

## **THE CROATIAN PARLIAMENT**

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby issue the

### **DECISION**

#### **PROMULGATING THE COMPETITION ACT**

I hereby promulgate the Competition Act enacted by the Croatian Parliament at its session of 15 July 2003.

No.: 01-081-03-2640/2  
Zagreb, 21 July 2003

President of the Republic of Croatia  
Stjepan Mesic

## **THE COMPETITION ACT**

### **I GENERAL PROVISIONS**

#### **Subject Matter of the Act**

##### Article 1

The Act stipulates the rules and the system of measures for the protection of competition, regulates the powers, duties and the organisation of the authorities entrusted with the protection of competition, as well as the procedure for the implementation of this Act.

#### **Scope of Application**

##### Article 2

This Act shall apply to all forms of prevention, restriction or distortion of competition within the territory of the Republic of Croatia or outside its territory, if such practices take effect in the territory of the Republic of Croatia, unless differently stated by particular regulations for certain markets.

##### Article 3

(1) This Act shall apply to companies, sole traders, craftsmen and other legal and natural persons that participate in economic activities in trade of goods and/or services.

- (2) The provisions of this Act shall apply correspondingly to all legal and natural persons that are engaged in a single or temporary trade of goods and/or services in the market.
- (3) This Act shall apply to legal and natural persons that have their seat and permanent residence abroad, provided that their participation in the trade of goods and/or services affects the home market.

#### Article 4

- (1) This Act shall also apply to legal persons, whose founders, shareholders or holders of share capital are the state or local and regional self-government units.
- (2) This Act shall also apply to legal and natural persons entrusted pursuant to special regulations with the operation of services of general economic interest, or which are by exclusive rights allowed to undertake certain business activities, insofar as the application of this Act does not obstruct, in law or in fact, the performance of the particular tasks assigned to them by special regulations and for the performance of which they have been established.

### **Undertaking Controlled by another Undertaking**

#### Article 5

- (1) This Act shall also apply to any undertaking controlling another undertaking as well as to the controlled undertaking.
- (2) Pursuant to paragraph (1) of this Article, an undertaking shall be deemed to be controlled by another undertaking if that undertaking, directly or indirectly:
  1. holds more than half of the share capital or half of the shares, or
  2. may exercise more than half of the voting rights, or
  3. has the right to appoint more than half of the members of the management board, supervisory committee or similar administrative or managing body, or
  4. in any other way exercises a decisive influence on the right to manage business operations of the undertaking.
- (3) Pursuant to this Act an undertaking is a legal or natural person referred to in Article 3 of this Act.

### **Legal Relations and Undertakings Not Covered by this Act**

#### Article 6

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

## **Relevant Market**

### Article 7

- (1) In the sense of this Act the relevant market is defined as a market of certain goods and/or services, which are the subject of the activities performed by the undertaking in the specific geographic territory.
- (2) The Government of the Republic of Croatia, upon the proposal of the Competition Council (hereinafter: the Council), shall issue regulations which stipulate the criteria in defining the relevant market for the purposes of application of this Act.

## **Authority for the Implementation of this Act**

### Article 8

Administrative and professional jobs relating to the protection of competition shall be performed by the Croatian Competition Agency (hereinafter: the Agency).

## **II AGREEMENTS**

### **Prohibited Agreements**

#### Article 9

- (1) There shall be prohibited all agreements between undertakings, contracts, single provisions of agreements, explicit or tacit agreements, concerted practices, decisions on the associations of undertakings (hereinafter: agreements) the object or effect of which is to prevent, restrict or distort competition in the relevant market, and in particular those which:
  1. directly or indirectly fix purchase or selling prices or any other trading conditions;
  2. limit or control production, markets, technical development or investment;
  3. share markets or sources of supply;
  4. apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
  5. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (2) The agreements that prevent, restrict or distort competition pursuant to paragraph (1) of this Article, and which may not be exempted in the sense of Article 10 of this Act shall be null and void.

#### Article 10

- (1) Certain categories of agreements that contribute to improving the production or distribution of goods and/or services, or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit shall be granted individual or group exemption under the conditions laid down by the Government of the Republic of Croatia, upon the proposal of the Council.
- (2) The agreements referred to in paragraph (1) of this Article may not:

1. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives, and
2. afford such undertakings the possibility of eliminating competition in respect of a substantial part of goods and/or services constituting the subject of the agreement.

## **Block Exemptions**

### Article 11

- (1) The regulations stated in Article 10 paragraph (1) of this Act referring to block exemption relate to the following categories of agreements:
  1. agreements between undertakings not operating on the same level of production or distribution, and in particular, agreements on exclusive distribution, selective distribution, exclusive purchase and franchising;
  2. agreements between undertakings operating on the same level of the production or distribution, and in particular, research and development and specialization agreements;
  3. agreements on transfer of technology, license and know-how agreements;
  4. agreements on distribution and servicing of motor vehicles, and
  5. insurance agreements.
- (2) The regulation referred to in paragraph (1) of this Article sets out the following:
  1. provisions that such agreements must obligatorily contain;
  2. restrictions or conditions such agreements must not contain;
  3. other provisions such agreements must comply with.
- (3) Agreements fulfilling the conditions laid down in Article 10 of this Act do not need to be submitted to the Agency for assessment in respect of individual exemption under Article 12 of this Act.
- (4) The Agency may, *ex officio*, initiate the proceedings to assess the compatibility of a particular agreement referred to in paragraph (3) of this Article, if it should find that the particular agreement, in itself or due to the cumulative effect with other similar agreements in the relevant market, does not comply with the conditions set out in Article 10 of this Act.

## **Individual Exemption**

### Article 12

- (1) At the request of the parties to the agreement in question, the Agency may take a decision granting individual exemption from the application of the provision of Article 9 paragraph (1) of this Act, if that particular agreement fulfils the conditions set out in Article 10 paragraph (1) of this Act.
- (2) The Agency shall decide upon the exemption referred to in paragraph (1) of this Article, its decision to be applicable for a limited period of time, which as a rule may not exceed five years.
- (3) The time limit referred to in paragraph (2) of this Article may at the request of the parties to the agreement, be additionally extended for no longer than five years, if the parties can prove that the agreement continues to comply with the conditions set out in Article 10 of this Act. The request for the extension of exemption must

be submitted to the Agency by the parties to the agreement at least 6 months before the expiry of the validity of the exemption.

- (4) The exemption determined by the decision made under paragraph (2) of this Article shall take effect from the day of the conclusion of the agreement, i.e. at the latest from the day the decision upon exemption has been issued.
- (5) The Agency may by means of a decision determine the measures and conditions indispensable for the exemption of the agreement, the deadlines for their fulfilment, and if so, the day of the entry into force of the exemption in question.

