

Case Summary: Croatia Airlines d.d.¹ vs. Zračna luka Zagreb d.o.o.² and Zračna luka Zagreb-Ugostiteljstvo d.o.o.

SUMMARY

The Croatian Competition Agency (hereinafter: CCA) decided that Zračna luka Zagreb (Zagreb Airport) and its subsidiary Zračna luka Zagreb – Ugostiteljstvo (Zagreb Airport Catering) have been abusing their dominant position in the relevant market in transport, unload/load of catering supplies (food and drink) from/on aircrafts in the area of Zagreb Pleso Airport. Taking into account that Zagreb Airport exercises full control over Zagreb Airport Catering, within the meaning of the competition rules these two are considered as one undertaking. Zagreb Airport together with its controlled company as a sole operator and handling agent are providing all ground handling services in Zagreb Pleso Airport. In the market for aircraft ground handling – transport, unload/load of catering supplies (food and drink) from/on aircrafts there are no other competitors of the undertakings Zračna luka Zagreb and its subsidiary Zračna luka Zagreb – Ugostiteljstvo, hence, they hold a dominant position in the relevant market.

The CCA by its decision from 30 December 2008 established that undertakings Zračna luka Zagreb and Zračna luka Zagreb – Ugostiteljstvo, have abused their dominant position in the relevant market of transport, loading and unloading of food (meals) and beverages from aircraft in the area of Zagreb Pleso Airport, in the following manner.

First, on 1 March 2007, Croatia Airlines, as the biggest service user, canceled business cooperation in catering supplying services with Zagreb Airport Catering and switched to another supplier of in-flight meals (sandwiches). As response to Croatia Airlines cancellation of food supplying services, Zagreb Airport through its controlled undertaking Zagreb Airport Catering stopped to provide transport, loading and unloading of food and beverages from/on aircraft services. In the period from 1 March 2007 to 25 May 2007 the abuse of dominance had been established by the suspension of the provision of service including transport, unload/load of catering supplies (food and drink) from/on aircrafts to the undertaking Croatia Airlines by the above mentioned connected undertakings, whereas any further provision of the service concerned had been made subject to acceptance of supplementary obligations of catering supplying services by Zagreb Airport Catering.

Secondly, since 1 September 2007 onwards abuse of a dominant position has been established by imposing unfair prices charged for the provision of transport, unload/load of catering supplies (food and drink) from/on aircrafts in the area of Zagreb Pleso Airport – using the language of competition rules – through application of dissimilar conditions to equivalent transactions which are not objectively justified and cost related. In the moment when Croatia Airlines had chosen another food supplier over Zagreb Airport Catering, Zagreb Airport refused to provide its monopoly service: transport, loading and unloading of food (meals) and beverages from aircraft services, all with a goal to make the provision of that service subject to acceptance of catering supplying (production of meals) services. Zagreb Airport re-established the service concerned on 26 May 2007, after it had been

¹ d.d.= Joint stock company

² d.o.o.= Limited liability company

ordered to do so in line with the written authorization of the Ministry of the Sea, Tourism, Transport and Development. After Zagreb Airport Catering had been explicitly ordered to continue with the provision of all services agreed with Croatia Airlines, the former introduced a new price list of charges for transport, unload/load of catering supplies (food and drink) from/on aircrafts, which were some 300 per cent higher than the same charges under the previous price list and specified in two sets of charges for the same service – so called *handling 1* and *handling 2*.

THE FACTUAL AND LEGAL CONTEXT

The proceeding in this case was initiated upon the request of the undertaking Croatia Airlines from 5 April 2007. On 15 October 2007, CCA issued the resolution on instituting of the proceeding regarding the abuse of dominance of the undertakings Zračna luka Zagreb and Zračna luka Zagreb – Ugostiteljstvo.

The CCA applied the provisions of the Competition Act («Official Gazette», No. 122/03, hereinafter: CA), Regulation on the definition of Relevant Market («Official Gazette», No. 51/04) and General Administrative Procedure Act («Official Gazette, No. 53/91,106/93). The CCA also took into account relevant EU rules, for example, Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at community airports and OECD study– Competition policy and international airport services, DAFFE/CLP(98)3, OLIS 7 May 1998.

