

**Class: UP/I 030-02/206-01/41**

**30.12.2008**

**Case: Sedam-plin, Brala trade vs. Proplin**

**Type of case: Competition – abuse of a dominant position**

**Type of decision: Decision on abuse of a dominant position**

In LPG supply market covering the territory of the Republic of Croatia, the Agency established that the undertaking Proplin d.o.o. abused its dominant position starting 1 October 2003 until 30 December 2008, first, by applying dissimilar and non-transparent conditions relating to its rebate policy towards its buyers, thereby placing them at a competitive disadvantage and, second, by imposing the unfair trading conditions to the undertaking Adria Oil d.o.o. binding the latter to exclusively purchase LPG from the undertaking Proplin d.o.o.

The procedure for the establishment of alleged abuse of a dominant position was initiated on the basis of a complaint submitted by the undertakings Sedam-plin d.o.o. and Brala trade d.o.o. stating that the undertaking Proplin d.o.o. cut their LPG supplies with no justifiable reason and refused to grant them the rebates in line with the common rebate policy applicable to other LPG buyers.

The analysis carried out by the CCA established that the undertaking Proplin had until 27 August 2007 been the sole economic operator in the territory of the Republic of Croatia who had direct access to the sole domestic LPG factory – the undertaking INA d.d., who on its part, sold all its LPG supplies covering the sales in the territory of the Republic of Croatia exclusively to Proplin. Given a low volume share of the imported LPG in the relevant market Proplin held a high market share of more than 90 per cent in the relevant market.

The rebate policy of the undertaking concerned was contained in the decisions of Proplin which had the legal status of its internal acts and agreements which were neither published nor accessible to all buyers of the sole LPG supplier.

In accordance with the findings of the CCC, the non-transparent rebate policy was also incompatibly applied. In other words, dissimilar conditions were applied to equivalent transactions with other trading parties. Beyond any doubt it has been established that rebates were granted to particular buyers regardless of the actual volumes sold in a one year period to the buyers concerned, which indisputably indicates the absence of a non-discriminating volume rebates which would be adequately applicable to all buyers. In addition, the decisions on rebates in effect from 1 October 2003 to 30 December 2008 contained a provision on the basis of which the director of the company could unilaterally grant special rebates to certain buyers regardless of the volumes of LPG bought by the latter.

The above mentioned lead to non-application of the prescribed rebates or application of dissimilar rebates regardless of the actual volumes and rebate provisions laid down in the disputable decisions of the undertaking concerned to different trading parties thereby placing them at a competitive disadvantage.

The CCA ordered the undertaking Proplin to delete the anticompetitive provisions on rebate policy contained in the internal acts and other contracts and prohibited any further activities of the undertaking in question which may prevent, restrict or distort competition through abuse of a dominant position of the party as described in the decision of the CCA.

Finally, the CCA rejected the part of the complaint of the parties relating to the alleged cuts in LPG supply. It was established in the proceedings that Proplin did not reduce the LPG supply under the contract entered into between the parties concerned.