

# COMPETITION ACT

*Consolidated text OG 79/09, 80/13*

## I GENERAL PROVISIONS

### Subject matter of the Act

#### Article 1

The Act lays down the competition rules and establishes the competition regime, regulates the powers, duties, internal organisation and proceedings carried out by the competent competition authority entrusted with the enforcement of this Act.

### Scope of application

#### Article 2

This Act shall apply to all forms of prevention, restriction or distortion of competition (hereinafter referred to as: distortion of competition) by undertakings within the territory of the Republic of Croatia or outside its territory, if such practices take effect in the territory of the Republic of Croatia.

### Application of EU acquis

#### Article 2a, OG 80/13

This Act shall also stipulate the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union, OJ C 115 of 9.5.2008; hereinafter referred to as: TFEU) to all forms of distortion of competition by undertakings which produce effects on trade between the Republic of Croatia and the EU Member States pursuant to 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, 4.1.2003; (hereinafter referred to as: Council Regulation (EC) No 1/2003), 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, 29.1.2004; (hereinafter referred to as: Council Regulation (EC) No 139/2004).

### Definition of undertaking

#### Article 3

(1) Undertakings within the meaning of this Act shall mean 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 an

economic activity. This Act shall also apply to state authorities and local and regional self-government units where they directly or indirectly participate in the market and all other natural or legal persons, such as associations, sports associations, institutions, copyright and related rights holders and similar, who are active in the market.

(2) The definition of an undertaking referred to under paragraph (1) of this Article shall apply to any persons who are engaged in a direct or indirect, permanent, temporary or single participation in the market, irrespective of their legal form or ownership structure, form of financing and intent or effect to make profit, notwithstanding their place of establishment or residence within the territory of the Republic of Croatia or outside its territory.

(3) This Act shall also apply to undertakings which are entrusted pursuant to separate laws with the operation of services of general economic interest, those having the character of a revenue-producing monopoly, or, which are by special or exclusive rights granted to them allowed to undertake certain economic activities, insofar as the application of this Act does not obstruct, in law or in fact, the performance of the particular tasks assigned to them by separate rules or measures and for the performance of which they have been established.

### **Controlled undertaking**

#### Article 4

(1) An undertaking shall be deemed to be controlled by another undertaking if the latter, directly or indirectly:

1. holds more than half of share capital or half of shares, or
2. may exercise more than half of voting rights, or
3. has the right to appoint more than half of the members of the management board, supervisory committee or similar administrative or managing body, or
4. in any other way exercises a decisive influence on the right to manage business operations of the undertaking.

(2) The undertakings referred to in paragraph (1) of this Article are considered to be a single economic entity.

### **Legal relations and undertakings not covered by this Act**

#### Article 5

This Act shall not apply to labour relations between employers and employees nor to the relations that are covered by collective agreements between employers and labour unions.

## **Enforcement authority**

### Article 6

The Croatian Competition Agency (hereinafter referred to as: Agency) shall be empowered for the enforcement of competition rules under this Act.

## **Relevant market**

### Article 7

(1) In the sense of this Act relevant market is defined as a market of certain goods and/or services which constitute the subject of the activities performed by an undertaking in a specific geographic territory.

(2) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices and intended use.

(3) A relevant geographic market covers the geographic area in which the undertakings concerned are involved in the demand or supply of goods and/or services.

(4) Upon the proposal of the Agency, the Government of the Republic of Croatia shall establish the criteria and methods of defining the relevant market.

## **II AGREEMENTS BETWEEN UNDERTAKINGS**

### **Prohibited agreements**

#### Article 8

(1) There shall be prohibited all agreements between two or more independent undertakings, decisions by associations of undertakings and concerted practices, which have as their object or effect the distortion of competition in the relevant market, and in particular those which:

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

(2) Within the meaning of paragraph (1) of this Article agreements particularly refer to

contracts, particular provisions thereof, implicit oral contracts or explicitly written arrangements between undertakings, concerted practices resulting from such arrangements, decisions by undertakings or associations of undertakings, general terms of business and other acts of undertakings which are or may constitute a part of these agreements and similar, notwithstanding the fact if these agreements are concluded between undertakings operating at the same level of the production or distribution chain (horizontal agreements) or between undertakings who do not operate at the same level of the production or distribution chain (vertical agreements).

(3) By way of derogation from paragraph (1) hereof, certain categories of agreements shall be granted exemption from general prohibition under paragraph (1) of this Article and consequently shall not be prohibited if they, throughout their duration, cumulatively comply with the following conditions:

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

(4) Agreements that distort competition within the meaning of paragraph (1) of this Article and which do not fulfil the conditions of paragraph (3) of this Article, and agreements to which Article 10 of this Act does not apply, shall be *ex lege* void.

(5) Undertakings – parties to the agreement bear the burden of proof relating to the conditions referred to under paragraph (3) of this Article.

### **Decision on a prohibited agreement**

Article 9, OG 80/13

(1) Pursuant to Article 8 paragraphs (1) and (4) of this Act or Article 101 TFEU the Agency shall by its decision:

1. establish the existence of a prohibited agreement, the parties to the agreement, the category of the agreement, the goods and/or services on which the agreement has or may have effect, the geographic market concerned, the duration of the agreement, the object of the agreement and the way of its implementation;
2. determine measures and deadlines for the removal of adverse effects of the prohibited agreement;

3. impose a fine for the infringement within the meaning of this Act.

### **Block exemption**

#### Article 10

(1) Block exemption regulations shall specify the conditions under which certain categories of agreements may be exempted from general prohibition as referred to in Article 8 paragraph (1) of this Act.

(2) Upon the proposal of the Agency, the Government of the Republic of Croatia shall stipulate the criteria for block exemption, in particular for:

1. agreements between undertakings not operating at the same level of production or distribution (vertical agreements), and in particular, exclusive distribution agreements, selective distribution agreements, exclusive purchase and franchising agreements;
2. agreements between undertakings operating at the same level of the production or distribution (horizontal agreements), and in particular, research and development and specialization agreements;
3. agreements on transfer of technology;
4. agreements on distribution and servicing of motor vehicles;
5. insurance agreements, and
6. agreements between undertakings in the transport sector.

(3) The block exemption regulations referred to in paragraph (1) of this Article shall in particular stipulate:

1. the provisions that such agreements must contain, and
2. the restrictions or conditions that such agreements may not contain.

(4) The Agency may initiate a proceeding to assess the compatibility of a particular agreement which has been granted block exemption, where it finds that the particular agreement, in itself or due to the cumulative effect with other similar agreements in the relevant market, does not comply with the conditions set out in Article 8 paragraph (3) of this Act. Should the Agency in the course of the proceeding find that the agreement concerned produces certain effects which contravene with the conditions set out in Article 8 paragraph (3) of this Act, it shall adopt a decision withdrawing the application of the block exemption with respect to the agreement concerned.

## Article 10a, OG 80/13

(1) Block exemption shall apply also to the agreements that produce effects on trade between the Republic of Croatia and the EU Member States that meet the conditions under Article 101 paragraph (3) TFEU and the relevant regulations of the European Commission or the Council of the European Union for block exemption granted to certain categories of agreements from the general ban of the agreements referred to under Article 101 paragraph (1) TFEU.

(2) Within the meaning of the Council Regulation (EC) No 1/2003 the Agency may adopt a decision withdrawing the benefit of block exemption referred to under paragraph (1) of this Article or make a decision on the basis of which the European Commission or the Council of the European Union block exemption regulations under which certain categories of agreements may be granted exemption from the general ban under Article 101 paragraph (1) TFEU shall not apply to a particular agreement producing effect on the territory of the Republic of Croatia or a part thereof that constitutes a distinct geographic market which is not compatible with Article 101 paragraph (3) TFEU.

(3) In the case referred to in paragraph (2) of this Article the decision of the Agency on the withdrawal of the benefit of block exemption shall not impose a fine but it shall set the time limit for the agreement in question to be brought in compliance with the conditions set under Article 101 paragraph (3) TFEU or where this is not possible it shall order the agreement in question to be made null and void.

### **Agreements of minor importance**

#### Article 11

(1) The provisions regarding the prohibited agreements under Article 8 paragraph (1) of this Act shall not apply to agreements of minor importance.

(2) Agreements of minor importance referred to under paragraph (1) of this Article are defined as agreements in which the parties to the agreement and the controlled undertakings have an insignificant common market share, provided that such agreements do not contain hard core restrictions of competition that, in spite of the insignificant market share of the parties to the agreement, lead to distortion of competition.

(3) The Government of the Republic of Croatia shall upon the proposal of the Agency determine the conditions with which agreements of minor importance must comply and the restrictions or provisions that such agreements may not contain.

(4) The Agency shall initiate a proceeding for the assessment of the compliance of any individual agreement with the conditions prescribed by the regulation referred to in paragraph (3) of this Article, if it establishes that the effects of the agreement in question and other

agreements in the relevant market significantly distort competition.

### **III DOMINANT POSITION AND RESTRICTIVE PRACTICES**

#### **Dominant position**

##### Article 12

(1) An undertaking can be presumed to be in a dominant position when, due to its market power, it can act in the relevant market to a considerable extent independently of its actual or potential competitors, consumers, buyers or suppliers and this is particularly the case where the undertaking:

1. has no significant competitors in the relevant market, and/or
2. holds a significant market power in the relevant market in relation to its actual or potential competitors, and particularly relating to the following:
  - its market share and a period of time in which this market position has been held, and/or,
  - its financial power, and/or,
  - access to sources of supply or to the market itself, and/or,
  - connected undertakings, and/or,
  - legal or factual barriers for other undertakings to enter the market, and/or,
  - the capability to dictate market conditions considering its supply or demand, and/or,
  - the capacity of foreclosure against competitors by redirecting them to other undertakings.

(2) Within the meaning of this Act the undertaking which holds more than 40% of the market share in the relevant market may hold a dominant position.

(3) Two or more legally independent undertakings may hold a joint dominant position if they act or behave jointly with respect to their competitors and/or suppliers and/or consumers in a particular market.

#### **Abuse of a dominant position**

##### Article 13

Any abuse by one or more undertakings of a dominant position in the relevant market shall be prohibited, particularly involving the behaviour which consists of:

1. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

2. limiting production, markets or technical development to the prejudice of consumers;
3. applying dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
4. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

### **Decision on abuse of a dominant position**

Article 14, OG 80/13

(1) Pursuant to Articles 12 and 13 of this Act or Article 102 TFEU the Agency shall issue a decision on abuse of a dominant position on the basis of which it shall:

1. establish abuse of a dominant position and specify practices of the undertaking abusing this position and consequently distorting competition, and define the duration of the abusive practices concerned;
2. order a cessation of any further abusive practices by the undertaking referred to in point 1 of this Article;
3. impose the measures, conditions and deadlines for the removal of adverse effects of such practices;
4. impose a fine for the infringement of the provisions under this Act.

(2) Within the meaning of paragraph (1) point 3 of this Article the Agency may also impose structural remedies and/or behavioural remedies. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy.

## **IV CONCENTRATION BETWEEN UNDERTAKINGS**

### **Concept of concentration**

Article 15, OG 80/13

(1) A concentration between undertakings shall be deemed to arise where a change of control on a lasting basis is created by:

1. acquisition or merger of two or more independent undertakings or parts thereof;
2. acquiring direct or indirect control or decisive influence of one or more undertakings over one or more other undertakings, or of one or more undertakings or a part of an undertaking, or parts of other undertakings, in particular by:
  - acquisition of the majority of shares or share capital, or



- obtaining the majority of voting rights, or
- in any other way in compliance with the provisions of the Companies Act and other rules.

(2) Acquisition of control within the meaning of paragraph (1) of this Article may be effected through the transfer of rights, contracts or by other means, by which one or more undertakings, either separately or jointly, taking into consideration all legal and factual circumstances, acquire the possibility to exercise decisive influence over one or more other undertakings on a lasting basis.

(3) The creation of a joint venture by two or more independent undertakings performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph (1) of this Article.

(4) The Government of the Republic of Croatia shall upon the proposal of the Agency regulate the notification rules and set the criteria for the assessment of compatibility of concentration.

(5) A concentration shall not be deemed to arise within the meaning of paragraphs (1) to (3) of this Article where:

1. credit institutions or other financial institutions or investment funds or insurance companies, the normal activities of which include transactions and dealing in securities on their own account or on the account of others, acquire or hold on a temporary basis (not longer than 12 months) securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking. The 12-month-period may be extended by the Agency upon request, where such undertakings can show that the disposal was not possible within the period set;
2. acquisition of shares or interest which is the result of internal structural changes in either the controlled or controlling undertaking (such as merger, acquisition, transfer of legal title etc.);
3. control over the undertaking is acquired by a trustee in bankruptcy, office-holder or administration officer according to the national Bankruptcy Act and the Companies Act or other legislation in effect.

(6) The creation of a joint venture by two or more independent undertakings performing on a lasting basis all the functions of an autonomous economic entity where such a joint venture has as its object or effect coordination of the competitive behaviour of the undertakings that remain independent shall constitute a concentration but such a

coordination shall be appraised within the meaning of the criteria referred to under Article 8 paragraphs (1) and (3) of this Act.