PARTIES

Croatia Airlines main business activity is regular air transport.

Zagreb Airport is the operator and the sole provider of ground handling service airport that offers a full range of services for the aircraft, passengers, baggage, cargo and mail.

Zagreb Airport Catering deals with food production, storage of food and beverage equipment for the transportation of food and beverage preparation and delivery of equipment, and supplying food and drinks, as well as the performance of transport, loading and unloading of food and beverages, from aircraft.

RELEVANT MARKET

The CCA determined the relevant market in accordance with the Article 7 of the CA and Articles 5 and 6 of the Regulation on the Definition of the Relevant Market.

According to the Article 4 of the Regulation on the Definition of the Relevant Market, the definition of relevant market shall be considered as identifying its product (relevant product market) and geographic dimension (relevant geographic market).

In this case, relevant product market production is defined as market of transport, loading and unloading of food (meals) and beverages from aircraft, so called ground handling

The area of Zagreb airport is has been identified as the relevant geographic market

PROCEDURAL ASPECTS

During the administrative procedure the CCA collected information about the relevant market from the market participants as well from public authorities, for example, the Ministry of the Sea, Tourism, Transport and Development. By holding the oral hearing, the CCA completed the investigation and made a comprehensive economic and legal analysis of the case, upon which the final decision was based.

COMPETITION ANALYSIS

During the proceeding the CCA established that the Zagreb Airport and Zagreb Airport Catering have abused their dominant position in the following manner.

In March 2007, Croatia Airlines, as the biggest service user, canceled business cooperation in catering supplying services with Zagreb Airport Catering and switched to another supplier of in-flight meals (sandwiches). As response to Croatia Airlines cancellation of food supplying services, Zagreb Airport through its controlled undertaking Zagreb Airport Catering stopped to provide transport, loading and unloading of food and beverages from/on aircraft services.

Moreover, food supplying market on Zagreb Pleso Airport is open to other catering suppliers, unlike the relevant market of transport, loading and unloading of food (meals) and beverages from aircraft where Zagreb Airport Catering has complete monopoly.

It is important to underline the fact that in the moment when Croatia Airlines had chosen another food supplier over Zagreb Airport Catering, Zagreb Airport refused to provide transport, loading and unloading of food (meals) and beverages from aircraft services, that is refused to provide its monopoly service, all with a goal to make the provision of that service subject to acceptance of catering supplying (production of meals) services.

Zagreb Airport re-established the service concerned only after it had been ordered to do so in line with the written authorisation of the Ministry of the Sea, Tourism, Transport and Development.

After Zagreb Airport Catering had been explicitly ordered to continue with the provision of all services agreed with Croatia Airlines, the former introduced a new price list of charges for transport, unload/load of catering supplies (food and drink) from/on aircrafts, which was the first change in prices since 1999.

The charges in the new price list applicable as of 1 September 2007, for all carriers, were some 300 per cent higher than the same charges under the previous price list. Furthermore, the new price list introduced two sets of charges for the same service – so called *handling 1* and *handling 2*, where the price for the provision of the service of transport, unload/load of catering supplies (food and drink) from/on aircrafts depends on the storage locations. In other words, different charges are applicable for the ground handling service depending on whether it is provided by Zagreb Airport from the storage location of its own or from the storage location of the air carrier. At the same time, Croatia Airlines, holding the status of a dominant buyer of the service provided by Zagreb Airport, has been offered an exceptionally high discount which could not have been enjoyed by other users of Zagreb Airport services.

On the basis of the relevant facts arising from the behaviour of the undertaking Zagreb Airport on the market concerned and economic analyses carried out by the CCA, the conclusion was the following.

The undertaking Zagreb Airport, only after the competing undertakings entered the market on one segment of its business activities (food supplying), reacted by termination of the provision of the service of transport, unload/load of catering supplies (food and drink) from/on aircrafts to Croatia Airlines, at the very moment when the latter switched to another supplier of in-flight meals (sandwiches).

