

# The protection of the consumers' interests in the car distribution

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*The present study gives an overview primary of the private law rules of the miscellaneous regulations of the consumer protection on the example of car distribution, presenting its civil law and competition law regulations.*

## 1 The regulation of car distribution

### 1.1 The features of traffic and car distribution

The economic development, competitiveness and the quality of life of a country or an economic area depends on the development of the traffic system in a considerable measure. The traffic and the transportation give about 6% of Hungary's GDP. The cost of transportation services (with the purchase and servicing of cars) reach 21% in households consumption.

We may experience considerable changes on the Hungarian car market since the political changes. Three vehicle syndicates have founded factories in Hungary (AUDI, Suzuki, Opel) during the last decades, and this resulted in the development of the supplier network. A car dealer network and a new car distribution system took shape at a European standard, the official importer firms of the manufacturers of vehicles used in Europe were formed, and their own sales networks were created.

The car market has changed: the elevation of the selling of new motor vehicles went hand in hand with the economic increase (the old vehicles have been replaced with newer and better ones, and second motor vehicles have appeared in the households, etc.). Nowadays about 800 dealer firms in about 1100 dealerships distribute approximately 200-210 thousand new motor vehicles annually, although this number is expected to decrease in the immediate future. A sad indicator for the Hungarian car market is that the average age of cars is above 10 years. Considering the long lifetime of the motor vehicles it is important, that the consumer/end consumer gets a motor vehicle with a suitable quality.

## **1.2 The legal regulation of car distribution**

It is not possible to think about this area of the business-economic life in terms of legislative segments, it is necessary to examine the law in a complex manner. Defining car distribution requires a complex view, since we can not be limited to the examination of a single contractual relationship, we have to analyse the whole network of the contacts of more subjects-at-law instead. The legal background is also defined by a complex examination of different laws:

- the civil law regulates the property relations in the distribution chain, the contact between the participant subjects-at-law, or the devolution of property, the rules of the trade,
- the goal of competition law rules is to ensure a clean business competition and its vitality,
- it is necessary to take the rules of financial law into consideration in the car distribution, in its financing and in its operation as well (see taxation). In trading with states outside the European Union, it is necessary to apply the customs rules, which are parts of financial law,
- the rules of administrative law are to be applied in procedure questions,
- the rules of traffic law are to be applied in terms of traffic situations,
- and the rules of EC-law, which influence our everyday life since Hungary's accession to the EU can not be forgotten.

The law did not take the consumers' interests into consideration for a long time in a proper measure, but the Hungarian law today - according to the community rules - lays a strong emphasis on this area, and we may experience considerable development on the implementation of law. The consumer protection law is not an independent branch of law, but an area touching more branches of law.

## **2 Consumer protection in the car distribution**

The basis of the emphasized protection of consumers' interests is the fact, that the consumer usually receives less and less professional information, that's why their power to enforce their interests is limited, so they become defenceless towards their business partners. The consumer protection law tries to create balance between the market participants: between the manufacturer/distributor often in a dominant position and the consumer. The consumer protection formulates surplus rights for the consumers and burdens their partners with a surplus obligation. The consumer protection rules guarantee the consumers' rights and help to enforce their lawful interests.

The consumer protection appears in different areas:

- Civil law protection –warranty, guarantee, product liability,
- Public law protection – obligatory technical and qualitative regulations, preliminary license of goods, supervising authorities,
- Competition law protection,
- Actions of civil organisations for protection of interest

There are different participants of the distributional chain in the system of car production/distribution. The vehicle goes usually from the manufacturer through the general importer to the dealer or a middleman and from there to the end consumer.

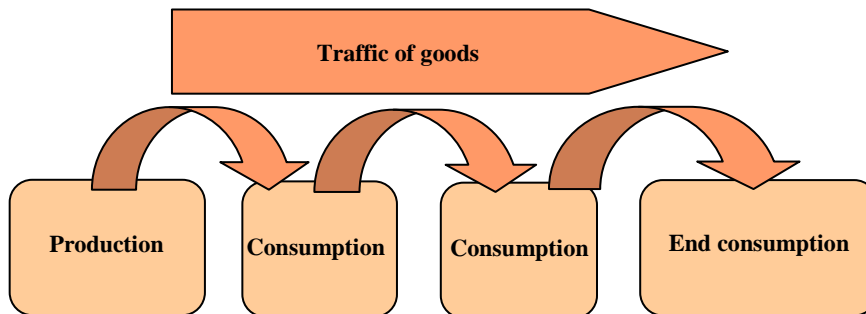


Figure 1  
Distributional chain

It is possible to examine the consumers' rights in the single sections, but since we face consumers with bigger expertise in the largest part of the distributional chain, the present study analyses only the protection of the end consumers' interests.