### **Prohibited concentration**

#### Article 16

A concentration of undertakings which would significantly impede competition in the market, in particular where such a concentration creates or strengthens a dominant position of the undertakings parties to the concentration shall be deemed incompatible and therefore prohibited.

### **Obligatory notification of a concentration**

#### Article 17, OG 80/13

(1) In order to assess the compatibility of a concentration within the meaning of this Act, the parties to the concentration are obliged to notify any proposed concentration to the Agency if the following criteria are cumulatively met:

1. the total turnover (consolidated aggregate annual turnover) of all the undertakings - parties to the concentration, realized by the sale of goods and/or services in the global market, amounts to at least HRK 1 billion in the financial year preceding the concentration in compliance with financial statements, where at least one of the parties to the concentration has its seat and/or subsidiary in the Republic of Croatia, and
2. the total turnover of each of at least two parties to the concentration realized in the national market of the Republic of Croatia, amounts to at least HRK 100,000,000 in the financial year preceding the concentration in compliance with financial statements.

(2) Where the parties to the concentration are unable to deliver financial statements for the financial year preceding the concentration at the time of the notification of concentration, the last year for which the parties to the concentration have concluded their financial statements shall be taken as the relevant year in the compatibility assessment procedure.

(3) The total annual turnover under paragraph (1) hereof shall be calculated by:

1. Adding together the respective turnovers of the following:

- the undertakings concerned;
- those undertakings in which the undertaking concerned, directly or indirectly owns more than half the shares or capital or business assets, or has the power to exercise more than half the voting rights, or has the power to appoint more than half the members of the management board or the supervisory committee or similar administrative or managing body,

or in any other way exercises a decisive influence on the right to manage business operations of the undertaking;

- those undertakings which have in the undertaking party to the concentration (acquiring or controlling undertaking) the rights or powers previously listed, and

- those undertakings in which undertakings referred to in line 3 of this point have the rights or powers listed in line 2 of this point.

2. Whereas no account shall be taken of the turnover:

- resulting from the sale of products or the provision of services between the companies within a group (turnover within the group).

(4) Where the concentration referred to under Article 15 paragraph (1) hereof consists of merger or acquisition of a part or parts of one or more undertakings, whether or not constituted as legal entities, the calculation of the turnover within the meaning of paragraph (1) of this Article shall include only the turnover relating to the parts of the undertakings which are the subject of the concentration.

(5) Two or more transactions within the meaning of paragraph (4) of this Article which take place within a two-year-period shall be considered to constitute one concentration, arising on the day of the last transaction.

(6) The Agency shall assess the compatibility of only those planned concentrations which are subject to obligatory notification as stipulated in paragraph (1) of this Article and of the concentrations for which the obligatory notification to the Agency has been provided under separate rules.

(7) By way of derogation from notification obligation, the parties to the concentration are not subject to obligatory notification of a proposed concentration to the Agency even if the criteria under paragraph (1) of this Article are cumulatively met, provided that obligatory notification of such a concentration to the European Commission has been regulated within the meaning of Council Regulation (EC) No 139/2004.

### **Total turnover for banks and other financial institutions**

#### Article 18

(1) In the assessment of compatibility of a concentration involving banks and other financial institutions, including insurance companies and re-insurance organizations as parties to the concentration, the total turnover referred to in Article 17 of this Act shall be calculated for this category of undertakings on the basis of the total turnover from their normal business operations in the financial year preceding the concentration.

(2) For banks and other institutions which provide financial services, after deduction of direct

taxes related to them, the sum of the following points of income shall be taken in the calculation of the total turnover referred to under paragraph (1) of this Article:

1. income from interest rates and similar income;
2. income from securities:
  - income from shares and other variable yield securities,
  - income from participating interests in economic entities,
  - income from shares in affiliated economic entities;
3. commissions receivable;
4. net profit on financial operations; and
5. other operating income.

(3) For insurance companies and companies that perform re-insurance activities the total turnover referred under paragraph (1) hereof shall be calculated as the value of gross premiums which includes amounts paid and received in relation to the insurance contracts issued by or on behalf of an insurance company, including also re-insurance premiums, after the deduction of taxes and parafiscal contributions charged by reference to amounts of individual premiums or in relation to total premium volume.

### **Prior notification of a concentration**

#### Article 19, OG 80/13

(1) Any proposed concentration between undertakings referred to in Article 15 of this Act shall be notified to the Agency by the parties to concentration subject to the criteria set out in Article 17 of this Act.

(2) In the case where control or decisive influence is acquired over a whole or parts of one or more undertakings by another undertaking, prior notification of a concentration shall be submitted by the controlling undertaking. In all other cases, all undertakings parties to the concentration shall agree on the submittal of one joint notification.

(3) The prior notification of a concentration shall be submitted to the Agency for assessment before the implementation of the concentration in question, following the conclusion of the contract on the basis of which control or decisive influence has been acquired over the undertaking or a part of the undertaking or following the publication of the public bid.

(4) By way of derogation from paragraph (3) of this Article, the parties to the concentration may submit a pre-notification of a concentration to the Agency even before the conclusion of the contract or the publication of the public bid, if they, *bona fide*, provide evidence of the planned conclusion of the contract or announce their intent to publish the public bid.

(5) The implementation of a notified concentration shall be permitted only after the expiry of the time period set under Article 22 paragraph (1) of this Act or on the day of the receipt of the final decision of the Agency on compatibility or conditional compatibility of the concentration within the meaning of Article 22 paragraph (7) points 1 and 2 of this Act.

(6) By way of derogation from paragraph (5) of this Article the Agency may, in particularly justified cases, upon the request of a party to the concentration, allow the implementation of particular actions relating to the implementation of the notified concentration before the expiry of the time period or before the receipt of the decision referred to in paragraph (5) of this Article. In deciding whether the request is justified, the Agency shall take into account all circumstances of the relevant case, particularly the nature and the gravity of the damages which might be posed on the parties to the concentration or on third parties, and the effects of the implementation of the concentration concerned on competition.

(7) Where the European Commission decides within the meaning of the Council Regulation (EC) No 139/2004 not to assess a concentration producing effect on trade between the EU Member States that, however, meets the conditions under Article 17 of this Act, in other words, that the assessment of the concentration concerned should be referred to the Agency, the parties to the concentration at issue shall notify the proposed concentration to the Agency within 30 days from the date of the receipt of the relevant decision of the European Commission.

### **Content of the notification of a concentration**

#### Article 20, OG 80/13

(1) In the supplement of the notification of a proposed concentration referred to in Article 19 of this Act the notifying party shall submit:

1. the original or a certified copy of the original document showing the legal basis of the concentration or a certified translation in the Croatian language, if the original text has originally not been written in Croatian;
2. annual financial statements of the parties to the concentration for the financial year preceding the concentration;
3. other documents and data as regulated under the provisions referred to in Article 15 paragraph (4) of this Act.

(2) Upon the request of the parties to the concentration, the Agency may in particularly justified cases revoke the obligation relating to the submittal of the documentation and data under paragraph (1) point 3 of this Article, where it finds that the information in question is not necessary for the assessment of the concentration concerned.

(3) The notifying party shall state in the notification if it is obligated to submit the request for

the appraisal of a concentration to another competent authority in charge of the assessment of concentrations outside the territory of the Republic of Croatia. If the notifying party has already submitted such a request, it shall provide the Agency with the decision of the relevant body, where the relevant decision has already been adopted.

(4) By way of derogation from paragraph (1) of this Article, a Short Form for the notification of a concentration may be used for the purpose of notifying a concentration to the Agency under a simplified procedure treatment. Such a Short Form or simplified assessment procedure may be used in particular where:

1. None of the parties to the concentration is engaged in the business activities in the same relevant product and geographic market so there is no horizontal overlap, or where none of the parties to the concentration is active in the market which is upstream or downstream of the market in which another party to the concentration is engaged so there is no vertical relationship between them;
2. Two or more of the parties to the concentration are engaged in the business activities in the same relevant product and geographic market, provided that their combined market share is lower than 15 %, and/or when one or more of the parties to the concentration is engaged in the business activities in the relevant product market which is upstream or downstream of the product market in which any party to the concentration is engaged, provided that their individual or a combined market share in either of the markets is 25 % or higher;
3. A party to the concentration acquires sole control over the undertaking over which it already has joint control; or
4. Two or more undertakings acquire control over a joint venture, where the joint venture has only negligible, actual or reasonably foreseeable activities in the Republic of Croatia.

(5) By way of derogation from paragraph (4) of this Article, the Agency may require the notifying party to submit a full form notification of a concentration within the meaning of paragraph (1) of this Article, where it finds that there are sufficient indications of anticompetitive effects of the concentration concerned and where consequently, no Short Form or simplified procedure treatment is applicable.

(6) The day on which the Agency has received all the data and documents referred to in paragraphs (1) and (3) of this Article, shall be considered as the day of the receipt of the complete notification of a concentration, and the Agency shall issue the acknowledgement of receipt to the notifying party. The acknowledgement of receipt shall also be issued in the case referred to under paragraph (2) of this Article.

## **Procedure for the assessment of compatibility of a concentration**

### Article 21

(1) The Agency shall initiate a compatibility assessment proceeding immediately upon the receipt of the complete notification referred to under Article 20 paragraph (6) of this Act.

(2) In the assessment of compatibility of a concentration the Agency shall take into account its effects on competition and possible barriers to entry, particularly where the proposed concentration creates or strengthens a dominant position of the undertaking concerned.

(3) In the course of the assessment of the effects of a concentration referred to in paragraph (2) thereof, the Agency shall in particular define as follows:

1. the structure of the relevant market, actual and potential future competitors in the relevant market within the territory of the Republic of Croatia or outside this territory, the supply and demand choice and structure in the relevant market and the related trends, costs, risks, economic, legal and other barriers to entry to or withdrawal from the market;
2. the position in the market and the market share, economic and financial power of the undertakings in the relevant market, the level of competitiveness and possible changes in the business operations of the parties to the concentration and alternative sources of supply for the customers resulting from the implementation of the concentration;
3. the effects of the concentration on other undertakings or consumers, such as: shorter distribution channels, the lowering of transportation, distribution and other costs, specializing in production, technological innovation, lower prices of goods and/or services and other benefits that are directly linked with the implementation of the concentration.

(4) Pursuant to Article 41 hereof the Agency is authorised to require from the notifying party any data and documents which it may find necessary for the establishment of the facts referred to under paragraph (3) of this Article. The notifying party or the parties to the concentration may submit to the Agency any additional data and documents which they find relevant for the assessment of the concentration concerned given that the burden of proof in terms of the positive effects of the concentration lies with the undertakings concerned.

(5) Following the receipt of a complete notification of the proposed concentration referred to under Article 20 paragraph (6) hereof, in compliance with Article 32 points 1 (a) and (b) hereof the Agency shall publish on its web site a request for information aimed at all interested parties who may respond to this request in writing, by submitting their observations and data relating to the concentration concerned, which would then provide the

Agency with explanations and better understanding of the players and the situation in the relevant markets concerned.

(6) The request for information under paragraph (5) hereof shall particularly contain the following:

1. the business activities performed by the parties to the concentration in the territory of the Republic of Croatia;
2. the markets in the Republic of Croatia that will be affected by the concentration concerned;
3. a request containing the invitation to all the undertakings that operate in the affected markets and the undertakings that perform their activities on other markets in which the proposed concentration may have effects (upstream, downstream, neighbouring markets), the professional organisations, the employers' associations, consumers' associations and other persons who are not parties to the proceeding or competing undertakings of the parties to the concentration, but who may be reasonably assumed to have knowledge about the situation in the relevant markets concerned, to submit their comments, observations and opinions about possible concrete significant effects that the concentration in question may produce on their operation as well as possible appreciable effects of the concentration concerned on competition in the markets concerned, and
4. the deadline for the submittal of the relevant comments, observations and opinions that may not be shorter than 8 or longer than 15 days.

(7) Should in the course of the proceeding for the assessment of a concentration, the Agency receive one or more new notifications of a concentration where control or decisive influence is acquired by one and the same undertaking, the Agency may decide to regard all the notifications as one concentration and conduct a joint assessment proceeding and take one decision if it finds this reasonable and efficient. In such a case the time limit for the assessment of a concentration referred to under Article 22 paragraphs (1) and (3) hereof shall begin to run on the day when the notifying party is issued the receipt confirming the complete notification of a concentration that was last notified to the Agency within the meaning of Article 20 paragraph (6) hereof.

### **Letter of comfort and decision on a concentration**

#### Article 22, OG 80/13

(1) Where the Agency, on the basis of valid data and documents submitted together with the prior notification of a concentration in accordance with Article 19 of hereof, or on the basis of other available information and findings, establishes that it can be reasonably assumed that



the proposed concentration is not prohibited within the meaning of Article 16 hereof, and unless it takes a procedural order on the initiation of the compatibility assessment proceeding within 30 days following the receipt of the complete notification of a concentration in accordance with Article 39 of this Act, the concentration shall be rendered compatible.

(2) In the case referred to in paragraph (1) of this Article the Agency shall without delay issue a letter of comfort to the notifying party indicating the compatibility of the concentration concerned. The comfort letter shall also be published on the website of the Agency.

