

# THE CROATIAN PARLIAMENT

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

## DECISION

### PROMULGATING THE COMPETITION ACT

I hereby promulgate the Competition Act enacted by the Croatian Parliament at its session of 24 June 2009.

Class: 011-01/09-01/115

Reg.No: 71-05-03/1-09-2

Zagreb, 30 June 2009

President of the  
Republic of Croatia  
Stjepan Mesić

# THE COMPETITION ACT

## I GENERAL PROVISIONS

### Subject matter of the Act

#### Article 1

The Act lays down the competition rules and establishes the competition regime, regulates the powers, duties, internal organisation and proceedings carried out by the competent authority entrusted with the enforcement of this Act.

### Scope of application

#### Article 2

This Act shall apply to all forms of prevention, restriction or distortion of competition (hereinafter: distortion of competition) by undertakings within the territory of the Republic of Croatia or outside its territory, if such practices take effect in the territory of the Republic of Croatia.

## **Definition of undertaking**

### Article 3

(1) Undertakings within the meaning of this Act shall mean companies, sole traders, tradesmen and craftsmen and other legal and natural persons who are engaged in a production and/or trade in goods and/or provision of services and thereby participate in economic activity. This Act shall also apply to state authorities and local and regional self-government units where they directly or indirectly participate in the market and all other natural or legal persons, such as associations, sports associations, institutions, copyright and related rights holders and similar who are active in the market.

(2) The definition of an undertaking referred to under paragraph (1) of this Article shall apply to any persons who are engaged in a direct or indirect, permanent, temporary or single participation in the market, irrespective of their legal form or ownership structure, form of financing and intent or effect to make profit, notwithstanding their place of establishment or residence within the territory of the Republic of Croatia or outside its territory.

(3) This Act shall also apply to undertakings which are entrusted pursuant to separate laws with the operation of services of general economic interest, those having the character of a revenue-producing monopoly, or, which are by special or exclusive rights granted to them allowed to undertake certain economic activities, insofar as the application of this Act does not obstruct, in law or in fact, the performance of the particular tasks assigned to them by separate rules or measures and for the performance of which they have been established.

## **Undertaking controlled by another undertaking**

### Article 4

(1) An undertaking shall be deemed to be controlled by another undertaking if the latter undertaking, directly or indirectly:

1. holds more than half of share capital or half of shares, or
2. may exercise more than half of voting rights, or
3. has the right to appoint more than half of the members of the management board, supervisory committee or similar administrative or managing body, or
4. in any other way exercises a decisive influence on the right to manage business operations of the undertaking.

(2) The undertakings referred to in paragraph (1) of this Article, are considered to be a single economic entity.

## **Legal relations and undertakings not covered by this Act**

### Article 5

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

## **Enforcement authority**

### Article 6

The Croatian Competition Agency (hereinafter: the Agency) shall be the competent authority regarding the enforcement of competition rules under this Act.

## **Relevant market**

### Article 7

(1) In the sense of this Act the relevant market is defined as a market of certain goods and/or services, which are the subject of the activities performed by an undertaking in the specific geographic territory.

(2) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices and their intended use.

(3) A relevant geographic market comprises the area in which the undertakings concerned are involved in the demand or supply of goods and/or services.

(4) The Government of the Republic of Croatia, upon the proposal of the Agency, shall issue the criteria and methods of defining the relevant market for the purposes of application of this Act.

## **II AGREEMENTS BETWEEN UNDERTAKINGS**

### **Prohibited agreements**

#### Article 8

(1) There shall be prohibited all agreements between two or more independent undertakings, decisions by associations of undertakings and concerted practices, which have as their object or effect the distortion of competition in the relevant market, and in particular those which:

1. directly or indirectly fix purchase or selling prices or any other trading conditions;
2. limit or control production, markets, technical development or investment;
3. share markets or sources of supply;
4. apply dissimilar conditions to equivalent transactions with other undertakings, thereby

placing them at a competitive disadvantage;

5. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Within the meaning of paragraph (1) of this Article agreements particularly refer to contracts, particular provisions thereof, implicit oral or explicitly written down arrangements between undertakings, concerted practices resulting from such arrangements, decisions by undertakings or associations of undertakings, general terms of business and other acts of undertakings which are or may constitute a part of these agreements and similar, notwithstanding the fact if they are concluded between undertakings operating at the same level of the production or distribution chain (horizontal agreements) or between undertakings who do not operate at the same level of the production or distribution chain (vertical agreements).

(3) By way of derogation from paragraph (1) hereof, certain categories of agreements shall be granted exemption from general prohibition under paragraph (1) of this Article and consequently shall not be prohibited if they, throughout their duration, cumulatively comply with the following conditions:

1. they contribute to improving the production or distribution of goods and/or services, or to promoting technical or economic progress,
2. while allowing consumers a fair share of the resulting benefit,
3. they do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and
4. they do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of goods and/or services in question.

(4) Agreements that prevent, restrict or distort competition within the meaning of paragraph (1) of this Article, and which do not fulfil the conditions of paragraph (3) of this Article, and agreements to which Article 10 of this Act does not apply shall be *ex lege* void.

(5) Undertakings – parties to the agreement bear the burden of proof of demonstrating that the conditions referred to in paragraph (3) of this Article apply.

### **Decision on a prohibited agreement**

#### Article 9

(1) Pursuant to Article 8 paragraphs (1) and (4) of this Act the Agency shall by its decision:

1. specify the prohibited agreement, parties to the agreement, the category of the agreement, goods and/or services concerned, the geographic market concerned, the

- duration of the agreement, the object of the agreement and its implementation;
2. determine the terms and measures including the deadlines for the removal of adverse effects of the prohibited agreement;
  3. impose fines for the infringements of the provisions of this Act.

### **Block exemption**

#### Article 10

(1) Block exemption regulations shall specify the conditions under which certain categories of agreements may be exempted from general prohibition as referred to in Article 8 paragraph (1) of this Act.

(2) The Government of the Republic of Croatia, upon the proposal of the Agency, shall issue the criteria for block exemption, in particular for:

1. agreements between undertakings not operating on the same level of production or distribution (vertical agreements), and in particular, exclusive distribution agreements, selective distribution agreements, exclusive purchase and franchising agreements;
2. agreements between undertakings operating on the same level of the production or distribution (horizontal agreements), and in particular, research and development and specialization agreements;
3. agreements on transfer of technology;
4. agreements on distribution and servicing of motor vehicles;
5. insurance agreements, and
6. agreements between undertakings in the transport sector.

(3) The block exemption regulations referred to in paragraph (1) of this Article shall in particular stipulate:

1. the provisions that such agreements must contain, and
2. the restrictions or conditions that such agreements may not contain.

(4) The Agency may, *ex officio*, initiate the proceedings to assess the compatibility of a particular agreement which has been granted block exemption, where it finds that the particular agreement, in itself or due to the cumulative effect with other similar agreements in the relevant market, does not comply with the conditions set out in Article 8 paragraph (3) of this Act. Should the Agency in the course of the proceedings find that the agreement concerned produces certain effects which contravene the conditions set out in Article 8 paragraph (3) of this Act, it shall withdraw the application of the block exemption concerned.

### **Agreements of minor importance**

## Article 11

(1) The provisions regarding the prohibited agreements under Article 8 paragraph (1) of this Act shall not apply to agreements of minor importance.

(2) Agreements of minor importance referred to under paragraph (1) of this Article are defined as agreements in which the parties to the agreement and the controlled undertakings have an insignificant common market share, provided that such agreements do not contain hard core restrictions of competition that, in spite of the insignificant market share of the parties to the agreement, lead to distortion of competition.

(3) The Government of the Republic of Croatia shall upon the proposal of the Agency determine the conditions with which agreements of minor importance must comply, and the restrictions or provisions that such agreements may not contain.

(4) The Agency shall initiate proceedings for the assessment of compliance of individual agreements with the conditions prescribed by the regulation referred to in paragraph (3) of this Article, if it establishes that the effects of the agreement in question and other agreements in the relevant market significantly distort competition.

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

### **Dominant position**

#### Article 12

(1) An undertaking can be presumed to be in a dominant position when, due to its market power, it can act in the relevant market to a considerable extent independently of its actual or potential competitors, consumers, buyers or suppliers and this is particularly the case when an undertaking:

1. has no significant competitors in the relevant market, and/or
2. holds a significant market power in relation to its actual or potential competitors, and particularly relating to the following:
  - its market share and a period of time in which this market position has been held, and/or,
  - its financial power, and/or,
  - access to sources of supply or to the market itself, and/or,
  - connected undertakings, and/or,
  - legal or factual barriers for other undertakings to enter the market, and/or,
  - the capability to dictate market conditions considering its supply or demand, and/or,

- the capacity of foreclosure against competitors by redirecting them to other undertakings.

(2) Within the meaning of this Act an undertaking which holds more than 40% of the market share in the relevant market may hold a dominant position.

(3) Two or more legally independent economic entities may hold a joint dominant position if they act to a considerable extent independently of their competitors and/or customers and/or consumers on the relevant market.

### **Abuse of a dominant position**

#### Article 13

(1) Any abuse by one or more undertakings of a dominant position in the relevant market shall be prohibited, particularly involving the behaviour which consists of:

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

### **Decision on abuse of a dominant position**

#### Article 14

(1) Pursuant to Article 12 and Article 13 of this Act the Agency shall issue a decision establishing a dominant position whereby it shall particularly:

1. determine whether an undertaking is dominant and practices of the undertaking abusing this position and consequently distorting competition, including the duration of the abusive practices concerned;
2. immediately order a cessation of any abusive practices by the undertaking referred to in point 1 of this Article;
3. imposes the measures, conditions and deadlines for the removal of adverse effects of such practices;
4. imposes fines for the infringements of the provisions of this Act.

(2) Within the meaning of paragraph (1) point 3 of this Article the Agency may also impose structural remedies and/or behavioural remedies. Structural remedies shall only be imposed

either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy.

## **IV CONCENTRATION**

### **The concept of concentration**

#### Article 15

(1) A concentration between undertakings shall be deemed to arise where a change of control on a lasting basis results from:

1. merger of two or more independent undertakings or parts thereof;
2. acquiring control or decisive influence of one or more undertakings over one or more other undertakings, or of one or more undertakings or a part of an undertaking, or parts of other undertakings, in particular by:
  - acquisition of the majority of shares or share capital, or
  - obtaining the majority of voting rights, or
  - in any other way in compliance with the provisions of the Company Law and other rules.

(2) Acquisition of control pursuant to paragraph (1) of this Article may be effected through transfer of rights, contracts or by other means, by which one or more undertakings, either separately or jointly, taking into consideration all legal and factual circumstances, acquire the possibility to exercise decisive influence over one or more other undertakings on a lasting basis.

(3) The creation of a joint venture by two or more independent undertakings performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph (1) of this Article.

(4) The Government of the Republic of Croatia shall upon the proposal of the Agency regulate the notification rules and set the criteria for the assessment of concentrations.

