



REPUBLIC OF CROATIA  
**Croatian Competition Agency**

**Annual Report**  
**for 2011**

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## INTRODUCTION

The role of the Croatian Competition Agency (CCA), that of an independent and autonomous authority, is to enforce the Competition Act and, until the accession of the Republic of Croatia to the EU, to authorise, monitor the implementation and order the recovery of unlawfully granted or illegally used State aid in line with the State Aid Act. With its powers the CCA implements measures with the view to ensuring better functioning of the market for undertakings, consumers and the economy as a whole, which at the same time fosters business friendly environment and overall growth.

However, this Agency is not the only authority whose task is to promote the development of the market and to facilitate creation of the level playing field for all undertakings in the market. In the global economic crisis it is particularly important that everybody who designs the policy understands the benefits of competition contained in the decisions made by this authority in the proceedings carried out against particular undertakings and those carried out within its activities aimed at competition advocacy. In the time of the crisis it is even more important to implement reforms that open the markets, promote structural adjustments in particular sectors and create friendly environment for new investments and new entrepreneurs. Our job is to point at the harm brought about by the restriction or even elimination of competition in particular industries and to raise awareness among the creators of the economic policy about the consequences of continuous rescuing of inefficient companies through granting of different forms of aid.

This is the reason why the major part of the CCA activities in 2011 was aimed at raising awareness of competition principles as early as in the process of drafting of the legislation or particular rules on the basis of which the conditions for the development of certain markets are created as well as the conditions under which the business activities thereon are performed. The CCA has been openly, critically, pointing at deficiencies of and barriers on certain markets created by regulatory framework which should be amended exactly in the interest of growth and development in these markets. One of such decisions in 2011 worth mentioning was definitely the opinion on the Forests Act in the part which gives an undertaking (the regulator) *Hrvatske šume* significant regulatory powers, the Fire Safety Act in the part which also empowers one undertaking with regulatory competences, which puts this undertaking in a favourable position in the market, not to mention the self-regulatory laws on liberal professions, such as the ones on associations of architects and engineers which have been engaged in collusive behaviour for years, particularly in price fixing and preventing the members of the association to provide their services under the set minimum prices i.e. at competitive prices. Then there were also certain regulations and decisions of the Croatian government on the basis of which certain marinas owned by the government have been ensured more favourable conditions on the market through concessions granting them a special status in comparison with

other privately owned operators on the same market. These are only some of the examples selected from a number of 140 issued opinions and statements regarding the proposed or the legislation in force, regardless of the fact how these procedures were initiated, be it upon the requests of the central or local public administration units, regulators, professional associations, or even undertakings, or on the CCA own initiative. Traditional market studies of the CCA, analysing the particular markets and their structure, revealing the patterns and observing the deficiencies in these markets, must also be mentioned here, together with the opinions and statements on the compliance of the existing or proposed pieces of legislation with competition rules.

On the other hand, big firms may fall into temptation to use their market power and control certain markets at the expense of both the incumbents and the entrants. This is the reason why the enforcement of competition rules must prevent the undertakings holding a dominant position from exclusionary and discriminatory practices which lead to market foreclosure. In 2011 the CCA established abuse of dominance of two powerful market players: *INA – Industrija nafte d.d., Zagreb*, that applied dissimilar conditions when setting the price of jet fuel for the undertaking *Dubrovnik Airline* and other domestic buyers as opposed to the foreign buyers, and of the undertaking *Adris grupa d.d., Rovinj and TDR d.o.o., Rovinj*, in the cigarette sales and promotion market who applied discriminatory business policy that lasted almost for six years. While the discriminatory practices in the first case were notified by one undertaking and the case could be relatively straightforwardly established, the second case was initiated upon the CCA own initiative and it was much more difficult to prove the anticompetitive behaviour beyond any doubt and establish the abuse.

In spite of the fact that in Croatia price fixing between competitors is still regarded as not unusual and often not considered unallowable, in certain sectors it is even regulated under the law, the CCA does not have the competence to prevent such collusive activities, even it is clearly defined as prohibited under the Croatian Competition Act. On the other hand, price arrangements, market sharing and other collusive practices, cannot be detected easily and it is even harder, given their usually informal and collusive nature, to demonstrate beyond any doubt that they take effect. In 2011 the CCA established the existence of one cartel in the office supplies retail market, whereas it opened several proceedings regarding the same matter. Given the hard core restrictions contained in such horizontal agreements, and particularly the harm they produce through higher prices to other undertakings, final consumers, and consequently, to the economy as a whole, the fight against cartels will represent a significant part in the CCA activities in the future.

As to the merger control falling also under the competence of the CCA, ten concentrations which have been cleared in 2011 speak about the deep economic crisis in our country. Compared to previous years the number of notified concentrations has fallen, which means that there is a slow-down on the Croatian market, both on the part of the domestic undertakings and the foreign investors or potential buyers who would want to expand on the Croatian market. Unlike this negative trend, in 2011 the EU saw a positive trend of notifications of concentrations.

Merger control in general is a balance between the economic benefit of the concentration, consolidation and other parameters such as the price, choice, quality or innovation. Acquisitions or mergers are a response to the global economic crisis. Undertakings seek organizational structures that are most productive and most competitive to reflect their strategic business requirements. On the other hand, the task of merger control is to avoid distortion of competition and structural changes in the market where competition would be weakened or even eliminated. Of 10 concentrations that the CCA assessed in 2011 no concentration was prohibited. At the same time the European Commission assessed more than 300 concentrations as compatible with the internal market, only one concentration was prohibited.

Finally, in the area of State aid we may say that the awareness that granting of State aid means advantage to its beneficiary, be it one undertaking or a whole sector, has eventually taken hold. This is important both for us and for the Croatian accession to the EU integrations where State aid policy means ban of State aid that may distort competition and promotion of "good aid" that produces positive effects for growth and development. The most important what we learned since 2003 (when the State aid rules were introduced in Croatia) is that the effect of aid first of all depends on the objective of aid which must be well defined, on the adequate amount of aid and the control of its use. Yet, in 2011 the CCA was notified a rather small number of aid schemes containing such "good aid". Worth mentioning here are State aid for deployment of broadband networks and environmental protection. The most part of the CCA activities in 2011 was nevertheless aimed at assessment of aid for rescue and restructuring of the firms in difficulty, particularly concerning the preparation, revision and assessment of the restructuring plans of the Croatian shipyards in difficulty. To that end the CCA cooperated almost on a daily basis with the competent ministry and the European Commission. Only after the CCA gave its preliminary opinion regarding every shipyard under restructuring Croatia could get a green light for the closure of the negotiations for the accession to the EU in Chapter 8: Competition policy.

We believe that the increase of the investors' confidence and that of the market players is only possible through a competition regime based on strict rules and responsible enforcement. The market is a driver of growth and employment and this big potential must be used. First at home, then also in the EU. The markets promote competition and encourage the entrepreneurs to produce new products and services, to compete on price and fight for consumers. This, in return, creates jobs and introduces changes to the society as a whole. It changes our attitude to business and by facilitating employment and turning ideas into growth, enhances social welfare. Yet, the market alone cannot resolve all issues, be it the behaviour of the undertakings or that of the State where it grants aid to the advantage of certain undertakings or sectors. This is the reason why the competition regime contained in the Competition Act and the State Aid Act is aimed at establishing the rules and sanctioning the infringements. We have never questioned our readiness to use these tools in practice and to bear responsibility for the adopted decisions.

Olgica Spevec, President of the Competition Council

## SUMMARY OF CCA ACTIVITIES IN 2011

- **419 cases were opened** in the area of antitrust, merger control (competition cases) and State aid.
- **390 cases were resolved**, 294 in the area of competition, 96 in the area of State aid.
- In line with the 2009 Competition Act draft proposals of the relevant bylaws were drafted by the CCA and subsequently adopted by the Government of the Republic of Croatia. **9 new bylaws (regulations)** in the area of competition entered into force in the period from 29 January 2011 to 16 July 2011.
- In one case a **prohibited horizontal agreement** (cartel) was established in the office supplies market. The agreement had been in force from 6 February 2008 to do 15 October 2010. In one case a **prohibited vertical agreement** was established in the new motor vehicles distribution market, repair and maintenance services and the motor vehicle spare parts distribution market. The vertical agreement had been in force from the end of 2009 to 13 October 2011.
- **Abuse of a dominant position** was established in two cases, concretely, by the undertaking **INA – Industrija nafte d.d., Zagreb** in the wholesale of jet fuel in the period from **21** April 2008 to 19 May 2011, and by the undertaking **ADRIS GRUPA d.d., Rovinj i TDR d.o.o., Rovinj**, in the cigarette sales market in the period from 15 August 2004 to 31 December 2010 respectively.
- **12 notifications for the assessment of compatibility of concentrations** were received. In **10 cases the CCA clearance decisions were adopted**, two notifications were dismissed. There was no case of a prohibited concentration.
- Pursuant to the requests of the Croatian National Bank (HNB) the CCA issued **three opinions** on the compatibility of concentrations **in the area of the financial (banking) sector** (until the accession of Croatia to the EU the Croatian National Bank is competent for concentrations in the banking sector).
- In respect of the CCA activities within the privatisation of the Croatian shipyards, concretely, concerning the revision of the restructuring plans and the business plans submitted by potential investors, the CCA adopted **4 decisions on authorisation of State aid contained in the restructuring plans of the shipyards**. The total amount approved under the restructuring plans in question was HRK 16.370 billion.
- In the area of competition advocacy **140 cases were resolved**.
- Upon the request of the Croatian Agency for Postal Services and Electronic Communications (HAKOM) for the purpose of the analysis of relevant markets subject to *ex ante* regulation the CCA made **12 expert opinions**.
- CCA responded to **107 different queries of State authorities, undertakings and other persons** (68 e-mail replies - 22 in the area of competition, 46 in the area of State aid).

- The Administrative Court of the Republic of Croatia<sup>1</sup> submitted to the CCA a total of **10 decisions concerning the claims against the decisions of the CCA**. In 9 decisions the Administrative Court of the Republic of Croatia upheld the decision of the CCA, whereas in one case it confirmed the claim.
- The CCA made **15 requests to the relevant minor offence courts** to open proceedings against 12 parties for concluding prohibited agreements and two on the basis of abuse of a dominant position, whereas one was made on the grounds that the requested data were not submitted to the CCA.
- Within the *Cro Compete* project **515 students** from six Croatian universities participated in lectures on competition and State aid. **17 seminars** were held for the representatives of local administration units and business community on the entire territory of Croatia. **464 local administration representatives** attended these seminars.
- The CCA published a **Guide on the powers and scope of the Croatian Competition Agency**.
- **2 international competition conferences** were held in Zagreb.
- There were about **2000 media publications** in the area of competition and State aid and the CCA in general.
- For the activities of the CCA the resources from the State Budget amounted to **HRK 13.310.128,07**, whereas from the EU Projects IPA 2007 and IPA 2008 HRK 3.544.478,84 was executed, i.e. the total executed budget for the CCA activities amounted to **HRK 16.854.606,91**.
- In 2011 the CCA **employed a staff of 57**, 44 employees thereof were directly involved in the enforcement of the laws and activities falling in the competence of the CCA.
- A **new Statute of the CCA** entered into force. 9 new legal acts were adopted regulating the internal organization of the CCA. New organizational structure was introduced, facilitating efficiency improvements and transparency in the work of the CCA (such as the Standing Orders on the work of the Competition Council, the Ordinance on internal structure, the Job Systematization, the Ordinance on salaries, the Ordinance on education and training of the employees, the Ordinance on safety at work etc.).

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<sup>1</sup> In accordance with the Act on the Amendments to the Courts Act (OG 130/2011) as of 1 January 2012 the court review in the administrative dispute proceeding is ensured by the territorially competent administrative courts, besides the administrative disputes which under the Administrative Disputes Act (OG 20/2011) fall under the competence of the High Administrative Court of the Republic of Croatia. The Administrative Court of the Republic of Croatia as of 1 January 2012 continues to work as the High Administrative Court of the Republic of Croatia.

## CROATIAN COMPETITION AGENCY

The CCA was established pursuant to the decision of the Croatian Parliament in 1995, and pursuant to the Competition Act (OG 79/2009) it is a legal person with public authority which autonomously and independently performs the activities in the scope of its competence under the Competition Act and the State Aid Act (OG 150/2005 and 49/2011), and reports to the Croatian Parliament on annually. Annual reports on the work of CCA and State aid reports are regularly submitted to the Croatian Parliament for adoption.

The competence of the CCA specifically in the area of competition covers the following:

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

At the same time, within its competence relating to **competition advocacy** and promotion of competition culture, the CCA issues expert opinions on the compliance with the Competition Act of draft law proposals, other proposed legal acts and existing legislation, including opinions on other competition-related issues.

The CCA is in charge of the enforcement of the Competition Act in all markets except for the financial (banking) services market, which fall, until the EU accession, under the scope of competence of the Croatian National Bank pursuant to the Financial Institutions Act.

Within the meaning of the **State Aid Act** the CCA is responsible for the **approval, monitoring of the implementation and ordering of the recovery of State aid** which has been granted or used in contravention with the State aid rules, except for the area of agriculture and fisheries. As stated above, the CCA drafts the annual report on State aid and submits it to the Croatian Parliament.

In addition to the laws mentioned above, the area of competition and State aid in the Republic of Croatia is regulated by a number of regulations and decisions adopted by the Croatian government that are enforced by the CCA. At the same time, in accordance with Article 70 paragraph 2 of the Stabilization and Association Agreement the European Communities and their Member States, of the one part, and

the Republic of Croatia, of the other part (hereinafter: SAA)<sup>2</sup> in the performance of the tasks within its competence the CCA undertook the commitment to assess any practices on the basis of criteria arising from the application of the competition rules applicable in the European Union, and interpretative instruments adopted by the EU institutions<sup>3</sup>. In line with Article 74 of the Competition Act this concretely means that when adopting decisions from its jurisdiction the CCA primarily applies Croatian law, but in the case of legal gaps or ambiguities in the interpretation of the Croatian law in the area of competition and State aid, it accordingly, as ancillary means of interpretation, applies the criteria contained in the EU *acquis*, including the EU regulations and guidelines, European Commission decisions, rulings of the European courts and other EU institutions. This has also been confirmed by the decisions of the Constitutional Court of the Republic of Croatia<sup>4</sup>.

Entire legislative framework in the area of competition and State aid adopted in Croatia is published in "Official gazette" (abbreviation: OG) and on the web site of the CCA [www.aztn.hr](http://www.aztn.hr). Moreover, transparency of the work of the CCA is ensured by the publication on its web site of all final decisions (decisions and procedural orders), opinions, request for information and other legal acts, as well as press releases from the sessions of the Competition Council, news, decisions of the competent administrative courts relating to the actions taken against the decisions of the CCA, decisions of the High Administrative Court of the Republic of Croatia, who rules in the second instance, but also the most important parts of the EU *acquis* in the area of competition and State aid translated into Croatian, particularly the rules that had to be adjusted during the EU accession negotiations – the benchmarks set by the Commission.

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. The conditions for the appointment and term of office of the members of the Competition Council, for relieving of the president and the members of the Competition Council and the scope of competence of the Competition Council are regulated by the Competition Act<sup>5</sup>. In managing the CCA the Competition Council adopts decisions on all general and individual acts of the CCA, at the sessions of the Competition Council, with the majority of at least three votes, and no member of the Competition Council can abstain from voting<sup>6</sup>.

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<sup>2</sup> „Official Gazette“– International treaties, 14/2001, 14/2004, 1/2005 and 7/2005.

<sup>3</sup> Article 70 paragraph 2 of the SAA: „Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular from Articles 81, 82, 86 and 87 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions.“

<sup>4</sup> Decisions of the Constitutional Court of the Republic of Croatia: U-III-1410/2007 of 13 February 2008 („Official Gazette“, 25/2008), U-III-4082/2010 of 17 February 2011 („Official Gazette“, 28/2011) and U-III-1804/2012 of 17 May 2012.

<sup>5</sup> The Competition Council are: MSc. Olgica Spevec, president, Mladen Cerovac, LL.M., vice president, Milivoj Maršić, M.econ., Vesna Patrlj, LL.M. and PhD Mirna Pavletić-Župić, members of the Council. All members, including the president and the vice president, are, in accordance with the Law on Labour, regular employees of the CCA.

<sup>6</sup> Article 31 of the Competition Act, OG 79/2009.

The president and the members of the Competition Council perform their duty as professionals; they may not be state officials, persons discharging their office in bodies of a political party or members of the boards, supervisory boards and management councils of undertakings, or be members of any other form of interest associations, which could lead to a conflict of interest.

**The expert team** of the CCA, on the basis of its legal powers, performs administrative and professional activities for the purposes of the Competition Council, i.e., carries out the proceedings in the competence of the CCA and prepares draft decisions, on the basis of which the Competition Council adopts final decisions at sessions.

In 2011 the Agency had **57 employees**. In line with the available resources the CCA promotes continuous training and education of its employees – postgraduate studies on Croatian universities, three-month-internships in the European Commission, attendance of seminars home and abroad, seminars within the EU projects and internal training (INTER-EDUKA) where the employees of the CCA are at the same time presenters and attendees.

**Internal organisation** and the code of conduct of the CCA as well as other issues relevant for its performance are regulated by the Statute of the Croatian Competition Agency<sup>7</sup>. In line with the Competition Act in respect of employees' rights and responsibilities general labour provisions apply.

The total planned funds for the performance of the activities of the CCA in the State budget for 2011 amounted to HRK **19.903.870**, of which HRK 13.740.035 from the State budget (for regular activities and for participation in assistance) and HRK 6.163.835 from the EU assistance for IPA 2007 and IPA 2008 Projects.

Except for the activities falling directly under its competence, in 2011 the CCA took an active part in the **negotiations for the accession of the Republic Croatia to the European Union**, particularly regarding the benchmarks which had to be fulfilled for the closure of Chapter 8: Competition policy. At the same time, together with other government bodies and judiciary, the CCA continued with the implementation of the EU projects and other international activities within its scope of activity.

In comparison with similar competition authorities, primarily in the EU, the CCA with its 57 employees is regarding its size, budget, enforcement record and other efficiency indicators, one of the smallest agencies in the EU, comparable to Slovak and Lithuanian agency which employ 61 and 62 employees respectively (although it must be noted that the CCA carries out activities also in the area of State aid, unlike the two mentioned competition authorities who are engaged only in antitrust and merger control)<sup>8</sup>.

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<sup>7</sup> The Statute of the CCA in force was ratified by the Croatian Parliament on 11 February 2011, OG 22/2011, it entered into force on 16 February 2011.

<sup>8</sup> The CCA carried out this analysis taking the model of the similar analysis performed by *Global Competition Review*, volume 5 of June 2012.

Monitoring over the activities of the CCA is performed by the State Audit Office, which confirmed the spotless operation of the Agency on several occasions. In the latest control of the operations of the CCA conducted between 1 December 2008 and 18 February 2009, the State Audit Office issued the third consecutive unqualified opinion about the Agency's annual operations and state assets disposal.

The CCA reports to the Croatian Parliament. However, its work is also monitored by the EU institutions in accordance with the provisions of the SAA and requirements of the Accession Treaty signed on 9 December 2011. In the working document of the European Commission SEC (2011) 1200 – **Croatia Progress Report 2011**, Chapter 8: Competition policy, which includes the period from the beginning of October 2010 to the end of September 2011, the following is stated:

*„Progress can be reported in the field of antitrust, including mergers. The new Competition Act which entered into force in October 2010 provides new tools for the Croatian Competition Agency (CCA) to enforce competition rules in Croatia. A number of implementing regulations were adopted, in particular the Regulation on the criteria for setting fines and the Regulation on immunity from fines and reduction of fines. With 55 employees, the CCA has a good administrative capacity, but it can be further strengthened through management and training, particularly in the fight against cartels and abuse of a dominant position.“*

## DECISIONS OF THE CCA IN 2011

In 2011 the CCA resolved a **total of 390 cases** falling in the scope of its competence. Table 1 shows the number, type and nature of the decisions from the two main areas of the CCA scope: competition (antitrust and control of concentrations) and State aid control.

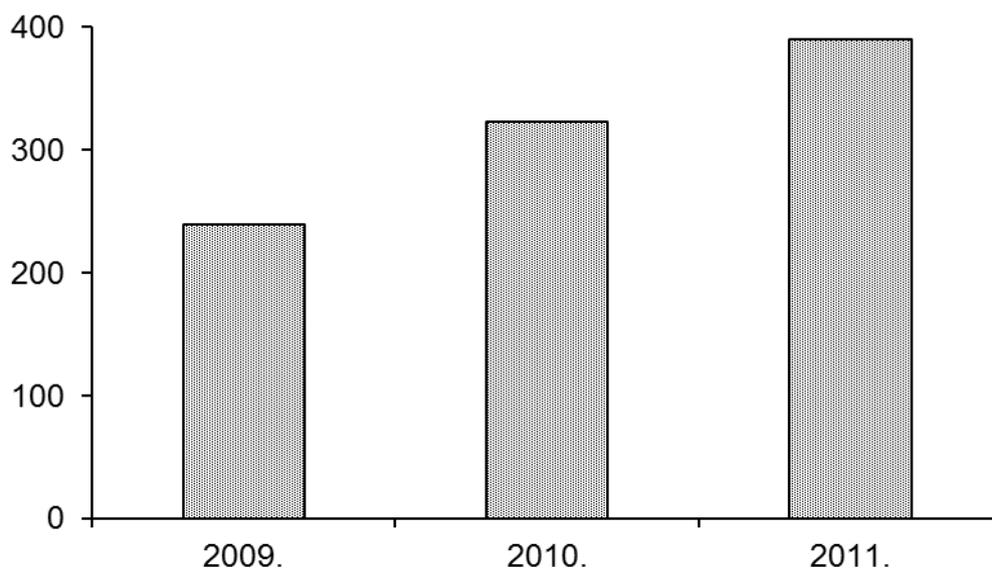
Table 1 Number of resolved cases in the CCA in 2011

Category of case/file	Number of resolved cases/files in 2011		
	Competition	State aid	Total
I. ADMINISTRATIVE CASES	65	40	105
II. NON-ADMINISTRATIVE CASES	229	56	285
<b>TOTAL</b>	<b>294</b>	<b>96</b>	<b>390</b>

Source: the CCA

In comparison with **240 resolved cases in 2009**, and **323 resolved cases in 2010**, **in 2011 there was a rise where the CCA resolved a total of 390 cases** falling under its competence.

