Summary Annual Report of the Croatian Competition Agency for 2015

The Croatian Competition Agency (CCA) reports annually to the Croatian Parliament. Concretely, it is its legal obligation to draft the annual report of the activities for the previous year and to submit it to the Parliament for adoption. Yet, the purpose of the annual report is also to inform the political scene, the economic operators and all professional stakeholders about the operation of the CCA, ensuring the transparency of its work and awareness raising about competition culture in the Republic of Croatia. What follows here are the highlights that mark the work of the CCA in 2015.

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

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

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

The CCA was established pursuant to the decision of the Croatian Parliament on 20 September 1995 as an independent legal person in charge of competition activities. The CCA became operational in 1997. Eighteen years later we witness that the role the CCA assumed by the Croatian accession to the EU in the implementation of the Treaty on the Functioning of the European Union (hereinafter: TFEU), that is the pillar of the economic and political

stability in the EU, was anticipated by the Croatian Parliament as the founding authority of the CCA in respect of the part the CCA would play in the internal market once Croatia becomes a Member State.

In spite of the fact that the CCA has been informally referred to as a "general regulator" it should be pointed out here that the CCA is an executive authority – a legal person with public powers in charge of implementation of competition rules. Sector specific regulators such as the Croatian Financial Services Supervisory Agency (HANFA), Croatian Regulatory Authority for Network Industries (HAKOM), the Croatian Energy Regulatory Agency (HERA) or Agency for Electronic Media (AEM) operate under the specific laws exclusively *ex ante* in the markets concerned, whereas the CCA carries *ex post* proceedings covering anticompetitive behaviour of undertakings in all the sectors regardless of the fact whether there is a specific regulator in the market concerned or not. In other words, the CCA is in charge of infringement proceedings against all undertakings that are active on these markets, including the markets where there are specific regulators and in spite of the existence of the sector specific regulation.

The competence of the CCA within the meaning of the Competition Act covers the following:

- **establishment of prohibited agreements between undertakings and imposing commitments needed for elimination of anti-competitive effects,**
- **establishment of abuse of a dominant position of undertakings and prohibition of any behaviour leading to further abuse and imposing commitments for elimination of anti-competitive effects, and**
- **assessment of compatibility of concentrations between undertakings.**

Given the still present misinterpretations of the powers of the CCA in the general public it should be stressed here that like other similar bodies in the European Union or worldwide who have developed and applied competition law the CCA does not directly regulate prices of goods and services, it does not control imports, it is not in charge of quality control, late payment in commercial transactions, taxes and social contributions payable by undertakings and marketing and placement of Croatian products by the global distribution chains.

What the CCA does do, is competition protection on the practically inexhaustible list of relevant markets by the application of competition rules on a wide scope of economic entities.

Note that within the meaning of competition law undertakings 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 economic activity. The Competition Act also applies 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.

In other words, the Competition Act applies to practically all entities that directly or indirectly participate in economic activity, regardless of the fact if it is only a one-off activity, regardless of the intent or effect to make profit.

Where the CCA establishes a prohibited agreement between undertakings, abuse of a dominant position of an undertaking/s or a prohibited concentration between undertakings the CCA decides on the amount of and imposes fines on undertakings that have committed an infringement of competition rules pursuant to the provisions of the Competition Act and the Regulation on the method of setting fines.

Besides the activities of the CCA relating to the enforcement of competition rules the CCA is also actively involved in **competition advocacy**. Concretely, the CCA issues expert opinions regarding the compliance with competition rules of draft proposals for laws and other legislation, as well as the existing laws and other legal acts and other related issues raising competition concerns.

Within its above mentioned primary activities in the area of competition in 2015 the CCA resolved 667 cases, which is 5.2% more than in the previous report period. On 31 December 2015 the CCA had a total of 28 open cases – pending proceedings in which the CCA has not yet taken a decision. It should be noted that the increase in 2015 was realized by 46 employees – less expert staff than in the previous years.

Besides the positive quantitative indicators the CCA also indicated positive qualitative trends compared with the previous years. It concretely means that, for instance, it has trained it staff and purchased the equipment and fully **developed the method of carrying out surprise inspections** in the course of infringement proceedings. Thus, in 2015 there were two such surprise inspections conducted in the medicinal and non-medicinal gases market and in the telephone systems market, which involved a total of 7 undertakings in different locations in Zagreb and Split.

