

Class: UP/I 034-03/2016-01/008  
Reg.no. 580-09/64-2017-079  
Zagreb, 8 October 2017

Case: **Croatian Competition Agency vs. BSH kućanski uređaji d.o.o.**

**Decision on termination of the proceeding due to absence of legal presumption for continuing the infringement proceeding.**

**Case summary:**

In October 2016 the Croatian Competition Agency (CCA) opened an infringement proceeding against the undertaking BSH kućanski aparati d.o.o. Zagreb (BSH household appliances) with the objective of establishing whether certain provisions under the standard rebate agreements that the undertaking BSH household appliances concluded with its buyers (distributors) who sell electrical household appliances in brick and mortar shops or so-called hybrid-traders, represent a prohibited agreement in line with Article 8 of the Competition Act, and put the buyers of the BSH products who sell exclusively on-line in an unfavourable position.

The results of the preliminary market investigation showed that under its 2016 Rebate Scheme BSH gave the buyers who sold the products concerned exclusively online lower rebates than the buyers who operated in traditional stores.

On the other hand, the so-called hybrid-traders (buyers that were engaged in both traditional and online selling) were given significantly higher rebates in terms of the planned turnover, whereas the exclusively e-traders were given identical rebates regardless of the realized turnover.

The 2016 Rebate Scheme comprised 7 categories of buyers depending on their annual turnover, from the highest profile buyers to “small retailers” and “basis promo trade” receivers. At the same time, the rebates also depended on the size of the household appliances. The 2016 Rebate Scheme did not divide the buyers into traditional and online traders, yet, it was apparent from the scheme and the contracts that BSH concluded with its buyers in 2016 that the pure e-traders could get only the “basic promo trade” rebate that in this case did not depend on the planned annual turnover.

Based on the submitted agreements and their annexes and the 2016 Rebate Scheme the CCA eventually found that the rebate scheme concerned provided for volume rebates applicable in accordance with the concluded agreements to brick and mortar stores. The very same rebate scheme did not equally apply to exclusively online traders but BSH provided for them identical rebates that did not depend on the planned volumes or planned annual turnover, the so-called “basic promo trade”. In general, the analysis of all the applicable rebates in 2016 revealed that the traders who sold the products concerned exclusively on-line got lower rebates. However, the bonus breakdown indicated that the e-traders at the same time got better bonuses than the traditional and hybrid traders.

Within the meaning of the Guidelines on Vertical Restraints item 52 (c) a supplier may impose certain conditions on the distributor selling his product on the internet, such as the

visual of the website or the setting up a brick and mortar store within a certain period of time, but it does not permit "dual pricing" which is considered a hardcore restriction. Concretely, where the CCA examined the contracts that BSH concluded with the traders who were engaged in online and offline trade at the same time (hybrid traders), it found that there was no dual pricing involved. If this had been the case, BSH would have given lower rebates for all the products that were sold online, in other words, lower rebates would not have been granted exclusively to the undertakings selling online but also to the hybrid traders who sell both online and offline. In addition, BSH did not refer to the volume of the products sold online but explained how it granted off-invoice rebates to online household appliances distributors whereas all other partners, that provided showroom presentations and pre-sales services linked with the product concerned, were eligible to a certain share of additional rebate for the services they provided for end users. This difference was partially levelled by the bonus system that to certain extent favoured the exclusively online traders.

BHS changed its 2017 Rebate Scheme by revoking the special rebate for exclusively online traders. In short, the new rebate scheme allowed for equal rebates regardless of the fact whether the trader was engaged solely in the internet trade, or brick and mortar selling or a combination of these (hybrid traders).

Despite the fact that the data collected in the preliminary market investigation were understood as sufficient indices to open the infringement proceeding, in the course of the proceeding it was established that BSH did not implement dual pricing practices, which are considered a hardcore restriction. It was also established that no apparent harm was inflicted on end consumers in terms of prices given the fact that at that time the internet stores had more or less equal or lower prices for electrical household appliances supplied by BSH than traditional brick and mortar shops and hybrid traders. Therefore, the CCA terminated the proceeding.