**THE REPUBLIC OF CROATIA**

**CROATIAN COMPETITION AGENCY**

# Annual report on the work of the Croatian Competition Agency in the area of anti-trust for 2004

**October 2005**

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# PREFACE

Competition rules are a constitutional category ensuring all undertakings equal legal position in the market, which is based on the freedom of undertakings and the principles of the free market economy in the Republic of Croatia.

The contemporary market economy cannot function without its basic protection mechanism – competition rules. Competition law is a constituent part of the legal and economic theories but it has also been recognized in the economic and trade practices of the most developed countries in the world. Consequently, competition rules and their effective implementation are a prerequisite for an optimal allocation of resources and elimination of extra profit which is not the result of the successful business operations of the undertaking, but its favoured position in the market. In other words, effective competition represents the best incentive to the undertaking in order to produce quality product, introduce technological improvements and innovations, which subsequently lead to production and distribution rationalization and lowering of costs, improving the development and distribution of new, cheaper, higher quality products. It leads to enhanced competitiveness in domestic and international markets.

Competition law, but also, which is even more important, its effective implementation is the essential factor of economic growth, does not evolve automatically by a mere decision of a country to apply market economy. It is also necessary to implement an adequate competition policy the objective of which is the development of economic efficiency and competitiveness in view to protection the interests of undertakings as well as consumers.

Effective implementation of competition rules influences the market structure and behaviour of the undertakings in the market. The undertakings are forced to adjust their market behaviour to rules which prohibit the abuse of dominance or do not allow the creation of monopolies, or prevent the creation of cartels which, as a rule, result in price fixing agreements or market partitioning. In addition, these rules prohibit mergers and acquisitions, or other forms of concentrations of undertakings, which may have as their consequence significant negative effects on competition or adversely affect consumers' interests. Accordingly, the consumers are free to choose amongst a greater range of products, goods and services, offered in the market by a larger number of undertakings, under lower prices and of higher quality.

After the signing of the Stabilisation and Association Agreement between the European Communities and its Member States and the Republic of Croatia (*Official Gazette - International Treaties,* No 14/01; hereinafter referred to as: the SAA), the first step for the Republic of Croatia was the priority and full harmonisation of the legislation in the area of competition (anti-trust) with the EC acquis communautaire in the form of the Competition Act (Official Gazette No 122/03) which was adopted by the Croatian Parliament on 15 July 2003 and subsequently entered into force on 7 August 2003, in application since 1 October 2003, which is the date when the first piece of legislation in the area of anti-trust, the 1995 Competition Act (Official Gazette No 48/95, 52/97 and 89/98) expired.

By the 2003 Competition Act the Croatian legislation is considered to be fully harmonized with the primary source of competition law in the EU, i.e. with the provisions of the Treaty establishing the European Community (hereinafter: the Treaty), provided under Article 82 and regulating abuse of a dominant position by one or more undertakings in the market, and Article 86 regulating the application of competition law to legal or natural persons entrusted with the

operation of services of general economic interest to which Member States grant special or exclusive rights.

From 2001 to 2003 the activities of the Croatian Competition Agency (CCA) were focused on the drafting of the new Competition Act. In this reporting period (2004) the main activities of the CCA were concentrated on the drafting of secondary legislation covering the regulations provided for under the provisions of the Competition Act, which are proposed by the Competition Council and subsequently adopted by the Government of the Republic of Croatia and which ensure further harmonization of the Croatian competition rules with the relevant EC secondary legislation and other sources of the EC law (so called "soft law").

The EC secondary legislation covers the regulations, guidelines, decisions, recommendations, communications and opinions of the European Commission and of the Council which regulate in detail the provisions of the Treaty relating to competition.

Given that the Competition Act only principally regulates the particular forms of distortion of competition it was necessary for the Croatian Government to adopt the sub ordinary legislation (regulations).

In 2004, upon the proposal of the Competition Council, the Croatian Government adopted seven regulations, out of eight which are provided for by the Competition Act. Six out of seven regulations entered into force in the same year:

- Regulation on the definition of relevant market (Official Gazette No 51/2004)
- Regulation on notification and assessment of concentrations (Official Gazette No 51/2004)
- Regulation on block exemption granted to certain categories of vertical agreements (Official Gazette No 51/2004)
- Regulation on agreements of minor importance (Official Gazette No 51/2004)
- Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles (Official Gazette No 105/2004)
- Regulation on block exemption granted to certain categories of horizontal agreements (Official Gazette No 158/2004).

The above mentioned regulations represent implementing rules for the Competition Act, regulating in detail the particular provisions thereof and ensuring its proper application in practice. This part of competition has been therewith harmonized with the EC acquis, especially with the provisions of the secondary EC legislation covering this area. On the other hand, the regulations concerned contribute to legal certainty of the interested parties, enabling better understanding and identification of the applicable criteria and standards, as well as the procedure carried out by the Competition Agency in each particular case. In addition, the adoption of the listed regulations which regulate in detail the provisions of the Competition Act was also necessary on the grounds of the stipulated commitment of the Agency to apply the EC criteria and standards and interpretation instruments used in the Community.

Furthermore, in 2004 the Agency took a step further in informing all participating parties on the importance of the EC acquis in the area of competition. Namely, all relevant EC regulations, guidelines and Commission communications, which the Croatian rules in this area have been complied with, have been translated into Croatian, some of them in cooperation with the Ministry of Foreign Affairs and European Integration, and are available on the Croatian website of the Competition Agency www.aztn.hr .

Apart from the activities focused on the harmonization of the Croatian legislation with the EC acquis in the area concerned, the CCA closed 74% of the total number of the registered cases, in spite of the fact that it is considerably understaffed in comparison with the number of employees actually needed for the effective implementation of the Competition Act. The majority of the cases in 2004 involved the control of concentrations of undertakings and issuing opinions on draft laws and other proposed legislation as to their compliance with the Competition Act, requested by the ministries and other public authorities. A fewer number of cases covered the assessment of agreements on the account of the fact that the newly adopted regulations provide for a transitional period for bringing into compliance of the existing agreements with the new rules, but also due to the fact that the agreements which satisfy the conditions for block exemption need not be notified to the CCA for assessment.

During 2004 the CCA was also actively engaged in competition advocacy aimed at raising awareness and knowledge of undertakings, consumers, government and other state bodies, judicial bodies and the wider public regarding the importance and role of competition law and policy in further development of market economy in our country, which is one of the priorities in the work of this Agency. To this end a number of seminars and workshops were organized, the web page of the CCA was constantly updated by the news which covers all the activities performed and publishing of the decisions made by the CCA and the rulings of the Administrative Court of the Republic of Croatia deciding upon the claims against the decisions of the CCA, as well as press releases which are published after each session of the Competition Council.

A significant part of the activities of the Agency in 2004 was aimed at establishing and promoting the cooperation with the competent authorities in the area of competition relating to particular sectors regulated by separate rules (so called sectoral regulators). In March 2004 the CCA concluded a Cooperation Agreement relating to competition within the energy sector with the Council for Energy Regulation. The CCA also initiated the modifications of the rules regulating the energy industries which lead to the recovery of the full jurisdiction of the CCA relating to competition issues in the energy sector, and explicitly stating the binding commitment of the Agency for Energy Regulation to provide technical support to the CCA in all cases in the form of expert opinions and analyses.

Informal cooperation has also been established with the Croatian Telecommunications Agency, Council for Electronic Media and Postal Services Council, and the successful cooperation with the Croatian National Bank has been continued. At the time of drafting of this annual report only the competition issues in the banking sector are not entirely covered by the jurisdiction of the Competition Agency.

In 2004 the Agency considerably improved its international cooperation which was particularly linked to the EU accession process and the cooperation with the European Commission Directorate General for Competition. In addition, worth mentioning are also the EU technical support projects the beneficiary of which is also the Agency and the necessary bilateral and multilateral cooperation in particular with the competition authorities of the EU Member States as well as the relevant authorities from the region. Furthermore, the employees of the Agency participated in a number of international seminars and conferences.
After the adoption of all subordinary legislation provided for under the Competition Act (the last two regulations, the Regulation on block exemption granted to certain categories of technology transfer agreements and the Regulation on block exemption granted to insurance agreements entered into force early in 2005) the process of harmonization and adjustment of the legislation in this area has been temporarily completed. Nevertheless, as the EU legal matter in question is

constantly subject to modifications and changes, the Croatian legislation will need to follow the same process of permanent adjustment to the changes during its way to the EU membership. Its second task will be the application and enforcement of the adopted rules in the way to ensure a market economy where all the participants within the Croatian market will be obeying the same rules, irrespectively of their power or market position. The strengthening of competition rules in the process concerned is designated to encourage competitiveness in the national market which will contribute to the development and strengthening of the undertakings which offer or are capable of offering lower prices, higher quality, new products and a greater choice to the consumers, which would also lead to their competitiveness in the EU common market. A great responsibility in this process bears the CCA, but also the courts which decide on the legality of its decisions (Administrative Court of the Republic of Croatia) and the courts which impose sanctions based on the decisions of the Agency for the violation of the provisions of the Competition Act (the misdemeanour courts and Higher Misdemeanour Court of Croatia).

Taking the above said into consideration, it is necessary to provide for the urgent and permanent training of the judges who pass judgements relating to the cases in this area, given that when deciding upon the legality of the decisions or fines prescribed by the CCA they should not only be acquainted with the Croatian legislation in this field, but also with the relevant case law of the European Court of Justice which is a constituent part of the EC acquis and an important instrument of interpretation in the application of the national legislation.

In the medium term (2006 – 2008) the CCA is planning to establish cooperation with the Ministry of Justice which is aimed at amending of the existing Competition Act and Courts Act with the view to eliminating the deficiencies of the current court protection system applicable against the decisions of the Agency, and which has already been reported about to the Croatian Parliament in the CCA Annual Report for 2003. Namely, the current legal solution which empowers one court to decide on the legality of the decisions of the CCA and which does not provide for the possibility of imposing sanctions (Administrative Court of the Republic of Croatia), whereas other courts (misdemeanour courts) have the jurisdiction for imposing fines based on the decisions of the CCA (Higher Misdemeanour Court of the Republic of Croatia decides on the appeals against the decisions of the misdemeanour courts) does not ensure full effectiveness in the implementation of competition rules. Such a system indicates a number of drawbacks: administrative disputes are lengthy and there is no possibility to impose sanctions, misdemeanour courts interrupt the procedure until the Administrative Court has reached its decision (or until the decision of the CCA becomes final), limitation misdemeanour courts fail to impose sanctions due to limitation periods, the training of so many judges (including all magistrates and all Administrative Court judges in the territory of the Republic of Croatia) compared with a relatively small number of very complex cases is impossible, unpractical and uneconomical etc.

In the most EU Member States only one court decides on the legality of the decisions taken by the authorities similar to the Competition Agency, including also the decisions on the level of fines imposed by such authorities. In order to avoid the above stated deficiencies the initiative of the Agency is to establish the said cooperation with the Ministry of Justice aimed at the amendments to the Competition Act in force, so as to also empower Agency to impose sanctions. In addition, the amendments to the existing Competition Act should ensure that only one court decides on the legality of the decisions of the Agency at the same time having the jurisdiction to impose fines.

Finally, taking into account that the area of competition constitutes a separate chapter (Chapter VIII) in the negotiations for the full membership of the Republic of Croatia in the EU, its

importance is even more significant, given that the implementation of the relevant acquis represents one of the key factors, *a conditio sine qua non*, in the establishment of the EC common market. Therefore, the work and the activities of the CCA, not only relating to the integration and transfer of the EC acquis in the Croatian legislation, but also with respect to its proper application, will be crucial in the evaluation of progress in the negotiations. In order to tackle this task, the Agency needs permanent institutional building covering both the increase in the number of employees and ensuring proper conditions for their work.

President of the Competition Council

Olgica Spevec

# 1. INTRODUCTON

The Competition Agency (CCA) compiled the Annual Report for 2004 within the meaning of Article 36 of the Competition Act[1]. This is the CCA second[2] annual report which has been drafted in accordance with the methodology used by the European Commission (EC) in drafting such annual reports.

This Annual Report covers the work of the CCA in the area of competition (anti-trust), whereas the Annual Report on the work of the CCA concerning the State Aid and Annual Report on State Aid for 2004 have been compiled separately and submitted to the Croatian Parliament within the meaning of the State Aid Act[3].

The Report contains the review of the CCA activities, relevant analyses and initiated proceedings within the meaning of the Competition Act, and covers the period from 1 January 2004 to 31 December 2004.

Chapter 2 of this Annual Report covers the legislative framework in the area of anti-trust and explains the reasons for its further harmonization with the EC acquis. The relevant legislative framework involves new subordinary legislation necessary for the implementation of the Competition Act, that is the regulations (bylaws) adopted by the Croatian Government, which regulate in detail particular parts thereof.

Chapters 3 and 4 of this Annual Report deal with the activities of the CCA in 2004 relating to the registered cases. In 2004 the CCA handled out a total of 239 files/cases, 82 of which were administrative cases. There are three basic categories of administrative cases: assessments of agreements, abuse of dominance and concentrations. Chapters 3 and 4 give a detailed insight into the activities relating to the mentioned categories of cases and provide summaries of selected cases in the areas concerned.

Chapter 5 deals with the promotion of so called competition culture, which has been one of the most important tasks taken by the CCA in the reporting period.
Competition advocacy falls under the jurisdiction of the CCA and involves activities such as giving opinions on compliance of the draft acts and other legislation with the provisions of the Competition Act. In the reporting period concerned the CCA received 24 applications from the ministries and other public authorities requesting the expert opinion on draft acts and other legislation. Furthermore, the CCA as a *sui generis* authority responsible for the implementation of the Competition Act also provides preliminary expert opinions upon requests of all stakeholders relating to the interpretation of the provisions of the Competition Act and procedural regulations. In 2004 there were registered 68 such requests. A detailed overview of such activities, selected cases and other operations of the CCA aimed at competition advocacy in the Republic of Croatia are also given in Chapter 5.

[1] "The Council shall prepare the annual report of the activities of the Agency in the preceding year and submit it to the Croatian Parliament".
[2] The first annual report drafted in accordance with the EC methodology for drafting such annual reports was the CCA Annual Report for 2003.
[3] Official Gazette No 47/03 and 60/04.

Activities of the CCA relating to international cooperation have also been significantly improved. They have been particularly linked to the EU accession process and the cooperation with the European Commission Directorate General for Competition. Worth mentioning here are also the EU technical support projects the beneficiary of which is also the CCA and the increasing bilateral and multilateral cooperation in particular with the competition authorities of the EU Member States and the relevant authorities from the region. The employees of the Agency participated in a number of international seminars and conferences with the view to their necessary training in the area of the EC acquis concerning competition. Hence, in the reporting period there were 60 files opened on international cooperation which is dealt with in Chapter 6.

Chapter 7 covers the internal organization of the CCA and the institutional capacity issues, whereas Chapter 8 includes the data on the CCA budget.

The novelties relating to the recent anti-trust reform in Europe are provided in Chapter 9.

Chapter 10 includes the closure remarks relating to the implementation of anti-trust law and policy in the Republic of Croatia and offers some solutions to the detected problems and drawbacks as well as the priorities facing the CCA on its way to efficient and effective implementation and promotion of this branch of law.

# 2. LEGISLATIVE FRAMEWORK

Legislative framework in the area of anti-trust consists of the Competition Act (Official Gazette No 122/03) which applies from 1 October 2003 and the relevant subordinate legislation. In 2004, upon the proposal of the Competition Council, the Croatian Government adopted seven regulations, out of eight which are provided by the Competition Act. Six out of these seven regulations entered into force in the same year, whereas two regulations entered into force in early 2005[4].

## 2.1. Reasons for further harmonization of legislation (following the entry into force of the Competition Act)

The obligation of the Republic of Croatia to harmonize its legislation with the EC acquis communautaire stems from Article 69, with respect to Article 70 and Article 40 of the Stabilization and Association Agreement between the Republic of Croatia and the European Communities and their Member States (Official Gazette – International Treaties, No 14/01; hereinafter: SAA).

In spite of the fact that the SAA entered into force on 1 February 2005 the above mentioned obligation of the Republic of Croatia was taken on as early as on 29 October 2001, the date when the SAA was signed. The relevant obligation must be fulfilled within six years from the date of signing.

One of the priority areas in this process of harmonization and application of the EC rules is the area of competition. From the early 2002 (i.e. before the entry into force of the SAA) the Interim Agreement on Trade and Trade-Related Matters[5] was in force, pursuant to which the provisions on trade and trade-related matters, competition, intellectual, industrial and trade property entered into force as early as on 1 January 2002. The Interim Agreement was applicable until 1 February 2005 when the SAA entered into force after it had been ratified by all EU Member States.

Within the meaning of the obligations stemming from the SAA, Croatia has undertaken the commitments as to the development and application of competition rules similar to those in force in the EU with respect to both primary[6] and secondary sources of law[7] and the EU case

[4] The Regulation on block exemption granted to certain categories of transfer technology agreements (Official Gazette No 2/05) and Regulation on block exemption granted to insurance agreements (Official Gazette No 54/05) entered into force in early 2005.

[5] The Ratification Act of the Interim Agreement on Trade and Trade-Related Matters between the Republic of Croatia and the European Community (Official Gazette – International Treaties, No 15/01), which was concluded on 29 October 2001, entered into force on 1 March 2002, in application from 1 January 2002 to the date of the entry into force of the SAA on 1 February 2005.

[6] Title VI Common rules on competition, taxation and approximation of laws, Chapter 1, Section 1, Articles 81, 82 and 86 of the Treaty Establishing the European Community (*Official Journal C 325 of 24 December 2002*), which represents the primary source of the EC competition law incorporated in the competition rules of the EU Member States, but also of the Croatian Competition Act.

[7] Secondary source of the EC law are regulations, guidelines, decisions, recommendations and opinions of the European Commission or the EC Council.

law. At the same time, Croatia has undertaken the obligation to establish the institutional framework responsible for the application of the rules and functioning of the system, including the independent operational authority with all necessary powers for efficient implementation of the rules concerned.

In general, the EU anti-trust law prohibits the following:

- all agreements between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market (Article 81 of the EC Treaty);
- any abuse by one or more undertakings of a dominant position within the common market (Article 82 of the EC Treaty);
- any measure contrary to the rules provided for in Article 12 and Articles 81 to 89, in the case of public undertakings and undertaking to which Member States grant special or exclusive rights.

Proper interpretation also takes into account the third possible form of distortion of competition, namely concentrations between undertakings, which are actually based on some kind of an agreement between undertakings. Hence, the EC anti-trust law also includes concentrations when it refers to agreements in the above listed second point.

The Competition Act fully complies with Articles 81[8], 82[9] and 86[10] of the EC Treaty (primary source of the EC competition law). Nevertheless, it only generally regulates the forms of distortion of competition. In order to ensure the proper application of the Competition Act in practice It was also necessary to adopt as soon as possible the secondary regulations (bylaws) regulating the area in question in more detail in the way prescribed by the relevant EC law. The adoption of the above mentioned regulations[11] was also necessary pursuant to the provisions of the Competition Act relating to the responsibility of the Competition Agency to apply the EC standards and criteria and interpretation instruments in the proceedings carried out before the Agency.

[8] Article 81 of the EC Treaty regulates prohibited agreements and the possibility for exemption from prohibition, whereby extensive interpretation also includes concentrations of undertakings.

[9] Article 82 of the EC Treaty regulates abuse of a dominant position by one or more undertakings.

[10] Article 86 of the EC Treaty refers to legal or natural persons - public undertakings and undertakings entrusted with the operation of services of general economic interest to which Member States grant special rights.

[11] Article 35 paragraph (3) of the Competition Act provides that in the assessment of different forms of prevention, restriction or distortion of competition, that may affect the trading between the Republic of Croatia and the European Communities, the Council shall in accordance with Article 70 of the Stabilization and Association Agreement, stipulated between the European Communities and their Member States and the Republic of Croatia (Official Gazette – International agreements, No 14/01), accordingly apply the criteria arising from the correct application of the rules regulating competition in the European Communities.

### 2.1.1. Regulations of the Croatian Government in the area of anti-trust

In 2004, upon the proposal of the Competition Council, the Croatian Government adopted seven regulations, out of eight which are provided for by the Competition Act. Six out of seven regulations entered into force in 2004, whereas two entered into force in early 2005[12].

In 2004 the following regulations entered into force:

- Regulation on the definition of relevant market (Official Gazette No 51/2004)
- Regulation on notification and assessment of concentrations (Official Gazette No 51/2004)
- Regulation on block exemption granted to certain categories of vertical agreements (Official Gazette No 51/2004)
- Regulation on agreements of minor importance (Official Gazette No 51/2004)
- Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles (Official Gazette No 105/2004)
- Regulation on block exemption granted to certain categories of horizontal agreements (Official Gazette No 158/2004).

The above mentioned regulations represent implementing rules for the Competition Act, regulating in detail the particular provisions thereof and ensuring its proper application in practice. This part of competition has been therewith harmonized with the EC acquis, especially with the provisions of the secondary EC legislation covering this area. On the other hand, the regulations concerned contribute to legal certainty of the interested parties, enabling better understanding and identification of the applicable criteria and standards, as well as the procedure carried out by the Competition Agency in each particular case.

Furthermore, in 2004 the Agency took a step further in informing all participating parties on the importance of the EC acquis in the area of competition. Namely, all relevant EC regulations, guidelines and Commission communications, which the Croatian rules in this area have been complied with, have been translated into Croatian, some of them in cooperation with the Ministry of Foreign Affairs and European Integration, and are available on the Croatian website of the Competition Agency www.aztn.hr .

The following subchapters provide a summary of the provisions introduced by the newly adopted regulations.

#### 2.1.1.1. Regulation on the definition of relevant market

The Regulation on the definition of relevant market[13] ensures the compliance of this part of competition system with the EC acquis, in the first place with the Commission Notice on the definition of the relevant market for the purposes of Community competition law[14].

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[12] Regulation on block exemption granted to certain categories of technology transfer agreements (Official Gazette No 2/05) and Regulation on block exemption granted to insurance agreements (Official Gazette No 54/05).

[13] Upon the proposal of the Competition Council, the Government of the Republic of Croatia adopted the Regulation on the definition of relevant market (Official Gazette No 51/04) which entered into force on 29 April 2004.

[14] Official Journal: OJ C 372 on 9/12/1997,( available in English on www.europa.eu.int or in Croatian on the CCA website www.aztn.hr ) .

The first step in the assessment of possible prevention, restriction or distortion of competition is the definition of relevant market in each particular case. The definition of the relevant product market and relevant geographic market represent the basic operations applying the case by case method in the procedures carried out before the Agency.

A relevant product market comprises all products which are regarded as interchangeable or substitutable, by reason of the products' characteristics, their prices and their intended use (substitute products)[15]. It shall be assumed that a product is a substitute product particularly when it can be reasonably expected that the buyers, i.e. customers of the relevant product would switch to readily available substitutes in response to hypothetical small (in the range 5% to 10%) but permanent relative price increase in the relative product; and/or when it can be reasonably expected that the buyers, i.e. customers of the relevant product would switch to equivalent or related product of a different supplier in response to or as a reaction to hypothetical small (in the range 5% to 10%) but permanent relative price increase in the relative product. The method described above has been developed in the United States of America but nowadays it is used worldwide in the area concerned.

Pursuant to the Regulation in question the relevant geographic market comprises the whole or a part of the territory of the Republic of Croatia, in exceptional cases also the international level or worldwide[16]. It is important to point out that the analysis of all market dimensions especially includes the examination of the conditions for entry to the market, particularly the transport costs, access to distribution channels and associated costs, current pattern of purchases and customers' usage patterns and other relevant facts.

The adoption of the relevant Regulation was especially important and necessary on the account of the more detailed definition of the provisions of the Competition Act which provide for the definition of relevant market only on a general basis[17].

The basic purpose of the definition of relevant market is the calculation of market shares held by certain undertakings, in the procedure for the assessment of agreements, establishment of abuse of a dominant position or assessment of concentrations. The detailed definitions of the relevant product market and relevant geographic market should ensure a proper application of the Competition Act on the part of the Agency, but also enable the undertakings involved and all interested parties to define relevant market in each particular case, estimate their market share in the relevant market concerned, identify their actual and potential competitors, as well as substitute products, entry barriers to particular relevant markets etc.

The compliance of the Regulation on the definition of relevant market with the EC acquis also ensures legal certainty of the undertakings to which the Competition Act applies, and contributes to their ability to understand the criteria used by competition authorities when defining relevant market for each particular product (goods or services). Such knowledge will especially help them where taking business decisions relating to acquisitions, joint venture, conclusion of agreements etc.

[15] Article 15 of the Regulation.
[16] Article 16 of the Regulation.
[17] Under Article 7 paragraph (1) of the Competition Act the relevant market is defined as a market of certain goods and/or services, which are the subject of the activities performed by the undertaking in the specific geographic territory.

### 2.1.1.2. Regulation on agreements of minor importance

The Regulation on agreements of minor importance[18] ensures the compliance of this part of competition system with the EC acquis, in the first place with the Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis)[19].

Within the meaning of the Regulation on agreements of minor importance, agreements of minor importance are considered agreements by which the parties to the agreement and their controlled undertakings do not hold an appreciable common market share,[20] provided that they do not contain provisions which despite the inappreciable market share lead to prevention, restriction or distortion of competition. Here applies the so called rule of reason[21], assuming that agreements which hold inappreciable market share consequently have inappreciable effect on competition, in other words that such agreements cannot have appreciable negative effects in the relevant market. Such agreements do not raise competition concerns and are not considered prohibited. The undertakings may feely conclude such agreements and need not be notified to the Agency for assessment.

However, the agreements which despite the inappreciable market share of the parties to the agreement and their connected undertakings contain hard core restrictions as prescribed by this Regulation shall not be considered the agreements of minor importance.

[18] Upon the proposal of the Competition Council, and within the meaning of Article 13 (3) of the Competition Act, the Government of the Republic of Croatia adopted the Regulation on agreements of minor importance (Official Gazette No 51/04) which entered into force on 29 April 2004.

[19] Official Journal C 368, 22/12/2001 (available in English on www.europa.eu.int or in Croatian on the CCA website www.aztn.hr )

[20] Inappreciable market share, relating to the agreements between competitors or non-competitors, within the meaning of this Regulation shall be considered:

- if the total market share held by the parties to the agreement and their controlled undertakings does not exceed ten per cent (10%) on any of the relevant markets affected by the agreement, where the agreement is made between undertakings which are actual or potential competitors on any of these markets; or
- if the market share held by each of the parties to the agreement or their controlled undertakings does not exceed fifteen per cent (15%) on the relevant market affected by the agreement, where the agreement is made between undertakings which are not actual or potential competitors on the relevant market concerned; or
- if the market share held by each of the parties to the agreement or their controlled undertakings does not exceed ten per cent (10%) on the relevant market affected by the agreement, in cases where it is difficult to classify the agreement as either an agreement between competitors or an agreement between non-competitors on the relevant market concerned.

[21] Rule of reason has been established by a very extensive case law in the USA which has been much later accepted in Europe. The assessment of the agreements containing hard core restrictions depends on the legal and economic analysis of its positive and negative effects on competition in the relevant market.

| HARD CORE RESTRICTIONS ON AGREEMENTS OF MINOR IMPORTANCE BETWEEN COMPETITORS | |
|---|---|
| **1.** | **fixing of prices when selling the products to third parties,** |
| **2.** | **limitation of output or sales,** |
| **3.** | **allocation of markets or customers.** |

| HARD CORE RESTRICTIONS ON AGREEMENTS OF MINOR IMPORTANCE BETWEEN NON-COMPETITORS | |
|---|---|
| **1.** | **the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier imposing a maximum sale price or recommending a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties** |
| **2.** **the restriction of the territory into which, or of the customers to whom, the buyer may sell the contract products** | ***NIJE ZABRANJENO*** |
| | *a. the restriction of the buyer's active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer;* |
| | *b. the restriction of active and passive sales to end users by a buyer operating at the wholesale level of trade;* |
| | *c. the restriction of active and passive sales to unauthorized distributors by the members of a selective distribution system;* |
| | *d. the restriction of the buyer's active or passive sales regarding the ability to sell components or spare parts, supplied for the purposes of incorporating, to customers who would use them to manufacture the same type of products (substitutes) as those produced by the supplier.* |
| **3.** | **the restriction of active or passive sales to end users by members of a selective distribution system operating at the retail level of trade,** |
| | without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorized place of establishment; |
| **4.** | **the restriction of cross-supplies between distributors within a selective distribution system, including the restrictions between distributors operating at different level of trade;** |
| **5.** | **the restriction agreed between a supplier of components and a buyer who incorporates those components, which limits the supplier's ability to sell the components as spare parts to end users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its products.** |

### 2.1.1.3. Regulation on block exemption granted to certain categories of vertical agreements

The Regulation on block exemption granted to certain categories of vertical agreements[22] ensures the compliance of this part of competition system with the EC acquis, in the first place with the Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices[23] which is directly applicable in all EU Member States. Commission Notice – Guidelines on vertical restraints[24] was also used in drafting of the Regulation concerned.

