

CCA carries out a market study into on-line food delivery in Croatia

In November 2021 the Croatian Competition Agency (CCA) launched a market investigation into the provision of food delivery services via digital platforms in the Republic of Croatia with the aim of determining all the relevant facts relating to the pricing method for the provision of online food delivery services, inspecting the mutual relations between digital platforms and their most important partners - restaurants and catering establishments, and the mutual relations between the digital platforms and the food delivery workers (mandataries).

The emphasis of the research was additionally focused on the general terms and conditions used by individual digital platforms that actively provide food delivery services in the Republic of Croatia, as well as the contractual relations with restaurants and other catering establishments.

The reason for carrying out this sectoral research, among other things, has been the fast-emerging influence of digital platforms in the provision of food delivery services in the Republic of Croatia, particularly due to the spread of the COVID-19 pandemic in the last two and a half years.

The analysis has covered the legislative framework and the implementation in the provision of online food delivery services. General indicators of the online food delivery market in the Republic of Croatia have been determined, such as the turnover of the individual digital platforms, the number of service users - restaurants and catering facilities, the pricing and price calculation in the provision of online food delivery services, the mutual relations between the digital platforms and their most important partners -restaurants and catering establishments, and the mutual relations between the digital platforms and delivery workers. The understanding of the comparative practice of the European Commission and individual national competition authorities has also been included in the market analysis.

With respect to the legislative framework applicable in the provision of food delivery services via digital platforms in the Republic of Croatia, the research results showed that there are no special provisions regulating the sector concerned. The main source of law in this area is the Electronic Commerce Act, OG 173/03, 67/08, 36/09, 130/11, 30/14, 32/19 that has transposed into the Croatian legal system the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market.

The Act on the Implementation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online inter- mediation services, entered into force on 12 December 2020. The Regulation (EU) 2019/1150, OJ L 186 of 11 July 11 2019, pp. 57-79, aims to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency, fairness, and effective redress possibilities, creating at the same time predictable, sustainable and trusted online business environment within the internal market open to innovation.

In addition to the above-mentioned provisions, a legal entity that performs information society services is obliged to comply with other general and secondary provisions in the Republic of Croatia. Also, all subjects in food business are obliged to comply with food regulations in the part of the activities that are under their control.

Furthermore, the CCA found that there have been no legal and/or factual entry barriers to the market concerned, that is, the market has not been subject to any detailed ex ante regulation. No significant infrastructure is required because the activity is primarily performed through a digital application and the people who work as delivery workers, do this by using their own means of transport. These are services that cannot be performed by just one undertaking in the market.

For the purpose of this research, the CCA created a sample of undertakings that primarily provide online food delivery services, i.e., three digital platforms that are dominant in the market concerned. These are Wolt Zagreb d.o.o., Zagreb, Bolt Services HR d.o.o., Zagreb and GlovoApp Technology d.o.o., Zagreb. The founders of these undertakings with their seats in the Republic of Croatia are parent companies in Finland in Helsinki (Wolt), the Republic of Estonia in Tallinn (Bolt) and the Kingdom of Spain in Barcelona (Glovo). Wolt started providing online food delivery services in the Republic of Croatia in December 2018, Glovo started in March 2019, and Bolt in May 2020.

The research showed that at the end of 2021, one digital platform provided online food delivery services in the area of 27 towns and cities and covered the territory from the western to the southern part of the Republic of Croatia, including the four biggest cities: Zagreb, Split, Rijeka and Osijek. Second surveyed digital platform has provided these services in the area of 11 towns and cities, also including the cities of Zagreb, Split, Rijeka and Osijek, whereas third provider of these services has been active in the area of three cities (Zagreb, Split, Osijek) with an expansion plan.

Furthermore, based on the statements given by the above-mentioned undertakings active in the provision of online food delivery services, in the second phase of the research, the CCA surveyed the users of online food delivery services, namely, the restaurants and other catering establishments. It included a total of top ten undertakings - restaurants and catering facilities, that have been the partners – service users of the surveyed food delivery digital platforms, according to their realized turnover from food delivery and/or the number of deliveries in 2020.

The digital platforms and the restaurants in question have been requested information concerning the business relationships between the parties to the agreement, such as the general terms and conditions, agreements in effect, annexes, etc.

In relation to the structure of the online food delivery market in the Republic of Croatia in the period from 2019 to 2021, the research results showed that the undertaking Wolt represented the most significant online food delivery platform.

Regarding the importance of the use of digital platforms as an intermediary in comparison with the total sales of a particular restaurant, the research showed that the share of online

food delivery was ranging from 14 per cent to 90 percent and more in the total sales of an individual restaurant.

In the part that referred to the way in which the relations with delivery workers (mandataries) as an important stakeholder in the food delivery chain have been regulated, the research results showed that digital platforms used general terms of business and contracts with delivery workers (mandataries). One of the digital platforms stated that its relations with delivery workers had been regulated in a specific way, given that the digital platform concerned did not directly employ couriers and that the couriers could work through a partner company or be self-employed. All three digital platforms stated that they perform their activities exclusively as intermediaries between the restaurants, the delivery workers and the persons who order food.

In the part referring to the requirements that must be met by delivery workers, the results of the research have essentially been the same for all three digital platforms.

