

CROATIAN COMPETITION AGENCY

Competition Council

**COMPETITION AGENCY STRATEGY STATEMENT
2007 – 2008**

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1. Introduction

Croatian Competition Agency Strategy Statement for 2007 – 2008 follows the main objectives and activities of the Croatian Competition Agency (hereinafter: the Agency) set under the legislative framework which regulates the scope and competence of the Agency as well as the goals and priorities specified in its Strategy Statement for 2006. The experience and practice of the Agency, particularly taking into account the specificity, comprehensiveness and multidisciplinary nature of competition issues, have proved that these goals, especially in respect of the revision and changes of the legislative framework concerned, cannot be achieved within a short-term period of one year. The implementation of the rules in question and the procedures carried out before the Agency, here are particularly meant prevention of serious violations of competition rules and investigations of certain markets (sector investigations) which are complex and lengthy and may last for years. Taking the above said into consideration, as well as the fact that the mandate for the majority of the members of the Competition Council expires in October 2008, this Strategy Statement covers the time period of two years which would, in the opinion of the Council who has made such a decision, ensure a comprehensive and objective approach which would consequently result in realistically set goals and achievable priorities.

A key goal concerning the work of the Agency relates mainly to structural changes. In other words it is necessary to change the parts of competition regime with the view to its improvement, particularly in respect of the revision and modification of the competition rules as well as the reforms in the enforcement practice and economic measures used and industrial policy applied in the sectors such as shipbuilding, steel and iron industry etc. The introduction of the necessary reforms requires cooperation and a consensus of all competent public authorities, and, subsequently, interaction in the activities relating to the implementation of the competition law and policy in the Republic of Croatia.

In practice, it means that the expert activities of the Agency in the following two years will be simultaneously focused on the drafting of the amendments to the Croatian Competition Act and the provision of initiatives concerning the drafting of other legislation which will alongside with the Competition Act and State Aid Act ensure efficient and effective implementation of competition law and policy and creation of a single competition regime in our country. The everyday work of the Agency will continue to be concentrated on the handling of the requests of the undertakings and aid providers with the view to increasing expertise, timeliness and standard of the decisions and procedures carried out before the Agency. These activities include permanent and systematic communication with all stake holders (undertakings, associations of undertakings, consumer associations, public authorities, academia, general public) in the objective of promoting awareness of competition policy and enhancing competition advocacy in the market economy as well as the operations to increase competitiveness of Croatian undertakings.

In the forthcoming period the activities of the Agency will also be linked to the negotiations for the accession of the Republic of Croatia to the EU, particularly in Chapter 8: Competition policy. Apart from its important and indispensable role in the preparation, performance and conclusion of successful negotiations in this chapter, the Agency must at the same time be accordingly prepared for the obligations which are to be fulfilled by its membership in the EU. Here are especially meant the expertise and the number of staff which are vital for the performance of the activities entrusted to this Agency. Thus, in 2007, and in 2008 at the latest, extra effort will be needed to solve the current problem of the lack of office space, understaffed departments and resources allocated for the work of the Agency.

Finally, not only does this Strategy Statement identify the goals and priorities in the work of the Agency in the following two years, but it is at the same time a document which ensures the transparency of the work of the Agency and its openness to business community and experts and its commitment to further promotion and understanding of competition law and policy in Croatia as an effective instrument in the development of the economy, by ensuring equal conditions for success of undertakings in the market and consequently producing benefit for the consumers.

Olgica Spevec,
President of the Competition Council

2. Mission statement and goals

Since its establishment in 1997 until today, the Agency has played a significant role in the promotion of new rules and legislation in the area of competition in the Republic of Croatia. The first important step in this period was the adoption of the first Competition Act in 1997 and the second, the adoption of the first State Aid Act, both in 2003. The experience gained in this ten-year period, particularly in the part that has indicated the short backs and deficiencies of the existing system, induce the Agency to start adequate initiatives and propose solutions for which it considers will contribute to more efficient and effective enforcement of competition law and policy in the future.

Within the meaning of the above mentioned laws, the basic task of the Agency is to promote and enforce competition law and policy and prevent the activities and practices of the undertakings, including those state owned, when it comes to state aid awards, which place or may place some of them at a competitive advantage to other undertakings. This particularly in respect of concrete activities of the Agency involving the assessment of restrictive agreements between undertakings, establishment of abuse of a dominant position of undertakings and accompanying measures to prevent such behaviour, assessment of compatibility of concentrations between undertakings, and, since 2003, state aid control.