Regarding the CCA sanctioning policy it should be mentioned that the Government of the Republic of Croatia adopted a revised Regulation on the method of setting fines on 26 February 2015. In the sense of the former Regulation on the method of setting fines when imposing a fine on the participants in a cartel agreement the CCA was obliged to increase the basic amount of the fine by an additional amount ranging from 15 % to 25% of the turnover of the undertakings concerned realized in the relevant market. The adopted revisions of the Regulation at issue provide for the deletion of the minimum increase of the fine by 15% and leave the maximum cap amount of 25%. Simply put, this gave the CCA the discretion to **decide in each particular case and appropriately set the fine so that the final amount of the fine is proportionate to the gravity of the infringement** of the Competition Act taking account of other relevant circumstances of the case. Imposition of fines is not the objective and the purpose of the work of the CCA. The infringement proceedings are carried out with the view to eliminating the irregularities in the market whereas the sanctions for the

infringements are imposed with particular consideration taking into account the operation of the undertaking concerned, the deterrent effect of the fine, the scope and effect and the duration of the infringement, the market power of the undertaking, special features of the market, mitigating and aggravating circumstances of the case at issue etc. When the CCA informs the public of a decision on the basis of which a sanction is imposed on an undertaking/s, it always stresses the deterrent effect of the fine, that is to say, the amount of the fine high enough to meet its strong preventive objective and sending the message to all undertakings that the violation of competition rules does not pay. In 2015 the CCA imposed a total of HR KUNA 17.510,500 fines based on the established infringements of competition rules, whereas HR KUNA 40,056 thereof were collected by the end of December 2015. From 27 January to 3 February 2016 additional HR KUNA 6.989,000 was collected. Fines for the infringements of competition rules are in Croatia direct revenue of the State budget.

In 2015 the CCA made again **a step forward in using commitments in settlement procedures** as they swiftly and effectively restore competition in the relevant market, whereas lengthy infringement proceedings and fines for undertakings involved are thereby avoided. In 2015 there were 5 cases closed by accepting these remedies that were offered by the undertakings and that eliminate possible anticompetitive effects.

There were 3 commitment procedures recorded in 2015 in the area of prohibited agreements: one regarding the practices of the Croatian Association of Communications Agencies and two in the resale of pyrotechnic products. In the area of abuse of dominance there were also two cases closed and competition concerns eliminated by the application of the measures offered by the undertakings concerned: one in the resale of new motor vehicles and maintenance services for old motor vehicles of the Peugeot car make and one in the provision of specialised IT support to companies dealing with leasing and other forms of financing. All three cases have in common that soon after the infringement proceedings were initiated the undertakings realized that their practices were not in line with competition rules, they immediately and voluntarily offered their commitments (measures and obligations within set deadlines) with the view to restoring competition in the relevant market concerned.

The CCA accepts and advocates committments as a settlement mechanism exclusively where no hardcore restrictions are at issue, wherever the proposed remedies are viable and proportionate to possible negative effects on competition (market test). Following its preventive mission and taking into account the effectiveness of such commitments, the CCA always reminds the undertakings of the possibility to use this settlement mechanism, it does not bring a negative decision and it does not impose sanctions (the parties merely bear the costs of proceedings).

All the undertakings that were in 2015 involved in commitment proceedings have submitted evidence to the CCA that all the committments have actually been undertaken within the set

deadlines. For instance, in the infringement proceeding carried out against the Croatian Association of Communications Agencies – HURA, the CCA accepted the remedies proposed by this association of advertisers. Namely, HURA committed itself to revise all the provisions from the Guidelines for successful pitching that raised competition concerns within a 30-day deadline. The Guidelines were publically available on the web site of HURA and its application was binding for all its members. Based on sufficient indices the CCA opened an *ex officio* proceeding for the establishment of distortion of competition against HURA and assessed the compliance of certain provisions of the Guidelines with competition law, concretely, with the rules regulating prohibited agreements. The CCA carried out a surprise inspection on HURA premises. After the proceeding against HURA was opened, HURA voluntarily proposed the committments to eliminate the possible anticompetitive effects of its behaviour in the market. HURA committed itself to eliminate all the provisions that raised competition concerns from the Guidelines within a time period of 30 days. Concretely, this involved the provisions obliging the members to report about the pitching process, the provisions on sanctions that could be imposed on the members for non-compliance with the Guidelines and the obligation on the advertisers to retreat from the pitching process unless it was in compliance with the Guidelines.

