REPUBLIC OF CROATIA
CROATIAN COMPETITION AGENCY

Annual Report
of the Croatian Competition Agency
for 2007

June 2008

CONTENTS

Enforcement of competition law and policy and the significance, power, autonomy and expertise of a market regulator in implementing competition rules with the main objective to create a level playing field for all participants and ensure consumer protection at the same time providing a free market access and fair competition for all undertakings is a *conditio sine qua non*. "By establishing the Competition Agency, Croatia has already ten years ago shown its determination in setting up of institutions necessary for the existence of a functioning market economy and has during that period become an inevitable subject which ensures that all players in the market are treated equally." (Poslovni dnevnik, 14 November 2007)

Competition Day
Zagreb, 13 November 2007

INTRODUCTION

The Croatian Competition Agency (CCA) is a legal person with public competences established by the Croatian Parliament. Its main activities cover anti-trust and merger control and authorisation, monitoring the implementation and recovery of state aid within the meaning of the provisions of the Competition Act and the State Aid Act.

The Agency was established in 1997. The 2007 Report provides an overview of the Agency's work and activities, and in addition reflects the progress the Agency achieved in the past decade. The concept contained in competition law and policy which covers the freedom of competition among undertakings in the market has thus finally been recognized and accepted by the undertakings, together with the fact that competition freedom is of key importance for all countries, including the Republic of Croatia whose economy is based on free market. Progress is indisputable in raising awareness of undertakings, public authorities, other regulators, justice administration, academic community, and primarily and most importantly of consumers and general public, on the role and significance of effective competition in a market economy. This Report reflects these significant shifts accomplished by the Agency as well as the altered public perception about competition which is of great importance for the development of the Croatian economy.

Taking into consideration the limited human and other resources, in February 2007, the Agency had adopted the Competition Agency Strategy Statement for 2007 – 2008, which defined the Agency's priorities, key objectives, activities and implementation modes. Those activities are mainly structural, i.e. they particularly relate to substantial changes of competition regime. Special emphasis is put on amendments to the existing and introduction of new rules in this area, and on necessary reforms in practice and support measures for the economy as a whole and industrial policy in the sectors such as shipbuilding, metal industry etc.[1]

In 2007, the Agency's activities were primarily focused on achieving objectives which had been set for the Republic of Croatia as benchmarks for the opening of the EU accession negotiations in Chapter 8: Competition policy, in the part thereof pertaining to *antitrust* (assessment of agreements between undertakings, abuse of a dominant position) and merger control, and activities pertaining to the alignment of state aid schemes with the commitments undertaken under the Stabilization and Association Agreement and monitoring of state aid.

Also in 2007, the Agency focused on the preparation, review and amendments to the exiting Competition Act and on initiating and participating in the drafting of other subordinate legislation which together with the Competition Act and the State Aid Act will ensure efficient and effective implementation of the competition regime in Croatia.

In addition, despite the limited human resources, the Agency has efficiently solved cases from its everyday practice and scope of work: assessment of restrictive agreements between

[1] The entire document titled Competition Agency Strategy Statement 2007 – 2008 is available on Agency's web site www.aztn.hr

undertakings, establishing of abuse of a dominant position and assessment of compatibility of concentrations. The Agency's main state aid control activities, such as keeping the state aid register, authorisation and monitoring the implementation of state aid also constituted a considerable portion of its work in 2007, especially in regard to implementation of the international commitments undertaken by the Republic of Croatia and the EU accession negotiations. A list of solved cases is provided at the end of this Report whereas particular decisions, given their importance and progress achieved in solving competition issues are also separately described.

In addition to its legal obligation to submit its annual reports to the Croatian Parliament, this document has to ensure the transparency of the Agency's work and its openness to the business community and professional public. We hope this will contribute to further enhancement of competition in the Republic of Croatia, as an effective instrument of economic development, by ensuring a level playing field for all undertakings in the market and by creating benefits for the consumers.

The objective of competition law and policy is to create conditions for economic growth based on competitiveness and economic efficiency. The task of independent regulators which are entrusted with enforcement of this policy within their scope of jurisdiction is to create a level playing field for all participants in the market and prevent impediments of effective competition in the relevant market.

The Croatian Competition Agency realizes the mentioned task by its each particular decision, regulation, given opinion, press release, and competition advocacy consisting also of numerous statements on competition and state aid issues. The Agency defines its key purpose as both a regulator and promoter of competition culture, whereby, the institutional framework should primarily ensure transparency and predictability, increase legal certainty and create a friendly environment for successful development of effective competition. In the long-run, the Agency's policy is to prevent any distortion of competition, by either undertakings who, given their market power, wish to impose their own rules on the market and thus prevent the entry of new competitors or foreclose the incumbent firms, or by the state and its bodies which by granting state aid, put certain undertakings into a more favourable position in regard to those who do not receive such aid.

It is irrefutable that such thinking and policy can only be based on a completely reliable and predictable legislative framework and an independent implementing institution. However, this is not enough. Efficient and effective competition can be achieved through the availability of human and material resources in the Agency's everyday practice, in the proceedings which require complex legal and economic analyses, knowledge of laws and bylaws and behaviour of undertakings, features of a particular sector and their market behaviour. Beside from the lack of legal framework, this reporting period for 2007 was especially marked by the everyday practice which required making decisions such as the case relating to the assessment of a cartel between the bus operators, abuse of a dominant position in the telecommunications market or that of preventive steps that had to be taken in the case of Microsoft.[2] In the case of combating cartels, it became once again obvious that significant changes must be made in the mentioned

[2] The above mentioned cases and proceedings are described in detail below.

legal framework, especially in regard to prohibited cartel agreements. Therefore, in order to realize the Agency's objectives, it is necessary to change the legal framework which, especially in the case of serious violations of competition rules with significant negative effects for the consumers, should ensure high fines for those who infringe these rules, and to empower the Agency to impose them.

On the other hand, the EU competition rules which the Republic of Croatian committed to apply when it signed the Stabilization and Association Agreement (Article 70), are susceptible to constant changes. Given the aforementioned, in order to realize its objectives, the Agency should constantly follow up to these changes and propose adequate solutions in the Croatian legislation empowering the Agency to act in accordance with relevant rules in effect, in order to achieve effective competition, carry out market investigations within the legal framework and facilitate the necessary adjustments of the Croatian economy to global environment.

Finally, it should be noted here that the negotiations for the accession of the Republic of Croatia to the EU, in which competition law and policy are one of the most significant chapters have so far shown that fair competition, and especially a well regulated state aid regime which provides for a limited support for certain undertakings or sectors, make competition advocacy a priority task for this Agency also in the years to come. To that end, the Agency will continue with its proactive policy particularly relating to the promotion of the role of competition and state aid control through all available legitimate means with the view to successfully accomplishing the tasks that have been assigned to it.

1. COMPETITION SYSTEM IN THE REPUBLIC OF CROATIA

The Competition Act (Official Gazette 122/03) stipulates competition rules and the system of measures applicable where competition issues must be addressed, it regulates the powers, duties and the organisation of the authority entrusted with the promotion of competition and enforcement of competition rules, sets the enforcement procedure provides for the adoption of and bylaws. The State Aid Act (Official Gazette 40/05) regulates the general scope and rules for authorization, monitoring the implementation and recovery of state aid granted or used contrary to provisions of the State Aid Act.

This Act applies to all forms of prevention, restriction or distortion of competition within the territory of the Republic of Croatia or outside its territory, if such practices take effect in the territory of the Republic of Croatia, unless differently stated by particular regulations for certain markets.

