Summary Annual Report of the Croatian Competition Agency for 2020

In compliance with its legal obligation under the **Competition Act** OG 79/09, 80/13 and 41/21, and the **Act on the prohibition of unfair trading practices in the business-to-business food supply chain** OG 117/17 (UTPs Act), the Croatian Competition Agency (CCA) submits its Annual Report for 2020 to the Croatian Parliament. The Annual Report for 2020 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 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 and to facilitate improvements in productivity and innovation of the actors in the market both in the Croatian and the EU internal market. At the same time, the activities of the CCA are aimed at ensuring that the fair-trading practices are defined, observed and protected by all the participants in the food supply chain.

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

The constant revisions of competition rules in the EU subsequently lead to adequate harmonization of the first Croatian Competition Act with the EU acquis. The first amendments to 1995 Competition Act came into effect in 1997 and 1998. On 1 October 2003 a new Competition Act came in force whereas on 1 October 2010 Competition Act now in effect entered into force. The amendments to the 2010 Competition Act were adopted on the day of the accession of the Republic of Croatia to the EU on 1 July 2013 whereas the most recent amendments to 2010 Competition Act entered into force on 24 April 2021.

At the moment of the completion of its twenty fourth annual report, pursuant to the Competition Act OG 79/09, 80/13 and 41/21 in effect, the CCA is a legal person with public powers, a general, national competition authority that autonomously and independently performs the regulatory activities in all markets as defined under the Competition Act and ancillary provisions thereof, and particularly with respect to direct application of Articles 101 and 102 of the Treaty on the functioning of the European Union, OJ C 115, 09.05.2008 (TFEU), 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.

In other words, the CCA is empowered for the application of the national and EU competition law. The Statute of the CCA, which has been ratified by the Croatian Parliament, provides for a detailed description of the CCA activities, lays down its internal organisation and regulates other issues related to the CCA work.

The main task of the CCA is to eliminate prevention, restriction and distortion of competition by the undertakings that conclude prohibited agreements or are engaged in abusive practices in the market. The powers of the CCA also include the 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 (UTPs Act). The full application of the UTPs Act started on 1 April 2018.

For the first time this piece of legislation has regulated the area of unfair trading practices in the food supply chain in Croatia. Concretely, the UTPs Act specifies the rules and provides for a system of measures for the prevention of imposition of unfair trading practices, it defines the unfair trading practices in the food supply chain, the imposition of which enables the use of the strong bargaining power of the buyer and/or processor or the re-seller with respect to their suppliers. The UTPs Act seeks to establish, ensure and promote the fair-trading practices that would protect all the participants in the food supply chain.

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

Under the most recent Act on the Amendments to the Competition Act that entered into force on 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, under the Competition Act in effect in the moment of the conclusion of the Annual Report of the CCA for 2020 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.

The conditions for the appointment, the term of office of the members of the Competition Council and the scope of competence of the Competition Council and the process of decision making are regulated by the Competition Act. The 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. 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.

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.

At the moment the Competition Council consists of four members. Unfortunately, in the first year of his third term of office, the president of the Council, Mladen Cerovac, passed away and in line with the Competition Act the powers of the president of the Council have been transferred to the vice-president of the Council, Ms Vesna Patrlj, until the appointment of the new president.

Taking the above-mentioned circumstances into account, the CCA is currently run by the following members of the Council: Vesna Patrlj, LLM, vice-president of the Council performing the duties of the president of the Council until the appointment of a new president of the Council (third term of office March 2019 – March 2024), Ljiljana Pavlic, MSc, MBA, member of the Council (second term of office January 2019 – January 2024), Denis Matić, LLM, member of the Council (second term of office January 2019 – January 2024), and Mirta Kapural PhD, member of the Council (first 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 and IT experts specialised in digital forensics – all experts in the area of competition law and policy. There is a team of at least one lawyer and one economist handling a case, accompanied, when necessary, by an IT expert. The expert team of the CCA performs administrative and expert activities, whereas based on so established facts, the Competition Council makes a decision on the basis of which the CCA resolves a case.

In 2020 the number of workers who carried out all the activities of the CCA in the area of antitrust, merger control and unfair trading practices remained constant compared with the previous year. Concretely, on 31 December 2020 the CCA had **52 employees**, which equals the number of employees in 2019. In the last quarter of 2020 two vacancy positions in the Restrictive Agreements Department were filled by two new lawyers who have been permanently employed subject to a six months probationary period. At that point there were 53 workers employed in the CCA. However, the sudden death of the president of the Competition Council, Mr Mladen Cerovac on 29 December 2020 decreased this number to

52. Therefore, for the longest part of 2020 there were 51 workers employed in the CCA, including the members of the Council.