### **Minor Importance Agreements**

#### Article 13

- (1) The provisions of Article 9 paragraph (1) of this Act shall not apply to agreements of minor importance.
- (2) Agreements of minor importance are defined as agreements in which the parties to the agreement and the controlled undertakings have an insignificant common market share, under the condition they do not contain the provisions that, in spite of the insignificant market share, lead to prevention, restriction or distortion of competition.
- (3) The Government of the Republic of Croatia shall, upon the proposal of the Council, pass the regulation separately determining the conditions with which such agreements must comply, as well as the restrictions or provisions that such agreements may not contain.
- (4) The Agency may, *ex officio*, initiate proceedings on the assessment of compliance of individual agreements with the conditions prescribed by the regulation referred to in paragraph (3) of this Article, if it determines that the effects of that agreement and other agreements in the relevant market prevent, restrict or distort competition to a considerable extent.

### **Cancellation, Annulment and Amendments of a Decision of the Agency**

#### Article 14

- (1) The Agency may, *ex officio*, or at the request of a party cancel a decision on exemption in the sense of the provisions of this Act, if it has been based on incorrect or untrue information, which exerted decisive influence on the taking of the decision concerned.
- (2) The Agency may, *ex officio*, or at the request of a party, annul the decision on exemption when:
  1. market position and conditions that have been decisive for taking that particular decision have changed, and the criteria for the exemption pursuant to Article 10 of this Act are no longer satisfied;
  2. the parties to the agreement have failed to fulfil any of the conditions or do not respect any of the measures defined by the decision of the Agency.
- (3) The Agency may, *ex officio*, or at the request of any party, amend its decision on exemption of the agreement when:

1. market position and conditions, over which the parties to the agreement have no control and which do not have for its consequence the annulment of the decision made in accordance with paragraph (2) of this Article, have changed;
2. the parties to the agreement in question are not able to fulfil the conditions or to respect any of the measures attached to the decision of the Agency, owing to the occurrence of circumstances over which they have no control.

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

#### **Dominant Position**

##### Article 15

- (1) An undertaking is in a dominant position when due to its market power it can act in the relevant market considerably independently of its real or potential competitors, consumers, buyers or suppliers. This is especially the case when an undertaking:
  1. has no competitors in the relevant market, and/or
  2. holds a position of considerable market power in the relevant market in relation to its real or potential competitors, and especially in relation to the following:
    - market share and position;
    - financial power;
    - access to sources of supply or to the market itself;
    - connected undertakings;
    - legal or factual hindrances for other undertakings to enter the market;
    - the capability of an undertaking to dictate market conditions considering its supply or demand; and
    - the capacity of an undertaking to eliminate other competitors from the market by directing them to other undertakings.
- (2) Two or more undertakings are in a dominant position if they do not compete significantly in the relevant market in relation to specific categories of goods and/or services, and if put together they meet the requirements referred to in paragraph (1) of this Article.
- (3) 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.
- (4) It shall be presumed, within the meaning of paragraph (2) of this Article, that more undertakings are in a dominant position when:
  1. three or fewer undertakings hold more than 60% of the common market share in the relevant market, or
  2. five or fewer undertakings hold more than 80% of the common market share in the relevant market.

#### **Abuse of a Dominant Position**

##### Article 16

- (1) Any abuse by one or more undertakings of a dominant position in the relevant market shall be prohibited.

- (2) The abuse referred to in paragraph (1) of this Article may, in particular, consist of:
1. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  2. limiting production, markets or technical development to the prejudice of consumers;
  3. applying dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
  4. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

### **Decision on Abuse of a Dominant Position**

#### Article 17

The Agency shall act, pursuant to Article 15 and Article 16 of this Act, and within the meaning of Article 57 item 3 of this Act, in particular issue a decision on the following:

1. determine a dominant position and practices of the undertaking abusing this position, i.e. that prevents, restricts or distorts competition, and the duration of the abusive practices concerned;
2. immediately order a cessation of such abusive practices by the undertaking referred to in item 1 of this Article;
3. determine the terms and measures for the removal of adverse effects of such practices;
4. determine other appropriate measures to ensure competition among undertakings in the relevant market and deadlines for their implementation.

## **IV CONCENTRATIONS**

### **Prohibited Concentrations**

#### Article 18

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.

### **Definition of Concentration**

#### Article 19

- (1) A concentration of undertakings shall be deemed to arise by means of:
1. merger association of undertakings;
  2. acquiring control or prevailing influence of one or more undertakings over another undertaking, i.e. of more undertakings or a part of an undertaking, or parts of other undertakings, in particular by:
    - acquisition of the majority of shares or share capital, or
    - obtaining the majority of voting rights, or
    - in any other way in compliance with the provisions of the Company Law and other regulations.

- (2) The creation of a joint venture having the nature of a permanent independent economic unit shall constitute a concentration within the meaning of paragraph (1) of this Article.
- (3) Acquiring control in the sense of paragraph (1) of this Article may be achieved by holding rights, contracts or by other means, through which one or more undertakings, either solely or jointly, within specific legal and factual circumstances, is enabled to exercise prevailing influence on one or more other undertakings.
- (4) The Government of the Republic of Croatia, on the proposal of the Council, shall pass the regulation on notification and concentration assessment criteria.
- (5) The creation of a joint venture with the objective to coordinate competition among the undertakings that remain independent does not constitute a concentration and shall be assessed within the meaning of Article 9 of this Act.

### **Acquisition of Shares or Share Capital in Controlled Undertakings**

#### Article 20

Acquisition of shares or share capital, which is the result of the restructuring of an undertaking controlled by other undertakings (merger, association, transfer of property and similar) in the sense of Article 5 of this Act, shall not be deemed to constitute a concentration.

### **Acquisition of Shares Acquired in the Ordinary Course of Business Operations of Banks, Insurance Companies and other Financial Institutions**

#### Article 21

- (1) A concentration shall not be deemed to arise when banks or other financial institutions, investment funds or insurance companies, in their ordinary course of business which includes transactions and dealing with securities, for their own account or for the account of third parties, hold shares on a temporary basis with a view to reselling them, provided that they do not exercise their voting rights in respect of those shares for the purpose of determining the competitive behaviour of that undertaking, i.e. provided that they exercise such voting rights solely with a view to preparing the disposal of the whole or a part of the undertaking or its shares, provided that they, at the same time:
  1. do not undertake any operation which may distort, restrict or prevent competition;
  2. carry out the disposal concerned within one year following the acquisition referred to in paragraph (1) of this Article.
- (2) The Agency may, in exceptions, extend the period referred to in paragraph (1) item 2 of this Article, on submitted request, if the aforesaid undertakings can prove that the transaction concerned has not been reasonably possible within the period set.