Vertical agreements are considered any categories of agreements, explicit or tacit, entered into between two or more independent undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods and/or services (e.g. an agreement between the manufacturer – supplier, and the wholetrader or retailer – distributor).

The Regulation in question stipulates the conditions for block exemption from the application of the provisions on prohibited agreements pursuant to the Competition Act, and particularly relating to exclusive distribution agreements, selective distribution agreements, exclusive purchase agreements, exclusive supply agreements and franchise agreements.

This Regulation also introduces a so called "safe harbour" for the undertakings, assuming that where a market share on the part of the supplier does not exceed 30 % in the relevant market, vertical agreements which do not contain hard core restrictions, as a rule, have positive effects on competition and contribute to improving the production or distribution of goods and/or services, or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit. In other words, vertical agreements to which block exemption applies do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of goods and/or services constituting the subject of the agreement[25].

Vertical agreements containing hard core restrictions listed in the following table may not be granted block exemption within the meaning of this Regulation, notwithstanding the market share held by the undertakings – parties to the agreement. Such agreements are prohibited and *ex lege* void within the meaning of Article 9 of the Competition Act.

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[22] Upon the proposal of the Competition Council, the Government of the Republic of Croatia adopted the Regulation on block exemption granted to certain categories of vertical agreements (Official Gazette No 51/04) which entered into force on 29 April 2004. The Regulation concerned applies without a transitional period following the date of the entry into force.

[23] Official Journal of the European Communities L 336/21 of 29.12.1999 (available in English on www.europa.eu.int or in Croatian on the CCA website www.aztn.hr )

[24] Official Journal of the European Communities C 291 of 13.10.2000 (available in English on www.europa.eu.int or in Croatian on the CCA website www.aztn.hr )

[25] Article 10 of the Competition Act stipulates four criteria that must be cumulatively fulfilled for agreements to be grated block exemption. This Article is substantially equal to Article 81(3) of the EC Treaty.

| HARDCORE RESTRICTIONS ON VERTICAL AGREEMENTS | |
|---|---|
| **1. the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier's imposing a maximum sale price or recommending a sale price, provided that they do not amount to a fixed or minimum sale price a s a result of pressure from, or incentive offered by, any of the parties;** | |
| **2. the restriction of the territory into which, or of the customer to whom, the buyer may sell the contract products;** | ***NOT PROHIBITED***<br>*a. the restriction of the buyer's active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer;*<br>*b. the restriction of active and passive sales to end users by a buyer operating at the wholesale level of trade;*<br>*c. the restriction of active and passive sales to unauthorised distributors by the members of a selective distribution system;*<br>*d. the restriction of the buyer's active or passive sales regarding the ability to sell components or spare parts, supplied for the purposes of incorporating, to customers who would use them to manufacture the same type of products (substitutes) as those produced by the supplier;* |
| **3. the restriction of active or passive sales to end users by members of a selective distribution system operating at he retail level of trade,** | |
| *without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment;* | |
| **4. the restriction of cross-supplies between distributors within a selective distribution system, including the restrictions between distributors operating at a different level of trade;** | |
| **5. the restriction agreed between a supplier of components and a buyer of those components, which restricts the supplier's sales of the components as spare parts to end users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its products.** | |

Benefits for the undertakings:

- legal certainty (agreements which have been concluded before this Regulation enters into force, must be brought in compliance with the provisions thereof within six months from the day of its entry into force);
- non-obligatory notification to the CCA of the agreements which fulfil the conditions for exemption;
- reduced costs (no more administrative fees paid for the assessment of agreements which fulfil the conditions for exemption).

Benefits for the CCA:

- reduced administrative proceedings and assessments of agreements which fulfil the conditions for exemption;
- work may be focused on cases which appreciably prevent, restrict or distort competition.

### 2.1.1.4. Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles

The Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles (hereinafter: Regulation on motor vehicles)[26] ensures the compliance of this part of competition system with the EC acquis, in the first place with the Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector[27].

The above mentioned EC Regulation is directly applicable in all EU Member States. The Commission Explanatory Brochure on the application of article 81(3) of the treaty to categories of vertical agreements and concerted practices in the motor vehicle sector[28] was also used in drafting of the Regulation concerned.

The purpose of this Regulation is to ensure the conditions for the development of competition in the markets for distribution and servicing of motor vehicles, as well as in the spare parts supply market.

The following objectives have been achieved by the adoption of the Regulation concerned:

- So called multi-branding: allows any distributor to sell different brands of new motor vehicles, whereas authorised dealers within the selective distribution system may also operate out of an unauthorised place of establishment, without asking a special permit from the supplier (for example, an authorised distributor from Zagreb may open its new showroom in Rijeka, which may not be prohibited by the supplier, provided that the outlet in question satisfies the relevant criteria applicable for similar outlets located in the same geographic area. (This benefit will be applicable from 1 May 2006)[29].
- Market for maintenance and repair of motor vehicles opens (until recently it has been closely linked to the distribution of motor vehicles). Distributors may, in case they do not want to provide distribution and services of motor vehicles, enter into agreements with undertakings – repairers of motor vehicles, which shall as authorised repairers, provide maintenance and repair services. It also enables the long standing authorised dealers, whose agreements has been cancelled or terminated, to ensure their further provision of maintenance and repair services as authorised repairers. In compliance with the relevant EC practice, it is assumed that the long standing distributors and repairers may after they enter into new agreements pursuant to this Regulation, provide at least the services as authorised repairers for the motor vehicles concerned on the account of their skills and experience in this field, but also on the account of considerable financial resources

[26] Upon the proposal of the Competition Council, the Government of the Republic of Croatia adopted the Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles (Official Gazette No 105/04) which entered into force on 5 August 2004. The Regulation concerned applies to the agreements concluded following its entry into force without a transitional period. Nevertheless, for the agreements concluded before 5 August 2004, the Regulation stipulates for a transitional period by the end of 2005.

[27] Official Journal L 203 , 01/08/2002 of 1 August 2002 (available in English on www.europa.eu.int or in Croatian on the CCA website www.aztn.hr )

[28] OJ L 203, 1.8.2002, (available in English on www.europa.eu.int or in Croatian on the CCA website www.aztn.hr )

[29] Article 14 paragraph (4) item (b) of the Regulation on motor vehicles.

invested in the long-term activity of distribution and maintenance and repair of motor vehicles.

- The Regulation also ensures a better position for independent repairers relating to the supply of spare parts, access to all technical information etc. The customers are free to choose between authorised or independent repairers for maintenance and repair of their motor vehicles, and they do not have to fear the quality of such repair.
- In addition, the Regulation provides for fair and predictable business terms for all undertakings – distributors and repairers of motor vehicles, who until recently have been a weaker party as against car manufacturers or authorised dealers in the Republic of Croatia. Given that the business activity in question entails significant tangible and financial investments it must be ensured legal certainty. Therefore, the Regulation stipulates that the vertical agreement concluded by the supplier of new motor vehicles with a distributor or authorized repairer must provide that the agreement is concluded for a period of at least five years, in this case each party to the agreement has to undertake to give the other party at least six months' prior notice of its intention not to renew the agreement. If the agreement is concluded for an indefinite period, in this case the period of notice for regular termination of the agreement has to be at least two years. Nevertheless, the CCA provides for the additional interpretation that the agreements concluded for an indefinite period also involve a duration of at least five years, where the prescribed period of notice is included in this five-year period.
- Furthermore, the Regulation provides that a supplier who wishes to give notice of termination of an agreement must give such notice in writing and must include detailed, objective and transparent reasons for the termination.
- Finally, the vertical agreement provides for each of the parties to the agreement the right to refer disputes resulting from the agreement to the Conciliation Centre of the Croatian Chamber of Commerce, this without prejudice to the right of each party to the agreement to settle the disputes resulting from the agreement at the court of law or by arbitration. The agreement also provides that the supplier agrees to the transfer of the rights and obligations resulting from the vertical agreement to another distributor or repairer within the distribution system and chosen by the former distributor or repairer[30].

Block exemption under this Regulation may not be granted to agreements containing hard core restrictions of competition. Such agreements are prohibited within the meaning of Article 9 of the Competition Act and *ex lege* null and void.

[30] Article 9 of the Regulation on motor vehicles.

| HARDCORE RESTRICTIONS CONCERNING THE SALE OF NEW MOTOR VEHICLES, SPARE PARTS AND REPAIR AND MAINTENANCE SERVICES | |
|---|---|
| **1. the restriction of the distributor's or repairer's ability to determine its sale price, without prejudice to the supplier's ability to impose a maximum sale price or to recommend a sale price, provided that this does not amount to a fixed of minimum sale price as a result of pressure from, or incentives offered by, any of the parties to the agreement** | |
| | ***DEROGATION FROM PROHIBITION*** |
| **2. the restriction of the territory into which, or of the customers to whom, the distributor or repairer may sell the contract products** | *a. the restriction of active sales into the exclusive territory by the distributor or repairer or to an exclusive customer group reserved to the supplier or allocated by the supplier to another distributor or repairer, where such a restriction, imposed by the supplier, does not limit sales by the customers of the distributor or repairer*<br>*b. the restriction of active and passive sales to end users by a distributor operating on the wholesale level of trade*<br>*c. the restriction of active and passive sales of new motor vehicles and spare parts to unauthorised distributors by the members of a selective distribution system in markets where selective distribution is applied*<br>*d. the restriction of the buyer's ability to sell (active and passive sales) components, which are supplied to the buyer as spare parts for the purposes of incorporation, to customers who would use them to manufacture the same type of products (substitutes) as those produced by the supplier* |
| **3. the restriction of active or passive sales of new passenger cars, spare parts for motor vehicles or repair and maintenance services for motor vehicles to end users by members of a selective distribution system operating at he retail level of trade** | |
| **4. the restriction of cross-supplies between distributors or repairers within a selective distribution system, including restrictions between distributors or repairers operating at different levels of trade** | |

| HARDCORE RESTRICTIONS CONCERNING THE SALE OF NEW MOTOR VEHICLES |
|---|
| **1. the restriction of the distributor's rights to sell any new motor vehicle which corresponds to a model within its contract range set forth by the agreement** |
| **2. the restriction of the distributor's right to subcontract the provision of repair and maintenance services to other authorized repairers, without prejudice to the right of the supplier to require the distributor to give end users the name and address of the authorized repairer in question before the conclusion of the sales contract** |

| HARDCORE RESTRICTIONS CONCERNING THE SALE OF SPARE PARTS AND OF REPAIR AND MAINTENANCE SERVICES |
|---|
| **1. the restriction of the authorised repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts** |
| **2. the restriction of the sales of spare parts for motor vehicles by members of selective distribution system to independent repairers which use these parts for the repair and maintenance of motor vehicles** |
| **3. the restriction agreed between a supplier of original spare parts or spare parts of matching quality, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these products to authorised or independent distributors or to authorised or independent repairers or end users** |
| **4. the restriction of a distributor's or authorised repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its choice and to use them for the repair or maintenance of motor vehicles** |

| | |
|---|---|
| | *Without prejudice to the ability of a supplier of new motor vehicles to require the use of original spare parts supplied by it for repairs carried out under warranty, free servicing and vehicle recall work* |
| **5.** | **the restriction agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components which limits the latter's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts** |

This Regulation on motor vehicles, in a similar way as the Regulation on vertical agreements, also introduces a so called "safe harbour" for the undertakings, assuming that where a market share on the part of the supplier does not exceed 30 % in the relevant market, agreements on distribution and repair of motor vehicles which do not contain hard core restrictions, as a rule, have positive effects on competition. As an exception, the market share thresholds do not apply to agreements establishing qualitative selective distribution system where the conditions of access must not discriminate between any potential distributors or repairers which satisfy the qualitative conditions of the suppliers.

Benefits for the undertakings:

- legal certainty – possibility for adjustment of the existing agreements before the entry into force of the Regulation (by the end of 2005);
- strengthening the position of distributors and repairers with respect to suppliers (multibranding);
- long standing distributors may remain within the system as authorised repairers;
- non-obligatory notification of the agreements which satisfy the conditions under the Regulation.

Benefits for the consumers:

- lower prices – as a result of competition between distributors and repairers, but also suppliers.

### 2.1.1.5. Regulation on block exemption granted to certain categories of horizontal agreements

The Regulation on block exemption granted to certain categories of horizontal agreements (hereinafter: Regulation on horizontal agreements)[31] ensures the compliance of this part of competition system with the EC acquis, in the first place with the Commission Regulation (EC) No 2659/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements and Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements[32]. Commission Notice – Guidelines on the applicability of Article 81 of

[31] Upon the proposal of the Competition Council, the Government of the Republic of Croatia adopted the Regulation on block exemption granted to certain categories of horizontal agreements (Official Gazette No 158/04 of 15 November 2004) which entered into force on 23 November 2004. The Regulation concerned applies without a transitional period to the agreements concluded following its entry into force. However, the agreements concluded before its entry into force are given transitional period until 1 January 2006.

[32] Both Regulations were published in Official Journal L 304 , 05/12/2000 and are available in English on www.europa.eu.int or in Croatian on the CCA website www.aztn.hr

the EC Treaty to horizontal cooperation agreements has been also used in drafting of the Regulation in question[33].

Block exception from the application of the provisions on prohibited agreements as stipulated by the Competition Act[34] is granted to certain categories of horizontal agreements, i.e. agreements between two or more independent undertakings which operate on the same level of production or distribution chain. Such agreements are particularly important in the context of assessment given that they are as a rule entered into between competing undertakings and as such may have more negative effects on competition than the agreements concluded between non-competing undertakings in the relevant market. The Regulation contains separate provisions applicable to research and development and specialisation agreements.

Joint research and development and exploitation of the results of research and development, as a rule contribute to promoting technical and economic progress, as it communicates know-how between undertakings and avoids the unnecessary overlapping research activities. Such cooperation gives incentives to new accomplishments in the field of research and development and contributes to rationalization of the production of products or application of the contract processes.

Not only do participants to such agreements benefit from research and development agreements but they also allow consumers a fair share of the resulting benefit. It can be generally assumed that the consumers gain benefit as a result of the increased volume and efficiency of the research and development activities by the undertakings involved by introducing new or improved goods and/or services or lowering the prices of products.

Agreements on specialization in production generally contribute to improving the production or distribution of goods, because the undertakings concerned can concentrate on the manufacture of certain products and thus operate more efficiently and supply the products more cheaply. Agreements on specialisation in the provision of services can also be said to generally give rise to similar improvements. It is likely that, given effective competition, consumers will receive a fair share of the resulting benefit.

The Regulation introduces a so called "safe harbour" for undertakings, stipulating that block exemption shall apply on condition that the combined market share of the participating undertakings does not exceed 20 % of the relevant market and provided that the agreements do not contain particular hard core restrictions and it can be presumed that such agreements have positive effects on competition. Where two or more of the participating undertakings are competing undertakings, the block exemption for research and development agreements shall apply if, at the time the research and development agreement is entered into, the combined market share of the participating undertakings does not exceed 25 % of the relevant market. The agreements which satisfy the conditions stipulated under this Regulation need not be notified to the Agency for assessment.

However, regardless of the market share held by the participants to the agreement, block exemption from the application of the provisions on prohibited agreements as laid down by this

[33] Official Journal of the European Communities C 003 of 6 January 2001 (available in English on www.europa.eu.int or in Croatian on the CCA website www.aztn.hr )

[34] Article 9 of the Competition Act regulates prohibited agreements. Article 9 (1) and (2) are fully harmonized with the provisions of Article 81 (1) and (2) of the Treaty.

Regulation, may not apply to agreements containing hard core restrictions of competition[35]. Such agreements are within the meaning of Article 9 of the Competition Act prohibited and *ex lege* void.

| **HARDCORE RESTRICTIONS WITHIN RESEARCH AND DEVELOPMENT AGREEMENTS** |
|---|
| **1. the restriction of the freedom of the participating undertakings to carry out research and development independently or in cooperation with third parties in a field unconnected with that to which the research and development relates or, in the field to which it relates** |
| **2. the prohibition to challenge after completion of the research and development the validity of intellectual property rights which are relevant to the research and development or, after the expiry of the research and development agreement, the validity of intellectual property rights which protect the results of the research and development** |
| *without prejudice to the possibility to provide for termination of the research and development agreement in the event of one of the parties challenging the validity of such intellectual property rights* |
| **3. the limitation of output or sales** |
| **4. the fixing of prices when selling the contract product to third parties** |
| **5. the restriction of the customers that the participating undertakings may sell the contract products, after the end of seven years from the time the contract products are first put on the market** |
| **6. the prohibition to make passive sales of the contract products in territories reserved for other parties** |
| **7. the prohibition to put the contract products on the market or to pursue an active sales policy for them in territories within the market that are reserved for other parties after the end of seven years from the time the contract products are first put on the market** |
| **8. the requirement not to grant licences to third parties to manufacture the contract products or to apply the contract processes where the exploitation by at least one of the parties of the results of the joint research and development is not provided for or does not take place** |
| **9. the requirement to refuse to meet demand from users or resellers in their respective territories who would market the contract products in other territories** |
| **10. the requirement to make it difficult for users or resellers to obtain the contract products from other resellers, and in particular to exercise intellectual property rights or take measures so as to prevent users or resellers from obtaining, or from putting on the market, products which have been lawfully put on the market by another party or with its consent** |

| **NOT CONSIDERED AS HARDCORE RESTRICTIONS:** |
|---|
| ***a.*** *the setting of production targets where the exploitation of the results includes the joint production of the contract products* |
| ***b.*** *the setting of sales targets and the fixing of prices charged to immediate customers where the exploitation of the results includes the joint distribution of the contract products* |

[35] Articles 11 and 12 of the Regulation on horizontal agreements.

| HARDCORE RESTRICTIONS WITHIN SPECIALISATION AGREEMENTS |
|---|
| **1. the fixing of prices when selling the products to third parties** |
| **2. the limitation of output or sales** |
| **3. the allocation of markets or customers** |

| NOT CONSIDERED AS HARDCORE RESTRICTIONS: |
|---|
| ***a.*** *provisions on the agreed amount of products in the context of unilateral or reciprocal specialisation agreements or the setting of the capacity and production volume of a production joint venture in the context of a joint production agreement* |
| ***b.*** *the setting of sales targets and the fixing of prices that a production joint venture charges to its immediate customers* |

### 2.1.1.6. Regulation on notification and assessment of concentrations

The Regulation on notification and assessment of concentrations[36] ensures the compliance of this part of competition system with the EC acquis, in the first place with the Commission Regulation (EC) No (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings and the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89 on the control of concentration between undertakings[37].

The Regulation stipulates the undertakings obliged to submit a prior notification of concentration, the method of submittal, the content and form of the notification, the documentation and data which are to be enclosed to the notification, the form and content of the announcement on acquisition of shares or share capital falling within the normal activities of the banks, insurance companies and other financial institutions, and the assessment criteria of the compatibility of concentrations of undertakings in the proceedings carried out by the Competition Agency within the meaning of the provisions stipulated by the Competition Act.

In addition, the Regulation stipulates the form and content of the obligatory notification, the language, number of copies, accuracy and completeness of data and confidentiality of information.

[36] Regulation on notification and assessment of concentrations was adopted pursuant to Article 19 par (4) of the Competition Act, which stipulates the obligation of the Government of the Republic of Croatia, upon the proposal of the Competition Council, to adopt a regulation establishing the notification and assessment criteria for concentrations of undertakings. The Regulation concerned was published in the Official Gazette of 21 April 2004 and entered into force on 29 April 2004.

[37] Validity of which expired on 1 May 2004 when the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 133 of 30 April 2004) and Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133 of 30 April 2004) entered into force.

The Competition Act stipulates only the minimum content of notification[38]. Other provisions relating to obligatory notification of data are stipulated by the Regulation concerned[39].

As soon as it receives the notification the Agency initiates the assessment procedure[40], after the notification has been examined by the authorised person of the CCA.

When the examination by the authorised person proves that the notification complies with the statutory and formal requirements and that it is complete, the Agency issues a special receipt to the notifying party thereof[41]. In the event that the Agency must collect the data in question, the notification will be considered complete only after the missing data have been collected.

The issuance of the above mentioned receipt of the notification in question is a very important procedural requirement within the assessment procedure. The most important parts thereof are the issuance date and instructions for the notification party which determine the subsequent steps in the procedure.

The date of the receipt is the date when the time period begins, in which the Agency must take the decision on the compatibility of the concentration in question in accordance with the separate instructions therein.

The first instruction is in respect of the date of notification which represents the date from which the implementation of the proposed concentration is prohibited[42] as long as the Agency has taken its final decision thereon or until the expiry of the period set by the decision declaring the concentration conditionally compatible[43].

The second instruction stipulates that the date of notification is the date from which the period for the assessment of concentration in the first Phase begins[44]. The concentration in question shall be deemed compatible if the Agency within 30 days from the date of notification does not pass a procedural order on the initiation of the compatibility assessment procedure thereof.

The receipt verifying the completeness of notification actually stands for the start of the assessment procedure relating to the compatibility of concentration as regards its possible effects on competition. The Agency applies various criteria in the assessment of compatibility of concentration. Nevertheless, one of the first steps in this procedure is the definition of relevant

[38] Article 45 par (1) items 1) and 2), and par (2) of the Competition Act.
[39] Article 45 par (1) item 3) of the Competition Act.
[40] Article 25 of the Competition Act.
[41] Article 45 par (3) of the Competition Act.
[42] Article 22 par (3) of the Competition Act.
[43] In the case of a concentration not to raising anti-competitive concerns referred to under Article 26 par (1) of the Competition Act, which is assessed in the so called first Phase, the prohibition remains in effect until the expiry of the period of 30 days following the issuance of the receipt.
In the case of a concentration raising competitive concerns referred to under Article 26 par (3) of the Competition Act, which is assessed in the so called second Phase, the prohibition remains in effect until the final decision is taken, provided that the concentration in question is declared compatible.
If in the second Phase the concentration is assessed conditionally compatible within the meaning of Article 26 par (3) item 3) of the Competition Act, the prohibition remains in effect until the expiry of the time period and/or until the measures set by the decision taken by the Agency have been complied with.
[44] Article 26 par (1) of the Competition Act.

market in each particular case which is regulated by the Competition Act and the Regulation on the definition of relevant market[45].

The main criteria for the assessment of concentrations are set by the Competition Act[46] and the Regulation on concentrations. The Competition Act provides for an unexhaustive list of the criteria[47], some of them quantitative and some of them qualitative.

The first group of the criteria involves the structure of the relevant market, actual and possible future competitors in the relevant market, supply and the potential market supply, costs, risks, technical, economic and legal conditions necessary to enter or to withdraw from the relevant market, possible effects of the concentration concerned on competition in the relevant market.

The second group of the criteria is used to calculate market share and position, economic and financial power, business operations of the undertaking concerned in the relevant market, internal and external advantages for the parties to concentration in relation to their competitors, and possible changes in business operations of the parties to concentration, following the implementation of the concentration.

The third group of the criteria is used to establish the effects of the concentration on other undertakings, especially relating to the consumer benefit, as well as other objectives and positive effects of the proposed concentration, such as: decrease in prices of goods and/or services, shorter distribution courses, lowering of transportation, distribution and other costs, specializing in production, and other benefits directly deriving from the implementation of the concentration.

#### 2.1.1.6.1. CCA Guidelines on the procedure for the assessment of concentrations

After the entry into force and of the Competition Act and Regulation on notification and assessment of concentrations[48], as well as other subordinary legislation, particularly the Regulation on the definition of relevant market[49], including also the separate rules regulating concentrations in specific sectors, and the application thereof, the conditions for the above mentioned Guidelines on the procedure for the assessment of concentration (hereinafter: CCA Guidelines) have been satisfied.

The CCA Guidelines cover the whole concentration control procedure, from filling in the notification form on the proposed concentration, the procedure carried out by the Agency after the receipt of such notification, application of the criteria used in the assessment of compatibility of concentrations, to the decisions taken and measures imposed by the Agency.

There are certain limitations that must be taken into account in the application of the CCA Guidelines:

1. CCA Guidelines do not have the force of a law or subordinary legislation. They are not a part of the Croatian legislation regulating the control of concentrations.

[45] Article 7 of the Competition Act.
[46] Article 25 par (2) of the Competition Act.
[47] A so called "pros and cons".
[48] Official Gazette No 51/2004. The Regulation entered into force on 29 April 2004.
[49] Official Gazette No 51/2004. The Regulation entered into force on 29 April 2004.

2. CCA Guidelines have the purpose of a guide for undertakings. This document focuses on a detailed description of the concentration control procedure carried out by the Agency and its theoretical and practical approach to certain issues, keeping in mind the undertakings as its target reader.

3. CCA Guidelines do not impose an obligation to the Agency to use always the same prescribed procedure in every particular case. The assessment of compatibility of concentrations involves a complex examination of all interlocking legal and economic aspects of the case. The CCA Guidelines do not cover all possible situations and cases which occur in practice. Every concentration is evaluated on the basis of a case by case method, taking into account all legal, economic and factual aspects[50]. Given that, concrete assessment of concentrations in every particular case may differ from the procedures described by the CCA Guidelines.

Although subject to these limitations, we believe that the CCA Guidelines will contribute to better understanding of the matter in question and awareness rising within the area in question on the part of undertakings. Therefore, it is expected that the existing CCA Guidelines will be reviewed and updated.

[50] One of the basic principles of competition law is that there are no identical cases.

# 3. ACTIVITIES OF THE COMPETITION AGENCY IN 2004

Other than the activities relating to the drafting of the procedural regulations (which have been described in detail in point 2.1.1. of this Report), the CCA registered a total of 82 administrative cases in the area of competition in this reporting period. 7 cases covered the assessment of agreements between undertakings, 50 cases covered the assessment of abuse of a dominant position and 25 cases involved assessment of concentrations.

In addition, in this reporting period the CCA also performed the activities relating to legal opinions of draft laws and other regulations (a total of 24 registered files), expert opinions on the request of undertakings (a total of 68 registered files), other non-administrative cases (a total of 65 registered files) and international cooperation (a total of 60 registered files).

In this reporting period the CCA closed 316 files and cases out of the total of files and cases pending, which amounts to 74 %.

This high percentage of execution reflects the remarkable efficiency of the CCA based on the expertise of its expert team but also on the fact that the members of the Competition Council are professionally employed in the Agency, which enables them to regularly meet in sessions and take decisions promptly.

It is necessary to point out here that a large number of the cases closed (especially in comparison with similar competition authorities in the EU) unfortunately does not reflect the real effectiveness of the Agency but results from the legally determined procedure which is carried out before the Agency. Namely, apart from the Competition Act, the General Administrative Procedure Act (Official Gazette No 53/91 and 103/96; hereinafter GAPA) subordinately applies in the procedure carried out before the Agency. The provisions of the GAPA oblige the Agency to consider every request submitted by the party to be a request for initiation of the proceedings, on which the Agency is committed to decide by an administrative decision, against which the party has the right to initiate an administrative dispute, in other words, to file a claim with the Administrative Court of the Republic of Croatia. Administrative decisions used in the (closure) proceedings are resolutions (procedural orders) and decisions.

A large number of cases initiated before the Agency are closed by means of a resolution on dismissal of the request on the account of the lack of grounds for the initiation of the proceedings[51], or by means of a resolution on dismissal for lack of jurisdiction.

The above mentioned decisions of the Agency do not deal with the merits of the case, given that the preliminary investigation in the relevant market[52], and before the formal resolution on the initiation of the proceedings for the assessment of prevention, restriction and distortion of competition[53] has been issued, it has been established that in the particular case there are no

[51] Although Article 41(2) of the Competition Act provides for the ability of the Agency not to initiate the proceedings, if it finds that the related activity in the market has minor effect on competition, or if the initiation of such proceedings is not in the public interest, in accordance with the provisions of the GAPA, such proceedings must nevertheless be closed by an administrative decision against which the injured party may file a claim with the Administrative Court of the Republic of Croatia.
[52] Article 37, items 8 and 9, of the Competition Act.
[53] Article 41, paragraph (1), and Article 46 of the Competition Act.

grounds for the initiation of the proceedings before the Agency. However, the preliminary investigation in the relevant market itself is a complex and time consuming activity which requires considerable human resources in the process of establishing if a business operation has a minor effect in the market, or that the initiation of such a proceeding is not in the public interest. Due to the permanent lack of staff, the Agency cannot preliminary investigate all potential markets which could possibly raise competition concerns (which is normally performed in all Member States), but as a rule, it initiates the proceedings only after it has been submitted a request to do so or by the adoption of the decision on an *ex officio* initiation of the proceedings.

Hence, given the provisions of the GAPA, the Agency cannot inform the party by a simple notice that there is a minor effect on competition or that the initiation of such proceedings is not in the public interest. It must issue an administrative decision against which the injured party may file a claim to the Administrative Court of the Republic of Croatia. This causes a considerable workload on the part of the staff conducting the anti-trust proceedings within the Competition Division and Legal Affairs and Economic Analyses Division (there are only 17 case handlers plus 5 members of the Council)[54].