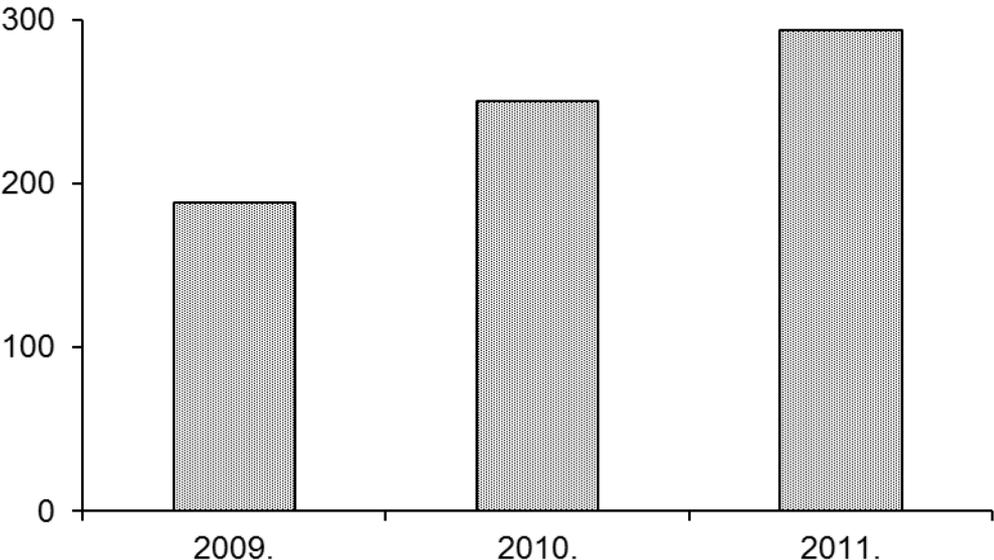
Picture 1 Number of total resolved cases from 2009 to 2011



Source: the CCA

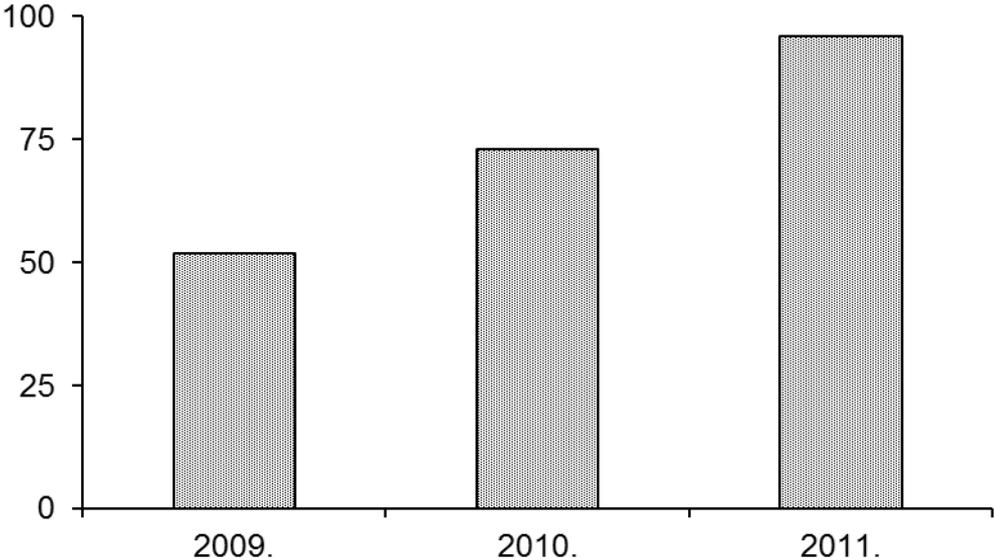
The rise in the total number of resolved cases is also followed by the rise of cases relating to antitrust and control of concentrations in 2011, compared to the two preceding years:

Picture 2 Number of resolved cases in the area of antitrust and control of concentrations from 2009 to 2011



Source: the CCA

Picture 3 Number of resolved cases in the area of State aid from 2009 to 2011



Source: the CCA

In addition to the shown figures, it is necessary to note here that the CCA also communicated to the European Commission, on a regular basis, its **enforcement record** and summaries of the resolved cases. From the opening of the negotiation

and particularly before the closure of the negotiation, the Commission monitored the work of the CCA and proper application of competition and State aid rules and assessed the introduced changes in the Croatian legislative framework.

In June 2011 the benchmarks for the closure of the negotiations in Chapter 8: Competition policy were met and this was the time period when the communication and cooperation with the Commission were particularly active, notably in the area of assessment of restructuring plans of the Croatian shipyards in difficulty, drafting of the EU Common Position in Chapter 8: Competition policy, amending the existing aid lists etc.

# I. COMPETITION

## Legal framework

The Competition Act that was adopted by the Croatian Parliament on 24 June 2009 and that came into force on 1 October 2010 sets forth the general rules and establishes a competition regime in the Republic of Croatia. The Competition Act applies to all forms of prevention, restriction or distortion of competition by undertakings in the territory of the Republic of Croatia or outside its territory when these practices have effect within this territory. The provisions of the Competition Act do not apply only in cases where particular markets are regulated by a specific law.

This is the third Croatian Competition Act (after the 1995 Competition Act and the 2003 Competition Act) which established the prerequisites for the strengthening of competition between undertakings on one hand, whereas it provided the CCA with the tools for prevention and sanctioning of the anticompetitive practices, on the other.

The powers of the CCA under the Competition Act ensure effective enforcement of competition rules, particularly in respect of the sanctions which CCA may now impose for infringements established in the proceedings carried out against undertakings. The Competition Act also regulates the organization of the CCA, the scope of activities of the Competition Council and the duties of the expert team.

Against the decisions of the CCA (the decisions establishing infringements of the Competition Act, the decisions on imposition of fines, the decisions on termination of the proceedings and the decisions on the suspension of the proceedings in the case of established preliminary issues, as well as against the procedural orders on dismissal of the initiative due to the existence of no public interest for the initiation of the proceeding or due to the lack of legal grounds for initiation of the proceeding) no appeal is allowed but the injured party may **take actions** at the territorially competent administrative court. The claim affects the enforceability of the decision of the CCA. The claims against the decisions of the CCA are urgent. On the legality of the decisions of the CCA rules the **High Administrative Court of the Republic of Croatia**.

Legal certainty and transparency of the work of the CCA is ensured on the basis of a number of bylaws adopted by the Croatian government in the course of 2010 and 2011. Concretely, these are eleven regulations, two of which were adopted in 2010: the **Regulation on the method of setting fines**<sup>9</sup> that regulates the criteria which the CCA is required to take into consideration in the procedure of identifying of the

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<sup>9</sup> OG 129/2010.

conditions for imposition of fines and in the imposition of fines to undertakings that have infringed the provisions of the Competition Act, and second, the **Regulation on immunity from fines or reduction of fines**<sup>10</sup> that provides for the criteria that the CCA is obliged to take into consideration before adopting a decision on applying the immunity of undertakings from payment of fines and the criteria that the CCA is required to take into consideration before adopting the decision on the reduction of fines for members of a prohibited horizontal agreement - cartel.

By the adoption of the relevant regulations not only did Croatia take another step towards harmonization of the Croatian competition rules with the recent revisions of the EU *acquis* in this area, but it also ensured predictability for undertakings and other stakeholders in the application of competition rules who should adjust their business activities to the said rules in order to avoid infringements. On the other hand, where infringements have been committed, the undertakings may with a high degree of certainty predict the assessment of the CCA and the fines that may be imposed for the infringements concerned.

**9 regulations** that were proposed by the CCA and adopted by the Croatian government in 2011 were as follows:

**Regulation on the definition of relevant market (OG 9/2011), Regulation on agreements of minor importance (OG 9/2011), Regulation on block exemption granted to certain categories of horizontal agreements (OG 072/2011), Regulation on block exemption granted to certain categories of technology transfer agreements (OG 9/2011), Regulation on block exemption granted to certain categories of vertical agreements (OG 37/2011), Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles (OG 37/2011), Regulation on block exemption granted to insurance agreements (OG 78/2011), Regulation on block exemption granted to agreements in the transport sector (OG 78/2011) and Regulation on notification and assessment of concentrations (OG 38/2011).**

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<sup>10</sup> OG 129/2010.

# Enforcement of the Competition Act

In 2011 within the framework of its primary activities involving the assessment of restrictive agreements, establishing abuse of a dominant position of undertakings, assessment of compatibility of concentrations between undertakings and competition advocacy, the CCA resolved a total of **294 cases**.

## 1. Prohibited agreements – cartels

A cartel is a group of similar, independent undertakings which join together to fix prices, to limit production or to share markets or customers between them. Instead of competing with each other, cartel members rely on each other's' agreed course of action, which reduces their incentives to provide new or better products and services at competitive prices. As a consequence, their clients (consumers or other businesses) end up paying more for less quality. In other words, such agreements have no positive effects. The members of such agreements count on a short-term profit at the expense of other undertakings and consumers.

Agreements or collusive behaviour between competing undertakings may occur in every sector with no exception. However, some sectors are more sensitive and prone to such agreements. For example, cartels appear more often in the markets with less competitors, in the case of products with similar features (homogenous products) leaving little space to undertakings to compete on quality or provision of services, or in the markets with strong associations of undertakings. Globally and on the territory of the EU, cartels have been entered into on a lot of different markets, such as the cement market, sugar market, market in chemical and medicinal products, cosmetics, elevators, detergents, gas insulated switchgear market etc.

Cartels are illegal under EU competition law and European Commission imposes heavy fines on companies involved in a cartel.

Similarly as the EU *acquis* the Competition Act also provides for a leniency programme - immunity from fines for a whistle-blower – the first company who comes forward with information about a cartel and enables the CCA to initiate the proceeding, or, where the CCA has already opened the proceeding, which first submits the relevant evidence on the existence of the cartel. In line with the previously mentioned Regulation on immunity from fines or reduction of fines, other leniency applicants, depending on the applicants' place in the queue (marker), may be granted reduction of the fine provided that they submit to the CCA additional compelling evidence of the cartel which represent significant added value in the establishment of the infringement.

In 2011 the CCA **closed 5 proceedings relating to establishment of prohibited horizontal agreements**. In one case – ***CCA v Office Supplies Retailers' Association and its members*<sup>11</sup>**, **existence of a prohibited horizontal agreement (cartel) was established** between the undertakings competitors in the relevant

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<sup>11</sup> UP/I 030-02/2010-01/018 of 21 July 2011, OG 111/2011.

market in the retail of office supplies in the territory of the Republic of Croatia. In 4 other cases: *CCA v Croatian Association of Civil Engineers*<sup>12</sup>, *CCA v Croatian Association of Architects*<sup>13</sup>, *CCA v Croatian Association of Mechanical Engineers*<sup>14</sup> and *CCA v Croatian Association of Electrical Engineers*<sup>15</sup>, the proceeding was terminated due to lack of legal presumptions for carrying out of the proceeding.

In two other cartel cases in 2011 – *CCA v Association of Tradesmen Osijek, Bakers' Section and 17 undertakings that attended the meeting of the Section on 16 February 2011*, UP/I 030-02/2011-01/039; *CCA v VIPnet d.o.o., HT d.d. and Tele2 d.o.o.*, UP/I 030-02/2010-01/001, the proceedings are under way.

The proceeding opened in 2011 in the case *CCA v members of the associations Viadukt-Konstruktor inženjering and Hidroelektra niskogradnja – INGRA*, UP/I 030-02/2010-01/014, was terminated on 19 April 2012.

In 2011 one initiative was dismissed because there was no grounds for the opening of the proceeding, namely in the case - *MOL, Ltd, Budapest, Hungary – application of the prohibited agreement between Allianz Zagreb d.o.o., PBZ Croatia osiguranje d.d., Raiffeisen d.d. i Erste d.o.o. – companies for the Management of the Mandatory Pension Fund relating to the purchase of shares of Ina d.d. at the Zagreb Stock Exchange in the period from 14 to 20 December 2010.*<sup>16</sup>

The initiative of the Croatian Institute for Health Insurance that was received by the CCA in 2011 in the case *CCA v Media d.o.o., Zagreb and Medical Intertrade d.o.o., Zagreb*, was dismissed in 2012 due to lack of grounds for the opening of the proceeding.<sup>17</sup>

What follows are the summaries of two most interesting cases from the practice of the CCA in 2011 in the area of prohibited horizontal agreements (cartels).

### **1.1. Office supplies cartel**

*In its decision of 21 July 2001*<sup>18</sup> the CCA established that the **Office Supplies Retailers' Association** and nine members of the Association, undertakings *Birodom, Ingpro, Jadran Informatika, Petrix promet, Text papir, Timi, Tip Kutina, Tip Zagreb and Zvibor*, in the first meeting of the Association held on 6 February 2008 in Zagreb **directly fixed prices of office supplies and allocated customers** on the basis of the Agreement on marketing of office supplies, and by doing so concluded a prohibited agreement under the Competition Act.

***The agreement was in force from 6 February 2008 to 15 November 2010.***

<sup>12</sup> UP/I 030-02/2011-01/027, of 1 December 2011.

<sup>13</sup> UP/I 030-02/2011-01/035, of 1 December 2011.

<sup>14</sup> UP/I 030-02/2011-01/036, of 1 December 2011.

<sup>15</sup> UP/I 030-02/2011-01/037 of 1 December 2011.

<sup>16</sup> UP/I 030-02/10-01/037 of 13 January 2011 available on the website of the CCA.

<sup>17</sup> UP/I 030-02/11-01/021 of 26 January 2012 available on the website of the CCA.

<sup>18</sup> UP/I 030-02/2010-01/018 of 21 July 2011, OG 111/2011.

*In line with the decision of the CCA the undertaking Zvibor was a participant to the prohibited agreement in the period from 6 February 2008 to 16 October 2009 when it was expelled from the Association, whereas the undertaking Tip Zagreb was a participant to the prohibited agreement concerned in the period from 6 February 2008 to 20 July 2010 when it informed the former president of the Association that he wishes to withdraw from the Association.*

*It must be noted here that the **Association** itself was also considered to be a participant to the cartel, given the fact that it, overstepping its legitimate powers, **allowed its members to create a joint business and pricing policy** on the office supplies market, which is in contravention to competition rules, and was **directly involved in sanctioning of any member of the Association that would act in contravention to the agreed conditions.***

*Concretely, the **non-compete agreement** meant that no other member of the Association was allowed to offer the price more competitive than the member whose historical buyer was at stake. The **agreement on customer allocation** consisted in each member of the Association presenting the names of 5 biggest customers, thereby exchanging the information on the most important buyers of the other members of the Association. In addition, the Agreement provided for **sanctions** for any member of the Association that would not observe the said Agreement.*

*Ignorance, lack of the awareness of the Association and its members about the fact that by setting the rules of conduct and compliance with the agreed terms, they infringe competition rules, did not exempt the Association nor its members from liability for the unlawful conduct.*

*Economic analysis of the cartel members' business operations showed that in this case, the CCA was dealing with undertakings holding low market shares in the office supplies retail market in the territory of the Republic of Croatia. However, from the viewpoint of competition rules, this is irrelevant, since horizontal agreements containing hard-core restrictions (price fixing and market sharing and/or customer sharing) cannot be exempted from the application of the Competition Act, **regardless of the market shares** held by the parties to the agreement in question.*

*At the same time, the economic analysis of the tender documentation and the statements made by the selected buyers of office supplies indicated that **a specific tender in 2008 and/or 2009 was approached only by the member of the Association who named this particular customer as its key customer.***

*Although the parties involved stated that the Association was founded with the objective to protect small entrepreneurs from big companies, and to facilitate joint purchase of goods, direct evidence, such as the decisions of the Association to exclude from the membership the undertakings Fiv and Zvibor of 5 November 2008 and 16 October 2009 respectively, the minutes taken at the first meeting of the Association on 6 February 2008 and finally, the fact that no member of the Association, nor the Association itself during this meeting clearly withdrew from the*

*behaviour concerned, upheld the finding of the CCA that the agreement served the purpose of cartel behaviour.*

*Given that the proceedings had started before the CCA was empowered under the 2009 Competition Act to impose fines, it made a request to open proceedings against 9 members of the Association at the competent minor offence court.*

*Although it was established in the decision of the CCA that the Association, in this case, has acted through its legally obtained authority, and that it should be considered a participant in the cartel agreement, the claim against the Association was not submitted. Namely, in the course of the proceeding it was established that on the basis of the final decision of the City Department of General Administration of the City of Zagreb, of 15 November 2010, the Association was removed from the Register of Associations of the Republic of Croatia, meaning that the Association lost its legal personality, and thus all the rights and obligations arising from there, and ceased to exist.*

*Several undertakings participants to this agreement have filed a claim at the former Administrative Court of the Republic of Croatia against the decision of the CCA. The CCA filed the statement of defence within the prescribed period. The administrative dispute is pending.*

## **1.2. CCA v Croatian Association of Civil Engineers, Croatian Association of Architects, Croatian Association of Mechanical Engineers and Croatian Association of Electrical Engineers – termination of the proceeding**

*On 1 December 2011 the CCA adopted a decision on termination of the proceeding in the above case due to the lack of legal presumptions for further action. Namely, it was established by the CCA that the price lists applied by the stated professional associations (“chambers”) and published on their websites provide for the calculation of fees for the work of architects and engineers on the basis of the **lowest and highest fees** for the association members and was adopted by the Croatian Association of Architects and Building Engineers the members of which are licensed civil engineers, licensed architects, licensed mechanical engineers and licensed electrical engineers in line with the former Act on the Croatian Association of Architects and Building Engineers (OG 47/98). However, by the entry into force of the Act on Architectural and Engineering Jobs and Activities in Physical Planning and Construction (OG 152/2008 and 49/2011) the Croatian Association of Architects and Building Engineers ceased to exist, whereas four associations (“chambers”) were founded - Croatian Association of Civil Engineers, Croatian Association of Architects, Croatian Association of Mechanical Engineers and Croatian Association of Electrical Engineers.*

*These associations continued to apply the pricelists adopted pursuant to the previously valid Act on the Croatian Association of Architects and Building Engineers. All four associations provide for the obligation (in their Statutes) to apply the uniform prices, what is more, they envisage sanctions for the members who apply lower*

prices from the ones prescribed by the pricelist – from high fines to expulsion from the association, whereby the latter implies that those members would not be able to perform their activities as licensed architects or engineers.

It should be noted here that the CCA, in line with the Competition Act, considered the associations (“chambers”) in question as **associations of undertakings** who by performing their activities (physical planning, design, construction supervision etc.) are engaged in an economic activity and take part in the trade of goods or provision of services in the market.

**Price fixing between competitors in the market is regarded as a hard-core restriction of competition** resulting in the **absence of price competition** in the market, in other words, from the point of the customers, elimination of choice for the same service.

Yet, and in spite of the fact that everything indicated the existence of a collusive behaviour – a prohibited horizontal agreement – the CCA established in the course of the proceeding that the anticompetitive practices concerned are a direct consequence of the provision of the Act on Architectural and Engineering Jobs and Activities in Physical Planning and Construction. Namely, Article 160 thereof explicitly states that as long as the adequate bylaw of the particular association is adopted the Ordinance on pricelists originating from 1999 pursuant to the previously valid Act on the Croatian Association of Architects and Building Engineers applies. Thus, legal presumptions for further actions in the proceeding ceased to exist.

Until today, none of the listed associations has adopted its own pricelist. What is more, the valid Act has not prescribed a time period for the fulfilment of this obligation.

Although the proceeding was terminated due to the above issues, the CCA used its competence under Article 25 paragraph 3 and adopted an opinion on the compliance of the Act on Architectural and Engineering Jobs and Activities in Physical Planning and Construction in effect and the 1999 Ordinance on pricelists with competition rules. The CCA took into account the best practices in the EU Member States and particularly ensured that the application of the competition rules legally and factually does not prevent the performance of the activities entrusted to the parties concerned on the basis of specific rules.

Thus, the CCA communicated to the competent ministry and the four associations concerned the opinion in which it indicated the deficiencies of the Act on Architectural and Engineering Jobs and Activities in Physical Planning and Construction and **pointed out the necessity of adoption of a separate pricelist by each association fully aligned with the Competition Act within a reasonable deadline.** When working out the new pricelists the associations in question should refrain from prescribing a minimum price or fixing the price and repeal the sanctioning of its members if their economic interest allows the application of lower prices. Moreover, other conditions should be stipulated to ensure a balance between service quality and compliance with the law. The standpoint of the CCA is that neither

*minimum prices, nor the minimum fee rates, can prevent irresponsible service providers from offering low-quality services. On the contrary, minimum prices or recommended prices with the effect of minimum or fixed prices may even protect such service providers and guarantee their fee, regardless of the quality of the service provided. Also, they do not provide an incentive for cost-effective operation or for improved and innovative service*<sup>19</sup>.

## **2. Other prohibited agreements**

Besides the prohibited horizontal agreements – cartels, as most serious infringements of competition rules, other categories of agreements, both horizontal (between competitors) and vertical (between non-competing undertakings), may, under certain circumstances, be found restrictive i.e. prohibited, and as such may not be granted block exemption under the Competition Act.

However, not all agreements containing restrictions are prohibited, i.e. certain categories of agreements are granted exemption from general prohibition if they, throughout their duration, cumulatively comply with the following conditions: (i) they contribute to improving the production or distribution of goods and/or services, or to promoting technical or economic progress, (ii) while allowing consumers a fair share of the resulting benefit, (iii) they do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and (iv) they do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of goods and/or services in question. In addition, an agreement may also be granted block exemption under the specific regulations stated previously in the text of this report.

In 2011 the CCA dealt with five cases of allegedly restrictive vertical agreements. For example in the case *CCA v Euro rent sport d.o.o. Zagreb*<sup>20</sup> it established a prohibited agreement. In the case *CCA v TM ZAGREB d.o.o., Zagreb*<sup>21</sup>, covering the distribution of «Yamaha» products in Croatia, the CCA decided to terminate the proceeding given that in the course of the proceeding the legal presumptions for further action ceased to exist. In the remaining three cases, *Auto prodajni centar Muše d.o.o., Split v PSC Dalmacija d.o.o.*<sup>22</sup>, *More d.o.o., Zagreb v Bugatti d.o.o., Višnjevac*<sup>23</sup> and *CCA v Vitaminka, Prilep*<sup>24</sup> the requests or initiatives have been dismissed after the preliminary investigations in the relevant markets (distribution of «Opel» motor vehicles in the territory of Croatia, distribution and servicing of «Lada» motor vehicles in the territory of Croatia and distribution of *Vitaminka, Prilep* products).

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<sup>19</sup> Opinions of the CCA in cases: 011-01/2012-02/001; 011-01/2012-02/002; 011-01/2012-02/003; 011-01/2012-02/004, of 5 April 2012, available on the website of the CCA.

<sup>20</sup> UP/I-030-02/2010-01/024, of 13 October. 2011, OG 145/2011.

<sup>21</sup> UP/I 030-02/10-01/017 of 16 June 2011.

<sup>22</sup> UP/I 030-02/2010-01/032 of 23 January 2011.

<sup>23</sup> UP/I 030-02/2010-01/028 of 23 January 2011.

<sup>24</sup> UP/I 030-02/2011-01/034 of 15 September 2011, available on the website of the CCA.

