

Class: UP/I 034-03/19-04/005
Reg.no: 580-16/119-2019-012
Zagreb, 6 December 2019

CCA vs. Iločki podrumi d.d., Ilok

- Unfair trading practices

- Decision establishing unfair trading practices

Case summary:

On 24 May 2019 the Croatian Competition Agency (CCA) opened an ex-officio infringement proceeding against the undertaking – winemaker Iločki podrumi d.d. from Ilok after having assessed a complaint from a supplier of grapes regarding the alleged late payment infringement which was communicated to the CCA by the Ministry of Agriculture.

In the course of the proceeding the CCA found that Iločki podrumi imposed unfair trading practices and used its superior bargaining power with respect to its suppliers of grapes regarding the wine harvest season 2018.

Namely, in its published general terms for the purchase of grapes in the wine harvest season 2018 Iločki podrumi in the period from 22 August 2018 until 1 September 2019 set the terms of payment later than 30 days in spite of the fact that this contravened with the provisions of the Act on the prohibition of unfair trading practices in the business-to-business food supply chain (UTPs Act) regarding the payment of fresh agri products and thus was regarded as imposition of unfair trading practices on the supplier. Concretely, the “Notice” of 22 August 2018 contained the terms of purchase of grapes in the wine harvest season 2018 defining that the payment for 25 % of the value of the delivered grapes would be made until 31 December 2018 whereas the payment for the remaining 75 % would be made in eight equal instalments starting in January 2019 until August 2019. Iločki podrumi thereby set the terms and deadlines for payment that exceed 30 days from the receipt of fresh agri product, in this particular case grapes, which contravenes with the provisions of the UTPs Act and constitutes an unfair trading practice within the meaning of the UTPs Act.

Furthermore, the CCA examined the contract that was submitted to it by the complainant, on the basis of which the infringement proceeding was initiated in the first place, and found that Iločki podrumi, as a processor of grapes, actually agreed the terms of payment that were longer than 30 days. Not only was the payment made later than 30 days – the payment deadline that cannot be exceeded as laid down by the UTPs Act – but was even outside the deadline for payment set by the agreement.

What is more, the Standard Purchase Contract that Iločki podrumi concluded with the complainant on 27 August 2018 did not contain any essential provision on the duration of the agreement, which also contravenes with the provisions of the UTPs Act and constitutes an unfair trading practice. It has been established that Iločki podrumi imposed the unfair trading

practices on this supplier in the time period from 28 September 2018 to 2 September 2019 on eleven purchase orders.

Therefore, under its decision the CCA prohibited the wine maker Iločki podrumi any further behaviour that would constitute unfair trading practices with respect to the complainant but also with respect to other suppliers of grapes (there were 189 Standard Purchase Contracts concluded between Iločki podrumi and its suppliers where the CCA established beyond any doubt these contracts contained the challenged terms of payment and did not contain the duration of the contract).

The CCA ordered Iločki podrumi to provide evidence that the Purchase Contract for wine harvest season 2019 or the necessary annex to the valid purchase contract have been brought into compliance with the provisions of the UTPs Act, to communicate to the CCA the list of all grape suppliers in the wine harvest season 2019 indicating the date when these contracts or annexes to the contracts were concluded and to provide the contracts with all the suppliers of grapes in the wine harvest season 2019 proving their compliance with the provisions of the UTPs Act (or one copy of the standard contract). The remedies concerned are subject to a statutory time period of three months.

Taking into account the gravity, the scope and the duration of the infringement concerned and the consequences for the suppliers, Iločki podrumi was imposed a fine in the amount of HRK 250,000 where the basis amount of HRK 380,000 originally set by the CCA was reduced due to good co-operation with the undertaking concerned in the course of the proceeding, the relatively short time of the infringement, the fact Iločki podrumi provided CCA timely with all necessary documents and data, paid its debts to the complainant and that the purchase contract with one grape supplier was brought in compliance with the UTPs Act before the proceedings was closed.

It is the view of the CCA that the fine is proportional to the gravity, scope and duration of the infringement and that it will have a deterrent effect not only on Iločki podrumi but also on other re-sellers, buyers and/or processors in the food supply chain.