

Croatian Competition Authority carried out a fuel sales sector inquiry

The Croatian Competition Authority (CCA) launched the motor fuel sales sector inquiry in August 2022. One of the objects of the sector inquiry was to establish the relevant facts about the way and mechanisms used in setting the prices of fuels, having in mind the price increase of mostly used oil derivatives products (petroleum and diesel) due to the global disturbances in the relevant production and sales market.

The aim of this market study was to determine the facts regarding the criteria for determining the prices of motor fuels sold in specialized shops - petrol stations in Croatia, as well as to establish facts about the retail prices of motor fuels in the period from 2021 to 2022. The CCA analysed the fuel prices from 15 October 2021, when the first Regulation on determining the maximum retail prices of oil derivatives by the Government of the Republic of Croatia was adopted (Official Gazette, No. 112/21), that determined the maximum retail price with value added tax for three petroleum fuels and one diesel engine fuel. Prices and mark-ups of traders were analysed in detail in two periods: from 25 January to 31 January 2022, and from 8 to 22 November 2022, specifically for the purpose of comparative analysis of these two periods, due to the fact that in the first observed period, in January 2022, the Regulation on the repeal of the Regulation on determining the maximum retail prices of oil derivatives (Official Gazette, No. 133/21) was in force, that came into force on 6 December 2021, and during which fuel prices were not regulated for a certain period of time, and in the second period, in November 2022, during which fuel prices were regulated.

The relevant product market comprised the market for the sale of motor fuels, primarily petroleum fuels, diesel engine fuels, and LPG – auto gas. The market investigation aimed to establish facts primarily regarding the motor fuels retail market. Furthermore, considering the defined market situation in the retail market based on commercial and contractual relations with the undertakings active in the upstream market, the investigation also covered the motor fuels wholesale market. The geographic market included the territory of the Republic of Croatia.

This market investigation analysed the legislative and institutional framework of the motor fuels sale in Croatia, identified possible legal and/or factual barriers to entry to the motor fuels wholesale and retail markets in Croatia, determined general and quantitative indicators of the market situation in the sale of motor fuels in Croatia, defined the market position of individual undertakings, inspected into the regulatory framework for determining the prices of motor fuels, determined the facts about the retail prices of motor fuels (Eurosuper 95 without multifunctional additives, Eurosuper 95 with additives, Eurodiesel without additives, Eurodiesel with additives, LPG – auto gas) in the period from 2021 to 2022, including the method of determining the fuel prices, the application of the formula in calculating the motor fuel retail prices, the structure of the retail fuel prices in 2022, the application of different prices depending on the location of the petrol station, motor fuels taxes and fees, the relationship between the buyers and suppliers, including the facts related to purchase prices of motor fuels in 2022, and determined the facts regarding the contractual relationships between wholesale traders - suppliers of motor fuels, and the retailers of motor fuels and

liquefied petroleum gas (LPG). Additionally, the CCA gained insight into the comparative investigations of some other national competition authorities.

The market inquiry was based on a questionnaire sent to all relevant stakeholders in the market, including large, medium-sized, and small motor fuel traders (a total of 22 undertakings) operating at the retail and/or wholesale level. After the CCA received the basic information from the Croatian Energy Regulatory Agency (HERA) and the Croatian Chamber of the Economy (HGK), detailed questionnaires were sent to the surveyed undertakings in multiple phases from mid-November 2022 to early June 2023. The sample of the undertakings that was included in the questionnaire was primarily based on the HERA and HGK databases, and additional data and responses provided to the CCA by the included undertakings in the first phase of the inquiry. Additionally, the CCA also contacted the Association of small and medium-sized motor fuel distributors (UMDG) whose 40 members mostly operate on the retail level.

The sector inquiry has not included the upstream market (refinery operations and business), due to the fact that the only refinery in Croatia (owned by INA) was closed down for maintenance. In other words, fuel supply to consumers in Croatia during the observed period was mainly carried out through imports or entries from other countries.

Legal framework

The Act on Oil and Oil Derivatives Market (Official Gazette, No. 19/14, 73/17, and 96/19; hereinafter referred to as the Oil Market Act) is the primary piece of law regulating the market for the sale of motor fuels in Croatia. In addition, the motor fuel sales market has been regulated by a number of other legal and ancillary provisions, the most important of them being the Regulation on setting the maximum retail price of oil derivatives adopted by the Government of the Republic of Croatia.