The Agency's activities are assessment of restrictive agreements between undertakings, establishment of abuse of a dominant position of undertakings and assessment of compatibility of concentrations between undertakings. Proceedings related to e.g. public procurement or granting concessions do not fall under the jurisdiction of the Agency but other bodies entrusted by a special law with the implementation of those activities.

The provisions under the State Aid Act regulate that state aid granted without the authorization of the Agency is unlawful aid, and the Agency is authorized to order recovery of the state aid used, increased by statutory interest on arrears payable from the date on which the unlawful aid was first used. In duly justified cases the Agency can give an *ex post* authorisation of state aid if it finds that the state aid in question is compatible with the state aid rules.

In addition to the law, upon the Agency's proposal, the Government of Croatia passes a number of subordinate legislative acts which regulate in more detail competition and state aid in the Republic of Croatia, whereas the Agency adopts other guidelines in this area. All rules which have been adopted until now have been published in the Official Gazette and are available on the Agency's web site: www.aztn.hr

Provisions of the General Administrative Proceedings Act (Official Gazette 53/91 and 106/93) are applied subordinately in all proceedings carried out by the Agency.

Given that the Agency does not have the authority to impose fines for the infringements of the Competition Act, (which is under the jurisdiction of the minor offence courts), after the decision has been adopted, the Agency makes a request to a minor offence court to start the minor offence proceedings against the undertaking concerned and the responsible person of the respective undertaking.

2. ORGANIZATIONAL STRUCTURE OF THE COMPETITION AGENCY

The Agency is a legal person with public authority which is, as an independent entity, autonomously performing the activities within its scope and powers regulated by the Competition Act and State Aid Act, responsible to the Croatian Parliament.

The managing body of the Agency is the Competition Council, which consists of five members appointed and relieved from duty by the Croatian Parliament, upon the proposal of the Government of the Republic of Croatia. In managing the Agency, the president of the Competition Council organizes and runs business activities of the Agency, supervises and is responsible for its expert performance. The Agency's detailed internal organization and modus operandi are regulated by the Agency's Statute ratified by the Croatian Parliament. Other issues pertaining to Competition Council's work and its sessions are regulated by the Standing orders of the Competition Council.

The expert team of the Agency performs administrative and professional activities. In 2007, the Agency's expert team had a total of 40 employees, of whom 29 directly involved in case handling in four divisions, whereas the rest is in charge of general affairs, finance and personnel activities. Thus, 11 employees (5 lawyers and 6 economists) are employed in the Competition Division, 4 lawyers and 5 economists in the State Aid Division, 2 employees (one lawyer and one economist) in International Cooperation Division, and 4 lawyers and 2 economists in the Legal Affairs and Economic Analyses Division.

A detailed internal organization of the CCA is provided in chapter 8 at the end of this report.

Compared to 2006, the number of expert team employees increased by 7.7%, and compared to 2003 when the 2003 Competition Act and the State Aid Act entered into force, the number of employees of the expert team increased by 64.7%, i.e. by 11 employees.

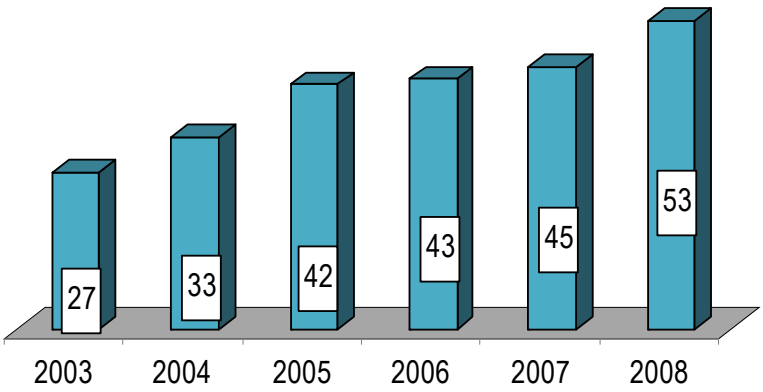
As of 2003, the Agency has seen an increased employment trend. Compared to 2003, in 2007 the total number of employees increased from 27 to 45, i.e. by 66.7%.

Table 1 CCA employees 2003 – 2007

	2003	2004	2005	2006	2007
Members of the Competition Council	5	4	5	5	5
Expert team of CCA – case handlers	18	21	26	27	29
General Affairs	4	8	11	11	11
Total:	**27**	**33**	**42**	**43**	**45**

Source: CCA

Picture 1 Total number of CCA employees 2003 – 2008



Source: CCA
Data for 2008 in accordance with the current number of employees and CCA 2008 employment plan.

Table 2 Expert team (case handlers) – years of employment with the Agency

0 – 3 years	3 – 10 years	> 10 years	∑
14	**14**	**1**	**29**

Source: CCA

Although the average age of the expert team staff is only 34, they are well qualified: 4 employees have a Master of Science degree, 14 have passed the Bar exam and 2 employees have passed the Audit exam.

Despite the continuous increase in the number of staff, the Agency still needs more employees and what is more, office space and additional funds for training and permanent education of its staff. According to the volume of activities and obligations deriving from the existing legislation, the Agency needs 68 employees (not including the Council members), which it plans to hire by the time of the EU accession, that is to say until late 2010.

In 2007, the Agency hired 5 new employees, as planned. However, 2 employees left the Agency the same year and 29 employees are still insufficient for all the activities performed by the Agency.

The Agency is also facing the brain drain – highly skilled expert staff leaving for the private sector and sector-specific regulators who can offer better incentives and pay. After they acquire the necessary knowledge and work experience during their work in the Agency, young employees leave the Agency, since the knowledge and experience in this new branch of law in Croatia is in high demand in the private sector and other. However, this is not only the case in

Croatia. Other competition bodies in Europe fight the same problem since their salaries cannot compete with those offered by the private sector.

The Agency plans to hire 5 new employees in the expert team in 2008. However, until 1 June 2008, 3 employees left the Agency and the number of new vacancies (planned and new) in the expert team is 10 at the moment of drafting of this Report.

3. ACTIVITIES OF THE CROATIAN COMPETITION AGENCY IN 2007

In 2007, the Croatian Competition Agency followed its main objectives and activities set under the legislative framework which regulates the scope and competence of the Agency as well as the goals and priorities specified in its Strategy Statement for 2007-2008 and commitments deriving from the Stabilization and Association Agreement. On the basis of the aforementioned, the major goals and priorities in the upcoming period may be specified as follows:

- Enhancing effectiveness of the existing competition regime through necessary reforms of the legislative framework,
- Efficient and effective enforcement and strengthening of the enforcement record relating to antitrust, merger control and state aid, and
- Strengthening of the administrative capacities through development and training to enable handling of most serious cases of violation of competition rules.

During 2007, the Agency particularly focused its activities on:

- Continuing with intensive work relating to the initiative towards the Ministry of Justice in terms of the necessary amendments to the existing Competition Act in the part which would entrust the Agency with the power to impose fines, and establish unique and efficient system of court protection against the Agency's decisions. In addition, it is necessary to introduce the option of immunity from or reduction of fines for a "whistle-blower" who informs the CCA and demonstrates evidence of prohibited agreements given that without such a leniency programme it is impossible to successfully combat cartels. Finally, the objective of the legislative changes is to change a part of procedural provisions thus enabling the Agency and undertakings a more efficient conducting of the proceedings (e.g. the option of submitting a short-form notification of concentration where these do not raise competition concerns).

