

**Further strengthening of the Croatian Competition Agency and
implementation of competition law and policy -
EuropAid/119687/C/SV/HR**

Critical Assessment of Past Cases:

P.Z. Auto-Kolnoa & P.Z Auto-Agreement

1. Summary of the case

The case involves an agreement concerning the sale of gear shift mechanical blocks concluded between the undertakings P.Z. Auto d.o.o (“P.Z Auto”) and Kolnoa d.o.o (“Kolnoa”), and, business plan agreements related to this agreement between P.Z Auto and its distributors and service providers. Both agreements were determined by the Croatian Competition Agency (“the Agency”) as being anti-competitive in that they excluded the competitor undertaking Magnat d.o.o (“Magnat”) from the market.

P.Z. Auto was an authorised car importer distributing cars in the Republic of Croatia. Kolnoa was the authorised importer in Croatia of the gear shift mechanical block “Construct” product. Kolnoa's position in the market for this type of product was significant as it held between 80 % - 90% of market share.

Magnat was the authorised importer in Croatia of the gear shift mechanical block “Defend-lock” product and brought a complaint to the Agency concerning the exclusive purchasing agreement between P.Z. Auto and Kolnoa.

Under this agreement, P.Z. Auto agreed to exclusively purchase the “Construct” product from Kolnoa. This agreement was also the basis for various business plan agreements between P.Z Auto and its authorised distributors and service providers under which P.Z Auto granted various financial benefits to its distributors and service providers if they purchased products from P.Z Auto, including the Kolnoa “Construct” product.

The business plan agreements also directly obliged the authorised distributors and service providers within the P.Z. Auto distribution system not to sell various substitute products of competing suppliers if they wished to achieve the financial benefits specified under the business plan agreements from P.Z Auto, in effect including Magnat and its products which was the sole competitor in the market for the type of product in question.



2. Comments on the case

The assessment of the case contained in the CCA final decision appears quite complete and exhaustive.

First, the definition of the relevant market is analyzed in detail. Analysis of the product definition (substitutability etc) has been examined very carefully, in particular, the reasons behind the CCA decision to exclude other types of (electronic) devices having the same general purpose as the mechanical ones from the relevant market are explained extensively.

Second, the dominant position of Kolnoa appears proved beyond doubt. Magnat's market share is not only extremely high (beyond 80%), but it has been relatively stable in the course of the years - it is encouraging to see that, although Article 15(3) of the Croatian Competition Act assumes there to be dominance at 40 %, the CCA has done an extensive analysis of dominance (total sales of both Kolnoa and Magnat by value and quantity in the relevant market).

Third, the abusive practices have been analyzed in full. Kolnoa agreed with P.Z Auto, the Croatian importer of Volkswagen cars (VW) to impose (indirectly) on Volkswagen car dealers the exclusive distribution of the mechanical locking devices imported into Croatia by Kolnoa.

Consequently, all VW customers were precluded from asking their dealers for other mechanical locking products to be installed in their cars, with clear market foreclosure effects for other firms, including Magnat (in effect the only competitor left). No strong efficiency reasons appear to be present that could justify the investigated practices and although there is some explanation about why the exemption criteria of Article 10 do not apply, in the future it is recommended to provide some more detail as to why such criteria do not apply in a given case¹.

¹ A better understanding of the European Commission Guidelines on the application of Article 81(3) would be useful.(OJ C 101 of 27 April 2004)



In our view, the only piece of assessment that is missing here - which would help understanding the actual extent of the foreclosing effects of P.Z Auto-WV importer single branding arrangements (and thus make the infringement more serious) - appears to be whether similar contractual or “de facto” engagements had involved car dealers of other brands, in addition to VW. In fact, the foreclosed share of the market related to WV cars was overall limited, in 2005, to around 30% of the total sales. More specifically, it would have been useful to know whether other brands’ car dealers also were involved in some form of exclusive branding, similar to the one agreed upon between P.Z Auto and Kolnoa, which would further contribute to explain Kolnoa’s very high market share.

It is encouraging to see that the CCA also sought evidence from third parties in this case (the approximate 20 authorised dealers)

General reference is made to the Hearing - in the future, in the interest of respecting procedural norms it is recommended to specifically refer to key issues raised in the Hearing and what the Agency’s response to the issue raised were.

General reference is made on a few occasions to EU legislation and practice - in the future it might be useful to be a bit more specific about this.

In conclusion, we think that overall the Agency has done a very thorough job and this case should act as a template for the standard that other prohibited agreements cases should be benchmarked against.

MG & AB, 1 June 2006