Furthermore, based on the order issued by the competent Ministry by which Zagreb Airport was obligated to continue with the provision of the service concerned, it significantly raised the charges for the service of transport, unload/load of catering supplies (food and drink) from/on aircrafts and offered extremely high discount to only one undertaking, its main buyer, without a possibility of such discounts for other buyers.

The analyses of the structure of costs which are decisive for establishing the price of the service in the business segment concerned and the results of the macroeconomic analyses in respect of the period concerned indicated that Zagreb Airport had abused its dominant position in the relevant market. Moreover, the market structure benefits the Zagreb Airport to the extent which would not be possible if there was effective competition in the market concerned.

On the basis of the above mentioned data the CCA has undoubtedly established that Airport Zagreb had abused its dominant position by charging unfair prices.

In this particular case, it must also be noted that Zagreb Airport is the only domestic airport (a "port of call") for Croatia Airlines and for no other carrier. Consequently, the majority of services including the service of transport, unload/load of catering supplies (food and drink) from/on aircrafts are provided only by Zagreb Airport and Zagreb Airport Catering as necessary business partners.

In addition, the CCA established that the price difference in respect of *handling 1* and *handling 2* services is not justified by the transport costs and other variable costs based on the difference in distance between the storage location of Zagreb Airport Catering and other storage locations in the area of Zagreb Pleso Airport. Thus, given that the difference in costs cannot be objectively justified, the transactions in question are considered the same whereas the different charges for *handling 1* and *handling 2* discriminatory, which constitutes abuse of a dominant position by the undertakings Zagreb Airport and Zagreb Airport Catering according to the Article 16, paragraph 2, points 1 and 4 of the CA.

OUTCOME

Following the detailed economic and legal analysis conducted, by its decision from the 30 December 2008, the CCA had determined that it had been indisputably proven that the undertakings Zagreb Airport and Zagreb Airport Catering abused their dominant position on the relevant market of transport, loading and unloading of food (meals) and beverages from aircraft in the area of Zagreb Pleso Airport.

In its decision the CCA issued an order directed to the undertaking Zagreb Airport Catering to modify and adopt a new price list for the service of transport, unload/load of catering supplies (food and drink) from/on aircrafts without delay, within the period of three months at the latest. The new price list must be based on prices which are established in a clear, transparent and non-discriminatory manner and must reflect the actual costs of the undertaking concerned incurred through the provision of the service in question, regardless of the position of the storage location in the area of Zagreb Pleso Airport. Furthermore, the CCA prohibited any further practices of Zagreb Airport and Zagreb Airport Catering which would constitute abuse of a dominant position.

Finally, in its decision the CCA rejected part of the request of the undertaking Croatia Airlines relating to the alleged abuse of a dominant position of the undertakings Zagreb Airport and Zagreb Airport Catering through the imposition of unfair prices of meals in line with the price list applicable since 5 June 2008. That part of the request was rejected due to the lack of legal basis where the catering service (production of meals) is not connected with the service of transport, unload/load of catering supplies (food and drink) from/on aircrafts. More precisely, the access to the provision of catering services (production of meals) market is open, which enables Croatia Airlines to turn to and select from any catering suppliers, including competing undertakings of Zagreb Airport Catering. This practice has already been used by Croatia Airlines in the supply of in-flight meals (sandwiches).

THE FINE

Whereas current legislative framework prevents the CCA to directly impose fines and requires that the CCA, after the final decision of the Competition Council, initiate minor offence proceedings against the undertakings before the minor offence court, the CCA, in accordance with the Competition Act, submitted a claim to the designated Minor Offence court to start the minor offence proceedings against undertakings Zagreb Airport and Zagreb Airport Catering and its responsible persons.

This court will rule on the amount of fine to be imposed on undertakings and responsible persons concerned, which could amount to a maximum 10% of the value of undertaking's total annual turnover in the financial year proceeding the year when the infringement was committed, according to Article 61 of the Competition Act.

APPEAL

Against the decisions of the CCA no appeal is allowed, but the injured party may file a claim with the Administrative court of the Republic of Croatia. Zagreb Airport and Zagreb Airport Catering filed claims against the decision concerned.

CCA's final decision is published on CCA's website and in the Official Gazette.