

## Summary Annual Report of the Croatian Competition Agency for 2021

In compliance with its legal obligation under the Competition Act OG 79/09, 80/13 and 41/21<sup>1</sup>, and the Act on the prohibition of unfair trading practices in the business-to-business food supply chain OG 117/17 and 52/21<sup>2</sup>, the Croatian Competition Agency (CCA) submits its **Annual Report for 2021** to the Croatian Parliament. The Annual Report for 2021 outlines the CCA activities in the previous year and informs the political scene, the economic operators, professional stakeholders, and the general public about the operation of the CCA, ensuring the transparency and raising awareness about the importance of competition culture and the prohibition of unfair trading practices in the business-to-business food supply chain in the Republic of Croatia.

As one of the milestones of the market economy the purpose of competition law is to ensure a level playing field for all market operators regardless of their size, market power or other features. Therefore, the main task of the CCA is to ensure the maximum benefit for the consumers in the form of a wider choice, lower prices and better quality of products and services, and to facilitate improvements in productivity and innovation of the actors in the market. Effective competition boosts economic development based on competitive markets, effective allocation and use of limited resources and investment for innovation. Besides the proactive action of the CCA, the achievement of these objectives depends on the activities of other government authorities in the creation of clear and enforceable rules regulating the behaviour in the market and their capacity to apply these rules in practice.

In accordance with Competition Act OG 79/09, 80/13 and 41/21 in effect<sup>3</sup> the CCA is a stand-alone and independent legal person with public authority which, as a general, national regulatory authority in charge of competition in all markets, performs the activities within its scope and powers regulated by the Competition Act and Articles 101 and 102 of the Treaty on the functioning of the European Union, OJ C 115, 09.05.2008 (TFEU) and:

- 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.

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<sup>1</sup> Article 26, paragraphs 6 and 7 of the Competition Act.

<sup>2</sup> Article 16 of the Act on the prohibition of unfair trading practices in the business-to-business food supply chain.

<sup>3</sup> Article 26 paragraphs 1 to 3 of the Competition Act.

In other words, the CCA is applies national competition law in parallel to Articles 101 and 102 TFEU.

**The internal structure and operation** of the CCA, its internal acts and other matters relating to the operation of the CCA are regulated by the CCA Statute that is adopted by the Croatian Parliament.<sup>4</sup>

Since the Act on Amendments to the Competition Act OG 41/21, and Act on the Amendments to the Act on the prohibition of unfair trading practices in the business-to-business food supply chain OG 52/21 entered into force, which prescribe the obligation to harmonize the CCA Statute with the provisions of these revisions, at the end of 2021 the CCA adopted a new statute, which was then sent to the Croatian Parliament for adoption. During the preparation of the Annual Report for 2021, the Croatian Parliament ratified the CCA Statute, which was followed by harmonization of other general acts of the CCA with the provisions of those revised pieces of legislation in line with the new CCA Statute.

The CCA is empowered for the enforcement of competition rules applicable to 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 ex-ante merger assessment.

Since 7 December 2017 the CCA has been also 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 and 52/12; (UTPs Act). The full application of the UTPs Act started on 1 April 2018 and the application of the Revised UTPs Act on 1 March 2022<sup>5</sup>. For the first time this piece of legislation has regulated the area of unfair trading practices in the food supply chain in Croatia.

The UTPs Act defines the rules and measures for the prevention of imposition of unfair trading practices, it provides a list of the unfair trading practices in the food supply chain, the imposition of which enables the use of the strong bargaining power of the buyer with respect to their suppliers. 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<sup>6</sup>. The president and the members of the Council are all employed in the CCA. The president and the members of the Council are appointed and relieved from duty by the Croatian Parliament, upon the proposal of the Government of the Republic of Croatia. The president and the members of the Council are appointed for a five-year term of office. From the date of entry

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<sup>4</sup> The decisions on the ratification of the Statute and the Amendments to the Statute of the Croatian Competition Agency by the Croatian Parliament are published in Official Gazette 22/11, 74/14, 60/18 and 63/22.

<sup>5</sup> Act on the Amendments to the Act on the prohibition of unfair trading practices in the business-to-business food supply chain, OG 52/21.

<sup>6</sup> The terms used in this text, which have a gender meaning, refer equally to the male and female gender.

into effect of the Act on the Amendments to the Competition Act (24 April 2021) the Government of the Republic of Croatia makes a public call for the proposals of the candidates for the president of the Competition Council and its members before it proposes their appointment to the Croatian Parliament. However, the present members of the Competition Council that had been appointed before 24 April 2021 continue with their mandates until the expiry of the period to which they had been appointed.

Based on the procedure following the public call and the proposal of the Government of the Republic of Croatia, on 1 October 2021 the Croatian Parliament adopted a decision on the appointment of Mirta Kapural PhD, president of the Competition Council. Preceding this decision, the Croatian Parliament relieved Mirta Kapural from the duty of the member of the Competition Council. The conditions for the appointment, the term of office and the scope of competence of the members of the Competition Council are regulated by the Competition Act. The members of the Council cannot 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 president and any member of the Council cannot be relieved from office due to the reasons linked with the orderly performance of their duties and orderly exercise of their powers in the application of the Competition Act and Articles 101 and 102 TFEU<sup>7</sup>.

As the managing body of the CCA the Competition Council adopts its decisions in its sessions, with the majority of at least three votes, where no member of the Council can abstain from voting. The president or the vice-president of the Council must be present at the session<sup>8</sup>.

The president of the Competition Council represents and speaks for the CCA and manages its activities. In managing the CCA, the president of the Council organizes and runs the operational activities of the CCA, supervises and is responsible for its expert performance. The vice-president of the Council is elected on the proposal of the president of the Council by a majority vote of the members of the Council.

The Competition Council as a rule consists of five members but at the moment the Competition Council consists of four members given that the Government of the Republic of Croatia at the moment of completion of the Annual Report for 2021 has not made a public call for the proposal of a candidate for the member of the Council that consequently has not been appointed yet.

Taking the above-mentioned circumstances into account, the CCA is currently run by the Competition Council consisting of Mirta Kapural, PhD, president of the Council (first term of office October 2021 – October 2026), Vesna Patrlj, LL.M, vice-president of the Council (third term of office March 2019 - March 2024), Ljiljana Pavlic, MSc, MBA, member of the Council

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<sup>7</sup> Article 29 paragraph 4 of the Competition Act.

<sup>8</sup> Article 31 of the Competition Act.

(second term of office January 2019 - January 2024), and Denis Matić, LL.M., member of the Council (second term of office January 2019 - January 2024).

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 specialized in competition law and policy and IT experts specialised in digital forensics. There is a team of at least one lawyer and one economist handling a case, accompanied, when necessary and depending on the complexity of the case, by an IT expert. The expert team of the CCA performs administrative and expert activities, whereas based on so established facts, the Competition Council decides on the basis of which the CCA resolves a case.