(5) A concentration shall not be deemed to arise within the meaning of paragraphs (1) to (3) of this Article where:

1. credit institutions or other financial institutions or investment funds or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis (not longer than 12 months) securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive

behaviour of that undertaking. The 12 month period may be extended by the Agency upon request, where such institutions or companies can show that the disposal was not reasonably possible within the period set;

2. acquisition of shares or interest which is the result of internal structural changes in either the controlled or controlling undertaking (such as merger, acquisition, transfer of legal title etc.);
3. control is acquired by an office-holder or administration officer – relating to bankruptcy, liquidation or winding up – according to the national Bankruptcy Law and the Companies Act.

(6) The creation of a joint venture by two or more independent undertakings performing on a lasting basis all the functions of an autonomous economic entity where such a joint venture has as its object or effect coordination of the competitive behaviour of the undertakings that remain independent which leads to significant impediment to competition shall not constitute a concentration and shall therefore be appraised as an agreement in the sense of Article 8 of this Act.

### **Incompatible concentration**

#### Article 16

A concentration of undertakings which would significantly impede effective competition in the market, in particular where such a concentration creates or strengthens a dominant position of the undertakings parties to the concentration shall be deemed incompatible with competition rules and therefore prohibited.

### **Obligatory notification of concentration and turnover thresholds**

#### Article 17

(1) In order to assess the compatibility of concentration, the parties to the concentration are obliged to notify any proposed concentration to the Agency if the following criteria are cumulatively met:

1. the total turnover (consolidated aggregate annual turnover) of all the undertakings - parties to the concentration, realized by the sale of goods and/or services in the global market, amounts to at least HRK 1 billion in the financial year preceding the concentration and in compliance with financial statements, where at least one of the parties to the concentration has its seat and/or subsidiary in the Republic of Croatia, and
2. the total turnover of each of at least two parties to the concentration realized in the national market of the Republic of Croatia, amounts to at least HRK 100,000,000 in the financial year preceding the concentration and in compliance with financial

statements.

(2) Where the parties to the concentration are unable to deliver financial statements at the time of the notification of concentration, the last year for which the parties to the concentration have concluded their financial statements shall be taken as the relevant year in the assessment procedure.

(3) The intra-group turnover realized by the sale of goods and/or services by undertakings within a group shall not be taken into account when calculating the total turnover referred to under paragraph (1) of this Article.

(4) Where the concentration referred to under Article 15 paragraph (1) hereof consists of the acquisition of a part or parts of one or more undertakings, whether or not constituted as legal entities, the calculation of the turnover within the meaning of paragraph (1) of this Article shall include only the turnover relating to the parts which are the subject of the concentration.

(5) However, two or more transactions within the meaning of paragraph (4) of this Article which take place within a two-year-period shall be considered to constitute one concentration, arising on the day of the last transaction.

(6) The Agency shall assess the compatibility of only those planned concentrations which are subject to obligatory notification as stipulated in paragraph (1) of this Article.

### **Total turnover for banks and other financial institutions**

#### Article 18

(1) In the assessment of compatibility of concentrations involving banks and other financial institutions, including insurance companies and re-insurance organizations as parties to concentrations, the total turnover referred to in Article 17 of this Act shall be calculated for this category of undertakings on the basis of the total turnover from their normal business operations in the financial year preceding the concentration.

(2) For banks and other institutions which provide financial services, after deduction of direct taxes related to them, the sum of the following points of income shall be taken:

1. income from interest rates and similar income;
2. income from securities:
  - income from shares and other variable yield securities,
  - income from participating interests in economic entities,
  - income from shares in affiliated economic entities;
3. commissions receivable;
4. net profit on financial operations; and

5. other operating income.

(3) For insurance companies and companies that perform re-insurance activities, the value of gross premiums which includes amounts paid and received in relation to the insurance contracts issued by or on behalf of an insurance company, including also re-insurance premiums, after the deduction of taxes and parafiscal contributions charged by reference to amounts of individual premiums or in relation to total premium volume.

### **Prior notification of concentration**

#### Article 19

(1) Any concentration between undertakings referred to in Article 15 of this Act shall be pre-notified to the Agency by the parties to concentration subject to the criteria set out in Article 17 of this Act.

(2) In the case where control or decisive influence is acquired over a whole or parts of one or more undertakings by another undertaking, the prior notification of concentration shall be submitted by the controlling undertaking. In all other cases, all undertakings parties to the concentration shall agree on the submittal of one joint notification.

(3) The prior notification of concentration shall be submitted to the Agency for assessment before the implementation of the concentration in question, following the conclusion of the contract on the basis of which control or decisive influence has been acquired by the controlling undertaking, or following the publication of the invitation to tender.

(4) By way of derogation from paragraph (3) of this Article, the parties to the concentration may submit the prior notification of concentration to the Agency even before the conclusion of the contract or publication of the invitation to tender, if they, *bona fide*, provide evidence of the proposed conclusion of the contract or announce the invitation to tender.

(5) The implementation of a notified concentration shall be permitted only after the expiry of the time period set under Article 22 paragraph (1) of this Act, in other words, after the receipt of the final decision of the Agency on compatibility or conditional compatibility of concentration referred to under Article 22 paragraph (7) points 1 and 2 of this Act.

(6) By way of derogation from paragraph (5) of this Article the Agency may, in particularly justified cases, upon the request of a party to the concentration, permit the implementation of particular actions relating to the implementation of the notified concentration before the expiry of the time period referred to in paragraph (5) of this Article. In deciding on the request, the Agency shall take into account all circumstances of the relevant case, particularly the nature and gravity of the damages which might be posed on the parties to the concentration or on third parties, and the effects of the implementation of the concentration concerned on competition.

## **Content of notification of concentration**

### Article 20

(1) Notification of a concentration pursuant to Article 19 of this Act shall be supplemented by:

1. the original or a certified copy of the document, or a certified translation, showing the legal grounds for the concentration if the original official text is not originally written in Croatian;
2. annual financial statements of the parties to the concentration for the financial year preceding the concentration;
3. other documents and data as required under Article 15 paragraph (4) of this Act.

(2) Upon the request of the parties to the concentration, the Agency may in particularly justified cases revoke the obligation as referred to under paragraph (1) point 3 of this Article, where it finds that the information in question is not necessary for the assessment of the concentration concerned.

(3) The notifying party shall state in the notification if it intends to submit the request for appraisal of concentration to another competent authority in charge of assessment of concentrations outside the territory of the Republic of Croatia. If the notifying party has already submitted such a request, it shall provide the Agency with the decision of the relevant body, where the relevant decision has already been adopted.

(4) By way of derogation from paragraph (1) of this Article, a short-form notification of the concentration may be used for the purpose of notifying concentrations under a simplified procedure treatment. Such a short-form notification and the so called simplified procedure may be used where, in particular, one of the following conditions apply:

1. None of the parties to the concentration is engaged in business activities in the same relevant product and geographic market (no horizontal overlap), or in a market which is upstream or downstream of a market in which another party to the concentration is engaged (no vertical relationship);
2. Two or more of the parties to the concentration are engaged in business activities in the same relevant product and geographic market (horizontal relationship), provided that their combined market share is less than 15 %, and/or when one or more of the parties to the concentration are engaged in business activities in a relevant product market which is upstream or downstream of a product market in which any party to the concentration is engaged (vertical relationship), provided that none of their individual or combined market shares at either level is 25 % or more;
3. A party to the concentration is to acquire sole control of an undertaking over which it already has joint control; or

4. In the case where two or more undertakings acquire control over a joint venture, where the joint venture has no, or negligible, actual or foreseen activities within the Republic of Croatia.

(5) By way of derogation from paragraph (4) of this Article, the Agency may require a full notification of a concentration to be made within the meaning of paragraph (1) of this Article, where it finds that there are substantial indications of significant impediment of effective competition by the concentration concerned and where consequently, no simplified procedure treatment is applicable.

(6) The day on which the Agency has received all the data and documents stated in paragraphs (1) and (3) of this Article, shall be considered as the date of the receipt of the complete notification of a concentration, and the Agency shall issue a receipt thereon to the notifying party. The receipt in question shall also be issued in the case referred to under paragraph (2) of this Article.

### **Assessment of compatibility of concentration**

#### Article 21

(1) The Agency shall initiate a compatibility assessment proceeding immediately upon the receipt of the complete notification referred to under Article 20 paragraph (6) of this Act.

(2) In the assessment of compatibility of a concentration, the Agency shall take into account its effects on competition and possible limitations on market access, particularly where the proposed concentration creates or strengthens a dominant position of the undertakings concerned.

(3) In the course of assessment of a concentration within the meaning of the paragraph (2) thereof, the Agency shall in particular define as follows:

1. the structure of the relevant market, actual and potential future competitors in the relevant market within the territory of the Republic of Croatia or outside this territory, supply and demand structure in the relevant market and its trends, costs, risks, economic, legal and other barriers to entry to or withdrawal from the market;
2. the position in the market and the market share, economic and financial power of the undertakings in the relevant market, the level of competitiveness of the undertakings and possible changes in the business operations of the parties to the concentration and alternative sources of supply for the buyers resulting from the implementation of the concentration concerned;
3. the effects of the concentration on other undertakings, and especially relating to the consumer benefit, such as: decrease in prices of goods and/or services, shorter distribution courses, lowering of transportation, distribution and other costs,

specializing in production, technological innovation and other benefits directly deriving from the implementation of the concentration.

(4) Within the meaning of Article 41 thereof, the Agency is authorised to ask for any data and documents which it might find necessary for the establishment of the facts under paragraph (3) of this Article. The notifying party or the undertakings parties to the concentration may submit to the Agency any data and documents which they find relevant for the assessment of the concentration concerned because the burden of proof in terms of positive effects of the concentration lies on the undertakings concerned.

(5) Following the receipt of a complete notification of concentration referred to under Article 20 paragraph (6) hereof, and in compliance with Article 32 points 1 (a) and (b) hereof, the Agency shall publish on its web site a request for information aimed at all interested parties who may respond to this request in writing, giving their opinions and submitting the data at their disposal relating to the concentration concerned which would then provide the Agency with better understanding of the players and the relevant markets concerned.

(6) The request for information under paragraph (5) hereof shall particularly contain the following:

1. business activities performed by the parties to the concentration in the territory of the Republic of Croatia;
2. the markets in the Republic of Croatia that may be affected through the implementation of the concentration concerned;
3. a request containing the invitation to all undertakings who operate in affected markets, undertakings who perform their activities on other markets in which the proposed concentration may have effects on competition (upstream, downstream, neighbouring markets), associations of undertakings, associations of employers, consumers associations and other parties who are not parties to the proceedings or competing undertakings of the parties to the concentration, but who may be reasonably assumed to have knowledge on the relevant markets concerned, to submit their comments, standpoints and opinions on possible significant effects which the concentration in question may produce on their operation as well as possible appreciable effects of the concentration concerned on effective competition in the markets concerned, and
4. the deadline for submittal of the relevant comments which may not be shorter than 8 or longer than 15 days.

(7) Should in the course of the assessment of a concentration, the Agency receive one or more new notifications of concentration where control or decisive influence is acquired by one and the same undertaking who submitted the original notification of a concentration, the

Agency may decide to conduct a joint assessment proceedings and take one decision if it finds it reasonable and efficient. In this case the time limit for the assessment of a concentration referred to under Article 22 paragraphs (1) and (3) hereof shall begin to run when the notifying party is issued the receipt confirming the complete notification of concentration which was last notified to the Agency within the meaning of Article 20 paragraph (6) hereof.