(3) Where the Agency, based on the evidence submitted together with the prior notification of the proposed concentration in line with Article 19 hereof, or on the basis of other available information and findings establishes that the implementation of the concentration concerned could significantly impede effective competition in the relevant market, in particular as a result of the creation or strengthening of a dominant position of the undertaking concerned within the meaning of Article 16 of this Act, it shall take a procedural order on the initiation of the proceeding for the assessment of compatibility of the concentration concerned within the meaning of Article 39 hereof.

(4) Where in the course of the assessment proceeding the Agency finds that the concentration in question can be declared only conditionally compatible subject to necessary remedies, it shall without delay inform the notifying party thereof in line with Article 48 hereof. The notifying party shall then in the time period which may not exceed 30 days from the day of the receipt of this notice propose adequate commitments (whether behavioural and/or structural measures) and other remedies that would remove the negative effects of the concentration concerned.

(5) The commitments referred to in paragraph (4) hereof may be proposed by the notifying party as early as in the prior notification of the concentration itself.

(6) In the case referred to in paragraph (4) hereof the Agency may accept the commitments (conditions, obligations and deadlines) proposed by the parties to the concentration, in their entirety or parts thereof, if it establishes that the commitments concerned are adequate to eliminate the negative effects on competition of the concentration at issue. In the event that the Agency does not accept or just partly accepts the said commitments proposed by the parties to the concentration, it is empowered to define and impose other behavioural and/or structural measures, conditions, obligations and deadlines for the restoration of effective competition in the market.

(7) Within 3 months following the adoption of the procedural order on the initiation of the assessment proceeding referred to in paragraph (3) hereof, the Agency shall take one of the following decisions:

1. by which the concentration concerned is rendered compatible, or

2. by which the concentration concerned is declared conditionally compatible, provided that certain commitments are undertaken within the time limits set by the Agency, or
3. by which the concentration concerned is assessed as incompatible and therefore prohibited.

(8) In the case referred to under paragraph (7) point 2 hereof the parties to the concentration may pursue the activities relating to the implementation of the concentration concerned as of the day of the receipt of the decision by the Agency declaring the concentration conditionally compatible. In the event that the parties to the concentration fail to undertake the commitments specified by the decision of the Agency within the prescribed time limits, taking into account the reasons for non-compliance regarding the commitments concerned, the Agency shall then revoke or accordingly amend the decision on the basis of which it declared the concentration conditionally compatible within the meaning of Article 23 hereof.

(9) The time period referred to under paragraph (7) of this Article shall not run from the day of the receipt of the Statement of Objections referred to under Article 48 of this Act by the participants to the concentration to the day of the receipt by the Agency of the proposed commitments referred to in paragraph (4) hereof.

#### **Withdrawal or partial withdrawal of the decision on concentration**

##### Article 23, OG 80/13

(1) The Agency may, *ex officio* or upon request of a party to the concentration, withdraw the decision referred to in Article 22 of this Act where:

1. the decision has been made on the basis of incorrect or untrue information that has been essential for the decision making, and/or
2. any of the parties to the concentration has not complied with the commitments defined by the decision of the Agency.

(2) In the decision referred to under paragraph (1) hereof the Agency shall withdraw the prior decision and render the concentration incompatible and therefore prohibited within the meaning of Article 16 hereof, set remedies and deadlines necessary to restore effective competition and impose a fine in line with the provisions of this Act.

(3) Where the parties to the concentration cannot comply with one or more commitments or cannot observe the set deadlines owing to unpredictable circumstances beyond their control, the Agency may, *ex officio*, or upon request of a party to the concentration, make a decision partially withdrawing the decision referred to under Article 22 of this Act and at the same time set new remedies and deadlines aimed at restoring effective competition.

## **Measures following implementation of impermissible concentration**

### **Article 24**

(1) The Agency shall, *ex officio*, make a separate decision in which it shall set all necessary measures, whether behavioural or structural, aimed at restoring efficient competition in the relevant market and the deadlines for their implementation in the following cases:

1. where the concentration concerned has been implemented contrary to the decision of the Agency by which the concentration has been assessed as incompatible and therefore prohibited within the meaning of Article 22 paragraph (7) point 3 of this Act, or
2. where the concentration concerned has been implemented without the obligatory prior notification of a concentration in line with Article 19 of this Act.

(2) On the basis of a decision referred to in paragraph (1) hereof, the Agency may, in particular:

1. order for the shares or interest acquired to be transferred or divested;
2. prohibit or restrict the exercise of voting rights related to the shares or interest in the undertakings parties to the concentration and order the joint venture or any other form of control by which a prohibited concentration has been put into effect in the sense of Article 15 of this Act to be removed.

(3) The decision referred to in paragraph (1) of this Article may also contain the imposition of a fine prescribed under the provisions of this Act.

## **V EXPERT OPINIONS OF THE AGENCY**

### **Expert opinions**

### **Article 25**

(1) The Agency 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 this Act of draft proposals for laws and other legislation, as well as other related issues raising competition concerns.

(2) The central administration authorities or other state authorities may be requested to communicate to the Agency draft proposals for laws and other legislation for the purpose of assessment and issuing expert opinions on their compliance with this Act, if it finds that they may raise competition concerns.

(3) The Agency can issue expert opinions assessing the compliance of the existing laws and other legal acts with this Act, opinions promoting competition culture and enhancing

advocacy and raising awareness of competition law and policy and give opinions and comments relating to the development of the comparative practice and case law in the area of competition law and policy to the authorities referred to under paragraph (1) hereof.

## **VI COMPETITION AGENCY**

### **Legal status and organization of the Agency**

#### Article 26, OG 80/13

(1) The Agency is a legal person with public authority which as an independent entity autonomously performs the activities within its scope and powers regulated by this Act, the Council Regulation (EC) No 1/2003 relating to the application of Articles 101 and 102 TFEU and the Council Regulation (EC) No 139/2004.

(2) In carrying out its activities referred to in paragraph (1) of this Article the Agency shall cooperate with the European Commission and the national competition authorities of the EU Member States.

(3) For the performance of its activities the Agency is responsible to the Croatian Parliament.

(4) Any method form of influence on the work of the Agency which could impede its independence and autonomy shall be prohibited.

(5) The work of the Agency is public.

(6) The seat of the Agency is in Zagreb.

(7) The internal structure and operational activities of the Agency, its general acts and other important operational issues shall be regulated in detail by the Statute of the Agency which shall be ratified by the Croatian Parliament.

(8) With respect to the employment rights and duties the general provisions on labour shall apply to the employees of the Agency and the members of the Competition Council.

(9) The resources for the activities pursued by the Agency are provided from the state budget of the Republic of Croatia.

(10) The administrative fees and fines set and imposed by the Agency shall be contributed to the state budget of the Republic of Croatia.

### **Competition Council**

#### Article 27

(1) The Competition Council (hereinafter referred to as: Council) is the managing body of the Agency. The Council consists of five members, one of whom is the president of the Council.

(2) The president of the Competition Council represents and speaks for the Agency and manages its activities.

(3) In managing the Agency, the president of the Council organizes and runs the operational activities of the Agency, supervises and is responsible for its expert performance.

(4) The president and other members of the Council shall be appointed and relieved from duty by the Croatian Parliament on the proposal of the Government of the Republic of Croatia.

(5) The vice-president of the Council shall be elected on the proposal of the president of the Council by a majority vote of the members of the Council.

(6) The president and other members of the Council are employees of the Agency.

### **Terms of appointment and terms of office**

#### Article 28

(1) The president and the members of the Council may be appointed from any citizen of the Republic of Croatia who holds an undergraduate and graduate university degree or an integrated undergraduate or graduate university degree in legal or economic studies and has been conferred the adequate degree within the meaning of a separate law and has ten years of work experience in the professional field concerned.

(2) The president and the members of the Council shall in addition to the terms of appointment laid down under paragraph (1) hereof:

1. have the Bar Exam passed (if the person concerned is a lawyer), or
2. have a certification exam passed or hold a master of science degree or a doctor's degree (if the person concerned is an economist).

(3) The president and the members of the Council shall be appointed for a five-year-term of office with the possibility of reappointment.

(4) The president and the members of the Council shall perform their duties professionally.

(5) The president and the members of the Council may not be state officials, persons performing duty in any administrative body of a political party, members of management boards, supervisory boards or executive bodies of undertakings, or members of any kind of interest associations that could lead to a conflict of interest.

(6) The president and the members of the Council may write and publish research papers and participate in expert conferences, academic workshops and projects.

(7) The president and the members of the Council are obligated to behave in a manner to protect the reputation of the Agency and not to challenge its independence and autonomy in decision making.

## **Relief from office**

### Article 29

(1) At the proposal of the Government of the Republic of Croatia, the Croatian Parliament may relieve the president or any member of the Council from office before the end of the term:

1. at his/her own request;
2. if he/she is convicted of a criminal offence, which makes him/her unworthy to perform the duty of the president, i.e. the member of the Council;
3. if he/she permanently loses the ability to perform the duties confirmed to him/her;
4. if he/she, during his/her mandate, assumes any of the duties referred to in Article 28 paragraph (5) hereof;
5. if he/she, in performing his/her duty, violates the provisions of Article 28 hereof.

(2) On the existence of any reasons for relief from office of the president or any member of the Council before the end of the term, the Council shall notify the Government of the Republic of Croatia.

(3) Before the decision on relief from office is taken, the president or the member of the Council shall be given the opportunity to provide a written comment on the relief from office to the Croatian Parliament.

## **Activities of the Council**

### Article 30, OG 80/13

In carrying out its managing activities the Council shall in particular:

1. propose to the Government of the Republic of Croatia the adoption of the subordinate legislation pursuant to this Act;
2. make a decision on the basis of which the Agency initiates and carries out the infringement proceeding relating to the establishment of distortion of competition and the proceeding relating to the determination of the conditions necessary for the imposition of fines in respect of the infringements of competition rules under this Act and under Articles 101 or 102 TFEU, and make a decision on the basis of which the Agency resolves the administrative matter and decides on the remedies and deadlines necessary to restore effective competition and imposes a fine, respective deadlines and the manner of the execution of the fine;
3. make a decision on the basis of which the Agency suspends the proceeding where the European Commission or the competent national competition authority of the EU

Member State is dealing or has already dealt with the same case;

4. instruct the expert team to carry out the preliminary investigations in the relevant market,
5. take a decision on the basis of which the Agency makes a request to the High Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to conduct a surprise inspection of the business premises, land and means of transport, to examine all documents, records and objects relating to the business, to seal any business premises or records and to seize objects and documents which are subject to a surprise inspection referred to under Article 42 paragraph (1) and Article 44 hereof;
6. proactively promote activities relating to competition advocacy and raising awareness on the role and significance of competition law and policy;
7. issue opinions on the compliance of proposed draft laws and other legislation with this Act;
8. define methodological principles for competition studies and market investigation;
9. define rules of fair competition, measures to eliminate impediments to competition and other activities aimed at enhancing competition law and policy in the territory of the Republic of Croatia;
10. issue expert opinions and give comments on the decisions and the development of comparative practices in the area of competition law and policy;
11. upon 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 issue expert opinions about issues in the area of competition law and policy;
12. facilitate international cooperation relating to the fulfilment of the international commitments undertaken by the Republic of Croatia and given to the powers of the Agency, which particularly involves the obligation of close cooperation with the European Commission and the competent national competition authorities of the EU Member States within the European Competition Network and the commitments defined under the Council Regulation (EC) No 1/2003 and the Council Regulation (EC) No 139/2004, and cooperate with other international organisations and institutions in the area of competition;
13. adopt the annual report on the work of the Agency for the previous year that is submitted to the Croatian Parliament.

## **Decision making**

### Article 31

(1) The Council adopts all general and individual decisions in its sessions, with the consent of a majority of at least three votes, whereby no member of the Council may abstain.

(2) Three members of the Council shall constitute a quorum whereas the president of the Council must be present at any session. In the absence of the president the vice-president shall attend.

