

Summary Annual Report of the Croatian Competition Agency for 2019

In compliance with its legal obligation the **Croatian Competition Agency** (CCA) reports annually to the Croatian Parliament.

The Annual Report for 2019 outlines the CCA activities in the previous year and informs the political scene, the economic operators and all professional stakeholders about the operation of the CCA, ensuring the transparency and raising awareness about competition culture in the Republic of Croatia. Here are the highlights that marked the work of the CCA in 2019.

The CCA was established pursuant to the decision of the Croatian Parliament on 20 September 1995 under the first 1995 Competition Act that for the first time introduced major competition rules applicable in the European Union and ensured the establishment of an independent national competition authority. The CCA became operational in 1997, its founder is the Republic of Croatia.

The constant revisions of the competition rules in the European Union (EU) lead to adequate harmonization of the first Croatian Competition Act with the EU acquis. The first amendments to 1995 Competition Act came into effect in 1997 and 1998. On 1 October 2003 a new Competition Act came in force whereas the 1 October 2010 was the day of entry into force of the Competition Act now in effect.

Pursuant to the Competition Act in effect the CCA is a legal person with public authority whose founder is the Croatian Parliament.

In accordance with the above mentioned **Competition Act**, OG 79/09 and 80/13 the CCA is a legal person with public powers that autonomously and independently performs the activities under the Competition Act, and ancillary provisions thereof, particularly with respect to direct application of Articles 101 and 102 of the Treaty on the functioning of the European Union, OJ C 115, 09.05.2008: the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003, relating to the implementation of Articles 101 and 102 of the Treaty on the Functioning of the European Union, OJ C 115, 09.05.2008, and the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.01.2004.

Concretely, this makes CCA empowered for the application of both national and European competition law. Its powers, under the Competition Act, implicitly establish the CCA as the only national general regulator in the area of competition in all markets in the territory of the Republic of Croatia.

The CCA is financed exclusively from the State budget and has no operational or financial revenue of its own. Administrative fees and fines set and imposed by the CCA are contributed to the State budget of the Republic of Croatia.

The Statute of the CCA, which was ratified by the Croatian Parliament, provides for a detailed scope of the CCA activities. The main task of the CCA is to eliminate prevention, restriction and distortion of competition by the undertakings that conclude prohibited agreements or are engaged in abusive practices in the market. The powers of the CCA also include the merger control.

Since 7 December 2017 the CCA has been in charge of the implementation of the **Act on the prohibition of unfair trading practices in the business-to-business food supply chain**, OG 117/17 (UTPs Act). This piece of legislation has for the first time regulated the area of unfair trading practices in the food supply chain. The UTPs Act establishes the rules and effective redress mechanisms to eliminate UTPs imposed by a trading partner in the food supply chain where a superior bargaining position is abused by the buyer and/or the processor or the reseller with respect to the supplier. The UTPs Act seeks to establish, ensure and promote the fair-trading practices that would protect the participants in the food supply chain.

The CCA is run and managed by the Competition Council consisting of 5 members. The president and the four members of the Competition Council are all appointed for a five-year term of office and also relieved from duty by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia. They are all employed in the CCA.

The conditions for the appointment, the term of office of the members of the Competition Council, for relieving of the president and the members of the Competition Council and the scope of competence of the Competition Council and the process of decision making are regulated by the Competition Act. The president and the members of the Council may not be state officials, persons who perform duty in any administrative body of a political party, members of supervisory boards and executive bodies of undertakings, or members in any kind of interest associations, which could lead to conflict of interest. The Competition Council adopts its decisions at its sessions, with the majority of at least three votes, where no member of the Council can abstain from voting.

The everyday administrative tasks are carried out by the **expert team** of the CCA, that comprises of masters of law with a passed Bar Exam, masters of economics and IT experts specialised in digital forensics – all experts in the area of competition law and policy.

In 2019 there were 772 resolved cases in the area of competition and the area of unfair trading practices.

There were **finances imposed in the total amount of HRK 4.119,500** for the established infringements of the Competition Act and the UTPs Act in the same report period.

In 2019 the number of resolved cases rose by 12.6 per cent in comparison with the previous year. The positive trend is more prominent taking into account the rise of 6.7 percent that was recorded in 2018 compared with 2017.

It must be noted here that the year of 2019 was the first calendar year of the full application of the UTPs Act, a piece of legislation that covers a wide area of prohibition of unfair trading practices, which significantly rose the number of cases and the activities of the CCA.