In 2015 the CCA received its **first application for leniency** in line with the Regulation on immunity from fines and reduction of fines. In essence, the leniency policy offers companies involved in a cartel - which self-report and hand over evidence - either total immunity from fines or a reduction of fines which the CCA would have otherwise imposed on them. In the view of the CCA the first application for leniency is the result of the high amounts of imposed sanctions for hardcore restrictions in 2014 and 2015. The level of fines is proportionate to the their deterrent function and the CCA believes that the fear of fines and penalties will increase the number of leniency applications, which will at the same time increase the efficiency of the CCA and shorten the duration of the proceedings.

In 2015 the CCA established **cartels – prohibited horizontal agreements** in the provision of personal protection services, in the provision of berthing services in marinas and in the gaming and betting industry. The total imposed fines on the undertakings that participated in these cartels amounted to HR KUNA 17.4 million, whereby two thirds of this amount was imposed on the undertakings participants in the betting shops cartel. For example, in the *ex officio* proceeding and based on the direct evidence the CCA established beyond any doubt that the cartel members fixed the level of the bookmaker commission fee in the Republic of Croatia in the meeting of the Association of Pool Betting Shops on 26 March 2014. The commission or handling fee (so called vigorish) represents a constituent part of the price of the product, in this concrete case the price of betting, whose level depends on the method on the basis of which it is calculated. Given that here the undertakings agreed on the constituent element of the price, the agreement constituted a hard cord restriction. What is more, a new method was agreed for the calculation of the handling fee that was less favourable for the players than the one that had been in force before 1 April 2014. Namely,

the commission fee had been calculated as a bet percentage while after the agreement at issue entered into force as a percentage of the possible winning. The cut in the stake that was the result of the change in the vigorish calculation method also lead to the cuts in possible wins. At the same time, based on the new calculation method the bettors' revenues increased on the basis of the wager cuts based on the new bookmaker commission fee calculation method. Taking into account the gravity of the infringement and its duration from March 2014 until November 2015, the CCA imposed the total amount of HR KUNA 9.7 million. Four out or five cartel members paid their individual fines.

In two cases in which the CCA assessed allegedly prohibited agreements it found that there had been no infringement of competition rules, in other words, no distortion of competition. In the first proceeding, which the CCA carried out against the Croatian Insurance Bureau (CIB) and 12 undertakings – members of CIB – association of insurance companies no evidence was found that the decision to revoke the power of Generali Insurance to issue a motor insurance certificate ("Green Card") constituted a prohibited agreement either by object or by effect. Concretely, the CIB and 12 insurers brought a decision on the basis of which they lifted the power of Generali Insurance to issue a motor insurance certificate as retaliation for lowering the prices of insurance premiums for third party motor insurance. Within the proceeding no evidence was found that the decision to lift the power to issue a motor insurance certificate constituted a prohibited horizontal agreement. It should be noted that the case at issue definitely speeded up the liberalization process in the compulsory motor insurance market and lowered the price of insurance, the competitiveness of the market, the benefits for the consumers and the economy as a whole increased.

The second case where the CCA found no infringements of competition rules was the case *CCA v Piaggio Hrvatska from Split*. In the *ex officio* infringement proceeding conducted by the CCA there was no direct or indirect evidence found in respect of alleged resale price maintenance provisions in the vertical agreements with its authorised dealers. In other words, Piaggio did not limit the sales or restrict the buyers' ability to freely determine their sale price. The recommended price for motorcycles and scooters did not amount to a fixed price as a result of pressure from the supplier or incentives provided on the authorised dealers and there was the no restriction of the territory into which, or of the customers to whom, these authorised dealers could sell the motorcycles and scooters concerned. Given the fact that no direct evidence was found that there was existing concurrence of will or a meeting of minds, coercion in the form of threats, intimidation, sanctions or other forms of inducement or pressure imposed, based on the facts of the case and established evidence the CCA brought a decision stating that it "cannot be concluded that there has been a prohibited vertical agreement between Piaggio Hrvatska and its authorised dealers that would distort competition".