## Obligatory Notification of Concentration

### Article 22

- (1) Any proposed concentration of undertakings referred to in Article 19 paragraph (1) and paragraph (2) of this Act shall be notified by the parties to the concentration to the Agency when the conditions set out in paragraph (4) of this Article have been fulfilled.
- (2) The notification of the intent to create a concentration, in the form laid down in Article 45 of this Act, shall be submitted to the Agency for assessment without delay, and at the latest within 8 days following the day of the publication of the public bid or the day of the conclusion of the contract through which the control or prevailing influence of an undertaking is acquired, that period shall begin when the first of these events occurs.
- (3) The notification of the proposed concentration shall prohibit the implementation of concentration for all the parties to the concentration, as long as the Agency has taken its final decision authorising it, or until the expiry of the period set out in Article 26 paragraph (1) and paragraph (3), also Article 56 paragraph (5) of this Act.
- (4) The parties to the concentration are obliged to notify the concentration to the Agency if the following conditions are simultaneously met:
  1. the total turnover of all the undertakings – parties to the concentration, realized by the sale of goods and/or services in the global market, amounts to at least 1 billion Kuna in the financial year preceding the concentration, and
  2. the total turnover of each of at least two parties to the concentration realized by the sale of goods and/or services in the domestic market, amounts to at least 100,000,000.00 Kuna in the financial year preceding the concentration.
- (5) The total turnover referred to in paragraph (4) of this Article shall be calculated taking into account the turnovers of all the parties to concentration and their associated companies acquiring the control or prevailing influence and as a difference of the turnover that they realise by selling goods and/or services among themselves.
- (6) By derogation from Article 19 paragraph (1) of this Act when the concentration consists in association or merger of a part or parts of one or more undertakings, irrespective of whether or not those parts are constituted as legal entities, the calculation of the turnover within the meaning of paragraph (4) of this Article shall on the seller's side include only the calculation of the turnover deriving from the parts being the subject of the concentration.
- (7) However, two or more transactions within the meaning of paragraph (6) of this Article which take place within a two-year-period shall be considered to constitute one concentration, arising on the day of the last transaction.

## **Total Turnover of Banks and Other Financial Institutions**

### **Article 23**

In the matters of control of concentrations involving banks and other financial institutions as parties to concentrations, the total turnover referred to in Article 22 paragraph (4) of this Act, shall be calculated on the basis of the total turnover from their regular business operations in the financial year preceding the concentration, in accordance with the Decision of the Croatian National Bank.

## **Total Turnover of Insurance Companies**

### **Article 24**

In the matters of control of concentrations including insurance companies as parties to concentrations, the total turnover referred to in Article 22 paragraph (4) of this Act, shall be calculated on the basis of the total gross premiums of the parties to concentration in the financial year preceding the concentration.

## **Assessment of Notification of Concentration**

### **Article 25**

- (1) The Agency shall initiate the assessment proceedings of a notification of concentration received, immediately upon the receipt of the notification within the meaning of Article 45 paragraph (3) of this Act.
- (2) In the course of the assessment of concentration, the Agency shall take into consideration possible advantages and effects that would occur in the case of implementation of concentration, as well as probable hindrances to enter the market, in particular:
  1. the structure of the relevant market, actual and possible future competitors in the relevant market, supply and the potential market supply, costs, risks, technical, economic and legal conditions necessary to enter or to withdraw from the relevant market, possible effects of the concentration concerned on competition in the relevant market;
  2. market share and position, economic and financial power, business operations of the undertaking concerned in the relevant market, internal and external advantages for the parties to concentration in relation to their competitors, and possible changes in business operations of the parties to concentration, following the completion of the transaction;
  3. the effects of the concentration on other undertakings, especially relating to the consumer benefit, as well as other objectives and positive effects of the proposed concentration, such as: decrease in prices of goods and/or services, shorter distribution courses, lowering of transportation, distribution and other costs, specializing in production, and other benefits directly deriving from the implementation of the concentration.
- (3) The parties to concentration shall submit to the Agency the documentation they consider relevant for establishing the facts referred to in paragraph (2) of this Article.

## **Decision on Concentration**

### **Article 26**

- (1) If the Agency, on the basis of valid evidence submitted together with the notification of concentration, in accordance with Article 25 hereof, and on the basis of available information and findings, establishes beyond dispute that it is reasonable to suppose that the implementation of the proposed concentration is not prohibited within the meaning of Article 18 of this Act, and if the notifying party is not given notice, within 30 days following the receipt of the complete notification of concentration in accordance with Article 45 paragraph (3) of this Act, about the procedural order on the initiation of the assessment proceedings of the concentration, the concentration concerned shall be deemed to be compatible.
- (2) In the case referred to in paragraph (1) of this Article the Agency shall upon a special request of the undertaking - party to concentration, issue a decision by which the concentration in question shall be declared compatible.
- (3) Where the Agency considers that the implementation of the concentration concerned could have as its effect considerable prevention, restriction or distortion of competition in the relevant market, it shall order the initiation of the proceedings for the purpose of evaluating the compatibility of the concentration concerned, and within three months following the day of the procedural order on instituting the proceedings, render its decision:
  1. by which the concentration concerned is evaluated as compatible, or
  2. by which the concentration concerned is evaluated as incompatible, or
  3. by which the concentration concerned is evaluated as conditionally compatible, provided that certain measures are observed and conditions met, within the time limits set by the Agency.
- (4) Regarding paragraph (3) item 3 of this Article, the Agency shall, in the decision by which it evaluates the proposed concentration as conditionally compatible, impose the measures and conditions intended to ensure the compliance, as well as the time limits to be observed, for the purpose of ensuring that the implementation of the proposed concentration shall not cause considerable prevention, restriction or distortion of competition in the relevant market.
- (5) In the event of paragraph (3) item 3 of this Article, the parties to the concentration may, as a rule, pursue the activities relating to the implementation of the concentration concerned, as soon as the imposed measures and conditions referred to in paragraph (4) of this Article have been fulfilled, unless the Agency for a particular legitimate reason decides otherwise.

## **Annulment and Amendments to Decision**

### **Article 27**

- (1) The Agency shall, *ex officio*, or upon request of any of the parties, annul the decision taken in accordance with the provisions laid down in Article 26 of this Act in the following cases:
  1. if the decision has been made on the basis of incorrect or untrue information that has been essential for the decision making, and

2. if any of the parties have not fulfilled the conditions and measures determined by the decision of the Agency, within the meaning of Article 26 paragraph (4) hereof.
- (2) The Agency may, *ex officio*, or upon request of any of the parties, amend the decision taken under Article 26 of this Act when the parties cannot fulfil certain conditions imposed on them, or if they infringe certain measures set forth in the decision taken by the Agency, owing to circumstances beyond their control.