Since its establishment the Agency has endeavoured to maintain its independent and autonomous status of an authority whose competence covers the implementation of the rules concerning the assessment of behaviour of powerful market players, control of consolidation processes in the market and measures against concerted practices between undertakings in the market. In the area of state aid control, the Agency has apart from the activities linked with the fulfilment of the commitments undertaken by the Republic of Croatia in the accession process and the matching enforcement of the legislation pursuant to these obligations, also established linkages with the competent authorities in charge of state aid policy on the joint task involving the implementation of transitional economic processes which, on the way to their conclusion, are preconditioned by political and expert coordination. Such partnerships, but also the decisiveness and thoroughness in the realisation of the duties entrusted to it, the Agency will continue to keep in the future. Furthermore, apart from the above stated enforcement activities and procedures carried out before the Agency, it will continue to promote competition or strengthening of competition in the industries and sectors which are partly or entirely exempted from competition on the legal basis, existing rules or through interest associations.

The market behaviour of undertakings from certain sectors, such as telecommunications and banking, is regulated by separate rules. Nevertheless, all competition concerns are, in general, subject to the provisions of the Competition Act. This has been the cause for numerous issues of split jurisdiction and considerations about the question which authority is best placed to act in practice. This subsequently makes the decisions on real

competence and the best placed authority for the application of competition rules difficult and unclear. In order to avoid the current practice, where acting against the behaviour of an undertaking in breach of competition rules may be assessed by several competent authorities or no authority, and in order to ensure legal certainty and protection of public interest, direct and permanent cooperation between the expert staff of the Agency and other competent authorities entrusted with control and regulation of separate markets, through coordinated actions against anticompetitive practices of undertakings, is essential. In 2006 this issue encouraged the Agency to initiate the conclusion of a number of cooperation agreements with sector specific regulators (such as the Croatian Telecommunications Agency, Croatian Financial Services Supervisory Agency etc.), whereas in 2007 it is expected of this cooperation to generate positive results in practice. Nonetheless, the Agency still considers that the only solution to this problem is adequate reform and modifications of the relevant legislation which will provide for the creation of a single competition regime to ensure that the Competition Act applies to all sectors.

In order to increase the effectiveness of the competition regime and state aid control it is not only necessary to have an appropriate legislative framework but also the adequate administrative capacities within the Agency, public administration authorities and other implementation authorities. This Strategy Statement wants to contribute to the improvement of the enforcement system and invite all stake holders from the public and private sector to participate and pay their contribution to the realization of the stated goals.

3. Strategic goals and priorities for 2007 – 2008

3.1. Anti-trust

In the past three years the Agency has constantly used its best endeavours to propose and adopt new rules which have improved the competition regime in our country, apply these rules, create its practice and experience and carry out complex assessments of market practices of undertakings. This has been accompanied by constant strengthening of the administrative and institutional capacities of the Agency, raising of the level of expertise and the number of staff and enhancing advocacy in promoting awareness of competition policy. On the basis of the aforementioned, the major goals and priorities in the upcoming period may be specified as follows:

- enhancing effectiveness of the existing competition regime through necessary reforms of the legislative framework,
- efficient and effective enforcement and strengthening of the enforcement record, and
- strengthening of the administrative capacities through development and training to enable the handling of most serious cases of violation of competition rules.

3.1.1. Enhancing effectiveness of the existing competition regime

In the period from 2007 – 2008 the Agency will carry on to perform the activities relating to the necessary modifications and reforms of the existing legislative framework for the purpose of overall improvement and strengthening of effectiveness of the competition regime. In this respect, the Agency will particularly:

- Continue with intensive work relating to the initiative towards the Ministry of Justice in terms of the necessary amendments to the existing Competition Act and the Courts Act in the part which would entrust the Agency with the power to impose fines. Within the cooperation with the competent ministry, representatives of courts and experts from the Law School, it is necessary to find appropriate legal solutions which would correspond to the similar ones applicable in EU Member States whose legal systems match the Croatian legislative regime. Currently, the Agency considers that the most appropriate court, taking into account its scope of jurisdiction, would be the commercial court, which would in compliance with the amendments to the Competition Act, ensure that only one first instance court in the territory of the Republic of Croatia at the same time rules on the legality of the decisions of the Agency and on the level of fines set by the Agency. The planned reforms of the Competition Act also include possible introduction of leniency programmes for the undertaking which is the first to submit information and evidence of the alleged cartel to the Agency. Without such a leniency programme it is

impossible to successfully disclose and combat cartels. The European Commission admits that no cartel case would have been successfully solved without the information from the undertaking/s involved, who, in turn, have become eligible to benefit from a reduction of a fine or given immunity from a fine that would otherwise have been imposed.

