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Reg.no: 580-10/76-2017-018

Zagreb, 23 November 2017

**Case: CCA v Hrvatsko društvo skladatelja, Zagreb (Croatian Collecting Society)
- Alleged abuse of a dominant position**

Decision: Initiative dismissed due to lack of standing to act

Case summary:

Due to lack of standing to act the Croatian Competition Agency (CCA) dismissed the initiative of the undertaking “Muzika i to” complaining about the allegedly abusive practices of the Croatian Collecting Society.

The complainant Muzika i to, who is the agent for the territory of the Republic of Croatia, Slovenia, Serbia, Bosna and Herzegovina of the undertaking Soundreef Ltd from London, UK, registered as a collective managing organisation in charge of the rights of the authors who decided to withdraw from any other collective managing organization, informed the State Intellectual Property Office in writing about its activities in terms of managing the rights of the authors that recalled their membership in any other collective management organization. Secondly, it also claimed that it informed the Croatian Collecting Society – Music Copyright Society (HDS ZAMP) and introduced itself as a distributor for the territory of Croatia. Muzika i to attached to that writing a list of authors included in the in-store music of its users, asking the HDS ZAMP to delete from its list any of the authors that have possibly been specified in the Croatian Collective Society base and whose rights have been now protected by Muzika i to as an independent management organization.

Concretely, the complainant stated that the HDS ZAMP asked all the Bauhaus stores, that have been one of the users of its services, for compensation for damages and prohibited any further performance of soundtracks that have not been approved by the authors of the music or their agents. In the view of the complainant, HDS ZAMP used repressive methods, intimidated and threatened its clients and thereby abused its dominant position in the market preventing other market players to enter the relevant market concerned.

The CCA carried out a preliminary market investigation in which it asked for the opinion of the HDS ZAMP and the expertise of the State Intellectual Property Office in the matter concerned. So collected documentation and the established facts of the case revealed that under the Croatian Copyright Act the HDS ZAMP is an undertaking holding a dominant position, within the meaning of Article 12 of the Competition Act, in the collective management of copyright market in musical works as a national collecting society. However, taking into consideration all the aspects of the matter at issue, the CCA concluded that in this particular case the HDS ZAMP did not abuse its dominance in this relevant market within the meaning of Article 13 of the Competition Act, given the fact that the legal analysis showed that the national collecting society acted in line with the objects and purposes for which it has been established in the first place, keeping in mind primarily the interest of the authors, in other words, the protection of the original copyright owner’s exclusive right to publish or release a song.

Namely, the received documentation and the facts of the case spoke in favour of the national collecting society that, in accordance with the CCA decision on the basis of which it dismissed the initiative of the complainant, acted in line with the relevant Copyright and Related Rights Act and the Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of

rights in musical works for online use in the internal market. In other words, it has been established that the HDS ZAMP acted within the meaning of its obligations towards the right holders, that besides everything else, include monitoring of the use of the subject of protection and opening and carrying out of the proceedings involving any infringement of the rights granted to a copyright holder.

Bearing in mind the above-mentioned findings and the fact that there has been no binding decision of a competent court regarding a possible infringement of the provisions of the Copyright and Related Rights Act, the behaviour of the HDS ZAMP could not raise competition concerns and the CCA dismissed the initiative.