### 3. Abuse of a dominant position

To establish dominance the CCA investigates whether the undertaking holds substantial market power over a significant period of time, allowing it to behave to an appreciable extent independently of its competitors and customers (suppliers, buyers and final consumers). It investigates whether or not there are sufficient constraints on the undertaking's conduct by existing competitors and their output, by expansion or entry of rivals and/or by countervailing buying power. A soft safe harbour is created by stating that dominance is not likely if the market share of the firm is below 40%. In other words, the **sole existence of a dominant position in the relevant market does not contravene competition rules** and therefore is not prohibited. What is prohibited is abuse of this dominant position.

Within the meaning of the Competition Act the undertaking which holds more than 40 % of the market share in the relevant market may hold a dominant position. The effects-based approach of the exclusionary conduct by dominant firms aims to deliberately exclude actual competitors from expanding or would-be competitors from entering a market, thereby potentially depriving customers of more choice, more innovative goods or services and/or lower prices. In other words, dominance may in principle be established also with a lower market share threshold of 40 %. On the other hand, the undertaking holding a dominant position has a bigger responsibility regarding its behaviour in relation to other participants in the market.

The first step for the CCA to explain how the allegedly abusive conduct is likely to restrict competition and thereby harm consumers is the analysis of the conditions on the market, including the relevance of entry barriers, the position of and counterstrategies available to competitors, the part of the market affected by the conduct, and possible evidence of actual foreclosure and implementation of an exclusionary strategy. In the case of pricing conduct the CCA will, as part of its general assessment, investigate whether the conduct is capable of excluding also equally efficient competitors, in which case the conduct can restrict effective competition and harm consumer welfare. The second step is for the undertaking to rebut this finding of a likely negative effect by showing that it is likely to create efficiencies which leave consumers better off overall.

In line with the Competition Act abuse of dominance may particularly involve the behaviour which consists of: **directly or indirectly imposing unfair purchase or selling 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 undertakings, thereby placing them at a competitive disadvantage (here are particularly meant the concepts of excessive pricing, predatory prices, loyalty rebates, margin squeeze, price discrimination etc.), and making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

As stated before, in 2011 abuse of a dominant position was established by the CCA in two cases, concretely, by the undertaking **INA – Industrija nafte d.d., Zagreb** in the wholesale of jet fuel where its practices in respect of pricing discriminated the domestic air operators relative to foreign operators, and in the second case, by the undertaking **ADRIS GRUPA d.d., Rovinj and TDR d.o.o., Rovinj**, in the cigarette sales market where the undertaking concerned was involved in exclusionary practices with foreclosure effects.

Besides the above stated abuses of dominance in the report period the CCA also **dismissed 31 initiatives** or requests for the opening of the procedure due to the fact that the preliminary investigation showed that there were no sufficient indices for initiation of the proceeding within the meaning of the Competition Act.

### **3.1. CCA v Adris grupa d.d., Rovinj and TDR d.o.o., Rovinj – established abuse of a dominant position**

*In this case the CCA established that Adris grupa and TDR d.o.o., whereby the former holds controlling interest in the latter, **abused their dominant position in the cigarette sales market in the territory of the Republic of Croatia from 15 August 2004 to 31 December 2010.**<sup>25</sup> In its decision the CCA established beyond any doubt that Adris grupa and TDR held a dominant position in the market in the time period concerned and that the **establishment of exclusionary buyers' network involved abusive exclusionary conduct aimed at foreclosing their competitors where effective access of actual or potential competitors to supplies or markets was hampered or eliminated.***

*The proceeding was initiated ex officio given the controlling interest of Adris grupa, the significant effect on competition and, consequently, the public interest.*

*The relevant product market was defined as the cigarette production and distribution (sales) market; the relevant geographic market involved the territory of the Republic of Croatia. The CCA took special attention of the **specific markets** involved, that of the production, purchase, processing and marketing of tobacco and of tobacco products, the specific legislative framework regulating the whole industry, involving both economic and health aspects, non-smoking policy, the law banning all advertising and promotion of tobacco products etc.*

*The legal basis for the abusive practices in question was found in the standard contract terms and the agreements on the sales and marketing of products which TDR concluded with its buyers – both wholesale buyers and retailers in the stated period, which were in effect from 15 August 2004 to 31 December 2010.*

#### **Single branding obligations and fidelity rebates:**

*Concretely, the **exclusive purchase obligation additionally imposed by the said agreements bound the buyer to purchase all or a significant part of its***

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<sup>25</sup> UP/I 030-02/2006-01/082 of 16 June 2011, OG 103/2011.

**requirements only from TDR.** In order to convince the buyers to exclusive purchase TDR provided incentives in the form of **retroactive discounts** applied to purchases made before the threshold is reached i.e. **loyalty inducing schemes** or **target rebates** (“a share in the planned production and distribution”).

Additional rebates and sales incentive schemes, which constituted a reward for work and promotion of sales held a significant share in the total rebates and thereby encouraged the buyers to satisfy their demand exclusively or almost exclusively with the TDR tobacco products. Practically, the buyer was made to purchase all his requirements on this market from only one supplier, known in competition law as **single branding obligation**. More than 90 per cent of TDR key accounts were given fidelity rebates in the period from 2004 until 2009. These buyers covered more than 80 per cent (on the average) of their requirements by the cigarettes produced by TDR. Although in the period concerned both the rebates and the market share of TDR decreased, the fidelity rebates and the sales incentives remained such as to promote exclusive or almost exclusive purchase of TDR brands.

**The analysis of the CCA showed that the market share held by TDR in the observed period in the relevant market concerned had not been lower than 70 %.** In other words, its market share was significantly higher than that of its first rival. In addition, TDR is a unavoidable trading partner in the cigarettes sale market in Croatia and the sole cigarette producer. Consequently, its **dominant position in the relevant market** had been undoubtedly established.

Namely, the analysed agreements contained restrictive provisions having as their object **exclusion of competition in the market and resulting in market foreclosure**, preventing at the same time the entry of other players. **Additional rebates that had been rewarded retroactively since 15 August 2004 until June 2010 meant application of dissimilar conditions to equivalent transactions with buyers, thereby placing them at a competitive disadvantage.** For example, the analysis showed that a small buyer with the needs of a 100 units of particular product would have been given a rebate if he had bought 80 units of the product. A big buyer, whose needs were 1000 units, would have to buy 800 units in order to be given rebates. Thus, such rebates were not given to buyers relative to the total amount of purchased products, but relative to the minimum amounts, fixed in advance, as a share of the total needs of each particular buyer (for purchases made before the threshold is reached).

This is particularly relevant in comparison with the analysis of data on target thresholds supplied by TDR for its 20 biggest buyers. On the basis of this data the CCA established that the agreements stipulated **target thresholds** – target sales and purchase of tobacco products for 20 buyers in 2004 and 2005. Consequently, a very low share in the total volume of products was left to TDR competitors. As an example, the biggest buyer and distributor of TDR cigarettes indicated in 2004 and 2005 an exceptionally high sales target of almost 88 % display in the following period of one year. Yet, in 2006 TDR introduced the **planned volumes** instead of the target thresholds. The authorised distributor had been granted additional/retroactive rebate provided that he had reached the sales of products within the set six-month-period in

line with the planned average weekly level with the tolerance of +/- 5 % for every week of the set period, and where it had reached the sales higher than the total planned volume.

Additional/retroactive rebates had a high share in the total rebate schemes and therefore **tyed the buyers to purchase exclusively or almost exclusively the TDR cigarettes**. More than **90 % of all TDR key buyers** in the period from 2004 to 2009 realized the additional/retroactive rebates and covered the most part of their requirements (on the average more than 80 %) with the TDR portfolio cigarettes. Although the volumes necessary to realize the stated rebates decreased in the period concerned, as well as the market share of TDR, the additional/retroactive rebate remained significant and represented an incentive for the buyers to exclusive or almost exclusive purchase of the TDR cigarettes where this abuse of dominance lead to market foreclosure and distortion of competition in the relevant market.

On the other hand, TDR entered into **rent and marketing agreements** with its buyers. The constituent part of these agreements also providing for customer tying was the **Guide for categorisation, outfitting and display of the products at the point of sale** which had been in use in 2006, 2007, 2008 and 2009 until 31 December 2010. This is particularly significant taking into account the almost absolute ban of advertising and promotion of tobacco products in the relevant cigarette sales market. The Guide provided for categorisation of the points of sale where cigarettes are displayed which additionally restricted the visibility of the competing undertakings of TDR, given that in the points of sale categorised by A and B the buyers were obliged to display only the promotional materials of TDR, whereas at the points of sale of category C 25 % of the display space was free to be used by other undertakings. The analysis showed that if the buyers of TDR had had even the theoretical possibility to sell the cigarettes of its competitors, these competitive cigarettes would have, especially the **new brands, remained unknown and invisible to the buyers**, taking into account that shelving and placement at the point of sale is, under the regulatory framework in effect in the Republic of Croatia, which almost totally bans advertising and display of tobacco products, the only method to approach its customers and to profitably sell tobacco products. In addition, the above mentioned Guide provided for the **limited duration of the promotion of cigarettes** form the portfolio of the competing undertakings. The rent and marketing agreements had been concluded for a period of five years, where TDR had the priority rights to extend of the agreements after expiry, under most favourable conditions in the market. In return, TDR ensured compensation for the provision of marketing services expressed in percentage of the value of sales in the relevant period.

In conclusion, the described practices of TDR involved **abuse of dominance through application of dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage and making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts.**

The CCA made a claim to the minor offence court in Rovinj to initiate the proceeding and impose sanctions for abuse of a dominant position against Adris grupa and TDR and their responsible persons. The CCA was communicated the claim made by Adris grupa and TDR on 15 September 2011 and sent the reply to the statement of claim to the Administrative Court of the Republic of Croatia within the prescribed deadline. Administrative dispute is pending.

### **3.3. Dubrovnik Airline d.o.o., Dubrovnik v INA-Industrija nafte d.d., Zagreb-established abuse of a dominant position**

On 19 May 2011 the CCA took a decision which completed the proceeding initiated against the undertaking INA -Industrija nafte Zagreb d.d., on the basis of which it was established that INA, as a sole wholesaler of jet fuel JET A-1 in the Republic of Croatia and a sole supplier of jet fuel JET A-1 for aircrafts in the airports in the Republic of Croatia in the period **from 21 April 2008 until 19 May 2011 abused its dominant position in the relevant market of wholesale trade of jet fuel JET A-1 in the Republic of Croatia and the supply of jet fuel JET A-1 in the airports in the Republic of Croatia** by inconsistent and non-transparent pricing arrangements of jet fuel JET A-1, i.e. through application of dissimilar criteria in setting the prices of the aviation fuel for Dubrovnik Airline d.o.o. and other domestic buyers on one hand, and the foreign buyers on the other hand, thereby placing the former at a **competitive disadvantage in relation to foreign buyers by applying dissimilar conditions to equivalent transactions**, within the meaning of Article 16 paragraph 2 item 3 of the Competition Act.<sup>26</sup>

The CCA analysed all sales agreements concluded between INA and its buyers in the period from 2008 to 2010 on the basis of which INA **categorized its buyers depending on their registered seat**, thereby making a distinction between the buyers with their seat in the Republic of Croatia (domestic buyers) and the buyers whose registered office was outside the territory of the Republic of Croatia (foreign buyers). Namely, in the case of the domestic buyers the **price in basic agreements** was defined in line with the official pricelist of INA which is delivered to its buyers on a fortnight basis and which contained several structural categories of the selling price, while in the case of the foreign buyers the price was defined as the amount of Platt's quotation (indicator of the price trend for petroleum products globally used when calculating the domestic price of the petroleum products in line with the Act on Petroleum and Petroleum Products) increased by the premium of the single airport. Given that only the category of net selling price is transparent to the domestic buyers and they do not have the insight into the basis for the selling price, the Platt's quotation, the method for setting the selling price for that category of the buyers was undoubtedly less transparent.

The CCA established that the **application of different pricing methods in respect of the domestic buyers on one hand and the foreign buyers on the other hand,**

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<sup>26</sup> UP/I 030-02/2009-01/035 of 19 May 2011, OG 79/2011.

in the period from 16 June to 16 November 2008 at the Dubrovnik airport resulted in different selling prices of jet fuel JET A-1 for each category of buyers.

Furthermore, the CCA determined that in the case of the undertaking Croatia Airlines d.d. there were additional deviations from the selling price that INA applied to the domestic buyers. Precisely, Croatia Airlines d.d. was calculated a different selling price in comparison with both domestic and foreign buyers. However, given the share of Croatia Airlines d.d. in INA's sales of jet fuel JET A-1 for domestic buyers of more than 70 %, and the share in total sales to all buyers of over 60 %, and the fact that this special discount was exclusively related to the volume of sales to the undertaking concerned and therefore considered justified, the CCA did not find in its decision that this was the application of dissimilar conditions to equivalent transactions within the meaning of Article 16 paragraph 2 item 3 of the Competition Act.

On the other hand, the CCA found no justification for the application of the different criteria when calculating the price of jet fuel JET A-1 for the domestic buyers related to undertaking Croatia Airlines d.d. and the foreign buyers, the behaviour that resulted in placing the undertaking Dubrovnik Airline d.o.o., i.e. the domestic buyers, at a competitive disadvantage in relation to competition, i.e. foreign buyers, pursuant to Article 16 paragraph 2 item 3 of the Competition Act.

**In its decision the CCA ordered INA to change the restrictive provisions relating to the jet fuel price from the sales agreements with domestic buyers of jet fuel JET A-1 in a period of three months and to set the price in question in a clear, transparent and non-discriminatory way. Consequently, in June 2011, INA submitted to the CCA new agreements concluded with its domestic buyers in which the jet fuel price was specified in a clear, transparent and non-discriminatory manner. By doing so, INA fully complied with the decision of the CCA.**

INA brought action before the Administrative Court of the Republic of Croatia against the said decision of the CCA. The High Administrative Court of the Republic of Croatia<sup>27</sup> rejected the claim and upheld the decision of the CCA in its entirety<sup>28</sup>.

#### **3.4. KINO ZADAR FILM d.d., Zadar v BLITZ d.o.o., Zagreb and DUPLICATO MEDIA d.o.o., Zagreb – abuse of dominance not established**

Unlike the previous examples where abuse of a dominant position was established by the CCA, in the case KINO ZADAR FILM d.d., Zadar v BLITZ d.o.o., Zagreb and DUPLICATO MEDIA d.o.o., Zagreb<sup>29</sup> the CCA rejected the claim of the undertaking concerned and considered it legally unfounded.

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<sup>27</sup> In accordance with the Act on the Amendments to the Courts Act (OG 130/2011) as of 1 January 2012 the court review in the administrative dispute proceeding is ensured by the territorially competent administrative courts besides the administrative disputes which under the Administrative Disputes Act (OG 20/2011) fall under the competence of the High Administrative Court of the Republic of Croatia. The Administrative Court of the Republic of Croatia as of 1 January 2012 continues to work as the High Administrative Court of the Republic of Croatia.

<sup>28</sup> The ruling of the High Administrative Court of the Republic of Croatia, Us-7153/2011-8 of 9 February 2012, OG 35/2012.

<sup>29</sup> UP/I 030-02/2008-01/80 of 24 February 2011, OG 88/2011.

The CCA defined the relevant product market as the film distribution market, whereas the relevant geographic market was the territory of the Republic of Croatia. However, the CCA found that the **cinema release market** was closely connected to the relevant market concerned and it carried the analysis of the said neighbouring market as well, both in the territory of the Republic of Croatia and in the town of Zadar. The data collected indicated that **Blitz holds a dominant position in the relevant film distribution market in the territory of the Republic of Croatia.**

Yet, **no abuse of dominance by Blitz and Duplicato was established in the relevant film distribution market** by application of dissimilar conditions to equivalent transactions with other trading partners which would put Kino Zadar in an unfavourable position relative to its competitor Blitz-Cinestar Adria in the neighbouring cinema release market.

The claim of Kino Zadar Film was made at the moment when this undertaking, holding a dominant position, felt threatened by the entry of a big competitor linked with the leading film distributor in Croatia.

It must be noted that in Croatia links between film distributors and theatre operators are not limited by law. However, adverse effects of such linkages, such as decrease in the number of independent theatre operators who cannot easily survive next to big operators who are vertically connected to film distributors are evident. This made the claim of Kino Zadar Film justified.

In the course of the proceeding the CCA analysed all relevant facts and supporting evidence, and established that the claim of Kino Zadar Film related to direct refusal to supply (by Blitz and its connected undertaking Duplicato) was unfounded. Namely, in the period from the opening of the "Cinestar" theatre in Zadar until August 2010, Kino Zadar Film showed 60 % - 70 % of the titles distributed by Blitz and Duplicato, 30 % - 40 % thereof on the national release date.

Out of top 40 movies in 2009 and 2010 Kino Zadar Film released 80% - 90 % movies distributed by Blitz and Duplicato, out of which 60% - 70% of them on the national release date. This leads to the conclusion that the most successful movies distributed by Blitz and Duplicato were, in general, available to Kino Zadar Film on the earliest possible date, that of the national release.

With respect to particular movies which Blitz refused to deliver to Kino Zadar Film on the national release date, the CCA established that Blitz applied exclusively the economic-based objective criteria in compliance with the licensing provisions contained in the agreements with UIP and Warner Bros.

CCA also analysed the claims of Kino Zadar Film related to minimal guarantee, untimely delivery of written approvals, involvement of Blitz in scheduling of its weekly programme and delivery of promotional materials containing a logo of the competing undertaking "Cinestar", and finally concluded that the behaviour of Blitz and Duplicato did not contain elements of indirect refusal to supply. In addition, it was established that the agreement on film release concluded between Blitz and Kino Zadar Film did not contain unfair trading conditions.

*In spite of the fact that certain irregularities in the behaviour of Blitz and Duplicato had been established it was eventually concluded that they did not have as their effect distortion of competition.*

*However, and regardless of its finding, the CCA took the opportunity to warn Blitz as a dominant undertaking in the movie distribution market in Croatia that it had a special responsibility to **treat all theatre operators equally**. Blitz' behaviour shall therefore, due to the highly concentrated film distribution and public release market in the territory of the Republic of Croatia and in respect of its capital and personal ties with Blitz-Cinestar and its controlling influence over Duplicato, be monitored in future in line with competition rules in effect.*

### **3.8. OT-Optima Telekom d.d., Zagreb v HT-Hrvatske telekomunikacije d.d., Zagreb – complaint dismissed<sup>30</sup>**

*In an ex officio proceeding carried out on the basis of the initiative of the undertaking OT-Optima Telekom d.d. against the undertaking HT-Hrvatske telekomunikacije d.d. the CCA carried out the preliminary market investigation concerning the alleged abuse of a dominant position of the latter based on its **sales promotion activities** in the market of broadband Internet access in the Republic of Croatia for residential customers and the market of provision of transmission services to private TV channels to end users in the Republic of Croatia. The object of this investigation was to detect possible anticompetitive effects of this behaviour of the undertaking holding a dominant position in the market, which may harm the consumers, regardless of the fact if this is done by price increase, drop in quality or restriction of choice.*

*During the preliminary investigation in the **market of broadband Internet access in the Republic of Croatia for residential customers and the market of provision of transmission services to private TV channels to end users in the Republic of Croatia, in the relevant period from 2007 - 2010**, the CCA concluded that there were not sufficient indications that in this case the implementation of sales promotion activities by the undertaking HT lead to **the foreclosure of the market or exclusionary effects** on other competitors within the meaning of the Competition Act. Concretely, the preliminary investigation carried out by the CCA in the relevant markets in the periods concerned indicated that **no competitor left the market, the incumbents recorded a growing users' base**, whereas **several new entrants** successfully entered the market. What is more, **all the operators, including the complainant itself, recorded a rising trend in the number of broadband internet users** in the relevant period from 2007 – 2010. On the other hand, in the referred period **HT showed a falling market share**.*

*Given the stated reasons, on 15 December 2011 the CCA decided that there had been no grounds to start the proceeding against the undertaking HT on the basis of its promotion activities where the quantitative analysis showed that these activities did not result in market foreclosure or exclusionary abuse.*

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<sup>30</sup> UP/I 030-02/2009-01/034 of 15 December 2011, available on the website of the CCA.

*The CCA has no knowledge whether OT-Optima Telekom d.d. took actions against the decision of the CCA.*

In 2011 preliminary investigation of the market relating to alleged abuse of a dominant position was carried out in two more telecom cases. These were: *CCA v HT d.d., Zagreb*<sup>31</sup> and *CCA v VIPnet d.o.o., Zagreb*<sup>32</sup>. In both cases the initiatives were dismissed.

#### 4. Merger control

The CCA assesses only the business transactions which produce effects on the territory of the Republic of Croatia and which, under the competition law, constitute concentrations between undertakings. In other words, subject to assessment by the CCA within the meaning of the Competition Act are concentrations of **significant economic power** which is reflected through total turnover of the undertakings parties to the concentration, regardless both of the market share held by the participants to the concentration before the implementation of the concentration in question and the market share after the implementation. **The sole objective and measurable criterion for obligatory notification of a concentration is the total annual turnover of the undertakings participants to the concentration.** This ensures legal certainty for the undertakings in line with the Competition Act.

Thus, in order to assess the compatibility of concentration, the parties to the concentration are obliged to notify any proposed concentration to the Agency if the following criteria are cumulatively met: (i) the total turnover (consolidated aggregate annual turnover) of all the undertakings - parties to the concentration, realized by the sale of goods and/or services in the global market, amounts to at least HRK 1 billion in the financial year preceding the concentration and in compliance with financial statements, where at least one of the parties to the concentration has its seat and/or subsidiary in the Republic of Croatia, and, (ii) the total turnover of each of at least two parties to the concentration realized in the national market of the Republic of Croatia, amounts to at least HRK 100,000,000 in the financial year preceding the concentration and in compliance with financial statements. Non-compliance with this notification obligation may be sanctioned by the CCA i.e. the CCA may impose fines on undertakings who fail to notify the concentration in line with the provisions of the Competition Act.

The criteria for assessment of a particular concentration are decided by the CCA taking into account the effects of the concentration concerned in the relevant market/markets. These criteria involve the **structure of the relevant market, actual and potential future competitors in the relevant market, structure of supply and demand in the market and the observable trends, prices, risks, other economic and legal barriers to entry to or exist from the market.** In addition, the market position, market shares and economic and financial power of the undertakings in the relevant market, the level of competitiveness of the parties to the concentration,

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<sup>31</sup> UP/I 030-02/10-01/007 of 9 February 2012, available on the website of the CCA.