In accordance with the Oil Market Act, the prices of oil and oil derivatives are determined in accordance with the rules regulating market relations (Article 9 paragraph 1 of the Oil Market Act). Exceptionally, under Article 9 paragraph 2 of the Oil Market Act, the Government of the Republic of Croatia can by means of a regulation, for the sake of consumer protection, market regulation, or other justified reasons, prescribe the maximum retail price of certain oil derivatives for a continuous period not exceeding 90 days. The results of this market investigation have shown that from 15 October 2021 to the end of July 2023, a total of about 40 price-cup regulations of the Government of the Republic of Croatia were adopted. The first regulation came into force on 15 October 2021, prescribing the maximum retail price including VAT for four types of motor fuels. It should be noted that during the period from 6 December 2021 to 6 February 2022, the Regulation ceased to be in effect. In other words, during that period, the price of both regular and premium gas was set freely.

It is important to note that under the Oil Market Act it is possible to prescribe only the retail price but not the wholesale price. In this regard, the research results have shown that one of the adopted regulations in the period from 15 October 2022 to 31 July 2023, also specified the setting of the wholesale price. It is the Regulation on setting the maximum retail and wholesale price of oil derivatives (Official Gazette, No. 76/22). This regulation was additionally

based on Article 6 of the Act on Exceptional Measures for Price Control (Official Gazette, No. 73/97, 128/99, 66/01), in addition to the already mentioned provision of Article 9 paragraph 2 of the Oil Market Act.

With respect to legal and/or factual barriers to entry into the retail and wholesale motor fuel market in Croatia, the research results have shown that out of seven most significant surveyed undertakings (INA, Petrol, Tifon, AGS Hrvatska, Adria Oil, Coral Croatia, and Lukoil Croatia), four of them essentially stated that there had been no, or they had been not aware of them, legal or factual barriers to entry to the motor fuel wholesale and retail market in Croatia.

On the other hand, two surveyed undertakings cited that the retail price regulation constituted an entry barrier. One of the undertakings additionally stated that the licencing process for the performance of the activity concerned constituted a barrier to entry.

General and quantitative indicators on oil derivatives market in Croatia

The data on the number of petrol stations and their distribution by geographic location for the surveyed undertakings in the sample were collected directly from the undertakings themselves. The total number of petrol stations at the end of 2021 was 857 (of total 51 undertakings, including the members of the UMDG). For the sake of comparison, according to the publicly available data from the Ministry of Economy and Sustainable Development - Institute for Environmental Protection and Nature, stated in the "Report on Liquid Petroleum Fuels for 2021," there were 76 suppliers registered in the database "Fuel Quality at Petrol Stations and Storage Facilities," owning 872 petrol stations. This indicated that the CCA's investigation basically covered the entire retail network of petrol stations in Croatia.

The investigation results also showed that INA had the highest number of petrol stations, totalling 396. Together with its affiliated company Tifon, which had 47 petrol stations, the INA Group had a total of 443 petrol stations at the end of 2021. Petrol had 203 petrol stations, together with Crodux Derivati Dva.

Motor fuel retail market structure in Croatia in 2021

On one hand, the analysis into the structure of the retail motor fuel market in Croatia in 2021 included all types of fuel jointly and, on the other hand, individual types of fuel (Eurosuper 95 without additives, Eurosuper 95 with additives, Eurodiesel without additives, Eurodiesel with additives, and LPG – auto gas). It must be noted that the investigation was launched in 2022, and therefore, the indicators refer to 2021, the last full business year.

The largest motor fuel retailer in 2021 was INA (MOL Group), whose market share was [50 – 60] percent based on the turnover from the five observed types of motor fuel. In addition, Tifon held a market share of [5 – 10] percent, bringing the MOL Group's market share to [60 – 70] percent. Petrol followed with a market share of [10 – 20] percent, Lukoil Croatia with a market share of [5 – 10] percent, and other undertakings with lower market shares. The market shares are expressed in percentage range rather than in exact figures because the data provided by the undertakings were marked as business secrets.

The Herfindahl-Hirschman Index (HHI) for this market was 4.428, indicating that the retail motor fuel market in Croatia in 2021 was highly concentrated.

Furthermore, the results of the investigation showed that in the total sold quantities of motor fuel by the surveyed retailers in 2021, the share of Eurodiesel without additives was 44 percent, and the share of Eurodiesel with additives was 29 percent. Thus, the combined share of Eurodiesel was a significant 73 percent, showing that Eurodiesel is the most sold type of motor fuel in Croatia. The share of Eurosuper 95 without additives was 11 percent, with additives 13 percent, making up for 24 percent of the combined share of Eurosuper 95 in the total sold quantities of motor fuel in 2021. The share of LPG-auto gas was 3 percent.