The CCA is an independent in its operation and exercises its powers independently impartially in the common interest of the effective enforcement of the provisions falling under its jurisdiction. The Council and the expert team of the CCA exercise their powers independently of any political or other influence and receiving no instructions from the Government of the Republic of Croatia or any public or private authority in carrying out of its tasks and powers, and reports to the Croatian Parliament. The CCA is empowered to set the priorities in its work also where it receives the initiative for the initiation of an ex officio proceeding within the meaning of the Competition Act and Articles 101 and/or 102 TFEU.

The CCA has no operational or financial revenue of its own. The CCA is financed exclusively from the State budget of the Republic of Croatia. In compliance with the financial capacity of the State Budget of the Republic of Croatia the CCA is ensured sufficient resources in terms of qualified staff, financial means, technical and technological expertise and equipment, to ensure they are able to perform their tasks effectively. On the other hand, the CCA is independent regarding the purposeful spending of the financial means allocated to it for the enforcement of its powers, without prejudice to and in full compliance with the provisions of the Act on the Execution of the State Budget.

**The fines set and imposed by the CCA for the infringements of the Competition Act and the UTPs Act are contributed to the State budget of the Republic of Croatia.**

The CCA obliges itself to effectively perform its obligations and responsibly distribute the allocated financial resources from the State Budget.

The planned funds for the regular operational activities falling under the scope of the CCA in the State budget for 2021 amounted to HRK 13.866,662. The total executed budget in 2021 amounted to HRK 13.854,113 which was 99.91 % of the current plan.

In 2021 the number of workers who carried out all the activities of the CCA in the area of antitrust and merger control and unfair trading practices was lower compared with the

previous year. Concretely, on 31 December 2021 the CCA had 49 employees, whereas in 2020 it employed 51 workers.

The task of the CCA is to ensure the proper functioning of the market that produces benefits for the consumers, undertakings and the economy as a whole, by removing barriers and market failures through effective enforcement of competition rules and the rules on the prohibition of unfair trading practices.

The main objective of the CCA as an expert authority and competition regulator in all markets is to create and ensure effective competition through enforcement and advocacy activities, that would facilitate long term growth, benefit the economy of Croatia, ensure maximum benefit for consumers and procompetitive effects enhancing their choice of innovative goods and services of high quality and lower prices at the same time encouraging undertakings to improve efficiency and innovation in the market.

The global pandemic crisis caused by covid-19 put challenges to the work of the CCA.

It must be noted that oral hearings as a mandatory constituent part of the investigation and the administrative proceedings in the enforcement of antitrust and unfair trading practices rules that ensure the right to defence of the parties in complex proceedings involving the infringements and sanctioning carried out by the CCA, could not be held due to the threat imposed by the spreading of covid-19 virus.

The oral hearings during the lock-down months when precautionary measures were imposed and the number of covid infected people soared were not possible due to the fact that the offices and the conference rooms of the CCA cannot be well-ventilated (the windows cannot open), which did not comply with the precautionary measures.

However, despite the second challenging pandemic year the CCA succeeded in resolving complex cases falling under its jurisdiction. **In 2021 there were 725 resolved cases in the area of competition and unfair trading practices.**

**The fines imposed for the infringements of the Competition Act and the UTPs Act in 2021 amounted to a total of HRK 3.001,000.**

The following table indicates the resolved cases in 2021:

	Number of resolved cases in 2021		
	Competition	Unfair trading practices	Total
Administrative cases	33	10	43
Non-administrative cases	622	60	682
Total:	655	70	725

Source: CCA

On 31 December 2021 there were 40 pending administrative cases, 28 in the area of competition, 12 in the area of unfair trading practices. Predominantly, these administrative (investigation) proceedings were opened at the end of 2019 or in 2020 or 2021 where the legal conditions for their closure had not been met. Most of these cases will be closed during 2022.

There was a very moderate stagnation of the number of the resolved cases in comparison with 2020 when there had been 729 resolved cases, compared with 725 in 2021. More precisely, there has been a negligent fall of only four resolved cases less.

This slight drop in the number of resolved cases would not have happened, had it not been for the objective circumstances that prevented the normal conduct of the hearings during several months, epidemiologic precautions and work conditions on the premises of the CCA and the requests made by the parties themselves to postpone the hearings due to the epidemic. This is the reason why some administrative proceedings could not be closed.

Besides the administrative cases that are handled by the CCA in the area of competition, a great part of the activities of the CCA involves so called non-administrative cases in the area of competition advocacy (opinions on draft laws and proposed regulations and opinions on the compliance of the laws and regulations in effect), market studies, responses to queries that cannot be classified as initiatives for the opening of an infringement proceeding in the sense of the Competition Act, preliminary market investigations carried out at the stage where the CCA has to decide whether there is enough circumstantial evidence to open an infringement case, data base cases, assessments of notifications of concentrations under the Council Regulation (EC) No 139/2004<sup>9</sup>, assistance cases with other regulators and authorities, international co-operation cases, internal acts of the CCA, access to files responses and other replies to addressees of the Competition Act.

Similarly, in the area of unfair trading practices, the CCA has been receiving a large number of queries from natural and legal persons that have not been directly connected with the concrete administrative (investigation) cases but have been urgently responded to by the CCA in so called non-administrative cases. Within its powers, in these non-administrative cases the CCA requires information, documentation and written explanations directly from the alleged infringers and investigates the received and analysed information for the existence of possible circumstantial evidence for the opening of an administrative proceeding.

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<sup>9</sup> 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.

In 2021 the CCA received a total of **40 initiatives or complaints** within the meaning of the Competition Act and the General Administrative Procedure Act respectively (hereinafter: GAPA)<sup>10</sup> for the initiation of ex-officio administrative proceeding.

In resolved administrative cases, in 22 cases the procedure was initiated ex officio on the basis of the received initiative or complaint (13 cases in the area of competition, and nine cases in the area of unfair trading practices). There was a total of ten anonymous complaints (three in the area of competition and seven in the area of unfair trading practices).

In unresolved and pending administrative cases, in 18 cases the procedure was initiated ex officio on the basis of an initiative or a complaint (11 cases in the area of competition and seven cases in the area of unfair trading practices). There was a total of seven anonymous complaints, all in the area of unfair trading practices.

The key and most important objective of the CCA in the past period has been related to the CCA's core activity, which is the enforcement of national and European competition law within its powers, with an emphasis on eliminating hard core restrictions of competition and active cooperation with the European Commission (hereinafter: EC). Within this objective, the focus of CCA's work was on the activities of undertakings that directly limit the national economic growth.

