

Class: UP/I 034-03/20-01/003
Reg.no. 580-09/63-2020-009
Zagreb, 27 November 2020

CCA vs. Pivovara Daruvar d.o.o., Zagreb
- Alleged distortion of competition – prohibited agreement

Decision on acceptance of commitments

Case summary:

The infringement proceeding against Pivovara Daruvar was opened on 7 May 2020 with respect to existing circumstantial evidence of possible prevention, restriction or distortion of competition by the conclusion of a prohibited agreement within the meaning of Article 8 of the Competition Act, OG 79/09 and 80/13. There has been strong circumstantial evidence that the agreement that this brewery company concluded with its business partner contained provisions that contravene with the Regulation on block exemption granted to certain categories of vertical agreements, OG 37/11.

At an early stage of the proceeding (within the first six months following the initiation of the proceeding) Pivovara Daruvar committed itself to undertake necessary remedies under Article 49 of the Competition Act and proposed the concrete commitments with the view to eliminating possible anticompetitive effects.

Pivovara Daruvar voluntarily revised the challenged provisions under the business agreement concerned even before the initiation of the infringement proceeding and concluded a new agreement with the undertaking concerned that would not contain the challenged provisions on the basis of which the infringement proceeding against the brewery company was commenced in the first place. In other words, the challenged agreement had been in effect for only 8 months.

Within the meaning of Article 49 paragraph 3 the Croatian Competition Agency (CCA) sets the time period in which the undertaking in question should comply with the commitments, obliges the undertaking concerned to furnish evidence from which it is evident that it has undertaken the commitments concerned, on the basis of which the CCA can establish that there are no legal grounds to any further actions against the undertaking concerned.

The CCA published the commitments proposed by Pivovara Daruvar on the CCA website and invited all the interested entities to submit their comments. No comments following the CCA request have been received.

Taking everything into account on 27 November 2020 the CCA adopted a decision on acceptance of the proposed commitments offered by Pivovara Daruvar finding these remedies sufficient to eliminate the competition concerns and to restore effective competition in the market.

In addition, Pivovara Daruvar committed itself to introduce a separate compliance programme and to carry out the compliance training for its employees in the area of competition rules.

The CCA notes that the commitments undertaken in the sense of Article 49 of the Competition Act do not mean that there had been an infringement of competition rules and that none has been found within the proceeding concerned.

At the same time, the act of undertaking the commitments does not constitute a settlement or admitting to the infringement.

However, should the monitoring procedure with respect to the implementation of the commitments indicate that the undertaking concerned should act contrary to its commitments, such behaviour would constitute an infringement of the Competition Act and the CCA would issue a separate decision establishing the infringement and imposing the fine for the infringement concerned in line with the provisions of the Competition Act.