With respect to individual types of fuel, in the sale of Eurosuper 95 without additives INA held a market share of [50 – 60] percent. Additionally, Tifon held [10 – 20] percent, bringing the MOL Group's market share to [70 – 80] percent. The HHI for this market was 5.539, indicating that the retail market for Eurosuper 95 without additives in 2021 was highly concentrated.

For Eurosuper 95 with additives, the investigation results showed that the MOL Group (INA and Tifon) held a market share of [60 – 70] percent. The HHI for this market was 4.910, indicating that the retail market for Eurosuper 95 with additives in 2021 was also highly concentrated.

For Eurodiesel without additives, the MOL Group (INA and Tifon) held a market share of [60 – 70] percent. The HHI for this market was 4.301, indicating that the retail market for Eurodiesel without additives in 2021 was highly concentrated.

As for Eurodiesel with additives, the investigation results showed that the MOL Group (INA and Tifon) held a market share of [60 – 70] percent. The HHI for this market was 4.607, indicating that the retail market for Eurodiesel with additives in 2021 was highly concentrated.

Finally, for LPG-auto gas, the CCA found that the MOL Group (INA and Tifon) held a market share of [40 – 50] percent. The HHI for this market was 3.086, indicating that the retail market for LPG-auto gas in 2021 was also highly concentrated.

Motor fuel wholesale market structure in Croatia in 2021

The structure of the wholesale motor fuel market was examined by the CCA exclusively based on the responses received from the survey. Since it did not include wholesalers outside Croatia who sell fuels to undertakings in Croatia, the results and data should be understood considering this fact. In this context, regarding the wholesale market of oil derivatives, the research results from the sample showed that INA was the most significant player in this market, holding a market share of [50 – 60] percent in 2021. Tifon did not have a notable presence in the wholesale motor fuel market. Following INA were Crodux Derivati Dva, which was then operating separately with a market share of [10 – 20] percent, and Petrol with a market share of [10 – 20] percent. The combined market share of Petrol and Crodux amounted to [20 – 30] percent. The HHI for this market in 2021 was 5.566, indicating a highly concentrated market. Regarding the individual five types of fuel in the wholesale market, the

results essentially indicated that INA had the highest turnover in the sample in each of the individual market categories.

Regulatory framework for motor fuels price setting

In the section related to the regulatory framework for fuel price setting, the results of the inquiry essentially showed that since the liberalization of the market in February 2014, the prices have been set in line with the market conditions.

During the relevant period covered by this market inquiry, regulatory changes occurred due to global market disruptions and rising oil prices in the world market. Thus, from 15 October 2021 onwards, with occasional interruptions, the retail prices of petroleum products were regulated by the Government of Croatia through the adoption of around 40 price-cap regulations setting the maximum retail prices of oil derivatives. These price-cap regulations have been setting the maximum fuel mark-up for fuels without additives (regular or basic fuels). Motor fuels with additives (premium fuels) have been excluded from these regulations, i.e., their price has been freely determined by the retailers.

Furthermore, the Act on Biofuels for Transport ("Official Gazette," No. 65/09, 145/10, 144/12, 14/14, 94/18, and 52/21) is also an important piece of legislation because it prescribes the so-called "green fee." Based on the provisions of this Act, the Regulation on Amendments to the Regulation on the Special Environmental Fee for Not Placing Biofuels on the Market and for Not Reducing Greenhouse Gas Emissions ("Official Gazette," No. 35/22) was adopted, which reduced the fees for fuel distributors from the obligation to mix biofuels into diesel engine fuel or motor petrol. This regulation came into force on 1 April 2022 and was in effect until 31 December 2022. By reducing this fee for distributors, it further enabled the reduction of fuel prices. Until the conclusion of the CCA inquiry, the latest amendments to this regulation came into force on 1 July 2023, and were valid until 31 December 2023, extending the payment of the reduced fee for not placing biofuels on the market, thereby allowing the calculation of a more favourable retail fuel price to protect consumers. In the meantime, from the closure of the inquiry until the time of this press release, new amendments to this regulation were adopted at the end of 2023 ("Official Gazette," No. 158/23), which are essentially the same in content and keep the reduced fees in force until 30 June 2024.

