

Class: UP/I 034-03/19-01/006

Reg.no: 580-10/65-2020-119

Zagreb, 16 January 2020

CCA vs. Nike European Operations Netherlands B.V., the Netherlands

- Initiative relating to alleged distortion of competition – abuse of a dominant position

Decision: Initiative dismissed due to lack of standing to act

Case summary:

On 2 April 2020 the Croatian Competition Agency (CCA) received a complaint for the initiation of an infringement proceeding against the undertaking Nike European Operations Netherlands B.V., from the Netherlands (Nike) regarding the alleged prevention, restriction and distortion of competition in the form of abuse of a dominant position. After having carried out a preliminary market investigation the CCA dismissed the initiative of the complainant due to lack of standing to act within the meaning of the Competition Act.

Generally, the complainant, who requested that its identity remains confidential, stated that the company NEON 2015 refused to deal with the complainant in 2015, concretely, refused to supply the complainant with the goods that had been previously available to it. NEON 2015 allegedly changed its business strategy restricting the access to premium goods of Nike brand to the complainant by imposing on its buyers the minimum mandatory requirements vouching for Nike quality and image as well as the best experience for the consumers. Therefore, NEON terminated the cooperation with certain distributors forcing them to turn to alternative but unfavourable sources of supply.

In the preliminary market investigation, the CCA studied the additional data submitted by the complainant and the comments received from the competing undertakings, the undertaking NEON 2015 and its competitors – the undertakings Adidas and Urban Sport.

Taking into account all data and information received and investigated in the course of the proceeding the CCA defined the relevant market as two connected production markets – the athletic apparel and footwear upstream wholesale market and the athletic apparel and footwear downstream retail market. In the case at issue the investigation focused on the behaviour of NEON 2015 as a supplier of athletic apparel and footwear in the wholesale market whereas the retail market was taken into consideration owing to the fact that NEON 2015 was present in the athletic apparel and footwear retail market through its own retail outlets and digital platforms (vertically integrated undertaking).

The CCA noted in its decision that there are two prerequisites for practices of an undertaking to be regarded as prevention, restriction or distortion of competition must be fulfilled: the undertaking must hold a dominant position in the relevant market within the meaning of article 12 of the Competition Act and must abuse this dominant position within the meaning of Article 13 of the Competition Act.

The collected data did not indicate that NEON 2015 would hold a dominant position in the athletic apparel and footwear wholesale market, meaning that the first condition for opening of an infringement proceeding regarding the alleged abuse was not fulfilled. The inquiry showed that NEON 2015 had strong competitors in the relevant market concerned, selling substitutable sports brands, in other words, NEON 2015 could not behave to an appreciable extent independently of its competitors.

The CCA did not accept the comments made by some of the undertakings – competing undertakings of the complainant, explaining the Nike products were not interchangeable. On the contrary, the CCA specifically noted that Nike products by reason of the products' characteristics, their prices and their intended use are interchangeable with the products of other brands – competitors of the undertaking NEON 2015. There are many competing brands in the relevant market, this was also confirmed by the main competitor Adidas.

In line with the above findings the CCA decided to dismiss the case concerned.

However, taking into consideration the matter concerned, the CCA decided to open a separate proceeding under Class: 957-01/20-02/001 in which it will carry out a preliminary market investigation in the relevant market given the fact that NEON 2015 had changed its selective distribution regime with the view to establishing whether there has been any circumstantial evidence for the opening of a proceeding for the assessment of the agreements this undertaking has been concluding with its distributors considering their compliance with the vertical block exemption regulation and the guidelines on vertical restraints.