### **Decision on concentration**

#### Article 22

(1) Where the Agency, on the basis of valid data and documents submitted together with the notification of a concentration, in accordance with Article 19 of hereof, or on the basis of other available information and findings, establishes beyond dispute that it is reasonable to suppose that the implementation of the proposed concentration is not prohibited within the meaning of Article 16 hereof, and unless it takes a procedural order on the initiation of the assessment proceedings within 30 days following the receipt of the complete notification of concentration in accordance with Article 39 of this Act, the concentration concerned shall be deemed to be compatible.

(2) In the case referred to in paragraph (1) hereof the Agency shall upon a special written request of the undertaking a party to the concentration, give a special notice on compatibility of the concentration concerned.

(3) Where the Agency, based on the evidence submitted together with the notification of a proposed concentration in line with Article 19 hereof, or on the basis of other available information and findings finds that the implementation of the concentration concerned could significantly impede effective competition in the relevant market, in particular as a result of the creation or strengthening of a dominant position of the undertakings concerned in line with the Article 16 of this Act, it shall take a procedural order on the initiation of the proceedings for the assessment of compatibility of the concentration concerned within the meaning of Article 39 hereof.

(4) Where in the course of the assessment proceedings the Agency finds that the concentration in question may be declared compatible only after necessary obligations and conditions are fulfilled, it shall without delay inform the notifying party thereof in line with Article 48 hereof. The notifying party shall than in the time period which may not exceed 30 days from the day of the receipt of this notice propose adequate commitments (whether behavioural and/or structural measures) and other conditions in order to remove the negative effects of the concentration concerned.

(5) The commitments referred to in paragraph (4) hereof may be proposed by the notifying party as early as in the prior notification of the concentration concerned.

(6) In the case referred to in paragraph (4) hereof the Agency may accept the measures – conditions, obligations and deadlines, proposed by the parties to the concentration, in their entirety or parts thereof, if it establishes that the measures concerned are adequate to restore efficient competition. In the event that the Agency does not accept or just partly accepts the said remedies proposed by the parties to the concentration, it is authorised to define and impose other behavioural and/or structural measures, conditions, obligations and deadlines for the restoration of effective competition in the market.

(7) Within three months following the adoption of a procedural order on initiation of the proceedings, the Agency shall take the decision:

1. by which the concentration concerned is rendered compatible, or
2. by which the concentration concerned is declared conditionally compatible, provided that certain measures are observed and conditions met, within the time limits set by the Agency, or
3. by which the concentration concerned is assessed incompatible and therefore prohibited.

(8) In the case referred to under paragraph (7) point 2 hereof the parties to the concentration may, as a rule, pursue the activities relating to the implementation of the concentration concerned as of the day of the receipt of the decision by the Agency declaring the concentration conditionally compatible. In the event that the parties to the concentration fail to comply with the conditions and obligations specified by the decision of the Agency within the prescribed time limits, the Agency shall, taking into account the reasons for non-compliance regarding the conditions and obligations concerned, withdraw or amend the decision on the basis of which it rendered the concentration conditionally compatible within the meaning of Article 23 hereof.

(9) The time period referred to under paragraph (7) of this Article shall not run from the day of the receipt of the notice referred to under Article 48 of this Act to the day of the receipt of the proposed commitments from paragraph (4) of this Article by the Agency.

### **Withdrawal of and amendments to the decision on concentration**

#### Article 23

(1) The Agency may, *ex officio* or upon request of a party to the concentration, withdraw the decision laid down in Article 22 of this Act in the following cases:

1. if the decision has been made on the basis of incorrect or false information that has been essential for the decision making, and/or
2. if any of the parties to the concentration have not fulfilled the conditions and obligations determined by the decision of the Agency.

(2) The decision referred to under paragraph (1) hereof on the basis of which the decision declaring the concentration conditionally compatible is being revoked shall render the concentration incompatible and therefore prohibited within the meaning of Article 16 hereof, set the conditions and obligations and deadlines to restore effective competition and impose the fine prescribed for the committed infringements.

(3) The Agency may, *ex officio*, or upon request of a party to the concentration, amend its decision taken under Article 22 of this Act where the parties to the concentration cannot fulfil any of the proposed conditions or observe the set deadlines, owing to unpredictable circumstances beyond their control. Such an amended decision of the Agency may contain new obligations, conditions and deadlines for their implementation aimed at restoring effective competition.

### **Suspension of concentration**

#### Article 24

(1) The Agency shall, *ex officio*, by means of a separate decision, propose all necessary measures, whether behavioural or structural, aimed at restoring efficient competition in the relevant market, and set the deadlines for their adoption in the following cases:

1. where the concentration concerned has been implemented contrary to the decision of the Agency by which the concentration has been assessed as incompatible and therefore prohibited within the meaning of Article 22 paragraph (7) point 3 of this Act, or
2. where the concentration concerned has been implemented without the obligatory prior notification of concentration in line with Article 19 of this Act.

(2) On the basis of a decision referred to in paragraph (1) hereof, the Agency may, in particular:

1. order for the shares or interest acquired to be transferred or divested;
2. prohibit or restrict the exercise of voting rights related to the shares or interest in the undertakings parties to the concentration, and order the joint venture or any other form of control by which a prohibited concentration has been put into effect in the sense of Article 15 of this Act to be removed.

(3) The decision referred to in paragraph (1) of this Article may also contain the imposition of a fine prescribed for the committed infringements.

## **V EXPERT OPINIONS OF THE AGENCY**

### **Expert opinions**

#### Article 25

(1) The Agency issues expert opinions at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities in compliance with separate rules and local and regional self-government units, regarding the compliance with this Act of draft proposals for laws and other legislation, as well as other related issues raising competition concerns.

(2) The central administration authorities or other state authorities may be requested to communicate to the Agency draft proposals for laws and other legislation for the purpose of assessment and issuing expert opinions on their compliance with this Act, if it finds that they may raise competition concerns.

(3) The Agency shall issue expert opinions assessing the compliance of the existing laws and other legal acts with this Act, opinions promoting competition culture and enhancing advocacy and raising awareness of competition law and policy and give opinions and statements relating to the development of the comparative practice and case law in the area of competition law and policy to the authorities referred to under paragraph (1) hereof.

## **VI COMPETITION AGENCY**

### **Legal status and organization of the Agency**

#### Article 26

(1) The Agency is a legal person with public authority which, as an independent entity autonomously performs the activities within its scope and powers regulated by this Act and the State Aid Act. The Agency is responsible to the Croatian Parliament.

(2) Any method or form of influence on the work of the Agency which could impede its independence and autonomy shall be prohibited.

(3) The work of the Agency is public.

(4) The seat of the Agency is in Zagreb.

(5) The internal structure and operational activities of the Agency, its general acts and other important operational issues shall be regulated in detail by the Statute of the Agency which shall be ratified by the Croatian Parliament.

(6) The general provisions on labour shall apply to the employees of the Agency and the members of the Competition Council.

(7) The resources for the activities pursued by the Agency are provided from the budget of the Republic of Croatia.

(8) The administrative fees and fines imposed and collected by the Agency shall be contributed to the budget of the Republic of Croatia.

### **Competition Council**

## Article 27

- (1) The Competition Council (hereinafter in the text: the Council) is the managing body of the Agency. The Council consists of five members, one of whom is the president of the Council.
- (2) The president of the Competition Council represents and speaks for the Agency and manages its activities.
- (3) In managing the Agency, the president of the Competition Council organizes and runs the operational activities of the Agency, supervises and is responsible for its expert performance.
- (4) The president and other members of the Council shall be appointed and relieved from duty by the Croatian Parliament on the proposal of the Government of the Republic of Croatia.
- (5) The vice-president of the Council shall be elected on the proposal of the president of the Council by a majority of votes of the Council.
- (6) The president and other members of the Council are employees of the Agency.

### **Terms of appointment and terms of office**

## Article 28

- (1) The president and the members of the Council may be appointed from any citizen of the Republic of Croatia who holds a university degree in legal or economic studies and has ten years of work experience in the professional field concerned.
- (2) The president and the members of the Council shall in addition to the terms of appointment laid down under paragraph (1) hereof:
  1. have the Bar Exam passed (if the person concerned is a lawyer), or
  2. have a certification exam passed or hold a master of science degree or a doctor's degree (if the person concerned is an economist).
- (3) The president and the members of the Council shall be appointed for a five-year-term of office with the possibility of reappointment.
- (4) The president and the members of the Council shall perform their duties professionally.
- (5) The president and the members of the Council may not be state officials, persons who perform duty in any administrative body of a political party, members of supervisory boards and executive bodies of undertakings, or members in any kind of interest associations, which could lead to conflict of interest.
- (6) The president and the members of the Council may write and publish research papers and participate in expert conferences, academic workshops and projects.
- (7) The president and the members of the Council are obligated to behave in a manner to

protect the reputation of the Agency and not to challenge its independence and autonomy in decision making.

### **Relief from office**

#### Article 29

(1) At the proposal of the Government of the Republic of Croatia, the Croatian Parliament may relieve the president or the member of the Council from office before the end of the term:

1. at their own request;
2. if they are convicted of a criminal offence, which makes them unworthy to perform the duty of the president, i.e. the member of the Council;
3. if they permanently lose the ability to perform the duties confirmed to them;
4. if they, during their mandate, assume any of the duties referred to in Article 28 paragraph (5) hereof;
5. if they, in performing their duty, violate the provisions of Article 28 hereof.

(2) On the existence of any reasons for relief from office of the president or the member of the Council before the end of the term, the Council shall notify the Government of the Republic of Croatia.

(3) Before the decision on relief from office is made, the president or the member of the Council shall be given the right to be heard in the form of a written comment on relief which may be submitted to the Croatian Parliament.

### **Activities of the Council**

#### Article 30

In carrying out its managing activities the Council shall in particular:

1. propose to the Government of the Republic of Croatia the adoption of the subordinate legislation pursuant to this Act;
2. make decisions on the basis of which the Agency initiates and carries out the compatibility assessment proceedings and the proceedings involving the imposition of fines in respect of infringements of competition rules under this Act, conclude the proceedings and decide on the adoption of measures (obligations, conditions and deadlines) necessary to restore effective competition and impose fines and respective deadlines for execution of fines;
3. instruct the expert team to carry out the preliminary investigations in the relevant market,

4. take a decision on the basis of which the Agency makes a request to the Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to conduct dawn raids of business premises, land and means of transport, to examine all records and objects relating to the business, to seal any business premises or records and to seize objects and documents which are subject to a surprise inspection referred to under Article 42 paragraph (1) and Article 44 hereof;
5. promote activities relating to competition advocacy and understanding of the benefits of competition and raising awareness on the role and significance of competition law and policy;
6. issue opinion on the compliance of proposed draft laws and other legislation with this Act;
7. define methodological principles for competition studies and market investigation;
8. define rules of fair competition, measures to eliminate impediments to competition, and other activities aimed at enhancing competition law and policy in the territory of the Republic of Croatia;
9. issue expert opinions and give statements on the development of comparative practices in the area of competition law and policy;
10. upon request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities in compliance with separate rules and local and regional self-government units issue expert opinions in respect of competition issues;
11. facilitate international cooperation, referring to the realization of the international commitments undertaken by the Republic of Croatia and given to the powers of the Agency, as well as relating to running the projects of international and European economic integrations and cooperate with international competition authorities and international organisations and institutions;
12. adopt the annual report on the work of the Agency for the previous year which is submitted to the Croatian Parliament.

