

Class: UP/I 034-03/15-01/033

Reg.no. 580-10/76-2016-004

Zagreb, 14 January 2016

Case: CCA v Nemetova Prima, Zagreb

- Alleged abuse of a dominant position by the health centre – complaint by EuroMedica, Zagreb

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 14 January 2016 the initiative made by the health centre EuroMedica from Zagreb against the health centre Nemetova Prima for alleged abuse of a dominant position due to the lack of grounds for the initiation of an ex officio proceeding.

In its complaint EuroMedica stated that Nemetova Prima illegally offered unfair prices for drivers' medicals that were lower than the prices defined by the Decision of the Croatian Government in the amount of 350 for normal and 450 Kuna for vocational drivers' licencing. Nemetova Prima allegedly wanted to strengthen its dominant position forcing or eliminating competitors out of the market concerned. It offered these discounts on its web page that meant some 20 % lower prices on the average than the prices regulated by the Ministry of Health.

At the same time the complainant claimed that there is a conflict of interest and unequal treatment of the parties in the same legal situation considering the fact that based on specific agreements Nemetova Prima was a part of the Agrokor Group where its 50,000 employees ensure the health centre concerned a favourable position in the market related to its competitors. As an example the complainant holds that any losses made by Nemetova Prima would be covered by the Agrokor Group thereby freeing the founder from such a responsibility under the law.

Taking everything into account, the claimant concluded in its initiative that Nemetova Prima used abusive conduct to strengthen its dominant position forcing or eliminating competitors out of the market concerned with the view to creating a monopoly in the provision of medical services for drivers' normal medical examinations and professional drivers' medical examinations.

In the preliminary market investigation the CCA established that, first, Nemetova Prima did not hold a dominant position in the relevant market in the territory of the Republic of Croatia, neither in the City of Zagreb nor in Zagreb County. Therefore, the undertaking concerned could not abuse the non-existing dominance within the meaning of Article 13 of the Competition Act.

Second, the CCA undoubtedly established during the preliminary investigation that the market in the provision of normal drivers' medicals and medicals for vocational drivers is very dynamic and competitive where the undertaking concerned was exposed to significant competitive constraints by other undertakings active in this market.

Third, the CCA noted that its role is not that of a price regulator but that of a facilitator of free market mechanisms, and where necessary, sanctioning of a dominant firm who behaves to an appreciable extent independently of its competitors, customers – suppliers and buyers and ultimately of its consumers and uses this behaviour to prevent, restrict or distort free competition, reinforced by its economic and financial strength. In this particular case, no indices of such abusive conduct were found.

Finally, the CCA stressed that surveillance and sanctioning for possible non-application or misapplication of the laws and other rules regulating the area concerned does not fall under the jurisdiction of the CCA.