



**Republic of Croatia  
Croatian Competition Agency**

**Annual Report of the Croatian Competition Agency for 2006**

**July 2007**

# CONTENTS:

INTRODUCTION .....	1
1. ACTIVITIES OF THE CROATIAN COMPETITION AGENCY IN 2006 .....	7
2. ADMINISTRATION AND ENFORCEMENT OF THE COMPETITION ACT .....	11
2.1. Assessment of agreements between undertakings .....	13
2.1.1. Piaggio Hrvatska d.o.o., Split - Individual exemption to the agreement .....	15
2.2. Abuse of a dominant position .....	16
2.2.1. Adris grupa d.d. Rovinj and Ronhill d.o.o. Kanfanar - Abuse of a dominant position .....	19
2.2.2. Competition Agency v Kvasac d.o.o. Prigorje Brdovečko - Non-abuse of a dominant position .....	20
2.3. Assessment of compatibility of concentrations between undertakings .....	21
2.3.1. Euroherc osiguranje d.d., Zagreb, Jadransko osiguranje d.d., Split, Euroherc životno osiguranje d.d., Zagreb, Euro Daus d.d., Split, Euroagram Tis d.o.o., Zagreb, Euroleasing d.o.o., Zagreb, Eurodom d.o.o., Osijek and Sunce osiguranje d.d., Zagreb.....	26
2.3.2. Styria Media International AG, Austria, G+J International Publishing Holding GmbH, Austria and Sanoma Magazines International B.V., Netherlands.....	29
2.4. Competition advocacy .....	31
2.4.1. Opinion on the proposed Draft Trading Act .....	32
2.4.2. Opinion on the "most favoured party clause" in the contracts concluded between the Croatian Composers Society, Collecting Society (HDS - ZAMP) and producers.....	33
2.4.3. Opinion on the setting up of the company Zagreb plakat d.o.o. by the City of Zagreb.....	34
2.4.4. Opinion on the prices and conditions for users' packages in the provision of voice telephony and public fixed telecommunications networks .....	35
3. ADMINISTRATION AND ENFORCEMENT OF THE STATE AID ACT .....	37
3.1. New legislative framework.....	37
3.2. Definition of state aid.....	38
3.2.1. Categories of state aid .....	40
3.3. Activities of the Agency in the area of state aid .....	42
3.3.1. Fiscal aid .....	43
3.3.1.1. Preliminary binding opinion on the proposed Investment Promotion Act .....	43

3.3.2. Shipbuilding.....	44
3.3.2.1. Decision giving State guarantees for 3. Maj Brodogradilište d.d. covering rescue aid loan.....	45
3.3.3. Steel .....	47
3.4. State aid control .....	48
3.5. Other cases .....	48
3.5.1. Authorisation of the proposed Annual employment promotion plan for 2006 .....	49
3.5.2. Ordinance on the criteria and methods for granting financial aid through the Environmental Protection and Energy Efficiency Fund .....	49
3.5.3. Programme for the promotion of protection and reconstruction of the cultural heritage in the underdeveloped areas and its inclusion in the tourist offer .....	50
3.5.4. The proposal for the conversion of debt into equity and debt write-off in respect of the undertaking Mupera d.o.o. ....	51
3.5.5. Draft Proposal for the Decision on ratification of Guarantee Agreement between Auto cesta Rijeka-Zagreb d.d. and the European Bank for Reconstruction and Development for the financing of the "Project for the construction of the II b section of the Motorway Rijeka – Zagreb.....	52
3.6. Other activities of the Agency relating to state aid .....	53
4. INTERNATIONAL COOPERATION .....	54
4.1. European Union and EU support projects.....	54
4.2. Multilateral and bilateral co-operation .....	55
4.3. Professional training and international seminars .....	57
CONCLUSION.....	59

## **Appendices:**

- Appendix 1: Organisational chart of the Croatian Competition Agency
- Appendix 2: The budget of the Agency in 2006
- Appendix 3: Total number of registered and resolved cases/files in the area of anti-trust and merger control in 2006
- Appendix 4: Comparison of the total number of cases/files received and resolved in the area of competition and state-aid in 2005 and 2006
- Appendix 5: Total of adopted decisions in the area of anti-trust and merger control in accordance with the methodology used by the European Commission
- Appendix 6: List of cases assessed by Croatian Competition Agency in 2006 in the area of antitrust and merger control – substantive decisions
- Appendix 7: Selected decisions in the area of state aid in 2006
- Appendix 8: List of rulings of the Administrative Court of the Republic of Croatia relating to the claims filed against the decisions of the Agency in 2006
- Appendix 9: Croatia 2006 Progress Report – Chapter 8: Competition policy

## INTRODUCTION

The Annual report of the Croatian Competition Agency for 2006 outlines the most significant activities in respect of the implementation of the Competition Act and State Aid Act in the report period. However, it also identifies the problems and challenges that Croatia faces on its way to establishment of a more efficient competition regime both relating to the behaviour of the undertakings in the market and the changing role of the state in granting state aid. At the same time, this report also takes into account the recent reviews of the EC legislative framework in the area of competition law and policy, particularly relating to a new distribution of competences between the national authorities of the Member States and the EU institutions, which also affects Croatia in the pre-accession period. The understanding of the key principles of the competition regime ensures proper implementation of competition law and policy in the EU and enables the possibility for the competent authorities to timely prepare for the commitments arising from the EU membership in the area concerned. It must also be taken into account that the effective enforcement of the EC *acquis* in the area of competition is the principal criteria in the assessment of the country's readiness for accession.

The most important role of competition law and policy is strengthening of competitiveness for the purpose of most efficient use and allocation of limited resources and establishing of business conditions which ensure equal treatment and equal opportunities for all undertakings in the market, irrespective of their size, market power or nature of their businesses. Competition law within the EC integration framework is a set of legal and economic rules which are key elements in ensuring cohesion and further development of the EU internal market and, at the same time, fostering growth of the economies of its Member States and strengthening their competitiveness at the global level.

The undertakings are thus allowed mergers and acquisitions or any other form of joint ventures, conclusion of business agreements or strengthening of their market power, whereas, central, local and any other state authorities which control and allocate state resources, are permitted to promote particular economic goals or support the development of particular regions. Nevertheless, in doing so, both the businesses and the relevant authorities, must respect competition rules. This ensures legal certainty for the undertakings operating in the market and creates an environment in which new competitors, are encouraged to enter the market and make investments under the general market conditions.

In such an environment the task of a competition authority such as the Croatian Competition Agency, within its administrative capacities and other resources, is to tackle the most serious distortions of competition focusing primarily on the most serious infringements, such as price cartels, market sharing or different forms of abuse of a dominant position. Moreover, the work of any competition authority and consequently of this Agency, apart from being concentrated on the *ex post* approach and resolving the

already committed infringements, at the same time includes a proactive approach aimed at the revision of the existing or improvements of the future legal solutions which directly or indirectly, actually or potentially influence the establishment of effective competition in a certain sector. Simultaneously, *pro futuro* market investigations are included as an imperative which involves adequate economic analyses and understanding of particular markets and as such are indispensable in the assessment of compatibility of concentrations or in the assessment procedure for granting of restructuring aid to firms in difficulty. The above mentioned indicates the particular scope of work of this Agency and justifies its status as a *sui generis* authority, with an important and manifold role in the development of market economy.

The proactive policy of the Agency covers the activities aimed at investigation of particular markets which indicate restrictions of administrative or technical nature which hinder competition or create barriers to entry to the markets concerned. The investigations of the markets where competition is impeded require significant administrative and financial resources as shown by the long and comprehensive analyses carried out by the European Commission and the national competition authorities with a longer tradition in this area. The investigations in question are valuable both from the standpoint of the existing economic operators as of those who plan to carry out activities in a certain sector. At the same time they are important for the relevant public authorities which propose legislative frameworks serving as a basis for the performance of the business operations in question. These inquiries generally indicate the causes which lead to market irregularities to the disadvantage of the end-users and consumers and facilitate the development of competition culture by giving all the participants – public authorities, undertakings and service users an insight into the market aspects on which the performance of particular activities is based and the possibilities of their redefinition taking into account the market principles. However, some market restrictions and barriers to entry may be the result of an inadequate legislative framework which fails to foster or even restricts competition by granting certain undertakings special or exclusive rights or empowering certain professional associations to do so. This prevents new competitors to enter these markets and creates standards for the provision of services which may limit the development of competition and negatively affect the interests of the service users. In general, an open and developed market creates benefit for the consumers which are the objective measure of the level of competition existing in a certain industry. On the basis of such investigations the Agency has made a number of proposals to the competent authorities for the purpose of the improvement of the conditions and rules which regulate the professions in question, such as the provision of taxi services, attorneys' and audit services.

This report provides for summaries of a number of cases which have been handled in the everyday practice of the Agency in all areas falling under its competence - antitrust, control of concentrations and state aid. The case summaries from the report period should contribute to the understanding of competition law and policy and promote competition culture among experts involved and the general public. The report consists of statistical

breakdowns concerning the resolved cases whereas the guidelines and the objectives concerning the activities of the Agency and the strategies for further development of competition law and policy in Croatia are contained in the Competition Agency Strategy Statement 2007 – 2008 available on the web site of the Agency<sup>1</sup>.

In 2006 the Agency continued to improve its enforcement efficiency both in respect of the implementation of the Competition Act and State Aid Act. In the area of antitrust and control of concentrations there have been more than a hundred adopted decisions in the administrative proceedings concerning the assessment of agreements, abuse of a dominant position, control of concentrations and competition advocacy. In the area of state aid, some ninety decisions have been adopted in various administrative proceedings concerning assessment and granting of state aid whereas a number of opinions and explanations have been issued upon the request of other competent institutions.

The major part of the decisions concerning restrictive and prohibited agreements covered the assessment of agreements in the telecommunications sector. Taking into account the ongoing liberalization of the sector concerned and the turnover realized in all branches of the convergence technologies, innovation and new services, it is to be expected that the number of cases in the area concerned will grow in the future. This makes the cooperation of the Agency with other sector specific regulators (in this particular case the Croatian Telecommunications Agency) indispensable for the proper functioning of the competition regime. Apart from the cooperation agreement with the Croatian Telecommunications Agency which was concluded last year, the Agency has entered into similar cooperation agreements with five other regulators, either competent in the area of competition in specific sectors (such as the banking sector), regulate sectors which undergo liberalization (such as the energy or postal sector) or implement other laws which are directly connected with the implementation of the Competition Act (such as in the electronic media and financial services sector).

In the report period four abuses of a dominant position have been established - in the tobacco manufacturing, processing and marketing of tobacco products, sanitation and communal waste collection and disposal and construction stone suppliers. A multidisciplinary approach used here, based on the financial data and economic analyses, where gravity is given to *significant effects on competition* caused by certain behaviour of dominant undertakings is fully in compliance with the recent EC frameworks in this particular area of competition concerns.

More than twenty concentrations have been assessed in the report period, whereby the most of them have been notifications on the share holding structure under the Electronic Media Act, where the concept of concentration involves any equity transaction regardless of the fact whether the transaction in question leads to any change in respect of exertion of

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<sup>1</sup> [www.aztn.hr](http://www.aztn.hr)

control or not, and whether it raises competition concerns or not. This also lead to the proposal made by the Agency concerning the necessary revision of the existing Electronic Media Act in the part concerning the definition of concentration in this area, taking into account the very purpose of the assessment of concentrations.

An appreciable part of the activities of the Agency in 2006 involved the opinions given on draft proposals for laws and other regulations which may have effects on competition and other expert opinions in respect of the application of competition rules. This part of the job assigned to the Agency which points out its consultative and advisory role, proves to be a segment which considerably contributes to drafting of legal regulatory framework which must be in compliance with competition rules and as such promotes the establishment and further development of the market economy and creation of new economic values to the benefit of the consumers. In a nutshell, the regulatory framework must be cleared of all obsolete and redundant provisions which may restrict the performance of certain business activities, as long as they are not necessary for the protection of public interest or other interests that may be protected in other ways which are less harmful for development and strengthening of competitiveness of the economy and which bring benefit to the consumers. In addition, expert opinions which are issued by the Agency upon the request of the undertakings contribute to raising awareness in the area of competition among the business community aimed at possible prevention of anticompetitive business operations.

A special place in the work of the Agency, taking into account the necessity of permanent education and training and the constant changes in the area of competition law and policy, is reserved for its international cooperation and participation in competition fora within the EU, OECD, ICN and others, and its bilateral cooperation with national competition authorities, particularly in the region and with the neighbouring countries. The knowledge and experience so gained are important for the successful negotiations for the accession of Croatia to the EU, particularly under Chapter 8: Competition policy, but they also give a new dimension to the everyday practice of the Agency, introduce new techniques in case handling and prepare the Agency for its membership in the European Competition Network (ECN). On the other hand, the efforts of the Agency are constantly aimed at raising awareness of competition law and policy among the business community and to that end it organizes, alone or supported by the EU projects or in cooperation with the Croatian Chamber of the Economy, expert meetings, consultations and seminars which are open to the public. In November 2006 it held its International Competition Conference in Zagreb where national but also the British, German and Slovenian experts together with the representatives of the European Commission promoted the objectives set in this area.

In the creation of a business environment which fosters the development of entrepreneurship, new investments and increased industrial efficiency, state aid control plays an indispensable role. Legal certainty of undertakings and state aid which is granted under equal conditions to all undertakings is achieved through a transparent granting system, monitoring of its implementation and recovery of awards where state aid had been

granted illegally or misused. State aid control, until the Croatian full membership in the EU, falls under the competence of the Agency. State aid proposals are notified to the Agency by the central and local state administrations and legal persons who may allocate state resources under the particular aid schemes or to individual undertakings. The Agency here applies the rules adopted by the Government of the Republic of Croatia in compliance with the proceedings established under the 2006 Regulation on state aid, in accordance to which the EC state aid rules become directly applicable in their Croatian translation after their adoption by the Government and their official publication. Apart from direct application this legal solution also ensures timely adjustment of aid providers and aid beneficiaries to the EU state aid regime once Croatia becomes an EU Member State.

Taking into account the benchmarks set under the part of the negotiation covering competition policy and exclusively concerning the progress made in the area of state aid, particularly referring to the existing shipbuilding and steel industry and their structural adjustments to market conditions, a uniform tax incentives policy and the necessary regulations in the area of incentives to textile and automotive parts industry, the most part of the job of the Agency in the previous year was marked by intensive activities aimed at the fulfilment of the criteria set under the Stabilization and Association Agreement particularly relating to restructuring of the above mentioned sectors in difficulty and adjustment of the existing state aid schemes in other industries. The Resolution of the Government of the Republic of Croatia as of 2 March 2006 was one of the crucial steps in this legislative alignment. It contains the List of existing aid schemes which constitutes the legal basis for granting state aid before the 2003 State Aid Act entered into force and thereby introduced state aid control in Croatia and imposed the obligation on the state authorities and legal persons who manage state aid to align, within a specific time periods, the existing programmes with the new rules in cooperation with the Agency.

The necessary structural adjustments that are under way in the sectors concerned and the relatively short deadlines for the implementation of the reforms require a special attention and additional efforts of the agents of the economic policy and of the Agency which itself monitors the whole process. The provision of technical support within the CARDS project, more precisely the twinning project with Germany and Slovenia, were of crucial importance for the Agency and key aid providers in the past two years. Within the PHARE project in the following two years the Agency will continue with the twinning project with Germany as a partner not only in the area of state aid but the support will also be extended to the area of antitrust and control of concentrations.

The enforcement of the State Aid Act is essentially based on cooperation between aid providers and the Agency. It is supported by the competent EU institutions through the above mentioned projects, but also facilitated through direct cooperation with the DG Competition of the European Commission. On the other hand, the adjustment of undertakings - the biggest aid beneficiaries - to the new environment is determined through the development of the business strategies and introduction of necessary changes in their

operation which will guarantee their survival and increased competitiveness in the market, under the terms of long-term viability and supported by the state when their projects are aimed at investment in research and development and innovation, education and training, environmental protection and other horizontal objectives.

In this view, the Agency established a permanent working group whose coordination with aid providers should enhance the realization of the above mentioned goals through regular meetings and addressing the issues relating to the enforcement of the State Aid Act. This collaboration facilitates better understanding of the application of state aid rules in practice and also involves the participation of international experts in the seminars where they share their experiences in dealing with state aid matters in their home Member States.

In developed market economies competition law and policy have proved to be an important instrument which ensures economic efficiency and growth on the account of the fact that it encourages undertakings or even make them focus on permanent strengthening of their competitiveness usually through necessary adjustments or preparations for the changes in the environment given that it is the only safe way for their success in the market. Taking economic efficiency as the end, and competition as the means, this is the best way to achieve efficiency and economic effectiveness.

# 1. ACTIVITIES OF THE CROATIAN COMPETITION AGENCY IN 2006

The activities of the Croatian Competition Agency (CCA) in 2006 were focused on the goals and tasks set by the Competition Act and State Aid Act and, on the other hand, on the priorities concerning their implementation which have been specified in the Competition Agency Strategy Statement 2006<sup>2</sup>. Namely, it was necessary to outline the main goals and priorities of the CCA and to identify the major activities falling under its scope and responsibilities taking account of the limited financial as well as human resources with the view to achieving optimum results by concentrating on the cases which following the necessary assessments have most serious effects on competition in our county.

The adoption of the Strategy Statement was also taken as a step further towards improved transparency of the work of the Agency ensuring the business community and general public insight into the current and future policies of the Agency on its way to fostering the efficiency of the competition regime in Croatia.

In 2006 the Agency particularly focused its activities on:

- Efficient case handling and proper application and enforcement of competition rules, including state aid;
- Investigation of liberal professions market where the rules or association statutory provisions limit entry or lead to market foreclosure, and where traditional instruments of competition law do not prove satisfactory in handling market insufficiencies and unfair market behaviour of the market players. To that end, as early as in 2004, the CCA drew up a market analysis of the provision of attorneys' services which was subsequently, in the form of an opinion issued by the CCA, submitted to the competent ministry, whereas in 2005 the market analysis covered the provision of taxi services which has been communicated to the local authorities with the view to its future deregulation. In 2006 the CCA carried out the analysis of audit services:
- Sectoral monitoring especially in respect of the provision of telecommunications services, taking into account rapid technology changes in the traditional telecommunications market of increasing competition and historically determined technical limitations of access and operation in particular market segments;
- Further cooperation and interaction with other competition authorities and sector specific regulators, particularly by putting formal arrangements (joint working groups) in place for liaising with the regulators concerned, with the purpose to ensure efficient case handling and common views on particular market behaviour in the sectors concerned. Upon the initiative of the CCA such agreements on

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<sup>2</sup> The Competition Agency Strategy Statement 2006 was adopted by the Competition Council in March 2006. It is available on the CCA web site [www.aztn.hr](http://www.aztn.hr)

- cooperation have been signed with the Croatian Energy Regulation Agency, Croatian Financial Services Supervision Agency, Council for Postal Services, Croatian National Bank and the Croatian Telecommunications Agency;
- Further alignment of the legislation in the area of competition with the EC acquis and participation in the accession negotiations between the Republic of Croatia and the EU, particularly covering Chapter 8. Competition policy;
  - Competition advocacy work - policy advice and giving expert opinions on the compliance of laws and other regulations with the provisions of the Competition Act. This activity of the CCA highlights the best practice of the EU Member States regulating particular sectors and proposes legislative measures to promote competition in the sectors concerned. In addition, the CCA will continue to issue expert opinions upon the request of the business community describing and providing interpretation of the relevant legal mechanisms and instruments set by the Competition Act, although this is not the practice of other similar authorities in the EU and in spite of the additional burden on the normal operations of the CCA;
  - The cooperation initiative launched in May 2006 with the Ministry of Justice and aimed at the necessary modifications of the existing Competition Act and the Courts Act, in order to remove the deficiencies of the current court protection system and empower the CCA to impose sanctions as regulated by law with the view to strengthening effectiveness of the CCA and increasing the deterrent effect of the sanctions. In cooperation with the competent ministry the CCA insists on finding adequate solutions to this problem taking into account the practice and judicial mechanisms applicable in the comparable EU Member States. It is the view of the Agency, in accordance with its scope of jurisdiction, that the most appropriate review court would be the commercial court. The amendments to the Competition Act would thereby ensure that only one court rules on the legality of the decisions, and at the same time decides on the level of fines imposed by the CCA. The changes in question should also provide for new investigative mechanisms, such as the "whistle-blower" immunity (leniency) programme for cartels, i.e. the total or partial reduction of fines applied to undertakings which first inform the CCA and demonstrate evidence of the existence of a hardcore cartel. This instance has proved to be vital in the investigation and combat of cartels also by the European Commission which acknowledges that no cartel case would have been successfully solved without the cooperation of the undertakings who have been first to come forward for a clear benefits of immunity or reduction of fines. The representatives of the competent ministry, representatives of courts and experts from the Faculty of Law together with the CCA experts have strengthened their activities, with the view to finding appropriate legal solutions which would correspond to the similar legal framework and practices applicable in EU Member States whose legal systems match the Croatian legislative regime. The complexity of the problem requires necessary time and the deadline set for its final resolution is the first quarter of 2008 when the first draft of a new Competition Act or Amendments to the Competition Act should be submitted to the Government of the Republic of Croatia;

- Facilitating international cooperation, particularly with the DG Competition of the European Commission and other national competition authorities, especially in the region (Slovenia, Bosnia and Herzegovina) taking into account of the presence of the Croatian undertakings in these markets.

In 2006 all previously adopted subordinate legislation in the area of antitrust and control of concentrations became fully applicable<sup>3</sup> given the fact that transitory periods allowing the undertakings to bring their operations in compliance with the new rules expired within the meaning of the Competition Act<sup>4</sup> and the successively adopted regulations which appreciably improved the functioning of the competition regime in our country.

The activities of the CCA in 2006 have thus been focused on the proper application of the new rules and handling of the cases and implementation of rather complex administrative proceedings in respect of the assessment of the behaviour of undertakings in the market, through constant strengthening of administrative and institutional capacities of the CCA, increase of the number of the staff and strengthening of its expertise and the activities aimed at the promotion of competition culture and active international cooperation.

Taking into account that a new State Aid Act entered into force on 6 December 2005 which significantly broadened the scope of activities and competences of the CCA in the area of monitoring and implementation of state aid regime, in 2006 the CCA directed a major part of its activities to collaboration with and training of aid providers – public administration authorities at the national and local level, state funds and banks, in the view to promoting a state aid policy which would allocate the resources more effectively through better understanding of state aid rules which must be respected under the law. In compliance with the proceedings specified under the Regulation on state aid which was adopted by the Government of the Republic of Croatia in February 2006 all state aid rules are directly

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<sup>3</sup> Upon the proposal of the CCA, during 2004 and 2005 the Croatian Government adopted eight regulations, whereas the CCA adopted two guidelines on concentrations between undertakings and provided a number of interpretations of the provisions thereof. The adopted regulations are as follows:

- Regulation on the definition of relevant market (Official Gazette No 51/2004)
- Regulation on notification and assessment of concentrations (Official Gazette No 1/2004)
- Regulation on block exemption granted to certain categories of vertical agreements (Official Gazette No 51/2004)
- Regulation on agreements of minor importance (Official Gazette No 51/2004)
- Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles (Official Gazette No 105/2004)
- Regulation on block exemption granted to certain categories of horizontal agreements (Official Gazette No 158/2004)
- Regulation on block exemption granted to certain categories of technology transfer agreements (Official Gazette No 2/05)
- Regulation on block exemption granted to insurance agreements (Official Gazette No 54/05).

The legislative framework is also available on the CCA web site [http://www.aztn.hr/eng/zakonodavni\\_o.htm](http://www.aztn.hr/eng/zakonodavni_o.htm)

<sup>4</sup> The Competition Act (Official Gazette No 122/2003) was adopted by the Croatian Parliament on 15 July 2003, entered into force on 7 August 2003, applies since 1 October 2003.

applicable from the EC acquis after having been translated into Croatian and published in the Official Gazette. In practice, this presupposes the understanding of the rules concerned, adequately trained staff and administrative capacities both on the side of the CCA which is empowered to authorise state aid and aid providers who award state aid. To this end, the CCA supported by the CARDS project organized numerous seminars and workshops on rather complex state aid matters which are one of the most important criteria for the EU membership.

*In 2006 the CCA resolved a total of 347 cases, whereby 246 cases dealt with antitrust matters and control of concentrations (118 thereof have been substantial cases of assessment of agreements, concentrations, abuse of dominance and issued opinions), whereas in the area of state aid 101 cases have been resolved.*

*The organizational structure of the CCA is determined by the Competition Act, as well as the scope of activities of the Competition Council which is the managing body of the CCA. The Competition Act also regulates the terms of appointment, duration and relief from office for the members and the president of the Council, sets the decision making process, competences, responsibilities and rights and obligations of the expert team of the CCA. The Statute of the CCA establishes and regulates the organisational and other matters relating to the activities of the CCA in more detail. Organisational structure of the CCA is provided in Appendix 1 to this report.*

*In 2006 the CCA had a staff of 43 employees, including five members of the Council who are appointed by the Croatian Parliament. Although the number of employees increased by 2 % in comparison with 2005 it is nonetheless by far enough to stand the complex activities within its scope and a significant work load taking into consideration the fact that more than 30 % of the employed experts are at the same time engaged in a number of working groups in the EU accession negotiations. The most of the staff is young (the average age of the expert team is 34) and consists of highly qualified and motivated economists and lawyers holding a university degree (out of 15 lawyers 13 have passed the Bar Exam) and there are three Masters of Science. Unfortunately, the brain drain continued also in 2006 where highly skilled expert staff leaves for the private sector or to sector-specific regulators who can offer better incentives and pay.*

## 2. ADMINISTRATION AND ENFORCEMENT OF THE COMPETITION ACT

Within the meaning of the Competition Act the major part of the activities of the CCA covers the administrative proceedings in the following areas:

- assessment of restrictive agreements between undertakings,
- establishment of abuse of a dominant position, and
- assessment of compatibility of concentrations between undertakings.

Besides the above mentioned administrative proceedings the CCA performs also other activities within its scope:

- The CCA issues expert opinions at the request of the ministries and other state authorities, regarding the compliance of draft bill proposals and other legislation, as well as related issues which may significantly influence competition, with the Competition Act;
- issues expert opinions at the request of the undertakings and other stakeholders concerning the competition rules;
- monitors and investigates certain markets with the view to promotion of competition;
- collects data and information from undertakings relevant for market investigations and conduct of analyses;
- draws statistical reports necessary for its international cooperation and cooperates at the international level with the relevant competition authorities in respect of the undertaken international obligations of the Republic of Croatia in the area of competition falling under the jurisdiction of the CCA.

During 2006 the CCA opened a total of 267 cases, where 240 proceedings have been initiated at the request of a party and 27 were opened on the CCA's own initiative.

Of the stated total number of cases 82 thereof have been administrative cases initiated within the main scope of the CCA:

- 31 cases concerning the assessment of agreements between undertakings;
- 21 cases concerning the establishment of a dominant position, and
- 30 cases assessing the compatibility of concentration between undertakings.

In the area of the activities relating to its expert opinions the CCA received a total of 42 requests where it has given opinion:

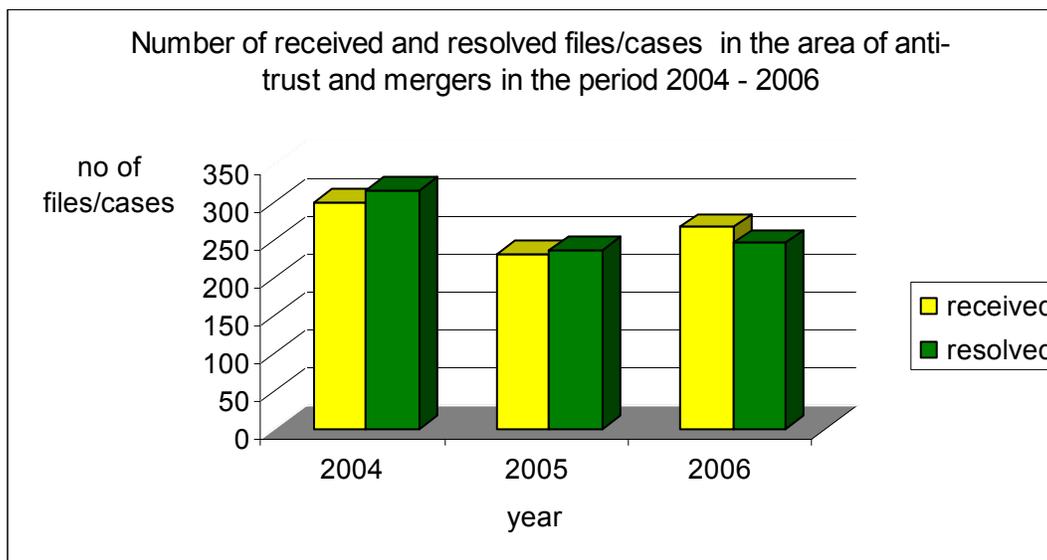
- on draft bills and other legislative proposals (13 requests), and
- upon request of undertakings (29 requests).

There have been also 143 cases opened in other areas of the CCA's competence, such as international cooperation, cooperation with other public administration authorities and institutions, investigation of particular markets including the collection of data etc. In 2006, 128 cases from the above stated number have been closed, as follows:

- 68 cases relating to international cooperation reports, cooperation with the Croatian institutions and other bodies;
- 53 other non-administrative cases, and
- 7 cases internal acts and publications of the CCA.

The CCA has kept the pace relating to its efficiency in resolving the cases. In 2006 it closed the proceedings and taken its decisions in 246 cases.<sup>5</sup> The stated number also includes, besides the decisions and opinions of the CCA, 27 resolutions made by the CCA in administrative acts where the injured party may file an administrative dispute before the Administrative Court of the Republic of Croatia.

Appendix 3 to this report gives a breakdown of the total opened and resolved cases in the area of antitrust and control of concentrations in 2006, whereas Appendix 6 gives a list of decisions (decisions and opinions) of the CCA in the same area in 2006.<sup>6</sup>



<sup>5</sup> The number of resolved cases in 2006 also includes the cases received in the preceding years of 2005 and 2004, given that the proceedings in the latter cases have been closed in this report period. In 2006 the CCA has taken 21 resolutions on dismissal of the request due to lack of legal grounds within the meaning of the Competition Act, 3 resolutions on termination of the proceedings which had been initiated ex officio due to the lack of legal grounds, 2 resolutions on termination of the proceedings based on the party's failure to act and 1 resolution on dismissal of the request due to lack of jurisdiction.

<sup>6</sup> Taking into account that the list of decisions has been made in compliance with the relevant method used by the European Commission it does not include the resolutions of the CCA described above given that fact that the method in question does not provide for this kind of procedural decisions which are not concerned to be substantial decisions. Only the decisions and opinions of the CCA can fall under this category.

Due to the changes introduced by the Competition Act and the relevant bylaws which began to apply in 2005 and 2006 the number of cases which had to be notified to the CCA decreased. However, taking into account the obligation in respect of the application of the relevant EC acquis, handling the cases has become much more complex and requires more resources than before.

As stated above in this text, the key activities of the CCA relating to the conduct of administrative proceedings within the meaning of the Competition Act cover the assessment of restrictive agreements, establishment of abuse of dominance and assessment of compatibility of concentrations between undertakings. Each of these areas will be separately presented in this annual report.

## **2.1. Assessment of agreements between undertakings**

In this report period the CCA continued with the consistent implementation of the Competition Act in the view to preventing anticompetitive behaviour of undertakings which is in this particular case manifested through the conclusions of prohibited agreements. In 2006 the CCA has taken 19 decisions – in other words, closed 19 cases relating to the assessment of agreements. Out of these 19 decisions, one of them granted individual exemption to an agreement whereas 18 decisions contained interim measures. Besides these 19 cases there were 3 more cases of assessment of agreements where the requests concerned have been dismissed (resolutions on dismissal) due to lack of legal grounds for the initiation of the proceedings within the meaning of the Competition Act.

*Within the meaning of Article 9 of the Competition Act:*

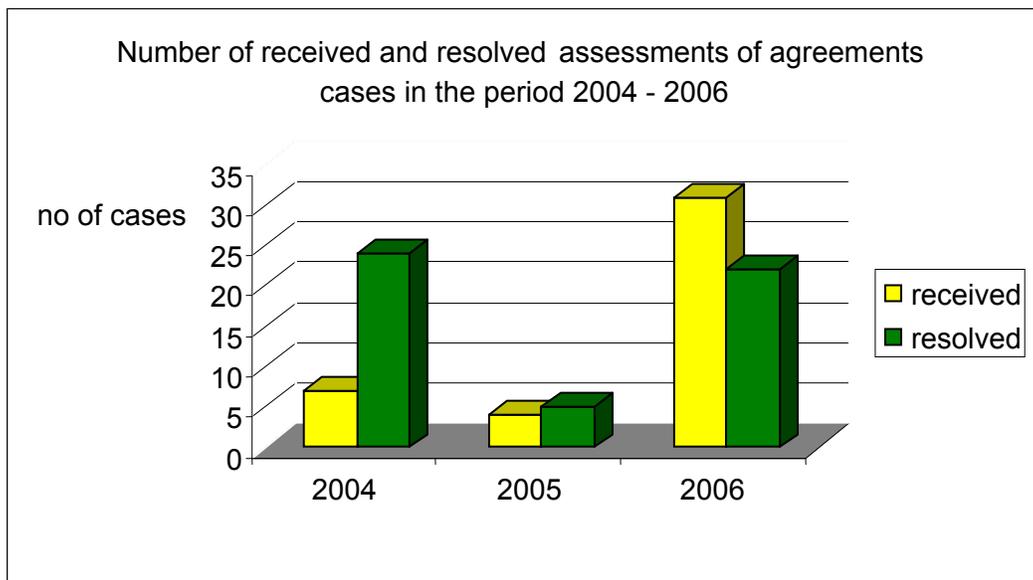
*“(1) There shall be prohibited all agreements between undertakings, contracts, single provisions of agreements, explicit or tacit agreements, concerted practices, decisions by associations of undertakings (hereinafter: agreements) the object or effect of which is to prevent, restrict or distort competition in the relevant market, and in particular those which:*

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

*(2) The agreements that prevent, restrict or distort competition pursuant to paragraph (1) of this Article, and which may not be exempted in the sense of Article 10 of this Act shall be null and void.*

For the first time the CCA has granted individual exemption to an agreement from the application of the provisions on prohibited agreements pursuant to the Competition Act in the case where upon the request of the undertaking Piaggio Hrvatska d.o.o. relating the agreement which it entered into with 36 other undertakings, all of them with the place of establishment in Croatia, the CCA granted individual exemption with a duration of two years under the conditions and criteria that must be fulfilled within a time periods specified by the CCA.<sup>7</sup>

Similarly, in 18 cases considering the assessment of agreements entered into between HT-Hrvatske telekomunikacije d.d., Zagreb and T-Mobile Hrvatska d.o.o., Zagreb, and 18 key accounts and their connected undertakings which comprise in total more than 150 undertakings, the CCA has taken 18 decisions on interim measures in respect of the restrictive provisions contained in these agreements which produce anticompetitive effects and prevent market access to the competing undertakings of HT-Hrvatske telekomunikacije d.d. and T-Mobile Hrvatska d.o.o. whereby, within the meaning of competition rules, the application of the provisions in question must be terminated whereas the undertakings in question are imposed prohibition as regards the conclusion of such restrictive agreements with their key accounts in the future.<sup>8</sup>



The future activities of the CCA in the area of restrictive agreements will be focused on certain markets' investigations with a special emphasis on the possible existence of cartel

<sup>7</sup> The decision of the Agency: UP/I 030-02/2005-01/02 of 13 January 2006, Official Gazette No 14/06).

<sup>8</sup> The provisional decisions of the Agency: UP/I 030-02/2006-01/43, from no 45-48, 50-51, 53-63, all dated 7 September 2006 and published in the Official Gazette No 103/96.

agreements.<sup>9</sup> Nevertheless, in order for such investigations to derive results in the sense of effective disclosure and combat of cartels, in the forthcoming period (2007 – 2008) it is necessary to establish the legal basis in the form of the introduction of leniency programmes for "whistleblowers", i.e. the total or partial reduction of fines applied to undertakings which inform the CCA and demonstrate evidence of the existence of a hardcore cartel. This instance has proved to be vital in the investigation and combat of cartels even by the European Commission which acknowledges that no cartel case would have been successfully solved without the cooperation of the undertakings concerned with the antitrust authorities.

### **2.1.1. Piaggio Hrvatska d.o.o., Split**

#### *Decision granting an individual exemption to the agreement<sup>10</sup>*

*Following the request of the undertaking Piaggio Hrvatska d.o.o. from Split (hereinafter: Piaggio) and on the basis of the decision of the Competition Council, the Agency granted individual exemption from the application of the provisions on prohibited agreements to 36 exclusive distribution agreements and one non-exclusive distribution agreement which had been entered into between the authorised dealer of mopeds and scooters Piaggio and other authorised dealers in the territory of the Republic of Croatia (authorised dealers within the selective distribution network). The agreements in question could not be granted block exemption under the provisions of the Competition Act due to the fact that they contained several restrictive provisions whereas one has been assessed as a hardcore restriction of competition.<sup>11</sup>*

*Following the in-depth economic analyses of the Agency, the Competition Council established that the market covering the distribution of mopeds and scooters in the territory of the Republic of Croatia is characterised by a large number of competing undertakings to Piaggio who are engaged in distribution of mopeds and scooters of different brands and from different suppliers. This dynamic and competitive market also indicated that the market share held by Piaggio has been significantly lower in the period from 2003 to 2005, whereas the market shares of other undertakings have grown in the same period.*

*The agreements in question had been concluded for one-year duration with a possibility of the extension. The Council found that they contained the restrictive provisions in the form of restriction of operation with the competing suppliers, obligation of secrecy during the period of five years after the expiration, annulment or termination of the agreement and the*

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<sup>9</sup> Arrangement(s), usually tacit and informal, between competing firms designed to limit or eliminate competition between them, with the objective of increasing prices and profits of the participating companies and without producing any objective countervailing benefits. In practice, this is generally done by fixing prices, limiting output, sharing markets, allocating customers or territories, bid rigging or a combination of these. Cartels are harmful to consumers and society as a whole due to the fact that the participating companies charge higher prices (and earn higher profits) than in a competitive market.

<sup>10</sup> The decision of the Agency: UP/I 030-02/2005-01/02 of 13 January 2006, Official Gazette No 14/06.

<sup>11</sup> Block exemption that may be granted to certain categories of agreements is provided by the regulations adopted by the Croatian Government upon the proposal of the Competition Council.

*provision which has been assessed as a hard core restriction of competition relating to the restriction of active sales to potential buyers within the selective distribution network. Taking into account the seriousness of the restrictive provisions contained in the agreements concerned they could be granted neither block exemption nor individual exemption within the meaning of the provisions of the Competition Act concerning prohibited agreements; however, the Council has taken the decision granting conditional individual exemption to the undertaking Piaggio provided that the restrictive provisions are deleted from the agreements in question, set the deadlines for their fulfilment whereas the exemption in question will enter into force as soon as the Competition Agency is submitted evidence on the fulfilment of the specified conditions.*

*Piaggio followed the requests imposed by the Competition Agency – the disputable restrictive provisions have been deleted from the agreements in questions within the prescribed time periods and the modified agreements have been submitted to the CCA and the individual exemption from the application of the provisions on prohibited agreements has been granted in accordance with the provisions of the Competition Act for the period of two years.*

## **2.2. Abuse of a dominant position**

In this report period the CCA continued with its intensified activities aimed at the prevention of abuse of a dominant position by undertakings whose business practices may have the effect of actually or potentially denying market entry to new competitors or foreclosing the market for incumbent firms, thus unduly preventing, restricting or distorting competition in the market concerned or in the sectors where such a behaviour puts the consumers at a disadvantage. The consumers benefit the most from competitive prices but at the same time from better choice and quality of products and services which deserve their loyalty. On the other hand, monopolies generally have negative effects on consumers as they traditionally set different administrative or technical barriers to entry, which subsequently result in an unjustified price increase and does not promote investment in research and development and innovation of products and services by monopoly undertakings.

It is important to stress here that the task of the national competition authority is neither to prevent the growth of undertakings where this growth is a result of their effective business activities, high quality products or competitive prices which they may offer to the consumers, nor to encourage the undertakings which make losses on account of their own failures to remain on the market and take the market shares of the successful ones. In accordance with the deterrent policy of the CCA the proceedings for the establishment of abuse of a dominant position are carried out on the basis of legal and economic analyses of both actual effects of the business practices of the undertaking(s) and potential effects on competition, whereas the final decision on abuse depends on the results of the analyses in question.

Unlike Article 9 of the Competition Act which regulates prohibited agreements, Article 16 stipulating abuse of a dominant position of undertakings does not explicitly define abuse as any practices of undertakings in the market which have as their object or effect the prevention, restriction or distortion of competition. In the proceedings establishing abuse of a dominant position the identification of anticompetitive objectives and effects is for the CCA one and the same thing. In other words, for the establishment of a breach of Article 16 of the Competition Act it would suffice to prove that the abusive practices of an undertaking holding a dominant position actually or potentially restricts competition.<sup>12</sup> However, the potential effect must never occur and it is desirable that it never occurs. This is in compliance with the policy of the CCA to act as a deterrent to possible abusive practices of dominant undertakings, to prevent any abusive practices if they actually occur, prohibit them in the future and ensure, restore or enhance effective competition in a certain market.

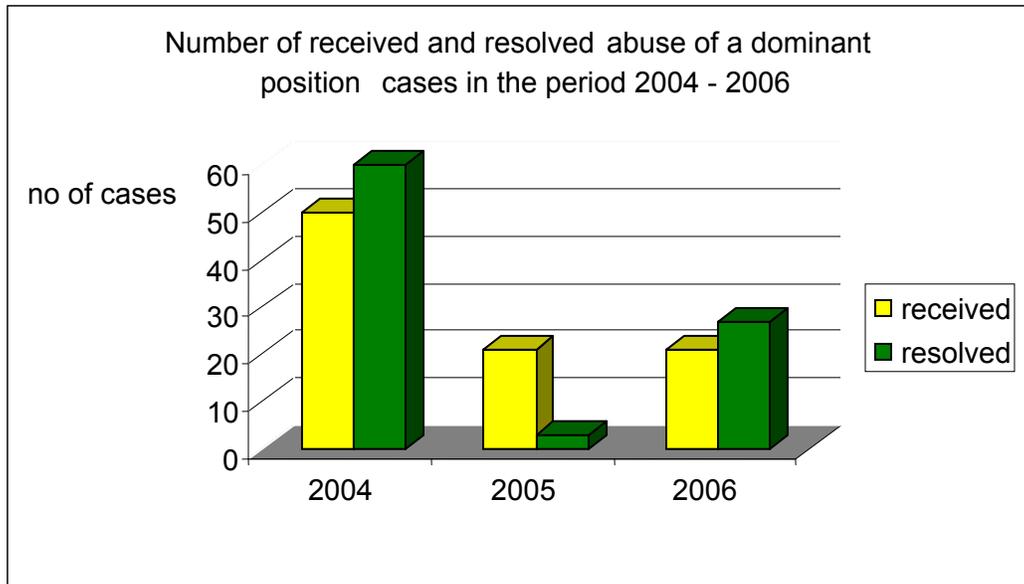
During 2006 the Agency received a total of 21 requests for initiation of the proceedings relating to the establishment of abuse of a dominant position, whereas it resolved a total of 27 cases.<sup>13</sup> The proceedings in 5 cases were closed whereas in 4 cases thereof after having carried a complete economic and legal analysis, the CCA established abuse of a dominant position (in one case it also decided on interim measures) and in 1 case no abuse of dominance has been established and the CCA rejected the request of the party.<sup>14</sup> Besides the 5 closed cases mentioned above the CCA has also terminated the proceedings in 3 cases given no legal grounds for any further actions in the proceedings: *Competition Agency v Kvasac d.o.o., Prigorje Brdovečko, Competition Agency v Blitz d.o.o., Zagreb* and *Competition Agency v Continental film d.o.o., Zagreb*. In the latter cases the CCA initiated the proceedings on its own initiative, carried out a comprehensive economic and legal analysis and subsequently established that there have been no grounds for any further steps in the proceedings. In the report period 19 more abuse of dominance cases have been concluded by the resolution of the CCA, where 16 cases thereof have been dismissed on the basis of lack of legal grounds for initiation of the proceedings within the meaning of the Competition Act. The proceedings have been terminated in 2 cases on the basis of the withdrawal of the party and in one case the CCA dismissed the request on the basis of lack of jurisdiction.

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<sup>12</sup> This is in compliance with the interpretation of Article 82 of the EC Treaty which corresponds to Article 16 of the Croatian Competition Act. See also the Judgment of the Court of First Instance in Case T-203/01 *Manufacture Française des Pneumatiques Michelin v Commission of the European Communities* (par. 233 and 241), translated in Croatian and published on the web site of the CCA [www.aztn.hr](http://www.aztn.hr), and the Judgment of the Court of First Instance in Case T-219/99 *British Airways plc v Commission of the European Communities* (par. 293) published on the EC web site.

<sup>13</sup> The number of resolved cases relating to the establishment of abuse of a dominant position also includes the cases received in the preceding years, given that the proceedings in the latter cases have been closed in this report period.

<sup>14</sup> Two cases concerning the establishment of prevention, restriction and distortion of competition have been joined (UP/I 030-02/2006-02/05 *KUNŠTEK BRANKO, Krapina* and *FANIKA VEŠLIGAJ, v Presečki grup d.o.o., Krapina* and one decision on rejection of the request have been taken given that no abuse of a dominant position has been established (Official Gazette, No 142/06).



2006 was marked by a couple of complex proceedings and important decisions on abuse of a dominant position on certain relevant markets. As an example, in the case initiated by the undertaking Tvornica duhana Zadar d.d., Zadar and BAT Hrvatska d.o.o., Zagreb, against the undertaking Adris grupa d.d. (former Tvornica duhana Rovinj d.d.) and the connected undertaking Ronhill d.o.o., the CCA established abuse of a dominant position and conclusion of restrictive agreements in the relevant market covering the distribution of cigarettes in the territory of the Republic of Croatia. In addition, in the case initiated on its own initiative against the undertaking Tvornica duhana Rovinj d.d.<sup>15</sup> the CCA established that the undertaking in question abused its monopolistic position in the relevant market covering the production and sales of tobacco products and abused its dominant position in the relevant market covering tobacco processing, whereas both relevant markets covered the whole territory of the Republic of Croatia, with the objective of preventing market access to the undertaking British American Tobacco Investments, affiliated company of the British American Tobacco plc from Great Britain.

It must be stressed here that in 2006 it has been the first time the CCA subordinately and adequately applied, besides the provisions of the Croatian Competition Act, the recent criteria arising from the EC acquis (EC decisions and case law of the European Court of Justice) taking into account the latest approach of the European Commission concerning the application of Article 82 of the EC Treaty which corresponds to Article 16 of the Competition Act regulating abuse of a dominant position of undertakings – *DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses*, where it terminated the proceedings which had been initiated *ex officio*. Apart from the legal analysis, the CCA took into account a comprehensively conducted economic analysis including the potential practices of the undertakings in the relevant markets and

<sup>15</sup> The decision of the Agency: UP/I-030-02/99-01/44 of 12 April 2006, Official Gazette No 52/06.

consequently established that the practices in question have not lead to abuse of a dominant position. This specifically concerned the case which was initiated on the Agency's own initiative on the basis of the initiative launched by certain undertakings against the undertaking Kvasac d.o.o. Prigorje Brdovečko, in the relevant market covering the distribution (wholesale) of fresh baker's yeast in the Republic of Croatia. In the case against the undertakings Blitz d.o.o. and Continental film d.o.o. it was decided that the undertakings in question do not hold a joint dominant position in the relevant market - distribution of videograms on VHS cassettes and DVD media relating to assignment of rights for use of videograms intended for home use in the territory of the Republic of Croatia. Joint dominance of the undertakings concerned was not possible, on the account of the fact that they are competing undertakings in the market concerned.<sup>16</sup>

### **2.2.1. Adris grupa d.d. Rovinj and Ronhill d.o.o. Kanfanar**

#### *Establishment of abuse of a dominant position*

*Based on the decision<sup>17</sup> of the Competition Council the Agency established that the undertaking Adris grupa d.d. (former Tvornica duhana Rovinj d.d.) and its connected undertaking Ronhill d.o.o., had been abusing their dominant position in the cigarette sales market by the adoption of the general terms of business as follows: General Conditions for contracting agreements on the provision of special services and participation in bidding of 23 June 1999; Annex I to the General Conditions for contracting agreements on the provision of special services and participation in bidding of 25 November 1999; General Conditions for contracting agreements on the provision of special services and participation in bidding of 6 November 2001 and General Conditions for contracting agreements on the provision of special services and participation in bidding of 26 May 2003, and the conclusion of the General Conditions on agency in the sale of tobacco derivatives and the Agreement on the provision of special services and participation in bidding with different wholesalers and retailers of tobacco products with the place of establishment in Croatia in the period from 23 June 1999 to 1 October 2003, that is before the adoption of the Competition Act in effect. In addition, the undertaking in question concluded restrictive agreements on the basis of the above mentioned agreements. Ronhill d.d. which held a dominant position, almost a monopoly, in the relevant period from 1999 to 2003, had concluded agreements which by their nature may be considered exclusive distribution agreements, with its buyers, covering both wholesale and retail, the conclusion of which has nevertheless been prohibited to him, on the account of his high level of dominance in the relevant market.*

*The proceedings in this case were initiated upon the request of the undertakings Tvornica duhana Zadar d.d. from Zadar and BAT Hrvatska d.o.o. Zagreb.*

<sup>16</sup> Article 15 par 2 and par 4 item 1 of the Croatian Competition Act establishes the criteria for a joint dominant position.