The CCA is financed exclusively from the State budget and has no operational or financial revenue of its own. With the view to achieving its objectives in the area of competition and unfair trading practices in the business-to-business food supply chain it is essential for the CCA to keep and strengthen its independence and autonomy of operation. In compliance with the financial capacity of the State Budget of the Republic of Croatia it is important for the CCA to be ensured sufficient resources in terms of qualified staff, financial means, technical and technological expertise and equipment, necessary for its efficient functioning. 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 administrative fees and 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 2020 amounted to **HRK 13.776,638.** The total executed budget in 2020 amounted to HRK 13.630,936 which was 98.94 % of the planned funds.

In 2019 the planned funds for the regular operational activities falling under the scope of the CCA in the State budget for 2019 amounted to HRK 14.819,977. The total executed budget in 2019 amounted to HRK 14.294,281 which was 96.45 % of the planned funds. The comparison of the two latter figures for 2019 and 2020 indicates a decrease in the total executed budget by HRK 663,344 or 4.64 %.

The year of 2020 was globally marked by covid-19 pandemic that affected all the institutions and people working for these institutions. At the end of the year the CCA and its workers were struck by the death of their president of the Competition Council, colleague and friend, Mr Mladen Cerovac, one of the founders of the CCA and most prominent competition law experts in the Republic of Croatia.

The global health crisis caused by covid-19 affected the economies of all the countries in the world, including Croatia. The economy slowdown in Croatia and worldwide lead to a fall in the number of business transactions and consequently to the downscale of notifications of concentrations both at the EU and national level. For both the European Commission and the CCA it meant a shrinkage in the number of resolved cases in that area.

Secondly, the work and the proper functioning of the CCA due to the lockdowns in March, April and May, and again during November and December 2020, continued in home-office

mode. However, during these five months the hearings, as a mandatory constituent parts of the investigation and the administrative proceedings in the enforcement of the 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.

Thus, despite the fact that home-office could be organized for all the workers of the CCA, the year of 2020 was the first year in which oral hearings could not be held during five lock-down months. This adversely affected the number of resolved cases in 2020 and left a significant number of cases open.

In addition, the offices and the conference rooms of the CCA cannot be well-ventilated (the windows cannot open), which made it even impossible to comply with the precautionary measures.

The above-described reasons resulted in a moderate 5.6 % fall of the resolved cases in comparison with 2019, at the same time accompanied by the opposite trend because there had been a rising trend in 2019 compared with 2018. It must also be noted that 2019 was the first year of the full application of the UTPs Act when the scope of work of the CCA consequently surged compared with 2018.

In 2020 there were 729 resolved cases in the area of competition and the unfair trading practices (638 cases thereof in the area of competition and 91 cases in the area of unfair trading practices.

There were fines imposed in the total amount of HRK 1.630,000 for the established infringements of the Competition Act and the UTPs Act in the same report period.

The following table indicates the resolved cases in 2020:

	Number of resolved cases in 2020		
	Competition	Unfair trading practices	Total
Administrative cases	42	10	52
Non-administrative cases	596	81	677
Total:	638	91	729

On 31 December 2020 there were 28 pending administrative cases, 9 in the area of competition, 19 in the area of unfair trading practices. Predominantly, these administrative (investigation) proceedings were opened in the second half of 2019 or in 2020 but the legal conditions for their closure had not been met in the reporting period. Most of these cases have been or will be closed during 2021.

Besides the administrative cases that are handled by the CCA, 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 other regulations and opinions on the compliance of the laws and regulations in effect), market studies, 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, co-operation and assistance cases with other regulators and authorities, international co-operation cases, internal acts, access to files responses and other replies to addressees of the Competition Act.

In 2020 the CCA resolved 44 non-administrative cases less than in 2019. This was due to the above-mentioned decreased number of notifications of concentrations. Apparently, the rising trend would have been kept also in 2020 compared with 2019 had it not been stopped by the objective circumstances linked to the spread of covid-19 pandemic that prevented the normal conduct of the hearings, 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 several administrative proceedings could not be closed.

In the area of unfair trading practices the CCA also received a large number of queries from natural and legal persons that were not directly connected with the administrative (investigation) cases in this area. The majority of these queries were unsigned but they were all checked by the CCA for the presence of possible circumstantial evidence on the basis of which ex-officio administrative proceeding could be opened.

In the course of the report period the CCA received a total of 30 initiatives or complaints within the meaning of the Competition Act or the General Administrative Procedure Act for the initiation of ex-officio administrative proceeding, 14 within the meaning of the Competition Act in the area of competition and 16 complaints were received in the sense of the UTPs Act in the area of unfair trading practices. Out of the total number of received complaints 8 of them were unsigned, one in the area of competition, 7 in the area of unfair trading practices. After the conduct of the preliminary market investigation the CCA decided to initiate ex-officio proceeding in 8 cases thereof, 6 in the area of competition, 2 in the area of unfair trading practices.

