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AGENCIJA ZA ZAŠTITU
TRŽIŠNOG NATJECANJA

CROATIAN COMPETITION AGENCY

Panel: Undertaking as an Economic Unit

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PRESENTATION OUTLINE

- ❑ DEFINITION OF UNDERTAKING-CROATIAN COMPETITION ACT
- ❑ PUBLIC LAW ENTITIES-UNDERTAKINGS IN COMPETITION LAW
- ❑ ASSOCIATIONS AS UNDERTAKINGS IN COMPETITION LAW
- ❑ CROATIAN EXPERIENCE- CASE EXAMPLES-ASSOCIATIONS
- ❑ CONCLUSIONS

DEFINITION OF UNDERTAKING

Article 3 Croatian Competition Act 2009

- 1) Undertakings-companies, sole traders, tradesmen and craftsmen and other legal and natural persons who are engaged in a production and/or trade in goods and/or provision of services and thereby participate in economic activity;
-also state authorities and local and regional self-government units where they directly or indirectly participate in the market and all other natural or legal persons, such as associations, sports associations, institutions, copyright and related rights holders and similar who are active in the market.

- (2) The definition of an undertaking shall apply to any persons who are engaged in a direct or indirect, permanent, temporary or single participation in the market, irrespective of their legal form or ownership structure, form of financing and intent or effect to make profit, notwithstanding their place of establishment or residence within the territory of the Republic of Croatia or outside its territory.

PUBLIC ENTITIES IN COMPETITION LAW

=undertakings when they perform economic activity/directly or indirectly participate in the market (Competition Act 2009)

-less clear in the previous Competition Acts 1998 and 2003

-relevant judgments from Administrative Court in 2005 regarding the role of two cities in competition;

-CCA established the abuse of dominant position in two similar cases against two smaller cities on the local markets: legal persons which participated in the sale of goods and services on the market, announced the tenders for lease and usage of public locations/surfaces.

-Administrative Court- diff.opinion, local self-government units are not undertakings, provide public service and not perform economic activity.

-annuled decisions of the CCA.

NOTE: The interpretation and judgement of the Adiministrative Court could be different now! The implementation of provisions of present Competition Act could lead to different conclusion!

PUBLIC ENTITIES IN COMPETITION LAW II

- services of general economic interest, public utilities, undertakings which are entrusted pursuant to separate laws with the operation of services of general economic interest
- several cases in the practice of the CCA

Case Kozala d.o.o. from 2011

- the service in question is not performed on the free market, regulated by the provisions of Law on Utility Management
- the service of transport of deceased cannot be assessed exclusively from the perspective of competition rules.
- also in line with Croatian Constitution.

SPECIFIC POSITION OF ASSOCIATIONS IN COMPETITION LAW

Problem: insufficient understanding about their role in competition law that they can also be responsible for breaches of competition rules as undertakings.

Often announcements in media of professional associations inviting their members to raise prices on the same level and in the same amount (association of producers of bread, publishers).

CCA-constant effort to explain that this is contrary to competition law (competition advocacy activities and enforcement).

CROATIAN EXPERIENCE-CASE EXAMPLES: ASSOCIATIONS

Criteria for the implementation of the definition of undertaking, similar approach but stronger recognition of the role of an association in the cartel.
Implementation of 2003 Competition Act

-cartel cases, decisions of the CCA from 2010 and 2011

1. CCA vs. daily newspaper publishers

-proceeding was also initiated against the Croatian Employers Association Association of Newspaper Publishers, the announcements in the media about the simultaneous price increase of the dailies made by the president of the Association

-established that the association does not fulfil the criteria under the Article 3 of the Competition Act, cannot be considered an undertakings, it does not participate in the trade of goods and services and does not perform an economic activity.

2. EXAMPLE: Cartel in the market of office supply

AZTN vs. Association of office supplies retailers – prohibited agreements

- decision of the CCA from 21 July 2011
- application of Competition Act 2003
- the CCA reached the decision that members of the association concluded a prohibited agreement with the elements of price fixing and market sharing.
- responsibility of the association established, crucial role of the association in the cartel.

Purpose of the association: gathering of the small undertakings to protect themselves from bigger undertakings and the intention was joint supply of the goods.

Role of the association in cartel: restriction of competition motivated by intentions of its members to keep the existing market shares and gain additional profit in the anti-competitive conditions.

1. Direct involvement in the creation of rules of behaviour
2. Sanctioning of the members who break the agreement

2. EXAMPLE: Cartel in the market of office supply

Established responsibility of association and its members for cartel Agreement

Association not fined because:

1. It was erased from the Register of associations
2. It did not participate in providing goods and services on the market
3. It did not gain profit from the activities of the association

CONCLUSIONS

- Crucial to have good, precise but also broad enough definition of an undertaking in the Competition Act
- NCA need to make additional effort to promote understanding of the role of public undertakings and associations in the competition law
- Courts interpretation can influence the validity of the NCAs decisions in the judicial review process.

THANK YOU FOR YOUR ATTENTION

QUESTIONS??

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