

AGENCY FOR PROTECTION OF MARKET COMPETITION
Savska cesta 41/VII, Zagreb

ANNUAL REPORT
for the period from 1 April 2001 to 28 February 2002

**Analysis of the situation and proceedings initiated
based on the Law on Protection of Market Competition**

Zagreb, 2002

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1. INTRODUCTORY REMARKS

The Agency for Protection of Market Competition (hereinafter referred to as 'the Agency') has drafted the Annual Report for the year 2001, pursuant to the provision of Article 38 of the Law on Protection of Market Competition (hereinafter referred to as LPMC).¹ The Report contains the analysis of the situation and proceedings initiated in the Agency on the basis of LPMC in the period from 1 April 2001 to 28 February 2002.²

However, it should point out that this Report encompasses a period shorter than one year. In effect, the Report *encompasses the period of eleven months*. This is because the Agency has developed and implemented a new methodology of drafting of annual reports. Namely, during the last five years, the Agency has changed the methodology of drafting annual reports twice. The reason thereto was an insufficient experience concerning significance of certain factors and their importance for analysis of the situation of market competition in the Republic of Croatia. The new methodology foresees that, starting from this year, the annual reports shall cover the period from 1 March to 28/29 February.

Apart from the analytical part, the Report includes the overview of the cases and proceedings from the Agency's scope of activities which were in course in the year 2001. The Report also includes a detail description of proceedings and decisions rendered by the Agency in some of the key, leading cases. The Agency has chosen, in its opinion, the most interesting cases, for which it assessed that they would be significant for rendering of decisions in other similar matters. A special chapter is included to describe international cooperation activities of the Agency.

1.1. Market competition in the Republic of Croatia – legal and institutional framework

The decisive effect to the optimal efficiency of the economy lies with the structure of the market in which the undertakings freely compete. In the process, available economic resources are directed to production of most demanded goods and services which generate the highest profit.

However, the concept of free market competition has its reverse side. The profit may not present the sole purpose of market competition. The requirement of balance of interests should also be respected. Namely, on one hand, the desire to realize profits ensures maximal mobilization of undertaking efforts in the most efficient way and continuously encourages technological achievements and other innovations, active market strategy and undertaking of reasonable risks. This means continuous efforts of undertakings to gain the consumers' trust by increased quality of the products and services and favorable conditions of sale and low prices. All of that, however, should be in the interest of the consumers. So the consumers with their own choice of goods and services decide on success of a certain undertaking in the market. Thus, market competition acts as the force

¹ *The Law on Protection of Market Competition* ("Official Gazette" Nos. 48/95, 52/97 and 89/98). The Law was adopted in June 1995 and entered into force on 22 July 1995.

² Article 38 LPMC: "*The Agency is obliged to make a complete analysis of the situation and of actions brought on the basis of this Law and to deliver an annual report to Parliament.*"

which compels the undertakings to comply with consumers' wishes and to do business more efficiently and compels them to act so to be more successful than their competitors. The only means allowed in this competition are the price and quality of the products or services rendered by the undertakings.

1. 1. 1. Law on Protection of Market Competition

The legal framework for protection of market competition in the Republic of Croatia is the *Law on Protection of Market Competition*. The Law regulates the rules of conduct and the system of measures aimed at protecting free and effective market competition.³

LPMC incorporates the fundamental regulations of the European Union in the area of competition law. Specifically, it is based on the provisions of Articles 81 and 82 of the *Treaty on European Union (so-called Amsterdam Treaty)*, which shall be referred to herein below.

LPMC is divided into five (5) chapters and consists of 46 articles.

The first chapter (Articles 1 to 5 LPMC) contains the general provision. The provisions of LPMC apply to undertakings – companies, sole proprietors, craftsmen and other legal and natural persons who participate in the trade of goods and services by performing their economic activity. The LPMC applies accordingly to each legal and natural person engaged in a single or temporary trade of goods and services. It also applies to all legal and natural persons with the seat and residence abroad, provided that their participation in the trade of goods and services has an effect on the domestic market.

LPMC does not apply to legal and natural persons who, pursuant to special legal provisions, have been entrusted with the task of performing public services, or have been granted special and exclusive rights of concessions, but only in the cases in which the application of LPMC would prevent the accomplishment of the tasks regulated for them by special regulations and for which they were established. Furthermore, LPMC does not apply to contractual relations between principals and agents or commission agents, relations between employers and employees, and relations which are the object of collective bargaining agreements between employers and labor unions. The provisions of LPMC does not apply to deals and contracts which do not affect the domestic market, and which do not have adverse effects on the interests of other domestic undertakings taking part in operations, both in the domestic and international market, provided, however, that international agreements signed by the Republic of Croatia do not regulate otherwise.

The second chapter (Articles 6 to 26 LPMC) relate to distortion upon free market competition. Distortions upon free market competition exist in various forms of prevention or restriction of entrepreneurial freedoms or activities of undertakings relating to the trade of goods and services in the market. LPMC regulates possible forms of distortions upon free market competition such as agreements between undertakings (Articles 7 to 12 LPMC), abuse of monopolistic or dominant position (Articles 13 to 20 LPMC) and concentration of undertakings (Articles 21 to 26 LPMC).

³ Article 1 LPMC.

Articles 27 to 38 form the third chapter of LPMC. They regulate the structure, authorities and method of work of the Agency for Protection of Market Competition, its Director and the Council for Protection of Market Competition.

The fourth and the fifth chapter of LPMC contain penal provisions (Articles 39 to 41a) and transitional and final provisions (Articles 42 to 46).

LPMC elaborates the constitutional category of entrepreneurial and market freedoms. Namely, Article 49, paragraphs 1 and 2 of the *Constitution of the Republic of Croatia*⁴ regulates market freedoms as the fundamental economic rights. The entrepreneurial and market freedom are the basis of the economic system of the Republic of Croatia. The state ensures an equal legal status on the market for all undertakings. Abuse of monopolistic position regulated by law is prohibited. The basis for this idea consists of acceptance of market influences as the primary regulator of economic relations, rejecting at the same time all forms of inappropriate influence of the state to entrepreneurial decision-making.

Raising free market competition to the level of the constitutional category, the Republic of Croatia incorporated in its Constitution the concepts which some of the highly developed countries only intend to adopt or have done so only recently⁵ assessing it a necessary requirement for granting wide authorities to the bodies of authority protecting market competition.

At this point, two more original solutions adopted by LPMC should be noted. Primarily, they relate to the specific position of the Agency as an authority *sui generis* in the system of the executive power. The Agency is not a part of any other authority of the executive power (such as a ministry). Therefore, the Director of the Agency is responsible for his/her work exclusively to the Croatian Parliament and not to the Government of the Republic of Croatia, and he/she submits an annual report on the work. In that way, the independence of the Director and the Agency is emphasized and the possibility of political influence to decision-making is avoided.

The other specific solution is the institute of the *Council for Protection of Market Competition* (hereinafter referred to as *the Council*). The Council is the advisory expert authority of the Agency. It consists of nine lawyers and economists, mostly doctors of science, permanently employed at universities and other scientific institutions, experts for competition and similar areas. The members of the Council are not employees of the Agency but receive a minimal compensation for their work. In that way, it is made possible that the best Croatian experts, who are few, participate in the work of the Agency. They remain attached to their basic organizations, maintain their independence and do not interrupt their scientific career. On the other hand, such model avoids budgetary costs for their salaries if they worked full time in the Agency. However, it should be pointed out that the amount of the compensation they receive is absolutely inadequate concerning the significance and the scope of their work.⁶ This body meets as required, but at least once a month and it debates the proposals of the experts of the Agency in specific cases. The

⁴ *Constitution of the Republic of Croatia* (cleansed text, «Official gazette», No. 41/01).

⁵ E.g., Australia.

⁶ The compensation for the president, vice-president and the members of the Council was determined by the Government of the Republic of Croatia. It amounts to approx. 250 Euros and has not changed for almost three years.

Council proposes to the Director of the Agency undertaking of measures for protection of market competition. The Director of the Agency is not bound by the proposals and decisions of the Council, so he/she might even render a different decision in a specific case.

The competition law experts consider both of the described legal solutions highly advanced.⁷

LPMC is the fundamental, general act regulating market competition. This act, as *lex generalis*, applies always when the subject-matter of protection of free market competition is not regulated by another, special regulation. Namely, the subject-matter of protection of free market competition is for some activities (markets) in the Republic of Croatia regulated by special regulations. Thus, also significant for market competition in the Republic of Croatia are the provisions of the regulations which additionally, partially or completely regulate certain issues of market competition. Let us note some of the regulations, such as *Banking Law, Law on Telecommunications, Law on Electric Energy Market, Law on Gas Market*, etc., as well as accompanying bylaws. Rules which affect market competition are also contained in *Insurance Act, Law on Mediation and Representation in Insurance, Law on Municipal Economy, Law on Trade*, etc.

Apart from LPMC, the *Regulation on Administration of the Register of Concentrations*⁸ also makes a part of the legal framework for protection of market competition in the Republic of Croatia.

The important role in implementation of regulations on market competition lies with the Croatian courts, primarily the Administrative Court of the Republic of Croatia, the High Magistrate Court of the Republic of Croatia and magistrate courts, which shall be elaborated in more detail herein below.

1. 1. 2. The Agency for Protection of Market Competition

The authority having jurisdiction for protection of market competition is the *Agency for Protection of Market Competition*. The Agency performs expert and administrative activities in connection to protection of market competition on the basis of the Law on Protection of Market Competition.

The scope of activities of the Agency is regulated by LPMC and includes:

- evaluation of agreements between undertakings (Articles 7 to 12 LPMC),
- prevention and elimination of abuses of dominant or monopolistic position (Articles 13 to 20 LPMC),
- control of concentrations of undertakings (Articles 21 to 26 LPMC).

The Agency issues preliminary legal opinions on drafts of laws and other regulations, but proposers thereof are not obligated to seek the Agency's opinion.

⁷ It should point out that from 192 stated throughout the world, over 90 countries has adopted regulations on protection of market competition and has appropriate authorities to implement them.

⁸ *Regulation on Administration of the Register of Concentrations* («Official Gazette», No. 30/97).

At the request of the Croatian Privatization Fund and other state authorities and institutions with shareholdings in companies, the Agency issues opinions concerning whether the sale of shares in a company to a specific undertaking would result in creation of prohibited concentration. The cited authorities, however, are not obliged to seek the opinion, and if they choose to seek it, it is not binding for them. This institute is rarely implemented in practice.

Although it is not a legal obligation, the Agency has introduced the practice to issue preliminary legal opinions concerning issues relating to specific undertakings and specific legal situations, which directly or indirectly concern the area of free market competition.

Special regulations⁹ on certain activities (industry, markets) provide for special *regulatory authorities* (hereinafter referred to as *regulators*). Their jurisdiction also includes the protection of free market competition. We shall mention only a few, such as *the Council for Telecommunications* and *the Council for Regulation of Energy Activities*.¹⁰ *The Croatian National Bank* also plays a restricted, specific role in protection of market competition in the area of banking activities. In the area of insurance activities, such role pertains to *the Direction for Supervision of Insurance Companies*. It could also be asserted that a similar role pertains to *the Securities Commission*.

⁹ The regulations are cited herein above under 1.1.1 of the Annual Report.

¹⁰ It should point out that until rendering of the cited regulations and establishment of regulatory authorities for certain sectors, the Agency also performed all activities in connection to protection of market competition for such activities. After the regulatory authorities have been established, the Agency continues to have the authority to control the concentrations in such activities.

2. REVIEW AND ANALYSIS OF THE WORK OF THE AGENCY IN 2001

The review of the work of the Agency for Protection of Market Competition in the Annual Report for the year 2001 has been divided into several activities. Each of those activities shall be separately described and analyzed. A few words are dedicated to the data on the Agency's budget for the year 2001, and to the number and the structure of the employees. These analyses are graphically presented in the Attachment I of the Report. The Report also contains a special review and analysis of the activities of the Council for Protection of Market Competition in the reporting period. The list and the brief overview of the cases relating to international cooperation of the Agency are located in the Attachment IV of the Report.

The most significant (leading) cases, one from each of the basic areas of activities of the Agency, are described in detail in the Attachment II to the Annual Report. The Attachment III contains the list and the overview of all administrative cases received in the reporting period.

2. 1. Agency budget, employees and administrative taxes

As per 28 February 2002, the Agency employs in total **17 employees**. This is for 5.56% lesser than the number of employees in the previous year (there were 18 employees). Of the cited number of employees, 14 employees have university education¹¹, while 3 employees have high school education.¹²

Of 14 employees with university education, there were eight lawyers, five economists and one professor of Croatian language and literature.¹³

The average period of employment of employees is 14 years and the average age somewhat below 38 years.

Of the total 17 employees, 53 percent are women (nine women and eight men).

Six lawyers and four economists were engaged on the cases from the area of protection of competition.¹⁴

In accordance with its role and mission, the Agency is financed exclusively from the state budget. The budget of the Agency for the year 2001 (after the rebalance) amounted to 4,760,692.00 Kuna. It is 7.43 percent more than the budget for the year 2000.

¹¹ It should point out that university education relates to: lawyers with active knowledge of the English language and the bar exam or economists with active knowledge of the English language and exam for certified internal auditor (such references are required for the job of a lawyer-advisor or economist-head in the Agency). Furthermore, of currently 17 persons employed in the Agency, two of them have the degree of Master of Science, while the remaining seven employees participate in postgraduate scientific studies.

¹² See Attachment I, Table 2.

¹³ It concerns the journalist-editor of the Gazette of the Agency, who also was a language reviser of all decisions and correspondence of the Agency.

¹⁴ Only persons who do not work on the cases are the Director, Head of the Accounting and Finance Department and the Assistant Director for the Department of International Cooperation.

However, for the activities performed in the reporting period, the Agency issued orders for administrative taxes in amount of 4,944,081.00 Kuna. It is 8.74 percent more than the orders for administrative taxes issued in 2000 (4,320,400.00 Kuna).¹⁵

Therefore, **value of the administrative taxes** which the Agency has issued for the activities performed **is higher for the amount of 183,389.00 Kuna (3.85 percent) than the funds allocated for financing of its activities in the state Budget for 2001.** In effect, through payment of administrative taxes the Agency earns more funds for the State Budget than it receives from the Budget for financing of its activities.

