



GAZDASÁGI
VERSENYHIVATAL

Improved competitiveness to bail out the agricultural sector

It would be neither practical nor desirable and would not serve the interest of consumers if the food sector was exempted from the scope of the Competition Act – turns out from the study prepared by the Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) about the buying up processes of agricultural produce in 2008. According to the GVH, it is also true for the agricultural sector that flexible compliance with market pressure might constitute in the long run the guarantee for the competitiveness of the sector and the welfare of the Hungarian consumers and society. In the GVH's view competition does not hinder competitiveness on the food markets; on the contrary, it is an important source of the competitiveness.

In September 2008 the Agricultural Committee of the Hungarian Parliament called upon the GVH to analyse the buying up processes of produce in 2008. The study has been completed and today the GVH has disclosed its findings before the committee.

Last year the GVH focused its attention on the buying processes on four markets within the agricultural sector: the buying up prices of sour-cheery, melon and apple caused serious tensions, and also milk market crisis within the EU hit the Hungarian market players. These events were also followed by the GVH with increased attention in the course of its competition supervision activity.

However, no proceedings were initiated by the GVH, since no circumstances could be proven and no evidences could be found on the basis of which it could have been presumed that buyers and merchants would have formed a cartel or abused their market dominance.

In 2008, besides the agricultural cases, the GVH conducted five proceedings against retailer chains. In these cases the clauses of supplier contracts applied by the retailers were the subjects to the investigations. In the proceedings based on the Act on Trade, the commercial undertakings concerned – in order to anticipate possible condemnations – undertook commitments to remove the clauses that presumably infringed the provisions of the Act on Trade and thus were likely to be disapproved by the GVH, and not to apply these provisions in their future contracts.

As a result of investigating the formal and informal complaints concerning the food production chains, the most important findings of the GVH may be summarized as follows:

- Some undertakings and sectoral alliances have false expectations concerning the possibilities of the competition authority and the tools of competition law in resolving the problems arising from adaptation to the market.
- Asymmetry does exist in negotiations between market players of different levels of the supply chain. However, on the basis of the agreements analysed in the course of the investigations, we cannot say that the contract terms are

usually identical; this fact suggests that each and every deal is special, and negotiation skills and competencies are of high importance.

- One-sidedly beneficial contractual terms could be removed from the practice of the retail chains, therefore no stronger intervention was necessary.

According to the GVH, with the help of tools of competition law the competition authorities are capable of handling neither the inequalities in the allocation of incomes between the different players of the agricultural supply chain nor the market tensions resulting from the deviations between demand and supply. For this reason, in the agricultural sector, sectoral regulation has priority over the general competition rules. However, if a certain case does not fall under the exceptions defined by sectoral rules, general competition provisions apply for the conduct in question, also in the food industry.

In the view of the competition authority the serious problems of the food production chains can only be resolved by prompting the accommodation of undertakings to market demands and by improving market orientation. Application of state interventions that can only be enforced within the territory of a certain state – like special rules for the practice of retailers – must be considered duly and carefully. It may happen that the strict regulation will lead to an increasing amount of import that can be achieved easily through abroad transactions, finally causing detrimental effects to domestic contractors. Mr. László Sólyom, the President of the Republic of Hungary, also drew the attention of decision-makers and market players to this issue, when he returned the Act on Unfair Trade Practices to the Parliament for consideration.

It is inaccurate to cherish illusions that the state would solve these problems instead of market players in the small Hungarian market, which is highly sensitive to the international market trends. Being a Member State of the European Union limits the measures that can be taken for market protection. European Community law constitutes the main barrier in the case of agreements between undertakings having as their object or effect the restriction of export and import competition. The objections raised by the GVH with respect to the food production chain code of ethics concerned the points restricting imports coming from other EU Member States, which is deemed to be a prohibited market protection that could not even be regulated by statutory regulation in a lawful way.

Contrary to the public opinion, changes in structure, increasing concentration and improvement of co-ordination as parts of the accommodation to market requirements, which are resulting in efficiency gains are not prohibited by competition law – pursuant to the study of the GVH. Especially, if these changes take place between SMEs with low market shares. Nevertheless, price fixing and market sharing practices do not fall under this exemption. However, if a significant number of the producers concerned do not accept the need for adaptation – either because of the lack of will or insufficient knowledge -, the increasing danger of mass selection can be expected in the agricultural sector.

According to the GVH, it is also true for the agricultural sector that flexible compliance with market pressure might constitute in the long run the guarantee for the competitiveness of the sector and the welfare of the Hungarian consumers and society. In the GVH's view competition does not hinder competitiveness on the food markets; on the contrary, it is an important source of the competitiveness. Therefore, it would be neither practical nor desirable and would not serve the interest of consumers if the food sector was exempted from the scope of the Competition Act.

Finally a few proposals of the GVH, which may contribute to the solving of the real problems of the food sector:

1. The GVH will make a proposal on the fine-tuning of the block exemption system complementary to the Competition Act. Furthermore, the provisions of the Act on Trade applying for traders with significant market power may also be corrected.
2. The competition authority can specify the contractual terms that are not raising any competition concerns (eg. the fixing of a maximum resale price by suppliers).

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