<sup>32</sup> UP/I 030-02/10-01/012 of 9 February 2012, available on the website of the CCA.

possible changes in their operation and the alternative sources of supply resulting from the implementation of the concentration all also taken into account. Other possible effects of the concentration in respect of other undertakings and, particularly, consumers, such as shorter distribution channels, lower transport or distribution costs, specialization in the production, innovations, lower prices of goods or services and other efficiencies directly deriving from the implementation of the concentration and creating benefits for the consumers are also constituent parts of the assessment of the compatibility of the concentration carried out by the CCA.

Until the accession of the Republic of Croatia to the EU the assessment of compatibility of concentrations in the banking sector does not fall under the scope of the CCA. Merger control, until the EU accession, is carried out by the Croatian National Bank (HNB). This is why the number of potential notifications in the area of banking services has been additionally decreased.

With respect to concentrations in the media sector, separate laws apply<sup>33</sup>. Media publishers are subject to obligatory notification of a proposed concentration regardless of the turnover of the parties to the concentration, whereas subject to the assessment of the CCA are concentrations within the meaning of competition rules.

In 2011 the CCA **assessed 10 concentrations as compatible** in the relevant market. Nine concentrations thereof were cleared in the first phase, whereas one concentration was assessed as compatible in the second phase. There were no prohibited concentrations.

Following the requests of the HNB **three opinions on compatibility of concentrations in the financial (banking) sector** were issued.<sup>34</sup>

Out of the total of ten concentrations the compatibility of which was assessed by the CCA in 2011, 8 concentrations related to acquisition of control, while 2 concentrations were joint ventures. In all 3 cases the business transactions involved acquisition of controlling interest.

Two notifications of proposed concentrations have been dismissed due to lack of legal grounds for the initiation of the assessment proceedings, in the cases *Konzum d.d., Zagreb / Kerum d.o.o., Split*, and *Rafinerija nafte a.d. Brod, Brod, Bosnia and Herzegovina / Nestro petrol a.d. Banja Luka, Banja Luka, Bosnia and Herzegovina / Nestro Sava d.o.o., Zadar*), whereas in one case (*Kanal RI d.o.o.*) the concentration within the meaning of competition rules did not exist and the case was transferred to the competent authority – the Agency for Electronic Media (AEM).

More than 40 undertakings – parties to the concentrations were involved in the cases involving assessment of compatibility of proposed concentrations.

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<sup>33</sup> Media Act, OG 59/2004 and 84/2011, Electronic Media Act, OG 153/2009 and 84/2011.

<sup>34</sup> As previously noted, until the EU accession the assessment of compatibility of concentrations in the banking sector falls under the scope of the Croatian National Bank within the meaning of the Act on Credit Institutions, OG 117/2008, 74/2009 and 153/2009.

In the last four years there is a significantly negative trend in the number of notified and assessed concentrations. One of the reasons why it is so is the fact that the CCA since December 2009 does not assess the changes in ownership in the media sector ("media concentrations"). Media concentrations fall since the stated date under the competence of the Agency for Electronic Media in charge of protection of pluralism and diversity of electronic media, pursuant to the above mentioned Electronic Media Act.

In conclusion, and more significant, the negative effects of the global crisis are also evident in the Croatian market. Mergers and acquisitions are affected by financial uncertainty which is reflected in the lessening of the interest, particularly on the part of foreign investors, also for acquisitions in Croatia.

Table 2 Falling trend in the number of notified concentrations

	2008	2009	2010	2011
1. Total of compatible concentrations cleared in Phase I	27	14	12	9
- thereof in the media sector	15	6	3	2
2. Total of compatible concentrations in Phase II	-	1	-	1
- thereof in the media sector	-	-	-	1
3. Total of conditionally compatible concentrations in Phase II	1	1	-	-
<b>Total:</b>	<b>28</b>	<b>16</b>	<b>12</b>	<b>10</b>

Source: CCA

Despite of the negative trends, it is expected that the interest of foreign investors will rise by the date of the Croatian accession to the EU<sup>35</sup>, particularly in the sector of tourism, sales and food industry.

As mentioned in the introduction to this report, while the number of concentrations in the EU decreased in 2009 and 2010, which was the result of the negative trends of the financial and economic downfall in the time of the global crisis, in 2011 the EU records a significant rise in concentrations, particularly relating to the complex transactions involving in-depth market analysis in eight cases and adoption of decisions on conditionally compatible concentrations.

Below are summaries of two examples of the assessment of compatibility of concentrations from the work of the CCA in the area of merger control in 2011.

#### **4.1. Mexival Anstalt, Liechtenstein / Group Jadranski luksuzni hoteli d.o.o., Rijeka and Jadranski luksuzni hoteli d.o.o., Dubrovnik**

*In the assessment proceeding carried out by the CCA in the case Mexival Anstalt, Liechtenstein / Group Jadranski luksuzni hoteli d.o.o., Rijeka and Jadranski luksuzni hoteli d.o.o., Dubrovnik<sup>36</sup> the CCA cleared in the first phase the concentration by which Mexival Anstalt from Liechtenstein (Lukšić Group) acquired the controlling interest over Group Jadranski luksuzni hoteli (JLH) from Rijeka given it does not create or strengthen a dominant position of the undertakings concerned, **neither will***

<sup>35</sup> The date of the Croatian EU accession is 1 July 2013, provided the Accession Treaty is ratified by all MS.

<sup>36</sup> Decision on compatibility of concentration in Phase I: UP/I 030-02/11-02/004 of 31 August 2011.

**it significantly impede competition in the relevant hotel accommodation services market in spite of the reduction in the number of competitors in the relevant market.**

The relevant markets defined by the CCA were that of the hotel accommodation services in three, four and five stars hotels, whereas the relevant geographic market was defined in the territory of the Town of Dubrovnik and Dubrovnik Riviera (Croatian-Montenegro border on the east, up to the road intersection on the Pelješac Peninsula from the direction of Dubrovnik on the west including the Elafit Islands-Lopud, Koločep, Šipan, Jakljan and Olib).

The guiding criteria for the calculation of market shares were the capacity data on availability (ratio between the number of beds of a particular hotel and the total number of beds in the relevant market) and the data on overnight stays in a hotel concerned compared with the total overnights in the relevant market).

The market analysis and the analysis of market shares proved that the implementation of the concentration concerned will have no anticompetitive effects nether in the territory of Dubrovnik or in the neighbouring area of Dubrovnik Riviera. **The market shares held by Lukšić Group after the implementation of the concentration are between 20 % and 30 %, the demand for hotel accommodation in the markets concerned is higher than the supply and there are no barriers to entry.** On the contrary, there have been projects that have been realized in the past three years or projects under way which strengthen competition in this market.

In the assessment of this concentration the CCA applied also the practice of the European Commission in this area, particularly when defining the relevant market in similar cases. Namely, the European Commission for the segmentation of this market uses either the price/level of service based on categorisation (hotel stars awarded to a particular hotel), or the hotel ownership criterion (hotel chains on one hand, independent hotels on the other hand). Given the structure of the market concerned, in other words, given the statistical data that show that the occupancy rate of the Croatian hotels does not depend on the fact whether a particular hotel belongs to a hotel chain or not, the CCA found that it was more appropriate to use in this particular case the categorisation criterion taking into account the **sustainability of the hotels of neighbouring categories**. Given that the participants to this concentration manage hotels in the relevant market of the hotel category of three and five stars hotels and no four stars hotels, it was not necessary to define the relevant market as the hotel market covering all categories (three, four and five stars hotels) but it was appropriate for the purpose of this particular analysis to divide the hotels in two groups: that of three stars hotels, and that of four and five stars hotels.

#### **4.2. VIPnet d.o.o., Zagreb / B.net Hrvatska d.o.o., Zagreb**

The complete notification of the proposed concentration between the undertakings VIPnet d.o.o., Zagreb and B.net Hrvatska d.o.o., Zagreb<sup>37</sup> was received by the CCA in July 2011. In its assessment of compatibility of this concentration the CCA concluded that the concentration would be created by the acquisition of **controlling interest by the undertaking VIPnet, d.o.o. over the undertaking B.net Hrvatska d.o.o.** by obtaining a hundred per cent of the share capital in the latter within the meaning of Article 15 paragraph 1 item 2 of the Competition Act.

Relevant markets were as follows: public available telephone service retail market at a fixed location, market of access to the broadband internet retail market; TV program transmission market for the end-users ("cable television"); wholesale market of leased cables; Croatia.

Taking into account that VIPnet primarily provides public telecommunications in the mobile telecommunications networks and the broadband internet access market in mobile network, while B.net is primarily engaged in the transmission of television programmes to end users (cable TV), broadband internet access retail at a fixed location, public voice telephony at a fixed location and leased lines wholesale, the CCA established that the concentration in question would produce effects primarily in the following relevant markets in the territory of the Republic of Croatia:

- public telephony retail provided at a fixed location;
- broadband internet access retail provided at a fixed location;
- wholesale of leased lines, and
- television programmes transmission for the end-users.

In the relevant markets where there is a horizontal overlap in the activities of the merging parties the market share of Vipnet, after the implementation of the concentration concerned, in the retail market in public voice telephony provided at a fixed location would increase by [0-5] per cent and would amount to [0-5] per cent whereas in the retail market in broadband internet access provided at a fixed location it would rise by [5-10] per cent and amount to [5-10] per cent.

Before the implementation of the proposed concentration VIPnet was not active in the wholesale leased lines market, or in the television programmes transmission market to end-users in the territory of the Republic of Croatia. After the implementation of the concentration concerned this undertaking will assume the market shares of B.net in these markets. Therefore, the market share of VIPnet in the wholesale leased lines market will amount to [0-5] per cent and [20-30] per cent in the market in television programmes transmission to end-users.

The CCA also took into account the possibility of **unilateral and coordinated effects of the concentration** in question. It found that there are competitive constraints

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<sup>37</sup> Notice on compatibility of concentration in Phase I: UP/I 030-02/11-02/005 of 28 July 2011.

coming from other market players in the relevant markets, particularly the undertaking **Hrvatski Telekom d.d.** whose combined market share with Iskon d.d. is [50-60] per cent in the market in television programmes transmission to end-users, up to [70-80] per cent in the retail market in broadband internet access provided at fixed location. Given a great number of competitors in the market or a high degree of Interchangeability (sustainability) between the products/services provided by different undertakings, it may be reasonably assumed that VIPnet would not be able to unilaterally raise the prices of its services on the account of the fact that it would mean that the consumers would easily switch operators. At the same time, a large number of competing undertakings of different market power, a large portfolio of products/services of the market players and vivid competition between the undertakings due to the price sensitivity of the consumers which acts as a competitive constraint, it is not likely that the implementation of the concentration would lead to collusive behaviour of competitors in the market, particularly as to fixing prices.

Having obtained a positive comments from the Croatian Post and Electronic Communications Agency (HAKOM) which was based on Article 68 of the Electronic Communications Act (OG 73/08), the CCA concluded on the basis of the notification and the relevant market data gathered from the parties to the concentration in the course of the proceeding that the proposed concentration would not have significant effects on competition, since it does not create or strengthen a dominant position of the parties to the concentration.

*The clearance decision was issued in the first phase.*

In the area of media and electronic media the CCA assessed in 2011 a total of three concentrations.

## **5. Competition advocacy**

Competition advocacy and strengthening of competition culture involves **raising awareness about the effects of competition on the growth of competitiveness of the national economy**, including informing about the **benefits that competition brings to consumers**. At the same time, competition culture implies giving a contribution to the creation and adjustments of the legislative framework that will encourage **competitive environment** aimed at the development of entrepreneurship and therefore serving the public interest.

Concretely, pursuant to Article 25 of the Competition Act the **CCA issues opinions on laws** and other legal acts which may have effects on competition<sup>38</sup>. The CCA also conducts **market studies** and launches initiatives to lower the market barriers, both administrative, or those caused by market participants due to their restrictive practices on the market. The objective here is to contribute to the understanding of competition issues in all structures of the executive, legislative and judicial authorities, to participate in the necessary amendments of laws and inform the public administration, but also the general public, about the competition concerns. Raising awareness among businessmen and particularly among consumers is a very important task for the CCA, inseparable from the administrative tasks described in the first part of this report.

It is important to stress here that the central role here bears prevention, in other words avoiding the adoption of legislative acts on the basis of which competition is distorted in the first place, intentionally or unintentionally, thereby harming (other) undertakings, consumers and the Croatian economy in general. On the other hand, legislation that is subject to such impact assessment lessens the need of the CCA to act *ex post*, when the infringement has already been committed.

Decisions and opinions of the CCA are regularly published on its website [www.aztn.hr](http://www.aztn.hr)

In 2011 the CCA issued **33 expert opinions** pursuant to its competence under the above mentioned Article 25 of the Competition Act, it replied to 107 queries, whereas 22 replies have been communicated via email relating to different competition issues.

The expert opinions in the report period mostly related to the **telecommunications sector, utility services, humanitarian demining, fire protection, public procurement, postal services (hybrid mail), management of forests and land, use of seaports of special purpose** etc.

### 5.1. Opinions on laws and other legal act

**Out of 140 opinions**, statements and replies to public authorities and undertakings in 2011 the following deserve mentioning: **the Act on Amendments to the Act on Humanitarian Demining, the Act on Services, the Act on Electronic Communications, the Act on the Amendments to the Act on On-line Trade, and the Act on Fire Protection**. Among others, the CCA also supplied opinions on the

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<sup>38</sup> Article 25 of the Competition Act states: „ (1) The Agency issues expert opinions at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities in compliance with separate rules and local and regional self-government units, regarding the compliance with this Act of draft proposals for laws and other legislation, as well as other related issues raising competition concerns. (2) The central administration authorities or other state authorities may be requested to communicate to the Agency draft proposals for laws and other legislation for the purpose of assessment and issuing expert opinions on their compliance with this Act, if it finds that they may raise competition concerns. (3) The Agency shall issue expert opinions assessing the compliance of the existing laws and other legal acts with this Act, opinions promoting competition culture and enhancing advocacy and raising awareness of competition law and policy and give opinions and statements relating to the development of the comparative practice and case law in the area of competition law and policy to the authorities referred to under paragraph (1) hereof. “

**proposed draft of the Criminal Act, the Act on the Amendments to the Act on Electronic Media, the Act on the Amendments to the Trade Act.**

What follows are summaries of two CCA decisions from the above list.

### ***Opinion on the application of the Public Procurement Act***

*It is worth mentioning here that the most queries of the undertakings in the report period included application of the **Public Procurement Act**<sup>39</sup>, which falls under the competence of the Directorate for the System of Public Procurement within the Ministry of the Economy, Labour and Entrepreneurship and the State Commission for Public Procurement Proceedings Control. However, the CCA was obliged to give its opinion in particular cases, taking into consideration the application of competition rules in public procurement proceedings.*

*In those cases the Agency pointed out the **responsibility of the contracting authority** to apply to all bidders in the public procurement procedure, regardless of the purpose, competition principles such as obligation of **non-discrimination, equal treatment and transparency**.*

***Relating to the bidding documentation it is the responsibility of the contracting authority to ensure that it does not contain discriminatory provisions which would place certain undertakings in a favourable position.** Concretely, the CCA view is that in drafting requests for evidence on technical and professional capacity special account must be taken so that it enables access to the bidding to as many undertakings as possible, at the same time keeping in mind the subject of the procurement process and the estimated value of goods or services in question.*

*In this sense the CCA also gave its **opinion in respect of joint bidding in public procurement**<sup>40</sup>:*

*Within the meaning of competition rules joint bidding, established with the view to submitting a joint bid in the public procurement proceedings, in principle does not contravene competition rules. However, it must be noted that any agreement between the participants in the joint bidding is prohibited, where such agreement may have as its object or effect distortion of competition. In other words, joint bidding, from the point of competition rules, may not be founded on a restrictive – prohibited agreement.*

*Based on the insights of the CCA that it gained concerning the EU practice and policy and the data available from other national competition authorities (Poland, Sweden, Hungary, Germany, France, Bulgaria etc.) the CCA reached the conclusion that **joint bidding indisputably and legally exists as a form of associated acting of undertakings in the public procurement procedure**. What is more, this practice is encouraged in the European Union, particularly when independent suppliers who take part in joint bidding are small and medium sized undertakings, with the view to*

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<sup>39</sup> OG 110/07 and 125/08.

<sup>40</sup> Opinion of 27 September 2011, available on the website of the CCA.

*promoting their businesses, especially in the cases where such practices generate efficiencies through synergies and information sharing and where these bidders associate financial and other resources and in such a way remove barriers to entry the market on which they as single bidders would not be able to act successfully. This is also encouraged by the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts<sup>41</sup> which ensures to SMEs access to public procurement contracts and points out the necessity to facilitate access to the public procurement market for SMEs in order to fully take the advantage of their potential, ensure genuine competition and putting emphasis on value for money rather than on price.*

*However, and this has been witnessed by the national authorities included in the CCA analysis, the experience shows that joint bidding in public procurement procedures may turn into prohibited practices in the sense of competition rules in case where instead of the said positive effects it results in warning signs such as **less competitors in the market or small number of ever occurring (same) suppliers, unexpected withdrawal from bidding of regular suppliers, geographic allocation of winning tenders**, or even worse, where such bidding consortia encourage bid rigging in public procurement, in other words, **bid-rigging agreements** negotiated in secret. Such negative effects on competition in public procurement, resulting from collusive agreements between the undertakings members of a bidding consortium, directly raise barriers to entry and they are known to regulative frameworks and practices of the national authorities that submitted their concerns to the CCA.*

*In conclusion, within the meaning of competition rules, where **joint bidding** occurs in the public procurement procedure, such joint behaviour **may be justified only in cases where a single undertaking, a member of such a bidding consortium, is not able to meet the performance requirements** or the functional requirements laid down by the contracting authorities and supply the bidding goods or services on its own and where the establishment of joint bidding does not result in unjustified foreclosure in the relevant market.*

*The key to the problem is the **responsibility of the contracting authority**. In a particular public procurement process it should in the first place take into account the nature of a particular market which may be prone to collusive practices due to the special nature of the industry or products and to assess, in every particular case, if it would be justified for pooling of bidders. In addition, good planning and thorough preparation of the public procurement procedure plays an important role in detecting the signs which may indicate collusive behaviour. The OECD Guidelines for fighting bid rigging in public procurement designs a checklist for designing the procurement process to reduce risks of bid rigging and takes into account, for example, the size of the contract, access to the relevant information and quality of these information, proportionality of financial requirement, value for money principle, the time given to the bidders to work out the bids etc.*

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<sup>41</sup> Commission of the European Communities, Brussels, 25.6.2008 SEC (2008) 2193.

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### **Opinion on the existing Forest Act**

Taking due account of the interest of the Republic of Croatia in **sustainable management of forests an land** on one hand, and of the fact that undertakings compete in the market in forest management and the market in the provision of services relating to forestry works on the other hand, and after the CCA dismissed the initiative of the Croatian Association of Employers – Cro Industry – Association of Employers in Forestry, Hunting and Ancillary Activities, relating to establishment of abuse of a dominant position of the undertaking Hrvatske šume d.o.o. in the case CCA against Hrvatske šume d.o.o.<sup>42</sup> on the basis of the fact that the Forest Act defines the competences and duties of the undertaking Hrvatske šume d.o.o., the CCA issued its opinion on the Forest Act which together with its bylaws defines the conditions under which forest holders manage forests and land and provides recommendations for improvements in this sector and in the specified relevant markets<sup>43</sup>.

The *ex post* assessment of the Forestry Act which evaluated its compliance with competition rules indicated several competition concerns.

Namely, the CCA found that the **revocation of the Forestry Consultancy Service** (once in charge of forest management) and subsequent establishment of the limited liability company Hrvatske šume d.o.o. (Croatian Forests), which is the legal successor of the former, may raise competition concerns regarding the fact that **Croatian Forests are at the same time the regulator in the forestry sector and the competitor in the market** involving different works necessary for the efficient implementation of the national and local forestry policy. In other words, the “**regulator rules**” situation does not comply with the principle of fair competition in the market.

Regardless of the legal form of the service, the CCA held the view that as a public authority to which special powers have been assigned and, at the same time, a direct competitor in the forest management market, Croatian Forests does not act as a **genuinely independent authority exercising its powers on a market-neutral basis** (Council Regulation (EC) 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) of 20 September 2005).

Taking into account the importance of the forestry resources and the operations which must be carried out with the objective of maintenance and protection and improvement of the environment, the landscape and its features, natural resources, forests should be given specific attention. In accordance with the opinion of the CCA communicated to the competent ministry, it is necessary that these activities are managed by a genuinely independent authority with **public remit**, respecting the **principles of transparency, proportionality and competition rules**. It is the

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<sup>42</sup> UP/I 030-02/11-01/012 of 7 April 2011 available on the website of the CCA.

<sup>43</sup> Opinion of the CCA 031-02/2010-01/171 of 29 December 2011 available on the website of the CCA.

*opinion of the CCA that it is not necessary for this independent authority to be a separate legal person. This independency may be achieved within the existing institutional framework, but taking into account that such an authority may not at the same time be a regulator and a competitor in performing the activities than has been assigned to it in the relevant market.*

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### **Opinions in the electronic communications sector**

Within the cooperation between the CCA and the Croatian Postal Services and Electronic Communications Agency (HAKOM) in respect of competition issues in this sector, in 2011 the CCA issued **12 opinions** regarding the requests of HAKOM containing its analyses of the relevant markets subject to *ex ante* regulation.

Namely, in 2010 and 2011 HAKOM carried out market analyses, in line with the Electronic Communications Act<sup>44</sup> with the view to assessing competition effectiveness in the markets applying the *Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation, Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services* and the relevant opinions and common positions adopted by the Body of European Regulators and for Electronic Communications (BEREC)<sup>45</sup>.

Concretely, the EU regulatory framework has established a two-step approach for regulating the telecommunications sector. In the first step the so called **Three-Criteria-Test (TCT)** is applied with the aim to identify those markets which should be subject to regulatory intervention. The three criteria are: the market shows high barriers to entry, market structures do not tend towards effective competition and application of competition law alone does not adequately address the market failure. In other words, the existence of one or more operators with significant market power means imposing regulatory obligations where there is no effective competition in the relevant market concerned.

HAKOM carried out the analyses of the following markets:

- markets for access to the public network at a fixed location for private and business users, and
- market of wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity.

*In respect of the **market of wholesale terminating segments of leased lines** irrespective of the technology used to provide leased or dedicated capacity the CCA pointed out in its opinion that it had, in the course of the proceeding at stake, analysed the leased lines market in the *B.net Hrvatska d.o.o., Zagreb v HT d.d., Zagreb*<sup>46</sup>, where it emphasised the importance of Ethernet technology in the leased*

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<sup>44</sup> OG 73/2008 and 90/2011.

<sup>45</sup> All documents are available on Europe's Information Society Thematic Portal.

<sup>46</sup> UP/I 030-02/2008-01/045 of 31 August 2010, OG 115/2010.

lines market<sup>47</sup>. In this sense, the results of the HAKOM analysis fully complied with the conclusions reached by the CCA.