2.2. Activities from the basic scope of activities of the Agency – protection of market competition in a stricter sense

The basic authority of the Agency consists of the activities aimed to protection of market competition in a stricter sense. It concerns areas of activities of the Agency determined by LPMC. As already stated herein above, the scope of activities of the Agency includes:¹⁶

- evaluation of agreements between undertakings (Articles 7 to 12 LPMC),
- prevention and elimination of abuses of dominant or monopolistic position (Articles 13 to 20 LPMC),
- control of concentrations of undertakings (Articles 21 to 26 LPMC).¹⁷

Before the analysis of the number of the cases the Agency received and resolved in the year 2001, we once more point out that due to application of the new methodology, the reporting period includes only eleven months. It is, therefore, shorter for one month than the reporting period encompassed by the Annual Report for the year 2000. Consequently, some of the results presented in this Report shall appear less efficient than the results of the previous reporting period. We kindly request this fact to be born in mind when reading this report.

2.2.1. Fluctuation of case number

The analysis of the number of cases the agency resolved in relation to the number of the cases received shall be presented according to several criteria. The criteria the Agency applied in these analyses are division of cases to administrative and non-administrative cases, division according to qualification of the cases (agreements, abuses, concentrations, preliminary legal reports, opinions to laws, other non-administrative cases). The analysis relate to the ratio of the number of the cases received in the reporting period and the number of the cases in which the proceedings were closed during the same period. The second analysis shall show the total number of unresolved cases; therefore the number of unresolved cases received in the reporting period and the number of unresolved cases received in previous years.

¹⁵ See Attachment I, Table 3 and Picture 2.

¹⁶ See above under 1.1.2 of the 2001 Annual Report.

¹⁷ Considering the subject-matter it regulates, LPMC is a so-called *anti-trust* regulation.

2. 2. 1. 1. Number of cases received and resolved in this reporting period

Within the reporting period, 229 cases were opened in the Agency.¹⁸ This is in total 29.75 percent less than in the previous year 2000.¹⁹ Of the said number of cases, in total 97 are administrative cases, which is 48.16 percent of the total number of cases.

The number of administrative cases initialized in this period is for 58.37 percent lesser than in the year 2000.

Among the administrative cases in the reporting period, there were 23 request for assessment of agreements of undertakings, 48 requests for determination of distortion upon free market competition by abuse of dominant position in the market and 26 applications to assess if concentrations of undertakings are permitted.

In the reporting period, there were in total 132 non-administrative cases opened. Of the said number, 47 cases relate to preliminary legal opinions, 25 to opinions to laws and other acts and 60 relates to other non-administrative cases. The number of non-administrative cases in his period is for 22.58 percent lesser than in the year 2000.²⁰ However, this number does not include 73 cases of international cooperation.²¹

Of the total number of cases received by the Agency in the reporting period, 186 cases have been resolved. Accordingly, realization is 81.22 percent. Already during the reporting period 67 of the total number of administrative cases were resolved, which is 69.07 percent. In the same period 119 of the total number of non-administrative cases were resolved, which is 90.15 percent of the total number of opened cases.²²

During the reporting period for the year 2001, there was 32.35 percent less applications to assess if concentrations of undertakings were permitted. This, however, should not be surprising considering the size of the Croatian market and the remaining number of undertakings attractive for takeover. It should bear in mind that the main "wave of concentrations" was in the period from 1997 to 2000, when the large number of 128 concentrations was carried out.

The number of applications concerning abuses of dominant position in the market in the year 2001 is lesser for 7.69 percent. Such development is not expected in the future. The

¹⁸ See Attachment I, Table 4.

¹⁹ Remark: We should remind again that the reporting period covered by the 2001 Annual Report is one month shorter, which is 8.33 percent lesser than the period covered by 2000 Annual Report. Should we cut the total number of cases opened in 2000 to eleven months, we would reach in total 298 cases. Consequently, the number of the total cases opened in 2001 in relation to the previous year would be lesser for a good 23.20 percent.

²⁰ See Attachment I, Table 10.

²¹ If all cases of international cooperation would be included, the number of non-administrative cases would increase to 205. In that case, the total number of cases dealt with in the reporting period within the Agency would be 419.

²² See Attachment I, Table 4.

number of applications to determine abuse of dominant position in the market shall increase with increased knowledge of undertakings on the work and authorities of the Agency and creation of awareness on prohibited practice in the market. Entry to the market of foreign undertakings, which are fully aware of competition rules, shall influence this development significantly.

In the year 2001, the number of requests to assess agreements of undertakings has fallen for 84.35 percent (23 in relation to 147 in the year 2000). This is a direct result of the new methodology applied by the Agency in opening of administrative proceedings relating to standard contracts. According to the new methodology, if the subject of assessment relates to standard contracts in which one of the parties is the same undertaking, the agency shall open one administrative case file. Such standard contracts are not longer assessed as separate agreements, but rather as a package. For the purposes of economy of the proceedings, the Agency shall render one decision only. This will happen even if the applicant insists on making a separate assessment, providing, however, that there are no justifiable grounds for doing otherwise. Therefore, if the Agency had applied the old methodology in opening of this type of administrative proceedings and rendering decisions on their conformity with LPMC, the number of agreements of undertakings reported for assessment would be double.²³ However, from the aspect of the scope of tasks to be performed by the leader of the case in assessment of standard contracts and the time consumed to performed the tasks, almost nothing has changed. Namely, in order to determine whether all submitted agreements have the identical or similar contents, the leader of the case must examine each contract separately and assess the conformity of each of them with the provisions of LPMC.

A significant decrease of the number of opened cases in the year 2001 in relation to the previous year relate to non-administrative cases. Primarily, it relates to the decreased number of requests to issue preliminary legal opinions (47 in comparison to 87 in the year 2000). The decrease, therefore, is around 46 percent. Such development can also be expected in the future. This is a direct result of intensified awareness of undertakings, attorneys and consultants concerning the work and the authorities of the Agency. On the other hand, the Agency has principally terminated the practice of issuance of preliminary legal opinions concerning the obligations to report the intention to carry out a concentration in specific cases.

On the contrary, the number of requests to issue opinions to laws and other acts has increased in 2001. It concerns opinions of the Agency whether the draft laws and other regulations contain provisions contrary to LPMC. The number of such requests increased from 6 in the year 2000 to 25 in this reporting period. The increase amounts to 416.60 percent. Such development can be certainly expected in the future. The reason thereto is the Directive of the Government of the Republic of Croatia of 19 July 2001.²⁴ The cited directive determines the obligation of all ministries to obtain the assessment (opinion) of

²³ E.g., in the administrative case *The Agency vs. Croatia osiguranje d.d.*, Class: UP/I-030-02/00-01/128 (see, Attachment III, case no. 110), the Agency has reviewed 65 agreements on business and technical cooperation signed by Croatia osiguranje d.d., in the period from 2000 until the end of 2001 with 65 different undertakings. The Agency has reviewed each of the 65 agreements and established that 36 of them contain prohibited provisions. However, the Agency rendered only one decision thereupon on 28 February 2002.

²⁴ *The Directive of the Government of the Republic of Croatia*, Class: 441-03/00-02/02, File No.: 5030114-01-9, of 19 July 2001. The Directive was rendered in compliance with the obligation of the Government of the Republic of Croatia assumed by the Structural Adjustments Loan Agreement signed between the Government and the International Bank for Reconstruction and Development (so-called SAL).

the Agency in the process of proposing laws and other regulations concerning the influence of the concrete regulation to market competition, starting from 1 July 2002.

2. 2. 1. 2. Number of cases from the previous reporting periods resolved in this reporting period

In the reporting there were 346 cases under course in the Agency, of which 229 were received during the reporting period, while 117 case were unresolved from the previous reporting periods. The said number should be increased for 73 case of international cooperation.

Therefore, in the reporting period the Agency processed in total 419 cases.²⁵ For the purposes of further analyses in this Annual Report, the Agency shall continue with the number of 169 cases. Therefore, it will use the number of the cases received, which excludes the categories "other non-administrative cases" and "cases of international cooperation". Namely, there has been no statistics for those groups of cases in the previous reporting periods kept according to the methodology used in this Report. Consequently, a comparative analysis of the cases through the years would not be possible.

During the year 2001, the total number of 289 cases, or 83.53 percent of the cases, was resolved.²⁶ As per 28 February 2002 there were only 14 cases from the previous periods. Therefore, the realization in this segment is 88.03 percent.

2. 2. 1. 3. Total number of cases under course as per 28 February 2002

As per 28 February 2002, there were 5 cases in work in the Agency. It concerns the cases in which the proceedings are still under course.²⁷ From that number, only 14 cases were from the previous periods, while the number of unresolved cases opened in the year 2001 amounted to 43. Therefore, total realization is 83.53 percent.

2. 2. 2. Structure of submitted requests (according to sectors)

The Agency has carried out the analysis of the request for determination of distortion upon free market competition according to sectors or activities applying the criterion of municipal and non-municipal activities.

The sector of municipal activities mostly includes all undertakings whose objects are connected to use of some infrastructure (telecommunications, power, gas, heating, water supply and draining of waste water, transportation, etc.).²⁸ It also includes other

²⁵ See Attachment I, Table 1.

²⁶ See Attachment I, Table 6.

²⁷ See Attachment I, Table 6 and Picture 3.

²⁸ It mostly concerns so-called *natural monopolies*.

undertakings which have been granted an exclusive right to perform some municipal activity by special regulations or by concession (e.g., cemetery maintenance and funeral services).²⁹ All other activities are non-municipal.

The analysis show that a large number or 31.52 percent of the requests relate to determination of distortions upon free market competition particularly in the sector of municipal activities. Therefore, undertakings in that sector tend to abuse their specific, in general monopolistic position in the market.³⁰

2. 2. 3. Ways to initiate proceedings

Article 34 of LPMC regulates that the proceedings to determine distortions upon free market competition may be initiated upon request (*ex privato*) or officially by the Director of the Agency (*ex officio*).

Thus, in the year 2001, 149 cases were initiated upon request or 79.68 percent. The proceedings were initiated officially in 38 cases or 20.32 percent. This is a significant increase in relation to the previous year when only 7.2 percent of the cases were initiated *ex officio*.³¹

Most of the proceedings initiated officially were the cases of concentrations of undertakings (17) and cases of notification of agreements (12). Therefore, it concerns the cases in which the undertakings failed to submit mandatory notifications to the Agency and the Agency learnt of such practice from other sources.

The percentage of proceedings initiated officially in this reporting period is somewhat around the upper limit of the average number in the countries with developed competition law. It is a result of indiscipline and disrespect of the provisions of LPMC, in most cases by the largest undertakings, therefore, the ones which are aware of their obligations regulated by LPMC and which engage the most prominent attorneys.

2. 2. 4. Participants in the proceedings – criterion of seat/residence of the parties

The Agency carried out the analysis of the number of participants in the proceedings conducted by the Agency according to the criterion of their seat/residence.³² The analysis has been performed by the criterion of seat/residence abroad and in the Republic of Croatia. For legal and natural persons with the seat/residence in the Republic of Croatia, the analysis is made according to counties.

The analysis shows a relatively large number of participants in the proceedings with the seat abroad. It most often concerns participants in the proceedings of notification of

²⁹ It mostly concerns so-called *legal monopolies*.

³⁰ See Attachment I, Table 7.

³¹ See Attachment I, Tables 8 and 9 and Pictures 4 and 5.

³² See Attachment I, Picture 6.

concentrations and proceedings for evaluation of agreements. The analysis also shows that these parties also requested a large number of preliminary legal reports, which is understandable, considering their insufficient knowledge of the Croatian regulations.

Of the parties with the seat/residence in the Republic of Croatia, most of the participants in the proceedings are undertakings from economically mostly developed areas (such as the City of Zagreb, the Zagrebacka County). It is also noticeable that a fairly large number of participants come from some counties in which the economic situation is poor. However, it is interesting that the parties from such counties are mostly participants in the proceedings of determination of abuse of dominant position in the market.

The above stated leads to a simple conclusion that efficient market competition exists in economically developed areas. In areas where the economic situation is poor, the remaining undertakings attempt to stay on the market applying in the process some illegal methods and practices to exclude competitors from the market.

2.2.5. Work of courts – Administrative Court of the Republic of Croatia, magistrate courts and High Magistrate Court of the Republic of Croatia

Extremely important role in implementation of regulations and the protection of free market competition itself pertain to courts. Primarily, it is the *Administrative Court of the Republic of Croatia* which reexamines legality of the decisions of the Agency. Also important is the role of *magistrate court*, which upon request of the Agency or the competent regulator, pronounce penalties for violation of regulations on free market competition. Connected thereto is the role of the *High Magistrate Court of the Republic of Croatia*, which also indirectly participates in reexamination of legality of decisions of the said authorities.

From the beginning of the work of the Agency (end of 1997) until 28 February 2002, the Agency resolved in total 1158 administrative cases upon request.³³

Against decisions of the Agency an administrative dispute was initiated against the Administrative Court of the Republic of Croatia in 39 cases, which is 2.7 percent in relation to the total number of cases. The Administrative Court rendered judgments in 17 cases. The Court accepted only three complaints (7.69 percent of the total number of complaints). In other cases, the Court dismissed or denied the complaints or the plaintiff withdrew the complaint. It is important to point out that the grounds for acceptance of complaints in all three cases were exclusively of procedural nature.

Such statistics show high professionalism of the Agency's employees and strict compliance with legality principles in carrying out proceedings of determination of distortions upon free market competition.

From its foundation, the Agency filed to magistrate courts in total 36 requests to initiate offense proceedings against undertakings and responsible persons in the undertakings for distortions of free market competition.³⁴

³³ See Attachment I, tables 10 and 11 and Pictures 7 and 8.

³⁴ See Attachment I, Table 13.