During 2007, a number of meetings were held with representatives of the competent courts (the Administrative Court of the Republic of Croatia, the High Court of Minor Offences, the High Commercial Court) and the ministries (the Ministry of Justice, the Ministry of the Economy, Labour and Entrepreneurship) and establishment of a working group which will work on the amendments to the Competition Act was initiated. In principle, an agreement was reached on the proposal to entrust the Agency with the power to impose fines and ensure only one court to rule on the legality of the decisions of the Agency and on the level of fines set by the Agency. In addition, within the assistance PHARE project 2005, a team of German experts were engaged in finding appropriate legal solutions which would correspond to the similar ones applicable in EU Member States.

In 2007 the Agency also focused on:

- Continuing with permanent cooperation with other competent authorities and sector specific regulators, and making proposals for defining and providing clear definition of competences in regard to certain competition issues. By signing the Cooperation Agreement with the Electronic Media Council in April 2007, the Agency completed the activities in regard to establishment of institutional cooperation with all sector specific regulators (previously such agreements were concluded with the Croatian National Bank, Croatian Telecommunication Agency, Council for Postal Services, Croatian Financial Services Supervisory Agency and Croatian Energy Regulatory Agency);

- Promotion of competition law and policy in terms of strengthening of competition culture is being implemented through direct activities by the members of the Competition Council and the Agency's expert team. During the reporting period, they have held a number of papers on competition and state aid for graduate and postgraduate studies and other institutions (Faculty of Law in Zagreb, Faculty of Economics and Business in Zagreb, Faculty of Economics in Pula, Zagreb School of Economics and Management, Diplomatic Academy, University of East Anglia, Norwich, England etc.) and have published a number of expert and scientific papers in distinguished Croatian (Hrvatska pravna revija/Croatian Law Journal, Informator, Novi Informator, RIF, RRIF etc.) and foreign publications (Global Competition Review, London, Competition Antitrust Review, Essex, International In-House Counsel Journal, Cambridge, England etc.) and have, with their contributions, participated in the seminars and conferences in Croatia and abroad (Meeting of economists in Opatija, and similar);

- Implementation of the Competition Act, primarily administrative activities relating to the assessment of restrictive agreements between undertakings, establishment of abuse of a dominant position and assessment of compatibility of concentrations between undertakings;

- Investigation of the liberal professions market. The analyses of the audit service market was carried out after the new Audit Act and Audit Service Fees entered into force[3];

- Intensive work on the implementation of the state aid system, that is to say authorisation and monitoring the implementation of state aid in the Republic of Croatia through decision making, data collection, registration and monitoring of state aid granted, proposals to improve the existing and future legal solutions in regard to state aid etc.;

- Facilitation of further cooperation with the relevant international authorities and the European Commission in regard to harmonization and implementation of the legislation relating to state aid;

- Taking further steps in the negotiations for the accession of the Republic of Croatia to the EU, particularly in Chapter 8: Competition policy in regard to harmonization of fiscal laws, addressing the issues in the shipbuilding sector, steel industry, drafting the regional aid map, and improving implementation activities etc.;

[3] The investigation into liberal professions has been thus expanded to the provision of audit services following the previous market analyses covering the attorneys' and taxi services.

- Intensive cooperation with the European Commission and the EU national competition authorities, particularly Germany, Hungary, Bulgaria and Romania, and countries in the region (Bosnia and Herzegovina, Macedonia and Slovenia);

- Strengthened cooperation with the competent Croatian authorities with the view to meeting the criteria defined after the *screening* was carried out in the area of shipbuilding, steel industry, fiscal support, action plan, transparency issues;

- Implementation of regulations i.e. solving cases in which the Agency's expert team (given the complex legal and economic matter, and sometimes lack of regulations) was intensively consulted and exchanged experiences with other European Commission experts from that field, European competition authorities, support project consultants etc.;

- Activities relating to competition advocacy and raising awareness and understanding of the benefits of competition. A number of seminars and workshops were held in cooperation with the Croatian Chamber of the Economy, Croatian Association of Employers, Croatia-EU Business Council (CEUBC) and the ministries. The Agency continued its proactive policy, promoting competition and disseminating knowledge among all stakeholders on the rules, current practice and changes in the area of antitrust, merger control and state aid;

- Promotion of competition law and policy through the organization of an international expert meeting – A Competition Day, which marked the tenth anniversary of the CCA. In addition to the Croatian experts and the representatives of the Croatian institutions, the meeting was also attended by the representatives of the European Commission, competition authorities of the EU Member States (Germany, Hungary and Slovenia) and countries in the region;

- Participation in international conferences and seminars, such as the activities of the OECD Regional Centre for Competition in Budapest, despite the fact that Croatia is not an OECD member;

- Cooperation with competent authorities on the drawing up of the regional aid map of Croatia, given that the privileged status of „Region A" in accordance with the Stabilisation and Association Agreement expired in March 2006. After the EUROSTAT accepted the classification of statistical regions for Croatia according to NUTS II units in early March 2007, on 22 March 2007 the Government of the Republic of Croatia established a working group for drafting of the regional aid map;

- Participation in the process of further harmonization of the existing aid schemes with the EU acquis;

- Facilitating cooperation between the Agency and state aid providers, especially through efficient implementation of the system of notification, authorization and monitoring the

implementation of the state aid, through an established permanent working group, and cooperation with the Committee for monitoring of the EU state aid rules and their publication in Croatia;

- Education and training of the Agency's professional staff and state aid providers at all levels, especially at the regional and local level through support by the German experts within the PHARE 2005 assistance project.

4. ADMINISTRATION AND ENFORCEMENT OF THE COMPETITION ACT

Within the meaning of the Competition Act the major part of the activities of the CCA covers the administrative proceedings in the following areas:

- assessment of restrictive agreements between undertakings,
- establishment of abuse of a dominant position, and
- assessment of compatibility of concentrations between undertakings.

Besides the above mentioned administrative proceedings, the CCA also performs other activities within its scope:

- The CCA issues expert opinions upon the request by the ministries and other state authorities, regarding the compliance of draft bill proposals and other legislation (as well as other related issues which may raise competition concerns), with the Competition Act;
- Gives expert opinions upon the request by the undertakings and other stakeholders where competition issues arise;
- Monitors and investigates certain markets with the view to promote competition;
- Collects relevant data and information from the undertakings which are necessary for market investigations and conducting market analyses;
- Draws statistical reports necessary for its international cooperation and cooperates at the international level with the relevant competition authorities in respect of the international obligations undertaken by the Republic of Croatia in the area of competition falling under the jurisdiction of the CCA.

During 2007, the CCA opened a total of 229 cases, where 213 proceedings have been initiated at the request of a party and 27 were opened on the CCA's own initiative.

Of the stated total number of cases, 45 thereof have been administrative cases initiated within the main scope of the CCA:

- 4 cases concerning the assessment of agreements between undertakings;
- 12 cases concerning the establishment of a dominant position, and
- 29 cases assessing the compatibility of concentration between undertakings.

In the area of the activities relating to its expert opinions, the CCA received a total of 29 requests where it has given opinion:

- on draft bills and other legislative proposals (13 requests), and
- upon request by undertakings (16 requests).

