



GAZDASÁGI  
VERSENYHIVATAL

## **No investigation into sour-cherry cartel**

**It is market processes rather than assumed cartels of processors and purchasers that have generated low purchase prices – concluded the Hungarian Competition Authority (GVH). Therefore it rejected both complaints of the growers that were submitted to the authority, thus no investigation was initiated in the sour-cherry case.**

The GVH received two complaints about anomalies found on the sour-cherry market. One of them was presented by MAGOSZ (National Association of Hungarian Farmers' Societies and Co-operatives) against Kerezsi Kft., Mirsa Co Ltd. Pest Megyei Hűtőipari Zrt., Bács Zöldért Ltd., EKO Kft, Schenk és Társa Kft., Szatmári Konzervgyár Kft. and Marján és Társa Kft. According to the complaint of the association the seven undertakings concerned and other processors and purchasers not mentioned in the complaint violated the Competition Act by a harmonisation resulting in concerted sour-cherry purchase prices, and thus sour-cherry was sold at 50-60 HUF/kg all over the country. In the complainant's view processors are compensating their losses of 2007 by keeping purchase prices down this year since sour-cherry purchase price was around HUF 200/kg in 2007 all over the country. Therefore MAGOSZ suspects them to have abused their dominant position.

The other complainant was the Chamber of Agriculture of county Szabolcs-Szatmár-Bereg. According to the public body, Bégány-Ker Kft., Ertim Kft., Karácsony Kft., Meggy-Kert Zölség- és Gyümölcstermelő Értékesítő Szövetkezet, STISZA-Ker Bt., Szamos-Ker Kft., Szamosvölgyi Bt., Tisza-Jubileum Kft., Tranzit-Dió Kft., Zatól-Frucht Kft., Zöld Kert-TÉSZ Szövetkezet, Erzsébet Baráth entrepreneur and several processors - not identified - harmonised their procurement prices in the county Szabolcs-Szatmár-Bereg. As the chamber alleged, the undertakings kept continuous contact, harmonised prices and conditions to allocate the market and kept sour-cherry purchase prices artificially low. The sour-cherry purchase price was HUF 50-60/kg in the county. According to the complainant the purchasers abused their dominant position.

In order to clarify the situation, the GVH conducted a market analysis in which it established that 80 percent of domestic sour-cherry harvest was exported and 20 per cent of the export was purchased - unprocessed - by preserving factories and 70-80 percent of the export was preserved fruit or possibly natural fruit for direct consumption. The biggest purchasing market is Germany: about 70-80 percent of the export goes to Germany. The most important German purchasers are the retail supermarket chains Aldi and Lidl and the trading company Schroeder KG.

In 2007, the sour-cherry harvest was poorer and amounted to about 46,000 tons due to frost damage, thus the purchase price was around 200-220 Ft/kg. In 2008 the sour-cherry purchasing season started in the middle of June and lasted for a month. Based on the data provided by the national interprofessional organization for fruit and vegetable Fruitveb

(FruitVeb Magyar Zöldség-Gyümölcs Szakmaközi Szervezet és Terméktanács, hereinafter FruitVeb) sour-cherry harvest amounted to 59,000 tons. It was sold all over the country at 75-80 HUF/kg as an average at the processing plants. Depending on the stock left from last year, processors bought sour-cherry at 60-100 HUF/kg. However in case of indirect sales, not to processors – where the purchaser was a mediator – sour-cherry purchase price was lower, about 50-60 HUF/kg. At the same time purchase price for direct consumption was higher: around 120-150 HUF/kg. The purchase price of the “gipsy sour-cherry” used for nectar and pulp processing was also more favourable, around 90 HUF/kg.

Sour-cherry price-fluctuations were also observed over the last years

	2001	2002	2003	2004	2005	2006	2007	2008
<b>Hungarian sour-cherry yield</b> (thousand tons)	46	47	51,7	61,2	47,6	57,7	46,4	59
<b>Sour-cherry purchase price (fruit for bottling) at processing plants</b> (HUF/kg)	117	96	200	77	127	119	219	80

In order to reveal market processes in relation to this case, the GVH conducted consultations with the main players engaged in sour-cherry production, processing and sales. Besides the opinion of the farmers and representatives of the undertakings against which the complaints were directed, the authority also requested the opinion of the processors, and it also turned for opinion to Fruitveb professional organization grouping all the players of the sour-cherry chain. The GVH examined for instance how much the undertakings – that had allegedly formed a cartel as producers claimed – paid for sour-cherry.