Since 1 January 2019 there has been a new measure introduced to compensate for part of the excise taxes for diesel engine fuel used as a propulsion fuel in commercial transport of goods and passengers by trucks and buses, respectively, and since 1 January 2020, the compensation for part of the excise taxes for diesel engine fuel used as a propulsion fuel in commercial transport of goods and passengers by rail, to reduce transportation costs and strengthen the competitiveness of undertakings in that sector. During 2022 and 2023, two regulations were adopted to compensate for part of the cost of diesel engine fuel used as a propulsion fuel in commercial road passenger transport.

Motor fuel retail price and mark-ups

Regarding the motor fuels retail price setting during the observed period, most retailers referred to the regulations of the Government according to which they set the fuel price accordingly. Outside this framework, either a prescribed formula or supplier prices were used.

In terms of the structure of the fuel retail prices, the retail price of motor fuels essentially included: the purchase price, energy entity premium (mark-up), excise tax (including the fees for the Croatian Motorways, Croatian Road Transport Company, and Croatian Railways Infrastructure), and value-added tax. Some of the surveyed undertakings also mentioned additional costs such as fuel transportation costs and the addition of functional additives.

Thus, the retail price depends on the inputs that are beyond the control of the motor fuel retailers – the purchase price of fuel, excise taxes and taxes.

The results from the sample indicated that in the period from **25 – 31 January 2022** the excise taxes and VAT made up 54 percent of the retail price structure for Eurosuper 95 without additives. The excise taxes in January 2022 accounted for 34 percent of the motor fuel retail price structure, while VAT was 20 percent.

In the period from **8 to 22 November 2022**, excise taxes and VAT accounted for 46.4 percent in the retail price structure for Eurosuper 95 without additives. Excise taxes in November 2022 made up 26 percent of the retail price structure, while VAT accounted for 20 percent. It is noted that from 7 June 2022 the Government reduced the amount of the excise tax by 0.80 HRK/Litre for motor petrol (with and without additives) and by 0.40 HRK/Litre for diesel engine fuels.

From 15 October 2021 to 31 July 2023 the energy entity premium for non-additized motor petroleum and diesel engine fuels varied from 0.65 HRK/Litre (0.0863 EUR/Litre) to 0.94 HRK/Litre (0.1245 EUR/Litre).

The analysis of the energy entity premiums (**mark-ups**) essentially showed a decrease in energy entity premiums in November 2022 (the time period when the maximum retail price was prescribed) compared to January 2022 (the time period when the maximum retail price was not prescribed). Logically, the consequence of the regulation was the reduction in the premium (mark-up) on non-additized fuels.

However, the market inquiry results showed a significant increase in mark-ups on additized fuels. This was particularly noted for Eurodiesel, the dominant fuel in total fuel sales, where the mark-ups on additized fuels among major retailers in November 2022 increased more than twice compared to the mark-ups in January 2022.

The taxes and excise taxes in the sales of motor fuels have been further analysed. The excise taxes were changed multiple times based on the Regulation on the level of energy and electricity excise taxes. From the beginning of 2023 to 31 July 2023 there had been nine amendments to the Regulation on the level of energy and electricity excise taxes. The share of excise taxes in the retail price structure was lower than in the previous market inquiry for 2015/2016. The value-added tax rate remained unchanged (25%).

Regarding the part of the research concerning the deadlines for the issuance of invoices and the method of motor fuel distribution to petrol stations, it was found that generally the invoices were issued individually for each fuel delivery. Most of the surveyed undertakings transported the fuel to petrol stations using their own fleet of vehicles. Even "smaller" retailers significantly own their own vehicles - tank trucks and independently transport fuel to their petrol stations.

The part of the market inquiry regarding different pricing of fuel depending on the geographical location of a petrol station showed that retailers applied differentiated fuel prices based on various criteria – such as locations on highways, seasonal locations, and others.

Association of small and medium-sized motor fuel distributors (UMDG)

The Association of small and medium-sized fuel distributors (UMDG) has some 40 members – mainly undertakings with one petrol station. Based on the responses from a large number of the UMDG members, it was established that the association members did not negotiate jointly with the suppliers, but each member independently decided on the supplier and negotiated independently on commercial and other terms.

However, the UMDG members expressed their concern about blue-dyed diesel that was also subject to the provisions of the above-mentioned motor fuels price-cup regulations. According to them, the price of blue-dyed diesel was fixed for a long period and was not formulated as Platts + premium. Instead, it was expressed as a fixed figure that was below the purchase price for small distributors in the market.