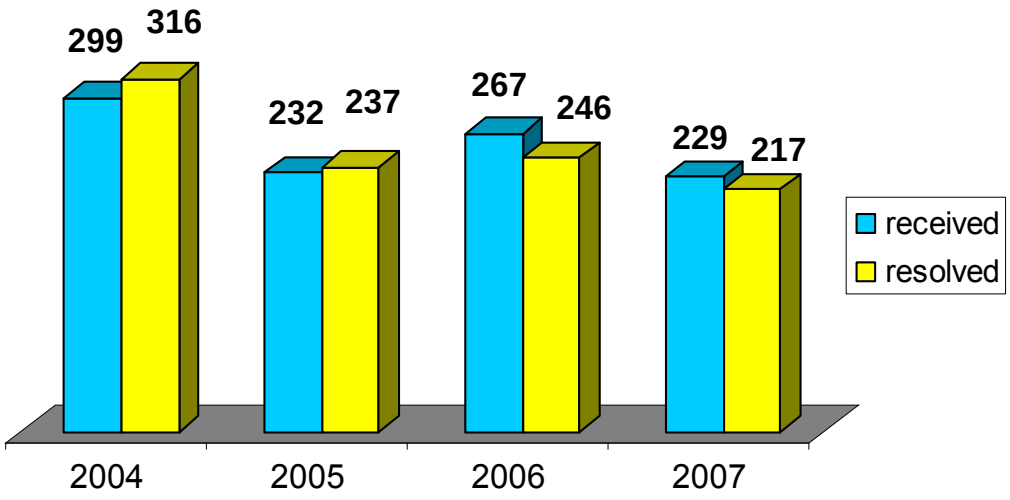
There have also been 155 cases opened relating to the investigation of particular markets and including data collection, international cooperation, cooperation with other public administration authorities and institutions etc. In 2007, 141 cases from the above stated number have been closed, as follows:

- 73 other non-administrative cases, i.e. investigation of market including data collection and processing,

- 58 cases related to international cooperation, cooperation with the Croatian institutions and other bodies, and
- 10 cases relating to internal acts and publications of the CCA.

In 2007, the CCA has not only kept but increased its efficiency in resolving the cases within its jurisdiction. During 2007, the Agency's performance was **94.76**%.[4] For comparison sake, in 2007 the Agency has taken decisions in 217 cases.[5] In addition to the decisions and opinions of the CCA, the stated number also includes 16 resolutions (procedural orders) made by the CCA in the administrative cases which are final in the administrative proceedings and where the injured party may file an administrative dispute before the Administrative Court of the Republic of Croatia.

Picture 2 Number of received and resolved files/cases in the area of anti-trust and mergers in the period 2004 - 2007



Source: CCA

Chapter 8 of this report gives a breakdown of the total opened and resolved cases in the area of antitrust and control of concentrations in 2007.

Due to the changes introduced by the 2003 Competition Act and the regulations adopted on the basis of this Act[6], the number of cases which fall under the obligatory notification

[4] In 2006 this efficiency rate was 92.13%.

[5] Alike in previous years, the number of resolved cases in 2007 also includes the cases received in the preceding years given that the proceedings in the latter cases have been closed in this report period. In 2007, the CCA has taken 16 resolutions (procedural orders) of which 3 on termination of the proceedings based on the party's failure to act, 12 resolutions on dismissal of the request due to the lack of legal grounds, and 1 resolution on dismissal of the request due to lack of jurisdiction.

[6] Upon the Agency's proposal during 2004 and 2005 the Government of the Republic of Croatia has passed 8 regulations stipulating competition rules whereas the Agency adopted 2 guides on in concentrations between undertakings, and a number of opinions providing interpretations and comments on the provisions of the Competition Act. All the mentioned

to the CCA is appreciably lower (particularly relating to the assessment of agreements between undertakings), which resulted in the total number of administrative cases resolved by the Agency comparable to the usual number of substantial cases in EU Member States. However, the cases themselves have become much more complex which is a direct consequence of the application of the relevant EC acquis in addressing competition cases, especially where there are legal voids or doubts in interpretation of the Croatian rules.[7]

As stated above in this text, the key activities of the CCA relating to the conduct of administrative proceedings within the meaning of the Competition Act cover the assessment of restrictive agreements, establishment of abuse of dominance and assessment of compatibility of concentrations between undertakings. Each of these areas will be separately presented in this annual report.

4.1. Assessment of agreements between undertakings

In this report period the CCA continued with the implementation of the Competition Act in the part pertaining to the assessment of restrictive agreements between undertakings, in accordance with Article 9 of the Competition Act.

Article 9 of the Competition Act:

"(1) There shall be prohibited all agreements between undertakings, contracts, single provisions of agreements, explicit or tacit agreements, concerted practices, decisions by associations of undertakings (hereinafter: agreements) the object or effect of which is to prevent, restrict or distort competition in the relevant market, and in particular those which:
1. directly or indirectly fix purchase or selling prices or any other trading conditions;
2. limit or control production, markets, technical development or investment;
3. share markets or sources of supply;
4. apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
5. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
(2) The agreements that prevent, restrict or distort competition pursuant to paragraph (1) of this Article, and which may not be exempted in the sense of Article 10 of this Act shall be null and void.

regulations, guides and interpretations are available on the Agency's web site at: www.aztn.hr and are included in the list of cases at the end of this report.

[7] Article 35 paragraph 3 of the Competition Act states that in the assessment of different forms of prevention, restriction or distortion of competition, that may affect the trading between the Republic of Croatia and the European Community, the Agency shall, in accordance with Article 70 of the Stabilization and Association Agreement, concluded between the Republic of Croatia and European Communities and their Member States and the (Official Gazette – International Treaties, Nos. 14/01), accordingly apply the criteria arising from the correct application of the EC competition rules.

What are prohibited or restrictive agreements in the first place? What is meant thereof are usually cartels or cartel agreements, in other words agreements between competing firms in a certain market designed to limit or eliminate competition between them. Such agreements are usually tacit and informal due to which it is difficult to reveal them. Usual objectives of such agreements are: fixing prices, limiting output, setting rebates, sharing markets, allocating customers or territories, bid rigging or a combination of these.

What is the objective or effect of such agreements? Primarily, to eliminate competition among direct competitors and earn higher profits for the members of a cartel, which is the result of their agreement and not of their successful business. Such agreements have no positive effects. In addition to eliminating competition, they are harmful to consumers who in principle have to pay high prices for products covered by such agreements. Cartels can appear in any sector, without an exception. However, some sectors are more sensitive and prone to cartel agreements due to the structure or nature of a certain business activity. In other words, cartels may be often found in markets with a small number of competitors, in the case of products which are perfect substitutes (homogenous products), thus leaving little space for undertakings to compete in the quality of products or provision of services, or where competitors in some market already collaborate through an association of undertakings. The global and European practice indicate cartel agreements particularly in the cement market, sugar market, pharmaceutical products market, cosmetic products market, between lift makers etc.

Although the existing Competition Act in the Republic of Croatia provides for high fines for conclusion of prohibited agreements (up to 10% of the total turnover of the participants to such agreements in a year prior to their conclusion), it is rather inadequate for a successful combat of cartels in the Republic of Croatia. Why is that so?

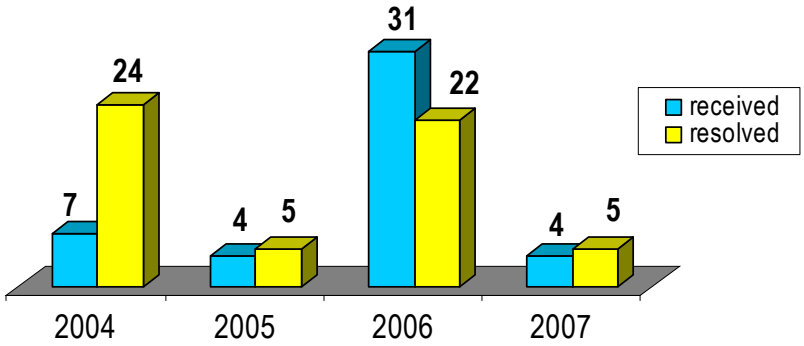
The provisions of the Competition Act have been applied in the Republic of Croatia since the mid 1997, and they are well known to the biggest undertakings with the largest share of market power, who today, unlike in the late nineties, successfully hide their possible cartel activities and evidence of any existence of a cartel. In addition, the substantially updated 2003 Competition Act which has been in effect since 1 October 2003, does not empower either the Agency or minor offence courts to grant immunity from or reduction of fine in the case where a participant of a cartel agreement comes forward and reveals to the Agency the details of its existence.

