

Class: UP/I 034-03/18-01/008
Reg.no: 580-10/76-2018-022
Zagreb, 14 November 2018

CCA vs. Croatian Composers' Society

- Initiative relating to the alleged distortion of competition – abuse of a dominant position

Decision: Initiative dismissed due to lack of standing to act

Case summary:

On 14 November 2018, after having carried out a thorough preliminary market investigation, the Croatian Competition Agency (CCA) dismissed the initiative of the undertaking Muzika i to with its seat in Zagreb, for the opening of an ex officio infringement proceeding based on alleged abuse of a dominant position by the Croatian Composers' Society from Zagreb due to lack of standing to act.

Namely, the complainant Muzika i to claimed that the Croatian Composers' Society (CCS) has been abusing its dominant position in the collective rights management market in Croatia, in particular by restricting access to this market to other collecting organisations such as the undertaking Soundreef Ltd. London from Great Britain that has been registered at the British Intellectual Property Office.

The complainant explained that the Act on the Amendments to the Copyright and Related Rights Act ensured any copyright collective engaged in collective rights management to pursue this activity in accordance with the Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84, 20.3.2014. In the opinion of the complainant, this piece of legislation guaranteed the copyright holders freedom to select a copyright collective of their own free choice and prevented the monopolistic position of the national copyright collective.

In addition, the complainant found that under the above-mentioned legislative framework Soundreef, as an independent management entity, informed the State Intellectual Property Office of the Republic of Croatia (SIPO) that it, as a registered copyright collective of the British Intellectual Property Office, concluded an agreement with Muzika i to and empowered it by means of a licence to perform the collecting activities on behalf of Soundreef in the territory of Croatia for copyright holders that have chosen Soundreef for licencing of copyrighted works on behalf of the authors.

In that sense, the CCS had allegedly sent reminder letters to some users warning them that they had been using music without necessary permits (illegally) and as a consequence of such behaviour they could be sued for damages.

Finally, the complainant accused the SIPO of failing to carry out inspections as a competent surveillance authority in the area concerned, what is more, it had allegedly opened a proceeding against the complainant regarding its status as an independent management entity.

In the preliminary market investigation of the relevant market concerned the CCA sought additional information from the complainant – Muzika i to and the CCS whereas it also asked for an expert opinion of the SIPO.

The CCA found that CCS holds a dominant position in the market within the meaning of Article 12 of the Competition Act and based on the Copyright Act the undertaking CCS is engaged in collective rights management activities. In spite of the fact that it holds a dominant position, there had been no circumstantial evidence that the CCS had been abusing its dominant position within the meaning of Article 13 of the Competition Act, given that the copyright collective concerned had been acting in line with its purpose and the objectives, in the first place protecting the authors' interest and copyright. On the other hand, the CCA established that the fees, discounts and the criteria under which the CCS granted discounts had been applied in a transparent manner and in the sense of the special laws regulating the area concerned.

With respect to the interpretation of the Copyright Act the CCA maintained the view of the SIPO as a body issuing the licences for the performance of collective rights management activities and responsible for the surveillance of societies and independent management entities carrying out the activities concerned. Concretely, the SIPO assessed the activities of the CCS as compatible with the provisions regulating the area concerned whereas it found that the undertaking Muzika i to in point of fact was an independent management entity carrying out the activities relating to collective copyright and related rights management.

The allegations concerning dissimilar conditions to equivalent transactions with other undertakings that CCS supposedly applied in its business transactions the CCA did not find anticompetitive and after having examined the CCS agreements, invoices and specific provisions the CCA found no distortion of competition based on the CCS pricing policy.

Finally, it must be noted that the surveillance regarding the proper application and implementation of the laws and specific rules governing the area and possible sanctioning in case of infringements falls outside the powers of the CCA.

On the account of the above stated the CCA decided that the circumstantial evidence in the case concerned was not sufficient for the opening of an infringement proceedings relating to Article 13 of the Competition Act and dismissed the case.