## **Expert team of the Agency**

### Article 32, OG 80/13

The expert team of the Agency shall perform administrative and expert activities relating to competition issues, in particular it shall:

1. carry out preliminary investigations in the relevant market with the view to defining sufficient indications of competition concerns on the basis of which it initiates the proceeding in the sense of Article 39 of this Act, and to that end it shall:
  - a) collect data and information from legal or natural persons, professional associations or economic interest groups, associations of undertakings, consumers associations, public administration authorities and local and regional self-government units which may have certain knowledge that can contribute to the investigation of the market and identifying market positions, regardless of the concrete cases handled by the Agency;
  - b) collect data and information from legal or natural persons, professional associations or economic interest groups, associations of undertakings, consumers associations, public administration authorities and local and regional self-government units which may have certain knowledge necessary for the definition of market position in particular markets, and before issuing a procedural order on initiation of the proceeding in a particular case, endeavour to restore effective competition in the relevant market, if this is in the public interest, and unless it involves significant distortion of competition;
2. propose to the Council the adoption of the decision on the initiation of the proceeding within the meaning of Article 39 of this Act;
3. report on the facts and circumstances on the basis of which the Council takes a decision pursuant to which the Agency makes a request to the High Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to conduct a surprise inspection of the business premises, land and means of transport, to examine all documents, records and objects relating to the business, to seal any



business premises or records and to seize objects and documents which are subject to a surprise inspection referred to under Article 42 paragraph (1) and Article 44 hereof;

4. inform the Council about any received request from the European Commission submitted pursuant to the Council Regulation (EC) No 1/2003 regarding the carrying out of a surprise inspection by the Agency in the territory of the Republic of Croatia with the purpose of establishing the infringement under Article 101 or 102 TFEU, or about any request of the European Commission on the Agency to afford necessary assistance in carrying out of these inspections and about any requests of the competent national competition authority of the EU Member State to the Agency to carry out a surprise inspection or any other investigation measure in the territory of the Republic of Croatia on its behalf, for the purpose of collecting evidence regarding the infringement of Article 101 or 102 TFEU;
5. carry out the infringement proceeding establishing distortion of competition and the proceeding in individual cases relating to imposition of fines, whereas after establishing all relevant facts and circumstances for decision making draw up a draft of the decision and report to the Council which then decides on the particular case within the meaning of the provisions of this Act or Article 101 or 102 TFEU;
6. draw up a draft of the decision on the basis of which the Agency suspends the proceeding where the European Commission or the competent national competition authority of the EU Member State is dealing or has already dealt with the same case;
7. draw up a draft opinion on the compliance of the proposed draft law and other legislation with this Act;
8. draw up a draft of by-laws and other provisions necessary for the implementation of this Act;
9. prepare draft documents with the view to raising awareness and understanding of competition law and policy and promotion of competition culture and champion competition;
10. identify and analyse market conditions with the purpose of further development of effective competition;
11. ensure international cooperation relating to the fulfilment of the international commitments undertaken by the Republic of Croatia and given to the powers of the Agency, which particularly involves close cooperation with the European Commission and the competent national competition authorities of the EU Member States within the European Competition Network and in line with the commitments under the Council Regulation (EC) No 1/2003 and the Council Regulation (EC) No 139/2004,

and cooperate with other international organisations and institutions in the area of competition;

12. draft the annual report of the activities of the Agency.

### **Conflict of interest**

#### Article 33

(1) The persons employed in the Agency may not be members of management or supervisory boards, or boards of undertakings, members of any other interest associations that could impede their impartiality in carrying out the proceedings falling under the authority of the Agency.

(2) By way of derogation from paragraph (1) of this Article, it is allowed to be a member of and to participate in research associations and projects, provided that this does not affect the impartiality in conducting the proceedings.

### **Annual report**

#### Article 34

The Agency shall once a year submit to the Croatian Parliament the annual report on the activities of the Agency in the preceding year.

## **VII PROCEEDINGS CARRIED OUT BY AGENCY**

### **Application of the provisions in the proceedings carried out by the Agency**

#### Article 35, OG 80/13

(1) In the proceedings falling under the scope of the Agency a general administrative procedure law shall apply.

(2) Unless otherwise provided by this Act, the provisions of the Law on Minor Offences shall accordingly apply to the form and content of the notice of hearing, the conduct of the main hearing, the attendance of the parties and third persons at the main hearing and the minutes of the main hearing.

(3) The employees of the expert team of the Agency – graduated lawyers who have passed their Bar Exam shall be case handlers in the proceedings carried out by the Agency under paragraph (1) of this Article, whereas the decisions in the cases concerned shall be adopted by the Council within the meaning of Article 30 point 2 of this Act.

(4) The proceeding relating to the setting of the criteria for the imposition of a fine and the imposition of the fine as referred to under Article 52 and Articles 60 to 65 hereof shall be carried out by the employees of the Agency who have at least four years of professional service after having passed their Bar Exam.

## **Parties to the proceeding**

Article 36, OG 80/13

(1) Undertakings against which the proceeding is being carried out by the Agency and undertakings parties to the concentration shall have the status of a party to the proceeding.

(2) A person upon whose initiative the proceeding has been initiated as referred to under Article 37 of this Act shall not hold the status of a party to the proceeding.

(3) A person that does not have the status of a party to the proceeding but that claims that its rights or legal interests are decided upon in the proceeding carried out by the Agency may request, in writing, the same procedural rights that are enjoyed by the person upon whose initiative the proceeding has been initiated as referred to under Article 37 of this Act provided that such legal interest has been proved legitimate.

(4) The Agency shall decide about the request referred to under paragraph (3) hereof within 30 days from its receipt in a separate decision. Against this decision of the Agency no appeal is allowed but the party may take action against the decision of the Agency by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia.

## **Infringement proceeding**

### **Initiative for initiation of the proceeding**

Article 37, OG 80/13

(1) The initiative for the initiation of the proceeding falling under the scope of the Agency, in other words, a request, a proposal, a notice or a complaint – may be submitted in writing by any legal or natural person, professional association or economic interest group or association of undertakings, consumers association, the Government of the Republic of Croatia, central administration authorities and local and regional self-government units.

(2) The initiative referred to under paragraph (1) of this Article shall contain:

1. the name and the seat of the legal person concerned, i.e. the name, surname and address of the natural person filing the initiative;
2. relevant data on the basis of which it may be clearly and undoubtedly established against whom the initiative is made;
3. facts of the case, practice or circumstances which explain the initiative;
4. relevant data and documents and other evidence at the disposal of the person who is filing the initiative substantiating the allegations referred to in point 3 of this paragraph.

(3) If the initiative referred to in paragraph (1) of this Article contains any data which, in the opinion of the person who is filing the initiative (hereinafter referred to as: complainant), are considered confidential, it shall specify it as such and indicate the legal basis thereof.

(4) The complainant may by means of a written request ask the Agency to communicate to it a short form of the Statement of Objections referred to in Article 48 of this Act and ask to be heard as a witness to the proceeding. In the latter case the Agency shall comply with the request of the complainant.

(5) The complainant may ask the Agency to protect its identity and the Agency shall comply with its request provided that it is based on a justified reason. In this case the complainant shall not enjoy the rights provided by paragraph (4) of this Article.

### **Initiation of the proceeding**

#### Article 38, OG 80/13

(1) The Agency shall act *ex officio* where it initiates the infringement proceeding concerning the establishment of a prohibited agreement referred to in Article 8 of this Act and the proceeding concerning the establishment of a prohibited agreement referred to in Article 101 TFEU, the proceeding for the assessment of an agreement as referred to in Article 10 paragraph (4), Article 10.a and Article 11 paragraph (4) of this Act and the proceeding for the establishment of abuse of a dominant position referred to under Article 13 of this Act and the proceeding for the establishment of abuse of a dominant position referred to under Article 102 TFEU.

(2) The proceeding relating to the assessment of compatibility of a concentration shall be initiated, as a rule, acting on the notification of the parties to the concentration within the meaning of Article 19 of this Act. However, the Agency may act on its own initiative where the parties to the concentration fail to notify the concentration within the meaning of Article 17 of this Act, in case of a withdrawal or a partial withdrawal of the decision on concentration in line with Article 23 of this Act and where it imposes necessary measures after the implementation of an impermissible concentration as referred to under Article 24 of this Act.

(3) The proceedings referred to in paragraphs (1) and (2) of this Article shall be considered initiated on the day on which the procedural order on the initiation of the proceeding referred to in Article 39 of this Act has been taken.

(4) If the Agency finds that the behaviour indicated in the initiative for the initiation of the proceeding referred to under Article 37 hereof does not significantly distort competition in the relevant market, the Agency shall adopt a decision stating that there is no public interest for the initiation of the proceeding and inform the complainant thereof.

(5) If, on the basis of the received initiative referred to under Article 37 of this Act and after

having carried out the preliminary investigation of the relevant market within the meaning of Article 32 point 1 a) and b) hereof, the Agency finds that there is no legal basis for the initiation of the proceeding within the meaning of this Act, it shall at the latest within 6 months from the day of the receipt of the initiative for the initiation of the proceeding issue a decision thereof and communicate it to the complainant referred to under Article 37 of this Act.

(6) Where, on the basis of the initiative under Article 37 of this Act, during the course of the preliminary investigation of the relevant market within the meaning of Article 32 point 1 lines a) and b) of this Act, and with the view to establishing sufficient circumstantial evidence for the initiation of the proceeding relating to distortion of competition pursuant to Article 101 or 102 TFEU, the Agency finds that there is no effect on trade between the EU Member States, it shall adopt a decision establishing that there are no grounds for the opening of the proceeding within a time period that shall not exceed six months from the receipt of the initiative for the initiation of the proceeding and it shall communicate the decision concerned to the complainant.

(7) The Agency shall adopt a decision establishing that there are no grounds for opening of the proceeding also in the case where the European Commission or any other competent national competition authority of the EU Member State is carrying out the proceeding in the same case or where the European Commission or any competent national competition authority of the EU Member State has already made a decision in the same case.

(8) No appeal is allowed against the decisions referred to in paragraphs (4), (5), (6) and (7) of this Article but one may take action against the decision of the Agency by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia.

(9) The decisions of the Agency referred to under paragraphs (4), (5), (6) and (7) hereof shall clearly state the reasons for the absence of public interest or lack of standing to act, whereas the Agency is not obligated to provide comments or explanations in respect of individual proposals of the complainant.

### **Procedural order on institution of the proceeding**

#### Article 39, OG 80/13

(1) A procedural order on the institution of the proceeding within the meaning of the provisions of this Act and Article 101 or 102 TFEU shall in particular contain:

1. the reference to the case concerned;
2. the provisions of this Act and Article 101 or 102 TFEU pursuant to which the proceeding is being initiated;
3. the facts of the case, practices or circumstances which led to the initiation of the proceeding;

4. the request for the submittal of the relevant data and documentation in the sense of Article 41 hereof.

(2) Against the procedural order on the initiation of the proceeding referred to in paragraph (1) hereof no appeal is allowed and no administrative dispute can be filed at the High Administrative Court of the Republic of Croatia.

#### Article 40, OG 80/13

(1) A copy of the procedural order on the institution of the proceeding referred to in Article 39 hereof shall be delivered by the Agency to the party against which the proceeding has been initiated or the notifying party in the case of a concentration, freed from the data which are covered by the obligation of business secrecy within the meaning of Article 53 hereof.

(2) The party against which the proceeding has been initiated shall respond within a time period set by the Agency in each particular case. However, this time period may not be shorter than 8 days or longer than 30 days.

(3) The party against which the proceeding has been initiated shall respond to the Agency within the prescribed time period. The statement of the party shall also contain other data and documentation in respect of the relevant case.

(4) By way of derogation from paragraphs (2) and (3) hereof the party against which the proceeding has been initiated may, based on a justified reason, ask for the extension of the prescribed deadline. The Agency may allow a further extension to the deadline which cannot exceed 30 days.

(5) If the party against which the proceeding has been initiated does not act in accordance with the request and within the deadlines set by the Agency, or if it declares that it is not able to act in compliance with the request in question, the Agency shall establish the facts and circumstances of the case on its own initiative, based on its own findings, available data and documentation and shall without delay communicate to the party against which the proceeding has been initiated the Statement of Objections referred to in Article 48 hereof and set the oral hearing.

(6) Where the proceeding has been initiated on the basis of the initiative referred to under Article 37 of this Act the complainant will not be submitted the procedural order referred to under Article 39 hereof. Instead, the Agency shall inform the complainant about the initiation of the proceeding in a letter.

(7) Where the proceeding has been initiated applying Article 101 or Article 102 TFEU the Agency shall pursuant to the Council Regulation (EC) No 1/2003 inform thereof the European Commission and where necessary the competent national competition authority of the EU Member State without delay, at the latest after the first procedural step has been

taken in the proceeding concerned.

### **Collection of data**

Article 41, OG 80/13

(1) For the purposes of application of this Act and Article 101 or 102 TFEU the Agency is empowered to:

1. request from the party to the proceeding or other legal or natural persons, professional associations or economic interest groups or associations of undertakings, consumers associations, public administration authorities and local regional self-government units to submit all necessary information in writing, or to make written or oral statements or otherwise make available all relevant data and documentation;
2. request from the party to the proceeding to ensure direct inspection of all business premises, all immovable and movable assets, business books, data bases and other documentation;
3. request from the party to the proceeding to undertake other activities which the Agency finds necessary in order to establish the facts of the case.

(2) The request referred to in paragraph (1) hereof shall contain the legal basis, the subject and the purpose of the request, the time limit for the response and the penalty clause within the meaning of this Act in case the request in question should be disobeyed by the party to the proceeding or other legal or natural persons referred to under paragraph (1) hereof.

(3) Where the party to the proceeding or any other legal or natural person referred to in paragraph (1) hereof fails to act in compliance with the request of the Agency, the Agency shall adopt a procedural order on the initiation of the proceeding for setting the criteria for the imposition of a fine, it shall communicate a Statement of Objections and a notice of hearing to the party concerned, after which it shall adopt a decision establishing whether an infringement of this Act has been committed and if so, impose a fine provided for the infringement concerned in compliance with this Act. Against this decision no appeal is allowed but one may take action against the decision of the Agency by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia.

(4) Where the data and documentation referred to in paragraph (1) hereof are covered by the obligation of secrecy, the party to the proceeding and other legal and natural persons referred to under paragraph (1) of this Article shall identify information that is considered confidential and provide necessary argumentation.

