Summary Annual Report of the Croatian Competition Agency for 2014

The Croatian Competition Agency (CCA) reports annually to the Croatian Parliament. Concretely, it is its legal obligation to draft the annual report of the activities for the previous year and to submit it to the parliament for adoption. Yet, the purpose of the annual report is also to inform the political scene, the economic operators and all professional stakeholders about the operation of the CCA, ensuring the transparency of its work and awareness raising about competition culture in the Republic of Croatia. What follows here are the highlights that mark the work of the CCA in 2014.

Pursuant to the Competition Act (OG 79/2009 and 80/2013) the CCA is a legal person with public authority which autonomously and independently performs the activities in the scope of its competence under the above mentioned Competition Act and ancillary provisions thereof, the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003, relating to the implementation of Articles 101 and 102 of the Treaty on the Functioning of the European Union, OJ C 115, 09.05.2008, and the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.01.2004.

Internal organization and other issues relating to the operation and every day work of the CCA are set in the CCA Statute that was also approved by the Croatian Parliament.

The CCA was established pursuant to the decision of the Croatian Parliament on 20 September 1995 as an independent legal person in charge of competition activities. The CCA became operational in 1997 whereas before that date competition issues had been the competence of the Ministry of the Economy in line with Article 43 of the 1995 Competition Act.

Since its establishment the CCA has been the general regulatory competition authority in the Republic of Croatia in charge of all sectors of the economy whereas the necessity of the existence of such an independent regulator has been confirmed during the approximation of the Croatian legislation with the EU acquis in the EU accession process.

Besides the CCA that as previously said covers all sectors of the economy, there are several other specific regulators such as the Croatian Financial Services Supervisory Agency (HANFA), Croatian Regulatory Authority for Network Industries (HAKOM), the Croatian Energy Regulatory Agency (HERA), the establishment of which went hand in hand with the liberalization of the provision of services in the markets concerned (such as financial services, telecoms, postal services, energy supply etc.). Yet, these sector specific regulators operate under the specific laws exclusively *ex ante* in the markets concerned, whereas the CCA carries *ex post* proceedings covering anticompetitive behaviour of undertakings in all

the sectors regardless of the fact whether there is a specific regulator in the market concerned or not. In other words, the CCA is in charge of infringement proceedings against all undertakings that are active on these markets, including the markets where there are specific regulators and in spite of the existence of the sector specific regulation.

Under such circumstances it is absolutely necessary for the CCA to remain independent and autonomous in its decision making so as to ensure the non-partisan operation free from political interference and influence from big market leaders. In order to achieve this, it is important for the CCA staff to continuously receive education and training, improve expertise, general and specific, and to gain knowledge, skills and competences.

The CCA is run and managed by the Competition Council consisting of 5 members, one of which is the president of the Competition Council, who are all appointed for a five-year term of office and also relieved from duty by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia. The conditions for the appointment, the term of office of the members of the Competition Council, for relieving of the president and the members of the Competition Council and the scope of competence of the Competition Council and the process of decision making are regulated by the Competition Act. The Competition Council collectively decides in all competition matters whereas the president of the Competition Council represents the CCA and is responsible for the legality of its decisions. The Competition Council adopts its decisions at its sessions, with the majority of votes, where no member of the Council can abstain from voting. Decisions can be made only if the president or the vice-president of the Council and at least two other members of the Council are present at the session.

The report year of 2014 was the first full year of the mandate of the new Competition Council (appointed in November 2013) consisting of Mr Mladen Cerovac LLM, president of the Council, Ms Vesna Patrlj, LLM, vice-president of the Council, and Ms Ljiljana Pavlic, MSc, Mrs Tatjana Peroković, MSc, and Mr Denis Matić, LLM, members of the Council. In 2014 the Council held 54 sessions where all the decisions of the CCA were taken.

Since 1997 when it was first granted financial resources from the State budget and started to operate the CCA has been in charge of the following core businesses: prohibited agreements between undertakings, abuse of a dominant position by undertakings, and assessment of compatibility of concentrations between undertakings, as stated in the Croatian Competition Act.

Additionally, there is also competition advocacy involving the CCA competences to promote competition through its opinions on laws and other accompanying activities listed under the Competition Act.

The Act on the Amendments to the Competition Act that entered into force on 1 July 2013 (the day of the Croatian EU accession) significantly widened the authority of the CCA empowering it for the direct application of the EU competition rules.

Since 1997 the CCA continuously and effectively acts against all forms of prevention, restriction of competition and distortion of competition and thereby contributes to an effective and responsible competition regime and establishment of competition culture in Croatia. The activities undertaken in 2014 fully complied with the strategic goals set under the Annual Plan for 2014- 2016 with the view to maximizing the efficiencies of the CCA and creating benefits for the consumers and undertakings in Croatia.

The CCA enforcement record for 2014 indicates 632 decisions in the area of antitrust and merger control and 7 in the area of State aid, a total of 639 resolved cases or 31 per cent more in the area of antitrust and merger control than in 2013. It should be noted that the increase was achieved by less staff than in the previous years.

Given the number of resolved cases in which infringements of the Competition Act were established and sanctions were imposed, the number of infringement proceedings that resulted in committments decisions on the basis of which the undertakings committed themselves to remedies aimed at preventing significant impediments to effective competition and the increased number of cases in the area of merger control, the year of 2014 was a creative leap in the work of the CCA and the year of increased efficiencies for the consumers and the undertakings in Croatia.

The enforcement record for 2014 indicates that the CCA activities were particularly focused on the infringement proceedings dealing with prohibited horizontal agreements between undertakings (cartels) and prohibited vertical agreements between undertakings (retail price maintenance) in the supply chain: manufacturer – supplier – retailer, where price competition was restricted to the buyers.

At the same time, the activities of the CCA broke a one-year monopoly and re-opened the local water supply market.

In the area of merger control in two sectors – the food retail market and the electronic communications market – two concentrations were conditionally approved by the CCA whereby the offered commitments and complex structural and behavioural remedies lead to restoration of a competitive structure of the relevant markets concerned generating at the same time benefits for consumers.

On the other hand, comprehensive sector inquires in the relevant markets at issue proved valuable in the concrete proceedings that were opened as a result of these market studies.

For example, in the report period by opening of the proceeding against the Croatian Insurance Bureau (Croatian Association of Insurance Companies) and 12 undertakings – members of this association – the CCA directly contributed to the plummeting prices of insurance and actual liberalization of the third party motor insurance market. That is to say, in comparison with the year before in 2014 the car insurance market gross written premium was lower by 590 million Kuna, whereas the number of insurance policies rose by 1.6 per

cent. The incumbent companies stayed on the market, the new competitors entered the market. The competitiveness of the motor insurance market produced positive effects on final consumers and the economy as a whole.

In 2014 the CCA imposed more than 5 million Kuna fines (5.012.600 HRK) based on the established infringements of competition rules, whereas some 1.6 million Kuna thereof (1.600.986 HRK) were actually collected. Namely, the offender pays the fine once the CCA decision becomes enforceable but if a complaint is lodged and administrative dispute opened, once the court decision upholding the decision of the CCA becomes definitive. Fines are direct revenue of the State budget.

Basically, in the report year of 2014 the sanctioning policy as a part of the effective enforcement of competition rules fully took hold and paved the path towards a consistent practice of setting and imposition of fines. The CCA strongly believes in the purpose of sanctions, particularly in the deterrent effect they have on undertakings. Fines send a clear message to the undertakings that violating the rules does not pay. Concretely, we understand that there is a special deterrent effect on recidivism for the undertakings that have already been sanctioned for the infringement of competition rules, and a general deterrent effect preventing other undertakings from engaging in anticompetitive practices. This approach of the CCA is in line with the global trends that indicate the rise in the total amounts of fines that are imposed by the regulators worldwide.

In 2014 the work and the capacities of the CCA were focused on the distortions of competition that cause the direct harm to the consumers and undertakings. Three cartels – prohibited horizontal agreements were established, first, in the provision of personal protection services involving seven undertakings, where personal protection firms fixed minimum prices; second, in the provision of berth and mooring services alongside the Adriatic Coast, where the members of the cartel exchanged information on future pricing intentions; and third, in the provision of orthodontic services where the national orthodontists society fixed minimum prices. As regards the personal protection cartel and the marinas cartel the CCA carried out all the activities of the proceeding during 2014 whereas it adopted the actual infringement decisions in the early 2015. The total amount of fines imposed in these two cases amounted to 7.6 million Kuna.

In two of the cases mentioned above – the orthodontists' cartel and the marinas cartel – the participants in the prohibited agreement were the associations of undertakings themselves, in the former case it was the decision of the association, in the latter the sharing of strategic information that constituted infringements of competition rules. Namely, in spite of the fact that the associations have the right to protect the interests of their members, they may in no way act, take part and implement agreements that contravene with competition rules. On the contrary, professional associations have the task and are held particularly responsible for sharing the knowledge among their members about the mandatory rules of law in Croatia. Thus, their job is to warn their members that the exchange of strategic information involving

the price, volumes, production cost, buyers' lists etc. constitute hard core restrictions of competition, a practice that is *per se* prohibited and for which fines are imposed in the highest possible amounts.

Concretely, in the proceeding carried out against the undertakings active in the provision of protection security services the CCA found that the undertakings that participated in the meeting are direct competitors and that they agreed on the minimum price of their services, knowingly and deliberately engaged in collusive behaviour, eliminated competitive constraints and produced harm for the consumers – the users of their services. When a company participates in a meeting where strategic information are exchanged and receives such strategic data from a competitor, it is presumed to have accepted the information and adapted its market conduct accordingly, unless it responds with a clear statement that it does not wish to receive such data and immediately leaves the meeting. In this situation the undertakings concerned were involved in a concerted practice facilitating collusion of all the participants in the meeting and thus committed a serious infringement of competition rules.

On the other hand, it is particularly worth mentioning that the CCA obtained indices of the existence of vertical restrictive agreements containing hard core restrictions from its regular market study conducted in the groceries distribution and retail sector for 2013. The communicated documents in this market analysis revealed strong indices that certain provisions of the sales agreements between certain manufacturers or suppliers and retailers contravene with competition rules and constitute a prohibited agreement within the meaning the Competition Act in several product categories, such as confectioneries, wines, meat and meat products, bread, flour, beer and sugar.

In 2014 after the assessment of certain provisions contained in the agreements concluded between the manufacturers (suppliers) and retailers, the CCA established four prohibited vertical agreements containing provisions on minimum resale price maintenance and retaliation in response to deviation. Given that minimum resale price maintenance is a hardcore restriction of competition, regardless of the market share of the parties to the agreement and regardless of the fact whether such restrictive provisions have actually been applied or not, because they restrict the buyer to freely set the prices which directly affects the interests of the final consumers, the CCA declared such provisions null and void and, taking into account the market position and financial power of the parties to the agreement, imposed the sanctions for the infringements of Competition Act to the undertakings concerned (*Dukat d.d., Konzum d.d., Kutjevo d.d., KTC d.d., Carlsberg d.d*.) in the total amount of some 5 million Kuna.

It is the opinion of the CCA that its consistent sanctioning policy involving significant levels of fines and symbolic fines for the said infringements of competition rules, the policy that was announced as one of the priorities of the work of the CCA by the president of the Competition Council at the beginning of his term of office in 2013, produced a preventive effect on the participating undertakings but also a deterrent effect which should keep other

undertakings from any further infringements of competition law. To the understanding of the CCA after the fines had been imposed for the conclusion of prohibited agreements between manufacturers or suppliers with the buyers or retailers, a large number of undertakings on all markets started hurriedly to analyse the compliance of the agreements they concluded with their suppliers and buyers.

One of the strategic decisions of the new CCA leadership was to ensure the necessary conditions for a more intensive and effective detection and sanctioning of cartels. One of the key tools here is a surprise inspection. Although the CCA competence to carry out dawn raids was established as early as in 2003, this valuable tool could not be used in practice due to the fact that the CCA at that time did not dispose of the necessary digital forensic equipment. The CCA also needed to train the staff outside Croatia to use these digital forensic tools. The president and the members of the Competition Council set the purchase of the digital forensic equipment as one of our priorities for 2014. This initiative of the CCA was supported by the Ministry of Finance that approved additional resources from the budget for that purpose and the CCA managed to obtain the cutting edge digital forensic equipment and began intensively and systematically to train its experts in the seminars and workshops organized by the European Commission. The result was a significant rise in the number of conducted dawn raids compared with the previous periods. In 2014 the CCA conducted three surprise inspections at different locations. Within the cartel investigation proceedings it conducted surprise inspections in the electric motor cycle – and scooter market, the provision of advertising and marketing services and on-line sale of household appliances. In the field of IT forensics the CCA has managed to create a certain "centre of excellence" in the region of the south-east Europe. It was therefore looking forward to organizing the first regional conference on IT forensics used in the conduct of surprise inspections in September 2015.

