

# THE CROATIAN PARLIAMENT

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

## DECISION

### PROMULGATING THE ACT ON THE AMENDMENTS TO COMPETITION ACT

I hereby promulgate the Act on the Amendments to Competition Act enacted by the Croatian Parliament at its session of 21 June 2013.

Class: 011-01/13-01/163

Reg.No: 71-05-03/1-13-2

Zagreb, 24 June 2013

President of the  
Republic of Croatia  
Ivo Josipović

# THE ACT ON THE AMENDMENTS TO COMPETITION ACT

## Article 1

In the Competition Act (Official Gazette, 79/09) after Article 2 a new Title and Article 2.a shall be added to read as follows:

*“Application of the EU acquis”*

### Article 2.a

This Act shall also stipulate the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (OJ C 115 of 9.5.2008; hereinafter referred to as: TFEU) to all forms of distortion of competition by undertakings which produce effects on trade between the Republic of Croatia and the EU Member States pursuant to 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, 4.1.2003; hereinafter referred to as: Council Regulation (EC) No 1/2003), 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, 29.1.2004; hereinafter referred to as: Council Regulation (EC) No 139/2004.”

## **Article 2**

In Article 9 in the introductory sentence after the words "of this Act" the following words shall be added: "or Article 101 of the TFEU".

## **Article 3**

After Article 10 the following Article 10.a shall be added to read:

### **"Article 10.a**

(1) Block exemption shall apply also to the agreements that produce effects on trade between the Republic of Croatia and the EU Member States which meet the conditions under Article 101 (3) of TFEU and the relevant regulations of the European Commission or the Council of the European Union for block exemption granted to certain categories of agreements from the general ban of the agreements referred to under Article 101 (1) of the TFEU.

(2) Within the meaning of the Council Regulation (EC) No 1/2003 the Agency may by means of a decision withdraw the benefit of block exemption referred to under paragraph (1) of this Article or make a decision on the basis of which the European Commission or the Council of the European Union block exemption regulations under which certain categories of agreements may be granted exemption from the general ban under Article 101 (1) TFEU shall not apply to a particular agreement producing effect on the territory of the Republic of Croatia or a part thereof that constitutes a distinct geographic market which is not compatible with the provision of Article 101 (3) of TFEU.

(3) In the case referred to in paragraph (2) of this Article the decision of the Agency on the withdrawal of the benefit of block exemption shall not impose a fine but it shall set the time limit for the agreement in question to be brought in compliance with the conditions set under Article 101 (3) of TFEU or where this is not possible it shall order the agreement in question to be maid null and void."

## **Article 4**

In Article 14 paragraph (1) in the introductory sentence after the words "of this Act" the following words shall be added: "or Article 102 of the TFEU".

## **Article 5**

In Article 14 paragraph (5) point 3 after the words "Companies Act" the following words shall be added: "or other legislation in effect".

Paragraph (6) shall be amended to read as follows:

"(6) The creation of a joint venture by two or more independent undertakings performing on a lasting basis all the functions of an autonomous economic entity where such a joint venture has as its object or effect coordination of the competitive behaviour of the undertakings that remain independent shall constitute a concentration but such a coordination shall be appraised within the meaning of the criteria referred to under Article 8 paragraphs (1) and (3) of this Act."

## **Article 6**

In Article 17 paragraph (2) the words "Where the parties to the concentration are unable to deliver financial statements at the time of the notification of concentration", shall be replaced by the following words to read: " Where the parties to the concentration are unable to deliver financial statements for the financial year preceding the concentration at the time of the notification of concentration".

Paragraph (3) shall be amended to read as follows:

"(3) The aggregate annual turnover under paragraph (1) hereof shall be calculated by:

1. Adding together the respective turnovers of the following:

- the undertaking party to the concentration;

- those undertakings in which the undertaking concerned, directly or indirectly owns more than half the shares or capital or business assets, or has the power to exercise more than half the voting rights, or has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or has the right to manage the undertakings' affairs;

- those undertakings which have in the undertaking party to the concentration (acquiring or controlling undertaking) the rights or powers previously listed, and

- those undertakings in which an undertaking as referred in line 3 of this point has the rights or powers listed in line 2 of this point.

2. Whereas no account shall be taken of the turnover:

- resulting from the sale of products or the provision of services between the companies within the group (turnover within the group)."

In paragraph (6) after the words "of this Article" the following words shall be added: "and of the concentrations for which the obligatory notification to the Agency has been provided by the separate rules".