The most important case closed by the CCA in 2015 in the area of abuse of a dominant position was a complex and long *CCA against Hrvatska pošta* (*Croatian Post*, hereinafter referred to as: HP) initiated by the undertaking City Ex that stated in its complaint that HP was engaged in predatory pricing. The CCA found that HP did not distort competition in the provision of letter services in Croatia. In other words, in the course of the proceeding the CCA did not find evidence that after 1 January 2013, the point of the full liberalization of the letter market in Croatia, HP implemented predatory pricing policy with the exclusionary abuse objective or anticompetitive foreclosure, meaning that there was no evidence that it was engaged in a predatory conduct with the objective of excluding the existing competitors from the relevant market and deterring entry of new operators. In spite of a certain overlapping of the content of the postal services regulation in the part relating to setting the price of universal service and the provisions of the Competition Act in the part relating to predatory pricing, and consequently, the convergence of the jurisdiction of the HAKOM (Croatian Regulatory Authority for Network Industries) as specific regulator and the CCA as the general regulator in competition issues, the CCA carried out a comprehensive legal and economic analysis within its scope of competence in the proceeding in question. The analysis that was based on the provisions falling under the scope of the CCA and in compliance with the relevant criteria arising from the EU acquis and the case practice of the European Commission upheld by the rulings of the European Court of Justice. The CCA found that the criteria that are necessary to provide evidence that the allegedly abusive conduct lead to anti-competitive foreclosure had not been cumulatively met in the case at issue. It must be noted that the CCA did not decide on the allegations made by City Ex in its complaint as regards the application of other provisions, such as the provisions regulating public procurement, State aid issues, taxes regulations and application of postal regulations, given that the application of these provisions falls under the scope of other authorities, such as the Ministry of the Economy, the Ministry of Finance and the European Commission, the Ministry of Finance and the Tax Administration and the HAKOM, respectively. In conclusion, it should be noted that the proceeding against the undertaking HP was initiated on the basis of the parallel or consecutive application of the national competition law (Croatian Competition Act) and Article 102 of the Treaty on the Functioning of the European Union (Treaty). In accordance with the case law principle established by the European Court of Justice, a national competition authority cannot take a negative decision (a decision on non-infringement of competition rules) within the meaning of Article 102 of the Treaty, in other words a national competition authority is precluded from taking a negative decision on the merits when applying Article 102 of the Treaty, which might prevent the Commission, or other NCAs, from subsequently establishing an infringement of Article 102 Treaty. Consequently, such a practice would jeopardise the fundamental importance of the uniform application of EU competition law and the concept of coherence. This was the reason why the CCA terminated the proceeding against HP, in other words, closed the proceeding without taking a negative decision on the merits by deciding that there are no grounds for action on its part, in the sense of the principle of supremacy of the EU law that allows EU law

to take precedence over the provisions of the national law and the established case law of the European Court of Justice.

In the area of **merger control**, where in 2015 the CCA recorded a rise in the number of cases at the national level and the number of decisions regarding the notification and assessment of compatibility of concentrations in line with the EC Merger Regulation, one should particularly mention the work of the CCA in the monitoring of the behavioural and structural remedies that have been successfully implemented in two high-profile cases of conditionally approved concentrations, that between *Agrokor/Mercator* and *HT/OT-Optima Telekom*.

In both above mentioned cases the CCA has been monitoring the implementation of the remedies agreed under the 2014 decision on the conditionally approved concentration. The trustees with an irrevocable mandate were approved by the CCA.

In 2015 the trustees submitted to the CCA the first and the second report on the implementation, which were after subsequent interventions accepted by the CCA.

In the media and the electronic media sector the CCA carried out a number of proceedings where it imposed fines not exceeding 1% of the total turnover on several undertakings in the sector concerned for failure to submit the obligatory prior notification of concentration to the CCA. Although in the past years the CCA has on several occasions urged the undertakings in the media and the electronic media sector to notify transactions regardless of the aggregate turnover thresholds of the parties to the concentration, the negative trend has still been prevailing.