(5) In the case referred to in paragraph (4) of this Article the party to the proceeding and legal and natural persons referred to in paragraph (1) of this Article shall also submit to the Agency

a copy of business documentation which does not contain business secrets. Where they just indicate the data which they find to be covered by the obligation of business secrecy and fail to provide a consolidated version of the text and/or business documentation containing no business secrets, the Agency shall send the reminder to the person/s concerned to submit the documentation at issue freed of business secrets. If the party to the proceeding or any legal or natural person referred to under paragraph (1) hereof does not act in compliance with the reminder of the Agency, it shall be assumed that the writing and/or business documentation concerned does not contain data which are covered by the obligation of business secrecy.

(6) If the party to the proceeding or any other legal or natural person referred to in paragraph (1) of this Article does not submit the data and documentation referred to in paragraph (1) of this Article, in the assessment of the facts of the case the Agency shall take into account the significance of non-compliance with its request and accordingly establish the relevant facts.

**Surprise inspection of business premises, other premises, land and means of transport, affixation of seals and temporary seizure of objects**

Article 42, OG 80/13

(1) Prior to the conduct of a surprise inspection of the business premises, land and means of transport, the Agency shall make a request to the High Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to conduct a surprise inspection of the business premises, land and means of transport, to examine all documents, records and objects found there, and to seal any business premises or records and to seize objects, particularly if it can be reasonably suspected that the evidence necessary for the establishment of distortion of competition within the meaning of Article 8 or 13 of this Act or Article 101 or 102 TFEU is being kept on these premises or in possession of a certain person and there is a reasonable suspicion that it may be destroyed or concealed. Within the meaning of the Council Regulation (EC) No 1/2003 the Agency shall submit such a request to the High Administrative Court of the Republic of Croatia also following the request of the European Commission or a competent national competition authority of the EU Member State.

(2) The High Administrative Court of the Republic of Croatia shall:

1. within two days from the receipt of the request of the Agency referred to in paragraph (1) of this Article decide on issuing a warrant for the conduct of a surprise inspection, whereas
2. a warrant to carry out a surprise inspection must contain:
  - the reference to the subject of the surprise inspection referred to in paragraph (1) of this Article and Article 44 of this Act,



- the legal basis for the conduct of the surprise inspection,
- the names of the authorised persons from the Agency and other accompanying authorised persons who will carry out the inspection,
- the deadline for the conduct of the surprise inspection.

(3) Within the meaning of the Council Regulation (EC) No 1/2003 the Agency shall afford the European Commission the necessary assistance regarding the preparation for and the conduct of the surprise inspection in the territory of the Republic of Croatia. The Agency may authorise other officials from the competent national competition authority from other EU Member States to take part in the surprise inspection in the territory of the Republic of Croatia or it may carry out the surprise inspection on behalf of the authority concerned.

(4) The authorised persons of the Agency on their own or with the assistance of the law enforcement authorities (hereinafter referred to as: authorised persons) or the authorised persons referred to in paragraph (3) of this Article may conduct a surprise inspection referred to in paragraph (1) of this Article, on which the party or the proprietor of the premises and objects shall be informed on the spot at the moment of the conduct of the surprise inspection. Where in carrying out of the surprise inspection referred to in paragraph (1) of this Article physical resistance or threats and implementation of coercive measures may be expected, or where the assistance of an expert witness or other expert assistance might be sought, the authorised persons of the law enforcement authorities shall afford adequate assistance to the authorised persons of the Agency, the European Commission or the competent national competition authority of the EU Member State in carrying out the surprise inspection.

(5) The authorised persons of the Agency shall exercise their powers of surprise inspection as referred to under paragraph (2) of this Article upon production to the party to the proceeding or the proprietor of the premises and objects the identity card and the warrant to carry out a surprise inspection issued by the High Administrative Court of the Republic of Croatia. The form and content of the identity card used by the authorised persons shall be laid down by the Agency's Ordinance regulating the identity card. Where other authorised persons referred to under paragraph (2) of this Article also conduct the inspection they shall produce to the party to the proceeding or the proprietor of the premises the written authorisation to participate in the inspection certified by the Agency.

(6) The authorised persons to conduct a surprise inspection referred to under paragraph (2) hereof are empowered:

1. to enter and inspect any business premises, land and means of transport (hereinafter referred to as: premises) at the seat of the undertaking against which the procedure is being carried out as well as in any other location where the undertaking concerned performs its business activities;

2. to examine the books and other records related to the business of the undertaking concerned, irrespective of the medium on which they are stored, such as computers, servers, telephone devices;
3. to take and/or obtain in any form the copies of or extracts from such books, documents or records, irrespective of the medium on which they are stored;
4. to seize the necessary documentation and to retain it as long as it takes to make photocopies where due to technical reasons it is not possible to make photocopies of the documentation concerned during the inspection. The authorised person shall make an administrative note thereof;
5. to seal any premises and/or books or records for the period and to the extent necessary for the inspection;
6. to ask any representative or member of staff of the undertaking for explanations on the facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;
7. to ask any representative or member of staff of the undertaking to submit a written statement on the facts or documents relating to the subject-matter and purpose of the inspection and set the deadline in which this statement should be submitted;
8. to perform any other actions in accordance with the purpose of the inspection.

(7) Where during the conduct of a surprise inspection referred to under paragraph (2) of this Article any objects, books or other documentation are temporarily seized, the Agency shall make an administrative note thereof particularly specifying the place where the objects concerned have been found accompanied with the description thereof. The authorised person of the Agency shall without delay issue a certificate on the temporary seizure of objects and documentation concerned to the party to the proceeding or the proprietor of the objects. The objects, books and documentation which have been temporarily seized shall be retained as long as the facts and circumstances contained in the evidence concerned have been established. However, this period may not be extended after the day on which the Agency closes the proceeding in the case concerned.

(8) Articles 42 to 46 of this Act shall apply accordingly to surprise inspections which the Agency is obliged to conduct in the undertakings or association of undertakings in the territory of the Republic of Croatia upon the request of the European Commission in compliance with its powers concerning the implementation of the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings which affect trade between the EU Member States.

#### Article 42a, OG 80/13

Where in the course of the conduct of the surprise inspection referred to in Articles 42 and 44 of this Act objects are found which indicate that a criminal offence has been committed which is *ex officio* prosecuted, the authorised persons of the law enforcement authorities shall describe the objects concerned in a separate police report and temporarily seize them, whereas a certificate on the seizure of this objects shall be issued on the spot. The authorised persons shall immediately report the case to the state attorney.

#### Article 43, OG 80/13

(1) Where the undertaking denies entry to the premises to the authorised persons, obstructs the examination of business books and other documentation, or in any other way hinders or resists the surprise inspection of the premises, the authorised persons may with the assistance of law enforcement authorities enter the business premises in spite of the opposition on the part of the undertaking and conduct their inspection of the books and other documentation.

(2) The representatives of the undertaking or the employees of the undertaking shall cooperate with the authorised persons referred to in Article 42 paragraphs (3) and (4) of this Act in charge of the conduct of the surprise inspection referred to in Articles 42 and 44 of this Act.

(3) Upon the request of the authorised persons of the Agency, a person using a computer or having access to the computer or other data storage or media, shall ensure free access to the computer or data storage or media, and provide all necessary information relating to their undisturbed use.

#### Article 44, OG 80/13

(1) If a reasonable suspicion exists that books and/or other records related to the proceeding carried out by the Agency pursuant to Article 8 or Article 13 of this Act or Article 101 or 102 TFEU, are being kept in any other premises of the undertakings against no proceedings have been initiated, or in the homes or other rooms of the same, similar or related purpose of directors, managers and other members of staff of the undertakings against which the proceeding has been initiated or other persons, the surprise inspection shall be conducted in the presence of two adult witnesses.

(2) The provisions of Articles 42, 43, 45 and 46 of this Act accordingly apply to surprise inspections referred to in paragraph (1) hereof.

#### Article 45, OG 80/13

(1) The conduct of a surprise inspection shall not extend to correspondence, notices and other communication which is considered confidential information between the undertaking

against which the proceeding is carried out and its attorney, who is obliged to keep their communication covered by the obligation of professional secrecy pursuant to special rules.

(2) Where the undertaking or its attorney refuse the access to file and documentation pleading confidential or privileged information as referred to under paragraph (1) of this Article, the authorised person of the Agency has the right of access to the files concerned. Should in the view of the authorised person of the Agency the information concerned not be regarded as confidential or privileged in the sense of paragraph (1) of this Article, the authorised person of the Agency shall in the presence of the undertaking and its attorney, if the latter is present, file the document concerned or its photocopy in a separate envelope, properly dated and sealed by the Agency and signed by all the parties and attorney concerned.

(3) In the case referred to under paragraph (2) of this Article in deciding over the preliminary issue the provisions of the General Administrative Procedure Act shall accordingly apply.

#### Article 46

(1) After the surprise inspection referred to in Articles 42 and 44 of this Act has been carried out, and within fifteen days at the latest, the authorised person shall prepare the inspection report.

(2) The inspection report under paragraph (1) of this Act shall particularly contain:

1. the date and place of making the inspection report;
2. the class number under which the case is registered and the legal basis for the conduct of the surprise inspection;
3. the place and the time of the surprise inspection;
4. the names of the authorised persons who conducted the inspection, the parties who were present during the inspection and their attorneys and third parties;
5. the description of the course and content of the inspection steps and the list of statements given during the inspection;
6. the list of documents and other objects used and/or temporarily seized during the surprise inspection.

(3) The inspection report referred to in paragraph (1) hereof shall be communicated to the parties to the proceeding and to the persons who were subject to the inspection.

(4) The parties to the proceeding and persons who were subject to the inspection can provide their written comments on the inspection report referred to under paragraph (1) of this Article within fifteen days from the day of the receipt of the inspection report.

## **Right of access to files**

### Article 47, OG 80/13

(1) The parties to the proceeding have the right of access to case files after they have received the Statement of Objections referred to in Article 48 of this Act. The Agency shall make a photocopy of the file or of single documents at the expense of the party concerned.

(2) The request for access to files referred to in paragraph (1) hereof shall be submitted to the Agency in writing.

(3) The Agency shall set the time for the inspection of the file not later than within fifteen days following the receipt of the request referred to in paragraph (2) hereof.

(4) By way of derogation from paragraphs (1) and (2) hereof, draft decisions of the Agency, official statements, protocols and typescripts from the sessions of the Council, internal instructions and notes on the case, correspondence between the Agency and the European Commission, between the Agency and other international competition authorities and their networks and other documents which are covered by the obligation of business secrecy in the sense of Article 53 of this Act, may neither be inspected nor copied.

(5) The complainant and the persons who, based on the separate decision of the Agency, have been granted the same procedural rights which are enjoyed by the complainant, shall enjoy the right of access to the documents which served as a basis for the decision making of the Agency after the receipt of the decision referred to in Article 38 of this Act stating the reasons on the basis of which there has been no public interest or no grounds for the initiation of the proceeding, or after the receipt of the decision of the Agency establishing no infringement of competition rules within the meaning of the provisions of this Act (Article 58 paragraph (1) point 13) or after the receipt of the decision on termination of the proceeding. Where this is the case, the provisions of paragraph (2) and (4) of this Article also refer to their right of access to file. The Agency shall set the time of access to file without delay, but not later than eight days from the receipt of the written request.

(6) By way of derogation from paragraph (5) of this Article, the persons referred to under Article 36 paragraphs (2) and (3) hereof may not exercise the right of access to files as long as the proceeding is carried out by the Agency. However, they can be submitted the short form of the Statement of Objections referred to under Article 48 of this Act, provided they have requested the submittal of this document in writing.

(7) The Agency shall deny access to file pursuant to a decision.

## **Statement of Objections**

### Article 48, OG 80/13

(1) The parties to the proceeding referred to under Article 36 paragraph (1) of this Act shall

be informed by the Agency in writing of the preliminary established facts in the Statement of Objections in order to ensure the relevant parties to express their views on all relevant facts and circumstances of the case before the oral hearing is set.

(2) The parties to the proceeding can submit their written replies relating to the Statement of Objections referred to in paragraph (1) hereof within one month from the receipt of the Statement of Objection.

(3) In their written replies referred to in paragraph (2) of this Article the parties to the proceeding can also propose that the Agency should hear other witnesses and present additional evidence.

(4) A copy of the short form Statement of Objections referred to in paragraph (1) of this Article which does not contain data which are covered by the obligation of business secrecy can be submitted upon request to the complainant referred to in Article 37 paragraph (1) of this Act. The Agency shall set a time limit of one month from the receipt of the short form of the Statement of Objections by the complainant to submit its views to the Agency in a written reply to the Statement of Objections.

(5) A copy of the short form Statement of Objections referred to in paragraph (1) of this Article which does not contain data which are covered by the obligation of business secrecy shall be communicated upon request to any person whose right or legal interest has been acknowledged by the Agency pursuant to a separate decision, in other words, ensuring this person the same rights in the proceeding that are enjoyed by the complainant, instructing the person concerned that it is entrusted to inform the Agency of its observations in a written reply to the Statement of Objections within a time limit of one month from the day of its receipt.