<sup>17</sup> The decision of the Agency: UP/I-030-02/2000-01/04 of 29 December 2006, Official Gazette No 18/07.

*In accordance with the decision of the Agency, Tvornica duhana Rovinj d.d. (now Adris grupa d.d.) and its connected undertaking Ronhill d.o.o. imposed on its buyers large shares of their likely needs in the form of quantity targets on the basis of which it also set discounts as well as penalties for non-compliance with the set quantity targets. Tvornica duhana Rovinj d.d. (now Adris grupa d.d.) and its connected undertaking Ronhill d.o.o., whereby the latter was the only tobacco manufacturer in the territory of the Republic of Croatia and at the same time almost the sole supplier of cigarettes in the Croatian market in the period concerned, tied their buyers, on one hand on the account of the consumer preferences to brands of the producer in question, on the other hand due to scarce number of cigarette importers, leaving them very little opportunity to choose between other cigarette suppliers, which consequently lead to creating barriers of entry to the relevant tobacco distribution market in the territory of the Republic of Croatia for all actual and potential competitors.*

*Other than the above mentioned proceedings, the Council initiated ex officio proceedings for the establishment of abuse of a dominant position through the conclusion of prohibited agreements against the undertaking Adris grupa d.d. and its connected undertakings in the period from 1 October 2003 until today, given that the behaviour of the undertakings concerned after 1 October 2003 will be assessed within the meaning of the Competition Act in force.*

## **2.2.2. Competition Agency v Kvasac d.o.o. Prigorje Brdovečko**

### *Establishment of non-abuse of a dominant position*

*Based on the decision of the Competition Council the Agency passed the resolution<sup>18</sup> by which it terminated the ex officio proceedings relating to the alleged abuse of dominance of the undertaking Kvasac d.o.o. It has been established that the undertaking Kvasac d.o.o. undoubtedly holds a dominant position in the relevant market - fresh baker's yeast distribution (wholesale) market in the territory of the Republic of Croatia, however no abuse of its dominance has been established. In accordance with the Competition Act and the relevant EC rules, particularly the similar EC decisions and case law of the European Court of Justice the Agency also took into account the potential effect of the business practices of the undertaking Kvasac d.o.o. in the relevant market and the most recent approach of the European Commission in the application of Article 82 of the EC Treaty (DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses). During the proceedings the Agency established that in the observed period from 2003 to 2005 the market share of the undertaking in question indicated a significantly falling trend in comparison with the growing market shares of other undertakings in the relevant market,*

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<sup>18</sup> The resolution of the Agency UP/I 030-02/2005-01/52 of 23 November 2006 is published on the web site of the Agency <http://www.aztn.hr/eng/odluke.asp>

*which is indisputable evidence of competition in the market concerned. The rebates which have been applied by the undertaking in question neither potentially or actually significantly prevent, restrict or distort competition in the relevant market nor do they negatively affect buyers/consumers of the product concerned. The rebates policy in question has not impeded access to the relevant market to new competitors or foreclosed the market in question to the incumbent undertakings. On the other hand, technological advances in the area of transport ensure long distance transport of the product in question given its nature, whereas the production capacities in the relevant market are not limited. What is more, following the direct inquiry of the Agency the undertakings which compete directly with the undertaking Kvasac d.o.o. have expressed no competition concerns in the matter. Consequently, any further actions in the proceedings have been considered as inappropriate and ineffective and the Agency adopted the resolution on termination of the proceedings.*

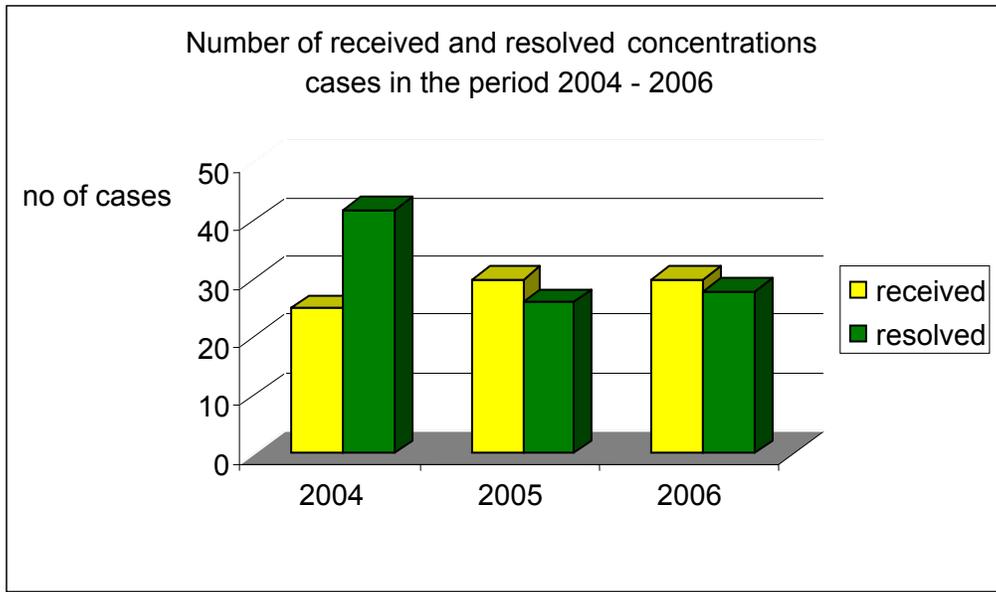
### **2.3. Assessment of compatibility of concentrations between undertakings**

In 2006 the Agency assessed 28 concentrations between undertakings. 26 concentrations thereof have been assessed in the so called first or second phase within the meaning of Article 26 paragraphs 1 and 3 of the Croatian Competition Act, whereas in 2 cases the Agency dismissed the request of the party in spite of the fact that the transactions in question fall under the concept of concentration given that the cumulative criteria relating to the aggregate annual turnover of the participating undertakings in the world market and Croatian market in the year preceding the implementation of the concentrations in question have not been fulfilled and consequently they did not fall under the notification obligation as prescribed by law.

*Article 22 paragraph 4 of the Croatian Competition Act reads as follows:*

*“The parties to the concentration are obliged to notify the concentration to the Agency if the following conditions are simultaneously met:*

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



As shown in Appendix 3 in 2006 the Agency resolved a total of 28 administrative proceedings relating to the assessment of concentrations. 24 concentrations of that total have been declared compatible in the first phase given that on the basis of the data contained in the notifications concerned and its own findings (without in-depth market investigation necessary) the Agency could indisputably decide that the concentrations in question will not have anticompetitive effects.

Only two concentrations have been assessed by the Agency in phase II procedure involving the in-depth market investigation and a comprehensive legal and economic analysis. In both cases no concern has been raised as to the significant anticompetitive effects in the relevant markets concerned. The first case referred to the assessment of a full function joint venture which created a new company Adria Magazines d.o.o. established by the following undertakings: Styria Medien International AG, Austria, G+J International Publishing Holding GmbH, Austria, Sanoma Magazines International B.V., Netherlands.<sup>19</sup> The second concentration referred to acquisition of control – decisive influence over the undertaking Sunce osiguranje d.d., Zagreb by the members of Agram group, as follows: Euroherc osiguranje d.d., Zagreb, Jadransko osiguranje d.d., Split, Euroherc životno osiguranje d.d., Zagreb, Euro Daus d.d., Split, Euroagram Tis d.o.o., Zagreb, Euroleasing d.o.o., Zagreb and Eurodom d.o.o. Osijek.<sup>20</sup>

Furthermore, 26 concentrations between undertakings implemented in the territory of the Republic of Croatia which have been deemed compatible indicate several common features.

<sup>19</sup> The decision of the Agency: UP/I 030-02/2005-02/54 of 9 May 2006, Official Gazette No 61/06.

<sup>20</sup> The decision of the Agency: UP/I 030-02/2005-01/51 of 14 June 2006, Official Gazette No 81/06.

First, all parties to concentrations in the Croatian markets are very often successful, profit making undertakings who become a "target" for the even bigger competitors. Examples of such concentrations are: *GLAXO GROUP LIMITED, UK / PLIVA-ISTRAŽIVAČKI INSTITUT d.o.o., Zagreb and EUROHERC OSIGURANJE d.d., Zagreb; JADRANSKO OSIGURANJE d.d. Split; EUROHERC ŽIVOTNO OSIGURANJE d.d., Zagreb; EURO DAUS d.d., Split; EUROAGRAM TIS d.o.o., Zagreb; EUROLEASING d.o.o., Zagreb; EURODOM d.o.o., Osijek / SUNCE OSIGURANJE d.d., Zagreb.* Nevertheless, it should be taken into account that the Agency does not perform the appraisal of all concentrations, but only of those undertakings parties to concentrations which meet the requirements relating to their aggregate thresholds as defined by the Competition Act. Given that aggregate turnover worldwide and in the territory of Croatia is taken as a relevant criteria in the assessment of compatibility of concentrations, data on possible concentrations between relatively small and presumably unsuccessful undertakings are not available to the Agency.

Second, the appraisal of concentrations is continuously related mostly to horizontal mergers, i.e. concentrations between competing undertakings (such as the above mentioned concentration between *EUROHERC OSIGURANJE d.d., Zagreb and six other undertakings / SUNCE OSIGURANJE d.d., Zagreb,* concentration between *STYRIA MEDIEN INTERNATIONAL AG, Austria; G+J INTERNATIONAL PUBLISHING HOLDING GmbH, Austria; SANOMA MAGAZINES INTERNATIONAL B.V., Netherlands,* which on the Croatian market created a new undertaking *Adria Magazines d.o.o.* instead of the former four undertakings (*Burda Magazin d.o.o., Sanoma Magazines Zagreb d.o.o., X-Press d.o.o. and Adria Magazin d.o.o.*). In this case the legal form of concentration was a full function joint venture operating on a lasting basis.

The third feature indicates that the undertakings with their seat outside Croatia have chosen concentrations they entered into with the Croatian incumbent firms rather than opting for Greenfield investment. These have usually been Croatian undertakings holding a relatively low market share and using a technology which cannot be competitive, but at the same time with valuable brands and/or important human resources.

Fourth, there has been an increase in the number of concentrations that have been implemented in the media sector. Here are particularly meant the concentrations in the press publishing sector such as the above mentioned concentration between *STYRIA MEDIEN INTERNATIONAL AG, Austria; G+J INTERNATIONAL PUBLISHING HOLDING GmbH, Austria; SANOMA MAGAZINES INTERNATIONAL B.V., Netherlands.*

However, in 2006 the most attention by the media and the general public was received by the concentrations and their participants who were not subject to the notification obligation within the meaning of the Croatian Competition Act, such as for example the concentration in the telecom market between the undertakings *HT-Hrvatske telekomunikacije d.d. Zagreb and ISKON INTERNET d.d. Zagreb.* The point to remember here is that although a certain transaction may fall under the concept of concentration, unless legal criteria concerning the

realised total turnovers of their participants in certain period are fulfilled, it is nevertheless not subject to notification obligation and as such is not assessed by the Agency.

The Croatian Competition Act sets neither the market share of the participants of the concentration nor the market share following the implementation of the concentration in question as criteria which would decide on the notification obligation relating to the assessment of concentrations. The only objective and measurable criteria for the existence of notification obligation remains the level of the aggregate annual turnover of the undertakings parties to the concentration, thus providing legal certainty whether a particular concentration must be notified to the Agency for assessment.

Accordingly, in the event that the parties to the concentration would notify the concentration which does not fall under the notification obligation within the meaning of the Competition Act, the Agency would not carry out the appraisal of the concentration in question. In such a case it would dismiss such a notification by means of a resolution on the basis of lack of legal grounds for the initiation of the assessment procedure.

In this context, the wording of Article 18 of the Competition Act must be understood as to what constitutes a prohibited concentration within the meaning of the Competition Act, but only in the case where the concentration is subject to notification obligation.

*Article 18 reads as follows:*

*"There shall be prohibited the concentrations of undertakings that create a new, or strengthen a dominant position of one or more undertakings, individually or as a group, if they can significantly influence the prevention, restriction or distortion of competition, unless the participants in that particular concentration provide valid evidence that their concentration will lead to strengthening of competition in the market, bringing benefits that will prevail over negative effects produced by the creation or strengthening of their dominant position."*

The standpoint taken by the Agency very much complies with the provisions regulating the appraisal of concentrations under the relevant EC law which the Agency subordinately applies within the meaning of Article 35 paragraph 3 of the Competition Act, particularly in cases where the proper application of the Croatian competition rules raises competition concerns.<sup>21</sup> The same view was taken by the Administrative Court of the Republic of

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<sup>21</sup> In accordance with Article 35 par 3 of the Competition Act in the assessment of different forms of prevention, restriction or distortion of competition, that may affect the trading between the Republic of Croatia and the European Communities, the Agency shall in accordance with Article 70 of the Stabilization and Association Agreement between the European Communities and their Member States and the Republic of Croatia (Official Gazette – International agreements, No 14/01), of 29 October 2001 which entered into force on 1 February 2005, accordingly apply the criteria arising from the correct application of the rules regulating competition in the European Communities.

Croatia in its judgement of 11 December 2003, No: US-5814/2000-4, Official Gazette No 22/04.

In compliance with Articles 1 and 5 of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), Official Journal L 024 which define the scope of the Regulation and the calculation of turnover of the undertakings concerned, and detailed explanations contained in the Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, Official Journal C 066, the European Commission applies two criteria in the assessment of concentrations of undertakings.

The first criteria is that the transaction in question must comply with the concept of concentration within the meaning of the above mentioned Regulation, whereas the second criteria takes into account the turnover thresholds for the purpose of identification of those transactions which may influence the market or with a Community dimension. The fact is that what matters are aggregate turnover thresholds and not market shares of the undertakings concerned or even some other criteria. The purpose of the pieces of EC legislation in question is to ensure a simple and objective mechanism which is easily applicable by the undertakings concerned in their decision whether the transaction in question may have a Community dimension and whether as such must be notified to the European Commission for assessment.

The relevant provisions of the Croatian Competition Act must be interpreted in the same manner. Thus, concerning the assessment of concentrations, if certain obligations or competences are not explicitly stipulated by the Competition Act, the Agency cannot apply them because it would mean contravening the powers entrusted to it by law, although in a particular case, the concentration may significantly strengthen the dominant position of the undertaking concerned in the relevant market, which was the case following the implementation of the concentration between the undertakings HT-Hrvatske telekomunikacije d.d. Zagreb and ISKON INTERNET d.d. Zagreb which attracted significant public attention. In such a case the task of the Agency is to concentrate more on the behaviour of the undertakings in the market after the implementation of the concentration and to initiate *ex officio* proceedings in the event of potential or actual abuse of a dominant position. Thus, it is the establishment of abuse of dominance which is then used by the Agency to eliminate the anticompetitive effects produced by such concentrations.

Unlike the Competition Act which regulates the obligatory notification of the proposed concentration under the above mentioned criteria, the provisions of the Electronic Media Act make any change in the share holding structure of a certain electronic media subject to obligatory notification. Accordingly, the Agency must assess any concentration in the electronic media sector even when it is clear beforehand that the transaction in question has no anticompetitive effects whatsoever.

This increased the number of the usual average of 16 concentrations per year assessed by the Agency to significantly higher number of 28 concentrations in 2006. Furthermore, the undertakings tend to merge in a more complex manner by using sophisticated legal forms of concentrations (such as joint decisive influence or a full function joint venture) which necessitate extensive procedures, more human and material resources and carrying out of more complex and comprehensive legal and economic analyses of the markets which may be affected either positively or negatively by the implementation of the concentration in question. What is more, the increasing number of implemented concentrations produce parallel effects on more affected markets whereas the participants to the concentrations appear in a "double" role – that of partners in a particular concentration but at the same time that of competitors in some other market. Only after the in-depth investigation it is possible for the Agency to decide if a particular concentration will be deemed compatible, conditionally compatible or prohibited within the meaning of the Competition Act. The experience and practice so far indicates that the trend involving increasingly complex legal and economic analyses will continue also in the years to come, particularly taking into account the fact that the Agency must follow the most recent and more refined criteria used in the assessment of concentrations applicable by the European Commission and the EU Member States.

### **2.3.1. Euroherc osiguranje d.d., Zagreb, Jadransko osiguranje d.d., Split, Euroherc životno osiguranje d.d., Zagreb, Euro Daus d.d., Split, Euroagram Tis d.o.o., Zagreb, Euroleasing d.o.o., Zagreb, Eurodom d.o.o., Osijek and Sunce osiguranje d.d., Zagreb**

*Based on the decision of the Competition Council and within the meaning of competition rules, the Agency declared the compatibility of the concentration between the following undertakings: Euroherc osiguranje d.d., Zagreb, Jadransko osiguranje d.d., Split, Euroherc životno osiguranje d.d., Zagreb, Euro Daus d.d., Split, Euroagram Tis d.o.o., Zagreb, Euroleasing d.o.o., Zagreb, Eurodom d.o.o., Osijek (all undertakings are members of Agram group), and the undertaking Sunce osiguranje d.d., Zagreb.<sup>22</sup>*

*In the assessment proceedings it was relevant to establish first of all the legal form of the undertaking Agram group. Even though Agram group had not been registered as a legal entity in the court register, where the above mentioned undertakings – members of the group are registered as independent legal persons and taking into account the existence of the Interconnection Agreement between the members which regulates joint management and by which executive bodies are established, and significant cross ownership and/or interlocking directorates within the undertaking Agram, it has been indisputably established that the latter is, within the meaning of Article 476 paragraph 2 of the Companies Act*

<sup>22</sup> The decision of the Agency: UP/I 030-02/2005-01/51 of 7 July 2006, Official Gazette No 81/06 and also on the CCA web site: [http://www.aztn.hr/eng/odluke\\_arhiva.asp](http://www.aztn.hr/eng/odluke_arhiva.asp)

(Official Gazette No 111/93, 34/99, 121/99, 118/03), a so called "de facto concern company". The relevant provisions stipulate that legally independent companies where linked by joint management make a "concern" and individual companies are members of the "concern".

*This horizontal merger i.e. the implementation of the concentration in question had not been notified to the Agency for assessment within the prescribed period although the legally set criteria relating to the aggregate turnover realized by the parties to the concentration in the financial year preceding the concentration had been cumulatively fulfilled.<sup>23</sup>*

*The failure to notify lead the Agency to submit its request for the initiation of the minor offence proceedings against the undertakings concerned at the competent minor offence court.*

*Given that this was a horizontal merger – concentration of undertakings who had been direct competitors in the market, in the assessment procedure the task of the Agency was to establish whether the concentration in question produces anticompetitive effects.*

*In 2003, as the relevant financial year preceding the concentration, the undertaking Euroherc životno osiguranje d.d. (member of Agram Group) held a 0-5 % market share, while the undertaking Sunce osiguranje d.d. held a 5-10 % market share on this relevant market.*

*The economic analysis carried out by the Agency which took 2003 as the relevant year indicated that the implementation of the concentration in question produced effects in several relevant markets in the territory of the Republic of Croatia – in life insurance market, non-life insurance market and market in medical services provided by health centres under the contract entered into between the latter and the insurance companies.*

*Agram group had been present in the life insurance market preceding the implementation of concentration through Eroherc životno osiguranje d.d. and held a market share of 5 % - 10 %. Following the implementation of concentration its market share rose to some 10 % - 15 % through the undertaking Sunce osiguranje d.d. It must be noted that at the same time several insurance companies acquired higher market shares than that of Agram group in the same relevant market.*

*Prior to the implementation of concentration Agram group had not been present in the relevant market in medical services provided by health centres on the grounds of contracts*

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<sup>23</sup> Pursuant to Article 22 par 2 of the Competition Act the notification of the planned concentration must be submitted to the Agency for assessment without delay and at the latest within 8 days following the day of the publication of the public bid or the day of the conclusion of the contract through which the control or prevailing influence of an undertaking is acquired, whichever of these events occurs first.

*entered into between them and insurance companies. Taken this into account, after the implementation of concentration Agram group merely "stepped into the boots" of the undertaking Sunce osiguranje d.d., i.e. it got hold of the market share of the latter.*

*In the non-life insurance market, following the concentration between Agram group and Sunce osiguranje d.d. in 2004 the former undertaking had raised its market share to some 25 % - 30 %. In the same relevant market the market share of the undertaking Croatia osiguranje d.d. amounted to 45 % - 50 %, i.e. almost double the market share of its first competitor Agram group. As regards the segmentation of the relevant market concerned the Agency established that the most significant share thereof is held by compulsory third party insurance and comprehensive car insurance. In the relevant year of 2003 in the segment of compulsory third party insurance Agram group held the market share of 35 % - 40 %, whereas in 2004, before the implementation of concentration, this market share amounted to 40 % - 45 %. Thus, in this segment of non-life insurance market Agram group assumed a dominant position but not as to significantly prevent, restrict or distort competition. In the segment of compulsory car insurance Agram group, after the implementation of concentration, held a market share of 20 % - 25 %, whereas a significantly higher market share was held by its direct competitor, the undertaking Croatia osiguranje d.d.*

*The decision of the Agency in this case was particularly influenced by the possibility of unilateral effects to lessen competition which may arise where a merged group may increase the prices of its products without coordinating it with its competitors.*

*It was therefore important in this particular case to turn the attention to a special feature of the insurance business the operation of which is based on building of customer loyalty, i.e. that of the relationship between the insurance company and policyholders. However, in the event that the insurance company raises its prices excessively, policyholders may turn to other insurance undertakings offering more favourable terms of insurance. This shows how raising prices excessively may lead to insurance companies which due to the premium increase lose their customers.*

*Based on the above mentioned considerations, the Agency decided that it is less likely that the implementation of concentration would lead to significant anticompetitive effects through strengthening of dominance in the markets which are characterised by high degree of substitutability as regards the products of the undertakings concerned and their competing undertakings.*

*Given this high degree of substitutability in the markets in life and non-life insurance and a great number of insurance undertakings, the Competition Council established that it is not likely that Agram group would raise prices for its services because it would make their customers seek services from other insurance undertakings.*

*In addition, all insurance undertakings in the relevant insurance markets offer interchangeable or substitutable products – homogenous types of insurance where the only distinction between the undertakings concerned is the difference of insurance premiums.*

*In conclusion, the implementation of the concentration in question contributed to growing market shares of the undertakings concerned in the relevant markets where this concentration produces effects. Nevertheless, it did not appreciably impede competition in the markets concerned. Consequently, the Agency declared the concentration compatible within the meaning of competition rules.*

### **2.3.2. Styria Media International AG, Austria, G+J International Publishing Holding GmbH, Austria and Sanoma Magazines International B.V., the Netherlands**

*Based on the decision of the Competition Council and within the meaning of competition rules, the Agency declared the compatibility of the concentration between the following undertakings: Styria Media International AG, Austria, G+J International Publishing Holding GmbH, Austria and Sanoma Magazines International B.V., the Netherlands.<sup>24</sup> The implementation of the concentration concerned generated a new undertaking – Adria Magazines d.o.o. – which operates on the Croatian press publishers market instead of four former undertakings – Burda Magazin d.o.o., Sanoma Magazines Zagreb d.o.o., X-Press d.o.o. and Adria Magazin d.o.o. The implementation of this concentration also created joint market shares of the participants in the following relevant markets: publishers of monthly women's magazines, women's weeklies, monthly magazines covering issues in the field of nature, science, environment and similar and monthly computer magazines.*

*The legal basis of the horizontal merger in the media sector concerned is the Memorandum of Understanding, concluded between the undertakings concerned whereas the concentration will be carried out in four phases whose ultimate goal is the creation of a full function joint venture.<sup>25</sup> A full function joint venture operates on a lasting basis as an autonomous economic entity, has a management dedicated to its day-to-day operations and access to sufficient resources including finance, staff, and – most importantly - there is an acquisition of joint control by two or more undertakings, that is, its parent companies.*

*The economic analysis conducted by the Agency showed that in this particular case in the relevant year 2004 preceding the implementation of the concentration in question it produced effects in several relevant product markets:*

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<sup>24</sup> The decision of the Agency: UP/I 030-02/2005-02/54 of 25 May 2006, Official Gazette No 61/06 and also on the CCA web site: [http://www.aztn.hr/eng/odluke\\_arhiva.asp](http://www.aztn.hr/eng/odluke_arhiva.asp)

<sup>25</sup> Article 19 par 2 of the Competition Act stipulates that the creation of a joint venture having the nature of a permanent autonomous economic unit shall constitute a concentration within the meaning of competition rules.