In the area of abuse of a dominant position for the purpose of the 2014 Summary Annual Report the CCA selected one of the cases where precisely as a result of the proceeding carried out by the CCA a long-term harm for the consumers was prevented and competition restored in the water supply market in the territory of the Zagreb County *(CCA v Vodoopskrba i odvodnja d.o.o., Zagreb-VIO)*. In essence, following the complaint against the water supply and sewage operator VIO that had been received from an undertaking alleging that it had been prevented to access the market concerned on the account of the fact that in July 2013 VIO practically foreclosed the market that had already been liberalized and excluded all the competitors already operating in the market by the adoption of new general and technical conditions (GTC), the CCA opened an infringement proceeding in the provision of services relating to water meter and telemetry devices installation and the measurement of water consumption providing data for billing and reporting, in the territory of Zagreb, Samobor, Sveta Nedjelja and the municipality of Stupnik.

In the course of the proceeding CCA imposed an interim measure ordering the undertaking VIO to temporarily cease-and-desist the application of the challenged provisions under the GTC that prevented the undertakings from the provision of services which they had been discharging before the challenged GTC entered into force and prevented final consumers from freely choosing the provider of the services concerned.

On its own initiative VIO offered the committments aimed at restoring effective competition in the provision of the relevant services, thereby brining its monopolistic position caused by the adoption of the said GTC to an end. This meant the re-opening of the market to alternative providers and free entry for possible new operators in the market concerned. At the same time, this ensured the consumers free choice of service providers. The CCA uses committments as a settlement mechanism wherever the proposed remedies are viable and proportionate to possible negative effects on competition. Where they are sufficient and adequate and proposed freely at an early stage of the proceeding, they swiftly and effectively restore competition in the relevant market, lengthy infringement proceedings and fines for undertakings involved are thereby avoided. Following its preventive mission and taking into account the effectiveness of such commitments, the CCA always reminds the undertakings of the possibility to use this settlement mechanism.

Intensified activities in the area of merger control in 2014 were recorded particularly with respect to the CCA monitoring the behavioural and structural remedies aimed at preventing a significant impediment to effective competition in two cases of conditionally approved concentrations, that between *Agrokor/Mercator* and *HT/OT-Optima Telekom*, two cases that regarding their complexity have no precedent in the seventeen-year-practice of the CCA.

Concretely, in April 2014 the CCA declared the above mentioned concentrations conditionally compatible obliging the undertakings concerned to comply with a series of comprehensive structural and behavioural remedies in order to remove anticompetitive effects of the concentration on competition, restore the competitive structure of the market and protect the interests of the consumers. For instance, *Agrokor* committed itself to divest a total of 96 stores from the combined retail network of *Agrokor (Konzum)* and *Mercator,* which limited the market power of the new economic entity created by the implementation of the concentration. Until 15 January 2015 *Agrokor* divested 30 out of 96 stores defined in the CCA decision. The competing undertakings have been given the opportunity to take over the outlets concerned and increase their presence in the retail market and their market share and thereby strengthen the competition constraint on *Konzum.* At the same time, to remove the anticompetitive effects, *Agrokor* committed itself to behavioural remedies worked out in the first place to protect *Mercator-H* suppliers and to enable entry and/or expansion of competing undertakings on the shelves of *Konzum* involving the key product categories from the producers that are members of the group.

On the other hand, in the assessment of the compatibility of the concentration between *HT/OT-Optima Telekom* the CCA accepted the failing firm defence, given that *OT-Optima* due

to insolvency and over-indebtedness entered the pre-bankruptcy settlement plan. In other words, the CCA determined that in the case of *Optima's* exit from the market, competition structure on the relevant market would be distorted at least to the same extent as in no concentration scenario. However, taking into account the nature of the relevant market concerned – its complexity due to the application of advance technologies, a relatively low number of competition and high asymmetry in the market shares and market power of the market players that would be even deepened had the concentration been unconditionally approved, the CCA insisted on comprehensive remedies aimed at preventing a significant impediment to effective competition. The report of the trustee who monitors the implementation of the measures imposed showed that the undertaking concerned complied with the proposed measures whereas the independence of *OT-Optima* within *HT Group* has been preserved in the objectively highest possible extent during the entire duration of the concentration. *HT* also committed itself to ensure such management over *OT- Optima* that at the end of the term of the concentration it will not lead to *OT-Optima's* assets being undercapitalized as compared to the initial situation at the beginning of the period of concentration. Specifically, it is the assets consisting of *OT-Optima's* customer base (number of customers and revenue) and infrastructure.

What also influenced the rise in the scope of activities of the CCA in 2014 were the decisions regarding the notification and assessment of compatibility of concentrations. Namely, in line with the EC Merger Regulation and within the European Competition Network (ECN) cooperation, under the rules governing the referral of concentrations from the European Commission to the EU Member States and in line with the submission procedure, well placed authority to deal with the case is decided. These are, in general, so called concentrations with an EU dimension, in principle, producing effects in at least three Member States (cross-border effect). In a nutshell, where concentrations with an EU dimension are notified to the European Commission, the Commission transmits the submission at issue to all Member States on the account of the fact that any Member State referred to in the reasoned submission may express its agreement or disagreement as regards the request to refer the case. For example, this may happen where the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market and should therefore be examined, in whole or in part, by that Member State in accordance its national competition rules.

Besides the activities of the CCA relating to the enforcement of competition rules the CCA was in 2014 also involved in the area of competition advocacy. Competition advocacy and strengthening of competition culture means raising awareness about the effects of competition among central and local administration authorities, executive, legislative and judicial authorities, but also the general public, about the benefits competition brings for strengthening of the competitive environment. Concretely, pursuant to Article 25 of the Competition Act the CCA issues opinions on laws and other legal acts which may have effects on competition, which is the CCA contribution to the harmonization of the Croatian legal

framework in the area concerned with the EU rules. The CCA issues expert opinions at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities in compliance with separate rules and local and regional self-government units, regarding the compliance with competition rules of draft proposals for laws and other legislation, as well as the existing laws and other legal acts and other related issues raising competition concerns. In 2014 the CCA gave 44 opinions on existing laws and proposed draft laws and regulatory impact assessment opinions. The year 2014 marked the rising trend in competition culture among public administration authorities, central and local, as well as legal authorities that have been granted special powers, whereas the undertakings submitted more complaints with more detailed descriptions of alleged infringements of competition rules, such as in the case of claimed irregularities in public procurement procedures. On the other hand, the complainants more often than before challenge particular provisions in force, regardless of the sector concerned. This speaks in favour of the CCA endeavours in competition advocacy in the past – competition rules have become known for a larger number of undertakings whose businesses and legality of actions depend on their compliance with these rules. Finally, it must be noted here that when the CCA receives a query, and even when it does not open a formal infringement proceeding, it assesses in detail all the rules regulating the particular area, which often includes the comparative approach to Treaty law and practice.

In addition, given its powers to give opinions on the proposed EU legislation, the CCA also actively participated in the preparatory work of the recently adopted Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L 349, 5.12.2014. During 2014 the CCA contributed alongside with other national competition authorities in the drafting of the Directive 2014/104/EU on antitrust damages actions that was agreed in April and consequently signed into law on 26 November 2014. Concretely, the CCA staff prepared the position of the Republic of Croatia, made comments and proposals, and helped with the translation of the final text of the Directive into the Croatian language respecting the already established competition law register. The Directive 2014/104/EU on antitrust damages actions lays down new rules allowing firms that are victims of cartel or antitrust violations to be compensated for damages, i.e. to receive full compensation for actual losses and lost profits that they suffer as a result of the infringement (Articles 101 and 102 of the Treaty on the Functioning of the European Union or the national competition law (Articles 8 and 13 of the Croatian Competition Act), ensuring equal legal protection within the internal market. The Directive defines the right on full compensation, disclosure of evidence, proof of infringement, access to files of the competition authority concerned, effect of national decisions, liability (where several firms infringe the competition rules together, they are held jointly and severally liable for the entire damage) and limitation period. The Directive entered into force on 25 December 2014 and should be transposed into national law by 27 December 2016. In Croatia, this means that it would be necessary to carry out certain

revisions of the existing rules or to adopt new ones that would ensure the implementation of the Directive concerned.

Together with other EU national competition authorities the CCA participated actively in the drafting of the Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions, after it has been established that the existing MIFs (fees charged for each sales transaction with a payment card) produced anticompetitive effects in the internal market. The subsequently adopted Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions caps interchange fees and it increases transparency on fees thus permitting retailers to know the level of fees paid when accepting cards. It enhances competition by providing consumers with more and better choices between different types of payment cards and service providers. Specifically, the Regulation caps interchange fees at 0.2 % of the transaction value for consumer debit cards and at 0.3 % for consumer credit cards. The CCA presented on 13 October 2014 an Overview of the Payment Card Market on the basis of the data collected for the former three years. The objective was to examine the situation on the payment card market in Croatia before and after the EU accession that showed that the adoption of the proposed Regulation regulating the cap MIF rate for Visa and MasterCard would reduce the average interchange fees in Croatia by some 80 per cent for Visa and some 70 per cent for MasterCard.

One of the important instruments in the CCA competition activities are its regular market inquiries. On one hand, there are vital source of information and deep insights into the functioning of the concrete markets and may serve as a basis for opening of the formal infringement proceedings. On the other hand, they may influence the undertakings subject to the market research concerned to review their behaviour in the market. This was proven to be true in 2014 in the third party motor insurance market investigation, which was conducted within the regular insurance sector inquiry in the territory of the Republic of Croatia. The results of the CCA market study directly contributed to the plummeting prices of insurance, strengthening of competitiveness, increase of new products and actual liberalization of the third party motor insurance market.

In addition, the data collected by the CCA within its regular sector inquiry covering the retail and wholesale distribution groceries' market in the Republic of Croatia (market research in food, beverages, toiletries and household supplies) bore particular importance in the assessment of compatibility of concentrations between undertakings in the groceries' retail market, concretely, *Agrokor/Mercator* and *Spar/Dinova*, but also in the previously mentioned cases where infringements have been established in the form of prohibited vertical agreements. The proceedings in these cases were also opened based on the results obtained from the regular groceries' sector inquiry.

Finally, the traditional market study in the press publishing and distribution market in the Republic of Croatia for 2014 delivered again outcomes that helped the CCA in the

assessment proceedings relating involving the undertakings *EURO POTICAJI d.o.o., Zagreb/EPH d.o.o., Zagreb and Adria Media Group d.o.o., Beograd, Republic of Serbia/ Adria Media Zagreb d.o.o., Zagreb.*

Since the accession of the Republic of Croatia to the EU on 1 July 2013 the CCA has been empowered for the direct application of the EU acquis in the area of competition. In other words, the CCA implements the provisions of the Croatian Competition Act and at the same time Articles 101 and 102 of the TFEU. Concretely, in the proceedings establishing prohibited agreements between undertakings or abuse of a dominant position by an undertaking or undertakings in a system of parallel powers the national competition authority – the CCA in Croatia – alongside with the national legislation (Article 8 and/or Article 13 of the Competition Act) may directly apply Articles 101 and/or Article 102 of the TFEU in the case of infringement of competition rules producing significant effects on trade between the Republic of Croatia and one or more Member States. On the other hand, where the CCA assesses that the distortion of competition in question has no effect on trade with other Member States, it will exclusively apply the national law. This means that on the accession date competition matters in Croatia became a part of the competition regime in the internal market which is enforced concurrently by the Croatian competition authority, Croatian courts (High Administrative Court of the Republic of Croatia and competent commercial courts) and the European institutions – the European Commission, the General Court and the Court of Justice of the European Union.

The above mentioned system of parallel powers means as of 1 July 2013 for the CCA obligatory cooperation between the CCA and the national competition authorities of the Member States and the European Commission through the European Competition Network (ECN). Through the ECN, the competition authorities exchange information on the proceedings carried out against undertakings that allegedly enter into prohibited agreements or abuse a dominant position and thereby infringe Articles 101 or 102 of the TFEU. They carry out joint surprise inspections or assist one another in carrying out inspections, or do so on behalf and for the account of the competition authority of another Member State or the European Commission. In the area of merger control the Croatian undertakings must notify the implementation of the proposed concentration to the European Commission where the criteria stipulated under the EC Merger Regulation are fulfilled. However, where the Commission decides not to assess a particular concentration despite the fact that the concentration is a concentration with an EU dimension, the appraisal of the concentration at issue may be entrusted to the CCA.

Within the commitments undertaken by the Republic of Croatia as a Member State in 2014 besides its obligations in the merger control area described above, the CCA fully exercised its right to participate in all European Competition Network (ECN) working groups, subgroups and advisory committees. The ECN was established by the European Commission and the national competition authorities with the view to improving consistency and convergence of

different jurisdictions. Using the request-for-information tool the ECN members require concrete information regarding the anticompetitive behaviour, specific sectors and markets, particular legal issues etc. In 2014 the CCA received and answered 45 requests for information, whereas it sent three such requests to other ECN members.