- Be engaged in drafting and proposing competition rules in the transport sector. Once the new, amended Competition Act is adopted, upon the proposal of the Competition Council, the Government of the Republic of Croatia will subsequently adopt the new regulations. New regulations concerning the transport sector are to regulate the conditions which agreements entered into between the undertakings in the sector in question may contain, restrictions which such agreements may not contain and other conditions that must be satisfied for these agreements to qualify for block exemption. The planned regulations provide for a "safe harbour" for undertakings, i.e. where the market shares of the undertakings concerned do not exceed the set thresholds, the undertakings may be exempted from obligatory notification to the Agency, provided that the agreements in question do not contain hard core restrictions and as such, in general, have precompetitive effects in the relevant market concerned. The secondary legislation concerned will ensure full harmonization of the competition regime in Croatia with the relevant EC rules regulating block exemption granted to certain categories of agreements.
- Proceed with permanent cooperation with other competent authorities and sector regulators and contribute to improvement of competition policy in separate sectors, in particular by the provision of a clear definition of competences of the Telecommunications Agency and Competition Agency relating to competition issues in the area of telecommunications which would, through the necessary changes of the Telecommunications Act, eliminate the possibility of any kind of positive or negative conflict of jurisdiction between these two authorities. A similar initiative will be introduced by the Agency in the banking sector with the view to ensuring the application of general competition rules instead of the separate rules now applicable in the sector concerned. Furthermore, the Agency will also initiate the relevant modifications of the Electronic Media Act in the part which is to ensure better application of the provisions thereof relating to competition in the sector in question. The Agency namely considers that the existing rules, where any change in ownership structure in the media sector is automatically subject to obligatory notification and assessment of concentration, even in cases where there has been no change in decisive influence in the particular electronic media, contravenes competition law and policy and the principle of procedural efficiency, whereas it imposes unnecessary financial and technical burden on electronic media publishers, particularly the smallest ones.
- Continue with market investigation of liberal professions (pharmacists, doctors etc.) which was once started in the area of the provision of legal as well as taxi services. After having carried out the investigations in the above mentioned markets the Agency has also communicated its proposals relating to competition issues in the areas in question and aimed at the improvement of the existing access conditions and carrying-

out of the activities within the sectors concerned. Similar activities will be continued concerning the provision of audit services which started in 2006.

- Investigate certain markets where the experience of other European countries has proved the possibility of existence of cartels (e.g. construction market).
- Further pursue on-going monitoring and analysis of telecommunications market taking into account that this market is characterised by rapid development and strengthening of competition. It is necessary to ensure that the provision of telecommunications services is subject to competition rules and as such can guarantee equal opportunities for all market players in this dynamic market.
- Take further actions to support the full harmonization of the Croatian legislation with the relevant EU rules in the area of competition law and policy and participate in the preparations of the negotiations for the accession of the Republic of Croatia to the EU, particularly in Chapter 8: Competition policy.
- Provide expert opinion on compliance of laws and other legislation with the provisions of the Competition Act on its own initiative. The Agency will identify and comment the EU practice concerning the operations and legal frameworks applicable in certain sectors and thereby propose improvements of competition policy and take appropriate actions domestically. At the same time, although this practice is not known to similar EU competition authorities and in spite of the additional "burden" to its regular activities, the Agency will continue to respond to the requests of single undertakings concerning its expert opinion on certain competition issues and interpretations of the Competition Act.
- Participate in the work of competition seminars and workshops organized by the Croatian Chamber of Commerce and county chambers, where the experts from the Agency disseminate knowledge on competition law and policy and the relevant reforms in this branch of law which is subject to constant changes, both concerning the Croatian and EU legislation, among business community. In 2007 the experts of Agency in cooperation with their German partners are planning to organise a special international seminar on competition law and policy where international experts will be invited and which will be aimed at businesses, judges and other interested parties in the area concerned.
- Start cooperation with the Croatian Association of Employers on the training programmes for undertakings particularly adjusted to the needs of this association. The projects concerned will mainly address concentrations between undertakings, particularly taking account of the current trend of agglomeration of undertakings and their preparation for the EU membership in terms of strengthening of their market positions and opening of the Croatian market, but also with the objective to ensure their qualification for a possibility of block exemption granted to certain categories of agreements, application of the criteria used for the establishment of a dominant position etc.
- Strengthen interaction and linkages with the academia, particularly law and business schools, with the view to distribution and dissemination of knowledge in the area of competition both in EU and Croatia among the students of the universities concerned.