The proceedings identifying distortion of competition in the form of conclusion of a prohibited agreement between undertakings and abuse of a dominant position by an undertaking in the market are very complex due to the necessity of a detailed economic and legal analysis and the protection of the right of the parties to be heard in the proceedings, and they are therefore defined in detail under the Competition Act. These proceedings are always initiated ex post, while a wide range of persons can submit an initiative for the initiation of the proceeding<sup>11</sup>.

The Annual Report of the CCA for 2020 described nine phases of the proceeding. Due to the entry into force of the Act on the Amendments to the Competition Act (hereinafter: Revised Competition Act 2021) since 24 April 2021 the proceedings has been somewhat shorter on the account of the fact that the "statement of the facts of the case" has been revoked. The revocation of the second statement of the facts of the case ensures efficiency of the proceeding whereas the right of defence is, on the other hand, indisputably ensured. Taking into account that the parties to the proceeding still receive the Statement of Objections that enables the parties to submit their comments in writing and present additional evidence and invite witnesses, the oral hearing is held and, besides that, pursuant to Article 52 of the GAPA the parties can take part in the investigation as long as the decision is taken.

For the sake of clarity, what follows is a detailed description of **six main phases of the procedure:**

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<sup>10</sup> Article 37 of the Competition Act and Article 42 of the General Administrative Procedure Act, OG 47/09.

<sup>11</sup> Article 37 of the Competition Act.

*(i) Phase One – Preliminary market investigation.* If based on the initiative of a complainant this phase can take up to maximum six months, after the relevant market has been defined<sup>12</sup>.

*(ii) Phase Two – Procedural order.* By means of a procedural order the CCA initiates the proceeding where it finds that the initiative of a complainant contains sufficient circumstantial evidence to open an administrative (investigation) proceeding. At this stage the parties are requested to submit written comments and necessary documentation in the time period that can neither be shorter than 8 days nor longer than 30 days from the day of the receipt of the procedural order<sup>13</sup>. At this stage the CCA can conduct a surprise inspection, make economic and legal analysis or take any necessary steps with the view to establishing the facts of the case. The parties can be requested to submit additional information relevant to the case in an appropriately set deadline.

*(iii) Phase Three – Statement of Objections.* The CCA is obliged to communicate a non-confidential copy of the Statement of Objections to the complainant (the person who has filed the initiative) and all persons that have been granted the rights of the complainant by the decision of the CCA, exclusively upon a written request of the person concerned. These persons can also send their comments on the Statement of Objections within the same deadline as granted to the parties to the proceeding. The Statement of Objections ensures the party the right of defence given that in the period of one month from the receipt of the Statement of Objections the party can respond to the preliminary established facts and circumstances in writing, suggest their comments and propose other witnesses to be heard or other evidence to be examined. Also, once it has received the Statement of Objections, the party can ask for access to file. However, after it has received the Statement of Objections, the party cannot propose commitments (remedies, conditions and deadlines) with the view to eliminating the anticompetitive effects of their behaviour or failure to act<sup>14</sup>.

*(iv) Phase Four – Oral hearing.* The oral hearing is mandatory called for in the shortest possible period after the expiry of the time period for the submittal of the replies to the Statement of Objections and after the CCA has carried out the analysis of the submitted comments. However, in some complex cases the CCA may call for oral hearing even before the adoption of the Statement of Objections, whereas it must call for oral hearing after the expiry of the deadline for the submittal of comments on the Statement of Objections, as previously mentioned. Thus, in such cases two oral hearings are held.

*(v) Phase Five – Decision of the Competition Council about the infringement and fine setting.* The Competition Council decides whether the infringement has been committed or not). If it finds no infringement the proceeding is terminated.

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<sup>12</sup> Article 38 paragraph 5 of the Competition Act.

<sup>13</sup> Articles 39 and 40 of the Competition Act.

<sup>14</sup> Article 48 of the Competition Act.

*(vi) Phase Six – Adoption of the decision.* The CCA takes its decision in line with the decisions of the Council within the time limit of 4 months following the day on which it has established all the facts of the case relevant for the adoption of the decision, i.e., not later than within 4 months from the day of the conclusion of the oral hearing held, in other words, the CCA takes a single decision on infringement and the imposition of a fine for the identified infringement<sup>15</sup>.

Within the concrete case proceedings in 2021 the CCA carried out the **investigations in 77 relevant markets**, 19 thereof were in the area of assessment of prohibited agreements between undertakings, 20 in the area of alleged abuse of a dominant position in the market and 38 in the area of assessment of compatibility of concentrations between undertakings.

One of the priorities of the CCA in 2021 was again the elimination of hardcore restrictions within the meaning of the Competition Act **contained in prohibited agreements**, particularly, horizontal agreements that are concluded between competitors (cartels) that mostly harm the consumers and the economy as a whole and constitute the most serious infringement of competition rules.

In the area of **prohibited agreements** in 2021 the CCA conducted **preliminary market investigations in 19 relevant markets** with a view to investigating whether there has been sufficient circumstantial evidence to open ex officio proceeding. The CCA **resolved a total of 24 cases in this area**, ten thereof were administrative and **14** non-administrative cases.

In the group of administrative cases, in two cases the CCA took infringement decisions identifying distortion of competition in the form of conclusion of a prohibited agreement within the meaning of Article 8 of the Competition Act and imposing fines for the infringements concerned. One of these prohibited agreements was a horizontal prohibited agreement (cartel) between competitors<sup>16</sup> whereas the other was a prohibited vertical agreement between undertakings that are not competitors<sup>17</sup>. In four cases the CCA took the decision dismissing the complaint due to lack of standing to act. In one case the CCA took an infringement decision where the party failed to act in line with the request of the CCA<sup>18</sup> while three administrative cases were closed by a written observation of the CCA.

**Abuse of a dominant position by the undertaking/s** on the market also impedes the competitive market structure and prevents the competitors from market entry or growth. This is particularly the case with abusive exclusionary practices that are detrimental to competition. This is why the CCA continued to investigate in 2021 whether certain undertakings have been involved in such abusive practices.

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<sup>15</sup>Article 57 of the Competition Act.

<sup>16</sup> Case: CCA v the undertakings PRESEČKI GRUPA d.o.o., Krapina, RUDI-EXPRESS d.o.o., Mihovljani, Boris Jambrošić, trader, „JAMBROŠIĆ TOURS“, Mursko Središće and Željko Jakopić, trader AUTOBUSNI PRIJEVOZNIK „TURIST“, Sveti Martin on Mura, Class: UP/I 030-02/11-01/024, 7 October 2021.

<sup>17</sup> Case: CCA v Spinnaker distribucija d.o.o., Zagreb, Class: UP/I 034-03/2020-01/019, 31 December 2021.

<sup>18</sup> Article 63 of the Competition Act.