Transparency and openness of its work are top priorities in the CCA modus operandi. In 2014 alongside with its enforcement activities it continued to use all available communication channels in its proactive approach in advocating competition and strengthening of competition culture, such as its cooperation in the drafting of the guidelines aimed at business operators *Competition and State aid*, training for businesses etc.

The CCA communication activities include the publication of its decisions in the Official Gazette and on its web site. In 2014 the CCA put out on its website 20 press releases and 40 other pieces of news related to competition. In the same period it published 11 issues of its e-bulletin *AZTN info* that by the end of the year had some five hundred registered readers in the key target groups – decision makers, undertakings, academia and experts, media representatives. The *CCA Guidance for undertakings: Compliance with competition law* started to produce results – the responses from the business community increased and the undertakings often ask for the presentation of the programme and training. As in the previous years the CCA continued to publish also other important documents – in 2014 these were the Annual Report for 2013, the Annual Plan for 2014 – 2016, the CCA Strategy, and the CCA Budget etc.

After the EU accession, when the exclusive competence for State Aid was assumed by the European Commission, the Croatian Competition Agency resumed its advisory role in this area under the State Aid Act, OG 72/2013 and 141/2013. It consisted primarily of providing support to aid providers in the form of opinions on compliance of the proposed State aid measures with the State aid rules before the notification to the Commission and opinions on proposed State aid measures that are exempted from the obligatory notification. The CCA also notified State aid to the Commission, reported on granted State aid in Croatia etc.

When on 24 April 2014 a new State Aid Act, OG 47/ entered into force all the competences of the Croatian Competition Agency in the area of State aid were shifted to the Ministry of Finance, the central public administration authority responsible for the State budget and the financing of the local and regional self-government units.

Thus, in the period from 1 January 2014 to 24 April 2014 the CCA issued its last opinions on the compatibility of the proposed State aid schemes with the EU general block exemptions rules, opinions on laws and other regulations containing State aid and opinions on proposed individual aid.

In line with Article 26 paragraph 9 of the Competition Act the CCA is financed from the State budget. The CCA has no other operational or financial revenue of its own. Administrative

fees and fines set and imposed by the CCA are within the meaning of Article 26 paragraph 10 of the Competition Act contributed to the budget of the Republic of Croatia.

In 2014 the CCA was financed solely from the funds from source 1 – General revenues and receipts. The planned funds for the regular operational activities falling under the scope of the CCA in the State budget for 2014 amounted to 12,575.887 Kuna, whereas the total executed budget in 2014 amounted to 12,413,243.18 Kuna, which is 98.71 per cent of the planned funds.

In comparison with 2013 the total execution of expenditures of the CCA for 2014 indicates a decrease in total expenditures by 403,540.49 Kuna or 3.15 per cent.

The expenditures for employees were 9.062, 880.13 Kuna or 98.96 per cent of the planned funds. Expenditures for employees made up for 73.01 per cent of the total expenditures. Compared with 2013 the expenditures for employees dropped by 546,201.57 Kuna or 5.68 per cent, particularly due to the workforce fluctuation and relocation of the part of the CCA staff to the Ministry of Finance after it became in charge of the State aid issues in late April 2014.

The salaries of the CCA employees are regulated under the Act on Salaries for Public Servants, OG 27/2001, whereas the names of work posts and coefficients applicable to particular posts are regulated under the Regulation on the names of work posts and rank coefficients.

In 2014 there were 48 employed persons in the CCA. The number of employees fell by 6 percent compared with 2013 when there were 51 employees working in the CCA, or, compared with 2012, when there were 53 employees, by 9 per cent. In 2014, out of 48 employees 39 were included in the enforcement of competition rules, 9 employees performed other activities closely related to the core business and the functioning of the CCA. In the report period 10 employees had a postgraduate degree, all case handlers had a bar exam, whereas 41 employees had a university degree, 5 of them college education and two secondary school education.

Taking into account the employment policy in the public sector, which is similar to other EU countries where competition authorities are financed from the State budget, it is not easy to retain the workforce with specific knowledge, competences and experience. The budget of the CCA cannot be expanded and it does not allow the accomplishment of goals that would give the CCA the autonomy in developing a sustainable promotion and award-based incentive schemes.

In conclusion, the priorities of the work of the CCA in the forthcoming period laid down in the final part of the Annual Report of the work of the CCA for 2014 include, first, the removal of all legal and factual barriers that hinder or impede market entry, particularly in the form

of the opinions that the CCA issues and taking a stand on the compatibility of both proposed and existing laws and other regulations with competition rules.

Second, the CCA will continue to monitor and study the markets where there are indices or weaknesses or irregularities as the result of the behaviour of the players in the market, the structure of the relevant market, habits in consumer buying behaviour, interventions of the government through regulation and other factors that may have negative effects on a particular market.

Third, increased efforts will have to be put into the cooperation with the European Commission on the market study in the energy market and e-commerce.

Furthermore, the activities of the CCA will be aimed at distortions in the market that cause the greatest direct harm to the consumers and other undertakings. Concretely, this would mean strengthening of its enforcement powers in the detection of most harmful infringements, such as cartels. In this sense, the CCA will intensify its activities on the promotion of leniency programmes for whistle-blowers, offering immunity from fines or reduction of fines under specific conditions for leniency applicants in cartel cases.

Finally, given the fact that it is financed from the State budget, the CCA will in line with the funds that have been allocated and the available administrative capacities, concentrate its activities around the strategic goals set under the Annual Plan for 2014 – 2016. At the same time, the CCA will align its activities with the strategic plan of the European Commission as a full ECN member and in line with its committments under the EC Merger Regulation.

In the appendix to this short overview please find the summaries of the CCA landmark cases in 2014.

Croatian Competition Agency

Zagreb, July 2015

Croatian Competition Agency - Landmark cases in 2014

Personal Protection Cartel

In the proceeding conducted against the personal protection firms Sokol Marić, AKD-Zaštita, Securitas Hrvatska, Klemm Sigurnost, Bilić-Erić, V GRUPA and Arsenal-Ivezić, the CCA found that on 23 October 2013 they participated in a meeting where they agreed on the minimum price of the personal protection security services amounting to 32.52 Kuna.

The CCA found that the agreement achieved in this meeting had all the features of a cartel agreement. Concretely, undertakings that participated in the meeting are direct competitors and despite they differ in their market power they agreed the minimum cost of an hour of personal protection service in the amount of 32.52 Kuna as the minimum profitability level.

The CCA established that the agreement concerned constituted an infringement of competition rules in the personal protection market in the period from 23 October 2013 to 17 January 2014.

The view of the CCA was that a cartel agreement fixing the minimum price constitutes a hard core restriction where the undertakings knowingly and deliberately were engaged in collusive behaviour, eliminated competition between them and produced harm for the consumers.

The CCA did not accept the position of the cartel members claiming that they were merely "consenting" on the wages and rates and not agreeing on the price of the service that would be offered to third persons. It was the reasoning of the CCA that the security officers rates (labour costs) made a major part in the total cost of the personal protection security service provider whereas the operating costs of each and every provider differed in practice, thus, it was impossible for different undertakings to bear the same operating costs.

In addition, the CCA found that the majority of undertakings that took part in the meeting had also bidden in tender procedures that followed the meeting with the same, agreed price, which was the evidence that the agreement had been implemented in practice.

In spite of the fact that certain participants in the meeting had not acted in line with the agreement and had bidden with prices that were lower than the price agreed in the meeting, this could not mean that there was no liability of the undertakings for the infringement of competition rules and that the agreement did not exist. Every undertaking was free to make its own business decision and was responsible for its behaviour. On the other hand, the CCA holds that any concerted practices and participation in an agreement between the competitors in the market constitutes an infringement of competition rules.

Therefore, the CCA imposed to the members of the personal protection cartel a fine in the total amount of 5.325 million Kuna.

When setting the fine the CCA took the stand that a price fixing cartel agreement represented the most severe infringement of the Competition Act. The aggravating circumstances were also taken into account: the fact that this was an agreement that was implemented in the whole territory of the Republic of Croatia on which the members of the cartel hold a significant market power. On the other hand, the extenuating factor was that the agreement was implemented in a relative short

period of time and it was not implemented by all the members of the cartel, which lessened its anticompetitive harm.

"Marinas Cartel"

In the proceedings against the Adriatic International Club, Tehnomont, Marina Šibenik, Ilirija from Biograd, Marina Hramina from Murter, Shipyard and Marina from Betina, Marina Punat, Marina Dalmacija and Marina Borik from Zadar and the Croatian Chamber of the Economy, that was opened following the initiative of the undertaking Aba Vela, the CCA established that the representatives of the marinas who participated in the meeting of the Council of the Croatian Association of Nautical Tourism (Croatian Marina Association) under the aegis of the Croatian Chamber of the Economy in October 2012 in Biograd na moru exchanged information relating to future pricing policies for berthing services. Concretely, the participants in the meeting announced that in 2013 they would not raise the prices of their services whereas these who "would raise the prices, would do so merely by the percentage of inflation in the Republic of Croatia".

Despite the fact that the CCA did not establish the existence of an explicit agreement among the above participants on the price increase, it has been established that strategic information on future pricing had been exchanged, in other words, behaviour that is considered concerted practices of the parties concerned.

When an undertaking reveals to its competitors strategic information concerning its future pricing plans, in this particular case rates and charges for berthing, and even in the absence of an explicit agreement to raise prices, this reduces strategic uncertainty as to the future operation of all the competitors involved and increases the risk of limiting competition and of collusive behaviour. In other words, this is why such a practice involving the exchange of individual data about intended future pricing policy constitutes a hard core restriction.

Thus, when a company participates in a meeting where strategic information are exchanged and receives such strategic data from a competitor, it is presumed to have accepted the information and adapted its market conduct accordingly unless it responds with a clear statement that it does not wish to receive such data and immediately leaves the meeting. Therefore, such a situation constitutes a concerted practice facilitating collusion of all the participants in the meeting, that is to say, sharing of strategic data between competitors amounts to concertation leading to infringement of competition rules by all participants in the meeting.

Given that in this particular case sharing of strategic data took place under the aegis of the professional association within the Croatian Chamber of the Economy, whose members were also present at the meeting, the CCA conducted the proceeding also against the Croatian Chamber of the Economy that as an economic interest group bears particular responsibility for dissemination of knowledge regarding the compliance of the practices of its members with competition rules.

It is therefore beyond any doubt that the Croatian Chamber of the Economy was held responsible for the participation in the agreement concerned, considering that its representative should have at least warned the participants in the meeting regarding their illegal behaviour. However, taking into consideration that no activity of the Croatian Chamber of the Economy had been found that would have facilitated the sharing of the sensitive data between the members of the association or

constituting a prohibited agreement, the CCA decided to impose a symbolic fine on the Croatian Chamber of the Economy amounting to 100,000 Kuna.

The parties to the prohibited agreement, the duration of which was from 25 October 2013 to 31 March 2014, were fined in the total amount of 2.263 million Kuna.

Orthodontists Cartel

Within the meaning of competition rules by the adoption of the „Minimum prices for orthodontists services" pricelist the Croatian Orthodontic Society (COS) concluded a prohibited agreement which was in force from 1 October 2010 until 9 October 2013. This decision of the COS was considered the infringement of competition rules by the CCA who imposed a symbolic fine amounting to 150,000 Kuna and declared the price list concerned null and void.

The Croatian Orthodontic Society (COS) is a voluntary association of dentists – specialist orthodontists. The association has 75 registered members and its goal is the promotion of the professional development of its members and policies which benefit dental practice and champion high standards in the public and in the bodies of the Croatian Medical Association.

In the proceeding initiated on 2 September 2013 the CCA established beyond doubt that the pricelist adopted by the COS containing minimum prices for orthodontists services, which was published on the web site of the COS, contained the list of orthodontist services and the relating minimum prices. This practice was considered the infringement of competition law from 1 October 2010 until 9 October 2013 – the time period in which it was applied.

The prohibited agreement concerned involved fixing the price which is prohibited by object and therefore it was not necessary for the CCA to provide evidence of its actual anticompetitive effect. Thus, the CCA did not analyse the concrete effects of the prohibited agreement concerned on the market and consumers.

Taking into account the fact that the pricelist in question was published on the web site of the COS during the time period of three years and hence available to the members of the professional association who had not been present when the challenged pricelist was adopted, the COS acted contrary to the normal market economy conditions, impeding thereby effective competition.