(6) If after the adoption of the Statement of Objections referred to in paragraph (1) of this Article the Agency carries out new analyses and establishes new facts or examines evidence which significantly change the facts of the case that had originally been established, it is empowered to take a decision which is different from the views established in the Statement of Objections referred to in paragraph (1) hereof. In this event, the Agency shall, prior to taking its decision resolving the administrative matter, submit to the parties to the proceeding a new Statement of Objections which shall contain new established facts and circumstances or drawn conclusions. The parties to the proceeding are again granted the right to send their written replies to the new Statement of Objections in the time period set by the Agency. The Agency shall act accordingly also in respect of the persons referred to under paragraphs (4) and (5) of this Article that shall be submitted a new short form Statement of Objections.

(7) The Agency shall not base its decisions on the facts and circumstances in respect of which the parties to the proceeding have not been granted right of defence.

## Commitments

### Article 49, OG 80/13

(1) Following the initiation of the proceeding in line with Article 39 of this Act and at the latest before the Statement of Objections referred to in Article 48 of this Act has been received, a party to the proceeding may offer its commitments to the Agency. The commitments undertaken shall mean meeting certain conditions and obligations within a set time periods, with the view to eliminating the negative effects on competition due to the party's actions or a failure to act.

(2) The Agency shall by means of a decision accept and make the commitments in question binding on the undertaking concerned if the proposed conditions and obligations within a set time periods referred to in paragraph (1) of this Article are found sufficient for the removal of competition concerns and the restoration of effective competition.

(3) The decision of the Agency referred to in paragraph (2) of this Article shall establish a specified time period in which the undertaking in question should comply with the commitments referred to in paragraph (2) of this Article. The decision shall also oblige the undertaking concerned to furnish evidence from which it is evident that it has undertaken the commitments concerned, on the basis of which the Agency can establish that there is no legal grounds to any further actions against the undertaking concerned.

(4) The Agency may accept the proposed commitments referred to in paragraph (1) of this Article where the infringement is of short duration, where the undertaking concerned has been open to cooperation in the course of the proceeding and where the commitments have been proposed in the first six months from the initiation of the proceeding, and particularly where the action by the Agency involves a larger number of parties, and in other cases where the Agency deems the acceptance of the proposed commitments referred to in paragraph (1) of this Article to be justified and appropriate for efficiency reasons with the view to restoring effective competition in the relevant market without carrying out a lengthy procedure.

(5) The Agency shall give notice on its intention to accept the commitments referred to in paragraph (1) of this Article on its web site and to that end publish a summary of the case and the proposed commitments. The interested parties shall be requested to submit their written replies in the form of comments, observations and statements within 20 days from the day of the publication of the request for information.

(6) Notwithstanding the provision under paragraph (3) of this Article the Agency may reopen the proceeding against the undertaking referred to in paragraph (2) of this Article:

1. where the decision of the Agency was based on incorrect or misleading information provided by the parties, and/or

2. where there has been a material change in any of the circumstances on which the decision was based.

(7) Where the monitoring procedure with respect to the implementation of the commitments referred to in paragraph (1) of this Article indicates that the undertaking concerned should act contrary to its commitments referred to in paragraph (3) hereof, such behaviour shall constitute an infringement of this Act or Article 101 or 102 TFEU and the Agency shall issue a separate decision establishing the infringement and imposing the fine for the infringement concerned in line with the provisions of this Act.

### **Oral Hearing**

#### Article 50

(1) As a rule, in the infringement proceeding carried out by the Agency pursuant to this Act an oral hearing is held, excluding the public in on the account of the protection the business secrecy obligation.

(2) The complainant referred to in Article 37 of this Act may also be summoned as a witness to the oral hearing. Where the complainant submits a written request to be heard, the Agency is obliged to summon him/her as a witness.

(3) If any of the summoned parties or attorneys, fail to appear at the first oral hearing in the proceeding, the Agency can postpone the oral hearing and call for a new one.

(4) If any of the parties to the proceeding or attorneys, fail to appear at the following oral hearing, convened in accordance with paragraph (3) of this Article, the Agency will not convene another oral hearing, but hold the oral hearing with the present parties and make its decision on the basis of its own findings, available data and documentation.

### **Interim measures**

#### Article 51, OG 80/13

(1) The Agency can initiate the proceeding against an undertaking and make a decision adopting an interim measure in case of urgency due to the existing risk of serious and irreparable damage to competition and particularly on the basis of a prima facie finding of the infringement of this Act or Article 101 or 102 TFEU.

(2) In its decision on an interim measure referred to in paragraph (1) hereof, the Agency shall order the undertaking to cease-and-desist the behaviour concerned, insist on meeting particular conditions or impose other measures necessary to eliminate the anticompetitive effects, set the duration of the relevant measure that, as a rule, may not exceed a period of six months, and advise the undertaking that in case of its failure to comply with the decision of the Agency on the imposed interim measure, it can be fined for the infringement in line with the provisions of this Act.



(3) By way of derogation from paragraph (2) of this Article, the duration of the interim measure can be renewed if the Agency finds it necessary in a particular case.

(4) Against the decision imposing an interim measure referred to in paragraph (1) of this Article no appeal is allowed but one may take action against the decision of the Agency by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia.

### **Proceeding for imposition of fines for infringements under this Act**

#### Article 52, OG 80/13

(1) After the Council in line with its powers referred to in Article 30 of this Act establishes in its session that the party to the proceeding distorted competition, in other words, committed the infringement of competition rules under the provisions of this Act or Article 101 or 102 TFEU, the Agency shall communicate to the party concerned a Statement of Facts established in this particular case and notify the party about the content of the relevant decision of the Council based on the established facts.

(2) Besides the Statement of Facts referred to in paragraph (1) hereof the Agency shall also send to the party the notice of hearing. In the main hearing the right of defence shall be afforded to the party concerned whereas evidence for the purpose of fine setting will be presented ensuring that all mitigating and aggravating circumstances and other criteria necessary for setting the level of the fine under this Act are taken into account.

(3) The notice of hearing referred to under paragraph (2) of this Article shall contain, in particular:

1. the name and the address of the undertaking concerned, the name and the address of the representative and the attorney, if appointed by the undertaking concerned;
2. the description of the facts relating to the action or a failure to act that resulted in distortion of competition under this Act or Article 101 or 102 TFEU, listing the provisions that have been violated due to the action or a failure to act concerned;
3. the date and the time of the main hearing;
4. the location of the hearing on the premises of the Agency where the main hearing will be held;
5. the indication of the status in which the party or the person concerned is called to the main hearing;
6. the instructions for the party or the person concerned indicating that if he/she does not attend the main hearing after the first notice, he/she will be again invited to the main hearing, whereas the absence at the following main hearing shall mean that the

Agency can either use coercive measures or hold the main hearing without the party or person in absence;

7. the seal of the Agency and the signature of the authorised person (case handler) in the proceeding for the imposition of fines.

(4) The Statement of Facts referred to in paragraph (1) of this Article shall contain, in particular:

1. the name and the address of the undertaking concerned or the name and the address of the natural person who infringed the competition rules;
2. definition of the relevant product market and the relevant geographic market;
3. the time, the place and the duration of the infringement of this Act or Article 101 or 102 TFEU;
4. a detailed description of the facts relating to the action or a failure to act that resulted in distortion of competition under this Act or Article 101 or 102 TFEU, listing the provisions that have been violated due to the action or a failure to act concerned;
5. the provision of this Act determining the level of fine for the relevant infringement;
6. a call upon the party to present any additional evidence and witnesses if any, and
7. a call upon the party to submit a defence in writing within a time period which may not be shorter than 15 or longer than 30 days.

(5) After the conclusion of the main hearing referred to in paragraph (2) of this Article the Council shall in line with its powers referred to under Article 30 of this Act decide on the criteria for the imposition of the fine, set the amount of the fine and the deadlines and the method of fine enforcement.

(6) Pursuant to the decision of the Council on the basis of which distortion of competition has been established and the decision establishing the criteria for the imposition of the relevant fine including the determination of its amount, the Agency shall close the proceeding by means of one integral decision.

### **Secrecy obligation**

Article 53, OG 80/13

(1) The members of the Council and the employees of the Agency shall keep and not disclose the information classified as a business secret, irrespective of the way they came to know it, whereby the obligation of business secrecy shall continue to be in effect 5 years after the expiry of their engagement with the Agency.

(2) Under the term business secret referred to in paragraph (1) of this Article, shall be

considered, in particular the following:

1. all which is defined to be a business secret by law or other regulations;
2. all which is defined to be a business secret by the undertaking concerned if accepted as such by the Agency;
3. all correspondence between the Agency and the European Commission and between the Agency and other international competition authorities and their networks.

(3) A business secret referred to in paragraph (1) of this Article shall be in particular business information which has actual or potential economic and market value, the disclosure or use of which could result in economic advantage for other undertakings.

(4) The Agency will in particular apply the following non-exhaustive list of criteria to determine whether information can be deemed to constitute a business secret:

1. the extent to which the information is known outside the undertaking;
2. the extent to which measures have been taken to protect the information within the undertaking, for example, through non-compete clauses or non-disclosure agreements imposed on employees etc.;
3. the value of the information for the undertaking and its competitors.

(5) In principle, the Agency considers that the following information would not normally be covered by the obligation of business secrecy in the sense of this Act:

1. information which is publicly available, including information available through specialised information services or information which is common knowledge among specialists in the field;
2. historical information, in particular information at least 5 years old, irrespective of the fact whether they have been considered a business secret;
3. annual and statistical information. Turnover is not normally considered as a business secret, as it is a figure published in the annual accounts or otherwise known to the market, and
4. data and documentation on which the decision of the Agency is based.

(6) By way of derogation from paragraphs (1) and (2) of this Article and in line with Article 41 paragraph (5) of this Act, where the undertaking submits to the Agency confidential documentation and data and fails to provide a copy of the relevant documentation and/or data containing no confidential information, the Agency shall after it has sent a reminder thereof to the undertaking concerned, finally assume that such a writing and/or documentation does not contain data which are covered by the obligation of business secrecy.

(7) Within the meaning of the Council Regulation (EC) No 1/2003 and the Council Regulation (EC) No 139/2004, and by way of derogation from the obligation of protection of business secrecy by the Agency provided under this Article, the Agency may disclose, use or exchange information covered with the obligation of business secrecy with the European Commission or the competent national competition authorities of the EU Member States, and use this information as evidence exclusively in the infringement proceedings initiated pursuant to Article 101 or 102 TFEU.

### **Filing and archiving**

#### Article 54

The files and documentation of the undertakings received by the Agency in the course of the proceeding or those collected and processed by the Agency for the purpose of carrying out the proceeding, shall be kept in the archives of the Agency in accordance with the relevant rules on keeping of archival materials.

### **Exempt person**

#### Article 55

(1) A person in charge of carrying out a proceeding of the Agency (case handler) shall be exempted from the case:

1. if he/she is a party in the proceeding concerned, witness or expert witness;
2. if he/she is related to the party, to the representative or the attorney as family descendant in the straight blood line up to whatever, or up to and including the second degree in the transversal line, as an in-law up to and including the second degree, a spouse or extramarital partner, even in the case where the marriage has ceased to exist;
3. if he/she is related to the party, representative or attorney of the party as an adoptive parent, adoptive child, guardian, ward, foster parent or foster child.

(2) A request for exemption of a person referred to in paragraph (1) hereof may also be filed by a party to the proceeding carried out by the Agency. The request concerned shall be submitted in writing.

(3) The provisions of this Article shall accordingly apply to the members of the Council.

#### Article 56

(1) Any case handler of the Agency who is authorized to carry out a proceeding in a particular case shall be exempted from the case:

1. if he/she, or a member of his/her close family is the owner of more than 3 per cent of shares or share capital in the undertaking which is a party to the proceeding carried

out by the Agency;

2. if, he/she has given statements or written opinions on certain issues of the case in the capacity of an independent expert;
3. if, for any other justifiable reason, an objective conduct of the procedure and an objective proposal for decision-making regarding the case, cannot be expected.

(2) The persons referred to in paragraph (1) of this Article shall inform the Council, in writing and without delay, about the existence of any of the reasons referred to in paragraph (1) of this Article.

(3) The request for exemption referred to in paragraph (1) of this Article may be filed by a party to the proceeding carried out by the Agency. The request shall be submitted in writing.

(4) The provisions of this Article shall accordingly apply to the members of the Council.

(5) The Council shall decide about the requests for exemption referred to in Article 55 and 56 of this Act.

### **Time limits for decision-making**

#### Article 57, OG 80/13

(1) The decision on a prohibited agreement referred to in Article 9 and the decision on abuse of a dominant position referred to in Article 14 of this Act shall be made by the Agency within the time limit of 4 months following the day on which it has established all the facts of the case relevant for the adoption of the decision, or not later than within 4 months from the day of the conclusion of the main hearing held in the fine proceeding.

(2) The decision on the assessment of concentration referred to in Article 22 paragraph (7) of this Act, shall be made by the Agency within 3 months from the day of the adoption of the procedural order on the initiation of the proceeding in line with Article 39 of this Act.

(3) The decision withdrawing the benefit of the block exemption granted to certain categories of agreements referred to in Article 10 paragraph (4) and Article 10a of this Act, the decision on the assessment of agreements of minor importance referred to in Article 11 paragraph (4) of this Act and the decision on partial withdrawal of the decision on concentration referred to in Article 23 paragraph (3) of this Act shall be made by the Agency within 4 months from the day on which all the relevant facts of the case have been established or not later than within 4 months from the day of the conclusion of the oral hearing.