### **Suspension of the Implementation of Prohibited Concentration**

#### Article 28

- (1) The Agency shall, *ex officio*, by means of a separate decision, propose all indispensable measures aimed at restoring efficient competition in the relevant market, and set the deadlines for their adoption in the following cases:
1. when the concentration concerned has been implemented contrary to the decision of the Agency by which the concentration has been evaluated as incompatible within the meaning of Article 26 paragraph (3) of this Act, or
  2. when the concentration concerned has been implemented without the submittal of a prior notification of concentration and without the decision of the Agency on its compatibility, and has as its effect the prevention, restriction or distortion of competition, in the sense of Article 18 of this Act.
- (2) By the decision referred to in paragraph (1) of this Article, the Agency may, in particular:
1. order for the shares or share capital acquired to be transferred or divested;
  2. prohibit or restrict the realization of voting rights attached to the shares or share capital of the undertakings – parties to the concentration, and order the joint venture or any other form of control by which a prohibited concentration has been put into effect in the sense of Article 19 of this Act to be removed.

## **V EXPERT OPINION OF THE AGENCY**

### **Issuing of Expert Opinions**

#### Article 29

- (1) The Agency issues expert opinions at the request of the ministries and other state authorities, regarding the compliance of draft bill proposals and other legislation, as well as related issues which may significantly influence competition, with this Act.
- (2) The Agency may, *ex officio*, demand to receive from the ministries or other state authorities, draft bill proposals and other legislation for examination, for the purpose of issuing expert opinions on their compliance with this Act, where they are deemed to exert significant influence on competition.
- (3) The provisions referred to in paragraph (1) and (2) of this Article shall be accordingly applied, even in cases of adopting and proposing legislation by the bodies of regional government and local self-government, professional and other associations that pass subordinate legislation, acting according to the conferred public authority.

- (4) Opinions issued pursuant to the provisions laid down in paragraphs (2) and (3) of this Article shall be submitted by the Agency to the Government of the Republic of Croatia.

## **VI THE COMPETITION AGENCY**

### **Organization of the Agency**

#### Article 30

- (1) The Agency is a legal person with public authority which is, as an independent entity autonomously performing the activities within its scope and powers regulated by this Act, responsible to the Croatian Parliament.
- (2) The seat of the Agency is in Zagreb.
- (3) The managing body of the Agency is the Competition Council.
- (4) The President of the Competition Council represents and speaks for the Agency and manages its activities.
- (5) In managing the Agency, the President of the Competition Council organizes and runs business activities of the Agency, supervises and is responsible for its expert performance.
- (6) The Agency has its expert team and departments, in accordance with its general acts.
- (7) The funds for the activities pursued by the Agency are provided from the budget of the Republic of Croatia.
- (8) The employees of the Agency shall realize their rights and perform their duties resulting from labour relations according to the general provisions on labour.
- (9) The Agency passes its Statute that is ratified by the Croatian Parliament.
- (10) The administrative fees collected by the Agency shall be contributed to the budget of the Republic of Croatia.

### **Competition Council**

#### Article 31

- (1) The Competition Council (hereinafter: the Council) is the managing body of the Agency; it consists of five members, one of whom is the President of the Council.
- (2) The president and other members of the Council shall be appointed and relieved from duty by the Croatian Parliament, on the proposal of the Government of the Republic of Croatia.
- (3) The vice-president of the Council shall be elected from among other members on the proposal of the president of the Council by a majority of votes of the Council.

## **Terms of Appointment and Terms of Office**

### Article 32

- (1) The president and the members of the Council may be appointed from any citizen of the Republic of Croatia who holds a university degree, ten years of work experience in the professional field concerned, i.e. having specific knowledge in the field of competition law, company law, commercial law, finances and accountancy, microeconomics and other related areas of law and economics.
- (2) The president and the members of the Council shall be appointed for a five-year-term of office with the possibility of reappointment.
- (3) The president and the members of the Council shall perform their duties professionally.
- (4) The president and the members of the Council may not be state officials, persons who perform duty in any administrative body of a political party, members of supervisory boards and executive bodies of undertakings, or members in any kind of associations of legal or natural persons, which could lead to conflict of interest.
- (5) The president and the members of the Council are authorized to write and publish research or scientific papers and participate in expert or scientific conferences.
- (6) The president and the members of the Council are obliged to behave in a manner to protect the reputation of the Agency and not to challenge its independence and autonomy in decision making.
- (7) It is prohibited to influence the activities of the Council in any way that could challenge the independence of the Agency, and in particular to abuse its public authority and the media, as well as public speaking in general, with the intent to influence the activities of the Council.

### **Relief from Office**

### Article 33

- (1) At the proposal of the Government of the Republic of Croatia, the Croatian Parliament may relieve the president or the member of the Council from office before the end of the term:
  1. at their own request;
  2. if they are convicted of a criminal offence, which makes them unworthy to perform the duty of the president, i.e. the member of the Council;
  3. if they permanently lose the ability to perform the duties confirmed to them;
  4. if they, during their mandate, assume any of the duties referred to in Article 32 paragraph (4) of this Act;
  5. if they, in performing their duty, violate the provisions of this Act.
- (2) On the existence of any reasons for relief from office of the president or the member of the Council before the end of the term, the Council shall notify the Government of the Republic of Croatia.

- (3) Before the decision on relief from office is made, the president or the member of the Council shall be given the opportunity to speak out about the reasons of the relief.

### **Decision Making**

#### Article 34

- (1) The Council issues the decisions on all general and individual legislative documents at its sessions, with the consent of a majority of at least three votes, whereby no member of the Council may abstain.
- (2) Three members of the Council shall constitute a quorum and the president of the Council obligatorily attends the sessions, i.e. in the absence of the president the vice-president shall attend.

