

## Croatian Competition Agency

### Summary Annual Report of the Croatian Competition Agency for 2018

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

**The Annual Report for 2018** outlines the CCA activities in the previous year and informs the political scene, the economic operators and all professional stakeholders about the operation of the CCA, ensuring the transparency and raising awareness about competition culture in the Republic of Croatia. Here are the highlights that marked the work of the CCA in 2018.

It must be noted that in the report year the activities of the CCA were not limited only to the implementation of competition rules. It was **the first year of the enforcement of the Act on the prohibition of unfair trading practices in the business-to-business food supply chain (UTPs Act)**. The CCA also continued with its intense activities involving competition advocacy and development of competition culture in general.

However, one of the circumstances that negatively affected the total of the resolved cases in the report year was the fact that the work of the Competition Council, the managing and decision-making body of the CCA, was interrupted from 15 November 2018 to 25 January 2019. Namely, on 15 November 2018 the term of office elapsed for three out of five members of the Competition Council and the Croatian Parliament appointed the new members as late as on 25 January 2019. This practically meant that the Competition Council could not adopt any decisions for more than two months given that it did not have the mandatory majority for any decision-making. This long interruption postponed a rather high number of decisions until 29 January 2019 when the first session of the new appointed Competition Council was held and the majority of the postponed cases were closed.

In 2018 in the area of antitrust, the CCA activities regarding the **prohibited agreements between undertakings** included preliminary market investigations on fifteen (15) relevant markets. After having carried out all the necessary legal and economic analyses in the cases concerned, the CCA accepted the offered commitments in one (1) case. In general, the CCA continued to advocate **commitments as a settlement mechanism** wherever the voluntarily proposed remedies were viable and proportionate to possible negative effects on competition. In such cases competition was quickly restored, no fines were imposed and, most importantly, procedures were shorter and efficient.

In nine (9) cases the CCA rejected the initiative for the initiation of the proceeding on the basis of the results of the preliminary market investigations that pointed to no circumstantial evidence for the opening of an ex-officio proceeding.

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

In the area of **abuse of a dominant position**, despite certain indices that pointed at possible abuse of a dominant position, after having examined the evidence and following the legal and economic investigation analysis in thirteen (13) relevant markets no evidence was found that in these cases abuse was committed by the undertakings concerned and the cases were closed by a non-infringement decision.

In the area of **merger control** the CCA received twenty-nine (29) notifications of proposed concentrations. Eighteen (18) cases thereof were resolved in the report year. The remaining eleven (11) cases were opened in November and December 2018 and five (5) thereof were resolved in January 2019 immediately after the appointment of the new members of the Competition Council in line with Article 31 of the Competition Act.

In the report year the majority of the activities of the CCA was again focused on proactive **competition advocacy** that is closely connected with the strengthening of competition culture among undertakings, competition experts and the wider public. The CCA issues 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 from the comparative practice raising competition concerns. These opinions are given at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, legal persons with public powers and local and regional self-government units but also in other cases where raising awareness about compliance with competition rules and creating of competition culture is in the centre of interest.

In the competition advocacy area, there were eighty-two (82) expert opinions adopted in 2018. Thirty-two (32) thereof were opinions on laws and bylaws where four (4) were expert opinions in the electronic communications area within the cooperation of the CCA with the Croatian Regulatory Authority for Network Industries (HAKOM). Additionally, the CCA provided answers to fifty (50) different queries received from the legal and natural persons, chambers and professional organizations etc.

In 2018 the CCA conducted four (4) **market studies** as research projects with the purpose of gaining an in-depth understanding of how particularly sensitive sectors or markets work.

These sectoral inquiries are traditionally carried out on the CCA own initiative with the view to detecting and removing any market failures and anticompetitive practices of the undertakings and concentrate also on the analysis of the legal framework regulating the particular markets. This very often enables the CCA to detect practices that contravene with competition rules.

The 2017 annual sector inquiries were conducted in 2018 in the retail groceries' market (market research in food, beverages, toiletries and household supplies), the press publishing market, the insurance market and the dairy products market.