Except for the markets defined in the Recommendation of the European Commission, the EU national regulatory authorities in EU members may define particular markets subject to *ex ante* regulation, depending on the particular circumstances in each particular Member State provided that these markets meet the TCT. HAKOM carried out the TCT and asked for the opinion of the CCA in the following markets which do not fall under the relevant Recommendation of the European Commission on relevant markets susceptible to *ex ante* regulation:

- access to publicly available telephone service on local and/or national level provided at a fixed location for residential customers;
- access to publicly available telephone service on local and/or national level provided at a fixed location for non-residential customers;
- access to publicly available telephone service on international level provided at a fixed location for residential customers;
- access to publicly available telephone service on international level provided at a fixed location for non-residential customers;
- wholesale trunk segments of leased lines, and
- retail broadband access market.

In the analysis of the particular markets and relating to the question if the application of the relevant competition rules alone enables adequate elimination of the market failure, the CCA indicated the issue in respect of specific data on the **costs for the provision of services incurred by the operators in the market**.

*Namely, in its opinions the CCA stated that within the meaning competition rules when an operator with significant power is defined it should be noted that the undertaking Hrvatski Telekom d.d., Zagreb, (HT) and its connected undertaking Iskon Internet d.d., Zagreb, must be regarded as a **single economic unit**. At the same time the CCA pointed out that HAKOM should in setting and enforcement of the regulatory obligations take into account the principles of **objectivity and proportionality in order to ensure a clear framework which would promote effective competition and equal position of all operators in the relevant market as well as take into account the interests and benefits for final consumers based on the technological development of the relevant market and conditions for the use of services**.*

*In the analysis of the **wholesale trunk segments of leased lines** the CCA held the view that the conclusions of HAKOM on the division of the market on competitive and non-competitive routes resulted from the specific knowledge of HAKOM as a sector specific regulator, stating at the same time that it was not clear from the proposed HAKOM decision how was HAKOM going to define routes which are considered competitive and non-competitive. This was why the CCA, in this particular case, could not look into the particular matter relating to the evaluation if there was effective competition in the markets concerned. Therefore the CCA proposed that HAKOM when defining the routes which it considers competitive and non-competitive besides the estimation of at least one operator which is not a connected undertaking*

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<sup>47</sup> "... In the leased lines market analysis the CCA notes the importance of this market for all downstream retail market that as their input use the leased lines services." Particularly the use of Ethernet in this moment is crucial for effective competition in related retail markets."

*of the operator with significant market power and which is present at the originating and terminating point of the route, and besides the estimation of the presence of overcapacity of the latter, should take into account if it is able to meet the requirements of the end users, and particularly, if the price for the provision of the service of the latter operator, who is not the operator with significant market power and/or its connected undertaking, may indicate that we are dealing with a **substitute** to the service provided by the operator with significant market power and/or its connected undertaking. In other words, HT as the operator with significant market power may, but need not dispose over the data and knowledge on which routes there are competitive undertakings and therefore assess on which routes it is obliged to apply regulatory provisions and on which routes this may not be the case. In the same way, the actual and potential users of HT services of leased lines cannot beforehand be familiar with the data on routes on which regulatory provisions have been imposed and on which such provisions do not exist. The forward looking principle may involve new competitors on particular routes or the actual competitors may start to provide the service on new routes.*

*In respect of **retail broadband access market**<sup>48</sup>, the CCA reaffirmed that the level playing field for all operators in the relevant market in order to ensure effective and sustainable competition should be established primarily on the basis of the regulatory framework in the wholesale broadband access market, whereas the **regulation of the market at the retail level should be accepted only as an exceptional and temporary measure**. On the other hand, ex ante regulation at the retail level should not have as its effect technological slowdown of the market concerned and competition within which could, consequently, have negative effects on consumers.*

*Whereas HAKOM indicated in its analysis that promotional activities of the undertakings HT and Iskon, as the operator with significant market power, could impede effective competition and imposed certain regulatory obligations, the CCA stated in its opinion that, in general, **promotional activities of a limited duration constitute a normal advertising practice and bring benefit to the consumers** and are therefore as such not prohibited under the competition law.*

## **5.2. Market studies**

Market studies are research projects conducted to gain an in-depth understanding of how sectors, markets, or market practices work. They are conducted primarily where there are concerns about the functioning of the markets arising from one or more of the following: firm behaviour; market structure, information failure, consumer conduct, public sector intervention in markets (whether by way of policy or regulation, or direct participation in the supply or demand side of markets) and other factors which may give rise to consumer harm.

The CCA carries out market studies with the view to communicating to the Croatian government, public administration authorities and local and regional administration recommendations and opinions aimed at elimination of barriers based on the regulatory framework, whereas their publication and implementation facilitates

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<sup>48</sup> This analysis included also the analysis of the regulatory framework in the relevant IPTV market, 034-08/2012-01/014 of 12 March 2012, available on the website of the CCA.

strengthening of competition culture. Where in the course of such a market study the CCA finds that behaviour in the market of a particular undertaking may have anticompetitive effects, in such a case the market study serves as a basis for opening of the proceedings against this particular undertaking.

In the past years the CCA has been engaged in three standard market studies, primarily with the object of identifying the number of competitors in a particular relevant market and their market shares in the relevant year. These market studies cover as follows:

- **market study in the wholesale and retail in grocery products, food, beverages and toiletries and household supplies**<sup>49</sup>,
- **market study in the press publishing and distribution market in the Republic of Croatia**, including the market in sold copies (number of sold copies), advertising market (revenue from advertising), market in wholesale press distribution (revenue from the wholesale) and the market in retail (revenue from retail),
- **market study in milk and dairy products industry in the Republic of Croatia** - the last market study was carried out in 2010 and given that no mergers and acquisitions are expected in this sector and due to efficiency and rationalisation priorities the CCA decided to temporarily suspend the market study in question.

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### ***Market study in the wholesale and retail in grocery products, food, beverages and toiletries and household supplies in the Republic of Croatia in 2011***

*The results of the market study indicate a **rise in the market** concerned in 2011 by 5.3 % compared to the previous year. In other words, all retailers from the sample of 55 undertakings taken together achieved a slight rise in revenues.*

*The most significant rise in retail revenues in 2011 was recorded by Lidl, 35 % compared with 2010. This has brought Lidl the third place according to the revenue, after Plodine which holds the second place with a moderate 12 % rise in revenue. Kaufland holds position number four on the revenue list with the rise of retail of 8 % compared with the previous year 2010.*

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<sup>49</sup> This market study has been carried out by the CCA since 2003 in a separate proceeding with the view to defining the market shares of the retail and wholesale operators and is used later on in the analysis of effects potential concentrations between undertakings may have in the relevant wholesale and/or retail market. The market study also enables the identification of positive or negative trends in revenue of the leading market players, of the shares held by different types of shops and their revenue, net sale surface and number of shops. The market study may also be used as a basis for defining the concentration ratio in the particular markets, calculating the realized revenue from the retail in all types of shops taking into account the geographical dimension, pooling and association of undertakings etc.

*Lidl and Kaufland taken together as a part of Schwarz Group hold a market share of some 15 % in 2011, which is a rise compared with 2010.*

*The first on the retail revenue list remains Konzum, with a rise in revenue of 5 %. However, its market share has not risen and has stayed very much as in the previous year at some 30 %. , In 2011 Konzum is the leading retailer in eleven counties and in the City of Zagreb.*

*On the other hand, the most significant fall in revenue in 2011 indicated Mercator-H which fell on the fifth place of the leading retailers in Croatia, whereas in 2010 it held the second position on this list.*

*In 2011 according to the indicators the retail market in question was **moderately concentrated**. If we take the five or ten leading retailers from the sample, the results of the market investigation for 2011 show a slight increase of market concentration compared with 2010.*

*Furthermore, the results of the market research for 2011 show that 68 % of the realized total revenue in the retail market was made through sales in the **large format retail stores**, 44 % in supermarkets and 24 % in hypermarkets. A positive trend was recorded in the rise of the share of small shops by 10 % in revenue compared with the previous year 2010. These neighbourhood shops are usually selected for daily shopping by final consumers.*

*One of the features of the retail is also a **larger number of successful regional and local retailers** which in 2011 recorded a rise in both their revenues and market shares, e.g. Lonia, Djelo, Metss, Boso, Gavranović, Brodokomerc Nova and Pemo.*

*Taking into account the significant changes in the structure of the market of the ten leading players, a different growth rate of certain operators and significant organic growth of stores of certain players in 2011, we can conclude that this is a dynamic and open market with strong competition between players, both in the segment of hypermarkets and supermarkets, as well as regarding the small format shops.*

The findings of the market studies of the CCA are regularly published on its website [www.aztn.hr](http://www.aztn.hr).

## 6. Court review

Within the meaning of the Competition Act against the decision of the CCA no appeal is allowed but the injured party may take actions at the territorially competent administrative court<sup>50</sup>.

In 2011 the Administrative Court of the Republic of Croatia made a **total of 10 decisions** relating to the claims filed against the decisions of the CCA. In nine cases thereof the Administrative Court of the Republic of Croatia upheld the decision of the CCA and dismissed the claim whereas in one case it confirmed the claim in respect of the decision of the CCA in the area of State aid<sup>51</sup>. This ruling of the Administrative Court of the Republic of Croatia annulled the decisions of the CCA UP/I 430-01/2004-01/42 of 4 April 2007, following the claim of the undertaking *Varteks d.d.* (a detailed description of the case is provided later on in the second chapter of this report dealing with State aid).

At the same time it must be noted that the Constitutional Court of the Republic of Croatia in its decisions dating from 2008 and 2010 rejected the claims filed against the rulings of the Administrative Court of the Republic of Croatia and thereby confirmed the legality of the decisions of the CCA.

Finally, it must be noted that until the time of drafting of this report (June 2012) the High Administrative Court of the Republic of Croatia adopted 23 decisions in which it upheld the decisions of the CCA and rejected the claims, while one claim was dismissed and one proceeding terminated.

Decisions of the administrative courts and the High Administrative Court of the Republic of Croatia are published on the web site of the CCA.

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<sup>50</sup> In accordance with the Act on the Amendments to the Courts Act (OG 130/2011) as of 1 January 2012 the court review in the administrative dispute proceeding is ensured by the territorially competent administrative courts besides the administrative disputes which under the Administrative Disputes Act (OG 20/2011) fall under the competence of the High Administrative Court of the Republic of Croatia. The Administrative Court of the Republic of Croatia as of 1 January 2012 continues to work as the High Administrative Court of the Republic of Croatia.

<sup>51</sup> Ruling of the Administrative Court of the Republic of Croatia Us-5362/2007-10 of 3 November 2010, OG 12/11.

### ***Minor offence courts***

In 2011 the CCA made a request to minor offence courts to open proceedings in 16 cases, one based on the party's non-compliance with the obligation to submit the requested data, two based on established abuse of a dominant position of the undertakings and thirteen based on the conclusion of a prohibited agreement<sup>52</sup>.

**Minor offence courts made 20 decisions in 2011** – three imposing sanctions in the amount of HRK 93.717,00 which is almost 97 % less than in 2010 when the sanctions amounted to HRK 2.911.747,31. In three cases the minor offence courts pronounced that they were not territorially competent, in 11 cases they claimed being not subject matter competent, in two cases they freed the undertaking from the claim because the new, 2009 Competition Act does not provide for minor offence for the infringement whereas in one case the proceeding was terminated due to the limitation period.

The reason for such a negative statistics lies in the view of the High Court of Minor Offences claiming that after 1 October 2010, when the new, 2009 Competition Act entered into force, actions regarded as offences of the parties do not classify as minor offences, and consequently the subject matter jurisdiction of the minor offence courts does not exist, even in the cases where requests to minor offence courts are made by the CCA at the time when the former 2003 Competition Act was still in effect (until 1 October 2010). Such a view of the High Court of Minor Offences means that the CCA in such cases, after the decision on minor offence becomes legally valid, must carry out the proceedings of setting fines and impose sanctions for the infringement concerned.

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<sup>52</sup> These cases had been opened in the CCA before the 2009 Competition Act entered into force and empowered the CCA to impose sanctions. In line with formerly valid 2003 Competition Act sanctions for infringements of competition rules used to be imposed by the minor offence courts.

## II. STATE AID

The activities related to State aid control and cooperation with aid grantors constitute an important part of the CCA work. Since 2003, in line with the commitments undertaken by the Republic of Croatia under the SAA, the State aid regime has been established, compliant with the EU State aid rules. In the stated period State aid rules in Croatia have been fully harmonized with the EU *acquis* in this area. Until the accession of Croatia to the EU, the enforcement activities in this area have been carried out by the CCA who also prepares the annual report on State aid and submits it to the parliament for adoption.

In 2011 the activities in the area of State aid were particularly strengthened taking into account the fulfilment of the criteria from the negotiation Chapter 8: Competition policy. Concretely, these were the activities performed in the assessment of the restructuring plans of the Croatian shipyards and restructuring of the steel sector. The benchmarks set for the closure of the accession negotiations required, and it was the condition of the European Commission, a preliminary opinion of the CCA on each particular restructuring plan of the shipyards in difficulty before the EC could reach its decision, i.e. approve the plans in question regarding their long-lasting viability<sup>53</sup>.

From the day of accession of the Republic of Croatia to the EU, besides the obligations under the accession documents, Croatia undertakes the obligation to act in line with the objectives of the EU common interest, particularly those relating to the internal market, competition rules and granting of State aid with the view to maintaining economic effectiveness of the EU and its development pursuant to the EU development strategies.

Where State aid is nevertheless granted, in line with the provided exemptions and the set criteria for approval regarding their objective, aid intensity (amount) and duration, should be directed to elimination of market failures or objectives that have positive effects on competitiveness, employment, growth, social and regional cohesion,

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<sup>53</sup> In the same way in 2010 the European Commission requested a preliminary opinion of the CCA regarding the draft Croatian Radio-Television Act, before it could reach its positive decision on its compliance with the State aid rules in the area of services of general interest in the area of public broadcasting.

environmental protection, research and development and innovation, risk capital investment and development of SMEs (so called aid to horizontal objectives). A good State aid policy facilitates growth and sustainable development. In 2011 the CCA authorised several aid schemes directed to the stated objectives, e.g. *Incentives for development and manufacture of the renewable energy equipment in the manufacturing industry*<sup>54</sup>, *National employment promotion plan for 2011 – 2012*.<sup>55</sup>, *Incentives for the production of bio fuels for transport*<sup>56</sup>, *Operating aid for the promotion of competitiveness and innovation in small shipbuilding for 2011*<sup>57</sup>, *Internet and broadband development plan in areas of special national concern, hilly and mountainous areas and islands*<sup>58</sup>.

On the other hand, effective prevention of granting illegal aid and recovery of such illegally granted or used aid are mechanisms which restore the situation on the market before the State aid was granted and ensure the re-establishment of the level playing field in the market. In 2011 the CCA ordered recovery of State aid in one case, that of *Željezara Split d.d.*<sup>59</sup>.

## Legislative framework

The scope of the CCA in the area of State aid control in the Republic of Croatia is regulated by the **State Aid Act**<sup>60</sup>, the **Regulation on state aid**<sup>61</sup> and the **Ordinance on the form and content and manner of data collection and keeping the register of state aid**<sup>62</sup>. In the implementation of the control, in addition to the rules mentioned above, the CCA applies also all the rules applicable in the EU which are contained in the regulations for specific types and categories of aid and which have been directly transposed into the Croatian legislation from the EU *acquis*. They are published in the "Official Gazette" of the Republic of Croatia and on the web site of the Agency. These are the **decisions on the publication of State aid rules** adopted by the Government of the Republic of Croatia at the proposal of the Minister of Finance.

From 2007 until the end of 2011, 32 decisions on the publication of State aid rules relating to specific categories and instruments of State aid or State aid to specific sectors (audio-visual industry, transport etc.) were transposed into Croatian legislation. In 2011 two more decisions were published: the *Decision on the publication of the State aid rules in relation to rapid deployment of broadband networks*<sup>63</sup> and the *Decision on the prolongation of the application of the State aid rules relating to cinematographic and other audio-visual works*<sup>64</sup>. The CCA is obliged

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<sup>54</sup> UP/I 430-01/2011-02/009 of 13 October 2011, OG 119/2011.

<sup>55</sup> UP/I 430-01/2011-02/001 of 24 March 2011, OG 42/2011.

<sup>56</sup> UP/I 430-01/2011-02/005 of 28 July 2011, OG 101/2011.

<sup>57</sup> UP/I 430-01/2011-02/007 of 15 September 2011, OG 110/2011.

<sup>58</sup> UP/I 430-01/2011-66/001 of 28 July 2011, OG 94/2011.

<sup>59</sup> UP/I 430-01/2011-02/004 of 11 May 2011, OG 58/2011.

<sup>60</sup> OG 140/2005.

<sup>61</sup> OG 50/2006.

<sup>62</sup> OG 2/2010.

<sup>63</sup> OG 64/2011.

<sup>64</sup> OG 144/2011.

to apply all these decisions and to help aid grantors in Croatia in granting State aid in the areas concerned.

In 2011 the Croatian Parliament adopted amendments to the 2005 State Aid Act. The amendments relate, first, to the adjustments of the State Aid Act with the new General Administrative Procedure Act in the part relating to the procedural rules, and second and more important, in relation to the recovery procedure where interest rate has been adjusted to reference rate increased by 100 basis points.

It must be noted here that when assessing and monitoring State aid, in line with Article 6 of the State Aid Act, in case of legal loopholes in the domestic legislation the CCA adequately applies the criteria which arise from Article 70 of the SAA. These are the interpretative instruments adopted by the EU institutions, such as the decisions from the practice of the EC, rulings of the EU courts, decisions of the Council of the EU, EU guidelines, communications etc.

### **CCA competence in the area of State aid**

In line with Article 6 of the State Aid Act the CCA performs the following activities:

- assesses State aid proposals and aid schemes** within annual and multi-annual state aid approval plans;
- monitors the implementation and effects of State aid granted and orders the recovery** of unlawfully granted state aid or aid used in contravention of the rules;
- collects, processes and registers the data on State aid;
- collects the data on the use and effects of State aid granted;
- keeps the State aid register**;
- cooperates with the authority responsible for State aid to agriculture and fisheries in the preparation of annual reports on State aid;
- cooperates in the budget preparation process with the authorities responsible for the preparation of the State Budget and the budgets of regional and local self-government units, in compliance with the separate law;
- submits the **annual report on State aid to the Croatian Parliament**;
- cooperates with international authorities, in compliance with the international commitments undertaken by the Republic of Croatia;
- participates in the preparation of draft proposals for laws and other legal acts concerning State aid and promotes and encourages improvements in the State aid system;

The ministries and other public administration authorities, before they submit the proposed draft laws which contain State aid to the Croatian government for adoption, are obliged to submit the relevant laws to the CCA which issues a **preliminary binding opinion**. The preliminary opinion of the CCA is submitted to the Government of the Republic of Croatia and the Croatian Parliament together with draft proposals for laws containing State aid. These preliminary opinions are published in the Official Gazette.

Any other legislative proposals, other than the proposals referred to in the previous paragraph, should be notified by aid grantors to the CCA for approval. Positive decision of the CCA means that the proposal is in compliance with the State Aid Act. Otherwise, a negative decision means that no approval of the CCA is given.

**State aid granted without the approval of the CCA is illegal.** If State aid is granted without the approval of the CCA the CCA **orders recovery of the amount of the used State aid plus the reference rate** from the date State aid has been first used. In exceptional cases the CCA may, where justifiable, give *ex-post* or **subsequent approval** of State aid, if it is compatible with the State aid rules.

The Agency monitors the implementation of authorised state aid *ex officio* or upon the proposal of aid beneficiaries, aid providers and any legal or natural person having a legal interest.

State aid to agriculture and fisheries (inclusive food and beverages industry, tobacco industry) falls outside the scope of the State Aid Act and the jurisdiction of the CCA.

### **Enforcement of State aid rules**

In 2011 the CCA **resolved a total of 96 cases in the area of State aid**. Of the total of **96 cases closed in 2011** in the area of State aid, 21 thereof involved approvals of aid schemes, 18 decisions were in respect of individual State aid. At the same time there were 7 opinions of CCA on laws or other proposals that contained State aid, whereas 4 preliminary opinions requested by the European Commission covered the proposed restructuring plans of the Croatian shipyards in difficulty. The remaining 46 cases involved *de minimis* aid, cooperation with aid grantors and aid beneficiaries and other issues where it has been established that the measures concerned did not constitute State aid pursuant to the State Aid Act.

Table 3 Closed cases in the area of State aid in 2011

Category	Closed in 2011
<i>I. ADMINISTRATIVE CASES:</i>	
1. Aid schemes	21
2. Individual aid	18
<b>I. TOTAL:</b>	<b>39</b>
<i>II. NON-ADMINISTRATIVE CASES:</i>	
1. Preliminary binding opinions on laws	1
2. Expert opinions	4
3. Opinions (plus preliminary opinions to EC)	6
4. Other issues	46
<b>II. TOTAL:</b>	<b>57</b>
<b>TOTAL ADMINISTRATIVE AND NON-ADMINISTRATIVE CASES (I+II):</b>	<b>96</b>

Source: CCA

The total amount of State aid contained in 20 aid schemes approved by the decision of the CCA was HRK 1.532 billion (excluding the Ordinance on guarantees issued by the Croatian Agency for Small Businesses (HAMAG) due to the fact that it does not contain the amount of aid but the guarantee capital in the amount of HRK 1 billion). In 18 decisions relating to individual aid CCA authorised the amount of HRK 474.8 million for 14 undertakings, whereas under the restructuring plans for the Croatian shipyards the CCA approved a total of HRK 16.370 billion.

### **1. Preliminary binding opinion on proposed draft laws**

As mentioned earlier, in line with Article 10 of the State Aid Act the CCA issues a preliminary binding opinion on the proposed draft laws which contain State aid before their adoption.

#### ***Preliminary binding opinion on the proposed Draft Act on the Amendments to the Maritime Code***

*In 2011 the CCA issued one preliminary binding opinion. After it carried out the assessment of the compliance of the proposed draft act with the State aid rules in the area of maritime transport it gave its positive opinion stating that the Draft Act on the Amendments to the Maritime Code complies with the State Aid Act<sup>65</sup>.*

*The draft act concerned was assessed and consequently approved by the CCA so as to be in line with the *acquis communautaire* of the EU. It introduced a tonnage tax system which represents a new aid instrument not yet used in the Republic of Croatia. Concretely, the draft act at issue introduces the provisions compatible with the requirements of the relevant guidelines on State Aid to maritime transport.*

<sup>65</sup> Preliminary binding opinion 430-01/10-04/10 of 13 April 2011, OG 53/2011.