3.1.2. Enforcement of antitrust rules

3.1.2.1. Agreements between undertakings

In the area of antitrust the Agency will in 2007 and 2008 continue with its intensive activities relating to the enforcement of the Competition Act, particularly concerning the anticompetitive practices of undertakings, such as conclusion of prohibited agreements or abuse of a dominant position. Nevertheless and as previously mentioned before, the disclosure and sanctioning of cartels is absolutely preconditioned by the establishment of a legally based system which would enable the Agency to act effectively in the procedures concerned. Cartel enforcement and successful prosecution depends on the available investigative mechanisms and the "whistle-blower" immunity programme for cartels which provides a means to break the secrecy surrounding cartel agreements where, in essence, the first member of a cartel who "blows the whistle", i.e. informs the Agency of the existence of a cartel, can seek immunity from fines or reduction in fines. Without such a legal mechanism it is unreasonable to expect any significant improvement in cartel combat. This is also the experience of all European competition authorities and the European Commission which states that without the "whistle blowers" and adequate legal solutions which ensure immunity from fines or reduction in fines for offenders who first step forward and report the existence of a cartel there would have been no success in combating such anticompetitive behaviour as hard-core cartels.

In the upcoming period the Agency will strengthen the implementation of all bylaws covering the application of block and individual exemption granted to certain categories of agreements between undertakings which have been adopted in 2004 and 2005 by the Croatian Government, upon the proposal of the Competition Council, pursuant to the Competition Act¹. The application of the above mentioned secondary legislation started in 2006 when the transitional periods provided for the adjustment of undertakings to the new conditions expired. As an example, it was in 2006 when the Agency for the first time took a decision by which it granted individual exemption of an agreement from the application of the provisions on prohibited agreements as laid down by the Competition Act for the duration of two years, provided that certain measures imposed by the Agency are fulfilled.

3.1.2.2. Abuse of a dominant position

In this part of the scope of its activities, the Agency will take all necessary measures with the view to preventing abuse of a dominant position by undertakings the practices of which have as their object or effect exclusion of competitors from the market, particularly concerning the industries and sectors where such practices directly affect the consumers.

¹ In 2004 and 2005, upon the proposal of the Competition Council, the Government of the Republic of Croatia adopted eight regulations in the area of competition, whereas two guides on notification and assessment of concentrations and a number of interpretations of particular provisions of the Competition Act have been adopted by the Competition Council.

The very idea of strong competition is based on the final benefit which it has for the consumers in the form of lower prices of goods and services, wider choice and better quality. Whereas competitors on the market try hard to build customer loyalty, monopolies almost in principle produce negative effects on consumers, given that their ultimate goal is to keep their market positions and increase profit and as such concentrate more on foreclosure of new entrants than on price reduction, innovation and other forms of creating benefit for the consumers.

Nevertheless, the role of this Agency is not to prevent growth of certain undertakings if this growth is the result of their effective and efficient business practices, nor is it to support and enable the less effective competing undertakings to strengthen their market position by taking over the market shares of the successful ones. This is the reason why in the establishment of the alleged dominant position of undertakings the Agency will in the first place apply economic approach and economic analyses in the effects-based assessment of the behaviour of the dominant undertaking concerned and only then decide if, in the particular case, abuse can be established.

Here it is necessary to point out that the Agency where establishing abuse of a dominant position of the undertaking concerned applies both the Croatian Competition Act and, subordinately, the relevant EC criteria (decisions made by the European Commission and the case law relating to the rulings of the European Court of Justice) and the newest reforms covered by the *DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses*, the provisions of which correspond with the provisions under Article 16 of the Croatian Competition Act. This new, economic approach has been applied by the Agency since 2006 where the assessments carried out in a couple of cases proved that the business practices of the undertakings concerned did not lead to abuse of a dominant position.²

In 2006 the Agency has taken a number of decisions which may be regarded as particularly significant relating to its practice and enforcement record in respect of the established prevention, restriction or distortion of competition through abuse of a dominant position and/or conclusion of prohibited agreements between certain undertakings in defined relevant markets.³

² Here are meant three cases which have been investigated *ex officio* by the Agency, against the undertaking Kvasac d.o.o., where the relevant market was defined as the distribution (wholesale) market of fresh yeast in the territory of the Republic of Croatia; against the undertaking Blitz d.o.o., and against the undertaking Continental film d.o.o., both active in the relevant market defined as the distribution market of VHS and DVD videograms, concerning the cession of videogram exploitation rights for renting and home use in the territory of the Republic of Croatia.

