REPUBLIC OF CROATIA

CROATIAN COMPETITION AGENCY

Annual Report

of the Croatian Competition Agency

for 2009

September 2010

Content

INTRODUCTION

The remit of the CCA, as a regular part of its business, covers in particular the implementation of the Competition Act and the State Aid Act. In the past year the Croatian Competition Agency (CCA) focused its work on the drafting of the new, revised Competition Act in line with the developments of the EU *acquis* and on cooperation with the relevant public authorities in charge of the implementation of the state aid regime which has been transposed from the EU *acquis* in the Croatian legislative framework not a long time ago. This, particularly in the context of new, revised state aid rules which in a more simplified manner regulate the granting of state aid under the rather modified circumstances of the global financial and economic crisis. In light of the seriousness of the crisis and its impact on the overall economy, certain categories of state aid are justified for a limited period, to remedy the difficulties. In 2008 and 2009 new state aid rules were also adopted in the transport sector, broadband internet, public service broadcasting and SMEs sectors. Given the Croatian commitment under the Stabilisation and Association Agreement (SAA), in order to implement the said revisions in the area of state aid it was necessary to ensure state aid control regarding the "new rules" that address the exceptional difficulties of companies to obtain financial support in the time of crisis. Hence, the CCA had to provide necessary assistance to aid providers who needed to understand and apply these rules in certain sectors setting out temporary state aid measures to support access to finance during the validity of the Temporary Framework until 31 December 2010. Aid providers had to be encouraged to grant financial support under these new, simplified rules, and given support in the process of adjustment of the aid schemes to the new rules. In other words, the activities of the CCA stretched from this advocacy part to the regular administrative procedure, which consists of authorisation of such aid schemes and adoption of the relevant decisions.

The CCA participated actively in the work of international organisations and fora dealing with competition issues (such as OECD, International Competition Network – ICN). It set up good cooperation with a number of EU member states and countries in the region. A number of assistance projects have been established. It continued to cooperate successfully with the European Commission who assesses the work of this Agency on the annual basis in its progress reports. A part of the staff has been actively engaged in the activities relating to the Croatian EU accession negotiations in Chapter 8: Competition policy.

Yet, the year 2009 was marked by the adoption of the new, revised 2009 Competition Act in the session of the Croatian Parliament in June 2009. The new Competition Act, which replaces the 2003 Competition Act, introduces significant novelties that appreciably change the existing competition regime in Croatia and ensure the necessary preconditions for its effectiveness. After many years of heated discussions, the CCA is given the power to impose fines, infringements are no longer treated as minor offences, the court in charge of the review of the decisions of the Agency is the Administrative Court of the Republic of Croatia. The new Competition Act is now in line with both the domestic legal regime and the EU acquis and as such is a cornerstone for a more transparent, more effective and better competition regime in Croatia.

Effective protection of competition relies on three equally important factors. First, there must be a legislative, regulatory framework in place consisting of the law and other subordinate acts that stipulates the powers of the Agency and sets the procedural rules, such as, for example, the right of defence, which must be ensured to the parties in the proceeding while, at the same time, it should enable the Agency to collect the evidence in the matter. Second, the system must be applied in practice. An effective enforcement record depends on the quality of the legislative and regulatory framework mentioned above, but also on the organisational structure, knowledge, professional and managerial skills of the implementing authority and its determination to implement the rules in practice constitutes the third

indispensable factor if we seek an efficient and effective competition regime. None of these components can stand alone. Regardless of how first-class the legislation may be, it remains a dead letter if there is no competent authority that enforces it. On the other hand, no well organised and well managed organisation, no expert staff and their excellent skills can make up for the loops in the legislative system or the lack of the understanding for this matter on the part of other institutions involved in its implementation, for example the courts. The new Competition Act will solve a number of the stated problems, given the deficiencies of the regime that considerably impaired the effectiveness of the decisions of the CCA, and it will create the conditions for the establishment of a more effective competition regime in our country.

The results of the work of the CCA in 2009 and its efficiency and effectiveness may be measured by the number of adopted decisions covering different markets and undertakings on the basis of which the CCA prevented or prohibited practices of the undertakings that lead to abuse of a dominant position in the market, conclusion of restrictive agreements or mergers with significant anticompetitive effects. Special attention was dedicated to detection and deterrence of cartels given such arrangements, especially by price fixing and market sharing, obstruct the development of the market economy and cause direct harm to the consumers.

In 2009 the CCA closed 240 cases. 188 of this number were antitrust cases and merger assessments, whereas 52 thereof covered the area of state aid.

In-depth analyses were necessary in a number of cases, such as the cartel agreement on setting the minimal price of the driving schools concluded between 15 driving schools, or the cartel agreement between real estate property managers. A restrictive vertical agreement was detected also in the distribution and servicing of motor vehicles sector, whereas abuse of a dominant position was established by the Croatian Composers' Society – Collecting Society HDS-ZAMP, which was abusing its dominant position in collecting private copying levy in the territory of the Republic of Croatia. A comprehensive legal and economic analysis was also carried out in the case of a conditionally approved concentration between MOL and INA.

In the area of state aid in the report period particular attention was drawn to the implementation of the Decision on the publication of the rules contained in the Temporary Framework for state aid measures to support access to finance in the current financial and economic crisis. In line with the Temporary Framework the CCA authorised 7 aid schemes. These are, for example, the aid schemes for interest rate subsidised loans by the Croatian Bank for Reconstruction and Development (HBOR), the operating aid scheme in favour of the textile, leather and apparel industry for 2009, etc. After the agreement reached with the Ministry of the Sea, Transport and Infrastructure, *ex post* approval was granted to state aid in the form of grants to natural persons who pay for public TV licence for the purchase of digital decoders.

As a matter of principle, effectiveness of a competition authority is usually measured by the number of decisions upheld by review courts and by the level of fines imposed for the infringements of the rules concerned. In the Croatian example, the decisions of the CCA have been upheld in 80 % of cases handled by the Administrative Court of Croatia. Concretely, out of 56 cases where disputes have been filed since 2003, in 44 cases the Administrative Court of Croatia has upheld the decision of the Agency, whereas 12 cases have been returned for re-examination, exclusively for procedural reasons. In 2009 the Administrative Court of Croatia upheld one decision of the Agency, while no decision had to be re-examined. The level of fines for infringements of competition rules increased significantly. In 2009 it amounted to almost one million and fourteen thousand Kuna, compared with HRK 325,000 in 2008. In the time span of five years, from 2003 to the end of 2008 the total amount of fines imposed was merely some HRK 350,000.

However, the effectiveness of the Agency cannot be measured only and exclusively by the number of opened cases and proceedings, or by the number of decisions upheld by the review court or the level of fines imposed. The mission of the Agency in the promotion of a market economy that creates the conditions for economic growth and fosters entrepreneurial culture comprises also other activities aimed at the development of the economy, liberalisation and competition which, on their part, ensure the creation of a level playing field for all businesses, domestic and foreign, private and state owned, regardless of their size, market power or the industry they pursue. What is meant here are the opinions of the CCA on laws and regulations that affect competition, its presence in working groups for the drafting of laws and regulations, its analyses of different markets (such as legal services market, audit services market etc.) and launching of initiatives in order to lower the barriers to entry that create obstacles to competition. This is particularly evident in the area of state aid, where there is a still present mindset that state owned firms and banks should be given such support regardless of the distortions on the market and the more favourable position of aided undertakings in comparison to other undertakings which do not receive such aid and in spite of the fact that this contravenes the law and the commitments undertaken by Croatia under international agreements.

In 2009 we continued to act independently and impartially. Yet, this in no way means that we were an island, isolated from and insensitive to the environment and its changes. On the contrary – we raised the standards of openness and cooperation both with other state institutions and regulators, associations and undertakings, and with individual undertakings, to which the door of this Agency is always open for meetings with the expert staff or the members of the Competition Council. We promote competition culture with the academia, particularly with the economics and law schools in Zagreb, Rijeka, Pula and Osijek. We pass our knowledge and experience to students of these schools and raise awareness of the importance of implementation of competition law and the significance of economic analyses in the decision making. The CCA is continuously open to the general public on our web site; we publish our decisions and provide explanations for decisions that raise particular interest. We publish requests for information, in the press room we publish the summaries of the sessions of the Competition Council and give commentaries in the cases of particular interest. Throughout the year we pressed ahead with work to improve our transparency and inform the media and the public about our work. Details about us can be found at: www.aztn.hr

Olgica Spevec, president of the Council

1. ABOUT THE CROATIAN COMPETITION AGENCY

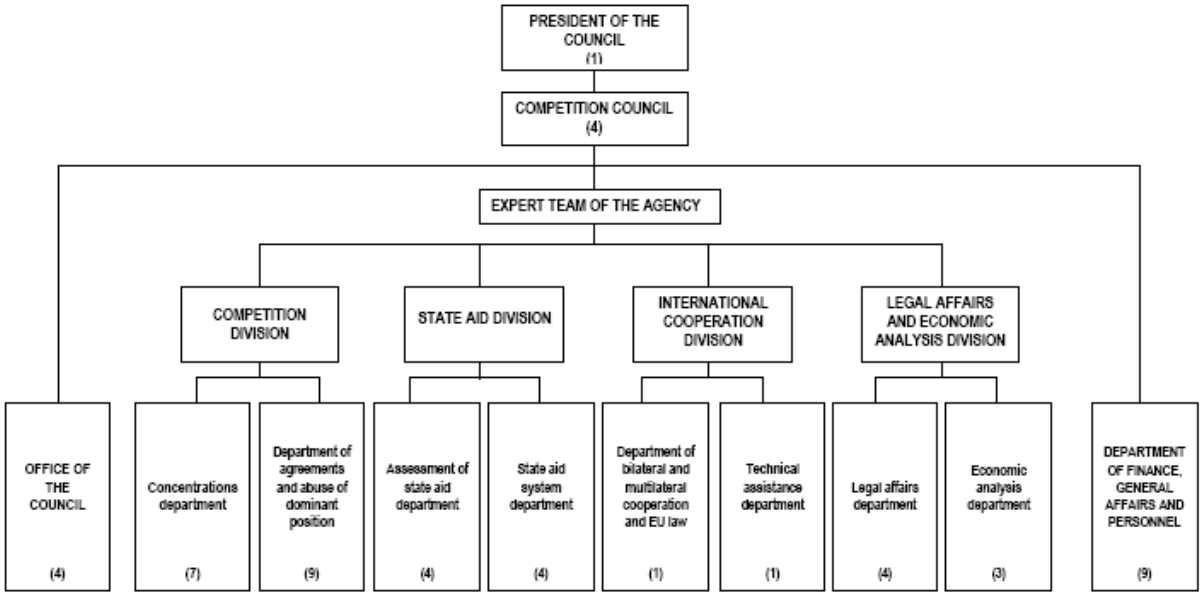
The Croatian Competition Agency (CCA) was established by the decision of the Croatian Parliament in 1995 as a legal person with public authority that autonomously and independently performs activities relating to protection of competition in line with the Competition Act (Official gazette – OG 122/03) and the State Aid Act (OG 40/05).

The Competition Act sets the rules and measures applicable to competition activities of the CCA, its powers, duties and the organisational structure. The Competition Act applies to all forms of prevention, restriction or distortion of competition in the territory of the Republic of Croatia or outside its territory where such practices produce effects within its territory. In particular, the work of the CCA consists of assessment of restrictive agreements between undertakings, establishment of abuse of a dominant position and assessment of compatibility of concentrations between undertakings.

The State Aid Act stipulates the general conditions and sets the rules for authorisation of state aid, monitoring of implementation of state aid and recovery of state aid that has possibly been granted or used against the law. Namely, the State Aid Act explicitly states that state aid that has been granted without the prior authorisation of the CCA is illegal and that CCA has the power to order recovery of aid so granted increased by the illegality interest from the day on which the aid was first used. In particularly justified cases, the CCA may decide on *ex post* approval of state aid if it finds that the aid concerned is compatible with the provisions of the State Aid Act.

In the proceedings carried out by the CCA the provisions of the General Administrative Proceedings Act (OG 47/09) are applied subordinately.

Table 1 **Organisational chart of the Croatian Competition Agency**



The CCA is run and managed by the Competition Council consisting of 5 members who are appointed and relieved from duty by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia. In line with Article 32 the president and the members of the Competition Council perform their duties professionally. The expert team of the Agency performs administrative and other expert activities.

In 2009 the Agency employed 51 workers, including the members of the Council. The largest part of the expert staff, 42 employees, was engaged in the enforcement activities including both the area of anti-trust and merger control and state aid activities. There were 33 case handlers (lawyers and economists), whilst 13 employees carried out administrative, accounting, personnel and other activities.

Table 2 **CCA Qualifications structure**

	Lawyers			Economists			Other			Total
	0-3 years	3-10 years	>10 years	0-3 years	3-10 years	>10 years	0-3 years	3-10 years	>10 years	
1 University degree	5	12	4	5	11	-	3	-	1	41
2 Two-year degree	-	-	-	-	-	1	-	-	3	4
3 Secondary school	-	-	-	-	-	1	-	1	4	6
Total No of employees (1 + 2 + 3)	**5**	**12**	**4**	**5**	**11**	**2**	**3**	**1**	**8**	**51**
PhD,MSc, MBA	-	1	1	1	5	-	-	-	-	8
Bar exam	4	11	4	-	-	-	-	-	-	19
Audit exam	-	-	-	-	3	-	-	-	-	3

The State Audit Office confirmed the spotless operation of the Agency in three reports in a row, the last of them being for the time period from 1 December 2008 to 18 February 2009 (the report is available on the web site of the State Audit Office www.revizija.hr).

Table 3 **Budget of the CCA**

	2009		
	Planned	Executed	% executed
NORMAL ACTIVITIES OF THE CCA	13.549.342,00	13.413.472,00	99,00%
Competition and state aid enforcement	13.242.623,00	13.107.691,00	98,98%
IT activities	220.819,00	220.632,00	99,92%
Equipment of the CCA	85.900,00	85.149,00	99,13%
PHARE 2005 AND OTHER ASSISTANCE FUNDS	5.997.956,00	2.665.321,00	44,44%
TOTAL:	19.547.298,00	16.078.793,00	82,26%

In line with the recommendations of the Ministry of Finance relating to necessary cuts in the budgetary spending and dynamics of introduction of necessary reductions of the revenues of state budget users, in March 2009 the Agency adopted the Budgetary Savings Plan for 2009 on the basis of which it controls the spending, introduces discipline and ensures the efficient and undisturbed operation of the Agency in line with its powers with minimum expenditures and rational use of office supplies and equipment and optimal use of resources.

The 2008 IPA project started implementation in 2010 instead of 2009. Therefore, all the funds planned for the said purpose have not been used in report period.

Table 4 **Number of resolved cases in 2009**

Category of case/file	No of cases/files resolved in 2009		
	Antitrust and merger control	State aid	**Total**
I ADMINISTRATIVE CASES	53	21	**74**
II ADVOCACY (OPINIONS)	15	11	**26**
III. NON-ADMINISTRATIVE FILES	120	20	**140**
TOTAL:	188	52	**240**

Besides the work on the cases, in 2009 an important part of the activities of the Agency was dedicated to the assessment of the compliance with the measures which have been imposed on undertakings in previous years for the purpose of restoration of effective competition in particular markets. In addition, the Agency actively participated in court proceedings.

The new, revised Competition Act (OG 79/09) was adopted by the Croatian Parliament in June 2009. It enters into force on 1 October 2010. Under the new Competition Act, for the first time the Agency will have the power to impose the fines on undertakings that infringe competition rules. Timely and appropriate sanctions will ensure effective competition,

eliminate harmful consequences of anti-competitive behaviour and deter undertakings from such infringements.

At the same time, in 2009 we continued our cooperation with the DG Competition of the European Commission responsible for competition policy within the EU, particularly in the area of adjustment and enforcement of competition and state aid rules. We also cooperated with other relevant authorities and sector specific regulators and national competition authorities of the EU member states, such as Germany, Hungary, Bulgaria, Romania, Austria, and the national competition authorities from the region (Bosnia and Herzegovina, Macedonia, Slovenia, Serbia and Albania).