Upon such requests, the magistrate courts have made until now 26 rulings (in 72.22 percent). A penalty was pronounced in only 4 or 15.38 percent of the total number of resolved cases, while statute of limitation occurred in 30.77 percent of the cases.

It is obvious that the greatest problem in high percentage of offense proceedings is the statute of limitation. Such situation may be interpreted in three ways: by inefficiency of courts and their being flooded with cases, which are the general problem of the Croatian judiciary, by insufficient education of magistrate courts in a specific and new matter of competition law, which makes difficult for them to decide a case, or by their reluctance to pronounce extremely high penalties regulated by LPMC. We cannot imagine a forth reason for this problem.

In competition law, punishment of the offender is not purpose *per se*. However, regardless of the reason for insufficiency of the courts, the purpose of prevention shall not be achieved without firm pronouncement of penalties for determinations of distortions upon free market competition which the Agency determined beyond doubt, nor shall the undertakings cease to engage in prohibited practices directed to elimination of competitors. Considering the nature of the offense which is directed to generating extra profits, a fine should be sufficiently high so that the offender may realize that such prohibited practice does not pay.

2. 3. New Law Project – making the draft Competition Act

Without any doubt, the most important and the most demanding task of the Agency in the reporting period has been drafting of the new competition act – *the Competition Act*. Also, the drafting of bylaws has begun.

The work on this project has engaged all available human resources of professional departments of the Agency. The preparations for drafting of the new Law have been under course for a longer period. Although the existing LPMC is conformed to the law of the European Union to a high degree, there are several important reasons for adoption of a new regulation governing the area of protection of market competition. We shall state only few of them.

The provisions of *the Stabilization and Association Agreement with the European Union* signed in October 2001 (hereinafter referred to as SAA) foresee that the Croatian legal system shall be brought in line with the legal system of the European Union gradually and completely.

The process has begun with signing of SAA and the final term for completion of bringing in line is within 6 years from its entering into force (therefore, upon its ratification in parliaments of all state members of EU). However, certain areas stated in SAA should be brought in line earlier. Market competition is explicitly mentioned as a priority area in the process of approximation. It concerns bringing in line of the Croatian legislature with the relevant provisions of *the Treaty on European Union* (hereinafter referred to as *the Treaty*).³⁵ These provisions are Articles 81 and 82.

³⁵ Title VI - "Common Rules on Competition, Taxation and Approximation of Laws", Chapter 1 - "Rules on Competition", Article 81 and Article 82 of the so-called *Treaty of Amsterdam*, OJ No.C340 p. 173, 1997/11/10.

Article 81 of the Treaty regulates that all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion upon competition within the common market, shall be prohibited as incompatible with a common market.³⁶ All agreements or decision prohibited on the basis of this article are null and void. The Article also regulates certain exceptions from the prohibition.³⁷

Article 82 of the Treaty regulates that any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between member states.³⁸

In Articles 69 to 74, the SAA regulates the obligation of the Republic of Croatia to make the Croatian legislation compatible to the laws of the European Union within stipulated terms. Considering the vast volume of the project, priority areas were determined which have a direct connection with exercise of four freedoms and establishment of internal market. Therefore, the approximation shall start in the following areas: competition and government supports; intellectual, industrial and commercial property; public contracts; standardization, metrology, accreditation and conformity assessment; consumer protection; company law; accounting law; financial services; inland transport; health and safety of workers; data protection; equal opportunities for women and men.

³⁶ Explicitly enumerated as *prohibited* are the agreements which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

³⁷ Article 81. paragraph 3 of the Treaty regulates the exceptions in the case of :

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

³⁸ Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) 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.

With that respect, SAA foresees strengthening and formation of institutions or specialized agencies in the Republic of Croatia which shall guarantee opening of other sectors of state monopolies to competition and undisturbed process of competition in these sectors. Considering the benefits brought by market economy, the legal framework in the Republic of Croatia should be conformed to the law of the European Union. The Agency for Protection of Market Competition represents the best guarantee to prevent possible distortion upon market competition and to secure consumers' interests in the wider sense.³⁹

Provisions on protection of competition contained in Article 70 SAA in essence repeat the provisions of Articles 81 and 82 of the Treaty on European Union, at the same time referring to their corresponding application.

The existing Law on Protection of Market Competition (LPMC) already contains all solutions incorporated in the cited regulations of the law of European Communities. It is based on Articles 81 and 82 of the Treaty establishing European Community. However, LPMC is in a way insufficient in its contents. There are several reasons thereto.

The most important reason is that the regulation of the competition law in the European Union has significantly progressed since entering into force of the Croatian LPMC (1995). In the past seven years a large number of regulations have been rendered which regulate certain aspects of competition law which represent a major change in the competition system. Therefore, these innovations should be incorporated in the Croatian law and appropriate bylaws should be rendered as well.⁴⁰

Furthermore, the five-year period of application of LPMC in practice has shown that regulations of certain issues from the area of competition were unclear or insufficient which might have resulted in doubts and legal insecurities for addressees (undertakings).

A very important reason for adoption of a new competition act is the need to include additional procedural provisions which shall regulate the proceedings conducted before the Agency. Namely, the existing Law contains only one procedural provision in Article 34 LPMC. In other issues the provisions of *the General Administrative Procedure Act* (hereinafter *GAPA*) applied. Since the provisions of *GAPA* are difficult to apply to sophisticated, modern proceedings of determination of distortions upon free market competitions, the proposed introduction of special procedural provisions shall speed-up, simplify and economize the proceedings before the Agency and thus a more efficient and swifter protection of rights and interests of undertakings and public interests shall be guaranteed. This solution is in accordance with the practice of numerous European countries (Germany, Italy, Czech Republic, Hungary, Slovenia, etc.).

The draft law on competition uses terms: "Competition Act" instead of the old term "Law on Protection of Market Competition", "Competition Agency" instead of "Agency for Protection of Market Competition" and "Competition Council" instead of the "Council for Protection of

³⁹ The Agency is not competent for consumer protection but indirectly protects their interest. It does so by securing an efficient market competition and thus providing for the consumers a choice of innovative, cheaper and better quality products/services.

⁴⁰ For example, new regulations in the area of control of concentrations, regulations of vertical and horizontal agreements and prevention of abuses of dominant position of undertaking in the market.

Market Competition". In other words, the change in title of the law and the title of the authorities for its implementation is proposed. This is made so to achieve better acceptance and understanding by addressees of the Law. Namely, the Croatian word for competition ('konkurencija') is rooted and commonly used in the Croatian language as it is in the laws regulating competition law in the European states.

In conclusion, it is necessary to point out that the draft Law has been made with support of the experts of the German Ministry of Justice and is financed by the funds of the Foundation of the Government of the FR Germany for International Legal Aid (Deutsche IRZ Stiftung). Therefore, its drafting of the new law is connected to the cooperation with the Ministry for European Integrations (hereinafter referred to as MEI) and projects for approximation of the Croatian legal system to the laws of European Union which is carried out at MEI within the project OBNOVA 2000 (Reconstruction 2000).

By adoption of the new Competition Law and appropriate bylaws the Croatian competition law shall be completely conformed to the regulations of the European Union. The Law should be adopted by end of the year 2002 and the accompanying bylaws by end of the second trimester of the year 2003.

3. WORK OF THE COUNCIL FOR PROTECTION OF MARKET COMPETITION

The work of the Council for Protection of Market Competition in the year 2001 was highly intensive and comprehensive. Since foundation of the Agency and appointment of the members of the first Council in 1997 until 28 February 2002, the Council has held 56 meetings. In the reporting period it held 14 meetings. At the meetings, altogether 183 items of the agenda were thoroughly debated. Decisions and recommendations were rendered for each item on the agenda. This is a significant progress in relation to the previous year 2000. In that year, the Council held 10 meetings (28.6 percent less) and debated altogether 117 items of the agenda (36 percent less).

Apart from regular, plenary meetings of the Council, during the year 2001 a large number of meetings of its *specialized committees* were held (*Agreements Committee, Abuses Committee, Concentrations Committee*).

3. 1. Decision of the Council and interpretation of the provisions of LPMC

In five-year application of LPMC in the practice certain insufficiencies and vagueness of individual provisions of the law were noted. Without a commentary to the Law, these insufficiencies created a legal insecurity of the addressees of the Law. Therefore, during the year 2001, the Council as a professional advisory body of the Agency, upon proposal and in cooperation with its professional department rendered a series of decisions to interpret vague or deficient provisions of LPMC. We shall state the most important decisions:

- Decision on interpretation of the terms "majority shareholding" and "majority of voting rights" (Article 21, paragraph 1 LPMC), which determines when the obligation arise to notify the intention to carry out a concentration (41st meeting, 30 January 2001),
- Decision on interpretation of provisions of Article 22 LPMC – minimal threshold required for obligation to notify concentration – application of *de minimis* doctrine (41st meeting, 30 January 2001),
- Decision on interpretation of Articles 21, 22 and 30 LPMC – cumulative fulfillment of requirements of minimal threshold to notify concentration and possibility to initiate proceedings of assessment of possible prohibited concentrations *ex officio*,
- Decision on determination of annual turnover of banks against the total income from regular business operations of the bank in the year preceding the concentration in the cases of control of concentrations (continuation of 47th meeting, 17 July 2001),
- Decision on interpretation of Article 9 LPMC on obligation to submit agreements regulated in Articles 10 and 11 LPMC for assessment of the Agency considering the annual turnover of the participants of the agreement and the portion of realized turnover of participants of the agreement in the relevant market (53rd meeting, held in the Agency, 27 November 2001),
- Decision on determination of annual turnover of insurance companies according to gross calculated premium in the year preceding the concentration in the cases of control of concentrations (53rd meeting, 27 November 2001),

- Decision on issuance of preliminary legal opinions of the Agency on existence of the obligation to notify concentration (55th meeting, 22 January 2002).

3. 2. Cooperation of the Council and the professional department of the Agency in drafting of the new Law

The entire Council and some of its members particularly have been actively included in drafting of the draft Competition Act.

4. ACTIVE PROMOTION OF COMPETITION LAW AND POLICY

The basic tasks of the Agency do not include only implementation of Law and other competition regulations, but also a proactive competition policy. The Agency should also actively promote the concept of free market competition and its protection. The addressees of the promotion are undertakings, consumers and state administration authorities.

The Agency carries out this policy notwithstanding its extremely low funds, through publishing of its own official gazette, by publishing of its decisions in the "Official Gazette of the Republic of Croatia", via Internet at its own web page (<http://www.crocompet.hr>), presentations of the experts employed in the Agency at professional conferences (lectures, forums, seminars, postgraduate studies, conferences, symposiums) etc.

In principal, the Agency should organize at least twice a year specialized seminars from the area of competition law and policy for all experts whose activities are connected to that area. This primarily relates to judges of the Administrative Court of the Republic of Croatia, High Magistrate Court of the Republic of Croatia and magistrate courts as well as attorneys. However, due to complete lack of funds for this purpose, the Agency has held only two such seminars in five years of its existence (in December 1997 and March 2000).

4. 1. Publication of «Gazette of the Agency»

Article 37a of LPMC regulates the obligation of the Agency to publish its official gazette starting from the year 1998. The gazette publishes the decisions of the Agency and judgments of the Administrative Court of the Republic of Croatia rendered upon complaints against the decisions.

The purpose of publishing the "*Gazette of the Agency for Protection of Market Competition*" (hereinafter referred to as "*the Gazette*") is to inform the undertakings, as well as professional and wider public of competition law and the work of the Agency. The Gazette is not in the free sale. It is free and it can be obtained in the seat of the Agency.⁴¹ However, the Agency delivers a part of the edition of the Gazette to the National and University Library, libraries of all faculties of law and economy in the Republic of Croatia, to Croatian national Bank, to the Direction for supervision of insurance companies, to the State Agency for Deposit Insurance and Bank Rehabilitation, to Croatian Chamber of Commerce, to Central Depository Agency, to State Institute for Statistics. In the future it shall also be delivered to newly-established regulatory authorities in the sectors.

Until now, two numbers of the Gazette were published. The Gazette is published both in Croatian and in English. Apart from the contents regulated by Law, the Gazette also publishes other decisions of the Agency, important decisions of the Council for Protection of market Competition and professional papers in the area of competition law.

The dynamics of publication, the scope of the contents and the edition depends on the collected material and receipt of funds for this purpose. So in the December 2001, the

⁴¹ The seat of the Agency for Protection of Market Competition is in Zagreb, Savska cesta 41/VII (Business building «Zagrepcanka»).

Agency published the English version of Number 2 of the Gazette. It was published in 200 copies (Croatian edition is always much larger). The number is printed on 98 pages. The total price of the edition amounted to 13,000.32 Kuna (VAT included).

4. 2. Publication of decisions of the Agency in the "Official Gazette of the Republic of Croatia"

Article 37a LPMC regulates the obligation of the Agency to publish decisions and judgments of the Administrative Court of the Republic of Croatia rendered upon complaints against the Agency's decision in the "Official Gazette of the Republic of Croatia". The purpose is to inform the undertakings, as well as professional and wider public of competition law and the work of the Agency. The introduction of this legal obligation, in the opinion of the Agency, has provided very good results as part of the Agency's proactive role in spreading of knowledge and awareness on existence and implementation of competition law and policy.

In the reporting period, 19 decisions of the Agency and two judgments of the Administrative Court of the Republic of Croatia rendered upon complaints against the Agency's decision were published in the "Official Gazette of the Republic of Croatia".

4. 3. The Agency's Web Page

At the beginning of the year 2000, the Agency has made its own *we page*.⁴² In that way, the work of the Agency, its decisions and regulations on protection of market competition are made available to public.

4. 4. Lectures and professional papers of the Agency's experts

In accomplishment of the task to promote competition law and policy, the experts of the Agency have held few outstanding presentations on the subject of competition law at various forums upon the invitation of the organizers.

In that way, Mr. Mladen Cerovec, Deputy Director of the Agency held the following presentations:

- "Institutional and legal framework of competition law in the Republic of Croatia" (Professional seminar of servicing agents for firefighting equipment in organization of Pastor d.d, Varaždinske toplice, 2001),
- "Competition Law – Link between Law and Economy" (presentation as a guest speaker at the Postgraduate Studies of Commercial Law at the faculty of Law in Osijek upon invitation of Professor Jelinic, Osijek, 2001),

⁴² Address of the Agency for Protection of Market Competition is: <http://www.crocompet.hr>.