## 2.1 The consumers' civil law protection

During the law harmonization before Hungary's accession to the EU, Hungary's civil law was complete with many rules, which were to protect consumers' interests.<sup>1</sup> Hungary's Civil Code (Act 1959/4) was modified and completed, and the product liability regulation has changed, too. The Civil Code gives already a definition for consumers, consumers' contracts and gives surplus obligations according to the consumers' contract to the contract partner of the consumer.

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<sup>1</sup> See Act 2002/36 on harmonization of Civil Code and other acts according to consumer protection

### 2.1.1 Consumer protection in the law of contracts

The provisions protecting the consumer accompany the regulation of the whole existence of the contract all the way along. The basic principle, which is to ensure the balance of the parties, is to be mentioned between the general rules, according to which the contract may become invalid<sup>2</sup> in case of prominent value disproportion (objective value disproportion) between service and valuable consideration.

There is a legal **obligation for cooperation** of the parties during the conclusion and fulfilment of a contract, and there is a need for information each other<sup>3</sup> about essential circumstances on this field. The law regulates this in detail at the individual contracts. In case of car distribution the Civil Code requires the distributor to inform the customer about the essential characteristics of the motor vehicle, the circumstances related to the vehicle, particularly the rights and obligations concerning the customer, and about the conditions of the guarantee. The distributor has to hand over the related documents and to do the related tasks with the vehicle delivery (for example to place the motor vehicle into traffic). The advertising regulations are also to be mentioned in connection with the information, although this area is regulated by another act of law.

The rules of warranty and guarantee are to be mentioned among the breach of contract. This area was modified significantly by harmonization of law before Hungary's accession to the EU.<sup>4</sup>

The obligor fulfils the car distribution contract (onerous consumer contract) defective, if in the time of performance the motor vehicle does not suit the characteristics defined in the contract or in a statute. **Warranty** is the objective legal consequence without exculpation of a defective fulfilment of the contract. On the one hand this requires perfect performance according to the physical characteristics of the supplied thing (implied warranty), on the other hand it is a validity, that the obligee can obtain ownership on the supplied thing without any restriction (warranty of title). There is a presumption according to the consumers' contracts that the defectivity recognized within six months after the fulfilment of the contract existed at the time of the fulfilment already. The parties may not differ from this rule<sup>5</sup>.

The warranty claims are enforceable from the dealer. There is a new rule: fulfilment of a contract is perfect, if it suits the public statements, as well. The distributors can be called account about the marketing activities of the

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<sup>2</sup> See Civil Code Paragraph 201, Art. 2

<sup>3</sup> See Civil Code Paragraph 205, Art. 4-5

<sup>4</sup> See directive 1999/44/EC and Act 2002/36

<sup>5</sup> See Civil Code Paragraph 305/A, Art. 2

manufacturers and the importers, which may influence the contracting intention of the consumer.

The obligee may require repairing or exchange in the case of defective fulfilment. In case he does not have the right or the opportunity to do it, he may claim price reduction or abandon the contract.

The **guarantee**<sup>6</sup> is the other instrument of the validity for the fulfilment of the contract. The guarantee looks similar to the warranty in many ways, but it can be applied in more cases, it has more obligations for the obligor and it is prescribed either by a statute<sup>7</sup> or the contract. (It can be applied not only in the case of a defective fulfilment, but in other cases of breach of contract, the obligor has the burden of proof, etc. ). Buying a new vehicle, the distributor has to give 1 year guarantee obligatory according to the statutory rules, but distributors/manufacturers may give, and give it in the reality, a longer guarantee for the vehicle or for its components and accessories based on the contract with the consumers. (They hope to get competitive advantage on the market this way.)

The guarantee does not affect the consumer's warranty rights, but it guarantees surplus rights for him. The guarantee claims are equal to the warranty claims. The consumer may enforce his guarantee claims with the guarantee ticket and he can do it directly at the repair service listed on the guarantee ticket given by the distributor. Only new components and accessories may be used in case of repairing a motor vehicle.