### **Activities of the Council**

#### Article 35

- (1) The Council shall perform the following activities:
1. manage the activities of the Agency;
  2. decide upon all issues within the competence of the Agency pursuant to the provisions of this Act;
  3. propose to the Government of the Republic of Croatia to issue the regulations pursuant to the provisions of this Act;
  4. draw up subsidiary legislation pursuant to this Act, as well as other bylaws necessary for its implementation;
  5. make administrative decisions to be implemented at the conclusion of the proceedings before the Agency in the sense of Article 57 of this Act;
  6. assess the compliance of draft laws and other relevant legislation with this Act;
  7. define methodological principles for studies on competition;
  8. determine rules and measures for protection of competition, measures to eliminate prevention, restriction or distortion of competition, and other measures with the aim of improving competition law and policy in the territory of the Republic of Croatia;
  9. state opinions and expert advice on decisions and development of comparative practices in the field of competition law and policy;
  10. upon request of the Croatian Parliament and the Government of the Republic of Croatia, issue expert opinions relating to competition law and policy;
  11. facilitate international cooperation, referring to the realization of the international commitments undertaken by the Republic of Croatia and given to the authority of the Agency, as well as relating to running the projects of international and European economic integrations, i.e. cooperate with international competition authorities and international organisations and institutions;
  12. perform other activities relating to the implementation of this Act.
- (2) In performing the activities within its scope, in the sense of paragraph (1) of this Article, the Council may establish expert advisory bodies that may assist in the decision making process.
- (3) In the assessment of different forms of prevention, restriction or distortion of competition, that may affect the trading between the Republic of Croatia and the

European Communities, the Council shall in accordance with Article 70 of the Stabilization and Association Agreement, stipulated between the European Communities and their Member States and the Republic of Croatia (Official Gazette – International agreements, No 14/01), accordingly apply the criteria arising from the correct application of the rules regulating competition in the European Communities.

### **Activity report**

#### Article 36

- (1) The Council shall prepare the annual report of the activities of the Agency in the preceding year and submit it to the Croatian Parliament.
- (2) The Agency also publishes the official gazette of the Agency.

### **Expert Team of the Agency**

#### Article 37

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

1. conduct the proceedings on individual issues, and after establishing all relevant facts and circumstances for decision making, report to the Competition Council, which then decides on the particular administrative case in accordance with the provisions of this Act;
2. draw up drafts of bylaw legislation, according to the provisions of this Act, as well as drafts of other bylaw legislation necessary for its implementation;
3. draw up drafts of administrative decisions implemented in the conclusion of the proceedings before the Agency;
4. draw up drafts giving opinions of draft laws and secondary legislation, as well as giving opinions of other pieces of legislation and measures that may prevent, restrict or distort competition;
5. suggest rules and measures for protection of competition, measures to eliminate prevention, restriction or distortion of competition, and other measures aimed at improving competition law and policy in the territory of the Republic of Croatia;
6. suggest methodological principles for studies on competition to the Council, as well as technical terms in Croatian and business standards;
7. observe and analyse market conditions with the purpose of further development of competition;
8. gather data and information from the undertakings, which are relevant for market studies and stating of market positions, irrespective of the proceedings conducted by the Agency;
9. collect data and information from the undertakings on market positions in single markets, and before issuing decisions on initiating proceedings in each and every particular case, endeavour to restore efficient competition in the relevant market, if this is in the public interest, and unless it involves considerable prevention, restriction or distortion of competition;
10. facilitate international cooperation referring to international commitments undertaken by the Republic of Croatia and given to the authority of the Agency, as well as relating to running the projects of international and European economic integrations, i.e. cooperate with international competition authorities and international organisations and institutions;
11. draft the annual report of the activities of the Agency;

12. prepare the official gazette of the Agency;
13. perform other jobs assigned by the Council relating to the implementation of this Act.

### **Conflict of Interest**

#### Article 38

- (1) The persons employed in the expert teams and departments of the Agency may not be members of management or supervisory boards, or boards of undertakings, members of any other associations of legal or natural persons that could cast doubt on their impartiality while conducting proceedings before the Agency.
- (2) Without prejudice to the provision laid down in paragraph (1) of this Article, it is allowed to be a member of and to participate in scientific associations, provided that this does not affect impartiality in conducting proceedings before the Agency.

### **VII DECISION-MAKING PROCEDURE BEFORE THE AGENCY**

#### **Application of the Provisions Regulating Proceedings before the Agency**

#### Article 39

In the proceedings before the Agency, unless otherwise regulated by this Act, the provisions of the General Administrative Procedure Act shall apply.

#### **Parties to the Proceedings**

#### Article 40

A party is a person upon whose request, a specific proceeding has been initiated, against whom proceedings are being conducted, or a person or a group of persons on whose interests the decision taken by the Agency may exert considerable influence, and for whom, upon their own request, the Agency has determined that they have the status of a party in the proceedings.

#### **Institution of the Proceedings**

#### Article 41

- (1) The Agency institutes the proceedings within the meaning of this Act, *ex officio* or upon the request of the party. The proceedings shall be initiated on the day the Agency issues the procedural order on initiating of the proceedings, as described in Article 46 of this Act.
- (2) The Agency shall, in exceptions, not institute the proceedings in the sense of paragraph (1) of this Article, if it finds that the related activity in the market has minor effect on competition, or if it has insignificant effect on development and maintenance of efficient competition, i.e. that the initiation of such proceedings is not in the public interest.
- (3) The Agency shall institute the proceedings, *ex officio*, if it finds that the practice concerned is likely to cause considerable prevention, restriction or distortion of competition and if :

1. it deems it necessary to protect the identity of the notifying party, and/or
  2. having regard to the circumstances of the case, it proves likely that the notifying party has insufficient funds to initiate and conduct the proceedings.
- (4) The institution of the proceedings before the Agency may, in accordance with the provisions of this Act, be requested by:
1. any legal or natural person having a legal or economic interest;
  2. any professional or economic interest association of undertakings;
  3. a consumer protection association, or
  4. the Government of the Republic of Croatia, state administration bodies and regional and local self-government authority units.

### **Claimant's Request**

#### Article 42

- (1) The request for institution of the proceedings before the Agency, involving the parties with contrary interests, shall contain:
1. the name and the seat of the legal person concerned, or the name, surname and address of the natural person – the claimants;
  2. relevant data by means of which it may be established against whom the claim is being made;
  3. facts of the case, practice or circumstances which led to the claimant's request.
- (2) The claimant may enclose in the claim, in particular:
1. relevant documents and other available evidence which prove the allegations referred to in paragraph (1) item 3 of this Article;
  2. evaluation of the relevant market;
  3. evaluation of the market share of the claimant as well as of the market shares of the competitors in the relevant market;
  4. Register of Companies certificate, single trader licence, or other papers proving the claimant's registration;
  5. the annual report or financial reports, or other accounting documents for the financial year preceding the submittal of the claim.
- (3) The day of the receipt of the request for institution of the proceedings involving the parties with contrary interests shall be considered the day on which the Agency received all the data referred to in paragraph (1) of this Article.

### **Amendment to the Claim and Waiving the Claim**

#### Article 43

- (1) When the claimant requesting the institution of proceedings before the Agency, fails to enclose and submit all data as laid down in Article 42 paragraph (1) of this Act, the Agency shall request the relevant information from the claimant.
- (2) If the claimant fails to act in accordance with the request made by the Agency in the sense of paragraph (1) of this Article within eight days, it shall be deemed that the claimant has waived the claim.