Active promotion of competition law and policy

- "Monopolies in Media" (presentation at the professional forum on draft Law on Public Communications in organization of the Ministry of Culture of the Republic of Croatia, Opatija 2002),

- "Concentrations of banks in Croatia: Elements of assessment of possible effects to market competition and consumers' interests" (Symposium on Croatian banking in organization of the Faculty of Law in Split, Split 2002),

The experts of the Agency publish regularly professional papers in the area of competition law and policy (M.Sc. Hrvoje Momcinovic, M.Sc. Mirna Pavletic Župic, M.Sc. Tatjana Ružic, Mladen Cerovac).

5. COOPERATION COMMITTEES – FOUNDATION AND ACTIVITIES

During 2001, the Agency has started the initiative for a more intensive cooperation with certain authorities and institutions the authorities whereof meet, join or are in a way complementary with the authorities of the Agency. This initiative has been referred to the Croatian National Bank, to the Direction for Supervision of Insurance Companies, to the State Agency for Deposit Insurance and Rehabilitation of Banks, to the Croatian Chamber of Commerce, to the Central Depository Agency and the State Institute for Statistics. Also, the Institute for Telecommunications has been invited to cooperate, but it has not responded to the invitation of the Agency.

The cited authorities and institutions have accepted this initiative and consequently two fundamental forms of cooperation were established:

- exchange of information between the Agency and the appropriate authority,
- foundation of a bilateral coordination authority (Cooperation Committee), composed of representatives of the Agency and other authorities (representatives of the Croatian National Bank, Croatian Chamber of Commerce...).

Namely, within the examination proceedings conducted by the Agency in assessment of concentrations, agreements and determinations of abuses, the Agency analyzes fluctuations in the relevant market, market shares of undertakings and their competitors, "ownership" structure of the participants in the concentration/agreement, as well as their financial position and market strength. With that respect, the Agency requires detailed databases available to other authorities and institutions.⁴³ The exchange of information also includes exchange of publications.

The coordination authorities (Coordination Committees) are founded for the purpose to review specific issues of mutual interest for the Agency and the other appropriate authority relating to competition law and policy in the Republic of Croatia. As required, the cooperation between the Agency and the cited authorities shall exceed the stated frameworks.

The cooperation with the cited institutions is realized in the model of the comparative practice and was very fruitful. It is realistic to expect that such forms of cooperation shall become a necessity for the purpose of efficient implementation of competition rules. With that respect, it shall become necessary to realize the cooperation between the Agency and the Council for Telecommunications, with the Council for Regulation of Energy Activities and the authority involved in the control of government supports.

⁴³ The Agency does not have the sufficient funds for acquisition of such databases.

6. PARTICIPATION OF THE AGENCY'S EXPERTS IN COORDINATION AND WORKING GROUPS

The experts of the Agency are members of a series of coordination and working groups for rendering of regulations or for cooperation in integration processes (such as the Coordination for Economy of the Government of the Republic of Croatia, Working Group for FIAS Study, Working Group for drafting of the draft Law on Government Supports, Working Group for drafting of the draft Law on Consumer Protection, Working Group for drafting of the Law on Public Information, etc.).

These activities present additional obligations for the Agency's experts, who spend much of their time to the work in the cited groups, although they are already consumed by performance of their regular activities. Namely, the work in the said groups also requires a detailed knowledge of the specific problem, comparative regulations etc.

Although the Agency participates in such projects willingly, this, apparently increasing, segment of the activities of its experts significantly occupies their time and affect the efficiency of the Agency.

7. INTERNATIONAL COOPERATION

An important part of the Agency's activities relate to international cooperation. Namely, the nature of the Agency's activities necessarily include intensive cooperation with other authorities for protection of competition abroad as well as numerous international organizations (such as UN, UNCTAD, WTO, OECD, UNECE, EBRD etc.). Cooperation with international organizations requires active participation of the Agency's representatives at conferences and seminars, but also includes drafting of numerous studies and analyses.

The review of the cases of international cooperation from the Agency's scope of activities conducted during the year 2001 is located in the Attachment IV to this Report. A special chapter has been dedicated to the description of the Agency's activities in the area of international cooperation.⁴⁴ The specifics of these cases are in the fact that the duration of the proceedings and their closure only partially depends on the Agency. Namely, it generally concerns the cases in which a cooperation is established with the authorities abroad or which include a medium-term or long-term projects (such as CARDS or TAL 2 projects). Therefore, it is a continuing and interactive cooperation. Consequently, in these cases a classic statistic approach relating to "resolved" or "closed" cases or proceedings is not possible.

Exceptionally dynamic and demanding is the cooperation of the Agency with the European Commission as the executive body of the European Union.

One of the extremely important functions of the Agency should be the initiative directed to the competent ministries and the Government of the Republic of Croatia to amend the existing laws which do not present the priority areas for the purpose of approximation of laws under the Stabilization and Association Agreement between the European Community and the Member States and the Republic of Croatia, but nevertheless contain provisions that are restricting from the aspect of competition law.

During the year 2001, the Agency for Protection of Market Competition has opened 52 cases of international cooperation.

⁴⁴ Again, we repeat that these cases due to their specifics are not included in the total number of non-administrative case, although they belong to that category. Furthermore, these cases are not included in the total number of cases opened during the reporting period.

8. FINAL CONSIDERATIONS

8.1. The 2001 Annual Report of the agency for Protection of Market Competition shows that the covered reporting period is especially characterized by the following:

- i) *Decrease of the total number of opened cases and quality change in their structure*⁴⁵

During the year 2001, the Agency has had in the absolute amount 48.16 percent less cases opened than in the year 2000. The greatest decrease is recorded for the assessments of concentrations and notifications of concentrations of undertakings. However, these cases in particular relate to the basic activity of the Agency.

Among administrative cases, the number of notified concentrations of undertakings has fallen for 32.35 percent. Although the number of 23 notified concentrations is still relatively high, considering the size of the Croatian market and the number of undertaking interesting for takeover, the decrease should not be surprising. Namely, the main "wave of concentrations" was in the period from 1997 to 2000, when the large number of 128 concentrations was carried out. This is the tendency the Agency cannot control.

The number of agreements of undertakings notified to the Agency for assessment is lower for 82.31 percent. This is due to the fact that the Agency has changed the methodology of opening administrative proceedings and the way of the assessment, so it does not render separate decisions for each undertaking being a party to the agreement, but for better economy of the proceedings, it renders only one decision.⁴⁶ Another reason for decrease of the number of notified agreements is also the fact that the undertakings do not comply with the legal obligation to submit an agreement to the Agency for assessment. On the other hand, it is rather difficult for the Agency to learn of such agreements, since the main source of its information are the media. Therefore, it would be useful if the state administrative authorities, such as for example State Inspectorate, could deliver to the Agency the information on existence of the agreements which should be submitted to the Agency for assessment (e.g., franchising agreements, exclusive and selective distribution agreements, etc.). It concerns the information such authorities have obtained in the supervisory proceedings.

The smallest decrease in the number of cases was recorded in the cases of determination of abuses of dominant position in the market (7.69 percent). This is a direct result of a better awareness of the undertakings on their obligations towards the Agency (mandatory notification of vertical agreements), as well as recognition of prohibited practices of their competitors and the possibility to exercise their rights in the Agency.

With respect to non-administrative cases, the number of requests for issuance of opinions to laws and other acts has increased significantly, for 416.6 percent. The increasing trend, probably for several thousand percentage points, may be expected also in the future. The

⁴⁵ Once again we point out that, due to the application of new methodology, the reporting period has only eleven months (period from 1 April 2001 to 28 February 2002). It is, therefore, one month shorter than the period encompassed by the 2000 Annual Report, which is 8.33 percent. Therefore, some results presented in this reporting period shall appear deficient in comparison to the results in the previous reporting period. Again we kindly ask to bear this fact in mind when reading this Report.

⁴⁶ See remark in supra note 23!

reason thereto is the rendering of the Directive of the Government of the Republic of Croatia of 19 July 2001, which determines the obligation of all ministries to obtain the assessment (opinion) of the Agency in the process of proposing laws and other regulations concerning the influence of the concrete regulation to market competition, starting from 1 July 2002.⁴⁷

Therefore, the decrease of the number of cases opened during the year 2001 does not itself imply the decrease of the Agency's activities. This decrease, however, is partially caused by the changes in methodology of work and methodology of drafting of annual reports.

Namely, this reporting period is shorter than the previous one for one month. Besides, the report is made on the basis of the total number of 169 cases, although the Agency carried out 419 cases in total. However, the Agency did not include 73 cases of international cooperation in any number of cases or any analysis.⁴⁸

However, the cases the Agency has carried out during the year 2001 are considerably more complex. The participants of the proceedings are mostly undertakings of great financial and market strength with highly valuable property. Therefore, the examination proceedings were very detailed, and researches and analyses carried out more thoroughly. This is indicated by considerably higher administrative taxes calculated by the Agency for its decisions. Namely, administrative taxes are calculated according to the share capital of the undertaking or according to the value of the agreement being subject to assessment. Furthermore, this is also indicated by the data on intensification of work of the Council for Protection of Market Competition and its specialized committees, as by the number of the meetings held, so by the number of items on the agendas.

Besides, since the beginning of the work of the Agency (1997), the undertakings have somewhat, although still not sufficiently, improved their knowledge on competition law and instruments of protection of market competition. The economic climate has essentially changed – rules and standards of market economy have been adopted. The Republic of Croatia has accessed the World Trade Organization and has signed the Stabilization and Association Agreement with the European Communities and Member States (SAA).

All this has contributed to complexity of cases carried out in the Agency. Therefore, it may be asserted that, with respect to the number of cases, the market competition in the Republic of Croatia has improved in quality, but has somewhat lost in quantity. It is indicated in the attachment II to this Report which shows in detail the course of proceedings in several leading cases from the reporting year.

Namely, it is obvious that the structure and the complexity of the cases have changed considerably during the last five years. Such changes have caused other changes, such as:

⁴⁷ For comparison, the Hungarian Office for Competition receives annually 300 to 400 requests for assessment of draft laws and other acts or assessment of conformity of such laws and acts to competition law.

⁴⁸ As already explained, these cases are so specific due to the fact that carrying out of such cases is connected to continuous several-years cooperation or permanent projects, so they may not be categorized as standard non-administrative cases.

Final considerations

- change of methodology in qualification of cases and opening of case files in connection thereto (e.g., opening of case files relating to standard contracts);

change of methodology of monitoring of duration and dynamics of proceedings based on absolute respect for all specifics of certain cases (e.g., in cases of international cooperation);
- change of case structure (e.g., decrease of number of notifications of concentrations of undertakings with simultaneous considerable increase of requests for issuance of opinions regarding conformity of draft laws and other acts to regulations on protection of market competition);
- change of methodology of work of the Agency in a stricter sense (e.g., the Agency ceased to issue preliminary legal opinions concerning the existence or non-existence of the obligation to notify concentrations of undertakings);
- change of methodology of drafting annual reports of the Agency, which is a logical result of the all above-stated changes.

All that means that in the last five years the activities of the Agency have shaped considerably. This is certainly is a positive development. Namely, the purpose of competition law and the authority for protection of market competition is not a mere punishment of prohibited market practices, but rather prevention thereof. Certainly, the best form of prevention is education of undertakings, consumers and state administrative authorities and increasing their discipline through increased awareness on prohibited and allowed market practices. This is exactly what developed during the last year.

ii) Increase of the number of proceedings initiated ex officio

The Director of the Agency has instituted *ex officio* 38 proceedings during the reporting period, which is 20.32 percent of the total number of initiated proceedings. It is a considerable increase in relation to the year 2000 when only 7.2 percent of the proceedings were initiated *ex officio*. The percentage is now around upper limit of the average percentage in the countries of developed tradition of competition law.

iii) Relatively large number of proceedings against natural and legal monopolies

Relatively large number (31.25 percent) of the requests concerning abuses of dominant position in this reporting period relates to the market of municipal services. Therefore, it concerns the proceedings connected to natural and legal monopolies or performance of municipal services based on concessions. It concerns undertakings whose objects are connected to use of certain infrastructure (telecommunications, power, gas, heating, water supply and water waste drainage, transportation services, etc.). This also includes undertakings which have been granted exclusive right to perform a certain activity (e.g., cemetery maintenance and funeral service).

Consequently, it is obvious that the undertakings acting in those markets tend to abuse their privileged position in the market. Foundation of new regulatory authorities for certain sectors, however, shall reduce the number of proceedings carried out by the Agency against such undertakings.

iv) Increase of the number of opinions to laws and other acts

This reporting period is particularly characterized by extremely high increase (for 416.6 percent) of the number of requests for issuance of opinions on conformity of draft laws and other acts to provision of LPMC, therefore, their compliance with the competition rules.

Considering the above-stated Directive of the Government of the Republic of Croatia, this segment of the Agency's activities shall multiply starting from 1 July 2002.

However, there are two problems noticed in this segment which need to be pointed out:

Primarily, the draft laws are delivered to the Agency too late. Considering that it usually concerns large legal texts and that on some of them the Council, which meets once every three weeks, needs to express its standpoint, this is unsurpassable obstacle for the Agency.

On the other hand, proposers of the laws often deliver also the regulations for which they themselves know do not contain provision which would in any way affect market competition. Delivery of such regulations to the Agency unnecessarily burdens the Agency and delays the legislative procedure.

