

Class: UP/I 034-03/20-01/019

Reg.no. 580-10/76-2022-148

Zagreb, 30 December 2021

CCA vs. Spinnaker distribucija d.o.o., Zagreb

- **Alleged prohibited agreement**
- **Decision on a prohibited agreement**

Case summary:

The Croatian Competition Agency (CCA) found that the undertaking Spinnaker distribucija d.o.o. from Zagreb breached competition rules in the distribution market for point of view (POV) action cameras in the territory of the Republic of Croatia by the conclusion of the Standard Selective Distribution Agreement with ten authorised retailers that had been in effect from 1 April 2018 to 31 March 2019. The Standard Selective Distribution Agreement contained provisions that constitute hard core restriction of competition by object and therefore are prohibited within the meaning of Article 8 paragraph 1 of the Competition Act and Article 9 paragraph 1 item d) of the Regulation on block exemption granted to certain categories of vertical agreements, given the fact that it contained the restriction of cross-supplies between distributors within a selective distribution system.

The CCA opened an *ex officio* proceeding against the undertaking Spinnaker based on the complaint made by the undertaking Sultan d.o.o. from Zagreb that in the meantime underwent bankruptcy and ceased to exist. The infringement proceeding was initiated by the CCA following a preliminary market investigation in which there had been indices of the possible restriction of passive sales regarding the rebate and pricing policy and criteria used with undertakings engaged in online sales compared with the traditional brick and mortar shops.

Namely, the investigation into the Standard Selective Distribution Agreement for 2018 showed that its provisions were not in compliance with the competition rules and that they constitute hard core restriction of competition by object in the distribution of POV action cameras in the territory of the Republic of Croatia. In other words, it contained the restriction of cross-supplies between distributors within a selective distribution system within the meaning of Article 9 paragraph 1 item d) of the Regulation on block exemption granted to certain categories of vertical agreements.

The challenged provisions imposed on the appointed dealers the obligation to purchase the GoPro cameras exclusively from Spinnaker but also the obligation on the authorised dealers

not to sell to other authorised dealers but exclusively to end users. In order to ensure the authorised dealers' compliance in practice, Spinnaker imposed a quantitative restriction on its authorised dealers by requiring a fixed number of cameras per sales.

The restriction of cross-supplies between distributors within a selective distribution system is a restriction of competition by object, which does not require any further analysis of the relevant market that would justify such a behaviour. In other words, selected distributors must remain free to purchase the contract products from other appointed distributors within the network, operating either at the same or at a different level of trade. Therefore, it was not necessary to conduct an individual assessment in order to demonstrate concrete restrictive effects in the market and whether these effects were significant or not.

Therefore, in this particular situation, the vertical agreement concerned could not be granted block exemption, which makes it *ex lege* void.

For the serious infringement of competition rules Spinnaker was imposed a reduced fine of HRK 350,000 and prohibited any such behaviour in the transactions with the authorised dealers (retailers) of GoPro products in the future.

When reducing the base amount of the fine, in the procedure of setting the fine the CCA took fully into account the extenuating circumstances of the case, the type of infringement, the way of participation in the prohibited agreement, the geographic area in which the infringement had or might have produced effects and the fact that, despite the existence of the challenged provisions, the infringement had not been actually committed in practice but merely likely to have happened.

It is the view of the CCA that the fine in the amount specified above will have a sufficiently deterrent effect, not only in order to sanction the undertaking concerned but also in order to deter other undertakings from engaging in, or continuing the behaviour that is contrary to the provisions of the Competition Act.