The year of 2018 was the first year of the full application of the **Act on the prohibition of unfair trading practices in the business-to-business food supply chain** (UTPs Act). The UTPs Act entered into force on 7 December 2017 and started to apply on 1 April 2018 until which date all the agreements between the re-sellers, buyers and/or processors and their suppliers that had been concluded before the UTPs entered into force had to be adjusted with the provisions of the UTPs Act. **From the entry into force of the UTPs Act on 7 December 2017 until 31 December 2018 the CCA opened one hundred and ninety-seven cases (197) and resolved eighty-two (82) cases dealing with the alleged unfair trading practices in the food supply chain.**

Within these proceedings the CCA investigates all the elements relating to the nature of the business deals concerned. However, the mere opening of an infringement proceeding against a re-seller, a buyer or a processor does not mean that the practices concerned necessarily constitute unfair trading practices and thereby an infringement of UTPs provisions. The CCA decides on the merit on a case-by-case basis, considering all the relevant facts of the case and concrete evidence that substantiate the indices on the basis of which the proceeding has been opened in the first place.

At the beginning of the application of the UTPs Act one of the challenging tasks of the CCA was to inform the addressed actors and the wider public about the issues that fall under the scope of work of the CCA and the ones that escape the jurisdiction of the CCA. The clear separation of jurisdiction between the public administration authorities and the CCA and the awareness of the addressed actors about the powers of the inspection department of the Ministry of Finance on one hand and the CCA on the other hand, is essential for the timely response of the public administration authorities and the CCA to the infringements of the UTPs Act and good commercial practices, with the view to eliminating them and restoring a healthy business environment in business transactions.

The CCA closed the proceedings that have been initiated ex-officio against the re-sellers and buyers where it found that these have **imposed unfair trading practices within the meaning of the UTPs Act**. Concretely, the CCA closed three (3) proceedings: against the undertaking Plodine d.d. that was fined HRK 1.008 million, the undertaking NTL d.o.o. that was fined HRK

800,000, and Fragraria d.o.o. that was fined HRK 350,000 respectively for imposing unfair trading practices. The decisions of the CCA are published on its website.

However, given the fact that these proceedings have been closed in 2019 the CCA will inform the Croatian Parliament about them in its annual report for 2019.

By the entry into force of the UTPs Act on 7 December 2017 the CCA was given the power for its implementation and it was obliged to accordingly harmonize its Statute and other bylaws under Article 33 of the UTPs Act with its provisions. Within the meaning of the decision of the Competition Council the CCA adopted the Amendments to the Statute and submitted them to the Croatian Parliament for approval. The Amendments to the CCA Statute involved the changes in its organisation structure and the establishment of a new unit – the Unfair Trading Practices Division, listing the new competences of the Competition Council and the expert team relating to the implementation of the UTPs Act.

As a legal person with public powers the CCA particularly pays attention to how it pursues its activities and carefully balances its budget. **The CCA is financed exclusively from the State budget and has no operational or financial revenue of its own.** Administrative fees and fines set and imposed by the CCA are contributed to the State budget of the Republic of Croatia.

The planned funds for the regular operational activities falling under the scope of the CCA in the State budget for 2018 amounted to HRK 13.423,006. The total executed budget in 2018 amounted to HRK 13.264,565 which was 98.82 % of the planned funds.

**In 2018 the CCA resolved a total of 688 cases** in the area of competition and unfair trading practices.

**This is a rise of 6.7 % in comparison with the previous report year.** On the date of 31 December 2018 there were 49 ongoing cases. The administrative proceedings in these cases have been opened during 2018 and are still pending.

Out of the above mentioned 49 pending cases 17 thereof are in the area of competition whereas 32 are in the area of unfair trading practices in which, given the fact that the full application of the UTPs Act started on 1 April 2018, the infringement proceedings against re-sellers, buyers and processors have been opened in late June 2018.

In 2018 there were **425 notifications of concentrations with an EU dimension** that were notified to the European Commission and then transmitted to all the national competition authorities concerned, including the CCA, where the effects of these concentrations on competition in the Croatian market must be assessed. If there had been no interruptions in the work of the Competition Council additional 82 notifications would have been checked by the end of 2018.

This implies that the majority of 174 unresolved non-administrative cases as of 31 December 2018 involved for the major part the notified concentrations with the EU dimension and the CCA expert opinions on draft laws and other provisions. As already stated above, these proceedings were not closed due to the fact that the terms of office expired for three members of the Competition Council on 15 November 2018, which made the decision making impossible.

On 31 December 2018 the **CCA employed 52 workers** – which is a rise compared with 2017 when it employed 44 workers.

