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Zagreb, 27 November 2020

CCA vs. Osječka pivovara d.d., Osijek

- Decision on imposition of a fine for non-compliance with the request for the submittal of data

Case Summary:

In the course of the administrative proceeding for the setting and imposition of a fine on the undertaking Osječka pivovara d.d. from Osijek the Croatian Competition Agency (CCA) established that the undertaking concerned did not act in line with the requests of the CCA for the submittal of data and therefore acted in contravention with Article 32 items 1 a) and b) of the Competition Act and consequently was imposed a fine in the amount of HRK 10,000 within the meaning of Article 63 of the Competition Act.

Namely, the CCA carried out a preliminary market investigation in the beer market – beer sales contracts in the HoReCa market sector in the Republic of Croatia. In line with Article 32 items 1 a) and b) the CCA is empowered to carry out preliminary investigations in the relevant market with the view to defining sufficient indications of competition concerns on the basis of which it initiates the proceeding, in particular to collect data and information from legal or natural persons, professional associations or economic interest groups, associations of undertakings, consumers associations, public administration authorities and local and regional self-government units which may have certain knowledge that can contribute to the investigation of the market and identifying market positions, regardless of the concrete cases handled by the CCA.

With the view to collecting data necessary for the conduct of the market study concerned the CCA asked the undertaking Osječka pivovara to communicate to the CCA the required data and information. Osječka pivovara ignored the requests of the CCA even after receiving subsequent reminders and despite the warning of the CCA about the consequences of the misconduct.

In line with Article 41 paragraph 1 the CCA is empowered to request from the party to the proceeding or other legal or natural persons, professional associations or economic interest groups or associations of undertakings, consumers associations, public administration authorities and local regional self-government units to submit all necessary information in writing, or to make written or oral statements or otherwise make available all relevant data and documentation. In the sense of Article 41 paragraph 3 where the party to the proceeding or any other legal or natural person referred to above fails to act in compliance with the request of the CCA, the CCA shall adopt a procedural order on the initiation of the proceeding for setting the criteria for the imposition of a fine, it shall communicate a Statement of Objections and a notice of hearing to the party concerned, after which it shall adopt a decision establishing whether an infringement the Competition Act has been committed and if so, impose a fine provided for the infringement concerned in compliance with the Competition Act.

In line with Article 63 of the Competition Act a fine in the amount ranging from HRK 10,000 to 100,000 shall be imposed on the undertaking that is not a party to the proceeding carried out by the CCA where

it fails to act in line with the request of the CCA as referred to under Article 32 points 1a) and b) and Article 41 paragraphs 1 and 3.

Concretely, in this case it has been established from the evidence provided by the postal services provider Hrvatska pošta that two requests (of 28 November 2018 and 30 January 2019) sent by the CCA safely arrived but the undertaking Osječka pivovara failed to act in compliance with these requests within the prescribed deadlines even until the very date of the adoption of this decision. The allegations of Osječka pivovara that the requests concerned had not been delivered to the director of the company and that the notice of the postal services provider did not include the stamp and the signature of the director implying that the piece of evidence is illegal were all dismissed by the CCA as irrelevant in this particular case.

Therefore, the CCA decided to impose a fine on the undertaking Osječka pivovara in the amount of HRK 10,000 holding the view that the sanction would deter the violator and other undertakings from engaging in similar practices.

In the proceeding for establishing the amount of the fine, the CCA took into account the mitigating circumstances of the case, particularly the fact that the undertaking Osječka pivovara had not been previously sanctioned for any infringement of competition rules.

However, the CCA took into account also the aggravating factors when imposing the fine in the case at issue, particularly the fact that Osječka pivovara ignored the requests of the CCA within the prescribed deadlines, more precisely in the uninterrupted time period from 26 February 2019 to 27 November 2020, and thus violated Article 32 item 1 a) that consequently invoked the provisions of Article 63 regulating sanctions for the infringements concerned.

The fines set and imposed by the CCA are contributed to the state budget of the Republic of Croatia. Should an undertaking fail to pay the imposed fine within the prescribed deadline, the CCA informs thereof the local Revenue Office of the Tax Authorities of the Ministry of Finance of the seat/address of the fined person, with the objective of enforced collection of claims in line with the enforced tax collection rules. The fines which are on the request of the CCA subject to enforced collection by the Tax Authorities are contributed directly to the state budget of the Republic of Croatia.