In 11 merger cases the CCA merger department acted on the basis of the notification, whereas in 7 cases the proceeding was initiated on its own initiative where the analysis of the ownership ties proved that the parties failed to notify the concentration to the CCA within the meaning of the relevant provisions of the Competition Act. Therefore, after the assessment of compatibility of these concentrations had been carried out, the CCA also carried out the proceedings for establishing the criteria for imposition of fines for failure to notify.

All the cases relating to merger control in 2015 were cleared in the first phase given the fact that the concentrations at issue did not produce anticompetitive effects. No concentration between undertakings was declared incompatible and prohibited.

In 2015 there were also 343 CCA decisions where concentrations with an EU dimension were notified to the European Commission and then transmitted to all Member States on the account of the fact that any Member State referred to in the reasoned submission may express its agreement or disagreement as regards the request to refer the case. For example, this can happen where the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market and should therefore be examined, in whole or in part, by that Member State, in this particular

case Croatia and the CCA, in accordance its national competition rules. Namely, in line with the EC Merger Regulation and within the European Competition Network (ECN) cooperation, under the rules governing the referral of concentrations from the European Commission to the EU Member States and in line with the submission procedure, a well-placed authority to deal with the case is decided. These are, in general, so called concentrations with an EU dimension, in principle, producing effects in at least three Member States (cross-border effect). No concentration within this referral procedure was found to have significant effects on competition in the territory of the Republic of Croatia as a separate, distinct market.

Additionally, there is also **competition advocacy** involving the CCA competences to promote competition through its opinions on laws and other activities preventing anticompetitive practices regarding the compliance of laws and other pieces of legislation in force in the Republic of Croatia with the mandatory rule of law in the area of competition.

Competition advocacy and strengthening of competition culture means raising awareness about the effects of competition among central and local administration authorities, executive, legislative and judicial authorities, but also the general public, about the benefits competition brings for strengthening of the competitive environment. Concretely, the CCA issues opinions on laws and other legal acts which may have effects on competition as well as expert opinions at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities in compliance with separate rules and local and regional self-government units, regarding the compliance with competition rules of draft proposals for laws and other legislation, as well as the existing laws and other legal acts and other related issues raising competition concerns.

In 2015 the CCA gave 51 opinions on existing laws and proposed draft laws and regulatory impact assessment opinions, such as the opinion on the final Draft Investment Promotion Act following the request of the Ministry of the Economy, on the proposed Draft Act on the Amendments to the Act on Management and Disposal of Asset Owned by the Republic of Croatia following the request of the State Office for State Property Management, on the Regulation on packaging waste management from the competent Ministry of Environmental Protection and Nature, on the Road Safety Act to the Ministry of the Interior, on the proposed Draft Law on Amendments to the Act on Housing Savings and Government Incentives for Housing Savings received from the Ministry of Finance etc.

In the area of electronic communications the CCA issued eight opinions.

In addition, the CCA gave a number of important comments based on the queries of individual undertakings that involved the analysis of the existing legislative framework and recommendations for necessary adjustments of the relevant provisions with competition rules. For example, it carried out a legal analysis of the Croatian Health Insurance Fund (HZZO) Guide for the new referral model identifying the basic drugs reimbursement list and the criteria for prescribing prescription drugs, it commented on the Decision of the City of

Zagreb regarding the provision of taxi services, it gave its opinion on the Town of Vodice local municipality decision, provided its observations to the State Commission for the Supervision of Public Procurement Procedures on applicability of competition rules in public procurement etc.

Namely, the development of competition law and policy and raising awareness on the importance of application of competition rules also raises the interest for such expert opinions not only as regards the legislation in effect or its draft proposals but also involving issues and behaviours addressed by the central administration or local government that want to minimize the likelihood of anticompetitive practices in their activities. In that sense, there are more undertakings that inform the CCA about competition concerns and ask the CCA to take steps. This is the sign that the awareness about competition rules has risen in the past years. The CCA takes definitely some credit for such progress.

It is important to stress here that before any opinion or expert observation within the meaning of competition rules is given the CCA carries out a legal analysis of separate laws and other provisions regulating the matter in question. Very often it carries out a comparative analysis of the rules and practices of the Member States in the particular area.