Namely, there was no legal ground for the COS to set a pricelist on the account of the fact that the sole authority able to do so is the Croatian Chamber of Dental Medicine under the separate law. The fact that the Chamber did not determine the minimum prices for orthodontists' services by means of a separate pricelist, neither directly or indirectly empowered the COS to do so. The price and the standard of the orthodontists services should have been regulated in any other legal way, stated the CCA in its decision.

Price arrangements, agreements on sharing markets and other similar activities of competing undertakings in the same market disregard the very nature and purpose of market economy and are therefore explicitly prohibited. Undertakings entering into such agreements have no motive to compete in terms of the quality of the service and innovation. This behaviour ensures the parties to such agreements to survive on the market as long as they comply with the said arrangements. Not only do these undertakings produce harm to the consumers but they also facilitate the survival on

the market of other undertakings that would not be able to do so under the circumstances of effective market competition.

When imposing the fine for the contested conduct of the COS the CCA took into account the fact that under the legislative act in force setting the minimum price for the provision of dental and orthodontic services is still allowed, however, the power to do so is vested in the Croatian Chamber of Dental Medicine, who unlike relating to other dental medicine services, did not use its power to set a pricelist in this particular case, which would also include the minimum prices for orthodontic services.

The fact that the pricelist was not binding for the members of the association and that they were not sanctioned if they did not observe the said pricelist was also taken into account when setting the fine. A slap on the wrist was considered adequate in this particular case, it focused on prevention and at the same time its deterrent effect should keep the COS and other undertakings from further infringements of competition law.

Subsequently, it must be noted that on 5 March 2015 the High Administrative Court of the Republic of Croatia confirmed the claim subsequently filed by the Croatian Orthodontic Society (COS) and overturned the decision of the CCA.

Given that there is no ordinary legal remedy against the ruling of the High Administrative Court of the Republic of Croatia it was the first time in the 18-year-operation of the CCA that it had resorted to an extraordinary legal remedy and decided to seek the State Attorney's Office of the Republic of Croatia to re-examine the legality of this controversial ruling of the High Administrative Court of the Republic of Croatia.

It is the position of the CCA that the High Administrative Court of the Republic of Croatia in the recital of its ruling challenged the very concept of a restrictive – prohibited agreement stipulated under the Competition Act and the EU acquis in the area of competition. In other words, in the CCA opinion the judgment by the High Administrative Court of the Republic of Croatia goes against both domestic and EU competition law, which prohibit fixing minimum or uniform prices. If this decision were to stand, it would encourage price agreements between companies, which would set an adverse precedent affecting consumers, entrepreneurs and competition in general.

The Croatian Competition Act, in line with the EU acquis in the area of competition, clearly defines that the decisions made by associations of undertakings fixing minimum or uniform prices shall constitute prohibited agreements, regardless of the fact whether these agreements have been actually implemented in practice or not. The participants to such agreements, particularly the associations of undertakings, are subject to sanctions in the form of fines solely on the basis of the fact that there is evidence on the existence of an agreement and regardless of the fact whether the agreement has been implemented in practice or not.

It is the position of the CCA that the ruling of the High Administrative Court of the Republic of Croatia denied these two key elements and thus made room for price agreements in professional and other interest associations of undertakings. What is more, if the ruling becomes established as an interpretation of the law, other cartelists could use it as a loophole for future price fixing. The CCA

decided to remain consistent in the application of the provisions of the Competition Act in line with the criteria deriving from the EU acquis in the area of competition to prohibited agreements.

In the meantime, the CCA received the communication from the State Attorney's Office that on 3 October 2015 the CCA request for the revision of the legally valid ruling of the High Administrative Court had been forwarded to the Supreme Court of the Republic of Croatia.

Prohibited vertical agreements in the groceries sector (RPM)

The practice of the CCA shows that undertakings are rather often inclined to conclude restrictive vertical agreements. These agreements between non-competing undertakings at different levels of the supply chain can contain restrictive provisions that cannot be justified in the sense of competition rules, such as those restricting a buyer's ability to determine its sale price.

It is particularly worth mentioning here that the CCA obtained indices of the existence of restrictive agreements containing hard core restrictions from its regular market study conducted in the groceries distribution and retail sector for 2013. The communicated documents from the undertakings and their trading partners involved in this market analysis revealed strong indices that certain provisions of the sales agreements contravene the competition rules (Block Exemption Regulation) and thereby constitute a prohibited agreement within the meaning the Competition Act.

Consequently, after the assessment of certain provisions contained in the agreements concluded between the manufacturers (suppliers) and retailers the CCA established four prohibited vertical agreements in 2014 in the procedures opened against the undertakings (CCA v Kraš d.d. and NTL d.o.o.; CCA v Dukat d.d. and Konzum d.d.; CCA v Kutjevo d.d. and KTC d.d.; CCA v Carlsberg Croatia d.o.o. and KTC d.d.) – containing provisions on minimum resale price maintenance and retaliation in response to deviation.

Given that minimum resale price maintenance is a hardcore restriction of competition, regardless of the market share of the parties to the agreement and regardless of the fact whether such restrictive provisions have actually been applied or not, because they restrict the buyer to freely set the prices which directly affects the interests of the final consumers, the CCA declared such provisions null and void and, taking into account the market position and financial power of the parties to the agreement, imposed the sanctions for the infringements of Competition Act to the undertakings concerned in the total amount of some 5 million Kuna.

Acknowledging all mitigating and aggravating circumstances with respect to the parties to the agreements concerned it is the opinion of the CCA that the fines and symbolic fines that had been imposed were adequate for the said infringements, at the same time producing a preventive effect on the participating undertakings but also a deterrent effect which should keep other undertakings from any further infringements of competition law. It is high time that all the players in the market became aware of the fact that the rules of competition law are mandatory rules all undertakings must comply with and that no agreements arranged between themselves can change this fact.

Merger control

CCA decision on conditionally approved concentration *Agrokor/Mercator*

On 24 March 2014 the Croatian Competition Agency (CCA) assessed the concentration between the undertakings Agrokor d.d. Zagreb, Croatia, and Poslovni sistem Mercator d.d. Ljubljana, Slovenia, as conditionally compatible and accepted the committments offered by the undertaking Agrokor that had to be fulfilled by the parties to the concentration with the view to eliminating the anticompetitive effects of the concentration on the basis of which Agrokor acquired controlling interest over the undertaking Mercator by acquisition of 53.1 per cent majority interest in the latter. The relevant product market comprises the grocery retail market whereas the relevant geographic market covers the territory of the Republic of Croatia.

Analysis

The analysis of the CCA revealed that taken into account that both undertakings parties to the concentration dispose of retail networks on the whole territory of the Croatia the implementation of the concentration would lead to the overlap of activities in the relevant market that would be particularly significant in certain counties. Additionally, the implementation of the concentration would also have effects on the supply market.

Under such circumstances the undertaking Konzum - connected company of Agrokor, would as a leading undertaking in the grocery retail market further strengthen its position in the market in the territory of the Republic of Croatia and this would increase the asymmetry of the market in question. Besides, this would strengthen the buying power of Konzum related to its suppliers.

Namely, Agrokor is a vertically integrated company which, besides operating in the groceries retail market is also present on the supply markets. The market power of Konzum as a member of the group and its impact on the relevant market derives from the fact that Konzum is not merely a retailer but at the same time also the supplier of groceries, whose buyers are retailers who are at the same time its competitors. Thus, this merger would additionally strengthen the negotiating power of Agrokor relative to the suppliers of Konzum, and relative to the buyers of the products produced by the food manufacturing part of the group. This would enable Agrokor to spill over its economic and market power and this would indirectly produce effects changing the structure of the retail market. All said was very important in the context of possible foreclosure of the market for competitors and buyers.

Therefore, the CCA declared the concentration conditionally compatible, obliging Agrokor to comply with a series of strict and comprehensive commitments to remove anticompetitive effects of the concentration on competition. It should be noted that Agrokor offered and modified its commitments on several occasions, as long as they could be accepted by the CCA.

Accepted committments

Finally accepted committments made by Agrokor in this matter could be divided in two groups of structural and behavioural remedies:

a) *Structural remedies* in the form of divestiture of sales outlets of the parties to the concentration with precisely determined conditions with the view to eliminating the negative horizontal effects of the concentration.

In the territory of Croatia, Agrokor committed itself to divest a total of 96 stores from the combined retail network of Konzum and Mercator whose total turnover makes up for almost 60 per cent of the turnover of Mercator-H in the year 2012.

Structural measures were primarily aimed at the City of Zagreb and the Zagreb County where Konzum had been a market leader prior to the concentration at issue and where the implementation of the concentration would have produced the most significant negative effects. Consequently, Agrokor committed itself to divest 26 stores on the territory of the City of Zagreb and 19 stores on the territory of the Zagreb County. In other 13 counties it would divest a total of 51 stores.

Divestiture means sale, termination of a lease contract, or a long-term lease of stores (for a period not shorter than 10 years excluding the possibility of an early notice of the contract). Agrokor could not repurchase once divested stores or lease them back before the expiry of the 5-years-period from the day of the divestment. The deadline for divestiture was set at six months from the day of the acquisition of control over Mercator.

However, Agrokor committed itself to immediately start searching for an up-front buyer ready to take over the stores, in other words, as soon as it receives the decision of the CCA and before it acquires control over Mercator.

In accordance with the set committments, the buyer could not be a person connected with Agrokor or Mercator or their board members and had to have financial means on the basis of which it could be reasonably assumed that it would be able to operate in the market. In the case that for some stores there would appear more qualified bidders, the preference would be given to a direct competitor on the market offering a higher price or to a bidder who would acquire more stores.

Agrokor had to offer sale or lease at a reasonable price. It was a price which was not considered meaningless and would not indicate a reasonable doubt as to the conclusion of a disadvantageous contract within the meaning of the provisions of the Criminal Act of the Republic of Croatia.

The stores that Agrokor would possibly fail to divest within the set period of six months, would have to be offered for sale or lease by a public notice in at least one national general information daily or weekly publication and at least one regional general information daily or weekly publication that is most read in the county and/or city where there are stores proposed for divestiture. In such a case, the public notice would be repeated every six months during the period of three years. The offer for sale or lease would be available on the official website homepage of Agrokor, Konzum and Mercator-H all the time.

In case of objective impossibility of divestiture, Agrokor could, in accordance with the decision of the CCA, within three months after the expiry of the deadline for divestiture, reallocate the retail outlets.

As a final measure, all stores that would not be sold, leased or converted, Agrokor committed to close within one month after the expiry of the deadline for reallocation and should not re-open before the expiry of the five-year-deadline.

b) *Behavioural remedies* in the form of monitoring of the behaviour of Agrokor relative to the suppliers of the parties to the concentration, particularly the suppliers of Mercator-H with the view to addressing the negative vertical effects of the concentration.

As stated above, Agrokor is vertically integrated group acting parallel as the supplier of its own products to the competitors of Konzum as well as the seller of these products in Konzum retail network. In specific groups of these products Agrokor also holds a significant market share.

Therefore, the CCA concluded that the structural remedies alone, involving the divestiture, are not sufficient to adequately limit further strengthening of Konzum's buying power on the retail market. Such strengthening could have led to a decrease in availability (placement) on Konzum shelves of the products of those companies that are not a part of the Agrokor group, on the account of a possible spill-over of the market power from the markets in which the producers from the Agrokor group are present as suppliers of grocery products.

To remove those effects, Agrokor committed itself to behavioural remedies worked out in the first place to protect Mercator-H suppliers and to enable entry and/or expansion of competing undertakings on the shelves of Konzum involving the key product categories from the producers that are members of the group.

Concretely, in Mercator-H's hypermarket and supermarket stores, during the period of at least three years from the day of acquisition of control by Agrokor over Mercator, the positioning in shelf space for three of their best-selling products should be ensured to each of the five biggest Mercator-H's suppliers under the following conditions:

I) suppliers that are at the same time suppliers of Mercator-H and Konzum in the relevant product category, shelf placement would be ensured under the conditions that are not less favourable than the ones that Konzum applies to their competitors in its own sales network;

II) suppliers that are exclusively the suppliers of Mercator-H (and not of Konzum), shelf placement would be ensured under the conditions in effect that these suppliers enjoy with Mercator-H in the relevant product category on the day of acquisition of the controlling interest. These conditions would be applicable during the period of not less than one year, and after the expiry of this period under the conditions that are not less favourable than the ones that Konzum apples to their competitors in its own sales network.

Besides that, Agrokor committed itself to ensure in Konzum hypermarkets and supermarkets during a period of not less than three years from acquisition of the controlling interest over Mercator the shelf placement of 30 percent for at least three competitors in the product segments where the producers from the Agrokor group hold a high market share (above 40 percent), and under the conditions that are not less favourable than the ones applied by Konzum in the relevant product segment to the competitors of these suppliers in its own retail network.