Furthermore, due to the lack of knowledge in the area of competition law, parties very often submit their requests relating to the public procurement procedure, consumer protection, conflict of interest, sanctions for the violations of the provisions of the Trade Act etc. to the Agency. It is therefore sometimes impossible to establish which authority is given jurisdiction to conduct the proceedings, which is the case where the CCA also must close the proceedings by an administrative decision.

It is necessary to point out that the EU competition authorities have mainly abandoned the above mentioned procedural rules. They initiate procedures in the area of competition applying one of the two models. The first model, used for example in Hungary, considers any writing submitted by the party to be an initiative for the initiation of the proceedings, which is carried out ex officio by the competition authority[55]. In the event that the business activity described in the initiative of the party does not raise competitive concerns, the Hungarian competition authority informs the notifying party in a simple writing that it won't initiate procedure in the matter concerned (in this case the notifying party has no right of appeal). The application of this model enables the Hungarian competition authority to concentrate on annually planned priorities relating to market investigation. The other model is the Irish model, where the Irish competition authority operates as a state attorney's office and initiates proceedings before the competent court of jurisdiction.

In addition, similar competition authorities in the EU, unlike the CCA, do not issue opinions upon the requests of natural and legal persons; they only give opinions on draft laws and other legal documents upon the request of the ministries. In spite of the fact that these activities put additional workload on the understaffed expert team of the Agency, we hold the view that that such practice is necessary given the fact that there is a lack of professional literature covering

[54] Other than competition (anti-trust) the CCA is also authorised for the implementation of the State Aid Act (Official Gazette No 47/03 and 60/04).

[55] According to this model, the burden of proof lies on the parties to the procedure. The parties must be represented by authorised agents (attorneys) given that the law maker took into account the fact that the procedures before a competition authority involve new, complex and sophisticated legal and economic matter where a qualified representative (attorney) is necessary for the adequate protection of the legal interests of the parties in question.

the area of competition in Croatian which would provide its recipients with the necessary information on the scope of the legal framework regulating this area.

Taking everything into account, the statistical survey carried out by the CCA cannot be compared to similar reviews made by the EU competition authorities. Whereas the EU competition counterparts employ significantly more staff, the CCA closes on the average three times more cases per year. As an example, the Hungarian competition authority employs a total of 127 employees. The department dealing solely with cartel investigation employs 20 experts thereof, whereas the CCA has a total of 17 employees (graduate economists and lawyers) who are in charge of the cases relating to all forms of prevention, restriction and distortion of competition (including assessment of agreements, assessment of concentrations and abuse of a dominant position). Given that, the number of some 300 cases which are closed by the CCA cannot be taken as statistically relevant when compared to the average of some 100 cases closed by other European competition authorities.

Finally, and prior to the breakdown of the main activities of the CCA in this reporting period, it must be noted that Ms Vesna Podlipec, the member of the Competition Council was relieved from duty at her own request as of 23 July 2004. Until 14 April 2005, when the Croatian Parliament appointed a new member of the Council, Mr Mladen Cerovac, the Competition Council had four members. The decisions of the Croatian Parliament relating to the relief from office and the appointment of the new member of the Council are published in Official Gazette.

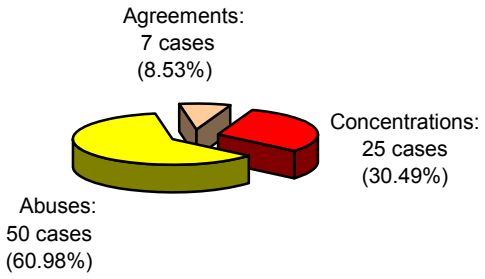
# 4. MAIN ACTIVITIES OF THE COMPETITION AGENCY – ANTI-TRUST

The Competition Act identifies three different forms of the activities of undertakings which may prevent, restrict or distort competition. These are prohibited agreements, abuse of a dominant position and prohibited concentrations. Subsequently the main activities of the Agency concerning anti-trust cover the following areas:

- assessment of agreements between undertakings,
- prevention and elimination of abuse of dominant position, and
- control of concentrations of undertakings.

The proceedings relating to the above mentioned areas are called *administrative proceedings.* In the reporting period there were a total of 82 administrative cases opened.

**Figure 1 Structure of opened cases relating to main activities of the CCA**




*Source: CCA, Legal Affairs and Economic Analysis Division*

## 4.1. Assessment of agreements between undertakings

In 2004 there were 7 cases opened concerning assessment of agreements between undertakings, which is 88.27 % less than in the previous reporting year when 51 cases had been opened concerning assessments of agreements between undertakings.

The decline in the number of the cases in question is the result of the adoption of the Regulations on block exemption granted to certain categories of agreements (which are described in detail in point 2.1.1. of this Report).

The above mentioned Regulations of the Government of the Republic of Croatia introduced a new notification system which is based on a non-obligatory notification of the agreements between undertakings which fulfil the criteria for block exemption.

The absence of obligatory notification for such agreements saves the CCA the unnecessary paperwork and assessment of agreements which, as a rule, do not raise competition concerns, and which are commonly used in the commercial practice, such as exclusive or selective distribution agreements, franchise agreements, research and development and specialization agreements, licensing agreements and technology transfer agreements.

The advantages to this system lie in the fact that the Agency can dedicate its time and resources to the cases which significantly prevent, restrict or distort competition, such as investigation of cartels and abuse of a dominant position of undertakings. Disclosure of cartels and abuse of a dominant position are very complex, evidence collection and carrying out legal and economic surveys are demanding and time consuming jobs. On the other hand, the system also ensures the legal certainty of undertakings given that it provides them with the conditions that such agreements must contain, or may not contain in order to be granted block exemption.

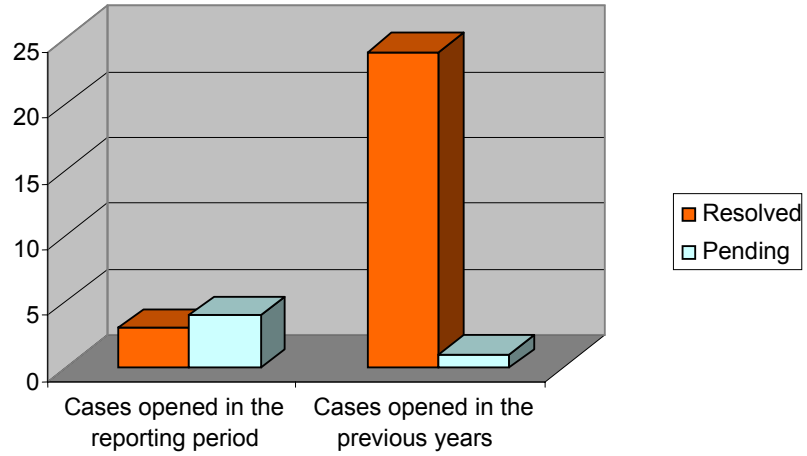
The method of assessment of the agreements between undertakings in Croatia complies with the method used in the EU (there is no obligatory notification of such agreements and where particular agreements do not satisfy the conditions for block exemption as referred to in the Regulations of the Government of the Republic of Croatia, participating undertakings may apply for individual exemption of such agreements).

Taking into account that this branch of law is relatively new and still unknown to undertakings, lawyers and judges, the law maker has kept, unlike in the EU, the possibility that the undertakings - parties to the agreement may submit to the Agency a request for individual exemption, if the agreement concerned does not fall under applicability of block exemption. It is necessary to point out here that even in the event that a particular agreement does not fulfil the conditions for block exemption, there is no compulsory notification for the undertakings - parties to the agreement, i.e. such agreements need not to be submitted to the Agency for assessment in respect of individual exemption. Nevertheless, if the parties do not notify such agreements in respect of individual exemption, they must bear the risk of having concluded a possibly prohibited agreement, which may be established later on within the procedure by the Agency, i.e. that the agreement in question may not be granted exemption from the application of the provisions on prohibited agreements as referred to in Article 10 of the Competition Act.

Out of the total of 7 cases, 3 cases were closed in 2004 (42.86 %), whereas 4 cases were still pending as of 31 December 2004 (57.14 %).

Apart from the cases which were opened in 2004, the CCA also processed 25 cases from the previous years, 24 of which were closed as of 31 December 2004 and only one case was still pending.
Overall, in 2004 there were 27 out of 32 cases involving the assessment of agreements closed (no less than 84.38 %) which proves a high level of efficiency of the CCA expert team.

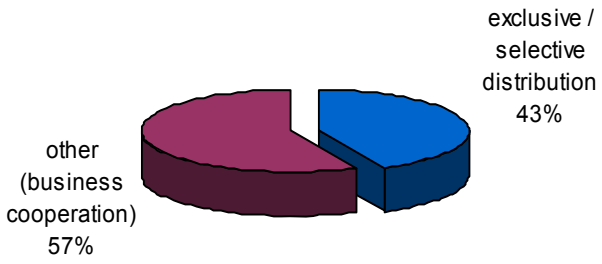
**Figure 2 Number of closed cases and cases still pending in the area of assessment of agreements in the reporting period**




*Source: CCA, Legal Affairs and Economic Analysis Division*

Out of the total of opened cases in 2004, 3 of them were exclusive or selective distribution agreements, whereas 4 registered cases covered different forms of business cooperation.

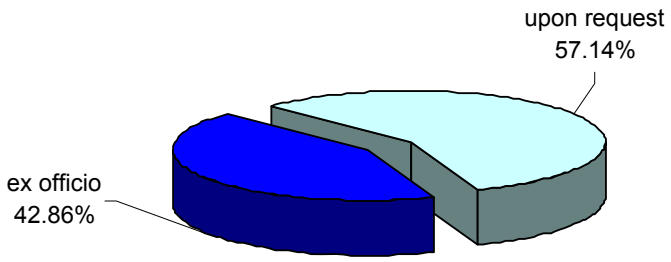
**Figure 3 Classification of cases relating to the assessment of agreements opened in 2004**




*Source: CCA, Legal Affairs and Economic Analysis Division*

According to the form of initiation of the proceedings in the area of assessment of agreements, 3 cases or 42.86 % was initiated ex officio, whereas 4 cases or 57.14 % were initiated upon the request of the parties.

**Figure 4 Cases relating to the assessment of agreements according to the form of initiation of the proceedings**




*Source: CCA, Legal Affairs and Economic Analysis Division*

### 4.1.1. Selected case 1: Assessment of the general distribution agreement between EUROline d.o.o. Zagreb and Smart GmbH, Germany

In the assessment of the distribution agreement in the motor vehicle sector concluded between EUROline d.o.o. Zagreb and Smart GmbH Germany, according to the request of the notifying party - EUROline d.o.o., the Competition Council declared in its decision UP/I 030-02/2003-01/43 of 19 February 2004 the agreement compatible with the provisions of the Croatian Competition Act, given that in does not contain hardcore restrictions of competition. The notifying party – EUROline d.o.o. as an exclusive distributor of the undertaking SMART GmbH Germany manages the distribution network in the contract territory (the territory of the Republic of Croatia) which includes the following contract products: motor vehicles, sales services, authorised repair of motor vehicles, spare parts supply, show room, sales of used motor vehicles and repair and spare parts for used motor vehicles, within the standards and requirements set by the undertaking SMART GmbH. The agreement in question is concluded for an indefinite duration.

The above mentioned agreement was assessed before the Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles entered into force. Within the meaning of the Regulation concerned all agreements concluded before its entry into force must be brought in compliance with the provisions thereof by the end of 2005. This also applies to the agreement in question.

### 4.1.2. Selected case 2: Assessment of the agreement on business cooperation between the undertaking Europlakat-Proreklam d.o.o Zagreb and the town of Zaprešić, upon request of the undertaking Metropolis Media d.o.o. Zagreb

In its decision UP/I 030-02/2000-01/84 of 18 October 2004 the Competition Council rejected the request of the undertaking Metropolis Media d.o.o. for lack of legal grounds for the prohibition of the agreement concerned pursuant to the provisions of the Croatian Competition Act. In this particular case, the agreement in question gave the town of Zaprešić the exclusive right for setting up bus-stop shelters, free standing billboard displays for advertising purposes and a big town billboard for a period of fifteen years. Furthermore, the town of Zaprešić used no resources from the local budget, thereby providing a direct benefit to the consumers and contributing to the public interest. Nevertheless, although it was established that the agreement in question did not contravene the provisions of the Competition Act, it was assessed that it is in contravention of the provisions of Article 391 of the Act on Ownership and other Proprietary Rights, since there had been no public tender enabling more undertakings to participate in the bid. Thus, the Competition Agency instructed the notifying party to initiate the procedure for nullifying of the agreement in question at the commercial court of competent jurisdiction. The Agency also notified the Central State Administration Office of the established deficiencies.

## 4.2. Assessment of concentrations between undertakings

In 2004 a total of 25 cases relating to implementation of the proposed concentrations were opened, which means that the number of cases in question dropped by 52.83% compared to the preceding year.

The above mentioned decrease resulted from the changes relating to the obligatory notification of concentrations which were introduced by the new Competition Act 2003, applicable as of 1 October 2003. The provisions of Article 22 par (4) of the Competition Act significantly increased the total annual turnover of the undertakings - parties to the concentration in the global and domestic market subject to obligatory notification. Article 22 par (4) reads as follows:
"The parties to the concentration are obliged to notify the concentration to the Agency if the following conditions are simultaneously met:

1. the total turnover of all the undertakings – parties to the concentration, realized by the sale of goods and/or services in the global market, amounts to at least 1 billion Kuna in the financial year preceding the concentration, and
2. the total turnover of each of at least two parties to the concentration realized by the sale of goods and/or services in the domestic market, amounts to at least 100,000,000 Kuna in the financial year preceding the concentration."

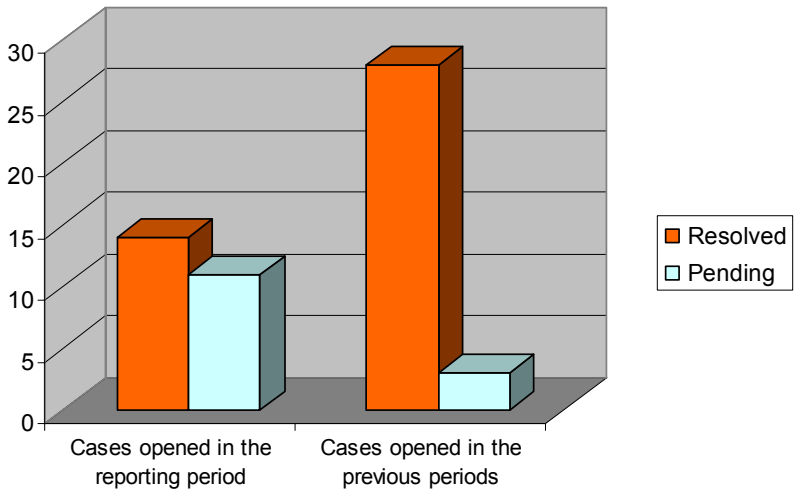
The share of the cases relating to assessment of concentrations amounts to 30.49 % of the total cases falling under the major competency of the CCA.

A total of 14 cases were closed in the reporting period (56 %) and 11 cases were still pending as of 31 December 2004.

Other than the cases opened in 2004, in the same reporting period the CCA dealt with 31 cases from the preceding periods, whereby 28 of the latter (90 %) were closed in this reporting period.

In sum, in 2004 there were 46 cases closed out of the total of 56 cases relating to the assessment of concentrations, which amounts to 75 %, whereas as of 31 December 2004 there were 14 cases (25 %) still pending. The above mentioned figures indicate a high level of effectiveness of the CCA expert team, taking into account the complexity of the assessment procedure involving detailed economic and legal analyses of the relevant market.

**Figure 5 Number of closed concentration cases and cases still pending in the reporting period**




*Source: CCA, Legal Affairs and Economic Analysis Division*

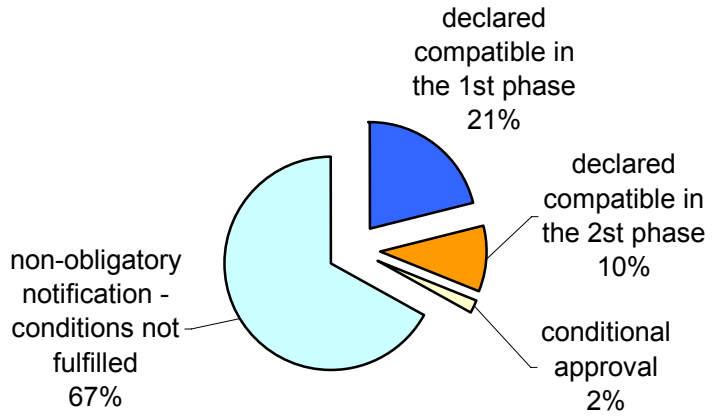
In the procedure for the assessment of concentrations the CCA takes into account all possible positive effects of the implementation of the proposed concentration, as well as possible negative effects on competition, such as the existence of significant entry barriers for actual or potential competitors to the parties to the concentration.

Out of the total of 14 resolved concentrations 9 were resolved in the first Phase (concentrations which do not raise competition concerns and the implementation of which can be reasonably assumed not to be prohibited within the meaning of the Competition Act). In such cases the CCA does not pass a resolution on initiation of the assessment procedure, but the concentration in question is deemed compatible after the expiry of the time period of 30 days following the receipt of the complete notification.
Four (4) concentrations were declared compatible in the second Phase (concentrations which raise competition concerns and which are assessed within a separate investigation proceedings). The investigation proceedings are initiated on the day on which the resolution on the initiation is passed and must be closed within three months.
One concentration was declared conditionally compatible in the second Phase, whereas 28 registered cases were dismissed by a resolution on dismissal on the account of non-compliance with the conditions for obligatory notification as specified under Article 22 of the Competition Act (in respect of the annual turnover of the undertakings – parties to the concentration in the financial year proceeding the concentration in question in the global and domestic market).

In respect of all concentrations that were declared compatible the CCA established that the concentrations in question will not have any anti-competitive effects on competition, whereas in

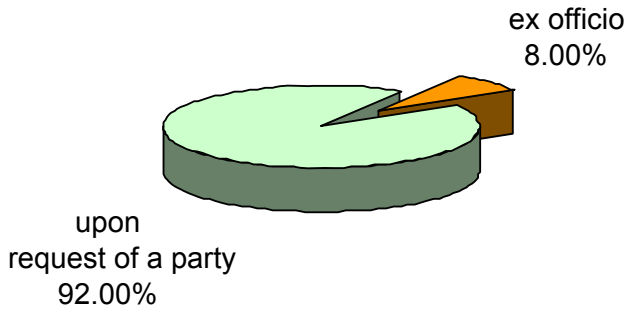
the case of the conditionally compatible concentration[56] the Agency proposed necessary conditions and obligations in order to eliminate negative effects of prevention, restriction or distortion of competition which would come to effect by the implementation of the proposed concentration, and the deadlines for the elimination of the said negative effects on competition in the relevant press distribution market. Consequently, the Agency imposed certain remedies within the meaning of Article 26 of the Competition Act. This case has been laid down in detail in point 4.2.1. as a selected case 3.

**Figure 6 Breakdown of the cases relating to concentrations in 2004**




*Source: CCA, Legal Affairs and Economic Analysis Division*

**Figure 7 Breakdown of the cases relating to concentrations as to the manner in which the proceedings is instituted**




*Source: CCA, Legal Affairs and Economic Analysis Division*

[56] The concentration between the undertakings EPH d.o.o. Zagreb and SLOBODNA DALMACIJA d.d. Split, Class: UP/I-030-02/2004-01/33.

The review shows that the trend relating to the consolidation of companies and the growth and size of firms continued also in 2004. The participating undertakings in mergers and acquisitions are mostly Croatian undertakings, particularly in the area of services, such as tourism (undertakings H.B.I. d.o.o. Zagreb and Hoteli Mlini d.d. Mlini) and wholesale and retail trade (undertakings KONUZM d.d. Zagreb and Mediator d.o.o. Dubrovnik, also the undertaking BILLA NEKRETNINE d.o.o. Zageb and the undertaking MINACO d.o.o. Našice).

The use of tying complementary market activities can also be observed in the publisher's and media market (undertakings EUROPAPRESS HOLDING d.o.o. Zageb and SLOBODNA DALMACIJA d.d. Split).

There were fewer undertakings – parties to the concentration with their place of establishments outside the territory of the Republic of Croatia, in particular in the area of services, such as retail and wholesale trade (undertakings MEPAS d.o.o., Široki Brijeg, Bosnia and Herzegovina, and BRODOMERKUR d.d., Split), media (undertakings CME MEDIA ENTERPRISES BV, Netherlands, and NOVA TV d.d., Zagreb), but also manufacturing industry (undertakings MEGGLE EASTERN EUROPE GmbH, Germany and IPK MIA MLJEKARSKA INDUSTRIJA d.d., Osijek) and insurance sector (undertakings WIENER STADTISCHE Allgemeine Versiherung AG, Vienna, Austria, and AURUM osiguravajuće društvo d.d., Zagreb).

### 4.2.1. Selected case 3: Concentration between the undertakings EUROPAPRESS HOLDING d.o.o. Zagreb and SLOBODNA DALMACIJA d.d. Split - CCA decision UP/I 030-02/2004-01/33 of 28 July 2004 (Official Gazette No 111/2004)

**SUMMARY**

The assessment of compatibility of the above concentration was specific for a number of reasons.

In the first place, it was the first assessment of compatibility of a concentration carried out by the CCA in the privatization process. In other words, the assessment of the CCA was a prerequisite for the transfer of shares held by the Croatian Privatisation Fund in the undertaking Slobodna Dalmacija d.d.

Secondly, the CCA applied the provisions of separate sectoral rules, in this particular case the Media Act, in the assessment of the concentration in question. General competition rules stipulated under the Competition Act were applied subordinately.

Thirdly, the specificacy of the case lies also in the fact that taking into account all possible benefits and positive effects on competition of the implementation of the proposed concentration on all affected relevant markets the CCA declared the concentration in question conditionally compatible. In accordance with the assessment of the CCA, the implementation of the concentration in question would significantly impede effective competition on one of the affected relevant markets, whereby these negative effects may be eliminated by imposing adequate remedies, such as structural measures and other conditions and obligations to be fulfilled within a specified time period.

1. Notification of the implementation of the proposed concentration

On 31 May 2004 the Croatian Competition Agency (CCA) received a notification of a proposed concentration which was submitted by the undertaking Europapress holding d.o.o.

The date of receipt of the complete notification is considered to be 24 June 2004, in accordance with the provisions of Article 11 and Article 13 of the Regulation on notification and assessment of concentrations.

2. Legal and de facto basis of the concentration

In accordance with Article 19 of the Competition Act, the concentration in question represents the acquisition of control which would be brought about by the acquisition of a majority of the share capital and a majority of the voting rights of the undertaking Slobodna Dalmacija d.d. (SD) by the undertaking Europapress holding d.o.o. (EPH).

The legal basis of the concentration is the agreement to be concluded between SD and the Croatian Privatization Fund according to which EPH buys 34.73 % of the share capital of SD and undertakes the commitment to increase the share capital of SD and subsequently acquires 70 % of the share capital of SD.

Within the meaning of Article 26(3) of the Competition Act the CCA analyzed the received notification data and documentation and carried out an in-depth market investigation in the second phase of the assessment procedure.

3. Parties to the concentration

The notifying party, the undertaking Europapress holding d.o.o. (EPH), with its place of establishment in Zagreb, is a publishing company, a part of the German group West Allgemeine Zeitungsverlag. The main activities of EPH include press publishing, press distribution (wholesale and retail) and marketing and advertising in the territory of Croatia.
In the context of the concentration in question the most important fact is that EPH is at the same time the publisher of the general information daily newspaper *Slobodna Dalmacija.*

The undertaking Slobodna Dalmacija d.d. (SD), with its place of establishment in Split, is a press publishing company which is also, directly or indirectly through its connected undertakings, engaged in press distribution (wholesale and retail) and marketing and advertising mostly in the region of Dalmatia.
In the context of the concentration in question the most important fact is that SD is at the same time the publisher of the general information daily newspaper *Jutarnji list.*

Both undertakings – parties to the concentration have ownership ties and interlocking directorates within other undertakings.

4. Relevant markets

Relevant markets have been defined in Articles 5 and 6 of the Regulation on the definition of relevant market the provisions of which provide for the definitions of a relevant product and relevant geographic market.

In accordance with the Media Act, which separately regulates the area of competition in the media sector, the relevant (product) market is defined as the general information daily newspapers publishers market and general information weekly newspapers market. The relevant geographic market is the territory of the Republic of Croatia.[57]

Given that it has been established in this particular case that the concentration in question could possibly have effects on the neighbouring (relevant) markets, and in compliance with the provisions of the Competition Act and Media Act, three relevant (product) markets have been defined by the CCA:

- general information daily newspapers publishers market,
- press distribution market for 2003, and
- general information newspapers advertising market.

The geographic relevant market has been defined as the territory of the Republic of Croatia.

Market shares have been calculated on the basis of the total sold circulation (number of copies) of the general information daily newspapers in the territory of the Republic of Croatia in 2003.

4.1. General information daily newspapers publishers market

On the account of the fact that there is no existing comprehensive data base covering the media market and the connected markets the CCA pursued with the market analyses on the basis of several available sources. Hence, the volume sales data relating to general information daily newspapers have been provided mostly directly from the publishers[58].
The following table shows the market structure of competing publishers of the daily general information daily newspapers (based on sold circulation):

| Daily | Publisher | 2003 Market shares (in %) |
|---|---|---|
| Večernji list | Večernji list d.d., Zagreb | 30 - 35 |
| **Jutarnji list** | **EPH d.o.o., Zagreb** | **25 - 30** |
| Novi list | Novi list Novinsko-nakladničko d.d., Rijeka | 10 - 15 |
| **Slobodna Dalmacija** | **Slobodna Dalmacija d.d., Split** | **10 - 15** |
| Glas Istre | Glas Istre d.o.o., Pula | < 5 |

[57] Article 37 of the Media Act stipulates that: "Impermissible concentration of undertakings in the general information daily newspapers market or general information weekly newspapers market shall be considered to exist if the market share of the participating undertakings after the implementation of the concentration concerned exceeds 40% of the total sold circulation of the general information daily newspapers or weekly newspapers in the territory of the Republic of Croatia."

[58] In accordance with the Media Act the press means newspapers and other periodicals published at least once every six months, in a circulation of more than 500 copies. Printed work in the circulation of less than 500 copies and published occasionally shall be considered press if intended for distribution.
General-information press means the press which jointly publishes programme contents for the purpose of informing the general public of the current social, especially political, economic, social, and cultural life and other events in Croatia and worldwide.
The Media Act also provides for the duty of the Croatian Chamber of Commerce to keep the register of publishers and press distributors. Nevertheless, in spite of several reminders, the required data have not been made available to the Agency.

| | | |
|---|---|---|
| Glas Slavonije | M.C. Glas Slavonije d.d., Osijek | < 5 |
| Vjesnik | Vjesnik d.d., Zagreb | < 5 |
| Zadarski list | RTD d.o.o., Zadar | < 5 |
| Osječki dom | Datapress d.o.o., Osijek | < 5 |
| La voce del popolo | Edit Rijeka nov.-izd. ustanova, Rijeka | < 5 |
| Karlovački list | Karlovački list d.o.o., Karlovac | < 5 |
| Foreign general information press | distrib.Tisak d.d., Distri-press d.o.o., Gen. Grafik d.o.o. | < 5 |
| Total : | | 100 |

*Data processed by: CCA, Competition Division*

4.2. General information daily newspapers advertising market

The advertising market has been regarded as a neighbouring market to that of newspapers publishers market concerned, given the fact that the general information daily newspapers publishers generate a significant part of their revenues from advertising.

In the market analyses in question the CCA used the data on advertising revenues only relating to the general information daily newspapers which hold a market share exceeding 10 % of the relevant market in question, as shown in the following table:

| Daily | Publisher | 2003 Market shares (in %) |
|---|---|---|
| Večernji list | Večernji list d.d., Zagreb | 35 - 40 |
| Jutarnji list | EPH d.o.o., Zagreb | 25 - 30 |
| Slobodna Dalmacija | Slobodna Dalmacija d.d., Split | 10 - 20 |
| Novi list | Novi list Novinsko-nakladničko d.d., Rijeka | 10 - 20 |
| Total: | | 100 |

*Data processed by: CCA, Competition Division*

4.3. Press distribution market

Press distribution is carried out through press wholesale and retail market. Some of the undertakings in the press distribution market operate only on the wholesale market (such as Distri-press), others operate at the same time also on the retail market. In this particular case the press wholesale market is given significant attention, taking into account the diversity, complexity and development of distribution networks (such as street sales, sales in non-specialized shops, subscriptions, street vendors) and the effects on competition which would occur after the implementation of the proposed concentration of the undertakings in question, namely EPH and SD.

