

Case No.: UP/I 034-03/12-01/019
Case: CCA vs. INA-INDUSTRIJA NAFTE Inc., Zagreb
Type of case: Competition
Type of decision: Initiative dismissed

SUMMARY

On 13th of November 2012 Croatian Competition Authority (hereinafter: CCA) received an application from undertaking BIS ZAGREB Ltd., with headquarter in Zagreb (hereinafter: BIS), to start an investigation on prevention, restriction and distortion of competition against INA-INDUSTRIJA NAFTE Inc., Zagreb (hereinafter: INA).

In its complaint BIS stated that INA announced call for public bidding for the installation and maintenance of self-service machines for hot and chilled beverages in its premises. BIS asked INA to deliver the bidding documentation and received an answer that he does not fulfil conditions for bidding laid down in General conditions for bidding. According to General conditions for bidding, bidder must not, in any way, bring into question business reputation of INA, for instance - existence of unsettled debts, disputes and/or other proceedings whose settlement is in competence of court or other administrative authorities or organizations.

BIS confirmed that he had indeed initiated legal proceedings against INA before Commercial Court in Zagreb. Consequently, BIS considered that he was deprived of participating in free opened bidding and so had been placed in unfair position in comparison with other competitors.

Above mentioned initiative was essentially the same as the one submitted in January 2011. The previous initiative was analysed by the CCA and it was determined that the relevant product market was the lease of the space inside the premises for the installation of self-service machines for hot and chilled beverages. The CCA determined that provisions of article 8 of Croatian Competition Act that correspond to article 101 of the TFEU could not have been applied since the concerned case had been about the contract on lease of the business space for the purpose of installation of self-service machines for hot and chilled beverages. In this case no goods or services were sold by the supplier to the buyer and therefore the CCA dismissed the initiative. BIS filed an administrative dispute before the High Administrative Court against the decision of the CCA. The court confirmed the CCA's decision on the ground that provisions of article 8 of the Croatian Competition Act could not be applied to the lease agreement of the space within the premises.

For the same reason the CCA dismissed the initiative submitted on 13th of November 2012 as well.