

Class: UP/I 034-03/15-01/023
Reg.no. 580-10/65-2015-019
Zagreb, 17 December 2015

Case: CCA v Dimnjak d.o.o.

- Alleged abuse of a dominant position by the undertaking Dimnjak d.o.o. – initiative made by a complainant who wanted to stay anonymous

Decision: Decision on dismissal due to the lack of grounds for the initiation of the infringement proceeding

Case summary:

The Croatian Competition Agency (CCA) dismissed on 17 December 2015 the initiative made by a complainant with protected identity against the undertaking Dimnjak d.o.o. with its seat in Osijek for alleged abuse of a dominant position due to the lack of grounds for the initiation of an ex officio proceeding.

In a nutshell, the complainant claimed that the undertaking Dimnjak, who is licensed by the Town of Osijek for the provision of chimney sweeping services, i.e. gas flues checks in the territory concerned, abused its position in the gas appliances maintenance and service and gas fittings and installation market. In the words of the anonymous complainant, the undertaking Dimnjak as a licence holder in the above stated part of the gas safety market forecloses the market for other competitors.

In the preliminary market investigation, based on the gas safety legal framework, received documentation from other participants in the market and the established facts, the CCA found that the chimney sweeping services (gas flues checks) that are carried out based on a license award, i.e. concession issued for such services under the utility regulations are separate services from the gas appliances maintenance and service and the gas installation market. In other words, whereas gas flues checks are carried out by one licensed undertaking in the territory concerned, other services, such as gas appliances maintenance and service and gas fittings and installation are carried out on a free and open market.

The undertakings who fulfil well-defined criteria may become authorised gas engineers in charge of maintenance and service of gas appliances and gas installations of the undertaking HEP-Plin d.o.o. who is the gas distributor in the territory of the Town of Osijek. However, the web page of the undertaking HEP-Plin clearly states that the undertaking Dimnjak is at the same time listed as a gas installation registered engineer authorised also to carry out work on gas fittings. In addition, all interested undertakings that fulfil the well-defined criteria may be authorised by the manufacturers and become authorised registered engineers for the provision of gas appliances services. This fact leads to no conclusion that the behaviour of the undertaking Dimnjak has had any exclusionary anticompetitive effects in the provision of gas appliances maintenance services.

Even though it is possible that Dimnjak who is licenced for the maintenance and checks of gas flues in the territory of Osijek while performing this service also offers other services,

such as gas appliances checks, it should be taken into account that the gas users are informed by the gas distributor – HEP-Plin d.o.o., and the gas appliances manufacturers about their rights and obligations concerning the gas safety measures involving their gas appliances and gas fittings. At the same time, the gas distributor HEP-Plin d.o.o. provides the users with lists of registered gas engineers that are authorised to perform gas appliances maintenance services. In that sense, the potentially inaccurate information provided by Dimnjak could not be understood as indices for potential abuse of a dominant position.