³ Upon the request of the undertakings Tvornica duhana Zadar d.d. from Zadar and BAT Hrvatska d.oo. from Zagreb, the Agency initiated the proceedings against the undertaking Adris grupa d.d. (former Tvornica duhana Rovinj d.d.) and the connected undertaking Ronhill d.o.o. where it was established that the undertakings concerned abused their dominant position and concluded prohibited agreements in the cigarettes distribution market in the territory of the Republic of Croatia (the decision of the Agency Class: UP/I 030 -02/2000-01/04 of 29 December 2006 has been published on the web site of the Agency).

3.1.2.3. Concentrations between undertakings

In the area of concentrations between undertakings the Agency will in the forthcoming period continue to improve its economic analyses which are necessary for effective implementation of the substantive test.⁴

In line with the merger review package relating to the control of concentrations between undertakings in the EU, the 2003 Croatian Competition Act and the relevant bylaws abandoned the use of the dominance test in the assessment of concentration effects on competition and introduced the application of the substantive test. The application of this new substantive test requires also a new approach which, as compared with the dominance test where the sole fact of the strengthening of the existing or creation of a new dominant position of the participating undertakings may be regarded as grounds for the prohibition of implementation of the concentration concerned, the substantive test takes into account all possible anti-competitive scenarios (legal, economic and material facts) and focuses on the impact of a particular merger on competition in the relevant market. In other words, the rise in the marked share held by the economic unit which has been created by the implementation of the concentration in question has lost its significance whereas the estimate of the impediment on effective competition becomes decisive. This impact of a merger on competition relates particularly to exclusionary effects on the incumbent firms, foreclosure effects and raising the barriers to entry to the market in question to actual or potential competitors.

Consequently, a high market share held by the undertakings following the implementation of a concentration ceases to be an argument for the prohibition of the concentration and becomes only one of the necessary indicators of potential competition concerns. This means that the use of the substantive test ensures compatibility also of those concentrations between undertakings whose market shares exceed the dominance thresholds set by the Competition Act.⁵ Nevertheless, this is possible only provided that the in-depth investigations undoubtedly prove that the implementation of the concentration concerned will not produce significant anti-competitive effects in the relevant market in question. This particularly applies to markets with low entry barriers.

⁴ Whereas Article 21 par (2) of the 1995 Croatian Competition Act regulated the exclusive use of the dominance test: "*There shall be prohibited any concentration between undertakings which creates new and strengthens the existing monopolistic or dominant position of undertakings in the market, by way of significant or permanent restriction or elimination of free competition*", Article 18 of the 2003 Croatian Competition Act introduces the application of the efficiency test and stipulates as follows: "*There shall be prohibited the concentrations of undertakings that create a new, or strengthen a dominant position of one or more undertakings, individually or as a group, if they can significantly influence the prevention, restriction or distortion of competition, unless the participants in that particular concentration provide valid evidence that their concentration will lead to strengthening of competition in the market, bringing benefits that will prevail over negative effects produced by the creation or strengthening of their dominant position*".

⁵ This is the rebuttable presumption pursuant to Article 15 paragraphs (3) and (4) of the Competition Act which state that an undertaking shall be presumed to be in a dominant position when it holds more than 40% of the market share in the relevant market, or where three or fewer undertakings hold more than 60% of the common market share in the relevant market, or five or fewer undertakings hold more than 80% of the common market share in the relevant market.

In accordance with the above described approach, in 2006 the Agency assessed 26 concentrations between undertakings, whereby 24 concentrations thereof have been declared compatible in the first Phase, where on the basis on the received notifications, enclosed documentation and in compliance with the understanding of the Agency (where the competition problem is readily identifiable and can easily be remedied) it was sufficient to clearly rule out serious doubts concerning competition. Only two concentrations⁶ have been assessed in compliance with a Phase II – proceedings which involved a detailed legal and economic analysis. Nonetheless, after the in-depth investigation which had been carried out, both concentrations were declared compatible posing no threat to competition in the relevant market.⁷

⁶ The decision of the Agency, Class: UP/I 030-02/2005-02/54 of 9 May 2006 (Official Gazette, 61/06) concerning the assessment of the full function joint venture, concerning the new economic entity Adria Magazines d.o.o. which was created by the following undertakings: Styria Medien International AG, Austria, G+J International Publishing Holding GmbH, Austria, Sanoma Magazines International B.V., Netherlands.

