

Class: UP/I 034-03/2015-01/019

Case: CCA v Hrvatske šume d.o.o., Zagreb

Type of case: Alleged abuse of dominant position – initiative dismissed

Case summary:

The Croatian Competition Agency (CCA) dismissed the initiative made by the undertaking Ceratonia d.o.o. from Lovište, Croatia, for the initiation of the infringement proceeding against the undertaking Hrvatske šume d.o.o. (public enterprise for forest and woodland management) based on the alleged abuse of a dominant position due to lack of grounds.

The complainant basically stated in its initiative that in accordance with the previous practice all companies that got the clearance of the Ministry of Environmental Protection and Nature could pick as much as wild-grown protected aromatic and medicinal herbs as permitted and stated in the clearance of the Ministry, on the land owned by the Republic of Croatia and managed by Hrvatske šume (HŠ). Pursuant to the permitted volume stated in the clearance the picker could sign an agreement with HŠ and payed a compensation per kilo of collected herbs. This practice has recently been repealed whereas a system of public bidding has been introduced. In other words, the right to pick the above mentioned herbs is now obtained by the best bidders, i.e. the bidders who are able to offer the highest compensation in a certain geographical area for a kilogram of picked wild-grown herbs. In the words of the complainant, this new practice forecloses the market for smaller, competitively weaker players and since HŠ is the forestry managing authority he claims that it abused its dominant position in the market. In the opinion of the complainant not only did this practice facilitate monopolisation in the business but also enabled foreign companies to participate and win the bid and in this way destroy the domestic industry which is rather lucrative and engaged more than twenty Croatian companies.

In the preliminary investigation of the market the CCA asked for and received additional documentation from the complainant, the Ministry and HŠ. In the course of the proceeding it has been established that the public tendering has been carried out by HŠ within the meaning of the regulations in force that empowers HŠ to conduct a tendering procedure without notifying or asking the consent from the Ministry.

It has also been established that equal treatment has been ensured to all undertakings that have previously been granted the permission for herbs picking by the Ministry. In addition, HŠ stated that there was even an equal opportunity for joint bidding.

Secondly, the CCA found that HŠ in this particular case did not hold a dominant position in the relevant market and therefore could not engage in abuse of such a position. This CCA decision was underpinned by its two previous decisions that were upheld by the High Administrative Court in the cases against HŠ where the Court confirmed that HŠ did not hold a dominant position in the same relevant market.

Based on the above findings the CCA dismissed the initiative of the complainant.