



GAZDASÁGI
VERSENYHIVATAL

Termination order was issued – the end of the ‘watermelon saga’?

On 10 April 2013 the Gazdasági Versenyhivatal (GVH – Hungarian Competition Authority) terminated the competition supervision proceedings that it had initiated in the watermelon cartel case. This decision was made because the authority believes that the continuation of the proceedings would not serve the public interest.

On 27 August 2012, the GVH initiated a competition supervision procedure against a number of supermarkets (ALDI Magyarország Élelmiszer Bt., Auchan Magyarország Kft., CBA Kereskedelmi Kft., Lidl Magyarország Kereskedelmi Bt., SPAR Magyarország Kereskedelmi Kft., TESCO-GLOBAL Áruházak Zrt) an association of Hungarian melon producers (Magyar Dinnye Szövetség Közhasznú Egyesület), the Hungarian Melon Association and the inter-branch organisation for fruits and vegetables (Magyar Zöldség-Gyümölcs Szakmaközi Szervezet és Terméktanács) (Hungarian Interprofessional Organisation for Fruit and Vegetables) concerning an alleged infringement of the prohibition on restrictive agreements. The parties had allegedly agreed, on the one hand, on the prices that would be charged from mid-July 2012 for watermelons produced in Hungary and, on the other hand, that they would also not distribute (or only by applying discriminatory pricing) imported watermelons. The alleged agreement was initiated by the Ministry for Rural Development which wanted to secure a fair standard of income for farmers through this action.

After the initiation of these proceedings an amendment of the Act (Act CXXVIII of 2012 on inter-branch organisations and on certain issues of the regulation of agricultural markets /entered into force in September 2012/) on inter-branch organisations was proposed and adopted during the autumn of 2012. According to the amendment an exemption from the general prohibition of the Competition Act was introduced for restrictive practices in the agricultural sector. The amendment was to be applied to on-going procedures as well. The amendment also provided that the authority which is to be responsible for establishing whether this exemption is applicable should lay with the competent Minister, which in this case is the Minister for Rural Development. The Minister has to assess whether the restrictive agreement contributes to the attainment of a fair income for producers and that no market actor is prevented from joining the agreement. In the watermelon case the Minister established that the conditions were met and that the alleged cartel agreement was exempt from the prohibition of the Competition Act.

Though the exemption thus introduced only relates to the prohibition of the national legislation, the applicability of Article 101 TFEU is also restricted by the new legislation. According to the amendment, fines for an infringement of Article 101 shall only be imposed if the parties continue the behaviour even after the establishment of its illegality by the GVH.

The GVH considered that the elimination of the national prohibition and the attempt to exclude the efficient applicability of the union prohibition leads to a situation in which the public interest that the legislator wishes to protect is no longer clear. On this ground it terminated its proceedings in this case.

The GVH considers that the existing regulation gives rise to serious concerns as it causes legal uncertainty in the evaluation of cartel activities concerning agricultural products.

Case number: Vj-62/2012.

Budapest, 12 April 2013.

Hungarian Competition Authority

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