With a view to investigating whether there is sufficient circumstantial evidence to open ex officio proceeding relating to alleged abuse of a dominant position in 2021 the CCA conducted a preliminary market investigation in **20 relevant markets**. The CCA **resolved 17 cases in this area**, **nine** thereof were administrative and **eight** non-administrative cases.

In one case, which was opened and closed before the entry into force of the Revised Competition Act 2021, the CCA took a decision on non-infringement of competition rules on the account of the fact that no evidence was found to substantiate the first indications on the basis of which the proceeding was initiated in the first place. Namely, at that time it was not yet possible to take a decision on termination of the proceeding but only a negative decision. In another case, which was closed after the entry into force of the Revised Competition Act 2021, the CCA found no evidence to substantiate the first indications on the basis of which the proceeding was initiated in the first place, and thus, terminated the proceeding. In seven cases the CCA dismissed the initiative of the complainant due to lack of standing to act.

As a rule, **mergers (concentrations between undertakings)** are normal and common part of business and a justified form of consolidation or restructuring processes of companies or whole industries as a response to the challenges amid the changes in the relevant markets with a view to achieving the savings and synergies that will ensure the new economic entities increase in performance. Unlike the assessment of possibly prohibited agreements between undertakings or abuse of a dominant position by an undertaking/s in the market which is carried out ex-post on the CCA's own initiative, the assessment of compatibility of concentrations between undertakings is carried out ex-ante, based on the merger notification of the undertakings concerned in the sense of the criteria for obligatory notification under the Competition Act<sup>19</sup>.

In other words, the participants to the concentration **must notify the concentration** prior to its implementation, where they **cumulatively** fulfil the criteria for notification in terms of turnover thresholds in the Croatian and global market, as stipulated in Article 17 paragraph 1 of the Competition Act. In other words, no concentration exceeding the said thresholds can be implemented without the compatibility assessment and approval of the CCA. The task of the CCA is to carry out ex ante investigations into these transactions and run the checks into their possible beneficial effects on market structure and consumer interests, that should outweigh the anticompetitive effects of the concentrations, such as the decline in the number of competitors or the rise in collusive behaviour or possible creation or strengthening of a dominant position.

In the area of assessment of compatibility of concentrations in 2021 the CCA analysed **38 relevant markets in 35 cases**. Out of 35 cases handled in the area of merger control by the CCA in 2021, in 13 cases the CCA assessed the compatibility of the notified concentrations, in one case it monitored the implementation of the commitments in the previously

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<sup>19</sup> Article 38 paragraph 2 of the Competition Act.

conditionally approved concentration, whereas in 18 cases the CCA provided replies to queries of third parties. Three merger assessment cases remained open while the respective decisions were taken in early 2022.

Out of 13 cases where the CCA assessed the compatibility of the notified concentrations, six of them were cleared in Phase I based on the fact that they had no significant effect on competition nor did they create or strengthen the existing dominant position in the market. In seven cases the CCA dismissed the notification of concentration based on lack of standing to act in the sense of compatibility assessment of the business transactions concerned.

In the case that included monitoring of remedies under three previous decisions of the CCA on conditionally approved concentration in the telecommunications market that was closed in December 2021, almost 700 steps have been taken. This was a complex and challenging monitoring process. The fulfilment of the commitments under the deadlines set by the decision of the CCA on a conditionally approved concentration was monitored by the Divestiture Trustee that ensures additional scrutiny and objectivity in the implementation of the divestiture commitments. This legal instrument was transposed from EC comparative practice in the area of merger control.

In regard to the case concerned in the procedure of finding a potential buyer of OT-Optima Telekom carried out during 2021 by a globally known investment banker, and in compliance with the commitments under the decisions of the CCA, the operator Telemach was selected as the best bidder, which, after seven years of monitoring of the implementation of remedies, fulfilled the purpose of the CCA's decisions and led to creation of the third rival in the fixed-line network market<sup>20</sup> that strengthened competition in the telecom market and produced benefits for the consumers. Thus, it is expected that the implementation of the concentration concerned will have positive effects based particularly on the fact that the third rival is retained in the electronic communication fixed-line network market and that the third integrated operator in mobile and fixed-line network will be created, that will be able to compete with the incumbent leading operators more effectively by offering convergent services. The creation of the third fully integrated competitor in the electronic communication sector ascertains potential efficiencies based on the ability of the integrated operators in mobile and fixed-line networks to offer convergent products, ensuring a counter-balance to already existing competitors to the advantage of the consumers.

In 2021 no concentration was assessed as prohibited.

In addition, in 2021 there were 421 notifications of concentrations that were notified to the EC and then transmitted to the CCA, where the effects of these concentrations on competition in the Croatian market had to be assessed. At the same time, within the European Competition Network (ECN) cooperation, a well-placed authority to deal with the compatibility assessment

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<sup>20</sup> Notice on compatibility of the concentration Telemach Hrvatska d.o.o., Zagreb and OT-Optima Telekom d.d., Zagreb, Class: UP/I 034-03/21-02/011, 21 December 2021.

procedure is decided. In other words, it is the obligation of the EC to transmit the obligatory notification of a concentration to all national competition authorities in any case of concentrations with an EU dimension. As a rule, these are concentrations that produce effects in at least three Member States.

**Market investigations** are also one important part of the CCA regular activities. These sector inquiries are research projects with the purpose of gaining in-depth understanding of how particular sectors or markets work. It is also the analysis of possible market barriers and the legal framework regulating the particular markets, which is the prerequisite for effective enforcement of the rules falling under the scope of the CCA. These legal and economic analyses very often enable the CCA to detect indications for infringement proceedings.

Besides the market investigations, as previously mentioned, in 77 relevant markets that were linked with concrete cases, the CCA conducted three sector inquiries including the retail groceries' market (market research in food, beverages, toiletries and household supplies)<sup>21</sup>, the insurance market<sup>22</sup> and the press publishing market<sup>23</sup>.

In 2020 the CCA also continued with its intense activities involving proactive competition advocacy and development of competition culture and raising awareness about the significance of competition for the economy and consumers, particularly in the sense of creation of the whole institutional and economic environment that would promote the entry of the undertakings to the market and the removal of actual and administrative barriers for the development of competition.

In that sense, besides the enforcement of the rules under its scope involving the administrative proceedings and case handling, one of the important roles of the CCA is active **competition advocacy**. Concretely, the CCA is empowered to issue expert opinions regarding the compliance with competition rules of draft proposals for laws and other legislation, as well as the existing laws and other legal acts and other comments on related issues raising competition concerns. The primary enforcement activity of the CCA is thereby significantly enhanced by competition advocacy.

In 2021 there were **68 resolved advocacy cases**, thereof **16 expert opinions on laws** and **52 answers to different queries about competition issues**.