Purchase prices of the undertakings complained by Magosz:

<b>Name of the undertaking</b>	<b>Purchase price (from – to), HUF/kg</b>
EKO Kft.	84
Mirsa Pest Megyei Hűtőipari Zrt.	84-108
Schenk és Társa Kft.	60-80
Szatmári Konzervgyár Kft.	84,96-105,2
Bács-Zöldért Zrt.	50-100
Kerecsi Kft.	50-60

Purchase prices of the undertakings complained of by the Chamber of Agriculture of county Szabolcs-Szatmár-Bereg:

<b>Name of the undertaking</b>	<b>Purchase price (from – to), HUF/kg</b>
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Erzsébet Baráth entrepreneur	50-70
Bégány-Ker Kft.	50-60
Karácsony Kft.	50-120
Meggy-Kert TЭСZ	36-168
Stisza-Ker Bt.	50-89
Szamos-Ker Kft.	50-70
Szamosvölgyi Bt.	35-120
Tisza-Jubileum Kft.	50-65
Tranzit-Dió Kft.	35-96
Zatol-Frucht Kft.	50-70
Zöld Kert-TЭСZ Szövetkezet	50-70

Neither complainants had definite knowledge of particular cases of the price concertation, nor were any circumstances proving the alleged cartel revealed in the course of the investigation. However it turned out from the data that the individual purchase prices significantly differed from each other and typically, they changed on a daily basis. Therefore decrease in purchase prices this year is due to the following market processes rather than to a cartelling of purchasers:

- Harvest 2008 is considered to be on an average level as compared with last years' harvest quantity, nevertheless the market faces an oversupply due to the new plantations becoming productive.

- According to the information provided by the professional association FruitVeb, the purchasers (certain exporters and Hungarian processors) set their prices for the Hungarian market before the actual beginning of the purchasing season calculating (based on flower-density) with a bigger harvest than it turned out to be actually.

- It is a market practise that negotiations about finished product prices between processors and purchasers usually take place in May and June, before the sour-cherry purchasing season. This way the price set in advance evidently influences the purchase price of sour-cherry. Since customers buy from several processors, similar purchase price levels may come into existence across the country without any price concertation.

- Based on the data available German demand for preserved sour-cherry decreased in 2007. According to the information provided by FruitVeb, in 2008 around EUR 0,5 is given for a bottle of preserved sour-cherry by the German retail chains Aldi and Lidl. This is also confirmed by the data provided by the processors according to which the processed sour-cherry can be sold at a lower price compared to last year's delivery prices. According to FruitVeb a purchase price not exceeding 80 HUF/kg can be the consequence of the fact that the price of the finished product is not higher than about EUR 0,5.

- It has been suggested that large stocks of finished products produced in 2007 from more expensive raw material in a more costly process remained unsold, and this fact was the reason for lower purchase prices since the processors wished to compensate their losses. There is no data available on the stocks at the commercial undertakings. According to estimations, however, there might be 20-25 millions of bottles of preserved sour-cherry

unsold at the Hungarian processors, this amount is around the half of last year's production. Based on the data procured by the GVH as well, many processors have unsold stocks. The stocks left might have also contributed to the decrease in demand, to this year's lower purchasing prices.

- Since the fact that there were unsold Hungarian stocks was also well-known to German customers – according to the information available – this might also have influenced their price calculation and their offers relating to this year's finished products.
- The fluctuation of the exchange rate of the Hungarian forint also contributes to the low purchase price: agreements between processors and customers were signed in May and June, and forint has been strengthened since that time. This might have also resulted in some percentage of decrease in price.
- The purchase price level of 2008 can basically be traced back to the decrease in finished product prices, which necessarily influences the purchase prices of the raw material.
- In addition – as this generally happens in the case of the purchasing of agricultural products – transparency also influences sour-cherry purchase: prices are posted at the purchasing places; furthermore, purchasers and processors get information of each other's prices from the growers, too. Moreover, the media also reported on this year's purchase prices and on their development during the purchasing season. All these mentioned contribute to similar price levels developing across the country.

Both of the complaints mention suppliers suspicion that purchasers abuse their dominant position. Therefore, the GVH examined this point as well. MAGOSZ considers the processors, the Chamber of Agriculture of Szabolcs considers the purchasers to be in a dominant position. The investigation of the GVH revealed that both the processors' and purchasers' side of the market have many players; consequently, the undertakings complained of cannot be dominant and therefore they cannot abuse any dominant position either. The complaint of MAGOSZ mentions four processors, but based on the data available to the GVH there are more undertakings which are interested in the sour-cherry processing; what is more 20-25 per cent of the Hungarian harvest is brought by foreign processors. According to the Chamber of Agriculture, there are 12 purchasing undertakings dominating the market of Szabolcs, but there are 300-400 purchasers in the region and even growers can directly deliver to processing plants, by-passing the purchasers.

The GVH only orders an investigation if the objected conduct, practise or situation may violate the provisions of the Competition Act, provided that the procedure falls within the competence of the GVH and the procedure is necessitated by the need to safeguard the public interest attached to competition. The GVH may establish by order that based on the data provided by the complaint and/or obtained in the course of the procedure commenced on application that the conditions for initiating a competition supervision proceeding are not met. As in the case described above, it could clearly be established those conditions not to be met, the Competition Authority rejected both of the complaints. The complainants may seek legal remedy against the refusal within 8 days by submitting a statement of claim, addressed to the Municipal Court of Budapest, to the GVH.

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