After paragraph (6) a new paragraph (7) shall be added to read:

"(7) Exceptionally, the parties to the concentration are not subject to obligatory notification of a proposed concentration to the Agency even if the criteria under paragraph (1) of this Article are cumulatively met, provided that obligatory notification of such a concentration to the Commission has been regulated within the meaning of Council Regulation (EC) No. 139/2004."

## **Article 7**

In Article 19 after paragraph (6) a new paragraph (7) shall be added to read:

"(7) Where the Commission decides within the meaning of the Council Regulation (EC) No. 139/2004 not to assess a concentration producing effect on trade between the EU Member States that at the same time meets the conditions under Article 17 of this Act and that the assessment of the concentration concerned should be assigned to the Agency, the parties to the concentration at issue shall notify the proposed concentration to the Agency within 30 days from the date of the receipt of the relevant decision of the Commission."

## **Article 8**

In Article 20 paragraph (1) point 2 shall be amended to read:

"2. annual financial statements of the parties to the concentration for the financial year preceding the concentration".

## **Article 9**

In Article 22 paragraph (2) shall be amended to read:

In the case referred to in paragraph (1) of this Article the Agency shall without delay give the notifying party proposing the implementation of the concentration a notice on compatibility of the concentration concerned. The notice on compatibility of the concentration shall also be published on the website of the Agency.

## **Article 10**

The headline above Article 23 shall be amended to read: "*Withdrawal or partial withdrawal of the decision on concentration*".

In Article 23 paragraph (3) the word "amend" shall be replaced by the words: "partially withdraw by means of a new decision", whereas the words "such an amended decision" shall be replaced by the words "such a decision".

## **Article 11**

In Article 26 paragraph (1) shall be amended to read:

"(1) The Agency is a legal person with public authority which as an independent entity autonomously performs the activities within its scope and powers regulated by this Act, the Council Regulation (EC) No 1/2003 relating to the application of Articles 101 and 102 of the TFEU and the Council Regulation (EC) No. 139/2004.

After paragraph (1) new paragraphs (2) and (3) shall be added to read:

(2) In carrying out its activities referred to in paragraph (1) of this Article the Agency shall cooperate with the European Commission and the national competition authorities of the EU Member States.

(3) For the performance of its activities the Agency is responsible to the Croatian Parliament."

The existing paragraphs (2), (3), (4), (5), (6) and (7) shall become paragraphs (4), (5), (6), (7), (8) and (9).

In the former paragraph (8) which becomes paragraph (10) the word "collected" shall be replaced by the word "determined".

In Article 26 paragraph (8) the word "imposed" shall be replaced by the word "determined".

## **Article 12**

In Article 30 point 2 shall be amended to read:

"2. make decisions on the basis of which the Agency initiates and carries out the proceedings relating to the establishment of distortion of competition and the proceedings relating to the determination of the conditions necessary for the imposition of fines in respect of the infringements of competition rules under this Act and under Articles 101 and 102 of the TFEU, and make decisions on the basis of which the Agency solves the administrative matter in question, decides on the adoption of measures, in other words obligations, conditions and deadlines necessary to restore effective competition and imposes fines, respective deadlines and the manner of the execution of fines,"

After point 2 a new point 3 shall be added to read as follows:

"3. make decisions on the basis of which the Agency suspends the proceeding where the European Commission or the competent national competition authority of the EU Member State is dealing or has already dealt with the same case,"

The existing point 3 shall become point 4.

In the existing point 4 which shall become point 5 the words "Administrative Court " shall be replaced by the words "High Administrative Court".

The existing points 5, 6, 7, 8, 9, and 10 shall become points 6, 7, 8, 9, 10 and 11.

The existing point 11 which now shall become point 12 shall be amended to read:

"12. ensure international cooperation relating to the fulfilment of the international commitments undertaken by the Republic of Croatia and given to the powers of the Agency, which particularly involves the obligation of close cooperation with the European Commission and the competent national competition authorities of the EU Member States within the European Competition Network and the commitments provided by the Council Regulation (EC) No 1/2003 and the Council Regulation (EC) No. 139/2004, and cooperate with other international organisations and institutions in the area of competition,"

The existing point 12 shall become point 13.

## **Article 13**

In Article 32 point 3 the words the words "Administrative Court" shall be replaced by the words "High Administrative Court".