The practice of similar competition authorities in the United States, the European Commission and EU national competition authorities has shown that it is almost impossible to reveal “the actual” cartel agreement without the information from the participants to such cartels. It was only after the European Commission passed a regulation enabling the undertakings participants to cartel agreements to come forward with necessary information in 2001/2002, that more cartels have been disclosed in the EU. Following this model, today the national legislations of almost all EU Member States have introduced into their legislation a leniency programme for cartels, i.e. the total or partial reduction of fines applied to undertakings which first inform the competition authority and demonstrate evidence of the existence of a hardcore cartel. However, prosecuting cartels and investigations may take several years.

The Republic of Croatia still does not have the legal preconditions for the most complex and most demanding activities pertaining to addressing cartel cases. Nevertheless, in 2007 on its own initiative the Agency disclosed one cartel agreement with 14 bus operators providing public passenger transport services.

During 2007, the Agency has taken 5 decisions in the cases relating to the assessment of agreements. In one case thereof, it took a decision establishing the conclusion of the above mentioned prohibited cartel agreement between 14 bus operators, whereas in the other case it dismissed the request for interim measures filed by an undertaking in the market in distribution and servicing of motor vehicles, given the lack of legal grounds for the adoption of such measures. Concerning 3 other cases of assessment of agreements, in one the Agency terminated the assessment proceedings due to the withdrawal of the party (VIPnet d.o.o., Zagreb) and by the same decision revoked 18 decisions on interim measures it had taken in 2006 upon the request by VIPnet d.o.o. under separate administrative proceedings of the assessment of agreements which the undertakings HT-Hrvatske telekomunikacije d.d., Zagreb (hereinafter: HT) and T-Mobile Hrvatska d.o.o., Zagreb (hereinafter: T-Mobile) concluded with 18 of their key accounts and their connected undertaking (comprising a total of over 150 undertakings). Eventually, the Agency decided to join the cases concerned and continue to conduct the proceedings against the undertakings HT and T-mobile based on the request to VIPnet but on a different legal basis, that of establishing abuse of a dominant position. In the remaining 2 cases of assessment of agreements, the Agency has dismissed the requests due to lack of legal grounds.

Picture 3 Number of received and resolved **assessment of agreements** cases in the period 2004 – 2007



Source: CCA

As far as the assessment of agreements is concerned, the Agency's main focus will be on market investigations which should detect restrictive agreements, especially meant here are cartel agreements. Nevertheless, in addition to horizontal agreements between direct competitors (between undertakings operating at the same level of the production or distribution chain) the Agency will also dedicate the same attention to vertical agreements concluded between non-competing undertakings (between undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, such as

exclusionary agreements relating to the conditions under which the parties may purchase, sell or resell certain goods or services) which due to their possible effect of foreclosure or barriers to entry for undertakings which are not parties to such agreements may significantly impede effective competition.

It can be reasonably assumed that by the end of 2008 or in early 2009 at the latest, adequate legal preconditions similar to those applicable by the national competition authorities in the EU Member States and the European Commission, empowering the Agency to impose fines, grant immunity or reduce fines for whistle–blowers (cartel members to first come out and provide information on existence of prohibited agreements) will be ensured for the purpose of effective enforcement when it comes to combating cartels.

4.1.1. The Agency against 14 bus operators

Establishing a prohibited (cartel) agreement

The Agency has established[8] that 14 undertakings, bus operators with headquarters in the Republic of Croatia, have on the basis of an explicit agreement and concerted practices directly fixed prices of bus tickets on the routes Zagreb-Split and Split-Zagreb, and Zagreb-Šibenik and Šibenik-Zagreb, which started to apply simultaneously on 1 July 2006, despite different service costs of the mentioned undertakings. By doing so, the mentioned bus operators have entered into prohibited (cartel) agreement, in accordance with Article 9 paragraph 1 item 1 of the Competition Act, which in accordance with the provision of Article 9 paragraph 2 of the Competition Act shall be null and void.

The subject of such an agreement (agreement on selling price of the bus tickets) is assessed as a hardcore restriction of competition, the objective of which is to exclude competition between direct competitors in a relevant market in providing inland passenger transportation services on the routes Zagreb-Split and Split-Zagreb, Zagreb-Šibenik and Šibenik-Zagreb. Such an agreement may not be granted either block or individual exemption in accordance with the provisions of Article 10 of the Competition Act and it leaves no price options for the consumers, regardless of the quality of the services provided.

In this case, the Agency received the initiative, a request to initiate the proceedings, by an anonymous e-mail from a citizen. After having received the writing, the Agency has conducted the market analysis and checked the allegations on the concerned introduction of the uniform price of bus tickets by all bus operators on the mentioned routes at the same time. After having received the price-lists and statements by parties and bus terminals in Zagreb, Split and Šibenik, the Agency ex officio initiated the assessment proceeding for such an explicit agreement, i.e. concerted practice. During the proceedings it has been established that there has been no written agreement, but that there has been a non-formal verbal agreement, i.e. concerted practice. The legal form of the agreement is irrelevant here. What is relevant is that it is a concerted announcement of official price lists (in a very short time period from 29 June until 4 July) and a concerted application of these identical price lists (as of 1 July 2006). All the above

[8] The Agency's decision, Class: UP/I -030-02/2006-01/39, of 24 September 2007 (Official Gazette 115/07).

mentioned has confirmed the joint attempt by the bus operators to act in a concerted manner in the relevant market. Competition law implies that every contact between the competitors in regard to their business activities and conduct in the market represents an exchange of information, thus representing significant risk for competition. However, given that the price is a reflection of the actual operational costs incurred by each undertaking, during the proceedings the Agency had to establish if all the bus operators on the mentioned routes had identical prices for their services as a result of their identical operational costs. Exactly the contrary has been established. The bus operators at the mentioned routes cover different distances, provide different quality of transportation services during different duration of travel, have different number of stops, use different routes (highway A1 with toll or state road D1 without toll) and get their supplies from different suppliers at different prices. In addition to the mentioned, the Agency has established other competition issues of the relevant market. It is a closed market, with administrative barriers preventing access to new undertakings due to the fact that the transportation cannot be provided without a license or a permit by the competent ministry and in accordance with special rules regulating those activities, so there is no possibility of a more significant access by new market competitors. Given that 14 bus operators have directly fixed price of this service and thus excluded competition between them, they are not motivated to conduct cost-effective business operations, which prevents setting the optimum prices of these services and resulting in lack of price choice for the consumers. Given that this is a hardcore restriction of competition in the relevant market in the provision of transportation services on the mentioned routes, the Agency filed the requests at the competent minor offence courts for the initiation of the minor offence proceedings against all 14 participants in the prohibited agreement, which would then impose fines for the conclusion of prohibited agreements.

Despite the fact that 7 out of 14 cartel members filed administrative disputes against the Agency's decision to the Administrative Court of the Republic of Croatia, they have all changed their price lists in accordance with their operational costs resulting from the provision of passenger transportation services. The price lists were altered in the period from May until July 2007, prior to the closure of the proceedings in question.