One of the important instruments in the CCA competition activities are its **regular market inquiries**. They are a vital source of information about the functioning of particular markets that very often reveal irregularities in these markets and practices that are in contravention with competition rules. By their nature they may serve as a basis for opening of a formal infringement proceeding or be a source of information for the purpose of the preliminary market investigation in particular proceedings carried out by the CCA.

In 2015 the CCA carried out a market study in the oil derivatives market. The object of the market inquiry was to establish the relevant facts about the way and mechanisms used in setting the prices of fuels in the period after the liberalization of this market in Croatia in February 2014. Inspired by the general public and the political interest raised by sudden and constant fluctuations in the prices of motor fuels in the last quarter of 2014 the CCA informed the public via its web site in January 2015 of the sector inquiry into the oil derivatives market, in particular, into the Croatian motor fuels retail and wholesale market.

In addition, the CCA continued in 2015 its regular sector inquiry covering the retail and wholesale distribution groceries' market in the Republic of Croatia (market research in food, beverages, toiletries and household supplies) whereas it also carried out its traditional market study in the press publishing and distribution market in the Republic of Croatia which again delivered the outcomes that helped the CCA in the assessment of compatibility of media concentrations.

On the other hand, the international activities of the CCA in 2015 are worth mentioning in this context. These activities include specifically active cooperation with the European Commission and the steps that must be taken in the process of convergence of competition

rules in the internal market that influence the work of the CCA and the relevant rules and practices at the national level.

Namely, in late 2015 the European Commission adopted new **Guidelines on the application of the specific rules set out in Articles 169, 170 and 171 of the CMO Regulation for the olive oil, beef and veal and arable crops sectors.** The CCA actively participated in the adoption of these Guidelines and published them on its website with the view to instructing the farmers how to cooperate and sell agricultural products concerned without infringing EU competition rules. It means that organising an undertaking in the specific form of a cooperative association does not in itself constitute anti-competitive conduct. The purpose of the derogation is to strengthen the bargaining power of producers in the sectors concerned vis-à-vis downstream operators in order to ensure a fair standard of living for the producers and a viable development of production. The clear and applicable rules should strengthen the position of producer organizations in the food supply chain and to help them to cope with higher concentration in food processing and food retail part of the chain.

Concretely, the EU competition rules prohibit agreements that fix prices or other trading conditions or share markets, unless they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit (Article 101 of the TFEU). The general competition rules, in other words, apply to agricultural sector subject to derogations that are set under the CMO Regulation.

The objective of the new Guidelines is to help the farmers, competition authorities and judicial bodies in the Member States with the application of the new rules. Concretely, the Guidelines provide for a clear definition and explanation of the activities that may generate significant efficiencies necessary for achieving the benefits of the derogation. The Guidelines list sets of examples of situations where such activities may lead to significant efficiencies. In addition, the Guidelines provide for the method of calculating the volumes brought to the market by producer organizations and how to respect the thresholds taking into the natural/weather conditions. At the same time, the Guidelines explain how exceptional circumstances (such as natural disasters) may be taken into account in the calculation of volumes that are put on the market by the producer organization and also explain the situations in which national competition authorities and the European Commission may use a safeguard clause under the CMO Regulation. The safeguard clause constitutes an exception from the derogation and so it enables the adoption of a decision about re-assessment of the joint commercialization by the producer organization or should not take place if it produces anticompetitive effects.

Public consultation on the draft text of the Guidelines was opened from January to May 2015. The European Commission consulted the European Parliament, the national competition authorities of the Member States, including the CCA.

In that respect one should also mention here one of the more recent initiatives of the European Commission in **tackling unfair trading practices (UTP) in the business-to-business food supply chain** in the Member States, particularly by protecting the small players in the supply chain (food manufacturers and retailers) from unfair trading practices of their partners with more significant market and financial power.

The CCA's experience in the proper application of the criteria generating from the rules on the functioning of the internal market and competition rules, even before the Republic of Croatia joined the EU, makes it an appropriate body in the potential extension of additional powers in the implementation of the UTP rules that are closely connected with competition rules.

In that respect the experts of the CCA were in 2015 active in the definition of the institutional powers that would regulate unfair trading practices with the view to becoming the initiator in the drafting of laws and the implementing authority in the area concerned. The European Commission promotes the adoption of such rules taking into account all the specific features of the national market creating competitive neutrality (i.e. maintaining a "level playing field" between small and medium-sized businesses in the supply chain and the multinational operators on the other hand). Individual Member States at their respective national levels approached the problem in a different way, including the diverse definitions of unfair practices which differ from broad to specific.