Based on the decision on dismissal of the initiative (in the area of competition) or the notice on the lack of grounds for the opening of the proceedings (in the area of unfair trading practices and competition) the **CCA dismissed 18 initiatives or complaints**. Out of that number, 7 initiatives and one complaint were dismissed in the area of competition, 10 complaints were dismissed in the area of unfair trading practices.

The infringement proceedings in the area of restrictive agreements between undertakings and in the area of abuse of a dominant position by an undertaking are complex and require a

detailed economic and legal analysis and the observance of the right of defence that are stipulated by the Competition Act. These proceedings are always initiated ex-post and ex-officio upon the initiative for the initiation of the proceeding.

The proceeding itself consists of nine main phases:

(i) Phase One – Preliminary market investigation. If based on the initiative of a complainant this phase can take up to maximum six months.

(ii) Phase Two – 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 which can be neither shorter than 8 days nor longer than 30 days. In this phase 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.

(iii) Phase Three – Statement of Objections. The Statement of Objections ensures the party the right of defence. Within a 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 her comments and propose the witnesses to be heard or other evidence to be examined. Also, once its 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 committments with the view to eliminating the anticompetitive effects of its behaviour or failure to act. A non-confidential copy of the Statement of Objections can be communicated to the complainant (the person who has filed the initiative) and all persons that have been granted the rights of the complainant by the CCA, upon a written request of the person concerned. These persons can also send their comments on the Statement of Objections.

(iv) Phase Four – Oral hearing. The oral hearing is 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 carries out the analysis of the submitted comments.

(v) Phase Five – Decision of the Competition Council about the infringement. Based on all facts and evidence collected by the expert team, the Competition Council takes a decision on the merits (deciding whether the infringement has been committed or not).

(vi) Phase Six – In the case of infringement the CCA identifies the conditions for the imposition of a fine. Where the infringement decision is taken, the CCA informs the party of the facts of the case and calls for the main hearing. In exercising their right of defence, the parties invited to the main hearing have 15 to 30 days from the receipt of the call to the main hearing to submit written comments about all the circumstances that could affect the

adoption of the decision, particularly the definition of the criteria for fine setting. However, it must be noted at this point that the most recent Act on the Amendments to Competition Act that entered into force on 24 April 2021 revokes Phase Six and Phase Seven due to efficiency reasons and the necessary fine tuning of the provisions concerned within the meaning of the ECN+ Directive described below.

(vii) Phase Seven – Main hearing. At the main hearing the parties exercise their right of defence and protect their interests, particularly ensuring that all mitigating and aggravating circumstances and other criteria necessary for setting of the level of the fine are taken into account.

(viii) Phase Eight – The decision of the Competition Council on the infringement and the level of the fine.

(ix) Phase Nine – The adoption of the decision by the CCA in line with the decision of the Competition Council not later than four months from the closure of the main hearing identifying the infringement of the Competition Act and imposing the fine[*].

Within the concrete case proceedings in 2020 the CCA carried out the **investigations in 44 relevant markets.**

One of the priorities of the CCA in 2020 was the elimination of hard restrictions of competition within the meaning of the Competition Act contained in, particularly horizontal agreements concluded between competitors (cartels) that mostly harm the consumers and the economy as a whole. The conclusion of prohibited agreements constitutes the most serious infringement of competition rules. In 2020 the CCA **resolved a total of 32 cases in the area of prohibited agreements**, 16 thereof were administrative and 16 non-administrative cases.

After examining the indications for the initiation of the administrative (investigation) proceeding and finding them sufficient for the opening of the case, in two cases the CCA did not find evidence that would substantiate the original indications and took a non-infringement decision. Three cases were closed by the adoption of the committments proposed by the parties to the proceeding. Three cases were closed by the adoption of the infringement decision imposing the fine for the infringement concerned due to the failure of the party to submit the necessary documentation. In one case the CCA terminated the proceeding on the account of the fact that the party ceased to exist. In seven cases the CCA

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[*]However, it must be noted at this point that the most recent Act on the Amendments to Competition Act that entered into force on 24 April 2021 revokes Phase Six and Phase Seven involving the issuance of the facts of the case and the main hearing due to efficiency reasons and the necessary fine tuning of the provisions concerned within the meaning of the ECN+ Directive described below.

took the decision dismissing the complaint due to lack of standing to act, after it had conducted the preliminary market investigation in the cases concerned.

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 exclusionary practices. This is why the CCA continued to investigate in 2020 whether certain undertakings have been involved in such abusive practices.