*The tax relief measures which apply in a special way to shipping are considered to be State aid. Equally, the **system of replacing the normal corporate tax system by a tonnage tax** is a State aid. 'Tonnage tax' means that the ship-owner pays an amount of tax linked directly to the tonnage operated. **The tonnage tax will be payable irrespective of the company's actual profits or losses.** Such measures have been shown to safeguard high quality employment in the on-shore maritime sector, such as management directly related to shipping and also in associated activities (insurance, brokerage and finance). Further, safeguarding quality employment and stimulating a competitive shipping industry established in a Member State through fiscal incentives, taken together with other initiatives on training and enhancement of safety will facilitate the development of EU shipping in the global market. At the same time the Commission would request any available evidence to show that all vessels operated by companies benefiting from these measures comply with the relevant international and EU safety standards, including those relating to on-board working conditions.*

*In addition, promoting the return of the ships in the Croatian ship register this tax system also promotes the competitiveness of the EU fleets in the global shipping market. Consequently, tax relief schemes should, as a rule, require a link with an EU flag.*

## 2. State aid authorised in 2011

### 2.1. State aid in the shipbuilding sector

Most human resources of the CCA carrying out the activities relating to State aid<sup>66</sup> were in 2011 concentrated on the jobs relating to the restructuring of the Croatian shipyards in difficulty. The activities of the CCA in this area were twofold: first, the CCA provided expert support in drafting of the restructuring plans in line with the requirements of the EU and the conditions under the restructuring rules which were, at the same time, the benchmarks for the closing of the accession negotiations in Chapter 8: Competition policy, and second, it had to issue a preliminary opinion to the European Commission on compliance of the same restructuring plans with the aforementioned benchmarks and the final decision on the compliance of the said restructuring plans with the State Aid Act.

The restructuring of the Croatian shipyards started in **September 2006 with the adoption of the decision of the CCA on the basis of which State aid for rescuing was adopted** amounting to HRK 4.2 HRK billion in the form of State guarantees. The rescue involved all large shipyards except for *Uljanik Brodogradilište d.d. Pula*, but this shipyard was subsequently included into the restructuring process as well. At the same time, the restructuring of the Croatian shipbuilding sector was set as a benchmark for the opening and closing of the negotiations for the accession of the Republic of Croatia to the EU in Chapter 8: Competition policy.

At the end of **March 2007** individual restructuring plans were submitted to the CCA and the European Commission for assessment. However, the plans did not contain all the necessary elements required by the rules on restructuring of the firms in difficulty, concretely, they did not contain sufficient evidence on profitability of operations without State aid. Therefore it was stated in the assessment of both the CCA and the European Commission that they did not guarantee sustainability in the market and that it was necessary to revise the plans in question including the restructuring measures which would improve the internal organization and performance of the shipyards.

**On 21 May 2008** the Government of the Republic of Croatia adopted a **decision on privatisation** of all six large shipyards, i.e. the following companies: *Uljanik d.d., Pula, Brodogradilište Kraljevica d.d., Kraljevica, Brodotrogir d.d., Trogir, Brodograđevna industrije 3. Maj d.d., Rijeka* and *Brodosplit d.d.* However, no activities in respect of privatization had been undertaken until **August 2009** when a public tender was published for the sale of shares of the shipyards concerned. Given that the above mentioned shipyards are considered firms in difficulty, that in the past received State aid which was not compatible with the relevant State aid rules, an

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<sup>66</sup> The State Aid Division employed in 2011 a total staff of 9 employees.

important condition in the public tender was that the potential investors had to work out restructuring plans meeting all the conditions set in the rules for rescue and restructuring. However, no bid was evaluated as acceptable in that sense in this first privatization round.

In early **2010** the Government of the Republic of Croatia issued a tender for the so-called **second round of privatisation of the shipyards** *Brodograđevna industrija Split d.d., Split (includes Brodogradilište specijalnih objekata d.o.o.), 3.Maj d.d. Rijeka, Brodotrogir d.d. Trogir and Brodogradilište Kraljevica d.d. Kraljevica*. The public tenders for *3.Maj* and *Kraljevica* were repeated. In the end, the competent ministry and the Croatian government selected the best bidder – the undertaking DIV d.o.o. from Samobor as a potential buyer of *Brodograđevna industrija Split*, and the undertaking *Jadranska ulaganja d.o.o. from Zagreb* as a potential buyer of *3.Maj, Kraljevica* and *Brodotrogir*.

The first drafts of restructuring plans were submitted to the CCA during 2010. However, given the necessity of their revision, the most part of the activities of the CCA, concretely, relating to the shortcomings of the restructuring plans in respect with proposed measures aimed at future market sustainability without aid, compensatory measures and own contribution to restructuring of the potential investors, was carried out during 2011. This comprehensive and demanding work involved not only the CCA but also the independent experts in the field of the shipbuilding industry who were engaged within a project financed by the European Commission<sup>67</sup>.

The analysis of the restructuring plans of each particular shipyard carried out under the above mentioned project involved particularly the assessment of the following:

- market oriented strategy of the shipyards, including the **assessment of output profitability**;
- **industrial restructuring**: production lines and facilities, planned investments, productivity;
- **organizational restructuring**: management tools, structure of employees;
- **sales strategy** (break-even point, planned output, production financing methods);
- **forecasts for the end of the restructuring process** (profitability, productivity, output, structure of employees etc.).

In short, the aim of the analysis was to prove if the submitted restructuring plans had been worked out on the basis of actual and reasonable assumptions and the situation on the market (present and future), taking into account the situation in each particular shipyard and its plans for the future, and if it was possible to expect long-term viability and competitiveness of the shipyards on the market after the restructuring process. The assessment analyses of the repeatedly reviewed

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<sup>67</sup> The project financed by the European Commission involved a Dutch company Ecorys that provided expert support to the CCA and the Commission particularly in respect with the market sustainability and rentability of the shipyards in the future.

restructuring plans lasted from November 2010 until June 2011 and involved, as previously stated, Ecorys independent experts, the competent ministry, selected investors and managements of the shipyards. In **February 2011 the first opinion was eventually submitted to the Commission - it was the opinion on the restructuring plan of the shipyard *Brodograđevna industrija Split d.d.* including *BSO d.o.o.*, later, in June 2011, for all the remaining shipyards.** The positive opinions of the CCA related particularly to the long-term viability of the shipyards without aid, own contribution to the restructuring amounting to 40 % of the restructuring costs and compensatory measures in the form of capacity reduction<sup>68</sup>.

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<sup>68</sup> The decision on authorisation of State aid for restructuring of *Brodotrogir d.d.* was adopted by the CCA on 27 September 2011, whereas the decisions for *Brodograđevna industrija Split d.d.* (including *BSO d.o.o.*), *Brodograđevna industrija 3. Maj d.d.* and *Brodogradilište Kraljevica d.d.* were adopted on 13 October 2011 (UP/I 430-01/2007-02/014 of 27 September 2011, OG 21/2012; UP/I 430-01/2007-02/013 of 13 October 2011, OG 17/2012., and corrigendum to the decision of 22 December 2011, OG 17/2012; UP/I 430-01/2007-02/012 of 13 October 2011, OG 34/2012; UP/I 430-01/2007-02/015 of 13 October 2011, OG 13/2012.

Table 4 Restructuring costs of the shipyards (in HRK)

Shipyards	State aid	Own contribution	Restructuring costs
Brodograđevna industrija Split d.d.*	6.623.023.898,00	4.425.141.820,00	11.048.165.718,00
Brodograđevna industrija 3. Maj d.d.	5.340.822.341,00	3.694.343.470,00	9.035.165.811,00
Brodotrogir d.d.	2.806.150.438,00	1.877.400.833,00	4.683.551.271,00
Brodogradilište Kraljevica d.d.	1.600.418.010,00	1.250.650.154,00	2.851.068.164,00
<b>Total</b>	<b>16.370.414.687,00</b>	<b>11.247.536.277,00</b>	<b>27.617.950.964,00</b>

Source: CCA

\* including shipyard BSO d. o. o., company owned by Brodograđevna industrija Split d.d.

Until the end of the restructuring process, in line with the decision of the CCA, the shipyards may receive only State aid provided in the restructuring plans and may not receive new aid for restructuring before the time period of at least ten years has expired from the date of signing of the privatization contract.

Regarding the shipyard **Uljanik Brodogradilište d.d.** on 24 February 2011 the CCA passed the resolution on termination of the proceeding for authorisation of restructuring aid for the shipyard in question given that it no longer constituted a firm in difficulty taking into account its financial data in the period from 2008 to 2010<sup>69</sup>. At the same time, *Uljanik Brodogradilište d.d.* complied with the recovery order and paid back the illegally granted aid it had received from 1 March 2006. The recovery of aid was realized on the basis of the Agreement between the Government of the Republic of Croatia and *Uljanik Brodogradilište d.d.* on the regulation of property issues and compensation for expropriation, on the basis of which the debt settlement was effected through compensation for expropriation of the property by the State.

## 2.2. State aid for rescuing and restructuring of the firms in difficulty

In the area of rescue and restructuring aid in 2011 the CCA authorised rescue measures in the form of State guaranties for the undertakings *Croatia Airlines d.d.*<sup>70</sup> and *Imunološki zavod d.d.*<sup>71</sup>

## 2.3. State aid measures in the current financial and economic crisis

In 2011 the CCA adopted five decisions regarding the authorisation of the prolongation of application of five aid schemes financed by the Croatian Bank for Reconstruction and Development (HBOR), i.e. loan schemes aimed at certain groups of undertakings. These are the aid schemes covering the permanent working capital loans for the development of businesses, loans to undertakings to facilitate liquidity,

<sup>69</sup> Resolution of the CCA on termination of the proceeding UP/I430-01/2007-02/16.

<sup>70</sup> UP/I 430-01/2011- 04/004 of 27 September 2011, OG 142/2011, and corrigendum of the decision of 20 October 2011, OG 141/2011.

<sup>71</sup> UP/I 430-01/2011-115/001 of 20 October 2011, OG 14/2012, and corrigendum of the decision 12 March 2012, OG 41/2012.

working capital loans and loans for financial restructuring. The temporary decreased reference rate was also approved in late 2011<sup>72</sup>. In addition, the *Decision on the publication of the rules under the Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis (Temporary framework)*<sup>73</sup>, enabled a more flexible interpretation of State aid rules in the EU, but also in Croatia. For example, in the calculation of the State aid element contained in the soft loans and subsidized interest rates. In line with the aid measure concerned, the aid element contained in the difference between the temporary decreased reference rate and the usual reference rate temporarily constitutes compatible aid.

The interest rate on the basis of the Temporary framework could be applied only for the soft loans given to undertakings until 31 December 2011 and for the interest paid until 31 December 2013, for undertakings which were not in difficulty on 1 July 2008 (and which came into difficulty due to the global financial economic crisis).

## 2.4. Employment aid

In March 2011 the CCA adopted a decision on subsequent approval of State aid for employment and training contained in the *National employment promotion plan for 2011 and 2012*<sup>74</sup>, upon the application of the Ministry of the Economy, Labour and Entrepreneurship, in the amount of HRK 558.975.071. The National plan concerned contains State aid directed to the issues such as long-term unemployment, and it has as its objective increasing employability level of women and the elderly, rising employability of young persons, raising the level of knowledge and skills, flexibility and adjustability of workers and employers etc.

The aid grantors under the National plan at issue are the Ministry of the Economy, Labour and Entrepreneurship, Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity, Ministry of the Sea, Transport and Infrastructure, Croatian Employment Fund, Fond for Professional Rehabilitation and Employment of Disabled Persons and other institutions.

The aid beneficiaries are unemployed persons and SMEs. Aid instrument is grant. Whereas the total planned amounts to HRK 558.975.071, for 2011 the planned sum was HRK 262.899.082, projection for 2012 HRK 296.075.989, from the State Budget. The National plan would be implemented from 3 February 2011 to 31 December 2012.

Employment aid may be granted for new employment of the disadvantaged and disabled persons in line with Articles 40 and 41 of the Decision on publication of the General Block Exemption Regulation on State aid<sup>75</sup>.

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<sup>72</sup> UP/I 430-01/2011-09/001 of 28 January 2011, OG 30/2011, UP/I 430-01/2011-09/002 of 28 January 2011, OG 30/2011, UP/I 430-01/2011-09/003 of 28 January 2011, OG 30/2011, UP/I 430-01/2011-09/004 of 28 January 2011, OG 30/2011, and UP/I 430-01/2011-09/005 of 28 January 2011, OG 30/2011.

<sup>73</sup> OG 56/2009.

<sup>74</sup> UP/I 430-01/2011-02/001 of 24 March 2011, OG 42/2011.

<sup>75</sup> OG 37/2009.

## 2.5. Environmental aid

One of the decisions of the CCA in 2011 relating to aid for environmental protection was also the positive decision on the ***Incentives plan for the production of bio fuels for transport***<sup>76</sup> which was the first time in Croatia that aid for production of biofuels for transport had been granted. Aid in the form of grants amounted to a total of HRK 398.507.343 and the Incentives plan would be in effect from 1 August 2011 to 31 December 2014.

The aid scheme in question would be financed through a special fee for biofuels per litre of diesel or motor fuel sold in the Republic of Croatia. Aid beneficiaries can be all undertakings registered for the production of bio fuels in Croatia.

The objective of the scheme is to **increase the share of energy produced from the renewable resources in transport** and to ensure safety in energy supply. The aid scheme is also a part of the National action plan for the promotion of production and use of bio fuels for transport in the period from 2011. – 2012.

The CCA approved the State aid in question provided that the following conditions are met: State aid per one litre of biofuel may be up to the highest amount of the difference between the reference domestic production cost and the market price of the energy form concerned in the reference international market (CIF Med), State aid for investment in a new plant for production of biofuels must be deducted when the amount of State aid is calculated, State aid may not be cumulated with other State Aid, *de minimis* aid or other forms of financing by the Republic of Croatia, if such a cumulation would exceed the prescribed aid intensity and the Ministry of the Economy, Labour and Entrepreneurship is obligated to submit to the CCA a report justifying that the first two conditions are met. In addition, the scheme provides for a deduction from the production costs of any investment aid granted to the undertaking in respect of the new facility when calculating the amount of operating aid. On the other hand, the provider of aid is obligated to notify any particular aid, where such production exceeds 150 000 tonnes per year per undertaking.

Within the meaning of the Decision on the publication of State aid rules for environmental protection<sup>77</sup>, the aid is an effective means of achieving the objectives of general interest, primarily in terms of achieving higher levels of environmental protection than it would have been the case without granting State aid. Aid for renewable energy is focused on market failure linked to negative externalities by creating individual incentives to increase the share of renewable energy sources in total energy production, which also represents one of the priorities of environmental protection. It also comes from the relevant decision that the environmental state aid may be justified if the cost of producing renewable energy is higher than the cost of production from a source less environmentally friendly. Namely, higher costs of

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<sup>76</sup> UP/I 430-01/2011-02/005 of 28 July 2011, OG 101/2011

<sup>77</sup> OG 154/2008.

production of energy from alternative resources would also mean higher market prices which erect barriers to entry to the energy market.

The aid intensity in the case of aid for environmental protection is 100 % of the difference between the cost of producing renewable energy and the market price of the oil derivative.

## 2.6. Regional aid

National regional aid consists of **aid for investment** targeted at specific regions in order to redress regional disparities. Increased levels of investment aid granted to small and medium-sized enterprises located within the disadvantaged regions over and above what is allowed in other areas are also considered as regional aid, particularly in the regions falling behind the EU average GDP.

National regional investment aid is designed to assist the development of the most disadvantaged regions by supporting investment and **job creation** linked to a particular investment. It promotes the expansion and diversification of the economic activities of enterprises located in the less-favoured regions, in particular by encouraging firms to set up new establishments there.

The amount of aid must not exceed a certain percentage of the wage cost of the person hired, calculated over a period of two years.

National regional investment aid is designed to **assist the development of the most disadvantaged regions** by supporting investment and job creation. It promotes the expansion and diversification of the economic activities of enterprises located in the less-favoured regions, in particular by encouraging firms to set up new establishments there. Regional aid in the Republic of Croatia is awarded in compliance with the regional aid map<sup>78</sup>.

Upon the application of the Ministry of the Economy, Labour and Entrepreneurship, in 2011 the CCA authorised the following regional aid schemes: ***Incentives for development and manufacture of the renewable energy equipment in the manufacturing industry***<sup>79</sup>, ***Operational programme for manufacturing sectors***<sup>80</sup> and ***Operational programme for the promotion of competitiveness and innovation in small shipbuilding***<sup>81</sup>. ***Operational programme for development of wood processing and furniture production 2011-2014*** was also authorised by the CCA, following the application of the Ministry of the Regional Development, Forestry and Water Management<sup>82</sup>.

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<sup>78</sup> OG 52/2008.

<sup>79</sup> UP/I 430-01/2011-02/009 of 13 October 2011, OG 119/2011.

<sup>80</sup> UP/I 430-01/2011-02/008 of 15 September 2011, OG 112/2011.

<sup>81</sup> UP/I 430-01/2011-02/007 of 15 September 2011, OG 110/2011.

<sup>82</sup> UP/I 430-01/2010-07/001 of 10 February 2011, OG 41/2011.

**Operational programme for manufacturing sectors for 2011** in the form of grants in the total amount of HRK 79.200.000, applicable from 1 September to 31 December 2011 contained regional aid in the following aid intensities: 50 % of the eligible costs granted to big firms in the statistical units Central and East (Panonian) Croatia and Adriatic coast Croatia, and 40 % of the eligible costs in Southwest Croatia. For SMEs the aid ceiling could be increased by 20 % of the gross grant equivalent (GGE) and by 10 % of the GGE for medium-sized undertakings. Eligible costs covered: tangible assets such as expenditures on land, buildings and plant/machinery, and intangible assets incurred by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge.

Aid was directed to undertakings in the textile manufacturing sector, apparel and leather manufacturing, manufacturing of chemicals and chemical products, pharmaceutical products, rubber, plastic and other non-metal mineral products and manufacturing of metal and metal products, electronic and electrical products and machinery. Aid could not be awarded to firms in difficulty.

Aid intensity, within the meaning of the decision taken by the CCA, may not exceed the allowable cap amounts per beneficiary. Aid could not be cumulated with de minimis support in respect of the same eligible expenses in order to circumvent the maximum aid intensities.

The competent ministry was obligated to submit the report on the implementation of the Operational programme by 31 January 2012.

## **2.7. State aid for rapid deployment of broadband networks**

Pursuant to the Decision on the publication of the rules on State aid for rapid deployment of broadband networks<sup>83</sup>, and upon the received application of HAKOM the CCA authorised the **Aid scheme promoting Internet and broadband development in areas of special national concern, hilly and mountainous areas and islands**, in the form of grants, in total of HRK 50.000.000, effective in the period from 1 September 2011 to 31 August 2016<sup>84</sup>.

The objective of the aid scheme is to **promote structural and balanced regional development of the information and communication technology**. The rapid deployment of broadband networks is a key factor for the development and use of ICT in the economy and society. Broadband access is strategically important because it accelerates the contribution of such technology development and innovation in all sectors of the economy, as well as social and territorial cohesion. Therefore, the aid scheme applies to the areas of special national concern, hilly and mountainous areas and islands, but only if this is an area in which a broadband network operator (so called "white area") is not present.

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<sup>83</sup> OG 64/2011.

<sup>84</sup> UP/I 430-01/2011-66/001 of 28 July 2011, OG 94/2011.

*The beneficiaries of the scheme are all entrepreneurs - mobile and fixed line operators at the wholesale level. Eligible costs of state aid are the costs of capital investment to build the necessary infrastructure.*

*The balancing test involved the assessment of the positive impact of aid in achieving objectives of common interest and its potential negative effects on competition. The CCA also found that the scheme includes the provision of neutrality in terms of technology. The scheme contains provisions on public bidding, in order to ensure full transparency, what is more, the existing network operators must allow other operators access to the infrastructure.*

*Thus, the beneficiaries of State aid commit themselves to provide wholesale access to the newly built infrastructure and other operators for the period of no less than 7 years from the granting of State aid. The aid scheme includes a comparative analysis of prices (benchmarking), thus avoiding excessive or predatory wholesale prices of the selected candidates. The aid scheme also provides special mechanisms for the recovery of State aid in order to avoid excessive compensation. State aid funds will be paid after the broadband Internet users have been granted access to the selected network operator.*

In its assessment the CCA took into account the data on State aid granted under the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, OJ 235, 30.9.2009. In the EU the level of State aid towards this objective doubled in 2010 compared with 2009, whereas the European Commission approved EUR 1.8 billion contained in 14 decisions of the Member States such as France, Poland, Greece and Portugal.

## **2.8. State aid for services of general economic interest**

State aid control comes into play when services of general economic interest (SGEI) are provided by a company and financed through public resources, in particular because overly generous compensation could enable the service providers to cross-subsidise their other commercial activities, and thereby distort competition.

In its 2003 Altmark judgement, the European Court of Justice held that public service compensation does not constitute State aid when four cumulative conditions are met:

- the recipient undertaking must have public service obligations and the obligations must be **clearly defined**;
- the **parameters for calculating the compensation** must be objective, transparent and established in advance;
- the **compensation cannot exceed what is necessary** to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit;
- where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least

cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs of a typical well-run company.

Where at least one of the Altmark conditions is not fulfilled, the public service compensation will be examined under State aid rules.

Services of general economic interest (SGEI) are economic activities such as transport (passenger transport - land, rail, maritime and air transport, cities' public transportation, postal services, energy, public broadcasting and telecommunications.

In 2011 the CCA authorised State aid for the performance SGEI in the case of Rijeka Airport on the island of Krk following the application of the Ministry of the sea, transport and infrastructure contained in the **Decision on discharging public service obligations by Zračna luka Rijeka d.o.o. (Rijeka Airport) in the period from 2010 to 2014.**<sup>85</sup>

*Namely, the CCA established that the exemption from the ban of State aid under Article 4 paragraph 3 item e) of the State Aid Act relating to State aid for the performance of SGEI may be applied given that it complies with the criteria contained in the Decision on the publication of the rules on State aid in the form of public service compensation (in compliance with the relevant EU acquis)*<sup>86</sup>.

*In accordance with the decision of the CCA the amount of aid may not exceed the minimum necessary for the coverage of operating services of general economic interest, taking into account all receipts and reasonable profit. These expenses have been determined for each year of the scheme. Unless the overcompensation exceeds 10 % of the annual compensation this excess may be transferred in the following business year in justifiable cases. In such a case, the compensation for the following year will be adequately adjusted (reduced for the amount concerned). Given the undertaking Zračna luka Rijeka d.o.o. also carries out activities which cannot be covered by a service of general economic interest, internal accounts must show separately the costs and receipts associated with the SGEI and those of other services as well as the parameters for allocating these costs. The Ministry as the aid grantor must submit evidence to the CCA on **separate accounts** and receipts associated with the SGEI and those of other services for the period from 2010 until 2014, at the latest until 30 April of the current year for the previous year.*

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<sup>85</sup> UP/I 430-01/2010-04/001 of 10 March 2011, OG: 42/2011.