Furthermore, the UMDG members identified INA as the most significant player in the market as a vertically integrated undertaking in the distribution chain of motor fuels, both directly and indirectly. According to UMDG, all major distributors at least partially purchase goods from INA.

In addition, the responses from the UMDG members indicated that, in the case of INA, the rebate schemes have been designed and communicated to the customers under the business agreements. According to the UMDG members, small distributors have observed inconsistencies in these schemes, noting that the rebates have not always been proportional to quantities. They particularly noticed this issue since the introduction of the motor fuels price-cup regulations. Since the regulations only provided the maximum retail price, it has occurred that the retail customers sometimes were granted better or nearly the same terms as small wholesale distributors for disproportionately smaller quantities of purchased fuel.

Additionally, some UMDG members mentioned the issue regarding the misaligned timelines, in other words, incongruent periods for setting the retail prices through government regulations, which covered a bi-weekly period, and the wholesale prices charged by fuel suppliers, which were typically calculated on a weekly basis. In such cases, if supplier wholesale prices that were set weekly increased during a certain period and the Government adopted a lower bi-weekly retail price under the price-cup regulation, the undertaking was

forced to operate with a significantly lower mark-up that was far from sufficient to cover the costs.

INA's General Terms of Business

Given the high market shares at both the retail and wholesale level in the motor fuel sales market, the CCA investigated into the certain aspects of INA's general terms of business in the sale of oil derivatives and LPG, as well as INA's rebate policy in the sale of motor fuels.

The findings in this part of the investigation indicated that INA applied general terms of sale, separately for motor fuels and for LPG-auto gas.

The CCA reviewed the document "General Terms of Sale of INA Oil Derivatives " dated 10 June 2023. Additionally, the CCA reviewed the document "General Terms of INA regarding the sale of LPG and the provision of LPG storage containers to legal entities" dated 1 January 2023 and 3 July 2023.

With respect to the pricing of fuels, the findings showed that the wholesale prices for motor fuels were uniformly determined for all wholesale customers. Prices were set at INA's wholesale warehouses, considering the purchase costs of oil derivatives in the Mediterranean market and the distribution costs. The prices were calculated on a weekly basis based on the previous week's Platt's quotations, adding the premium covering all distribution costs. Public procurement procedures could potentially be exempted from the aforementioned.

Similarly, INA's wholesale prices for LPG-auto gas were also uniformly set for all wholesale customers, in other words, applying a single wholesale price list for LPG across the entire country, typically on a weekly basis, unless otherwise regulated by the regulator (Ministry of the Economy and Sustainable Development). The calculated wholesale price from the price list represented the sum of the Platts quotation, costs, and wholesale margin.

INA further stated that it applied rebate scales for wholesale fuel customers based on economic, objective, and cost-justified criteria, for both motor fuels (petrol and diesel engine) and LPG-auto gas. INA clarified that it did not apply any customer segmentation by giving a special status to retailers in wholesale but applied identical rebates to all wholesale customers.

The review of INA's documentation showed that INA's general terms were transparent whereas its rebates policy was designed in detail in a separate document that provided volume discounts and other discounts and surcharges.

Comparative market studies of the relevant national competition authorities

For the purpose of this sector inquiry the CCA also consulted the relevant research and studies of other NCA's that carried out similar market inquiries into the motor fuel sector following the global distortions in this market and increasing prices, such as the German Bundeskartellamt, the Austrian Bundeswettbewerbsbehörde, CCPCs Ireland, Konkurrensverket Sweden, AGCM Italy, Konkurences padome Latvia, CMA of the United Kingdom and SPC Slovenia.

The conducted studies by these competition authorities primarily found that higher fuel prices in most national markets were not caused by any unlawful activities of motor fuel traders or lack of competition between petrol stations. Instead, they were the result of the rise in the global oil prices and/or refinery production costs resulting from the global energy situation. Additionally, the conclusions of these studies primarily indicated that it is challenging to distinguish between the price trends that would be in line with effective market competition in the motor fuel markets and the price trends that should raise competition concerns for regulators.

Conclusion

The final findings of the CCA sector inquiry indicated no likely competition concerns in the form of collusive practices or cartels in the fuel sales market in Croatia.

However, given the received responses of certain undertakings that participated in this market study, the CCA will continue to monitor the motor fuel sales market and take necessary steps in the event of suspected infringements of competition rules.