2. NEW LEGISLATIVE FRAMEWORK

The new, revised Competition Act enters into force on 1 October 2010.

After the 2003 Competition Act, which was a descendant of the first 1995 Croatian Competition Act, introduced the necessary changes in terms of the alignment of the Croatian competition rules with the relevant EU acquis, indicated its deficiencies in practice, the new Competition Act of 2009 aims at establishing a more efficient and effective competition regime in Croatia.

In line with the new Competition Act:

- A **new penalty regime** empowers the Croatian Competition Agency (CCA) to impose the fines. In other words, infringements of competition rules are no longer treated as minor offences where the CCA has merely established the presence of the infringement and a minor offence court decided on the penalty level. As to the court protection, the Administrative Court of the Republic of Croatia now reviews both the legality and the merits of the decision of the CCA and decides on the level of fines imposed by the CCA for infringements of competition rules.
- The criteria for the **imposition of fines** will be clearly listed; aggravating and mitigating circumstances specified, as well as the duration and gravity of the infringement.
- Cartels, secret by definition, and usually informal, have proven difficult to detect. The new Competition Act puts in place a **leniency programme** providing for reduction of or immunity from fines for cartel members who are first to come forward and submit compelling evidence which contributes to the disclosure of the cartel. The European Commission's recent success in fighting cartels is largely due to this 'whistle- blowing' or amnesty policy.
- In the area of merger control the new Competition Act introduces a **new substantive test** (SIEC test) and abandons the old test where dominance was necessary and sufficient to prohibit a merger. This undoubtedly means increased legal certainty for the undertakings concerned and other stakeholders. Introduction of a short form notification and a simplified procedure for treatment of concentrations that do not raise competition concerns will undoubtedly strengthen efficiency of the CCA.
- The new Competition Act **revokes individual exemption** of an agreement.
- It widens the investigation powers of the CCA to the **conduct of dawn raids** and seizure of objects and documents that are subject to a surprise inspection.
- It introduces **commitments** on the part of the undertakings concerned for the removal of competition concerns and restoration of effective competition.
- **Ex-officio** initiation of the proceedings relating to the assessment of agreements between undertakings and alleged abuse of a dominant position by undertakings is introduced. Yet, any natural or legal person may submit its **initiative** requesting the opening of the proceedings.
- **Statement of Objections** asserts the right of defence: the CCA informs the parties to the proceedings on the preliminary established facts of the case. The parties to the proceedings submit their replies relating to the statement of objections and propose oral hearings and presentation of additional evidence.
- **Damages claims** relating to the infringements of the Competition Act fall under the competence of the relevant commercial courts as to compensate victims of infringements of competition rules, both undertakings and consumers, and complement the enforcement activities of the antitrust authority.

The listed criteria will be further elaborated in the regulations of the Government of the Republic of Croatia, which will be fully harmonized with the relevant EU competition rules.

3. ENFORCEMENT OF THE COMPETITION ACT IN 2009

In line with its powers laid down in the 2003 Competition Act, the CCA's key theme is establishing of fair competition and preventing anti-competitive commercial activities of undertakings that use their market power and thus jeopardize the strengthening of competition and restrict market entry or foreclose markets. In 2009 acting against anti-competitive agreements and identifying abuse of market dominance was focused on interventions across the following key sectors and markets: telecommunications, inland passenger transport by bus and coach, tobacco trade market, daily papers wholesale market, distribution and servicing of motor vehicles, driving schools market, property management services and distribution of private copying levy by the collecting society.

During the year a significant part of our enforcement activities was directed to reviewing merger undertakings. Under the circumstances of increased amalgamation or consolidation activities on the Croatian market, we assessed the mergers in the following key sectors and markets: press distribution, food and grocery retail market, wholesale and storage of oil and oil derivatives, sugar production and distribution, stock feed import market, print media and electronic media sectors etc.

The mergers in the oil derivatives retail market, sugar production and distribution market and food and groceries retail market have been assessed by the CCA as conditionally compatible where structural or behavioural measures have been imposed on the undertakings concerned.

3.1. Prohibited agreements – cartels

In line with Article 9 of the 2003 Competition Act, prohibited are all agreements between undertakings, contracts, single provisions of agreements, explicit or tacit agreements, concerted practices, decisions by associations of undertakings 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.

The most dangerous agreements containing hard core restrictions are horizontal agreements, the so-called cartels, which are traditionally oral or tacit and informal agreements between direct competitors, on the basis of which they exclude competition, share markets or sources of supply, fix prices and gain profit that they would otherwise not be able to make. The Agency has drawn attention to the nature of cartel agreements on numerous occasions and explained how they directly hamper competition and harm consumers.

With the objective of fixing prices, limiting output, setting rebates, sharing markets, allocating customers or territories, bid rigging or a combination of these, cartels eliminate competition among direct competitors and earn higher profits for the members of a cartel, which is the

result of their agreement and not of their successful business. Such agreements have no positive effects. Acting as collective monopolies, they are harmful to consumers, whose choice is restricted and who in principle have to pay high prices for products covered by such agreements. At the same time, these agreements remove market mechanisms which would, under the normal circumstances, force undertakings to more cost effective performance, products of better quality and lower price. By fixing the prices of their products members of a cartel not only eliminate competition between themselves, but act against the public interest, key principles of market economy and consumers' interests. What is more, cartels ensure illegal profit to their members, whose costs are lower than the costs incurred by the most inefficient members, thus protecting them from competition and directly harming the consumers.

It is obvious why this Agency is committed to expression of the zero tolerance policy in the face of this most damaging type of anti-competitive practice, even in the cases where such practices are the only way of survival in the market, such as in the case of crisis cartels. Thus, disclosure and sanctioning of cartels and focus of our interventions on areas that pose the greatest threat to competitive, open and well-functioning markets stays our priority.

In the investigation procedure, where it identifies the presence of a cartel, the CCA carries out a preliminary market investigation in order to gain insight in the functioning of the market concerned and define the market situation. In this process, the CCA is entitled to seek information from the undertakings and other entities which are considered by the CCA as relevant in the particular case and collect data important for the market investigation concerned, regardless of the proceedings that are carried out by its expert team.

Concretely, in 2009 the CCA assessed the agreements between undertakings in the daily press publishers market, where it found that the daily press publishers simultaneously fixed prices, i.e. increased the price of dailies by one Kuna, all at the same time. These concerted practices lead to fixing of retail price of the dailies by publishers members of the prohibited agreement[1].

Despite all the limitations of the existing legal framework in force, in 2009 the CCA found in 5 cases that the restrictive agreements concerned violated the provisions of the Competition Act, whereas in 3 cases thereof it established prohibited horizontal agreements (cartels), while in two cases restrictive agreements were concluded between undertakings on a different level of production or distribution (prohibited vertical agreements).

The cartel between undertakings in the driving schools market and two cartels between property managers are described below.

[1] Decision of the Agency: UP/I 030-02/2008-01/72, of 25 March 2010.

3.1.1. Cartel between 15 driving schools in Rijeka and Matulji[2]

After it had carried out a market study in the provision of services of driving schools in the territory of the Republic of Croatia and after having received the necessary data from the undertakings in this market, the CCA established the existence of agreements on the basis of which 15 driving schools in the town of Rijeka and Matulji municipality fixed prices of driving lessons fees for drivers of licence category A, A1, B and M and thereby eliminated competition between them.

In spite of the fact that this is a partly regulated market, in other words, a specific ordinance of the Ministry of the Interior regulates the minimum prices for the provision of particular driving school services, nevertheless, these minimum prices do not equal the final price and may not be used as a fixed price by all service providers, in this particular case the driving schools. Given the different operating costs of each service provider, the price of each particular operator must be set in accordance with the actual costs incurred. Thus, regardless of the fact if it had been actually implemented or not, the CCA found this agreement in contravention of Article 9 of the Competition Act, which prohibits "agreements object or effect of which is to prevent, restrict or distort competition in the relevant market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions. "

The CCA made a request to open proceedings against all cartel members – 15 driving schools – for the infringement of competition rules in the period from 1 November 2007 to 30 July 2009 at the competent minor offence courts. Minor offence proceedings are pending.

Most driving schools filed the claims against the decisions of the Agency. The cases are pending.

3.1.2. Two cartels between property managers in Split and Pula[3]

The Agency closed two proceedings opened on its own initiative against seven property managers providing services in the territory of the Town of Split and four property managers in the territory of the Town of Pula. The complaint came from the consumers associations DALMATINSKI POTROŠAČ from Split and POTROŠAČ – DRUŠTVO ZA ZAŠTITU POTROŠAČA ISTRE from Istra.

In the first case the CCA was informed by DALMATINSKI POTROŠAČ that the property managers from Spilt agreed to raise their management fee to a fixed amount in their meeting held on the premises of one of them – Stanouprava d.o.o. in Split in December 2007, whereas one of them also announced this increase in the local daily on the following day.

In the proceeding it was established that seven property managers in Split, TEHNOPLAST d.o.o., STANO-UPRAVA d.o.o., NOVI DANI d.o.o., DUB-INŽENJERING d.o.o., JAMB-TUKIĆ d.o.o., DIKA d.o.o. and UPRAVITELJ d.o.o., explicitly created a cartel, which was in force from 1 January 2008 to 24 November 2009. The concerted practice, although informal, eliminated competition between competitors – in this particular case between property management service providers in the territory of the Town of Split. What is more, the seven undertakings involved in the infringement hold a significantly high market share in the relevant market, which was additionally increased in 2008 by the application of this cartel agreement and exceeded 90 per cent. At the same time, the individual market shares of the participants in the cartel remained the same, whereas the number of cases where the service users switched to other providers was negligible compared to 2007, which is again a strong

[2] Decision of the Agency: UP/I 030-02/2008-01/68 of 30 July 2009 (OG 154/09).
[3] Decisions of the Agency: UP/I 030-02/2008-01/03, of 24 November 2009 (OG 37/10) and UP/I 030-02/2008-01/78 of 23 December 2009 (OG 37/10).

indicator of decreased competition between the property managers in the relevant market in question.

In respect of the second proceeding, the one carried out against the four property managers in the territory of Pula: EKI INŽINJERING d.o.o., ULJANIK UPRAVLJANJE STAMBENO-POSLOVNIM ZGRADAMA d.o.o., STAMBENI INŽENJERING d.o.o. and KANY d.o.o., the CCA established that this cartel on fixing the fees for the provision of property management services which was in force from 15 May 2008 to 23 December 2009 was, unlike the previously mentioned one in Split, a formally signed agreement fixing the charges for the provision of the services concerned. More specifically, they agreed on the increase of the fee and set the minimum compensation for the property manager, regardless of the calculation method.

In both cartel cases opened on its own initiative the CCA established that the level and the structure of costs incurred by the participants of both cartels were also different. These costs are in no way economically justified, whereas the agreement on price fixing for the provision of the services in question between existing competitors is aimed exclusively against the consumers. Moreover, it removes market mechanisms, eliminates competition between competing undertakings and enables market sharing, again to the detriment of the consumers. This was recognised by consumers' associations, which communicated their complaints to the Agency.

Against all above mentioned (11) property managers the CCA took the necessary steps at the competent minor offence courts with the view to imposing adequate fines for infringements of competition rules. Minor offence proceedings are pending. Most property managers at issue took legal actions against the decisions of the Agency. Cases are still pending.

3.2. Other prohibited agreements

The Agency also assesses other types of agreements between undertakings that indicate concerted practices between them and which cannot be granted exemption pursuant to the regulations on block exemption that may be granted to certain categories of agreements under certain criteria.

For instance, in a case where it re-assessed a horizontal agreement on cooperation, it *ex officio* revoked its decision on the basis of which individual exemption was granted to an agreement in February 2008. Concretely, it was a restrictive agreement that had been concluded between the undertakings Viro tvornica šećera (a sugar factory) and Pfeifer & Langen (P&L) from Germany. On the basis of the cooperation agreement the undertakings concerned were to create a joint venture, a new company which would have had the exclusive rights for sugar imports from the parent company P&L for the Croatian market. However, after the clearance of a merger between Viro and another undertaking, SLADORANA d.d. from Županja, the situation on the sugar production and sugar distribution market on the territory of the Republic of Croatia changed significantly. Given that both the implementation of the concentration and the individual exemption of the agreement between the two companies would have led to strengthening of the dominant position of Viro in the market with possible anticompetitive effects, the Agency authorised the concentration, but revoked its decision on individual exemption of the cooperative agreement which had originally been authorised for a period of three years. More details about this case may be found below in the chapter dealing with concentrations between undertakings[4].

In 6 cases the proceedings for the assessment of agreements have been opened, whereas in the case of alleged agreements between undertakings in the distribution and servicing of

[4] Decision of the Agency: UP/ 030-02/2006-01/40, of 30 November 2009 (OG 7/2010) revoking the decision of the Agency: UP/I 030-02/2006-01/40 of 14 February 2008 (OG 43/08).

motor vehicles and in the case of alleged agreements in the long time rental (operating leasing) market and compulsory motor insurance and comprehensive insurance market the CCA, after it had carried out the necessary legal and economic analyses, found no grounds for the initiation of a proceeding.

3.2.1. Distribution and servicing of motor vehicles

The conditions that must be fulfilled for block exemption of certain categories of agreements in the motor vehicle sector, hard core restrictions and other criteria for block exemption of agreements for distribution and servicing of motor vehicles are contained in the Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles (Motor vehicle regulation)[5]. The purpose of its adoption was to ensure the development of competition in the motor vehicle market (distribution and servicing) and in the spare parts supply market.

Given the specific nature of agreements between undertakings that carry out their activities at different levels of production or distribution, which define the conditions under which motor vehicles and their spare parts may be purchased, sold or resold, and conditions under which repair and maintenance of motor vehicles may be provided, in the time period from July 2004, when the Motor vehicle regulation was adopted to the end of 2009, the CCA assessed no less than 15 such agreements.

The Motor vehicle regulation definitely contributed to the following achievements in the motor vehicle market:

- Development of multi-brand distributors – operators may freely choose to sell different brands of new motor vehicles, whereas members of a selective distribution system may sell not only out of the authorised place of establishment, but also operate out of an unauthorised place of establishment, without a prior consent of the supplier of motor vehicles (for example, an authorized dealer from Zagreb may open a new showroom in Rijeka, which may not be restricted by the supplier who may, on the other hand, require additional sales or delivery outlets to comply with the relevant criteria applicable for similar outlets located in the same geographic area).

- Openness of the motor vehicle repair market which had before the adoption of this Motor vehicle regulation been closely connected with the distribution of motor vehicles. The distributors may, independently and freely, unless they want to continue with distribution and repair of motor vehicles, enter into agreements with independent operators – repairers, who will as authorised repairers provide repair and maintenance services for vehicles. At the same time, authorised dealers with a long experience and knowledge in motor vehicle distribution, whose agreements have been cancelled or terminated, may further perform repair services as authorised repairers based on their skills and considerable resources they had to invest in the provision of distribution and repair services in the long run.

- Better position also for independent repairers when they purchase spare parts, or gain access to technical information. The customers have the opportunity to choose between authorised or unauthorised repairers, without fear that such a repair would be of lower quality.

- Fair and foreseeable business conditions for the operators – car dealers and repairers of motor vehicles – who had been in a less favourable position than the producers of motor vehicles or general suppliers in the Republic of Croatia before the entry into force of the Motor vehicle regulation. Taking into account the nature of the industry where large investments are needed, it was necessary to ensure that the

[5] OG 105/2004

contracts are not terminated “over night” without any consequences. Thus, the Motor vehicle regulation stipulates that if the agreement is concluded for a period of at least five years, in this case each party to the agreement has to undertake to give the other party at least six months' prior notice of its intention not to renew the agreement. If the agreement is concluded for an indefinite period, in this case the period of notice for regular termination of the agreement has to be at least two years for both parties. Block exemption applies on condition that the vertical agreement concluded with a distributor or repairer provides that a supplier who wishes to give notice of termination of an agreement must give such notice in writing and must include detailed, objective and transparent reasons for the termination.