It is, however, noticeable, that some proposers avoid delivery of draft laws and other regulations to the Agency. They even evade explicit written requests of the agency to deliver the texts of drafts of such regulations. It usually concerns regulations whose provisions could considerably distort free market competition. Moreover, it mostly concerns drafts of the laws which regulate activities in which the Agency has already expressed its negative comments to the law as in force. The draft law almost always contains the same provisions as the existing regulation, prohibited from the aspect of the competition law, which have already been criticized by the Agency. For example, we shall mention that the Ministry of Agriculture and Forestry failed to deliver to the Agency the draft Veterinary Act even upon the explicit written request to do so. In the same way, the Agency was not presented with the drafts of the new regulations on road traffic safety, nor was a representative of the Agency included in the drafting of the law. The Agency has made crucial, substantial objections to both laws (Veterinary Act and the Road Traffic Safety Act), but has no feedback as to whether they have been taken into account in the drafts of the new regulations.

v) Maintaining high efficiency

Total completion amount to 83.53 percent. Completion in cases received and resolved during the reporting period amounts to the high 81.22 percent. On 28 February 2002, there were only 57 cases in which the proceedings were still under course. From that number, 14 cases are from the previous periods. We deem that an extremely high percentage of accomplishment has been reached, particularly having in mind the complexity of the cases and the number of employees of the Agency, as well as other activities of the Agency in the period (such as work on drafting of the new Competition Act and accompanying regulations). The Agency has maintained such high percentage of the efficiency ever since it was founded in 1997.

vi) *High professionalism and legality of the Agency's work*

The courts play an important role in implementation of competition regulations and in protection of free market competition itself. These are primarily *the Administrative Court of the Republic of Croatia*, which reexamines the legality of the decisions of the Agency and regulatory authorities in certain sectors. *Magistrate courts* also play an important role, which upon proposal of the Agency pronounce penalties for violation of competition regulations. Closely connected is the role of the *High Magistrate Court of the Republic of Croatia*.

Since the beginning of the Agency's work (end of 1997) until 28 February 2002, the Agency has resolved in total 1,406 administrative cases. Against decision of the Agency rendered in those cases only 39 administrative complaints have been filed. Therefore, complaints have been filed only in 2.7 percent of the cases. The Administrative Court rendered judgments in 17 cases (43.59 percent). Of that number, the complaint has been accepted in only three cases (7.69 percent) exclusively on procedural grounds. In other cases the complaints were dismissed, denied or the plaintiff withdrew the complaint.

Such statistics shows high professionalism of the Agency's employees and strict compliance of legal requirements in carrying out proceedings for determination of distortion upon free market competition.

Since its foundation, the Agency has filed 36 requests for initiation of offense proceedings against undertakings and responsible persons in the undertakings on the grounds of determined distortion upon free market competition.

Acting upon those requests, the magistrate courts have rendered decisions in 72.22 percent of the cases. Penalty for the offense has been pronounced in only 15.38 percent of the cases. However, the statute of limitation has occurred in as many as 30.77 percent of the cases.

It is obvious that the greatest problem in high percentage of offense proceedings is the statute of limitation. Such situation may be interpreted in three ways: by inefficiency of courts and their being flooded with cases, which are the general problem of the Croatian judiciary, by insufficient education of magistrate courts in a specific and new matter of competition law, which makes difficult for them to decide a case, or by their reluctance to pronounce extremely high penalties regulated by LPMC. This seems more expressed in magistrate courts in small cities. We cannot imagine a forth reason for this problem.

vii) *Intensifying of cooperation and exchange of information with similar Croatian institutions and authorities*

In spite of all difficulties, as a result of the good will, effort and self-education of the Agency's employees, the examination proceedings carried out by the Agency and analyses made in such proceedings correspond to those procedures carried out by the authorities for protection of competition in state members. Examination proceedings of the Agency require detail and comprehensive databases, which are available to the Agency primarily owing to the enthusiasm and persistence of the employees, but also to successful cooperation with Croatian National Bank, Croatian Chamber of Commerce, State Agency for Deposit Insurance and Rehabilitation of Banks, Direction for Supervision

of Insurance Companies, Securities Commission, State Institute for Statistics and Croatian Financial Agency.

The cooperation with the cited institutions is realized in the model of the comparative practice and was very fruitful. It is realistic to expect that such forms of cooperation shall become a necessity for the purpose of efficient implementation of competition rules. With that respect, it shall become necessary to realize the cooperation between the Agency and the Council for Telecommunications, with the Council for Regulation of Energy Activities and the authority involved in the control of government supports.

viii) Intensive international cooperation of the Agency

A considerable part of the Agency's activities in the period related to international cooperation⁴⁹. It concerns an intensive cooperation with other authorities for protection of competition abroad, as well as numerous international organizations (such as UN, UNCTAD, WTO, OECD, UNECE, EBRD etc.). Cooperation with international organizations requires active participation of the Agency's representatives at conferences and seminars, but also includes drafting of numerous studies and analyses. Exceptionally dynamic and demanding is the cooperation of the Agency with the European Commission.

These activities increasingly consume the time of the Agency's employees. Namely, it generally concerns the cases in which a cooperation is established with the authorities abroad or which include a medium-term or long-term projects. These are, almost without any exception, projects based on obligations assumed by the Government of the Republic of Croatia towards the foreign authorities and organizations (such as Structural Adjustment Loan program – SAL or CARDS program).

Such development, certainly, can be expected in the future. The work on the said projects requires absolute engagement of the Agency's experts exclusively in implementation of such programs. Namely, the fact is that implementation of such projects understands a continuous, intensive, several-month training of the Agency's experts. This training is carried out separately and exclusively for each single project. On the other hand, the employees of the Agency trained in such a way must work continuously in implementation of each of such projects. It includes frequent reports to the holder of the project, preparation of tender documentation and conditions of tender (e.g., for appointment of foreign consultants; goes without saying that it should be done in English), permanent, often weekly and often utterly unexplainable changes in the project made upon request of the foreign holder of the project, participation in coordination meetings and direct meetings with the mission of foreign holders of project held on three-months basis.

All of the above stated shows that the employees working on the activities of international cooperation may not simultaneously work on the cases relating to the basic activity of the Agency. Thus, this is also one of the crucial reasons to encourage employment of new experts in the Agency.

⁴⁹ It concerns in total as many as 73 non-administrative cases. These cases are separated from the number of other non-administrative cases due to their specifics and have not been included in their total number of in the total number of cases opened or under course in the reporting periods (see remark in supra note 21!).

ix) Drafting of the new Competition Act

In this reporting period, the Agency made an extreme effort and has produced a draft Competition Act with the package of accompanying regulations. The law is entirely approximated to the regulations of EU. This is in accordance with the obligation of the Republic of Croatia assumed by signing of the Stabilization and Association Agreement on further approximation of the legislature with the Community *acquis* in the area of competition. The draft law has been made with the support of the experts from the German Ministry of Justice, financed by the funds of the Foundation of the German Government for international legal aid (IRZ Stiftung). The Agency has delivered the draft law to competent authorities for their opinion. Currently, the majority of the Agency's employees are engaged in drafting of bylaws.

The new law should enter into force by end of 2002. Bylaws (such as Regulation on Concentrations and Regulation on Vertical Agreements) should enter into force by end of June 2003.

x) Budget of the Agency for 2001 and administrative taxes

In accordance with its purpose and task, the Agency is financed from the State Budget. The budget of the Agency for the year 2001 amounted to 4,760,692.00 Kuna, which is for 8.04 percent more than the budget for the preceding year.

The Agency is completely financed from the State Budget and is one among the smallest budgetary users. Considering the role and the task the Agency has as the authority for protection of public interest, financing from the State Budget is the only possible and proper way to finance its activities.

However, the Agency considerably contributes to the State Budget funds. Namely, for decisions and opinions issued upon request of the parties, the Agency calculates administrative taxes. Thus, the amount of the administrative taxes ordered by the Agency to the undertakings during 2001 amounted to 4,944,081.00 Kuna, which is for 183,389.00 Kuna (3.85%) more than the amount allocated in the State Budget for financing of the Agency. Nevertheless, no self-financing model, either completely or partially, is possible for the Agency. The role of the Agency is similar to the role of a court. However, in the process of adoption of the State Budget in the part which relates to the budget of the Agency, it should bear in mind that the Agency indirectly realizes an income which is in certain periods higher than its budget. Therefore, the Agency should be provided with more funds for performance of its fundamental activities.

Consequently, the position of the Agency in relation to the state Budget is dual. The Agency appears both at the debit and the credit side, provided however, that the collected administrative taxes in fact cover the funds required for the financing of the Agency. Considering that the strengthening of the Agency would result in increased number of examination proceedings, the amount of collected administrative taxes from the area of protection of competition would also increase in favor of the State Budget.

By entering into force of the new Act with the accompanying package of regulations, it is reasonable to expect a certain increase of the number of cases, because the new Act

reduces the criteria governing concentrations in the area of control of concentrations carrying out of which the undertakings are obliged to notify by themselves.

xi) Fluctuation of Agency's experts and need to reinforce its human and personnel resources

The number of 18 employees of the Agency, 15 of which have a university education, has reduced to 17 at the beginning of 2002. At the same time, the period of notice is in course for yet five experts who announced termination of the employment contract.

During the years 2000 and 2001, the Agency submitted to the Ministry of Finance and the Government of the Republic of Croatia several well-explained requests for increase of the budget of the Agency or for granting of additional funds for employment of a minimal number of new employees. The Agency has also made out a projection of the development of the Agency and the funds necessary for the appropriate increase of employees in the next three years. These projections are based on the analysis of the current situation, difficulties noticed in implementation of competition law and policy, foreseeable changes in the structure of cases and proceedings, requests for harmonization with the law of EU and a comparative analysis of tasks, number of cases and number of employees in the same competition authorities in other states (members and candidates for admission to EU).

We deem that requests of the Agency were highly modest and reasonable. It should point out once again that it is a small budgetary user which significantly contributes to the State Budget by collecting administrative taxes.

The demands of the agency, however, were not accepted. Moreover, the same situation has repeated in the Agency budget for the year 2002.

With all due respect to the fact that entire Croatian economy is facing severe problems, it should nevertheless bear in mind that market competition is an area of great concern for the European Community. Furthermore, protection of free market competition is explicitly stressed as *conditio sine qua non* for admission to this integration in all relevant documents. It requires efficient and swift protection, which already at present moment needs to be effective. The existence of the legal and institutional framework or existence of the Law on Protection of Market Competition and the Agency shall not by itself be sufficient.

Throughout the world, there are more than ninety, so-called "antimonopoly" organizations. Some of them operate for more than eighty years. Therefore, gradually objectified criteria concerning funds, their purpose, number and qualifications of experts required for regular performance of sophisticated tasks of such organizations and their being able to deal with a number of undertakings in a market, are all well-known.⁵⁰ This market, considering the

⁵⁰ The fact that the number of employees in the "antimonopoly" organizations should comply not only to the number of the undertakings acting in an internal, national market, but also to the size and financial strength of the undertakings shall be illustrated using Croatia for example. Namely, while the Agency had 18 employees in total (of which 14 experts), at the same time an undertaking registered in Croatia, which was a party to a proceedings in the agency had almost 40 lawyers employed only in the legal department. Besides, for the purposes of the proceedings it additionally engaged the services of one of the greatest and most prominent law firms with fifteen partners and at least as many experts and other personnel without a partner status. Moreover, that undertaking was at the time only one of over two hundred parties in the proceedings

globalization processes, becomes wider than the national. At the same time, the undertakings operating in a national, internal market, Croatian included, are not longer exclusively undertakings with the seat registered at that market. The Agency elaborated all those facts in detail when drafting its recent proposals for its development and strengthening. Therefore, we deem that all of the above stated should be kept in mind by the Ministry of Finance and the Government of the Republic of Croatia, but also by the Croatian Parliament on occasion of adoption of the new State Budget.

xii) Insufficient promotion of competition law and policy

Due to the lack, or better say complete non-existence, of funds for promotion of competition law and policy, the Agency has reduced its activities in that area in this period to its legal obligations to publish the Gazette of the Agency and to publish its decision in the "Official Gazette of the Republic of Croatia", as well as to creation of its own web page.

Sporadic presentations of experts employed in the Agency in professional meetings (lectures, forums, seminars, post-graduate studies, conferences, symposiums) and publishing of professional papers in this area are not sufficient to conduct a proactive competition policy, the addressees whereof would be undertakings, consumers and state administrative authorities. Namely, the Agency should organize at least twice a year specialized seminars in the area of competition law and policy, primarily for the experts whose activities is connected to this legal area (such as judges of the Administrative Court of the Republic of Croatia, judges of the High Magistrate Court of the Republic of Croatia, magistrate courts and lawyers).

8.2. Rules of market competition aim to secure equal market conditions for all undertakings in the market so that their business success (and consequently even their existence in the market) results from the quality of their products and/or services. The objective of business operations of each undertaking is maximization of the profits, and competition rules prevent realization of that objective by means which do not reflect successful business operations, but result from prohibited agreements, abuses of market strength of undertakings or prohibited concentrations for the purpose of elimination of competition or restriction of free competition.

The situation in the area of implementation of competition regulations and policy in the Republic of Croatia is not satisfactory.

The fact is that undertakings, but unfortunately also some state administration authorities, have not even basic knowledge or culture in behaving in accordance with the competition rules or simply ignore them. Namely, they often deliberately decide to engage in prohibited practices. This is primarily due to insufficient effectiveness in punishment of the offenders. Undertakings count on statute of limitation or alleviated punishment, which will enable them to realize profits many times greater than the pronounced punishment. Although punishment of offenders is not by itself the purpose of competition law, without firm pronouncement of penalties for determinations of distortions upon free market competition determined by the Agency beyond doubt, nor shall the undertakings cease to engage in

carried out by the Agency. Besides, this is not the greatest undertaking that appeared in proceedings before the Agency, nor was it the undertaking with the greatest professional service.

prohibited practices directed to elimination of competitors. On the other hand, due to insufficient education of consumers and other undertaking and considering the size of the Croatian market and a relatively small number of competitors, the offender do not care too much if their reputation would possibly be damaged by their practices.

The Agency for Protection of Market Competition, as the authority founded for implementation of regulations on protection of market competition and competition policy, shall soon lose its recent intensity, quality, efficiency and high professionalism and enthusiasm in work. Without understanding for its needs and widest political support of its work, as by executive power, so by the Croatian Parliament, or without immediate and serious reinforcement of its professional and financial resources and political status, the agency shall soon become only a "paper tiger".

