

Class: UP/I 034-03/16-01/019

Reg.no: 580-10/76-2016-014

Zagreb, 12 December 2016

**CCA vs F&F Rail d.o.o.**

**- Initiative relating to the alleged abuse of a dominant position**

**Decision: Initiative dismissed due to lack of grounds for the initiation of the proceeding**

**Case summary:**

The Croatian Competition Agency (CCA) dismissed the initiative filed by the undertaking Zagrebtrans d.o.o. from Zagreb, for the initiation of the infringement proceeding based on alleged abuse of a dominant position against the undertaking F&F Rail d.o.o. from Zagreb, due to lack of grounds for the initiation of the proceeding.

The complainant stated in its initiative that on the special cargo market F&F Rail provides services below the competitive price thus making losses that have been compensated by the loan of its founder, whereby they both hold a significant market share in the special cargo transport market in the European Union. Thus, the complainant believes that F&F Rail as a connected company of the founder abuses its dominant position by directly or indirectly imposing unfair purchase or selling prices with the objective of eliminating competition in Croatia.

After the preliminary market investigation was carried out the CCA dismissed the above initiative in the sense of competition rules based on the features of the relevant market in the provision of special cargo rail transport services in the Republic of Croatia since 2014 (when F&F Rail was founded) and the realized revenues of the company compared with its only competitor Zagrebtrans. The CCA found that F&F Rail does not hold a dominant position in the territory of the Republic of Croatia within the meaning of Article 12 of the Competition Act. Therefore, given the fact that it does not hold a dominant position in the first place, the undertaking at issue could not be involved in any abusive practices in the sense of Article 13 of the Competition Act.

On the other hand, the behaviour of F&F Rail referred to by the complainant as price dumping or directly or indirectly imposing unfair selling prices could be regarded in the sense of Article 13 item 1 of the Competition Act exclusively in the context of alleged abuse of a dominant position by applying exclusionary abuse i.e. predatory pricing that aims at raising the price above the competitive level (recoupment capability) once it has forced the competitors to exit the market or deter entry and expansion by competitors, thereby increasing or maintaining its market power in the long run. However, taking into account that the undertaking concerned does not hold a dominant position in the market concerned in this particular case predatory pricing could not be discussed.

Finally, the CCA found it important to stress that it is not a price regulator or a price setting authority but a competition authority ensuring free market competition, beside other things, by preventing the undertakings who have the power to behave to an appreciable extent independently of its

competitors, its customers and ultimately of consumers do not prevent, restrict or distort competition by reaching to their market or financial power, which here was not the case.