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<sup>21</sup> Available on the CCA website <https://www.aztn.hr/ea/wp-content/uploads/2016/10/Prikaz-tr%C5%BEi%C5%A1ta-trgovine-na-malo-mje%C5%A1ovitom-robom-prete%C5%BEno-hranom-pi%C4%87ima-i-higijenskim-proizvodima-za-doma%C4%87instvo-u-Republici-Hrvatskoj-u-2020.-godini.pdf>

<sup>22</sup> Available on the CCA website <https://www.aztn.hr/ea/wp-content/uploads/2016/10/Prikaz-istraganja-trzista-osiguranja-u-RH-u-2020.pdf>

<sup>23</sup> Available on the CCA website <https://www.aztn.hr/ea/wp-content/uploads/2016/10/Prikaz-istraganja-trzista-osiguranja-u-RH-u-2020.pdf>

The year of 2020 and the beginning of 2021 were marked with close and successful cooperation with the Ministry of the Economy and Sustainable Development within a working group founded and coordinated by the CCA in charge of drafting of the proposed Act on the Amendments to the Competition Act. On 21 January 2021 it was adopted by the Government of the Republic of Croatia and submitted into parliamentary procedure. The **Revised Competition Act 2021**, OG 41/2021 entered into force on 24 April 2021. Instead of adopting a completely new Competition Act, the Revised Competition Act 2021 was adopted in line with the rule against retroactivity, which would deprive the CCA of the legal basis and thus render impossible any opening or running of the infringement proceeding against any undertaking that has committed a serious infringement of competition law before the entry into force of this amended act, for instance, with respect to participating in a cartel that constitutes a hard core restriction of competition law and usually takes three to five years to be detected, which would leave such infringements unprocessed and unsanctioned.

The Revised Competition Act 2021 transposes 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+). The ECN+ Directive should have been transposed into the national legislations of the EU Member States by 4 February 2021<sup>24</sup> but due to covid-19 pandemic most of the Member States ran late with its transposition. Although it also ran more than two months late, Croatia was one of the first Member States that harmonized its competition rules with the provisions of the ECN+ Directive.

The purpose of the ECN+ Directive is to put in place fundamental guarantees of independence of the national competition authorities in the EU (NCAs), adequate resources and minimum enforcement and fining powers including periodic penalty payments in order to ensure that NCAs apply Articles 101 and 102 TFEU uniformly and effectively.

The Revised Competition Act 2021 establishes the CCA as a general, national regulatory authority in charge of competition in all markets. This brings into compliance the legal status of the CCA with the nature of the tasks that it actually performs. The legal status, the independence, the organization and the resources of the CCA have all been brought into compliance with the ECN+ Directive, which ensures the institutional, financial and operational independence of the CCA. At the same time, the CCA would be entered into the court register as a public institution.

In line with the ECN+ Directive it also introduces some new powers of the CCA, such as the power to impose fines and periodical penalty payments for the infringements so as to ensure a uniform and effective application of Articles 101 and 102 TFEU.

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<sup>24</sup> OJ L 11, 14.1.2019. The Directive entered into force on 4 February 2019. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 February 2021.

The Revised Competition Act 2021 defines the frequently used terms, such as “cartel”, “secret cartel”, “leniency programme”, “leniency statement”, “applicant authority”, “requested authority”, whereas the definition of “undertaking” particularly explains the term “association of undertakings” and defines the notion of “undertakings concerned” in merger assessment.

In addition, the Revised Competition Act 2021 introduces new legal tools, such as: “interview”, “periodic penalty payment”, “uniform instrument”, “settlement in cartel cases”, and elaborates “access to leniency statements and settlement submissions”. It also specifies the imposition of fines where the infringement is committed by an association of undertakings.

**For the infringements of the Competition Act in 2021 the CCA imposed the fines in the total amount of HRK 1.391,000.**

In the context of judicial review, 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 (hereinafter: High Administrative Court). The council of three judges decides about the claim against the decisions of the CCA.

In the report year the **High Administrative Court took 6 decisions on the basis of which it dismissed the claims of the claimants and upheld the decisions of the CCA in their entirety.**

With respect to the enforcement of the **rules in the area of unfair trading practices**, that is to say, the UTPs Act, in 2021 the CCA resolved **69** cases, thereof **ten** administrative cases and **60** non-administrative cases.

The total sanctions imposed by the CCA for the imposition of unfair trading practices amounted to **HRK 1.610,000.**

In 2021 the CCA **closed ten administrative proceedings with nine decisions given that some cases were joined.** In five decisions thereof the CCA found that the party to the proceedings used its strong bargaining power and imposed on its suppliers unfair trading practices. For the infringements concerned the CCA imposed fines<sup>25</sup>, whereas it terminated the proceedings in four cases<sup>26</sup>.

In seven administrative cases the CCA acted following the allegations from anonymous complaints, while the remaining cases were opened as a result of detected circumstantial evidence during the market investigation carried out by the CCA based on the analysis of the

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<sup>25</sup> CCA v KOKA d.d., Varaždin, Class: UP/I 034-03/18-04/012, 21 May 2021; CCA v AGRO GOLD d.o.o., Opuzen, Class: UP/I 034-03/18-04/024, 29 July 2021.

CCA v SPAR HRVATSKA d.o.o., Zagreb, Class: UP/I 034-03/20-04/002, 11 July 2021; CCA v Moslavina voće d.o.o., Dugo Selo, Class: UP/I 034-03/18-04/025, 30 December 2021.

<sup>26</sup> CCA v KUPOVINA d.o.o., Split, Class: UP/I 034-03/21-04/001, 7 December 2021; CCA v FRAGARIA NERETVA d.o.o., Opuzen, Class: UP/I 034-03/19-04/006, 30 December 2021; CCA v NTL d.o.o., Sesevete, Class: UP/I 034-03/18-04/002, 31 December 2021; CCA v PPK Valpovo d.o.o., Valpovo, Class: UP/I 034-03/18-04/020, 31 December 2021.

documentation requested within the meaning of Article 17 paragraph 1 of the UTPs Act that regulates the CCA's power in collecting data.

The administrative proceeding under the UTPs Act is a complex one. It requires a multidisciplinary approach to each particular case and investigation into all relevant facts and circumstances relevant for the adoption of a decision. The duration of the proceeding depends not only on the volume and complexity of information and documentation that is subject to the analysis and processing by the CCA but also on the activity of the party concerned and their cooperation with the CCA and their willingness to voluntarily remedy their behaviour that resulted in imposition of unfair trading practices in the food supply chain.

The experts of the CCA are empowered to handle the proceedings by applying the UTPs Act. The expert staff consists of lawyers that have passed the Bar Exam and have at least four years of experience in legal jobs after they have passed the Bar Exam. Expert economists are engaged in the proceeding in the part relating to economic issues in the cases concerned.