Further successful operations of the Agency may not be performed without sufficient funds for employment of new experts and their education, as well as for further education of the currently employed experts. This certainly understands providing financial compensation for the members of the Council for Protection of Market Competition, which shall be consistent to their professional expertise and engagement.

Considering the increasingly complex proceedings conducted by the Agency, even maintenance of the current state, much less progress in the work of the Agency, would not be possible without additional funds for expert witnesses and ordered analyses of markets and activities for which the Agency does not have data or experts.

Development of free market competition in the Republic of Croatia and approach to the European integrations shall not be possible without providing funds for education of Croatian undertakings, consumers and employees in the state administration authorities. Namely, SAA determines competition policy as one of the basic elements representing the basis for creation of internal market. Approximation of the Croatian legislature with the *acquis* and appropriate application of competition rules should prepare the Croatian undertakings, their business operations, and entrepreneurial culture as a whole, for increase competitiveness of the internal market. Specifically, it should contribute to development of completely functioning and socially acceptable market economy of the Republic of Croatia, which shall endure the pressure of the competition as the result of integration of Croatian economy into the European market.

It is expected that during the next years, but especially 2004, pursuant to the provisions of SAA, the activities of the Agency towards the European Commission shall intensify. The implementation of SAA shall demand strengthening of the Agency, primarily in the sense of increase of the number of employees, specialists for competition law. The Agency estimates that the optimal increase of the number of employees, performed in stages until and including the year 2004, would be 46 employees. In making of such estimate the Agency considered not only long experiences of other countries⁵¹, but also the fact that this is the only way in which it could deal with all its tasks which have formed during the last five years of its activities. In that way, the Agency would always have a certain

⁵¹ For comparison, *the Estonian Competition Board*, the authority for protection of competition in Estonia, being a candidate state that has concluded negotiations with the European Commission in the area of competition, has been established in 1983 and has 47 employees. It performs the very same functions as the Agency. However, Estonia has only population of 1,370,000 and the area of 45,227 km².

Final considerations

"reserve" of experts in competition law, so that any possible departure of an expert would not disturb its work.

Let us say in the end that everyone benefits from the implementation of the competition rules: the Government, the consumers and the undertakings.

The objective of the Government is implementation of political and economic reforms in the sense of development of a completely functioning and socially acceptable market economy with the purpose of successful integration of the Republic of Croatia into the European structures. The prerequisite for that is existence of an efficient and effective Agency, as the authority for protection of competition. Namely, a reasonable undertaking, either domestic or foreign, shall not invest in the market without effective protection competition and without the existence of a strong and effective, yet politically and financially absolutely independent authority implementing the protection.

Director

M.Sc.Hrvoje Momcinovic

ATTACHMENT I

STATISTICAL REVIEW OF THE ACTIVITIES OF THE AGENCY

Table 1

Total number of cases carried out in the reporting period

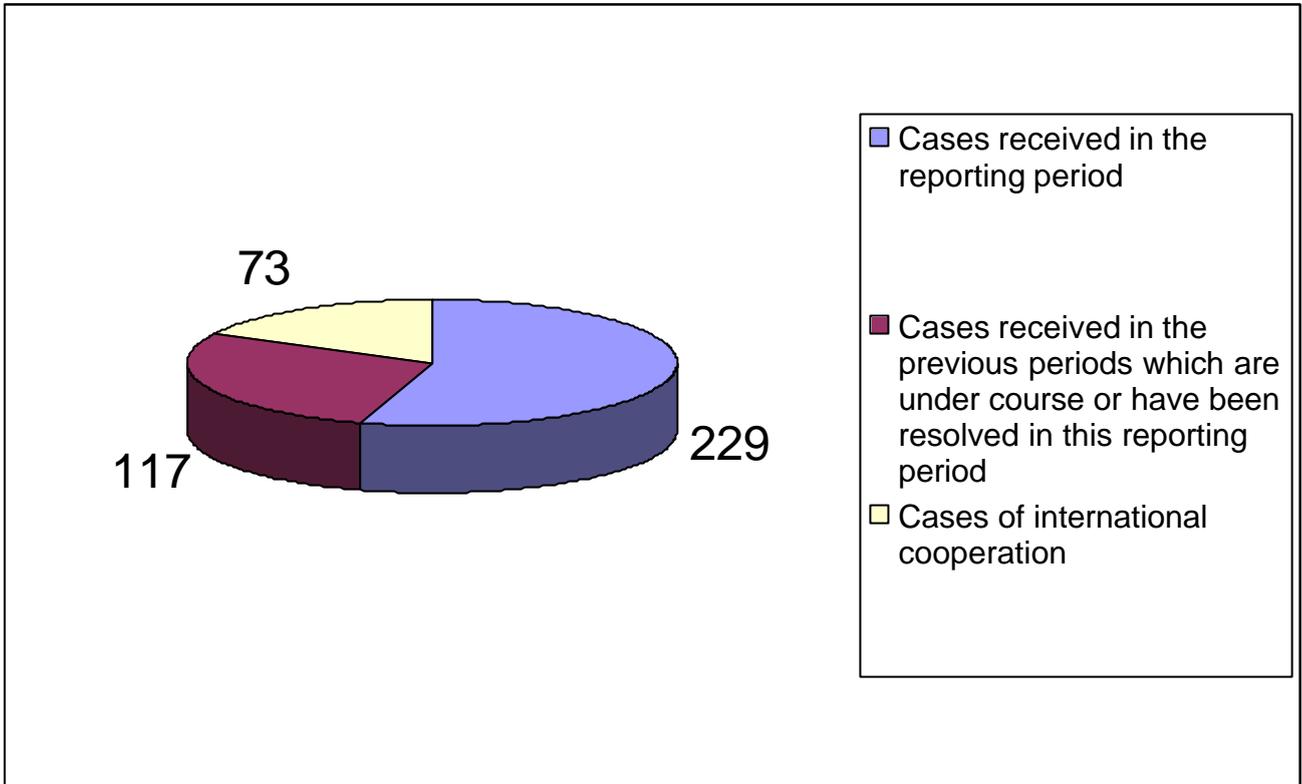
	Number of cases
Cases received in the reporting period	229
Cases received in the previous periods which are under course or have been resolved in this reporting period	117
Cases of international cooperation	73
Total	419

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Remark: For the purpose of further analysis in this Attachment and for comparison with previous periods, we shall use the number of 169 cases in this period. It is the number of cases received in this reporting period which does not include the categories "other non-administrative case" and "cases of international cooperation". Namely, for these categories of the cases the statistics has not been kept in the previous period according to the methodology used in this period, so the comparative analysis of the number of cases through years could not be possible.

Figure 1

Total number of cases carried out in the reporting period



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Table 2

Comparative review of employees in the Agency for Protection of Market Competition

	2002	2001	Ratio in % 2002/2001
Number of employees	17	18	-5,56%
University education	14	15	-6,67%
High School Education	3	3	0,00%

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Table 3

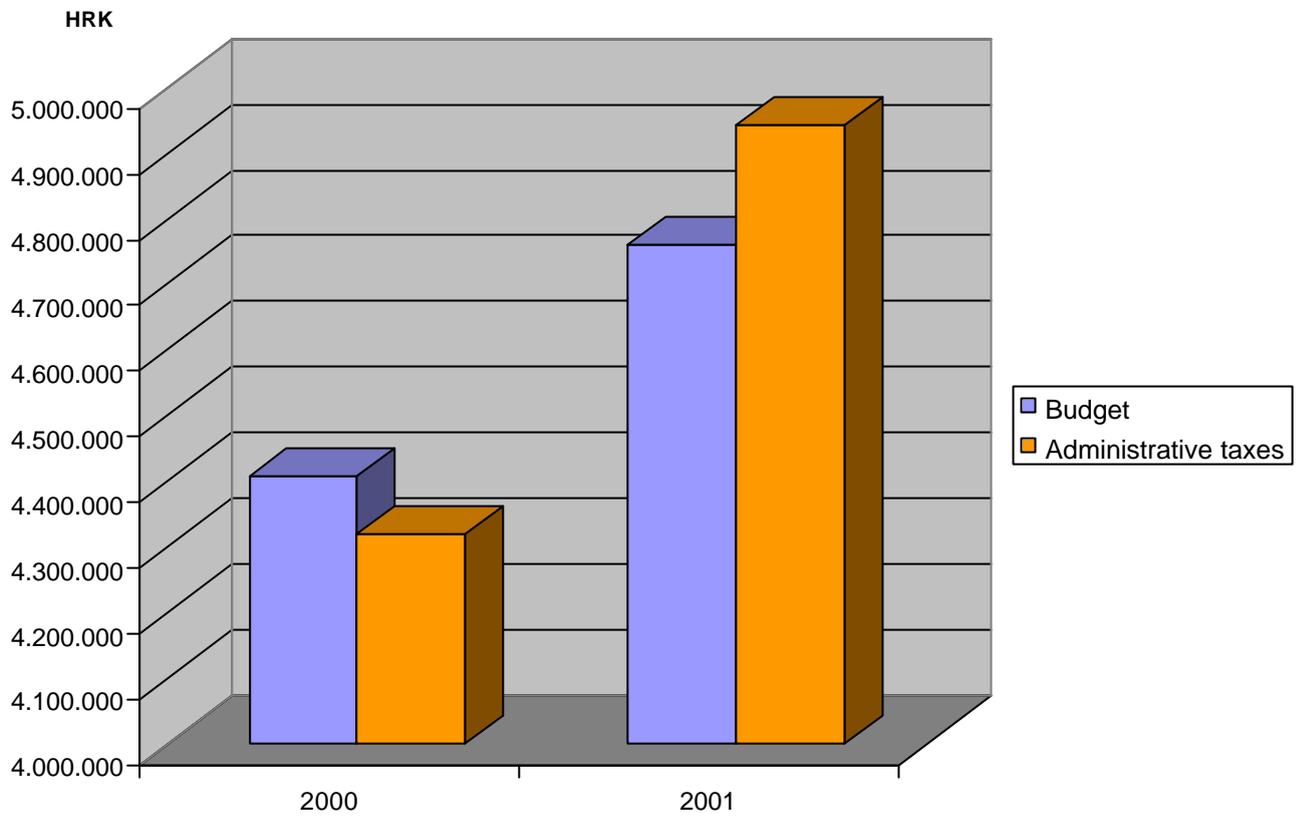
Budget of the Agency and issued orders for administrative taxes during the years 2000 and 2001

	2000	2001	Ratio in % 2001/2000
Budget	4,406,499	4,760,692	+8.04
Administrative taxes	4,320,400	4,944,081	+14.44%

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Figure 2

Budget of the Agency and issued orders for administrative taxes during the years 2000 and 2001



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Table 4
Cases opened in the reporting period

	Resolved	Under course	Total	Share in total no. of cases (in %)
Abuses	37	11	48	20,96
Concentrations	17	9	26	11,35
Agreements	13	10	23	10,04
Administrative cases in total	67	30	97	42,36
Preliminary legal opinions	45	2	47	20,52
Other non-administrative cases	51	9	60	26,20
Opinions to laws and other acts	23	2	25	10,92
Total non-administrative cases	119	13	132	57,64
Total number of cases	186	43	229	100,00
Share in total no. of cases (in %)	81,22	18,78	100,00	

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Table 5
Cases opened in the previous periods which are under course or have been resolved in this reporting period

	Resolved	Under course	Total	Share in total no. of cases (in %)
Abuses	38	5	43	36,75
Concentrations	29	2	31	26,50
Agreements	12	4	16	13,68
Administrative cases in total	79	11	90	39,30
Preliminary legal opinions	6	1	7	5,98
Other non-administrative cases	16	2	18	15,38
Opinions to laws and other acts	2	0	2	1,71
Total non-administrative cases	24	3	27	11,79
Total number of cases	103	14	117	100,00
Share in total no. of cases (in %)	88,03	11,97	100,00	

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Table 6

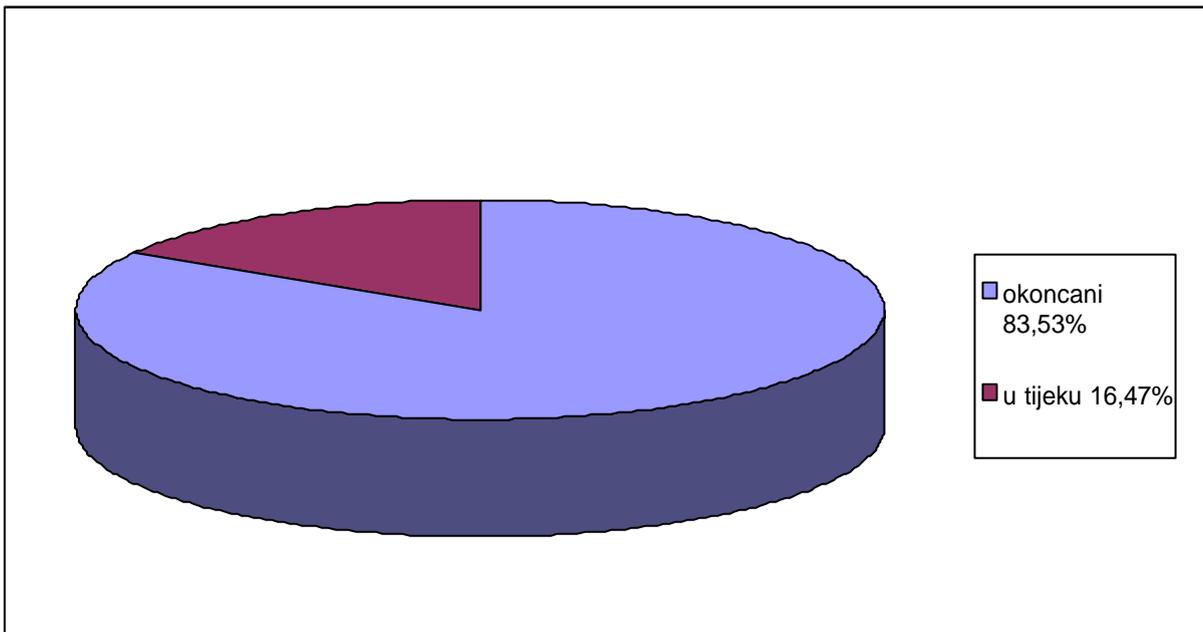
Total number of cases under course or resolved in this reporting period

