

Class: UP/I 034-03/16-01/022  
Reg.no: 580-10/70-2016-002  
Zagreb, 12 December 2016

**CCA vs. Kaufland Hrvatska k.d, Zagreb and Plodine d.d., Rijeka**

**- based on the initiative of an anonymous complainant relating to alleged abuse of a dominant position and restrictive agreements**

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

**Case summary:**

The Croatian Competition Agency (CCA) acting pursuant to the initiative for the initiation of the infringement proceeding made by an anonymous complainant against the undertakings Kaufland Hrvatska k.d. from Zagreb (Kaufland) and Plodine d.d. from Rijeka (Plodine) dismissed the initiative concerned due to the lack of grounds for opening an ex officio proceeding.

Namely, the complainant basically stated in its initiative that Kaufland and Plodine abused their dominant position and concluded a prohibited agreement in the time from 18 to 24 August 2016 when these two undertakings allegedly sold beer (Pan, Karlovačko and Ožujsko) under the special discount retail price that was below the purchase price.

The CCA carried out a preliminary market investigation and decided based on the available documentation and the established facts of the case to dismiss the initiative concerned within the meaning of Article 38 paragraphs 5 and 9 of the Competition Act due to the lack of grounds for the initiation of an infringement proceeding.

Namely, within the meaning of competition rules the selling of goods below its purchase price can be discussed only in the light of possible abuse of a dominant position by applying exclusionary predatory practices plus the evidence that the predator will be able to raise the price above the competitive level once it has forced the competitors to exit the market.

However, the CCA established that within the meaning of Article 12 of the Competition Act the undertakings concerned do not hold a dominant position in the relevant groceries retail market. Therefore, since they do not hold a dominant position, they could not be engaged in abusive practices in the sense of Article 13 of the Competition Act, particularly, as suggested in the complaint, in predatory pricing or exclusionary abuse.

Therefore, the complaint concerned did not constitute sufficient indices necessary for the initiation of an ex officio infringement proceeding against the undertaking Kaufland and

Plodine within the meaning of Article 39 and relating to the application of Articles 8 and 13 of the Competition Act.

The CCA also noted that selling of goods under the purchase price falls under unfair trading practices under Article 64 of the Trading Act. Yet, the said provisions and the application of law do not fall under the scope of the CCA. In line with Article 66 of the Trading Act the administrative control in the area concerned falls under the scope of the competent ministry, whereas the inspectors of the Ministry of finance carry out inspections.