

Class: UP/I 034-03/18-04/014

Reg.no: 580-16/123-2020-023

Zagreb, 18 December 2020

CCA vs. ULTRA GROS d.o.o., Zagreb

- Unfair trading practices

- Decision on termination of the proceeding

Case summary:

After having conducted a random investigation into the agri and food market in the sense of application of the Croatian Act on the prohibition of unfair trading practices in the business-to-business food supply chain (UTPs Act), the Croatian Competition Agency (CCA) opened an ex officio infringement proceeding against ULTRA GROS d.o.o. from Zagreb within the meaning of the UTPs Act with the view to establishing whether this re-seller used its superior bargain power and imposed unfair trading practices on its supplier V., regarding particularly the content and the implementation of the food products purchase agreement and the private label agreement between this re-seller and its supplier, both concluded on 31 March 2018, with the view to establishing whether the challenged provisions complied with the UTPs Act that started to fully apply on 1 April 2018.

In the course of the investigation the CCA found certain unclear provisions under the agreements concerned that could raise concerns with respect to the use of strong bargaining power and therefore could possibly contravene with the UTPs Act.

After having established that with respect to the turnover threshold ULTRA GROS constitutes a re-seller with a strong bargaining power, the CCA continued to follow the circumstantial evidence regarding the implementation of the private label agreement with respect to a possible fee charged for services that have not been provided or for services that have been provided even though they have not been agreed upon by the parties and the unclear specification of the place of delivery. In addition, the CCA also decided to inspect all the elements of the above-mentioned agreements particularly relating to payment deadlines, special offers, returning of delivered but unsold products, and the product assortment list, where applicable.

Yet, the CCA further analysis of the above-mentioned provisions under the challenged food products purchase agreement in the proceeding concerned found no evidence that would have substantiated the leads for any infringement of the UTPs Act.

Relating to the private label agreement the CCA found that it complies with the relevant criteria of the UTPs Act. The explanations provided by the party in the course of the proceeding and the results of the oral hearing conducted as an obligatory step in the

administrative procedure carried out by the CCA proved no evidence that would point at any infringements regarding the mandatory content of the agreement particularly relating to the imposition of any illegal fees, the legality of the payment deadlines, the place of delivery and discounts and rebates.

Therefore, the CCA adopted a decision to terminate the administrative proceeding concerned.