In connection with guarantee rules it is necessary to mention a related legal gap according motor vehicles bought abroad. The Hungarian rules do not concern contracts of sales like this. The official repairers belonging to the distributional system of the manufacturer have to provide guarantee services, repairs free of charge and recall works for all motor vehicles attached, distributed on the internal market, based on the block exemption regulation of the EC<sup>8</sup>, but only the distributor of the sold motor vehicle has to exchange it.

### **2.1.2 The regulation of the product liability**

The law<sup>9</sup> on **product liability** aims to ensure law protection for consumers by ensuring a compensation claim based on strict, objective liability in case there are damages caused by the defectivity of the product/vehicle. It makes possible to

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<sup>6</sup> Civil Code Paragraph 248, Art. 1 „The one who owns guarantee for the perfect fulfilment based on a contract or statutory rules, can exempt from responsibility during the guarantee time, if he proves, that the reason of the mistake arose after the fulfilment. Guarantee does not affect the rights of the obligee based on statutory laws.”

<sup>7</sup> See Government decree 151/2003 on obligatory guarantee of durable goods

<sup>8</sup> See Regulation 1400/2002/EC, Art. 17

<sup>9</sup> Act 1993/10 on product liability

claim the manufacturer directly. The statutory rules concerning the manufacturer are to apply also for the importers in case of import products/motor vehicles. The regulation is equal to the community law in this case, since the Directive 85/374/EC was transplanted into the Hungarian law.

According to law the motor vehicle is defective when it does not provide the safety, which is generally expected. Merely the fact that later motor vehicles come into the market of goods with bigger safety, does not make the product defective (see montage of airbag, ABS, ASR, ESP, etc. possibly already as series accessories into later models). The manufacturer is exempt from the responsibility, if the defectivity was not recognisable according to the knowledge of science and technique at the time he distributed the motor vehicle. (When manufacturers recognize defectivity later on, they call back the defective motor vehicles and eliminate mistakes with a part replacement, repair or on an other way.)

This statute forces the manufacturer to give informations according to the product. He has to warn the consumers from all risks, which can have an effect on the generally expectable safety. (He can give driving style advices for the time of running in for example).

The manufacturer is responsible for product liability 10 years long counted from the distribution of a motor vehicle, after this time the injured party can claim for compensation based on the general compensation rules. The product liability rules do not affect the injured party's other opportunities for assertion of claims (claims in connection with breach of law, with torts or other opportunities for assertion of claims based on other laws).

## **2.2 The consumers' public law protection**

The public law accompanies the process of the social reproduction all the way along from the motor vehicle production to the distribution. The standards, the technical and qualitative regulations on motor vehicles and their production are taken into consideration during the production. The environment protection regulations are to apply on the field of production and distribution. It is necessary to observe administrative rules at basing and operating depots (manufacturer or marketing depots) and it is necessary to apply the consumer protection law and the government decree on the safety of goods and services.<sup>10</sup>

According to the legal regulation the consumer protection law is to be emphasized on this field. This implies concept definitions (like consumer, distributor, manufacturer, etc.) and it regulates the authority work related to consumer protection. According to the aims of the consumer protection activity (like life-

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<sup>10</sup> Act 1997/155 on consumers' protection and Government decree 79/1998 on the safety of goods and services, and on the related market supervision procedure

and health care of the consumers, furthermore the protection of their material interests) this law regulates the manufacturers' responsibility in connection with the distributed goods (for example the survey of risk factors, the prevention of the health impairment, the regular accomplishment of the examinations concerning the safety, etc.).

## **2.3 The consumers' competition law protection**

The competition law took only the competitors' points of view into consideration for a long time and did not deal with the consumer protection. Nowadays the competition law - meeting the European requirements - regards the consumer protection as his task. In Hungary also the Act 1996/57 on the prohibition of unfair market practices and on prohibition of restraint of trade (later on: Act on unfair trade) contains consumer protection provisions and prohibits unfair influence of the consumer decisions (the consumers' deception and the application of the business methods limiting the consumers' purchase freedom unduly).

The Act on unfair trade deals with three main areas:

- it defends the construction of the economy (regulates the cartel ban and the prohibition of abusing the dominant position, and contains the rules of the fusion control),
- it defends the market's functions: prohibits the unfair competition,
- in order to protect consumers: it prohibits the unfair influence of the consumer decisions.