In 2020 the CCA **resolved 26 cases in the area of abuse of a dominant position**, 14 thereof were administrative and 12 non-administrative cases. In one case the infringement proceeding was initiated but no evidence was found to substantiate the first indications on the basis of which the proceeding was initiated in the first place, and the CCA terminated the proceeding concerned. In 13 cases the CCA took the decision dismissing the complaint due to lack of standing to act, after it had conducted the preliminary market investigation in the cases concerned.

Despite that no infringement decision relating to abusive practices was taken by the CCA in the reporting period, in one case it conducted a surprise inspection, whereas in several cases the Statements of Objections have been communicated to the parties. These cases will be closed during 2021 after the oral hearing has been conducted. It must be noted here that the Act on the Amendments to the Competition Act that came into force on 24 April 2021 considerably simplifies the procedure by revoking the delivery of the second Statement of the Facts provided by the former Competition Act then in force. The right of defence is, on the other hand, indisputably ensured to the parties through the Statement of Objections, the right of the party to be heard and to provide comments and additional evidence, through the conduct of the oral hearing and the participation of the party throughout the course of the investigation until the adoption of the final decision which is additionally ensured under the General Administrative Procedure Act.

Mergers (concentrations between undertakings) are business transactions which are not *a priori* banned. They are a normal part of business life and a justified form of consolidation or restructuring processes of the companies concerned or the whole industries as a response to the challenges amid the changes in the markets with the view to achieving the savings and synergies that will ensure the new economic entities increase the competitiveness — and hence performance. Unlike the assessment of possibly restrictive agreements between undertakings or abuse of a dominant position by an undertaking/s 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, as a rule, on the merger notification of the undertakings concerned.

In other words, the participants to the concentration must notify the concentration prior to its implementation, i.e., any transaction cumulatively fulfilling the criteria for notification

defining the turnover thresholds in the Croatian and global market stipulated in Article 17 paragraph 1 cannot 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 that should outweigh the anticompetitive effects of the concentrations, such as the decline in the number of competitors or the rise in collusive behaviour. This is the reason why merger control that includes prior assessment of compatibility of concentrations under the Competition Act remains in the focus of the CCA attention.

Out of 16 cases handled in the area of merger control by the CCA in 2020, in 10 cases the CCA assessed the compatibility of the notified concentrations, in one case it monitored the implementation of the committments in the previously assessed and conditionally approved concentration, whereas in five cases the CCA provided replies to queries with respect to the notification obligation regarding the transactions concerned.

Out of 10 cases where the CCA assessed the compatibility of the notified concentrations, 6 of them were cleared in Phase I based on the submitted documentation and additional available data. These concentrations have had no significant effect on competition given the fact that their implementation did not create or strengthen the existing dominant position in the market.

The CCA dismissed the notification of concentration in three cases based on the lack of grounds for any further steps of the compatibility assessment. In two cases thereof the CCA found that the turnover thresholds for obligatory notification have not been fulfilled, whereas in one case the parties to the concentration abandoned the concentration and withdrew from the notification due to covid-19 circumstances.

In one case an in-depth legal and economic analysis was carried out in the assessment of compatibility of the concentration in Phase II due to likely significant effect of the notified concentration on competition. The assessment procedure was initiated and carried out but in this particular case no possible negative effects on competition relating to the implementation of the proposed concentration in the relevant markets concerned have been found and the concentration was approved by the decision of the CCA.

In this area the CCA was also particularly involved in the monitoring of remedies aimed at preventing a significant impediment to effective competition in the telecommunications market. Altogether there have been more than 550 steps taken in the cases concerned, more than 120 in the reporting year. The monitoring of the remedies by the trustee and the reports submitted to the CCA with respect to the conditionally approved concentration between Hrvatski Telekom / OT-Optima Telekom, and OT-Optima Telekom / H1 Telekom, that were joined in one case in 2018 and became Hrvatski Telekom / OT-Optima Telekom due to the acquisition of H1 by OT-Optima Telekom, ensured additional scrutiny and

objectivity in the complex and challenging monitoring process. At the moment the fulfilment of the committments under the deadlines set by the decision of the CCA on a conditionally approved concentration is monitored by the Divestiture Trustee that informs the CCA about the implementation of the divestiture commitments. In line with the CCA decision from June 2017 the concentration between HT and Optima and the management of Optima by HT will cease on 10 July 2021.

In 2020 **no concentration was prohibited**.