	Resolved	Under course	Total	Share of resolved (in %)
Cases received in the reporting period	186	43	229	81,22
Cases received in previous periods under course or resolved in this reporting period	103	14	117	88,03
Total	289	57	346	83,53

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Figure 3

Share of resolved cases or cases under course



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Table 7

Distortion upon free market competition (abuses) in municipal or non-municipal services

Cases opened in the reporting period		
Municipal services	Non-municipal services	Total
15	33	48
31.25%	68.75%	100%
Cases opened in the previous periods which are under course or have been resolved in this reporting period		
Municipal services	Non-municipal services	Total
13	28	41
31.70%	68.29%	100%

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Table 8

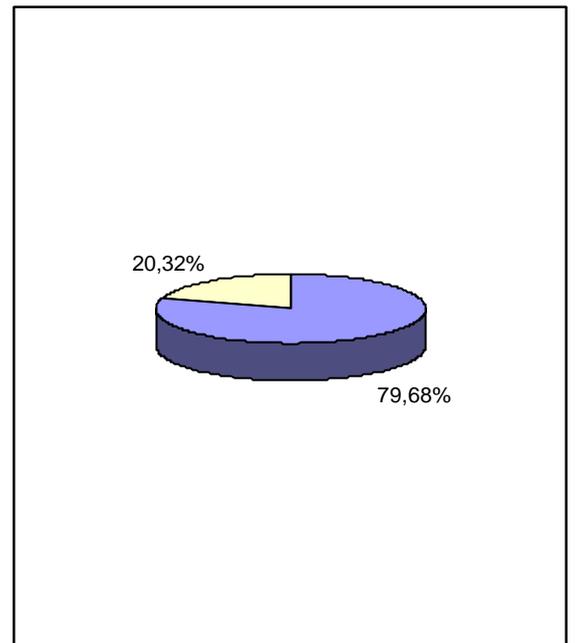
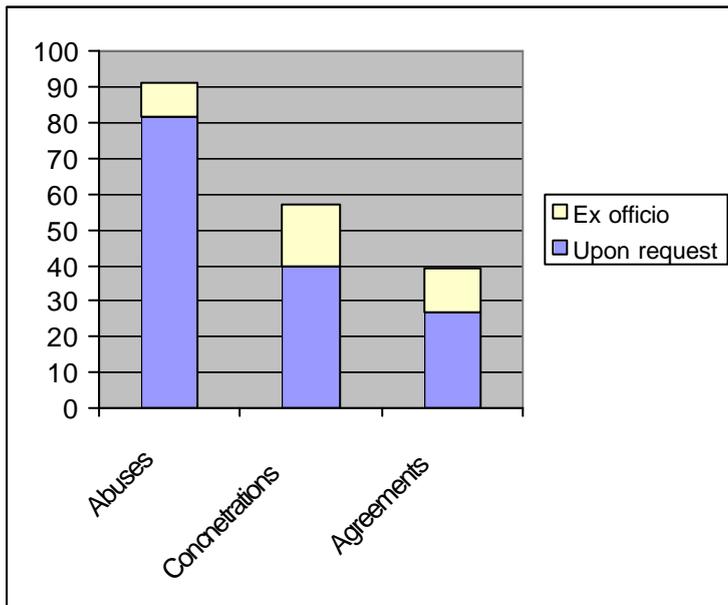
Number of cases in the reporting period instituted upon request of the party⁵² and *ex officio*

	Abuses	Concentrations	Agreements	Total	Share (in %)
Upon request	82	40	27	149	79,68
Ex officio	9	17	12	38	20,32
Total	91	57	39	187	100,00

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Figure 4

Structure of cases according to the way of initiation



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

⁵² Upon request of undertakings, associations or state administrative authorities.

Table 9

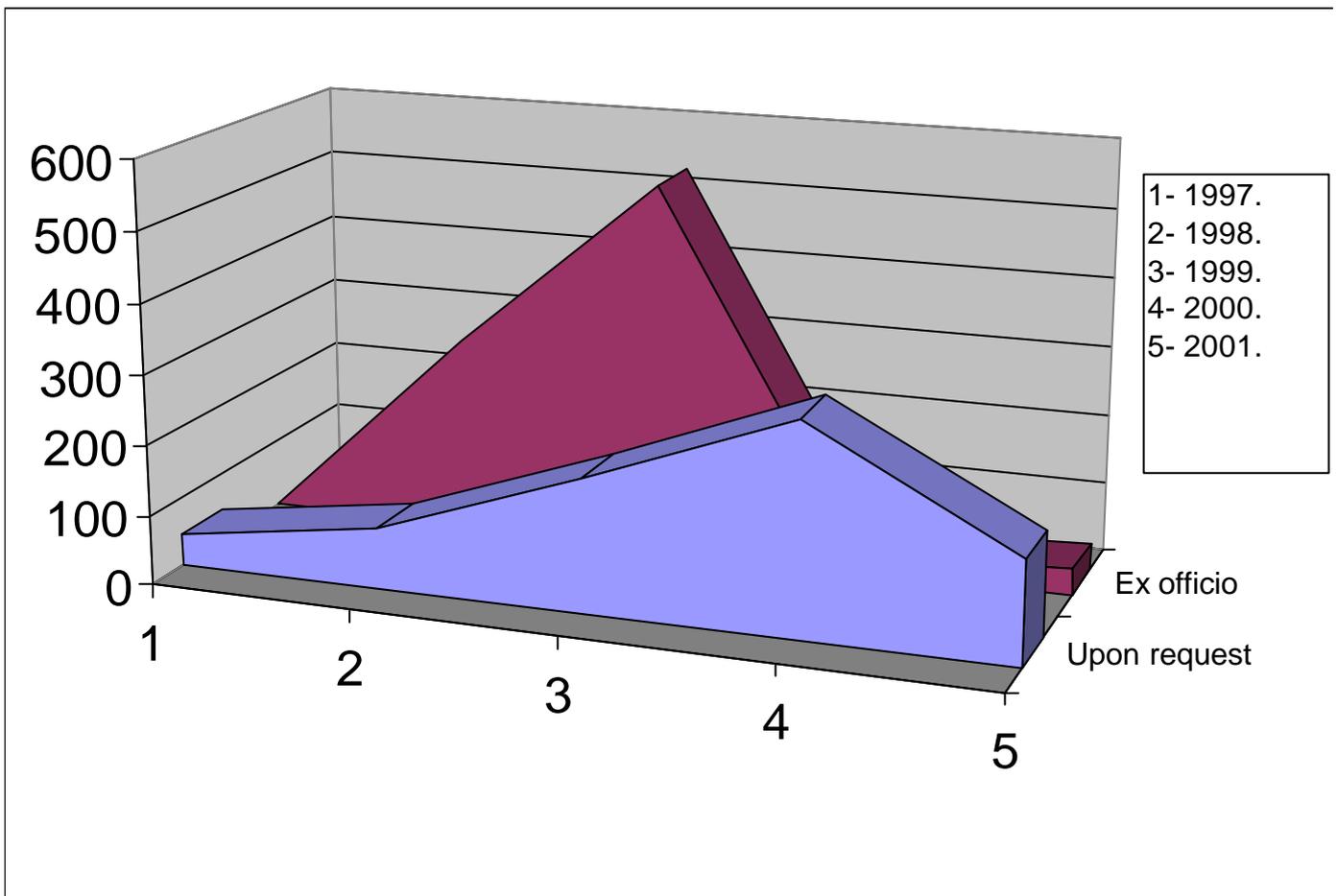
Comparative review of ways of initiation of proceedings since the foundation of the Agency

Ways of initiation	1997	1998	1999	2000	2001
Upon request	45	88	192	304	149
Ex officio	1	281	532	22	38

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Figure 5

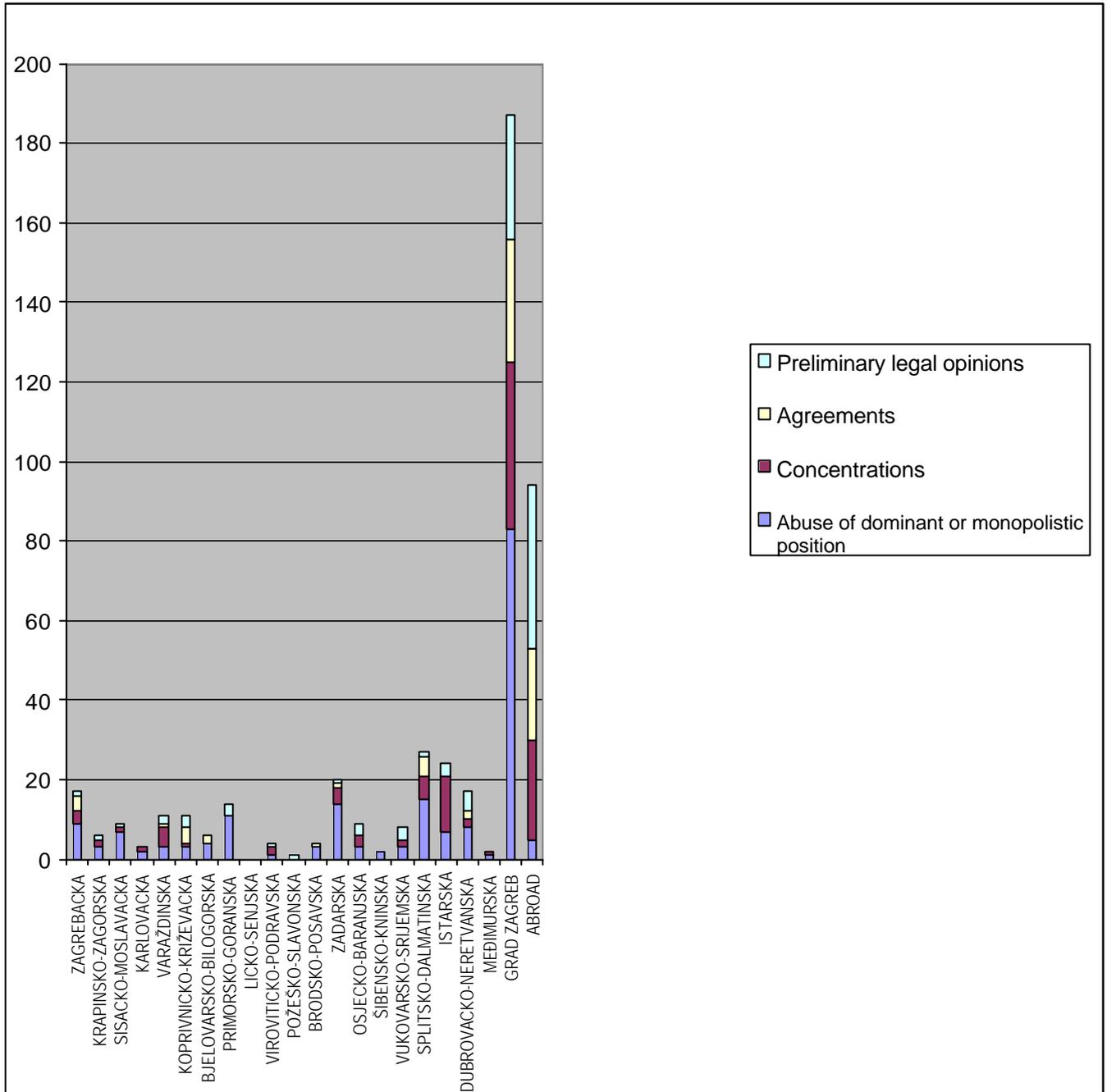
Comparative review of ways of initiation of proceedings since the foundation of the Agency



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Figure 6

Geographical structure of cases according to the seat of the parties in the counties of the Republic of Croatia and abroad



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Table 10

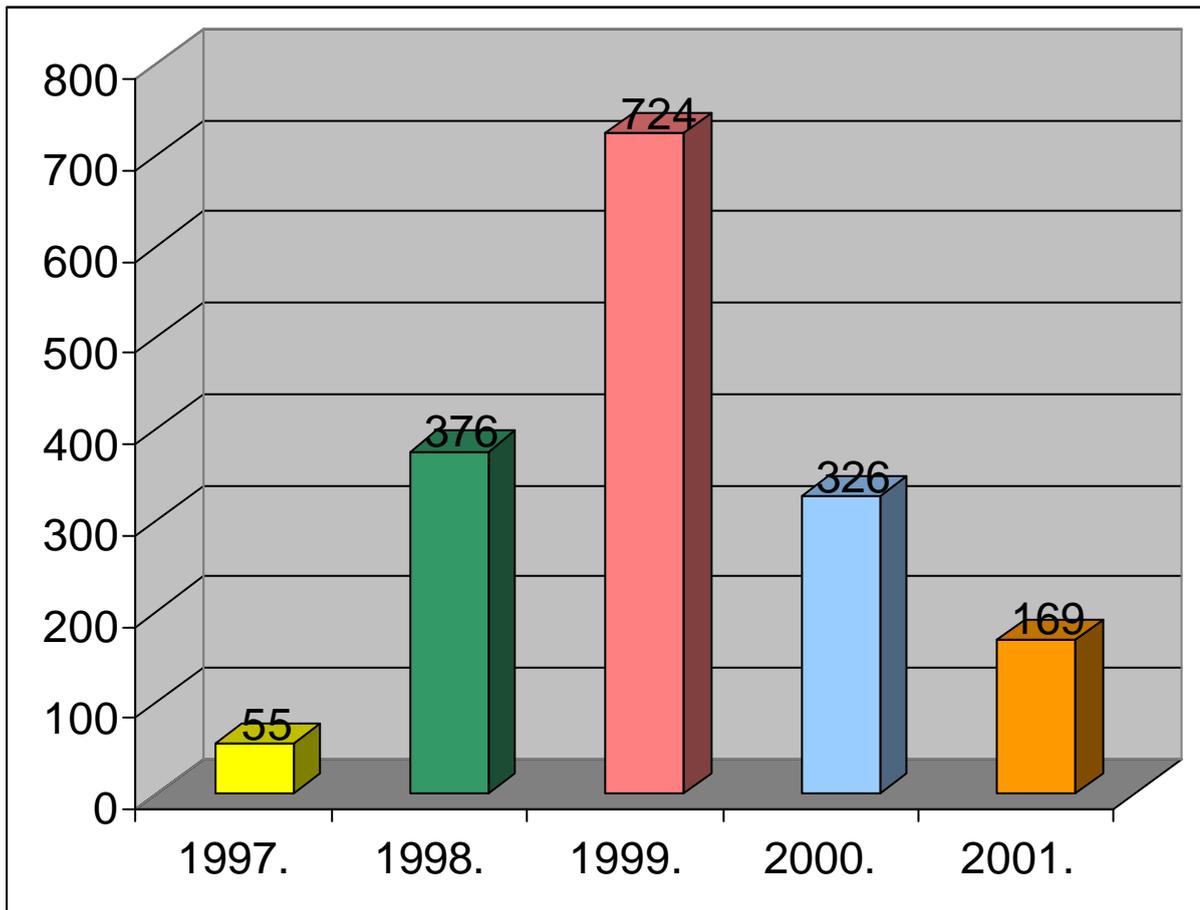
Comparative review of the total number of cases since the foundation of the Agency

