

CROATIAN COMPETITION AGENCY

Case No.: UP/I 030-02/2011-01/025

Case: CCA vs. HŽ Cargo d.o.o., Zagreb; initiative of undertaking Jadran-Metal d.o.o., Škrljevo, Kukuljanovo

Type of case: Competition – Abuse of dominant position

Type of decision: Decision on termination of the proceeding

I. SUMMARY

On 6th of June 2011 Croatian Competition Agency (hereinafter: CCA) received an application from undertaking Jadran-Metal Ltd. to start an investigation on abuse of dominant position against undertaking HŽ Cargo Ltd. The applicant stated that he was charged 22 euros per tone (€/t) of old iron that he transported from city of Osijek to the port of city of Rijeka, while his competitor, undertaking C.I.O.S. Ltd. was charged 12 €/t for the transport of the same goods on the same route. After conducting the preliminary analysis, the CCA, by its decision on 13th of October 2011 started the formal proceedings to determine whether HŽ Cargo abused its dominant position.

After conducting legal and economic analysis on the relevant market the CCA came to the conclusion that HŽ Cargo did not abuse its dominant position. Consequently, the proceedings were terminated on 27th of December, on the 126th session of the CCA council.

II. THE PARTY

HŽ Cargo, with its seat in Zagreb Mihanovićeveva 12 is registered in the court register of the Commercial Court in Zagreb. Among other activities, it is registered for national and international railway cargo transport. HŽ Cargo is a publicly owned company and is the sole provider of cargo carrier services by rail in the Republic of Croatia.

III. LEGAL PROVISIONS

The CCA applied provisions of the Competition Act (OG 79/09), Regulation on the definition of relevant market (OG 9/11) as well as the provisions of General administrative procedures Act (OG 47/09) in the part not regulated within the Competition Act.

The CCA also applied provisions of the Croatian Railway Act (OG 123/03, 194/03, 30/04, 79/07 and 75/09), the Rulebook on conditions and means of issuing licenses and for providing services of railway freight transport and license for railway infrastructure management (OG 127/05 and 121/07), Statute of the HŽ – Croatian Railways, as well as tariffs HRT 151, 152, 153, 154, 155, 156 which HŽ Cargo uses for domestic rail freight transport.

During the proceedings and legal and economic analysis the CCA also applied the criteria from the Treaty on the Functioning of the European Union, Official gazette C 115/89, and the CCA also took insight in cases of comparative practice, i.e. the judgment of the EU Court in case AKZO Chemie BV vs. Commission, No C-62/86 from 1991, and EU Commission merger case, No COMP/M.5096 – RCA/MAV Cargo.

IV. RELEVANT MARKET

As relevant product market the CCA identified rail freight transport while the relevant geographic market was identified as the territory of the Republic of Croatia.

For determining the relevant product market the CCA made a detailed analysis, taking into consideration substitutability of railway and road freight transport. According to the publicly available data, i.e. that of the Croatian bureau of statistics most of the goods being transported by rail in Croatia are also transported by road. Subsequently, the CCA contacted participants on the market which consumed HŽ Cargo's services, and according to their statements transport of cargo by rail is dominant for goods such as raw materials, or reproductive materials, which are the goods that these undertakings predominantly transport.

The CCA also analyzed the cases of the Commission on the definition of the relevant market, e.g. Case No COMP/M.5096 – RCA/MAV Cargo, and although the Commission left the relevant market open in this case, it was stated that there are strong indications that there is a separate market for rail freight transport, which could also be further segmented according to the distinction between block-trains or single wagon trains.

Following all stated above the CCA determined that in this case road freight transport cannot substitute rail freight transport.

Since HŽ Cargo is the sole provider of rail freight services in Croatia on the entire national territory the relevant product market was identified as the territory of the Republic of Croatia.

V. DATA COLLECTION

Formal proceedings were started on 13th of October 2011. During preliminary investigation and the formal proceedings the applicant and HŽ Cargo submitted their respective statements on several occasions.

Also, the CCA requested statements from all categories of undertakings which used HŽ Cargo services, from forwarders, key customers, small customers (among which is the applicant), producers and two associations, Road transport association and International freight forwarders association. A statement from the Croatian Chamber of Economy, Transport and Communication Sector was also requested, as well as professional help from the Ministry of the Sea, Transport and Infrastructure and Croatian Railway Market Regulatory Agency.

In order to analyze the comparative practice of EU member states the CCA sent a request to all European Competition authorities, including the Commission on whether any of them dealt with similar cases. Among those authorities, authorities from Czech Republic, France, Finland, Germany, Poland, Latvia and Hungary dealt with some cases concerning rail freight transport that proved to be useful to the CCA. It was clear from the response of most authorities that they haven't dealt with similar cases, but some of the authorities recommended examples from the EU Commission practice that might be useful.

The complete official Sales policy of HŽ Cargo was analyzed, as well as all the agreements and user tariffs for rail transport of old iron concluded with HŽ Cargo customers, among which were also the applicant and C.I.O.S. The CCA concluded that the terms of rail freight services contained in the Sales policy document of HŽ Cargo for 2010 and 2011 are transparent, available and applicable in the same way to all customers.

Furthermore, the CCA found that HŽ Cargo concludes with its clients transport agreements and user tariffs which contain the price of agreed transport depending on various elements: types of transport (domestic vs. international), volume, distance, category of goods, special attributes of goods, type of wagon, ownership of wagon, etc.

Following the above stated the CCA found that the two services in question, the ones provided to the applicant and to C.I.O.S. are not equivalent. Also, detailed economic analysis of user tariffs found no evidence which suggests that HŽ Cargo placed the applicant, Jadran-Metal ltd. at a competitive disadvantage.

VI. DECISION OF THE COMPETITION COUNCIL

On the basis of all submitted data and determined facts in this case, the Competition Council, on 27th of December, on the 126th session decided to terminate the proceedings as there are no legal requirements for the continuation of the proceedings.

VII. APPEAL

There is no possibility of an appeal against the decision of the CCA however the party has the right to file an administrative dispute before the competent Administrative Court against the decision of the CCA within 30 days from the date of decision delivery.