- press publishers market,
- press advertising market and
- press distribution market.

*The relevant geographic market was established to cover the whole territory of the Republic of Croatia.*

*The press publishers market has been for this purpose divided in accordance with the main features of the press concerned, i.e. taking into account that a monthly periodical cannot be substitute for a weekly or a daily and therefore the relevant markets must be analysed separately.*

*The result of the separate features was the establishment of the following markets: publishers market in monthly women's magazines, market in women's weeklies, market in monthly magazines covering issues in the field of nature, science, environment and similar and monthly computer magazines market. The same categorization was used for the press advertising market, whereas the press distribution market underwent the analysis in respect of the press wholesale market and press retail market.*

*In spite of the fact that after the implementation of the concentration in question the market share of the undertaking Adria Magazines d.o.o. would exceed 40 % in particular relevant markets the Council established that the concentration concerned cannot be found impermissible within the meaning of the Media Act<sup>26</sup> because in this particular case the relevant market was not defined as the market in general information daily newspapers or weekly magazines in the Republic of Croatia.*

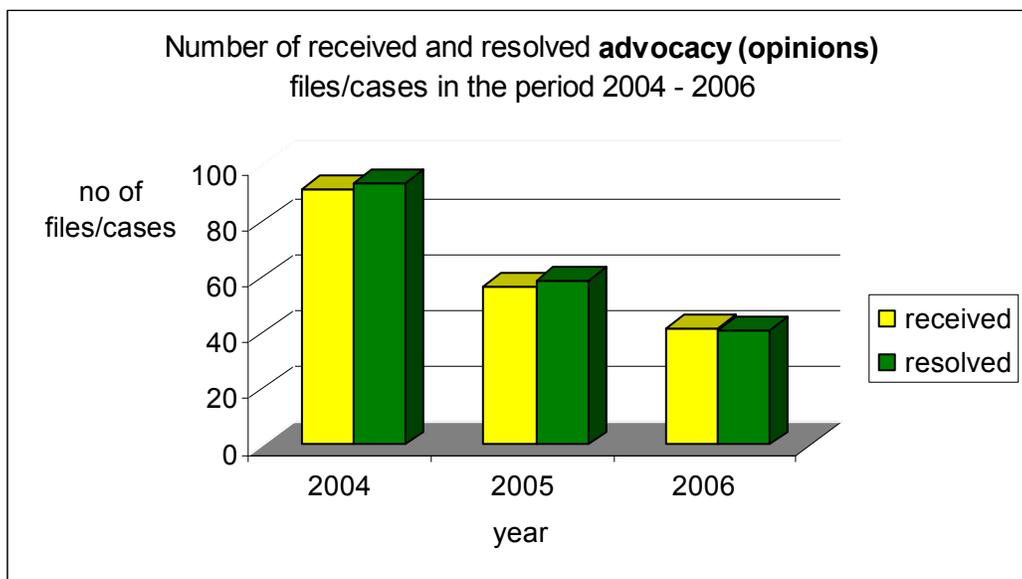
*At the same time, it was established that the main features of the relevant press publishers market in the territory of the Republic of Croatia is its openness and free access to new entrants, which complies with the provisions of the Media Act and other rules. Similarly, the press distribution market indicates no legal or administrative barriers to entry, what is more, Article 38 par 1 of the Media Act stipulates that press distributors may not reject distribution of the press by the publishers who accept general terms of the distributors which are made public.*

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<sup>26</sup> Article 37 par 1 of the Media Act reads as follows: "Impermissible concentration of undertakings in the general information daily newspapers market or general information weekly newspapers market shall be considered to exist if the market share of the participating undertakings after the implementation of the concentration concerned exceeds 40% of the total sold circulation of the general information daily newspapers or weekly newspapers in the territory of the Republic of Croatia."

## 2.4. Competition advocacy

One of the priorities in the work of the CCA has always been promotion of a proactive competition policy and it will continue to concentrate on raising awareness and knowledge of undertakings, consumers, government and other state bodies, judicial bodies, trade unions, business community and the wider public regarding the importance and role of competition law and policy in further development of market economy in our country. This includes both expert opinions on draft legislation which are given *ex officio* or upon the request of a party and other activities aimed at the promotion of competition culture such as press releases of the Agency, seminars, training for business community, lectures at universities, publications etc.



Competition advocacy cases in 2006 amounted to 41 opinions, where 13 of this total were opinions on laws and other legislation, while 28 opinions were issued upon request of the undertakings and interest associations, lawyers, members of the parliament etc.

The Competition Conference held in Zagreb in November 2006 brought together a number of participants – representatives of business community and lawyers, with the purpose of introducing the most relevant issues relating to competition and state aid law and policy within the ongoing EU accession negotiations. Prominent experts in these areas – the highest officials representing Croatian, Slovenian and EC competition authorities, professors and consultants on EU projects dealing with competition and state aid issues, endeavoured to make their contribution to better understanding of the most important issues in this area within the negotiation process.

In addition, it must be noted that the Agency together with the Croatian Chamber of the Economy organized a number of seminars in several county chambers where the experts of the Agency and members of the Competition Council shared their knowledge of competition rules with the participants who evaluated these workshops as exceptionally useful. This kind of cooperation between the Agency and the Chamber will be continued in the years to come.

In 2006 the following seminars have been held:

- *Assessment of Concentrations between Undertakings and Assessment of Agreements between Undertakings*, (September 2006, County Chamber Koprivnica);
- *An Economic Approach to Abuse of a Dominant Position, Assessment of Concentrations and Agreements of Undertakings: Reform of rules on abuse of a dominant position in EU* (October 2006, County Chambers of Osijek, Rijeka and Pula);
- *Competences of the CCA, Concentrations and Agreements between Undertakings, Abuse of a Dominant Position* (November 2006, County Chambers of Zagreb and Split);
- *Activities of the CCA, Assessment of Agreements between Undertakings* (December 2006, County Chambers in Zadar and Dubrovnik).

Several expert opinions in this area are illustrated below.

#### **2.4.1. Opinion on the proposed Draft Trading Act**

*Upon the request of the Ministry of the Economy, Labour and Entrepreneurship, following the decision of the Competition Council, the Agency gave its opinion on the proposed Draft Trading Act, according to which the Draft Act in question does not contain provisions which would significantly prevent, restrict or distort competition, i.e. which would contravene the provisions of the Competition Act.*

*However, the Council indicated that all possible effects of the Draft Act in question should be taken into account before it is sent for adoption, particularly relating to the part thereof listing the exemptions from the general prohibition on Sunday trading which may lead to unequal treatment of the retailers on one part and other undertakings as specified under Article 58 of the Trading Act. At the same time, the Council pointed out the declarative nature of the set of rules which are not in compliance with the recent developments and trends in modern trade.*

#### **2.4.2. Opinion on the "most favoured party clause" in the contracts concluded between the Croatian Composers Society, Collecting Society (HDS - ZAMP) and producers**

*The CCA received a query from an attorney's office relating to the so called "most favoured party clause" incorporated in the standard contracts of the Croatian Composers Society, Collecting Society (HDS - ZAMP) which is a member of BIEM (Bureau International des Societes Gerant les Droits d'Enregistrement et de Reproduction Mecanique, Paris). The CCA established that the contracts in question neither fall under prohibited agreements within the meaning of Article 9 of the Competition Act nor can they result in abuse of a dominant position of HDS - ZAMP within the meaning of Article 16 of the Competition Act.*

*The exercise of copyright in the Republic of Croatia is entrusted with HDS – ZAMP and since the above mentioned "most favoured party clause" is a part of the recommended Standard Contract of BIEM it has been in part directly transposed into the contract in question.*

*Due to the complexity of the legal matter concerned the Agency requested, prior to giving its own opinion, the statement of HDS – ZAMP and BIEM concerning the matter.*

*Thus, the Agency accepted the statement communicated by BIEM where the purpose of the provision concerned is to ensure most favoured treatment for all authors and copyright holders when certain terms are offered by producers to any author or copyright holder who is a member of a voting society. On the other hand, its aim is also to ensure that all producers who enter into contracts with the society may enjoy most favoured treatment which is offered by the society in question to any producer.*

*In the area of copyright and related rights the EU practice shows that there has been no evidence that any of the EU Member States would assess the "most favoured party clause" as restrictive from the point of view of competition rules. Consequently, the Agency, having consulted the rules in the area concerned in the Republic of Croatia, and taking into account that the clause concerned does not have as its object or effect the prevention, restriction or distortion of competition within the meaning of the Competition Act, established that the "most favoured party clause" may not in this particular case be considered a form of a so called "English clause" and as such it does not infringe either Article 9 of the Competition Act regulating prohibited agreements or Article 16 of the same Act regulating abuse of a dominant position, in this particular case by HDS – ZAMP.*

### **2.4.3. Opinion on the setting up of the company Zagreb plakat d.o.o. by the City of Zagreb**

*Upon the request made by a Member of Parliament, the Agency, based on the decision of the Competition Council, has given its opinion on the matter whether the setting up of the company Zagreb plakat d.o.o. by the local government unit, the City of Zagreb, constitutes a monopoly, given that the latter is the biggest user, and until recently the main concession grantor for the siting of billboards in the city-owned property.*

*In compliance with the Companies Act, any legal or natural person may set up a company for the performance of lawful businesses. In this sense, there are no legal barriers for the City of Zagreb, as a legal person, to establish a company. However, in accordance with the constitutional provisions under Article 134 of the Constitution of the Republic of Croatia, the main task of the local self-government units is the performance of the activities within the local scope which are directly related to the needs of the citizens such as housing, urban development, utilities, social care, health care, childcare, primary education, culture, sports, consumer protection, environmental planning and environmental protection, fire prevention and civil defence.*

*Consequently, it is the view of the Agency that the performance of an economic activity, i.e. entrepreneurial activity, outside the framework envisaged by the Constitution, and within the meaning of the Competition Act, falls outside the main scope of the activities of the local self-government units, be it the City of Zagreb or any other State authority.*

*Article 49 of the Constitution of the Republic of Croatia stipulates that it is the fundamental task of the state to ensure equal legal position of undertakings in the market. This provision is further developed in the Croatian Competition Act which provides that to ensure all undertakings equal conditions on the market means equal access to the market and equal opportunities to stay and survive on the market.*

*In the opinion of the Agency, the establishment of the company Zagreb plakat d.o.o. by the City of Zagreb which would operate in the outdoor advertising business and elevate signs neither complies with the principle of development and strengthening of competition in the relevant market, nor does it promote and contribute to raising of competition effectiveness in the territory of the Republic of Croatia as a whole. In this particular case, the City of Zagreb would assume two roles, that of a "regulator" which determines where and under which conditions billboards may be erected and licenses may be granted, and on the other hand that of an "owner" of the undertaking Zagreb plakat d.o.o. who would appear as a competing undertaking in the same relevant market.*

*The situation in question would from the very start ensure Zagreb plakat d.o.o. advantages in the market in comparison to its competitors. One of these advantages would be the so called first mover advantage, but also a much more serious possibility of tying where the*

*undertaking concerned would have the opportunity to tie the advertising services with other services provided by other undertakings which are "owned" by the City of Zagreb. Such a situation on the market would definitely not attract potential competitors and it would easily lead to the restriction or even, in the worst-case scenario and in the long run, abolition of competition and creation of a monopoly which always results in a higher price and lower quality of services.*

*Taking into account the development of the market economy in the Republic of Croatia, the Agency holds the view that the state should gradually withdraw from economic activities and that its entrepreneurial role should not be strengthened. Following the assessment in this particular case the Agency does not favour the situation where the City of Zagreb, or any other local administration unit, would appear in a double role of a regulator and a competitor (through its established company) from the standpoint of the main principles of competition law and policy, adding that such practices do not promote the development of competition in the relevant market and are contrary to the principles of the market economy.*

#### **2.4.4. Opinion on the prices and conditions for users' packages in the provision of voice telephony and public fixed telecommunications networks**

*The Croatian Telecommunications Agency (HAT) asked the opinion of the Competition Agency on the approval of the prices and conditions for users' packages in public fixed voice telephony – "Package 1" and "Package 2" – of the Croatian Telecommunications (HT-Hrvatske telekomunikacije d.d.; hereinafter T-HT).*

*After having assessed the above mentioned packages the Competition Agency, based on the decision of the Competition Council, held the opinion that such a pricing system may, within the meaning of competition rules, have the effects of market foreclosure and the exclusion of the direct competitors of T-HT in the relevant market, in other words, that the proposed lowering of prices would only be of a temporary character. Namely, it is most likely, which is also reinforced by point 27 of the Business Terms under which T-HT reserves the possibility to terminate the provision of its users' packages on any grounds, particularly in the event of different market conditions in the fixed telecommunications networks, that T-HT would, after having excluded its direct competitors in the relevant market, under such circumstances cease to provide the services in question or continue to provide them but under less favourable terms for the users. The analysis made by the Competition Agency indicates that in this particular case we are dealing with predatory pricing. However, taking into account that the Agency does not have certain data available, such as the data on pricing systems for business and private accounts in the fixed telecommunications networks, or the data on the level of competition in the area of pricing*

*for business and private accounts, which does not fall under the competence of this Agency, it is the responsibility of HAT, as a specific regulator, to issue a final decision in this matter and impose measures which would prevent abuse of a dominant position of T-HT.*

*At the same time, the Competition Agency noted that in the users' packages in question a one minute minimum call charge applies (regardless of the actual duration of the conversation) which is contrary to the HAT Decision as of 10 March 2005 which stipulates the mandatory application of a one second minimum rate in public voice telephony over fixed network.*

*Taking everything into account, the Competition Agency holds the view that the users' packages "Package 1" and "Package 2" may lead to the prevention, restriction or distortion of competition in the relevant market. It is likely that the practices concerned would lead to the exclusion of the competing undertakings from the relevant market, opening a possibility for T-HT to cease to provide the services in question or continue to provide them but under less favourable terms for the users.*

*The Competition Agency did not decide on the substantive part concerning the terms and pricing in respect of the packages concerned given that in the telecommunications sector these issues fall under the competence of HAT.*

### **3. ADMINISTRATION AND ENFORCEMENT OF THE STATE AID ACT**

The state aid regime in the Republic of Croatia is regulated by the State Aid Act published in Official Gazette No 140/2005 which replaced the first, 2003 State Aid Act. The State Aid Act in effect has been aligned with the EC acquis and regulates the general conditions and rules for granting, monitoring and recovery of state aid and thereby fulfils the international commitments undertaken by the Republic of Croatia in the area concerned.

The State Aid Act provides for a state aid control system in compliance with the commitments undertaken by the Republic of Croatia under the Stabilization and Association Agreement between the Republic of Croatia and the European Communities and their Member States (SAA). As referred to in Articles 69 and 70 of the SAA, Croatia committed itself to approximation of laws with the relevant EU rules in the area of competition also involving the rules for authorisation and monitoring of state aid by the time of its accession to the EU. It is necessary to point out here that the provisions and time limits in respect of competition rules as laid down under Article 70 of the SAA began to run on 1 March 2002, the day of the entry into force of the Interim Agreement on trade and trade-related matters between the European Community and the Republic of Croatia, which remained in force until the entry into force of the SAA on 1 February 2005.

#### **3.1. New legislative framework**

The system of state aid control (authorisation, monitoring of implementation and recovery of state aid) was first established in the Republic of Croatia under the State Aid Act (Official Gazette No 47/2003, 60/2004) and Regulation on state aid (Official Gazette No 121/2003).

The implementation of that system in practice as well as the comments received from the European Commission indicated that it is necessary for the system to be modified and improved in order to become fully adjusted to the relevant EC rules in this area which will strengthen its effectiveness. Consequently, the new, amended State Aid Act was drafted and put into effect in December 2005 (Official Gazette 140/2005).

This 2005 State Aid Act necessitated adequate modifications of the Regulation on state aid which subsequently entered into force in May 2006 (Official Gazette No 50/2006). The new Regulation on state aid stipulates the content, procedure and other important elements of the assessment of aid relating to its compliance with the State Aid Act. Given that the assessment of compatibility of state aid is carried out on the basis of the rules arising from Article 70 of the SAA<sup>27</sup> the 2005 Regulation on state aid stipulates that upon the proposal

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<sup>27</sup> Article 2 of the Regulation on state aid.

of the minister of finance, the Government of the Republic of Croatia shall issue decisions on the publication in the Official Gazette of the lists of relevant EC state aid rules containing the texts of the legislation covering the particular rules translated into Croatian and the provisions concerning the method of implementation of the rules in question.

Pursuant to Article 3 of the Regulation on state aid, the Government of the Republic of Croatia adopted in November 2006 the Decision on publication of the lists of state aid rules (Official Gazette No 121/2006). The rules will be translated and subsequently published in accordance with a previously established sequence and once published they will become a constituent part of the legislative framework of the Republic of Croatia used in the assessment of compatibility of aid. This will mean full alignment of the Croatian state aid rules with those in effect within the European Community.<sup>28</sup>

Within the meaning of the above mentioned commitment it is to be noted here that until the end of May 2007 two translated decisions on the publication of state aid rules have been published – the Decision on the publication of the rules on state aid for rescuing and restructuring firms in difficulty (Official Gazette No 20/2007) and the Decision on the publication of the rules on de minimis aid (Official Gazette No 45/2007).

The Ordinance on the form and content of the notification and the method of data collection and keeping the state aid register (Official Gazette No 11/05) sets the rules relating to data collection which are necessary in the assessment procedure relating to state aid proposals and establishes the method in which annual reports are drafted.

### **3.2. Definition of state aid**

The definition of state aid is provided in Article 3 paragraph 1 of the State Aid Act.

*Within the meaning of the State Aid Act, state aid shall mean any actual and potential expenditures or decreased revenue of the state granted in any form whatsoever by the aid provider, which distorts or threatens to distort competition by favouring certain aid beneficiaries, insofar as it may affect the international commitments undertaken by the Republic of Croatia, arising under the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States.*

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<sup>28</sup> Until individual rules have been published in the Official Gazette the relevant provisions of the 2003 Regulation on state aid shall apply.

State aid rules apply only to measures that satisfy all of the following criteria:

*(a) Transfer of State resources:*

State aid rules cover only measures involving a transfer of state resources, including national, regional and local authorities, foundations and publicly owned legal persons. Furthermore, state aid may also be granted by a private bank which is given responsibility by the state to manage, let's say, a state funded SME aid scheme. Financial transfers that constitute aid can take other forms such as decreased corporate tax revenue, loan guarantees, accelerated depreciation allowances etc.

*(b) Economic advantage:*

The aid should constitute an economic advantage that the undertakings would not have received in the normal course of business. Besides the direct forms of state aid such as grants, tax advantages or interest rate rebates and state guarantees, there are less obvious forms of aid which in the same manner benefit a particular undertaking or group of undertakings in the market. Less obvious transactions satisfying this condition are given below:

- a firm buys/rents publicly owned land at less than the market price;
- a company sells land to the State at higher than market price;
- a company enjoys privileged access to infrastructure without paying a fee;
- an enterprise obtains risk capital from the State on terms which are more favourable than it would obtain from a private investor.

*(c) Selectivity:*

State aid must be selective and thus affect the balance between certain firms and their competitors. "Selectivity" is what differentiates state aid from so-called "general measures" – measures which apply without distinction across the board to all firms in all economic sectors or regions. As an example, decrease in the corporate tax rate constitutes a general measure which applies to all undertakings and therefore does not satisfy the selectivity criteria and consequently may not be considered state aid.

The selectivity criterion is also satisfied if the scheme applies to particular regions or economic sectors. A scheme is considered selective if the authorities administering the scheme enjoy a degree of discretionary power.

*(d) Effect on competition and trade*

Aid must have a potential or actual effect on competition and trade between the Republic of Croatia and the EU Member States. It is sufficient if it can be shown that the beneficiary is

involved in an economic activity and that he operates in a market where there is trade and exports or operations directly linked to exports.

### **3.2.1. Categories of state aid**

Within the meaning of the State Aid Act there are exemptions from the general ban on state aid. Exemption categories are listed below.

#### **a) Regional aid:**

This aid category involves aid measures to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment. The aim of such aid is the promotion of the less-favoured areas mainly by supporting initial investment and job creation linked to the investment.

#### **b) Horizontal aid measures:**

Cross-industry or "horizontal" rules cover particular categories of aid which are aimed at tackling problems which may arise in any industry or region:

- aid for small and medium-sized enterprises;
- aid for research and development and innovation;
- aid for environmental protection;
- aid for services of general economic interest;
- aid for rescue and restructuring of firms in difficulty;
- aid to employment, and
- training aid.

Aid to promote culture and heritage conservation may also be considered to fall under the above mentioned horizontal rules although it is not applicable in all industries and regions. If the criteria in respect of granting of such aid are satisfied, the aid in question poses insignificant anticompetitive effects.

### c) Sector specific aid:

Industry specific or sectoral rules apply to particular industries where state aid may significantly impede competition. The rules in this context are the following:

- General sectors:

The sectors featuring specific types of problems or conditions currently include shipbuilding, steel, synthetic fibres industry, audiovisual production, broadcasting, electricity production and postal services.

- Transport:

Transport includes: road transport, inland waterways transport, rail transport, maritime transport and air transport.

- Agriculture and fisheries:

In the agriculture and fisheries sector separate state aid rules apply. Within the meaning of the Croatian State Aid Act, Article 1 paragraph 2, state aid to agriculture and fisheries fall outside the scope of the State Aid Act and the jurisdiction of the Competition Agency.

### d) *De minimis* aid

The EC *de minimis* Regulation of 2006 covers small amounts of state aid ("*de minimis* aid") whereby the ceiling of such aid is EUR 100 000, a cash equivalent granted to a particular undertaking over any three fiscal year period. *De minimis* aid as such does not constitute state aid in the sense of the State Aid Act and are therefore not subject to the notification requirement. It may be cumulated with other categories of aid which is allowable under the State Aid Act. However, the only type of aid which is excluded from the benefit of the *de minimis* rule is export aid. Similarly, it may not be granted to the steel industry and the transport sector.<sup>29</sup>

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<sup>29</sup> Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30) was replaced by the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ No L 379, 28.12.2006, p. 5) increasing the ceiling of the aid covered by the *de minimis* rule to EUR 200 000 cash grant equivalent over any three fiscal year period, whereas in the transport sector this limit remains EUR 100 000.

### 3.3. Activities of the Agency in the area of state aid

Within the meaning of Articles 5 and 6 of the State Aid Act the scope and the authority of the Agency in the area of state aid are specified as follows:

*The Croatian Competition Agency shall authorise and monitor the implementation of state aid and order the recovery of unlawfully granted state aid or aid used in contravention of the rules. The Agency performs, among others, the following activities: assesses the state aid proposals and aid schemes; collects, processes and registers the data on state aid; participates in the preparation of draft proposals for laws and other regulations concerning state aid, and promotes improvements in the state aid system. It also draws annual reports which are submitted to the Croatian Parliament and co-operates with international state aid authorities and the European Commission.*

*In 2006 the above mentioned activities were carried out by a staff consisting of nine (9) employees, the fact that determined the pace of resolving cases.*

In the time period from 2004 – 2006 the Agency received a total of 217 aid proposals, whereby 73 aid proposals of this total number have been received during 2006. By the end of 2006 the Agency resolved 183 cases or 84 % of the total.<sup>30</sup> In 2006, out of 73 received aid proposals 52 have been resolved, which makes for a high 72 % efficiency rate. Selected cases from the state aid inventory for 2006 may be found in Appendix 7 to this annual report.

The Government of the Republic of Croatia has adopted the List of existing aid schemes which was drafted by the Agency. It also passed the resolution on the approval of the Adjustment Programme of the Croatian State Aid System to the EU State Aid System and the Alignment Programme of the Existing State Aid Schemes to the Criteria Stipulated in Article 70 paragraph (2) of the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States, stating the priority of the implementation of the new state aid regime<sup>31</sup>, which makes further strengthening of the administrative capacities of the State Aid Division more than necessary. It is the view of the Agency that the current activities in the area of authorisation and monitoring of state aid at the central, regional and local level (counties, towns and municipalities), in particular sectors marked by restructuring (steel, shipbuilding) would be successfully carried out by a staff of fourteen (14) employees in the State Aid Division.