	1997	1998	1999	Ratio in % 99/98	2000	Ratio in % 2000/99	2001	Ratio in % 2001/2000
Abuses	27	68	90	32,35%	52	-42,22%	48	-7,69%
Agreements	9	264	534	102,27%	147	-72,47%	23	-84,35%
Concentrations	5	25	64	156,00%	34	-46,88%	26	-23,53%
Administrative cases in total	41	357	688	92,72%	233	-66,13%	97	-58,37%
Preliminary legal opinions and opinions to laws and other acts	14	19	36	89,47%	93	158,33%	72	-22,58%
Total cases initiated	55	376	724	92,55%	326	-54,97%	169	-48,16%
Other non-administrative cases							60	
Cases of international cooperation							73	
Total initiated in the reporting period							302	

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Figure 7

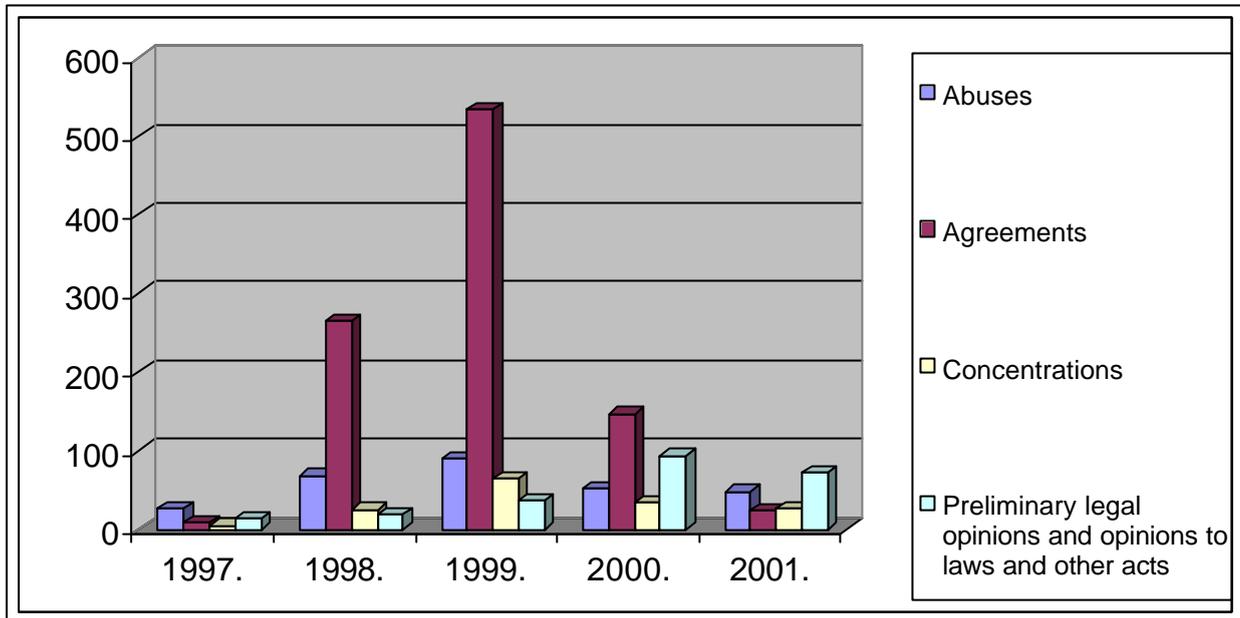
Comparative review of the total number of cases since the foundation of the Agency



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Remark: The number of 169 cases in this reporting period relates to all cases except "other non-administrative cases" and "cases of international cooperation". They are not included in this report because the statistics for these cases was not kept in previous years.

Figure 8
Structure of cases since the foundation of the Agency



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Remark: The number of 169 cases in this reporting period relates to all cases except "other non-administrative cases" and "cases of international cooperation". They are not included in this report because the statistics for these cases was not kept in previous years.

Table 11

Comparative review of resolved cases according to types and years

	1997	1998	1999	Odnos u % 99/98	2000	Odnos u % 2000/99	2001	Odnos u % 2001/2000
Total number of received cases	55	376	724	92,55%	326	-54,97%	169	-48,16%
Under course	24	35	128	265,71%	60	-53,13%	34	-43,33%
Resolved	31	341	596	74,78%	266	-55,37%	135	-49,25%
Abuses	27	68	90	32,35%	52	-42,22%	48	-7,69%
Under course	11	12	41	241,67%	23	-43,90%	11	-52,17%
Resolved	16	56	49	-12,50%	29	-40,82%	37	27,59%
Agreements	9	264	534	102,27%	147	-72,47%	23	-84,35%
Under course	7	12	44	266,67%	7	-84,09%	10	42,86%
Resolved	2	252	490	94,44%	140	-71,43%	13	-90,71%
Concentrations	5	25	64	156,00%	34	-46,88%	26	-23,53%
Under course	5	8	38	375,00%	20	-43,37%	9	-55,00%
Resolved	0	17	26	52,94%	14	-46,15%	17	21,43%
Preliminary legal opinions and opinions to laws and other acts	14	19	36	89,47%	93	158,33%	72	-22,58%
Under course	1	3	5	66,67%	10	100,00%	4	-60,00%
Resolved	13	16	31	93,75%	83	167,74%	68	-18,07%

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Remark: The number of 169 cases in this reporting period relates to all cases except "other non-administrative cases" and "cases of international cooperation". They are not included in this report because the statistics for these cases was not kept in previous years.

Table 12

Complaints filed to the Administrative Court of the Republic of Croatia

	1997	1998	1999	2000	2001	Total	Share in %
Under course	0	5	4	7	6	22	56,41%
Resolved	1	13	2	1	0	17	43,59%
Complaint accepted	0	2	0	1	0	3	17,65%
Complaint denied	1	9	1	0	0	11	64,71%
Complaint dismissed	0	2	0	0	0	2	11,76%
Complaint withdrawn	0	0	1	0	0	1	5,88%

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

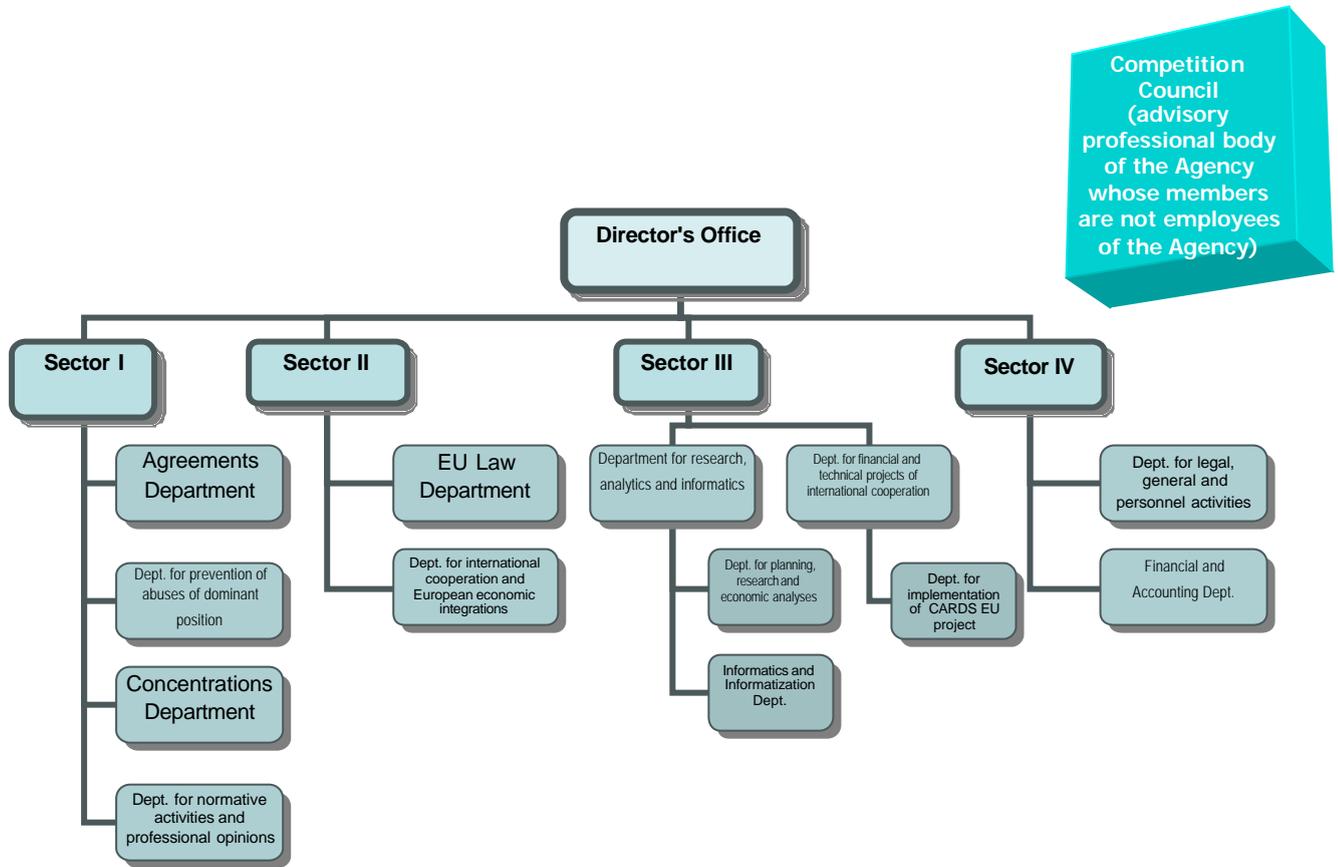
Table 13

Requests to magistrate courts

	1997	1998	1999	2000	2001	Total	Share in %
Under course	0	6	0	1	3	10	27,78%
Resolved	2	10	9	5	0	26	72,22%
Penalty	0	2	1	1	0	4	15,38%
Request denied	0	0	2	0	0	2	3,85%
Request dismissed	0	2	2	2	0	6	23,08%
Statute of limitation	0	5	2	1	0	8	30,77%
Withdrawal	2	1	0	0	0	3	11,54%
Termination of proceedings / suspension of rendering of decision	0	0	2	1	0	3	11,54%

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Figure 9
Planned structure of the Agency in 2004



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Table 14

Division of the total number of the employees of the Agency according to sectors based on degree of education

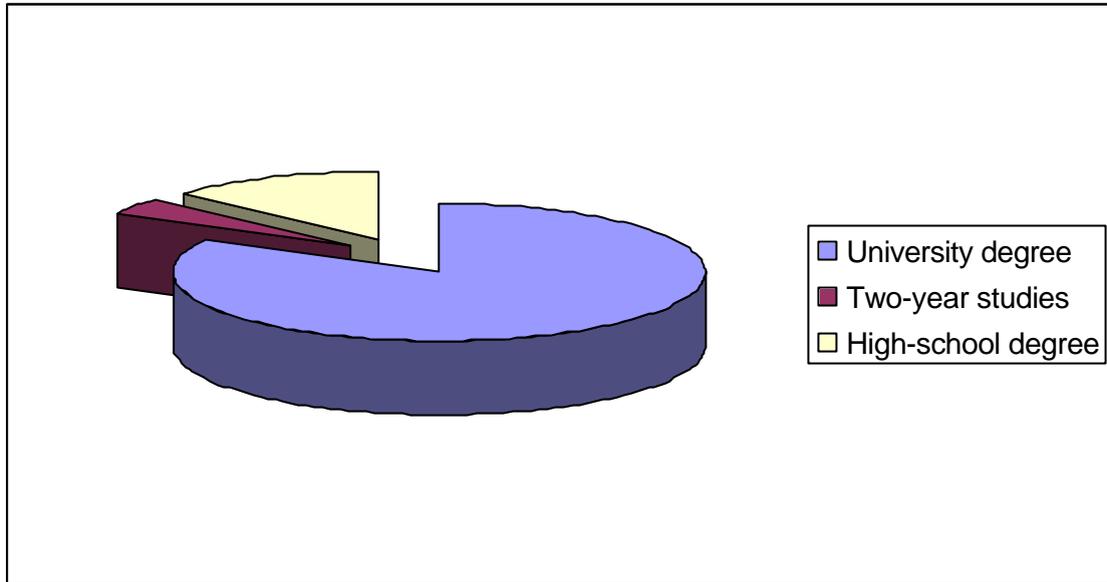
Internal organizational unit	Number of employees		
	University education	Two-year studies	High-school education
Director's Office	4	0	0
Sector I	13	0	0
Sector II	7	0	0
Sector III	11	0	0
Sector IV	3	2	6
TOTAL	38	2	6

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics

Figure 10

Planned structure of the employees of the Agency according to degree of education in 2004

Planned number of employees according to degree of education (planned organizational structure of the Agency until 2004)



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics