

Class: 034-08/21-01/050

Reg.no: 580-11/107-2021-02

Zagreb, 8 September 2021

Subject: ACI d.d., Rijeka and GITONE KVARNER d.o.o., Zagreb – Investigation of ownership ties

- Investigation findings

Case summary:

After having received an anonymous petition requesting the Croatian Competition Agency (CCA) to open a compatibility assessment procedure of the concentration between the undertakings ACI and Gitone Kvarner by creation of a joint venture ACI-Gitone, the CCA found in the course of the preliminary market investigation that within the meaning of Article 17 paragraph 6 of the Competition Act the criteria for the initiation of the compatibility assessment proceeding in this particular case have not been satisfied.

Specifically, in line with Article 17 paragraph 1 of the Competition Act, the parties to the concentration are obliged to notify any proposed concentration to the CCA if the total turnover of all the undertakings - parties to the concentration amounts to at least HRK 1 billion realized by the sale of goods and/or services in the global market, and, the total turnover of each of at least two parties to the concentration realized in the national market of Croatia, amounts to at least HRK 100 million. Both criteria must be cumulatively met.

In the preliminary market investigation, focusing on the ownership ties between the undertakings concerned and the relevant turnover thresholds, the CCA found that based on Articles of Association concluded on 22 February 2021 the undertakings ACI and Gitone Kvarner created a full-function joint venture ACI-Gitone, which unquestionably constitutes a concentration between undertakings within the meaning of Article 15 paragraph 3 of the Competition Act.

However, the CCA assesses the compatibility of those concentrations the are subject to obligatory notification as stipulated in Article 17 paragraph 1 of the Competition Act, the concentrations for which the obligatory notification to the CCA has been provided under separate rules and the concentrations that have been referred from the European Commission under the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation).

After having carried out the preliminary market investigation into the ownership ties of the undertakings concerned, turnover thresholds and other necessary data, the CCA found that the business transaction concerned falls outside the notification obligation within the meaning of Article 17 paragraph 6 of the Competition Act given the fact that the undertakings concerned do not cumulatively meet the threshold criteria stipulated under Article 17 paragraphs 1 and 2. At the same time, this business transaction falls outside any notification obligation provided under separate rules and the EC Merger Regulation.

It must be noted that the anonymous petition could not be regarded as a notification of a concentration due to the fact that it had not been submitted by a party to the concentration. Additionally, other allegations under the anonymous petition related to possible irregularities in the public tender for the award of concessions for the use of the Croatian maritime domain and suspected corporate crime, fall outside the CCA powers and consequently there have been no grounds for the initiation of ex-officio infringement proceeding relating to distortion of competition in the sense of competition rules.