### **Decision making**

#### Article 31

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

attend.

### **Expert team of the Agency**

#### Article 32

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

1. carry out preliminary investigations in the relevant market with the view to defining possible competition concerns on the basis of which it initiates the proceedings in the sense of Article 39 of this Act, and to that end it shall:
  - a) collect data and information from legal and natural persons, professional associations or economic interest groups, associations of undertakings, consumers associations, public administration authorities and local and regional self-government units which may have certain knowledge which contributes to the investigation of the markets and identifying market positions, regardless of the concrete cases handled by the Agency;
  - b) collect data and information from legal and natural persons, professional associations or economic interest groups, associations of undertakings, consumers associations, public administration authorities and local and regional self-government units which may have certain knowledge on market positions in particular markets, and before issuing a procedural order on initiating of the proceedings in a particular case, endeavour to restore effective competition in the relevant market, if this is in the public interest, and unless it involves significant distortion of competition;
2. propose to the Council adoption of the decision on the initiation of the proceeding within the meaning of Article 39 of this Act;
3. report on the facts and circumstances on the basis of which the Council takes a decision pursuant to which the Agency makes a request to the Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to conduct dawn raids of business premises, land and means of transport, to examine all records and objects relating to the business, to seal any business premises or records and to seize objects and documents which are subject to a surprise inspection referred to under Article 42 paragraph (1) and Article 44 hereof;
4. carry out the proceedings in individual cases establishing distortion of competition and the proceedings relating to imposition of fines, whereas after establishing all relevant facts and circumstances for decision making, report to the Council which then decides on the particular case within the meaning of the provisions of this Act;

5. draw up drafts of closing decisions to the proceedings carried out by the Agency, where these decisions may include the establishment of infringement of the provisions of this Act, imposition of fines for the infringements committed, deadlines for execution of fines or adoption of necessary measures (obligations, conditions and deadlines) to restore effective competition;
6. draw up drafts of opinions on compliance of proposed draft laws and other legislation with this Act;
7. draw up drafts of by-laws and other regulations necessary for the implementation of this Act;
8. prepare drafts of documents with the view to raising awareness and understanding of competition law and policy and promotion of competition culture and champion competition;
9. identify and analyse market conditions with the purpose of further development of effective competition;
10. facilitate international cooperation relating to international commitments undertaken by the Republic of Croatia and given to the powers of the Agency, as well as relating to running the projects of international and European economic integrations, cooperate with international competition authorities and international organisations and institutions;
11. draft the annual reports of the activities of the Agency.

### **Conflict of interest**

#### Article 33

(1) The persons employed in the Agency may not be members of management or supervisory boards, or boards of undertakings, members of any other interest associations that could cast doubt on their impartiality while conducting the proceedings falling under the competence of the Agency.

(2) By way of derogation from paragraph (1) of this Article, it is allowed to be a member of and to participate in scientific associations and projects, provided that this does not affect impartiality in conducting the proceedings.

### **Annual report**

#### Article 34

The Agency shall once a year submit to the Croatian Parliament the annual report on the activities of the Agency in the preceding year.

## **VII PROCEEDINGS CARRIED OUT BY AGENCY**

## **Application of the provisions regulating the proceedings carried out by the Agency**

### **Article 35**

(1) To the proceedings carried out by the Agency, unless otherwise regulated by this Act, the provisions of the General Administrative Procedure Act and the Law on Minor Offences shall apply.

(2) The employees of the Agency who are graduated lawyers who have passed their Bar Exam shall be case handlers to the proceedings carried out by the Agency under paragraph (1) of this Article, whereas the decisions in the cases concerned shall be adopted by the Council within the meaning of Article 30 point 2 of this Act.

(3) The proceedings relating to the imposition of fines as referred to under Article 52 and Articles 60 to 65 hereof shall be carried out by the employees of the Agency who have passed the Bar Exam and have over four years of professional service.

### **Parties to the proceedings**

#### **Article 36**

(1) Undertakings against which the proceedings have been carried out by the Agency and undertakings parties to the concentration shall have the status of a party to the proceedings.

(2) A person upon whose initiative the proceedings is initiated as referred to under Article 37 of this Act shall not hold the status of a party to the proceedings.

(3) A person who does not have the status of a party to the proceedings but who finds that his/her rights or legal interests are decided upon to the proceedings carried out by the Agency, may claim, in writing, the same procedural rights which are enjoyed by the person upon whose initiative the proceedings is initiated referred to in Article 37 of this Act, if such legal interest is proved legitimate.

(4) By means of a conclusion the Agency shall decide on the request referred to under paragraph (3) within 30 days from the receipt thereof. Against the conclusion of the Agency no appeal is allowed but the injured party may take actions at the Administrative Court of the Republic of Croatia.

### **Compatibility assessment proceedings**

#### **Initiative for initiation of the proceedings**

#### **Article 37**

(1) The initiative for initiation of the proceedings falling under the scope of the Agency – a request, proposal, notice or a complaint – may be submitted in writing by any legal or natural person, professional association or economic interest group or association of undertakings, consumers association, the Government of the Republic of Croatia, central administration

authorities and local and regional self-government units.

(2) The initiative referred to under paragraph (1) of this Article shall contain:

1. the name and the seat of the legal person concerned, or the name, surname and address of the natural person upon whose initiative the proceedings is initiated;
2. relevant data on the basis of which it may be clearly and beyond doubt established against whom the initiative is being made;
3. facts of the case, practice or circumstances which have led to the initiative;
4. relevant data and documents and other evidence at the disposal of the person who files the initiative which prove the allegations referred to in point 3 of this paragraph.

(3) If the initiative referred to in paragraph (1) of this Article contains any data which, in the opinion of the person who files the initiative (complainant), are considered confidential, he/she shall specify it as such and indicate the legal basis thereof.

(4) The person who files the initiative may by means of a written request ask the Agency to communicate to him/her a short form of Statement of Objections referred to in Article 48 of this Act and ask to be heard as a witness to the proceedings. In the latter case the Agency shall comply with the request of the complainant.

(5) The person who files the initiative may ask the Agency to protect his/her identity and the Agency shall comply with his/her request provided that it is based on a justified reason. In this case the complainant shall not be submitted the short form of Statement of Objections referred to in paragraph (4) of this Article.

### **Initiation of the proceedings**

#### Article 38

(1) The Agency shall act *ex officio* where it initiates the proceedings concerning the prohibited agreements as referred to in Article 8 of this Act, the assessment of agreements as referred to in Article 10 paragraph (4) and Article 11 paragraph (4) of this Act and where the assessment is related to the establishment of abuse of a dominant position referred to under Article 14 of this Act.

(2) The proceedings relating to the assessment of concentration as referred to in Article 19 of this Act shall be initiated, as a rule, acting on the notification of the parties to the concentration. By way of derogation, the Agency may act on its own initiative where the parties to the concentration fail to notify the concentration within the meaning of Article 17 of this Act, in case of withdrawal of or amendments to the decision on concentration in line with Article 23 of this Act and where it decides on adoption of the necessary measures after the implementation of the prohibited concentration as referred to under Article 24 of this Act.

(3) The proceedings referred to in paragraphs (1) and (2) of this Article shall start on the day when the procedural order on the initiation of the proceedings described in Article 39 of this Act is taken.

(4) If the Agency finds that the behaviour indicated in the initiative for initiation of the proceedings referred to under Article 37 thereof does not significantly distort competition in the relevant market, the Agency shall adopt a conclusion stating that there is no public interest for any steps to be taken and shall inform the complainant thereof.

(5) If, during the preliminary investigation of the relevant market within the meaning of Article 32 point 1 a) and b) hereof and on the basis of the received initiative referred to under Article 37 of this Act, the Agency finds that there is no basis for the initiation of the proceedings, it shall at the latest within 10 months from the day of the receipt of the initiative for the initiation of the proceedings issue a conclusion stating that there is no basis for the initiation of the proceedings and inform thereof the complainant referred to under Article 37 of this Act.

(6) There is no appeal against the conclusion referred to in paragraphs (4) and (5) of this Article but the person who filed the initiative may take actions at the Administrative Court of the Republic of Croatia.

(7) The conclusion of the Agency referred to under paragraph (4) and (5) hereof must undoubtedly state the reasons on the basis of which there was no public interest or no grounds for the initiation of the proceedings, notwithstanding the fact that the Agency is not obligated to provide assessment or give explanation in respect of every received complaint.

### **Procedural order on institution of the proceedings**

#### Article 39

(1) A procedural order on institution of the proceedings within the meaning of the provisions of this Act shall in particular contain:

1. reference to the related case;
2. the provisions of this Act pursuant to which the proceedings have been initiated;
3. facts of the case, practices or circumstances which led to the initiation of the proceedings;
4. request for submittal of the relevant data and documentation in the sense of Article 41 hereof.

(2) Against the procedural order on initiation of the proceedings referred to in paragraph (1) hereof no appeal and no legal action at the Administrative Court of the Republic of Croatia is allowed.

#### Article 40

(1) A copy of the procedural order on institution of the proceedings referred to in Article 39 hereof the Agency shall deliver to the party against which the proceedings has been initiated or the notifying party in the case of concentration, with the exception of the data which are covered by the obligation of business secrecy referred to in Article 53 hereof.

(2) The party against which the proceeding has been initiated may respond within a time period set by the Agency in each particular case. However, this time period may not be shorter than 8 days, nor exceed 30 days.

(3) The party against which the proceeding has been initiated shall respond to the Agency within the prescribed time period. The statement of the party shall contain also data and documentation in respect of the relevant case.

(4) By way of derogation from paragraphs (2) and (3) hereof the party against which the proceeding has been initiated may, based on a justified reason, ask for the extension of the prescribed time period for response. The Agency may authorise the extension of the set period but not longer than for 30 days.

(5) If the party against which the proceeding has been initiated does not act in accordance with the request and within time periods set by the Agency, or if it declares that it is not able to act in compliance with the request in question, the Agency shall establish the facts and circumstances of the case on its own initiative, based on its own findings, available data and documentation and shall without delay communicate to the party against which the proceeding has been initiated the Statement of Objections referred to in Article 48 hereof and set the oral hearing.

(6) Where the proceeding has been initiated on the basis of the initiative referred to under Article 37 of this Act the person who files the initiative shall not be submitted the conclusion referred to under Article 39 hereof. Yet, the complainant shall be informed on the initiation of the proceeding in writing.