- Block exemption applies on condition that the vertical agreement provides for each of the parties to the agreement the right to refer disputes resulting from the agreement to the Conciliation Centre of the Croatian Chamber of Commerce, this without prejudice to the right of each party to the agreement to settle the disputes resulting from the agreement at the court of law or by arbitration. Block exemption applies on condition that vertical agreement concluded with a distributor or repairer provides that the supplier agrees to the transfer of the rights and obligations to another distributor or repairer within the distribution system and chosen by the former distributor or repairer[6].

Block exemption for vertical agreements, a “safe harbour” for operators, applies on condition that the supplier's market share on the relevant market on which it sells motor vehicles, spare parts for motor vehicles and/or repair and maintenance services does not exceed thirty percent (30%), or forty percent (40%) for agreements establishing quantitative selective distribution system for the sale of new motor vehicles. Naturally, under the condition that they do not contain any of the hardcore restrictions and have positive effects on competition so they can be granted exemption from prohibition laid down in Article 9 of the Competition Act[7].

In other words, no block exemption may be granted to vertical agreements that contain hardcore restrictions, regardless of the market share of the parties to the agreement. Such agreements are prohibited under Article 9 of the Competition Act and *ex lege* void. This was exactly the case with the cases we handled in 2009.

In 2009 we adopted one interim measure and two decisions establishing prohibited vertical agreements in the motor vehicle distribution and servicing sector[8].

3.2.1.1. Šimatić d.o.o., Osijek v Tomić & Co d.o.o., Zagreb[9]

In the proceedings initiated upon the request of the undertaking Šimatić d.o.o., Osijek, against the undertaking Tomić & Co. d.o.o., the CCA decided that the undertaking Tomić & Co. d.o.o. by unilateral termination of the "Framework Agreement on the sale of new BMW motor vehicles, original BMW spare parts and repair and maintenance services" that it had concluded as an authorised importer and supplier of BMW motor vehicles with the undertaking Šimatić d.o.o., Osijek as an authorised dealer and repairer, restricted Šimatić to sell original BMW spare parts for motor vehicles and restricted its ability to provide authorised repair and maintenance services for BMW motor vehicles.

[6] Article 9 of the Motor vehicle regulation on *Duration, termination, settlement of disputes and transfer of rights and obligations to third parties.*

[7] Articles 10 – 13 of the Motor vehicle regulation.

[8] Decisions of the Agency: UP/I 030-02/2008-01/52 of 9 April 2009, UP/030-02/2008-01/52 of 3 November 2009 and UP/I 030-02/2008-01/67 of 24 September 2009.

[9] Decision of the Agency UP/I 030-02/2008-01/52 of 3 November 2009 (OG 150/09).

Contravening the provisions of the Motor vehicle regulation, Tomić & Co. restricted Šimatić' ability to provide only repair and maintenance services and sell original spare parts for motor vehicles. Such practices contradict also the EC case law, which the CCA is obligated to apply in the assessment of anticompetitive behaviour of undertakings in the motor vehicles distribution sector. In accordance with the relevant case law, the distribution of new motor vehicles and provision of repair and maintenance services are not necessarily linked and they may be provided by independent undertakings.

Given that in line with the competition rules, among other practices, such unilateral termination of a contract constitutes a prohibited agreement, Tomić & Co. committed an infringement of competition rules in the part of the agreement concerning the provision of repair and maintenance services and sale of original spare parts in the territory of the Republic of Croatia. Additionally, particularly taking into account the specific nature of the BMW cars, its price and status, it was established that there is a justified interest of the consumers for an authorised repairer in the territory of the Osijek-Baranja County.

With the view to eliminating negative effects of the above mentioned prohibited agreement on competition and end users, the CCA ordered the undertaking Tomić & Co. to include the undertaking Šimatić again into the authorised repairers system and sale of original BMW spare parts. This final decision of the CCA confirmed the interim measure ordered on 9 April 2009[10].

In accordance with the procedural rules, the CCA also took the necessary steps at the competent minor offence court against the undertaking Tomić & Co. and its responsible persons with the view to imposing adequate fines for conclusion of the prohibited vertical agreement, which was in force from 1 July 2008 to 21 April 2009. Minor offence proceedings are pending.

In deciding on the claims filed by Tomić & Co. against the decisions of the Agency, the Administrative Court of the Republic of Croatia upheld both decisions of the Agency and rejected the claims of Tomić & Co. [11]

3.2.1.2. CCA v ADRIA LADA d.o.o., Zagreb[12]

On 24 September 2009 the CCA brought a decision which completed an ex officio proceeding initiated against ADRIA LADA d.o.o. (LLC). In this decision it was established that the undertaking ADRIA LADA LLC, an authorised supplier, distributor and repairer of LADA motor vehicles for the territory of the Republic of Croatia, in the period from 28 May 2007 to 1 February 2009, did not organise an authorised distribution and repairers' network in line with the provisions of the Motor vehicle regulation. Hence, by entering into a series of prohibited agreements on servicing of LADA motor vehicles with his authorised repairers, which contained hardcore restrictions pursuant to the Competition Act and Motor vehicle regulation, it restricted competition on the relevant markets of repair and maintenance services for motor vehicles and sale of spare parts for motor vehicles.

The CCA also established that ADRIA LADA LLC, in the period from 28 May 2007 to 17 December 2008, applied discriminatory conditions in agreements on servicing of LADA motor vehicles with its authorised repairers, because it didn't make publicly available the criteria for acceptance in its qualitative selective network of authorised repairers. By doing so, ADRIA LADA LLC denied the access to the market of repair and maintenance services for LADA motor vehicles to all interested undertakings that fulfil these criteria, placing them in a

[10] Decision of the Agency UP/I 030-02/2008-01/52 of 9 April 2009 (OG 52/09).

[11] Rulings of the Administrative Court of the Republic of Croatia Us-13954/2009-4 of 3 February 2010 and Us-6186/2009-6 of 27 January 2010, both rulings published in OG 43/2010.

[12] Decision of the Agency UP/I 030-01/2008-01/67, of 24 September 2009.

competitive disadvantage in relation to their market rivals. Among others, this applied to the undertaking SPID LLC, which in this particular case submitted to the CCA an initiative for assessment of compliance of these servicing agreements with the provisions of Competition Act.

According to the established facts in the course of proceeding, applying the provision of Article 55 Paragraph 1 of the Competition Act, on 27 December 2008 the CCA adopted the decision on interim measure. Thereby, the CCA ordered ADRIA LADA to include the undertaking SPID LLC in the network of authorised repairers of LADA motor vehicles without any delay, to publish on its web site the "Guide for carrying out the repairs on motor vehicles of LADA brand within the warranty period", i.e. transparent qualitative criteria needed for acceptance in the network of any authorised repairer of LADA motor vehicles.[13]

The CCA also took the necessary steps at the competent minor offence court against the undertaking ADRIA LADA and its responsible persons with the view to imposing adequate fines for conclusion of the prohibited vertical agreement concerned. Minor offence proceeding is pending.

ADRIA LADA took legal actions against the decision of the Agency at the Administrative Court of the Republic of Croatia. The case is still pending.

In the motor vehicle sector the CCA received in 2009 several other complaints. For instance, in the case of Auto Centar Teo d.o.o. against the undertaking Kmag d.o.o., after the preliminary investigation of the market had been carried out, it was established that there were no grounds for the initiation of the proceeding for the assessment of the agreements on sales of Kia Motors brand. The contract in question was an agency agreement, to which, in accordance with the existing EU competition rules, Article 9 of the Competition Act on restrictive agreements is inapplicable.

The complaint received by the CCA from AUTO KUĆA CULAK d.o.o. against RENAULT NISSAN HRVATSKA d.o.o. was dismissed on the account of the fact that it had been established that the undertaking RENAULT NISSAN HRVATSKA did not restrict the use of original spare parts for repairs carried out outside warranty period and thereby did not contravene the provisions of the Motor vehicle regulation.

CCA also opened a proceeding in the case of Hyundai Auto Zagreb d.o.o. where it has been assessing the compliance of the typical agreements concluded with the authorised supplier and the authorised repairer with the rules contained in the Competition Act and Motor vehicle regulation. The case is still pending.

Notably, during the first seven months of 2010 the CCA received 5 new complaints relating to the assessment of restrictive agreements in the motor vehicle sector. This indicates a fairly lively entrepreneurial activity in the area of distribution and servicing of motor vehicles, pointing to rather bumpy relations between the suppliers and distributors of motor vehicles, particularly affected by the global economic crisis.

3.3. Abuse of a dominant position

Any abuse by one or more undertakings of a dominant position in the market is prohibited in line with Article 16 of the Croatian Competition Act.

Article 15 of the Competition Act provides that if a firm has a market share of 40 percent or more, it may be *presumed* to have a dominant position in the relevant market. Moreover, an undertaking is in a dominant position, regardless of its market share, when due to its market power it can act in the relevant market considerably independently of its real or potential

[13] Decision of the Agency UP/I 030-01/2008-01/67, of 17 December 2010 OG 6/09.

competitors, consumers, buyers or suppliers. In other words, holding a dominant position is, in itself, not a problem and is therefore *not prohibited*. The Competition Act is only infringed if an undertaking abuses its dominant position.

The main indicator of dominance is a large market share; other factors include the economic weakness of competitors, the absence of latent competition and control of resources and technology. Abuse of dominance covers all kinds of behaviour of undertakings in the market which, based on their market power and high market shares, restrict competition. Such behaviour has as its object or effect (actual or potential) limited access for new entrants or foreclosure of the existing market or elimination of actual or potential competitors.

The Competition Act provides for a non-exhaustive list of examples of "abusive practice" such as imposing unfair prices or other unfair trading conditions, limiting production, markets or technical development to the prejudice of consumers, applying dissimilar conditions to equivalent transactions with other trading parties, imposing supplementary obligations which have no connection with the purpose of the contract etc.

During 2009 in identifying abuse of market dominance the CCA carried out 23 preliminary investigations on several markets, such as in the cases MIRNA d.d. v HEP-OPSKRBA d.o.o. and HEP-Operator distribution network d.o.o., (electricity supply market), PROMET d.o.o. v CROATIA BUS d.d. under bankruptcy, (passenger transport by bus) PLAM d.o.o. v MONTCOGIM PLINARA (distribution of natural gas and construction of natural gas lines for homes), TIP-KUTINA d.o.o. v PROFIL INTERNACIONAL d.o.o. (sales of office supplies and distribution of textbooks) EURO-PETROL d.o.o. v INA d.d. (retail of oil derivatives). Preliminary investigations were also carried out in the following markets:

- insurance market – insurance policy issuance,
- servicing of motor vehicles ,
- service marina berths,
- supply of sports broadcasting rights,
- anti-corrosion services,
- telecommunications market,
- outdoor advertising market.

In the case of alleged abuse of a dominant position by ZAGREB PLAKAT d.o.o. in the outdoor advertising market the proceeding was terminated due to lack of evidence whereas most analyses in other markets indicated no grounds for the initiation of a proceeding.

The cases referring to alleged abuse of dominance such as GETRO d.d. v SAP d.o.o. based on the 2009 analysis of the wholesale market in PCs, PDAs, notebooks and laptops, peripheral equipment, PC components and electronic equipment and the software wholesale market, KINO ZADAR FILM d.d. v BLITZ d.o.o. based on the cinema distribution investigation and DUBROVNIK AIRLINE d.d. v INA d.d. in the wholesale in oil derivatives and supply of aircraft fuel are due to their complexity still pending.

One of the most significant decisions in 2009 was the established abuse of a dominant position of the Croatian Composers' Society, Collecting Society (HDS ZAMP) where the collecting society fulfilled all the measures imposed by the CCA and where consequently effective competition concerning the collecting of private copying levy in the territory of the Republic of Croatia was successfully restored.

3.3.1. Croatian Composers' Society – Collecting Society abuse of a dominant position in collecting private copying levy in the territory of the Republic of Croatia[14]

Based on Article 32 of the Copyright and Related Rights Act where a work may be reproduced without the author's authorization, the author whose works are, due to their nature, expected to be reproduced without authorization, by recording on sound, visual or text fixation mediums, for private or other personal use, shall have the right to an appropriate remuneration upon sale of consumer electronics and blank audio fixation mediums.

This "blank media tax or levy" is paid by the manufacturers and importers of blank media. The copyright levy is collected by a collecting society vested with this right by the State Intellectual Property Office of the Republic of Croatia.

Upon the request of the Croatian Association of Small Importers and Distributors of ICT Equipment (HUVEL) the Agency initiated the proceeding against the Croatian Composers' Society, Collecting Society (HDS ZAMP) due to its alleged abuse of a dominant position in respect of discounts granted to some applicants for the standard copyright levy collected for reproduction of audiovisual and other resources.

HDS ZAMP is a collective which holds the exclusive right to manage and protect music copyright in Croatia. In line with the findings of the CCA, it undoubtedly abused its dominant position created on the basis of a specific law by applying dissimilar conditions to equivalent transactions with other trading parties, in this particular case, by applying different discounts to equivalent standard fees with different trading parties in the period from 1 January 2006 to 3 November 2009, thus placing them at a competitive disadvantage.

The CCA established that HDS ZAMP in an unjustifiable and non-transparent manner fixed the discount level at 15 % (for timely payment), 25 % and 35 % (rebate for pooling into an association dependant on the association to which individual undertakings belonged, which on their part, depended on the joint annual fee of the association members and the share held by the individual members in the market in products concerned. Undertakings which did not comply with the criteria for a certain discount or their rebate rate was lower, were placed at a competitive disadvantage to undertakings who could, based on their more favourable rebate rates, determine a more favourable price of the products concerned. In addition, it was identified that the rebates themselves were lump discounts and failed to reflect the actual expenditures. HDS ZAMP did not communicate to the CCA any evidence which would justify the difference between these rebates.

CCA established beyond any doubt that the rebates based on pooling into associations were set so high that only the members of one association were able to fulfil the criteria for this rebate, and cumulate both rebates into 50% discount, while members of other associations, as well as other levy payers – who did not belong to any association, were eligible only for 15% rebate based on timely payment. In addition to that, the CCA determined that rebates for pooling into associations were not objectively justified, and did not simplify the collection of private copying levy.

Therefore, in its decision the CCA:

1. established that HDS ZAMP since 1 January 2006 onwards abused its dominant position by charging different rebates to levy payers through application of dissimilar conditions to equivalent transactions which are not objectively justified;

2. ordered cessation of such abusive practice by the HDS ZAMP and prohibited any further activities of the undertaking in question which may prevent, restrict or distort competition through abuse of a dominant position;

[14] Decision of the Agency UP/I 030-02/2008-01/67 of 17 December 2008 (OG 9/2010).

3. ordered HDS ZAMP to collect private copying levy under the equal conditions from all levy payers as of the receipt of CCA decision;

4. ordered HDS ZAMP to submit to the CCA the evidence (invoices for the next payment period) that will show compliance with the request from item 3, within 8 days of issuance of those invoices;

5. ordered HDS ZAMP to publish its Pricelist and Rebates Policy on its web site within 30 days starting from the receipt of the CCA decision.

In addition, the insight into the EU practice in this area showed that in 16 out of 20 member states observed collecting societies do not apply any rebates on levy payments. In countries in which such rebates apply, they are offered under equal conditions to all levy payers. No EU member state uses a rebate policy which would be associated with the levels of private levy payments particular individual levy payers or associations of undertakings are obligated to pay.

HDS ZAMP acted completely in line with the measures ordered by the Agency. What is more, it cancelled all the invoices of undertakings who had not been entitled for the maximum rebate before the decision of the Agency was adopted. Instead, HDS ZAMP issued new invoices stating the full rebates and started to repay the excess payments.

Hence, the consequence of the decision of the Agency was the establishment of a transparent and fair copyright levy regime for private and other than private copying in the Republic of Croatia.