After point 3 a new point 4 shall be added to read:

"4. inform the Council about any received request of the European Commission submitted pursuant to the Council Regulation (EC) No 1/2003 regarding the carrying out of a surprise inspection by the Agency in the territory of the Republic of Croatia with the purpose of establishing an infringement under Article 101 or 102 of the TFEU, or about any request of the European Commission on the Agency to afford necessary assistance in carrying out of these inspections and about any request of the competent national competition authority of the EU Member State to carry out surprise inspection or any other investigation measure in

the territory of the Republic of Croatia on its behalf, for the purpose of collecting evidence in order to establish an infringement of Article 101 or 102 of the TFEU."

In the existing point 4 which shall become point 5 after the words "decision making", the words shall be added "draw up a draft of the decision and" the comma shall be deleted whereas after the word "Act" the following words shall be added "or Article 101 or 102 of the TFEU."

The existing point 5 shall become point 6 and shall be amended to read:

"6. draw up drafts of the decisions on the basis of which the Agency suspends the proceedings where the European Commission or the competent national competition authority of the EU Member State is dealing or has already dealt with the same case."

The existing points 6, 7, 8 and 9 shall become points 7, 8, 9 and 10.

The existing point 10 shall become point 11 and shall be amended to read:

"11. ensure international cooperation relating to the fulfilment of the international commitments undertaken by the Republic of Croatia and given to the powers of the Agency, which particularly involves close cooperation with the European Commission and the competent national competition authorities of the EU Member States within the European Competition Network and the commitments under the Council Regulation (EC) No 1/2003 and the Council Regulation (EC) No. 139/2004, and cooperate with other international organisations and institutions in the area of competition,"

The existing point 11 shall become point 12.

#### **Article 14**

In Article 35 paragraph (1) shall be amended to read as follows:

"(1) In the proceedings falling under the scope of the Agency a general administrative procedure law shall apply.

After paragraph (1) a new paragraph (2) shall be added to read as follows:

"(2) Unless otherwise provided by this Act, the provisions of the Law on Minor Offences shall accordingly apply to the form and content of the notice of hearing, the commencement of the main oral hearing, the appearance of the parties and third persons at the main hearing and the minutes of the main hearing."

The existing paragraphs (2) and (3) shall become paragraphs (3) and (4).

#### **Article 15**

In Article 36 paragraph (4) the word "conclusion" shall be replaced by the word "decision" both in the first and second appearance of the same word in the paragraph concerned, whereas the word "Administrative" shall be replaced by the words "High Administrative."

#### **Article 16**

In Article 37 paragraph (5) the words "be submitted the short form Statement of Objections referred to in paragraph (4) of this Article" shall be replaced by the words "enjoy the rights provided by paragraph (4) of this Article."

### **Article 17**

In Article 38 paragraph (1) shall be amended to read:

"The Agency shall act *ex officio* where it initiates the proceedings concerning the establishment of a prohibited agreement as referred to in Article 8 of this Act and the proceedings concerning the establishment of a prohibited agreement as referred to in Article 101 of the TFEU, the proceedings for the assessment of agreements as referred to in Article 10 paragraph (4), Article 10.a and Article 11 paragraph (4) of this Act and the proceedings concerning the establishment of abuse of a dominant position referred to under Article 13 of this Act and the proceedings concerning the establishment of abuse of a dominant position referred to Article 102 of the TFEU."

In paragraph (2) the word "amendments" shall be replaced by the words "a partial withdrawal".

In paragraph (4) the word "conclusion" shall be replaced by the word "decision".

In paragraph (5) number "10" shall be replaced by number "6" whereas the word "conclusion" shall be replaced by the word "decision".

After paragraph (5) new paragraphs (6) and (7) will be added to read as follows:

"(6) Where the Agency on the basis of the initiative under Article 37 of this Act finds during the course of the preliminary investigation of the relevant market within the meaning of Article 32 point 1 lines a) and b) of this Act, with the view to establishing sufficient circumstantial evidence for the commencement of the proceeding relating to distortion of competition pursuant to Article 101 or 102 of the TFEU that there is no effect on trade between the EU Member States, it shall adopt a decision establishing that there are no grounds to open the proceeding within a time period that shall not exceed six months from the receipt of the initiative for the initiation of the proceedings and notify thereof the person who filed the initiative.

(7) By means of a decision the Agency shall establish that there are no grounds to open the proceeding also in the case where the European Commission or any competent national competition authority of the EU Member State carries out the proceeding in the same case or where the European Commission or any competent national competition authority of the EU Member State have already closed the proceeding in the same case."

The existing paragraph (6) shall become paragraph (8) and shall be amended to read:

"(8) No appeal is allowed against the decision referred to in paragraphs (4), (5), (6) and (7) of this Article but one may bring action by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia."