The majority of the activities of the Agency in 2006 has been concentrated on the cases relating to the benchmarks set by the European Commission for the opening of the negotiations under Chapter 8: Competition policy.

<sup>30</sup> State guarantees in the shipbuilding sector have not been included.

<sup>31</sup> The Resolution of the Government of the Republic of Croatia was published in Official Gazette No 125/2004.

### 3.3.1. Fiscal aid

On 27 July 2006 the Agency issued its positive opinion on the Investment Promotion Act which had been adjusted to the regional aid rules. However, in its opinion the Agency reminded of the fact that state aid may be granted under the legal act concerned only after the regional aid map has been adopted, which is also the commitment undertaken by the conclusion of the SAA.

#### *3.3.1.1. Preliminary binding opinion on the proposed Investment Promotion Act<sup>32</sup>*

*Upon the request submitted by the Ministry of the Economy, Labour and Entrepreneurship the Agency issued a preliminary binding opinion on the proposed Investment Promotion Act which regulates the promotion of investment made by national and foreign legal or natural persons that carry out economic activities and participate in the trade of goods and services with the aim of fostering economic growth, facilitating development and implementation of the economic policy of the Republic of Croatia, its integration in the international trade and strengthening of the competitiveness of the Croatian economy. The system of incentive measures in question is aimed at investment in economic activities in the territory of the Republic of Croatia and job creation linked to investment.*

*The incentive measures concerned are generally regional aid linked to the introduction of new production processes and new products, incentive measures for the establishment and development of technology and innovation centres and strategic business support services. The incentive measures are: tax advantages, tariff preferences, aid to cover eligible costs of the job creation linked to an investment and aid to cover eligible costs of training linked to an investment.*

*Based on the decision of the Competition Council, the Agency issued its opinion stating that the proposed Investment Promotion Act complies with the provisions of the State Aid Act and constitutes state aid. However, the Council indicated that at the time of the adoption of this binding opinion the Croatian regional aid map was still not established which means that no aid may be granted under the Investment Promotion Act without the relevant regional aid map in place.*

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<sup>32</sup> Preliminary binding opinion 430-01/2006-01/26 of 27 July 2006 published in Official Gazette No 96/2006.

### **3.3.2. Shipbuilding**

Rescuing and restructuring of the Croatian shipyards started in December 2005 when the Croatian government issued the Decision on the establishment of a Committee for the preparation of the Draft National Programme for Restructuring of the Croatian Shipbuilding Industry.

During 2004 and particularly in 2005 the CCA repeatedly reminded of the urgent necessity for alignment of the aid schemes and other related legal acts on the basis of which aid to shipbuilding is awarded with the provisions of the State Aid Act, the Regulation on state aid and with the obligations undertaken under the SAA. To that purpose, the existing legal acts which served as a legal basis for grants awards and state guarantees have been included in the list of existing aid which needs to be brought into compliance with state aid rules in the area of shipbuilding and state guarantees. Such is for example the Resolution of the Government of the Republic of Croatia of 22 August 2002 on the basis of which the Ordinance on grants to shipbuilding and Ordinance on grants to small shipbuilding have been adopted. The said government Resolution also determined that the Government of the Republic of Croatia will subsidize shipbuilding in the Croatian yards with at least 10 % of the sales price of the projects contracted to be delivered until 31 December 2006.

Taking into account the fact that the Croatian shipyards are considered firms in difficulty and that, in principle, they are not able to obtain loans under normal market conditions without state guarantees under lower than average premiums for construction financing guarantees, it is clear that all state guarantees, whether end-financing or construction financing guarantees constitute state aid without exemption.

Under the above described circumstances, the only possible way to ensure the survival and long-term viability of the Croatian shipyards is to prepare the relevant restructuring plans to serve as the legal basis for any future state aid awards in the shipbuilding sector given that the provisions of the State Aid Act and the obligations undertaken under the SAA do not allow granting of operating aid to cover operating costs unless provided for in the restructuring plan. Thus, any aid which is not in line with the state aid rules in the shipbuilding sector would be considered illegal and therefore prohibited.

The restructuring of the Croatian shipyards started in the second half of 2006 when the CCA received four requests for approval of rescue aid for the shipyards from the Ministry of the Economy, Labour and Entrepreneurship.

The CCA authorised rescue aid in the form of state guarantees for shipyards in the amount of 4.2 billion HRK on 21 September 2006. Out of the above mentioned total sum 1.7 billion HRK was granted to Brodosplit Brodogradilište d.o.o., 625 million HRK to Brodotrogir d.d., 1.7 billion HRK to 3. Maj brodogradilište d.d. and 221 million HRK to Brodogradilište Kraljevica d.d.

On 18 January 2007 the CCA additionally authorised rescue aid to Brodosplit Brodogradilište specijalnih objekata d.o.o. in the form of state guarantees covering the loans in the amount of 140 million HRK. Rescue aid in question was approved by the CCA for the period of six months. It is the obligation of the Ministry of the Economy, Labour and Entrepreneurship to submit to the Agency reports proving that the approved resources have been used in compliance with the principles of rescue aid.<sup>33</sup>

### *3.3.2.1. Decision giving State guarantees for 3. Maj Brodogradilište d.d. covering rescue aid loan<sup>34</sup>*

*The Ministry of the Economy, Labour and Entrepreneurship submitted to the Agency a request for approval of state guarantees for the undertaking 3. Maj Brodogradilište d.d. covering rescue aid loan.*

*The request is based on the financial difficulties of the undertaking concerned where its incapacity to obtain normal bank loans would jeopardize its survival in the market.*

*Article 17 par (1) of the Regulation on state aid provides for the possibility of rescue aid which may be granted to an ailing firm for the time needed to work out a restructuring plan under the following conditions: rescue aid must consist of liquidity support in the form of loan guarantees or loans under normal market conditions, the loans are to be reimbursed over a period of not more than 12 months after disbursement of the last instalment to the firm, it must be warranted on the grounds of serious social difficulties, it must be restricted to the amount need to keep the firm in business, it is authorised for not more than six months needed for the preparation of the restructuring plan and it is a one-off operation.*

*In the proceedings carried out by the Agency it was established that in the case of 3. Maj Brodogradilište all criteria have been satisfied and state guarantees relating to rescue aid loan have been approved in the amount of USD 216,338,238 (or HRK 1,267,879,447) and EUR 54,210,000 (or HRK 402,786,426) which comes to a total of HRK 1,670,665,873 earmarked as follows:*

- USD 145,860,076 (or HRK 854,832,664) for short-term loans with commercial banks for operating costs;*
- USD 54,478,162 (or HRK 319,276,623) which is principal plus interest, to be used for the loan taken with DEPFA BANK Investment Bank Ltd. CY 1665 Nicosia, Cyprus, for the reimbursement of the loan taken with DEUTSCHE BANK AG, London, with maturity date 28 September 2006 which is covered by the guarantee given by the Ministry of Finance on 3 October 2005;*

<sup>33</sup> In February 2007 the Ministry of the Economy, Labour and Entrepreneurship submitted to the Agency a summary of the individual restructuring plans for all shipyards. It was the opinion of the Agency that they satisfy the principal criteria used in the preparation of the restructuring plans.

<sup>34</sup> The decision of the Agency: UP/I 430-01/2006-02/46 of 21 September 2006, Official Gazette No 136/06.

- USD 16,000,000 (or HRK 93,770,160) to be used for the financial indebtedness with the commercial bank for the purchase of materials for new buildings 702, 703 and 704;
- EUR 54,210,000 (or HRK 402,786,426) to be used for the financial indebtedness with the commercial bank for the purchase of materials for new buildings 708 and 709.

The above mentioned state guarantees have been given to the undertaking 3. Maj Brodogradilište under the following conditions:

- the undertaking shall remunerate the state at the moment when the Ministry of Finance gives the guarantee by 0.5 % premium to the benefit of the State budget of the Republic of Croatia;
- loans covered by state guarantees must be obtained under normal market conditions or at an interest rate applicable to healthy undertakings which should not be lower than 5.44 % reference rate. The loan must be reimbursed over a period of not more than 12 months after disbursement of the last instalment to the firm;
- within the period of not more than six months, in this case until 21 March 2007, the restructuring plan or liquidation plan will be submitted to the Agency or 3. Maj Brodogradilište will have to furnish evidence that the loans covered by state guarantees have been reimbursed.

It is also the obligation of the Ministry of the Economy, Labour and Entrepreneurship as rescue aid provider in this particular case, to submit monthly reports on the fulfilment of the criteria and earmarked loans covered by state guarantees throughout the rescuing period or until the end of the period in which the undertaking concerned spends the loans in question.

### 3.3.3. Steel

In line with the obligations under Article 70 of the SAA, and Protocol 2, as its constituent part, Croatia may grant state aid for rescuing and restructuring of the steel industry until 1 March 2007. Under the same agreement Croatia undertook the obligation to draw up a restructuring programme for the Croatian steel industry.

For Croatia, similarly as in the shipbuilding sector, the rescue and restructuring process in the steel industry started on 1 December 2005 when the Government of the Republic of Croatia took the Decision on the establishment of a Committee for the preparation of the Draft restructuring programme for the Croatian steel industry.

Given that two steel works Željezara Split d.d. and Valjaonica cijevi Sisak d.o.o. constitute firms in difficulty the sole possibility of awarding state aid to these undertakings is the drawing up of the restructuring programme.

Restructuring in the steel sector must be based on a feasible restructuring plan which can ensure that:

- after completing its restructuring, the company will be able to carry out its operations under normal market conditions without state aid,
- the amount and intensity of the aid is limited to what is necessary needed for the restoration of the firm's long-term viability and progressively reduced, and
- the restructuring plan involves the overall reorganisation and rationalisation of the steel activities in the Republic of Croatia.

In 2007 the Government of the Republic of Croatia adopted the Restructuring Programme for the Croatian Steel Industry for 2007 – 2013.

At the moment of compilation of this report calls for public tenders have been opened for the privatization of Željezara Split d.d. and Valjaonica cijevi Sisak d.o.o. The CCA will assess the individual restructuring plans of the steel works in question after the new investor has been selected.

### 3.4. State aid control

*In line with Article 5 of the State Aid Act the Agency authorises and monitors the implementation of state aid and orders the recovery of unlawfully granted state aid or aid used in contravention of the rules.*

*The Agency monitors the implementation of authorised state aid ex officio or upon the proposal of aid beneficiaries, aid providers and any legal or natural person having a legal interest.<sup>35</sup>*

*Where the Agency establishes any irregularities in monitoring the implementation of state aid, it shall adopt a decision ordering the aid provider and/or aid beneficiary to remedy the irregularities in question within no longer than 3 months.<sup>36</sup>*

*Where the aid provider and/or aid beneficiary does not remedy the irregularities in question, the Agency shall order the aid provider and/or aid beneficiary recovery of the awarded state aid in the part in which irregularities have been established, increased by statutory interest on arrears payable from the date on which the established irregularities occurred.*

In 2006 the Agency opened two proceedings relating to monitoring of the implementation of state aid on its own initiative. Given the sectors in which the aid schemes in question have been implemented – that of the textile and leather industry and automotive parts sector – and a large number of aid beneficiaries and necessary data which must be collected, these cases are still pending.

### 3.5. Other cases

In 2006 the Agency gave 23 opinions on legal proposals and aid schemes on the basis of which aid may be granted to previously unspecified beneficiaries with no need for any further implementation measures. State aid contained in the opinions on legal acts and aid schemes concerned covers practically all categories of horizontal state aid and regional state aid.

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<sup>35</sup> Article 15 par 1 of the State Aid Act.

<sup>36</sup> Article 15 par 2 of the State Aid Act.

### **3.5.1. Authorisation of the proposed Annual employment promotion plan for 2006<sup>37</sup>**

*The Ministry of the Economy, Labour and Entrepreneurship submitted to the Agency a request for approval of the proposed Annual employment promotion plan for 2006. Aid under the aid scheme concerned has been awarded by the Ministry of the Economy, Labour and Entrepreneurship, Ministry of Family Affairs, War Veterans and Intergenerational Solidarity, Ministry of the Sea, Tourism, Transport and Development, Ministry of Health and Social Welfare, Ministry of Science, Education and Sports, Croatian Employment Service and the Fund for Professional Rehabilitation and Employment of Disabled Persons.*

*In the assessment of the Annual plan concerned the Council did not include aid measures which are awarded to beneficiaries which in accordance with the State Aid Act (OG 140/05) may not constitute beneficiaries of state aid (healthcare, education etc.) or de minimis aid which do not need to be notified to the Agency.*

*In the part where the resources for financing employment constitute state aid, besides the state aid for employment the Annual plan envisages also state aid for training and state aid for small and medium-sized enterprises in the form of grants and interest rebates. All SMEs and large firms are eligible for state aid for employment, other than firms considered in difficulty and those engaged in shipbuilding and maritime transport.*

### **3.5.2. Ordinance on the criteria and methods for granting financial aid through the Environmental Protection and Energy Efficiency Fund<sup>38</sup>**

*The Environmental Protection and Energy Efficiency Fund (hereinafter: the Fund) submitted to the Agency the proposed amendments to the Ordinance on the criteria and methods for granting of the Fund resources and criteria and requirements for the assessment of applications for grants (hereinafter: the proposed Ordinance). In this particular case the proposed Ordinance is an aid scheme containing state aid for environmental protection under Article 10 of the Regulation on state aid (OG 121/03).*

*The Fund resources are particularly aimed at financing projects, programmes and other activities in compliance with the national strategy in the area of environmental protection and energy efficiency in the form of loans, grants and other financial aid on the basis of a public tender.*

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<sup>37</sup> The decision of the Agency: UP/I 430-01/2005-02/26 of 2 March 2006, Official Gazette No 26/06.

<sup>38</sup> The opinion of the Agency: 430-01/2005-56/05 of 16 March 2006.

*In the assessment carried out by the Agency it has been established that aid envisaged by the proposed Ordinance constitutes state aid in the sense of Article 3 par 1, whereas the possibility for certain aid to fall under Article 4 par 3 item d) of the State aid act relating to state aid to facilitate the development of certain economic activities or of certain economic areas has also been considered.*

*Finally, the decision of the Council was that the proposed Ordinance may not be found compatible with the provisions of the State Aid Act and Articles 10 to 15 of the Regulation on state aid concerning state aid for environmental protection. Therefore, the proposed Ordinance must be brought in compliance with the relevant state aid rules particularly in respect of the specification of the eligible costs, aid intensities, financing resources, annual aid amounts and the duration of the aid scheme in question.*

### **3.5.3. Programme for the promotion of protection and reconstruction of the cultural heritage in the underdeveloped areas and its inclusion in the tourist offer<sup>39</sup>**

*The Ministry of the Sea, Tourism, Transport and Development submitted to the Agency a request for authorisation of the Programme for the promotion, protection, reconstruction and inclusion of the cultural heritage in the underdeveloped regions into the tourist offer.*

*The aid beneficiaries in the regions where tourism is not sufficiently developed are legal and natural persons, cooperatives, institutions and associations with their place of residence or establishment in the Republic of Croatia who are under the specified goals of the Programme concerned eligible for grants.*

*The Programme is based on non-repayable financial aid in the amount not exceeding HRK 250,000 granted specifically to co-finance: (i) development projects which promote improvement of the tourist offer in the regions where tourism is not sufficiently developed, such as rural and highland areas, islands and areas of special state concern, (ii) protection, reconstruction and revival of the natural and cultural heritage, traditional historic values and crafts and their inclusion in the tourist offer, and (iii) the development of underdeveloped rural communities and areas of special state concern which are marked by high potential in cultural and natural heritage and offer possibilities for employment of the local population.*

*The Competition Council decided that the subsidies envisaged by the Programme involved the amounts of HRK 250,000 per beneficiary which under Article 5 of the Regulation on state aid (OG 121/03) constitute de minimis aid which is exempted from the notification requirement and whose ceiling is set at HRK 750,000 per undertaking over a period of three fiscal years.*

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<sup>39</sup> Resolution on dismissal: UP/I 430-01/2006-04/05 of 16 February 2006.

*Yet, the aid provider – the Ministry of the Sea, Tourism, Transport and Development – must inform the aid beneficiary of the amount of aid granted to him and ask for necessary data reflecting any de minimis aid granted in the previous three years. At the same time the aid provider must communicate to the Agency that de minimis aid has been granted within a time period of 15 days.*

In the remaining 19 cases (excluding the cases in the transport sector) the Agency decided on individual aid, predominantly relating to state aid for rescuing and restructuring of the firms in difficulty. In two cases thereof the Agency refused to give its approval regarding state aid for restructuring of the firms in difficulty due to lack of legal grounds for authorisation of such aid.

#### **3.5.4. The proposal for the conversion of debt into equity and debt write-off in respect of the undertaking Mupera d.o.o.**

*The State Agency for Deposit Insurance and Bank Rehabilitation submitted to the Agency the Proposal for the conversion of debt into equity and debt write-off in respect of the undertaking Mupera d.o.o. who was considered a firm in difficulty.*

*Within the meaning of the State Aid Act a firm in difficulty must submit its restructuring plan in order to become eligible for state aid. The undertaking Mupera d.o.o. drafted and submitted the restructuring plan in which it proposed its debt to be converted into equity and written off.*

*Nevertheless, the Council has taken the decision that the measures under the restructuring plan do not satisfy the criteria of sustainability of the restructuring plan given that:*

- the financial restructuring does not involve a clear industrial and operative restructuring concerning an investment that did not render profitable;*
- the business plan was not based on real data and as such lacked viability;*
- the aid was not limited to the minimum necessary to enable restructuring and*
- under the restructuring plan concerned the aid beneficiary did not make contributions to the restructuring from its own resources which must amount to at least 25 % etc.*

*In competitive markets, such as in this case the beer manufacturing market, where in the territory of the Republic of Croatia a great number of undertakings, big and small, are engaged in beer production, the success on the market or market exit is highly dependent on the undertaking's own efficiency and profitability which cannot be solved through one-off intervention of the State.*

*What is more, the undertaking Mupera d.o.o. employs one to two workers on the average per year so that the aspect of serious underemployment in the Split-Dalmatia County may also be ruled out.*

*Taking everything said into account the Agency refused its approval and it consequently decided that the aid in question is considered incompatible and prohibited as referred to under Article 4 par 1 of the State Aid Act.*

The majority of cases in the transport sector related to maritime transport which were followed by the air transport cases and state guarantees to cover the construction of certain parts of motorways.

### **3.5.5. Draft Proposal for the Decision on ratification of Guarantee Agreement between Auto cesta Rijeka-Zagreb d.d. and the European Bank for Reconstruction and Development for the financing of the "Project for the construction of the II b section of the Motorway Rijeka – Zagreb"<sup>40</sup>**

*In its opinion issued on the Draft Proposal for the Decision on ratification of Guarantee Agreement between Auto cesta Rijeka-Zagreb d.d. and the European Bank for Reconstruction and Development for the financing of the "Project for the construction of the II b section of the motorway Rijeka – Zagreb", submitted by the Ministry of the Sea, Tourism, Transport and Development, the Competition Council did not initiate the proceedings for assessment of the guarantee in question given that in this particular case the coverage of credit liabilities on the part of the undertaking Autocesta Rijeka – Zagreb d.d. the purpose of which is the construction of infrastructure (II b section of the motorway Rijeka-Zagreb) does not constitute state aid.*

*On the account of the fact that the undertaking and concession holder Autocesta Rijeka-Zagreb d.d. is entirely owned by the Republic of Croatia and that it uses the loan in question for the construction of the final section of the full motorway which is considered an infrastructure facility accessible to all users, actual and potential, on non-discriminatory terms, the infrastructure funding concerned constitutes a measure of general interest where the investment made by the state is considered in compliance with its assigned general interest obligation and in line with the strategy for the construction of roads and establishment of the transport system in the general interest.*

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<sup>40</sup> Opinion of the Agency: UP/I 430-01/2006-04/31 of 7 July 2006.

### **3.6. Other activities of the Agency relating to state aid**

One of the key activities of the Agency in this area is also further cooperation with and training of aid providers. This is based on the fact that aid providers insist that representatives of the Agency take part in the activities relating to redefinition of state aid policy in certain sectors of the economy through working groups which are responsible for revision and modifications of particular parts of legislation and aid schemes. To that view, in 2006 the representatives of the Agency participated on the temporary or permanent basis in the work of several working groups for the conclusion of the National Restructuring Programme for the Croatian Steel Industry, drafting of the Act on Liner Shipping and Seasonal Coastal Maritime Transport, Free Zones Act and Investment Promotion Act, as well as in the working group for the drafting of the strategy and capacity building for regional development in Croatia.

With the support of the 2002 CARDS project, the establishment of a comprehensive state aid data base worth EUR 400,000 in equipment and program support is under way. The new IT system has already passed the testing period and data received from aid providers are currently being entered into the new data system.

## 4. INTERNATIONAL COOPERATION

In 2006 the intensified cooperation between the Agency and the EU institutions continued, particularly the Competition Directorate General of the European Commission and the national competition authorities of the EU Member States and outside the EU.

The Agency also continued its traditional participation in the activities of the international organizations such as UNCTAD, OECD, ICN, SEECAN (*South East Europe Competition Authorities Network*).

### 4.1. European Union and EU support projects

Ten employees of the Agency have been involved in the *screening* process. Both members of the Council and expert team) are active in working groups covering different chapters in the EU accession negotiations: Competition policy, Energy, Transport policy, Regional policy, Consumer protection and Enterprise and Industrial policy. In short, some 30 % of the Agency's staff has been actively involved in the preparations for the accession negotiations in the areas concerned.

The training arrangements involving the CCA officials have been agreed with the DGCOMP. More experts of the Agency will be sent to DGCOMP internship in the future in order to gain necessary knowledge and practice in case handling.

In 2006 two CARDS projects have been implemented in the Agency, whereas the preparations for the implementation of the PHARE project have been carried out. PHARE is a comprehensive project in both areas of competition and state aid, with Germany as a twinning partner. The second part of the project will cover the purchase of IT equipment and establishment of an electronic data base and information and documentation system connecting the whole Agency. A part of this will be financed also through the Agency's own budget.

The CARDS project 2003 "Further strengthening of the Croatian Competition Agency and implementation of competition law and policy" which was commenced in October 2005 in the report period included 17 seminars held by distinguished international competition experts.

Institutional and administrative capacity building of the Agency involved 9 seminars for members of the Council and expert team. The component relating to implementation of the legislative framework for public administration and private sector consisted of 8 seminars aimed at other stakeholders (other regulators, business community, academia, lawyers and judges).

Apart from the training activities a study tour to the Swedish national competition authority was organized whereas permanent cooperation has been ensured through daily consultations about the pending cases. A Short Guide for Businesses about Croatian Competition Law and the Croatian Competition Agency has also been published and it is available both in English and Croatian on the web site of the Agency.<sup>41</sup>

The implementation of the *twinning* project in the area of state aid "Support to the Croatian State Aid System" which was commenced in June 2005 in the co-operation with partner countries Germany and Slovenia continued. The objective of this project was to provide support to the Agency in the implementation of the commitments undertaken under the SAA particularly through the capacity building of the Agency and training of target groups, particularly aid providers. 18 seminars were held for the employees of the Agency whereas 11 for ministries and other public authorities, concentrating on regional aid rules, environmental aid, aid for R&D&I, SGEI, shipbuilding, state guarantees etc.

Study tours have been organized to the German national authorities responsible for state aid. A Practical guide for Local and Regional Administrations has also been published and made available in English and Croatian on the web site of the Agency.

The *twinning* project also included the purchase and establishment of a comprehensive electronic data base on state aid in the Republic of Croatia (CROSADS – Croatian State Aid Database System).

## **4.2. Multilateral and bilateral co-operation**

Intensified interaction continued within the international organizations and initiatives with the national competition authorities of the EU Member States and other candidate countries.

The CARDS project ensured the participation of the representatives of the Agency in the European Competition Day in Vienna. The conference concentrated on new trends in the area of cross-border mergers, liberalizing energy markets and financial sector, compensations in the court proceedings, leniency provisions, recent revisions of Article 82 of the EC Treaty, market in services, new tests establishing abuse of dominance, cooperation between Member States in cartel cases and applications for leniency, out-of-court settlements etc.

The OECD Regional Centre for Competition in Budapest hosted the second meeting of the regional competition authorities which was this time focused on training of judges and employees of the national competition authorities of the EU candidate countries and new

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<sup>41</sup> See footnote 1.

Member States. Every national authority may include four of its representatives in the work of the OECD training courses which will be held during 2007 in the Regional Centre in Budapest. In addition, a special data base will be made available to the national authorities concerned containing accessible economic analyses and decisions of the relevant authorities.

