where it is not apparent that the merger would not significantly lessen competition on the relevant market. If the parties fail to notify such concentrations, the HCA can launch an investigation within 6 months after closing.

Conclusions

The HCA is determined to pursue its enforcement activity in line with up-to-date developments of EU competition and consumer laws in the digital space.

Companies in Hungary are advised to review their marketing activity and communication to the extent it relies on collecting personal data from consumers, communication in social media, or other online platforms. Fines for misleading consumers can be high² if such conduct had a national reach and was decisive for the transactional decision. Compliance programs to prevent breaches of consumer protection will be considered as a fine mitigating factor if they meet the requirements set by the HCA.

Acquisitions in Hungary of companies engaged in this area of activity by purchasers already present in Hungary require careful assessment as regards the potential impact of the transaction on competition. Such assessment should take into account that traditional relevant market definitions may be outdated and thus irrelevant for the assessment, and that the HCA may indeed look for opportunities to review such transactions.

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² Most recently, Magyar Telekom was fined 600 million HUF/approx. 2 million EUR for unverified statements about the size of its 4G network (Case Vj/104/2015).