On the date of 31 December 2019 there were 37 ongoing cases, 15 thereof in the area of competition and 22 in the area of unfair trading practices. The administrative proceedings in these cases have been opened in the second half of 2019 and despite the uninterrupted activities of the CCA the legal prerequisites for the adoption of the decisions in these cases had not been satisfied until the end of the report year.

In 2019 in the area of antitrust, the majority of the CCA activities were focused on **prohibited horizontal agreements between undertakings (cartels)**. Prohibited are all agreements between two or more undertakings, decisions by associations of undertakings and concerted practices, which have as their object or effect the distortion of competition in the relevant market. Such prohibited agreements constitute hard core restrictions of competition. In the area of allegedly restrictive agreements in 2019 the CCA carried out preliminary market investigations in eight (8) relevant markets investigating whether there is sufficient circumstantial evidence to open ex officio infringement proceedings in these cases. In this area the CCA **resolved a total of 26 cases**.

In two (2) cases thereof the CCA established that the practices concerned constituted prohibited horizontal agreements (cartels) where the competing undertakings fixed prices of their services and harmed the consumers who had to pay prices above the competitive levels. **The crucial evidence in these cases was obtained from the users of these services and in surprise inspections applying forensic data collection processes.**

In one (1) case the CCA accepted the offered commitments by the undertaking aimed at eliminating any negative effects on competition. The voluntarily proposed remedies at an early stage of the proceeding were viable for the restoration of effective competition in the market concerned.

It must be noted that the mere existence of a dominant position of an undertaking in a relevant market does not automatically constitute an infringement of competition rules. What is prohibited is the abuse of this dominant position. The need to strengthen its market power for an undertaking is justified and natural. However, the companies that hold a dominant position in the market should take special responsibility not to behave and act in contravention with competition rules and thereby abuse their dominance.

In the area of abuse of a dominant position in 2019 the CCA examined the circumstantial evidence and carried out a preliminary market investigation in thirteen (13) relevant markets

and opened 22 cases. Based on the circumstantial evidence obtained during the preliminary market investigation the CCA opened two (2) infringement proceedings based on alleged abuse of a dominant position of the undertakings concerned. One proceeding was closed by the acceptance of the commitments offered by the undertaking concerned. The other proceeding was closed by a non-infringement decision. In the remaining number of cases after having examined the circumstantial evidence in a thorough preliminary market investigation in the relevant markets concerned the CCA did not find sufficient evidence for the initiation of an infringement proceeding.

Mergers (concentrations) are business transactions which are not *a priori* banned. They are a normal part of business life and a justified form of consolidation or restructuring processes of the companies concerned or whole industries as a response to the challenges amid the changes in the markets with the view to achieving the savings and synergies that will ensure the new economic entities increase the competitiveness — and hence performance. The task of the CCA is to carry out *ex ante* investigations into these transactions and run the checks into their possible beneficial effects that should outweigh the anticompetitive effects of the concentrations, such as the decline in the number of competitors or the rise in collusive behaviour. This is the reason why merger control than includes prior assessment of compatibility of concentrations under the Competition Act remains in the focus of the CCA attention.

In the area of merger control the CCA investigated 35 relevant markets. In 2019 it resolved 34 merger cases. In two (2) cases it carried out in-depth legal and economic analyses in the assessment of compatibility of these concentrations in the phase II due to their possible significant effect on competition in the market concerned.

In 13 cases the concentrations between undertakings were assessed as compatible in phase I, in other words, they obtained clearance of the CCA due to the fact that these concentrations did not produce negative effects on the market given the fact that their implementation did not create or strengthen the existing dominant position in the market.

In this area the CCA was also particularly involved in the monitoring of remedies aimed at preventing a significant impediment to effective competition in two concentrations that had previously been assessed as conditionally compatible.

In six (6) cases the CCA dismissed the notifications of the proposed concentrations due to the fact that the criteria for notification under the Competition Act were not fulfilled. In other cases, the CCA provided the parties with necessary information regarding the possible notification obligation.

In 2019 there were 473 notifications of concentrations that were notified to the European Commission and then transmitted to all the national competition authorities concerned, including the CCA, where the effects of these concentrations on competition in the Croatian market had to be assessed.

In 2019 the CCA conducted three (3) **market studies** as research projects with the purpose of gaining in-depth understanding of how particular sectors or markets work. These sectoral inquiries are traditionally carried out on the CCA own initiative with the view to detecting and removing any market failures and anticompetitive practices of the undertakings and concentrate also on the analysis of the legal framework regulating the particular markets. This thorough legal and economic analyses very often enable the CCA to detect practices that contravene with competition rules and to possibly open infringement procedures.