Deadlines

As already mentioned above, the deadlines for Agrokor to act in line with the approved committments started to run on the *Starting Day* – the date of acquisition of the controlling interest over Mercator on 8 September 2014, when all the resolutions taken by the General Assembly which

ensure the undertaking Agrokor acquisition of controlling interest of Poslovni sistem Mercator, Slovenia, were entered into the court's register of the Republic of Slovenia. This was communicated to the CCA within the prescribed 48 hours, whereas, as a matter of exception, the deadline for finding a so-called up-front buyer started on the day of the receipt of the decision taken by the CCA.

Monitoring and Trustee Reports

It was decided that the compliance with the above committments should be monitored by a trustee who was appointed by the CCA in accordance with the proposal of Agrokor. In accordance with the decision of the CCA a trustee had to be a natural or legal person with no interlocking directorates or ownership ties with the parties to the concentration, who possessed the necessary qualifications and was not in any way in the conflict of interests.

The Trustee Mandate was approved by the CCA on 15 July 2014 to PricewaterhouseCoopers d.o.o., Zagreb, Croatia.

The *Initial Report of the trustee* on the implementation of the structural divestment remedies and the conduct (behavioural) remedies in the concentration at issue was accepted by the CCA. The CCA also approved the Work-Plan and the activities of the trustee together with the fixed deadlines for their implementation.

After having analysed all the elements with respect to the acquisition of the controlling interest of Agrokor over Mercator – the appointment of the management of Mercator, the double check of the registry extract of the Republic of Slovenia, and having examined the curricula vitae of the newly elected management of Mercator, the trustee decided on the starting point of the duration of the concentration between Agrokor and Mercator as stated above.

The trustee also found that Agrokor acted in line with the committments in the CCA decision, it took all actions necessary for the divestment of the part of the business to the up-front buyer and the divestment of the part of the business (96 outlets) which were to be offered on sale or lease within three days from the starting point of the concentration.

In line with the trustee's report, Agrokor had an up-front buyer for seven retail outlets, whereas at that point it received binding bids for 65 outlets in the sense of divestment or lease commitment.

The CCA complied with the above committments: it approved the divestment of businesses to the up-front buyer and the selection of the binding bids for 65 outlets. After the divestment Agrokor had to inform the trustee thereof and submit the necessary documentation.

Unlike the divestment remedies which depend on the starting point – Day One of the concentration, behavioural remedies involve the monitoring of Mercator and Konzum suppliers' protection and compare it with the situation in the time period before the concentration was formally and factually implemented.

The supplier lists were defined on the basis of the data covering the time period from 1 January to 31 July 2014 according to the categories and subcategories of products normally found in the retail sector. Within 12 basic categories of products set out in the decision of the CCA conditionally approving the concentration in question there were 45 subcategories added.

The trustee defined five biggest suppliers in accordance to the realized purchase value and purchase volume. The trustee also defined the suppliers' three bestselling products. Five biggest suppliers in each subcategory and three of their bestselling products would be subject to the monitoring of the trustee. In other words, the trustee would monitor the contracts in effect before the implementation of concentration and the subsequent revisions and screen the conditions from the contacts in the part referring to the purchase prices of the products, payment deadlines, rebates, bonuses etc.

Among five biggest suppliers in certain categories and subcategories there had to be no suppliers from the Agrokor group.

On the other hand, Agrokor had to inform the suppliers with no delay that they were considered to fall under the biggest five and at the same time it had to inform the suppliers from their group that they might not be included in the biggest five list. Taking into account the fact that from the Day One of the concentration certain time already had elapsed, the contacts with exclusively suppliers of Mercator-H had to be concluded/extended for the period of one year from the date of the conclusion/extension of the contacts, regardless of the first day of the concentration.

Finally, the trustee determined the shelf positioning (visibility) as well as the criteria for the implementation of the committments from the decision of the CCA with respect to the commitment made by Agrokor to ensure 30 per cent in shelf space for at least three competitors in the product segments in which the companies belonging to the Agrokor group hold a high market share (exceeding 40 per cent) in Konzum hypermarkets and supermarkets for at least three years from the starting day of the implementation of the concentration. The conditions regarding the positioning in shelf space could not be less favourable than those approved by Konzum in its own retail network to the competitors of these suppliers within the particular group of products.

The presence of Konzum suppliers in the time period before the implementation of concentration had been based on the realized purchase value of the single supplier in comparison with the total purchase value of a particular category or subcategory.

In addition, solely the criterion relating to the supplier belonging to the Agrokor group was applied, concretely, by defining the visibility of the suppliers from the Agrokor group and the share of other suppliers – competitors in the shelf space, regardless of the fact whether the space is attributed to branded goods or Konzum own brands. This visibility in shelf space was measured in linear meters and percentage.

With respect to the rebranding of Mercator outlets which had been carried out in the meantime, Mercator network was considered to include all Mercator-H outlets at the moment of the adoption of the CCA decision, excluding the outlets which are to be divested.

In order to ensure the implementation of the committments set out in the decision of the CCA and the monitoring of these committments on the part of the trustee, Agrokor attributed to all integrated Mercator objects exceeding the floor space of 400 m2 a separate distribution channel, so called "Mercator channel" on the top of the centralised purchase via Konzum stock. This label opened the possibility for the different range of products to be placed in different outlets with similar floor space and spacing as well as for the different shelf placement of the products.

The CCA also accepted the *First Report of the trustee* on the implementation of the structural divestment remedies and the conduct (behavioural) remedies in the concentration concerned.

Until the date of the conclusion of the Report on 15 January 2015 Agrokor divested 30 out of 96 outlets foreseen in the decision of the CCA. 19 outlets thereof had been sold whereas 11 had been leased for a period of five years (with the possibility of the extension of the lease agreement for the following five years).

In other words, Agrokor divested retail shops whose share in the total turnover in the year preceding the year of the implementation of concentration was 27% in the total turnover realized by all 96 retail shops on the divestment list.

For the outlets holding 24.8% share in the total turnover covered by divestment commitment conclusion of contracts was at that point under way, whereas for the outlets holding further 18.3% in the total turnover negotiations had been under way. The retail shops whose share in the total turnover was 2.7% the permit from the lease holder to sublease was awaiting. For the ones holding a 9.4% share in the total turnover Agrokor proposed alternative divestitures, whereas for the remaining 17.7% share in the total turnover committed for divestment there had been no interested buyers.

Taking into account that there were no interested buyers for four outlets out of five that were committed for divestment – or 9.4% of the total turnover of all outlets committed for divestment, Agrokor proposed nine alternative retail shops that are somewhat smaller in space but their turnover is by some 50% higher than the ones originally foreseen for divestment. The CCA accepted the proposal.

Given that the deadline for divestment expired on 12 March 2015 the CCA ordered Agrokor to immediately start looking for interested buyers by placing the advertisements on Agrokor, Konzum and Mercator-H websites and in the regional press in the regions where these outlets are located. Should this offer fail, Agrokor was ordered to start with reallocation of these outlets without delay.

In order to ensure transparency of the divestment process, in line with the measure from the decision of the CCA, the list of all outlets committed for divestment is accessible on the web site of Agrokor, Konzum and Mercator-H.

At the same time the CCA ordered Agrokor to conclude the contracts where the negotiations reached the final phase as well as for the outlets where the negotiations were still under way. In addition, it was necessary to address the issue of the leased outlets.

Within the monitoring activities relating to the implementation of the divestiture measures the trustee picked out six retail shops and paid them a visit. On the locations there were no differences spotted in comparison with other Konzum retail shops, concretely, no behaviour on the part of Agrokor or its connected companies was detected that would significantly impede the operation of the retail shops intended for divestment.

Furthermore, as regards the measure ordered by the CCA to Agrokor concerning the establishment of a clear communication with the staff of the retail shops committed for divestment, it was found that such communication existed with the works council.

With respect to the implementation of the behavioural remedies the trustee found that Agrokor had conducted a series of organizational changes with the view to implementing the remedies. Written guidance had been worked out for all the levels of staff employed in Konzum and Agrokor and relating to the implementation of the remedies all levels of employees had been involved in training. An intranet portal had been created ensuring the staff of the outlets access to all information about the relevant products and suppliers and verification whether the measures had been implemented.

The trustee stated in the Report that the visibility of the products after the implementation of the concentration had not been affected i.e. that the shelf positioning had not worsened. Agrokor was said to be in close contact with the suppliers and following the request of particular suppliers it even agreed on less favourable conditions from the ones that had been ensured by Mercator-H relating to visibility of the products on the shelves. The visible output of space planning existed in the form of planograms that had been regularly communicated to all retail stores of the network. In addition, besides the trainings and workshops for workers there were also drawn up logistics and distribution, retail and controlling handbooks that are available to all employees on the intranet portal.

By signing the Addendums to the framework purchase and sale agreements the suppliers had been ensured that the same business conditions would be retained in the period of one year.

At the same time Agrokor complied with the order of the CCA to individualize its memos written to the suppliers within a set time period. Concretely, on 29 December 2014 Agrokor sent detailed and individualized information to suppliers containing the name of the supplier and also defining the suppliers' three most selling products together with the list of the retail shops subject to the remedies pursuant to the decision of the CCA.

The trustee inspected the conditions regarding the positioning in shelf space in Konzum retail network of the products that are competing products of the companies of the Agrokor group in the categories where Agrokor holds a high market share. This was linked with the commitment made by Agrokor to ensure 30 per cent in shelf space for at least three competitors in the product segments in which the companies belonging to the Agrokor group hold a high market share. The shelf visibility check was carried out on the sample of 62 out of 192 outlets - hypermarkets and supermarkets in Konzum distribution network, including the former Mercator-H outlets that were not intended for divestment.

The trustee established that regarding the positioning in shelf space of the competing products the measure had been implemented in line with the decision of the CCA, i.e. that on the sample of 67 outlets the visibility on the shelves of competing undertakings was less than 30 percent in only one (1) per cent of the total subcategories subject to inspection and that less than three (3) competing products had been displayed in only two retail shops.

Conclusion

The Agency has concluded that the implementation of measures for removing the negative effects of this concentration indirectly leads to positive effects on competition and consumer interests that would not occur in the absence of this concentration.

Measures to monitor the operations of the new economic entity to some extent allow the entry or expansion of competitors' offer on Konzum's shelves in relation to key products of companies from the group.

On the other hand, by divestiture of significant number of stores of different formats, market power of the new economic entity is limited, while at the same time providing an opportunity to Konzum's competitors to take over the offered stores in order to increase their market share and presence on the market.

Conditionally compatible concentration by which HT acquired control over Optima telekom

Having in mind all concrete factual, legal and economic circumstances, and after legal and economic analysis of the relevant market conducted, Croatian Competition Agency decided to clear under certain conditions concentration by which Hrvatski telekom acquires control over Optima telekom in the procedure of pre-bankruptcy settlement.

During the assessment of concentration, the Agency accepted the „failing firm defence" of Optima as it determined that in the case of Optima's exit from the market, competition structure on the relevant market would be distorted at least to the same extent as in no concentration scenario.

However, despite accepting of that criterion, this concentration can be permitted only with fulfilment of very strict and comprehensive measures and conditions for elimination of possible negative effects of the concentration on competition in the market of provision of electronic communication services in fixed networks in the Republic of Croatia. Namely, although there is a relatively big number of alternative operators at the market that are present on the specific retail and wholesale levels, according to the size of the market shares and operators' market power, that market is asymmetrical and not well structured. Implementation of this concentration would lead to further asymmetry and the existing level of competition would be decreased.

Aware of that, HT had already submitted a proposal of measures and conditions for elimination of negative effects on competition in its incomplete merger notification from 26 July 2013. During the proceedings, and respecting Agency's remarks, HT had changed the original measures proposal three times and finally the Agency accepted the measures and conditions proposal submitted by HT on 17 February 2014. During the assessment of compatibility of final measures, conditions and deadlines for their fulfilment, the Agency has taken into account the proposals and competitors' opinions acquired through market test as well as the opinion of the sector regulator HAKOM.

Accepting the measures and conditions by which the effects of the concentration on competition are being eliminated, parties to the concentration have committed to their implementation within the time limits required by the Agency's decision.

Primarily, duration of the concentration of HT and Optima is limited to a period of four (4) years starting with HT's control acquiring over Optima i.e. from the moment when all decisions of Optima's general assembly foreseen in the pre-bankruptcy settlement are duly made and entered into the court register. Upon the expiration of the four-year period the concentration is automatically terminated, without the possibility of extension.

On the date of expiry of the third year of the concentration, HT needs to start with the selling procedure of all its Optima shares, during which it will have the right to sell Optima shares held by Zagrebačka banka as well (drag along right). Selling procedure must be transparent, objective, non-discriminatory and in the accordance with best practices. HT is obliged to prepare it before the expiration of the third year, and selling proposal must be submitted for review to a trustee who will monitor the implementation of the measures imposed.