### **Collection of data**

#### Article 41

(1) The Agency is empowered to:

1. request, in writing, from the parties to the proceedings or other legal or natural persons, professional associations or economic interest groups or associations of undertakings, consumers associations, public administration authorities and local regional self-government units to submit all necessary information in writing, or to make oral statements in respect of all relevant data and documentation;
2. request, in writing, from the parties to the proceedings to ensure direct inspection of all business premises, all immovable and movable assets, business books, data

bases and other documentation;

3. request, in writing, from the parties to the proceedings to carry out other activities which the Agency finds necessary in order to establish the facts of the case.

(2) The written requests referred to in paragraph (1) hereof shall contain the legal basis, the subject and the purpose of the request, the time limit for its implementation and the penalty clause in case the request in question should be disobeyed by the parties to the proceedings or other legal or natural persons referred to under paragraph (1) hereof.

(3) Where a party to the proceedings or any legal or natural person referred to in paragraphs (1) and (2) hereof fail to act in compliance with the request of the Agency, the Agency shall carry out the proceedings establishing the infringement of the provisions of this Act and it shall issue a decision setting the fine for the infringement concerned within the meaning of this Act. Against the decision of the Agency no appeal is allowed but the injured party may take actions at the Administrative Court of the Republic of Croatia.

(4) Where the data and documentation referred to in paragraph (1) hereof are covered with the obligation of secrecy, the undertakings and other legal and natural persons referred to under paragraph (1) of this Article who submit these data and documentation to the Agency shall in their writing identify information that would be considered confidential and provide necessary argumentation.

(5) In the case referred to in paragraph (4) of this Article the undertakings and legal and natural persons referred to in paragraph (1) of this Article shall also submit to the Agency a copy of business documentation which does not contain business secrets. In case where the undertaking or a legal or natural person referred to in paragraph (1) hereof only indicates the data which it finds to be covered by the obligation of business secrecy and fails to provide a consolidated version of the text and/or business documentation containing no business secrets, the Agency shall send the reminder to the person/s concerned to submit the documentation concerned freed of business secrets. If the party to the proceedings or any legal or natural person referred to under paragraph (1) hereof does not act in compliance with the reminder of the Agency, it shall be assumed that the writing and/or business documentation concerned does not contain data which are covered by the obligation of business secrecy.

(6) If the undertaking or any legal or natural person referred to in paragraph (1) of this Article does not submit the data and documentation referred to in paragraph (1) of this Article, the Agency shall in the assessment of the facts of the case take into account the significance of non-compliance with its request and accordingly establish the relevant facts.

**Surprise inspection of business premises, other premises, land and means of transport affixation of seals and temporary seizure of objects**

## Article 42

(1) Prior to the conduct of a surprise inspection of the business premises, land and means of transport, the Agency shall in line with the relevant rules for collecting evidence applicable in non-contentious procedures make a request to the Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to conduct a dawn raid of business premises, land and means of transport, to examine all records and objects relating to the business, to seal any business premises or records and to seize objects and documents found on these premises, particularly if there it can be reasonably assumed that the evidence might be destroyed or concealed.

(2) If a reasonable suspicion exists that evidence related to the subject-matter of the inspection may be replaced or altered by the parties to the proceedings, the authorised persons of the Agency may alone or with the assistance of law enforcement authorities of the Corporate Crime Department (hereinafter in the text: authorised persons) conduct surprise inspections referred to in paragraph (1) of this Article on which the parties or the proprietor of the premises and objects will be informed at the spot, at the moment of the conduct of the surprise inspection.

(3) The authorised persons of the Agency shall exercise their powers of surprise inspection as referred to under paragraph (2) of this Article upon production to the party to the proceeding or the proprietor of the premises and objects of the identity card and the warrant to carry out surprise inspections issued by the Administrative Court of the Republic of Croatia. The form and content of the identity card used by authorised persons shall be laid down by the Agency's Ordinance regulating the identity card. Where other authorised persons referred to under paragraph (2) of this Article also conduct the inspection they shall produce to the party to the proceedings or the proprietor of the premises the written authorisation to participate in the inspection certified by the Agency.

(4) The authorised persons to conduct a surprise inspection referred to under paragraph (2) hereof are empowered:

1. to enter and inspect any premises, land and means of transport (hereinafter: the premises) at the seat of the undertaking against which the procedure is being carried out as well as in any other location where the undertaking concerned performs its business activities;
2. to examine the books and other records related to the business, irrespective of the medium on which they are stored;
3. to take or obtain in any form copies of or extracts from such books or records, irrespective of the medium on which they are stored;
4. to seize the necessary documentation and to retain it as long as it takes to make

photocopies where due to technical reasons it is not possible to make photocopies during the inspection. The authorised person shall make an administrative note thereof;

5. to seal any premises and/or books or records for the period and to the extent necessary for the inspection;
6. to ask any representative or member of staff of the undertaking for explanations on the facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;
7. to ask any representative or member of staff of the undertaking to submit a written statement on the facts or documents relating to the subject-matter and purpose of the inspection and set the deadline in which this statement must be submitted;
8. to perform any other actions in accordance with the purpose of the inspection.

(5) Where during the conduct of a surprise inspection as referred to under paragraph (2) of this Article the objects, books or other documentation are temporarily seized, the Agency shall make an administrative note thereof particularly specifying the place where the objects concerned have been found accompanied with the description thereof. The authorised person of the Agency shall without delay issue a certificate on the seizure of objects and documentation concerned. The objects, books and documentation which have been seized shall be retained as long as the facts and circumstances contained in the evidence concerned are established. However, this period may not be extended after the day on which the Agency closes the proceedings in the case concerned.

#### Article 43

Where the authorised persons find that an undertaking opposes an inspection ordered pursuant to this Act, obstructs the examination of business books and other documentation, or in any other way hinders or resists the surprise inspection of the premises, the authorised persons may with the assistance of law enforcement authorities enter the business premises in spite of the opposition on the part of the undertaking and conduct their inspection of the books and other documentation.

#### Article 44

(1) If a reasonable suspicion exists that books and/or other records related to the proceedings carried out by the Agency, are being kept in any other premises, land and means of transport of the parties against no proceedings have been initiated, or in the homes of directors, managers and other members of staff of the undertakings against which the proceedings have been initiated or other persons, the surprise inspection shall be conducted in the presence of two adult witnesses.

(2) The provisions of Articles 42, 43, 45 and 46 of this Act accordingly apply to surprise inspections referred to in paragraph (1) hereof.

#### Article 45

(1) Any letters, notices and other communication between the undertaking against which the proceedings have been initiated and its lawyers duly authorised to act shall be excluded from the surprise inspection to the extent they constitute confidential or privileged information.

(2) Where the undertaking or its lawyer refuse the access to file and documentation pleading confidential or privileged information as referred to under paragraph (1) of this Article, the authorised person of the Agency has the right of access to the files concerned. Should in the view of the authorised person of the Agency the information concerned not be regarded as confidential or privileged in the sense of paragraph (1) of this Article, the authorised person of the Agency shall in the presence of the undertaking and its lawyers duly authorised to act, if the latter is present, file the document concerned or its photocopy in a separate envelope, properly dated and sealed by the Agency and signed by all the parties and lawyers concerned.

(3) In the case referred to under paragraph (2) of this Article in deciding over the preliminary issue the provisions of the General Administrative Procedure Act shall accordingly apply.

#### Article 46

(1) After the surprise inspection as referred to in Articles 42 and 44 of this Act has been carried out, and within fifteen days at the latest, the authorised person shall prepare the inspection report.

(2) The inspection report under paragraph (1) of this Act shall particularly contain:

1. the date and place of the inspection report;
2. the class number under which the case is registered and the legal basis for the conduct of the surprise inspection;
3. place and time of the surprise inspection;
4. the names of the authorised persons who conducted the inspection, the parties who were present during the inspection and their lawyers and third parties;
5. the description of the course and content of the inspection operations and the list of statements given during the inspection;
6. the list of documents and other objects used and/or temporarily seized during the surprise inspection.

(3) The inspection report referred to in paragraph (1) hereof shall be communicated to the parties to the proceeding and to the persons who were subject to the inspection.

(4) The parties to the proceedings and persons who were subject to the inspection may provide their written comments on the inspection report referred to under paragraph (1) of this Article within fifteen days from the day of the receipt of the inspection report.

### **Right of access to files**

#### Article 47

(1) Parties to the proceedings have the right of access to case files after they have received a Statement of Objections referred to in Article 48 of this Act. The Agency shall make a photocopy of the file or of single documents at the expense of the parties concerned.

(2) The request for access to files referred to in paragraph (1) hereof shall be submitted to the Agency in writing.

(3) The Agency shall set the date and time for inspection of the file within fifteen days following the receipt of the request referred to in paragraph (2) hereof.

(4) By way of derogation from paragraphs (1) and (2) hereof, drafts of the decisions of the Agency, official statements, protocols and typescripts from the sessions of the Council, internal instructions and notes on the case, correspondence and information exchanged between the Agency and the European Commission, between the Agency and other international competition authorities and their networks and other documents which are covered by the obligation of business secrecy in the sense of Article 53 of this Act, may neither be inspected nor copied.

(5) After receiving the decision of the Agency stating that there is no public interest for the initiation of the proceedings as referred to under Article 38 paragraph (4) of this Act or stating that there is no basis for the initiation of the proceedings as referred to under Article 38 paragraph (5) of this Act , or following the receipt of the decision of the Agency establishing that no infringement of competition rules within the meaning of this Act has been committed as referred to under Article 58 paragraph (1) point 12, the person who filed the initiative shall have the right of access to files on which the relevant decision of the Agency was based. Paragraphs (2), (3) and (4) hereof also cover the right of access to files of the person who filed the initiative.

(6) By way of derogation from paragraph (5) of this Article, the persons referred to under Article 36 paragraphs (2) and (3) hereof may not exercise the right of access to files as long as the proceeding is carried out by the Agency. However, they may be submitted the short form of the Statement of Objections referred to under Article 48 of this Act, provided they request the submittal of such a document in writing.

(7) Against the decision on the basis of which the access to file or a part thereof is denied no appeal is allowed neither may the injured party take actions.

## Statement of Objections

### Article 48

(1) The parties to the proceedings referred to under Article 36 paragraph (1) of this Act shall be informed by the Agency in writing of the preliminary established facts in the Statement of Objections in order to ensure the relevant parties to express their views on all relevant facts and circumstances of the case before the oral hearing is set.

(2) The parties to the proceedings may submit their written replies relating to the Statement of Objections referred to in paragraph (1) hereof within a month from the receipt of the Statement of Objection.

(3) In their written replies referred to in paragraph (2) of this Article the parties to the proceedings may also propose that the Agency should hear other witnesses and present additional evidence.

(4) A copy of the short form of the Statement of Objections referred to in paragraph (1) of this Article which does not contain data which are covered by the obligation of business secrecy may be submitted upon request to the person who filed the initiative referred to in Article 37 paragraph (1) of this Act. The Agency shall set a time limit of one month from the receipt of the short form of the Statement of Objections within which the person who filed the initiative may inform the Agency in writing of his/her views.