To sum up, the issue in question being close to the current powers and implementation practices of the CCA, makes the CCA stand out and take a responsibility in the creation of the new legislative framework in the area concerned in Croatia.

In the report period the CCA participated together with the Ministry of the Economy, Ministry of Justice and Ministry of Foreign and European Affairs as one of the initiators in the work group responsible for the **drafting of the proposed draft Act on actions for damages for infringements of competition law** (hereinafter: Act on Damages) that transposes the Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. The provisions in question must be transposed in the Croatian law until 27 December 2016. In practice, this would mean that the actions for damages may be filed by any natural or legal person that has suffered harm on the account of the infringement of competition rules. In other words, once the Act on Damages enters into force, the undertakings that have been involved in the infringement of competition provisions may face the risk of being sued for damages at the competent court that would decide on the amount of compensation. The CCA was also actively included in the adoption of the Directive in 2014; it prepared the position paper of the Republic of Croatia, gave its comments and proposals and translated the original text of the Directive into Croatian. The CCA started the collaboration with the Ministry of the

Economy and proposed the inclusion of all stakeholders in the matter concerned – the competent ministries, academia, judges, the bar association and the business community.

On 24 February 2016 the CCA was empowered by the Ministry of the Economy as the sponsor of the act to establish and coordinate the working group that intensively carried out its activities in 2016.

In the forthcoming period, the CCA as a full member of the European Competition Network would have to align its goals with the strategic goals of the European Commission given the committments it has undertaken under the Council Regulation (EC) No 1/2003. Concretely, it means that the CCA would continue to carry out market investigations particularly where market failures are spotted, including the ones investigated by the European Commission, such as the energy market, e-commerce and others.

Since Croatia joined the EU in 2013 the CCA **international committments and relating activities** have been a very important part of its activities. In the first place, it means participation in the work of all the working groups within the European Competition Network (ECN), a body comprising the work of the European Commission and the national competition authorities of all the EU Member States and European Economic Area and fostering legislative coherence and convergence between Member States in the area of competition.

The work of the CCA in 2015 in the area of international cooperation was marked by the initiative of the European Commission that invited the general public and stakeholders to share their experience and provide feedback on potential EU legislative actions to further strengthen the enforcement and sanctioning tools of national competition authorities. The public consultation invited a broad range of stakeholders (undertakings, SMEs, associations of undertakings, public authorities, bar associations, judges, consumer associations etc.) to provide feedback until February 2016 on potential improvements to ensure that all national competition authorities have the right tools to detect and sanction violations of EU competition rules; to ensure national competition authorities have effective leniency programmes that encourage companies to come forward, possibly in several jurisdictions, with evidence of illegal cartels; and to safeguard the independence of national competition authorities when enforcing EU competition law, and ensure they have the resources and staff needed to do their work. Empowering the national competition authorities to be more effective enforcers actually comes to better serve the European citizens and businesses. The CCA communicated the public consultation that was initiated by the EU Commissioner in charge of competition policy, Margrethe Vestager, to the public via its web site and its e-journal *AZTNinfo*.

Within its international activities in 2015 the CCA experts participated in the ICN workgroups, continued its cooperation with the OECD, UNCTAD and bilateral cooperation – in 2015 the CCA signed the cooperation agreement with the national competition authority

of Monte Negro and provided assistance to the countries in the region in their respective stabilization and association processes.

Besides the activities of the CCA relating to the enforcement of competition rules the CCA was in 2015 also involved in the area of competition advocacy that is *conditio sine qua non* in the development and strengthening of the competitiveness of the Croatian economy in the widest sense of the word. Transparency and openness of its work are the top priorities and in 2015 the CCA continued to use all available communication channels, despite its limited financial and human resources, in advocating competition among undertakings and consumers, central and local administration authorities, executive, legislative and judicial authorities, academia and the general public.