In the case that the shares are not sold by the expiration of the four-year duration of concentration, any possibility of HT's control over Optima ends automatically. HT agrees that immediately upon the expiration of concentration it will transfer all management rights of its Optima shares to Zagrebačka banka or to a third party not associated with HT and authorize Zagrebačka banka to sell all of HT's Optima shares. HT then has to ensure that Zagrebačka banka or a third person to whom they transferred management rights from HT's shares, while holding those shares, do not use their voting rights.

HT agrees that during the concentration, and considering Optima's earlier business trends, it will ensure such management over Optima that at the end of the term of the concentration it will not lead to Optima's assets being undercapitalized as compared to the initial situation at the beginning of the period of concentration. Specifically, it is the assets consisting of Optima's customer base (number of customers, revenue) and Optima's infrastructure (the amount of own or leased infrastructure capable of providing competitive services to Optima customers, speed of access and quality that is available to most users in the market). HT has to ensure that at the end of the period of concentration Optima assets will in its essence be preserved qualitatively and quantitatively. Comparison benchmark will be the condition in which Optima's assets are found at the end of the quarter preceding the beginning of concentration. HT agrees that within 30 days of acquiring control over Optima, it will deliver the information on the initial state of their property to Optima trustee and to the Agency.

If during the period of the concentration it is shown that there are no objective reasons for deviations higher or lower from the determined or if the deviation cannot be attributed to earlier trends of Optima's business and its objective possibilities to monitor market development, but can be attributed to the HT management of Optima with the aim of its undercapitalization, the Agency may prohibit the concentration.

When it comes to the measures to ensure the independence of Optima's business, HT has committed to a series of measures.

First of all, HT agrees that during the term of the concentration, HT members who are appointed to the Optima Board shall not at the same time be members of HT Board or HT Supervisory Board or any HT's affiliated companies and that from the moment of taking over their duty in Optima until the termination of the duration of concentration will not perform any function in HT. At least one of the appointed members of the Optima Board must not have any previous connection with HT. Also, members that HT proposes to Optima's Supervisory Board shall not at the same time be members of the HT's Board or the HT's Supervisory Board or any of its affiliated companies. Members that HT proposes to Optima's Supervisory Board, as well as HT's staff responsible for the implementation of Optima's restructuring measures, shall not come from HT's business unit for private customers, HT's business unit for business customers or HT's affiliated company Iskon Internet.

Within 30 days of delivery of the decision of the Agency, HT will establish mechanisms to ensure the prevention of the flow of commercially sensitive data (conventional term for this in competition law is a Chinese Wall) between Optima and HT's staff involved in its operations and HT's business unit for private customers, business unit for business customers and affiliated company Iskon Internet.

This does not include the reporting to HT Board and persons determined by HT Board (whose names will be notified to the trustee and to the Agency) on business results, financial data needed for consolidation and data needed for achieving synergy effects between Optima and HT.

HT trustee and the Agency will submit duly enacted internal HT ordinance that ensures mechanisms for the implementation of Chinese Wall measures.

Also, during the concentration period Optima Board will be responsible exclusively to the Optima Supervisory Board of Optima and will regularly, at least once in three months, report to Optima Supervisory Board on intent, planning, progress and outcomes of the implementation of projects between HT and Optima within the concentration and the benefits of these projects for Optima.

During the period of concentration Optima employees will not be liable to any person outside the Optima for their work. All incentive compensation for Optima employees and managers, as well as bonuses payments based on performance, will be exclusively related to business objectives linked to the results of Optima's operations. Neither any bonus payment nor incentive compensation of Optima employees and management will be reflected in HT shares.

In addition to ensuring the independence of Optima business, HT's obligation is that during the term of the concentration it will not offer employment to Optima key employees, that it will protect the confidentiality of Optima user database, that it will not take any actions that would restrict the current sales activity of Optima's sales partners and that it will not sell Optima's retail points.

When it comes to protection of the current users of Optima's wholesale services, including the service of dark fiber lease, HT is committed that the contracts between Optima and its customers for the duration of concentration remain in effect for the period in which they are concluded. Exceptions are contracts that could be prematurely terminated due to financial/economic reasons, which must be notified by HT to the trustee and the Agency in advance.

Also, HT and Optima are committed that for the duration of concentration Optima will at the wholesale level to other operators on the market (existing and/or new), at cost-oriented and market-established prices, offer to lease available capacities in the built optical network, where the offer will have no impact on existing customer contracts and Optima wholesale service. Optima is obliged to submit to the trustee and the Agency a public offer for wholesale services of lease of free capacity in the optical network within 30 days of HT's acquisition of control over Optima.

During the period of concentration, HT will not allow preferential treatment to Optima in terms of providing HT's wholesale services compared to other operators present in the relevant market.

During the period of concentration, Optima's web pages, in the framework of its official memorandum and on its invoices to users of its services include the information that it is part of the HT group.

HT commits that during the term of the concentration it will not participate in taking control over other alternative electronic communications operators over which there is, or could be, an open procedure of pre-bankruptcy settlement.

It has already been stated that the execution of measures and commitments monitored by the trustee will be approved by the Agency on the proposal of the parties to the concentration. The trustee may be independent auditing or consulting firm who possess the necessary qualifications in terms of experience and knowledge of the electronic communications market, and should not be personally or capitally related to merging parties and must not be nor become exposed to a conflict of interest. His task during the entire duration of concentration is to inform the Agency of any significant actions taken by the merging parties in the execution of the proposed measures. Every six months, or more often if necessary or if ordered by the Agency, the trustee must submit a written report to the Agency on the implementation of measures and commitments under the conditional approval of this concentration.

The Initial Report for HT/Optima

The Initial Report and the Work-Plan, the activities and the implementation time table drafted by Ernst & Young d.o.o. - the trustee monitoring the implementation of the remedies under the decision on conditionally approved concentration between the undertakings Hrvatski Telekom and OT – Optima Telekom, whose mandate was approved and accepted by the Croatian Competition Agency (CCA).

First, the findings of the trustee show that the annex to the contract between HT and Zagrebačka banka contains all the changes to the contract requested by the CCA in its decision on conditionally approved concentration with respect to the duration of the concentration and the sale of Optima shares. It has also been established that HT had appointed a person in charge of coordination of the activities linked with the concentration and that this person undertook to prepare the process for the sale of Optima shares before the third year of the duration of the concentration will have elapsed in a transparent, objective and non-discriminatory manner and in compliance with the best practice. Once this process has been prepared, it will be submitted to the trustee for review.

Referring to the measures from the decision relating to managing of Optima assets where HT undertook to ensure, within the range of possibility, during the period of duration of the concentration, such management that will prevent the undercapitalization of Optima assets at the end of the concentration duration period in comparison with the situation at the beginning of the duration of the concentration concerned, the trustee's Initial Report contains a breakdown of parameters that are the elementary for the supervision of the committments by the trustee.

Optima assets are being monitored on the basis of two parameters: the users' base and the infrastructure. The users' base mainly refers to the realized revenue and the number of users (private and business) of Optima with respect to its services.

The data relating to infrastructure involve own infrastructure and infrastructure under a lease agreement.

The trustee will compare these Optima parameters during the duration period of the concentration with the market.

The trustee also communicated the market situation and the market trends indicators for both parameters and forecast revenues for 2014 based on the first two quarters of the same year and the last quarter preceding the beginning of the duration of concentration.

The trustee will inform the CCA on the fulfilment of the committments in its half annual reports.

As regards the commitment undertaken by HT not to sale Optima resale outlets the trustee found that Optima had no retail outlets on its own but is engaged in direct sales or telesales or sales is carried out by its partners. The trustee set out a list of Optima partners and will be monitoring the changes in the number of partners in comparison with the established number on the list at the beginning of the concentration.

In respect of the measures under which HT is committed to ensure the autonomy of Optima the trustee checked all the documents (excerpt from the court register, employment contracts, incentive schemes for the employees and the management, minutes from the meetings of the Supervisory Board, CVs of the managers and members of the Supervisory Board etc.) and established that the initial state complies with the CCA measures ordered in the decision conditionally approved concentration.

At the same time, the trustee found that by the adoption of the Ordinance on Optima trade secrecy protection HT ensured the prevention of sensitive trade information flaw, a situation known in competition law as Chinese Wall, between Optima and HT's staff involved in its operations and HT's business unit for private customers, business unit for business customers and the affiliated company Iskon Internet.

However, with the view to ensuring a simpler and transparent implementation of the business secrecy protection mechanism the trustee proposed a set of improvements of the above mentioned Ordinance which were accepted by the CCA. The CCA ordered to HT and Optima to make necessary adjustments of the documentation and the activities and to provide the trustee with the evidence that they have been introduced within the period of eight days from the receipt of the communication at the latest.

Considering the wholesale agreements of Optima, HT committed itself not to terminate the agreements of Optima concluded with the buyers of wholesale services including the service of dark fibre lease within the duration of the period of the concentration but to keep these agreements in force during the period for which they had been concluded. Exempted here are agreements that could be prematurely terminated on the account of financial/economic reasons, in which case HT must beforehand inform the trustee and the CCA.

The report of the trustee also involves the list of the agreements between Optima and its wholesale buyers at the beginning of the period of duration of the concentration and at the end of the second quarter of 2014, containing the data of the party to the agreement, the date of the conclusion of the agreement, the duration of the agreement and the title of the contract for active contracts.

Pursuant to the decision of the CCA the trustee shall be monitoring whether during the time line of the concentration Optima enjoys favourable treatment as regards its wholesale services to HT in comparison with other operators active on the relevant market, and whether HT is involved in

acquiring control over other alternative operators which are involved or which may end up in a pre-bankruptcy settlement proceeding.

Finally, after having investigated the Optima web site, its official memorandum format and its receipts the trustee found that by indicating that Optima is a member of HT group Optima complied with the measure set forth in the CCA decision.

Clearance for Media Merger between AMG and AMZ

The Croatian Competition Agency cleared the proposed implementation of a concentration on the basis of which Adria Media Group (AMG) from Belgrade acquires control over the undertaking Adria Media Zagreb (AMZ).

Adria Media Group had been until 2013 active in the Republic of Serbia under the name of Adria Media Serbia under control of the undertakings Adria Media Holding GmbH and Styria Media International GmbH. After these two left the market in 2013 their share capital in Adria Media Serbia was acquired by the undertaking Kurir-Info, whereas later Aleksandar Rodić acquired the share capital concerned. In July 2014 Adria Media Serbia changed its name into Adria Media Group. AMG in Serbia publishes a newspaper, 14 magazines and 12 online publications.

Adria Media Zagreb was founded as a joint venture between the undertakings Sanoma Magazines International B.V. from the Netherlands and the Austrian G+J International Publishing Holding GmbH and Styria Media International AG. The implementation of this concentration resulted in the establishment of a company Adria Magazines, now Adria Media Zagreb, who is in Croatia a publisher of 14 magazines and 7 online publications.

The concentration between AMG and AMZ will have effects on the relevant press publishing market, in the segments of the circulation sold (magazines) and press advertising (magazines) as well as the circulation and advertising in online publications (web portals).

Based on the complete notification of the concentration concerned and the defined structure of the relevant market taking into account the actual and potential competitors, the CCA concluded that no party to the concentration is active in the same relevant geographic market, there is no horizontal overlap and there are no vertical links between the merging companies.

Adria Media Group is entering the relevant market by acquiring the market share of AMZ (the situation known as stepping into the shoes of the merged entity) that leads to no change in the structure of the relevant market.

Namely, in the market segment of press publishing and advertising in magazines, Adria Media Zagreb is the second of the two leading competing undertakings in Croatia, whereas in the online publishing and advertising market, AMZ has no significant market share given the fact that there are a lot of competitors present in these markets.

There were no replies to the request for information made public by the CCA.

Consequently, taking into account the structure of the market and the market power and the market shares of the parties to the concentration in the relevant markets concerned, the CCA found that this concentration is not likely to have any anticompetitive effects and cleared it in the first phase.

Approved merger between Plava laguna and Istraturist

The Croatian Competition Agency approved the implementation of the proposed concentration between the undertakings Plava laguna and Istraturist.

The concentration in question will produce effects in the following relevant markets: accommodation and catering services in hotels, apartments and campsites in Istria County and accommodation and catering services in hotels in the territory of Dubrovnik and Dubrovnik Riviera. Besides that, Plava laguna owns one hotel in the territory of Rijeka.

The common feature of the listed relevant markets is inelastic supply and highly elastic demand for accommodation capacities based on the fact that supply in the markets concerned many fold exceeds the demand.

In addition, the fact that on the side of the demand there is no differentiation of the capacities within the main accommodation category (such as family hotels, business hotels, spa and wellness etc.), in combination with the inelasticity of supply, contributes to a high degree of substitutability of these services in the market.