In the existing paragraph (7) which shall become paragraph (9) the words "conclusion under paragraphs (4) and (5)" shall be replaced by the words "decision under paragraphs (4), (5), (6) and (7)."

### **Article 18**

In Article 39 paragraph (1) in the introductory sentence after the words "of this Act" words "and Article 101 or 102 of the TFEU" shall be added.

In paragraph point 2 after the words "the provisions of this Act" the words "and Article 101 or 102 of the TFEU" shall be added.

In paragraph (2) the word "Administrative" shall be replaced by the words "High Administrative."

#### **Article 19**

In Article 40 a new paragraph (7) shall be added to read:

"(7) Where the proceeding has been initiated on the basis of Article 101 or Article 102 of the TFEU the Agency shall pursuant to the Council Regulation (EC) No 1/2003 inform thereof the European Commission and where necessary the competent national competition authority of the EU Member State without delay."

#### **Article 20**

In Article 41 paragraph (1) after the words "Agency is" a comma shall be inserted and the words "for the purpose of application of this Act and Article 101 or 102 of the TFEU" shall be added.

Paragraph (3) shall be amended to read:

"Where a party to the proceedings or any other legal or natural person referred to in paragraph (1) hereof fail to act in compliance with the request of the Agency, the Agency shall by means of a conclusion initiate a proceeding relating to establishing the grounds for the imposition of fines, it shall communicate a Statement of Objections and a notice of hearing to the party concerned, after which it shall by means of a decision establish whether an infringement of this Act has been committed and if so, impose a fine provided for the infringement concerned in compliance with this Act. Against this decision no appeal is allowed but one may bring action by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia."

#### **Article 21**

In Article 42 paragraph (1) shall be amended to read:

"(1) Prior to the conduct of a surprise inspection of the business premises, land and means of transport, the Agency shall make a request to the High Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to conduct a surprise inspection of business premises, land and means of transport, to examine all documents, records and objects found there, and to seal any business premises or records and to seize objects, particularly if it can be reasonably suspected that the evidence necessary for the establishment of distortion of competition within the meaning of Article 8 or 13 of this Act or Article 101 or 102 of the TFEU is being kept on these premises or in possession of a certain person but there is a reasonable suspicion that it may be destroyed or concealed. Within the meaning of the Council Regulation (EC) No 1/2003 the Agency shall submit such a request to the High Administrative Court of the Republic of Croatia also following a request of the European Commission or a competent national competition authority of the EU Member State."



After paragraph (1) new paragraphs (2) and (3) shall be added to read:

"(2) High Administrative Court of the Republic of Croatia shall:

1. within two days from the receipt of the request of the Agency referred to in paragraph (1) of this Article decide on issuing a warrant for the conduct of surprise inspection, whereas

2. a warrant to carry out surprise inspection must contain:

- the reference to the subject of the surprise inspection referred to in paragraph (1) of this Article and Article 44 of this Act,
- legal basis for the conduct of the surprise inspection,
- authorised persons from the Agency and other accompanying authorised persons who will carry out the inspection,
- the deadline for the conduct of the surprise inspection.

(3) Within the meaning of the Council Regulation (EC) No 1/2003 the Agency shall afford the European Commission the necessary assistance regarding the preparation for and the conduct of the surprise inspection in the territory of the Republic of Croatia. The Agency may authorise other officials from the competent national competition authority from other EU Member States to take part in the surprise inspection in the territory of the Republic of Croatia or it may carry out surprise inspection on behalf of the authority concerned."

The existing paragraph (2) shall become paragraph (4) and shall be amended to read:

"(4) The authorised persons of the Agency alone or with the assistance of law enforcement authorities (hereinafter: authorised persons) and authorised persons referred to in paragraph (3) of this Article may conduct surprise inspections referred to in paragraph (1) of this Article, on which the party or the proprietor of the premises and objects shall be informed at the spot at the moment of the conduct of the surprise inspection. Where in carrying out of the surprise inspection referred to in paragraph (1) of this Article physical resistance or threats and implementation of coercive measures may be expected, or where the assistance of an expert witness or other expert assistance might be sought, the authorised persons of the law enforcement authorities shall afford adequate assistance to the authorised persons of the Agency, the European Commission or the competent national competition authority of the EU Member State in carrying out the surprise inspection."

In the existing paragraph (3) which shall become paragraph (5) the word "Administrative" shall be replaced by the words "High Administrative."

In point 2 of the existing paragraph (4) which shall become paragraph (6) after the words "on which they are stored" the semicolon shall be deleted and a comma and the following words in brackets shall be added "(for example, computers, servers, telephones)."