⁷ The decision of the Agency, Class: UP/I 030-02/2005-01/51 of 14 June 2006 (Official Gazette, 81/06) concerning the assessment of acquisition of control or decisive influence over the undertaking Sunce osiguranje d.d. Zagreb by the following undertakings: Euroherc osiguranje d.d., Zagreb, Jadransko osiguranje d.d., Split, Euroherc životno osiguranje d.d., Zagreb, Euro Daus d.d., Split, Euroagram Tis d.o.o., Zagreb, Euroleasing d.o.o., Zagreb i Eurodom d.o.o. Osijek.

3.2. State aid

During 2007 and in the first half of 2008 the most part of the substantive EU rules in the area of state aid which will be published in the Croatian Official Gazette are expected to enter into force pursuant to the provisions thereof laid down in the Croatian Regulation on state aid (Official Gazette, 50/06). The relevant EU state aid rules will be applied by the Competition Agency in the proceedings concerning the state aid issues. This is also the reason why the Agency has its representatives in the Committee for preparation and monitoring of the publishing of the state aid rules.

In addition, the prior task is to establish the regional state aid map of the Republic of Croatia. Given that regional state aid may not be granted without the established regional state aid map the Agency is determined to pursue cooperation with other competent authorities on its drafting, whereas both the Agency and European Commission are pursuant to Article 70 of the Stabilization and Association Agreement mutually in charge of its adoption.

The Agency will also, taking into account the importance of the timely award of state aid in certain sectors and aid to horizontal objectives, proceed with its policy from the former period and base its activities and efforts on the strengthening of the efficiency of the enforcement record relating to state aid cases and approval of state aid, particularly in the area of transport, investment in infrastructure, employment etc. Here we particularly want to refer to the decisions of the Agency concerning four Croatian shipyards which have been granted rescue aid provided the adoption of individual restructuring plans within the period of six months. This will significantly shift the focus of the activities of the Agency in 2007 to the assessment and approval of the restructuring plans in question concerning their compliance with the relevant state aid rules.

In 2007 and 2008 the Agency will continue its cooperation with the competent authorities relating to the activities concerning the adjustment of the existing state aid schemes and other legal acts on the basis of which state aid had been granted before the 2003 State Aid Act entered into force. With the object of improved coordination as regards the more efficient and effective enforcement of state aid rules and data exchange in the process of granting new state aid, in 2006 the Agency also set up a working group which meets on the regular basis and serves as a kind of forum in charge of specific issues which prove important for the proper implementation of the State Aid Act and Article 70 of the Stabilization and Association Agreement.

In this respect, the activities which have been commenced during 2006 will be continued whereby account will be taken particularly of:

- Intensive cooperation with the European Commission and relevant competent authorities in Croatia with the view to fulfilling the benchmarks which have been defined

after the pre-accession negotiations (shipbuilding, steel industry, fiscal aid, action plan, transparency);

- Cooperation with the Croatian Central Bureau of Statistics and other competent authorities on the activities relating to the drawing up of the regional aid map of the Republic of Croatia, given that the favoured "region A" status expired by virtue of the Stabilization and Association Agreement in March 2006;
- Further harmonization of the existing state aid schemes with the EC acquis;
- Facilitating ongoing cooperation between the Agency and aid providers, especially through efficient implementation of the notification, authorization and monitoring of the state aid, through the established working group and necessary interaction with the Committee for preparation and monitoring of the publishing of the EC state aid rules in Croatia;
- Promotion of the state aid policy which is tailor-made and redirected towards horizontal and regional development objectives;
- Further education and training of the expert staff of the Agency and aid providers at all government levels, particularly regional and local, with the view to better preparation of aid proposals, especially relating to qualitative economic analyses and duly justification of new aid proposals;
- Training of aid providers relating to the application and use of the data management system which ensures effective monitoring and establishment of a credible state aid inventory.

Taking into account the commitments undertaken by the Republic of Croatia under the Stabilization and Association Agreement (SAA) and the set benchmarks for the opening of the negotiations in the area of competition, the Agency sets as its priority the considerations and activities relating to particular sectors and industries where the necessity for business operators to adjust their operational practices to the rules applicable in the Common market is especially highlighted.

The most demanding sectors which need urgent structural and operational reforms are the iron and steel sector and shipbuilding. A part of the companies in question (steel and iron industry) are undergoing privatization whereas the relevant restructuring plans for the companies in the shipbuilding sector which will guarantee the restoration of their long-term viability and operation under market conditions are in the pipeline. In late 2005 the Commission for drafting of the National Restructuring Plan in Steel and Iron Industry and Commission for drafting of the National Restructuring Plan in Shipbuilding have been established, whereby the preparations to work out integral solutions to the issues in

question have started. Taking into account the economic significance of the sectors concerned and the number of workers directly employed as well as the indirectly involved entities, here we deal with a complex task of major importance which is consequently directly linked with the benchmarks set for the opening of the negotiations in the area of competition.