(5) A copy of the short form of the Statement of Objections referred to in paragraph (1) of this Article which does not contain data which are covered by the obligation of business secrecy may also be submitted to any person which holds the view that his/her rights or legal interest is decided upon to the proceedings carried out by the Agency. The Agency shall set a time limit of one month from the receipt of the short form of the Statement of Objections within which the person concerned may inform the Agency in writing of his/her views.

(6) If the Agency after notifying the Statement of Objections referred to in paragraph (1) of this Article carries out new analyses and establishes new facts or examines evidence which significantly change the facts of the case that had originally been established, it is empowered to take a decision which differs from the views established in the Statement of Objections referred to in paragraph (1) hereof. In this event, the Agency shall, prior to taking its final decision, notify the parties to the proceedings a new Statement of Objections which will contain new established facts and circumstances or drawn conclusions. The parties to the proceedings are again granted the right to send their written comments to the new Statement of Objections in the time period set by the Agency. The Agency shall act accordingly also in respect of the persons referred to under paragraphs (4) and (5) of this Article, who will be submitted a new short form of the Statement of Objections.

(7) The Agency shall not base its decisions on the facts and circumstances in respect of

which the parties to the proceedings have not been granted right of defence.

## **Commitments**

### Article 49

(1) Following the initiation of the proceedings in line with Article 39 of this Act and at the latest before the Statement of Objections referred to in Article 48 of this Act has been notified, a party to the proceedings may offer its commitments to the Agency. The commitments undertaken shall mean meeting certain conditions and obligations within a set time periods, in order to eliminate the negative effects on competition due to its actions or a failure to act.

(2) The Agency shall by means of a decision make the commitments in question binding on the undertakings if the proposed conditions and obligations, within a set time periods, referred to in paragraph (1) of this Article, are by the Agency deemed satisfactory for the removal of competition concerns and restoration of effective completion.

(3) The decision of the Agency referred to in paragraph (2) of this Article shall establish a specified time period in which the undertaking in question must comply with the commitments referred to in paragraph (2) of this Article. The decision shall also obligate the undertaking concerned to furnish evidence from which it is evident that it complied with the set commitments and on the basis of which the Agency may establish that there are no longer grounds for action against the undertaking concerned.

(4) The Agency may accept the proposed commitments referred to in paragraph (1) of this Article in the cases where the infringement is of short duration, where the undertaking concerned is open to cooperation to the proceedings carried out by the Agency and commits itself to meeting certain conditions and obligations in the first six months of the proceedings, where the action by the Agency involves a large number of parties and in other particular cases where the Agency deems the acceptance of the proposed commitments referred to in paragraph (1) of this Article justified and appropriate for efficiency reasons with the view to re-establishing of effective competition in the relevant market without carrying out unnecessary lengthy procedures.

(5) The Agency shall give notice on intention to accept commitments and to that end publish a summary of the case and the main content of the proposed commitments referred to in paragraph (1) of this Article on its web site. The interested parties shall be requested to submit their written replies in the form of comments, observations and statements within 20 days from the day of the publication of the request for information.

(6) By way of derogation from paragraph (3) of this Article the Agency may reopen the proceedings against the undertakings referred to in paragraph (2) of this Article:

1. where the decision of the Agency was based on incorrect or misleading information provided by the parties, and/or
2. where there has been a material change in any of the facts on which the decision was based.

(7) Where in the monitoring procedure for the implementation of the commitments referred to in paragraph (1) of this Article the undertakings concerned should act contrary to their commitments referred to in paragraph (3) hereof, such behaviour shall constitute an infringement of this Act and the Agency shall issue a separate decision which will revert to prohibition and impose the fine for the infringement concerned in line with the provisions of this Act.

### **Oral Hearing**

#### Article 50

(1) As a rule, in the proceedings establishing distortion of competition carried out by the Agency oral hearings will be held and they shall not be public in the legitimate interest of the protection of business secrets and other confidential information.

(2) Besides the parties to the proceedings the person who filed the initiative referred to in Article 37 of this Act may also be summoned to the oral hearing. Where the person who filed the initiative submits a written request to be heard, the Agency is obliged to summon him/her as a witness.

(3) If any of the summoned parties, or their lawyers, fail to appear at the first oral hearing to the proceedings, the Agency shall, as a rule, postpone the oral hearing and call for a new one.

(4) If any of the summoned parties to the proceedings, or their lawyers, fail to appear at the following oral hearing, convened in accordance with the provision laid down in paragraph (3) of this Article, the Agency shall not convene another oral hearing, but shall hold an oral hearing with the present parties and make its decision on the basis of its own findings, available data and information.

### **Interim measures**

#### Article 51

(1) The Agency may initiate the proceedings against an undertaking and make a decision adopting interim measures in cases of urgency due to the risk of serious and irreparable damage to competition and on the basis of a prima facie finding of infringement of the provisions of this Act.

(2) In its decision on interim measures referred to in paragraph (1) hereof, the Agency shall

suspend all actions of the undertaking concerned, insist on meeting of particular conditions or impose other measures reasonably necessary to eliminate the risk and damage to competition, as well as the duration of the relevant measures, which as a rule, may not exceed a period of six months, and advise the undertaking that in case of its failure to comply with the imposed measures it will be fined for the infringement in line with the provisions of this Act.

(3) By way of derogation from paragraph (2) of this Article, the duration of the interim measure may be renewed if the Agency finds it necessary in a particular case.

(4) Against the decision imposing interim measures as referred to in paragraph (1) of this Article no appeal is allowed but the injured party may take actions at the Administrative Court of the Republic of Croatia.

### **Fine proceedings – imposition of fines for the infringements of the provisions of this Act**

#### Article 52

(1) After the Council in line with its competences as referred to in Article 30 of this Act in its session establishes distortion of competition by the party to the proceedings carried out in the case concerned, or in other words, where infringements of the provisions of this Act have been established, the Agency shall communicate to the party concerned a Statement of Facts established in this particular case and notify the party on the content of the relevant decision of the Council.

(2) The Agency shall besides the Statement of Facts referred to in paragraph (1) hereof also send to the party the notice of hearing. In the main hearing the right of defence shall be afforded to the party concerned. Main hearing shall ensure that evidence is presented and all relevant circumstances are taken into account for the purpose of fine proceedings and imposition of fines, such as mitigating circumstances concerning the infringement, aggravating circumstances and other criteria necessary for the method of setting fines imposed pursuant to this Act.

(3) The notice of hearing as referred to under paragraph (2) of this Article shall contain, in particular:

1. name and address of the undertaking concerned, and name and address of the representative or a lawyer duly authorised to act, if they are appointed by the undertaking concerned;
2. description of the facts relating to the actions or a failure to act which lead to distortion of competition and resulted in the infringement of the provisions of this Act;
3. date and the time of the main hearing;

4. location of the hearing – the part of the premises of the Agency where the main hearing will be held;
5. indication of the status in which the party or the person concerned is called to the main hearing;
6. instructions for the parties in case they do not attend the main hearing after the first notice, in which case a new main hearing will be convened, whereas the absence at this following main hearing shall mean that the Agency may either use coercive measures or hold the main hearing without the parties or persons in absence;
7. the seal of the Agency and the signature of the authorised person in charge of fine proceedings.

(4) The Statement of Facts as referred to in paragraph (1) of this Article shall contain, in particular:

1. name and address of the undertaking concerned or name and address of the natural person who infringed competition rules;
2. definition of the relevant product market and the relevant geographic market;
3. time, place and duration of the infringement of this Act;
4. a detailed description of the facts relating to the actions of the undertakings or its failure to act which have led to distortion of competition and resulted in the infringement of the provisions of this Act;
5. the provisions of this Act under which the fine for the relevant infringement is prescribed;
6. a call upon the party to present any additional evidence and witnesses if any;
7. a call upon the party to submit a defence in writing within a time period which may neither be shorter than fifteen days nor exceed thirty days.

(5) After the conclusion of the main hearing referred to in paragraph (2) of this Article the Council shall in line with its jurisdiction as referred to under Article 30 of this Act decide on the imposition of the fine and determine the amount of the fine, the deadlines and the method of fine enforcement.

(6) The Agency shall in line with the decisions of the Council on the basis of which distortion of competition has been established and taking into account all the criteria for the imposition of the relevant fine including the determination of its amount, close the proceedings by means of an integral decision.

(7) Unless otherwise stated by this Act, the provisions of the Law on Minor Offences shall apply in respect of the form and content of the notice of hearing, the course of main hearing,

summons of the parties to the proceedings and third parties to main hearing and keeping of the hearing protocol.

### **Secrecy obligation**

#### Article 53

(1) Members of the Council and the employees of the Agency shall keep and not disclose the information classified as a business secret, irrespective of the way they came to know it, whereby the obligation of business secrecy shall continue to be in effect 5 years after the expiry of their engagement with the Agency.

(2) Under the term business secret referred to in paragraph (1) of this Article, shall be considered, in particular the following:

1. all which is defined to be a business secret by law or other regulations;
2. all which is defined to be a business secret by the undertaking concerned if accepted as such by the Agency;
3. all correspondence between the Agency and the European Commission and between the Agency and other international competition authorities and their networks .

(3) A business secret referred to in paragraph (1) of this Article shall be in particular business information which has actual or potential economic and market value, the disclosure or use of which could result in economic advantage for other undertakings.

(4) The Agency will in particular apply the following non-exhaustive list of criteria to determine whether information can be deemed to constitute a business secret:

1. the extent to which the information is known outside the undertaking;
2. the extent to which measures have been taken to protect the information within the undertaking, for example, through non-compete clauses or non-disclosure agreements imposed on employees etc.;
3. the value of the information for the undertaking and its competitors.

(5) In principle, the Agency considers that the following information would not normally be covered by the obligation of business secrecy in the sense of this Act:

1. information which is publicly available, including information available through specialised information services or information which is common knowledge among specialists in the field;
2. historical information, in particular information at least five years old, irrespective of the fact whether they have been considered a business secret;
3. annual and statistical information. Turnover is not normally considered as a business

secret, as it is a figure published in the annual accounts or otherwise known to the market, and

4. data and documentation on which the decision of the Agency is based.

(6) By way of derogation from paragraphs (1) and (2) of this Article and in line with Article 41 paragraph (5) of this Act, where the undertaking submits to the Agency confidential documentation and data and fails to provide a copy of the relevant documentation and/or data containing no confidential information, the Agency shall after it has sent a reminder thereof to the undertaking concerned, finally assume that such a writing and/or documentation does not contain data which are covered by the obligation of business secrecy.

### **Keeping files and documentation**

#### Article 54

Files and documentation of the undertakings received by the Agency in the course of the proceedings or those collected and processed by the Agency for the purpose of the proceedings, shall be kept in the archives of the Agency in accordance with the relevant rules on keeping of archival materials.

### **Exempt of authorized persons of the Agency**

#### Article 55

(1) Any case handler of the Agency who is authorized to carry out operations relating to a particular case shall be exempt from the case:

1. if he/she is a party in the proceeding concerned, witness or expert witness;
2. if he/she is related to the party, to the representative or attorney as family descendant in the straight blood line up to whatever, or up to and including the second degree in the transversal line, as an in-law up to and including the second degree, a spouse or extramarital partner, even in the case where the marriage has ceased to exist;
3. if he/she is related to the party, representative or attorney of the party as an adoptive parent, adoptive child, guardian, ward, foster parent or foster child.

