

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Competition Issues in Aftermarkets - Note by Croatia

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More documents related to this discussion can be found at

www.oecd.org/daf/competition/aftermarkets-competition-issues.htm

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1. Introduction

1. This contribution describes relevant developments in the practice and case law of the Croatian Competition Agency (further: CCA) addressing different issues of aftermarket shares in the medical equipment and the motor vehicles sectors. Considering that aftermarkets are markets for the supply of products or services needed mostly for the use of a relatively long-lasting piece of equipment that has already been acquired, in Croatia the issue of primary markets and aftermarkets also appeared in typical sectors of special equipment and auto parts/repair services. All the cases in question were terminated by commitment decisions, thus without establishing the infringement of competition law due to the fact that parties offered measures sufficient to remove potential competition concerns.

2. Cases in medical equipment sector-PRIMALAB

2. In 2012 the CCA adopted two commitment decisions regarding the same undertaking PRIMALAB, exclusive distributor and authorized repairer of Metrohm brand of laboratory equipment and spare parts on the territory of Croatia.

3. First decision from 12 July 2012 was brought in relation to the restrictive provisions in vertical agreements on distribution. The case was opened based on the initiative from undertaking Ohm Lab d.o.o. (further: Ohm Lab), an independent service provider of Metrohm products, to open proceedings against Primalab for alleged restrictions in supply of spare parts and consumables imposed by Primalab on Ohm Lab thus preventing Ohm Lab to offer services of maintenance and repair of Metrohm products, due to the fact that Primalab is the sole distributor of Metrohm spare parts in the territory of Croatia.

4. CCA identified the primary relevant product market as laboratory equipment distribution market, while the relevant primary geographic market was identified as the territory of Croatia.

5. CCA identified the secondary relevant product markets as:

1. market for distribution of Metrohm laboratory equipment spare parts
2. market for repair and maintenance services of Metrohm laboratory equipment after the validity period of manufacturers guarantee.

6. CCA identified the secondary relevant geographic market as the territory of Croatia.

7. The CCA accepted commitments proposed by undertaking Primalab d.o.o., Croatia by changing problematic Articles of the "Agreement on distribution and representation" which was signed on 9 October 2009 between undertakings Metrohm Ltd, Switzerland and Primalab d.o.o., Slovenia, by which undertaking Primalab d.o.o., Croatia acquired the status of exclusive distributor of "Metrohm" products in the territory of Croatia.

8. Annex to the agreement altered the content of the Article 8 of the Agreement, Primalab, Slovenia committed not to sell products which are in competition with

Metrohm products during the signed agreement and one year after its termination, while regarding Article 27 of the Agreement, the duration of the agreement is determined to be 5 years, i.e. from 1 January 2010 until 31 December 2014.

9. The second decision from 26 July 2012 dealt with potential abuse of a dominant position of the same undertaking Primalab and based on the same initiative.

10. CCA identified the primary relevant product market as laboratory equipment distribution market, while the relevant primary geographic market was identified as the territory of the Republic of Croatia.

11. According to publicly available data and received statements during preliminary assessment on the relevant market a loop structure of primary relevant product market was made. Data about generated revenues indicated abundance of competitors on the relevant market of laboratory equipment distribution market in the Republic of Croatia and on the position of Primalab on that market, which cannot be considered as dominant.

12. CCA identified the secondary relevant product markets as:

1. market for distribution of Metrohm laboratory equipment spare parts
2. market for repair and maintenance services of Metrohm laboratory equipment outside guarantee period.

13. CCA identified the secondary relevant geographic market as the territory of the Republic of Croatia.

14. Metrohm's original spare parts in Croatia are available exclusively through Primalab, hence it can be concluded that Primalab is in a dominant position on the secondary relevant market, i.e. market for distribution of Metrohm laboratory equipment spare parts.

15. On the secondary relevant market for repair and maintenance services of Metrohm laboratory equipment outside guarantee period, along Primalab, those services are offered by Ohm Lab and internal service providers of individual buyers. Primalab is in a dominant position because almost 80 per cent of analysed buyers of Metrohm products stated that they are using services from Primalab for repair and maintenance of those products.

