

Class: UP/I 034-03/17-01/016
Reg.no: 580-10/76-2018-017
Zagreb, 14 December 2017

Case: CCA vs. HZZO, Mediligo d.o.o. Zagreb, Medtronic Adriatic d.o.o. Zagreb, Oktal Pharma d.o.o. Zagreb, Ljekarne Olujić Split

- Alleged prevention, restriction or distortion of competition

Decision: Initiative dismissed due to lack of standing to act

Case summary:

Due to lack of standing to act the Croatian Competition Agency (CCA) dismissed the initiative of the undertaking Stradivari Trade from Split complaining about the allegedly abusive practices of the Croatian Health Insurance Fund (CHIF) and the undertakings Mediligo d.o.o. from Zagreb, Medtronic Adriatic d.o.o., Zagreb, Oktal Pharma d.o.o., Zagreb, and Ljekarne Olujić, from Split.

In short, the complainant Stradivari Trade as a contract supplier of orthopaedic medical devices and other medicinal supplies in the territory of Dalmatia to persons insured by the CHIF, claimed that it had been foreclosed from the market due to the interpretation of the mandatory provisions falling under the separate rules regulating the activity concerned. In addition, it also complained about the allegedly unfair rebate policy implemented by the apothecary Olujić from Split.

After carrying out a preliminary market investigation in which the CCA examined all the collected data and evidence furnished by all the parties concerned, it pointed out in its decision that in this particular case, the CHIF is the only public institution managing the compulsory health insurance in line with the principle of solidarity and universal coverage. In such an established system it is presumed that the activity in question is not considered an economic activity, and in accordance with its nature has no effect on trade, since it is primarily based on the concepts of universal coverage and solidarity. The exclusive rights assigned to such an authority in carrying out its public tasks in the area of health care are considered public interest, a public, social activity based on universality, solidarity and equal treatment, fulfilling the social purpose in compliance with the criteria clearly set by separate laws.

Thus, in this concrete case, competition rules do not apply. The decision of the CCA quotes also the standpoint of the Court of Justice of the European Union in *Cisal di Battistello Venanzio & C. Sas. v Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL)*, and the General Court in *Fenin v Commission*, where it stated that competition rules do not apply to bodies and organisations engaged in national healthcare management where these bodies exclusively perform the role of buyers of products and medicinal equipment used in hospitals.

With respect to the allegations regarding the price discrimination and rebate policy the CCA found that there have been no indices that would substantiate the allegations of the complainant that Oktal Pharma was engaged in anticompetitive practices and infringed competition rules.

In the sense of the above findings, the CCA dismissed the initiative in question whereas it noted that it found that the behaviour of the CHIF was not based on any kind of strategy that would ensure a more favourable treatment of particular undertakings or foreclosure for the others. It can be assumed that the issues at stake have been the a direct consequence of the lack of transparency in the interpretation of the provisions that regulate the matter concerned.