(2) A request for exemption of a person referred to in paragraph (1) hereof may also be filed by a party to the proceeding carried out by the Agency. The request concerned shall be submitted in writing.

(3) The provisions of this Article shall accordingly apply to the members of the Council.

#### Article 56

(1) Any case handler of the Agency who is authorized to carry out operations relating to a

particular case shall be exempt from the case:

1. if he/she, or a member of his/her close family is the owner of more than 3 % of shares or share capital in the undertaking which is a party to the proceedings carried out by the Agency;
2. if, he/she has given statements or written opinions on certain issues of the case in the capacity of an independent expert;
3. if, for any other justifiable reason, an objective conduct of the procedure and an objective proposal for decision-making regarding the case, cannot be expected.

(2) The persons referred to in paragraph (1) of this Article shall inform the Council, in writing and without delay, about the existence of any of the reasons referred to in paragraph (1) of this Article.

(3) The request for exemption referred to in paragraph (1) of this Article may be filed by a party to the proceedings carried out by the Agency. The request shall be submitted in writing.

(4) The provisions of this Article shall accordingly apply to the members of the Council.

(5) The Council shall decide on the requests for exemption referred to in Article 55 and 56 of this Act.

### **Time limits for decision-making**

#### Article 57

(1) The decision on prohibited agreements referred to in Article 9 and the decision establishing abuse of a dominant position referred to in Article 14 of this Act shall be made by the Agency within the time limit of 4 months following the day on which it established all the facts of the case relevant for the adoption of a final decision, or at the latest within 4 months from the day of the conclusion of the main hearing held in the fine proceedings.

(2) The decision relating to the assessment of concentration referred to in Article 22 paragraph (7) of this Act, shall be made by the Agency within 3 months from the day of the adoption of the procedural order on the initiation of the proceedings in line with Article 39 of this Act.

(3) The decision withdrawing the benefit of the block exemption granted to certain categories of agreements as referred to in Article 10 paragraph (4) of this Act, the decision on the assessment of agreements of minor importance referred to in Article 11 paragraph (4) of this Act and the decision on amendments to the decision on concentration referred to in Article 23 paragraph (3) of this Act shall be made by the Agency at the latest within 4 months from the day on which all the relevant facts of the case are established or at latest within 4 months from the day of the conclusion of the oral hearing.

(4) The decision on withdrawal of the decision on concentration under Article 23 paragraphs (1) and (2) of this Act and the decision on the measures to restore effective competition after the implementation of an incompatible concentration referred to under Article 24 paragraph (1) of this Act shall be taken by the Agency within 4 months from the day on which all the relevant facts of the case are established or at the latest within 4 months from the day of the conclusion of the main hearing in the fine proceedings.

(5) The decision on the commitments undertaken by an undertaking referred to in Article 49 paragraph (3) of this Act and the decision on non-compliance with the set conditions, obligations and time limits as referred to under Article 49 paragraph (7) hereof shall be taken by the Agency within 3 months from the day on which all the facts relevant for the adoption of a decision are established.

(6) By way of derogation from paragraph (2) of this Article the Agency may extend the time limit for adoption of the decision on the assessment of a concentration referred to under Article 22 paragraph (7) of this Act to 3 months where it finds necessary to carry out additional expertise or analyses defining the state of facts and examination of the evidence, about which it shall inform the parties to the proceedings before the expiry of the prescribed time limits.

## **Decisions of the Agency**

### Article 58

Within the meaning of Article 30 of this Act the Agency adopts, in particular, the following decisions:

1. decisions by which it decides on prohibited agreements and imposes measures in the sense of Article 9 of this Act and imposes the fine for the infringement of the provision concerned;
2. decisions by which it withdraws the benefit of the block exemption granted to a certain category of agreement in the sense of Article 10 paragraph (4) of this Act;
3. decisions assessing agreements of minor importance in the sense of Article 11 paragraph (4) of this Act;
4. decisions establishing abuse of a dominant position and imposing measures in the sense of Article 14 of this Act and imposing the fine for the infringement of the provision concerned;
5. decisions assessing the compatibility of concentrations and imposing measures in the sense of Article 22 of this Act;
6. separate decisions by which it revokes the decision of the Agency in the sense of Article 23 paragraphs (2) and (3) of this Act and imposes the fine for the

infringement of the provision concerned;

7. separate decisions by which it amends the decision of the Agency in the sense of Article 23 paragraph (3) of this Act;
8. decisions defining particular measures to be taken aimed at restoration of effective competition in cases of incompatible concentrations, pursuant to Article 24 of this Act and imposing the fine for the infringement of the provision concerned;
9. decisions by which it accepts the commitments offered by undertakings and sets time limits for their implementation pursuant to Article 45 paragraph (3) of this Act;
10. decisions by which it imposes interim measures in the sense of Article 51 of this Act;
11. decisions on non-compliance with the set conditions, obligations and time limits as referred to in Article 49 paragraph (7) of this Act;
12. decisions on the basis of which it imposes fines pursuant to this Act;
13. decisions establishing compliance with competition rules under this Act.

(2) Within the meaning of Article 30 of this Act the Agency in particular adopts procedural orders and conclusions by means of which it:

1. initiates the proceedings in the sense of Article 39 of this Act;
2. decides on the initiation of a single proceeding against two or more independent undertakings in the event where their rights and/or obligations are based on the same or similar facts of the case and on the same legal basis;
3. joints two or more separate cases which have been previously initiated pursuant to Article 39 of this Act where these are based on the same or similar facts of the case and on the same legal basis (joint cases);
4. requests the Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to conduct dawn raids of business premises, land and means of transport, to examine all records and objects relating to the business, to seal any business premises or records and to seize objects and documents which are subject to a surprise inspection referred to under Article 42 paragraph (1) and Article 44 hereof;
5. establishes lack of legal basis for the initiation of the proceedings referred to in Article 38 of this Act;
6. within the meaning of Article 36 of this Act decides on the status of a party to the proceedings for persons who wish to enjoy the same procedural

rights which are enjoyed by the person upon whose initiative the proceedings is initiated.

### **Submittal and publication of decisions**

#### Article 59

(1) Decisions of the Agency shall be submitted to the parties to the proceedings within 30 days from the day of the expiry of the time period for the adoption of a decision within the meaning of Article 57 of this Act. Where the proceedings have been initiated upon the initiative filed by a complainant, the decision will be submitted within the above stated time period also to the complainant. Where the decisions of the Agency contain data which are covered by the obligation of business secrecy within the meaning of Article 53 of this Act, each party and complainant shall be submitted a copy of a decision containing no confidential data.

(2) Summary decisions of the Agency referred to in Article 58 paragraph (1) points 1 to 11 shall be published in *Official Gazette*.

(3) Decisions referred to in paragraph (1) of this Article, decisions of the Administrative Court of the Republic of Croatia concerning the claims filed against the decisions of the Agency and other decisions adopted by the Agency shall be published on the web site of the Agency.

(4) Data considered to be covered by business secrecy obligation within the meaning of Article 53 of this Act shall be exempt from the publication as referred to in paragraph (3) of this Article.

## **VIII PENALTY CLAUSE**

### **Imposition of fines**

#### Article 60

The objective of the fines imposed by the Agency in the sense of this Act is to ensure effective competition, to sanction the infringements, to eliminate the consequences of anticompetitive behaviour and to deter other undertakings from engaging in such practices.

### **Fines for severe infringements**

#### Article 61

A fine not exceeding 10 % of the total turnover of the undertaking realized in the last year for which financial statements have been completed shall be imposed on the undertaking who:

1. concludes a prohibited agreement or participates in any other way in the agreement that resulted in undue distortion of competition in the sense of Article 8 of this Act;
2. abuses a dominant position as referred to under Article 13 of this Act;
3. participates in the implementation of a prohibited concentration as referred to in Article 16 of this Act;
4. does not act in compliance with the decisions of the Agency as referred to under Article 58 paragraph (1) points 1 to 10.

### **Fines for less severe infringements**

#### Article 62

A fine not exceeding 1 % of the total turnover in the last year for which financial statements have been completed shall be imposed on an undertaking party to the proceedings where it:

1. fails to submit the obligatory prior notification of concentration to the Agency referred to in Article 24 paragraph (1) point 2;
2. submits to the Agency incorrect or misleading information in the concentration assessment proceedings as referred to in Article 20;
3. fails to act in compliance with the request of the Agency as referred to under Article 41 paragraphs (1) and (3);
4. obstructs the enforcement of the injunction of the Administrative Court of the Republic of Croatia as referred to in Articles 42 to 46.

### **Fines for other infringements**

#### Article 63

A fine in the amount ranging from HRK 10,000 to 100,000 shall be imposed on an

undertaking who is not a party to the proceedings carried out by the Agency if it fails to act in line with the request of the Agency as referred to under Article 32 points 1 a) and b), and Article 41 paragraphs (1) and (3).

### **Method for the setting of fines**

#### Article 64

(1) The final amount of the fine which may be imposed under this Act shall not, in any event, exceed 10 % of the total turnover of the undertaking realized in the last year for which financial statements have been completed in line with Article 61 of this Act.

(2) When setting the fine the Agency shall take fully into account all mitigating and aggravating circumstances, such as the degree of gravity of the infringement, the duration of the infringement and the damage caused for competing undertakings and consumers. The Agency will use the following two-step methodology when setting the fine: first, it will determine a basic amount for each undertaking; second, it shall adjust that basic amount upwards or downwards depending on the mitigating and/or aggravating circumstances in each particular case.

(3) The basic amount of the fine will be determined and set at a level of up to 30 % of the undertaking's turnover generated exclusively from the activity of the undertaking carried out in the relevant market where the infringement was committed. The amount determined on the basis of turnover will be multiplied by the number of years of participation in the infringement of this Act. The Agency will then take into account circumstances, aggravating or mitigating, that respectively result in an increase or decrease in the basic amount as previously determined.

(4) Mitigating circumstances referred to in paragraph (2) hereof shall be considered in particular:

1. where the undertaking concerned provides evidence that it terminated the infringement urgently, as soon as the Agency initiated the proceedings. By way of exception, this will not apply to cartel agreements;
2. where the undertaking provides evidence that the infringement has been committed as a result of negligence;
3. where the undertaking provides evidence that its involvement in the infringement is substantially limited and thus demonstrates that, during the period in which it was party to the offending agreement, it actually avoided applying it by adopting competitive conduct in the market;
4. where the undertaking concerned has effectively cooperated with the Agency outside the scope of the criteria for granting immunity from and reduction of fines in line with

the rules referred to in Article 65 of this Act.

(5) Aggravating circumstances as referred to in paragraph (2) hereof shall be considered in particular:

1. where an undertaking continues the same actions or repeats the same or a similar infringement within the provisions of this Act, after the Agency has made a finding that it infringed the provisions of this Act. In such cases the basic amount shall be increased by up to 100 % for each such infringement established;
2. refusal to cooperate with or obstruction of the Agency in carrying out its investigations;
3. role of leader in, or instigator of the infringement and all other steps taken to coerce other undertakings to participate in the infringement of this Act.