After the existing paragraph (5) which shall become paragraph (7) a new paragraph (8) shall be added to read as follows:

"(8) Articles 42 to 46 of this Act shall apply accordingly to surprise inspections which the Agency is obliged to conduct in the undertakings or association of undertakings in the territory of the Republic of Croatia upon the request of the European Commission in compliance with its powers concerning the implementation of the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings which affect trade between the EU Member States."

## **Article 22**

After Article 42 Article 42.a shall be added to read:

**"Article 42.a**

Where in the course of the conduct of the surprise inspection referred to in Articles 42 and 44 of this Act objects are found which indicate that a criminal offence has been committed which is prosecuted *ex officio*, the authorised persons of the law enforcement authorities shall describe the objects concerned in a separate police report and temporarily seize them, whereas a certificate on the seizure of this objects shall be issued at the spot. The authorised persons shall immediately report of the case to the public prosecutor."

**Article 23**

In Article 43 preceding the word "Where" the number of the paragraph "(1)" shall be inserted.

After paragraph (1) paragraphs (2) and (3) shall be added to read:

"(2) Representatives of the undertaking or the employees of the undertaking shall cooperate with the authorised persons referred to in Article 42 paragraphs (3) and (4) of this Act concerning the conduct of the surprise inspections referred to in Articles 42 and 44 of this Act.

(3) Upon the request of the authorised persons of the Agency, a person using a computer or having access to the computer or other data storage or media, shall ensure free access to the computer or data storage or media, and provide all necessary information relating to their undisturbed use."

**Article 24**

In Article 44 paragraph (1) after the words "by the Agency" the following words shall be added: "pursuant to Article 8 or Article 13 of this Act or Article 101 or 102 of the TFEU".

**Article 25**

In Article 45 paragraph (1) shall be amended to read:

"(1) The conduct of surprise inspection shall not extend to correspondence, notices and other communication which is considered confidential information between the undertaking against which the proceeding is carried out and its lawyers dully authorised to act, who are obliged to keep their communication covered by the obligation of professional secrecy pursuant to special rules."

**Article 26**

In Article 47 paragraph (5) shall be amended to read:

"(5) The person who filed the initiative and the persons who, based on the separate decision of the Agency, have been granted the same procedural rights which are enjoyed by the person who filed the initiative, shall enjoy the right of access to the documents which served as a basis for the decision of the Agency as follows: after the receipt of the decision referred to in Article 38 of this Act stating the reasons on the basis of which there was no public interest or no grounds for the initiation of the proceedings, after the receipt of the decision of

the Agency establishing no infringement of competition rules under the provisions of this Act (Article 58 paragraph (1) point 13) or after the receipt of the decision on termination of the proceeding. In such a case, the provisions of paragraph (2) and (4) of this Article also refer to their right of access to file. The Agency shall set the time of access to file without delay, but not later than eight days from the receipt of the written request.”

Paragraph (7) shall be amended to read:

“(7) The Agency shall deny access to file by means of a decision.”

#### **Article 27**

In Article 48 paragraph (5) shall be amended to read:

"(5) A copy of the short form Statement of Objections referred to in paragraph (1) of this Article which does not contain data which are covered by the obligation of business secrecy shall be transmitted by the Agency upon request to any person whose right or legal interest has been acknowledged by the Agency by means of a separate decision, in other words ensuring this person the same rights in the proceeding that are enjoyed by a person who filed the initiative, instructing the person concerned that he/she holds the power to inform the Agency of his/her observations in a written reply to the Statement of Objections within a time limit of one month from the day of its receipt".

In paragraph (6) the words “final decision” shall be replaced by the following words: “decision deciding about the administrative matter”.

#### **Article 28**

In Article 49 paragraph (7) after the words "an infringement of this Act" words "or an infringement of Article 101 or 102 of the TFEU" shall be added.

#### **Article 29**

In Article 51 paragraph (1) after the words "of this Act" words "or Article 101 or 102 of the TFEU" shall be added.

In paragraph (4) the word "Administrative" shall be replaced by the words "High Administrative".

#### **Article 30**

In Article 52 paragraph (1) after the words "provisions of this Act" words "or the provisions of Article 101 or 102 of the TFEU" shall be added.

In paragraph (3) point 2 after the words "provisions of this Act" words "or Article 101 or 102 of the TFEU" shall be added.

In paragraph (4) point 3 after the words "of this Act" words "or Article 101 or 102 TFEU" shall be added.

In point 4 after the words "of this Act" words "or Article 101 or 102 of the TFEU" shall be added.