**The Croatian Act on the Amendments to the Act on the prohibition of unfair trading practices in the business-to-business food supply chain (hereinafter: Revised UTPs Act 2021)**<sup>27</sup> entered into force on 1 September 2021 but its full application started on 1 March 2022. The Revised UTPs Act 2021 transposed 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 (hereinafter: Directive (EU) 2019/633)<sup>28</sup> that has regulated for the first time the area of unfair trading practices in food supply chain in the EU. All administrative proceedings that had been opened before 1 September 2021 were closed pursuant to the UTPs Act 2017 then in effect. The Annual Report for 2021 therefore uses the terminology from both pieces of legislation. The Annual Report for 2020 describes the parts of the proceeding provided by the UTPs Act 2017.

The objective of the Revised UTPs Act 2021 is to rectify the existing irregularities in business-to-business relationships in the agricultural and food supply chain by providing clearer definition of unfair trading practices, empowering the CCA as a competent enforcement authority and institutional cooperation and strengthening of all enforcement authorities of the Member States and the EC.

Taking into account the fact that the Revised UTPs Act 2021 entered into force in this report year, we provide you with the explanation of the parts of the proceeding within the meaning of this piece of legislation. The major difference regarding the proceeding is that the "statement of the facts of the case" has been revoked given that the established facts of the case can be finally established only by the decision of the CCA resolving a particular administrative matter. Instead, the adoption of the Statement of Objections has been introduced. This is a part of the proceedings where the Revised UTPs Act 2021 has been

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<sup>27</sup> Official Gazette 52/21, 14 May 2021. Enters into force on 1 September 2021.

<sup>28</sup> OJ L 111, 25.4.2019.

harmonized with the Directive (EU) 2019/633, ensuring appropriate safeguards in respect of rights of defence, in accordance with the general principles of the EU law and the Charter of Fundamental Rights of the European Union. Another novelty is the revocation of the “main hearing” and in line with the Revised UTPs Act 2021 and the GAPA only the “oral hearing” is held and unannounced on-site inspections are introduced.

The proceeding under the Revised UTPs Act 2021 can be divided in **five parts**:

*(i) Opening of the administrative proceeding*

The administrative proceeding identifying the use of strong bargaining power of a buyer in transactions with its supplier by imposing unfair trading practices is initiated ex officio or upon the request of the party.

Not only within the administrative proceeding but also outside the proceeding, the CCA is empowered to demand in writing from the parties to the procedure and other legal or natural persons that do not have the status of a party to the procedure, cooperatives, professional or economic interest associations or associations and chambers, all necessary information, in the form of written statements and submission of contracts and other necessary data and documentation for inspection. This tool is also used in procedures involving market investigation in agricultural and food products, the purpose of which is to verify whether the addressees of the law have brought into compliance their business operations with its provisions, i.e., whether they have adjusted their contracts and their implementation with the provisions of the law, and whether they apply practices that are in in the sense of the law considered unfair.

In situations where, during such investigations, AZTN finds that there are indications that a particular buyer has violated the provisions of the law, it initiates administrative proceedings ex officio in order to protect the public interest.

In addition to the above, when assessing the existence of reasons for initiation of ex officio proceeding, the CCA considers complaints, or other notifications that point to the need to protect the public interest, and even anonymous ones when possible.

The CCA initiates the ex officio administrative proceeding on the basis of the notice delivered to the party to the proceeding.

In situations where the administrative proceeding relating to the use of strong bargaining power of the buyer in relation to its suppliers by imposing unfair trade practices is initiated at the request of a party, the procedure is considered to have been initiated at the time of delivery of the proper request of the party to the CCA.

In the current practice of the application of the UTPs Act, there have not yet been situations where administrative proceedings would have been initiated at the request of a party. Namely, the fear of the supplier is still present that because of their activity in the proceeding

against their buyer, i.e., reseller, purchaser and/or processor, they will jeopardize the business deals not only with that particular buyer, i.e., reseller, purchaser and/or processor, but also with other buyers.

*(ii) Investigation proceeding*

At the first stage of the procedure identifying the use of strong bargaining power by imposition of unfair trading practices, on the basis of the powers entrusted to it by the UTPs Act, the CCA collects written statements, information and documents from the parties to the proceeding and other legal or natural persons that do not have the status of the party to the proceeding, cooperatives, professional or economic interest associations or associations and chambers.

In addition to what has been stated, the CCA establishes the facts of the case by all suitable forms of evidence collection, and for this purpose it can hear witnesses, obtain the findings and opinions of experts and conduct an investigation. In situations where the assumptions under the GAPAs are met, and especially when the CCA assesses that it is useful for solving the administrative matter, it can hold an oral hearing.

As a rule, an oral hearing at this stage of the procedure will always be held when it comes to extremely complex procedures, and since the procedures identifying the use of strong bargaining power are very complex and require a multidisciplinary approach, it can realistically be expected that during the investigation (administrative) procedure the CCA will reach for that tool as well.

Since there is still a concern of suppliers and other complainants that by submitting complaints or requests for the initiation of the proceeding, they will be exposed to commercial retaliation, not only by their buyers, but also by other buyers, the Revised UTPs Act 2021 now explicitly stipulates that the CCA decides about the complainant's request or other notification for the protection of their identity, as well as about the protection of any other information, the disclosure of which could be considered harmful to their interests or to the interests of other suppliers. At the same time, it should be pointed out that the CCA has protected the identity of a person that would request such protection. In addition, whenever possible, the CCA investigates into the existence of indications for the initiation of administrative proceedings in connection with received anonymous complaints.

*(iii) Preliminary facts and circumstances of the case – Statement of Objections*

In the procedural part of the law, the part related to the actions of the CCA has been modified, in other words, the CCA revokes the "statement of the facts of the case" given that the established facts of the case can be finally established only by the decision of the CCA resolving a particular administrative matter. Instead, the adoption of the Statement of Objections has been introduced. This is a part of the proceedings where the Revised UTPs Act 2021 has been harmonized with the Directive (EU) 2019/633, ensuring appropriate safeguards in respect of rights of defence, in accordance with the general principles of the EU law and the Charter of

Fundamental Rights of the European Union and the substantial nature of the administrative procedure, in terms of terminology and substance. In this sense, the party against which the proceeding is being conducted will be able to respond in writing to the preliminarily established facts of the case.

Thus, based on the results of the investigation, and after the facts and circumstances in the investigation have been preliminarily established, and after the CCA has preliminarily identified that the party to the proceeding used its strong bargaining power by imposing unfair trading practices on its supplier, i.e., violated the provisions of the law, the CCA delivers to the party a Statement of Objections in the specific case and informs them of the content of the CCA decision made on the basis of the preliminarily established facts of the case.

In addition to the Statement of Objections, the CCA also sends the party a call for oral hearing that is scheduled after the expiry of the deadline for the delivery of the party's written statement on all the circumstances and facts presented in the procedure.