For the established abuse of dominance in the period of almost four years (1 January 2006 to 3 November 2009) the CCA also took necessary steps at the competent minor offence court against HDS ZAMP. The case is pending.

3.4. Merger control

A concentration between undertakings, in accordance with Article 19 of the Competition Act, shall be deemed to arise by means of an „acquisition or merger association of undertakings, 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. 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, are enabled to exercise prevailing influence on one or more other undertakings“.

Concentration between undertakings is a permanent change in the control over an undertaking resulting in a change in the market structure.

Pursuant to the provisions of the Competition Act, the issue of control or controlling interest is always assessed taking into consideration all legal and factual circumstances. Therefore, the assessment does not only take into consideration the provisions of the share transfer agreement, but also all bylaws of undertakings that regulate the appointment and functioning of the management, supervisory or management board or assembly, particularly in terms of key business decision-making (financing, business plan).

In 2009 compatibility of 17 concentrations was assessed from the aspect of competition. Of that number, 16 concentrations were assessed as compatible (15 in Phase 1 and one in Phase 2), whereas 1 concentration was assessed as conditionally compatible.

Assessment of compatibility of a concentration in the first phase means that the concentration at issue is a non-disputed concentration for which it can be reasonably assumed that its implementation is not prohibited within the meaning of the provisions of the Competition Act. In that case the Agency does not issue a conclusion on the initiation of the procedure of its assessment within the meaning of the provisions of the Competition Act, but a concentration is deemed compatible upon the expiry of the term of thirty days following the submission of the full notification of concentration.

In the so-called second phase, concentrations that raise competition concerns are assessed in a procedure opened by a procedural order and closed by a decision on compatibility within three months from the day of the initiation of the procedure. The Agency establishes in the procedure the conditions and obligations, as well as deadlines for their fulfilment, by which the negative effects of concentration on competition should be eliminated.

Due to their significance for the market or markets and competition, in 2009 the Agency particularly focused on concentrations between the undertakings MOL Hungarian Oil and Gas Plc., Hungary/INA-Industrija nafte d.d., Zagreb, AGROKOR d.d., Zagreb/MLINAR d.d., Križevci and Tvornica šećera d.d.,Virovitica/SLADORANA d.d., Županja, which it approved after it had carried out the assessment of their anticompetitive effects in the relevant markets concerned.

The merger of Tvornica šećera d.d.,Virovitica/SLADORANA d.d., Županja was assessed as compatible in phase one, whereas the concentrations between MOL Hungarian Oil and Gas Plc., Hungary/INA-Industrija nafte d.d., Zagreb, and AGROKOR d.d., Zagreb/MLINAR d.d., Križevci were assessed as compatible in phase two.

The text below presents short reviews of two of the mergers mentioned above.

3.4.1. MOL Hungarian Oil and Gas Plc., Hungary/INA-Industrija nafte d.d., Zagreb[15]

The undertaking MOL, which has been the biggest shareholder of INA since October 2008, holding 47.155% shares, on 30 January 2009, by concluding the First amendment to the Agreement on mutual relations between shareholders pertaining to INA-Industrija nafte d.d. between MOL and the Republic of Croatia (hereinafter: the Agreement), has acquired control or controlling interest in INA. This, within the meaning of the provisions of Article 19 paragraph 1 point 2 of the Competition Act, created a concentration. Namely, on the basis of that Agreement MOL acquired the right to appoint a majority of Supervisory board members, it acquired control of finances as the most important part of its operations, consolidated INA in its financial statements and took over control over daily operations of INA.

Although MOL as early as in 2003, by acquiring 25% + one share of the issued share capital of INA, had entered into its ownership structure, at that point in time there had been no change in control relating to INA, and on the basis of the criteria stipulated by the Competition Act then in force (OG 48/95, 52/97 and 89/98), this transaction had not constitute a concentration between undertakings.

On the basis of the performed economic and legal analyses in the course of the procedure for the assessment of the concentration between MOL and INA in 2009, the CCA established that through its implementation the market share of MOL, which by that time operated in the oil derivatives retail market through it connected undertaking Tifon, grew to more than 60 %, thus creating a new dominant position of MOL on the retail market in oil derivatives in the territory of the Republic of Croatia. Given the structure and conditions on the relevant market and the fact that the first next competitor holds a market share which is more than seven times lower than that of MOL, the Agency declared the retail market in oil derivatives contentious from the point of view of competition rules.

Since the implementation of concentration could have had significant adverse effects on competition in the said relevant market, and consequently also on consumer interests, the Agency declared the subject concentration conditionally compatible, and to eliminate significant adverse effects of the concentration on competition, ordered structural measures and behavioural measures to be complied with by the parties to the concentration.

Prior to the adoption of the decision, the Agency published on its web site a request for information from other undertakings and stakeholders. The request for information contained the legal nature of concentration, identified the affected markets and set the 14-day deadline for the submittal of any relevant data and opinions regarding the acquisition of controlling interest of MOL in INA. Not one single opinion, either by a competitor or by the citizens or other stakeholders, was received within the prescribed period.

The Agency ordered to the parties to the concentration the following measures by a decision of 9 June 2009:

1) divestiture of Crobenz d.d., a connected undertaking of INA, with its assets, rights and obligations, inclusive of takeover of employees, to the extent that allows this undertaking to stay on the market on the sustainable basis as an independent economic entity, within 9 months. The conditions that the buyer had to meet in that respect were possessing sufficient financial resources and appropriate expertise for the maintenance of the existing activity of Crobenz d.d., as well as non-existence of any significant capital or personal connections with participants of the MOL/INA concentration and their connected undertakings.

2) It is prohibited to the parties to the concentration and their connected undertakings to buy back Crobenz within 5 years from the date of receipt of the decision;

[15] Decision of the Agency: UP/I 030-02/2009-02/05, of 9 June 2009 (OG 113/09).

3) Submission of the proposal of the trustee - natural or legal person, which will, subject to the approval of the Agency, pursuant to an irrevocable mandate and without any influence by the notifying party, or an affiliated undertaking, perform the tasks of monitoring of the execution of the conditions and measures from the decision of the Agency. The Agency stipulated by the decision that, in the event that the parties to the concentration alone do not carry out the divestiture of Crobenz d.d. within the given time period, the divestiture will be carried out by the trustee;

4) Until the day of divestiture of Crobenz d.d. it is prohibited to transfer the rights and obligations under the contracts regulating the wholesale and retail in petroleum products, which Crobenz d.d. concluded with third parties until 9 June 2009, to participants in the concentration and their connected undertakings. In addition, it is ordered that Crobenz d.d. has to be provided conditions for supply of oil products and storage of oil products, according to the current conditions and existing contracts valid at the moment if the issuance of the decision;

5) It is prohibited to open new petrol stations, buy, lease or sub-lease, enter into sub-concession agreements or similar agreements on new sections of the existing motorways that will be built in future in the territory of the Republic of Croatia, and on new motorways on the same lane of the particular motorway in question, in case that the petrol filling station is located at a distance not exceeding 30 kilometres.

With a view to executing the order from the decision, MOL proposed to the Agency Croatian Petrol Stations as the buyer of Crobenz d.d. This proposal was rejected by the Agency, on the basis of the opinion of the trustee and submitted documentation, on the grounds that it did not fulfil the conditions for the buyer stipulated by the decision - it had no employees and was not engaged in the performance of the activities relating to trade in petroleum products, and the Agency was not able to determine its financial situation with certainty.

Therefore, the Agency decided that, in accordance with the decision indicated above, the trustee should carry out the divestiture of Crobenz d.d. within three months, starting from 21 April 2010.

The trustee submitted to the Agency, within the period indicated by the decision, and following the publication of the announcement on the divestiture of Crobenz in print media, review and evaluation of binding offers and conducted negotiations, submitted the report and proposal for the divestiture of Crobenz d.d. to the undertaking Lukoil Croatia d.o.o., given that it was a buyer that fulfilled the criteria as laid out in the decision of 9 June 2009.

On 21 July 2010 the Agency received for approval the Agreement on purchase of 100 % of share capital of Crobenz, concluded between INA and Lukoil Croatia d.o.o. and the opinion of the trustee about the buyer and the contract: The Competition Council accepted and approved the selected buyer in line with its decision of 9 June 2009.

3.4.1. VIRO Tvornica šećera d.d., Virovitica/SLADORANA d.d., Županja[16]

In 2008 the Agency, at the request of the undertaking Viro d.d., granted individual exemption to the Cooperation Agreement that the undertaking entered into with the undertaking Pfeifer & Langen, k.d., with the place of establishment in Germany, for a period of three years. Namely, in the assessment of the subject Agreement the CCA carried out legal and economic analysis, which showed positive effects of the agreement in question, such as the transfer of know-how from P&L to Viro, including the preparation of its operation in the EU once Croatia becomes a member state and entering the sugar sales markets in Southeast Europe, improving the quality of sugar on the Croatian market, supply of new sugar products, etc.

The merger between undertakings Viro d.d. and Sladorana d.d. was assessed by the Agency as compatible in the first phase, given that it was evident from its notification and available economic analyses that the concentration at issue was not a prohibited one whose implementation would have significant anti-competitive effects in the relevant markets of sugar production and sale in the territory of RC.

However, by acquiring control by the undertaking Viro d.d. over the undertaking Sladorana d.d., i.e., by creating an economic unity between the two undertakings, one of the essential reasons for individual exemption of the 2008 Cooperation Agreement ceased to exist. The maintaining of the subject agreement in effect until 2011 could have had negative effects on competition in the relevant market concerned. The reason for this was that the subject Cooperation Agreement, among other things, provided for the newly established company, i.e., the undertaking VPL Šećer d.o.o., to have in the Croatian market the exclusive right of import and sale of sugar of the undertaking Pfeifer & Langen k.d., one of the leading German sugar producers. This might have lead to a significant strengthening of the position of the undertaking Viro d.d. in comparison with other sugar importers and a significant adverse impact on competition due to which the conditions for an individual exemption of the Cooperation Agreement would no longer be in place.

Although the joint venture was established by the 2008 Cooperation Agreement, it has never been implemented and operational in the market, i.e., the Cooperation Agreement has not been implemented in practice. Consequently, the Agency revoked the individual exemption of the said agreement in order to prevent possible adverse effects on competition on the relevant market in future.

In the implementation of the conditionally compatible concentrations, frequently there appear in the market unforeseen circumstances requiring either the extension of the deadline for the implementation of individual measures, or adjustment of the measures to the newly arisen market circumstances. It should be noted here that the circumstances at issue are objectively conditioned and are beyond control of the parties to the concentration.

For instance, in 2009 the Agency was requested to amend the decision on the conditionally compatible concentration between the undertaking KONZUM trgovina na veliko i malo d.d., Zagreb, and the undertaking LOKICA d.o.o. za trgovinu i usluge, Drniš, in the part pertaining to the fulfilment of the measures and extension of the deadline for the fulfilment of the prescribed measures[17].

Namely, the subject decision stipulates for the undertaking Konzum to, within six months, sell, terminate the lease agreement, and transfer to another undertaking 7 food retail outlets in the territories of the towns of Šibenik, Vodice and Murter, which it acquired from Lokica d.o.o.

[16] Decision of the Agency, UP/I-030-02/2009-02/06, of 6 August 2009.

[17] Decision of the Agency: UP/I 030-02/2008-02/06, of 30 December 2009.

Since Konzum submitted to the Agency the documentation indicating that it was not able due to objective reasons to dispose of 4 retail outlets as instructed by the decision of the Agency, by a new decision the Agency adopted as a substitute measure the sale of one food retail outlet and at the same time ordered Konzum to sell one more substitute retail outlet in the territory of Vodice. Within the deadline the undertaking Konzum submitted to the Agency evidence on the fulfilment of all structural measures concerned.

3.4.2. Media mergers

A special procedure is provided by the Media Act (OG 59/04) and the Electronic Media Act (at the moment of the assessment the Electronic Media Act in force, OG 122/03) for the assessment of compatibility of concentrations in the media sector. There are two significant differences in comparison with the procedure and solutions provided for by the Competition Act.

First of all, the Media Act specifically excludes the provision of the Competition Act according to which the obligation of the notification of concentration and assessment of compatibility applies only to concentrations whose parties exceed the legally stipulated total turnover thresholds[18]. This means that the Agency is obliged to assess the compatibility of all concentrations in the sectors of media and electronic media.

Furthermore, until the very end of 2009, the Electronic Media Act that was in force at the time (and remained in force until 11 December 2009), provided for the obligation of notification of any change in the ownership structure of an electronic media both to the Electronic Media Council and to the CCA.

Thus, in 2009, in 10 cases we assessed the change in the ownership structure, irrespective of the fact whether the transfer of shares lead to the change in control.

It was established in 6 cases that the change in the ownership structure gave rise to a change in control, in other words, that there was the ensuing concentration between undertakings within the meaning of the provisions of the Competition Act. Those were the concentrations Denis Blašković, Mladenići - BOSCO d.o.o., Rijeka, Jelena Popović - RADIO JASKA d.o.o., Jastrebarsko, ISTARSKI MEDIJSKI CENTAR d.o.o., Zagreb - INFANTINFO d.o.o., Pula, ARTING RADIO d.o.o., Rovinj - STUDIO MINSK d.o.o., Umag, MILENA MAČEK - MEA MEDIA d.o.o., Varaždin and Josip Majher, Zagreb - ZAGORSKA SPORTSKA MREŽA d.o.o., Zagreb.

In the cases of ARENA RADIO d.o.o., Pula, RADIO 052 d.o.o., Pazin, RADIO HRVATSKO ZAGORJE-KRAPINA d.o.o., Krapina and ŽUPANIJSKI RADIO ŠIBENIK d.o.o., Šibenik, it was established that there was no concentration, but only the change in the ownership structure of the broadcasters which does not have a significant effect on the prevention, restriction or distortion of competition, within the meaning of Article 18 of the Competition Act, i.e., it does not constitute an impermissible concentration within the meaning of Articles 46 and 47 of the Electronic Media Act.

Such a legal framework has lead to a situation that the Agency, instead of dealing with assessments of concentrations (which is one of the purposes of its establishment in the first place) was engaged in the changes of ownership structure of the broadcasters. Therefore, our position was that the matters of competition should be separated from the matters of the

[18] Article 22 paragraph 4 of the Competition Act stipulates that the parties to a concentration are obliged to notify a 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 Kuna in the financial year preceding the concentration.

protection of pluralism and diversity of electronic media, and there should be a clear delineation between the scope of competence of the Agency for Electronic Media and the Council for Electronic Media as a regulatory body in the area of electronic media, and the scope of competence of the Croatian Competition Agency as a body which, in this case, assesses electronic media mergers.

In the opinion on the proposed draft of the Electronic Media Act[19], in which the Agency proposed the necessary amendments to the Electronic Media Act, it proposed that the CCA should be completely excluded from the part of the activities related to the changes of the ownership structure, and that those activities should be performed exclusively by the Electronic Media Agency and the Council for Electronic Media.

Our opinion was fully endorsed, and the Electronic Media Act (OG 153/09) that came into force on 11 December 2009 provides for the obligation of the broadcaster to notify to the Council for Electronic Media any change in the ownership structure, while the competition rules apply to the providers of media services.

[19] Opinion of the Agency: 011-02/2009-01/07, of 25 May 2009.

4. COMPETITION ADVOCACY

The development and promotion of competition culture is in the focus of our activities. The goal is general recognition and acceptance of measures that will create an environment which will be a constant evidence of how the operations of the Agency contribute to the development of the market and bring palpable benefits, primarily to the consumers, the undertakings, but also to the strengthening of competition as a whole and growth of the competitiveness of the national economy. The competition culture implies creating and adjustments of the legislative framework that will promote a competitive, enabling environment to foster entrepreneurial activities. Such raising of awareness about the role and importance of competition will further be strengthened by the new Competition Act, as it will give the Agency legal authority to issue opinions of compliance of legislation in force, and not only drafts of new laws and regulations.

