

Class: UP/I 034-03/21-04/001

Reg.no: 580-16/119-2021-008

Zagreb, 7 December 2021

CCA vs. Kupovina d.o.o., Split

- Unfair trading practices

- Decision on termination of the proceeding

Case summary:

After having received a complaint from the complainant who has requested that their identity remain confidential, in the sense of application of the Croatian Act on the prohibition of unfair trading practices in the business-to-business food supply chain (UTPs Act), on 5 May 2021 the Croatian Competition Agency (CCA) opened an ex officio infringement proceeding against the re-seller Kupovina d.o.o. from Split within the meaning of the UTPs Act with the view to identifying whether this re-seller sold an agricultural or food product (in this particular case flour) to end consumers at a price that was lower than any purchase price in the chain of supply of this particular product including value added tax.

In the course of the investigation the CCA found that despite the fact that the operations of the re-seller indicated infringement of the UTPs Act, the analysis of the CCA showed that the undertaking Kupovina did not constitute a re-seller with a strong bargaining power under the UTPs Act stipulating that “a re-seller whose total annual turnover and total annual turnover of companies connected to the re-seller realized in the Republic of Croatia exceeds the amount of HRK 100,000,000.00 is considered to possess strong bargaining power”.

However, another piece of legislation, i.e., the Croatian Trade Act also defines “unfair trading” as “selling of goods to end consumers at a price that is lower than any purchase price including value added tax”, with an exception of goods close to the expiration date, recalled goods, total sales due to closing down, bankruptcy and liquidation or other reasons that do not have as their effect prevention, restriction or distortion of competition.

Regardless of the fact that both pieces of legislation – the UTPs Act (*lex specialis*) and the Trade Act (*lex generalis*) stipulate as unfair the selling of goods below its purchase price, taking into account the above-mentioned exceptions, the CCA found that this particular situation does not lead to overlapping jurisdictions and referred the case to the State Directorate of the Republic of Croatia empowered by the Trade Act, where the CCA found that the undertaking concerned did not fulfil the turnover threshold to be considered an undertaking with strong bargaining power within the meaning of the UTPs Act, yet, there

were still indications that the re-seller Kupovina sold agricultural and food products below the purchase price including VAT.

Given the fact that the undertaking Kupovina could not be considered an undertaking with strong bargaining power under the UTPs Act the CCA adopted a decision terminating the administrative proceeding concerned and referred the case to the State Inspectorate of the Republic of Croatia.