16. From the competition analysis, the CAA concluded that Primalab's conditional delivery of Metrohm spare parts directly to the buyer, when the service of repair and maintenance was done by Ohm Lab, is actually a consequence of mutual problems in relationship between the employees of Primalab and Ohm Lab since they were all previously employees of the same undertaking, Donau Lab.

17. Primalab in its commitments suggested that it will publish a notice on its website to all interested buyers of spare parts for the repair of Metrohm products and that they have the right to buy all spare parts for Metrohm products necessary for the repair, with the obligation to take into account business reputation of Metrohm and ESD protection when working on open instrument during installation or removal of spare parts. Notice will be available on Primalab's website for the whole duration of validity of the Agreement which was signed between undertaking Metrohm and Primalab, Slovenia by which undertaking Primalab, acquired status of exclusive distributor of "Metrohm" products in the territory of Croatia.

18. Regarding proposed commitments, the CCA took a stance that they are acceptable especially because they will ensure additional insurance of the competition on respective

markets. Namely, regarding determined facts and circumstances in this case, and at the same time to secure effective competition between service providers of certain brand, especially when this product is distributed through the system of exclusive distribution on certain territory, it is reasonable to accept proposed commitments which could offer additional public, transparent, available information which would ensure smooth supply of spare parts from Primalab for the service of Metrohm products done by independent service providers.

3. Cases in motor vehicles sector

3.1. CCA vs Peugeot Hrvatska d.o.o., Zagreb

19. The CCA initiated proceeding against the undertaking Peugeot Hrvatska d.o.o. Zagreb for the establishment of the alleged abuse of a dominant position in the markets for the provision of repair and maintenance services for motor vehicles of the car make Peugeot in Croatia and the sale of spare parts for motor vehicles of Peugeot car make in the Croatia. This was based on the indices that Peugeot Hrvatska which holds a dominant position on said markets applied the Selective criteria for authorised Peugeot repairers in a non-transparent manner when deciding whether to accept or to retain a certain repairer in the network after 31 December 2013, placing them at a competitive disadvantage, by unjustifiably denying access to the relevant market to the undertaking Auto Maksimir d.o.o.

20. The CCA adopted a decision on an interim measure and ordered the undertaking Peugeot Hrvatska to give access to the undertaking Auto Maksimir to the authorised Peugeot repairers network and ensure that it enjoys all the rights and obligations under the agreement. Furthermore, Peugeot Hrvatska was ordered to inform in writing all the buyers, leasing and insurance companies that Auto Maksimir remains the authorised repairer of the car make Peugeot. The proceeding revealed that in December 2011 Peugeot Hrvatska terminated the agreements for the purchase, sale or resale of new motor vehicles and spare parts and authorised repair with all the members of its distribution network with a two-year cancellation period, meaning that all the agreements expired on 31 December 2013.

21. Peugeot Hrvatska claimed that the cancellation of the agreements concerned was the result of a new business policy and his distribution strategy in Croatia. It meant that the conclusion of new agreements would depend on the fact whether the members would respect the obligations and selection criteria set under the agreements in force until 31 December 2013 and whether they would comply with the standards and methods imposed by Peugeot Hrvatska as well as whether they would undertake to comply with the obligations and the selective criteria that would enter into force on 1 January 2014. In addition, Peugeot Hrvatska claimed that a new repair and maintenance services agreement for Peugeot motor vehicles had not been concluded with Auto Maksimir due to the fact that Auto Maksimir allegedly had not installed new brand identity elements until 1 January 2014 when the new agreements had entered into force.

22. Auto Maksimir challenged the legality of the cancellation of the agreement in December 2011 and insisted that it fulfilled all the criteria, that the erection of the new brand identity elements did not arise from the Selective criteria for authorised Peugeot repairers and that not all the network members fulfilled all the criteria concerned on the stated date. However, Peugeot Hrvatska did sign the new agreements with these

undertakings and they were allowed to postpone the actions necessary to comply with the said conditions.

