

CROATIAN COMPETITION AGENCY

Case No.: UP/I 030-02/2011-01/024

Case: CCA vs. Presečki grupa d.o.o., Krapina, Rudi-express d.o.o., Mihovljan, Boris Jambrošić, owner of the craft „Jambrošić tours“, Mursko Središće and Željko Jakopić, owner of the craft Autobusni prijevoznik „Turst“, Sveti Martin na Muri

Type of case: Competition - Prohibited agreement (cartel)

Type of decision: Decision on a prohibited agreement (cartel)

SUMMARY

The CCA imposed fines on the undertakings – bus operators in Međimurje County who infringed the provisions of the Competition Act by concluding a prohibited agreement in the passenger transport market. The members of the cartel were the following undertakings: Presečki grupa from Krapina, Rudi-Express from Mihovljan, Jambrošić tours from Mursko Središće and Autobusni prijevoznik “Turst” from Sveti Martin on Mura.

In the course of the proceeding the CCA analysed two agreements – the Business Cooperation Agreement concluded on 1 February 2011 and the Contract on joint provision of scheduled passenger bus transport service in Međimurje County concluded on 1 March 2011. Those agreements contained clauses on direct price fixing in the provision of passenger bus transport service in Međimurje county, market sharing, continuous coordination of business policy, coordinated registration of bus lines as well as coordination of conduct (joint bidding) in any future public tenders the subject of which is the provision of special scheduled transport for elementary school children in Međimurje County.

The undertakings concerned thereby concluded a prohibited agreement within the meaning of Article 8 of the Croatian Competition Act, in effect from 1 February 2011 to 9 October 2012, restricting the competition on the relevant markets of scheduled passenger transport in Međimurje County and special scheduled transport for elementary school children in the same territory.

Presečki gupa was fined HRK 1.009,000, Rudi-express HRK 98.000, Boris Jambrošić HRK 80.000 and Željko Jakopić HRK 67.000.

In the course of the proceedings the CCA established that the agreements in question were concluded on the initiative of Presečki grupa, immediately after it was selected in the public tender as the best bidder in competition with another five bus operators, among whom were Rudi Express, Jambrošić Tours and Autobusni prijevoznik “Turst”. By winning in the public tender Presečki grupa got all 106 permits for the provision of passenger bus transport service in Međimurje County. Subsequently, by concluding the said agreements the parties agreed to fix the prices of bus fares on the scheduled lines and to share the market by assigning the lines to a specific operator in particular portion, and implementing these obligations in practice. However, other provisions related to joint future conduct have not been implemented.

This cartel led to elimination of competition in the relevant markets concerned where former competitors became parties of the prohibited agreement. By including its competitors in the provision of public transport on the lines assigned to him at the tender, Presečki grupa removed the risk of potential competition from Rudi-express and Jambrošić tours who could have at any moment requested the license from Međimurje county and if they had done so, could have posed a significant potential or even actual threat to the monopoly of Presečki grupa.

On the other hand, by entering the said agreements Rudi-express and Jambrošić tours ensured for themselves the provision of public bus transport on specific routes of Presečki

grupa, without the introduction of their own lines, thus avoiding the imminent business risk which would under normal market conditions exist resulting from the competition with Presečki grupa. At the same time, Željko Jakopić, the owner of Autobusni prijevoznik "Turist" has by accepting a non-compete obligation with Presečki grupa, Rudi-express and Jambrošić tours, secured his present position on the market i.e. on the routes on which he had been performing public transport of passengers prior to the conclusion of the agreements concerned.

It was evident that the undertakings concerned, contrary to the normal market behaviour, decided to fix the prices and share the relevant markets at the expense of their clients - citizens and school children of Međimurje County, who consequently paid the uniform price of transport set by the bus operators irrespective of their increased number and difference in quality of the service.

"In this case we were dealing with price fixing, market sharing and joint planning of the future conduct on the market between the competitors – the practices which are strictly prohibited under the provisions of the Competition Act. These agreements are prohibited by objective so it was not necessary for us to prove their effect on the relevant markets. Therefore, the CCA did not analyse the harmful effects of the agreements in question on competition but when it came to the adoption of fines it did take into account the fact that all the provisions that could raise competition concerns were not implemented in practice" - said Olga Spevec, president of the Competition Council.

In the fining procedure the CCA took into account all the facts and circumstances of the case, as well as aggravating and mitigating circumstances related to each party of the prohibited agreement. In the present case the parties to the agreement operated on the same market - it was a cartel which is the most serious infringement of Competition Act. The initiator, Presečki grupa, bears therefore the highest responsibility for the agreement, and was accordingly fined with the highest fine, while the CCA also considered the mitigating circumstances for all parties of the agreement - temporal and territorial restrictions (Međimurje County) as well as non-implementation of certain provisions in practice.

Under the law, the fine shall be paid to the State budget upon the finality of CCA decision if no claim is filed, or after the court's judgement becomes legally valid in the case the injured party has filed the claim, including any legal interest from the delivery date to the payment date.