4.2. Abuse of a dominant position

In this reporting period the Agency continued with consistent implementation of the Competition Act in the part pertaining to establishment of abuse of a dominant position by undertakings and its preventive and deterrent role. At the same time, without the initiation of special proceedings, the Agency has worked on prevention and on dissemination of knowledge including the undertakings when it comes to certain prohibited practices, with the objective to get the undertakings to voluntarily give up on such practices and to quickly establish effective competition, for the purpose of Agency's efficiency and in the public interest.

Although a dominant position of an undertaking in a particular relevant market is not prohibited per se, and a natural and justified objective of each undertaking competing in a free market is to strengthen its market power, such strengthening of market power is permissible and justified only if it is a result of effective business operations, product quality and innovation which justifiably ensure a competitive advantage and do not contravene with competition rules. In

practice, however, the undertakings holding a dominant position often behave in a way which is in contradiction with competition rules. For the purpose of offering more expensive products they try to eliminate their competitors from the market or limit their market access through unlawful operations. Competition is then weakened, products are of a poorer quality, innovation and new technologies do not develop and this is at the end of the day harmful not only to their competitors but also to the consumers, and the economy as a whole.

Article 16 of the Competition Act:

(1) Any abuse by one or more undertakings of a dominant position in the relevant market shall be prohibited.

(2) The abuse referred to in paragraph (1) of this Article may in particular consist of:

1. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,

2. limiting production, markets or technical development to the prejudice of consumers,

3. applying dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage,

4. making the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Evidentiary proceeding for the establishment of abuse of a dominant position is very complex given that in such proceedings, the Agency has to in advance establish indisputably that an undertaking is in a dominant position in a particular market.[9] In accordance with the deterrent policy of the CCA, the proceedings for the establishment of abuse of a dominant position are carried out on the basis of legal and economic analyses of both actual effects of the business practices of the undertaking(s) and potential effects on competition, whereas the final decision on abuse depends on the results of the analyses in question. It is important to note here that the effects of abuse of a dominant position by an undertaking need not necessarily to occur for the abuse to be established. It is desirable that the actual effect for establishing abusive practices of an undertaking holding a dominant position never occurs. This is in compliance with the policy of the CCA to act as a deterrent to possible abusive practices of dominant undertakings, to prevent any abusive practices if they actually occur, prohibit them in the future and ensure, restore or enhance effective competition in a certain market.

During 2007, the Agency received a total of 12 requests for the initiation of the proceedings relating to the establishment of abuse of a dominant position, whereas it resolved a total of 14 cases.[10] The proceedings were closed in 3 cases. In 2 cases thereof, after having carried a

[9] The market share in terms of Article 15 paragraph 3 and 4 of the Competition Act is only one of the criteria for the presumption of a dominant position; however, it is a refuted legal presumption which is why other criteria from Article 15 paragraph 1 of the Competition Act have to be used to establish a dominant position. As an example, these may be legal or factual barriers, i.e. all economic characteristics of a particular market which may decide on the possibility of actual or potential competitors to compete in the relevant market or to enter this market within a reasonable time period.

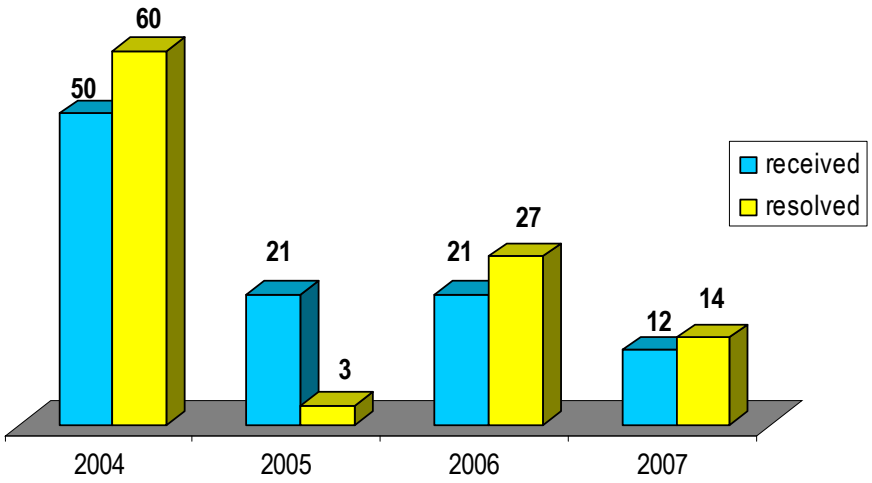
[10] The number of resolved cases relating to the establishment of abuse of a dominant position in 2007 also includes the cases received in the preceding years, given that the proceedings in the latter cases have been closed in this report period.

complete economic and legal analysis, the CCA established abuse of a dominant position[11] and in one case no abuse of dominant position has been established and the CCA rejected the request of the party [12].

Besides the 3 closed cases mentioned above, the CCA has also terminated the proceedings in 2 cases given that there were no legal grounds or public interest for any further actions in the proceedings: Krizantema obrt, Slavonski Brod v Kozala d.o.o., Slavonski Brod, and Krizantema obrt, Slavonski Brod v Monte Giro d.o.o., Pula. In the latter cases, the CCA initiated the proceedings based on the initiative of the same complainant, carried out a comprehensive economic and legal analysis and subsequently established that undertakings Kozala d.o.o. and Monte Giro d.o.o. did not abuse a dominant position in the relevant market of cemetery and crematorium maintenance in Rijeka, i.e. Pula, with the view to increasing their market power to another closely related relevant market (sale of funeral equipment). In other words, the allegations made by the undertaking who submitted the request indicating that the mentioned utilities companies were conditioning the choice of funeral service schedules with the purchase of funeral equipment from the undertakings concerned could not be substantiated.

In addition, during the report period 9 more cases of abuse of a dominant position have been concluded by the resolution (procedural order) taken by the CCA, where 8 cases thereof have been dismissed on the basis of lack of legal grounds for initiation of the proceedings within the meaning of the Competition Act. In one case the CCA dismissed the request on the basis of lack of jurisdiction.

Picture 4 Number of received and resolved **abuse of a dominant position** cases in the period 2004 – 2007



Source: CCA

[11] Agency's decision Class: UP/I 030-02/2005-01/50, of 12 July 2007 (Official Gazette 100/07) establishing the abuse of a dominant position by undertakings HT d.d. and T-Mobile d.o.o. in telecommunications market in the territory of the Republic of Croatia and decision Class: UP/I 030-02/2005-01/43, of 15 October 2007 (Official Gazette 6/08) establishing abuse of a dominant position by undertakings Tisak d.d. and Distri-Press d.o.o. , a joint abuse of a dominant position in the daily press distribution wholesale market in the territory of the Republic of Croatia.

[12] The request by KRIZANTEMA trades, Slavonski Brod, v KOMUNALAC d.o.o., Slavonski Brod, in the case Class: UP/I 030-02/2005-01/45, was rejected by the Agency's decision of 18 January 2007, since no abuse of a dominant position has been established (Official Gazette 10/07).

During 2007, the Agency made two very important decisions relating to very complex proceedings of establishing abuse of a dominant position whereby it established abuse of a dominant position by an undertaking in the telecommunications services market and in the daily press distribution wholesale market. A detailed description of these two decisions is provided below.

4.2.1. HT-Hrvatske telekomunikacije d.d., Zagreb and its connected company T-Mobile Hrvatska d.o.o., Zagreb

Establishing abuse of a dominant position

The Agency took a decision[13] on abuse of a dominant position of the undertakings HT d.d. and its connected company T-Mobile Hrvatska d.o.o. starting from 13 November 2003 in the relevant market covering the provision of telecom services through the conclusion of the Frame Contracts on the provision of telecom services including the appendices and annexes, with twenty three (23) different key accounts with their place of establishment in the Republic of Croatia. The assessment procedure in question has been carried out upon a complaint submitted by the undertaking VIPnet d.o.o. whereas the provision raising anticompetitive concerns included the conclusion of contracts subject to acceptance by key accounts of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts, and are thus considered as hardcore restrictions of competition within the meaning of competition rules.