Paragraph (7) shall be deleted.

### **Article 31**

In Article 53 after paragraph (6) a new paragraph (7) shall be added to read:

"(7) Within the meaning of the Council Regulation (EC) No 1/2003 and the Council Regulation (EC) No. 139/2004, and by way of derogation from the obligation of protection of business secrecy by the Agency provided under this Article, the Agency may disclose, use or exchange information covered with the obligation of business secrecy with the European Commission or the competent national competition authorities of the EU Member States, and use these information as evidence exclusively in the proceedings relating to establishment of distortion of competition under Article 101 or 102 of the TFEU."

### **Article 32**

In Article 57 paragraph (3) after the words "Article 10 paragraph (4)" the words "and Article 10a." shall be added, whereas the word "amendments" shall be replaced by the words "a partial withdrawal".

### **Article 33**

In Article 58 paragraph (1) point 2 after the words "Article 10 paragraph (4)" the words "and Article 10a." shall be added.

In point 7 the word "amends" shall be replaced by the words "partially withdraws".

In point 9 number "45" shall be replaced by number "49".

In point 13 after the words "of this Act" words "or Article 101 or 102 of the TFEU" shall be added.

After point 13 instead of the full stop a semi colon will be inserted and new points 14, 15, 16 and 17 shall be added to read:

"14. decisions by which it terminates the proceeding when the same case is being dealt with or has been dealt with the European Commission or a competent national competition authority of the EU Member State within the meaning of Article 30 point 2 of this Act and the Council Regulation (EC) No 1/2003;

15. decisions on the basis of which it establishes that there are no grounds or public interest for the initiation of the proceeding under Article 38 of this Act;

16. decisions on the basis of which it acknowledges the right or legal interest to the persons who do not have the status of a party to the proceedings, ensuring this person the same rights in the proceeding that are enjoyed by a person who filed the initiative;

17. decisions on the basis of which access to the file is denied."

In paragraph 2 point 4 the word "Administrative" shall be replaced by the words "High Administrative".

Points 5 and 6 shall be deleted.

#### **Article 34**

In Article 59 paragraph (2) shall be replaced to read:

"Decisions of the Agency under Article 58 paragraph (1) points 1 to 11 of this Act shall be published in the Official Gazette."

In paragraph (3) the word "Administrative" shall be replaced by the words "High Administrative".

After paragraph (4) a new paragraph (5) shall be added to read:

"(5) Within the meaning of the Council Regulation (EC) No 1/2003 the Agency shall no later than 30 days before the adoption of a decision on the basis of which it establishes distortion of competition under Article 101 or 102 of the TFEU, on the basis of which commitments are accepted under Article 49 of this Act in the proceedings initiated concerning the infringements of Article 101 or 102 of the TFEU, or on the basis of which the benefit of block exemption of a certain agreement is withdrawn within the meaning of Article 10.a paragraph (2) of this Act, inform thereof the European Commission, and where necessary also the competent national competition authorities of the EU Member States, and provide a summary of the case and the envisaged decision."

#### **Article 35**

In Article 60 after the words "to sanction the infringements" the words "of this Act and Article 101 or 102 of the TFEU" shall be added.

#### **Article 36**

In Article 61 point 1 after the words "of this Act" the words "and Article 101 or 102 of the TFEU" shall be added.

In point 2 after the words "of this Act" the words "and Article 102 of the TFEU" shall be added.

In point 4 number "10" shall be replaced by number "11".

#### **Article 37**

In Article 62 point 1 the words "Article 24 paragraph (1) point 2" shall be replaced by the words "Article 19 paragraph (1)".

In point 4 the word "Administrative" shall be replaced by the words "High Administrative".

After point 4 instead of the full stop a semi colon shall be inserted and point (5) shall be added to read:

"5. implements a concentration in contravention with Article 19 paragraph (5) of this Act".

#### **Article 38**

In Article 64 paragraph (3) after the words "in the infringement of this Act" the words "or Article 101 or 102 of the TFEU" shall be added.

In paragraph (4) point 2 after the word "infringement" words "of this Act or Article 101 or 102 of the TFEU" shall be added.

In paragraph (5) point 1 after the words "the provisions of this Act" the words "or Article 101 or 102 of the TFEU" shall be added.

In point 3 after the words "of the infringement" the words "of this Act or Article 101 or 102 of the TFEU" shall be added. The text after the words "to participate in the infringement" shall be deleted.

In paragraph 6 after the words "of this Act" the words "or Article 101 or 102 of the TFEU" shall be added.