The Croatian press distribution market is represented by a relatively small number of competing undertakings, especially on the wholesale level, whereby two of them hold a dominant position in the wholesale market concerned, with a combined market share of almost 80 % of the relevant press wholesale market. The table below also shows that four largest distributors hold a combined market share of some 96 % of the relevant market in question.

| | Undertaking/Distributor | Market shares in % (2003) |
|---|---|---|
| | 1. | 2. |
| **1.** | **Tisak d.d., Zagreb** | **50 - 55** |
| **2.** | **Distri-press d.o.o., Zagreb** | **25 - 30** |
| 3. | Novi list-Novinsko nakladničko d.d., Rijeka | 5 - 10 |
| **4.** | **Slobodna Dalmacija-Trgovina d.o.o., Split** | **5 - 10** |
| 5. | Glas Istre d.o.o., Pula | < 5 |
| 6. | Medijski centar Glas Slavonije d.d., Osijek | < 5 |
| | Total: | 100 |

*Data processed by: CCA, Competition Division*

In the context of the assessment of the concentration concerned it is necessary to point out that both parties to the concentration (EPH and SD) are active on the press distribution market, covering both the wholesale and retail market, through their connected undertakings in which they have interest or hold shares, such as Tisak, the largest press distributor in which EPH holds 25 – 30 % of shares; Distri-press (DP), the second largest press distributor operating only on the wholesale level, where EPH holds 40 – 50 % of the share capital; and Slobodna Dalmacija – Trgovina, which is the third largest press distributor both on the wholesale and retail level, with its own specialized points of sale predominantly located in the region of Dalmatia, where Tisak and SD hold the majority of its share capital.

The above mentioned indicators speak of a highly concentrated market. The current market situation is the result of the inherited state of affairs which existed in the pre-transition period, when as a rule, every press publisher had its own distribution network normally covering both wholesale and retail. The circumstances have not significantly changed since, apart from the fact that the undertaking Distri-press d.o.o. (DP) which is involved in press distribution on the national level entered the market in question.

5. The new structure of the relevant markets resulting from the implementation of concentration

The implementation of the concentration between the undertakings EPH and SD would result in certain changes in all three relevant markets concerned. This would mean the changes of market shares in particular relevant markets and reduction in competition. The proposed concentration would produce a dominant influence of EPH in the new business entity, particularly relating to certain decisive issues concerning the business policy of SD.

6. Assessment of compatibility of the concentration between the undertakings EPH and SD

In the assessment of the proposed concentration the Competition Council (hereinafter: the Council) took into account all possible benefits and effects that would arise from the implementation of the concentration concerned in three relevant markets.

6.1. Effects of the merger in the general information daily newspapers publishers market

The implementation of the concentration concerned would result in the undertaking EPH, as a publisher of the *Jutarnji list* daily, to take over the market share of the undertaking SD realized by the sales of the *Slobodna Dalmacija* daily. EPH would in that way take a dominant position in the Croatian general information daily newspapers publishers market from the publisher of the *Večenji list,* which currently holds this position. The market share of EPH would be by some 5 percentage points (or some 14 %) higher than the market share of the publisher of the *Večernji list*. Consequently, two leading competitors would simply swap their positions in the market concerned keeping the difference between the relevant market shares unchanged (prior to the implementation of the concentration in question the *Večernji list* had a 6 percentage points or some 16 % higher market share than the *Jutarnji list* in the relevant market).

Nevertheless, the implementation of the concentration between EPH and SD would not lead to a market share of the EPH group which would exceed the 40 % market share threshold in the Croatian general information daily newspapers publishers market as provided for by the Media Act.

In its assessment the Council also stated that the entry into the market concerned ensures access to all undertakings that comply with the provisions stipulated by the Media Act and other legislation. In addition, there are no barriers to entry relating to the denial of distribution service concerning the press of the competing publishers. The Media Act regulates that press distributors may not refuse to distribute the press of another publisher upon their request and acceptance of the publically published general terms and conditions.

6.2. Effects of the merger in the general information daily newspapers advertising market

In accordance with the view of the Council the implementation of the concentration concerned would ensure EPH group a dominant position in a part of the Croatian general information daily newspapers advertising market.

Taking into account that EPH publishes the *Jutarnji list* and SD the *Slobodna Dalmacija,* the EPH group would subsequently hold a dominant position in the advertising market concerned covering the advertising revenues of the dailies which hold a market share exceeding 10 % in the Croatian market. Hence, from the above stated reasons (see table in point 4.2) the market analyses involved only the dailies covering 86 % of the market, whereas seven remaining Croatian dailies hold a common market share of 11 % in the relevant market. On the other hand, had the data on the publishers of these remaining 7 daily newspapers been included, the market share of the undertakings – parties to the concentration, EPH and SD, would have been even lower.
A dynamic approach reveals the importance of the fact that the market share of the undertaking SD relating to advertising plunged and that the advertising revenues dipped and as such represented one of the major reasons for the profit losses and bankruptcy threat that would wipe it out from the market. Under the circumstances, it is obvious that only a successful undertaking in the advertising market, such as EPH, could restore the market position of SD and ensure enough operating profit.

For the above mentioned reasons the Council did not oppose the implementation of the concentration in question in spite of the creation of a dominant position in the market concerned. The Council rendered its decision also taking into account the fact that newspapers advertising

covers only some 27 % of the total advertising market in the Republic of Croatia, whereas other forms of advertising (such as TV, radio, outdoor advertising) cover a significant 83 % thereof.

6.3. Effect of the merger in the press distribution market

In the assessment of the proposed concentration between the undertakings EPH and SD the Council decided that the parties to the concentration failed to prove that the positive effects of the concentration in question would outweigh the negative effects on competition which would occur by the creation of a new or strengthening of the current dominant position of the participating undertakings in the press distribution market.

The implementation of the concentration in question would enable the undertaking EPH, apart from the acquisition of the undertaking SD, also to acquire the joint company SD – Trgovina. SD – Trgovina is a company operating in the press wholesale and retail market and according to its market share the third largest competing undertaking in the market in question. On the basis of the collected and processed data, notifications and oral hearings, evidence and documentation served, and taking into account de facto and legal circumstances, the Council held the position that in respect of the existing ownership ties and interlocking directorates of the undertaking EPH with the undertakings operating in the Croatian press wholesale and retail market, the acquisition of shareholdings in the undertaking SD – Trgovina by the undertaking EPH would lead to significant changes in the market structure in question.

Following the implementation of the concentration EPH would acquire a shareholding of 50 % of the share capital of the undertaking SD – Trgovina. Although it must be pointed out that 50 % of the share capital would enable the undertaking EPH a significant influence on the business decisions of the undertaking SD – Trgovina, it is nevertheless even more important that the rest 50 % in SD – Trgovina is held by the undertaking Tisak, which operates in the same relevant market as the undertaking SD – Trgovina. What is more, Tisak is the largest Croatian press distributor covering both wholesale and retail. EPH holds 27 % of the share capital in the undertaking Tisak. It consequently gives it certain statutory powers relating to decision making procedure within the undertaking in question. The implementation of the proposed concentration would enable EPH a direct influence in the undertaking SD - Trgovina, through its own shareholding in the latter, but it could also indirectly influence its business policy through its shareholding in the undertaking Tisak. At the same time EPH has a prevailing influence in the undertaking Distri – press which is according to its market share the second largest Croatian press distributor.

Given that the undertaking EPH would by the implementation of the proposed concentration, directly or indirectly, acquire shareholdings in all three leading press wholesale distributors (Tisak, Distri – press and SD – Trgovina), and given the fact that these press wholesale distributors jointly hold the market share of more than 87 %, the concentration in question would lead to significant strengthening of a dominant position of EPH in the press wholesale distribution market.

In addition, the implementation of concentration would result in higher barriers to entry to the press distribution market, on the account of the fact that press distribution is based on commission sales to which general competition rules are not applicable. Particularly, press publishers conclude agreements on distribution of their own publications with one ore more distributors. Within the meaning of the Media Act a distributor may not refuse to distribute a publication of any publisher. Nevertheless, a publisher may refuse to conclude an agreement with a distributor – a new market entrant, which may be justified by all sorts of reasons, one of

them being that a larger number of agreements would unnecessarily complicate the business which would then become more expensive or similar[59]. Consequently, it is possible that a distributor cannot access the press distribution market due to the fact that no publisher wants to enter into an agreement.

Furthermore, the market closure becomes even more evident on the account of the fact that the publishers hold significant shareholdings in the distributors' share capital and therefore opt for own press distribution networks, which also leads to collusions and market partitioning.

To sum up, taking into account the strengthening of dominance of the parties to the concentration in the press distribution market and relatively high factual barriers to entry to the market in question, strong ownership ties and interlocking directorates between the publishers and distributors, and possible concerted practices on the part of the distributors as regards price fixing agreements and market partitioning, the Council concluded that the positive effects on competition fail to outweigh the anti-competitive effects of the implementation of the proposed concentration between the undertakings EPH and SD in the market concerned.

## 7. Decision of the Agency

Taking into account all previously stated data and analyses the Competition Council assessed the concentration in question as conditionally compatible.

In its decision the Council stated that the parties to the concentration furnished necessary evidence that the implementation of the concentration in question would not have anti-competitive effects in two defined relevant markets: the general information daily newspapers publishers market and general information newspapers advertising market in the territory of the Republic of Croatia.

Nevertheless, in its assessment the Council stated that the parties to the concentration did not provide evidence that the implementation of the proposed concentration would lead to strengthening of competition in the press distribution market, particularly relating to its wholesale part, which would outweigh the negative effects of strengthening of a dominant position of the newly created economic entity.

In order to eliminate the negative effects on competition in its decision the Council proposed and identified a number of necessary conditions and obligations to be fulfilled within the set time periods. The structural and other remedies to restore effective competition involve the following measures:

(i) EPH must divest or in any other way dispose of its shareholdings in Tisak, within a time period of six months following the day of the conclusion of the agreement on the basis of which it acquires shareholdings in SD.

(ii) If EPH does not divest or dispose of its shareholdings in Tisak within the set period, EPH must alternatively divest or dispose of its shareholdings in DP within the subsequent three months.

(iii) A purchaser – natural or legal person to which a divestiture of EPH shareholdings in Tisak is made, may not be structurally linked or have interlocking directorates with EPH. This also includes the links with any other undertaking in which EPH or WAZ group (member of

[59] Such behaviour is already known to the Agency, such as the case *Duhan d.d., Zagreb v. Večernji list d.d. and Europapress holding d.o.o.,* Class: 030-02/2000-01/153.

which is EPH) and their affiliated companies have shareholdings or shares. In this sense, the shareholders of Tisak d.d. are generally regarded as suitable buyers of EPH shareholdings in the undertaking in question, provided that following the acquisition of the shareholding concerned they obey the competition rules and separate regulations relating to prohibited agreements and abuse of a dominant position.

(iv) Prior to the divestiture of the shareholdings in Tisak, EPH must without delay notify the Agency on the purchaser ("upfront buyer"), in order to enable the Agency to approve a suitable purchaser in the sense of possible new competition concerns. EPH must submit to the Agency data from which it can undoubtedly assume that the conditions stipulated in its decision relating to a suitable purchaser are satisfied. Independently of the way of the divestiture or disposal, the acquisition of shareholdings in Tisak will be assessed by the Agency within a separate assessment procedure as a new concentration of undertakings, provided that the conditions stipulated under the Media Act and Competition Act are complied with.

(v) As long as the divestiture or disposal of the shareholdings in Tisak is made, the parties to the concentration, EPH and SD, must continue to operate in the market as viable competitors. They must refrain from any legal and de facto operations and businesses which would lead to any direct or indirect creation of a factual statutory and/or economic unit between the parties to the concentration or to any kind of coordination in decision making and concerted practices in the market. In this sense, EPH must particularly not terminate any distribution agreements entered into with Tisak, nor may it conclude new distribution agreements with the undertaking SD – Trgovina.

(vi) Following the day of the conclusion of the agreement on the acquisition of the shareholdings in SD, EPH as a shareholder in Tisak may not participate in any decision making which might have effect on the press distribution market in the territory of the Republic of Croatia. This especially in respect of the decisions on general terms of business of Tisak and conclusions or terminations of agreements with publishers, other distributors or subdistributors or press retailers.

(vii) As long as the divestiture or disposal of the shareholdings in Tisak is made, neither EPH nor SD or their affiliated companies may act as parties to other concentrations of undertakings in the press publishers or press distribution market and all transactions made to this effect will be terminated without delay. This does not impose an obligation to EPH to divest or dispose of its own shareholdings in undertakings operating in the market in question.

(viii) Following the divestiture of its shareholdings in Tisak, EPH will not in the following two years terminate the distribution agreements entered into with other press distributors, including the agreements concluded with Tisak, unless for particularly justified reasons. EPH must notify the Agency on any termination of the agreement with at least one month termination notice.

All conditions relating to the divestiture of the shareholdings in Tisak will accordingly apply to the alternative divestiture of the shareholdings in DP.

The position of the Council is that the above mentioned remedies can restore effective competition in the press distribution market and produce the following effects:

(i) The divestiture of its shareholdings in Tisak would lower the EPH market share in the press distribution market. The market share of EPH and SD which would amount to more than 87 % by the implementation of the proposed concentration would by the divestiture of the shareholdings in question be reduced to 33 %.

(ii) The implementation of the measures determined by the decision of the Agency will ensure the access to the wholesale and retail press distribution market to all publishers of general information daily newspapers holding a significant market share (exceeding 10%) through their own distribution networks. The publishers concerned will keep significant shareholdings in press distributors, whereby not all dominant publishers will hold shareholdings

in all dominant press distributors. The structural measures involved will restore balance in the press distribution market and reduce the possibility of concerted practices between press distributors given that the press distributors under control of different publishers will cease to share the same interests.

(iii) Nevertheless, from the viewpoint of the competition rules, the most significant "side effect" of the implementation of the concentration in question will be the brand maintenance of the *Slobodna Dalmacija* daily, a local general information newspaper, and the preservation of know-how by the journalists who are acquainted with their readers' needs and customs. *Slobodna Dalmacija* will thus remain a competing undertaking at least as regards the newspapers published by the publishers outside the EPH group. Although this argument cannot be given priority in respect of competition rules, it will at least contribute to job maintenance.

The implementation of the concentration between the undertakings EPH and SD will be cleared only after the parties to the concentration have fulfilled the conditions and obligations set by the Agency in its decision on the compatibility of concentration. The deadline for execution of the commitments shall be 28 February 2006.

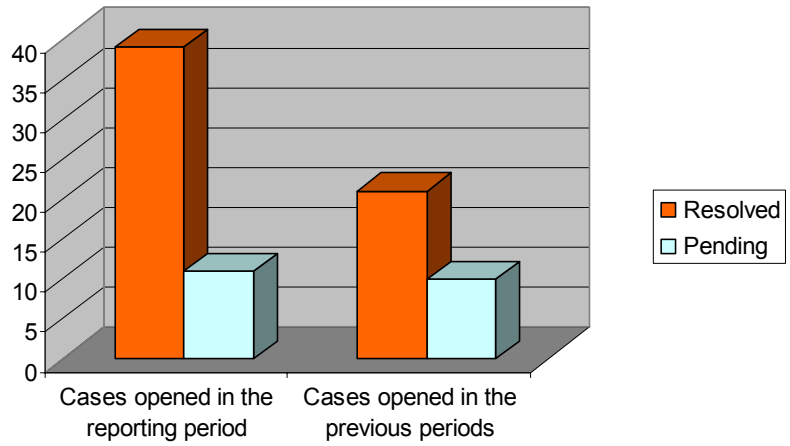
## 4.3. Abuse of a dominant position

In 2004 there were opened 50 cases on abuse of a dominant position, which in comparison to the previous reporting period represents an increase of 8.7 %, whereas the share of the cases concerned contribute with 60.92 % in the total number of anti-trust cases.

A total of 39 new (opened in 2004) cases were closed (78 %). As of 31 December 2004 there were 11 cases or 22 % still pending.

Apart from the new cases (opened in 2004) relating to the establishment of abuse of a dominant position the CCA also resolved 21 out of 31 cases from the previous reporting periods or 67.74 %.
In sum, in 2004 there was a total of 60 out of 81 cases on abuse of dominance closed, which amounts to 74.07%.

**Figure 8 Number of closed cases and cases still pending relating to abuse of a dominant position in the reporting period**




*Source: CCA, Legal Affairs and Economic Analysis Division*

The Competition Act stipulates the following forms of abuse of a dominant position:

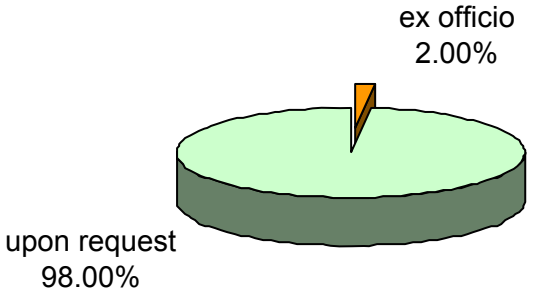
1. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
2. limiting production, markets or technical development to the prejudice of consumers;
3. applying dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at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

There is an equal number of all four identified forms of abuse of a dominant position.

It is necessary to point out here that on the account of the lack of knowledge on the part of undertakings a considerable number of notifications of abuse of a dominant position actually referred to objections regarding the public tender rules. Such cases do not fall under the competence of jurisdiction of the Competition Agency. Pursuant to the Public Procurement Act *(lex specialis)* the competence of jurisdiction relating to legality of the public procurement procedure falls under the State Commission for Public Procurement Procedure Control. All related requests have been consequently transferred to the competent authority.

Out of the above mentioned total, 49 cases on alleged abuse of dominance have been initiated upon the request of a party (98 %) whereas one case ex officio (2 %).

**Figure 9 Cases on alleged abuse of dominance according to the initiation of proceedings**




*Source: CCA, Legal Affairs and Economic Analysis Division*

### 4.3.1. Selected case 4: ORACLE HRVATSKA d.o.o Zagreb v. HRVATSKA NARODNA BANKA - Resolution by the CCA, Class: 030-02/2004-01/19 of 17 June 2004

The signing of the technical specifications of copyrighted computer currency exchanger programs by Hrvatska narodna banka (Croatian National Bank) lead to foreclosure of the market for some of the undertakings (among others also the notifying party), by imposing the obligation or prohibition to use certain program tools. Prior to its resolution on the initiation of the proceedings the Agency warned the Croatian National Bank on the incompatibility of the provisions in question with the competition rules. Subsequently, the Croatian National Bank, and within the cooperation in the area of competition in the provision of banking and financial services, immediately revised the technical specifications in question and removed the disputable provisions. Consequently, the undertaking Oracle Hrvatska d.o.o. withdrew its request and the proceedings before the Agency was terminated. On the account of immediate and successful cooperation between the Agency and Croatian National Bank the prompt removal of the disputable provisions re-established effective competition in the relevant market.

### 4.3.2. Selected case 5: AUTORAD HRVATSKA d.o.o., Zagreb, against P.Z. AUTO d.o.o., Velika Gorica - Resolution by the CCA, Class: UP/I 030-02/2004-01/09, of 22 July 2004

In the above mentioned case the undertaking P.Z. Auto d.o.o. cancelled the Letter of Intent concluded with the undertaking Autorad Hrvatska d.o.o. thereby excluding the latter from its selective distribution system and servicing of motor vehicles. Although P.Z. Auto d.o.o. decided on the mixed qualitative and quantitative selective distribution system and servicing of motor vehicles, it did not have transparent criteria and standards for accepting new authorised car dealers (distributors) and service providers (repairers) into the system in question. However, it denied access into the system to the undertaking Autorad Hrvatska d.o.o. and took a new undertaking as its authorised distributor and repairer instead. In the opinion of the undertaking Autorad Hrvatska d.o.o., it lead to distortion of competition given that it applied dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage. Although the Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles was not in force at the time concerned, the CCA applied apart from the provisions of the Competition Act also the relevant criteria applicable in the EU. During the preliminary investigation in the relevant market, and before it issued a procedural order on the initiation of the proceedings, in the contacts with the representatives of both undertakings the CCA pointed out the relevant position of the European Commission that car manufacturers and general importers of motor vehicles should, after the termination of the agreements, allow their long-standing authorised distributors and repairers to at least perform their activities as authorised repairers of the motor vehicles in question, taking into account their long business cooperation which proved them to have the experience, knowledge, professional skill and business facilities necessary for the activities of authorised distributors and repairers of motor vehicles.
Subsequently, and before the formal initiation of the proceedings in this case, the undertaking P.Z. Auto d.o.o. concluded a Business Cooperation Agreement covering the repair of motor vehicles and sale of original spare parts with the undertaking Autorad Hrvatska d.o.o. and four other undertakings that were previously also excluded from its system.

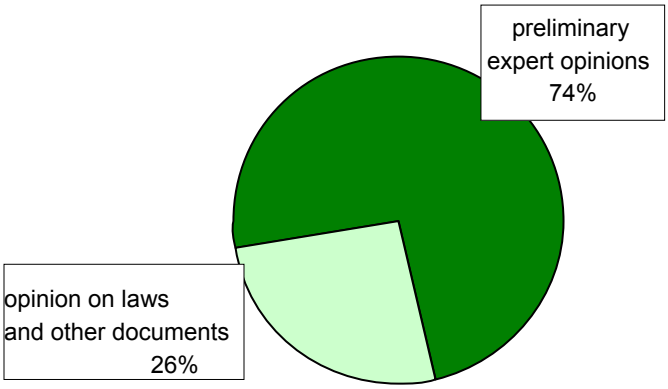
Although the case was closed by a resolution on dismissal of the submitted request due to the lack of grounds for the initiation of the proceedings before the Agency (the undertaking Autorad Hrvatska d.o.o. withdraw its request before the proceeding according to the provisions of the Competition Act was formally instituted), the fact that the undertaking Autorad Hrvatska d.o.o. consequently returned to the distribution system as an authorised repairer contributed to the re-established effective competition in the relevant market concerned, which is the ultimate objective of the operation of this Competition Agency.

# 5. COMPETITION ADVOCACY

In this reporting period the CCA continued to develop a so called competition culture and has kept its active engagement in competition advocacy and awareness raising between undertakings, government and other public authorities, the judiciary, consumers, and the general public regarding the importance and role of competition law and policy in further development of the market economy in our country and its role in raising competitiveness of the Croatian undertakings.

Competition advocacy involves the activities of the Agency which are not covered by its main executive operations relating to the implementation of the Competition Act.

In 2004 the Agency issued 92 legal opinions, 24 thereof relating to the requests and applications of the ministries on the compatibility of the law proposals or proposed legal documents with the provisions of the Competition Act. 68 opinions have been issued upon request of the parties (natural and legal persons, attorneys) in respect of the interpretation of the provisions of the regulations adopted pursuant to the Competition Act. Legal opinions which are issued by the Agency prior to the adoption of any relevant laws or regulations significantly contribute to harmonization of the Croatian legislation with the EC acquis and it has also been regulated by Article 29 of the Competition Act. Nevertheless, the practice of the competition authorities in the Member States does not involve the obligation of issuing legal opinions upon requests of legal or natural persons, only the opinions on draft legislation submitted by the ministries. Although the above mentioned interpretative activities lay an extra workload to the understaffed Agency, it is nevertheless considered to be a necessary practice which provides for legal certainty of all interested parties at the time when in Croatia the professional literature in this area is rather scarce.




*Source: CCA, Legal Affairs and Economic Analysis Division*

On its website www.aztn.hr the CCA regularly publishes press releases, relevant decisions, decisions of the Administrative Court of the Republic of Croatia rendered pursuant to the complaints filed against the decisions of the Agency, and the Croatian as well as the EC legislative framework in the area of competition and state aid, whereby the latter has been

translated into Croatian. The web site has been permanently improved and updated in accordance with the similar web pages of the Member States' competition authorities.

The representatives of the CCA participated in a numerous seminars and conferences at home and abroad. On 3 May 2004 in the collaboration with *Narodne novine* (Official Gazette) the Agency organized a conference: *Current issues in competition law* which provided legal education and facilitated the understanding and application of the current regulations in legal practice. The conference covered several topics, such as competition, state aid, public procurement and criminal liability relating to abuse of dominance and was attended by some 120 participants, mostly undertakings and attorneys.

The CCA also organised, in the collaboration with the European Institute – Denmark, a two-day International Conference covering competition issues, on 6 and 7 October 2004 in Zagreb, Hotel Sheraton. The primary objectives of the conference *The EU Competition Policy and Consequences for Croatia* were to promote the competition issues and stress their significance within the stabilization and accession process and the harmonization of Croatian legislation with the EU acquis, and to point out the importance of competition policy for the development of market economy in our country.
The conference was opened by Mr Damien Geradin, professor at the University of Liege and the College of Europe at Bruges and the Chairman of the Conference, Mr Jacques Wunenburger, former head of the Delegation of the European Commission in Zagreb.
The programme of the conference encompassed the review of the EU legislation in this field, covering Croatian as well as "old" and new EU member states. The speakers in the conference were distinguished European and Croatian experts as well as prominent university lecturers in the field of competition law and policy. The representatives from Slovenia, Hungary and Lithuania talked about their experience in the application of competition law. The representatives of the competition authorities from Serbia and Monte Negro, Bosnia and Herzegovina and Macedonia were also invited and made their contribution to the conference.

Finally, the CCA continued its fruitful cooperation with other regulators. Apart from the cooperation agreement which was concluded in 2003 with the Croatian National Bank, the Agency also concluded a similar agreement on cooperation in the area of competition on the energy market with the Council for Energy Regulation (now Agency for Energy Regulation). The agreement is meant to facilitate cooperation and implementation of competition rules in the energy market. A joint Cooperation Committee consisting of two members from both parties will ensure that the established objectives are successfully accomplished.

## 5.1. Selected case 6: Opinion on the proposed Draft Trading Act

Upon the request of the Constitutional Court of the Republic of Croatia, and based on the proposal on the initiation of the proceedings relating to assessment of constitutionality of the Amendments to the Trading Act, the CCA issued its opinion on the proposed Draft Trading Act regulating the normal working time, statutory days off, on Sundays and pubic holidays regulated by a separate law, of shops and other retail outlets.

The Competition Council holds the opinion that the anticompetitive effects of the criteria based on the floor area of shops laid down by the Draft Trading Act in question, as well as of the criteria for permissible working time on statutory days off, on Sundays and public holidays regulated by a separate law, outweigh the possible positive effects on competition provided by the legislative solution in question. The Council holds the view that the provisions of the legislation concerned does not take into account the market power of undertakings and as such does not comply with competition rules, given that it does not ensure an equal legal position of competing undertakings in the market.

Therefore, the Council finds it more appropriate in this case that the criteria for permissible working time in question should include the market power of undertakings, which would produce less negative effects on competition. In addition, the application of the market power criteria would result in equal treatment of all undertakings holding the same or similar market share and enable the undertakings of less market power to survive in the market dominated by the undertakings holding high market shares.

The Competition Council assessed the constitutionality of the Act on the Amendments to the Trading Act in question (Official Gazette No 17/03; hereinafter: the Novel) solely from the point of view of the effects on competition which may be produced relating to Article 26 par (4) thereof which provides for exemption from the ban of work on Sundays and holidays that may be granted to certain undertakings.

The Council considers that the criteria for exemption from the ban of work on Sundays and holidays have not been identified clearly and the application thereof may lead to an unequal position of undertakings in the market and as such have anti-competitive effects. This especially relating to the criteria applicable to the floor space of shops, the criteria stipulated for groceries shops under Article 1 par (5) and retail outlets as part of market halls and open markets under Article 1 par (8) of the Novel.

The Council finds the selection of shops would be more appropriate if the criteria of market power of the undertakings which may be granted exemption applied. To make it simple, what actually counts is the character of the undertaking, not the features of the shop.

The application of the market power criteria would at the same time produce a twofold effect. First of all, all undertakings of equal or similar market power would be given equal treatment. Secondly, the application of the said criteria would enable the undertakings of less market power to survive in the market which is dominated by the undertakings of great market power.
The floor space criteria places at advantage big supermarket chains which usually consist of a large number of shops with a floor space less than 200 $m^2$, towards other big undertakings occupying one or two shops with a larger floor space than the prescribed limit of 200 $m^2$. Big supermarket chains are again in a more favourable position where undertakings with significant

market power do not provide for widely spread retail networks. This favourable position in the market is even more striking with regard to small undertakings, i.e. undertakings with little market power.

In spite of the "rotation" of the shops providing Sunday and holiday service ("shops-on-call") it can still be assumed that big supermarket chains will at least have a couple of their shops opened, generate turnover and thereby furthermore increase their market power, which will at the same time lower the market power of the undertakings of similar size, let alone the market power of small undertakings.

The data used by the CCA in the assessment concerned indicate a significant rapidly falling trend in the market shares of micro and small enterprises in relation to supermarket chains, especially relating to the retail of groceries, food staffs, alcohol and non-alcohol beverages and tobacco products in non-specialized shops. Common market share of micro and small enterprises in the first half of 2003 amounted to 43 % in the relevant market, which is 12 % less than the first half of 2001 when their common market share amounted to 55 %. In the same period the market share of big supermarket chains and hypermarkets rose by 129 % and 150 % respectively.