Apart from the previously mentioned large number of market investigations that the CCA carried out in 2019 within individual cases, the annual sector inquiries were conducted in the retail groceries' market (market research in food, beverages, toiletries and household supplies), the insurance market and the press publishing market. The results of these market inquiries have been published on the CCA web site.

It is worth mentioning here that in 2019 the CCA also opened a market study into online platforms, concretely, the online travel booking market study in the Republic of Croatia. The results of this market inquiry will be included in the CCA annual report for 2020.

The CCA also continued with its intense activities involving **competition advocacy and development of competition culture** in general. The aim of these activities has been the strengthening of competition culture for the purpose of creating of the institutional and economic environment that would ensure market access to all undertakings, removing the factual and administrative barriers to the development of competition.

In the competition advocacy area, there were **77 resolved cases**, thereof ten (10) expert opinions on laws and bylaws and one expert opinion in the electronic communications area. Additionally, the CCA provided answers to 67 different queries received from legal and natural persons, chambers and professional organizations etc.

This report period was marked with successful inter-ministerial cooperation with the Ministry of the Economy, Entrepreneurship and Crafts, the Ministry of Foreign and European Affairs, the Ministry of Justice, the Ministry of Public Administration and other relevant institutions within the working group in charge of the transposition of the **Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (ECN+)** into the Croatian Competition Act now in effect. The **ECN Plus Directive** entered into force of 3 February 2019 whereas the Act on the Amendments to the Competition Act must enter into force by 4 February 2021 at the latest.

The ECN Plus Directive aims to strengthen the effectiveness of the competition authorities and the implementation of the EU antitrust rules by the national competition authorities, giving them appropriate enforcement tools to ensure the proper functioning of the EU market. The CCA was therefore empowered by the Ministry of the Economy,

Entrepreneurship and Crafts to set up a working group lead by the CCA experts in collaboration with the experts from the relevant ministries, chambers and academia.

On the other hand, **in the area of unfair trading practices the CCA resolved 62 cases**. In nine (9) cases the CCA found that the re-sellers, buyers or processors concerned had imposed unfair trading practices on their trading partners in the food supply chain. The **total sanctions imposed by the CCA in these cases amounted to HRK 3.499,500**. The remaining 53 cases in the area of unfair trading practices were investigations in the markets concerned, replies to the queries of natural and legal persons, chambers etc. and cases relating to international cooperation with the European Commission.

One of the key EU documents serving as the basis for the implementation of the national rules regulating unfair trading practices is the **Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain**.

The Directive (EU) 2019/633 that came into force on 30 April 2019 has for the first time regulated the area of unfair trading practices in the EU. This Directive establishes a minimum list of prohibited unfair trading practices in relations between buyers and suppliers in the agricultural and food supply chain and lays down minimum rules concerning the enforcement of those prohibitions and arrangements for coordination between enforcement authorities. It is appropriate to the Directive to introduce a minimum standard of protection under the EU law as this would enable the Member States to integrate the relevant rules into their national legal order in such a way as to enable cohesive regimes to be established.

The competent ministry in charge of the transposition of the Directive (EU) 2019/633 into the Croatian UTPs Act is the Ministry of Agriculture that started to prepare the necessary revisions in October 2019. The commission for the drafting of the proposal of the Act on the Amendments to the UTPs Act also includes the CCA experts. Member States must adopt and publish, by 1 May 2021, the laws, regulations and administrative provisions necessary to comply with this Directive and apply those measures not later than 1 November 2021.

The CCA **international activities** in 2019 continued as an essential part of the CCA day-to-day operation. They included the closure of the EU twinning light project in Monte Negro „Strengthening Institutional and Technical Capacities of the Agency for Protection of Competition", funded by the European Commission in the amount of EUR 250,000. This has been the first successful standalone project of the CCA involving the expertise support to another national competition agency, in this concrete case the Montenegrin competition authority.

The CCA enhanced the cooperation with other national competition authorities. In June 2019 a Memorandum for cooperation in the field of competition policy between the Competition Authority of Albania and the Croatian Competition Agency was signed. In

December 2019 a bilateral visit with the Chinese delegation from the State Administration for Market Regulation (SAMR), Beijing, People's Republic of China was organized in Zagreb.

The multilateral cooperation involved regular communication and collaboration with the European counterparts in the area of competition and unfair trading practices, working groups and subgroups meetings, ECN advisory committees and the exchange of information about the concrete cases and legislative issues on a daily basis.