Analyses of the markets that harbours barriers which make impossible or prevent development of competition, are pieces of research that are important not only to the Agency in its decision-making, but also to relevant state administration bodies that propose legal models of regulating specific activities, because in that way both the undertakings and the users of services gain an insight into market prerequisites of the performance of specific activities and possibilities of their re-defining.

In terms of the above, in 2009 we analysed the market of the provision of services of the PR agency section of HUOJ (Croatian Public Relations Association), conducted an investigation into the manner of determining the fee for the provision of gas installation services and gas servicing, investigated the market of postal and courier services, the milk and dairy products market in the Republic of Croatia in 2008, the food and groceries retail market, the press market and the office supplies market in the Republic of Croatia.

The analyses were carried out in order to establish situation in those markets, primarily the market shares of undertakings operating in those markets and possible barriers to entry to specific markets, based on the compliance with the Competition Act, aimed at ascertaining whether or not there was a basis for the initiation of the procedure for the assessment of possible prevention, restriction or distortion of competition, i.e., with the aim of restoring in each particular case efficient competition in the relevant market, prior to the formal opening of the procedure.

Released on our web site have been the data and results of specific conducted market investigations, for instance the market research into the purchase of groceries from wholesale centres Velpro owned by the Konzum retail outlet chain as part of the project Plus Marketi, as well as the results of the market research in food, beverages and sanitary products distribution for in the Republic of Croatia in 2008 and 2009, excluding business secrets.

4.1. Seventh investigation in food wholesale and retail market in the Republic of Croatia in 2009

The 2009 Market research in food, beverages and sanitary products distribution included wholesale and retail of those products, and was based on a sample of 54 undertakings with the highest turnover rates in those markets in the territory of the Republic of Croatia.

Aggregate turnover of all undertakings in the sample generated by wholesale of food, beverages and sanitary products in the Republic of Croatia in 2009 amounted to HRK 6.7 billion. The results of the research indicate that the wholesale market is highly concentrated. The undertaking Konzum d.d. had the highest market share, and was followed by the undertaking Metro Cash&Carry. In 2009 both undertakings recorded a drop in turnover in comparison with 2008; however, at the same time most of the undertakings continued to record a growth of turnover. It should be noted that this does not pertain only to large retail chains, but also to the smaller ones, which perform retail trade at the local and regional level.

Results of the research into retail market show that in 2009 the total turnover of all undertakings from the retail market sample was HRK 28.3 billion, by approximately 1 % less than the 2008 turnover figure. The highest turnover and also the highest market share was still held by Konzum, followed by Plodine, Kaufland Croatian, Mercator-H, Billa, Lidl, Kerum, Dinova - Diona, Tommy and Getro. In 2009 a significant growth of both turnover and market share was recorded by Plodine, Kaufland, Lidl and Dinova-Diona, a continuing trend from 2008, whereas the market shares of Mercator – H, Billa and Getro dropped. In addition, the year 2009 saw a continuation of the consolidation of the market, but also strengthening of undertakings that have penetrated the market in the last five years. This relevant market still demonstrates a dynamic quality. The merger and acquisition trend continued in 2009 as well, affecting the growth of the concentration of the market. More precisely, in 2009 concentration of the market rose among five leading retailers, indicating a weakening competition in the relevant market concerned. The results of this research have been released on the Agency's web site.[20]

The Agency has the obligation pursuant to Article 29 of the Competition Act, upon the request of ministries and other state bodies, to provide opinions about the compliance of draft proposals of laws and other regulations with the Competition Act, and also to provide opinions about other issues that may affect competition significantly.

In 2009, 15 such opinions were issued at the request of state bodies, associations of undertakings, legal and natural persons.

At the request of the Ministry of Science, Education and Sports, in December 2009 the Agency, making a note of the existence of a public interest, provided its opinion about the draft Act on Textbooks for Primary and Secondary Schools[21]. The CCA stressed in the opinion the need for the adoption of the textbook standard as a prerequisite for the application of the law, and proposed that, given the wide authority of the committee, the law should provide for the criteria for its appointment, excluding the possibility of any capital or personal links of the members of the committee with the publishers of the subject textbooks.

Further, to deter the publishers from possible price-fixing, which represents a serious infringement of competition law, the Agency proposed that provisions should be included into the Act concerned, according to which the committee, in the event possible indications of the existence of price-fixing between publishers, must notify the Agency thereof.

[20] See http://www.aztn.hr/uploads/documents/istrazivanje_trzista/031-022010-01024.pdf.

[21] Opinion of the Agency: 011-01/2009-01/014, of 4 December 2009.

Also, it was indicated that it was not possible to implement the proposed sanctions for non-compliance with the provisions regulating the retail price in the form of a possible withdrawal of the textbook at issue from the market with simultaneous exclusion of the publisher from the market by withholding of approval for any of its textbooks over a period of two years. Namely, since the publishers do not distribute their textbooks themselves, but distributors do that, such a provision might unjustifiably affect those publishers whose distributors violate the provisions of the Competition Act relating to price fixing.

All the proposals of the Agency were included in the final draft of the Act on Textbooks for Primary and Secondary School.

In another case, at the request of the Croatian Chamber of the Economy, an opinion was provided on the Price list of the services of bus stations per categories. The Agency established that the subject Price list was adopted in accordance with the provision of Article 88 paragraph 9 of the Act on Road Transportation[22] and that the said prices and prescribed commissions do not prevent, restrict or distort competition. The Agency also took into consideration the specificities of the subject relevant market, in other words, the fact that in the cities and towns of the Republic of Croatia, as a rule, there is usually only one bus station and therefore there is no competition between them. The CCA also took into consideration the legal obligation of the bus operator performing public line transportation to use the bus station in the place of its establishment[23].

Also, in 2009, although there is no such legal obligation, we have provided a number of opinions related to, for instance, purchase agreements concluded between the selling party with a dominant position and its buyers, promotional activities of undertakings holding a dominant position and the possibilities of concluding agreements of an undertaking that was a licence holder in the Republic of Croatia with the licence holder, etc.

4.2. Transparency of the work of the CCA

In 2009 we also continued to spread the knowledge about competition law and policy by means of our web site. To date 38 translations of the *acquis* from the area of competition and 15 translations from the area of state aid (regulations, guidelines, press releases etc.) have been published on the web site of the Agency – a total of 53 documents translated into the Croatian language.

In October 2009 a translation was published of a part of the text from the area of competition (anti-trust and merger control) and state aid from the Working document of the European Commission SEC (2009) 1333 – Croatia progress report 2009, Chapter 8: Competition policy, which covers the period from the beginning of October 2008 to mid September 2009.

In order to strengthen the transparency of its work in the area of assessment of compatibility of concentrations, immediately upon the issuance of the confirmation of the complete notification of concentration, a request for information is published on the web site of the Agency. The request for information is addressed to all stakeholders, primarily the competitors of the parties to the concentration, associations of undertakings and consumers, but also state bodies and institutions and all other legal and natural persons whose interests might be affected by the implementation of the concentration at issue. Comments, positions and opinions are submitted to the Agency in writing within ten days following the publication of the request for information.

[22] OG 174/04.

[23] Opinion of the Agency: 031-01/2009-01/16, of 26 March 2009.

After each session of the Council the Agency publishes important decisions on its web site in the form of a press release. In 2009, 32 press releases were published among other news and press releases.

In general, the activities of the Agency have been increasingly covered by the media. In the course of 2009 there were a total of 1097 media releases related to the area of competition and state aid or comments about the work of the Agency.

5. COURT REVISION

5.1. Administrative Court of the Republic of Croatia

Pursuant to the Competition Act, against the decisions of the CCA the injured party may file an administrative dispute before the Administrative Court of the Republic of Croatia.

In the period between 2003 and 2009, the Administrative Court of the Republic of Croatia issued a total of 56 decisions on the basis of the claims against the decisions of the Agency. Although this is, on average, amounts to 6 claims a year, the highest number of decisions, 16 of them, were taken by the Administrative Court of the Republic of Croatia in 2007, whereas in 2009 one decision was passed upholding the decision of the Agency and rejecting the claim of the unsatisfied party.

In previous years as well, in the majority of cases the decisions of the Agency were confirmed by the court. In less than 10 % of all issued decisions the Administrative Court of the Republic of Croatia decided that, due to procedural reasons, the case be remanded to the Agency. The most frequent cases where cases were remanded for re-assessment were, for instance, due to failure to carry out an oral hearing, although the obligation to set an oral hearing is not specifically prescribed by the Competition Act, since the proceedings concerned did not involve parties with conflicting interests[24]. However, the Administrative Court of the Republic of Croatia took the position that in those cases as well, due to extreme complexity of the matter, an oral hearing should be carried out.

Decisions of the Agency, as well as the decisions of the Administrative Court of the Republic of Croatia issued in relation to the claims filed against the decisions of the Agency are published in full in the Official Gazette. With coming of the new Competition Act into force, only the enacting terms of the decisions of the Agency will be published in the Official Gazette, whereas the full texts of the Agency's decisions, the decisions of the Administrative Court of the Republic of Croatia related to the claims filed against its decisions and other acts of the Agency will be published on the Agency's web site. It should be noted that the data considered a business secret will be exempted from publishing.

5.2. Minor offence courts and High Court of Minor Offences

In accordance with the Competition Act currently in force, minor offence courts impose sanctions – fines for the infringements of the Competition Act. The year 2009 saw a significant growth of sanctions for anti-competitive behaviour of undertakings, and this corroborates the fact that a systematic and persistent pointing at the need for a more serious attitude of the courts towards these issues has yielded certain results and has raised awareness, at least of a part of minor offence judges with respect to the infringements of the Competition Act.

More specifically, from 2003 to 2009 the Agency submitted 60 requests for the initiation of the minor offence proceedings. Minor offence courts in the Republic of Croatia issued a total of 10 rulings to the effect that the undertakings and their responsible persons were fined.

The first decision upholding the decision of the Agency was issued in 2006, the second in 2008, and no less than 8 such decisions were issued in 2009. Of those 8 rulings of the minor offence courts, 4 rulings were issued by the minor offence court in Zagreb, 2 minor offence

[24] Proceedings in which there are no parties with conflicting interests were conducted ex officio against all the parties in a prohibited agreement, since for the existence of the agreement it is necessary to establish the consent of the parties in the agreement.

court in Imotski, and 1 ruling each the minor offence courts in Blato on the island of Korčula and Velika Gorica, respectively.

In terms of the structure of the requests for the initiation of minor offence proceedings of the Agency, the courts imposed 4 fines due to the conclusion of a prohibited agreement, 2 fines due to failure of notification of concentration, one due to failure to proceed according to the request of the Agency to submit the opinion and data, and in one case the High Court of Minor Offences adopted the request for extraordinary mitigation of the final court judgment[25]. Namely, the final fine imposed for entering into a prohibited agreement that represented the value of approximately 3 % of the total annual turnover of the undertaking in the year preceding the year when the infringement was committed was converted by the High Court of Minor Offences into a fine accounting for approximately 1 % of the total annual turnover.

Consequently, in 2009 fines amounting to HRK 1,014,577.39 were imposed and collected, which is approximately 75 % of all fines imposed in the period between 2003 and 2009[26].

In 2009 the Agency submitted a total of 22 requests for the initiation of minor offence proceedings, comprising 15 against the parties in a cartel of driving schools in the area of Rijeka, 2 requests for the initiation of minor offence proceedings for abuse of a dominant position in the market of sale of liquefied petroleum gas and market for aircraft ground handling – transport, unload/load of catering supplies, 1 request for the initiation of minor offence proceedings due to entering into a prohibited agreement on the telecommunications market, 1 due to failure to abide by the decision of the Agency on the interim measure and 3 requests for the initiation of minor offence proceedings due to failure to submit comments and data to the Agency.

[25] Minor offence court in Zagreb in cases: UP/I-030-02/2007-02/30, against the undertaking AGROKOR d.d., Zagreb / UNEX MPG d.o.o., Zagreb; UP/I-030-02/2008-02/28 against the undertaking Gavrilović prva hrvatska tvornica salame, sušena mesa i masti, Mate Gavrilovića Potomci d.o.o., UP/I 030-02/2008-02/06, against the company DJELO d.o.o.,.
Minor offence court in Velika Gorica in the case: UP/I 030-02/2004-01/38 against the undertaking P.Z. Auto d.o.o..
Minor offence court in Imotski in cases: UP/I 030-02/2006-01/39 against the undertaking Denibus d.o.o. and UP/I 030-02/2006-01/39 against the undertaking Autopoduzeće Imotski.
Minor offence court in Blato in the case: UP/I 030-02/2004-01/39 against the undertaking Vojvodić Promet.

[26] From 2003 to 2009 fines totalling HRK 1,364,577.39 were imposed.

6. COOPERATION WITH SPECIFIC REGULATORS

Follow-up of the cooperation with relevant bodies and specific sector regulators, and also providing proposals for a clearer delineation of responsibilities in relation to specific competition mechanisms have marked the work of the Agency in 2009 as well[27]. Cooperation continued with the Croatian National Bank (CNB), the Croatian Energy Regulatory Agency (HERA), the Agency for Electronic Media (AEM), the Croatian Agency for Supervision of Financial Services (HANFA) and the Croatian Agency for Postal and Electronic Communications (HAKOM), whereas cooperation started with the newly established Railway Market Regulatory Agency (ARTZU).

6.1. Croatian National Bank

Given that the competition in the banking sector has been entrusted to the Croatian National Bank pursuant to the Credit Institutions Act (OG 117/08), this is the sector in which the Competition Act is not enforced by the Competition Agency, but by the CNB. Such a competition regime applicable to banks and credit institutions is in force until the accession of the Republic of Croatia in EU. Once Croatia becomes a member state, competence for competition issues in the banking sector will be shifted to the CCA pursuant to Article 373 of the Credit Institutions Act.

Cooperation between the CNB and the Agency is necessary to ensure the same competition regime in the financial sector as in other sectors. Cooperation is carried out on the basis of the Agreement on cooperation in the area of competition in the banking and financial services market.

In 2009 the Agency received from the CNB requests for opinions on the analysis of the preliminary notification of concentrations, specifically, between Centar banka d.d. and Nava banka d.d.[28], and Nava banka d.d. and a group of shareholders - GIP Pionir d.o.o., Gradko d.o.o., Paron d.o.o., Munis d.o.o., Tehnikagradnja d.o.o. and Dragica Predović[29].

On the basis of the data presented in the request, comments that the CNB submitted for information and the attached data and documentation, the CCA concluded that the above mergers did not constitute prohibited concentrations within the meaning of Article 18 of the Competition Act, i.e. the concentrations at issue would not create or strengthen a dominant position nor could they have significant anti-competitive effects in the relevant market.

Relating to all other aspects of competition in the financial sector (this primarily refers to conclusion of prohibited agreements and abuse of a dominant position) the CNB autonomously and independently enforces regulations in the area of competition.

6.2. Croatian Agency for Postal Services and Electronic Communications

The Croatian Agency for Postal Services and Electronic Communications as a regulatory body for the enforcement of the Electronic Communications Act (OG 73/08) promotes competition in sector of electronic communication networks and services. The cooperation with the Agency in this sector is based on requests for opinion of the Agency and for opening of a procedure before the Agency in all cases of prevention, restriction or distortion of competition in line with the Competition Act.

[27] For example, Opinion of the Agency on the Draft Electronic Media Act, No. 011-02/2009-01/07, of 25 May 2009.
[28] Opinion of the Agency: 031-02/2009-01/15, of 26 March 2009.

[29] Opinion of the Agency: 031-02/2009-01/3, of 30 June 2009.

Given a growing number of reports and requests for initiation of a procedure that the Agency receives from the area of electronic communications and the complexity of cases pertaining to new technologies and new markets and involving a large number of users, work in partnership with HAKOM is inevitable.