In the view of the CCA the very intention of the Novel has been to enable work on Sundays, holidays and statutory days off to the advantage of smaller shops. Article 1 par (5) of the Novel limits the net floor area of a shop to 200 $m^2$ and thereby obviously favours relatively small shops. It is a notorious fact that micro and small enterprises of low market power generally do not occupy larger floor areas.

Whereas the solution adopted by the Novel indicates that anti-competitive effects will outweigh possible positive effects on competition, the criteria based on the market power suggested by the CCA are assumed to bring about positive effects on small enterprises which will outweigh the possible negative effects of the said criteria relating to permitted work on Sundays on the undertakings holding great market power.

The above mentioned criteria do not endanger market position of any undertaking; they contribute to its equal allocation between undertakings and do not reduce the number of competing undertakings which becomes significant in the view of the consumer benefits. The greater the number of competitors, the wider the selection principle used by the consumers – these are the basic principles of competition law. In addition, the suggested solution complies with the practices used in several European countries.

## 5.2. Selected case 7: Opinion on the proposed Draft Act on the Amendments to the Energy Act

In its opinion on the proposed Draft Act on the Amendments to the Energy Act which was based on the decision of the Competition Council, the CCA supported the modifications thereof ensuring further liberalisation of the energy market and its opening to competition which subsequently results in strengthening of competition and reduction in prices. Nevertheless, it also stated some provisions that in its view needed some fine tuning.

The most important observation refers to the fact that the Draft Act in question does not provide for the regulation of competition in the energy sector. For the purpose of regulating competition issues within the sector in question and with the view to avoiding positive or negative conflict of jurisdiction between the competent energy regulation authority and the Competition Agency, the Council proposed a new Title: COMPETITION ISSUES to be introduced in the Draft Act in question. The provisions thereof should explicitly provide for the competence of jurisdiction of the energy regulation authority concerning the energy market and regulatory issues, such as access to the market, network access conditions, prices to be set on the basis of tariff systems etc.

In accordance with the opinion of the Council, all other issues concerning the provision of services in the market which are not covered by this Act, and in respect of prevention, restriction or distortion of competition should be subject to competition rules and regulations. A similar solution to this problem has been adopted in the Energy Regulation Act (Official Gazette No 177/04).

### 5.3. Selected case 8: Opinion on the proposed Draft Media Act

Other than some remarks regarding the wording and terms used in the Draft Media Act, the Competition Agency also had a number of objections as to the substantive law and statutory provisions thereof.

Objections as to substance covered the necessity to establish two relevant markets in the area concerned and the necessity for the competent ministry to immediately start the analyses needed for the establishment of the total turnover threshold of the undertakings parties to the concentration which represents the basis for obligatory notification of the concentration to the CCA.

The Ministry of Culture submitted the final Draft Media Act to the Competition Agency on 23 March 2004 at 4 p.m. The deadline for the issuance of the opinion of the Agency was extremely short (less than one working day) and it did not allow the Agency to draw up a more comprehensive analyses. The major remarks of the Agency were as follows:

1. The necessity to establish two relevant markets

The CCA suggested that the Draft Media Act should be modified so as to introduce the obligation on the media publishers to submit in their annual reports two types of data:
- data on the turnover and market share in the market realized from the sales of press, or the relevant data on the market share on the basis of viewer or listener ratings;
- data on the turnover and market share in the advertising market.

The specificity of competition law in the media market lies in the fact that there are always two different markets on which the publishers compete and record turnover:
- the readers' market, and
- the advertising market.

2. Provisional arrangement as to non-existence of the turnover threshold for the undertakings parties to the concentration

The Draft Act in question stipulates that general competition rules shall apply to publishers, media distributors and other legal persons performing public information activities.

Nevertheless, the Draft Act in question provides for one exemption. In particular, it stipulates that the obligatory notification of the proposed concentration of undertakings in the press publishers market applies independently of the total annual turnover (threshold) of the parties to the concentration in the year preceding the concentration.[60]

The above wording implies that:
- the notification of each and every concentration of undertakings in the publishers media market is obligatory;
- the undertakings concerned must notify the proposed concentration in the notification form and observing its content laid down by general competition rules and regulations;
- the Agency must without exception assess all notified concentrations within the procedure and criteria laid down by the general competition rules and regulations, and
- any notifying party of the proposed concentration in the media publishers market is subject to payment of administrative fees laid down by a separate law.

In general, the Agency accepted the justification contained in the Draft Act in question stipulating that the thresholds determined by the Competition Act are too high to be applicable to the undertakings in the media publishers market.

Nevertheless, it considered that such a solution is unnecessary, inefficient, incompatible with the EC acquis and expensive both for publishers and the state. On that account it can be accepted only as a provisional, temporary arrangement.

In that sense the Agency proposed to the competent ministry to immediately start to carry out necessary analyses with the view to establishing separate turnover thresholds which would be applicable to concentrations of undertakings in the media industry.

3. Response of the ministry (sponsor of the Draft Act in question)

The proposals of the Agency have been partly adopted. In that sense the publishers are now obliged to submit annual reports covering the turnover data in the advertising market.

Nevertheless, the Agency has received no response relating to the fact if the competent ministry started to carry out necessary analyses of the total annual turnover data in the media market in order to introduce the adequate turnover thresholds for obligatory notification of proposed concentrations between undertakings in the market concerned to the Agency.

[60] The Competition Act under Article 22 par (4) stipulates the turnover thresholds as a prerequisite for obligatory notification of the proposed concentration, taking into account the effectiveness and cost-cutting procedure for the state and the undertakings concerned. The parties to the concentration are obliged to notify the concentration to the Agency if the following conditions are simultaneously met: - the total turnover of all the undertakings – parties to the concentration, realized by the sale of goods and/or services in the global market, amounts to at least 1 billion Kuna in the financial year preceding the concentration, and the total turnover of each of at least two parties to the concentration realized by the sale of goods and/or services in the domestic market, amounts to at least 100,000,000 Kuna in the financial year preceding the concentration.

## 5.4. Selected case 9: Opinion on Attorney tariffs and compensations for costs for the provision of legal services

In accordance with the decision rendered by the Competition Council, in its opinion on the Attorney tariffs and compensation for costs for the provision of legal services the Agency established that it is necessary to initiate the proceedings for the amendments to the Legal Profession Act, with the objective of establishing attorney tariffs which would ensure high standards in the provision of legal services and effective competition between attorneys, given the fact that within the meaning of competition rules, strict regulation of attorney tariffs and price-fixing by the Croatian Bar Association (CBA) or fixing attorney hourly rates hinders competition between attorneys.

On the other hand, the existing model stipulating the conditions of access to the profession, according to which the level of registration fee for the entry into the Attorneys' Register, in accordance with the current provisions of the Legal Profession Act and relevant procedural bylaws, contravenes the provisions of the Competition Act, given that it applies dissimilar conditions when setting the level of registration fee for the persons who want to register into the Croatian Bar Association. Nevertheless, pursuant to the regulations in effect the Agency lacked legal basis for the initiation of the proceedings against the CBA, given that it is entrusted by law to autonomously and independently set and adopt attorney tariffs.

In accordance with the findings of the Agency, the Croatian model of tariff fixing fees is not known to any other European system.

A comprehensive insight into the legal practice of other countries proved the existence of two basic models on the basis of which attorney fees are set. The first model which applies in the most Member States provides for the arrangement of fees which is freely negotiated between the attorney and the client. In that case the attorney fee is set in accordance with the firmly established criteria, such as specialization of the attorney, emergency of the procedure, quality and standard of work, experience of the attorney, type of the procedure, jurisdiction of the court, value of the dispute etc. The other model provides tariff fixing fees, where the tariff is not established by the professional association but determined by law or any subordinate regulation of the ministry of justice.

In most Member States the fees charged for professional services are negotiated freely and are not necessarily regulated by law. The exemptions to that rule represents the German legal system which provides for fixed prices for legal services, as well as the legal systems of Austria, Portugal and Spain, which provide for recommended prices. Some legal systems, such as the Italian, fix minimum and maximum fees for members of profession.

On the average, an attorney hourly rate in the old Member States is from 250 to 300 EUR, whereas it amounts to some 150 USD in the USA. In the Slovak Republic, for example, the prices are linked to the average income of the employees in the real sector in the preceding calendar year.[61]

[61] www.sak.sk/en_compensations.asp («Regulation of the Ministry of Justice of the Slovak Republic No.163/02 Coll. 18.03.2002., on Attorney Fees and Compensations for the Provision of Legal Services»)

Within the meaning of competition rules the strict tariff fees which are fixed by the Bar Association hinder competition between attorneys and results in high prices for legal services which at the same time do not guarantee a service of a better standard and quality.

The entry regulations of the bar association and the power to represent a client in court are the basic competition issues here.

As already stated in the summary above, the existing model regulating the level of registration fee for the entry into the Attorneys' Register, contravenes the provisions of the Competition Act given that it applies dissimilar conditions when setting the level of registration fee for the persons who want to register into the Croatian Bar Association. In particular, persons who have completed the law school education, passed the bar exam and have the mandatory years of service in judiciary must pay the registration fee in the amount of only 100 HRK for the entry into the Attorneys' Register, whereas persons who have completed the law school education, passed the bar exam and have twice as many years of mandatory service outside judiciary must pay as much as 5.000 EUR registration fee (in HRK countervalue). The Competition Council considers this registration fee difference, in spite of the fulfilment of other mandatory criteria for the entry into the Attorneys' Register, to be anti-competitive and causing prevention, restriction and distortion of competition by restricting entry into the *legal services network.* It must be also pointed out here that, in accordance with our findings, the Croatian model for setting the level of registration fees for the entry into the Croatian Bar Association is not known to any European legal system, and what is more, in no European country are the registration fees in question as high as in Croatia.

The registration fee must be based on costs. If this is not so, it may hamper access to the provision of legal services.

Croatian attorneys do not have the exclusive power to represent their clients, apart from the cases where they represent in the criminal procedures relating to criminal acts which may be punishable by law to up to five years of imprisonment, in the procedures before the Supreme Court of the Republic of Croatia and in the criminal procedures carried out against juveniles. Nevertheless, any client who is not aware of such legal differences is prone to seek attorney's services with the objective of successful representation even in cases where such kind of representation is not obligatory.

The legal systems of Germany, France and Austria provide for attorneys who exclusively have the power to give legal advice and represent their clients in court. In Belgium, Netherlands and England attorneys have the exclusive right to represent a client in court, whereas legal aid may be sought with persons who are not attorneys. According to the most liberal model, the one used in Finland and Sweden, the right to give legal advice and to represent a client in court is not exclusively restricted to attorneys.[62]

Taking everything into account, the Council holds the view that the Legal Profession Act must be amended as soon as possible, as to ensure mandatory standards and quality in the provision of legal services and competition between attorneys, by determining pricing tariffs and fees in compliance with the most adequate model applicable in the Republic of Croatia, taking into

[62] www.europa.eu.int/comm/competition («Stocktaking exercise on regulation of professional services», p. 8)

account the experience of the Member States and the basic principles of competition. Furthermore, it is the opinion of the Council that the entry into the Attorney's Register of the Croatian Bar Association as regards the registration fee must be facilitated to everybody under equal mandatory conditions.

# 6. INTERNATIONAL COOPERATION

This chapter covers the activities of the Competition Agency in the area of international cooperation in 2004, involving the EU accession process and the cooperation with the European Commission - Competition Directorate-General, cooperation within the EU technical support projects, the beneficiary of which is also the Competition Agency, and bilateral and multilateral cooperation and participation of the employees of the Agency in international seminars and conferences.

## 6.1. European Union

*Participation in the Subcommittee for Internal Market of the Interim Committee for Monitoring the Implementation of the Interim Agreement*

In the meeting of the Subcommittee for Internal Market of the Interim Committee for Monitoring the Implementation of the Interim Agreement on 1 and 2 December 2004 the Agency presented the results of harmonization and implementation of the legislation in the area of anti-trust and state aid.

### 6.1.1. European Union assistance – CARDS programme

In January 2004 the implementation of the project CARDS 2001: *Support to the development of competition policy in Croatia in line with EU standards and practice,* continued after its start in April and suspension in August 2003. In October 2003, when the new Competition Council was appointed, the necessary conditions for the implementation of the project in question were fulfilled (see below).

In addition, the documentation for the project CARDS 2003: *Further strengthening of the Croatian Competition Agency and implementation of competition law and policy,* has been compiled. The project in question will focus on the enforcement of the established legislative framework in the area of anti-trust and its implementation is due in 2005.

Within the cooperation of the Ministry of Foreign Affairs and European Integration and Delegation of the European Commission to the Republic of Croatia the preliminary arrangements have been made relating to the preparation of the project PHARE 2005: *Strengthening of capacity to manage and enforce the EU competition and state aid policies.* The project will concentrate on the work of the Agency in general and not just on the activities of particular divisions and departments. The implementation of the project is foreseen in 2006.

***Support to the development of competition policy in Croatia in line with EU standards and practice***

As mentioned above, the implementation of the project in question was carried out in the Agency in 2004 within the CARDS programme 2001. Given that the first component which covered the harmonization of legislation was completed in the preceding year, the remaining two components, institutional capacity building and training aimed at the employees of the

Agency and judges of the Administrative Court of the Republic of Croatia and other courts, and awareness raising relating to competition law and policy could be carried out.

One of the most important activities in this area was the organisation of the first international conference in Zagreb: *The EU Competition Policy and Consequences for Croatia* (see Chapter 5).

Within the institutional capacity building component (which covered the employees of the Agency and judges) there were a number of planned seminars held from May to December 2004. On the account of the successful implementation and the shown interest the Delegation of the European Commission decided in December to continue with the training activities also in 2005.

These two-day seminars covered vertical restraints within the agreements between undertakings operating at a different level of the production and/or distribution chain, abuse of a dominant position, horizontal agreements entered into between undertakings operating at a same level of the production or distribution chain, covering for example specialization, research and development, or technology transfer agreements, utility services – such as electricity supply, transport and communications, mergers – substantive and procedural aspects of concentrations within the Community as well as administrative and court proceedings in the application of the EC competition law within the Community and particular Member States.

The seminars were based on the OECD model where a panel of three experts from different Member States (in this particular case from France, Italy, Denmark and Great Britain) presents a particular topic on the basis of the relevant case study, whereas the expert team of the Agency prepares the review of cases from the national practice, if any. The training model in question proved extremely useful taking into account the future cooperation with the European Commission (Directorate General for Competition) which will cover the presentation of different cases, argumentation and conclusion making, all in English, on the part of the expert team of the Agency.

Seminars at the Academy of Justice were held by two international experts with a special attention confined to procedural issues, taking into account that the seminars in question were aimed at the judges. The number of participants (judges and other stakeholders) never exceeded 20 – 30 persons per seminar. The translation of the written materials into Croatian and simultaneous translation were also covered through the project funds. Regrettably, the response of the judges was rather scarce. This especially refers to the judges of the Administrative Court who were the very target group of these seminars given that the court in question has the competence of jurisdiction concerning the control of legality of the decisions of the Agency.

## 6.2. Bilateral and multilateral cooperation

The cooperation with competition authorities in the countries of the region and the Member States which started in the preceding years was successfully continued and broadened in 2004. Some new projects within the international organizations have also been initiated.

*Bilateral cooperation*

The representatives of the Macedonian competition authority which operates within the Ministry of the Economy of the Republic of Macedonia visited the Competition Agency in Zagreb in April 2004. The Macedonian representatives were especially interested in the experience of the CCA in the harmonization of the Croatian legislation with the EC acquis. In September, a similar visit was paid by the Competition Council of Bosnia and Herzegovina. The energy sector found a special place on the agenda of the meeting which was attended also by the representatives of the Council for Energy Regulation.

The bilateral cooperation with the Federal Trade Commission (FTC) has been also continued by the visit of the American expert on the procedure for assessment of concentrations in June, which was organized in the form of technical support to the CCA and its expert team.

*Multilateral cooperation*

Cooperation with other competition authorities in the region is an important part of the CCA international cooperation, especially taking into account the EU accession processes of the countries in the region, transition and adjustments of the economy to market conditions in general. The issues in question were the primary objective of the regional meeting of competition authorities of the SEE countries in Ohrid, Macedonia, in September 2004. The same issues encouraged a number of projects which were introduced during the year and which were entirely financed by the Organization for Economic Co-operation and Development (OECD).

The OECD initiative *South East Europe Competition Authorities Network* (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Rumania and Serbia and Monte Negro, together with Slovenia, Hungary and Turkey) serves as a platform among participating countries for the exchange of information and experience, promotion of competition advocacy and other relevant competition issues through seminars and workshops within other international initiatives in the area of competition. At the First Annual Meeting of the SEE Competition Authorities Network in Istanbul, Turkey 1-2 July 2004 Croatia was appointed regional chair for 2005.

The OECD also organized three workshops in the area of competition for the SEE countries, the first in the row was held in Prague in December 2004. Three representatives of the CCA participated in the work of the seminar which concentrated on fighting cartels.

In August 2004 the Italian Competition Agency initiated a similar cooperation and technical assistance project *Competition Policy in the Balkan Countries,* a cooperation initiative between the Western Balkan countries relating to the implementation of competition law and policy. The project is going to start by a meeting of the heads of the competition authorities involved in Rome in June 2005.

In the context of international cooperation the participation of the CCA in the projects of the *Subgroup on Merger Notification and Procedures* within the International Competition Network (ICN) and in the surveys of the European Bank for Reconstruction and Development (EBRD), particularly through the communication of data on the work of the Agency and enforcement of legislation, should also be mentioned here.

## 6.3. Professional training - international seminars

Professional training of the employees of the Agency, as well as other parties involved in the enforcement of competition rules, is a permanent priority of the Agency with the objective of strengthening of its administrative capacity and enforcement record in the context of harmonization with the EU standards and relevant EC acquis. Apart from the above mentioned seminars which have been organized within the CARDS project, the Agency endeavours to provide education and training for its employees through participation in international seminars and conferences, which is sometimes rather difficult to carry out on the account of limited budget resources. Thus, the participation is in most cases restricted to seminars and conferences where the costs are partly or entirely covered by the organizer.

The OECD support enabled the representatives of the CCA to participate in the Fourth Global Competition Forum in Paris in February, the OECD Seminar on Implementing High Quality Regulation in Ljubljana in May, and in the workshop on competition advocacy also in Ljubljana.

In May the representatives of the CCA took part in the UNCTAD working meeting in Geneva and in the seminar organized by the European Institute of Public Administration (EIPA) in Maastricht which dealt with the new EU merger legislation.

Some members of the CCA expert team also participated in the competition summer school in Trier, Germany and paid a study visit to Italian public administration bodies within the assistance project *Wider Europe and Croatia on its way towards EU Membership*.

The training activities continued in autumn when some members of the expert team participated in the regular annual FTC seminar in Budapest. In October, the support from the CARDS project contributed to the participation of the Agency in the ICN and European Commission seminar in Brussels which covered the investigation procedures and in the EIPA seminar in Maastricht which dealt with the EU legislative reform in the area of merger control.

Under the TAIEX program there was one more seminar visited by one representative of the CCA. The seminar was aimed at the competent competition authorities from the countries in the region.

# 7. INTERNAL ORGANISATION OF THE CROATIAN COMPETITION AGENCY

The internal organisation of the CCA is regulated under Title VI of the Competition Act, Articles 30 to 37 which stipulate the internal organization of the Agency, terms of appointment, terms of office and relief from office for the members and the president of the Competition Council, the manner of decision making, activities performed by the Council and the organisation and responsibilities of the expert team. The Statute of the Agency, which was ratified by the Croatian Parliament on 30 January and which entered into force on 12 February 2004, regulates in more detail the issues relating to the organisation and performance of the activities within the Agency and other matters. The managing decision making body of the Agency is the Competition Council. The operation of the Council and related matters are regulated by the Standing orders for the operation of the Competition Council which was adopted by the Council on 11 March 2004.

In 2004 all necessary internal legal acts regulating the internal organization and operation of the Agency were adopted:

- Ordinance on internal organisation of the Competition Agency;
- Jobs specification and mandatory requirements for the performance of jobs and assigned duties within the Competition Agency;
- Ordinance on salaries and substantive rights of the employees;
- Ordinance on professional training of the employees, and
- Ordinance on the terms of use of business cars, mobile phones, expense accounts, business credit cards and regular air lines.

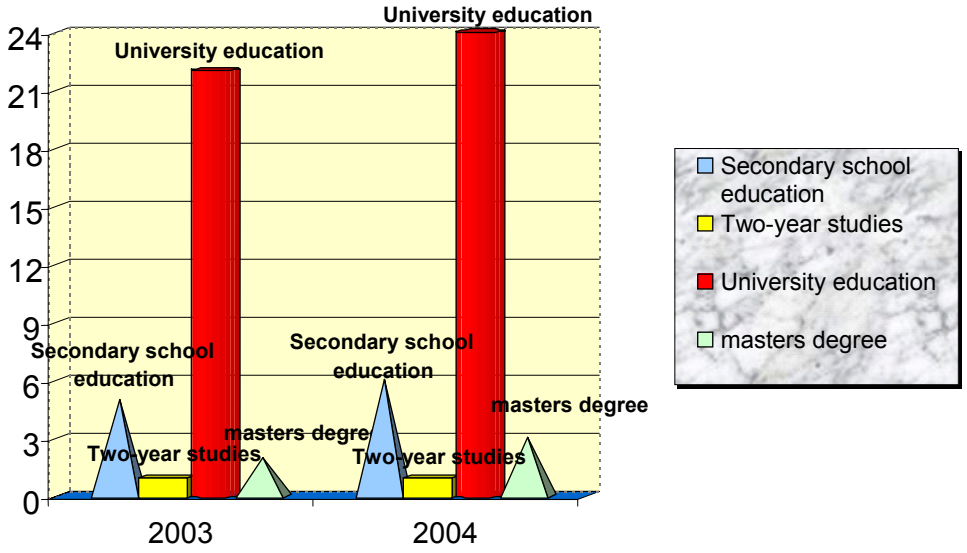
The expert team of the Agency performs administrative and professional activities in the area of competition for the purposes of the Competition Council. The part of the expert team responsible for administrative and professional activities (case handlers) currently consists of 16 university degree lawyers and economists, of which 3 employees hold a masters degree. All employed lawyers have passed the bar exam.

The average age of the expert team is 36, whereas the average age of the case handlers is 32.

All stated data speak for high education, qualification, expertise and particularly young and ambitious staff.

The total number of employees in the CCA as of 31 December 2004 is 34 (plus five members of the Council), which is 13 % more than compared to the year 2003.

**Figure 11 Number of employees in the CCA 2003/2004**

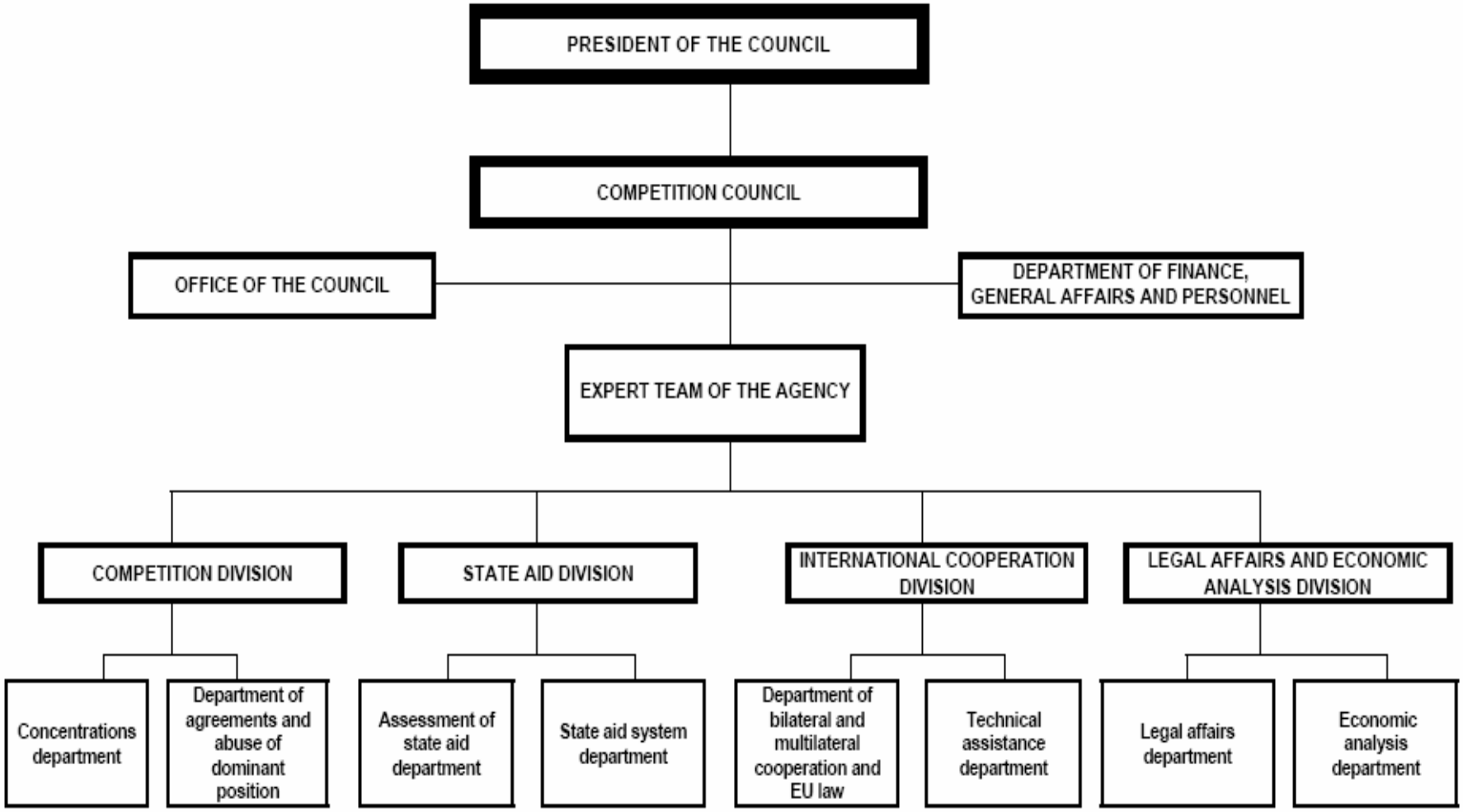



*Source: CCA, Legal Affairs and Economic Analysis Division*

In spite of the increase in the number of employees, it is of paramount importance for this number to be constantly increased, because otherwise the Agency will not be able to operate properly and enforce the legislation in the area of competition. The optimum number of employees necessary for the implementation of the legislation in question is 64. This number has been calculated using the comparison with similar bodies of the EU Member States such as Slovakia, Lithuania, Latvia and Estonia, which given the scope of activity, market size and population, are adequate examples.

As of October 2005 (time of drafting of this Report) the number of employees of the CCA is 37 plus 5 members of the Council.

# INTERNAL ORGANIZATION OF THE CROATIAN COMPETITION AGENCY



# 8. THE BUDGET OF THE AGENCY AND ISSUED ADMINISTRATIVE FEES

The funds for the activities pursued within the scope of the Agency are provided from the budget of the Republic of Croatia[63]. The budget of the Agency for 2004 after the budget revision amounted to 6,583,685 HRK which is 4.21 % more as compared to 2003[64].

The total expenditure in 2004 amounted to 5,599,580 HRK which is 15.18 % more than in 2003. The amount of remaining funds was 587,621.00 Kuna. The amount of approved funds after the budget revision for current expenditure in 2004 was 6,407,507 HRK, which is an increase of 26.95 % compared to 2003. The approved funds from the budget for material expenses was 1,829,124 HRK compared to 1,947,780 HRK in 2003. The funds which have been approved from the budget for capital expenses in 2004 amounted to 192,073 HRK compared to 682,615 HRK in 2003.

Under the Act on Administrative Fees (Official Gazette No 8/96, 77/96, 95/97, 131/97, 68/98 and 116/2000), the tariff numbers from 105 to 108 stand for special fees relating to competition matters. The fees refer to the files and activities which the Agency carries out in its proceedings concerning anti-trust and monitoring the implementation of state aid.

In particular, the competition administrative fees were introduced by the Act on the Amendments to the Act on Administrative Fees (Official Gazette No 131/97). Article 14 of the Act in question stipulates that a new subheading “Competition Fees” shall be introduced to the Act on Administrative Fees (Official Gazette No 8/96), which covers the tariff numbers 105, 106, 107 and 108. These provisions regulate administration fees in respect of:

- preliminary expert opinions;
- notifications to the Merger Registry;
- notifications of change of entry to the Merger Registry;
- notifications of agreements between undertakings;
- decisions on entry into the Merger Registry;
- decisions on agreements between undertakings (block and individual exemptions), and
- other decisions or resolutions by which the proceedings before the Agency are closed.

In accordance with the Regulation on the modifications of administrative fee tariffs under the Act on Administrative Fees (Official Gazette No 141/2004) the Government of the Republic of Croatia changed the tariff numbers 105, 106, 107 and 108 and determined new administrative fees in respect of the notifications as well as decisions rendered by the Agency.