Within its international cooperation the CCA continued with its activities in the OECD Competition Committee. The CCA has been actively participating in the work of the Competition Committee for five years now. The CCA continued its engagement in the European Competition Network (ECN) and joined the ICN International Framework on Competition Agency Procedures.

Transparency of the CCA activities is achieved through different communication channels in line with the CCA Communication Strategy. In 2019 the CCA remained involved in active competition advocacy by participating in trainings and workshops for undertakings and consumers and continued to promote transparency of its work and open communication with the public, both in the area of competition and the area of unfair trading practices in the business-to-business food supply chain, where it was necessary to introduce the addressed actors with the new rules.

In line with its publicly available Communication Strategy the CCA continues to publish on its website its decisions, opinions and annual reports, the relevant articles written by its experts and press releases about the opened and closed cases and its practice. The CCA publishes its bulletin and other guides and organizes and participates in trainings and workshops covering the specific matters in the area of competition law and policy and unfair trading practices. The CCA experts are present in the media and maintain contact with the journalists.

In 2019 the CCA published 11 issues of its monthly e-bulletin *AZTNinfo* containing the monthly updates of the CCA decisions and other activities and reports about the most recent developments in the comparative practice covering the areas concerned in the EU and globally.

Regarding the judicial review of the decisions of the CCA, it must be noted that against the decisions of the CCA no appeal is allowed but the injured party may file a claim and start an administrative dispute before the High Administrative Court of the Republic of Croatia. The council of three judges decides about the claim against the decision of the CCA. In 2019 the **High Administrative Court of the Republic of Croatia took 5 decisions on the basis of which it dismissed the claims of the claimants and upheld the decisions of the CCA in their entirety.**

Within the meaning of the Act on the Right of Access to Information in 2019 there were 9 requests for access to files and all of them were cleared. The information commissioner has

been communicated the report concerned and the report was published on the CCA website.

The priorities in the forthcoming period of the CCA will continue to involve its activities focused on the elimination of the most severe distortions of competition, such as prohibited agreements, particularly horizontal agreements between direct competitors (cartels) that are most harmful for the economy and the consumers. Given the fact that cartels are as a rule secret, collusive agreements, the key challenge for the CCA remains how to detect a cartel and obtain information about its existence and operation, and how to collect solid evidence.

The activities of the CCA will at the same time be directed to abusive practices of undertakings holding a dominant position in the market and merger control. The CCA will keep competition advocacy and raising awareness about compliance with competition rules (in the form of opinions on laws and other provisions, market studies and similar) and creating of competition culture in the centre of its interest.

The CCA will continue to conduct its traditional retail groceries' market research (market research in food, beverages, toiletries and household supplies), the press publishing market research and close its first market study into online platforms, concretely, the online travel booking market study in the Republic of Croatia that was opened in 2019.

With the view to proper application and convergence, within the European Competition Network (ECN) the CCA will continue to actively cooperate with the European Commission and the national competition authorities of the Member States in the area of harmonization and transposition of the EU competition rules into the Croatian legal framework.

In the forthcoming period the CCA will be engaged in increased cooperation with the relevant ministries (the Ministry of the Economy, Entrepreneurship and Crafts and the Ministry of Agriculture) regarding the necessary revisions of the Competition Act and the UTPs Act i.e. the transposition of the relevant provisions of the EU acquis into the Croatian legal framework.

The CCA will continue to be particularly engaged in the implementation of the UTPs Act that finds its primary objective and purpose not in sanctioning but in establishing a positive business environment that would contribute to the establishment of fair trading practices in the business-to-business food supply chain.

With the view to achieving the above-mentioned objectives in the area of competition and unfair trading practices in the business-to-business food supply chain it is essential for the CCA to keep and strengthen its independence and autonomy of operation. At the same time, it is important that it is adequately financed and well-staffed.

Public and political awareness about the benefits of the sound competition for the economy as a whole and the consumers is our central focus that will facilitate the carrying out of the proceedings by the CCA. This will, on the other hand, create competition culture and raise awareness for us to achieve our strategic goals focused on ensuring effective competition in the market by obeying the rules falling under the scope of the national competition authority in Croatia – the Croatian Competition Agency.

* For any further details of the 2019 Annual Report of the Croatian Competition Agency please refer to its full version in the Croatian language that will be available at the web site of the CCA after its adoption by the Croatian Parliament, also including the list of CCA decisions in 2019, the list of rulings of the High Administrative Court of the Republic of Croatia in 2019 and the list of sanctions imposed by the CCA on undertakings for infringements in 2019 (all available on the CCA website).

President of the Competition Council

Mladen Cerovac, LL.M

In Zagreb, 7 July 2020