The Agency established that the mentioned 23 key accounts belong to a hundred biggest Croatian undertakings which in spite of their financial power and negotiation skills accepted the contract provisions offered by the HT group. The reason for such a behaviour is that in the period concerned, it was only the HT group who could offer telecom services in a package which included both fixed-line, mobile services and other. Taking into account the content of the restrictive provisions and particularly the duration of their implementation (approximately 3 years), the imposed obligations have had as their object and effect the prevention of market access to the competing undertakings of HT and T-Mobile also after the fixed-line and mobile telecom market opened and subsequently offered other telecom services to new competitors. A further obligation on the key accounts had been to inform HT and T-Mobile on new telecom services which may be offered to them by the competing undertakings of HT and T-Mobile. In addition, the contract provisions made the key accounts subject to acceptance of the offer made by HT and T-Mobile where the offer of the latter included equal or lower prices or equal or better quality of the same products offered by their competitors. Also, the key accounts had to inform HT and T-Mobile on the actual percentage of the use of telecom services provided by the competing undertakings of HT and T-Mobile under certain conditions (so called "telecommunications services of limited scope"). In addition, the contracts concerned imposed the obligations on the key accounts to use all telecommunications services which have or will be offered by HT and T-Mobile following the conclusion of the contracts. Furthermore, HT and T-

[13] The decision of the Agency Class: UP/I 030-02/2005-01/50 of 12 July 2007 (Official Gazette100/07).

Mobile could unilaterally cancel the discounts for key accounts in the event they would at the same time use the services of their competitors.

During the procedure, HT and T-Mobile have submitted a certain number of modified contracts in question to the Agency. The wording of certain restrictive provisions has been changed, some have been deleted or ceased to be in force and evidence thereof has been communicated to the Agency. However, the Agency established that a number of restrictions were still in force in 14 contracts concerned. The content of the restrictive provisions, the duration of their implementation (approximately three years) and the sanctions that have been unilaterally envisaged in case of breach of the obligations limiting the use of services, undoubtedly indicate the abuse of dominance established in the relevant market by HT and T-Mobile.

Consequently, the Agency ordered HT and T-Mobile to remove or dully modify the restrictive contract provisions which have been in force in 14 contracts in question as long as the proceedings have been carried out. Furthermore, any future business practices which would result in abuse of a dominant position of the undertakings concerned or any direct or indirect financial incentives or sanctions imposed on the users of their services having as their object or effect restriction on the use of telecommunications services offered by competing undertakings shall be prohibited. The deadline for complying with all orders by the Agency and reporting to the Agency was three months.

Although HT and T-Mobile filed for an administrative dispute against the decision of the Agency in question at the Administrative Court of the Republic of Croatia, they nevertheless complied with all orders imposed by the Competition Agency and furnished evidence thereof in the form of annexes of the disputable Frame Contracts showing that the restrictive provisions have been removed in their entirety. When the annexes of the Frame Contracts entered into force, the abuse of a dominant position by the mentioned undertakings which has lasted for 4 years from 13 November 2003 until 13 November 2007 ceased.

4.2.2. Tisak d.d., Zagreb and Distri Press d.o.o., Zagreb

Establishing abuse of a dominant position

The Agency has established[14] joint abuse of a dominant position by the undertakings Tisak d.d. and Distri-Press d.o.o. starting as of 2 March 2005 in the daily press distribution wholesale market in the territory of the Republic of Croatia. The abuse in question pertained to the distribution of the daily newspaper "24 sata" published by the undertaking Media-Ideja d.o.o., Zagreb.

The proceeding was initiated upon the request by the undertaking Media-Ideja d.o.o.

[14] The Agency's decision Class: UP/I 030-02/2005-01/43, of 15 October 2007 (Official Gazette 6/08).

In this particular case, where the retail price of the daily newspaper "24 sata" is 3 HRK, the price for the distribution services has been uniformly set under the general terms of operations, yet made dependant of the total number of distributed issues of the particular daily and the returns from the agents. Nevertheless, all other daily newspapers publishers, whose retail price for dailies is 6 HRK, have been charged by Tisak and Distri Press only the uniform price agreed for the distribution services, disregarding the returns from the agents. Thus, this is the way how two biggest and the only Croatian press distributors operating on the national level, Distri Press and Tisak, applied dissimilar conditions to equivalent transactions with different trading parties, thus discriminating the publisher Media-Ideja in respect of its competitors in the connected daily newspapers publishers market. The Agency established abuse of a dominant position and ordered Tisak and Distri-Press to terminate anticompetitive practices and to revise the general terms of operation which will clearly and in a transparent manner under the principle of non-discrimination regulate the price of the daily papers distribution services which may not be made dependant on the sale price of the dailies. The deadline for complying with the Agency's order and reporting to the Agency was three months.

The undertakings Tisak and Distri press have entirely complied with the Agency's order and adopted new general terms of operation which do not contravene with the provisions of the Competition Act. When the new General terms of operation entered into force, the abuse of their dominant position which lasted for 2 years ceased.

4.2.3. Microsoft Hrvatska d.o.o., Zagreb

Restoration of effective competition without institution of separate proceedings

Upon the Agency's request, Microsoft Hrvatska d.o.o made a Statement[15] by which it undertook to act in compliance with the measures, obligations and limitations imposed by the European Commission in its decision 2007/53 EC of 24 March 2004 which was upheld by the judgement of the Court of First Instance of 17 September 2007 also in the territory of the Republic of Croatia. Microsoft Hrvatska d.o.o. undertook the obligation to perform its business practices within the meaning of the above mentioned decisions and to respect the key principles of competition law and competition rules in effect in the Republic of Croatia. Thereby Microsoft will ensure:

1. *the disclosure of the relevant Windows Server Protocol specifications to all undertakings in the market within the territory of the Republic of Croatia on the basis of non-discriminatory use and on equal terms applicable on the undertakings within the EU;*
2. *obtaining the existing Windows XP and Windows Vista operating systems without Windows Media Player in all languages obtainable in the EU in a non-discriminatory manner by offering 2 versions of Windows at the same price, namely one with Windows Media Player and the other without it;*
3. *availability in Croatian of a new version of Windows XP and Windows Vista operating systems without Windows Media Player*

[15] Statement by the undertaking Microsoft Hrvatska d.o.o., of 28 December 2007, available at the Agency's web site www.aztn.hr

Namely, in its decision 2007/53 EC of 24 March 2004 the Commission established abuse of a dominant position by Microsoft Corporation in the common market. The Court of First Instance upheld the EC decision in its judgement of 17 September 2007. Microsoft Corporation decided not to appeal to the European Court of Justice in respect of the afore mentioned decision obliging it to grant competitors access to its server protocols and to unbundle its Media Player software from its Windows operating system.

Within the meaning of Article 35 of the Competition Act and Article 70 of the Stabilization and Association Agreement whereby the Agency accordingly applies the criteria arising from the proper application of EC competition rules, and for the purpose of the application of the relevant EC decision on the Croatian market, even though it does not produce effects in the Croatian market, the Agency called for the business practices of the undertaking in question to be equal to the ones used in the Community market. This was followed by the Statement communicated by Microsoft Hrvatska in which the undertaking concerned ensures the implementation of the relevant EC decisions in Croatia. It must be noted here that so far no proceedings have been initiated against the undertaking in question. However, in case of the infringement of Croatian competition rules or of obligations undertaken in the Statement, the Agency explicitly warned the undertaking that in case of any violation of the obligations undertaken by the Statement, it may ex officio initiate proceedings against Microsoft Hrvatska concerning the establishment of abuse of a dominant position.