In the first part of 2007 the Agency will in full cooperation with the European Commission assess the privatization models of Željezara Split d.d. and Valjaonica cijevi Sisak d.o.o. as well as the national restructuring programme for the steel and iron industry which must be drafted pursuant to Protocol 2 of the SAA.

In the first quarter of 2007 the Agency will together with the European Commission assess the restructuring plans for four out of five shipyards and to that end select a joint consultant for the purpose of providing expert support in the assessment and drafting decisions relating to the restructuring of each individual shipyard. Note that in the last quarter of 2006 the amount of 4.2 billion HRK rescue aid has been granted to four shipyards concerned provided that by the end of March 2007 the Agency is submitted individual restructuring plans. Thus, it is perceivable that the most part of the activities of the Agency during 2007 will be focused on the proceedings concerning the authorisation of restructuring aid to Croatian shipyards.

The so called "fiscal aid package"⁸ is undergoing harmonization which is expected to be finished within the meaning of the National Programme for the Integration of the Republic of Croatia into the EU during the current year. The legislation in question covers fiscal support which for the most part concerns regional state aid rules and as such has been included in the existing state aid inventory. Given that the instruments of fiscal aid are generally applied throughout the EU Member States, this is the opportunity for Croatia to set up the legislative framework in question to favour investment under the established rules and allowable aid intensities and for the purposes provided by the relevant rules governing the award of state aid.

The implementation of the above mentioned goals will ensure the fulfilment of the relevant commitments under the SAA and successful EU accession negotiations. Consequently, the mentioned activities will redefine the role and policy of the state in the economy, with the view to achieving balance between the principles of free enterprise and keeping the possibility of interventions of the state acceptable in accordance with the permissible rules and within the framework conditions of the normal market economy. In other words, where the state assumes the role of an undertaking, similarly as in the case of a private investor, its policy must be governed by the principle of a conscientious investor and creditor, who, subject to the relevant state aid rules, eliminates, where allowable, the existing market failure.

⁸ Free Zones Act, Act on Areas of Special State Concern, Act on Hilly and Mountainous Areas, Act on Reconstruction and Development of the Town of Vukovar.

3.3. International linkages

In the first quarter of 2007 two CARDS projects, the beneficiary of which is currently the Agency, are foreseen to be concluded – the 2002 CARDS project in the area of state aid and 2003 CARDS project in the area of anti-trust. Following the results of the projects concerned a two-year 2005 PHARE project will be commenced in the second quarter of 2007. The 2005 PHARE project will cover both competences of the Agency and will consist of two separate subprojects – twinning project with Germany and supply of equipment and data base system for the installation, customization and maintenance of the Croatian state aid data system.

In the second quarter of 2007 the Agency will also be provided support within the short-term CARDS project concerning consultancy in the assessment of the individual restructuring plans for Croatian shipyards as formerly mentioned in this text.

One of the priorities in the next year will also relate to further implementation of the projects aimed at strengthening of the institutional capacities of the Agency and of the commitments undertaken under the Stabilization and Association Agreement.

To that end, the Agency will during 2007, and in cooperation with the Central Office for Development Strategy and Coordination of EU funds, focus on the designing of the 2007 IPA programme (Instrument for Pre-accession Assistance) where the view of the Agency is that the programme in question should be used to second staff of the Agency to best-practice authorities in the EU and EU Member States.

In accordance with the planned activities relating to international linkages, in 2006 the Agency participated in international cooperation with the competent competition authorities of the EU Member States, such as Slovenia, Hungary, Austria and the former candidate country Romania (the Agency concluded the cooperation agreement with the latter). Institutionalized cooperation through the signing of the memorandum on cooperation has been established with the Competition Council of Bosnia and Herzegovina whereas a similar instrument of cooperation has been also proposed to the Polish competition authority.

The participation in international developments concerning competition will be continued and in that sense the Agency will actively participate in the work of international organizations and competition forums (UNCTAD, OECD, ICN, SEECAN etc.). Further cooperation will be strengthened particularly with the DG Competition of the European Commission.

4. Competition advocacy

Although the activities that promote competition through non-enforcement mechanisms and raise awareness and understanding of the benefits of competition have been already referred to in the first part of this document, here it must be highlighted that they are not limited only to expert opinions on laws and other legislation and provision of policy advice to the government or ministries which are taken by the Agency *ex officio* or upon request of the party.