In the part related to the pricing method applied by the digital platforms concerned, the results of the research based on the statements of the three surveyed digital platforms showed that food prices have been regulated by the agreement and that the final price has been set independently and freely by the restaurants and other food service providers. There has been an obligation imposed on the restaurants and catering establishments to guarantee the price, concretely, the restaurant (partner) guarantees that the price of service of a particular digital platform would not exceed the price the partner applies when selling its products at its own point of sale, or that the price should not exceed the price offered on competing platforms. In their statements to the CCA, the surveyed restaurants and catering establishments stated that they freely set the final price of food on digital platforms and that the price of the product is identical to the price in their physical stores. In the case of promotional campaigns, the price is agreed with the food delivery service provider.

In relation to possible restrictions by the digital platform service providers on restaurants related to food prices, delivery conditions and priority of delivery, the research found that there have been no such restrictions.

With respect to intermediary fees that online food delivery service providers charge the restaurants and catering establishments, the research results showed that intermediary fees differ between the surveyed digital platforms. As for the way in which the intermediary fee is defined, the interviewed undertakings-owners of restaurants and catering establishments responded that the intermediary fee is subject to contracting or negotiation. One of the surveyed restaurants stated that the amount of intermediary fee to be paid to the food delivery service provider was agreed depending on the turnover achieved and the position of the restaurant, and that the percentage of the fee amount might vary.

Furthermore, the research in question also covered the fees that online food delivery service providers pay to food delivery workers and the way in which these fees have been calculated. In the case of one of the surveyed digital platforms the fee consisted of three parts: the basic fee, which is the same for each order in a particular delivery area depending

on the means of transport, the additional fee for the air distance in kilometres, and in some cities, the bonuses that the courier gets if they meet a certain number of deliveries.

Second platform has calculated its fees similarly to the first digital platform, although it has described the individual parts of the fee differently. There have been weekly bonuses, additional promotion coefficients and additional top ups in case of unfavourable weather conditions, which has enabled the delivery workers to increase the final remuneration for the services they have provided.

Third digital platform has also calculated the remuneration amount based on the distance travelled per kilometre at the same time defining the amount for pick-up and delivery of the order. A minimum pay per delivery has also been defined.

In addition, there have been weekly and weekend incentives. These bonus payments have been calculated based on the number of deliveries made by the courier or delivery person during the incentive period. Also, the research revealed a possibility of increasing the pay of the delivery person by the attributable bonus payment multiplier per delivery. Thus, in the case of one of the digital platforms, the highest multiplier has been applied in the evening hours, but it has differed in individual cities although the order has been made through the digital application of the same digital platform. In the case of second digital platform, bonus approval has been additionally elaborated depending on the acceptance rate of the order.

One of the surveyed digital platforms has applied the same bonus system for delivery workers, depending on the number of deliveries and the means of transport, but it has made no difference between places - cities where delivery has been made. The same platform, unlike the other two, has paid different bonuses for different means of transport.

Regarding the advertising on digital platforms and the conditions for advertising the restaurants on these platforms, the application and the functioning of the rating systems for individual restaurants, the research results showed that out of three surveyed digital platforms, one of them has not been engaged in advertising of restaurants at all. On the other hand, seven out of ten surveyed restaurants confirmed that they have been using the advertising services on the digital platform. There have been no special advertising requirements for restaurants and the advertising campaigns have been carried out within the regular advertising campaigns of the digital platform concerned.

All three surveyed digital platforms replied that they have had a rating system in place. The rating has been based on the ratings given by the users of the individual digital platform. The surveyed restaurants essentially responded that the rating system has been based on the ratings or experience of the end users and not of the digital platform itself.

In the market study in question, the CCA carried out the analysis of the comparative practice of the European Commission and national competition authorities in the provision of online food delivery services. In that sense, it examined the relevant research studies in online food delivery market made by some national competition authorities.

During 2015 and 2016, the Swedish authority (Konkurrensvetket) conducted a survey of the relevant online food delivery market. Concretely, it was the initiative of a smaller digital

platform Pizzahero against the competing undertaking Onlinepizza Norden AB (Onlinepizza), which is part of the Delivery Hero Group.¹

The Hungarian competition authority (GHV) started its investigation into the online food delivery market in September 2015 whereas in 2018 it accepted the commitments with the view to eliminating possible anticompetitive effects and restoring competition, undertaken by the digital platform Netpincér, owned by the entrepreneur Viala Kft., without imposing a fine.²

Finally, the CCA gained insights into the recent activities of the Norwegian competition authority - Konkurransetilsynet related to Foodora Case from February 2021 dealing with prohibited exclusive agreements³, and the Spanish competition authority (CNMC), that investigated the operation of the digital platforms active in the Kingdom of Spain also regarding the existence of possible exclusive agreements⁴. The CNMC research was completed in early 2021.

For the last two years, the German Bundeskartellamt has also focused its efforts on investigating the relationships between the individual digital platforms that perform the activity of ordering and delivering food and the users of these services (restaurants)⁵.

Based on the results of the research, the CCA will continue to investigate into the compliance of provisions under the agreements concerned with the Competition Act, OG 79/09, 80/13 and 41/21.

¹ [The Swedish Competition Authority closes investigation into the Online platform market for food delivery after OnlinePizza voluntary changed its contractual terms | ECN Brief \(europa.eu\)](#)

² [Netpincér undertook to modify its contracts signed with restaurants - GVH](#)

³ [Decision in Foodora case: exclusivity agreements with restaurants not allowed - Konkurransetilsynet](#)

⁴ [CNMC ends an investigation against the main food delivery platforms in Spain - Bird & Bird \(twobirds.com\)](#)

⁵ [Handelsblatt - Nachrichten aus Finanzen, Wirtschaft und Politik](#)