## **Application for Individual Exemption of the Agreement**

### Article 44

- (1) The application for individual exemption of the agreement shall be submitted enclosed with:
  1. the original or a certified copy of the agreement, i.e. the certified translation of the agreement if the official text of the agreement is not written in Croatian;
  2. Register of Companies certificate, sole trader licence, or other papers proving the claimant's registration;
  3. the annual report or financial reports, or other accounting documents for the financial year preceding that of the conclusion of the agreement concerned, for all parties to the agreement;
  4. other relevant data the Agency deems necessary for granting individual exemption of the agreement.
- (2) The following may be enclosed in the application for individual exemption:
  1. evaluation of the relevant market;
  2. evaluation of the market share of the participants to the agreement, as well as of the market shares of their competitors in the relevant market.
- (3) As the day of the receipt of the application for individual exemption of the agreement shall be considered the day on which all data and documents requested under paragraph (1) of this Article were received by the Agency, the Agency issues a special written receipt to the applicant thereof.

## **Notification of Concentration**

### Article 45

- (1) The notification of the proposed concentration shall be accompanied by:
  1. the original or a certified copy of the document, or a certified translation, if the original official text is not written in Croatian, proving the legal grounds for the concentration;
  2. annual financial reports for the parties to the concentration for the financial year preceding the concentration;
  3. other data as required by the provisions of the Regulation on Concentrations.
- (2) The notifying party shall obligatorily state in the notification if he intends to submit the request for appraisal of concentration to some other body authorised to assess concentrations outside the territory of the Republic of Croatia, or if the notifying party has already submitted the request in question, he shall supply the Agency with the decision of the relevant body, if the decision thereof has already been rendered.
- (3) The date when the Agency has received all the data and documents stated in paragraphs (1) and (2) of the above, shall be considered as the date of the receipt of the notification of concentration, and the Agency issues a special receipt to the notifying party thereof.

## **Resolution on Instituting of the Proceedings**

### **Article 46**

- (1) The Agency shall make the resolution on instituting the proceedings, *ex officio*, or upon the submitted request within the provisions of this Act.
- (2) Such resolution shall, in particular, contain:
  1. reference to the related case;
  2. the provisions of this Act pursuant to which the proceedings have been instituted;
  3. the request for submittal of the relevant documentation in the sense of Article 48 of this Act.
- (3) The resolution on instituting the proceedings may neither be appealed against nor is it allowed to commence an administrative dispute.

## **Response to the Request**

### **Article 47**

- (1) In the proceedings involving parties with contrary interests, the Agency shall deliver one copy of the resolution on the institution of the proceedings and also of the request for the institution of the proceedings referred to in Article 42 paragraph (1) hereof, to the party against which the claim has been made, as well as to the persons for which it has been established that they have the status of a party in the proceedings, with the exception of the data considered as official secret, in the sense of Article 51 of this Act.
- (2) The response shall be produced within a time limit set by the Agency as the case may be. This time limit may neither be shorter than 8 days nor exceed 30 days.
- (3) Within the determined time limit, the party against which the claim has been made shall be obliged to supply the Agency with its own response and other statements, supplements and documentation relating to the claim.
- (4) Without prejudice to paragraphs (2) and (3) of this Article, the party concerned may, in the case of a justifiable reason, make a request for the time limit fixed to be extended. The Agency may permit the extension of the time limit which may not exceed 30 days.
- (5) If the party against which the claim has been made does not act according to the request and the terms set by the Agency, or if it declares that it is not able to act according to the request, the Agency shall take all necessary steps in the sense of Title VIII of this Act, whereas the facts and circumstances relevant for the proceedings shall be stated, *ex officio*, on the grounds of its own findings, available information and documentation, and thereupon without delay call for the oral hearing.

## **Collecting of Data**

### **Article 48**

- (1) In carrying out enquiries the Agency shall by means of a written request:

1. request from the undertakings, in writing or through oral statements, all the required data, and ask for submittal of the required data and documentation for the inquiry;
  2. request from the undertaking concerned to ensure direct inspection of all business premises, all immovable and movable property, business books, data bases and other documentation;
  3. request other necessary data and information from other persons, which the Agency deems may contribute to solve and clarify certain issues on prevention, restriction or distortion of competition;
  4. request from the undertakings to pursue other activities which it deems necessary for the purpose of stating all the facts relevant to the procedure.
- (2) The request referred to in paragraph (1) of this Article shall be based on legal grounds, contain the subject and the purpose of the request, the time limit for its implementation, as well as penalty clause if the request regulated by this Act should be disobeyed.
- (3) Undertakings and other persons are obliged to act in accordance with the request of the Agency pursuant to paragraph (1) of this Article.

### **Right to Search Apartment, Business Premises and Seizure of Property**

#### Article 49

- (1) If there is a reasonable doubt that any of the parties to the proceedings or a third person, holds in possession documents or other instruments relevant to the establishing of the material truth in the proceedings, the Agency shall request the competent misdemeanour court in Zagreb to issue a written warrant ordering the search of particular persons, apartments, or business premises, and the seizure of objects and documents in possession of the undertakings concerned or a third person.
- (2) The Agency shall request the competent misdemeanour court in Zagreb to issue a written warrant referred to in paragraph (1) of this Article also in cases when a party to the proceedings or a third person fails to act in accordance with the request of the Agency referred to in Article 37 item 8 and 9, and Article 48 of this Act.

### **Right of Access to Files**

#### Article 50

- (1) Parties to the proceedings carried out before the Agency have the right of access to case files and are allowed by the Agency to make a photocopy of the file or of single documents at their own expense.
- (2) The request for access to the file referred to in paragraph (1) of this Article shall be submitted to the Agency in writing.
- (3) The Agency shall set the date and time for inspection of the file within eight days following the receipt of the request referred to in paragraph (2) of this Article.
- (4) Without prejudice to the provisions laid down in paragraph (1) and (2) of this Article, drafts of the decisions of the Agency, official statements and protocols

from the sessions of the Council, internal instructions and notes on the case, correspondence and information exchanged with the European Commission or other authorities of the European Communities, as well as other documents considered an official secret in the sense of Article 51 of this Act, may neither be inspected nor photocopied.