Thus, the Agency will maintain the policy to champion competition and influence and respond to public views about competition and encourage competition between the undertakings, government and other public authorities, judiciary, unions, consumers, and the general public regarding the importance and role of competition law and policy in further development of the market economy in our country and its role in raising competitiveness of the Croatian undertakings.

To this end, the Agency will after ten years of its existence, on its own or in cooperation with domestic partners or within EU assistance projects, continue to favour the development of competition culture and organise and participate in international conferences and seminars on competition policy topics, at the national, but also at the regional and local level (e.g. regional chambers of commerce), which is of particular importance when it comes to compliance with the law and proper and direct enforcement of competition rules.

5. Further development policies of the Agency

The budget of the Agency for 2007 has been slightly increased in comparison with the resources allocated to its work for 2006. This ensures a certain level of strengthening of the Agency's internal capacities although this falls far beyond the actual requirements and plans for 2007. At the same time, the experience of the Agency proves that the maintenance of the expert staff definitely depends on incentives and other effective performance measures that encourage staff retention within public authorities like and similar to this Agency i.e. which are financed through the state budget. Although the fact that highly qualified staff leaves for the private sector, but, what is even worse, for similar public authorities which use non-budgetary resources, may be in a wider sense understood as a kind of contribution to raising expertise in the area of competition law and generally taken in favour of the development of competition policy in the Republic of Croatia, the staff turnover in question nonetheless causes significant problems to the Agency which cannot be solved only by the management policy measures but systematically through necessary reforms of the general administrative regime, at the stage when it still must put considerable financial but also non-financial efforts into the establishment of the motivated core of experts who will be responsible for this specific and rather young branch of law in our country and able to respond to the challenges of new, more sophisticated breaches of competition rules and be timely prepared for the integration into the European Competition Network (ECN).

Consequently, the Agency will in the period 2007 -2008 with its best endeavour, and within the budgetary resources allocated to it, attempt to educate, train and raise the competence of its staff through seminars and courses home and abroad. In this respect in 2007 the Agency will be for the first time sponsored by the British Embassy which ensured two internships for the employees of the Agency in the DG for Competition of the European Commission, from March to June 2007.

In addition, the Agency as a beneficiary of the EU assistance programmes such as the CARDS or PHARE programme receives even more important financial support which enables further training of both the staff of the Agency and other competent authorities and business representatives. The programmes in question also ensure further technical development of the IT and communications system, which is critical to the Agency's performance and the increase in the availability and transparency of the Agency's practice and as such fosters interaction between the Agency and all national and international partners and stakeholders.

In the forthcoming period the Agency will pursue with the implementation of the activities identified in this strategy and will put additional effort into the inclusion of all competent authorities into the solution finding process regarding the strengthening of the enforcement record and efficiency of the competition regime in Croatia, in line with the recommendations repeatedly received from the European Commission. It will at the same time focus its

activities on the fulfilment of all the criteria in the area of state aid as laid down under the Stabilization and Association Agreement. Furthermore, as already stated before, the implementation of the Competition Act is conditioned by joint cooperation and interaction between all competent authorities, judiciary and the Agency in respect of the realization of the key goals set under this Strategy Statement. In this process the Agency wants to keep its role of *spiritus movens*.

In the same way, the implementation of the State Aid Act requires not only the efforts on the part of the Agency, but also on the part of all policy makers who are responsible for and undertakings who carry out their activities in the industries that are facing structural difficulties. This joint initiative involves both the implementation of the harmonization process relating to the legislative framework and restructuring reforms and structural adjustments, given the fact that once the Republic of Croatia becomes the EU Member State, the European Commission will perform the activities relating to state aid control. The pre-accession period must therefore be used so as to ensure the relevant adjustments to the rules applicable to carrying-out of the businesses within the Common market, whereas the Agency will besides its competence relating to authorisation and monitoring of state aid continue to enhance the state aid regime in Croatia through close cooperation with aid grantors, other competent authorities and permanent training of its staff.

Finally, the preparations for the fulfilment of the benchmarks set for the opening of the negotiations in Chapter 8: Competition policy and necessary measures which must be taken in the objective of implementation of the conclusions made by the European Commission in the 2006 Progress Report on Croatia mainly determine the strategic goals identified by the Agency in the upcoming period. Thus, this Strategy Statement must be regarded as an additional effort made by the Agency with the view to giving its contribution to the key goals set and encouraging all participating parties in the Republic of Croatia who are involved in its realization.

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