In 2006 a cooperation project, Competition Policy in the Balkans, initiated by the Italian competition authority, brought together national competition authorities from the South-East Europe who in their meetings discussed their legal frameworks in the area of competition and possible improvements in the enforcement efficiency and effectiveness of the relevant rules in the market economy.

In March 2006 a Memorandum of Understanding for Cooperation was signed in Sarajevo by the Croatian Competition Agency and the Competition Council of Bosnia and Herzegovina. The cooperation between the competition authorities concerned will be implemented through experts' exchange, seminars, study visits, expert and peer-to-peer meetings, professional training and exchange of information relating to the case practice of both authorities.

The representatives of the Romanian Competition Council accepted the invitation of the Croatian Competition Agency and visited Zagreb in February 2006. The cooperation between the two competition authorities started in 2005 when the Agreement on Cooperation in the areas of competition and state aid was concluded in Bucharest. The members of both Competition Councils gave an overview of the activities of both competition authorities and discussed the prospects of future cooperation. A meeting was held with the representatives of the Croatian negotiating team, where the issues specific to the negotiating process and experience gained by Romania in the EU negotiating process were discussed.

The University Institute of European Studies in Turin, Italy, invited the Croatian president of the Competition Council and member of the negotiating team responsible for competition policy and enterprise and industrial policy, to give a lecture within the course in Economic Law and Competition in the European Union in October 2006. In her lecture, she first of all presented Croatia in numbers and facts, explained its economic and political status and its membership in international organizations, and described the legislative framework and the activities and practice of the Croatian Competition Agency relating to competition, involving both anti-trust and state aid in the context of EU accession and the ongoing negotiations.

### **4.3. Professional training and international seminars**

For the purpose of this annual report only the most important conferences, seminars and workshop visited by the representatives of the CCA in the report period will be mentioned.

The OECD Global Forum in Paris held in February 2006 covered the competition issues in the area of concessions and provision of services of general interest and cartel case studies in view to prosecuting cartels without direct evidence of agreement. The representatives of the Agency presented the restrictive agreements as regulated by the Croatian Competition Act and answered the questions of the participants relating to the practices of the CCA in this matter. The Global Forum also addressed the concerns of developing countries in respect of cooperation between trade and competition. The OECD also organized a workshop on cartels in its Regional Centre for Competition Budapest whereas in Brno the representatives of the CCA participated in the seminar on abuse of a dominant position.

One representative of the CCA participated in the 5th Annual Conference of the International Competition Network, held in Cape Town in May 2006, a traditional international discussion forum on competition issues for a number of competition authorities worldwide. It is actively engaged in facilitating the provision of technical assistance and other forms of support, especially in respect of regulatory convergence. This year's conference highlighted a number of competition issues, such as a higher aggregate annual turnover of all participating undertakings of a concentration and legal certainty of undertakings. As regards the particular sectors, the telecommunications sector was mostly discussed and referred to during the conference. Finally, the conference pointed out the necessity of ongoing competition advocacy and all activities that promote competition law and policy through non-enforcement mechanisms and proper education and specialization of judiciary in the area concerned.

The CCA representatives participated in the work of the international conference on competition and state aid policy in the context of European Union accession, which was organized by the Ministry of the Economy, Trade and Energy of the Republic of Albania and Albanian Competition Authority, in collaboration with GTZ - Deutsche Gesellschaft für technische Zusammenarbeit, and held in Tirana, Albania, in June 2006. The participants contributed to the work of the conference by a series of papers relating to the EU approach to competition and state aid policy. In their presentations, the members of the Croatian Competition Council concentrated on the service and processing of data used in the preparation of the decisions of the Competition Agency and provided an insight into the Croatian state aid system, taking into account the relevant legal framework and the role of the Agency in the area of anti-trust and state aid, respectively.

The representatives of the CCA, the head of the working group for the preparation of negotiations in the area of state aid and representatives of the Ministry of Finance

participated in the work of the 4th Experts Forum on New Developments in European State Aid Law 2006, which was held in Brussels in May 2006. The main part of the conference focused on the direct application of Article 88 (3) of the EC Treaty by the national courts of the EU Member States and also involved the most recent practice relating to the cases handled by the national courts and the European Court of Justice.

The representatives of the CCA and the Supreme Court of the Republic of Croatia attended the VII Conference of the European Lawyers Union, Anti-trust between the EC Law and National Law, which was held in Treviso, Italy, in May 2006. The conference concentrated on the assessment of concentrations and abuse of a dominant position in light of the revised approach of the European Commission to application of Article 82 of the EC Treaty and brought together experts in the area of competition law from national competition authorities and courts.

Finally, worth mentioning are also the seminar organized by UNCTAD which was held in Istanbul – Competition Rules in Regional Trade Agreements, and the seventh Intergovernmental Expert Meeting on Competition Law and Policy in Geneva.

It must be noted that a majority of the above mentioned seminars and conferences have been financed by foreign sponsors (GTZ, Great Britain) or supported by the EU assistance projects, particularly the CARDS project, thus enabling the representatives of the Agency to participate in training activities and competition advocacy.

## CONCLUSION

Within the meaning of the priorities and activities set in the Competition Agency Strategy Statement for 2006 the Agency continued its work relating to the enforcement of the rules established under the Competition Act and the State Aid Act.

At the same time, after having completed the screening process concerning Chapter 8: Competition policy, intensified cooperation was ensured with other competent authorities and particularly with DG Competition of the European Commission relating to the fulfilment of the accession negotiation criteria and preparation of the necessary revisions of the rules and structural adjustments in particular sectors (shipbuilding, steel, aluminium production) which would ensure their operation on the market conditions and avoid use of state aid. In 2006 this shift was marked through the application of the new State Aid Act and the adoption by the Croatian Government of the new Regulation on state aid in accordance to which the EC state aid rules become directly applicable in their Croatian translation after the adoption of the Government and their official publication in the Official Gazette. This adjustment instrument ensures direct applicability of substantive state aid rules and facilitates their timely introduction to aid beneficiaries and aid providers in the acceleration lane of the Croatian EU accession process and raises the understanding of their validity once Croatia becomes an EU Member State. For the Agency it means taking additional workload which may be resolved only through administrative capacity building and employment of new, trained staff which will ensure proper enforcement and application of these rules.

For the purpose of raising efficiency and effectiveness of the Croatian competition regime in 2006 the Agency launched a cooperation initiative with the Ministry of Justice aimed at the necessary modifications of the existing Competition Act and the Courts Act, in order to remove the deficiencies of the current court protection system and empower the Agency to impose more than modest and symbolic sanctions as regulated by law. The changes in question should particularly provide for a new regime which would impose deterrent sanctions on the undertakings that take part in hardcore cartels and thereby commit serious infringements of competition rules, seriously impede competition and jeopardise consumers' interests. Although these issues relating to effectiveness of the decisions and deterrent effect of its sanctions were not set as benchmarks for the opening of the negotiations with the EU regarding competition policy, it is necessary to start dealing with the issues concerned so as to avoid possible impediments to definite closure of negotiations. Thus, the EC Croatia 2006 Progress Report noted that considerable progress has been made in the area of anti-trust and state aid with the adoption of the new legislation which has been adjusted to the EC rules, as regards training activities anti-trust enforcement record and management of the Agency, however, it also indicated some problems which must be resolved where improvements must be made in order to achieve a

satisfactory level of progress. It was particularly stated that "the current judicial system is not functioning satisfactorily, and development and training of judiciary in competition matters is necessary"... and that "the CCA should be empowered to impose fines". At the same time, it was noted that further resources are needed in order to come with the heavy and steadily increasing workload of the CCA and training needs, whereas, in this context, in the words used by the EC, it causes concerns that the CCA budget has not been increased. In conclusion, the Progress Report in Chapter 8: Competition policy although admitting that some progress has been made, both in the areas of anti-trust and state aid, states that Croatia needs to intensify its efforts concerning further legislative alignment, strengthening of administrative capacity, particularly regarding the staffing levels, and a more efficient enforcement record.

At the end of the day the activities of the Agency in 2006 which focused on the enforcement and proper application of the Competition Act and State Aid Act revealed a number of rather complex cases which underwent in-depth economic and legal analyses so as to establish actual or possible effects of prevention, restriction or distortion of competition through the conclusion of restrictive agreements or abuse of a dominant position. The Croatian undertakings follow their international counterparts and use even more subtle and increasingly unfair practices which may significantly impede competition or raise entry barriers with the view to maintaining or improving their market positions at the expense of their competitors and, ultimately, consumers. Anticompetitive effects in the proceedings before the Agency are not easily demonstrated without lengthy and complex assessments of such practices. Once again it must be noted that the Agency needs competent and trained experts who understand the case law and practices used by the international competition experts in developed market economies when facing the "other side", that represented by usually very strong teams of experts of different profiles, such as lawyers and financial experts, who in the protection of their interests often dispose of remarkable and unlimited resources.

At the same time, in the area of state aid, particularly when serious economic issues are concerned, such as state aid for shipbuilding, the restructuring plans and viability of individual business plans of the undertakings involved in the restructuring process, the role of the Agency is to tackle these problems in cooperation with aid providers and gradually prepare the conditions for the shift from the traditional state interventionism to long-term viability of undertakings under market conditions. This is where the Agency again needs support of qualified and motivated staff – legal experts and economists. To that end, it is necessary to ensure adequate resources and raise the budget of the Agency particularly for the financing of education and training of its staff involved in case-management and analysis and to facilitate promotion of knowledge and understanding of the matter concerned between the academia and private sector.

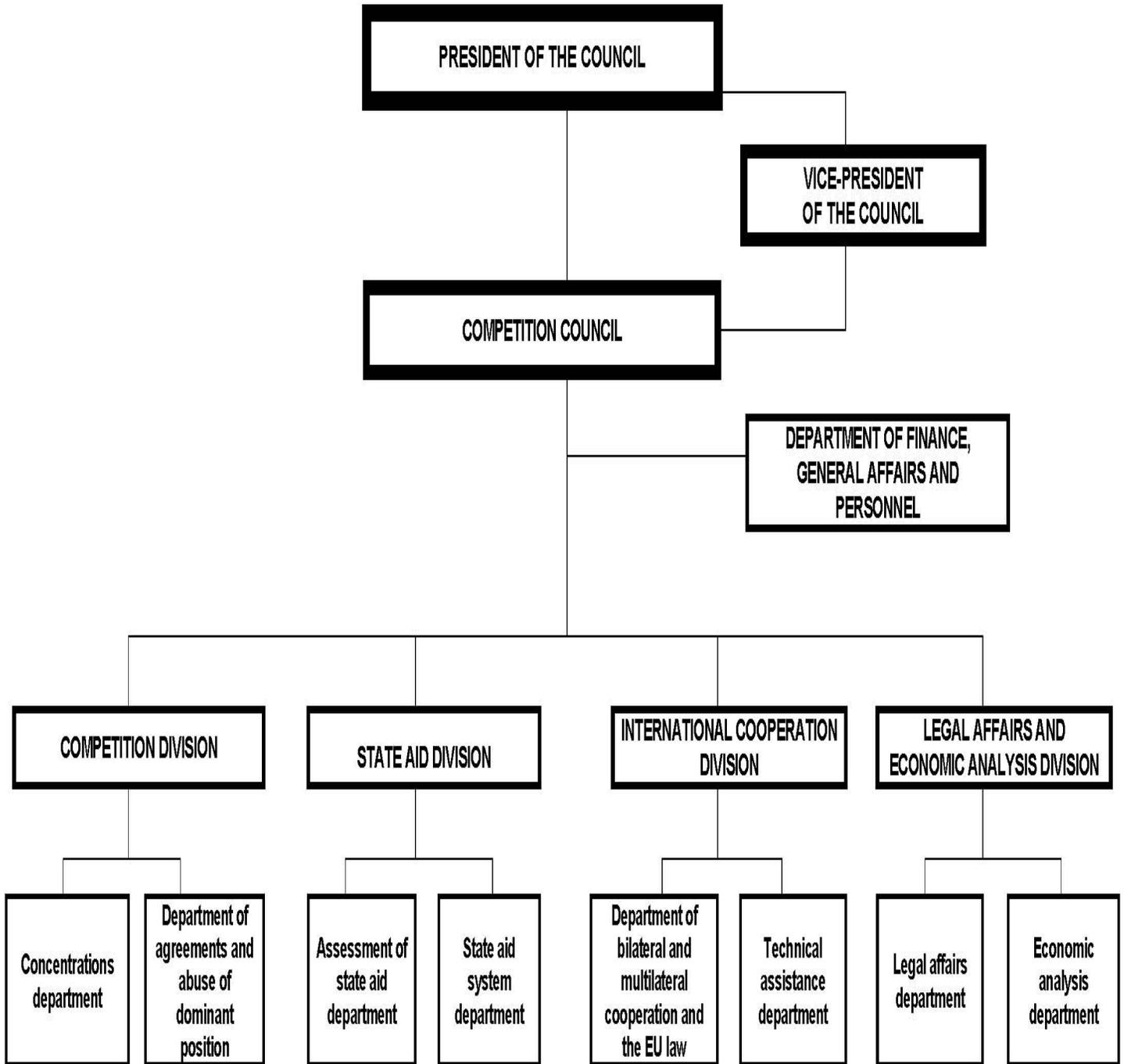
In a market economy competition policy and the establishment of equal conditions for the operation of all undertakings in the market ensure competitiveness at the global level. It

also ensures benefits for the consumers, offering more choice and lower prices. It is the task of the Agency, under the competences assigned to it by law, to implement competition rules in practice and investigate into the practices of the undertakings, but also to monitor the interventions of the state which may result in advantages to the selected undertakings which put them into a more favourable position in the market compared to other undertakings which do not receive such aid and thereby produce anticompetitive effects and impede the development of competition. In addition, the Agency's role is also to give proposals, make recommendations and indicate possible shortcomings and barriers to competition contained in the legislative framework which hinders competition in particular sectors or activities. In both areas of work the Agency still faces difficulties. Lack of understanding and support is particularly significant on the part of the big undertakings and associations of undertakings whose influence is strong and whose interests resist the necessary reforms. Furthermore, taking into account the legacy of the former political regime of command economy where the allocation of the resources was not determined by the market but managed through the interventions of the state, it is still the case that neither the undertakings nor the citizens understand, acknowledge and support a new approach which focuses on the market and its rules and the establishment of an independent competition authority in charge of administering, promoting and safeguarding a balanced and fair competition.

In spite of the mentioned insufficient resources, lack of staff and inadequacy of measures and instruments available for the establishment of a sound competition regime, the Competition Agency used its best endeavour, within its competences, to ensure the proper enforcement of competition rules and raise the awareness among the undertakings of the benefits of the rules which, if respected, can serve their benefit, protect their interests in the market and improve their business performance and competitiveness. Given that the very same rules protect the consumers' interests and contribute to consumer welfare the Agency will maintain the strategy to champion competition where consumer is sovereign.

# Appendix 1: Organisational chart of the Croatian Competition Agency

## INTERNAL ORGANIZATION OF THE CROATIAN COMPETITION AGENCY



## Appendix 2: The budget of the Agency in 2006

The funds for the activities pursued within the scope of the Agency are provided from the budget of the Republic of Croatia<sup>42</sup>. The planned budget of the Agency for 2006 amounted to HRK 12,938,050 whereas the realised funds amounted to HRK 9,053,830 which is 30 % less than the planned funds. The resulting balance is from the fact that the implementation of 2005 PHARE twinning project 'Strengthening of Capacity to Manage and Enforce the EU Competition and State Aid Policies' amounting to HRK 3,238,050 did not start in 2006.

*The following table shows the planned funds and the execution of the State budget of the Republic of Croatia relating to the Competition Agency in 2006*

	Planned	Executed	% executed
<b>TOTAL</b>	<b>12.938.050,00</b>	<b>9.053.830,50</b>	<b>69,98 %</b>
<b>Normal activities of the CCA</b>	<b>9.700.000,00</b>	<b>9.053.830,50</b>	<b>93,34 %</b>
Competition and state aid enforcement	9.488.000,00	8.862.225,02	93,40 %
IT activities	72.000,00	55.529,68	77,12 %
Equipment of the CCA	140.000,00	136.075,80	97,20 %
<b>PHARE 2005</b>	<b>3.238.050,00</b>	<b>0,00</b>	<b>0 %</b>

Source: State Annual Accounts – State budget of the Republic of Croatia for 2006 (Official Gazette 70/2007)

<sup>42</sup> Article 30 paragraph (7) of the Competition Act.

**Appendix 3: Total number of registered and resolved cases/files in the area of anti-trust and merger control in 2006**

Category of case/file	No of cases/files registered in 2006	No of decisions/ opinions/interim measures/procedural orders in 2006*
<b>I ADMINISTRATIVE CASES:</b>		
1 ABUSES	21	27
2 AGREEMENTS	31	22
3 CONCENTRATIONS	30	28
<b>Total:</b>	<b>82</b>	<b>77</b>
<b>II ADVOCACY (OPINIONS):</b>		
1. OPINIONS ON DRAFT LEGISLATION	13	13
2. OTHER EXPERT OPINIONS UPON REQUEST OF THE PARTIES	29	28
<b>Total:</b>	<b>42</b>	<b>41</b>
<b>Subtotal ADMINISTRATIVE CASES + ADVOCACY (I+II)</b>	<b>124</b>	<b>118</b>
<b>III. OTHER NON-ADMINISTRATIVE FILES</b>	<b>68</b>	<b>53</b>
<b>IV. STATISTICAL REPORTS, INTERNATIONAL PROJECTS AND COOPERATION</b> (international cooperation; cooperation with Croatian institutions and other bodies)	<b>68</b>	<b>68</b>
<b>I. INTERNAL ACTS AND PUBLICATIONS OF THE CCA</b>	<b>7</b>	<b>7</b>
<b>TOTAL (I-V):</b>	<b>267</b>	<b>246</b>

Source: CCA; Legal affairs and economic analysis division

\*including cases/files opened in preceding years which were resolved or closed in 2006 (decisions, opinions, procedural orders on rejection or dismissal or termination of the proceedings), also including 19 interim measures (18 thereof relating to assessment of agreements);

## Appendix 4: Comparison of the total number of cases/files received and resolved\* in the area of competition and state aid in 2005 and 2006

Total number of cases/files received and resolved\* in the area of competition and state aid in 2005 and 2006

TOTAL NUMBER OF FILES/CASES RECEIVED		TOTAL NUMBER OF FILES/CASES RESOLVED		% OF FILES/CASES RESOLVED	
2005	2006	2005	2006	2005	2006
232	267	197	246	84,91%	92,13%

Source: CCA; Legal affairs and economic analysis division

\*including cases/files opened in preceding years

Comparative total number of files/cases received and resolved\* in the area of competition and state aid in 2005 and 2006

Category of case/file	Total no of files/cases registered						Total no of cases/files resolved						% of resolved					
	2005			2006			2005			2006			2005			2006		
	A-T	S-A	Σ	A-T	S-A	Σ	A-T	S-A	Σ	A-T	S-A	Σ	A-T	S-A	Σ	A-T	S-A	Σ
I ADMINISTRATIVE CASES:	55	26	81	82	56	138	37	13	50	40	37	77	67,27%	50,00%	61,73%	48,78%	66,07%	55,80%
II ADVOCACY (OPINIONS):	57	32	89	42	18	60	49	22	71	33	17	50	85,96%	68,75%	79,78%	78,57%	94,44%	83,33%
TOTAL NO OF SUBSTANTIVE DECISIONS/OPINIONS (I+II):	112	58	170	124	74	198	86	35	121	73	54	127	76,79%	60,34%	71,18%	58,87%	72,97%	64,14%

Source: CCA; Legal affairs and economic analysis division

\*cases/files opened in the preceding years which were resolved in 2006, are not included in this Annual Report

**Appendix 5: Total of adopted decisions in the area of anti-trust and merger control in accordance with the methodology used by the European Commission**

<b>Activities of the Competition Authority in Croatia in 2006</b>		
Description		Adopted decisions (decisions/ opinions/procedural orders/others)
<b>1</b>	<b>Restrictive agreements</b>	<b>19</b>
1.1.	Individual exemption - negative clearance (not prohibited agreements)	1
1.2.	Prohibited agreements	0
1.3.	Interim measures	18
<b>2</b>	<b>Abuse of dominance</b>	<b>9</b>
2.1.	Negative clearance	1
2.2.	Prohibited decisions	4
2.3.	Cases closed by procedural order on termination of the proceeding (ex officio cases)	3
2.4.	Interim measures	1
<b>3</b>	<b>Mergers</b>	<b>26</b>
3.1.	Approvals (on 1st and 2nd level)	26
	- 1st Phase*	24
	- 2nd Phase	2
3.2.	Conditional approvals	0
<b>4</b>	<b>Advocacy</b>	<b>41</b>
4.1.	Draft legislation	13
4.2.	Other expert opinions	28
	<b>TOTAL NO OF SUBSTANTIVE DECISIONS, incl. Interim measures and cases closed by a procedural order on termination of the proceedings/ex officio cases (1 - 4):</b>	<b>95</b>
<b>5</b>	<b>Other cases and files</b>	<b>151</b>
5.1.	Administrative cases closed by a procedural order dismissing or rejecting the request or terminating the proceedings	23
5.2.	Non-administrative files (transfer of jurisdiction, withdrawal of request etc.)	42
5.3.	Sector investigation proceedings (retail, electronic media, bus transport, press distribution, telecommunications etc.)	11
5.4.	Statistical surveys, International Project files and Cooperation files (at the national & international level)	68
5.5.	Internal acts and publications (Gazette of the Agency etc.)	7
	<b>TOTAL ACTIVITIES IN 2006 (1 - 5):</b>	<b>246</b>
<b>6</b>	<b>No of Council's sessions held in 2006</b>	<b>22</b>

Source: CCA; Legal affairs and economic analysis division

\*No. of mergers assessed in accordance with the Electronic Media Act: 20

**Appendix 6: List of cases assessed by Croatian Competition Agency in 2006 in the area of antitrust and merger control –  
SUBSTANTIVE DECISIONS**

No	Date of decision	Title (including parties and sector)	Type: restrictive agreement (vertical/horizontal)/ abuse of dominance/ merger/advocacy	Description of practice or operation	Notification/ complaint/ own initiative/ consultation of draft law	Decision: exemption/ negative clearance/ rejection of complaint/ prohibition (fines)/ approval (conditional)
1	13 January 2006	PIAGGIO HRVATSKA d.o.o., Split: request for individual exemption from the application of the provision of Art 9 para 1 of CA	<b>Vertical agreement</b>	selective distribution agreement	Notification	<b>Individual exemption - negative clearance</b>
2	2 February 2006	MARKO RAŠIĆ, Slavonski Brod, vs. KAMEN-INGRAD d.d., Velika	<b>Abuse of dominance and restrictive practice</b>	applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage	Notification	<b>Prohibition decision - Decision on abuse of a dominant position</b>
3	12 April 2006	CROATIAN COMPETITION AGENCY, Zagreb vs. ČISTOĆA d.o.o., Zadar	Abuse of dominance and restrictive practice	mixed bundeling	Own initiative	Prohibition decision - Decision on abuse of monopolistic position
4	12 April 2006	CROATIAN COMPETITION AGENCY, Zagreb, vs. TVORNICA DUHANA ROVINJ d.d., Rovinj	Abuse of dominance and restrictive practice	barrier to entry	Own initiative	Prohibition decision - Decision on abuse of a monopolistic and dominant position

5	28 December 2006	TVORNICA DUHANA ZADAR d.d., Zadar, and BAT HRVATSKA d.o.o., Zagreb, vs. ADRIS GRUPA d.d., Rovinj, and TDR d.o.o., Rovinj	Abuse of dominance and restrictive agreement	1) direct or indirect impose of unfair purchase or selling prices of other unfair trading conditions; 2) limitation of production, markets or technical development to the prejudice of consumers	Notification	Prohibition decision - Decision on abuse of a dominant position and restrictive agreements for the period 25 November 1999 - 1 October 2003
6	14 December 2006	KUNŠTEK BRANKO - owner of the Craft "AUTOTRANSPORTI KRAPINA-AUTOBUSNI KOLODVOR KRAPINA", and FANIKA VEŠLIGAJ, Krapina, vs. PRESEČKI GRUPA d.o.o., Krapina	Abuse of dominance and restrictive practice	refusal to deal	Notification	<b>Rejection of complaint.</b>
7	27 July 2006	CROATIAN COMPETITION AGENCY, Zagreb, vs. BLITZ d.o.o., Zagreb	Abuse of dominance and restrictive practice and conclusion of prohibited agreement	directly or indirectly impose of unfair purchase or selling prices or other unfair trading conditions	Own initiative	<b>Procedural order on termination of the proceeding</b>
8	27 July 2006	CROATIAN COMPETITION AGENCY, Zagreb, vs. CONTINENTAL FILM d.o.o., Zagreb	Abuse of dominance and restrictive practice and conclusion of prohibited agreement	directly or indirectly impose of unfair purchase or selling prices or other unfair trading conditions	Own initiative	Procedural order on termination of the proceeding