#### *(iv) Oral hearing*

The main hearing in the sense of the UTPs Act, as a stage in the proceedings where the party was given the right to present a defence, i.e., to present evidence enabling the CCA to identify the existence of conditions for the imposition of a fine and to determine mitigating and aggravating circumstances, as criteria for setting the fine, was replaced by oral hearing.

Namely, after the expiration of the deadline for the delivery of the party's written statement, the CCA holds oral hearing, as a mandatory step in the revised procedure, set in accordance with the provisions of the Revised UTPs Act 2021 and the general administrative procedure rules, where the party will be able to present their statement, that is, where evidence will be presented and used for identifying the infringement and setting the fine, taking into account the mitigating and aggravating circumstances in setting the level of the fine under the Revised UTPs Act 2021.

#### *(v) CCA infringement decision*

After the oral hearing, the CCA decides on the basis of the established facts of the case whether the law has been violated, and where it identifies an infringement, it also decides on the criteria for setting and imposition of the fine, calculates its amount, and sets the deadlines and the terms of payment. In that case, the CCA closes the proceeding by the adoption of a single decision.

Where the CCA finds no legal grounds for any further steps in the proceeding that was initiated on its own initiative, it takes a decision on termination of the proceeding.

Against this decision of the CCA no appeal is allowed but the party may take action against the decision of the CCA by filing a complaint for an administrative dispute at a competent administrative court. The High Administrative Court decides in the second instance. The claim

does not delay the execution of the decision, except for the part of the decision that pertains to the fine. The claim against the CCA decision does not suspend the course of the procedure. All disputes initiated before the competent administrative courts are urgent.

With respect to lawsuits challenging the infringement decisions of the CCA, identifying that a re-seller, purchaser and/or processor imposed unfair trade practices in terms of the UTPs Act, the competent administrative courts issued four judgments in 2021. In three judgements thereof the claimant's claim for annulment of the decision of the CCA was rejected, together with the requests for compensation for the costs of the administrative dispute, while in one judgment the decision of the CCA was annulled ordering the CCA to reopen the case and bring a new decision<sup>29</sup>. AZTN fully complied with the order of the Administrative Court in Zagreb and closed the administrative procedure by issuing a new decision on 25 November 2021, finding that the re-seller concerned had used its strong bargaining power by imposing unfair trading practices in relation to three suppliers. The CCA, taking into account the gravity, scope, duration and effects of the infringement for the supplier and the established mitigating circumstances, imposed a fine of HRK 400,000 on the re-seller concerned.

Also, in one of the administrative disputes, the competent administrative court issued a decision dismissing the plaintiff's claim as untimely filed.

**In 2021, in three rulings the High Administrative Court dismissed the appeal of the re-sellers and upheld the rulings of the first instance courts rejecting the claim for cancellation of the decision of the CCA on infringement of UTPs Act and imposed unfair trading practices, and upholding the infringement decisions of the CCA. By the rulings of the High Administrative Court the CCA infringement decisions became legally valid and the parties made payments of the respective amounts of fines plus penalty interest into the State Budget immediately after the respective decisions became legally valid.**

Another important segment of the operation of the CCA are its **international cooperation** activities.

In 2021 international activities took place both through multilateral cooperation and through bilateral contacts with competent authorities in and outside the EU. However, due to the extraordinary circumstances of the pandemic, the usual bilateral meetings where the CCA initiates or strengthens cooperation with individual bodies did not take place, and all contacts were made virtually. The same was true for the multilateral cooperation forums in which the CCA continued its activities.

Despite the extraordinary circumstances that continued due to the pandemic, the EC continued to hold virtual (on-line) meetings. The statistics shows that the number of meetings

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<sup>29</sup> CCA v LIDL HRVATSKA d.o.o. k.d., Velika Gorica, Class: UP/I 034-03/2018-04/015, 25 November 2021.

was the same as usual, as well as the participation of the CCA representatives in the meetings of working groups and subgroups of the ECN, advisory committees and the working group of the Council of the EU.

The trend of a large number of requests for information between the agencies through the ECN2 network continued. The CCA received and replied to 60 requests for information (which is on average 2.5 requests per Member State) and sent two requests to other Member States. In this way, the CCA proves itself as one of the advocates of active cooperation between the Member States. In the period from 1 January to 31 December 2021, 17 representatives of the CCA participated in meetings of working groups, subgroups and advisory committees, a total of 28 times (out of 36 meetings held, and all of them were held online). In one year, 421 notifications of concentrations were received from the EC and resolved.

In 2021, due to the COVID-19 pandemic, the OECD, like other international organizations, continued its activities and organized regular meetings on-line. The CCA cooperation with the OECD takes place twice a year, in the Competition Committee, where the CCA has a participant status since June 2016, and once a year in the Global Forum on Competition, where participation is open to all world jurisdictions, regardless to the country's membership in the OECD. The meetings of the Committee are structured through a series of round tables and discussions, based on the written and oral contributions of the participants, and in 2021 they covered the following topics: trade, development and competition, economic analysis in abuse of a dominant position, promotion of competitive neutrality, assessment of market power, challenges of digital markets. Competition during the time of the COVID-19 disease was also an inevitable topic, and within the work of the Competition Committee, the president of the Council, Mirta Kapural PhD, participated on the topic of competition compliance programs. The employees of the CCA also participated in the virtual OECD Competition Open Day held in February 2021.

Organized by the OECD-GVH Regional Centre for Competition in Budapest, several regular seminars (in virtual format) were held, in which the CCA expert staff participated. The topics of the seminar were: bid rigging, market research, abuse of a dominant position, competition and intellectual property rights, implementation of effective investigative procedures.

Within the working group for competition, a total of **32 meetings** were held in 2021 on the topic of adoption of the **Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) - DMA**. At its session held on 3 March 2021, the Committee for the Economy of the Croatian Parliament discussed and supported the position of the Republic of Croatia on the proposal of the Digital Markets Act. Since the DMA deals with a completely new matter and brings innovations in the field of competition and business in general, in March 2021 the CCA established an informal working group finding that it is important to include all relevant stakeholders in the Republic of Croatia from the very beginning in a long-term and demanding work on the proposal of the DMA.

The proposal of the DMA seeks to resolve negative effects on the contestability of the core platform services and large platforms that increasingly act as gateways or gatekeepers between business users and end users and enjoy an entrenched and durable position. These gatekeepers have a major impact on, have substantial control over the access to, and are entrenched in digital markets, leading to significant dependencies of many business users on these gatekeepers. Without action at the EU level, they could lead to a fragmentation of the Internal Market.

In addition to the work on the DMA, the CCA was also actively involved in the working group under the leadership of the Ministry of the Economy and Sustainable Development, dedicated to work on the Digital Services Act – DSA. The Digital Services Act and the Digital Markets Act are the European response to the thorough reflection process carried out by the EC, the EU Member States and many other jurisdictions in recent years with a view to better understanding of the effects of digitization, and especially internet platforms, on fundamental rights, competition and generally the society and global economy.

