

Class: UP/I 034-03/2014-01/012

Case: - CCA v Ministry of Science, Education and Sports

- initiative of the undertaking Auctus-grupa d.o.o., Zagreb for the initiation of the proceeding for the establishment of abuse of a dominant position
- case summary

Within the meaning of Article 37 of the Competition Act (OG 79/09 and 80/13) the Croatian Competition Agency (CCA) received on 29 May 2014 the initiative submitted by the undertaking Auctus-grupa d.o.o., with its seat in Zagreb, Ulica Grada Vukovara 237/D, for *ex officio* initiation of the proceeding by the CCA against the Ministry of Science, Education and Sports, with its seat in Zagreb, Donje Svetice 38, and Studentski centar in Zagreb with its seat in Zagreb, Savska cesta 25 (Students' Centre), for the establishment of prevention, restriction or distortion of competition based on the alleged abuse of a dominant position within the meaning of Article 13 of the Competition Act.

The undertaking Aucuts stated in its initiative that on 27 July 2010 it concluded a Commercial Property Lease Agreement with Filozofski fakultet Sveučilišta u Zagrebu (Zagreb Faculty of Arts), with its seat in Zagreb, Ivana Lučića 3, on the basis of which it has been providing the catering services (food, preparation of meals, drinks) on the premises of the restaurant of Zagreb Faculty of Arts. It further claims that it has recently on several occasions asked the Ministry to enter into agreement on the provision of catering services for students given that it believes that it is capable to ensure high standard campus catering taking into account that it fulfils all the criteria for the conclusion of such an agreement for the provision of campus catering services under the Ordinance on the criteria and requirements for the compensation of costs of campus catering. All requests have been allegedly denied by the Ministry stating that the State budget does not provide for compensation for the costs of campus catering in the restaurant of Zagreb Faculty of Arts.

Further, Auctus claimed that the Ministry sent a writing to the Zagreb Faculty of Arts in which it allegedly supported the initiative of the Zagreb Faculty of Arts to introduce campus catering and the inclusion of the restaurant into the subsidy scheme provided that the campus catering services are discharged by the Students' Centre as an institution that is a part of the Zagreb University and that performs as its main line of business activities related to the standard of the students. In addition, in this writing, the Ministry allegedly asks the dean and the Faculty Board to appropriately resolve their business relations with the leaseholder, the undertaking Auctus, and to ensure cooperation with the Students' Centre with respect to the provision of subsidized campus catering services.

Auctus further states that it fully meets its liabilities under the Commercial Property Lease Agreement as of 27 July 2010 with all its annexes and that it has not received from the Zagreb Faculty of Arts any reminder or notice on possible irregularities, non-compliance or violation of the contract provisions. In addition, it points out that Mirko Bošnjak, a rehabilitation administrator of Students' Centre Catering, is at the same time the president of the National Commission for the Control of Students' Catering that adopted the said resolution of 10 March 2014, who, in the words of the complainant, directly used its position in the said Commission to discriminate Auctus.

In addition, Auctus claimed that the above mentioned writing by the Ministry indicated that its statement considering the absence of necessity to include a new restaurant in the subsidized campus catering scheme on the account of the fact that the existing capacities do not exceed the demand proves false, which Auctus mentions as the usual response of the Ministry when it on numerous occasions rejected the request of the undertaking Auctus to enter into an agreement on the provision of subsidized campus catering services.

Finally, the complainant pointed out its unfavourable position in the market related to other private catering objects that provide subsidized campus catering services and mentioned the rehabilitation administrator of the Students' Centre Catering, Mr Mirko Bošnjak, who apparently abused its position as the president of the National Commission for the Control of Students' Catering raising conflict of interest. In other words, the Students' Centre in Zagreb, supported by the Ministry, abused its position in the market and prevented the undertaking Auctus to enter the market.

Subsequently, the claimant asked the CCA to carry out a proceeding against the Ministry and the Students' Centre in Zagreb for the establishment of distortion of competition in the market concerned.

In order to establish whether in this concrete case there was enough circumstantial evidence to start a proceeding establishing the alleged prevention, restriction or distortion of competition within the meaning of Article 38 and 39 of the Competition Act with respect to the application of Article 13 of the Competition Act defining the abuse of a dominant position by an undertaking, the CCA carried out a preliminary market investigation in the sense of its competences.