9	1 December 2006	CROATIAN COMPETITION AGENCY, Zagreb, vs. KVASAC d.o.o., Prigorje Brdovečko	Abuse of dominance and restrictive practice	applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage	Own initiative	Procedural order on termination of the proceeding
10	16 March 2006	WIENER STADTISCHE ALLGEMEINE VERSICHERUNG AKTIENGESELLSCHAFT, Vienna, Austria / KADRAN N.V., Amsterdam, Holland	<b>Merger</b>	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
11	16 March 2006	GLAXO GROUP LIMITED, United Kingdom / PLIVA-ISTRAŽIVAČKI INSTITUT d.o.o., Zagreb	Merger	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
12	28 December 2006	MAN AKTIENGESELLSCHAFT, Germany / SCANIA AB, Sweden	Merger	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
13	28 December 2006	NOKIA CORPORATION, Finland / SIEMENS AG, Germany	Merger	merger association of undertaking	Notification	Notice of approval of concentration (in first phase)
14	9 May 2006	STYRIA MEDIEN INTERNATIONAL AG, Austria; G+J INTERNATIONAL PUBLISHING HOLDING GmbH, Austria; /SANOMA MAGAZINES INTERNATIONAL B.V., Netherlands	Merger	full-function joint venture / merger (in 4 phase)	Notification	Decision on approval of the concentration (in the second phase)

15	14 June 2006	EUROHERC OSIGURANJE d.d., Zagreb / JADRANSKO OSIGURANJE d.d. Split; EUROHERC ŽIVOTNO OSIGURANJE d.d., Zagreb; EURO DAUS d.d., Split; EUROAGRAM TIS d.o.o., Zagreb; EUROLEASING d.o.o., Zagreb; EURODOM d.o.o., Osijek / SUNCE OSIGURANJE d.d., Zagreb	Merger	acquisition of control or prevailing influence of one or more undertakings over another undertaking, i.e. of more undertakings or a part of an undertaking, or parts of other undertakings	Notification	Decision on approval of the concentration (in the second phase)
16	2 February 2006	CIK "DR. BOŽO MILINOVIĆ" d.o.o. RADIO ISTRA, Pazin	<b>Merger according to the Electronic Media Act*</b>	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
17	2 February 2006	RADIO DRAVA 92,5, Koprivnica	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
18	16 March 2006	RADIO NOVSKA d.o.o., Novska	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
19	16 March 2006	TELEVIZIJA SLJEME d.o.o., Zagreb:	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
20	30 March 2006	NEZAVISNA ISTARSKA TELEVIZIJA d.o.o., Pazin:	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
21	30 March 2006	PETRINJSKI RADIO d.o.o., Petrinja:	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
22	12 April 2006	KANAL RI d.o.o., Rijeka:	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
23	9 May 2006	RADIO SENJ d.o.o., Senj	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)

24	24 May 2006	GRADSKI RADIO VARAŽDIN RADIO 042 d.o.o., Varaždin	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
25	24 May 2006	ADRIATIC MEDIA d.o.o., Zagreb (ISKON MEDIA d.o.o., Zagreb)	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
26	21 September 2006	RADIO LABIN d.o.o., Labin	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
27	21 September 2006	RADIO CIBONA d.o.o., Zagreb / ZAGREBAČKI RADIO PLAVI 9 d.o.o., Zagreb	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
28	6 October and 28 December 2006	DTR TV i RADIO DIFUZIJA d.o.o., Buzet	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
29	6 October 2006	ADRIATIC KABEL d.o.o., Zagreb / CENTAR MREŽA ADRIATIC d.o.o., Zagreb	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
30	6 October 2006	ADRIATIC KABEL d.o.o., Zagreb / KABEL - NET d.o.o., Zagreb	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
31	23 November 2006	RTL HRVATSKA d.o.o., Zagreb	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
32	28 December 2006	MIROSLAV KRALJEVIĆ d.o.o., Požega	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
33	28 December 2006	RADIO CIBONA d.o.o., Zagreb	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)
34	28 December 2006	RADIO MAESTRAL d.o.o., Pula	Merger according to the Electronic Media Act*	acquisition of majority of share capital	Notification	Notice of approval of concentration (in first phase)

35	16 February 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft proposal of Electricity Energy Production Tarrif System from renewable energy resources and cogeneration	<b>Advocacy - draft legislation</b>	regulation of the energy sector	Consultation on draft bylaw	Expert opinion
36	16 February 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft proposal of Regulation on minimum share of Electricity Energy produced from renewable energy resources and cogeneration	Advocacy - draft legislation	regulation of the energy sector	Consultation on draft bylaw	Expert opinion
37	16 February 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft proposal of Bylaw on usage of renewable energy resources and cogeneration	Advocacy - draft legislation	regulation of the energy sector	Consultation on draft bylaw	Expert opinion
38	16 February 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft proposal of Bylaw on gaining a Favourable Consumer Status and cogeneration	Advocacy - draft legislation	regulation of the energy sector	Consultation on draft bylaw	Expert opinion

39	16 February 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft proposal of Regulation on compensation for stimulation to production of Electricity Energy produced from renewable energy resources and cogeneration	Advocacy - draft legislation	regulation of the energy sector	Consultation on draft bylaw	Expert opinion
40	16 March 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft Proposal of the Act on Oil and Oil products	Advocacy-draft legislation	regulation of oil and oil derivates market; Croatia	Consultation on draft law	Expert opinion
41	30 March 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft Proposal of the Trade Act	Advocacy-draft legislation	regulation of retail; Croatia	Consultation on draft law	Expert opinion
42	14 June 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft Proposal of the Real Estate Intermediation Activities Act	Advocacy-draft legislation		Consultation of draft law	Expert opinion
43	13 July 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft Proposal of Gas Market Act	Advocacy-draft legislation		Consultation of draft law	Expert opinion
44	7 September 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft proposal on General Terms of Heat Energy Supply	Advocacy - draft legislation	regulation of heat energy supply market; Croatia	Consultation on draft bylaw	Expert opinion

45	14 December 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Consumer Protection Act	Advocacy-draft legislation		Consultation on draft law	Expert opinion
46	14 December 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Cooperatives Act	Advocacy-draft legislation		Consultation on draft law	Expert opinion
47	14 December 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft Natural Gas Market Act	Advocacy-draft legislation		Consultation on draft law	Expert opinion
48	13 January 2005	KOMUNALNO KLIČNA SELA d.o.o., Donja Zdenčina: request for opinion	<b>Advocacy</b>	water supply tarrifs	Consultation of Law	Expert opinion
49	2 February 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on the Draft of the Stability Pact for South Eastern Europe Initiative - <i>Multilateral Free Trade Agreement between states in South East Europe</i>				Expert opinion
	9 May 2006	- <i>Proposal Decision on Amendments of accession to CEFTA agreement</i>	Advocacy		Consultation of Law	Expert opinion
50	16 February 2006	POLJOPROMET d.o.o., Metković: request for opinion on definition of parallel import	Advocacy	parallel import	Consultation of Law	Expert opinion

51	16 March 2006	LAW OFFICE "VEDRIŠ & PARTNERI", Zagreb: request for interpretation of provisions of Regulation on Block Exemption Granted to Agreements on Distribution and Servicing of Motor Vehicles	Advocacy	Block exemptions	Consultation of law	Expert opinion
52	16 March 2006	GOVERNMENT OF THE REPUBLIC OF CROATIA - OFFICE FOR PUBLIC PROCUREMENT: request for opinion	Advocacy	public procurement tender (tender documentation)	Consultation of law	Expert opinion
53	16 March 2006	HT - HRVATSKE TELEKOMUNIKACIJE d.d., Zagreb: request for interpretation of CA provisions	Advocacy	request on obligation to notify the concentration	Consultation of law	Expert opinion
54	16 March 2006	REPUBLIC OF CROATIA CENTRAL - GOVERNMENT OFFICE FOR e-CROATIA, Zagreb, and SAP d.o.o., Zagreb: request for opinion	Advocacy	framework agreement on special conditions on purchase of IT equipment	Consultation on draft law	Expert opinion
55	30 March 2006	LAW OFFICE IRENA TUŠAK MILETIĆ, Zagreb: request for interpretation of provisions of Regulation on Block Exemption Granted to Agreements on Distribution and Servicing of Motor Vehicles	Advocacy	Block exemptions	Consultation of law and bylaws	Expert opinion
56	9 May 2006	EUROPLAKAT d.o.o., Zagreb, and METROPOLIS MEDIA d.o.o., Zagreb: request for interpretation of CA provisions	Advocacy	request on obligation to notify the concentration	Consultation of law	Expert opinion

57	9 May 2006	VIP NET d.o.o. Zagreb, vs. T-MOBILE HRVATSKA d.o.o., Zagreb: request for opinion	Advocacy	possible abuse of dominance, i.e. restriction of free market competition	Consultation of law	Expert opinion
58	9 May 2006	CROATIAN TELECOMMUNICATION AGENCY: request for opinion	Advocacy	possible abuse of dominance, i.e. restriction of free market competition	Consultation of law	Expert opinion
59	24 May 2006	MERGER BETWEEN NARODNE NOVINE d.d., Zagreb and VJESNIK - NAKLADE d.o.o., Zagreb; request for opinion	Advocacy		Consultation of law	Expert opinion
60	24 May 2006	MINISTRY OF ECONOMY, LABOR AND ENTREPRENEURSHIP: request for opinion on Draft Proposal of the Trade Agreement between Republic of Croatia and Republic of Jordan	Advocacy		Consultation of law	Expert opinion
61	24 May 2006	GOVERNMENT OF THE REPUBLIC OF CROATIA: Draft Proposal of Bylaw on Public-Private Partnership*	Advocacy		Consultation of law	Expert opinion
62	14 June 2006	ISSA FILM d.o.o., Zagreb, and VIDEO d.o.o., Zagreb: request for opinion	Advocacy	price-list	Consultation of law	Expert opinion
63	3 July 2006	MINISTRY OF ECONOMY, LABOR AND ENTREPRENEURSHIP: request for opinion on Draft Proposal of the Trade Agreement between Republic of Croatia and UNMIK (UN Government of Kosovo)	Advocacy		Consultation of law	Expert opinion

64	13 July 2006	LAW OFFICE "KORPER & HARAMIJA", Zagreb: AGREEMENTS BETWEEN HDS-ZAMP (CROATIAN COMPOSER'S SOCIETY) AND PUBLISHERS (MANUFACTURERS): request for opinion	Advocacy		Consultation of law	Expert opinion
65	13 July 2006	MEMBER OF PARLIAMENT QUESTION - SUBMITTED BY ALENKA KOČIŠ ČIČIN ŠAIN: request for opinion	Advocacy		Consultation on law	Expert opinion
66	27 July 2006	LAW OFFICE ŽURIĆ AND PARTNERS, Zagreb: request for interpretation of CA provisions	Advocacy	request on obligation to notify the concentration - potential concentration (NARODNE NOVINE d.d. (OFFICIAL GAZZETTE) / VJESNIK-NAKLADE d.o.o.)	Consultation on law	Expert opinion
67	7 September 2006	MINISTRY OF ECONOMY, LABOR AND ENTREPRENEURSHIP: request for opinion on Draft Proposal on Strategy of mineral raw materials management	Advocacy	regulation mineral raw materials management; Croatia	Consultation on law	Expert opinion
68	6 October 2006	TAU ON-LINE d.o.o., Zagreb, vs. OGLASNIK d.o.o., Zagreb: request for opinion	Advocacy	refusal to deal	Consultation on law	Expert opinion

69	19 October 2006	CONTINENTAL FILM d.o.o., Zagreb - legality of The Resolution of CROATIAN CHAMBER OF ECONOMY - INDUSTRY DEPARTMENT, PROFESSIONAL ASSOCIATION OF GRAPHICAL - PROCESSING INDUSTRY, CINEMA GROUP: request for opinion	Advocacy	legality of Conclusion of Croatian Chamber of Commerce - Sector for Industry (Cinemas)	Consultation on law	Expert opinion
70	23 November 2006	HEP TOPLINARSTVO d.o.o., Zagreb: requests for opinion on Draft proposal of Framework agreement and agreement on the transmission of electricity and thermal energy and on the transformation in the necessary forms of energy	Advocacy		Consultation on law	Expert opinion
71	14 December 2006	INA-INDUSTRIJA NAFTE d.d., Zagreb: request for opinion	<b>Advocacy</b>	rebates system for wholesalers	Consultation on law	Expert opinion
72	14 December 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft proposal of Regulation on compensation for stimulation to production of Electricity Energy produced from renewable energy resources and cogeneration	Advocacy	regulation of the electricity sector; Croatia	Consultation on draft law	Expert opinion

73	14 December 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft proposal of Regulation on minimum share of Electricity Energy produced from renewable energy resources and cogeneration	Advocacy	regulation of the electricity sector; Croatia	Consultation on draft law	Expert opinion
74	14 December 2006	MINISTRY OF ECONOMY, LABOR AND ENTERPRENEURSHIP: request for opinion on Draft proposal of Electricity Energy Production Tarrif System from renewable energy resources and cogeneration	Advocacy	regulation of the electricity sector; Croatia	Consultation on draft law	Expert opinion
75	28 December 2006	CROATIA OSIGURANJE d.d., Zagreb / HOK OSIGURANJE d.d., Zagreb; request for interpretation of CA provisions	Advocacy	request on obligation to notify the concentration	Consultation on law	Expert opinion

Source: Croatian Competition Agency; Legal Affairs and Economic Analysis Division

\*The Media Act, as *lex specialis*, stipulates the obligation for notification in the media sector regardless of the threshold of the participants. It also establishes that concentrations where the participants acquire more than 40% of the market share are prohibited. Other criteria for assessment of concentrations are those stipulated under the Competition Act. Any changes in the shareholder structure of an electronic media publisher should be notified to the Council for Electronic Media and to the Competition Agency.

Note: This list only contains the cases falling under the direct competence of the CCA, i.e. in respect of the assessment of agreements between undertakings, establishment of abuse of a dominant position, assessment of concentrations and opinions on the compliance of laws and other legislative acts with the provisions of the Competition Act.

## Appendix 7: Selected decisions in the area of state aid in 2006

<b>Class</b>	<b>UP/I 430-01/2006-12/10</b>
<b>Aid provider</b>	Croatian Privatization Fund
<b>Title</b>	<b>Request for the reinvestment of dividend in the undertaking Badel 1862</b>
<b>Aid Beneficiary</b>	Badel 1862 d.d., Zagreb
<b>Aid Scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	17.02.2006, notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Manufacture of distilled alcoholic beverages
<b>Aid instrument</b>	Reinvestment of dividend
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	899.157,00
<b>Amount in EUR</b>	
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Writing dated from June 28, 2006 Class: UP/I 430-01/2006-12/10, Reg. No.: 580-03-06-43-06 on transfer of jurisdiction to the Ministry of Agriculture, Forestry and Water Management. According to Article 1 par 2 of State Aid Act, agriculture and fisheries are not covered by the State Aid Act.

<b>Class</b>	<b>UP/I 430-01/2006-12/11</b>
<b>Aid provider</b>	Croatian Privatisation Fund
<b>Title</b>	<b>Proposal for the conversion of debt into equity participation in the undertaking Agro-Ilok d.d.</b>
<b>Aid beneficiary</b>	Agro-Ilok d.d., Ilok
<b>Aid scheme/Individual</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	21.02.2006, notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Agriculture (growing of cereals and other crops)
<b>Aid instrument</b>	B1-Conversion of debt into equity participation
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	1.827.091,91
<b>Amount in EUR</b>	
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Resolution on dismissal of proposal for authorisation of state aid dated from March 2, 2006; Class: UP/I 430-01/2006-12/11, Reg. no.: 580-03-06-43-02. The Proposal in question does not contain state aid because according to Article 1 par 2 of the State Aid Act, agriculture and fisheries do not fall under the scope of the Act.

<b>Class</b>	<b>430-01/2006-11/18</b>
<b>Aid provider</b>	Ministry of Agriculture, Forestry and Water Management
<b>Title</b>	<b>Proposal for consolidation of the undertaking Duhan d.d. Slatina</b>
<b>Aid beneficiary</b>	Duhan d.d., Slatina
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	07.06.2006., notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Production of fermented tobacco
<b>Aid instrument</b>	Financial restructuring aid
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	44.366.161,77
<b>Amount in EUR</b>	6.077.557,00
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Notice dated from June 13, 2006; Class: 430-01/2006-11/18, Reg. no.: 580-03-06-17-02. According to Article 1 par 2 of the State Aid Act state aid to forestry and fisheries is not covered by the Act.

<b>Class</b>	<b>UP/I 430-01/2006-04/54</b>
<b>Aid provider</b>	Ministry of the Sea, Tourism, Transport and Development
<b>Title</b>	<b>Proposal for Decision on granting state guarantee associated with a loan from Bayerische Landesbank, Germany and Privredna banka Zagreb d.d., Zagreb taken by the undertaking Croatia Airlines d.d., Zagreb for refinancing of Airbus fleet.</b>
<b>Aid beneficiary</b>	Croatia Airlines d.d., Zagreb
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	10.11.2006; notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	air transport
<b>Aid instrument</b>	D -Guarantee
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	
<b>Amount in EUR</b>	
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	According to Article 13 par 4 of the State Aid Act the Decision dated from November 23, 2006; Class: UP/I 430-01/2006-04/54, Reg. no.: 580-03-06-54-05. The Agency decided that the state guarantee contained in the Proposal for Decision on granting state guarantee associated with a loan from Bayerische Landesbank, Germany and Privredna banka Zagreb d.d., Zagreb, taken by the undertaking Croatia Airlines d.d., Zagreb for refinancing of the Airbus fleet because is not regarded as state aid within the meaning of Article 74 par 1 of the Regulation. The decision stipulates that it is necessary to take into account all forms of aid granted to the undertaking Croatia Airlines d.d. by state in order for these to be aligned with the State Aid Act and rules regarding state aid in the air transport sector.

<b>Class</b>	<b>UP/I 430-01/2006-02/25</b>
<b>Aid provider</b>	Ministry of the Economy, Labour and Entrepreneurship
<b>Title</b>	<b>Proposal for a Decision on granting a state aid associated with a loan of 9.000.000,00 EUR from the Croatian Bank for Reconstruction and Development for financing of further technological reconstruction of the shipyard Uljanik Brodogradilište d.d., Pula</b>
<b>Aid beneficiary</b>	Uljanik Brodogradilište d.d., Pula
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	15.05.2006; notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Shipbuilding
<b>Aid instrument</b>	D - Guarantee
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	
<b>Amount in EUR</b>	7.200.000,00
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	CCA reached the decision according to Article 13 par 4 of the State Aid Act, dated from September 7, 2006.; Class: UP/I 430-01/2006-02/25, Reg. no.: 580-03-06-54-21 stating that the guarantee covering the loan obtained by the Croatian Bank for Restructuring and Development aimed at technological reconstruction is not regarded as state aid. CCA based its decision on the cumulatively satisfied criteria under Article 74 par 1 of the State Aid Regulation, which defines when state guarantee is not regarded as state aid.

<b>Class</b>	<b>UP/I 430-01/2006-12/21</b>
<b>Aid provider</b>	Croatian Privatisation Fund
<b>Title</b>	<b>Proposal for equity investments in the undertaking Mungos d.o.o., Zagreb</b>
<b>Aid beneficiary</b>	Mungos d.o.o., Zagreb
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	13.04.2006, notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Demining
<b>Aid instrument</b>	B1 – Equity investments
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	3.000.000,00
<b>Amount in EUR</b>	410.958,90
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Resolution on dismissal of the request for granting approval to the Proposal in question dated from July 13, 2006; Class: UP/I 430-01/2006-12/21, Reg. no.: 580-03-06-43-06, due to lack of legal basis, given that the undertaking is engaged in the activities of humanitarian demining which are of general interest, thus not in compliance with Article 3 par 1 of the State Aid Act which defines measures constituting state aid.

<b>Class</b>	<b>UP/I 430-01/2006-02/27</b>
<b>Aid provider</b>	Ministry of the Economy, Labour and Entrepreneurship
<b>Title</b>	<b>Proposal for a conversion of debt towards the Republic of Croatia into equity participation in the undertaking Petrokemija d.d., Kutina</b>
<b>Aid beneficiary</b>	Petrokemija d.d., Kutina
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	19.05.2006, notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Manufacture of chemical mineral fertilizers and nitrogen compounds (financial restructuring aid)
<b>Aid instrument</b>	B1 – Conversion of debt into equity participation
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	231.008.049,57
<b>Amount in EUR</b>	31.644.938,20
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Decision according to Article 13 par 4 of the State Aid Act determining that the proposed aid does not constitute state aid dated July 13, 2006; Class: UP/I 430-01/2006-02/27, Reg. no.: 580-03-06-17-02. It has been established in the course of the procedure that the undertaking's Petrokemija d.d. Kutina business losses were caused by circumstances beyond its control (state control of prices, abolition of cash grants for NPK fertilizers, non-delivery of gas, war damages) covered mostly by the undertaking itself, due to which it was unable to settle the gas debt from 1999. Furthermore, it has been established, according to the financial plan that the conversion of the proposed gas debt dating from 1999 into equity would enable the undertaking to gain profit and increase credit worthiness.

<b>Class</b>	<b>UP/I 430-01/2006-30/29</b>
<b>Aid provider</b>	County of Split-Dalmatia
<b>Title</b>	<b>Request from the County of Split-Dalmatia for ex-post authorisation of compensation for settling the running costs of two ecological boats of the undertaking Cian d.o.o. Split</b>
<b>Aid beneficiary</b>	Cian d.o.o., Split
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	29.05.2006, notification
<b>Legal basis</b>	Plan for Interventions in the Case of a Sudden Pollution of the Sea in the Republic of Croatia; Agreement on Cleaning of the Adriatic Sea and Purchase of two Ecological boats, and Annex to the same Agreement, signed between the Croatian Government and the County of Split-Dalmatia, on one side and undertaking Cian d.o.o. on the other side
<b>Sector, category and aid objective</b>	Cleaning of all types of facilities
<b>Aid instrument</b>	A1 - Subsidies
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	2.152.279,00
<b>Amount in EUR</b>	294.483,00
<b>Amount in USD</b>	

<b>Date and manner of conclusion of the procedure</b>	Decision brought according to Article 13, par 4 of the State Aid Act; dated from July 27, 2006; Class: UP/I 430-01/2006-30/29, Reg. no: 580-03-06-54-04. It has been decided that, given that the Contract and Annex to it which Croatian Government and the County of Split-Dalmatia, on one side and undertaking Cian d.o.o. on the other side, concluded prior to the entrance into force of the State Aid Act. Thus, the compensation to undertaking Cian d.o.o. is not regarded as state aid. Taking into consideration the need of the Croatian Government and County Split-Dalmatia to stipulate and sign a new contract, the CCA warned that rules on compensation for services of general economic interest should be included in the provisions of such a contract. Moreover, the undertaking performing services of general economic interest should be selected through public tender.
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<b>Class</b>	<b>UP/I 430-01/2006-04/31</b>
<b>Aid provider</b>	Ministry of the Sea, Tourism, Transport and Development
<b>Title</b>	<b>Proposed Decision on authorisation of a loan contract between the undertakings Autocesta Rijeka-Zagreb d.d., Zagreb and European Bank for Reconstruction and Development and Proposed Decision on the initiation of the procedure for the conclusion of the guarantee agreement between the Republic of Croatia and the European Bank for Reconstruction and Development for the "Project for the construction of II B phase of the motorway Rijeka-Zagreb"</b>
<b>Aid beneficiary</b>	Motorway Rijeka-Zagreb d.d., Zagreb
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	29.05.2006, notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Construction of motorways (infrastructure)
<b>Aid instrument</b>	D - Guarantee
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	
<b>Amount in EUR</b>	
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Notice dated from July 11, 2006; Class: UP/I 430-01/2006-04/31, Reg. no.: 580-03-06-43-02, according to which aid for the construction of infrastructure available to all users without discrimination, is not regarded as state aid within the meaning of the Croatian State Aid Act.