At the same time, due to the seasonal character and the non-segmented supply chain this market may be described as the "buyer's market" during a major part of the year, given the dominant influence of the purchasers over sellers in price negotiations, whereby the purchasers are the biggest world tourist agencies and tour operators (allotments contracts). Furthermore, there is also a significant influence by the groups and individual buyers using specialised web sites.

The implementation of the concentration will make Plava laguna the leader in Istria County with a 20 – 30 per cent market share, depending on the relevant market at issue. The former leader on the hotel and apartments market Riviera Adria would now take the second place, whereas Maistra, previously the leader in the camping sites market, would take the second place in the market concerned.

Besides, the competitive constraints on Plava laguna in all defined relevant markets come also from smaller undertakings active in these markets whose combined market share depending on the market ranges from 10 to 30 per cent.

Despite the fact that the implementation of concentration leads to the most significant market share of Plava laguna, taking into account the market shares of other competing undertakings and their competitive constraints, the Agency found that the relevant markets at issue will remain highly competitive and price competition intense – this particularly considering the fact that there are no structural entry barriers on the relevant markets affected by the implementation of concentration.

The strengthening of the market power of Plava laguna will contribute to even more intensive competition among the major players in the defined relevant markets, alongside with competitive constraints by other participants in the market, particularly in the apartments and camp sites market.

After the Agency carried out the necessary analyses of the relevant facts and bearing in mind that no replies to request for information were submitted, the Agency found that the implementation of concentration Plava laguna/Istraturist will have no significant anticompetitive effects and declared the concentration compatible.

Cleared concentration between Spar and Diona

Croatian Competition Agency has cleared the concentration by which Spar Hrvatska acquires control over 20 Dinova-Diona stores in the City of Zagreb and in Zagreb County.

This concentration has no significant impact on competition as it is not creating new or enhancing the existing dominant position of the parties. Concentration will produce effect on the relevant market of retail groceries, mostly food, beverages and household toiletries in the City of Zagreb and in Zagreb County.

Implementing this concentration, market share of Spar in the City of Zagreb is increased on the ratio between 10 and 20 percent, and by that the entrepreneur will become the most important competitor of Konzum, the market leader in Zagreb. The implementation of the concentration will therefore increase the competitive pressure on the market-leading competitor and it will alleviate the asymmetry of the market.

Having that in mind, as well as the market structure and the number of competitors on the market, the CCA concluded that this concentration could lead to greater competition between entrepreneurs on the relevant market and therefore cleared the concentration in the first phase.

Abuse of a dominant position

Accepted committments offered by water supply and sewage operator

By 12 December 2014 Vodoopskba i odvodnja d.o.o. committed itself to change the General and technical conditions for the provision of water services adopted on 19 July 2013.

The Croatian Competition Agency (CCA) adopted a decision accepting the committments offered by the undertaking Vodoopskba i odvodnja (VIO) relating to installation of water meter and telemetry devices (water meter reading network) in the old buildings.

In March 2014 the CCA opened the proceeding regarding the alleged abuse of a dominant position by the undertaking concerned in the provision of public water service which produces effects on the provision of services involving water meter and telemetry devices installation and the measurement of water consumption providing data for billing and reporting, in the territory of Zagreb, Samobor, Sveta Nedjelja and the municipality of Stupnik. The CCA opened the proceeding based on the provisions of the General and technical conditions (GTC) that had been adopted by VIO in July 2013

that introduced the obligation regarding the existing inside water meters in old buildings which are to be connected with the automatic water meter reading network (AWMR network). AWMR is a system of long distance reading which VIO has only started to introduce in the old buildings. In other words, this is the market on which VIO has not been present so far.

On the basis of the GTC provisions regulating the provision of water services regarding the obligation on the basis of which the existing inside water meters in old buildings must be connected in the AWMR network, VIO banned the undertakings which until than had been engaged in the installation of water meter and telemetry devices and reading and billing of the water consumption data so collected, to install inside water meter and telemetry devices in old buildings as of 1 January 2014, foreclosing thereby the market to potential new competitors. In addition, on 1 January 2014 a transitional five-year-period started in which these undertakings would be still allowed to perform only the distant readings from local networks, whereas upon the expiration of this transition period the distant reading would be exclusively provided by VIO.

In the sense of competition policy the above practice cannot be recommended nor is it justifiable on the account of the fact that once liberalised market is being re-regulated and foreclosed where there are no concrete indicators.

For the reasons stated above, in the course of the proceeding CCA also imposed an interim measure ordering the undertaking VIO to temporarily cease-and-desist the application of the challenged provisions under the GTC that prevent the undertakings from the provision of services which they had been discharging before the challenged provisions entered into force and preventing final consumers from freely choosing the provider of the services concerned.

Within the proceeding VIO offered on its own initiative the committments aimed at restoring effective competition in the *provision of services involving water meter and telemetry devices* installation and the measurement of water consumption providing data for billing and reporting, thereby brining its monopolistic position caused by the adoption of the said GTC to an end. In other words, VIO offered to delete the challenged GTC provisions and to revise in detail other GTC provisions, which means the restoration of the provisions in force before the disputable GTC provisions had been adopted. Thus, VIO would open the market to alternative providers and enable free entry for possible new operators in the market concerned. At the same time, this would ensure the consumers – users of the services involving inside water meters reading and billing – free choice of service providers.

Formally, the CCA accepted the above committments made by VIO given that the committments were submitted after the opening of the proceeding but before the statement of objections was issued. Second, the committments offered by VIO represent a voluntary act of the undertaking concerned eliminating the possible anticompetitive effects of the challenged GTC provisions.

On the basis of a separate decision the CCA revoked the interim measure taking into account that by the adoption of the decision on the acceptance of the commitment it became purposeless.

Termination of the proceeding that H1 Telecom initiated against Croatian Telecom (HT)

Croatian Competition Agency has terminated the proceeding against the Croatian Telecom (HT) for abuse of dominant position. The proceeding was initiated based on a claim by the H1 Telecom to determine if HT abused its dominant position by rejecting the provision of wholesale service to alternative operators through stalling the provision of those services in the period from 2011 onwards on four relevant markets.

H1 claimed that during 2012 it noticed significant fall in number of users of its services, namely: CPS service (operator preselecting) and WLR service (user lines renting), what H1 claimed was due to HT's takeover of its customers.

According to H1's claims, HT was doing active sales of its retail services to H1 users using the data base of H1 Telecom users despite the fact that it had already sold those same services to H1 Telecom on wholesale level and the fact that H1 delivered the data about users for realisation of wholesale services.

Also, H1 claimed that the HT has targeted and actively "attacked" H1 users by abusing the available wholesale base of H1 users. That practice was illustrated with data of four times larger fall of average monthly number of users in the period from 1 January to 31 December 2012 when compared to previous periods.

During the preliminary investigation on the relevant market, the CCA asked for additional written comments from HT and H1, as well as for the written comments from other alternative operators and from market regulator HAKOM.

As it was determined that there were enough indications to start a proceeding, the CCA adopted a conclusion on initiation of a proceeding against HT on 5 September 2013.

Besides the fact that the CCA started the proceeding based on the Croatian Competition Act, HT's behaviour possibly could have an effect on the trade between two Member States by preventing the new competitors to enter relevant markets on the territory of Croatia. Therefore, the proceeding was started also on the basis of Article 102 of the TFEU in order to preserve the single EU market. Based on the detailed analysis of all delivered documentation, the CCA did not find any facts and evidence during the proceeding that it would be possible to determine that HT used the stalling tactics on purpose when providing the wholesale services to alternative operators and to influence the maintenance or development of competition on the downstream markets and thereby limit the competition.

Namely, the CCA analysed the data about the HT's delays in realisation of its retail services to its own end users and compared it with the delays in the realisation of wholesale service to alternative operators (average time for realisation of service to access the network infrastructure, average time of failure recovery when accessing the network infrastructure and average time of realisation of the service of broadband access).

It was determined that HT did not discriminate alternative operators when providing the wholesale service and removing the failure and/or disturbance when compared to its retail part and did not systematically discriminate, endanger or put some operator/s to more a favourable position when compared to other operators that provide the wholesale services.

Also, based on the data on the number of requests for realisation of wholesale service submitted and number of pending requests, it was determined that, when compared with previous periods, HT's delays decreased significantly at the end of 2012 and in 2013.

Besides, the Agency found that HT concluded contracts with alternative operators that are fully in compliance with the competition rules. Therefore, it was concluded that there are no more indications for abuse of dominant position by HT and the Agency terminated the proceeding as there was no legal basis anymore.

CCA Inquiry into Interchange Fees in Card Payments in Croatia

The lowest interchange fee in Croatia is for transactions with Maestro cards and is 0.82 per cent on the average, whereas the highest average interchange rare of 1.45 percent is for Visa cards. Yet, when specific purchases cards are included (fuel cards, airline credit cards) the average interchange fee for Visa card transactions is 1.14 per cent. The average MasterCard interchange fee less special purchases cards (MasterCard World and MasterCard World Signia) is 0.97 percent, when these are included – 1.37 percent.

Croatia comparable to Slovenia

MIFs vary considerably in the EU Member States. The MIFs rate in Croatia is comparable to the one in Slovenia. However, compared with the more developed EU countries, for example, France, Italy, the Netherlands, the MIFs are comparatively high. On the other hand, these fees in Germany are distinctively higher for Visa debit card transactions, in Poland for all cards.

In principle, more developed EU Member States have comparatively low MIFs for debit card transactions – with a lower than 0.80 per cent rate, or less than 0.60 per cent rate for Visa cards. Yet, in Germany the fees for Visa debit card transactions are above average MIF rate.

Sample of nine banks

The above indicators come from the overview presented by the Croatian Competition Agency (CCA) with the objective to define the situation on the payment cards market with respect to the types and the amounts of fees (multilateral interchange fee, merchant service charge) that are paid in transactions where payment cards are used for non-cash payments in Croatia, their interdependence and, finally, considering the potential effects of these fees on competition. The Overview of the payment cards market is based on the data from a

sample of nine banks active on the territory of the Republic of Croatia, publicly available data of the Croatian National Bank, the European Commission, VISA and MasterCard.

Multilateral Interchange Fees (MIFs) are fees charged by a cardholder's bank (the 'issuing bank') to a merchant's bank (the 'acquiring bank') for each sales transaction made at a merchant outlet with a payment card. In payment schemes such as Visa and MasterCard, which are associations of banks, these fees are multilaterally agreed by member banks. MIF significantly defines the so called merchant service charge, the fee a merchant must pay to his bank for accepting the card as a means of payment.

Two types of payment schemes

The card schemes come in two main varieties. First, a more often four-party scheme where there are four parties: the issuing bank, the card user, the merchant and the acquiring bank. This scheme is both debit and credit, while the debit function is dominant.

Given the fact that MIFs are explicitly present in the four-party scheme, it appears that this scheme is also more likely to have effects on competition.

In a transaction within the four-party scheme the cardholder purchases goods or services on the basis of the credit or debit card payment, the issuing bank invoices the card holder but the amount which is increased by various fees that depend on the type of the card the cardholder uses.

At the same time the issuing bank, for and on behalf of the card user, makes the payment for the purchased goods or services by paying the acquiring bank the price deducted by the interchange fee. This actually means that the acquiring bank, with which the merchant has agreed on the basis of the contract to accept the card, pays the interchange fee to the issuing bank. Then, this acquiring bank pays the merchant the sales price less a 'merchant service charge' (MSC), the fee a merchant must pay to his bank for accepting the card as a means of payment (POS terminal fee).

Finally, both banks pay to the credit card institutions a fee for processing of the transaction, the membership fee, credit card fraud monitoring etc.

A three-party scheme consists of three main parties. In this card scheme model, the issuer and the acquirer is the same entity. These are primarily credit card schemes (in Croatia: Diners and American Express). In this scheme the cardholder purchases goods or services from the merchant, the bank invoices the cardholder the amount which is actually increased by other fees that must be paid by the user. At the same time the bank pays to the merchant the price less MCS. Since the same bank is both the issuer and the acquirer the interchange fee is not explicitly present. Finally, the bank pays to the card institution the fee for the processing of the transaction, for the membership etc.

In this model there are no charges between the issuer and the acquirer, there are only the cardholder fees i.e. fees that are paid by the owner of the card to the bank and MSCs that the merchant pays to the bank. Yet, MSCs that the banks charge the merchants are much higher than the charges they impose on the card users, in other words, consumers. Hence, even though they are not explicitly present, the interchange fees in this scheme are implicitly present on the account of the fact that one side is "overcharged".

Cardholder fees

Cardholder fees are actually fees or costs that card users must bear when they own a card. These are usually the issuance fee, annual fee, ATM withdrawal fees etc.