Transparency of the CCA activities is achieved through different communication channels with the general public. **Active competition advocacy** activities have been carried out through trainings and workshops for undertakings and consumers 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 relatively new rules to the addressed actors.

During 2021, the CCA employees were active in competition advocacy and held several expert papers. The education includes the basic concepts of competition, the work of the CCA and cooperation with the EC, prohibited agreements between undertakings, abuse of a dominant position of undertakings, concentration between undertakings and competition advocacy, along with practical examples. At the same time, education is often focused on all current issues and news in the development of competition law. In this way, the CCA communication with the general public is deepened and redirected to professional and qualified public, primarily undertakings, the judiciary, attorneys and academia. During 2021, the CCA employees also published several articles related to the revisions of the Competition Act and the orthodontists cartel case.

In compliance with the principles of transparency, independence, neutrality and professionalism in the communication with the parties and the public, in line with its publicly available **Communication Strategy**<sup>30</sup>, 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, market studies and its practice. The authorised representatives of the CCA are present in the media and maintain contact with the journalists.

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<sup>30</sup> Available on the CCA website

[http://www.aztn.hr/uploads/documents/o\\_nama/programi\\_rada/Komunikacijska\\_strategija\\_2014.pdf](http://www.aztn.hr/uploads/documents/o_nama/programi_rada/Komunikacijska_strategija_2014.pdf)

The CCA publishes different related content and guides and its representatives participate in conferences, trainings and workshops as paper holders or participants covering the specific matters in the area of competition law and policy and unfair trading practices. All press releases, the legislative framework and summaries of the CCA decisions are translated into the English language and published on the CCA website.

In 2021 the CCA published 51 decisions, replied to 20 queries of the journalists and 24 queries of the parties and published 52 press releases. The CCA published **10 issues of its monthly e-bulletin AZTNinfo**<sup>31</sup> containing the monthly updates of the CCA decisions and other activities and reports about the most recent decisions and developments in the comparative practice in the area of competition law and policy in the EU and globally.

Regarding the judicial review of the decisions of the CCA, it must be noted that exclusively the CCA lawyers who passed the Bar Exam represent the CCA in courts in the proceedings carried out against the decisions of the CCA. Thus, the CCA does not use any attorneys' services but relies on its own experts.

In 2021 all the activities in the area of competition and unfair trading practices have been realized by less employees than in the preceding year. Concretely, in 2021 the CCA had **49 employees**, three less than in 2020. Out of this total, one employee took unpaid sabbatical leave from 1 August to 31 December 2021 for the purpose of education abroad.

Unfortunately, the rising trend in experts leaving the CCA remained in 2021. The high-profile experts with specific knowledge and work experience are very much sought on the labour market by the private sector that can offer a higher pay. Another challenge for the CCA is the education and training of the newcomers in this complex matter on the account of the fact that it takes some time for the new staff to be equipped to work independently.

In 2021 there were 17 requests for access to files. Out of this number, three requests have been transferred to other competent authorities, whereas all other requests have been complied with within the deadline and the decisions on the received requests have been communicated to the persons who asked for access to files. The information commissioner has been communicated the Report about the implementation of the Act on the Right of Access to Information in 2021 and it was published on the CCA website.

In conclusion, the CCA priorities for the upcoming period are based on three main determinants: effective enforcement and sanctioning, competition advocacy, and cooperation with all stakeholders. Effective enforcement of the rules falling under the jurisdiction of the CCA in the area of competition implies the use of all investigative tools and methods available to the CCA and appropriate sanctioning with a general deterrent effect preventing other undertakings from engaging in anticompetitive practices.

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<sup>31</sup> Available on the CCA website <http://www.aztn.hr/aztn-info/>

The main tasks of the CCA in the enforcement of the rules in the field of competition will continue to be the elimination of hardcore restrictions stipulated by the provisions of the Competition Act and Articles 101 and 102 TFEU, such as prohibited agreements, primarily prohibited horizontal agreements between competitors (cartels) that produce the greatest harm to the economy and consumers, and abuse of a dominant position that distorts the competitive structure of the market. In the same way, activities will continue in the area of merger control and compatibility assessment of concentrations, directly arising from acquisitions of and mergers between undertakings and the consolidation of individual markets.

An extremely important activity is certainly competition advocacy, that raises the awareness of the importance of competition rules and the benefits that competition brings to citizens and consumers, and builds competition culture that ensures a deterrent effect. Specifically, it includes the opinions about the compliance with competition rules of laws, law proposals and other pieces of legislation with the provisions of the Competition Act, the conduct of sector inquiries with the aim of better understanding of the relations in certain relevant markets, transparency of operations and modern communication with all stakeholders, participation in trainings and their organization, expert meetings and international conferences on current and specific topics in the area of competition.

In the coming period, the enforcement of the other law falling under the scope of the CCA, that is to say, the Revised UTPs Act 2021, will continue. The CCA will continue to raise awareness of the necessity and use of fair trading practices in business relations between suppliers and buyers through the procedures it carries out within the meaning of the UTPs Act and the decisions it makes on the basis of these procedures. At the same time, the CCA will be active in promoting knowledge about fair trading practices and the benefits of complying with the rules that regulate unfair trading practices in the supply chain of food and agricultural products. In addition to transparently informing the public about all decisions made by the CCA in this area of enforcement, it will continue to publish the guide with the updated answers to the addressee's inquiries about the application of the UTPs Act.

Furthermore, the CCA will continue to monitor digital markets with particular attention, where relations between undertakings take place, and which certainly bring about innovations in the enforcement of competition law. The challenges in the future are precisely digital markets, so the CCA, like other institutions, must adapt to new circumstances which, on one hand, contribute to the benefits for the economy and facilitate innovation, but also, on the other hand, respect the competition rules. The above specifically implies the further involvement of the CCA in the drafting of the Digital Services Act and the Digital Markets Act at the EU level.

In conclusion, we would like to note that effective competition is the foundation of a market economy and a prerequisite for its strengthening, it encourages innovation and provides consumers with benefits in the form of a wider choice, better quality of products and services, and lower prices.

Therefore, our goal for the CCA is to be a strong, modern, professional institution with the necessary resources, that will work its way through to contribute to the benefit of the economy and ensuring that competition and unfair trading practices rules are complied with and respected.

\*\* The Annual Report of the Croatian Competition Agency for 2021 in the Croatian language is available on the web site of the CCA, including three attachments: the List of CCA decisions in 2021, the List of rulings of the courts in 2021, and the List of sanctions imposed by the CCA in 2021.

President of the Competition Council

Mirta Kapural, PhD, LL.M

In Zagreb, 9 June 2022