

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)

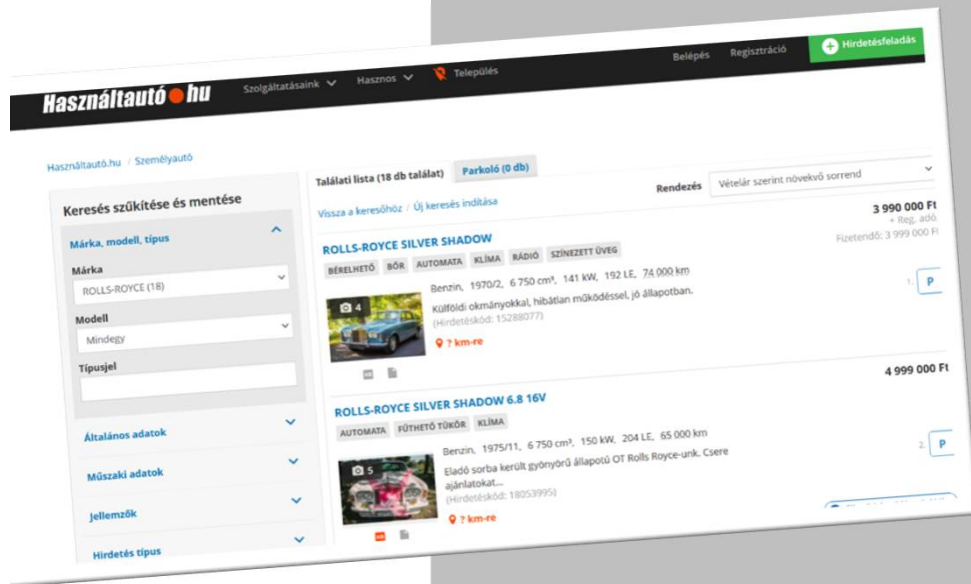
Online Retailers vs Brick-and-mortar Shops /1

- 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

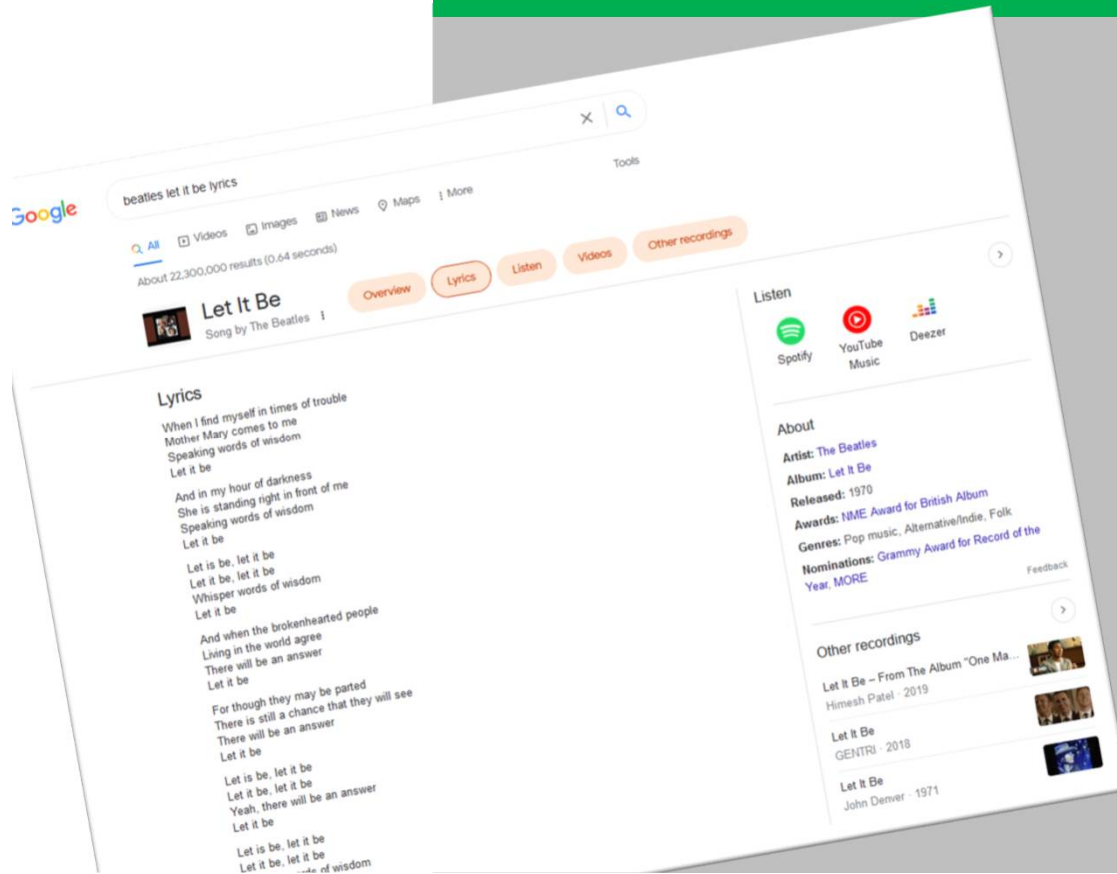
- Recent vertical cases of the GVH
 - Gardening equipment (2019)
 - Home alarm systems (2019) – under appeal
 - Nail products (2021)
 - Fishing products – ongoing
- Dos and don'ts for suppliers
 - Carefully choose the business model (selective / exclusive distribution?)
 - Avoid hard-core restrictions
 - 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

pancel.mark@gvh.hu