23. On 28 September 2015 the CCA adopted a decision whereby it accepted the commitments proposed by Peugeot Hrvatska as adequate to eliminate competition concerns and restore effective competition in the provision of repair and maintenance services for Peugeot motor vehicles. The measures proposed by Peugeot Hrvatska ensured that Auto Maksimir as a long-term authorised dealer of Peugeot at least remains in the network of authorised repairer of Peugeot vehicles after it stopped being authorised dealer of new vehicles.

3.2. CCA vs. Grand auto

24. In June 2015, the CCA opened the infringement proceeding against the undertaking Grand Auto following a complaint made by the car dealer Karlo that Grand Auto allegedly abused its dominant position in the provision of repair and maintenance services for Land Rover and Jaguar motor vehicles and in the sales of spare parts for these car-makes in the territory of Croatia. The car dealer Karlo stopped to be an authorised repairer for these car-makes in Croatia when Grand Auto became an authorised dealer for Land Rover and Jaguar. Sufficient indices have been found that the selection procedure for authorised repairers of Land Rover and Jaguar motor vehicles is not transparent. Thus, the CCA aimed to establish in the course of the proceeding whether Grand Auto has been restricting the access to the market to its competitors, despite the fact that it uses qualitative criteria within a qualitative selective distribution system.

25. Namely, in a qualitative selective distribution system the supplier decides on (exclusively) qualitative criteria for the acceptance of a particular repairer into the network. These criteria are necessary due to the nature of the contract product; they are equal for all repairers that want to join this distribution network and cannot be applied in a discriminatory manner and directly impose restrictions on the number of distributors or repairers in the relevant market. Thus, Grand Auto has no discretionary power to decide whether to grant access to the authorised repairers' network to interested undertakings or no. Where the applicant fulfils the criteria set by the manufacturer, Grand Auto must accept such a repairer in the network.

26. Finally, after the investigation and competition analysis were completed, the CCA found that the undertaking Grand Auto from Zagreb did not abuse its dominant position in the provision of repair and maintenance services for the car-makes Land Rover and Jaguar in the territory of Croatia. The sole fact that Grand Auto has been providing these services as an authorised repairer did not produce restrictive effects on competition and did not cause harm to the consumers. Within the proceeding it was established that Grand Auto did not accept any other car repairer in the authorised repairers' network but provided the motor vehicle servicing alone. However, the fact that no other repairer could become an authorised repairer for Land Rover and Jaguar motor vehicles did not have any anticompetitive effects and did not harm the consumers in the sense of competition rules.

27. Concretely, the analysis of the documentation investigated by the CCA revealed that more than 90 per cent of the turnover realized from the servicing of Land Rover and Jaguar in Croatia related to the repairs carried out after the warranty period has expired. Considering the fact that repairs under warranty represented a negligible segment in the

relevant market the access to the authorised repairers' network could not be considered a serious barrier for the provision of repair services for motor vehicles.

28. No indices of distortion of competition have been established in the closely connected distribution of spare parts for motor vehicles of the car-make Land Rover and Jaguar either. Namely, the complainant referred in its complaint to unequal treatment of the car dealer Karlo that has been allegedly placed at a competitive disadvantage relative to other authorised repairers. In fact, there have been no other authorised repairers besides Grand Auto and the car dealer Karlo purchased the original spare parts for Land Rover from Grand Auto and from one more undertaking, whereas the alternative spare parts have been purchased directly from the suppliers of spare parts.

29. On 31 May 2016 Grand Auto ceased to be the authorised Land Rover and Jaguar car dealer for Croatia.

4. Final remarks/Conclusion

30. The experience of Croatia in dealing with the issue of aftermarkets showed in the relevant case law described above that in the medical equipment case primary and secondary relevant market was defined in the manner that the relevant market for the competitive analysis consisted of separate markets for primary and secondary products. However, potential competition concerns and adopted commitments were analysed from the point of view of both primary and secondary product markets. In the motor vehicle cases, the aftermarket was always analysed as separate market (which is approach consisted with EU and national Regulation on the block exemption of motor vehicles). The same approach was kept and adopted in some further cases, for instance on the market for outboard motors. Regarding the type of potential abuse of dominant position, all cases in motor vehicles were mostly refusal to deal cases terminated with commitment decisions, there were no pricing conduct abuses.