

Class: UP/I 034-03/19-04/001
Reg.no: 580-16/119-2020-026
Zagreb, 18 December 2020

CCA vs. JASENSKA d.o.o., Opuzen

- Unfair trading practices

- Decision establishing unfair trading practices

Case summary:

After having conducted a preliminary market investigation into the mandarin oranges 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 ex officio infringement proceeding against Jasenska d.o.o. from Opuzen within the meaning of the UTPs Act with the view to establishing whether this buyer of mandarin oranges used its strong bargaining power and imposed unfair trading practices on its suppliers.

In the course of the administrative proceeding the CCA found that the mandarin oranges buyer Jasenska used its strong bargaining power and, in the mandarin orange season of 2018, imposed on its mandarin oranges suppliers a number of unfair trading practices.

1. In the period from 1 September 2018 to 31 December 2018 Jasenska's published general terms of purchase (General Terms of Purchase of Mandarin Oranges) contained neither the terms of payment and payment deadlines, nor the time and the place of delivery of mandarin oranges, which contravenes with the provisions of the UTPs Act and constitutes an unfair trading practice within the meaning of the UTPs Act.

2. Second, the CCA found that the purchase agreements did not clearly define the price and/or provide the method for calculation or correction of the price, in other words, they did not provide for the quality parameters of the product concerned used to calculate the price, which is in contravention with the UTPs Act and constitutes an unfair trading practice within the meaning of the UTPs Act.

3. In addition, the business agreements did not clearly define the terms and the time of delivery in the orange mandarin season of 2018, which made the terms and the time of delivery vague and ambiguous. Under the UTPs Act these provisions are considered mandatory for any written agreement between the supplier and the buyer, they must be laid down clearly and unambiguously whereas ignoring them constitutes a serious infringement of the UTPs Act.

4. Besides the above-mentioned unfair trading practices the CCA also found that Jasenska concluded and implemented the storage and preservation agreements (Storage and Preservation Agreements) pursuant to which it actually took deliveries of unsorted and unripe

mandarin oranges for further market placement, despite the fact that this had not been regulated by the storage and preservation agreements, or the production and delivery agreements, implementing in that way the practice which *de facto* postponed the actual time of delivery of mandarin oranges and consequently transferred all the operational risk related to the agricultural product concerned to the supplier, which constitutes imposition of an unfair trading practice on the supplier in the sense of the UTPs Act.

5. Finally, by refusing to take the delivery of mandarin oranges on several (8) days of the mandarin season of 2018, whereas no justified reasons for the refusal of the delivery of the agri product in this particular case had been established by virtue of the relevant agreements, Jasenska imposed unfair trading practices on all its suppliers (228 suppliers) of orange mandarins within the meaning of UTPs Act.

Therefore, under its decision the CCA prohibited Jasenska any further behaviour that would constitute unfair trading practices as provided by the existing above-mentioned business agreements and ordered Jasenska to provide evidence that the agreements with its suppliers have either been made inapplicable or revised and adequately brought into compliance with the provisions of the UTP's Act within a statutory time period of four months. The challenged provisions particularly include the necessary revisions of the pricing and quality parameters, delivery terms and deadlines, listing justified reasons for possible suspension of purchase obligation, calibration and storage criteria.

Taking into account the gravity, the scope and the duration of the infringement concerned and the consequences for the suppliers, Jasenska was imposed a fine in the amount of HRK 350,000 where the basis amount of HRK 437,000 originally set by the CCA was reduced due to good co-operation with the undertaking concerned in the course of the proceeding.

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 Jasenska but also on other resellers, buyers and/or processors in the food supply chain.