The revenue from administrative fees collected by the Agency is in its entirety the revenue of the State budget of the Republic of Croatia. In 2004 the Agency issued administrative fees of 1,395,050 HRK, of which 1,140,050 HRK, or 81.7 % of the amount of issued fees was paid into the State budget of the Republic of Croatia.

[63] Article 30, paragraph 7 of the Competition Act.
[64] See Appendix 3, Table 18.

# 9. ANTI-TRUST REFORM IN EUROPE

The latest anti-trust reform in the EU was introduced shortly after the new Competition Act 2003 started to apply, on the day of the largest enlargement on 1 May 2004.

This comprehensive reform concerns both assessment of agreements and mergers as well as abuse of a dominant position.

The changes in question have mostly covered by the new Council Regulation (EC) No 1/2003 of 16 December 2002[65] the provisions of which introduce significant changes in the application of Articles 81 and 82 of the Treaty. In the area of merger control new provisions have been introduced by the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) Official Journal L 024, 29/01/2004, and Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings Official Journal L 133, 30/04/2004.

The above mentioned regulations directly apply in all Member States as of 1 May 2004. After they entered into force the Commission drafted a number of guidelines necessary for the proper application thereof.

The existing system has been replaced b a directly applicable exception system in which the competition authorities and courts of the Member States have the power to apply not only Article 81(1) and Article 82 of the Treaty, which have direct applicability by virtue of the case law of the Court of Justice of the European Communities, but also Article 81(3) of the Treaty. In addition, after a long period of concentrating on merely legal aspects of the case, the economic approach has been given importance in the assessment of agreements. This shift to economic aspects of the case implies the drafting of detailed economic analyses of positive and negative effects which certain agreements may have on competition. The results of the analyses in question should serve as a basis for the assessment of the compatibility of agreements.

Novels introduced by the Council Regulation (EC) 1/3003 are as follows:

- Revision of the Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 81 and 82 of the Treaty;
- Introduction of the power of the national competition authorities and courts to directly apply Articles 81 and 82 of the Treaty, as of 1 May 2004;
- European Commission ceases to have the sole power to apply Article 81 (3) of the Treaty (exception from the prohibition of agreements);
- Direct application of Article 81 (3) of the Treaty (exception system) by the national competition authorities and courts;
- Abandonment of the agreements notification regime;
- Greater powers of the Commission in the proceedings;

[65] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, Official Journal L 001, 4 January 2003, p. 0001-0025.

- The Commission, national courts or competent competition authorities have the power to render only negative decisions, including or not including penalties, relating to direct application of Article 81 (1) of the Treaty (provisions defining prohibited agreements, decisions by associations of undertakings and concerted practices). The new system does not provide for exception from prohibition.
- Obligation of the national competition authorities of the Member States to form together a network of public authorities applying the Community competition rules (Articles 81 and 82 of the Treaty) in close cooperation with the Commission.
- Arrangements for information and consultation and modalities of cooperation within the network.
- Cooperation between the national courts and the Commission ensuring the consistent and uniform application of Articles 81 and 82 of the Treaty.

The objective of this big reform is the creation of a common market ensuring the EU's overall competitiveness and growth of the European economy. The instruments of this industrial policy have developed extremely dynamically and globally since the conclusion of the Treaty.

The aim of the anti-trust reform in question is to gauge the competitive impact of proposed legislation and to ensure that they do not undermine the interests of European consumers or the growth of the European economy. The challenge will be to make sure that the new anti-trust regime is used as effectively and efficiently as possible, leading to increased innovation and competitiveness throughout the European Union. The point is to explain in general terms how competition policy makes a real difference to the lives of the consumers, for example, by spurring innovation so that people can buy better goods and better services, lowering prices and strengthening the economy so that EU citizens can have better, more secure jobs.

The Commission and the undertakings will both enjoy the benefits of the new anti-trust regime. The Commission can devote itself to investigation of the most serious infringements of competition rules, such as cartels and abuse of dominance. Its forty-year practice proved that the Commission received a great number of notifications of agreements which contained no restraints, i.e. agreements which may be granted block exception. This new regime will enable the Commission to entirely focus on serious infringements of competition rules, such as disclosure of cartels and establishing of a dominant position, taking into account that the procedures relating to the infringements in question consist of thorough demonstration of evidence, complex legal and economic analyses, and are as a rule long-lasting.

The undertakings within the Community, as well as their representatives, will be offered greater legal certainty, given that the new regime enables them to demonstrate before the national courts that their agreements are not prohibited within the meaning of Article 81 par (1) of the Treaty, or that they may be granted block exemption under Article 81 par (3) thereof, whereas, vice versa, the national courts will be obliged to directly apply the EC legislation in the assessment of such agreements which produce effects on cross-border trade within the Member States. In other words, when concluding such agreements the undertakings throughout the EU should take into account exclusively the EC competition law and not the provisions of the national law of any of 25 Member States. The new regime will also contribute to greater responsibility of the undertakings within the Community in the assessment of their own agreements and practices. The burden of proof will rest entirely on the parties to the agreement and the former practice of seeking *ex ante* opinion from the Commission on the compliance of their transactions with competition rules will be abandoned.

The need to ensure legal certainty while at the same time developing greater sophistication in the economic analysis also applies to the merger control field. In the assessment of the compatibility of concentrations the dominance test is replaced by the substantive test to assess the competitive impact of mergers so as to eliminate any uncertainty as to its scope. It is necessary to point out here that the Competition Act which applies in the Republic of Croatia since 1 October 2003 (six months prior to the new EC merger regulation) regulates the prohibited concentrations on the basis of their appreciable effect on competition and in that way partially anticipated the EU merger regulation.[66]

Unlike the new EC anti-trust regime which from 1 May 2004 does not provide for notification and individual exemption from prohibition under Article 81 par (3) of the Treaty, the Croatian competition law reserves the possibility of individual exemption from the application of the provisions of the Croatian Competition Act on prohibited agreements.

The assessment of the agreements which may be granted block exemption is the same both in Croatia and in the EU: there exists no obligatory notification and where the agreements do not satisfy the conditions for block exemption of certain categories of agreements under the particular regulation, the parties to the agreement may submit their request for individual exemption to the Agency.

Taking into account that this branch of law is still relatively new and not yet fully acquired by the undertakings and legal experts, such as attorneys at law and judges, the legislator has, unlike its EU counterpart, kept the possibility for individual exemption of agreements on the basis of the application of the parties. In this way the Agency facilitates the self-assessment of agreements on the part of the undertakings and provides information on the restraints most commonly used in such agreements.

[66] Article 18 par (25) of the Competition Act.

# 10. CONCLUSION

In 2004, and in spite of the evident lack of staff, the Croatian Competition Agency (CCA) successfully completed the process of harmonization of the Croatian legislation in the area of anti-trust with the relevant EC acquis.

Nevertheless, taking into account that this particular legal matter is constantly and globally subject to modifications and changes, the harmonization process in this area stays one of the primary objectives of the CCA throughout the way of Croatia towards the EU membership.

Another important objective remains the application and enforcement of the adopted rules with the view to creating the market economy in which all participants in the Croatian market are subject to equal rules, notwithstanding their market power and market position. The strengthening of competition rules and their implementation instruments in the context of fostering competition in the internal market which will facilitate development and growth of undertakings which can offer lower prices, better quality, new products and benefits for the consumers is the final objective of the measures in question which will at the same time enhance competitiveness of the Croatian undertakings in the common European market.

The responsibility for the efficient implementation of the already harmonized legislation in the area of anti-trust lies not only with the Agency, but also with the court which rules on the legality of its decisions (Administrative Court of the Republic of Croatia) and courts which, in accordance with the decisions of the Agency, impose fines for the infringements of competition rules under the Competition Act (misdemeanour courts and Higher Misdemeanour Court of the Republic of Croatia).

It is therefore one of the prior tasks to provide for urgent and constant training of the judges who when deciding on the legality of the decisions of the Agency must be acquainted not only with the provisions and application of the Croatian law in this area but also with the relevant case law of the European Court of Justice which is one of the important constituent parts of the EC acquis and interpretative instruments in the application of the Croatian legislation.

In the midterm period (2006 – 2008) the Agency plans to establish cooperation with the Ministry of Justice aimed at the modifications of the existing Competition Act and Courts Act in order to remove the deficiencies of the current court protection against the decisions of the Agency which had already been mentioned in the preceding reporting period of 2003. The existing legislative solution which enables one court (Administrative Court of the Republic of Croatia) to rule on the legality of the decisions of the Agency, and empowers other courts (misdemeanour courts) to impose fines based on the decisions of the Agency (Higher Misdemeanour Court decides on appeals in the second instance) does not ensure full efficiency in the enforcement of the competition rules. In most EU Member States only one court rules on the legality of the decisions rendered by similar authorities including the decisions on fines imposed by such authorities.

With the view to further strengthening of competition law and policy and enforcement of competition rules in the Republic of Croatia on its way to full EU membership it is absolutely necessary to provide for institutional strengthening of the Agency, in the first place through the increase in the number of staff. It is also necessary to provide for permanent training of the staff so as to ensure efficiency in the procedures which are carried out before the Agency and where

the relevant EU standards apply. New, ambitious staff must be motivated to stay employed with the Agency for a longer period of time, in order to ensure the recovery of the funds which must be invested in their education and training. These people must also be prepared to work and cooperate with other international authorities, the EU and European Commission within the established competition networks.

The above mentioned requirements can be fulfilled only if the adequate business premises and the financial resources for the above mentioned activities are found.

Comments of the European Commission expressed on many occasions complied with the above mentioned opinion of the Agency on its way to further legislative alignment in this area and implementation of the provisions laid down under the SAA. We have made certain progress but there is a need for strengthening of administrative capacity and more effective enforcement which particularly includes the training of the judges dealing with this branch of law.

# APPENDIX

## Appendix 1: Breakdown of the activities in 2004

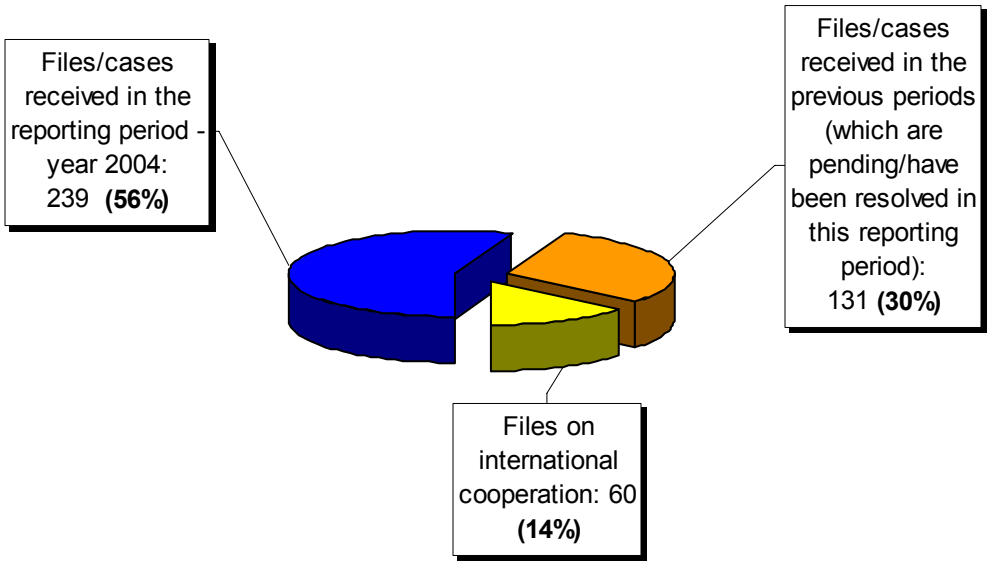
1.1. Total number of files/cases

Table 1 Total number of files/cases handled in 2004

| Description | Number of files/cases |
|---|---|
| **Files/cases received in *the reporting period* (2004)** | 239 |
| **Files on *international cooperation*** | 60 |
| **Files/cases received in *the previous periods* which are pending/have been resolved in this reporting period** | 131 |
| **Total** | **430** |

*Source: CCA, Division for legal affairs and economic analysis*

Figure 1 Total number of files/cases handled in 2004



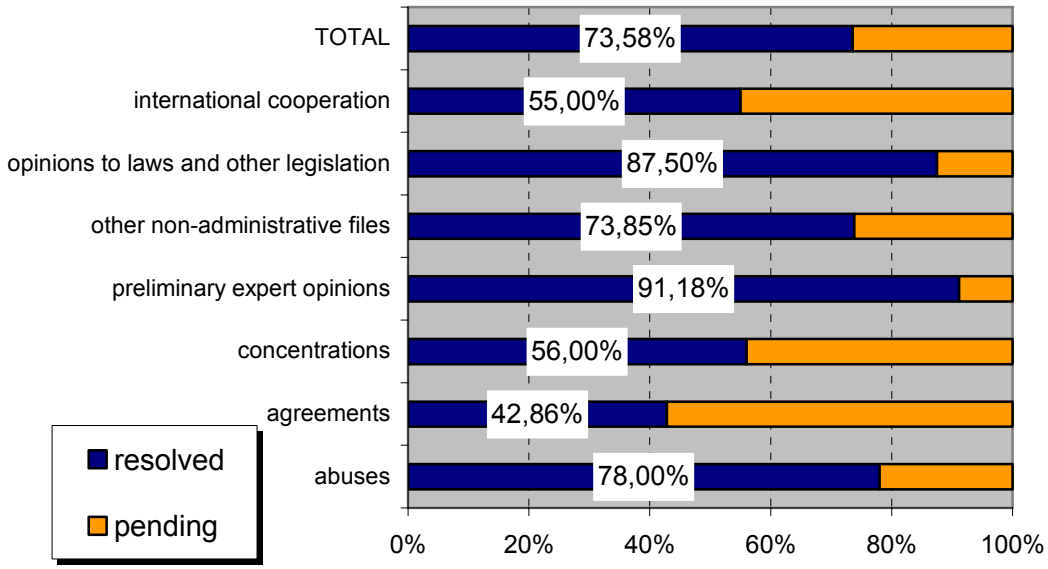

*Source: CCA; Legal affairs and economic analysis division*

Table 2 Files/cases opened in 2004

| Category | Resolved | Pending | Total | Share in total No of files/cases (in %) |
|---|---|---|---|---|
| **Abuses** | 39 | 11 | 50 | 16,72 |
| **Agreements** | 3 | 4 | 7 | 2,34 |
| **Concentrations** | 14 | 11 | 25 | 8,36 |
| **Total No of administrative cases** | **56** | **26** | **82** | **27,42** |
| **Preliminary expert opinions** | 62 | 6 | 68 | 22,74 |
| **Other non-administrative files** | 48 | 17 | 65 | 21,74 |
| **Opinions on laws and other legislation** | 21 | 3 | 24 | 8,03 |
| **Total No of non-administrative files** | **131** | **26** | **157** | **52,51** |
| **International cooperation** | **33** | **27** | **60** | **20,07** |
| **Total number of files/cases** | **220** | **79** | **299** | **100,00** |
| **Share in total No of files/cases (in %)** | **73,58** | **26,42** | **100,00** | |

*Source: CCA; Legal affairs and economic analysis division*

Figure 2 Share of resolved files/cases in the total number of files/cases handled in 2004



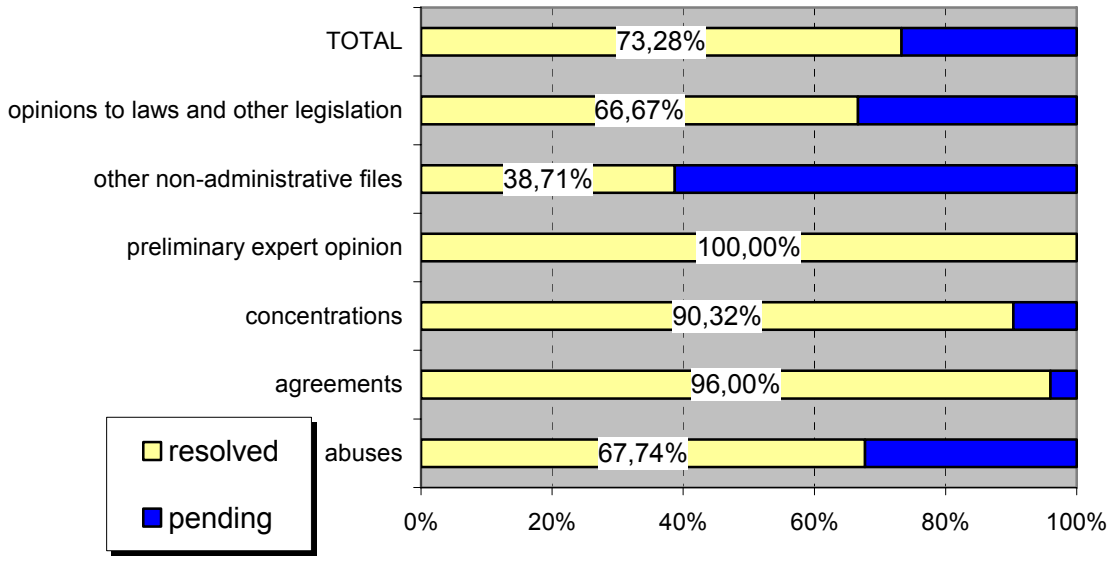

*Source: CCA; Legal affairs and economic analysis division*

Table 3 Files/cases opened in *the previous periods*, which are pending/have been resolved in this reporting period (year 2004)

| Category | Resolved | Pending | Total | Share in total No of files/cases (in %) |
|---|---|---|---|---|
| **Abuses** | 21 | 10 | 31 | 23,66 |
| **Agreements** | 24 | 1 | 25 | 19,08 |
| **Concentrations** | 28 | 3 | 31 | 23,66 |
| **Total No of administrative cases** | **73** | **14** | **87** | **66,41** |
| **Preliminary expert opinions** | 7 | 0 | 7 | 5,34 |
| **Other non-administrative files** | 12 | 19 | 31 | 23,66 |
| **Opinions on laws and other legislation** | 4 | 2 | 6 | 4,58 |
| **Total No of non-administrative files** | **23** | **21** | **44** | **33,59** |
| **Total number of files/cases** | **96** | **35** | **131** | **100,00** |
| **Share in total No of files/cases (in %)** | **73,28** | **26,72** | **100,00** | |

*Source: CCA; Legal affairs and economic analysis division;*

Figure 3 Share of resolved files/cases in the total number of files/cases handled in *the previous periods*, which are pending/have been resolved in this reporting period



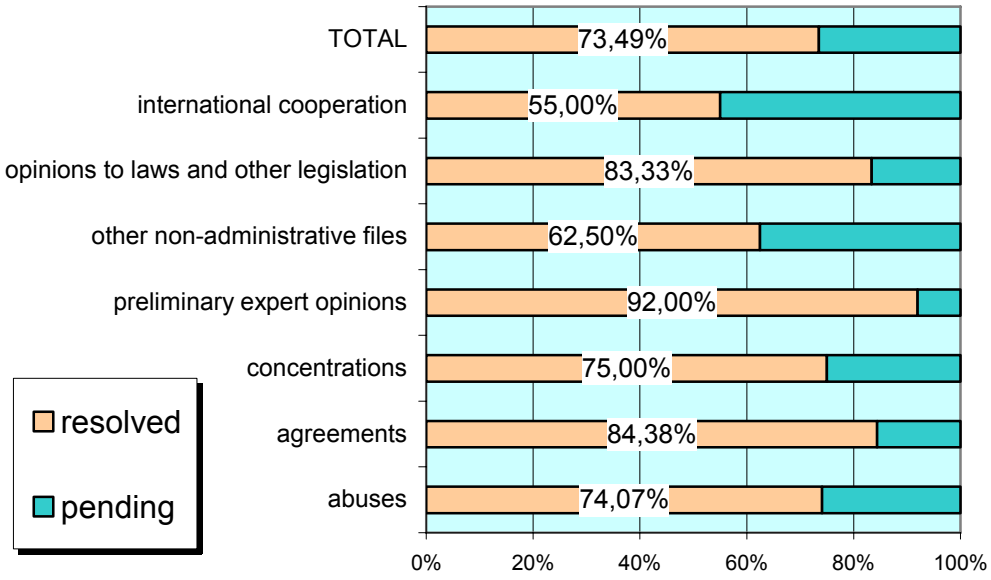

*Source: CCA; Legal affairs and economic analysis division*

Table 4 Total number of cases opened in *the reporting period* + cases opened in *the previous periods*, which are pending/have been resolved in this reporting period

| Category | Resolved | Pending | Total | Share in total No of files/cases (in %) |
|---|---|---|---|---|
| **Abuses** | 60 | 21 | 81 | 18,84 |
| **Agreements** | 27 | 5 | 32 | 7,44 |
| **Concentrations** | 42 | 14 | 56 | 13,02 |
| **Total No of administrative cases** | **129** | **40** | **169** | **39,30** |
| **Preliminary expert opinions** | 69 | 6 | 75 | 17,44 |
| **Other non-administrative files** | 60 | 36 | 96 | 22,33 |
| **Opinions on laws and other legislation** | 25 | 5 | 30 | 6,98 |
| **Total No of non-administrative files** | **154** | **47** | **201** | **46,74** |
| **International cooperation** | **33** | **27** | **60** | **13,95** |
| **Total number of files/cases** | **316** | **114** | **430** | **100,00** |
| **Share in total No of files/cases (in %)** | **73,49** | **26,51** | **100,00** | |

*Source: CCA; Legal affairs and economic analysis division*

Figure 4 Share of the resolved files/cases in the total number of files/cases handled in the reporting period




Source: *CCA; Legal affairs and economic analysis division*

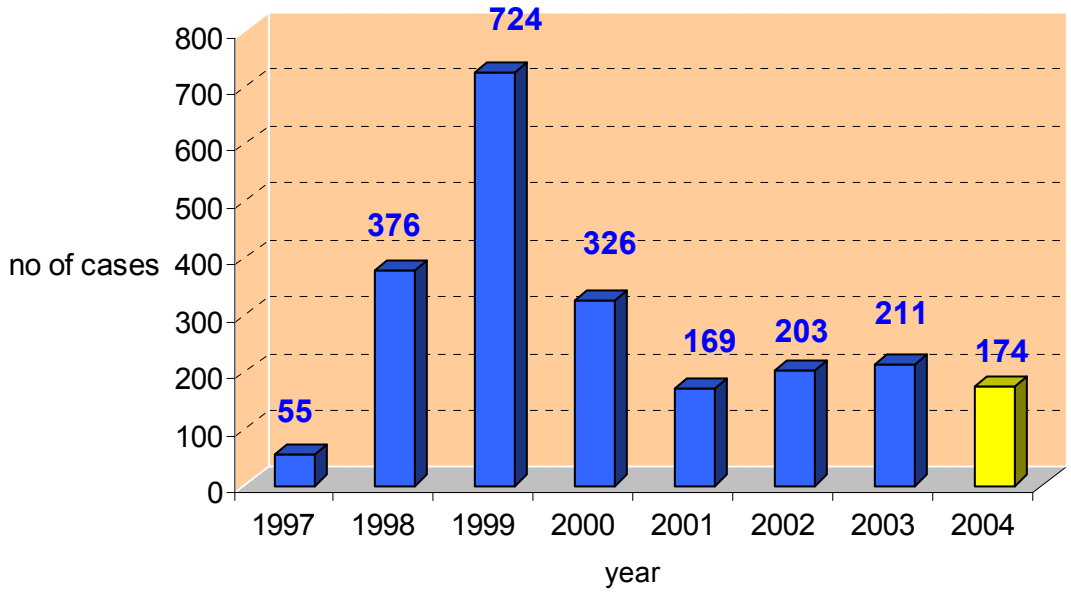
Table 5 Comparative review of the total number of files/cases since the establishment of the Agency

| Category | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | Ratio in % 2004/2003 |
|---|---|---|---|---|---|---|---|---|---|
| **ADMINISTRATIVE CASES:** | | | | | | | | | |
| *ABUSES* | 27 | 68 | 90 | 52 | 48 | 57 | 46 | 50 | 8,70% |
| *AGREEMENTS* | 9 | 264 | 534 | 147 | 23 | 73 | 51 | 7 | -86,27% |
| *CONCENTRATIONS* | 5 | 25 | 64 | 34 | 26 | 38 | 53 | 25 | -52,83% |
| **Total:** | **41** | **357** | **688** | **233** | **97** | **168** | **150** | **82** | **-45,33%** |
| | | | | | | | | | |
| *PRELIMINARY EXPERT OPINIONS AND OPINIONS ON LAWS AND OTHER LEGISLATION* | 14 | 19 | 36 | 93 | 72 | 35 | 61 | 92 | **50,82%** |
| **Subtotal:** | **55** | **376** | **724** | **326** | **169** | **203** | **211** | **174** | **-17,54%** |
| *OTHER NON-ADMINISTRATIVE FILES* | - | - | - | - | 60 | 61 | 38 | 65 | 71,05% |
| *INTERNATIONAL CASES* | - | - | - | - | 73 | 74 | 100 | 60 | -40,00% |
| **TOTAL:** | | | | | **302** | **338** | **349** | **299** | **-14,33%** |

**subtotal represents the sum of abuses, agreements and concentration cases, as well as preliminary expert opinions and opinions on laws and other acts*

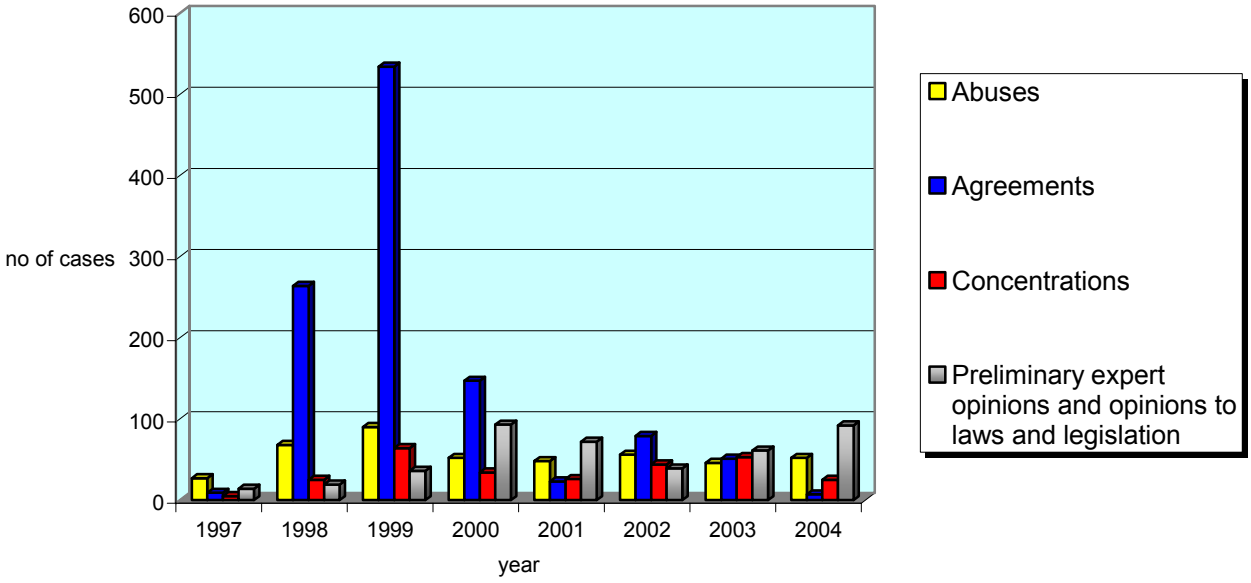
*Source: CCA; Legal affairs and economic analysis division*

Figure 5 Total number of opened files/cases in the period 1997 - 2004




*Source: CCA; Legal affairs and economic analysis division*

Figure 6 No of opened files/cases by category in the period 1997 – 2004




*Source: CCA; Legal affairs and economic analysis division*

1.2. Breakdown by category

Table 6 Review of opened files/cases by category in 2004

| Category | Number of files/cases | Structure in % |
|---|---|---|
| **ABUSES OF DOMINANT POSITION** | **50** | **16,72** |
| **AGREEMENTS** | **7** | **2,34** |
| exclusive /selective distribution | 3 | 1,00 |
| other (business cooperation) | 4 | 1,34 |
| **CONCENTRATIONS** | **25** | **8,36** |
| acquisition of the majority of shares/share capital or obtaining the majority of voting rights | 25 | 8,36 |
| **PRELIMINARY EXPERT OPINION AND OPINIONS ON LAWS AND OTHER ACTS** | **92** | **30,77** |
| preliminary expert opinions | 68 | 22,74 |
| ■ *obligatory/non-obligatory notification of concentration* | 4 | 1,34 |
| ■ *other opinions (interpretation of the provisions of the Competition Act etc.)* | 64 | 21,40 |
| opinions on laws and other legislation | 24 | 8,03 |
| **OTHER NON-ADMINISTRATIVE FILES** (market research, cooperation with other authorities and sector regulators etc.) | **65** | **21,74** |
| **INTERNATIONAL COOPERATION** | **60** | **20,07** |
| international seminars & conferences | 29 | 9,70 |
| other means of cooperation with international institutions and competition authorities; CARDS and other projects | 31 | 10,37 |
| **TOTAL NUMBER OF FILES/CASES:** | **299** | **100,00** |