<sup>86</sup> OG 39/2008.

## 2.9. State aid for culture

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, depending on the rules in effect in the sector concerned (e.g. public broadcasting, SGEI) and the importance of the particular project for the development of Croatian culture.

In 2011 the CCA authorised four aid schemes earmarked for culture following the applications of the Ministry of Culture, Agency for Electronic Media and the City of Zagreb.

One of the positive decisions of the CCA involved the **Support programme for book publishing 2011 – 2013**<sup>87</sup>.

*The CCA established that State aid under the **Support programme for book publishing 2011 – 2013** is aimed at cultural objectives on the basis of the application of the Ministry of Culture which demonstrated that aid will be granted only to cultural products whose importance is significant for the development of Croatian culture. The aid scheme covers the aid measures such as co-financing of book publishing of domestic literature and non-fiction, general cultural achievements such as complete works, reviews made by Croatian authors, co-financing of literary magazines and journals, which based on their distinctiveness, diversity of programmes, graphic design and regional distinctiveness contribute to diversity of cultural life of Croatia, financing of literary manifestations and events relating to important events from the Croatian past and participation of Croatian authors in book fairs home and abroad, grants for literary events in independent book shops aimed at raising availability of books and magazines and promoting literacy and the reading culture through events with authors, book promotions, literary meetings and organization of literary festivals etc.*

*The book publishing programme provides for aid in the form of grants whereas maximum aid intensity is up to 100 %, the total planned budget of the scheme is HRK 57.500.000.*

Two more decisions of the CCA on the basis of which aid schemes for culture were authorised are worth mentioning here: the **Programme for the allocation of the resources of the Fund for the promotion of pluralism and diversity of electronic media**<sup>88</sup> as proposed by the Agency for Electronic Media, and the **Decision on subsidizing the production and broadcasting of audio-visual and/or radio programmes for radio and TV broadcasters** as proposed by the City of Zagreb.<sup>89</sup>

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<sup>87</sup> UP/I 430-01/2011-03/001 of 10 February, OG 23/2011.

<sup>88</sup> UP/I 430-01/2011-101/001 of 19 May 2011, OG 62/2011.

<sup>89</sup> UP/I 430-01/2011-34/001 of 5 July 2011, OG 88/2011.

State aid for cinematographic and audio-visual works is granted in line with the Decision on the publication of the rules on State aid for cinematographic and other audio-visual works (in compliance with the relevant EU acquis)<sup>90</sup>.

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***Programme for the allocation of the resources of the Fund for the promotion of pluralism and diversity of electronic media***

*Financing from the above aid scheme involving the Fund for the promotion of pluralism and diversity of electronic media contains State aid in the form of grants in the total amount of HRK 17.200.000 in the period from 1 June 2011 until 31 December 2011. The financing is ensured from 3 % of the mandatory license fee payment collected by the public broadcaster (Croatian Radio-Television; HRT) as regulated by law. The aid measure is aimed at production of local and regional audio-visual and radio programmes promoting cultural and language diversity, contributing to media pluralism, preserving the languages of national minorities and diversity of cultural expression, ensuring access to information, facilitating the development of civil society, strengthening of social dialogue and tolerance, and as such are of public interest in the areas in which the works are broadcasted.*

*Aid beneficiaries are legal and natural persons at local and regional level and non-profit TV and radio broadcasters. Aid intensity may not exceed 50% of the eligible costs of a project (except for difficult and low-budget programmes where maximum aid intensity may not exceed 80%), including material costs and the other expenditures linked to the production of a television or radio programme (overheads, rental of facilities, bookkeeping services, special equipment, services, depreciation, financial costs, salaries, travel costs etc.). The resources from the Fund may not be awarded for the production of entertainment programmes, for audio-visual and radio programmes which are co-financed from any other budget resources, to firms in difficulty, under bankruptcy or liquidation, or firms which have been ordered recovery of State aid or who are in a State aid recovery proceeding.*

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***Decision on subsidizing the production and broadcasting of audiovisual and/or radio programmes for radio and TV broadcasters for 2011 as proposed by the City of Zagreb***

*The above aid scheme provides for State aid in the total amount of HRK 14 million. The CCA assessed that the objectives and the criteria under the aid scheme concerned comply with the State aid rules. Namely, the objective of aid is the production and broadcasting of quality programme contents in the interest of the City of Zagreb (cultural, artistic, scientific and innovative programmes) which promote community values of specific interest for the citizens of Zagreb.*

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<sup>90</sup> OG 46/2008 and 144/2011.

*The aid beneficiaries are SMEs (broadcasters) in the territory of the City of Zagreb who are not in difficulty, under bankruptcy or liquidation, or State aid recovery proceeding, and who settled all their liabilities with the City of Zagreb and their employees. Maximum aid intensity may not exceed 50% of eligible costs of production of the programme content and it includes all other State aid or de minimis aid received from other aid providers regardless if at the national or local level. In line with the decision of the CCA, aid for TV and radio broadcasters in the City of Zagreb may not be granted for the production of entertainment programmes, that of independent produces and all other contents which are not regarded as cultural products.*

### **3. De minimis aid**

Even though de minimis aid is not notified to the CCA, in other words, authorisation of the CCA is not needed for the award of *de minimis* aid within the meaning of the State Aid Act, an important part of the activities of the expert team is still dedicated to intensive cooperation with aid grantors (particularly ministries, towns and counties). This cooperation is particularly close in drafting of aid schemes regardless of the level at which State aid is granted (regional or local).

In the preparation of aid schemes in this area involving the adjustment of criteria and allowable amounts or dissemination of knowledge of how these aid schemes should be brought in compliance with the rules on *de minimis* aid<sup>91</sup>, the most queries came from the Ministry of Finance, former Ministry of the Economy, Labour and Entrepreneurship (*Operating aid for the promotion of SMEs in 2011*), the Ministry of Family, Veterans' Affairs and Intergenerational Solidarity (*Training and employment aid for Croatian veterans*) and the Ministry of Maritime Affairs, Transport and Infrastructure (*Aid to ship operators in inland waterway transport*), the Agency for Electronic Media (*Programme for the allocation of the resources of the Fund for the promotion of pluralism and diversity of electronic media*), or the Croatian Pension Insurance Institute, Fund for Vocational Rehabilitation and Employment of Disabled Persons, Environmental Protection and Energy Efficiency Fund, Fund for Reconstruction and Development of the Town of Vukovar, local administration units – such as the Town of Rijeka, Primorje-Goranska County etc. ).<sup>92</sup>

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<sup>91</sup> OG 45/07.

<sup>92</sup> In line with the Decision on the publication of rules on *de minimis* aid (in compliance with the relevant EU acquis) such aid may not exceed the amount of EUR 200,000 (expressed in HRK equivalent value) over three fiscal years per undertaking, also taking into account other granted de minimis aid from other providers, irrespective of the level of aid award (state, regional, local). In the road transport sector total *de minimis* aid may not exceed EUR 100.000 expressed in HRK equivalent value over any three fiscal years. De minimis aid may not be granted to firms in difficulty. The regulation does not apply to export-related activities and the acquisition of road freight transport vehicles or to aid tied to the use of domestic over imported goods. Although de minimis aid does not need authorisation of the CCA aid grantor shall inform the aid beneficiary that aid has been granted to him. At the same time it shall inform the CCA thereof.

## 4. State aid recovery

The recovery of State aid is ordered by the CCA if aid is granted without its authorisation unless in the proceeding of subsequent approval of State aid it has been established that the aid concerned is compatible with the State aid rules, and if in the monitoring proceeding it has been established that the aid in question had been illegally used. The amount of State aid illegally granted or used is increased by the applicable interest rate.

In 2011 the CCA ordered recovery of State aid to **Željezara Split d.d.**<sup>93</sup> on the basis of the fact that in the course of the restructuring process all restructuring measures had not been implemented and the undertaking could not achieve long-term viability, which resulted in initiation of the bankruptcy proceeding<sup>94</sup>.

In line with Article 15 paragraph 3 of the State Aid Act the CCA orders recovery of the awarded state aid in the part in which irregularities have been established, increased by the statutory interest payable from the date on which the established irregularities occurred (or now the reference rate). Therefore, the undertaking concerned was ordered recovery of State aid in the total of HRK 289.015.862,65 consisting of restructuring aid granted in the amount of HRK 221.693.825,38 increased by the statutory interest in arrears for the period from 28 May 2009 to 11 March 2011 in the amount of HRK 67.322.037,27 (in the relevant period illegality interest rate was 17 %).

## 5. No-aid decisions of the CCA

State aid rules apply only to measures that satisfy all of the criteria listed in Article 3 paragraph 1 of the State Aid Act and in particular:

- State aid rules cover only measures involving a transfer of state resources (including national, regional or local authorities' budgets, public banks and foundations, etc.) and other public or private sector bodies designated or controlled by the state, including e. g. tax exemptions.
- The aid should constitute an economic advantage that the undertaking would not have received in the normal course of business.
- State aid must be selective and thus affect the balance between certain firms and their competitors. A scheme is considered "selective", if the authorities administering the scheme enjoy a degree of discretionary power.
- Aid must have actual or potential distortive effect on competition and trade between the Republic of Croatia and the EU Member States.

Unless a particular measure fulfils all the above mentioned criteria, it does not involve State aid. State measures in the form of so-called "general measures" which apply

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<sup>93</sup> UP/I 430-01/2011-02/004 of 11 May 2011, OG 58/2011.

<sup>94</sup> The CCA also ordered recovery of State to the undertaking *Sloga Tvornica obuće d.d., Koprivnica* (UP/I 430-01/2007-02/022 of 14 May 2010) and to the undertaking *Elcon d.d., Zlatar-Bistrica* (UP/I 430-01/2007-02/18 of 30 October 2008).

without distinction to all firms in all economic sectors, (e.g. most nation-wide fiscal measures), do not constitute State aid, and therefore are not banned. Support measures which are not State aid are for example: aid to individuals, households or handicapped people, aid to educational institutions, hospitals, public housing, charities, organisations and other public bodies not involved in an economic activity, general measures, which can apply to all firms and all sectors, support for general infrastructure projects, State interventions in undertakings conducting economic activities if they are made on terms that would be acceptable to a private agent operating under market conditions (the "market economy investor principle"), direct EU funding and aid granted by supranational and multinational organisations, individual types of aid such as defence and public works.

In 2011 the CCA established in 7 cases that the measure concerned did not constitute State aid under the State Aid Act:

- *Subsequent approval of State aid to the undertaking Petrokemija d.d.,*
- *Proposed Decision on issuing a State guarantee for the loan taken by the Croatia Control Ltd from the European Bank for Reconstruction and Development aimed at financing of the Croatian air traffic management upgrading project (CroATMS) and relating projects,*
- *Procedure for the assumption of share capital through public participation in „Zračno pristanište Mali Lošinj“ d.o.o.,*
- *Proposed State guarantee to the undertaking Hrvatske ceste d.o.o. for the loan in the amount of EUR 155 million,*
- *Public participation in the share capital of Aerodrom Brač d.o.o.,*
- *Assignment of the undertaking GIP Pionir d.o.o. under the loan given to the County Directorate for the Roads of Sisak- Moslavina County covered by the State guarantee, and*
- *Sunčani Hvari d.d. – restructuring measure.*

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### ***Public participation in the share capital of the undertaking Aerodrom Brač d.o.o***

*The CCA decided that in this particular case the capital injection by the State in the amount of HRK 1.091.400 in the period from 2007 to 2010 does not constitute State aid within the meaning of the State Aid Act.*

*In line with the Decision on the publication of State air rules in the transport sector<sup>95</sup> that contains the Commission Communication of 9 December 2005 "Community guidelines on financing of airports and start-up aid to airlines departing from regional airports" the CCA had to establish if the capital injections of the Republic of Croatia in Aerodrom Brač relate to economic activities, given that the airport operators do not pursue solely commercial activities but also safety, air traffic control and other activities. The founding of the CCA was that the activities involving **safety and security and aid traffic control cannot be considered commercial activities and***

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<sup>95</sup> OG 141/2008 i 31/2010.

*that therefore State aid rules do not apply on such activities. The concrete investment covered safety and security measures which any airport must comply with and as such does not constitute State aid. In addition, the Brač airport is a small airport with less than one million passengers per year and who in line with point 13 of the stated Communication is not a direct competitor of the airports in Split and Dubrovnik.*

Financial intervention of the State where it can be proved that the State acted like a private investor (Market Economy Investor Principle: MEIP) also does not constitute State aid within the meaning for the relevant State aid rules.

***Agency for State Property Management (AUDIO) – Sunčani Hvar d.d. – Restructuring plan***

*Based on the above mentioned Market Economy Investor Principle the CCA assessed that the conversion of claims into equity in the amount of HRK 15 million, interest write-off in the amount of some HRK 3.9 million and the loan in the amount of HRK 19.9 million with the interest rate of 9.5 % by the Agency for State Property Management to the undertaking Sunčani Hvar d.d. does not constitute State aid.*

*The undertaking Sunčani Hvar d.d. started the restructuring process on the account of the financial difficulties, high operation costs and indebtedness to major shareholders Orco Property Group, AUDIO and commercial banks, Privredna banka Zagreb d.d., Societe Generale Splitska banka d.d. and Erste & Steiermarkische banka d.d.*

*The restructuring plan involved operational restructuring (increase in the number of seasonal workers, redundancy plans and revision of contracts with tourist agencies) and financial restructuring (conversion of claims into equity and debt write-off of the interest relating to new loans and indebtedness to shareholders).*

*The **MEIP** applied in this case, particularly the “equal footing” (pari passu) criteria in accordance to which the investment by the State must be carried out at the same time and under the same conditions as the significant investment of the private investor/owner depending on its financial power and position in the market, was specifically taken into account in the assessment of the CCA. Concretely, given that the conversion of claims into equity and interest write-off have been made by Orco Property Group and AUDIO under the equal conditions and that the owners’ equity remained unchanged, Sunčani Hvar was found not to have received the advantage in the market.*

## 6. Reference rates

The CCA sets and publishes the discount and reference rates in compliance with the State aid rules in force. The reference rate reflects the average market interest rate calculated on medium-term and long-term loans, backed by usual collaterals. It consists of two components: the base rate (interbank rate) and the risk margin.

The reference rate applies 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.

In comparison with 2010 there was a significant fall in the treasury bills interest rate of the Ministry of Finance in 2011. The base interest rate in effect from 1 January 2011 amounted to 4.1 %, whereas the temporary (decreased) reference rate was 3.54 %. The base reference rate is revised during the year, if the average interest rate on treasury bills in the preceding three months diverges by more than +/- 15 % from the set rate.

In mid-2011 the interest rate on treasury bills fell by more than 15 % and the CCA accordingly set a new base reference rate amounting to 3.47 % which was in effect from 1 July 2011.

Table 4 Reference and discount rates and temporary reference rate in 2011

Period		Reference rate (%)	Discount rate (%)	Temporary (decreased) reference rate (%)
From	To			
14.10.2011	31.12.2011	3,47	4,47	2,88
1.7.2011	13.10.2011	3,47	4,47	2,88
1.4.2011	30.6.2011	4,10	5,10	3,54
1.1.2011	31.3.2011	4,10	5,10	3,54

Source: CCA

In line with the relevant decrease in the difference between the base reference rate and the temporary reference rate in the EU the CCCA set a new temporary (decreased) reference rate in the period from July 2011 to 31 December 2011 amounting to 2.88 %.

Both the reference rate and the temporary rate are topped by risk margin, depending on the rating of the undertaking concerned and the collateral offered whereas where increased by a fixed margin of 100 basis points applies as the discount rate in the calculation of the grant equivalent.

## 7. Other activities in the area of State aid

Apart from authorisation and monitoring activities the CCA was also continuously involved in the collection of the State aid data, keeping of the State aid enforcement record in line with the EU methodology and drafting of the annual report on State aid<sup>96</sup>.

With the view to preparing the aid grantors for the conditions after the EU accession, where State aid will no longer be authorised by the national authority (CCA) but by the European Commission, the CCA continued to instruct the ministries, funds, agencies and local and regional administration about drafting of aid schemes.

In respect with the closure of the EU accession negotiations the CCA also compiled the **existing aid list**, where together with the aid grantors and the European Commission the CCA reviewed and amended the aid schemes in line with the State aid rules. Only aid schemes that were in compliance with the State aid rules and that were approved by the CCA and the Commission could find their place in the Act of Accession.

The criteria that must be fulfilled for any aid scheme to be given „existing aid“ status are the following:

- (i) it must enter into force before the date of accession of the Republic of Croatia to the EU and must be applied after that date,
- (ii) it must be authorised by the CCA,
- (iii) it must comply with the EU *acquis*.

In addition, the existing aid mechanism means that the aid concerned may be granted also after the accession without any further notification to or authorisation by the Commission whereas such aid may not be subject to recovery. In other words, all aid schemes and individual aid on the existing aid list are exempted from any subsequent EU monitoring for the time of their duration as stated in the list itself, provided that they do not undergo any changes either before or after the EU accession.

At the time of drafting of this report the following aid schemes and individual aid are on the existing aid list approved by the Commission:

1. Free Zones Act – until 31 December 2016,
2. Croatian Radio-Television Act– unlimited duration,
3. Decision on discharging a public service by Zračna luka Osijek d.o.o – until 31 December 2013,
4. Book publishing programme from 2011 – 2013 – until 31 December 2013,

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<sup>96</sup> The Annual Report on State Aid for 2010 was adopted by the Croatian Parliament on 16 March 2012 and published on the web site of the CCA.

5. Subsequent approval of State aid to undertaking *Rockwool Adriatic d.o.o.* – until 31 December 2015,
6. Act on Scientific Activity and University Education – until 31 December 2014, and
7. Decision on discharging a public service by Zračna luka Rijeka d.o.o. – until 31 December 2014.

The Accession Treaty provides in detail the conditions under which other aid measures that are authorised by the CCA in the time period preceding the EU accession may become a part of the existing aid mechanism on the basis of which aid may be granted also after the EU accession.

## 8. Court review in State aid cases

Since 2003, the beginning of the operation of the CCA in the area of State aid, the Administrative Court of the Republic of Croatia ruled in two disputes concerning the claims against the decisions of the CCA. Both decisions of the court were made in 2011.

In the first case, UP/I 430-02/2007-02/16 of 29 July 2008, the CCA passed a procedural order on the basis of which it terminated the procedure involving authorisation of restructuring aid for the undertaking *Uljanik Brodogradilište d.d.* from Pula, initiated by the application of the former Ministry of the Economy, Labour and Entrepreneurship, on the account of the fact that in the meantime the Government of the Republic of Croatia took a decision on privatisation of the big shipyards in difficulty, including *Uljanik*. In its procedural order the CCA imposed an obligation on the relevant ministry and the Croatian Privatization Fund to inform the CCA no later than within 15 days from the signing of the purchase agreement about the conclusion of the privatization process and to provide the investment plan and the business plan of the undertaking necessary for the proceeding.

*Uljanik Brodogradilište d.d.* decided to take actions on 29 August 2008 to annul the above procedural order of the CCA. In the meantime, *Uljanik* withdrew the claim on **18 February 2011** and the Administrative Court of the Republic of Croatia consequently took a decision on **24 February 2011** (Us-8964/2008-5) on the basis of which the proceeding was terminated.

In the second case the Administrative Court of the Republic of Croatia confirmed the claim in its judgement annulling the decision of the CCA, UP/I 430-01/2004-01/42 of 4 April 2007 approving the Decisions of the Government of the Republic of Croatia containing State guarantees for restructuring aid for the undertaking *Varteks d.d.*, on the basis of their compliance with the State Aid Act<sup>97</sup>. In the mentioned decision the CCA authorised State aid contained in the restructuring plan of the undertaking *Varteks d.d.*, based on the application of the Ministry of Finance in the form of State guarantees covering subsidized loans.

The Administrative Court of the Republic of Croatia ordered the CCA to adopt a new decision which would comply with the reasoning of the court and its comments relating to the application of law. The CCA complied with the order of the court and carried out another assessment of the restructuring plan of the undertaking *Varteks d.d.*, conducted the oral hearing involving all parties in the proceeding and on 19 May 2011 made a new decision on the basis of which it again gave its consent to the Decisions of the Government of the Republic of Croatia containing State guarantees

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<sup>97</sup> The Administrative Court of the Republic of Croatia ordered the CCA to carry out a separate investigation and an oral hearing before the adoption of the decision. In other words, the court instructed the CCA that in respect with the criteria, standards and interpretation instruments applied by the CCA that are neither contained in the SAA and the Interim agreement, nor assumed or published in any Croatian law or bylaw, these cannot be regarded as source of law.

for restructuring aid for the undertaking *Varteks d.d.*, on the account of their compliance with the State Aid Act. Against this decision of the CCA no actions have been taken.

### III. International cooperation

#### Multilateral cooperation

##### 1. ICN – International Competition Network

During 2011 the CCA was actively involved, as in the years before, in the work of the International Competition Network (117 member states).

In the Advocacy working group the CCA was actively involved by participating in teleconferences and teleseminars, e.g. in September 2011 the CCA participated in teleconference on “Explaining benefits of competition to the government”. The CCA continued participating in the ICN Cartel working group following new documents on promotion of knowledge on cartels which were prepared by the ICN member states and participating on teleconferences, in March on “Public procurement and cartels through public tenders” and in April on “Ex-Officio cartel disclosure”. Furthermore, upon request of the ICN working group chairman, links to relevant articles and regulations on cartels and leniency programme in Croatia were forwarded. In October 2011, in Bruges, Belgium, a Cartel working group meeting was held in which a member of CCA’s Cartel Department participated. The CCA also followed the work of the Agency Effectiveness working group, which during 2011 was dealing with the issues of knowledge management and knowledge transferring as a key to successful work of competition authorities.

The central task of the ICN merger working group in 2011 was **increased use of economic tools for quality improvement of economic analysis** as main criteria of merger assessment, shorter time period for merger assessment and the importance of access to information during the assessment of concentrations. The CCA followed the Merger working group activities and in November 2011 participated in teleconference on “Economic analysis in merger cases”. During 2011 a Unilateral conduct working group activities focused on producing a manual based on questions about analysis and assessment of abuse of a dominant position and writing chapter on economic techniques. In addition, several webinars and teleconferences, in which the CCA participated, were held and on 19 July 2011 members of the CCA participated in a teleconference of this ICN working group on “Price-cost test in cases of unilateral conduct”.

## 2. ECN – European Competition network

Since November 2011 the CCA is engaged, as an observer, in the work of several ECN working groups. First invitation to participate at the ECN Meeting of Heads of Competition Authorities came in November 2011. President of the CCA's Council and Head of CCA's International Cooperation Department participated at this meeting. In addition, since September 2011, members of the CCA are engaged in the work of ECN Forensic IT working group and since December 2011 in the work of ECN Cooperation issues and due process working group.