In 2020 there were **405 notifications of concentrations that were notified to the European Commission** and then transmitted to all the national competition authorities concerned, including the CCA, where the effects of these concentrations on competition in the Croatian market had to be assessed. The concentrations with an EU dimension (as a rule, these are concentrations that produce effects in at least three Member States) are notified to the European Commission and then, in line with the EC Merger Regulation, transmitted to all Member States on the account of the fact that any Member State referred to in the reasoned submission may express its agreement or disagreement as regards the request to refer the case. Namely, in line with the EC Merger Regulation and within the European Competition Network (ECN) cooperation, under the rules governing the referral of concentrations from the European Commission to the EU Member States and in line with the submission procedure, a well-placed authority to deal with the case is decided.

Market investigations are also one important part of the CCA regular activities.

In 2020 the CCA conducted **four market studies** as research projects with the purpose of gaining an in-depth understanding of how particular sectors or markets work. Besides the market investigations, as previously mentioned, in 44 relevant markets that were linked with concrete cases, 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. These thorough legal and economic analyses very often enable the CCA to detect practices that contravene with competition rules and to possibly open infringement procedures in line with the outcomes of the particular market study.

The 2019 annual sector inquiries conducted in 2020 included the **retail groceries' market** (market research in food, beverages, toiletries and household supplies), the **press publishing market**, the **insurance market** and the **market inquiry into the provision of on-line hotel booking services in the Republic of Croatia**. The results of these sector inquiries are available on the CCA web site.

In 2020 the CCA also continued with its intense activities involving proactive competition advocacy and development of competition culture in general. In that sense, 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.

In the competition advocacy area, there were 75 resolved cases, thereof 22 expert opinions and 53 answers to different queries about competition issues.

The year of 2020 was marked with close and successful cooperation with the Ministry of the Economy and Sustainable Development within the working group founded and coordinated by the CCA in charge of drafting of the Act on the Amendments to the Competition Act.

The Act on the Amendments to the Competition Act was adopted by the Croatian Parliament on 9 April 2021 and entered into force on 24 April 2021.

The Act on the Amendments to the Competition Act 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 but due to covid-19 pandemic most of the Member States ran late with its transposition. 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 (NCAs), adequate financial, human, technical and technological 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.

Thus, the Act on the Amendments to the Competition Act introduces new legal mechanisms and powers of the CCA, including the imposition of periodic penalty payments. 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 will be entered into the court register as a public institution.

In the reporting year **in the area of unfair trading practices the CCA resolved 91 cases**, thereof 10 administrative cases and 81 non-administrative cases.

The total sanctions imposed by the CCA for imposition of unfair trading practices amounted to **HRK 1.6 million.**

There are 19 administrative cases still pending, three cases thereof were opened in the second and third quartal of 2020 whereas the majority of the still pending cases were opened in the second half of 2019 and could not been resolved due to the above-described circumstances linked with covid-19 pandemic when the work of the CCA and the most

businesses was organized on-line and the oral hearings could not be held during five lock-down months. It can be realistically expected that a part of this cases will be resolved in the first quarter of 2021 and the majority of them by the end of 2021.

The administrative (investigation) proceeding is a complex one. For the sake of clarity, the proceeding in the area of unfair trading practices can be divided in the following parts:

Part I – *Collection of data, information, agreements and other necessary documentation*

The CCA requests the parties to proceeding and other legal or natural persons that are not parties to the proceeding, as well as co-operatives, professional organizations or economic interest groups or associations and chambers, to deliver any information, agreements or other necessary data and documentation. So collected data are then analysed from the legal and economic aspect, the facts of the case are established, turnover thresholds defined for the buyers, processors and re-sellers, the imposition of unfair trading practices investigated and criteria defined for the setting of the fine in each particular case.

Despite the fact that the investigation is primarily based on written statements, agreements between the parties concerned and other documentation, if necessary, on-the-spot investigation can be conducted as well.

Part II – *Oral hearing*

With the view to establishing all the facts and circumstances essential for the matter concerned and observing the right to be heard, the oral hearing is conducted.

In the oral hearing the parties exercise their right to be heard, witnesses are called and heard (usually the suppliers who are generally imposed unfair trading practices) and expert witnessed engaged if necessary for the specific explanations of the matter concerned.

In this phase of the proceeding the party against which the proceeding is carried out can make written and oral statements with respect to all facts and circumstances of the case emerging from the investigation, propose the presentation of evidence, participate in the presentation of evidence, hear the witnesses and expert witnesses, ask questions and be informed about the results of the evidence.

Part III – *Decision of the Competition Council based on the facts of the case*

After the facts of the case have been established by the expert team, the Competition Council adopts the decision on the merits of the case i.e., whether the party has committed the infringement of the UTPs Act or not.

Part IV – *Statement of Facts and Notice of Hearing are delivered to the party*

Where the Competition Council finds that the party infringed the UTPs Act by imposition of unfair trading practices on its supplier the procedure for definition of the criteria for the imposition of a fine is opened.

