

Class: UP/I 034-03/20-01/002
Reg.no. 580-09/63-2021-012
Zagreb, 29 December 2020

CCA vs. Zagrebačka pivovara d.o.o., Zagreb
- Alleged distortion of competition – prohibited agreement

Decision on acceptance of commitments

Case summary:

The administrative proceeding against Zagrebačka pivovara was opened on 7 May 2020 with respect to existing circumstantial evidence of possible prevention, restriction or distortion of competition by the conclusion of a prohibited agreement within the meaning of Article 8 of the Competition Act, OG 79/09 and 80/13. There has been strong circumstantial evidence that the Partnership Agreements that this brewery company concluded with its business partners contained provisions that contravene with the Regulation on block exemption granted to certain categories of vertical agreements, OG 37/11 (VBER).

At an early stage of the proceeding (within the first six months following the initiation of the proceeding i.e., before the Statement of Objections) Zagrebačka pivovara committed itself to undertake necessary remedies under Article 49 of the Competition Act and proposed the concrete commitments and deadlines for their implementation with the view to eliminating possible anticompetitive effects.

In the probe relating to the the Partnership Agreements concerned the Croatian Competition Agency (CCA) found that particular provisions under these agreements contained exclusive distribution and exclusive purchase obligations whereas in the sense of the AC Nielsen data Zagrebačka pivovara held a [40-50] % market share in the beer retail market in the Republic of Croatia in 2017. In line with Article 5 of VBER these agreements could not be exempted on the account of the fact that block exemption applies to specified categories of agreements, provided that the market share held by the supplier does not exceed thirty per cent (30%) of the relevant market on which it sells the contract products, whereas in the case of vertical agreements containing exclusive supply obligations, the block exemption provided for in VBER can apply on condition the market share held by the buyer does not exceed thirty per cent (30%) of the relevant market in which it purchases the contract products. In addition, the CCA found that the duration of the investigated Partnership Agreements exceeded 5 years, which also indicated a possible direct or indirect non-compete obligation.

Following the explanations provided by Zagrebačka pivovara it has been established by the CCA that the Partnership Agreements concluded with its business partners had never been

applied and had actually been terminated together with its annexes in early 2019 i.e., they were not in effect.

Zagrebačka pivovara committed itself to undertake necessary remedies under Article 49 of the Competition Act and proposed the concrete commitments with the view to eliminating possible anticompetitive effects.

Within the meaning of Article 49 paragraph 3 the CCA sets the time period in which the undertaking in question should comply with the commitments, obliges the undertaking concerned to furnish evidence from which it is evident that it has undertaken the commitments concerned, on the basis of which the CCA can establish that there are no legal grounds to any further actions against the undertaking concerned.

The CCA published the commitments proposed by Zagrebačka pivovara on the CCA website and invited all the interested entities to submit their comments. No comments following the CCA request have been received.

Taking everything into account on 29 December 2020 the CCA adopted a decision on acceptance of the proposed commitments offered by Zagrebačka pivovara finding these remedies sufficient to eliminate the competition concerns and to restore effective competition in the market.

Concretely, Zagrebačka pivovara cooperated with the CCA voluntarily before the initiation of the infringement proceeding and concluded the annexes to the sales agreement that by entry into force revoked the Partnership Agreements containing the above-mentioned challenged provisions. In addition, it committed itself:

- to introduce a separate compliance programme and to carry out the compliance training for its employees in the area of competition rules in the period of five years,
- to communicate the content of the competition compliance training to the CCA within 30 days from the day of the receipt of the CCA decision, and
- to inform the CCA about the implementation of the remedies concerned and their outcomes within four months following the receipt of the CCA decision.

Therefore, the CCA decided to accept the commitments proposed by Zagrebačka pivovara in line with Article 49 paragraphs 2 and 3 of the Competition Act and ordered the undertaking concerned to submit evidence that it has complied with the decision of the CCA within the prescribed time period.

Once the commitments concerned have been carried out there are no legal grounds to any further steps in the proceeding against Zagrebačka pivovara.

The CCA notes that the commitments undertaken in the sense of Article 49 of the Competition Act do not mean that the party admits to the infringement of competition rules and that no infringement has been found within the proceeding concerned.

At the same time, the act of undertaking the commitments does not constitute a settlement or admitting to the infringement.

However, should the monitoring procedure with respect to the implementation of the commitments indicate that the undertaking concerned should act contrary to its commitments, such behaviour would constitute an infringement of the Competition Act and the CCA would issue a separate decision establishing the infringement and imposing the fine for the infringement concerned in line with the provisions of the Competition Act.

In the sense of the Administrative Fees Act and the Regulation on Administrative Fees Tariffs Zagrebačka pivovara is subject to payment in the amount of HRK 24,500 that is contributed directly to the State budget of the Republic of Croatia.