

Class: UP/I 034-03/19-01/010
Reg.no: 580-10/76-2019-019
Zagreb, 11 December 2019

CCA vs. A1 Hrvatska d.o.o. Zagreb

- Initiative relating to the alleged distortion of competition – alleged abuse of dominance

Decision: Initiative dismissed due to lack of standing to act

Case summary:

The Croatian Competition Agency (CCA) received a complaint made by Totalna televizija d.o.o. from Zagreb (Total TV) for the initiation of an ex officio infringement proceeding against A1 Hrvatska d.o.o. with its seat in Zagreb (A1) on the basis of alleged distortion of competition in the form of abuse of a dominant position. After having carried out a preliminary market investigation the CCA dismissed the initiative of the complainant due to lack of standing to act within the meaning of the Competition Act.

In short, the complainant Total TV, a satellite television provider engaged in the provision of radio and broadcasting programme distribution services, internet services and fixed line services, submitted its initiative for the initiation of the infringement proceeding alleging that the undertaking A1, registered for a number of integrated telecom services, refused the supply, started legal proceedings with malice and without good cause (vexatious litigation) against the complainant and had been engaged in “joint dominance” in the relevant market with the undertaking HT.

Based on the data and information supplied by the complainant, A1, the expertise of the national specific regulator Croatian Regulatory Authority for Network Industries (HAKOM) and the applied competition law and the relevant EU comparative practice the CCA defined two connected relevant markets in the case concerned: i) the upstream hosting platform market for public voice telephony and internet access services and, ii) the downstream markets for telecom services (public telephony fixed line services, retail broadband internet and pay TV).

In the course of the preliminary market investigation the CCA decided to dismiss the initiative of the complainant based on the following reasoning:

- within the meaning of competition rules there are two conditions that have to be cumulatively fulfilled for a practice to be regarded as abuse of a dominant position: the undertaking at issue must actually hold a dominant position in the market in the sense of Article 12 of the Competition Act and it must abuse this dominant position in one or more ways described under Article 13 of the Competition Act;
- the results of the CCA preliminary market investigation in this particular case showed that A1 does not hold a “joint dominance” in the sense of Article 12 paragraph 3 of the Competition Act with the undertaking HT in the relevant hosting market in the territory of the Republic of Croatia. This means that the prerequisite for the establishment of abuse of a dominant position under Article 13 has not been fulfilled, in other words, the undertaking concerned

could not individually abuse this position. Therefore, the practice of A1 from the point of view of competition rules could not be contested.

Given the fact that there have been no legal grounds for the initiation of an infringement proceeding against the undertaking A1, the request of the complainant for an interim measure was devoid of object and purpose.