(6) The Agency may also increase the fine in order to exceed the amount of gains improperly made as a result of the infringement of this Act, where it is possible to estimate that amount.

(7) By way of derogation from paragraph (4) of this Article, the Agency may, upon request and evidence furnished by the undertaking concerned grant a further reduction of the fine. A further reduction could be granted solely on the basis of objective evidence that imposition of the fine as provided for in this Act would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value, given its unfavourable financial position before the fine for the infringement of competition rules has been imposed by the Agency.

(8) In the case mentioned under paragraph (7) of this Article and in similar cases where no significant impediment of competition has been established or where the infringement did not have negative effects on competition, the Agency may, in such cases, impose a symbolic fine. Yet, the justification for imposing such a fine should be given in its decision.

(9) Upon the proposal of the Agency, the Government of the Republic of Croatia shall further develop the criteria for the fine setting referred to in paragraphs (2) to (8) of this Article in line with the criteria arising from the application of competition rules in the Community and within the meaning of Article 74 of this Act.

### **Reduction of or immunity from fines**

#### Article 65

(1) With the view to disclosing the most severe infringements of the provisions of this Act, the Agency may grant immunity from fine to a cartel member who first comes forward and informs the Agency on the existence of a cartel and supplies evidence which will enable the Agency to initiate the proceeding in connection with the alleged cartel, or to the first cartel member who submits information and evidence which will enable the Agency to find the

infringement of this Act in connection with the alleged cartel in the previously initiated proceedings where the Agency had no sufficient evidence to adopt a decision, i.e. to detect the existence of a cartel.

(2) Immunity from fine under paragraph (1) of this Article may not be granted to the undertaking who was the originator (leader) or instigator of the cartel.

(3) Undertakings disclosing their participation in a cartel that do not meet the conditions for immunity from paragraph (1) of this Article may be eligible to benefit from a reduction of the fine, if they provide the Agency with evidence which represents significant added value with respect to the evidence already in the Agency's possession and which substantially contribute to the closure of the proceeding concerned.

(4) Upon the proposal of the Agency, the Government of the Republic of Croatia shall further develop the criteria for the immunity from and reduction of fines referred to under paragraphs (1) and (2) this Article in line with the criteria arising from the application of competition rules in the Community and within the meaning of Article 74 of this Act.

(5) The imposition of fines under the provisions of this Act is without prejudice to criminal liability of the person who was imposed the fine pursuant to this Act.

## **IX COOPERATION BETWEEN THE AGENCY AND OTHER AUTHORITIES AND COURT REVIEW**

### **Cooperation with judicial and other authorities**

#### Article 66

(1) The Agency shall cooperate with the competent judicial, regulatory and other authorities in resolving the cases in respect of undue distortions of competition in the territory of the Republic of Croatia.

(2) Upon a written request of the Agency, the competent ministry of interior shall free of charge assist the authorised persons in the conduct of surprise inspections and/or temporary seizure of objects and/or documentation referred to in Articles 42 to 46 of this Act.

(3) Upon the written request of the Agency referred to under Article 41 of this Act all central administration authorities, public authorities in compliance with separate rules and local and regional self-government units shall free of charge submit to the Agency any requested data and documentation, including the data and documentation covered with business secrecy obligation, regardless of the specific rules regulating confidentiality. The Agency shall treat such data and documents in line with Article 53 of this Act.

### **Court review**

#### Article 67

(1) Against the decisions of the Agency which establish the infringements of this Act and impose fines, and against the decisions by which the proceeding is terminated on the account of dealing with the preliminary issue, no appeal is allowed but the injured party may bring a claim before the Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision. The claim shall be decided over by a panel of 3 judges concerning the following points of the decision concerned:

1. misapplication or erroneous application of substantive provisions of competition law;
2. manifest errors in application of procedural provisions;
3. incorrect or incomplete facts of the case;
4. inappropriate fine and other issues contained in the decisions of the Agency.

(2) Against the procedural orders adopted by the Agency during the proceedings, no appeal is allowed but the injured party may bring a claim before the Administrative Court of the Republic of Croatia.

(3) By way of derogation from paragraph (2) of this Article, against the procedural order by which the proceedings are initiated (Article 39), the procedural order on the basis of which the Agency decides to initiate one single procedure against two or more independent undertakings in the case where rights and/or obligations are based on the same or similar facts of the case and on the same legal basis, the procedural order on the basis of which the request for access to files or a part thereof has been denied (Article 47) and the procedural order by which the Agency joins two or more new notifications of a concentration previously notified by one and the same undertaking and conducts a joint assessment proceeding (Article 21 paragraph (7)) no appeal and no claim at the Administrative Court of the Republic of Croatia is allowed.

(4) The claim referred to under paragraph (1) of this Article postpones the enforcement of the decision of the Agency.

(5) Against the decision of the Agency establishing an infringement of this Act and imposing a fine for the committed infringement referred to under paragraph (1) hereof a claim may be filed by the injured party to the proceedings, whereas against the decision of the Agency establishing that no infringement of competition rules within the meaning of this Act has been committed a claim may be filed also by a person who filed the initiative and the person who has been granted the same procedural rights which are enjoyed by the person who filed the initiative as referred to in Article 36 paragraphs (3) and (4).

#### Article 68

(1) The panel of judges of the Administrative Court of the Republic of Croatia shall discuss and decide on the basis of the facts presented in evidence during the proceedings.

(2) The plaintiff may not present new facts in evidence but he/she may propose new evidence relating to the facts which had been presented in evidence during the proceeding.

(3) New facts may be presented only under the condition that the plaintiff provides evidence that he/she did not have or could not have had knowledge of these facts during the proceeding.

#### Article 69

(1) All actions brought before the Administrative Court of the Republic of Croatia pursuant to this Act are urgent.

(2) Damages claims relating to the infringements of this Act shall fall under the competence of the relevant commercial courts.

### **X ENFORCEMENT OF FINES, LIMITATION PERIODS AND PROCEDURAL COSTS**

#### **Enforcement of fines**

#### Article 70

(1) The decision of the Agency on the imposition of fines for the infringement of the provisions of this Act shall also indicate the payment deadline and the method of payment.

(2) Payments relating to the fines imposed by the Agency shall be made as soon as the decision of the Agency becomes final where no claim has been filed or as soon as the judicial decision has become enforceable. Besides the fine the payments concerned shall also include the interest and penalty charges calculated from the day of the receipt by the party of the decision of the Agency to the day on which the payment is actually made. In compliance with the criteria specified under Article 64 of this Act the Agency may grant payment of fines by instalments.

(3) Should an undertaking fail to pay the imposed fine within the prescribed deadline, the Agency shall inform thereof the local Revenue office of the tax authorities of the Ministry of Finance, dependent on the seat/address of the fined person, with the objective of enforced collection of claims in line with the enforced tax collection rules. The fines which are on the request of the Agency subject to enforced collection by the tax authorities shall be contributed directly to the State budget of the Republic of Croatia.

#### **Limitation periods for the imposition of fines**

#### Article 71

(1) The proceedings investigating the infringements of this Act and the imposition of fines shall be subject to a limitation period of 5 years from the day on which the infringement of this Act was committed.

(2) In the case of continuing or repeated infringements of this Act, time shall begin to run on

the day on which the infringement ceases.

(3) Any action taken by the Agency for the purpose of the investigation of an infringement of this Act or the imposition of fines for the infringement shall interrupt the limitation period referred to in paragraph (1) of this Article. Where the proceeding by the Agency is carried out against more undertakings or association of undertakings, the limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has the status of a party to the proceedings.

(4) Each interruption shall start time running afresh. However, yet, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period referred to in paragraph (1) of this Article has elapsed.

### **Limitation period for the enforcement of fines**

#### Article 72

(1) The fines imposed on the basis of the infringement of this Act shall be subject to a limitation period of 5 years. The time shall begin to run on the day on which the decision of the Agency becomes final or the decision of the court enforceable. The limitation period shall begin to run on the day on which the undertaking duly received the enforceable decision of the court, or from the day on which the decision of the Agency became final if the injured party did not take actions against the decision concerned.

(2) The limitation period referred to in paragraph (1) shall be interrupted by any action taken by a competent authority with the objective of fine enforcement. Each interruption shall start time running afresh. However, the limitation period for the enforcement of a fine shall expire at the latest on the day on which a period equal to twice the limitation period referred to in paragraph (1) of this Article has elapsed.

(3) By way of derogation, where the Agency grants payment of the fine by instalments the limitation period shall begin to run on the day on which the payment fell due but was not settled by the undertaking concerned.

### **Costs of the procedure**

#### Article 73

All costs and expenses of the procedure carried out on the basis of the infringements committed pursuant to this Act and imposition of fines for the infringements concerned shall be regulated by the Administrative Tariffs of the Act on Administrative Fees and Charges.

## **IX TRANSITIONAL AND FINAL PROVISIONS**

### **Application of this Act and closing of the proceedings in progress**

#### Article 74

This Act shall in accordance with Article 70 of the Stabilization and Association Agreement between the Republic of Croatia and the European Communities and their Member States (Official Gazette - International agreements, No 14/01), particularly in the case of legal voids and uncertainties relating to the interpretation of competition rules, accordingly apply the criteria arising from the application of the competition rules applicable in the European Community.

#### Article 75

The provisions of the Competition Act 2003 (Official Gazette No 112/03) shall apply to complaints and requests for initiation of the proceedings received until 30 September 2010 and to the cases where the proceedings were initiated until 30 September 2010.

### **Subordinate legislation**

#### Article 76

(1) The Government of the Republic of Croatia shall as proposed by the Agency adopt the relevant subordinate legislation referred to in Article 7 paragraph (4), Article 10 paragraph (2), Article 11 paragraph (3), Article 15 paragraph (4), Article 64 paragraph (9) and Article 65 paragraph (4) of this Act at the latest within three months from the entry into force of this Act.

(2) Until the relevant rules referred to in paragraph (1) of this Article have taken effect, the rules adopted pursuant to the Competition Act 2003 (Official Gazette, No 122/03) shall accordingly apply.

(3) The Agency shall within six months at the latest from the day of the entry into force of this Act, revise the existing Statute and adopt other legislative acts of the Agency which need to be brought into compliance with this Act.

#### Article 77

(1) The members of the Council who are appointed to this office before this Act enters into force shall continue their work until the expiry of their mandate.

(2) After the relief from office, the president and the members of the Council shall remain eligible for the same salary they had been entitled to in the position of the president/member of the Council as long as they start working on another job or qualify for retirement pension in line with the general rules in effect, but no longer than a year following their relief from office, save in cases of relief from office referred to under Article 29 paragraph (1) points 2, 4 and 5 of this Act.

### **Cessation of validity of Competition Act 2003**

#### Article 78

The Competition Act 2003 (Official Gazette, No 122/03) shall cease to be in effect on the day

on which this Act enters into force.

**Entry into force**

Article 79

This Act shall be published in Official Gazette and shall enter into force on 1 October 2010.

Class: 330-01/09-01/07

Zagreb, 24 June 2009

THE CROATIAN PARLIAMENT

President of the Croatian  
Parliament

Luka Bebić