The Competition Council delivers to the party:

- the Statement of Facts in the case concerned,

- the notice about the decision of the Competition Council adopted on the basis of the established facts of the case, and

- the notice of hearing and request for a written statement of defence.

The right of defence and the protection of interest is ensured for the party against which the procedure is being carried out in the main hearing, particularly with respect to the definition of the criteria for the imposition of a fine, mitigating and/or aggravating circumstances as well as the criteria for setting of the level of the fine.

Part V – *After the main hearing the Competition Council adopts the infringement decision and sets the fine*

On the basis of two decisions – the infringement decision on the imposition of unfair trading practices through the use of superior bargaining power and the decision on the criteria for the imposition of the fine and the level of the fine, the CCA closes the proceeding by the adoption of a single decision.

In 2020 one of the key EU documents serving as the basis for the implementation of the national rules regulating unfair trading practices – 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, which came into force on 30 April 2019 and has for the first time regulated the area of unfair trading practices in the EU, has been transposed into the Croatian UTPs Act.

The EU Member States must adopt and publish, by 1 May 2021, the laws, regulations and administrative provisions necessary to comply with this Directive and apply those measures not later than 1 November 2021.

The Croatian Act on the Amendments to the Act on the prohibition of unfair trading practices in the business-to-business food supply chain enters into force on 1 September 2021 whereas its full application starts on 1 March 2022.

The competent ministry in charge of the transposition of the Directive (EU) 2019/633 into the Croatian UTPs Act is the Ministry of Agriculture that started to prepare the necessary revisions of the existing UTPs Act in October 2019 but the activities with respect to the transposition of this Directive have been particularly intensified in 2020.

The Commission for the drafting of the proposal of the Act on the Amendments to the UTPs Act was set up in February 2020 and has included, besides the representatives of the Ministry of Agriculture, Ministry of Justice and Administration, Ministry of the Economy and Sustainable Development, Ministry of Finance, the Croatian Chamber of the Economy, the Croatian Employers' Association, the Croatian Chamber of Crafts and Trades and the Croatian Chamber for Agriculture, also three CCA experts.

The Act on the Amendments to the UTPs Act introduces a wider scope of agricultural and food products found in business transactions between suppliers and buyers that are subject to these revised rules. Second, by lowering the threshold of the total annual turnover of the buyer it considerably extends the pool of addressed actors – entities that are subject to these rules. Third, it introduces a new power of the CCA to carry out unannounced on-site inspections within the framework of its investigations, in accordance with national rules and procedures. In addition, it regulates the cooperation between enforcement authorities – the national enforcement authority, the Commission and the Member States enforcement authorities in the area of unfair trading practices.

The activities of the CCA at **the international level** in 2020 were also affected by the Coronavirus Crisis. In March 2020 the ECN adopted the Joint statement by the European Competition Network (ECN) on application of competition law during the Corona crisis and published the Communication from the Commission - Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak, which were both published on the CCA web site in the Croatian language. In April 2020 the ECN continued with on-line meetings and the representatives of the CCA participated in working groups and subgroups, advisory committees and working groups of the European Council.

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

The ECN statistical review of submitted requests for information (RFI) indicates that since 2017 the number of requests has continuously risen. In 2020 there have been 82 requests for information within the ECN and ECN2, which on the average makes up for 3.5 submitted requests for information per Member State. Bulgaria reserved the first place in the percentage of replies – 98 %, whereas the second place was shared by Croatia and Sweden with 91 %. This is a great result for the CCA that proves itself as one of the leading advocates of proactive cooperation between the Member States.

Within its international cooperation the CCA continued with its activities in the OECD Competition Committee. The CCA has been actively participating in the work of the

Competition Committee for six years now. The CCA also continued its engagement in the International Competition Network (ICN).

Before the general lock-down, in January 2020, a bilateral visit with the representatives of the Slovenian competition authority was organized in Zagreb, where experience in the prevention of the imposition of unfair trading practices in the food supply chain was shared.

Transparency of the CCA activities is achieved through different communication channels in line with the **CCA Communication Strategy**. In 2020 the CCA remained involved in **active competition advocacy** by participating in trainings and workshops for undertakings and consumers and continued to promote transparency of its work and open communication with the public, both in the area of competition and the area of unfair trading practices in the business-to-business food supply chain, where it was necessary to introduce the relatively new rules to the addressed actors.

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, 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 rulings of the competent courts (administrative courts with territorial jurisdiction, the High Administrative Court of the Republic of Croatia and the Constitutional Court of the Republic of the Republic of Croatia) with respect to the decisions of the CCA are also published on its website. The CCA publishes its e-bulletin and other guides and organizes and participates in trainings and workshops covering the specific matters in the area of competition law and policy and unfair trading practices. The CCA experts are present in the media and maintain contact with the journalists.