In paragraph (7) after the words "grant a further reduction of the fine" the words "for the infringement of this Act or Article 101 or 102 of the TFEU" shall be added.

### **Article 39**

In Article 65 paragraph (1) after the words "the most severe infringements of the provisions of this Act" words "and Article 101 of the TFEU" shall be added.

In paragraph (4) the words "in the Community" shall be replaced by the words "in the European Union".

In paragraph (5) the words "pursuant to this Act" shall be deleted.

### **Article 40**

After Article 66 a new title and Article 66.a shall be added to read:

*"Cooperation between the courts, European Commission and the Agency*

#### Article 66.a

(1) Within the meaning of the Council Regulation (EC) No 1/2003 the application of Articles 101 and 102 of the TFEU shall fall under the scope of the commercial courts and they shall without delay inform the Agency on any court proceedings carried out pursuant to Article 101 or 102 of the TFEU.

(2) In the case where within the meaning of the Council Regulation (EC) No 1/2003 the European Commission submits to the competent court referred to in paragraph (1) of this Act written observations or opinions concerning the application of Article 101 or 102 of the TFEU, the court shall without delay transmit the copy of the written observation or opinion of the European Commission to the Agency and to the parties to the proceeding.

(3) Where within the meaning of the Council Regulation (EC) No 1/2003 the Agency submits written observations or opinions concerning the application of Article 101 or 102 of the TFEU to the competent court referred to in paragraph (1) of this Article, the court shall without delay forward a copy of the written observation or opinion of the Agency to the parties to the proceeding.

(4) The Agency and the European Commission may transmit the relevant written observations or opinions which are not binding to the competent court referred to in paragraph (1) of this Article at any point in the proceeding until the final judgement is made. With the permission of the court in question, the relevant bodies may also submit oral observations to the court.

(5) Where within the meaning of the Council Regulation (EC) No 1/2003 the competent court referred to in paragraph (1) of this Article asks the European Commission to transmit its opinion it shall without delay notify the parties thereof, and after it has received the unbinding opinion of the European Commission, it shall forward the copy of the opinion in question to the Agency and the parties to the proceeding.

(6) With the purpose of a uniform application of the EU competition law pursuant to the Council Regulation (EC) No 1/2003, when the competent courts referred to in paragraph (1) of this Article rule on agreements or practices under Article 101 or Article 102 of the TFEU which have already been the subject of a European Commission decision, they cannot take decisions running counter to the decision adopted by the European Commission. Where a decision is being contemplated by the European Commission in the proceedings it has initiated regarding the infringements under Article 101 or 102 of the TFEU the competent court may assess whether it is necessary to stay in its proceedings or to suspend the proceedings until the final decision of the European Commission is made. This obligation is without prejudice to the rights and obligations under Article 267 of the TFEU.

(7) The competent court referred to under paragraph (1) of this Article shall forward to the Agency a copy of any judgement made pursuant to Article 101 or 102 of the TFEU at the same time when this judgement is notified to the parties to the proceeding.”

#### **Article 41**

Article 67 shall be amended to read:

“(1) Against the decisions of the Agency no appeal is allowed but the injured party may bring action by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision. The claim shall be decided over by a panel of 3 judges concerning the following points of the decision concerned:

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

(2) The claims against the decisions of the Agency dealing with procedural issues shall not suspend the proceeding.

(3) Against the procedural orders (conclusions) adopted by the Agency and resolving procedural issues, no appeal is allowed and no administrative dispute may be lodged, however, the conclusion may be challenged by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia against the decision resolving the administrative matter in question.

(4) The claim referred to under paragraph (1) of this Article shall not postpone the enforcement of the decision, save for the part of the decision dealing with the imposed fine.

(5) Against the decision of the Agency establishing an infringement of this Act or Article 101 or 102 of the TFEU and imposing a fine for the infringement within the meaning of this Act a claim may be filed by the injured party to the proceedings, whereas against the decision of the Agency establishing that no infringement of competition rules has been committed within the meaning of this Act or Article 101 or 102 of the TFEU and the decision on the basis of which the proceeding is terminated, a claim may be filed also by a person who filed the initiative and the person who has been granted the same procedural rights which are enjoyed by the person who filed the initiative as referred to in Article 36 paragraphs (3) and (4).

(6) Against the warrant to carry out surprise inspections referred to in Articles 42 and 44 of this Act no appeal is allowed.”

#### **Article 42**

In Article 68 paragraph (1) the word “Administrative” shall be replaced by the words “High Administrative”.