<b>Class</b>	<b>UP/I 430-01/2006-02/35</b>
<b>Aid provider</b>	Ministry of the Economy, Labour and Entrepreneurship
<b>Title</b>	<b>Proposal for the Resolution on concluding a settlement agreement in order to provide for payments of the outstanding debts of the undertaking Trgo-Mikulić d.o.o., in accordance with the Criteria for settlements of payments of the outstanding debts</b>
<b>Aid beneficiary</b>	Trgo-Mikulić d.o.o., Biograd na moru
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	23.06.2006, notification
<b>Legal basis</b>	Criteria for settlements of payments of the outstanding debts
<b>Sector, category and aid objective</b>	Retail sale in non-specialized stores with food and non-food products
<b>Aid instrument</b>	A2 – Settling the debt by payment in goods
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	

<b>Amount in HRK</b>	4.800.124,13
<b>Amount in EUR</b>	657.551,23
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Resolution on dismissal of the Proposal dated from July 13, 2006; Class: UP/I 430-01/2006-02/35, Reg. no. 580-03-06-43-03. In order to settle the debt arising under the Contract on renewal of wheat supplies, the undertaking Trgo-Mikulić d.o.o. has delivered to the Ministry meat supplies, worth 4.800.124, 13 HRK in total. The Agency decided on the resolution on dismissal of the Proposal due to the lack legal grounds, given that in this case debt settlement by payment in goods of equal value to the amount of debt. Therefore, there is no state aid involved.

<b>Class</b>	<b>430-01/2006-21/28</b>
<b>Aid provider</b>	Town of Rijeka
<b>Title</b>	<b>Guarantee of the Town of Rijeka to the undertaking for financing the reconstruction and construction of town and public roads</b>
<b>Aid beneficiary</b>	
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	23.10.2006, notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Construction and reconstruction of roads (infrastructure)
<b>Aid instrument</b>	D - Guarantee
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	
<b>Amount in EUR</b>	
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Notice dated from October 24, 2006; Class: 430-01/2006-21/28, Reg. no. 580-03-06-43-02. Motorway infrastructure in question is open to all users without discrimination, thus it is not regarded as state aid within the meaning of the Croatian State Aid Act.

<b>Class</b>	<b>UP/I 430-01/2006-02/07</b>
<b>Aid provider</b>	Ministry of the Economy, Labour and Entrepreneurship
<b>Title</b>	<b>Proposal for financial consolidation and restructuring of the undertaking Nada d.o.o.</b>
<b>Aid beneficiary</b>	Nada d.o.o., Hrastovac
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	08.02.2006, notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Textile industry
<b>Aid instrument</b>	A2 – tax deferral
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	
<b>Amount in EUR</b>	
<b>Amount in USD</b>	

<b>Date and manner of conclusion of the procedure</b>	Resolution on dismissal dated from May 24, 2006; Class: UP/I 430-01/2006-02/07, Reg. no. 580-03-06-17-06. CCA dismissed the request for authorisation of the Proposal for debt rescheduling of the undertaking Nada d.o.o., covering the taxes and contributions in the amount of 3.767.960 HRK, due to be returned in 3 years with a 2 year grace period at a 4.5% discount rate because there are no legal grounds for initiation of the proceedings – as the aid concerned constitutes de minimis aid within the meaning of Article 5 par 1 of the Regulation on State Aid. In the course of procedure the CCA established that the total amount of discount rate represents a differentiation between the reference and discount interest rate based on 3.767.960 HRK, amounts to 91.662,32 HRK. It has been assessed that the aid in question is considered to be de minimis aid, which need not to be notified to the Agency.
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<b>Class</b>	<b>UP/I 430-01/2006-02/22</b>
<b>Aid provider</b>	Ministry of the Economy, Labour and Entrepreneurship
<b>Title</b>	<b>Proposal for the Resolution on the conclusion of a Settlement agreement in order to provide for payments of the outstanding debt in accordance with the Criteria for settlements in order to provide for payments of outstanding debts (with the undertakings: Gumikem d.o.o., Velebit d.d. and Dinarka d.d.)</b>
<b>Aid beneficiary</b>	Gumikem d.o.o., Osijek; Velebit d.d.; Dinarka d.d., Knin
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	14.04.2006., notification
<b>Legal basis</b>	Criteria for settlements of payments of the outstanding debts
<b>Sector, category and aid objective</b>	Manufacture of rubber products; retail sale in non-specialized stores (financial restructuring aid)
<b>Aid instrument</b>	A2 – debt rescheduling
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	45.895,26
<b>Amount in EUR</b>	
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Resolution on dismissal dated from July 3, 2006; Class: UP/I 430-01/2006-02/22, Reg. no. 580-03-06-54-05. In accordance with the resolution on debt of the undertakings Gumikem d.o.o., Velebit d.o.o. and Dinarka d.d. the following has been established: Gumikem d.o.o. would settle the debt by a one-off payment in goods under market conditions. The debt of the undertaking Velebit d.d. amounts to 1.867.363.77 HRK, whereas the debt of the undertaking Dinarka d.d. is 913.835,97 HRK. The latter two will undergo debt rescheduling, payable in 3 years, at a 4.5 % discount rate. Relating to the undertakings Velebit Velebit d.d. and Dinarka d.d. the sum payable will amount to 30.815,17 HRK, and 15.080,90 HRK respectively. This is why the CCA adopted a resolution on dismissal of the Proposal on the account of de minimis aid involved in the particular case, within the meaning of Article 5 par 1 of the Regulation on State Aid. In the case of the undertaking Gumikem d.o.o. there are no elements of state aid taking into account that the goods will be delivered under market conditions.

<b>Class</b>	<b>UP/I 430-01/2006-18/24</b>
<b>Aid provider</b>	Town of Novi Marof
<b>Title</b>	<b>Proposal for Agreement on assignment of rights to use maximum output from the transformer station TS 10(20)/0.4 kV „Podrute“ in the entrepreneurial zone in Podrute to undertaking BBS d.o.o., Zagreb</b>
<b>Aid beneficiary</b>	BBS d.o.o., Zagreb
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	08.05.2006, notification
<b>Legal basis</b>	Resolution on the conditions and methods of assignment of rights to use maximum output of the Town of Novi Marof
<b>Sector, category and aid objective</b>	Manufacture of plastic packaging (SMEs aid)
<b>Aid instrument</b>	C2 – Assignment of rights to use electricity
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	1.729.350,00
<b>Amount in EUR</b>	236.897,26
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Decision on authorisation of state aid according to Article 13 par 1 of the State Aid Act dated from July 27, 2006; Class: UP/I 430-01/2006-18/24, Reg. no.: 580-03-06-54-06. Under the Proposed Agreement, the Town of Novi Marof is assigning the use of electricity free of charge to the undertaking BBS d.o.o. since that the undertaking is fulfilling all the preconditions set by the Resolution on the conditions and methods of assignment of rights to use maximum output of the Town of Novi Marof. The Resolution prescribes that such undertaking should contribute to the creation of at least a 100 new jobs on the projects carried out in the area of Novi Marof. The undertaking in question will also be eligible for additional 10% discount on the basis of significant contribution of the new production process to environmental protection. CCA established that the aid in question constitutes state aid to SMEs within the meaning of Article 4 para 3 point d of the State Aid Act. Pursuant to the Regulation on state aid, the aid intensity does not exceed 15%.

<b>Class</b>	<b>UP/I 430-01/2006-02/46</b>
<b>Aid provider</b>	Ministry of Economy, Labour and Entrepreneurship
<b>Title</b>	<b>Proposal for granting state guarantees associated with a loan to shipyard 3 Maj d.d., Rijeka</b>
<b>Aid beneficiary</b>	3. Maj Brodogradilište d.d., Rijeka
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	20.09.2006, notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Shipbuilding (rescue aid)
<b>Aid instrument</b>	D - guarantee
<b>Duration</b>	Until March 21, 2007.
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	1.670.665.872,90
<b>Amount in EUR</b>	217.338.237,61 USD; 54.210.000,00 EUR
<b>Amount in USD</b>	

<b>Date and manner of conclusion of the procedure</b>	Decision on conditional authorisation of rescue aid according to Article 13 par 3 of the State Aid Act, dated from September 21, 2006; Class: UP/I 430-01/2006-02/46, Reg. no. 580-03-06-17-20, which authorises rescue aid to undertaking shipyard 3. Maj, Rijeka, amounting to 1.670.665.872, 90 HRK in total under the following conditions: it has to support the liquidity of the entrepreneur in the form of guarantees and loans under general market conditions (at an interest rate not less than the reference interest rate of 5.44%), the shipyard has to pay a premium of 0.5% of the total amount of the granted guarantee into the Croatian budget, the borrowed amount has to be returned within 12 months after the payment of the last instalment to the entrepreneur, it is granted in order to eliminate serious social difficulties, it is limited to the amount necessary to allow for the undertaking to stay in business, it is granted for the period necessary for the preparation of the restructuring plan, for a period of not exceeding six months (until March 21, 2007 at the latest), and is granted only once. By that date the CCA must receive Restructuring plan or Liquidation plan for the undertaking or the proof that the loans covered by the guarantee are fully repaid.
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<b>Class</b>	<b>UP/I 430-01/2006-02/47</b>
<b>Aid provider</b>	Ministry of the Economy, Labour and Entrepreneurship
<b>Title</b>	<b>Proposal for granting state guarantees associated with a loan to shipyard Brodogradilište Kraljevica d.d., Kraljevica</b>
<b>Aid beneficiary</b>	Brodogradilište Kraljevica d.d., Kraljevica
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	20.09.2006., notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Shipbuilding (rescue aid)
<b>Aid instrument</b>	D - guarantee
<b>Duration</b>	Until March 21, 2007.
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	220.780.387,92
<b>Amount in EUR</b>	29.000.000,00 USD; 6.840.000,00 EUR
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Decision on conditional authorisation of rescue aid according to Article 13 par 3 of the State Aid Act, dated from September 21, 2006; Class: UP/I 430-01/2006-02/47, Reg. no. 580-03-06-17-20, which authorises rescue aid to undertaking shipyard Brodogradilište Kraljevica d.d., Kraljevica, amounting to 220.780.387,92 HRK in total under the following conditions: it has to support the liquidity of the entrepreneur in the form of guarantees and loans under general market conditions (at an interest not less than the reference interest rate of 5,44%), the shipyard has to pay a premium of 0.5% of the total amount of the granted guarantee into the Croatian budget, the borrowed amount has to be returned within 12 months after the payment of the last instalment to the entrepreneur, it is granted in order to eliminate serious social difficulties, it is limited to the amount necessary to allow for the undertaking to stay in business, it is granted for the period necessary for the preparation of the restructuring plan, and at most for a period of six months (until March 21, 2007 at the latest), and is granted only once. By that date the CCA must receive Restructuring plan or Liquidation plan for the undertaking or the proof that the loans covered by the guarantee are fully repaid.

<b>Class</b>	<b>UP/I 430-01/2006-02/48</b>
<b>Aid provider</b>	Ministry of Economy, Labour and Entrepreneurship
<b>Title</b>	<b>Proposal for state guarantees associated with a loan to shipyard Brodotrogir d.d., Trogir</b>
<b>Aid beneficiary</b>	Brodotrogir d.d., Trogir
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	20.09.2006., notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Shipbuilding (rescue aid)
<b>Aid instrument</b>	D - guarantee
<b>Duration</b>	Until March 21, 2007.
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	624.860.903,70
<b>Amount in EUR</b>	106.620.000,00 USD
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Decision on conditional authorisation of rescue aid according to Article 13 par 3 of the State Aid Act, dated from September 21, 2006; Class: UP/I 430-01/2006-02/48, Reg. no. 580-03-06-17-20, which authorises rescue aid to undertaking shipyard Brodotrogir d.d., Trogir, amounting to 624.860.903, 70 HRK in total under the following conditions: it has to support the liquidity of the entrepreneur in the form of guarantees and loans under general market conditions (at an interest not less than the reference interest rate of 5,44%), the shipyard has to pay a premium of 0,5% of the total amount of the granted guarantee into the Croatian budget, the borrowed amount has to be returned within 12 months after the payment of the last instalment to the entrepreneur, it is granted in order to eliminate serious social difficulties, it is limited to the amount necessary to allow for the undertaking to stay in business, it is granted for the period necessary for the preparation of the restructuring plan, and at most for a period of six months (until March 21, 2007 at the latest), and is granted only once. By that date the CCA must receive Restructuring plan or Liquidation plan for the undertaking or the proof that the loans covered by the guarantee are fully repaid.

<b>Class</b>	<b>UP/I 430-01/2006-02/49</b>
<b>Aid provider</b>	Ministry of the Economy, Labour and Entrepreneurship
<b>Title</b>	<b>Proposal for state guarantees associated with a loan to shipyard Brodosplit-Brodogradilište d.o.o., Split</b>
<b>Aid beneficiary</b>	Brodosplit-Brodogradilište d.o.o., Split
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	20.09.2006, notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Shipbuilding (rescue aid)
<b>Aid instrument</b>	D - guarantees
<b>Duration</b>	Until 21.03.2007
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	1.687.618.850,45
<b>Amount in EUR</b>	(= 66.222.744,00 EUR + 204.001.167,00 USD)
<b>Amount in USD</b>	

<b>Date and manner of conclusion of the procedure</b>	Decision on conditional rescue aid according to Article 13 par 3 of the State Aid Act, dated from September 21, 2006; Class: UP/I 430-01/2006-02/49, Reg. no. 580-03-06-17-20, which authorises rescue aid to undertaking shipyard Brodotrogir d.d., Trogir, amounting to 1.687.618.850,45 HRK in total under the following conditions: it has to support the liquidity of the entrepreneur in the form of guarantees and loans under general market conditions (at an interest not less than the reference interest rate of 5,44%), the shipyard has to pay a premium of 0,5% of the total amount of the granted guarantee into the Croatian budget, the borrowed amount has to be returned within 12 months after the payment of the last instalment to the entrepreneur, it is granted in order to eliminate serious social issues, it is limited to the amount necessary to allow for the undertaking to stay in business, it is granted for the period necessary for the preparation of the restructuring plan, and at most for a period of six months (until March 21, 2007 at the latest), and is granted only once. By that date the CCA must receive Restructuring plan or Liquidation plan for the undertaking or the proof that the loans covered by the guarantee are fully repaid.
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<b>Class</b>	<b>UP/I 430-01/2006-59/02</b>
<b>Aid provider</b>	State Agency for Deposit Insurance and Bank Rehabilitation
<b>Title</b>	<b>Proposal from the State Agency for Deposit Insurance and Bank Rehabilitation for conversion of debt into equity participation and debt write-off of the undertaking Mupera d.o.o.</b>
<b>Aid beneficiary</b>	Mupera d.o.o., Solin
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	10.01.2006., notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Wholesale of chemical products (restructuring aid)
<b>Aid instrument</b>	B1- Conversion of debt into equity participation and debt write-off
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	87.524.896,00
<b>Amount in EUR</b>	
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Decision on rejection of authorisation dated March 16, 2006; Class: UP/I 430-01/2006-59/02, Reg. no. 580-03-06-54-04, due to the fact that the aid concerned is not aligned with the State Aid Act. In the course of procedure it has been established that Mupera d.o.o. is a firm in difficulty. To undertakings in financial difficulties the state aid may be granted according to Article 16 par and Article 18 of the Regulation on state aid; providing that the undertaking proposes a sustainable restructuring program. However, in the course of the procedure it has been established that the Restructuring plan does not fulfil all requirements set under Article 18 of the Regulation which would ensure a long-term viability to the undertaking. Therefore, the measures for ensuring the implementation of the restructuring procedure, meaning conversion of debt into equity participation and debt write-off, represent illegal state aid according to Article 4 par 1 of the State Aid Act, where the exemption from Article 4 par 3 point d of the Regulation is not applicable.

<b>Class</b>	<b>UP/I 430-01/2006-59/03</b>
<b>Aid provider</b>	State Agency for Deposit Insurance and Bank Rehabilitation
<b>Title</b>	<b>Proposal from the State Agency for Deposit Insurance and Bank Rehabilitation for debt write-off concerning penalty interest of the undertaking Solana Ston d.d.</b>
<b>Aid beneficiary</b>	Solana Ston d.d., Ston
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	10.01.2006., notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Production of salt (restructuring aid)
<b>Aid instrument</b>	A2 – Debt write-off
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	23.092.078,98
<b>Amount in EUR</b>	
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Decision on rejection of authorisation dated from May 24, 2006; Class: UP/I 430-01/2006-59/03, Reg. no. 580-03-06-54-08, according to Article 13 par 2 of the State Aid Act. It has been established in the course of the procedure that the undertaking Solana d.d. is in financial difficulty. Undertakings in financial difficulty may only be granted state aid for restructuring. CCA found that the Restructuring Plan is not in compliance with the precondition defining a long-term viability following the restructuring procedure and that it does not satisfy the criteria prescribed according to Article 18 par 1 of the Regulation. Namely, the Restructuring programme provides a very short restructuring period, meaning that it is anticipated for the undertaking to do business with profit in the 2006 which can hardly be expected. Furthermore, the restructuring plan neither specifies the restricted minimum aid amount needed, nor does it contain the provision on a significant contribution from the own resources of the aid beneficiary (at least 25%).

<b>Class</b>	<b>UP/I 430-01/2006-57/17</b>
<b>Aid provider</b>	Croatian Agency for Small Businesses
<b>Title</b>	<b>Proposal for authorisation of a guarantee to the undertaking Mladik d.o.o.</b>
<b>Aid beneficiary</b>	Mladik d.o.o., Vrbanja
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	29.03.2006., notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Manufacture of veneer, plywood, panel-boards and similar (SME aid)
<b>Aid instrument</b>	D - Guarantee
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	2.460.000,00
<b>Amount in EUR</b>	332.434,00
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Resolution on termination of the proceeding dated from November 6, 2006; Class: UP/I 430-01/2006-57/17, Reg. no. 580-03-06-43-09.

<b>Class</b>	<b>UP/I 430-01/2006-12/12</b>
<b>Aid provider</b>	Croatian Privatization Fund
<b>Title</b>	<b>Proposal for conversion of debt into equity participation in the undertaking Vučedol d.d., Vukovar</b>
<b>Aid beneficiary</b>	Vučedol d.d., Vukovar
<b>Aid scheme/Individual measure</b>	Individual
<b>Date and manner in which the procedure was initiated</b>	21.02.2006., notification
<b>Legal basis</b>	
<b>Sector, category and aid objective</b>	Bars (financial restructuring)
<b>Aid instrument</b>	B1 – Conversion of debt into equity participation
<b>Duration</b>	
<b>HRK foreseen in state budget for year 2006</b>	
<b>Amount in HRK</b>	4.174.894,51
<b>Amount in EUR</b>	
<b>Amount in USD</b>	
<b>Date and manner of conclusion of the procedure</b>	Resolution on termination of the proceeding dated from June 20, 2006; Class: UP/I 430-01/2006-12/12, Reg. no. 580-03-06-43-05. Croatian Privatization Fund gave a loan to undertaking Vučedol d.d., Vukovar, and since the undertaking failed to settle the debt, the Agreement on conversion of debt into equity participation in the amount of 4.174.894, 51 HRK was concluded. Given that the documentation submitted was not sufficient to reach the decision, CCA requested the additional data two times, according to Article 9 par 1 and 2 of the State Aid Act. Since the Croatian Privatization Fund failed to act accordingly, the State Aid Act enabled CCA to assume that the aid provider had withdrawn the state aid proposal and to pass a resolution thereon.

**Appendix 8: List of rulings of the Administrative Court of the Republic of Croatia relating to the claims filed against the decisions of the Agency in 2006**

CASE	CCA DECISION	ADMINISTRATIVE COURT RULING
Consule d.o.o.	Decision of 21.11.2001	claim rejected
Cosmopolis d.o.o.	Resolution of 29.5.2001	claim rejected
Provratak prirodi	Resolution of 11.11.2003	claim rejected
HT d.d.	Decision of 07.09.2006	proceedings terminated*
HT d.d.	Decision of 07.09.2006	proceedings terminated*
HT d.d.	Decision of 07.09.2006	proceedings terminated*
HT d.d.	Decision of 07.09.2006	proceedings terminated*
HT d.d.	Decision of 07.09.2006	proceedings terminated*
HT d.d.	Decision of 07.09.2006	proceedings terminated*
HT d.d.	Decision of 07.09.2006	proceedings terminated*

\*Upon the adoption of the final decision by the CCA the claimant revoked his claims.

## Appendix 9: Croatia 2006 Progress Report – Chapter 8: Competition policy

Croatia has made some progress under this chapter. In the **area of anti-trust**, including **merger control**, the Competition Act of 2003 contains the basic rules on restrictive agreements, dominant position and merger control, but further alignment is still necessary. In addition to a need for a general fine-tuning of the provisions, a single competition regime still needs to be created to ensure that the Competition Act applies to all sectors, particularly banking and telecommunications. The Croatian authorities should exclude the possibility for the Government to overturn anti-trust decisions on the basis of Article 266 of the General Administrative Procedure Act.

As regards the *administrative capacity*, the Croatian Competition Agency (CCA) has made some progress regarding training activities and case-management. The Agency is well managed and provides strategic statements of its activities. However, in order to cope with the heavy and steadily increasing workload of the CCA and training needs, further resources are needed. In this context, it causes concern that the CCA's budget has not been increased in 2006. Furthermore, the CCA should be empowered to impose fines. The current judicial system is not functioning satisfactorily, and development and training of the judiciary in competition matters is necessary.

As regards the *anti-trust enforcement* record, the Competition Agency (together with the Croatian National Bank, for the banking sector) adopted 93 substantive decisions in 2005, including on restrictive agreements (5), abuse of dominant position, (3) merger control (26) and advocacy decisions (59). The enforcement record needs considerable strengthening, including economic and legal assessment. Enforcement should focus better on preventing the most serious distortions of competition, in particular in the field of prohibiting restrictive horizontal agreements and exclusionary abuses of dominant position. It is also essential that a whole new system for fining is introduced that allows for sufficiently deterrent sanctioning.

In the area of **state aid**, considerable progress has been made with the adoption of the new State Aid Act and the new Regulation on State Aid, particularly as regards the possibility for the Competition Agency to issue binding decisions on binding decisions on draft State aid provisions. Progress has also been made in the new State Aid Act as regards the non application to the State aid area of Article 266 of the General Administrative Procedure Act on the Government's power to overturn decisions.

The Competition Agency is still in the process of developing its *administrative capacity* as Croatia's national state aid monitoring and control authority. The number of expert staff working on State aid issues has been reduced from nine in 2005 to eight. There is an urgent need to further strengthen the administrative capacity for State aid control as regards staff, budget resources and training.

There has been some progress as regards the *state aid enforcement* record. In 2005, the Agency handled 91 State aid cases (decisions and opinions). The majority of cases was either not considered state aid in the meaning of the Law or was approved as eligible aid. Only four cases were found to be incompatible with the Law. Enforcement continues to be in its infancy, and needs to be strengthened considerably in relation both to the scope and to the economic and legal assessment. In particular, aid grantors continue to ignore the notification obligations or to not provide sufficient cooperation with the Competition Agency. The Croatian authorities have compiled a list of existing aid schemes and other legal instruments on the basis of which state aid has been granted before the entering into force of the State Aid Act of 2003. As regards fiscal aid, a key element for the accession negotiations, some progress has been made. Alignment with the *acquis* as regards the Profit Tax Act and the Investment Promotion Act is well on track, while the alignment of the Free Zones Act with the *acquis* is still lagging behind. Croatia has yet to submit a proposal for a regional aid map.

As regards the shipbuilding sector, which is a key element of the accession negotiations, the adoption of the strategic guidelines for the future development of the Croatian shipbuilding sector is only a starting point for reflection. Croatia urgently needs to adopt viable restructuring plans for the companies in difficulties in order to comply with the state aid rules of the Stabilisation and Association Agreement and in view of the importance of the industry in Croatia.

In the steel sector, which is also a key element of the accession negotiations, Croatia has made limited progress. The adoption of a draft restructuring programme for the steel industry in Croatia is a positive step forward but not enough for Croatia to fulfil its obligations under the SAA. Essential elements of the plan, namely the industrial strategy, detailed information on the privatisation process and the state aid measures involved as well as the associated compensatory measures are still to be completed.

Given the continued state aid provided to both sectors, viable restructuring plans for shipbuilding companies in difficulties need to be urgently adopted, as well as a restructuring programme that meets the requirements of the SAA for the steel sector.

Croatia adopted the annual State Aid Report for 2005 in July 2006. The report is based largely on the EU methodology.

### *Conclusion*

Croatia has continued to make some progress, both as regards anti-trust and state aid. However, it needs to intensify its efforts. There is a need for important further legislative alignment, strengthening of administrative capacity, particularly regarding staffing levels, and a more efficient enforcement record. Special attention is needed in order not to violate SAA obligations, in particular as regards state aid to steel and shipbuilding, as well as fiscal aid.