In 2020 the CCA published **8 issues of its monthly e-bulletin *AZTNinfo*** containing the monthly updates of the CCA decisions and other activities and reports about the most recent developments in the comparative practice covering the areas concerned in the EU and globally.

Regarding the judicial review of the decisions of the CCA, it must be noted that 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.

Against the decision of the CCA no appeal is allowed but the injured party may file a claim and start an administrative dispute before the High Administrative Court of the Republic of Croatia. The council of three judges decides about the claim against the decision of the CCA. In 2020 the **High Administrative Court of the Republic of Croatia 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. Several claims relating to the decisions of the CCA in 2020 have been dismissed in early 2021. The decisions of the CCA have also been upheld in full.

In this context, it is important to mention the ruling of the Supreme Court of the Republic of Croatia that came in the course of the completion of this report early this year regarding the first extraordinary legal review used in the area of competition where the **Supreme Court of the Republic of Croatia revised the ruling of the High Administrative Court and dismissed the claim of the Orthodontists Society as unfounded in the administrative dispute challenging the infringement decision of the Croatian Competition Agency in 2014.** It is in the public interest to mention this ruling here in this year's report.

Namely, after having closed the administrative proceeding that had been initiated in September 2013 the CCA found in its decision of 12 June 2014 that by the adoption of the "Minimum prices for orthodontists services" in force from 1 October 2010 to 9 October 2013 the Croatian Orthodontic Society (COS) concluded a prohibited agreement within the meaning of Article 8 paragraph 1 of the Competition Act. The setting of minimum prices by this association of undertakings was considered an infringement of competition rules by the CCA who, given the extenuating circumstances, imposed a symbolic fine amounting to HRK 150,000 and declared the price list concerned null and void.

The prohibited agreement at issue involved fixing the price of services which is prohibited by object and therefore it was not necessary for the CCA to provide evidence of its actual anticompetitive effects. Thus, the CCA did not have to analyse the concrete effects of the prohibited agreement on the market and consumers. In addition, there was no legal ground for COS to set a pricelist on the account of the fact that the sole authority able to do so was the Croatian Chamber of Dental Medicine under a separate law. The fact was that the Chamber of Dental Medicine did not determine the minimum prices for orthodontists' services by means of a separate pricelist and has neither directly nor indirectly empowered the COS to do so. Therefore, the COS could in no way escape the infringement that was committed by the adoption of the minimum price list concerned. The fact that the pricelist was not binding for the members of the association and that they were not sanctioned if they did not observe the said pricelist was also taken into account when setting the fine but could not discharge the association from liability in this cartel case.

Despite the fact that in its statement of defence the CCA provided a detailed reply to the claim of the COS and explained the reasons for the adoption of the infringement decision, in its ruling of 5 March 2015 the High Administrative Court of the Republic of Croatia confirmed the claim of the COS and overturned the decision on a prohibited agreement taken by the CCA.

It was the position of the CCA that the High Administrative Court of the Republic of Croatia challenged in its ruling the very concept of a cartel as defined under the Competition Act and the EU acquis in the area of competition. In other words, the CCA pointed out back then that

if such a ruling had remained in force, it would have constituted a precedent that would have jeopardized the interest of consumers, undertakings and competition policy in general. Given that there was no ordinary legal remedy against the ruling of the High Administrative Court of the Republic of Croatia, in July 2015 the CCA resorted to an extraordinary legal remedy and decided to seek the State Attorney's Office of the Republic of Croatia to have the legality of the ruling of the High Administrative Court of the Republic of Croatia in the case CCA v Croatian Orthodontic Society re-examined. The State Attorney's Office found the CCA's request substantiated and in September 2015 informed the CCA that it had submitted the request for extraordinary legal review of the legally valid decision to the Supreme Court of the Republic of Croatia.

In its final ruling of 2 March 2021, the Supreme Court of the Republic of Croatia stated that the infringement decision of the CCA properly found that by the adoption and publishing of the document "Minimum prices for orthodontists services" the COS concluded a prohibited agreement under Article 8 paragraph 1 of the Competition Act.

The Supreme Court of the Republic of Croatia also repeated the very statements of the CCA during the administrative proceeding that the law does not empower any association of undertakings to fix prices of products or services of its members, and that any fixing of minimum or fixed prices constitutes an infringement of competition rules.

In addition, in its ruling the Supreme Court of the Republic of Croatia supported the finding of the CCA that such agreements are prohibited by object (where restrictions of competition by object are those that by their very nature have the potential of restricting competition and have such a high potential of negative effects on competition that it is unnecessary to demonstrate any actual effects on the market). Consequently, where this is the case, no examination of actual or potential effects on the market of such agreements is necessary.

