

Competition - Hungary

Watermelon cartel investigation could be terminated if legislative amendment passes

Contributed by **Bán S Szabó & Partners**

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A proposed amendment to the Agricultural Associations and Procedures Act, recently uploaded to the Hungarian Parliament's website, may have a major impact on ongoing investigations at the Competition Office. According to the proposal, the Competition Office will have no authority to investigate any agreement that is related to agricultural products and aimed at the restriction, distortion or exclusion of competition if the agreement attempts to guarantee fair and equitable income for the parties thereto. Under the slated amendments, the minister for agriculture will have sole competence to rule on whether the conditions for the exemption from investigation are met. The proposal must now be reviewed and accepted by the competent legislative committee (s) of Parliament in order to be submitted to a vote.

The Competition Office had launched an investigation into Hungarian subsidiaries of the large multinational retailers ALDI, Auchan, Tesco, Lidl, Spar and CBA based on their alleged horizontal coordination related to the retail price of watermelons – one of Hungary's most popular summer fruits. The investigation also targeted the Watermelon Association and the Fruit and Vegetable Authority.

The investigation has certain political aspects and is connected to a longstanding debate on the commercial terms along which watermelons are marketed in Hungary. Watermelon is a seasonal fruit grown country-wide by Hungarian farmers and is renowned for its superior quality. As watermelons are apparently popular among Hungarian consumers, it is of little surprise that they have for many years been imported from southern Europe (eg, the Balkans, Greece, Spain) in significant volumes for sale in Hungary. While it is debatable whether there is any quality difference between Hungarian and foreign watermelons, it is a matter of fact that foreign fruits are sold in Hungary at a retail price that is significantly lower than that of domestic fruits. Agricultural organisations and trade representations often claim that a large portion of the watermelons sold in Hungary to consumers as home-grown fruits are, in fact, imported products. Such 'grey' imports result in major losses for Hungarian farmers. Consequently, Hungarian farmers have repeatedly criticised government bodies for a failure to implement protective trade mechanisms aimed at prohibiting the sale of foreign watermelons in Hungary at a 'dumping price' with which a Hungarian farmer cannot compete.

Somewhat unexpectedly, their claims were heard by the government, and in Summer 2012 (ie, at the start of the watermelon season), the Ministry of Agriculture, along with the Watermelon Association and the Fruit and Vegetable Authority, initiated negotiations with watermelon producers, multinational retail chains and various agricultural organisations. The purpose of the negotiations was to implement a transparent trade system for the Hungarian watermelon market. In particular, ministry officials (in line with recommendations from industrial and farmers associations) 'asked' retailers to commence and finish the watermelon season at a retail price level that was substantially equivalent to that of the 2011 season and not to purchase watermelon for resale from foreign sources. While officially it was never confirmed, some sources claim that the ministry even fixed the minimum resale price of watermelons at Ft99 (approximately €0.30) per kilogram.

This initiation soon came to the Competition Office's attention, although government officials repeatedly refuted the allegations, referring to the ministry's conduct as an attempt to save Hungarian farmers from the dumping prices of foreign watermelons and alleging that there were no anti-competitive consequences. According to the ministry, its 'request for coordination' had just the opposite effect: it excluded unfair competition from the Hungarian market.

The Competition Office took a firm view and decided to launch a formal investigation,

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despite the fact that some retailers had not fixed a retail price of Ft99 per kilogram and had applied significantly lower retail prices to watermelons. Based on the facts that the Ministry of Agriculture had so far confirmed, it seemed probable that some kind of potentially anti-competitive coordination took place among retailers. This possible infringement could not be ignored on grounds that it was – at least partly – initiated by the government.

However, the investigation could be terminated without result if the proposed amendment is given the green light by Parliament. Government officials had previously claimed that the Competition Office had no authority to investigate the conduct of administrative bodies such as the Ministry of Agriculture, and the proposed amendment appears to support this view. It remains to be seen whether it will be approved by Parliament.

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