### **Secrecy obligation**

#### Article 51

- (1) The president and the members of the Council, as well as the employees of the Agency, shall keep and not disclose the information classified as an official secret, irrespective of the way they came to know it, and the obligation of official secrecy shall also continue to be in effect after the expiry of their engagement with the Agency.
- (2) Under the term official secret referred to in paragraph (1) of this Article, shall be considered, in particular the following:
  1. all which is defined to be an official secret by law or other regulations;
  2. all which is defined to be an official or a business secret on the basis of bylaw regulations or other regulations of the undertakings, i.e. persons referred to in Articles 4 and 5 of this Act;
  3. all that undertakings, or persons referred to in Articles 4 and 5 of this Act have defined as a business or an official secret;
  4. all correspondence with the European Commission and other authorities of the European Communities.
- (3) Without prejudice to the provisions of paragraph (1) and (2) of this Article, data and documents which have been made accessible to the general public in any way, or decisions of managing or administrative bodies of the undertakings published to be available to the general public pursuant to particular regulations, shall not be considered an official secret.

### **Keeping Files and Documentation**

#### Article 52

Files and documentation of the undertakings received by the Agency in the course of the proceedings or those elaborated by the Agency itself in order to carry out the proceedings, shall be kept in the archives of the Agency in accordance with the relevant rules on keeping of archive materials.

### **Exemption of Authorized Person of the Agency**

#### Article 53

- (1) The person authorized to carry out the proceedings before the Agency, or to perform certain operations in the proceedings before the Agency, shall be exempted from the case:
  1. if he/she is a party in the case in the procedure, witness or expert witness;
  2. if he/she is related to the party, to the representative or attorney as family descendant in the straight blood line up to whatever, or up to and including the fourth degree in the transversal line, as an in-law up to and including the second degree, a spouse or extramarital partner, even in the case where the marriage has ceased to exist;

3. if he/she is related to the party, representative or attorney of the party as an adoptive parent, adoptive child, guardian, ward, foster parent or foster child;
  4. if he/she is the owner of shares or holds a share capital in the undertaking which is a party in the proceedings before the Agency, or in the competing undertaking;
  5. if, in the course of the proceedings, he/she has given testimony or written opinions on certain issues of the case in the capacity of an independent expert;
  6. if, for any other justifiable reason, an objective conduct of the procedure and an objective proposal for decision-making regarding the case, cannot be expected.
- (2) The person referred to in paragraph (1) of this Article shall be obliged to inform, in writing and without delay, the Council of the Agency about the existence of any of the reasons referred to in paragraph (1) of this Article.
- (3) The request for exemption referred to in paragraph (1) of this Article may be submitted even by a party in the proceedings carried out before the Agency. The request has to be submitted in writing.
- (4) The Council shall decide on the request for exemption.

### **Oral Hearing**

#### Article 54

- (1) It is obligatory to hold the oral hearing in all cases with parties of contrary interests. The oral hearing is, as a rule, public.
- (2) The Agency is entitled to conduct the oral hearing in any case when it deems useful.
- (3) Without prejudice to paragraph (1) of this Article, if the Agency, after it has received the written statement of the party against which it has started the proceedings, decides that the facts of the case between the parties is beyond dispute and that there are no other hindrances preventing the decision to be made, and if it is in the public interest, the Agency may render a decision without calling for the oral hearing.
- (4) If any of the summoned parties, or their attorneys, fail to appear at the first hearing in the proceedings, the Agency shall, as a rule, postpone the oral hearing and call for a new one.
- (5) If any of the summoned parties to the proceedings fail to appear at the following hearing, convened in accordance with the provision laid down in paragraph (4) of this Article, as a rule, the Agency shall not convene another oral hearing, but shall make its decision on the basis of its own findings, data and information.

### **Interim Measures**

#### Article 55

- (1) The Agency may decide upon interim measures where it deems that particular activities of restriction, prevention or distortion of competition, within the meaning of this Act, represent a risk by creating a direct restraining influence on undertakings, or on particular sectors of the economy or consumers' interests.

- (2) In its decision on interim measures referred to in paragraph (1) of this Article, the Agency shall suspend all actions, insist on meeting of particular conditions or impose other measures reasonably necessary to eliminate prevention, restriction or distortion of competition, as well as the duration of the relevant measure, which as a rule, may not exceed the period of three months.

### **Time Limits for Decision-Making**

#### Article 56

- (1) The decision referred to in Article 26 paragraph (3) and (4) of this Act shall be made by the Agency within the time limit of three months following the day of the resolution on institution of the proceedings.
- (2) The decision referred to in Article 12 paragraphs (2) and (5) and hereof, shall be taken by the Agency within four months following the day of the resolution on institution of the proceedings.
- (3) The decision referred to in Article 17 of this Act, relating to the abuse of a dominant position, shall be made by the Agency within four months following the day when all the facts relevant for the final decision have been determined.
- (4) The decision pursuant to Article 10, Article 12 paragraph (5), Article 13 paragraph (4), Article 14, Article 27 and Article 28 of this Act, the Agency shall make within four months following the day of establishing all relevant facts in the final decision making.
- (5) The Agency may extend the time limit for the decision making referred to in paragraphs (1) and (2) of this Article for a subsequent period of three i.e. four months in cases where it is necessary to carry out additional expertise or analyses defining the state of facts and examination of the evidence, or where delicate industries or markets are concerned, about which the Agency has the obligation to inform the parties to the proceedings before the expiry of the prescribed time limits.

### **Administrative Decisions of the Agency**

#### Article 57

Within the meaning of Article 35 paragraph (1) item 2 and 5 of this Act, the Agency shall, in particular, make decisions in which it:

1. assesses the compliance of the agreement with the provisions of this Act;
2. authorizes the exemption of an agreement pursuant to Article 12 of this Act;
3. determines the existence of abuse of a dominant position pursuant to Article 15 and Article 16 of this Act;
4. estimates the compatibility of concentrations pursuant to Article 26 of this Act;
5. imposes interim measures pursuant to Article 55 of this Act;
6. annuls, cancels or amends the decision of the Agency by means of a separate decision, pursuant to Article 14 and Article 27 of this Act;
7. determines particular measures to be taken in order to restore efficient competition in cases of prohibited concentrations, pursuant to Article 28 of this Act;
8. makes other decisions, i.e. procedural orders pursuant to the provisions of this Act.

## **Court Protection**

### Article 58

Against the decisions of the Agency referred to in Article 57 of this Act, no appeal is allowed, but the injured party may file an administrative dispute before the Administrative Court of the Republic of Croatia.

## **Publication**

### Article 59

- (1) Decisions of the Agency referred to in Article 57 items 1 to 7 of this Act shall be published in the Official Gazette *Narodne novine*.
- (2) Rulings and decisions of the Administrative Court in matters concerning claims against the decisions of the Agency referred to in paragraph (1) of this Article shall be also published in the Official Gazette.
- (3) Decisions and rulings referred to in paragraphs (1) and (2) of this Article, as well as other legislative documents of the Agency, may be published in the official gazette of the Agency i.e. on its website.
- (4) Data considered to be an official secret, in the sense of Article 51 of this Act, shall be excluded from the publication within the meaning of paragraphs (1), (2), and (3) of this Article.

