



CERHA HEMPEL CEE NEWSLETTER

Hungary

HCA Rules on Unfair Commercial Practice of Booking.com

The [decision](#) published by the Hungarian Competition Authority (HCA) on 28 April 2020 fits a trend that is clearly visible in the EU where competition authorities are increasingly focussing on consumer protection activities while classic antitrust (cartels and abuse of dominant position) law enforcement takes a back seat. The HCA has imposed fines of over HUF 7.7 billion (approx. EUR 21.6 million) on companies for misleading consumers in the last six months alone, while the fines have not even exceeded HUF 2 billion (approx. EUR 5.6 million) in cartel cases over the same period.

Since December 2019, the HCA has issued a series of significant decisions in consumer protection cases: record fine on Facebook for [claiming that its services were free of charge](#); a fine of more than one billion forints (over EUR 3 million) on Vodafone (according to the HCA, they do not have the [largest 4G network](#) in Europe); an even larger fine on Telenor, since a [device marketed for HUF 0 was not free](#) after all. There is currently a pretty strong focus on consumer protection law in Europe. The European Commission announced its "[New Deal for Consumers](#)" policy in 2018, and the leaders of the Commission have repeatedly stated that, currently, fines intended to sanction consumer protection infringements do not have a sufficient deterrent effect on large corporations. As a result of this policy, national authorities have taken consumer protection more and more seriously, imposing ever-greater fines on businesses that mislead consumers and breach EU consumer protection regulations. The shift of focus in consumer protection has also led to a change in the usual 'clientèle' of public authorities (instead of magic doctors curing cancer,

products that promise immediate weight loss, investment advisers promising revenue above the usual financial tools, etc.): multinational companies that have millions of euros in advertising expenditure and operate extensive compliance systems are increasingly likely to become a target.

In its latest decision, the HCA fined Booking.com almost EUR 7 million for misleading its consumers with the following practices and thus violating the provisions of the act prohibiting unfair commercial practices:

- **Cancellation free of charge:** The promise of something being free of charge is taken more and more seriously by the HCA; Facebook and Telenor have also received huge fines from the authority for claiming that their services were free. In contrast, consumers had to pay for these services either with their data or the price of the service claimed to be free was included in the fee of other services. In the case of the online accommodation agent, the authority argued that consumers had to pay higher prices for a room with free cancellations than for the same room without cancellation, and so the price of free cancellation was eventually included in the accommodation fee. Asking money for free cancellation does not *per se* constitute an infringement: in the case of credible and clear communication to the consumers, it may be permissible and it is not in itself prohibited by consumer protection rules. In the future, it would be more practical – and presumably less risky – in similar cases to indicate the fee for cancellation (insurance, refund, etc.) separately, so that consumers can make a more informed decision about how much cancellation is worth to them.
- **Pressure tactics:** All readers might be familiar with the fairly disturbing phenomenon when



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on certain websites warning messages start to pop up during shopping: "hurry up, last item!", "40 other people are currently looking at this product, decide quickly!" According to the HCA, a similar practice by Booking.com qualifies as unfair, as it forces consumers to make a decision that they might not have taken without being pressured. It is unprecedented for the HCA to fine a multinational enterprise for a so-called 'aggressive commercial practice'. Aggressive commercial practices are prohibited because they provide real information – i.e. the 40 consumers might be real people who are looking at the same hotel room at the same time – to consumers in a way that influences their transactional decision and thus trick them into buying something they may not need. Until now, this has been common in the case of teleshops and other companies with a dubious reputation, but now the HCA appears to make large companies accountable for this as well.

- **Paying with SZÉP-card:** According to the HCA, Booking.com did not provide proper information about the cases in which it is possible to pay with a SZÉP-card (a cafeteria element popular in Hungary) at certain accommodation providers, thus violating the requirement of professional diligence required by law.

In our view, considering the HCA's extremely strict approach towards Booking.com and the high-profile companies that were fined previously, it seems that consumer protection is gaining ground even at the expense of classic competition law. It is not a coincidence that the HCA's

first action right after the outbreak of the coronavirus epidemic was to issue a [notice](#) about the importance of informing consumers properly. It is also an important development that the role of behavioural economics becomes more important with the spread of new technologies in consumer protection procedures: both public authorities and businesses can use the help of economic experts to prove the impact of a marketing message on consumer decision-making. Moreover, it will in future be even more important for a large company intending to be compliant to pay special attention and allocate resources to compliance activities. Well-functioning *compliance programmes* may be able to prevent the publication of potentially misleading content even before the infringement takes place. In addition, preliminary compliance efforts might be treated as a fine-mitigating circumstance by the HCA, and therefore it may be worth enlisting the help of an external consultant or specialist when developing these programmes.

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