

Kluwer Competition Law Blog

Croatia – Symbolic Fines for a Symbolic Cartel

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Almost two years into application of the new Croatian Competition Act (“Act”), the Croatian Competition Agency (“CCA”) has for the first time penalized undertakings involved in anticompetitive conduct. Under the previously applicable Competition Act (in force between 2003 and 2010), the CCA was authorized solely to establish a violation of competition law. A separate fining procedure had to be initiated before competent misdemeanor courts. For various reasons (e.g. misdemeanor courts were generally not equipped nor trained to deal with competition law issues, statute of limitations would rather often foreclose lengthy CCA and court proceedings, etc.) such a two-tier enforcement structure proved to be utterly ineffective and was one of major reasons for the recent overhaul of Croatian competition law.

The legal community was eagerly waiting for the CCA’s decisions under the new fining regime. It was expected that the CCA would enthusiastically use newly granted powers and would thus strive to boost the effectiveness of competition law enforcement. However, the first decision fell somewhat short of these expectations.

The case concerned a price fixing arrangement between 17 bakeries in Osijek (fourth largest city in Croatia). Due to an increase in production costs, the bakeries (self-employed entrepreneurs and micro-companies together accounting for, apparently, less than 10% of the relevant local market) decided to agree on an increased “orientation” price of bread and on permissible deviations. The cartel was facilitated by a local branch of the trade association which organized the relevant meeting. Also, following the meeting, the representative of the trade association held a press conference publicly explaining the agreement and informing the press of the new price of bread.

Obviously, discovering and evidencing this cartel was not a particularly challenging task for the CCA since the agreement on prices had been recorded in the minutes from the meeting of the trade association and in the subsequent press release. After the infringement had been thus established, the CCA proceeded with a fining procedure. Due to certain exceptional circumstances (e.g. participants enjoyed only a negligible market share, not all of the participants have actually increased the prices, etc.) and due to the impact that higher fines would have had on small entrepreneurs, the CCA decided not to calculate fines with reference to the undertakings’ turnovers but rather to impose symbolic fines of HRK 500 (app. EUR 66) for those bakeries that have not increased prices, HRK 1,500 (app. EUR 200) for those bakeries that have actually increased the prices and HRK 50,000 (app. EUR 6,600) for the trade association.

The case clearly falls within the CCA’s long-established pattern of enforcement. The targeted

cartel is of local character and negligible importance, involving relatively high number of smaller “uneducated” undertakings and individual traders and is easily discoverable and evidenced. Also, the level of fines might characterize this decision more as the CCA’s advocacy action than as vigorous enforcement of competition law.

Although the case admittedly represents a shy step towards more effective enforcement and although the CCA has finally used one of the newly acquired powers (we are yet to see a dawn raid), one may still question continuous allocation of the CCA’s scarce resources to such matters, especially since the law expressly allows the CCA to disregard “insignificant” violations. Also, bearing in mind the structure of the Croatian economy as well as taking into account the ultimate balance of positive and negative effects arising from such proceedings (one may especially wonder whether benefits of the procedure outweigh sheer costs of the CCA’s involvement), it might be worthwhile to reassess overall treatment of small and medium-sized enterprises under Croatian competition law.

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