## **VIII PENALTY CLAUSE**

### **Initiation of Minor Offence Proceedings**

#### Article 60

Pursuant to the decision of the Agency, upon violation of the provisions of this Act, the Agency makes a claim to the misdemeanour court to start the minor offence proceedings against the undertaking concerned and the responsible person of the respective undertaking.

### **Severe Violations of the Provisions of this Act**

#### Article 61

- (1) The undertaking - legal or natural person, shall be fined at the most 10% of the value of its total annual turnover in the financial year preceding the year when the infringement was committed, if it:
  1. concludes a prohibited agreement or participates in any other way in the agreement that caused prevention, restriction or distortion of competition in the sense of Article 9 hereof;
  2. abuses a dominant position as defined in the provision laid down in Article 16 of this Act;
  3. participates in prohibited concentration of undertakings referred to in the provision laid down in Article 18 of this Act, or
  4. fails to act in accordance with the decision made by the Agency (Article 57 items 1 to 7).

- (2) For the infringement referred to in paragraph (1) of this Article, the responsible person of the undertaking – legal person concerned shall also be fined an amount ranging from 50,000.00 to 200,000.00 Kuna.

### **Fines for Other Violations of the Provisions of this Act**

#### Article 62

- (1) The undertaking - legal or natural person shall be fined at the most with 1% of the value of its total annual turnover in the financial year preceding the year when the infringement was committed, if it:
1. submits to the Agency incorrect or untrue information which may influence the rendering of the decision on individual exemption of the agreement (Article 14 paragraph (1));
  2. fails to notify the Agency on the proposed concentration (Article 22);
  3. submits to the Agency incorrect or untrue information in the concentration assessment proceedings (Article 25, Article 26 paragraph (1) item 1);
  4. fails to act according to the request of the Agency (Article 47 paragraph (3), Article 48 paragraph (1) and (3));
  5. fails to act according to the decision of the Agency (Article 57, item 8);
  6. fails to act according to the written order of the misdemeanour court (Article 49).
- (2) For the infringement referred to in paragraph (1) of this Article the responsible person of the undertaking - legal person concerned shall also be fined an amount ranging from 15,000.00 to 50,000.00 Kuna.

### **Fines for Persons that are not Parties to the Proceedings**

#### Article 63

- (1) The undertaking - legal person that is not a party to the proceedings before the Agency shall be fined for the infringement committed an amount ranging from 15,000.00 to 50,000.00 Kuna if it fails to act upon the request of the Agency (Article 37 items 8 and 9, Article 48 paragraph (1) items 3 and 4 and paragraph (3)).
- (2) For the infringement referred to in paragraph (1) of this Article the responsible persons of the legal person in question shall also be fined an amount ranging from 5,000.00 to 10,000.00 Kuna.
- (3) The undertaking - natural person that is not a party to the proceedings before the Agency and that fails to act according to the request of the Agency shall be fined for the infringement committed an amount ranging from 5,000.00 to 10,000.00 Kuna (Article 37 items 8 and 9 and Article 48 paragraph (1) items 3 and 4 and paragraph (3)).

## **Limitation**

### **Article 64**

- (1) The minor offence proceedings instituted upon the violation of the provisions of this Act may not be started after three years from the day when the infringement was committed.
- (2) The limitation period referred to in paragraph (1) is interrupted by any action of the competent body undertaken for the purpose of persecuting the offender. After any interruption, the limitation period shall be restarted; however, the minor offence proceedings may in no case be conducted after the expiry of the double time limit laid down in paragraph (1) of this Article.
- (3) The imposed penalties may not be enforced if three years have passed from the date when the decision on the violation became legally valid.
- (4) The limitation period for the enforcement of the penalty shall be interrupted by any action of the competent body that is undertaken for the purpose of the enforcement. After any interruption, the limitation period concerned shall be restarted; however, the penalty may not be enforced after the expiry of the double time limit laid down in paragraph (3) of this Article.

## **Cooperation with Judicial Bodies**

### **Article 65**

The Agency shall cooperate with competent judicial bodies in resolving the cases relating to prevention, restriction or distortion of competition in the market of the Republic of Croatia.

## **IX TRANSITIONAL AND FINAL PROVISIONS**

### **Closing of the Proceedings in Progress**

#### **Article 66**

The provisions of the Law for Protection of Market Competition (Official Gazette, No 48/95, 52/97 and 89/98) shall be applied to close the proceedings in progress before the Agency until 1 October 2003.

## **Bylaws**

### **Article 67**

- (1) The Government of the Republic of Croatia shall as proposed by the Council pass the regulations referred to in Article 7 paragraph (2), Article 11 paragraph (1) item 1, Article 13 paragraph (3) and Article 19 paragraph (4) of this Act within 3 months from the entry into force of this Act.
- (2) Until the regulations referred to in Article 19 paragraph (4) of this Act have taken effect, the Ordinance on keeping the register on concentrations shall apply (Official Gazette, No. 30/97).

- (3) The regulations referred to in Article 11 paragraph (1) items 2, 3, 4 and 5 of this Act shall be passed by the Government of the Republic of Croatia as proposed by the Council, within six months from the entry into force of this Act.
- (4) The Council shall propose the Statute of the Agency (Article 30, paragraph (9)) to the Croatian Parliament within three months following the day of the entry into force of this Act.

### **Term of Office of the Director and Members of the Council**

#### Article 68

- (1) On the day when the president and the members of the Council of the Agency shall be appointed, pursuant to the provisions of Article 31 paragraph (2) and Article 32 of this Act, the term of office of the Director General of the Agency as well as of the members of the Council for Protection of Market Competition appointed pursuant to The Law for Protection of Market Competition shall expire (Official Gazette, No 48/95, 52/97 and 89/98).
- (2) The Government of the Republic of Croatia shall propose to the Croatian Parliament the appointment of the members of the Council pursuant to the provisions referred to in Article 31 paragraph (2) and Article 32 of this Act, within 60 days from the day of the entry into force of this Act.

### **Cessation of the Validity of the Law on Protection of Market Competition**

#### Article 69

The Law on Protection of Market Competition (Official Gazette, No 48/95, 52/97 and 89/98) shall cease to be in effect on the first day of application of this Act.

### **Entry into Force**

#### Article 70

This Act shall enter into force on the eighth day after the publication in the Official Gazette and shall apply from 1 October 2003.

Class. No: 330-01/03-01/03  
Zagreb, 15 September 2003

THE CROATIAN PARLIAMENT  
President of the Croatian Parliament  
Zlatko Tomcic