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Zagreb, 20 December 2016

**Croatian Competition Agency vs. Gorenje Zagreb d.o.o., Zagreb
- Alleged prohibited agreement**

Decision establishing a prohibited agreement

Case summary:

The Croatian Competition Agency (CCA) imposed a fine on the undertaking Gorenje Zagreb amounting to HRK 1.557,000.

The CCA found within the proceeding that Gorenje Zagreb entered into a prohibited agreement containing directly or indirectly restrictive provisions on resale price maintenance for white goods and small household appliances of Gorenje brand. The agreement has been concluded with a number of undertakings that sell Gorenje products in the territory of the Republic of Croatia.

Gorenje Zagreb used its rebate policy to induce the resellers to observe a fixed or minimum resale price as a result of pressure on the resellers and implementing a price monitoring system.

Gorenje Zagreb has implemented its restrictive business policy on the basis of its Sales provisions for white goods for 2010 that have been a constituent part of its standard contracts from October 2010 to February 2011. After that period Gorenje Zagreb actively used its price monitoring system in the form of electronic communications as to check whether its buyers comply with the fixed or minimum price level.

In the sense of these practices Gorenje Zagreb restricted the independent buyer's ability to determine its sale price and thereby infringed competition rules. The CCA declared the prohibited agreement in question null and void.

The CCA opened an *ex officio* proceeding against the undertaking Gorenje Zagreb based on the complaint made by a party afforded a protected identity status. The infringement proceeding was initiated following a preliminary market investigation in which there have been indices of the possible restriction of passive sales regarding the rebate and pricing policy and criteria used with undertakings engaged in online sales compared with the traditional brick and mortar shops.

However, the data and observations collected in the course of the proceeding lead the CCA to the conclusion that besides the likely restriction of passive sales there has been a reasonable doubt of fixed or minimum sale price maintenance, meaning that the price fixing and the price discounters offered to certain undertakings who sell Gorenje products have been a result of pressure from, and/or incentives offered by Gorenje Zagreb, whether orally or in its email communications.

Therefore, the CCA asked for the order of the High Administrative Court of the Republic of Croatia on the basis of which it carried out a surprise inspection of the business premises of Gorenje Zagreb.

During the dawnraid evidence was found that Gorenje Zagreb used the pressure and explicitly asked for acquiescence to its unilateral business policy by other undertakings.

On one hand, Gorenje Zagreb used its rebate policy to induce the buyers to comply with its imposed sales prices; on the other hand, it suspended further delivery of its products to undertakings that have not complied with the restrictive agreement thus preventing the deviations from the standard price level by other undertakings.

In short, Gorenje Zagreb has been for a longer period of time engaged in resale price maintenance (RPM) – imposing a fixed or minimum sale price that was to be observed by its buyers. Furthermore, Gorenje Zagreb has implemented a monitoring system that enabled it to control whether a certain buyer has deviated from the imposed price level by reducing the price below the price level and to compare these prices with the recommended prices. It acted so on its own initiative but implementing measures to identify price-cutting distributors and based on reports of other members of the distribution network that deviate from the standard price level.

The awareness of the fact that they have been constantly monitored by Gorenje Zagreb or by any other competitors, created pressure on the will of other buyers to comply with the imposed obligations. Therefore, the CCA has opened no proceedings against other undertakings that as weaker parties complied to what was imposed on them by Gorenje Zagreb and that needn't have been their true will.

Within the proceeding at issue Gorenje Zagreb expressed its will to undertake commitments to restore competition in the relevant market concerned. However, the CCA did not accept the offer taking into account the relatively long duration and the gravity of the infringement.

When imposing the fine in this particular case the CCA took into account all relevant facts and circumstances of the case. There have been no aggravating circumstances. The mitigating circumstances have been Gorenje Zagreb's cooperation with the CCA during the procedure and the fact that this undertaking had previously not been sanctioned for the infringement of competition rules.

It is the assessment of the CCA that the level of the fine in question amounting to HRK 1.557,000 has as its effect both general and specific prevention, in other words, it will have a deterrent effect on undertakings when considering engaging in competition infringements.