(4) The decision on withdrawal of the decision on concentration under Article 23 paragraphs (1) and (2) of this Act and the decision on the measures to restore effective competition after the implementation of an impermissible concentration referred to under Article 24 paragraph (1) of this Act shall be taken by the Agency within 4 months from the day on which all the

relevant facts of the case have been established or not later than within 4 months from the day of the conclusion of the main hearing in the fine proceeding.

(5) The decision on the commitments undertaken by an undertaking referred to in Article 49 paragraph (3) of this Act and the decision on non-compliance with the set conditions, obligations and time limits referred to under Article 49 paragraph (7) hereof shall be taken by the Agency within 3 months from the day on which all the facts relevant for the adoption of the decision have been established.

(6) By way of derogation from paragraph (2) of this Article the Agency may extend the time limit for the adoption of the decision on the assessment of concentration referred to under Article 22 paragraph (7) of this Act to 3 months where it finds necessary to carry out additional expertise or analyses relating to the facts of the case and the examination of evidence, about which it shall inform the parties to the proceeding before the expiry of the prescribed time limit.

### **Decisions of the Agency**

#### Article 58, OG 80/13

(1) Within the meaning of Article 30 of this Act the Agency adopts, in particular, as follows:

1. a decision by which it decides on a prohibited agreement, imposes measures in the sense of Article 9 of this Act and imposes a fine for the infringement of the provision concerned;
2. a decision by which it withdraws the benefit of the block exemption granted to a particular agreement in the sense of Article 10 paragraph (4) and Article 10a of this Act;
3. a decision assessing the agreement of minor importance in the sense of Article 11 paragraph (4) of this Act;
4. a decision establishing abuse of a dominant position, imposing measures in the sense of Article 14 of this Act and imposing a fine for the infringement of the provision concerned;
5. a decision assessing the compatibility of concentration and imposing measures in the sense of Article 22 of this Act;
6. a separate decision by which it withdraws the decision of the Agency in the sense of Article 23 paragraphs (1) and (2) of this Act and imposes a fine for the infringement of the provision concerned;
7. a separate decision by which it partially withdraws the decision of the Agency and imposes the measures in the sense of Article 23 paragraph (3) of this Act;
8. a decision defining the particular measures to be undertaken aimed at restoration of

effective competition in the case of a prohibited concentration pursuant to Article 24 of this Act and imposing the fine for the infringement of the provision concerned;

9. a decision by which it accepts the commitments offered by the undertaking pursuant to Article 49 paragraph (3) of this Act and sets the time limits for their implementation;

10. a decision by which it imposes interim measures in the sense of Article 51 of this Act;

11. a decision on non-compliance with the set conditions, obligations and time limits by the undertaking concerned referred to in Article 49 paragraph (7) of this Act;

12. a decision on the basis of which it imposes a fine pursuant to this Act;

13. a non-infringement decision establishing compliance with competition rules within the meaning of this Act or Article 101 or 102 TFEU;

14. a decision by which it terminates the proceeding when the same case is being dealt or has been dealt with by the European Commission or the national competition authority of the EU Member State within the meaning of Article 30 point 3 of this Act and the Council Regulation (EC) No 1/2003;

15. a decision on the basis of which it establishes that there are no grounds or public interest for the initiation of the proceeding under Article 38 of this Act;

16. a decision on the basis of which it acknowledges the right or legal interest to a person who does not have the status of a party to the proceeding, ensuring this person the same rights in the proceeding that are enjoyed by the complainant, or denies the right or legal interest concerned;

17. a decision on the basis of which the access to the file is denied.

(2) Within the meaning of Article 30 of this Act the Agency in particular adopts procedural orders (conclusions) by means of which it:

1. initiates the proceeding in the sense of Article 39 of this Act;

2. decides on the initiation of a single proceeding against two or more independent undertakings in the event where their rights and/or obligations are based on the same or similar facts of the case and on the same legal basis;

3. joins two or more separate cases which have been previously initiated pursuant to Article 39 of this Act where these are based on the same or similar facts of the case and on the same legal basis (joint cases);

4. requests the High Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to conduct a surprise inspection of business premises, land and means of transport, to examine all records and objects relating to the business, to seal any business premises or records and to seize objects and documents referred to under Article

42 paragraph (1) and Article 44 hereof.

### **Submittal and publication of decisions**

#### Article 59, OG 80/13

(1) A decision of the Agency shall be submitted to the parties to the proceeding not later than within 30 days from the day of the expiry of the time period for the adoption of a decision within the meaning of Article 57 of this Act. Where the proceeding has been initiated upon the initiative filed by a complainant, the decision will be submitted also to the complainant within the same time period. Where a decision of the Agency contains data which are covered by the obligation of business secrecy within the meaning of Article 53 of this Act, each party and the complainant shall be submitted a copy of the decision freed from any confidential data.

(2) The decisions of the Agency under Article 58 paragraph (1) points 1 to 11 of this Act shall be published in Official Gazette.

(3) The decisions referred to in paragraph (1) of this Article, the decisions of the High Administrative Court of the Republic of Croatia concerning the claims filed against the decisions of the Agency and other legal acts adopted by the Agency shall be published on the web site of the Agency.

(4) Data considered to be covered by business secrecy obligation within the meaning of Article 53 of this Act shall be exempt from the publication referred to in paragraph (3) of this Article.

(5) Within the meaning of the Council Regulation (EC) No 1/2003 the Agency shall not later than 30 days before the adoption of an infringement decision under Article 101 or 102 TFEU, on the basis of which commitments under Article 49 of this Act have been accepted in the proceeding initiated concerning the infringement of Article 101 or 102 TFEU, or on the basis of which the benefit of block exemption of a certain agreement is withdrawn within the meaning of Article 10.a paragraph (2) of this Act, inform thereof the European Commission, and where necessary also the national competition authorities of the EU Member States, and provide a summary of the case and the draft decision.



## **VIII PENALTY CLAUSE**

### **Imposition of fines**

Article 60, OG 80/13

The objective of the fines imposed by the Agency in the sense of this Act is to ensure effective competition, to sanction for the infringements under this Act and Article 101 or 102 TFEU, to eliminate the harmful consequences of anticompetitive behaviour and to deter other undertakings from engaging in such practices.

### **Fines for severe infringements of competition rules**

Article 61, OG 80/13

A fine not exceeding 10 % of the total turnover of the undertaking realized in the last year for which financial statements have been completed shall be imposed on the undertaking which:

1. concludes a prohibited agreement or participates in any other way in the agreement that resulted in distortion of competition in the sense of Article 8 of this Act and Article 101 TFEU;
2. abuses a dominant position referred to under Article 13 of this Act and Article 102 TFEU;
3. participates in the implementation of a prohibited concentration referred to in Article 16 of this Act;
4. does not act in compliance with the decision of the Agency defining the measures to restore effective competition or imposing interim measures as referred to under Article 58 paragraph (1) points 1 to 11.

### **Fines for less severe infringements of competition rules**

Article 62, OG 80/13

A fine not exceeding 1 % of the total turnover in the last year for which financial statements have been completed shall be imposed on the undertaking party to the proceeding where it:

1. fails to submit the obligatory prior notification of concentration to the Agency referred to in Article 19 paragraph (1);
2. submits to the Agency incorrect or untrue information in the concentration assessment proceeding referred to in Article 20;
3. fails to act in compliance with the request of the Agency referred to under Article 41 paragraphs (1) and (3);
4. obstructs the enforcement of the injunction of the High Administrative Court of the Republic of Croatia referred to in Articles 42 to 46;

5. implements a concentration in contravention with Article 19 paragraph (5) of this Act.

### **Fines for other infringements of competition rules**

#### Article 63

A fine in the amount ranging from HRK 10,000 to 100,000 shall be imposed on the undertaking that is not a party to the proceeding carried out by the Agency where it fails to act in line with the request of the Agency referred to under Article 32 points 1a) and b), and Article 41 paragraphs (1) and (3).

### **Method of setting fines**

#### Article 64, OG 80/13

(1) The highest amount of the fine which can be imposed under this Act shall not, in any event, exceed 10 % of the total turnover of the undertaking realized in the last year for which financial statements have been completed in line with Article 61 of this Act.

(2) When setting the fine the Agency shall take fully into account all mitigating and aggravating circumstances, such as the degree of gravity of the infringement, the duration of the infringement and the damage caused for competing undertakings and consumers. The Agency will use the following two-step methodology when setting the fine: first, it will determine the basic amount for each undertaking; second, it shall adjust that basic amount upwards or downwards depending on the mitigating and/or aggravating circumstances in each particular case.

(3) The basic amount of the fine shall be set at a level of up to 30 % of the undertaking's turnover generated exclusively from the activity of the undertaking carried out in the relevant market where the infringement of this Act or Article 101 or 102 TFEU has been committed. This amount shall be multiplied by the number of years of the duration of the infringement concerned. The Agency shall then take into account the established circumstances, aggravating and/or mitigating, and respectively increase or decrease the basic amount.

(4) Mitigating circumstances referred to in paragraph (2) hereof shall be considered in particular:

1. where the undertaking concerned provides evidence that it terminated the infringement urgently, as soon as the Agency initiated the proceeding. By way of exception, this will not apply to cartel agreements;
2. where the undertaking provides evidence that the infringement of this Act or Article 101 or 102 TFEU has been committed as a result of negligence;
3. where the undertaking provides evidence that in spite of the fact that it participated in

a prohibited agreement, it has not applied the agreement concerned, in other words, where it can demonstrate that during the period in which it was party to the offending agreement, it has acted in compliance with competition rules;

4. where the undertaking concerned has effectively cooperated with the Agency outside the scope of the criteria for granting immunity from and reduction of fines referred to under Article 65 of this Act.

(5) Aggravating circumstances referred to in paragraph (2) hereof shall be considered in particular:

1. where the undertaking continues the same illegal actions or repeats the same or a similar infringement of this Act or Article 101 or 102 TFEU, after the receipt of the decision of the Agency establishing that the practices of the undertaking concerned distorted competition. In such cases the basic amount shall be increased by up to 100 % for each repeated infringement established by the Agency;
2. a refusal by the undertaking to cooperate with or obstruction of the Agency in carrying out the proceeding;
3. a role of leader in, or facilitator of the infringement and all other steps taken to coerce other undertakings to participate in the infringement of this Act and Article 101 or 102 TFEU.

(6) The Agency can also increase the fine in order to exceed the amount of gains improperly made as a result of the infringement of this Act or Article 101 or 102 TFEU, where it is possible to estimate that amount.

(7) By way of derogation from paragraph (4) of this Article, the Agency can, based on the evidence furnished by the undertaking in financial difficulty that committed an infringement of this Act or Article 101 or 102 TFEU, grant a further reduction of the fine. A further reduction can be granted solely on the basis of the relevant evidence that imposition of the fine as provided for in this Act would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value given its unfavourable financial position.

(8) In the case referred to under paragraph (7) of this Article and in other cases where no significant impediment of competition has been established or where the infringement did not have negative effects on competition, the Agency can, in such cases, impose a symbolic fine. Yet, the justification for imposing such a fine should be given in its decision.

(9) Upon the proposal of the Agency, the Government of the Republic of Croatia shall further develop the criteria for the fine setting referred to in paragraphs (2) to (8) of this Article in line with the criteria arising from the application of competition rules in the Community within the

meaning of Article 74 of this Act.

### **Reduction of or immunity from fines**

#### Article 65, OG 80/13

(1) With the view to disclosing the most severe infringements of the provisions of this Act and Article 101 TFEU, the Agency may grant immunity from fine to a cartel member that first comes forward and informs the Agency on the existence of the cartel and submits information, facts and evidence that will enable the Agency to initiate the proceeding in connection with the alleged cartel, or to the first cartel member that submits evidence that enables the Agency to establish the infringement of this Act in the previously initiated proceeding where the Agency has had no sufficient evidence to close the proceeding, in other words, to detect the existence of the cartel.

(2) The immunity from fine under paragraph (1) of this Article may not be granted to the undertaking that was the leader or the facilitator of the cartel.

(3) The members of a cartel that do not meet the conditions for the immunity from fine under paragraph (1) of this Article may be eligible to benefit from a reduction of the fine, if they provide the Agency with evidence which represents significant added value with respect to the evidence already in the Agency's possession and which substantially contribute to the closure of the cartel proceeding concerned.

(4) Upon the proposal of the Agency, the Government of the Republic of Croatia shall further develop the criteria for the immunity from and reduction of fines referred to under paragraphs (1) and (2) of this Article in line with the criteria arising from the application of competition rules in the European Union within the meaning of Article 74 of this Act.

(5) The imposition of fines under the provisions of this Act is without prejudice to criminal liability of the person who has been imposed a fine.

## **IX COOPERATION BETWEEN THE AGENCY AND OTHER AUTHORITIES AND COURT REVIEW**

### **Cooperation with judicial and other authorities**

#### Article 66

(1) The Agency shall cooperate with the competent judicial, regulatory and other authorities in resolving the cases in respect of undue distortion of competition in the territory of the Republic of Croatia.

(2) Upon a written request of the Agency, the competent law enforcement authority shall provide assistance in the conduct of surprise inspections and/or temporary seizure of objects and/or records referred to in Articles 42 to 46 of this Act free of charge.