Starting from the strategic importance of the electronic communications networks and services for the Croatian economy as a whole, and particularly given the possible effects of competition in that market on the standard of the Croatian citizens, the cooperation of the Agency and HAKOM is based on the Agreement on cooperation in the area of competition in the postal and courier services and the electronic communication networks and services. The Agreement provides for the modalities of cooperation of the two regulators aimed at enhancing and supporting the development of competition in the markets concerned.

7. STATE AID

7.1. Legislative framework

The scope of competence of the CCA in the area of state aid is regulated by the State Aid Act (OG 140/2005), the Regulation on State Aid (OG 50/2006) and the Ordinance on the form and content and manner of data collection and keeping the register of state aid (OG 2/2010). In the implementation of state aid control, in addition to the rules mentioned above, the Agency also applies the rules on state aid covering specific types and categories of aid which have been directly transposed into the Croatian legislation from the EU *acquis* in the form of Decisions adopted by the Croatian government.

Namely, in accordance with Article 3 of the Regulation on State Aid, the Government of the Republic of Croatia, at the proposal of the minister of finance, passes decisions on the publication in the Official Gazette of the state aid rules applicable in the EU member states.

Concretely, to date 29 such decisions have been published, including the rules for granting specific categories and forms of aid (such as the rules for employment aid, aid for small and medium-sized enterprises, aid for research and development and innovation, regional aid, aid for services of general economic interest etc.) and rules for granting state aid to specific sectors (transport, audio-visual activities, public broadcasters etc.). In 2009 three new EU regulations were adopted, more specifically, general block exemption regulation, regulation on state aid in the form of guarantees and the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis, which have been consequently published and adopted in the form of decisions of the Croatian government.

The Agency has the responsibility and obligation to proceed in compliance with the above rules in the course of the state aid control, and to assist aid providers and aid beneficiaries in understanding of the rules.

In the course of 2009, the activities of the Agency focused on the implementation of the state aid rules that mitigate the effects of the financial and economic crisis in line with the above mentioned Temporary framework for state aid measures to support access to finance in the current financial and economic crisis (Temporary framework)[30]. The Temporary Framework partly modified the existing state aid rules with the view to facilitating the access to finance for the members states and mitigating the effects of the crisis on its undertakings and the economy as a whole. The examples from the CCA practice in authorising state aid under the Temporary Framework in 2009 are given below.

7.2. Enforcement of the State Aid Act

The jurisdiction of the Agency with regard to state aid encompasses primarily assessment of the state aid proposals and aid schemes, monitoring the implementation and effects of state aid granted and ordering recovery of state aid granted or used against the law, collection, processing and registering of the data on state aid and keeping the state aid register, launching of initiatives and giving proposals aimed at improvement of the state aid regime by participating in drafting of laws and other legal acts pertaining to state aid, cooperation with regional and local authorities, international bodies and institutions, in accordance with the international commitments undertaken by the Republic of Croatia.

[30] OG 56/2009.

7.2.1. Decisions in 2009

In 2009 the Agency closed a total of 52 cases in the area of state aid. 26 thereof involved assessment of compatibility of aid schemes, 6 referred to individual aid measures, whereas 20 cases included the opinions which were issued upon the request of aid grantors or aid beneficiaries, explanations of legal acts containing state aid, collection of data on state aid etc.

Of the total of 32 adopted decisions pertaining to aid schemes and individual aid, 30 were resolved on the basis of the applications submitted by aid providers, while 2 decisions were adopted in the procedure initiated *ex officio* (*ex-post* approvals of state aid awarded to the undertakings Croatia Airlines d.d. and HOC Bjelolasica d.o.o. for the performance of services of general economic interest).

7.2.1.1. Aid schemes under the Temporary Framework

In accordance with the above Temporary Framework for state aid measures in support of access to finance in the current financial and economic crisis, in 2009 the CCA approved 7 such aid schemes.

More precisely, the Temporary Framework relaxes and simplifies the rules for granting of state aid and provides for the following:

- a lump sum of aid up to EUR 500,000 per company in the period between 1 January 2008 and 31 December 2010 to relieve them from current difficulties;
- aid in the form of guarantees to enable easier access to finance by undertakings and diminish the current risk aversion of banks when approving loans;
- aid in the form of a subsidised interest rate by introducing a temporary reference rate which is significantly lower than the existing reference rate;
- aid in the form of an interest-rate reduction for investment loans related to products which significantly improve environmental protection;
- aid for risk capital investment of €1.5 million a temporary derogation from the 2006 risk capital guidelines in order to increase the tranche of finance per target SME;
- simplification of the requirements of the export credit Communication to use the exemption that allows non-marketable risks to be covered by the state..

Aid schemes that the CCA approved on the basis of the Temporary Framework refer to the award of a limited amount of aid of up to EUR 500,000 and aid in the form of subsidised interest rate on the basis of the introduction of the temporary reference rate.

State aid up to EUR 500,000 may be awarded under the following conditions:

- aid does not exceed the amount of EUR 500,000 per undertaking, either in the form of grants (subsidies) or in the form different from grant funds (soft loans);
- aid is awarded exclusively on the basis of an aid scheme which cannot be limited to a particular region, and aid cannot be awarded as one-time (*ad hoc)* aid. A state aid scheme is a legal act on the basis of which, without any additional implementation measures needed, individual aid may be granted to ex ante unspecified aid beneficiaries;
- aid is awarded to undertakings that had not been in difficulty on 1 July 2008 (a firm in difficulty is defined in the Decision on the publication of rules on state aid for rescue and restructuring[31]), but it can also be awarded to undertakings which thereafter came into difficulty caused by the global financial and economic crisis (e.g. due to decrease in bank loans by commercial banks);
- aid is not applicable to undertakings in the fisheries sector;
- aid must not relate to directly exported quantities or the establishment of an export distribution network, and the award of aid may not be made conditional on purchasing of domestic products as opposed to import products;
- aid must be granted no later than 31 December 2010;
- before aid is granted, aid provider is obliged to obtain from the undertaking concerned a statement of all *de minimis* aid and aid of up to EUR 500,000 awards because the cumulation of these in the period from 1 January 2008 to 31 December 2010 must not exceed the total amount of EUR 500,000. For primary agricultural production the allowed amount is EUR 15,000;
- aid may be granted to undertakings engaged in production and marketing of agricultural products.

Of the 7 state aid schemes that the Agency approved according to the criteria described above, 5 aid schemes (Proposed aid measures at the time of financial crisis, the Production Loan Scheme, Loan scheme for working capital for enhancement of business operations, Loan scheme for financial restructuring and Loan scheme for improvement of liquidity) are aid schemes of the Croatian Bank for Reconstruction and Development, whereas the remaining 2 schemes (the Programme of measures for the reduction of pollutant emissions of road vehicles N2, N3 and M3, and Operating aid scheme for maintaining of competitiveness of the textile industry, leather industry and leather products industry for 2009) are the programmes of the Environmental Protection and Energy Efficiency Fund and the Ministry of the Economy, Labour and Entrepreneurship respectively.

Opinion of the Agency on HBOR's proposal of state aid measures at the time of the financial crisis*[32]*

The CCA received from HBOR a proposal of State aid measures at the time of financial crisis (hereinafter: Proposal) whereby HBOR introduces a reduction of interest rate on loans that it approves under the schemes prepared on the basis of the Ordinance on basic requirements for financing of individual target groups which contains the requirements for awarding regional state aid, state aid for small and medium-sized enterprises, state aid for research, development and innovation and state aid for environmental protection. The aim of loans with subsidized

[31] OG 20/2007.

[32] Opinion of the Agency: UP/I 430-01/2009-09/02.

interest rate is to facilitate access to finance for undertakings at the time of economic and financial crisis, thus ensuring their liquidity. Beneficiaries of loans with interest rebates can be all undertakings that on 1 July 2008 were not firms in financial difficulty. Interest rate reduction will be applied to loans approved until 31 December 2010 and accrued interest which is due until 31 December 2012. The interest rate reduction is also applied as a proxy for the market rate in determining if the aid at issue constitutes state aid in the form of a soft loan under other HBOR credit schemes falling outside the state aid regime, such as the Loan programme for financial restructuring.

After the necessary assessment carried out by the Agency the Proposal was assessed as compatible aid.

Loan programme for production [33]

The objective of the Loan programme for production is to enable the undertakings in the period of financial and economic crisis easier access to loans for acquisition of working capital for production of goods in order to continue production and maintain liquidity. The highest amounts of interest subsidy are higher than the allowed amount envisaged for awards of de minimis aid, but total up to EUR 500,000 (in Kuna countervalue) for the end beneficiaries.

Final beneficiaries of loans provided for by the Loan programme for production are micro, small, medium-sized and large enterprises which were not in financial difficulty on 1 July 2008 and which are registered and perform a production activity in the Republic of Croatia. Loans for production may not be used for the promotion of exports and placing domestic products in a more favourable position in comparison to imported ones.

HBOR will implement this programme through commercial banks by forwarding the offer for cooperation for its implementation to all banks which according to the current internal HBOR methodologies are classified under risk groups from A to B1/4. Commercial banks that accept the offer of HBOR may approve for end beneficiaries loans intended for the preparation of production, bridging until the collection of payment for sold goods and for the whole cycle from the preparation of production until the collection of payment for sold goods.

Programme of measures for the reduction of pollutant emissions of road vehicles N2, N3 and M3 [34]

The Environmental Protection and Energy Efficiency Fund has submitted to the Agency a proposal of the said aid programme envisaging award of state aid of up to EUR 500,000 under the Temporary Framework.

The basic goal of the programme is the reduction of harmful gas emissions and level of noise generated by road motor vehicles of categories N2 (road vehicles used for transportation of freight whose maximum allowable total mass does not exceed 3.5 t), N3 (road vehicles used for transportation of freight whose maximum allowable total mass exceeds 12 t) and M3 (motor vehicles for passenger transportation that besides the driver's seat have more than 8 seats and whose maximum allowable total mass exceeds 5 t), in line with the objectives provided for under Article 6 of the Environmental Protection Act[35]*.*
Namely, in accordance with the explanation of the programme, transport sector as one of the factors of economic growth and the quality of living represents one of the biggest environmental polluters, primarily because of the large harmful gas emission of means of

[33] Decision of the Agency: UP/I 430-01/2009-09/03, of 26 March 2009, OG 43/2009.
[34] Decision of the Agency: UP/I 430-01/2009-83/01, of 26 March 2009, OG 43/2009.
[35] OG 110/2007.

transportation, whereas, in addition to causing air, water and soil pollution, it causes greenhouse gas emissions, the global warming, noise, vibrations, the climate change, depletion of biodiversity, changing landscape, but also traffic accidents.

The programme provides for the measure of reduction of harmful gas emissions in the categories of road vehicles N2, N3 and M3, in accordance with prescribed standards (EURO 1, EURO 2, EURO 3, EURO 4 and EURO 5). Standards of harmful gas emissions are established for vehicles in the form of a gram of emitted matter per kilometre, on average for a typical driving cycle. The standards limit the emission of carbon monoxide (CO), hydrocarbon (HC), nitrogen oxides (NOx) and particulate matter (PM) (for comparison sake, one vehicle of the EURO 1 standard has the emission as three vehicles of the EURO 4 standard, or one lorry as ten cars).

On 1 October 2009 in the EU member states came into force the EURO 5 standard, whereas the same standard in the Republic of Croatia will start to be implemented from 1 October 2010. On the basis of the measures under the programme, it is planned to replace approximately 3,000 environmentally unacceptable vehicles with road vehicles of the EURO 5 standard.

Improvement of environmental standards of vehicles of undertakings engaging in road transportation is significantly aggravated with the emergence of the global financial and economic crisis, in particular, the reduction of possibility of obtaining loans in the financial market. Therefore, the measures envisaged under the programme are aimed at eliminating such problems, while the award of state aid will have a positive impact on this economic activity.

Aid beneficiaries are small, medium-sized and large enterprises. An aid beneficiary, among other things, may not belong to the category of firms in difficulty, except if it acquired this status after 1 August 2008, due to the financial and economic crisis.

The state aid instrument is a grant amounting to up to HRK 70,000 per vehicle, for small and medium-sized enterprises, and in the amount of up to HRK 50,000 per vehicle for large firms. The amount of state aid, together with de minimis aid and aid under other programmes, per individual beneficiary, may not exceed EUR 500,000, for the same eligible costs, in Kuna countervalue, on the day of the award of state aid according to the Croatian National Bank mean rate, in the period between 1 January 2008 and 31 December 2010.

Operating aid scheme for maintaining of competitiveness of the textile industry, leather industry and leather products industry for 2009 (Interest subsidy scheme and Working capital subsidy scheme)[36]

At the proposal of the Ministry of the Economy, Labour and Entrepreneurship, the Agency approved by a decision grants for a partial coverage of interest rate on loans and grants for the provision of working capital up to the amount of EUR 500,000 on the basis of the Temporary Framework, as well as regional aid under the Initial investments and modernisation subsidy scheme under the proposed Operating aid scheme for maintaining of competitiveness of the textile industry, leather industry and leather products industry for 2009 (hereinafter: the).

The Agency appraised the Operating aid scheme as compatible with the State Aid Act and specified the conditions and terms that need to be adhered to for its implementation, according to which the Ministry of the Economy, Labour and Entrepreneurship has the

[36] Decision of the Agency: UP/I 430-01/2009-02/003, of 30 July 2009, OG 102/2009.

obligation to submit to the Agency the Implementation report for the Interest subsidy scheme for loans and Working capital subsidy scheme until 31 December 2009.

The Operating aid scheme provides the measures for elimination of serious disturbances in the economy that were a consequence of the economic and financial crisis, especially in terms of its adverse effects on textile, apparel and leather industries. This measure ensures the undertakings a more favourable financing of current business operations, particularly in the period of prolongation of payments for sold goods, decreasing orders on the domestic and foreign market, thus compensating for the serious drop in credit operations of commercial banks. The Operating aid scheme is aimed at setting up of a better current liquidity, long-term financial balance of undertakings, increased stability and operational performance, maintaining competitiveness and preserving employment.

The interest subsidy scheme provides for interest subsidy for loans agreed with commercial banks from 1 January 2009 onwards, and also for loans agreed with commercial banks after 1 July 2008, if under those credit arrangements interests were increased by credit providers, provided that such an increase in interest rate was a consequence of the economic and financial crisis.

The loans have to be used exclusively for investment into fixed assets (machinery and equipment), financing of working capital (financing of production) or for financing of intangible assets (patents, licences, non-patented technical know-how etc.). The interest subsidy may amount up to 3 percentage points on loans agreed from 1 January 2009, whereas for loans agreed from 1 July 2008 subsidy will be provided for the difference between the contractual and subsequently increased interest rate by the commercial bank.

This measure will be used for loans approved by commercial banks until the day of the public call for proposals for awarding of subject funds and interest accrued with maturity by 31 December 2012, and will be calculated on the basis of the loan agreement and repayment plan, in keeping with point 4.4.2 of the Temporary Framework. Aid intensity per individual undertaking may not exceed the amount of EUR 500,000 in Kuna countervalue.

The Working capital subsidy scheme is intended for maintaining of business operations of undertakings and preserving the current employment level.
The Working capital subsidy scheme is implemented on the basis of the calculation of the required working capital, based on stocks of raw material and other materials, stocks of work in progress, stocks of finished products, receivables and individual phases of the production cycle. The amount of the necessary working capital is proved by contracts on orders, letter of intent or similar documents for the sale of goods by using technological standards that determine attachment of funds in individual phases of a technological cycle. Aid intensity per individual undertaking may not exceed the amount of EUR 500,000 in Kuna countervalue, in accordance with point 4.2.2 of the Temporary Framework.

Eligible aid beneficiaries are small, medium-sized and large enterprises with their place of establishment in the territory of the Republic of Croatia whose core activity for which they are registered is production listed under NACE code 13-Textile production, 14-Apparel production and 15-Leather and related products production, in accordance with the Decision on the National Classification of Economic Activities for 2007[37]*.*

Subject funds may not be granted to firms in difficulty in accordance with points 9 to 11 of the Decision on the publication of rules on state aid for rescue and restructuring of firms in difficulty, undertakings under bankruptcy, undertakings under liquidation procedure, undertakings with unsettled liabilities regarding state institutions or employees, and undertakings which have been ordered recovery of aid or which are undergoing the recovery procedure. However, the scheme

[37] OG 58/2007

only applies to firms which were not in difficulty on 1 July 2008, while it can be used to award aid to firms that have entered into difficulty as a result of the global financial and economic crises.