It is important to underline that with the **Croatia's accession to the EU on 1 July 2013 and with full participation in the work of ECN it will be expected, from the CCA, to actively participate in the cases of the so called EU dimension**, which include prompt submission of replies to the queries of other agencies, preparation of opinions, statements and various other written materials, as well as participating in numerous working group meetings and sectoral subcommittees which will require substantial financial and human resources from the CCA. Certain specific fields will be monitored by individuals from the CCA's expert team responsible for that field. On the account of that all case handlers will have access to common information network, established to facilitate practical and everyday cooperation between member states.

Legal basis for such cooperation is found in the EC Regulation 1/2003 which anticipates a system of parallel supervision, in which Commission and National Competition Authorities can apply articles 101 and 102 of TFEU. Looking from the undertakings point of view, this is a system in which an undertaking can be subject to the investigation of the National Competition Authority and the European Commission, depending on which of the authorities is "best placed" to handle the case.

## 3. OECD

The tenth OECD Global Competition Forum which was held in Paris on 17 and 18 February 2011. The topics related to the area of cross border concentrations and problem of emergence of so called "crisis cartels" in the context of global recession. The representative of the CCA participated in the work of OECD with papers regarding cross borders concentrations of undertakings and establishment of "crisis cartels".

## 4. European Energy Community

A representative of the CCA's State Aid Department participated in the State aid workshop which was held in March 2011 in Vienna and which was organized by European Energy Community, which also covered all of the expenses.

Following the regular requirements for the delivery of the updated data of the CCA's practices, in July 2011 the CCA submitted the requested data on the decisions of competition and State aid adopted in 2010 and 2011 to the European Energy Community Secretariat.

## 5. EBRD – Competition Survey

In July 2011, the CCA received a request from the EBRD for review and submission of updated information for 2011 Competition Survey. On 20th July 2011 CCA submitted an updated summary of its practices and regulations in Croatia to the EBRD.

## 6. Cooperation with the Mediterranean countries

During 2011 the cooperation with the Mediterranean countries in the field of competition continued under the leadership of the European institute "Robert Schumann" from Florence and the European Commission. In July 2011 an article entitled "Agency's practices in implementing anti-cartel policies" was prepared and proposed for a new publication on the occasion of 13th Conference of Mediterranean countries.

### Bilateral Cooperation

On the initiative of the Croatian Competition Agency, while participating at the above-mentioned OECD Competition Forum, Mrs. Dr. Mirna Pavletic Župić, a member of CCA Council and Professor. Dr. Nurettin Kaldirimci, president of the Turkish Agency for Protection of Competition (Rekabet Kurumu) signed a cooperation agreement on 17 February 2011 in Paris. The purpose of this agreement is to promote cooperation in the field of competition policy and rules through the exchange of experts, organization of seminars and study visits, organization of meetings on professional level, professional training and the exchange of literature and information relating the cases from practices of both authorities. Similar bilateral agreements CCA has already signed with Romanian Competition Council, Competition Council of Bosnia and Herzegovina and with Macedonian, Hungarian, Bulgarian, Austrian and Kosovo competition authorities.

### Professional training

Apart from the regular participation in seminars for expert team (mostly these are the OECD Regional Centre for Competition seminars in Budapest, which provides financial support to educate participants from non-OECD countries), internships in the European Commission Directorate General for Competition, deserve special attention. Two CCA employees, supported from the twinning project, were in Brussels for a three-month practice and training in the relevant departments of the Directorate General for Competition.

## IV. CCA and EU

In 2011 the expert team and the members of the Competition Council also participated in the closing phase of the **negotiations for the accession of the Republic of Croatia to the EU**.

In this area the CCA cooperated closely with the European Commission, particularly in drafting of the **decisions on the basis of which restructuring aid contained in aid schemes was authorised to four Croatian shipyards in difficulty (*Brodosplit d.d. including BSO, 3. Maj d.d., Brodotrogir d.d. and Kraljevica d.d.*)**. Invaluable support in the adoption of preliminary opinions of the CCA involving the restructuring plans of the shipyards was provided by the independent experts under the IPA 2008 project "Support to the process of privatization and restructuring of the Croatian shipbuilding industry" which was completed in 2011. The project included the analysis of the plans for each particular shipyard and final reports containing the evaluation of the experts concerning the long-term viability of the shipyards after restructuring. To that end restructuring plans had to be translated, numerous meetings were held with the Ministry of the Economy and the European Commission, investors and shipyards.

Like in the previous years, the CCA regularly submitted the so called enforcement record to the European Commission (summaries of the cases in the area of competition and State aid and the relevant decisions of the CCA). From the start of the negotiation process, and particularly in the final phase, the Commission closely monitored the application of competition and State aid rules and developments of the legislative framework in this area.

For the purpose of drafting of the Progress Report on Croatia the CCA has also regularly submitted to the Commission self-assessment reports in the part falling under the scope of the CCA, containing the most important data from the enforcement, legislative and administrative activities of the CCA in the area of competition and State aid. The CCA was also involved in the drafting of the government Plan for the adoption and implementation of the EU *acquis* for 2012.

In the time before the EU accession the representatives of the CCA regularly participated in the meetings of the Stabilization and Association Committee EU Croatia and the Subcommittee for Internal Market, Trade, Industry, Customs and Taxation.

## V. EU projects

In 2011 the CCA has completed the implementation of one of the two projects from the EU Assistance Programme 2007 "**Implementing Croatian Competition and State Aid policies**", and the IPA 2008 project "**Support to the process of privatization and restructuring of the Croatian shipbuilding industry**". Preparation of a new project from IPA 2011 Programme began in February 2012. Internal audit, which applies to EU projects completed in the previous years was conducted as in the previous years.

### PHARE 2005

Pursuant to the letter of the National Authorizing Officer and the Action Plan of the Central Harmonization Unit, the Internal Audit Department of the Ministry of Economy, Labour and Entrepreneurship conducted, in the April - May 2011, a review of the sustainability of completed projects under the PHARE 2005 in the Project Implementation Unit (PIU) of the CCA. The audit was carried out successfully and only four recommendations regarding the administrative capacity of the PIU were determined, which have already been met or will be met by the deadline in 2012.

### Projects from IPA Programme

#### *Cro Compete*

In December 2011 the implementation of a two-year project called "**Cro Compete**" was completed with the objective to improve the conditions of competition and State aid policy in the Republic of Croatia. The project has been extremely successful and has been listed among the best practices of IPA projects implementation. The objective of this technical assistance project was to contribute to creating awareness about the benefits that citizens have from fair competition, observing the competition rules and the overall strengthening of competition culture. This objective was systematically realized through informing students, local authorities and business community about the benefits that effective competition brings to consumers and taxpayers in general. The CCA supported by foreign experts also held seminars on competition and State aid in cooperation with the Croatian Chamber of the Economy and other institutions including the Croatian law and business schools.

#### Project objectives and results:

Component 1 - University education on legislative regulation in the field of competition and State aid - **515 students** from six Croatian universities participated in lectures on competition and State aid, and 6 students of law and economics visited Brussels and Luxembourg in the 4-day study tour.

Component 2 - Raising awareness of competition and State aid policy at the local level - **17 seminars for representatives of local authorities and the business community** were held across the country; **464 representatives** of local authorities and business community attended the seminars.

Component 3 - Promotion of the Croatian Competition Agency - **in 2010 the number of publications about CCA increased by 60%** compared to the previous year, and in 2011 50% more articles were published mentioning CCA than in 2010. Two international conferences on competition were held; a "Guide for Entrepreneurs on the powers and scope of work of the Croatian Competition Agency" was published and the web site of the project was uploaded. Two surveys on competition and State aid were conducted, and the Agency employed a spokesperson.

### *Twinning*

Parallel with the previous project, the CCA has continued implementation (until March 2012) of another project aimed at strengthening of the capacity of the CCA, as well as sectoral regulators and the judiciary in the implementation of the rules on competition and State aid in the period immediately before and after the Croatian accession to the EU, with the so-called twinning contracts signed with the competent authorities of the Member States.

In one way the twinning prepares this agency for work in the aforementioned **European Competition Network (ECN)**, whereby the CCA cooperates with the Italian Competition Authority as a twinning partner. In November 2011, following the invitation of the Directorate General for Competition of the European Commission, the CCA participated in a meeting of Heads of National Competition Regulators of Member States for the first time. Although Croatia will become an EU Member State a member of the ECN in July 2013 the CCA was invited to participate, as an observer, in the working sessions of the Member States. In this way the CCA representatives were given a chance to prepare themselves for active participation in the future design and implementation of European law and competition policy. The CCA representatives follow the work of the ECN, and its working groups and subgroups, until the Croatian accession to the EU when the CCA will become a full-fledged participant of the ECN.

In the part relating to State aid, assistance of the competent institutions of Great Britain as the twinning partners was aimed at increasing efficiency, accuracy and transparency in decision-making of the CCA and improvement in defining of State aid to aid providers. During the implementation of the activities of this component, aid providers, which will be involved in the implementation of projects financed from structural funds, demonstrated a clear need for additional knowledge about the issues regarding the structural funds and State aid rules.

### *Shipbuilding*

The previously mentioned IPA 2008 project "**Support to the process of privatization and restructuring of the Croatian shipbuilding industry**" lasted from November 2010 until June 2011. During the project international experts with years of experience in shipbuilding gave support to the CCA in evaluation of the restructuring programs of Croatian shipyards in difficulty (*Brodosplit including BSO, 3.Maj, Brodotrogir and Kraljevica*).

## VI. Cooperation with specific regulators

The CCA continued to cooperate closely with specific regulators and other competent authorities and promoted competition policy and competition culture in all specific sectors. Formal and informal contacts have been established on the regular basis particularly with the Croatian National Bank (HNB), the Croatian Energy Regulatory Agency (HERA), the Agency for Electronic Media (AEM), the Croatian Agency for Supervision of Financial Services (HANFA), the Croatian Agency for Post and Electronic Communications (HAKOM), the Agency for Regulation of the Railway Services Market (ARTZU) etc. Individual cooperation cases have been described in detail in Section 5 Competition Advocacy and in chapter II State aid.

Within the *twinning* project and in cooperation with the Italian experts there was a seminar held in HERA under the title “Competition issues in the electricity supply sector”. In HNB there was a series of seminars on competition and regulatory framework in the banking sector. In October 2011 HAKOM was a host of the seminar dealing with “Competition law and regulatory framework in the postal sector”. In November 2011 within the „*Cro Compete*“ project, involving awareness rising in the implementation of new competition rules, there was a seminar in ARTZU on liberalization of the railways in Croatia and its adjustment to the relevant EU directives.

2011 was specifically marked with cooperation in the electronic communications market between this agency and HAKOM – the competent regulator in the electronic communications market. As already mentioned previously in this report, in 2011 the **CCA submitted to HAKOM 12 expert opinions within the analysis of the relevant markets subject to previous (*ex ante*) regulation** (Section 5.1 Opinions on laws and other legal acts).

The cooperation with HNB, currently the regulator in the area of competition in the banking sector, is necessary to ensure compliance in the financial sector. The cooperation is carried out on the basis of the Cooperation Agreement. This competition regime in the banking and financial sector will be in force until the accession of the Republic of Croatia to the EU when competition issues in the banking sector shall also fall under the scope of the Croatian Competition Agency pursuant to the Act on Credit Institutions<sup>98</sup>.

However, current cooperation between these two authorities has been carried out within the meaning of the legislative framework in force. CCA issued in 2011 three opinions upon the request of HNB relating to the cleared concentrations in the banking sector.

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<sup>98</sup> OG 117/2008, 74/2009 and 153/2009.

Successful cooperation has been pursued at the level of the expert teams of HERA and HZZO (Croatian Institute for Public Health) concerning the matters that fall under the jurisdiction of the CCA in specific markets and in the area of public procurement.

## VII. Transparency and public relations

The CCA submits the annual report on its work and the annual report on State aid to the Croatian Parliament. It also works out a two-year-strategy statement setting the priorities in its work. All the documents are available on its web site.

One of the novelties of the 2009 Competition Act is that only the **dispositions of the decisions** of the CCA are published in the Official Gazette. Full texts of the decisions, the decisions of the Administrative Court of the Republic of Croatia (High Administrative Court of the Republic of Croatia) and all other acts produced by the CCA are published on the web site of the CCA. Business secrecy provisions are observed.

At the same time, transparency in the area of assessment of concentrations is ensured through the publication of the request for information on the web site of the CCA.

Pursuant to the Access to Information Act<sup>99</sup> the CCA as a public administration authority must ensure openness and publicity of its work regarding the information it possesses.

In accordance with the Registry of requests, procedures and decisions on **access to information** the CCA received two requests for access to information in 2011. Both requests have been approved.

### Communication activities in 2011

The key communication channel of this agency is its **web site** [www.aztn.hr](http://www.aztn.hr). Entire legislative framework is available to the public, decisions, procedural orders and opinions, as well as the most important internal documents. The web site has special links to EU *acquis*, provides translations into Croatian for the major part of it, it contains all annual reports in both Croatian and English, strategy statements etc. There are the decisions of the Administrative Court of the Republic of Croatia (High Administrative Court of Croatia) relating to the decisions of the CCA and the decisions of the Constitutional Court, the CCA international activities etc.

The CCA communicates with the media. On the CCA web site there are all press releases and news from the sessions of the Council and other information important for the work of the CCA. The press is also directly informed of the matters concerned.

In 2011 there were published:

**53** CCA decisions

**24** procedural orders

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<sup>99</sup> OG 172/2003, 144/2010 and 77/2011.

**27** opinions

**30** press releases

**56** news on competition matters and CCA activities.

There were some **2000 media publications** in the area of competition, State aid or the work of the CCA in general. This number must be topped up with some 200 written and oral different queries.

A particular interest of the public was recorded in the area of shipbuilding, negotiations for the accession of Croatia to the EU, steel sector (on the account of the recovery ordered to *Željezara Split d.d.*) etc.

In 2011 the CCA published a ***Handbook of Competition Rules in the Republic of Croatia*** containing the full legislative framework in the area concerned. Within IPA 2007 „*Cro Compete – Strengthening of competition and State aid policy in the Republic of Croatia*” a ***CCA Practical Guide for Undertakings*** has also been issued.

In the period from March to May 2011, within the above mentioned project and in cooperation with the Croatian Chamber of the Economy, a survey on compliance with competition rules among undertakings and other target groups in Croatia has also been carried out.

## IX. Conclusion

The work of this Competition Agency and its scope have been defined by a number of rules that the Republic of Croatia has gradually been adjusting to the EU *acquis* since the signing of the SAA (the Croatian Competition Act, the State Aid Act and more than forty bylaws).

In spite of this fact, the very name of this authority has been causing misunderstandings on the part of some public bodies holding the CCA responsible for all negative occurrences in the market. Naturally, this is not so. What is more, the CCA decisions are subject to court review, even of the Constitutional Court of the Republic of Croatia, whereas during the negotiations for the accession of Croatia to the EU its decisions have been scrutinized by the European Commission and other EU institutions. The decisions and opinions of the CCA are published in many expert journals and publications dealing with competition and State aid.

Therefore, we are obligated to issue sometimes even unpopular decisions, but solely under the condition that our view is founded by the law. In this sense we also use other instruments, such as continuous education and dissemination of knowledge about competition rules among undertakings, associations of undertakings, judges, academia, and most importantly – citizens who are usually final consumers that must benefit from the implementation of the rules concerned in their everyday-life.

On the other hand, the enforcement of competition and State aid rules, together with other activities mentioned in this report, particularly competition advocacy, should ensure that neither private nor public impediments create barriers to establishment of dynamic markets and competition – that consequently – generate economic growth, strengthen export competitiveness and increase employment. Although some in this country may oppose, only the market and competition in the market, as it has been evidenced by most dynamic economies in the world, may increase productivity and economic development, which together with a sustainable development policy, result in social progress.

In the years to come we want the awareness about the importance of competition to rise, openness of the market to improve and the role of this agency to find its place in structural adjustments and reforms with the view to overcoming the crisis and creating conditions for economic growth. On the account of these objectives we adopted the CCA Annual Plan for 2012 – 2013 on the basis of which we set the priorities taking into account the necessity of timely preparation of the Croatian business community for the changes brought about by the EU accession, but also the need to further strengthen the financial and administrative capacities of the CCA given the new tasks and activities it will have to assume by the EU membership<sup>100</sup>.

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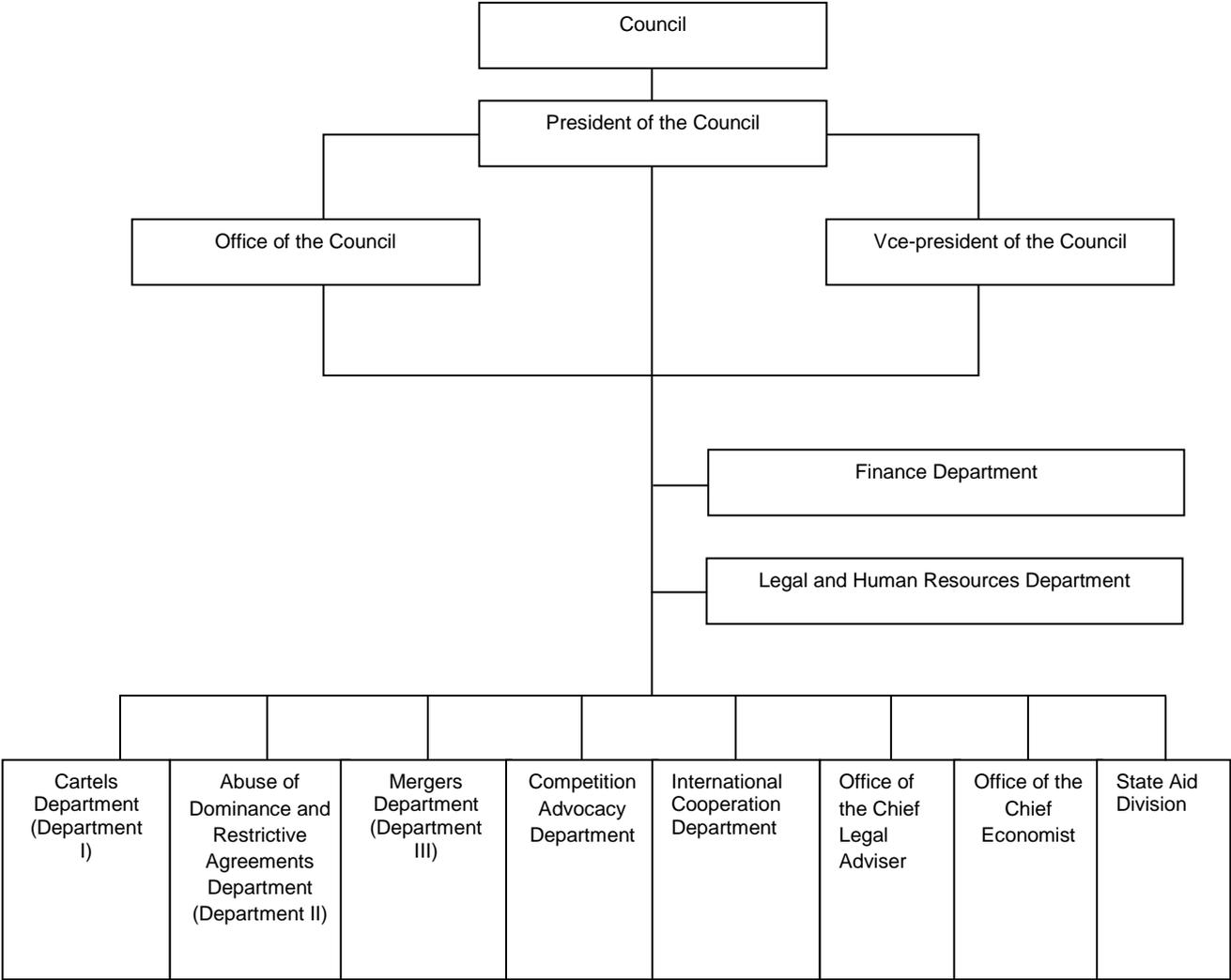
<sup>100</sup> The CCA Annual Plan for 2012 - 2013 is available on its website <http://www.aztn.hr/o-nama/24/annual-plan/>

Concretely, in the coming years our priorities will direct towards strengthening of the enforcement record, the Agency acting in its executive capacity, in the cases where its decisions have significant impact on competition and consumers, where the behaviour of the players in the market should be changed and where compliance of their business strategies with competition rules must be achieved, where competition advocacy is needed to strengthen competition culture among policy makers and public administration authorities, central and local, and finally, in the area of State aid control and the relevant cooperation with the EU institutions after the Croatian accession to the EU on 1 July 2013.

However, the risks of our success lie in our budget, the political environment and interface with other policies, the existing legal system, and last but not least, in our employees. The key to effectiveness of this agency depends on its expert team. They are our most valuable resources. Taking into account the employment policy in the public sector in the time of the crisis, the prospects of new employment and career making is unfortunately limited. In spite of this fact, we believe in competence, knowledge and experience of our employees in pursuing our objectives. The challenge for us is to keep these experts in the CCA in the forthcoming years. On the other hand, the budget of the CCA in the time of the crisis does not allow the accomplishment of goals we have set for ourselves, which we are aware is the destiny of many authorities similar to this agency.

Optimum conditions for businesses and consumers can only be created on the basis of fair competition and sound legal framework. Barriers removed by certain laws cannot be re-erected by undertakings. Open markets and competition rules together design a modern industrial policy. They can together with public support create business-friendly environment for all undertakings and sectors of the economy. Given the approaching accession of Croatia to the EU it is important to highlight once again that what we create here, at home, especially relating to the change in the behaviour of the undertakings and the improvement of the business environment, is of invaluable importance for our future under the challenges of increased competitive pressure from the market of more than 500 million consumers, 220 million workers and 20 million undertakings.

**Organization chart of the Croatian Competition Agency**



## CCA Budget

	2011		
	Planned	Executed	% executed
<b>FUNDS FROM SOURCE 1 GENERAL REVENUES AND RECEIPTS</b>	<b>13.740.035,00</b>	<b>13.310.128,07</b>	<b>96,87</b>
A507008 Administration and Management	13.370.470,00	13.003.074,43	97,25
K507005 IT	307.637,00	307.053,64	99,81
T 507012 IPA 2008 Support to the privatization process of the Croatian shipbuilding sector	61.928,00	-	-
<b>FUNDS FROM SOURCE 5 SUPPORT</b>	<b>6.163.835,00</b>	<b>3.544.478,84</b>	<b>57,51</b>
T507012 IPA 2007 Implementation of competition and State aid policy	5.763.987,00	3.544.478,84	61,49
T507013 IPA 2008 Support to the privatization of the shipbuilding sector in Croatia	399.848,00	-	-
<b>TOTAL:</b>	<b>19.903.870,00</b>	<b>16.854.606,91</b>	<b>84,68</b>

Source: CCA