In spite of the fact that Auctus specified in his complaint that the initiative was directed against the Ministry and the Students' Centre in Zagreb, the CCA found that the undertaking Auctus actually challenged the behaviour of the Ministry. On the account of that fact the CCA concentrated on the investigation whether the actions of the Ministry represent enough circumstantial evidence for the initiation of the proceeding for the establishment of abuse of a dominant position within the meaning of Article 13 of the Competition Act.

In the course of the proceeding the Ministry in its replies of 8 July and 22 September 2014 stated that in the Republic of Croatia Students' Centres have been founded within the universities and colleges with a status of public institutions in charge of the students' standard. The establishment of the Students' Centres is regulated in Article 54 paragraph 2 of the Act on Scientific Activity and High Education. Pursuant to the provisions concerned the universities may have as their constituent parts the Students' Centres as well as other institutions or companies that are in the service of the students and universities.

Taking into account that the Students' Centres are constituent parts of the universities and campuses in the area of high education and students' standard that discharge public services as public institutions in charge of the students' standard and that campus catering is as their main activity co-financed from the public resources, the Ministry held the view that campus catering activity should be primarily carried out by the Students' Centres.

The Ministry also stated that in case where a Students' Centre lacks capacity for the provision of subsidized campus catering services, the Ministry that ensures co-financing from the public resources i.e. the State budget, must seek for other model of the provision of this services, whereby in doing so it favours the institutions falling under its scope of activity, such as the restaurants providing catering services for student dormitories. In case where there is no such possibility the Ministry may conclude an agreement on the provision of subsidised catering services for students also with a private catering company.

Further, the Ministry stated that the Students' Centre in Zagreb has adequate staff and technical capacities as well as resources planned in the State budget for the provision of the subsidised campus catering services. On the account of that fact the Students' Centre in Zagreb announced that it would be able to provide these services at the Zagreb University of Arts that is a constituent part of the University of Zagreb. The Ministry supports such a view of the Students' Centre in Zagreb given the fact that the Students' Centre in Zagreb is also a constituent of the University of Zagreb.

In addition, the Ministry stated in its writing that in the territory of the City of Zagreb there operates a subsidized campus catering scheme under which the Students' Centre in Zagreb provides its services in 12 restaurants active within campuses belonging to the University in Zagreb, and in some dormitories. Other operators in this market are the following catering undertakings: Ugostiteljski obrt Odeon from Zagreb, Kačićeva 26, Cassandra d.o.o. from Zagreb, Ulica Grada Vukovara 1 and Vemag d.o.o. from Zagreb, Pierrotijeva 6.

The Ministry explained the reasons why it concluded the annexes to the agreement with private undertakings Cassandra, Vemag and Odeon for the period from 1 September to 31 December 2014. It claimed that it concluded the agreements with the above mentioned undertakings after the business results of the corporate rehabilitation of the Students' Centre, which were received by the Ministry on 1 August 2014, indicated that the Student's Centre was at that period not in the position to undertake any business investments whereas the liabilities of particular campuses after the succession in the case that the agreement with the above mentioned undertakings had not been prolonged, would have created financial liabilities to particular learning institutions.

Once the corporate rehabilitation process in the Students' centre had been completed, the Ministry undertook in cooperation with the University of Zagreb and the particular campuses on which private undertakings have leased restaurants providing catering services for students, to start the proceeding that would ensure the discharge of campus catering services by a public institution that had been founded by the University of Zagreb exclusively for the provision of services linked to students' standard.

In this particular case it has been established that the Ministry is not an undertaking holding a dominant position in the sense of Article 12 of the Competition Act, but an entity that is in compliance with the law in charge of the provision of services described in Article 88 paragraph 4 of the Act on Scientific Activity and High Education. Thus, the services concerned, including the campus catering services, cannot be assessed in the sense of competition rules but taking into account their nature and the public interest.

Campus catering for students has been regulated in detail under the Ordinance on campus catering and is in its major part financed from the State budget, whereas the operation of the Students' Centres, the founders of which are particular universities and colleges, which on their part are founded by the State, is also ensured from the State resources. The Students' Centres are entities in the first place responsible for the welfare of students, which includes campus catering for students. Thus, in the sense of competition rules the CCA cannot challenge the intention of the Ministry to empower the Students' Centres with the provision of the subsidized campus catering and such activities of the Ministry cannot be regarded as abuse of a dominant position within the meaning of Article 13 of the Competition Act given that the Students' Centres have been founded by particular universities to provide campus catering and accommodation for students and are publically financed.

The initiative of the undertaking Auctus was therefore dismissed by the decision of the CCA, Class: UP/I 034-03/2014-01/012 of 24 October 2014.