#### **Article 43**

In Article 69 the number of paragraph “(1)” shall be deleted and the word “Administrative” shall be replaced by the words “High Administrative”.

Paragraph (2) shall be deleted.

#### **Article 44**

After Article 69 a title shall be inserted and Article 69.a added to read as follows:

#### *“Compensation for damages*

##### Article 69.a

(1) The competent commercial courts shall decide on the claims for damages based on the infringements of this Act or Article 101 or 102 of the TFEU.

(2) The undertakings who have infringed the provisions of this Act or Article 101 or 102 of the TFEU shall be responsible for the compensation for damages resulting from the infringements concerned.

(3) When deciding on the compensation for damages referred to in paragraph (1) of this Article the competent commercial court shall particularly take into account the legally valid decision of the Agency on the basis of which an infringement of this Act or Article 101 or 102 of the TFEU has been established or the final decision of the European Commission in the case where the European Commission established the infringement of Article 101 or 102 of the TFEU. This is without prejudice to the rights and obligations under Article 267 of the TFEU.



(4) Where case relating to the establishment of the infringement of Article 101 or 102 of the TFEU is being dealt by the Agency or the European Commission, the competent commercial court may assess whether it is necessary to stay in its proceedings or to suspend the proceedings until the legally valid decision of the Agency or the final decision of the European Commission is made.

(5) The competent commercial court shall without delay inform the Agency of any claim filed regarding the right to seek compensation for damages resulting from the infringement of the provisions of this Act or Article 101 or 102 of the TFEU.

(6) The limitation period for damages claims filed regarding the right to seek compensation for damages referred to in paragraph (1) of this Article shall be suspended from the day on which the proceeding was initiated by the Agency or by the European Commission until the day on which the relevant proceedings have been closed.”

#### **Article 45**

In Article 70 paragraph (1) after the words “infringement of the provisions of this Act” the words “or Article 101 or 102 of the TFEU” shall be added.

In paragraph (2) the word “final” shall be replaced by the word “enforceable”.

#### **Article 46**

In Article 71 paragraph (1) after the words “infringements of this Act” the words “or Article 101 or 102 of the TFEU” shall be added. The words “of this Act” in the wording at the end of the paragraph “on which the infringement of this Act was committed” shall be deleted.

In paragraph (2) after the words “of this Act” the words “or Article 101 or 102 of the TFEU” shall be added. There are no other changes in this paragraph (Translator’s note).

In paragraph (3) after the words “of this Act” the words “or Article 101 or 102 of the TFEU” shall be added.

#### **Article 47**

In Article 72 paragraph (1) after the words “of this Act” the words “or Article 101 or 102 of the TFEU” shall be added. Wherever the word “final” appears, it shall be replaced by the word “enforceable”.

#### **Article 48**

In Article 73 before the word “All” number “(1)” marking the first paragraph shall be added.

After paragraph (1) paragraph (2) shall be added to read:

“(2) The parties to the proceedings falling under the scope of the Agency shall have no right to seek reimbursement of costs of the proceedings concerned.”

#### **Article 49**

Article 74 shall be amended to read:

“(1) Within the meaning of Article (1) of the Treaty concerning the accession of the Republic of Croatia to the European Union (Official Gazette – International agreements, No 2/12), in the application of this Act, and particularly in case of legal voids or uncertainties relating to the interpretation of the rules, the criteria arising from the application of the competition rules applicable in the European Union shall apply.

(2) On the day of the accession of the Republic of Croatia to the European Union the Agency shall become a competent authority for the application of Articles 101 and 102 of the TFEU.”

### **Transitional and final provisions**

#### **Article 50**

(1) Claims against the decisions of the Agency received by the territorially competent administrative courts after the day of the accession of the Republic of Croatia to the European Union shall be dealt with by the High Administrative Court of the Republic of Croatia.

(2) The territorially competent administrative courts shall deliver all cases relating to the implementation of the Competition Act, that is to say, all ongoing cases regarding the claims filed against the decisions of the Agency that are being dealt by them on the day of the entry into force of this Act to the High Administrative Court of the Republic of Croatia.

(3) On the day of the entry into force of this Act the Croatian National Banks shall deliver all the ongoing cases covering competition issues in the banking sector and the financial services provided by credit institutions to the Competition Agency which will continue the proceedings concerned.

#### **Article 51**

This Act shall be published in the Official Gazette and shall enter into force on the day of the accession of the Republic of Croatia to the European Union.

Class: 022-03/13-01/134  
In Zagreb, 21 June 2013

THE CROATIAN PARLIAMENT

President of the Croatian Parliament  
Josip Leko