Even though the ruling of the Supreme Court was adopted more than five years after the receipt of the application for extraordinary review, the CCA has welcomed the decision of the Supreme Court and has been looking forward to any future decisions and interpretations of the Supreme Court of the Republic of Croatia that would serve as a source of law containing legal rules by a competent authority and contributing to proper understanding and application of competition rules.

Regarding the judicial review of the decisions of the CCA in the area of unfair trading practices, against the decisions of the CCA no appeal is allowed but the injured party may file a dispute before the administrative court with territorial jurisdiction whereas the High Administrative Court of the Republic of Croatia is the second instance court in the matters concerned. Until now all the statements of claim against the decisions of the CCA have been dismissed by the administrative courts with territorial jurisdiction in Rijeka, Zagreb and Osijek within the appropriate time period of one year from the point when the claim was made. Until the end of 2020 no rulings have been made by the second instance court.

In 2020 there were six requests 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 and the report was published on the CCA website.

Activities in the forthcoming period will concentrate on effective application of the Act on the Amendments to the Competition Act that entered into force on 24 April 2021. The CCA must now propose to the Government of the Republic of Croatia the necessary ancillary provisions – the Regulation on the method of setting fines and the Regulation on immunity from fines and reduction of fines. These provisions regulate the criteria stipulated under the Competition Act and must be brought into compliance with the EU acquis and the ECN+ Directive.

Taking into account that the Act on the Amendments to the UTPs Act will enter into force on 1 September 2021 the activities of the CCA will also involve some fine tuning of the Statute and other by-laws reflecting the changes in the legislative framework. The CCA must make the necessary revisions of its Statute within six months from the entry into force of the pieces of legislation concerned. The Statue will be submitted to the Croatian Parliament for adoption.

The elimination of hard-core restrictions of competition laid down by the Competition Act will remain in the focus of the CCA together with the prohibition of unfair trading practices as stipulated by the UTPs Act.

The CCA will intensify its activities regarding the close investigation in the new digital market and the businesses that operate in this market, which will address the issues with respect to the implementation of competition rules in this area. This particularly involves the participation of the CCA in the Joint position of European competition authorities in enforcing the Digital Markets Act and the drafting of the national framework relating to digital services. The CCA has been called to provide its comments on the proposal of the document concerned and to appoint its representative in the informal working group for the drafting of the proposal for the Digital Services Package (Digital Services Act).

In the context of covid-19 pandemic and respecting the global and national epidemiological measures, the CCA will continue to organize international conferences, trainings and professional gatherings on specific subjects in the area o competition and unfair trading practices in the business-to-business food supply chain. At the same time, the experts of the CCA will try to attend the trainings and professional gatherings with the view to bringing in compliance the practices of economic operators in the market with the provisions of the revised Competition Act and the UTPs Act.

With the view to continuous proper application of competition rules and convergence in the internal market, the CCA will continue to actively cooperate with the European Commission and the national competition authorities of the Member States within the European Competition Network (ECN). The cooperation with the OECD and the ICN will also be

continued. A more intensive cooperation with the European Commission is expected relating to the enforcement of the revised UTPs Act.

Finally, it must be noted here that with the view to effective implementation of competition rules and the rules regulating unfair trading practices in the business-to-business food supply chain the CCA must be ensured adequate financial and human resources. Unfortunately, the rising trend in experts leaving the CCA remains the problem the CCA is permanently facing. The high-profile experts with specific knowledge and work experience in competition area are very much sought on the labour market by the private sector that can offer a higher pay. On the other hand, it takes at least a year for the CCA to train new staff in this specific and complex matter. We hope that the revised Competition Act in line with the ECN+ Directive will contribute to future empowerment of the CCA in the sense of financial and human resources, with the view to more effective enforcement of the rules falling under its jurisdiction.

In conclusion, it has to be highlighted once again that effective competition is groundwork of the market economy and the prerequisite for its strengthening. However, the engagement of the CCA in the area of competition and unfair trading practices cannot suffice. What is needed is the collaboration and proactive approach of all public authorities in the creation of explicit and enforceable competition rules, advocacy and observance of these rules by all the participants in the market and the creation of competition culture and raising awareness of its importance for the society as a whole.

** For any further details of the 2020 Annual Report of the Croatian Competition Agency for 2020 please refer to its full version in the Croatian language that is available on the web site of the CCA including the list of CCA decisions in 2020, the list of rulings of the High Administrative Court of the Republic of Croatia in 2020 and the list of sanctions imposed by the CCA for infringements in 2020.

Vice-President of the Competition Council

Vesna Patrlj, LLM

In Zagreb, 29 June 2021