Looking at the titles only the third area deals with the consumer protection, but considering the content also the second issue contains regulations with a character like this.

### **2.3.1 The prohibition of unfair competition**

According to the Act on unfair trade Paragraph 2 "It is prohibited to continue unfair business activity, particularly on a way, where lawful interests of competitors and consumers' can be violated or endangered, or where the requirements of business fair play are violated." There are some listed examples beside this general clause in the law, but it does not want to deal with all possible cases of everyday life. There is an important rule to emphasize from the regulation: it is enough to endanger the legal interests of the consumers', it is not necessary to violate them.

Among the listed cases the prohibition of character usurpation and of imitation protects the consumers' interests. According to the Act on unfair trade Paragraph 6, without the competitors' agreement, it is prohibited to produce, distribute,

advertise goods or services with characteristic exterior, packaging, marking, origin-marking or to name, use a marking, from which the competitor or its goods can be recognised. In the car sector this prohibition is usually violated in connection with components and accessories.

### **2.3.2 The prohibition of the unfair influence of the consumer decisions**

The rules of the consumers' competition law protection are the most often applied rules of the Act on unfair trade. The prohibition of the unfair influence of the consumer decisions can be divided into two prohibited areas: into the prohibition of the consumers' deception and into the prohibition of the application of business methods limiting the consumers' purchase freedom unduly.

It is prohibited to mislead the consumers, especially to state untrue facts, to state real facts on a false way, to use deceptive label in contact with the price, essential characteristic of goods, its origin or to give any deceptive information.

The law regards as a consumers' deception especially the concealment, the deception concerning any circumstances influencing consumers' decision and making a false appearance of especially beneficial shopping.

An example for breaking the prohibition of the application of business methods limiting the consumers' purchase freedom unduly is the case, when the real judgement of the goods, the offer or their comparison with other goods or offers is made difficult significantly (for example dishonest comparative advertising, puffing of goods).

### **2.3.3 “Actio popularis” for consumer protection**

As a speciality in our law, “actio popularis” for consumer protection has to be mentioned in the Act on unfair trade. On its base not only the affected may take legal proceedings because of the disadvantage caused for the consumer, but if the legal requirements are fulfilled, the Business Competition Authority, the chamber of commerce or consumer protection organisations can take legal proceedings, too.

## **2.4 Actions of civil organisations for protection of interest**

The role and weight of civil organizations is increasingly bigger. They do not have the power of an authority, of course, but they play a great part in information and civil control. That is the way how they can help to form the consumers thinking and behavior to become more conscious and they help to defence the consumers' rights on a higher degree. In case of the violation of consumers' interests, they can even take legal action according to the requirements of “actio popularis” in the Act on unfair trade.



## **2.5 Organizations empowered to consumer protection**

The consumer protection imposes an obligation on organisations in a wide circle from the governmental level to the civil organisations. The state's task is for example to develop and to approve the consumer protection concept or to organize the consumer protection education.

There are consumer protection supervisory organs, too: national and regional inspectorates, the national health and health officer service, the commercial quality controlling institute, etc.

The local governments' municipal corporation and its notary have competences according to consumer protection, too. (They have competences according to granting permission for the entrepreneur, keep official records, support the civil consumer protection organisations and they may organize consultations as well, etc.)

The chambers of commerce request the honest market behaviour, the protection of consumers' interests from their members. In case of violation of these rights, there can be taken an ethic committee procedure. There are independent conciliation bodies beside the chamber of commerce, in case of a lawsuit, they try to mediate between the consumer and the business organization.

Last but not least it is necessary to talk about the civil organisations supplying the representation of the consumer interests. They are based on Act 1989/2 on freedom of association. They play a great part in information, giving advice, making and distributing informative publications, as well as controlling, they help the consumer protection activity of the authorities and they can make proposals for legislation on consumer protection.

## **3 Conclusion**

The car distribution itself is a complex, multidisciplinary area, because it affects different disciplines (law, business, technical science). The consumer protection, being attached to car distribution, oversteps the individual branches of law. It contains civil law, competition law, administrative law rules and, in case of an infringement, it contains criminal law rules as well. You have to interpret relations and connections correctly in order to find the way in this complex world of several dimensions. The present study tries to interpret this complicated problem clearly.

### **Summary**

The present study gives an overview primary of the private law rules of the miscellaneous regulations of the consumer protection on the example of car distribution, presenting primary its civil law and competition law regulations.

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