7.2.2. Other aid schemes

In 2009 the Agency, on the basis of the requests of aid providers, also approved a number of aid schemes for culture, employment, small and medium-sized enterprises in tourism, development of regions, performance of services of general economic interest, transport and audio-visual activities.

Aid for culture was approved at the request of the Ministry of Culture under the Book publishing financing programme in 2009 in the amount of HRK 22,500,000. In line with the state aid rules, aid for culture is aimed at promotion of culture and heritage protection, audio-visual industry, book publishing and public service broadcasting, as a rule, in the amounts accounting for between 50 % and 100 % of the eligible costs in the case of projects significant for the development of Croatian culture.

7.2.2.1. Support programme for book publishing 2009

At the request of the Ministry of Culture, on 29 January 2009 the Agency approved state aid for culture earmarked for financing of book publishing, under the Book publishing programme in 2009. The programme provides for aid for book publishing, publishing of magazines, literary manifestations and book programmes in bookshops, intended for legal and natural persons who, in line with Article 2 paragraph 2 of the State Aid Act, perform an economic activity. Aid intensity may account for up to 100 % of eligible costs, provided that it is proven that a certain project is significant for the development of Croatian culture within the meaning of Article 40 of the Regulation on state aid, as decided by the expert committee of the Ministry of Culture. The funds for the implementation of the Programme, in the total amount of HRK 22,500,000, have been planned in the State budget of the Republic of Croatia for 2009, whilst its implementation has been envisaged from 1 January until 31 December 2009.

Employment aid may be approved for new employment of disadvantaged persons with low employability factor and for employment of disabled persons pursuant to the Decision on the publication of rules on block exemptions in the area of state aid[38]. For employment and training purposes in 2009, the National employment implementation plan for the period between 2009 and 2010 of the Ministry of the Economy, Labour and Entrepreneurship was approved in the amount of HRK 136,686,670.

Aid for small and medium-sized enterprises is approved on the basis of the same Decision on the publication of rules on block exemptions in the area of state aid, and here they refer to aid for investments and aid for job creation. Thus, aid for small and medium-sized enterprises and regional aid have been authorised under the Loan programme for small and medium-sized enterprises in tourism – Incentive for success, of the Ministry of tourism, amounting to HRK 198,375,000, for the period from 2009-2011.

Aid for environmental protection contained in the Ordinance on the requirements and manner of award of funds of the Environmental Protection and Energy Efficiency Fund, and in line with the criteria for the assessment of applications for awarding funds of the Environmental Protection and Energy Efficiency Fund[39], provides for award of *de minimis* aid. In 2009 the Agency received the Draft amendments to the Ordinance, which was assessed as, overall, not containing aid for environmental protection, but should be further improved in terms of the preparation of a special aid scheme which should be aligned with other state aid rules in effect.

[38] Decision on the publication of general rules on block exemptions in the area of state aid, OG 37/09

[39] OG 18/09.

Regional state aid is approved for investment in tangible and intangible assets and job creation linked to investment. For instance, the Agency approved regional aid contained in the proposed Ordinance on basic terms of financing of individual target groups submitted by the Croatian Bank for Reconstruction and Development. The proposed Ordinance also provides for *de minimis* aid, aid for small and medium-sized enterprises, aid for research, development and innovation and aid for environmental protection.

Aid for digital decoders does not pertain specifically to any of the existing categories of state aid. On the basis of Article 4 paragraph 3 point d) of the State Aid Act according to which aid to facilitate the development of certain economic activities or of certain economic areas may be found compatible with state aid rules, the Agency authorised state aid to natural persons who pay for radio and television licence fee for the purchase of digital decoders for 2007 and 2009 amounting to HRK 67,900,000, given the conditions of transparency, proportionality and technological neutrality are satisfied.

Aid for performance of services of general economic interest is a special aid category with four award criteria:

- The nature and the duration of the public service obligation have to be clearly defined;
- The undertaking and the territory concerned also have to be clearly defined;
- The parameters for calculating, controlling and reviewing the compensation also have to be defined in advance,
- As well as the arrangements for avoiding and repaying any overcompensation.

The Republic of Croatia, in line with the state aid rules in effect, decides independently about subsidising of the said services of undertakings which are entrusted with the performance of services of general economic interest on the basis of special regulations, and which without state aid would be prevented from the performance of tasks entrusted to them, but as long as state aid is limited only to the discharge of these services. This means that if the undertaking also performs commercial activities, and not only the entrusted services of general economic interest, it is entitled only for the compensation for the performance of services of general economic interest.

Starting from the criteria laid out above, on the basis of the request of the Ministry of the Sea, Transport and Infrastructure, the Agency carried out the procedure of assessment of aid to Osijek Airport. The aid in question amounted to HRK 10,577,000 in the period between 2009 and 2013 in the form of a grant for coverage of additional variable and fixed costs of Osijek Airport, which cannot cover its expenditure from the generated income due to the obligation of the Government of the Republic of Croatia pursuant its Decision on discharging public service obligations by Zračna luka Osijek d.o.o. (Osijek Airport) in the period from 2009 to 2013.

In another case the Agency subsequently approved aid to the undertaking Croatia Airlines d.d. for subsidizing regular domestic air transport amounting to HRK 101,000,000 for 2005 and 2006. Namely, in the same context, on 6 September 2007 grants were approved to Croatia Airlines, based on the request of the Ministry of the Sea, Tourism, Transport and Development, for the period from 2007 to 2011 contained in the aid measure Enhancing air transport connectivity between the regions (on scheduled domestic routes)[40]. At the moment it took this decision, the Agency did not dispose of the facts and data on grants awarded to Croatia Airlines for 2005 and 2006 and therefore it initiated a procedure for subsequent approval of aid. After the Ministry of Finance submitted the relevant explanations that the

[40] Decision of the Agency: UP/I 430-01/2006-04/44, of 6 September 2007.

amount indicated was awarded for partial compensation for losses on unprofitable domestic lines, where Croatia Airlines is the only air carrier performing round-the-year air transport on domestic lines, and after the Agency assessed that the amount of aid concerned was a minimum amount of state aid to cover for the expenditures, it subsequently approved the grants awarded to this undertaking for 2005 and 2006.

Furthermore, following the request of the Ministry of Science, Education and Sports, the Agency carried out *ex-post* approval of aid for the provision of sports and utility services of general economic interest to the undertaking HOC Bjelolasica d.o.o. and Javna ustanova HOC in the amount of HRK 36,200,000, in the form of direct grants and capital investments. The undertaking HOC Bjelolasica d.o.o. was approved grant for the period from 2008 to 2010 in the amount of HRK 17,200,000, on the account of the fact that in accordance with the provisions of Article 67 paragraphs 2 and 3 of the Sports Act[41], the Croatian Olympic Centre Bjelolasica is declared a sports facility of special interest to the Republic of Croatia[42]. However, in the period from 2004 to 2007 the Ministry paid out to the same undertaking aid in the amount of HRK 36,200,000 that was not reported to the Agency. Therefore, an *ex-port* approval procedure for that state aid concerned was carried out, and after the Ministry submitted all the necessary evidence and data explaining that the aid concerned was awarded for the performance of services of general economic interest, the Agency adopted the decision on *ex-post* approval of the aid concerned.

At the request of the Ministry of the Sea, Transport and Infrastructure, 2009 also saw the issuance of the opinion on the proposed Regulation on the requirements and evaluation of the criteria for the issuance of concessions for the provision of transportation services on scheduled coastal lines, given that it contains all the necessary elements stipulated by the Decision of the Commission and the Community Guidelines for the performance of services of general economic interest[43].

A **preliminary binding opinion** is adopted by the Agency with respect to the proposals for laws containing state aid, prior to their submission to the Government of the Republic of Croatia. In 2009 the Agency adopted a preliminary binding opinion on the Postal Services Act, which contains the legal basis for the award of aid in the category of aid for services of general economic interest and a preliminary binding opinion on the Act on the Amendments to the Railway Act. The said laws do not constitute aid schemes under Article 3 of the State Aid Act, but they represent a legal basis on the basis of which future state aid programmes, subject to preliminary binding approval of the Agency, may be adopted.

In 5 cases where the CCA assessed the aid schemes and individual aid, excluding the preliminary binding opinions and opinions on laws and amendments to laws, the Agency declared that the proposals concerned do not contain state aid. These were the Amendments to the Ordinance on guarantees issued by the Croatian Agency for Small Entrepreneurship and the Proposal for the Act on the Amendments to the Ordinance on conditions and manner of financing of the Environmental Protection and Energy Efficiency Fund and the criteria for the assessment of requests for the award of the funds of the Fund, the cases relating to financial restructuring of the undertakings Vjesnik d.d. and Primorje d.d. Senj, and the opinion on the IPA programme on cross-border cooperation between the Republic of Slovenia and the Republic of Croatia for 2007 to 2013.

In the assessment of the Proposal for the Amendments to the Act on Liner Shipping and Seasonal Coastal Maritime Transport it was established that it does not contain state aid.

[41] OG 71/06.

[42] Decision of the Agency: UP/I 430-01/2008-05/16, of 17 December 2008.

[43] Community Framework for state aid in the form of public service compensation, OJ C 297/2005.

***De minims* aid** was the subject of assessment in 5 cases. The basic prerequisite for the adoption of a positive decision in cases of *de minimis* aid is that such aid may not exceed the amount of EUR 200,000 over three fiscal years, contained in the following aid schemes:

- Ordinance on the method of exercising the tax exemption in the areas of special state concern, Ordinance on the method of exercising the tax exemption in the area of the Town of Vukovar and the Ordinance on the method of exercising the tax exemption in the hilly and mountainous areas of the Ministry of Regional Development, Forestry and Water Management;

- Operational plan for the promotion of SMEs for 2009 of the Ministry of Economy, Labour and Entrepreneurship;

- The Programme of fuel subsidies for liner shipping companies in the period from 2009 to 2011 of the Ministry of the Sea, Transport and Infrastructure;

- Proposal of the Decision of the Government of the Republic of Croatia on debt write-off covered by the guarantees of the Croatian Agency for Small Entrepreneurship; and

- Aid for damage caused by natural disasters that the City of Zagreb provides for natural disasters.

7.2.2.2. Fuel subsidies for liner shipping companies for 2009 – 2011[44]

It is evident from the received writing from the Ministry of the Sea, Transport and Infrastructure, with respect to the proposed Programme for fuel subsidies for liner shipping companies for 2009 - 2011 that, at the initiative of the former Ministry of the Sea, Tourism, Transport and Development, on 12 May 2007, the Government of the Republic of Croatia adopted the Conclusion on the Programme for fuel subsidies for liner shipping companies for 2007. By means of the said programme the Ministry provides incentives for natural or legal persons – owners of ships and boats, i.e., Croatian shippers performing transportation of passengers and freight in internal waters and the territorial sea of the Republic of Croatia.

Subsidising the price of fuel in 2007 and 2008, in accordance with the Ministry's statements, is considered to have improved the offer of the Croatian private liner shipping companies, in particular with respect to the competitiveness and tourist offer, since this decreases the total operating costs of undertakings pertaining to cruises, one-day or several-day journeys, freight transportation in internal waters etc. In the period between 2007 and 2008, a total of HRK 16,300,000 in aid was paid for 268 liner shipping companies.

Taking into consideration the above positive effects of the previous measures of fuel subsidies for liner shipping companies, the Ministry envisaged the follow-up of the Programme in the period from 2009 to 2011. HRK 10,000,000 has been planned for each year of the duration of the Programme, i.e. the total amount of HRK 30,000,000 in three years, and the said funds have been earmarked in the State Budget of the Republic of Croatia on the item of the Ministry under the title "Incentives for liner shipping companies".

The planned funds will be allocated on the basis of a public tender, i.e., after the submission of the data on actually used quantity of fuel in the performance of the activity of a liner shipping company, accompanied by a confirmation of the relevant harbour master's office and invoices evidencing the procured quantity of fuel at full cost expressed in retail price.

In comparison with the notice of the Agency addressed to the former Ministry of the Sea, Tourism, Transport and Development dated 21 June 2007, with respect to the proposal of the

[44] *Notice of the Agency: 430-01/2009-04/004, of 17 July 2009.*

Conclusion on the Programme of fuel subsidies for liner shipping companies for 2007, it was established that the proposal at issue is actually a follow-up of the 2007 Programme, and that in this particular case the aid in question is de minimis aid.

Based on the facts presented above and examination of the proposal, the Agency established in its notice to the Ministry that the aid in question is de minimis aid referred to in Article 2 of the Decision on de minimis aid, given that the total amount of the state aid for a specific beneficiary does not exceed the amount of EUR 200,000 in Kuna countervalue in the period of three fiscal years.

Furthermore, the prerequisites from Article 3 of the Decision on de minimis aid are also fulfilled, because the Ministry has the obligation to inform the Agency about each awarded amount of de minimis aid within 15 days from the day of award and is obliged to keep the records on de minimis aid for 10 years following its award.

However, since this particular case is a case of de minimis aid, the Agency mentioned in the notice that due to transparency of the award of the subject grants, the proposal should also provide for the following prerequisites in accordance with the Decision on de minimis aid: subject funds may not be awarded to undertakings in difficulty; the Ministry as aid provider is obliged to inform the aid beneficiaries that they have been awarded de minimis aid; upon the allocation of funds the Ministry is obliged to request from the undertaking, in writing, a statement of as to how much de minimis aid the undertaking has received in the current year and in the previous two fiscal years, in accordance with Article 3 point c) of the Decision on de minimis aid. Further to the above, after the Ministry has included into the proposal the provisions from the notice of the Agency, it will be deemed that it is compatible with the Decision on de minimis aid.

7.2.2.3. Operating aid to SMEs for 2009[45]

The Operating plan for the promotion of SMEs for 2009 of the Ministry of Economy, Labour and Entrepreneurship provides for the award of de minims aid in accordance with the provisions of the Decision on the publication of rules on de minims aid in the form of grants[46].

Having examined the Operating plan for 2009, the Agency, in its notice to the Ministry, stated that in terms of content its provisions are consistent with the provisions of the Operating plans for the promotion of SMEs for 2005, 2006, 2007 and 2008, whereas the legal basis of the Operating plan for 2009 was the Programme for the promotion of small and medium-sized enterprises for the period from 2008 to 2012 which highlights the importance of developing and strengthening of small and medium-sized enterprises as a significant economic factor and engine of development. Taking into account the data from 2008 the Agency established in the case Class: 430-01/2008-02/10 that the Operating plan for 2008 constitutes de minimis *state aid for small and medium-sized enterprises in the total amount of HRK 350,905,949.*

On the basis of the Operating plan for 2009, the Ministry plans a total of HRK 331,433,342, for the promotion of projects, instruments and incentive measures for development of SMEs, in accordance with the objectives of the Programme. However, a part of the stated amount of HRK 331,433,342 are EU projects and funds earmarked for the local and regional self-government units which do not constitute state aid pursuant to Article 2 paragraph 2 of the State Aid Act, in accordance to which aid beneficiaries are legal and natural persons who participate in trade of goods and services by performing an economic activity in the market.

[45] Notice of the Agency: 430-01/2009-02/01, of 31 March 2009.

[46] OG 45/07.

The Agency established that the Operating plan for 2009 contains de minimis aid which, if all the prerequisites from the said Decision on de minimis aid are fulfilled, need not be reported to the Agency for approval. The Ministry was informed that the total de minimis aid may not exceed the amount of Kuna countervalue of EUR 200,000 according to the CNB mean rate on the day of the approval of aid in the period of three fiscal years, or EUR 100,000 per beneficiary, in the case of undertakings involved in road transport, whereby its is non-applicable in the following cases: aid to export-related activities towards third countries, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity; aid contingent upon the use of domestic over imported goods; aid for the acquisition of road freight transport vehicles granted to undertakings performing road freight transport for hire or reward; aid granted to undertakings in difficulty.

