

Class: UP/I 034-03/2014-01/022
Reg.no: 580-10/76-2015-045
Zagreb, 17 January 2015

**CCA vs. CCA vs. Piaggio Hrvatska, Split
- alleged restrictive RPM agreement with authorised dealers**

Decision: Decision on non-infringement of competition rules

Case summary:

Although the results of the preliminary market investigation and the investigation carried out within the proceeding indicated alleged restrictive practices of the undertaking Piaggio Hrvatska from Split as the exclusive importer and distributor of motorcycles and scooters of Piaggio Group in the Republic of Croatia in the form of resale price maintenance and territorial restraints, the collected data and the facts of the case established in the course of the proceeding could not be taken as evidence that would be sufficient for the establishment of a restrictive agreement.

Namely, neither direct nor indirect evidence was found in the proceeding that was conducted against the undertaking Piaggio Hrvatska based on the alleged resale price maintenance provisions in the vertical agreements with its buyers. In other words, Piaggio Hrvatska did not limit the sales or restrict the buyers' ability to freely determine their sale price. The recommended price did not amount to a fixed price as a result of pressure from or incentives provided on the buyers.

Consequently, the Croatian Competition Agency (CCA) found that Piaggio Hrvatska from Split as an exclusive purchaser and distributor of Piaggio Group motorcycles and scooters did not distort competition by concluding a prohibited agreement with its authorised dealers.

In an ex officio infringement proceeding conducted by the CCA there was no direct or indirect evidence found in respect to alleged resale price maintenance provisions in the vertical agreements with its authorised dealers. In other words, Piaggio Hrvatska did not limit the sales or restrict the buyers' ability to freely determine their sale price. The

recommended price for the motorcycles and scooters did not amount to a fixed price as a result of pressure from the supplier or incentives provided on the authorised dealers and there was the no restriction of the territory into which, or of the customers to whom, these authorised dealers may sell the motorcycles and scooters concerned.

As mentioned above, the CCA based the case on the indices obtained from the motorcycles and scooters market investigation conducted with the view to establishing the pricing policy of the undertaking concerned and the assessment of the possible vertical restrictions contained in the distributor's agreements with the authorised dealers concerning the restriction on the buyers to freely determine the resale price of the products that Piaggio supplies.

The CCA explained in its decision that the supplier, in this concrete case Piaggio Hrvatska, is permitted to recommend the resale price or to impose a maximum sale price, provided that this price does not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by the supplier or buyer. Similarly, the buyer should be free to use the recommendations of the supplier and this in no way may be the result of any pressure or incentive on the part of the supplier but exclusively the result of its free will in pursuing its own economic interests.

In detecting any possible hard core restrictions the CCA used all available tools in order to completely and properly establish the facts of the case. It requested and analysed additional information from the parties and other participants in the relevant market concerned, it carried out the assessment of the standard authorised sales agreement between Piaggio Hrvatska and its authorised dealers, conducted a surprise inspection of Piaggio's business premises in Split and the oral hearing, where the right to be heard was given not only to the parties but also to the relevant witnesses of the case. The above mentioned analysis of the authorised sales contract that Piaggio Hrvatska concluded with 36 undertakings in the territory of the Republic of Croatia in the period from October 2010 to the end of 2015 showed that this contract was fully in compliance with competition rules.

However, the CCA draw the conclusion on the possible indices of infringement of competition rules based on the recommended price lists that Piaggio Hrvatska regularly emailed to its authorised distributors' network, the statements of the individual authorised dealers that they sent to the CCA, the notes taken in the meetings of Piaggio Hrvatska with some of its authorised dealers, the internal electronic communications between Piaggio's employees and the electronic communications between Piaggio Hrvatska and the individual authorised dealers.

Nevertheless, in line with competition rules and the criteria stemming from the EU acquis, in order to establish collusion, in this case a restrictive vertical agreement, the existence of direct evidence is essential. Direct evidence means that there is existing concurrence of will or a meeting of minds, coercion in the form of threats, a systematic monitoring, intimidation, warnings, sanctions or other forms of inducement or pressure imposed.

No such evidence was found by the CCA in this particular case. None of the analysed documents contained direct evidence of Piaggio's potential coercive strategy regarding the observance of its pricing policy by its buyers – authorised dealers of Piaggio motorcycles and scooters. On the contrary, the CCA actually established that the authorised dealers were free in creating their business policies, concretely, in determining of the resale price for the products concerned and the territory in which they sell these products. In other words, the authorised dealers freely and independently observed the prices recommended by Piaggio Hrvatska.

Consequently, the CCA took a decision establishing that on the basis of the facts of the case and from the material evidence it cannot be concluded that Piaggio Hrvatska and its authorised distributors were engaged in a prohibited agreement that would constitute an infringement of competition rules.