*Source: CCA; Legal affairs and economic analysis division*

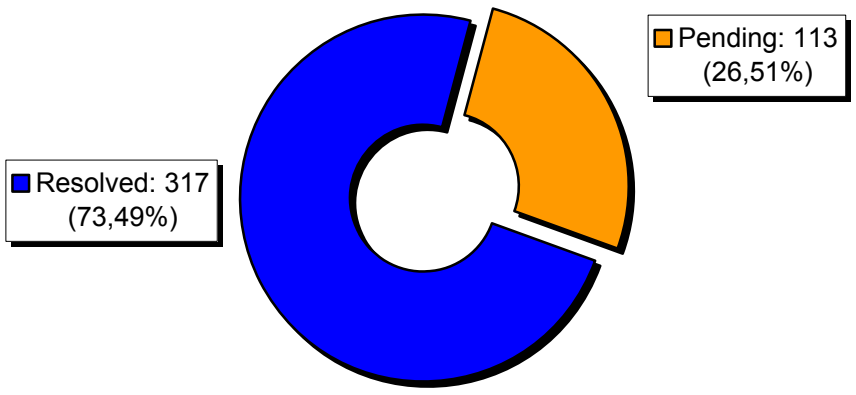
1.3. Breakdown of resolved files/cases

Table 7 Number of resolved files/cases and files/cases pending in the *reporting period* compared to the total number of files/cases handled

| Description | Resolved | Pending | Total | Share of resolved files/cases in total (in %) |
|---|---|---|---|---|
| **Files/cases received in the reporting period (year 2004)** | 220 | 79 | 299 | 73,58 % |
| **Files/cases received in the previous periods which are pending or have been resolved in this reporting period** | 96 | 35 | 131 | 73,28 % |
| **Total** | **316** | **114** | **430** | **73,49 %** |

*Source: CCA; Legal affairs and economic analysis division*

Figure 7 Structure of resolved files/cases and files/cases pending compared to the total number of files/cases handled in 2004




*Source: CCA; Legal affairs and economic analysis division*

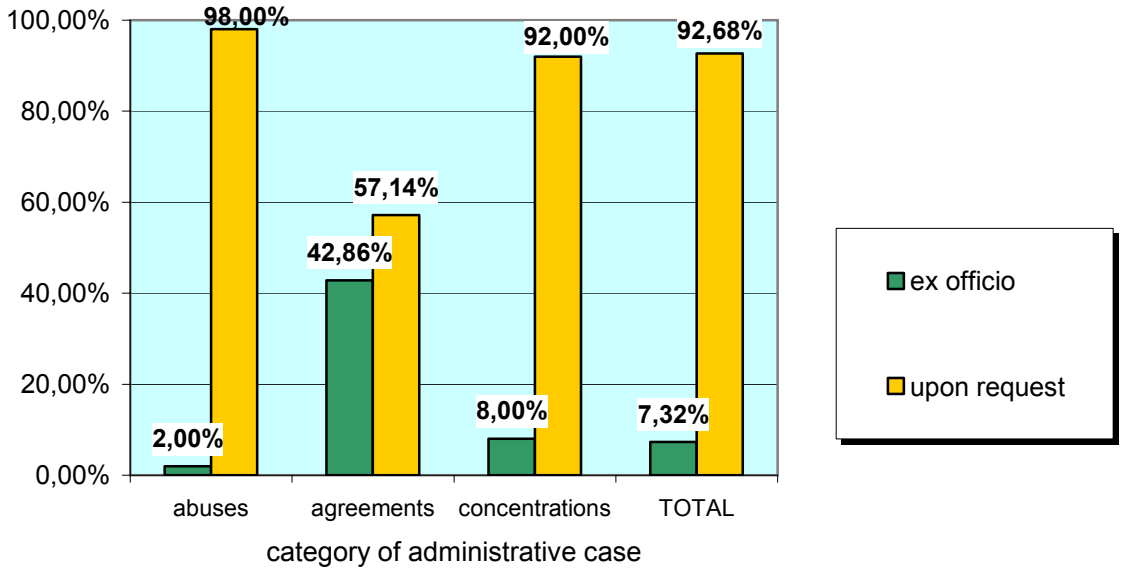
1.4. Breakdown according to the method of initiation of the proceedings

Table 8 Number of administrative cases according to the method of initiation of the proceedings opened in 2004

| Category | | No of cases | Structure in % |
|---|---|---|---|
| **ABUSES OF DOMINANT POSITION** | | **50** | **100,00** |
| ex officio | | 1 | 2,00 |
| upon request | | 49 | 98,00 |
| **AGREEMENTS** | | **7** | **100,00** |
| ex officio | | 3 | 42,86 |
| upon request | | 4 | 57,14 |
| **CONCENTRATIONS** | | **25** | **100,00** |
| ex officio | | 2 | 8,00 |
| upon request | | 23 | 92,00 |
| ∑ | ex officio | 6 | 7,32 |
| | upon request | 76 | 92,68 |
| **TOTAL NO OF ADMINISTRATIVE CASES:** | | **82** | **100,00** |

*Source: CCA; Legal affairs and economic analysis division*

Figure 8 Breakdown of cases according to the method of initiation of the proceedings (in %) opened in 2004



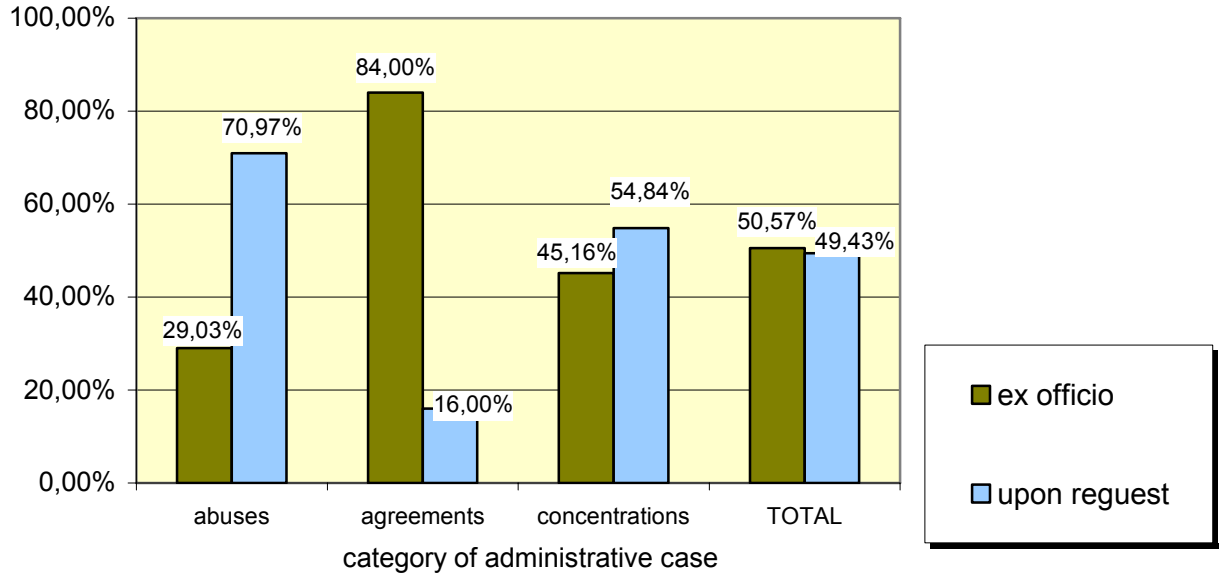

*Source: CCA; Legal affairs and economic analysis division*

Table 9 Number of cases according to the method of initiation of the proceedings, opened in the *previous periods*, which are pending/have been resolved in the reporting period

| Category | | No of cases | Structure in % |
|---|---|---|---|
| **ABUSES OF DOMINANT POSITION** | | **31** | **100,00** |
| ex officio | | 9 | 29,03 |
| upon request | | 22 | 70,97 |
| **AGREEMENTS** | | **25** | **100,00** |
| ex officio | | 21 | 84,00 |
| upon request | | 4 | 16,00 |
| **CONCENTRATIONS** | | **31** | **100,00** |
| ex officio | | 14 | 45,16 |
| upon request | | 17 | 54,84 |
| ∑ | ex officio | 44 | 50,57 |
| | upon request | 43 | 49,43 |
| **TOTAL NO OF ADMINISTRATIVE CASES:** | | **87** | **100,00** |

*Source: CCA; Legal affairs and economic analysis division*

Figure 9 Breakdown of cases according to the method of initiation of the proceedings (in %) opened in the *previous periods*, which are pending/have been resolved in the reporting period




*Source: CCA; Legal affairs and economic analysis division*

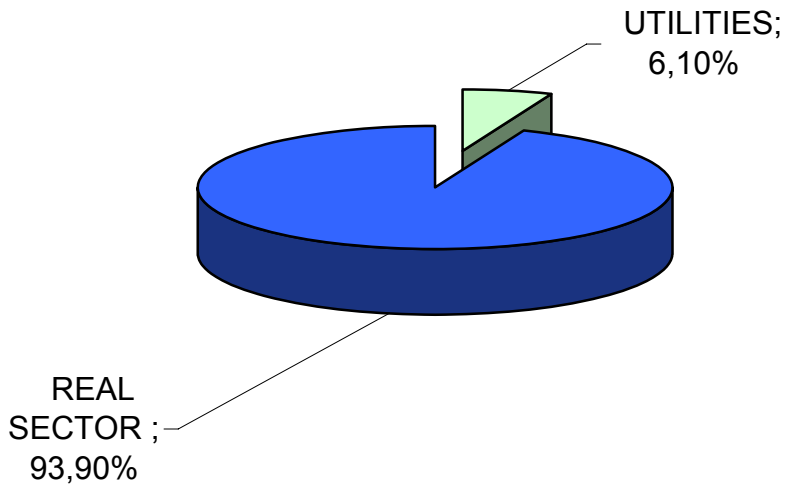
1.5. Breakdown of administrative cases by the industry of the parties to the proceedings (relevant markets – goods or services, by sectors)

Table 10 Relevant markets by sectors relating to cases opened in 2004

| Relevant markets | No of cases opened in the reporting period (year 2004) | | | | Structure in % |
|---|---|---|---|---|---|
| | Abuses | Agreements | Concentrations | ∑ | |
| **UTILITIES** | 5 | 0 | 0 | **5** | **6,10%** |
| water supply & waste water management | 1 | 0 | 0 | 1 | 1,22% |
| energy and district heating supply | 0 | 0 | 0 | 0 | - |
| public transport | 1 | 0 | 0 | 1 | 1,22% |
| graveyard maintenance and funeral services | 1 | 0 | 0 | 1 | 1,22% |
| maintenance of municipal sanitation and waste disposal | 2 | 0 | 0 | 2 | 2,44% |
| **REAL (BUSINESS) SECTOR** | 45 | 7 | 25 | **77** | **93,90%** |
| **• manufacturing industries** | 5 | 1 | 8 | 14 | 17,07% |
| **• services** | 40 | 6 | 17 | 63 | 76,83% |
| retail & wholesale | 3 | 1 | 8 | 12 | 14,63% |
| finance and insurance | 8 | 2 | 1 | 11 | 13,41% |
| catering & tourism | 2 | 0 | 1 | 3 | 3,66% |
| transport | 0 | 0 | 1 | 1 | 1,22% |
| media | 0 | 0 | 5 | 5 | 6,10% |
| telecommunications | 0 | 0 | 0 | 0 | 0,00% |
| other services | 27 | 3 | 1 | 31 | 37,80% |
| **TOTAL NO OF RELEVANT MARKETS:** | 50 | 7 | 25 | **82** | **100,00%** |

*Source: CCA; Legal affairs and economic analysis division*

Figure 10 Relevant markets by sectors relating to cases opened in 2004



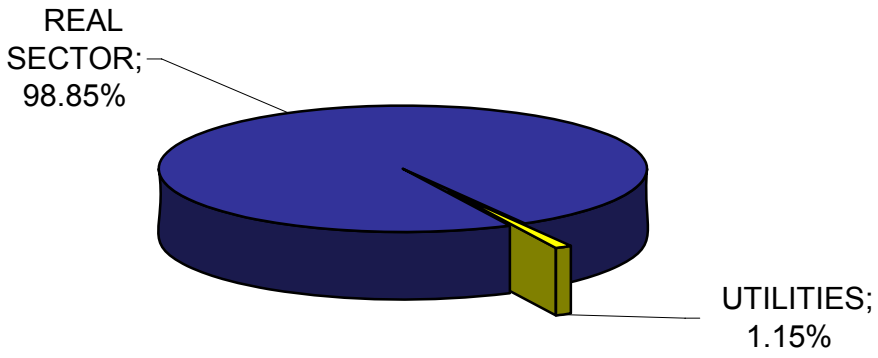

*Source: CCA; Legal affairs and economic analysis division*

Table 11 Relevant markets by sectors relating to cases opened in the *previous periods*, which are pending/have been resolved in the reporting period

| Relevant markets | No of cases opened in previous periods | | | | Structure in % |
|---|---|---|---|---|---|
| | Abuses | Agreements | Concentations | ∑ | |
| **UTILITIES** | 1 | 0 | 0 | **1** | **1,15%** |
| water supply & waste water management | 0 | 0 | 0 | 0 | - |
| energy and district heating supply | 0 | 0 | 0 | 0 | - |
| public transport | 0 | 0 | 0 | 0 | - |
| graveyard maintenance and funeral services | 0 | 0 | 0 | 0 | - |
| maintenance of municipal sanitation and waste disposal | 1 | 0 | 0 | 1 | 1,15% |
| **REAL (BUSINESS) SECTOR** | 31 | 22 | 33 | **86** | **98,85%** |
| **• manufacturing industries** | 2 | 1 | 8 | 11 | 12,64% |
| **• services** | 29 | 21 | 25 | 75 | 86,21% |
| retail & wholesale | 16 | 20 | 16 | 52 | 59,77% |
| finance and insurance | 1 | 0 | 2 | 3 | 3,45% |
| catering & tourism | 0 | 0 | 1 | 1 | 1,15% |
| transport | 1 | 1 | 0 | 2 | 2,30% |
| media | 0 | 0 | 3 | 3 | 3,45% |
| telecommunications | 0 | 0 | 1 | 1 | 1,15% |
| other services | 11 | 0 | 2 | 13 | 14,94% |
| **TOTAL NO OF RELEVANT MARKETS:** | 32 | 22 | 33 | **87** | **100,00%** |

*Source: CCA; Legal affairs and economic analysis division*

Figure 10 Relevant markets by sectors, relating to cases opened in the *previous periods*, which are pending/have been resolved in the reporting period



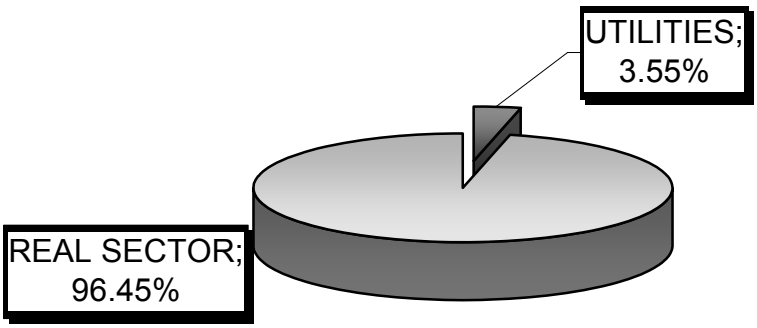

*Source: CCA; Legal affairs and economic analysis division*

Table 12 Breakdown of relevant markets by sectors relating to cases opened in the r*eporting* and *previous periods*, which are pending or have been resolved in the reporting period

| **Relevant markets** | Total no of cases opened in the reporting period (year 2004) and previous periods | | | | Structure in % |
|---|---|---|---|---|---|
| | Abusess | Agreements | Concentrations | ∑ | |
| **UTILITIES** | 6 | 0 | 0 | **6** | **3,55%** |
| water supply & waste water management | 1 | 0 | 0 | 1 | 0,59% |
| energy and district heating supply | 0 | 0 | 0 | 0 | - |
| public transport | 1 | 0 | 0 | 1 | 0,59% |
| graveyard maintenance and funeral services | 1 | 0 | 0 | 1 | 0,59% |
| maintenance of municipal sanitation and waste disposal | 3 | 0 | 0 | 3 | 1,78% |
| **REAL (BUSINESS) SECTOR** | 76 | 29 | 58 | **163** | **96,45%** |
| **• manufacturing industries** | 7 | 2 | 16 | 25 | 14,79% |
| **• services** | 69 | 27 | 42 | 138 | 81,66% |
| retail & wholesale | 19 | 21 | 24 | 64 | 37,87% |
| finance and insurance | 9 | 2 | 3 | 14 | 8,28% |
| catering & tourism | 2 | 0 | 2 | 4 | 2,37% |
| transport | 1 | 1 | 1 | 3 | 1,78% |
| media | 0 | 0 | 8 | 8 | 4,73% |
| telecommunications | 0 | 0 | 1 | 1 | 0,59% |
| other services | 38 | 3 | 3 | 44 | 26,04% |
| **TOTAL NO OF RELEVANT MARKETS:** | 82 | 29 | 58 | **169** | **100,00%** |

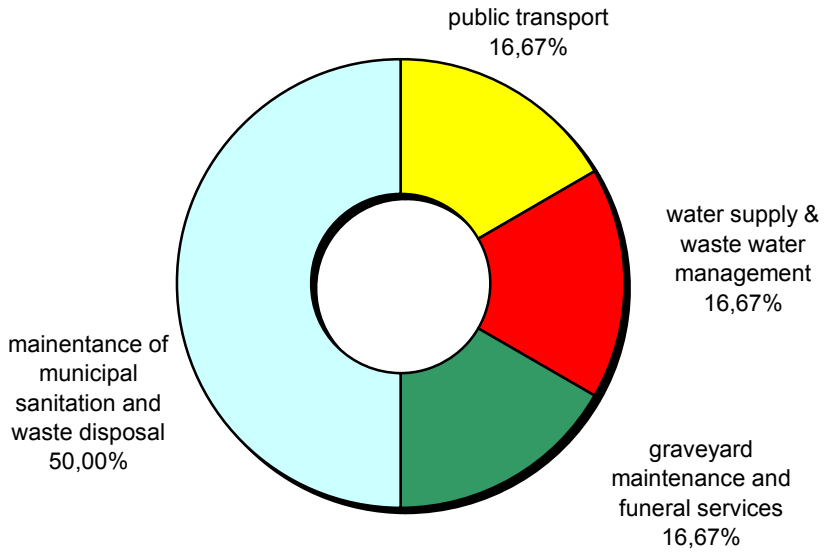
*Source: CCA; Legal affairs and economic analysis division*

Figure 11 Structure of relevant markets by sectors relating to cases opened in the *reporting* and *previous periods*, which are pending or have been resolved in the reporting period



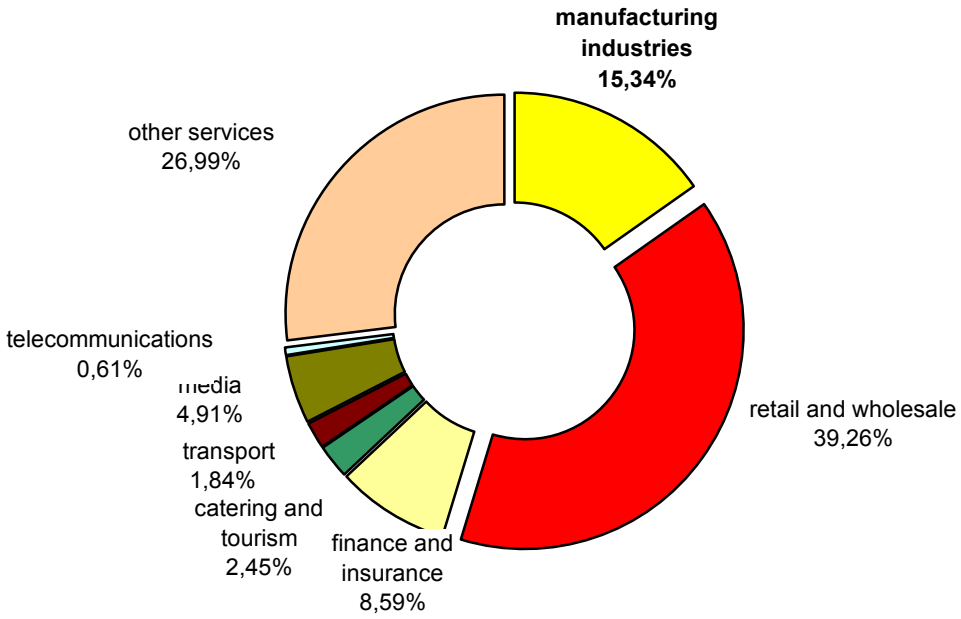

*Source: CCA; Legal affairs and economic analysis division*

Figure 12 Structure of relevant markets – utility sector




*Source: CCA; Legal affairs and economic analysis division*

Figure 13 Structure of relevant markets - real sector




*Source: CCA; Legal affairs and economic analysis division*

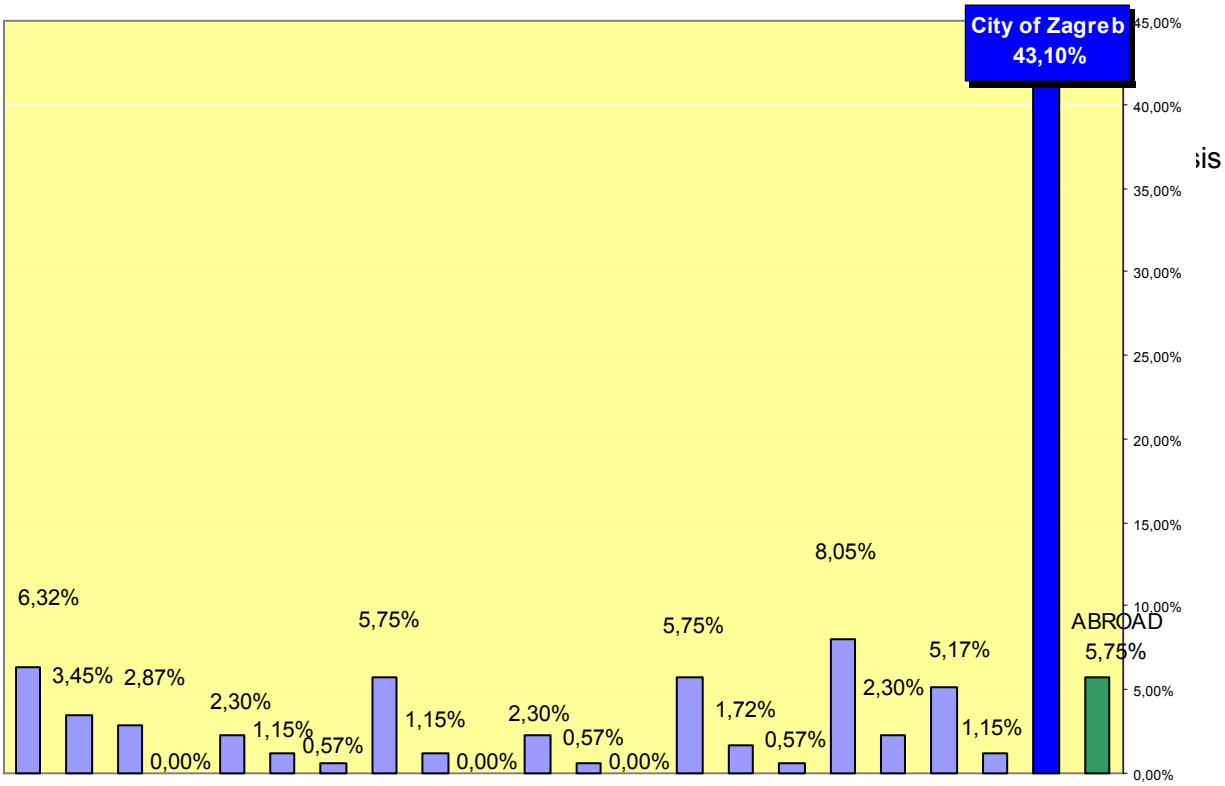
1.6. Review of cases by place of establishment of the parties

Table 13 Place of establishment of the parties in the administrative cases opened in the reporting period

| Place of establishment | Abuses | Agreements | Concentrations | ∑ | Structure in % |
|---|---|---|---|---|---|
| **1 COUNTIES IN CROATIA** | | | | | |
| ZAGREBAČKA | 3 | 6 | 2 | 11 | 6,32% |
| KRAPINSKO-ZAGORSKA | 6 | 0 | 0 | 6 | 3,45% |
| SISAČKO-MOSLAVAČKA | 4 | 1 | 0 | 5 | 2,87% |
| KARLOVAČKA | 0 | 0 | 0 | 0 | 0,00% |
| VARAŽDINSKA | 0 | 0 | 4 | 4 | 2,30% |
| KOPRIVNIČKO-KRIŽEVAČKA | 1 | 0 | 1 | 2 | 1,15% |
| BJELOVARSKO-BILOGORSKA | 0 | 1 | 0 | 1 | 0,57% |
| PRIMORSKO-GORANSKA | 9 | 1 | 0 | 10 | 5,75% |
| LIČKO-SENJSKA | 2 | 0 | 0 | 2 | 1,15% |
| VIROVITIČKO-PODRAVSKA | 0 | 0 | 0 | 0 | 0,00% |
| POŽEŠKO-SLAVONSKA | 3 | 0 | 1 | 4 | 2,30% |
| BRODSKO-POSAVSKA | 1 | 0 | 0 | 1 | 0,57% |
| ZADARSKA | 0 | 0 | 0 | 0 | 0,00% |
| OSJEČKO-BARANJSKA | 1 | 2 | 7 | 10 | 5,75% |
| ŠIBENSKO-KNINSKA | 3 | 0 | 0 | 3 | 1,72% |
| VUKOVARSKO-SRIJEMSKA | 0 | 0 | 1 | 1 | 0,57% |
| SPLITSKO-DALMATINSKA | 12 | 0 | 2 | 14 | 8,05% |
| ISTARSKA | 1 | 1 | 2 | 4 | 2,30% |
| DUBROVAČKO-NERETVANSKA | 6 | 0 | 3 | 9 | 5,17% |
| MEĐIMURSKA | 2 | 0 | 0 | 2 | 1,15% |
| CITY OF ZAGREB | 44 | 12 | 19 | 75 | 43,10% |
| **Subtotal:** | **98** | **24** | **42** | **164** | **94,25%** |
| **2 ABROAD** | | | | | |
| GERMANY | 0 | 0 | 4 | 4 | 2,30% |
| LUXEMBOURG | 0 | 0 | 1 | 1 | 0,57% |
| NETHERLANDS | 0 | 0 | 1 | 1 | 0,57% |
| AUSTRIA | 0 | 0 | 1 | 1 | 0,57% |
| SWITZERLAND | 0 | 0 | 1 | 1 | 0,57% |
| USA | 0 | 0 | 1 | 1 | 0,57% |
| BOSNIA AND HERZEGOVINA | 0 | 0 | 1 | 1 | 0,57% |
| **Subtotal:** | **0** | **0** | **10** | **10** | **5,75%** |
| **Total (1+2)** | **98** | **24** | **52** | **174** | **100,00%** |

*Source: CCA; Legal affairs and economic analysis division*

Figure 14 Administrative cases in respect of the place of establishment of the parties relating to cases opened in the reporting period




*Source: CCA; Legal affairs and economic analysis division*

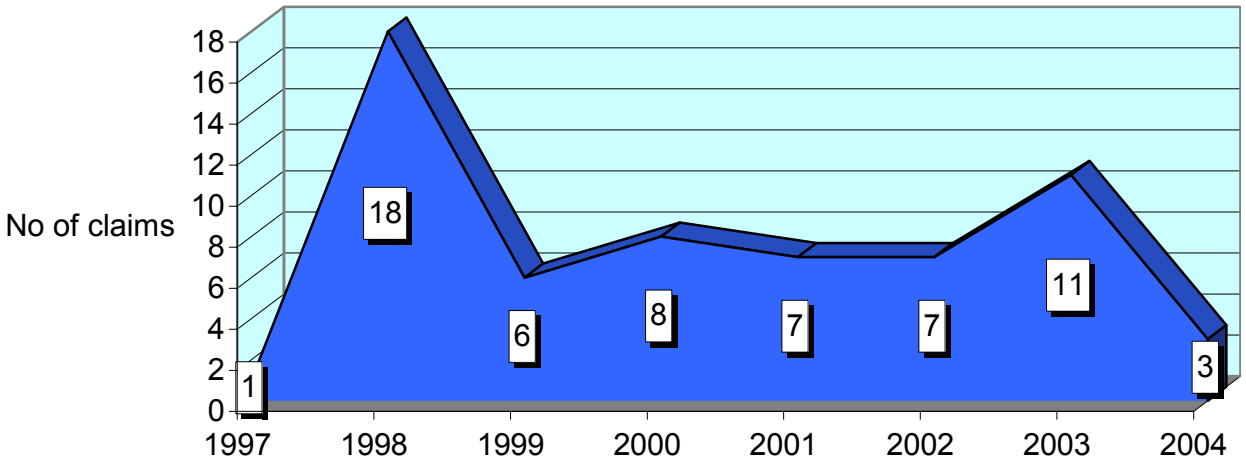
1.7. Review of cases according to the number of initiated administrative and misdemeanour proceedings