The **activities of the CCA at the international level** in 2018 were marked with the successful closure of the CCA participation in the legal preparation of the Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (ECN+) in the EU Council working bodies.

The **ECN Plus Directive** was adopted on 14 January 2019 after almost two years of legal preparation in which the CCA experts took an active part and supported its adoption. The ECN Plus Directive aims to strengthen the effectiveness of the competition authorities and the implementation of the EU antitrust rules by the national competition authorities, giving them appropriate enforcement tools to ensure the proper functioning of the EU market, particularly to small national competition authorities like the CCA.

The main provisions of the ECN Plus Directive relate to the operational independence of national competition authorities (NCAs) that should be strengthened in order to ensure the effective and uniform application of Articles 101 and 102 TFEU. To this end, NCAs must be protected against external intervention or political pressure. Similarly, NCAs must be independent in their recruitment procedures and decide independently on the spending of the budget allocations for the purpose of carrying out their duties. NCAs should have sufficient resources, in terms of qualified staff, financial means and technical and technological expertise, to ensure they are able to perform their tasks effectively.

The ECN Plus Directive aims to ensure enough powers and tools for effective implementation of antitrust proceedings that particularly include the power to inspect business and other premises, requests for information, interviews with any persons that might possess relevant information and the imposition of interim measures and commitments offered by undertakings. This includes the imposition of fines on undertakings and associations of undertakings.

Worth mentioning here are also the provisions on mutual assistance – cooperation between the NCAs in the application of Articles 101 and 102 TFEU that include the possibility of collecting the fines in any other Member State. The ECN+ contains also the provisions on the role of national competition authorities before national courts and on admissibility of evidence before national competition authorities.

The Member States must bring into force the laws, regulations and administrative provisions necessary to comply with the ECN+ by 4 February 2021 i.e. two years after its entry into force.

In the fifth year of the Croatian membership in the EU the representatives of the CCA continued to be **active in the OECD Competition Committee, the European Competition Network (ECN) and other fora like ICN, UNCTAD and ICC.**

In 2018 the CCA received thirty-seven (37) requests for information from the national competition authorities within the EU and provided a response to all of them. At the same time the CCA sent two (2) requests for information to other Member States' competition authorities.

The CCA international activities in 2018 included the **EU twinning light project in Monte Negro „Strengthening Institutional and Technical Capacities of the Agency for Protection of Competition"**. This has been the first successful standalone project of the CCA involving the expertise support to another national competition agency, in this concrete case the Montenegrin competition authority.

On 7 November 2018 the CCA organized the **21<sup>st</sup> International conference „Exchange of information between competitors, fixing prices or price components – the role of professional associations and chambers "**. Its objective was to disseminate knowledge about allowed and prohibited exchange of information between competitors focusing on price or price components fixing. Special attention was given to the role of professional bodies in the exchange of information in the sense of competition rules. Two panels were run at the conference: the first entitled "Information exchange in cartels", whereas the second panel was held under the title "Information exchange within chambers or professional associations – what is allowed and what is prohibited".

The CCA remained involved in active competition advocacy by participating in trainings and workshops for undertakings and consumers and continued to promote transparency of its work and open communication with the public.

**In the forthcoming period** the CCA will continue to focus its activities on investigating, eliminating and sanctioning of the most severe distortions of competition, such as abuse of a dominant position by undertakings in the market and restrictive agreements between undertakings.

The enforcement of the recently adopted Act on the prohibition of unfair trading practices in the business-to-business food supply chain is expected to take up a major part of the CCA resources. The UTPs provisions are complex and new and they for the first time regulate this very wide and demanding area of the prohibition of the unfair trading practices in the food supply chain, bearing in mind that the year of 2018 was the first year of its full application.

In the sense of the proper application of the EU competition rules the CCA will continue to play its active role in the cooperation with the European Commission and the national competition authorities within the European Competition Network (ECN).

In the area of raising awareness about the importance about the compliance of businesses with competition rules the CCA priority remains to advocate competition law. Transparency of its activities will continue to reflect through different communication channels in line with the CCA Communication Strategy. On its website the CCA will continue to publish its decisions, opinions and annual reports, the relevant articles written by its experts and press releases. Its experts will continue to respond to the invitations of the media, journalists, broadcasters dealing about its decisions and practice, and continue to organise press conferences, publish its monthly e-bulletin and other guides and brochures as well as organize and participate in trainings and workshops covering the specific matters in the area of competition law and policy.