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CRISIS CARTELS

Contribution from Croatia

-- Session III --

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CRISIS CARTELS: ASSESSMENT OF CARTELS UNDER THE CROATIAN COMPETITION LAW

-- Croatia --

1. Introduction

1. In the times of economic crisis, by which was also affected the Croatian economy, there could be constantly noticed the attempts of various entrepreneurs to treat into the cartels or cartel-like arrangements in order to close the markets in their respective sectors where they operate and therefore retain the profits and the business results from the past. Such attempts might harm the economy and prevent other entrepreneurs from the free competition in the market, which could ultimately decrease the welfare of the consumers and negatively affect the entire situation on the market.

2. Prohibited agreements among entrepreneurs

2. The Competition Act (2009), establishes general prohibition to all practices where two or more independent undertakings enter into agreements, or where associations of undertakings close a decision or act in a concerted practice, which actions have as their object or effect the distortion of competition in the relevant market, and in particular those which:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.¹

3. Within the meaning of the definition for prohibited agreements as listed above, there are specially taken into account the contracts, particular provisions thereof, implicit oral or explicitly written down arrangements between undertakings, concerted practices resulting from such arrangements, decisions by undertakings or associations of undertakings, general terms of business and other acts of undertakings which are or may constitute a part of these agreements and similar, notwithstanding the fact if they are concluded between undertakings operating at the same level of the production or distribution chain

¹ Author: Dr. Sc. Mirna Pavletic-Zupic, Member of the Competition Council // Art.8 of the CA, aligned to Art.101 of the Treaty on the Functioning of the EU.

(horizontal agreements) or between undertakings who do not operate at the same level of the production or distribution chain (vertical agreements).

4. However, a certain categories of agreements shall be granted exemption from general prohibition from the Law, if they, throughout their duration, cumulatively comply with the following conditions:

- if they contribute to improving the production or distribution of goods and/or services, or to promoting technical or economic progress,
- while allowing consumers a fair share of the resulting benefit,
- they do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and
- they do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of goods and/or services in question.

5. Finally, agreements that prevent, restrict or distort competition, and which do not fulfill the conditions as listed above, as well as agreements to which could not be applied the rules for block exemptions shall be *ex lege* void.

6. The criteria for block exemptions are narrowly specified in the separate regulations, where are defined the conditions under which certain categories of agreements may be exempted from general prohibition, and among others those are particularly²: (a) agreements between undertakings not operating on the same level of production or distribution (vertical agreements), such as exclusive distribution agreements, selective distribution agreements, exclusive purchase and franchising agreements; (b) agreements between undertakings operating on the same level of the production or distribution (horizontal agreements), and in particular, research and development and specialization agreements; (c) agreements on transfer of technology; (d) agreements on distribution and servicing of motor vehicles; (e) insurance agreements, and (f) agreements between undertakings in the transport sector.

7. However, the block exemption regulations referred herewith above shall in particular stipulate: (i) the provisions that such agreements must contain, and (ii) the restrictions or conditions that such agreements may not contain. Based on this, the implementing Authority, namely the Croatian Competition Agency (furthermore: CCA) may, *ex officio*, initiate the proceedings to assess the compatibility of a particular agreement which has been granted a block exemption, where it finds that the particular agreement, in itself or due to the cumulative effect with other similar agreements in the relevant market, does not comply with the conditions set out above. Should it be established, during the proceeding that the agreement concerned produces certain effects which contravene the conditions as set out in the Law, the block exemption shall be withdrawn.

8. Croatian Law also recognizes the agreements of minor relevance³ which are defined as such agreements to which the parties have an insignificant mutual market share, provided that such agreements do not contain hard core restrictions of competition that, in spite of the insignificant market share of the parties to the agreement, lead to distortion of competition.

² Art. 10 of the CA.

³ Art. 11 of the CA, Par. 1.

3. Enforcement record and the issues taken into the consideration when reviewing the cartels

9. In the further part is described one of the most recent decisions of the Croatian Competition Agency (furthermore: the CCA), in relation to detecting and sanctioning of the cartels.

10. After it had carried out a market study in the provision of services of driving schools in the territory of the Republic of Croatia and after having received the necessary data from the undertakings in this market, the CCA established the existence of agreements on the basis of which 15 driving schools in the town of Rijeka and Matulji municipality fixed prices of driving lessons fees for drivers of licence category A, A1, B and M and thereby eliminated competition between them.

11. In spite of the fact that this is a partly regulated market, in other words, a specific ordinance of the Ministry of the Interior regulates the minimum prices for the provision of particular driving school services, nevertheless, these minimum prices do not equal the final price and may not be used as a fixed price by all service providers, in this particular case the driving schools. Given the different operating costs of each service provider, the price of each particular operator must be set in accordance with the actual costs incurred. Thus, regardless of the fact if it had been actually implemented or not, the CCA found this agreement in contravention of Article 9 of the Competition Act, which prohibits “agreements object or effect of which is to prevent, restrict or distort competition in the relevant market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions. “

12. The CCA made a request to open proceedings against all cartel members – 15 driving schools – for the infringement of competition rules in the period from 1 November 2007 to 30 July 2009 at the competent minor offence courts. Minor offence proceedings are pending. Most driving schools filed the claims against the decisions of the Agency. The cases are pending.