Table 14 Claims filed to the Administrative Court of the Republic of Croatia against the decisions of the Agency from 1997 – 2004

| | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | ∑ | Structure in % |
|---|---|---|---|---|---|---|---|---|---|---|
| **TOTAL** | **1** | **18** | **6** | **8** | **7** | **7** | **11** | **3** | **61** | **100,00%** |
| **Pending** | **0** | **3** | **3** | **6** | **6** | **7** | **8** | **0** | **33** | **54,10%** |
| **Resolved** | **1** | **15** | **3** | **2** | **1** | **0** | **3** | **3** | **28** | **45,90%** |
| Claim accepted | 0 | 2 | 0 | 1 | 0 | 0 | 1 | 2 | 6 | 9,83% |
| Claim denied | 1 | 11 | 2 | 1 | 1 | 0 | 0 | 1 | 18 | 29,51% |
| Claim dismissed | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 3,28% |
| Claim withdrawn | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 2 | 3,28% |

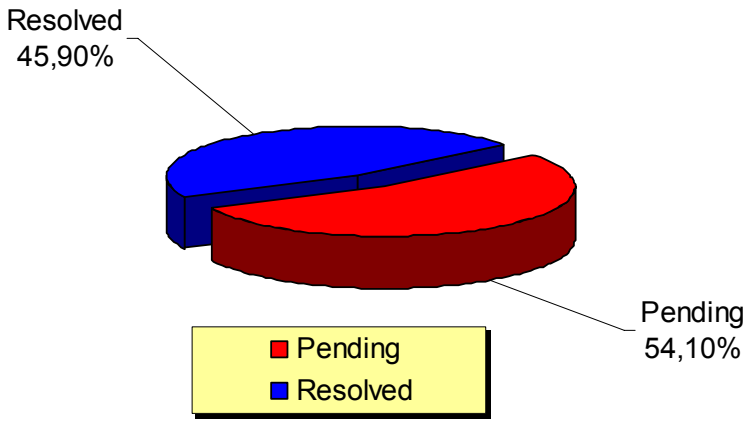
*Source: CCA; Legal affairs and economic analysis division*

Figure 15 Number of claims filed to the Administrative Court of the Republic of Croatia against the decisions of the Agency from 1997 – 2004



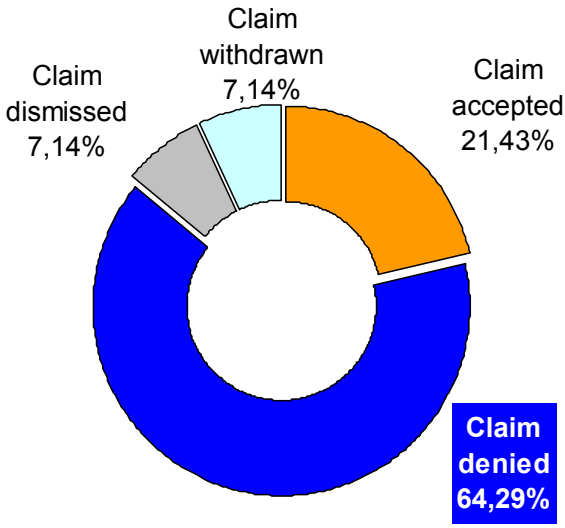

*Source: CCA; Legal affairs and economic analysis division*

Figure 16 Share of resolved claims in the total no of claims at the Administrative Court of the Republic of Croatia from 1997 – 2004




*Source: CCA; Legal affairs and economic analysis division*

Figure 17 Structure of decisions at the Administrative Court of the Republic of Croatia from 1997 – 2004



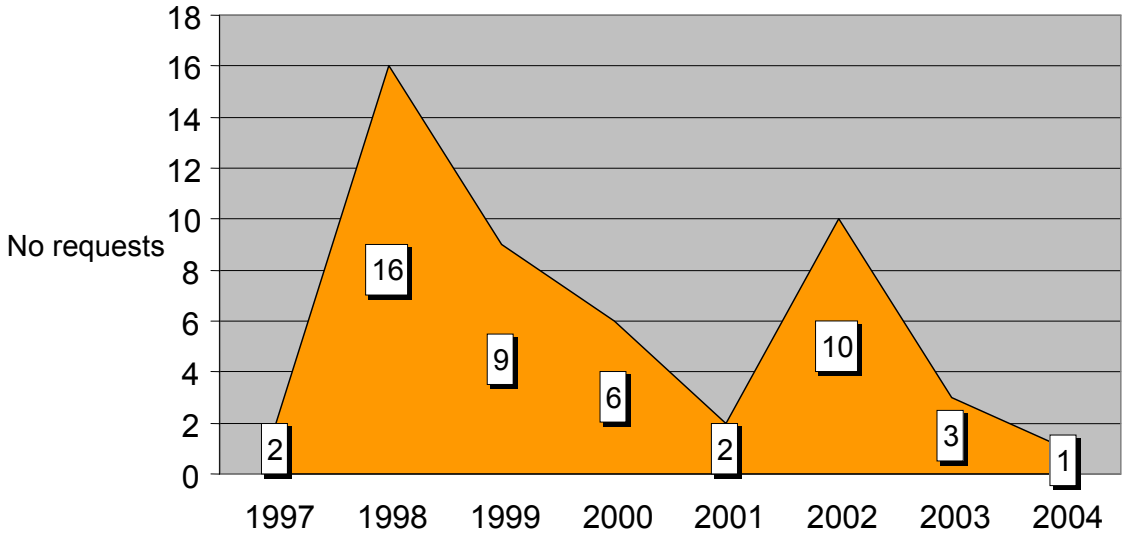

*Source: CCA; Legal affairs and economic analysis division*

Table 15 Requests submitted by the CCA to the misdemeanour courts from 1997 – 2004

| | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | ∑ | Structure |
|---|---|---|---|---|---|---|---|---|---|---|
| **TOTAL** | **2** | **16** | **9** | **6** | **2** | **10** | **3** | **1** | **49** | **100,00%** |
| **Pending** | **0** | **4** | **0** | **0** | **2** | **5** | **0** | **1** | **12** | **24,49%** |
| **Resolved** | **2** | **12** | **9** | **6** | **0** | **5** | **3** | **0** | **37** | **75,51%** |
| Penalty | 0 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 4 | 8,16% |
| Request denied | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 4,08% |
| Request dismissed | 0 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 6 | 12,24% |
| Statute of limitation | 0 | 7 | 2 | 1 | 0 | 0 | 0 | 0 | 10 | 20,14% |
| Request withdrawn | 2 | 1 | 0 | 1 | 0 | 5 | 3 | 0 | 12 | 24,48% |
| Termination of proceedings / deferral of decision | 0 | 0 | 2 | 1 | 0 | 0 | 0 | 0 | 3 | 6,12% |

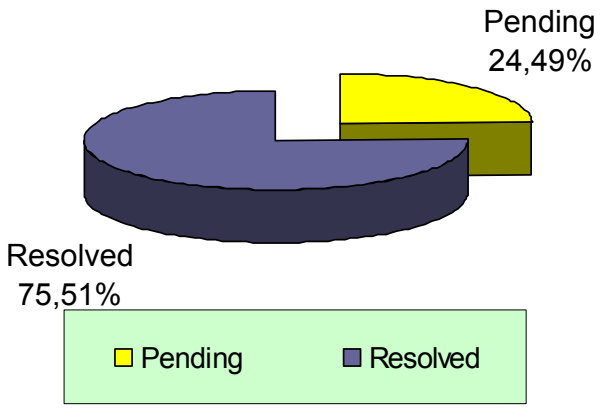
*Source: CCA; Legal affairs and economic analysis division*

Figure 18 Number requests submitted by the Agency to the misdemeanour courts from 1997 – 2004



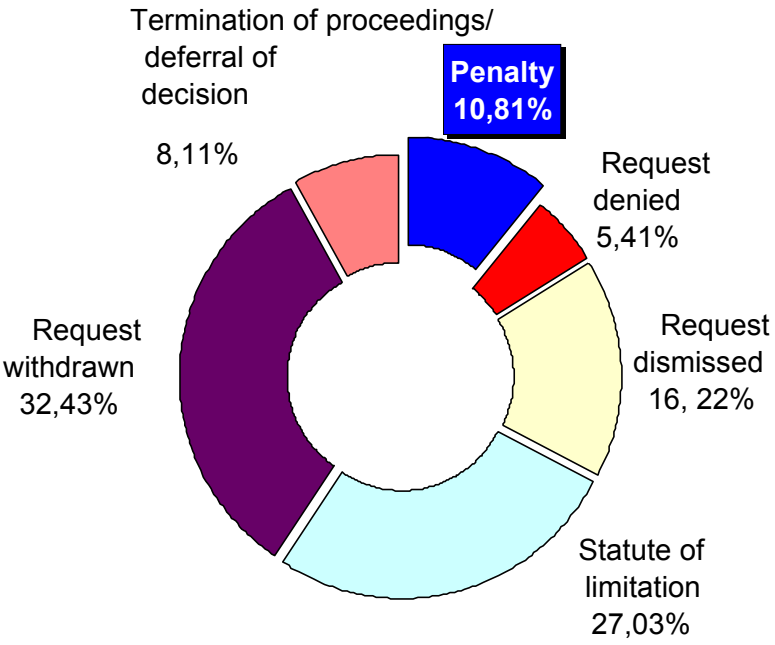

*Source: CCA; Legal affairs and economic analysis division*

Figure 19 Ratio of resolved and pending cases relating to the proceedings initiated by the Agency at misdemeanour courts from 1997 - 2004




*Source: CCA; Legal affairs and economic analysis division*

Figure 20 Structure of decisions of misdemeanour courts relating to the proceedings initiated by the Agency from1997 – 2004




*Source: CCA; Legal affairs and economic analysis division*

1.8. Number of files/cases presented in the sessions of the Competition Council

During the reporting period (2004) the Competition Council held a total of 24 sessions.

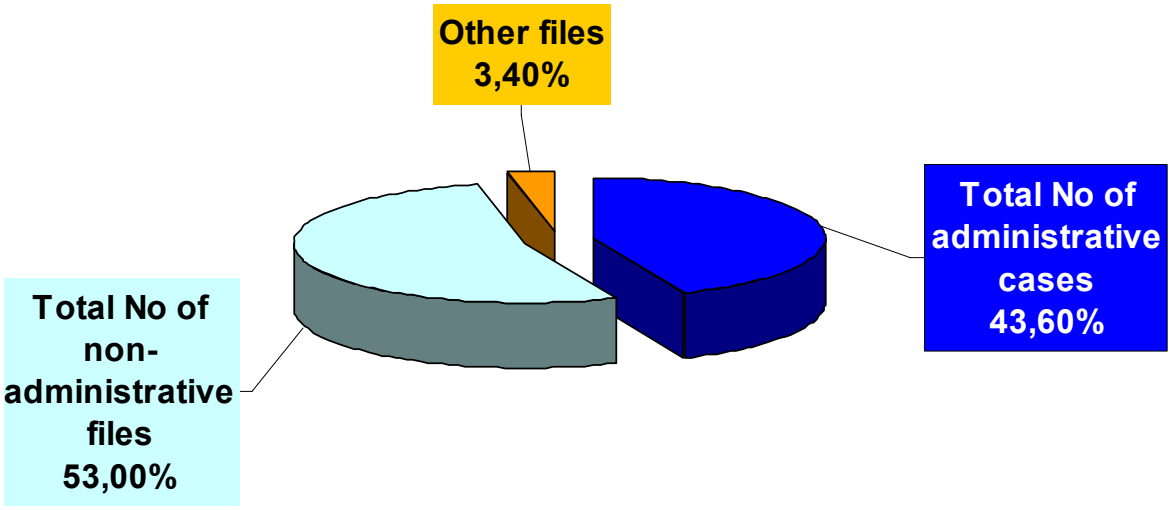
It is important to mention that the total number of cases includes all types of files and real cases (administrative cases, non-administrative files, advocacy files etc.), namely all cases and files that have been opened both in the reporting period and the previous periods.

Table 16 Number of files/cases presented in the sessions of the Competition Council in 2004

| Category | No of files/cases | | Structure |
|---|---|---|---|
| **Abuses** | 86 | | 22,45% |
| **Agreements** | 23 | | 6,01% |
| **Concentrations** | 58 | | 15,14% |
| **Total No of administrative cases** | **167** | | **43,60%** |
| | | | |
| **Preliminary expert opinions** | 129 | | 33,68% |
| **Other non-administrative files** | 46 | | 12,01% |
| **Opinions on laws and other acts** | 28 | | 7,31% |
| **Total No of non-administrative files** | **203** | | **53,00%** |
| | | | |
| **Other files (international cooperation, internal acts etc.)** | **13** | | **3,40%** |
| | | | |
| **Total No of files/cases** | **383** | | **100,00%** |

*Source: CCA; Legal affairs and economic analysis division*

Figure 20 Structure of the cases/files presented in the sessions of the Competition Council in the reporting period




*Source: CCA; Legal affairs and economic analysis division*

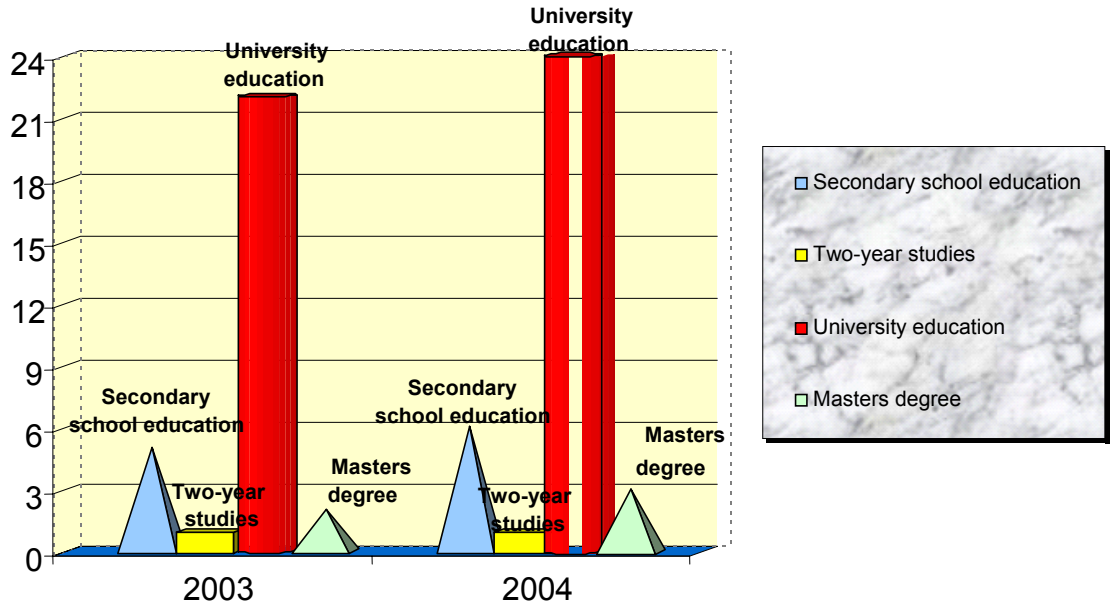
## Appendix 2: Number and structure of employees of the CCA

Table 17 Table of comparison of the total No of employees of the Agency

| | 2004 | 2003 | Ratio in % 2004/2003 |
|---|---|---|---|
| **Secondary school education** | 5 | 6 | + 20,00% |
| **Two-year studies** | 1 | 1 | - |
| **University degree** | 22 | 24 | + 8,33% |
| **Masters degree** | 2 | 3 | 50,00% |
| **Total No of employees** | **30** | **34** | **+ 10,00%** |

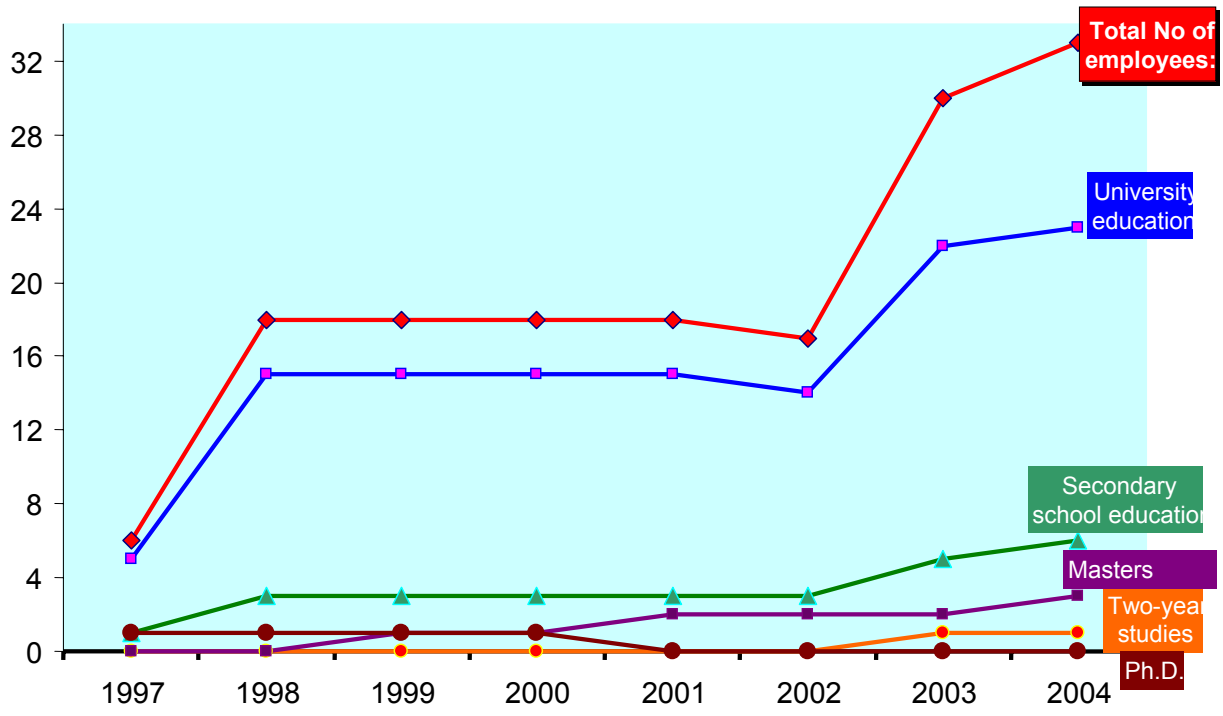
*Source: CCA; Legal affairs and economic analysis division*

Figure 21 Structure of employees of the Agency in the year 2003 and 2004




*Source: CCA; Legal affairs and economic analysis division*

Figure 22 Changes in the number of employees in the period 1997 – 2004




*Source: CCA; Legal affairs and economic analysis division*

Figure 23 Number of employees as of 31 December 2004 compared with the estimated number necessary for the enforcement of the Acts falling under the CCA competence

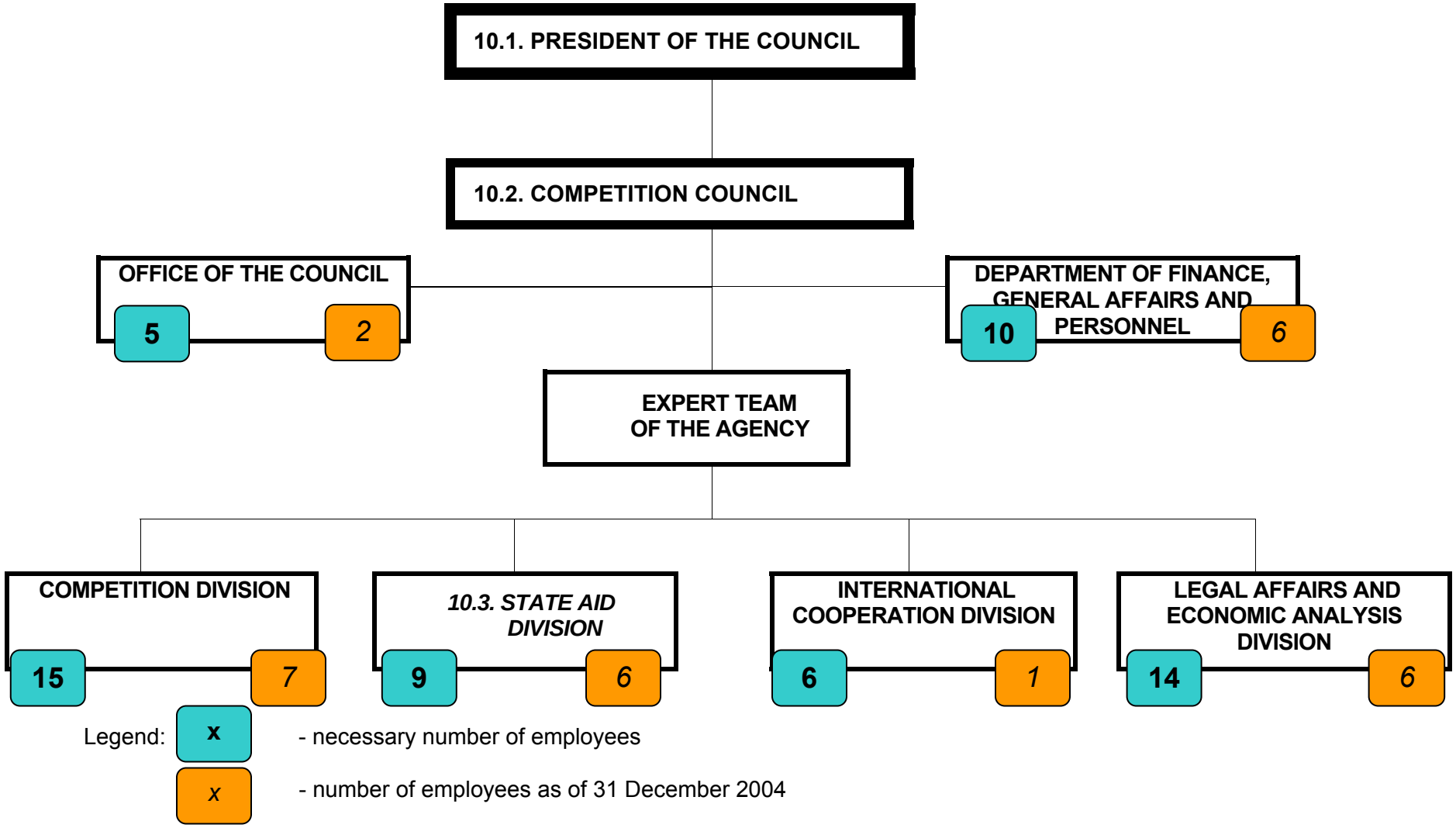
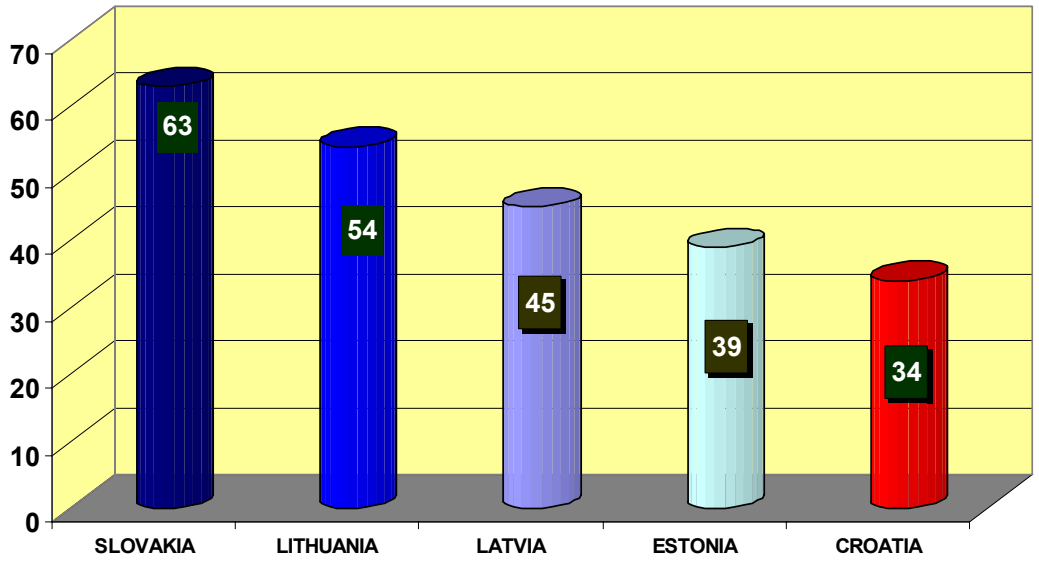


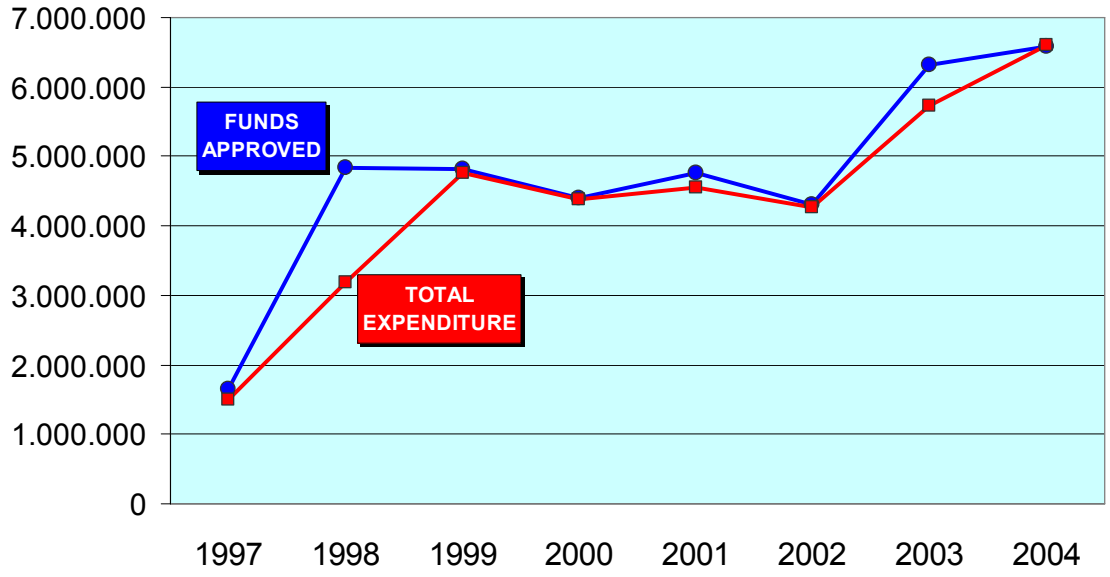
Figure 24 Number of employees in some other national competition authorities in 2004




*Source: The international journal of competition policy and regulation: «The 2004 Handbook of Competition Enforcement Agencies, Sixth edition», published by: Global Competition Review, March 2004;*
*Arrangement by CCA; Legal affairs and economic analysis division*

## Appendix 3: Budget of the Agency

Figure 25 Funds approved from the Central Budget and total expenditure of the Agency in the period 1997 - 2004




*Source: CCA; Legal affairs and economic analysis division*

Table 18 Funds approved (after the Budget revision) and total expenditure of the Agency from 1997 - 2004

*In HRK*

| Item | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | Index 2004/ 2003 |
|---|---|---|---|---|---|---|---|---|---|
| **1. FUNDS APPROVED FROM THE CENTRAL BUDGET** | **1.648.361** | **4.846.365** | **4.826.278** | **4.406.499** | **4.760.692** | **4.314.820** | **6.317.499** | **6.583.685** | **104,21** |
| 1.1. Current expenditure | 1.012.618 | 2.418.807 | 4.510.153 | 4.335.867 | 4.258.346 | 4.116.240 | 5.047.263 | 6.407.507 | 126,95 |
| ■ salaries | 287.941 | 1.270.458 | 2.981.755 | 2.940.875 | 2.598.930 | 2.489.800 | 3.099.483 | 4.578.383 | 147,71 |
| ■ material expenditure | 724.677 | 1.148.349 | 1.528.398 | 1.394.992 | 1.659.416 | 1.626.440 | 1.947.780 | 1.829.124 | 93,91 |
| 1.2. Capital expenditure | 476.943 | 755.898 | 253.211 | 50.328 | 297.640 | 157.170 | 682.615 | 192.073 | 28,14 |
| **2. TOTAL EXPENDITURE (1.1.+1.2.)** | **1.489.561** | **3.177.705** | **4.763.364** | **4.386.195** | **4.555.986** | **4.273.410** | **5.729.878** | **6.599.580** | **115,18** |
| **3. BALANCE (1. – 2.)** | **158.800** | **1.668.660** | **62.914** | **20.304** | **204.706** | **41.410** | **587.621** | **-15.895** | - |

*Source: CCA; Legal affairs and economic analysis division*