

Class: UP/I 034-03/20-01/014

Reg.no: 580-09/64-2020-003

Zagreb, 22 October 2020

CCA vs. Krokoteks d.o.o., Sveti Ivan Zelina and URIHO, Zagreb
- Initiative relating to alleged distortion of competition

Decision: Initiative dismissed due to lack of standing to act

Case summary:

On 27 April 2020 the Croatian Competition Agency (CCA) received a complaint filed by the undertaking Salesianer Miettex Lotos d.o.o. from Zagreb (SM Lotos) for the initiation of the infringement proceeding against the undertaking Krokoteks d.o.o. from Sveti Ivan Zelina and URIHO – Institution for professional rehabilitation and employment of persons with disabilities from Zagreb regarding their alleged prevention, restriction and distortion of competition in the form of a prohibited agreement and 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.

The complainant basically claimed that Krokoteks and URIHO concluded a prohibited agreement, which on the other hand, lead to abuse of their dominant position in the market. Concretely, the complainant stated that the above-mentioned entities participated in bid rigging in the public procurement procedure for the purchase, rental, laundry and ironing services and thereby committed an infringement of competition rules. Allegedly, collusive tendering enabled them to win a number of public procurement procedures but on the other hand, the contracting authority itself, where a likely conflict of interest was presumed, set the bidding criteria so as to ensure that only one bidder, namely, the above-mentioned association of bidders, could fulfil the criteria concerned.

After having carried a preliminary market investigation and the necessary legal analysis of public procurement rules, the CCA found in its session of 22 October 2020 that, as a rule, competition rules do not apply to public procurement procedures, only exceptionally to the participating undertakings – bidders.

However, the CCA did not find circumstantial evidence that would be necessary for the opening of the infringement proceeding against the bidders in the listed tenders in the sense of competition rules regulating prohibited agreements (Article 8 of the Competition Act) and abuse of dominance (Article 13 of the Competition Act).

Concretely, the CCA found the allegations of the complainant stating that Kroteks and URIHO created a bidding consortium based on a prohibited agreement in the sense of Article 8 of the Competition Act by eliminating the competitors from the relevant market, in other words,

undertakings that provide purchase, rental, laundry and ironing services, or other undertakings that provide the same services but do not comply with the tendering criteria, unfounded. Given that in the matter concerned the relevant market is defined under Article 51 of the Public Procurement Act and the tendering criteria, the undertakings that perform this activity, but do not comply with the criteria set under Article 51 of the Public Procurement Act, cannot be regarded as competitors in the relevant market concerned.

In addition, whether the bidding consortium consisting of Kroteks and URIHO met the criteria of the tender and the provisions of the Public Procurement Act and whether the bidding criteria had been defined in compliance with the Public Procurement Act and other specific provisions, falls outside the scope of the CCA. The assessment of the competence of the service providers to provide the purchase, rental, laundry and ironing services and whether Article 51 of the Public Procurement Act was applicable to the said jobs, falls also outside the jurisdiction of the CCA. In the same way, the allegations concerning the possible infringements of the Criminal Act relating to abuse in the public procurement procedure fall under the competence of other authorities or institutions, different from CCA.

Taking everything mentioned above the CCA dismissed the initiative of the complainant due to lack of standing to act within the meaning of the Competition Act.