(3) Upon the written request of the Agency referred to under Article 41 of this Act all central administration authorities, local and regional self-government units and public authorities in compliance with separate rules shall free of charge submit to the Agency any requested data and documentation, including the data and documentation covered with business secrecy obligation, regardless of specific rules regulating the confidentiality of the data concerned, whereas the Agency shall treat such data and documents in line with Article 53 of this Act.

### **Cooperation between courts, European Commission and Agency**

#### Article 66a, OG 80/13

(1) Within the meaning of the Council Regulation (EC) No 1/2003 the application of Articles 101 and 102 TFEU shall fall under the scope of the commercial courts and they shall without delay inform the Agency on any court proceedings carried out pursuant to Article 101 or 102 TFEU.

(2) In the case where within the meaning of the Council Regulation (EC) No 1/2003 the European Commission submits to the competent court referred to in paragraph (1) of this Article written observations or opinions concerning the application of Article 101 or 102 TFEU, the court shall without delay forward a photocopy of the written observation or opinion of the European Commission to the Agency and to the parties to the proceeding.

(3) Where within the meaning of the Council Regulation (EC) No 1/2003 the Agency submits written observations or opinions concerning the application of Article 101 or 102 TFEU to the competent court referred to in paragraph (1) of this Article, the court shall without delay forward a photocopy of the written observation or opinion of the Agency to the parties to the proceeding.

(4) The Agency and the European Commission may transmit to the competent court referred to in paragraph (1) of this Article the relevant written observations or opinions which are not binding at any point in the course of the proceeding until the final judgement is made. With the permission of the court in question, the relevant bodies may also submit oral observations to the court.

(5) Where within the meaning of the Council Regulation (EC) No 1/2003 the competent court referred to in paragraph (1) of this Article asks the European Commission to transmit its opinion, it shall notify the parties without delay, and after it has received the unbinding opinion of the European Commission, it shall forward a photocopy of the opinion in question to the Agency and the parties to the proceeding.

(6) With the purpose of uniform application of the EU competition law pursuant to the Council Regulation (EC) No 1/2003, when the competent courts referred to in paragraph (1) of this Article rule on agreements or practices under Article 101 or Article 102 TFEU which have already been the subject of a European Commission decision, they cannot take decisions

running counter to the decision adopted by the European Commission. Where a decision is being contemplated by the European Commission in the proceeding that it has initiated regarding the infringement under Article 101 or 102 TFEU, the competent court may assess whether it is necessary to stay in its proceeding or to suspend the proceeding as long as the final decision of the European Commission has been adopted. This obligation is without prejudice to the rights and obligations under Article 267 TFEU.

(7) The competent court referred to under paragraph (1) of this Article shall forward to the Agency a photocopy of any judgement made pursuant to Article 101 or 102 TFEU at the same time when this judgement is notified to the parties to the proceeding.

### **Court review**

#### Article 67, OG 80/13

(1) Against the decision of the Agency no appeal is allowed but one can take action against the decision of the Agency by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision. The claim shall be decided over by a panel of three judges with respect to the following points:

1. misapplication or erroneous application of substantive provisions of competition law;
2. manifest errors in application of procedural provisions;
3. incorrect or incomplete facts of the case;
4. inappropriate fine and other issues contained in the decision of the Agency.

(2) The claims against the decision of the Agency dealing with procedural issues shall not suspend the proceeding.

(3) Against a procedural order (conclusion) of the Agency dealing with procedural issues no appeal is allowed and no administrative dispute may be lodged, however, the procedural order (conclusion) may be challenged by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia against the decision resolving the administrative matter in question.

(4) The claim referred to under paragraph (1) of this Article shall not postpone the enforcement of the decision, save for the part of the decision dealing with the imposed fine.

(5) Against the decision of the Agency establishing an infringement of this Act or Article 101 or 102 TFEU and imposing a fine for the infringement within the meaning of this Act a claim may be filed by the injured party to the proceeding, whereas against the decision of the Agency establishing that no infringement of competition rules has been committed within the meaning of this Act or Article 101 or 102 TFEU and the decision on the basis of which the

proceeding is terminated, a claim may be filed also by the complainant and the person who has been granted the same procedural rights that are enjoyed by the complainant as referred to in Article 36 paragraphs (3) and (4) hereof.

(6) Against the warrant to carry out a surprise inspection referred to in Articles 42 and 44 of this Act no appeal is allowed.

#### Article 68, OG 80/13

(1) The panel of judges of the High Administrative Court of the Republic of Croatia shall debate and decide on the basis of the facts presented in evidence during the proceeding.

(2) The plaintiff may not present new facts in evidence but may propose new evidence relating to the facts which had been presented in evidence during the proceeding.

(3) New facts may be presented only under the condition that the plaintiff provides evidence that it did not have or could not have had knowledge of these facts during the proceeding.

#### Article 69, OG 80/13

All actions brought before the High Administrative Court of the Republic of Croatia pursuant to this Act are urgent.

### **Compensation for damages**

#### Article 69a, OG 80/13

(1) The competent commercial courts shall decide on the claims for damages based on the infringements of this Act or Article 101 or 102 TFEU.

(2) The undertakings that have infringed the provisions of this Act or Article 101 or 102 TFEU shall be responsible for the compensation for damages resulting from the infringements concerned.

(3) When deciding on the compensation for damages referred to in paragraph (1) of this Article the competent commercial court shall particularly take into account the legally valid decision of the Agency on the basis of which the infringement of this Act or Article 101 or 102 TFEU has been established or the final decision of the European Commission in the case where the European Commission has established the infringement of Article 101 or 102 TFEU. This is without prejudice to the rights and obligations under Article 267 TFEU.

(4) Where the case relating to the establishment of the infringement of Article 101 or 102 TFEU is being dealt by the Agency or the European Commission, the competent commercial court may assess whether it is purposeful to stay in its proceeding or to suspend the proceeding until the legally valid decision of the Agency or the final decision of the European Commission has been made.

(5) The competent commercial court shall without delay inform the Agency of any damages

claim filed regarding the right to seek compensation for damages resulting from the infringement of the provisions of this Act or Article 101 or 102 TFEU.

(6) The limitation period for damages claims filed regarding the right to seek compensation for damages referred to in paragraph (1) of this Article shall be suspended from the day on which the proceeding was initiated by the Agency or by the European Commission until the day on which the relevant proceedings have been closed.

## **X ENFORCEMENT OF FINES, LIMITATION PERIODS AND PROCEDURAL COSTS**

### **Enforcement of fines**

Article 70, OG 80/13

(1) The decision of the Agency on the imposition of a fine for the infringement of the provisions of this Act or Article 101 or 102 TFEU shall also indicate the payment deadline and the method of payment.

(2) Payments relating to the fines imposed by the Agency shall be made as soon as the decision of the Agency becomes enforceable where no claim has been filed, or as soon as the judicial decision has become legally valid, including the interest and penalty charges calculated from the day of the receipt by the party of the decision of the Agency to the day on which the payment is actually made. In compliance with the criteria specified under Article 64 of this Act the Agency may grant payment of the fine by instalments.

(3) Should an undertaking fail to pay the imposed fine within the prescribed deadline, the Agency shall inform thereof the local Revenue Office of the Tax Authorities of the Ministry of Finance of the seat/address of the fined person, with the objective of enforced collection of claims in line with the enforced tax collection rules. The fines which are on the request of the Agency subject to enforced collection by the Tax Authorities shall be contributed directly to the State budget of the Republic of Croatia.

### **Limitation periods**

Article 71, OG 80/13

(1) The proceeding investigating the infringement under this Act or Article 101 or 102 TFEU and the fine proceeding for the committed infringement shall not be initiated after the expiry of the period of 5 years from the day on which the infringement was committed.

(2) In the case of a continuing or repeated infringement of this Act or Article 101 or 102 TFEU, the limitation time shall begin to run on the day on which the infringement ceases.

(3) Any action taken by the Agency for the purpose of the investigation of the infringement of this Act or Article 101 or 102 TFEU and the imposition of a fine for the infringement concerned shall interrupt the limitation period referred to in paragraph (1) of this Article.



Where the proceeding is carried out by the Agency against more undertakings or association of undertakings, the limitation period interruption shall have effect on the day on which the action is communicated to any undertaking that has the status of a party to the proceeding.

(4) Each interruption shall start limitation time running afresh. However, the proceeding shall not be run after the period equal to twice the limitation period referred to in paragraph (1) of this Article has elapsed.

### **Limitation period for the enforcement of fines**

Article 72, OG 80/13

(1) The fines imposed for the infringements of this Act or Article 101 or 102 TFEU shall not be enforceable where a period of 5 years elapses from the day on which the decision of the Agency becomes enforceable and/or the decision of the court legally valid. The limitation period shall begin to run on the day on which the undertaking receives the legally valid decision of the court, or on the day on which the decision of the Agency becomes enforceable, if the party has not brought an action against the decision concerned.

(2) The limitation period referred to in paragraph (1) shall be interrupted by any action taken by the competent authority with the objective of fine enforcement. Each interruption shall start time running afresh. However, the fine enforcement proceeding shall not be carried out after the period equal to twice the limitation period referred to in paragraph (1) of this Article has elapsed.

(3) By way of derogation, where the Agency grants payment of the fine by instalments the limitation period shall begin to run on the day on which the payment was not settled by the undertaking concerned.

### **Costs of the procedure**

Article 73, OG 80/13

(1) All expenses of the procedure carried out with respect to the infringements committed pursuant to this Act and the imposition of fines for the infringements under this Act shall be regulated by the Administrative Tariffs of the Act on Administrative Fees and Charges.

(2) The parties to the proceedings falling under the scope of the Agency shall have no right to seek reimbursement of costs of the proceedings concerned.

## **XI TRANSITIONAL AND FINAL PROVISIONS**

### **Application of this Act and closing of the proceedings in progress**

Article 74, OG (80/13)

(1) In line with Article 1 of the Treaty concerning the accession of the Republic of Croatia to the European Union (Official Gazette – International agreements, No 2/12), in the application

of this Act, and particularly in case of legal voids or uncertainties relating to the interpretation of the rules, the criteria arising from the application of competition rules applicable in the European Union shall apply.

(2) On the day of the accession of the Republic of Croatia to the European Union the Agency shall become a competent authority for the application of Articles 101 and 102 TFEU.

#### Article 75

The provisions of the Competition Act, Official Gazette, No 112/03, shall apply to complaints and requests for the initiation of the proceedings received until 30 September 2010 and to close the cases initiated by the Agency up to 30 September 2010.

### **Subordinate legislation**

#### Article 76

(1) The Government of the Republic of Croatia shall as proposed by the Agency adopt the relevant subordinate legislation referred to in Article 7 paragraph (4), Article 10 paragraph (2), Article 11 paragraph (3), Article 15 paragraph (4), Article 64 paragraph (9) and Article 65 paragraph (4) of this Act at the latest within three months from the entry into force of this Act.

(2) As long as the relevant rules referred to in paragraph (1) of this Article have taken effect, the rules adopted pursuant to the Competition Act, Official Gazette, No 122/03, shall accordingly apply.

(3) The Agency shall not later than within six months from the day of the entry into force of this Act revise the existing Statute and adopt other legislative acts of the Agency that need to be brought into compliance with this Act.

#### Article 77

(1) The members of the Council who have been appointed to this office before this Act enters into force shall continue to work until the expiry of their mandate.

(2) After the relief from office, the president and the members of the Council shall remain eligible for the same salary they have been entitled to in the position of the president/member of the Council as long as they start working on another job or qualify for retirement pension in line with the general rules in effect, but not longer than one year following their relief from office, save in cases of relief from office referred to under Article 29 paragraph (1) points 2, 4 and 5 of this Act.

### **Cessation of validity of Competition Act**

#### Article 78

The Competition Act, Official Gazette, No 122/03, shall cease to be in effect on the day on which this Act enters into force.

## **Entry into force**

### Article 79

This Act shall be published in Official Gazette and shall enter into force on 1 October 2010.

Class: 330-01/09-01/07

Zagreb, 24 June 2009

THE CROATIAN PARLIAMENT

President of the Croatian  
Parliament

Luka Bebić

## **Transitional and final provisions, OG 80/13**

### **Article 50**

(1) Claims against the decisions of the Agency received by the territorially competent administrative courts after the day of the accession of the Republic of Croatia to the European Union shall be resolved by the High Administrative Court of the Republic of Croatia.

(2) The territorially competent administrative courts shall transfer all cases relating to the implementation of the Competition Act, that is to say, all ongoing cases regarding the claims filed against the decisions of the Agency that are being dealt by them on the day of the entry into force of this Act, to the High Administrative Court of the Republic of Croatia.

(3) On the day of the entry into force of this Act the Croatian National Bank shall re-allocate all ongoing cases covering competition issues in the banking sector and the financial services provided by credit institutions to the authority of the Competition Agency.

### **Article 51**

This Act shall be published in Official Gazette and shall enter into force on the day of the accession of the Republic of Croatia to the European Union.

Class: 022-03/13-01/134

In Zagreb, 21 June 2013

THE CROATIAN PARLIAMENT

President of the Croatian Parliament  
Josip Leko