

**Case: CCA v Zagrebački holding d.o.o. - Zagrebački velesajam, Zagreb (affiliated company)**

**- Initiative of the undertaking Motonavis d.o.o., Rijeka for the initiation of the proceeding for the establishment of prevention, restriction or distortion of competition**

**- Case summary:**

Within the meaning of Article 37 of the Competition Act (OG 79/09 and 80/13) the Croatian Competition Agency (CCA) received on 19 December 2014 the initiative submitted by the undertaking Motonavis d.o.o., with its seat in Rijeka, Jože Vlahovića bb, represented by its director Vesna Cerovac (hereinafter: Motonavis), for initiation of the proceeding by the CCA against the undertaking Zagrebački holding d.o.o. – Zagrebački velesajam (affiliated company), with its seat in Zagreb, Avenija Dubrovnik 15, represented by the director of the affiliated company Marina Pavković (hereinafter: Zagreb Fair) for the establishment of prevention, restriction or distortion of competition.

In its initiative Motonavis basically stated that as an exclusive distributor for Suzuki outboard engines for the Republic of Croatia he has been participating at the Zagreb Boat Show since it was founded. He stated further that in the past few years there have been unfair practices and in that sense he gave an example of how the undertaking Yamaha leased a whole exhibition hall and then subleased it to other exhibitors, mainly manufacturers and dealers of vessels, under a much lower price than the price paid by other undertakings who participate independently in the fair, but provided that they exhibit a vessel with a Yamaha outboard engine or a vessel with no outboard engine at all. In the opinion of the complainant, it is the Zagreb Fair who in this particular case acted as a lessor of the exhibit space and not as a fair organizer and therefore and in that way engages in practices that lead to distortion of competition.

The CCA carried out a preliminary market investigation with a view to establishing sufficient indices for the initiation of the proceeding for the establishment of prevention, restriction or distortion of competition within the meaning of Articles 38 and 39 of the Competition Act, relating to the application of Article 8 of the Competition Act regulating prohibited agreements and Article 13 of the Competition Act regulating abuse of a dominant position by an undertaking.

The data that the CCA received from the Zagreb Fair revealed that since the mid 2009 high excise duty on vessels has been in effect, which caused problems to boat builders and boat dealers and consequently lead to exit from the market of some 50 per cent of the businesses that had been engaged in either of these activities. These trends caused a falling trend also in the business of the Zagreb Boat Show. On the other hand, in early 2011 the undertaking TM Zagreb d.o.o., with its seat in Zagreb, Susedsko polje 53 (hereinafter: TM Zagreb), the exclusive importer and distributor of Yamaha products in the territory of the Republic of Croatia founded a project *Yamaha and partners* and offered it to the Zagreb Fair with the view to raising quality and standards of the exhibitions of the brand. Almost 50 percent of previously independent exhibitors joined the project that was subsequently accepted by the Zagreb Fair, involving the rebates that were proportionate to the size of the leased

exhibition space. The Zagreb Fair stated that the project actually raised the quality of the Zagreb Boat Show.

The Zagreb Fair further stated that the cooperation between the Zagreb Fair and the undertaking TM Zagreb was agreed under the contact no 756/11-1901/S-30 "Zagreb Boat Show 2011" that ensured the exhibitors within the project *Yamaha and partners* to lease the exhibition space for [...] Kuna for m2. Each exhibitor under the said project had received an invoice for the leased exhibition space in the Zagreb Fair pavilion 8a. However, in the time period from 2012 to 2015 not the members of the project separately but only the company TM Zagreb, whose aim was to gather as many undertakings who would display Yamaha boat engines under the project, was invoiced for the transaction. That, according to the Zagreb Fair, means that TM Zagreb actually subleased the exhibition space to the members of the project. Concretely, from 2012 to 2015 the undertaking TM Zagreb obtained a quantity rebate worth 50 percent for the lease of 1000 m2 of empty exhibition space in the Zagreb Fair pavilion no 8a.

The Zagreb Fair commented further that the 50 per cent quantity rebate was given to the undertaking TM Zagreb under the Pricelist for the basic services at the Zagreb Boat Show, regulating that an undertaking may be given a 50 per cent rebate when it leases exhibition space of 1000 m2 or more.

In its writing of 19 January the Zagreb Fair stated that any legal person whose business activity is related to maritime and boating may participate in the Zagreb Boat Show and lease a whole pavilion if its offer is attractive and if it is able to cover the costs of such a scope.

The results of the preliminary investigation of the relevant market indicated that in this concrete case the practices of the Zagreb Fair cannot constitute any form of prevention, restriction or distortion of competition within the meaning of Articles 8 and 13 of the Competition Act.

Apart from the fact the participation in the Zagreb Boat Show was open to all undertakings in the line of business concerned the CCA also considered that the behaviour of the undertaking TM Zagreb who leased the exhibition space from the Zagreb Fair and subleased it to other undertakings involved in business with Yamaha products cannot be disputed in the sense of competition rules. On the contrary, the CCA found such a decision procompetitive based on the fact that in line with the statement of the Zagreb Fair almost 50 per cent of the exhibitors that participated in the project concerned would not have been interested to display their products on their own.

In the course of the preliminary investigation it was established that there were no indices that the Zagreb Fair would withhold the right to other undertakings who would wish to lease the exhibiting space in the Zagreb Boat Show under the same terms that were granted to the undertaking TM Zagreb.

At the same time, the rebates given by the Zagreb Fair for the provision of basic fair services were defined in the above mentioned Pricelist and applied in a non-discriminatory manner to all undertakings.

Consequently, the CCA found that there were no legal grounds for the opening of an ex officio procedure for the establishment of abuse of a dominant position within the meaning of Article 13 of the Competition Act.

Moreover, the analysis of the contract on business cooperation no 756/11-1901/S-30 "Zagreb Boat Show 2011" that had been concluded between the Zagreb Fair and the undertaking TM Zagreb on 19 January 2011 found no provisions that would constitute a prohibited agreement in the sense of Article 8 of the Competition Act.

Taking everything above said into account the CCA dismissed the initiative of the undertaking Motonavis in its decision UP/I 034-03/15-01/00 of 14 May 2015.