The analysis carried out by the CCA clearly indicates an upward trend in the payment card market in the Republic of Croatia. Despite the fact that from 2010 to 2013 the volume of payment cards in circulation has slightly fallen, their use rises. The volume of transactions has risen by 16 per cent from 2010 to 2013, the value of transactions by 8 percent in the same time period. The most transactions have been performed by debit cards, some 66 per cent annually, which corresponds to the rate showing the share of the debit cards in the overall volume of cards in circulation. Logically, the value of transactions carried out by debit cards holds the highest 75 per cent share annually on the average. When looking at the volume of transactions the debit cards are followed by the charge cards with the average annual share of 12 per cent, the revolving cards and the deferred debit cards with a 10 per cent share in the same report period.

In addition, it has been established that all banks do business with MasterCard and Visa, with one, or both of them. Consequently, they offer these cards. Besides that, Erste banka also offers Diners cards, whereas the acceptance of the Diners card complies with the above described three-party scheme where the MIF is not explicitly present. American Express cards offered by PBZ are based on the same three-party model.

MIF and MSC

A large part of the merchant service charge is determined by the interchange fee. The MIF is an important part of the total cost for card acceptance and ultimately contributes to the price of goods and services for final consumers. The MSC, on the other hand, directly affects the price of the goods and services in the merchants' offer.

It could be reasonably assumed that a reduction in MIFs would lead to lower MSCs, which would translate into lower prices of goods and services for card users. On the account of this assumption the European Commission intents to set the cap benchmark for MIF levels for credit and debit cards.

In April 2014 the European Parliament voted on the proposed Regulation of the Commission to cap the MIFs. The service or "interchange" fees that banks charge for processing

transactions under payment schemes, would be capped at 0.3 per cent of the transaction value for credit card transactions and 7 euro cents, or 0.2 per cent of the transaction value, for debit card ones.

The new caps would involve both commercial and consumer cards, and would apply to both cross-border and domestic transactions in the EU. However, the Member States would still be able to set lower MIF rates and to impose other possible restrictions on card institutions. The new rules would apply exclusively to four-party card schemes, whereas the three-party payment schemes would be subject to the new rules only where they would go beyond the threshold set by the Commission. The proposed Regulation on multilateral interchange fees for card-based payment transactions (MIF Regulation) is to be further considered at the European Parliament's plenary sessions and discussed between the Commission and the Member States before the adoption of the final text.

The proposed MIF Regulation

The above mentioned MIF Regulation proposed by the Commission regulating the cap MIF rate for Visa and MasterCard would reduce the average interchange fees in Croatia by some 80 per cent for Visa and some 70 per cent for MasterCard. The reduction in MIFs would presumably call for the reduction of MSCs.

Namely, in accordance with the collected data, the average MSCs are more than two times higher form the average MIFs. The proposed MIF Regulation would therefore after setting the cap rates for MIFs leave ample space for the banks to reduce the MSC rates and for the merchants to reduce the prices of goods and services.

Beside the negative effects they have on MSCs, the MIFs may have other restrictive effects on competition. The MIF appears to be a decision of an association of undertakings that may have the object and the effect of restricting competition by foreclosing the market concerned, by restricting competition between acquiring banks and inflating the cost of card acceptance, absence of competition between card schemes, inflated merchants' costs for accepting payment cards and ultimately increased consumer prices within the internal market etc.

The proposal is part of a legislative package within the EU payments framework and the aim is to create a single payments market in the EU to lower costs for users and enhance procompetitive effects in the EU.

Benefits for merchants and consumers in Croatia

The setting of the MIF caps would benefit retailers who would be then more open to accept cards and card payments. At the same time the new rules would promote wider use of card payments by the consumers, lead to reduction of prices for goods and services. Furthermore, the increase in the volume of the transactions made by payment cards and

cash management savings would at least partially compensate for the potential costs of the banks when setting the cap rates of these fees, whereas other savings could be the result of less ATM cash withdrawals. The regulation of cross-border transactions would benefit the retailers who would be able to look for cheaper acceptance services outside their domicile market and thereby promote competition between the domestic banks.

If adopted, the proposed MIF Regulation would also cover the fees and charges applicable in the Republic of Croatia and the positive, procompetitive effects of the new rules for MIFs announced by the Commission after its adoption would be also realized in its territory.

The Commission is presently conducting a study to measure merchants' costs of processing payments by card and by cash. The results will provide the basis for calculating a MIF benchmark and will be published during 2014. In this overview the data from the following banks have been used: Zagrebačka banka, Privredna banka Zagreb, Erste&Steiermärkische bank, Raiffeisenbank Austria, Hypo Alpe-Adria-Bank, Societe Generale – Splitska banka, Hrvatska poštanska banka, OTP banka Hrvatska and Podravska banka.

Opinion - Public Financing of Research Organizations

The Ministry of Science, Education and Sports asked the opinion of the Croatian Competition Agency (CCA) relating to the question whether public research organizations may freely provide consultancy services on the market, and whether by charging lower prices for their services they infringe competition rules. Given that public research organizations are partly financed from the State Budget and enter into business arrangements with other public administration authorities who are also financed from the State Budget, the ministry also sought explanation as to the compliance of this conduct with State aid rules.

The opinion of the CCA was based exclusively on the compliance of the above practices with competition rules, notwithstanding the issue of public interest and strategic goals stated by the ministry in its Strategy Plan for 2014 – 2016.

In its opinion the CCA pointed out the importance of the definition of undertaking, which is under the well-established competition case law an entity which engages in an economic activity, irrespective of its legal status and the way it is financed. Under the Competition Act undertakings are 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 but 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, organisations, copyright and related rights holders and similar who are active in the market. Competition rules also apply to undertakings which are entrusted pursuant to separate laws with the operation of services of general economic interest, or, which are by special or

exclusive rights granted to them allowed to undertake certain economic activities, insofar as the application of competition rules would not obstruct the performance of the particular tasks assigned to them by separate rules or measures and for the performance of which they have been established.

The status of research organizations is not only regulated by the Croatian laws defining the criteria for their establishment and their primary activity but also by the EU State aid rules, in this particular case the EU Framework for State aid for research and development and innovation in force.

The 'research organisation' means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer.

Consequently, where the same research organisation carries out activities of both economic and non-economic nature, the public funding of the non-economic activities will not fall under Article 107(1) of the Treaty if the two kinds of activities and their costs, funding and revenues can be clearly separated so that cross-subsidisation of the economic activity is effectively avoided. Evidence of due allocation of costs, funding and revenues can consist of annual financial statements of the relevant entity.

Generally, the following activities are considered as non-economic activities: first, the primary activities such as education for more and better skilled human resources, independent R&D for more knowledge and better understanding, including collaborative R&D where the research organisation or research infrastructure engages in effective collaboration, wide dissemination of research results on a non-exclusive and non-discriminatory basis, for example through teaching, open-access databases, open publications or open software, and second, knowledge transfer activities, where they are conducted either by the research organisation or research infrastructure with, or on behalf of other such entities, and where all profits from those activities are reinvested in the primary activities of the research organisation or research infrastructure.

On the other hand, where a research organisation or research infrastructure is used for both economic and non-economic activities, public funding falls under State aid rules only insofar as it covers costs linked to the economic activities. Where the research organisation or research infrastructure is used almost exclusively for a non-economic activity, its funding may fall outside State aid rules in its entirety, provided that the economic use remains purely ancillary, that is to say corresponds to an activity which

is directly related to and necessary for the operation of the research organisation or research infrastructure or intrinsically linked to its main non-economic use, and which is limited in scope.

However, where research organisations or research infrastructures are used to perform economic activities, such as renting out equipment or laboratories to undertakings, supplying services to undertakings or performing contract research, public funding of those economic activities will generally be considered State aid. These secondary activities which are considered economic or market activities are subject to application of competition and State aid rules on the account of the fact that in this part of its activities the research organisation is considered an undertaking.

Here it must be noted that not all forms of public financing or other financing constitute State aid. Even if the financing may be considered State aid under the existing State aid rules, it may be exempted from the general State aid ban under Article 107 (1) of the Treaty. For example, the Commission will not consider the research organisation or research infrastructure to be a beneficiary of State aid if it acts as a mere intermediary for passing on to the final recipients the totality of the public funding and any advantage acquired through such funding. Where a research organisation or research infrastructure is used to perform contract research or provide a research service to an undertaking, which typically specifies the terms and conditions of the contract, owns the results of the research activities and carries the risk of failure, no State aid will usually be passed to the undertaking if the research organisation or research infrastructure receive payment of an adequate remuneration for its services particularly where the research organisation or research infrastructure provides its research service or contract research at market price or where there is no market price, the research organisation or research infrastructure provides its research service or contract research at a price which reflects the full costs of the service and generally includes a margin established by reference to those commonly applied by undertakings active in the sector of the service concerned.

The question of whether and under which conditions undertakings obtain an advantage within the meaning of Article 107(1) of the Treaty in cases of contract research or research services provided by a research organisation or research infrastructure, as well as in cases of collaboration with a research organisation or research infrastructure must be answered in accordance with general State aid principles. To this purpose, it may in particular be necessary to assess whether the behaviour of the research organisation or research infrastructure can be imputed to the State.

If a project is carried out through collaboration between undertakings and research organisations, no indirect State aid is awarded to the participating undertakings through those entities due to favourable conditions of the collaboration if one of the

following conditions is fulfilled: the participating undertakings bear the full cost of the project, or the results of the collaboration which do not give rise to IPR may be widely disseminated and any IPR resulting from the activities of research organisations are fully allocated to those entities, or any IPR resulting from the project, as well as related access rights are allocated to the different collaboration partners in a manner which adequately reflects their work packages, contributions and respective interests, or the research organisations receive compensation equivalent to the market price for the IPR which result from their activities and are assigned to the participating undertakings, or to which participating undertakings are allocated access rights.

In order to avoid possible spillovers from public financing into market activities, which may consequently lead to price reduction for the services concerned on the market that are below the competitive price , it is necessary to introduce separate accounting for economic and non-economic activities, their costs and financing in order to demonstrate that no undue cross-subsidation would occur. In that context, in line with the European Commission case law, annual financial statements or other proper evidence of cost allocation, such as compulsory declarations by the beneficiaries revised by independent audits or full costing defined as the ability to identify and calculate all direct and indirect costs per activity and/or project that need to be considered in carrying out these activities. In other words, where research organisations carry out activities that are not a part of their primary non-economic activities, and compete in this part of their activities on the market with other undertakings whose goal is to make profit, they must fulfil the above cost separation criteria.

In reply to the other question of the ministry, the CCA stated that the activities carried out by public authorities inartistically form part of the prerogatives of official authority and when performed by the State they do not constitute economic activities. The same applies to State administration authorities and regional and local administrative units. Where these enter into agreements with research organisations they do so pursuing its primary, non-commercial goals, on the basis of objective and transparent criteria.

However, it is likely that research organisations that are funded from the public resources for the provision of their services will offer a lower price from the market price offered by undertakings in the market that are not publically financed. Therefore, where selecting the service provider with the lowest cost for the community, it is necessary to select the most economically advantageous offer in an open competitive tender procedure.

In order to avoid any distortion of competition, research organisations that are financed from the public resources and at the same time pursue economic activities in the market, should by means of separation of economic from non-economic activities and prevention of cross-subsidation ensure compliance with competition rules so as to prevent economic advantage and favourable position on the market in the form of State aid for the activities which cannot be considered primary and non-economic activities.

Opinion - Limitation of the number of taxi operators and vehicles in the town of Slavonski Brod

The Croatian Competition Agency (CCA) received on 15 December 2014 a request made by the Town of Slavonski Brod seeking opinion of the CCA whether the limitation of the taxi licences that are issued in Slavonski Brod contravenes the Competition Act (OG 79/09 and 80/13).

Pursuant to the decision of the Competition Council the CCA adopted the opinion in which it mainly stated that any legal or factual limitation of the number of undertakings performing a certain economic activity in the market (*numerus clausus*) is objectionable in the sense of competition rules.

Comment – Compliance of the provisions of the Law on Textbooks with competition rules

In Croatia, legal provisions on the prices of books are contained in the special Law on Textbooks for primary and secondary school. Following the request of the Book Publishers and Book Sellers Association of the Croatian Chamber of the Economy the CCA issued an expert opinion, particularly stating that the Law in question also contained provisions on the maximum price for school textbooks. Considering that product in question is very specific (textbooks for schools), the CCA concluded that the said provisions of the Law which determine maximum level of the prices for textbooks is not contrary to the Competition Act. Competition between publishers is not restricted by the mentioned provision, in other words, competition is possible below the highest level of the price determined by the Law, because each publisher has different costs of doing business and in relation to that, each publisher can determine a different price for a textbook. On the other hand, in the view of the CCA, the maximum level of the price for school textbooks protects the public interest in cases when the State under certain conditions finances or co-finances the supply of textbooks for certain categories of users. Maximum level of price also protects parents who can get school textbooks for their children for most affordable price.

For any further details please refer to the CCA web site:

http://www.aztn.hr/en/