The first level of transparency includes the legal obligation of the CCA to annually report to the Croatian Parliament. The second level of transparency involves the publication of its decisions, opinions and observations, market investigations, news, annual reports, internal acts and other information on its web site. The web site of the CCA publishes also the rulings of the High Administrative Court of the Republic of Croatia in the actions taken against the decisions of the CCA as well as the relevant decisions of the Constitutional Court of the Republic of Croatia. All decisions of the CCA pursuant to the the Competition Act published in the Official Gazette.

The CCA communication activities constitute the third level of transparency. They are related to presentation of the CCA decisions and its work in the public. In 2015 there was a noticeable shift in the communication from indirect channels (media) to direct communication in various conferences, workshops and seminars. This means that communication is becoming less general in content and switches to more specified and qualified public and experts, first of all the undertakings, judiciary, lawyers and academia.

In that sense, in 2015 the CCA organized or co-organized two international conferences in the area of competition law. There was the First regional conference on IT forensics in Zagreb in September 2015 that was attended by 11 national competition authorities and the representatives of the Croatian authorities whose work relies on the IT forensics tools (the Ministry of the Interior, the State Attorney's Office of the Republic of Croatia. The second was a two-day International Competition Conference in co-operation with the Faculty of Law in Rijeka held in Rovinj in April 2015 that welcomed some 120 participants – experts in the area of competition law and state aid rules from different institutions, academia, judiciary and business community.

Besides, the members of the Competition Council and other CCA experts held papers and participated in international gatherings, visited universities and trainings that were organized by professional organizations, such as the Croatian Employers' Association and the Croatian Chamber of the Economy.

The monthly e-bulletin of the CCA *AZTNinfo* containing detailed information about the decisions of the CAA and its activities as well as the news from the comparative practice in the area of competition law and policy regularly reached its readers.

The transparency of the work of the CCA has also been ensured by guaranteeing access to files. In 2015 there were 11 requests for access to files that were all cleared within the set deadlines. The information commissioner was communicated the report on the implementation of the Competition Act for 2015.

As a legal person with public powers the CCA particularly pays attention to how it pursues its activities and carefully balances its budget.

In line with Article 26 paragraph 7 of the Competition Act the CCA is financed from the State budget. The CCA has no other operational or financial revenue of its own. Administrative fees and fines set and imposed by the CCA are within the meaning of Article 26 paragraph 10 of the Competition Act contributed to the budget of the Republic of Croatia.

The planned funds for the regular operational activities falling under the scope of the CCA in the State budget for 2015 amounted to HR KUNA 11,795.000, which was 6.21% less than in 2014. The total executed budget in 2015 amounted to HR KUNA 11,036,381.85, which was 93.57 % of the planned funds. The expenditures for employees held the highest share of 69.1 % followed by material expenditures of 28.5 %.

In connection with this it must be noted that the CCA rationally and responsibly spends the allocated budgetary funds and systematically uses its best endeavours to control the expenses.

At the end of 2015 there were 46 employed persons in the CCA, which is 4 % less than in 2014 and 19 % less than in 2011 when the CCA employed 57 workers. The employees of the CCA, including the members of the Competition Council, may not be members of management or supervisory boards, boards of undertakings or members of any other interest associations. The hierarchical organizational structure is rather flat and the jobs include many tasks. The complexity of the work of the CCA asks for a highly qualified staff. From the total number of employees (including the members of the Competition Council) 22 % hold a postgraduate degree, 63 % have a university degree and additional expertise for the job they perform. For example, all the lawyers - case handlers must have a bar exam, whereas the ones imposing the sanctions must have a four-year work experience after the completion of the bar exam, similar to the judges of the minor offence court. Trainings and professional development and improvement are an important feature of the CCA employment policy.

Taking everything mentioned above into account the CCA assesses its work in 2015 as effective and efficient. This particularly in connection with the application of the specific tools in the implementation of the Competition Act that have not been used in their full

scope in the past years due to a number of circumstances. This changed on the 18th anniversary of the Croatian Competition Agency when in 2015 it symbolically came of age and made use of the instruments that prove its knowledge and expertise in the area of the implementation of competition rules both in Croatia and in the EU internal market.

For any further details of the Annual Report of the Croatian Competition Agency please refer to its version in the Croatian language available at the web site of the CCA: http://www.aztn.hr/godisnja-izvjesca/

President of the Competition Council

Mladen Cerovac, LLM

Zagreb, May 2016