

Class: UP/I 034-03/2013-01/016

Case: CCA v Kraš d.d., Zagreb and Narodni trgovački lanac d.o.o., Sesvete

- assessment of the agreement
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In the case Class: 031-02/11-01/012 the Croatian Competition Agency (CCA) conducted a market research in food, beverages and sanitary products distribution in the Republic of Croatia for 2010 where it asked the undertakings active in this market to communicate to the CCA particular documents. Among other undertakings, the undertaking Kraš d.d., with its seat in Zagreb, Ravnice 48 (Kraš), was also requested to communicate to the CCA the copies of its commercial agreements with its major trade partners.

It was established in the analysis of the received documentation that it contained strong indices that certain provisions of the sales agreement between Kraš and the undertaking Narodni trgovački lanac d.o.o., with its seat in Sesvete, Soblinec, Soblinečka 55 (NTL) contravene the Regulation on block exemption granted to undertakings active at different levels of the production or distribution chain (OG 51/04) and the Regulation on block exemption granted to certain categories of vertical agreements (OG 37/11) and thereby constitute a prohibited agreement within the meaning of Article 8 of the Competition Act (OG 79/09 and 80/13).

On the basis of the above indices the CCA issued a procedural order UP/I 034-03/13-01/016 opening the proceeding against Kraš and NTL on 23 May 2013 to assess whether the challenged provisions contained in the said sales agreements constitute a prohibited agreement within the meaning of Article 8 of the Competition Act.

Following the proceeding the Competition Council in its 23/2014 session held on 3 July 2014, within its powers under Article 30 of the Competition Act, found that the undertakings Kraš and NTL concluded a prohibited agreement having as its object or effect the prevention, restriction and distortion of competition within the meaning of Article 8 paragraph 1 item 1 of the Competition Act. The duration of the infringement was defined to cover the period from 1 October 2010 to 3 July 2014.

Namely, the Competition Council established that Article 6 paragraphs 1, 4 and 5 of the sales agreement for 2010 concluded between Kraš and NTL on 12 July 2010 and Article 6 paragraphs 1, 4 and 5 of the sales agreement for 2012 concluded between the same undertakings on 2 July 2012, contained provisions that committed NTL not to sell the products supplied by Kraš under the price set out in the Kraš' price list in force and provided for retaliation in case that NTL would not comply with the agreed minimum resale price maintenance. These restrictive provisions constitute a hardcore restriction of competition prohibited under Article 9 paragraph 1 item a) of the above mentioned 2004 Regulation on vertical agreements that was in force until 7 April 2011 and Article 9 paragraph 1 item a) of the 2011 Regulation on vertical agreements, in other words constitute a prohibited agreement under Article 8 paragraph 1 item 1 of the Competition Act.

With respect to the sales agreement for 2009 that was concluded on 18 May 2009, which contained identical competition concerns, the Competition Council found it was applied in its

entirety before 1 October 2010, that is to say, before the 2010 Competition Act entered into force bringing new powers to the CCA. Thus, it was the view of the Competition Council that the provisions of the 2010 Competition Act now in force could not be applied to the sales agreement for 2009 nor any sanctions could be imposed for the infringements committed in the period when 2003 Competition Act had been in effect.

Following a separate proceeding involving the definition of the level of fines the Competition Council in its 48/2014 session held on 3 December 2014 established the conditions of the imposition of fines and other relevant circumstances for setting the level of fines.

When setting the level of fines the Competition Council took particularly into account the fact that in this concrete case the prohibited agreement produces or may produce effects in the territory of the Republic of Croatia between undertakings that do not operate at the same level of the production or distribution chain, whereas the challenged provisions have been introduced in the said agreements on the Kraš' initiative. The Competition Council took into account also the fact that the infringement has actually not been committed in practice.

Acknowledging all mitigating and aggravating circumstances with respect to both parties to the agreement the Council found that the mitigating factor was that the provisions concerned had not been applied in practice and that despite the presence of the prohibited agreement the parties to the agreement otherwise observed the competition rules. No aggravating factors were established, either on the part of Kraš, or NTL.

Taking the above said into account including all the circumstances of this case, pursuant to the set criteria the CCA imposed a fine on Kraš in the amount of 1.560,600 Kuna and on NTL an amount of 1.022,000 Kuna.

It is the opinion of the CCA that the fines imposed are adequate for the said infringements, at the same time producing a preventive effect on the participating undertakings but also a deterrent effect which should keep other undertakings from any further infringements of competition law in the form of restrictive agreements.