

Class: UP/I 034-03/17-01/015

Reg.no: 580-09/84-2017-003

Zagreb, 11 October 2017

**CCA vs. Autotransport Karlovac d.d., Karlovac and Čazmatrans promet d.o.o.,
Čazma**

**- Initiative relating to alleged distortion of competition in public procurement
process**

Decision: Initiative dismissed due to lack of standing to act

Case summary:

The Croatian Competition Agency (CCA) dismissed the initiative filed by the undertaking Kladušan Transturist from Ribnik, for the initiation of the infringement proceeding based on alleged prohibited agreement under Article 8 of the Competition Act entered into in the public procurement procedure (competitive bidding) involving the provision of school bus services for the pupils attending primary schools whose founder is Karlovac County by the undertakings Autotransport Karlovac from Karlovac, and Čazmatrans promet from Čazma, due to lack of grounds for the initiation of the proceeding.

In its initiative Kladušan Transturist complained that Autotransport Karlovac and Čazmatrans promet entered into a bid rigging agreement for the provision of school bus services for primary schools whose founder is Karlovac County where Autotransport Karlovac, despite the fact that its bids for groups 1, 2, 3 and 6 were selected as best bids, withdrew the submitted bid, so that the bids made by Čazmatrans promet could be selected as the best bids, given the fact that only these two bidders submitted their bids in the competitive bidding concerned.

In addition, the complainant stated that Autotransport Karlovac made a significantly lower bid than the estimated value of the purchase, whereas the bid made by Čazmatrans promet corresponded to the level of the estimated value of the purchase.

Taking these allegations into account, the complainant drew the conclusion that the difference between the bids made by Autotransport Karlovac and Čazmatrans promet in terms of the estimated value of the purchase, and particularly the fact that the undertaking Čazmatrans Nova d.o.o. controls the undertaking Autotransport Karlovac and is the sole founder of Čazmatrans promet, indicate that Autotransport Karlovac and Čazmatrans promet agreed about Autotransport Karlovac offering a competitive price in this public procurement procedure and consequently withdrawing this offer with the objective of Čazmatrans promet winning the bidding and obtaining the contract under the prices corresponding to the estimated value of the purchase for the individual groups – subjects of the bid.

Following the preliminary market investigation in this particular case and the established facts of the case the CCA found that Autotransport Karlovac and Čazmatrans promet are two companies belonging to the same group, controlled by the undertaking Čazmatrans Nova. Thus, within the meaning of competition rules, these two are considered one economic entity and perform jointly as legal representatives of the same undertaking. Given these

undertakings are not independent economic entities in the sense of competition rules Article 8 of the Competition Act does not apply here and consequently, their behaviour in the competitive bidding cannot be qualified as a prohibited agreement. In other words, in this particular case two bidders in this public procurement procedure can only be regarded as one undertaking, which to some extent, makes the whole competitive bidding purposeless. Thus, the CCA rejected the initiative and referred the parties concerned to the public procurement rules that fall under the jurisdiction of the authorities and institutions different from this competition authority.