7.2.3. Reference and discount rate

Reference and discount rate are regularly calculated and released on the web site of the Agency. Both rates are applied in the calculation of the element of state aid in three cases: as a threshold to determine whether loans should be classified as state aid or not, as a discount rate for the calculation of the present value of the awarded state aid, and for the calculation of the future value of aid granted unlawfully at the moment of recovery.

The base rate in the last quarter of 2009 was 7.63 %, and it was calculated on the basis of interest rates on treasury bills of the Ministry of Finance. The base reference rate is increased by the reference risk margin depending on the rating of the undertaking concerned and the collateral offered, and increased by fixed margin of 100 basis points is applied as a discount interest rate in the calculation of the present value of granted aid.

Also, on account of the current financial and economic crisis, and on the basis of the aforementioned Temporary Framework, the undertakings are enabled, provided they fulfil certain conditions, to use reference rates in the amount which is lower than the one mentioned above. The Agency calculates and publishes the so-called interim (decreased) base reference rate, which can be applied only if there is a programme submitted by the aid provider approved by the Agency, and as such can be applied to subsidised loans granted to undertakings until 31 December 2010 and interest paid by 31 December 2012. In the last quarter of 2009 the interim base reference rate was 5.21 %.

7.2.4. State aid report for 2008

The Agency prepares, publishes and submits to the Croatian Parliament a report on state aid that contains the detailed data on the granted state aid, allowed intensities and award criteria, aid beneficiaries etc. The last year's report – The Annual report on the state aid for 2008 – was adopted by the Agency on 24 November 2009, and the Croatian Parliament reviewed it at its session in February 2010.

In 2008 state aid amounted to HRK 8,810.5 million, which was lower by 17.6 % than in 2007, whereas the share of total aid in GDP in 2008 accounted for 2.6 %. In comparison with the previous period that was lower by 24.4 %, when it accounted for 3.4 %.

2008 data indicated that aid per employed person amounted to HRK 5,666.6, a 19.6 % decrease in comparison with 2007, when they amounted to HRK 7,050.6. Aid per capita dropped from HRK 2,430.7 in 2007 to HRK 2,002.4 in 2008, and this was a reduction of 17.6 %.

Although sectoral aid still prevailed in 2008, for which approximately HRK 3.5 billion was granted, a continual drop in the share of this type of aid in favour of the growth of aid with horizontal objectives and regional development is encouraging. Aid granted to special sectors in 2008 in comparison with 2007 was lower by 40.2 %. Aid granted with horizontal objectives in 2008 record a growth of 24.6 % in comparison with 2007, or an increase from HRK 956 million to HRK 1,191.4 million. Together with regional aid and aid granted at local level, which according to EU methodology constitute horizontal aid, total horizontal aid in 2008 amounted to HRK 1,774.4 million, and this was more by approximately 9 % than in 2007. The share of horizontal aid defined like this in total aid in 2008 accounted for somewhat more than 20 %, while the share of this type of aid intended for industry and services without agriculture and fisheries accounted for approximately 34 %. This is a positive trend pointing to the conclusion that in the Republic of Croatia aid providers are also increasingly aware of the need to shift aid to the purposes and objectives that encourage the increase in effectiveness and competitiveness of all undertakings.

8. EU ASSISTANCE PROJECTS

PHARE 2005
In February 2009 the implementation of the project PHARE 2005 „Strengthening of capacity to manage and enforce the EU competition and state aid policies“ was completed. The twinning with Germany was aimed at the preparation of the draft of the new Competition Act and consulting activities in the cases related to the fulfilment of the obligations arising from the Stabilisation and Association Agreement (cases concerning state aid, primarily in the steel and shipbuilding sectors), while in the procurement component a comprehensive IT document and case management system was developed. The project worth EUR 1.2 million was implemented in the Agency from April 2007.

IPA 2007
This is a two-year EU-financed assistance project worth approximately EUR 2 million, whose goal is improving the conditions of competition and state aid policy in the Republic of Croatia. This is expected to significantly help the Agency as the beneficiary of the project in awareness raising regarding the benefits for consumers, observance of competition rules and the overall strengthening of the competition culture.

The first project objective has been implemented since December 2009 through a technical assistance agreement - „CRO Compete - Implementing Croatian Competition and State Aid Policies“, whose focus is on informing the students, local authorities and the business community on the advantages that effective competition brings to consumers and taxpayers. Under this part of the project, and building on many years of positive experience, there are ongoing preparations of seminars on competition and state aid in cooperation with the Croatian Chamber of Commerce and other institutions, including the Croatian law and economics faculties.

The second objective is focusing on strengthening of the capacities of the Agency, sector-specific regulators and the judiciary in the implementation of competition and state aid rules in the period immediately preceding and after the Croatian EU accession, through a twinning agreement whose implementation started in the first half of 2010.

One part of the twinning project will prepare the Agency for the work in the European Competition Network (ECN), with the assistance of the Italian Competition Authority as the twinning partner. In the part concerning state aid, the assistance of the relevant institutions of Great Britain as a twinning partner will focus on increasing the efficiency, promptness and transparency of the decisions of the Agency and improving the understanding of state aid on the part of aid providers.

IPA 2008
A short-term project (the so-called *facility*) was planned under this programme. The value of the project was EUR 150,000, in the area of competence of the CCA concerning state aid. More precisely, this facility is the assistance to the Agency for the purpose of the completion of the procedures of the assessment of the restructuring of Croatian shipyards (the CCA passed the conclusions on the termination of the procedures for approval of state aid proposals that are an integral part of the restructuring programmes in July 2008, with the intention for the procedures to continue and be completed after the privatisation process has been carried out). Depending on the developments in the privatisation process, the implementation of this project is planned to take place during 2010.

9. INTERNATIONAL COOPERATION

9.1. Multilateral cooperation

ICN
In 2009 cooperation within the framework of the International Competition Network continued through participation in a number of working groups.

In the working group for the promotion of competition law and policy representatives of the CCA participated in the annual conference held in Zurich in June. Work in this working group included participation in filling out of questionnaires and in teleconferences on current activities, plans and exchange of contributions for manuals, in the Review and Update Project, Market Studies Project and in the Subgroup for technical assistance.

In the working group on cartels, in addition to sending a commentary on the draft ICN Anti-Cartel Enforcement Manual, the questionnaire on the practices of the Agency in cases related to cartels was also filled out. The questionnaire was also presented at the annual workshop, which took place in Cairo.

We participated in the working group for mergers in designing of two documents. The first document dealt with the definition of relevant market with particularly detailed explanations and recommendations connected with the application of SNIPP test. The second document dealt with failing firm defence in assessment of concentrations.

In three remaining working groups, representatives of the Agency participated in preparation of working plans and in regular teleconferences. Those were: working group for the promotion of competition law and policy, working group for effectiveness of competition authorities and working group for unilateral conduct.

WTO
Under the auspices of the Ministry of the Economy, Labour and Entrepreneurship (MELE), the Agency, throughout the year, together with other relevant institutions, participated in the preparation of the Trade Policy Review of the Republic of Croatia, in the part pertaining to competition and state aid, and also in meetings with the representatives of WTO held in Zagreb.

OECD
Under the auspices of MELE, the Agency participated in the project Measuring Investment Progress of the Republic of Croatia under the OECD project Investment Compact.

The European Energy Community
At the request of MELE a competition questionnaire was filled out, in connection with the future establishment of the international office for management of electrical energy bids within the European Energy Community.

In March the Agency participated in the workshop entitled: „ECS Workshop on the Role of Competition Law in the Energy Community", held in Vienna, and gave a presentation on Competition in the Energy Sector in the Republic of Croatia. In May and November we prepared and submitted to the European Energy Community updated competition and state aid data for the Republic of Croatia.

9.2. Bilateral cooperation

Upon the invitation of the Croatian competition authority the representatives from Kosovo met with the members of the Croatian Competition Council and the CCA expert staff. The purpose of this visit was to support the newly established Kosovo Competition Commission and share the experience and practices of the Croatian peers in the area of competition law and policy, particularly in the proceedings covering the assessment of restrictive agreements between undertakings, establishing abuse of dominance and assessment of compatibility of concentrations, competition advocacy, negotiations for the accession of the Republic of Croatia to the EU, cooperation with other national competition authorities, ICN etc.

Also upon our invitation, representatives of the Austrian Federal Competition Authority visited us in June. On that occasion the representatives of the Austrian Federal Competition Authority held a meeting with the Council and the expert staff. The purpose of the visit was follow-up of the cooperation of the two institutions, formally established by the signing of the Cooperation Agreement in June 2008. Discussions focused on topics that were particularly interesting for the Agency in light of the new Competition Act, such as the leniency programme. Concrete cases from the practice of the Austrian Federal Competition Authority were presented.

In addition, the CCA was visited by representatives of the Competition Commission of the Republic of Serbia in September and representatives of some Ukrainian institutions in October, as part of study visits that also included other authorities in the Republic of Croatia and the region.

9.3. Training

Of regular seminars and conferences, in which the members of the expert team and members of the Council participate to the extent allowed by the Agency's budget resources or co-financed by international organizations, the ones to be mentioned include the regular annual conferences on competition and state aid dealing with the main novelties in the European Union and other jurisdictions, such as the USA. In the course of 2009 the main topics of such gatherings were related to the role and place of competition law and policy at the time of financial and economic crisis when interventions by certain states significantly affected the balance of forces in the market.

Also, in 2009 regular seminars of the OECD's Regional centre in Budapest were held. Those were workshops on vertical restraints and cartels and the regulated sectors (for instance, the air transport sector), and also a two-week seminar on competition law with examples from the practices of the competition authorities from several countries. The expert team also participated in two TAIEX workshops – on anti-cartel activities and on the issues of state aid with respect to free zones. It should also be mentioned that the representatives of the expert team participated in a two-week training in the Hague, about the work in the EU institutions, „How to operate in Brussels".

CONCLUSION

The basic objective of competition law and policy is to create an environment in which a level playing field is ensured for all undertakings, regardless of their power on the market and size.

Undertakings are allowed to merge, become stronger through internal growth or through innovations, or to enter into agreements that increase their competitiveness and market effectiveness. Also, the government has the right and obligation to create a competition friendly environment for the development of the economy and to foster economic growth, both by financial and non-financial interventions into the economy. However, both the undertakings – in their efforts to become as competitive as possible and better than their market competitors, and the government – in its efforts to help the national economy so that it could respond to the challenges of the international competition, have to respect the rules on competition that are enshrined in the Competition Act and the State Aid Act. The task of the CCA is decisive enforcement of the stated laws and enhanced legal security, which is essential for the creation of an environment which would promote entry of new undertakings into the market, increase investments and create added value. Therefore, adoption of the new Competition Act in 2009, as the fundamental legal act regulating the rules and standards of competition in terms of merger control, prevention of conclusion of prohibited agreements between undertakings or establishing abuse of dominance, has widened the role of the Agency in the market and created the prerequisites for strengthening of competition discipline.

Although the 2003 Competition Act, which is still in force, has empowered the Agency with the fundamental competition rules and the necessary „tools“ for the implementation of the competition in the Republic of Croatia, given the lack of competence for imposing sanctions for infringements of competition rules, a number of no less than three court instances competent for its implementation and dynamics of resolving cases in courts, the CCA, in practice, has had limited possibilities for intervening on the market, such as preventing the behaviour and practices of undertakings that lead to distortion of competition. Our decisions mostly served as a reminder and warning, whilst the sanctions of obvious infringements of the Competition Act were usually not imposed, or were negligible. Given that the new Competition Act places the fines for infringements of competition rules that amount to as much as 10 percent of the total turnover into the competence of the Agency and enables immunity for whistleblowers who first come forward and inform the Agency of the existence of a cartel and reduction of fines for those who subsequently provide evidence about a cartel, this will be a much more deterrent and effective tool in the implementation of the competition rules in practice. In the future, each undertaking will have to focus to a much greater extent on its behaviour on the market and in relation to its competitors, contractual partners or users of their products and services. Therefore, although it was not a formal sponsor of the new Competition Act, in 2009 the Agency devoted its best expertise and time to the preparation and proposing of the solutions that were finally incorporated in and adopted by the new Competition Act.

As regards the enforcement of the Competition Act still in effect, in 2009 the Agency paid special attention to the procedures carried out in establishing prohibited agreements concerning the price-fixing agreed between competing undertakings in the provision of services of driving schools and property managers, whose conduct directly affected citizens in the territories in which the existence of such agreements was identified. Since the Agency received the initiative for the initiation of the proceedings in the above cases from the consumers' associations or directly from citizens, it is evident that the citizens themselves are increasingly reluctant to put up with the arbitrariness and behaviour by which financial gain is acquired at their expense or on the basis of which ineffective undertakings survive on the market. The above cases, but also other proceedings closed or opened in 2009.,

opinions on individual pieces of legislation, acts or queries, reflect the commitment of this Agency that, given its limited administrative capacities, it will focus particularly on those cases that represent the interest of a large number of consumers or users of specific products or services (HDS-ZAMP, MOL/INA), where the results of its intervention are comparatively quickly realised in the market and where conduct in contravention of competition rules brings the most serious and most expensive consequences for undertakings and the economy as a whole.

At the same time, in the implementation of the State Aid Act, i.e., in the area of state aid control, the objective of the activity of the Agency is not solely to comply with the obligations undertaken under the SAA and to prevent adverse effects on trade between the Republic of Croatia and the EU. An effective state aid regime presumes creating of such business conditions in the Croatian market in which the state will, by its measures of financial incentives for specific activities or undertakings, to the least possible extent distort competition by placing into a more favourable position those who are granted such incentives, and those that need such support, will use them in a purposeful and efficient manner. This is possible only if aid is awarded according to the rules stipulated by the State Aid Act and a number of subordinate acts that guarantee corresponding discipline, legal security and less discretion in granting aid. Therefore, the Agency, through the supervision and approval of specific forms of aid, especially stresses the need for continual cooperation with aid providers, through which it will make contribute to the understanding of rules and provide assistance in the preparation of aid programmes that will comply with these rules as to avoid illegal aid without preliminary binding opinion of the Agency regarding its authorisation. In 2009, marked by the financial and economic crisis, this cooperation received even more attention.

Finally, starting from the fact that the EU membership negotiations were conducted intensively during 2009 as well and given that experts of the Agency were included in a number of negotiation chapters, in particular in Chapter 8: Competition policy, and also with respect to the fact that Croatia's readiness for membership, among other things, is measured by the quality of its decisions, their compliance with the relevant rules and the European judicial practice, this part of the activities significantly marked our work in 2009. In that context, it should be noted that in 2009 a twinning project from the CARDS programme was completed, and two new projects from IPA programme were approved. These new projects will be implemented over 2010 and 2011. Finally, it is worth noting that the Agency, as a small institution with only fifty-odd employees, in the period from 2003 to 2009 became a beneficiary of ten EU projects in the total value of about EUR 6.5 million.

Zagreb, 31 August 2010

CCA FACTS IN BRIEF – 2009

5 members of the Council

46 employees – expert staff

- **8** case handlers in the area of state aid
- **23** case handlers in the area of antitrust and merger control

240 total solved cases

- **52** total solved state aid cases
- **188** total solved antitrust and merger cases

HRK 395,150 in collected administrative fees

31 rulings in respect of claims against the decisions of the Agency

22 requests for initiation of minor offence proceedings, of which:

- **16** due to entering into a prohibited agreement
- **2** due to abuse of dominance
- **1** due to failure to proceed according to the decision of the Agency on interim measure
- **3** due to non-submission of data and opinions

8 of rulings of minor offence courts about the fine

HRK 1,014,577 in collected fines

1097 press releases about the Agency

53 published translations of the EU *acquis*