

Class: UP/I 034-03/21-01/002

Reg.no: 580-10/63-2021-005

Zagreb, 22 July 2021

CCA vs. Croatian Hydrographic Institute, Split
- Initiative relating to alleged distortion of competition

Decision: Initiative dismissed due to lack of standing to act

Case summary:

On 3 March 2021 the Croatian Competition Agency (CCA) received a complaint filed by the undertaking GEOMAR with its seat in Split for the initiation of an infringement proceeding against the Croatian Hydrographic Institute (HHI) from Split regarding the alleged prevention, restriction and distortion of competition. After having examined the allegations of the complainant and the specific law applicable to the activity concerned 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 stated that it is engaged in hydrographic activities as an authorised legal person for the discharge of hydrographic activities whereas the participation of the public institution like the HHI in public procurement procedures and simplified acquisitions it finds discriminatory, based on the fact that this public institute is financed from the State resources, competes in the relevant market and bids in public procurement procedures alongside with private undertakings, and as such distorts competition in the relevant market. Namely, the complainant assumes that the HHI does not have to bear the costs of hiring experts or ancillary staff, tools, machinery and equipment, given that these costs are all covered from the State budget.

There is a dispute between the complainant and the HHI regarding the interpretation and the application of Article 30 of the Hydrographic Activity Act that stipulates that the HHI apart from the activities listed under Article 5 thereof, can perform activities involving hydrographic surveying, production of nautical charts and publications for domestic and foreign legal persons, on their request, wholesale and retail of its own products, provided that it does not obstruct the operation of hydrographic services of general economic interest for the Republic of Croatia.

Whereas the standpoint of the HHI is that the above provisions empower it to participate in public procurement procedures, the view of the complainant is that the HHI could not participate in the said public procurement procedures and simplified acquisitions next to the privately owned and authorised undertakings.

After having carried out the preliminary market investigation the CCA found that the matter concerned is regulated by specific rules, namely the Hydrographic Activity Act, whereas the scrutiny with respect to its application falls under the authority of the Ministry of the Sea, Transport and Infrastructure.

Namely, there is a dispute between the complainant and the HHI regarding the interpretation and the application of Article 30 of the Hydrographic Activity Act, whereas within the meaning of Article 40 of the Hydrographic Activity Act the specific scrutiny activities relating to the application of the Hydrographic Activity Act falls under the authority of the Ministry of the Sea, Transport and Infrastructure.

On the basis of the above explanation the initiative of the complainant GEOMAR in this particular case was dismissed within the meaning of competition rules.

However, at the end of its decision the CCA pointed out that any institution that apart from its services of general economic interest regulated by specific rules also performs economic activities and thereby competes in the market with economic entities must respect the State aid rules which fall under the jurisdiction of the Ministry of Finance and the European Commission.