Having realized that such behaviour, given the complexity of the proceedings, would be neither purposeful nor efficient for either the undertaking or the Agency, Microsoft Hrvatska has already complied with two orders made by the Agency, and for the third, concerning the availability in the Croatian language of a new version of Windows XP (N version) it was given a deadline according to which it has to be available in the Croatian language in Croatia at the same time it appears in the EU Member States and their official languages.

4.3. Assessment of compatibility of concentrations between undertakings

A significant portion of the Agency's administrative activities in 2007 pertained to assessment of concentrations between undertakings. Firms do not only grow through the increase in volume and sale of their products in the market but also through various forms of mergers and acquisitions, thereby acquiring control or decisive influence over one or more undertakings, or by creating a joint venture of legally independent economic entities, which performs, on a lasting basis, all the functions of an autonomous economic entity. Such full-function joint ventures are often beneficial for the Croatian market and its economy as a whole given that they increase competitiveness, strengthen the economy of scale and ensure benefits for the consumers (lower prices, higher quality and diversification of products). However, mergers can possibly also have anticompetitive effects in the long-run and also lack beneficial effect for consumers on the account of the fact that they reduce the number of competitors in the market. Therefore, it is

necessary to pre-notify any planned concentration to the Agency in accordance with competition rules.

The Agency does not assess all business transactions which have effects on the market of the Republic of Croatia and which have the nature of concentrations, but only those which have a significant economic power manifested through total turnovers of all the undertakings parties to the concentration (Article 22 paragraph 4 of the Competition Act).

The Croatian Competition Act sets neither the market share of the participants of the concentration nor the market share following the implementation of the concentration in question as the criteria which would decide on the existence of a notification obligation relating to the assessment of concentrations. The only objective and measurable criteria for the existence of notification obligation remains the level of the aggregate annual turnover of the undertakings parties to the concentration, thus providing them with legal certainty prior to the implementation of the proposed concentration.

In this context, the wording of Article 18 of the Competition Act must be understood as to what constitutes a prohibited concentration within the meaning of the Competition Act, but only in the case where the concentration is subject to notification obligation.

Article 18 of the Competition Act:
„There shall be prohibited the concentrations of undertakings that create a new, or strengthen a dominant position of one or more undertakings, individually or as a group, if they can significantly influence the prevention, restriction or distortion of competition, unless the participants in that particular concentration provide valid evidence that their concentration will lead to strengthening of competition in the market, bringing benefits that will prevail over negative effects produced by the creation or strengthening of their dominant position."

Article 22 paragraph 4 of the Competition Act:
„The parties to the concentration are obliged to notify the concentration to the Agency if the following conditions are simultaneously met:
1. the total turnover of all the undertakings – parties to the concentration, realized by the sale of goods and/or services in the global market, amounts to at least 1 billion Kuna in the financial year preceding the concentration, and
2. the total turnover of each of at least two parties to the concentration realized by the sale of goods and/or services in the domestic market, amounts to at least 100,000,000 Kuna in the financial year preceding the concentration."

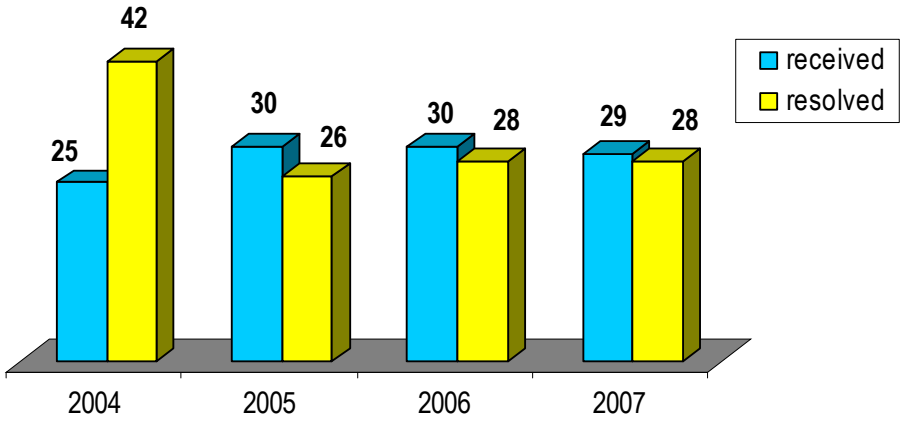
Unlike the Competition Act which regulates the obligatory notification of the proposed concentration under the above mentioned criteria, the provisions of the Electronic Media Act make any change in the share holding structure of a certain electronic media subject to obligatory notification. Accordingly, the Agency must assess any concentration in the electronic media sector even when it is clear beforehand that the transaction in question has no anticompetitive effects whatsoever.

In regard to the above, during 2007 the Agency received a total of 29 notifications of proposed concentrations and resolved the same number of cases relating to assessment of concentrations as in 2006 - 28. Alike in 2006, 26 concentrations have been assessed in the so-called first or second phase within the meaning of Article 26 paragraph 1 and 3 of the Competition Act, whereas in 2 cases the Agency dismissed the request of the notifying party. In one of the latter cases, the transaction in question did not fall under the concept of concentration, i.e. there were no conditions to initiate the assessment proceedings, whereas in the second case, despite the fact that the transaction in question did fall under the concept of concentration, the cumulative threshold criteria relating to the aggregate annual turnover of the participating undertakings in the world market and Croatian market in the year preceding the implementation of the concentration in question were not met.

24 concentrations of the total of 28 have been declared compatible in the first phase given that on the basis of the data contained in the notifications concerned and its own findings (without in-depth market investigation necessary) the Agency could indisputably establish that the concentrations in question will not have anticompetitive effects.[16]

Only two concentrations have been assessed by the Agency in the phase II procedure involving the in-depth market investigation and a comprehensive legal and economic analysis of the relevant markets on which the concentration has or may have effect[17]. One of them was declared conditionally compatible and the Agency ordered a number of conditions and obligations for their implementation (AGROKOR d.d., Zagreb and Tisak d.d., Zagreb). The other concentration was declared compatible (SLOBODNA DALMACIJA d.d., Split and ŠIBENSKI LIST d.o.o., Šibenik).

Picture 5 Number of received and resolved **concentration** cases
In the period 2004 – 2007



Source: CCA

[16] Article 26 paragraph 1 of the Competition Act.
[17] Article 26 paragraph 3 of the Competition Act.

Furthermore, 26 concentrations between undertakings implemented in the territory of the Republic of Croatia in 2007 indicate some common features.

- Parties to the concentrations active in various product markets in the Republic of Croatia are very often successful undertakings who become a "target" for even bigger foreing firms. Examples of such concentrations are: *MOL Ltd, Hungary / TIFON d.o.o., Zagreb, PHOENIX Pharmahandel Aktiengesellschaft & CoKG, Germany / UNIPHARM d.o.o., Zagreb, ERSTE BANK der Österreichischen Sparkassen AG, Austria / DINERS CLUB ADRIATIC d.d., Zagreb*;
- The number of vertical mergers is approaching the number of horizontal mergers which continue to make the majority of the total number of assessed concentrations.
  The examples of horizontal mergers (between competing undertakings) are: *MOL Ltd, Hungary / TIFON d.o.o., Zagreb, KONZUM d.d., Zagreb / JADRAN TRGOVINA d.o.o., Rovinj, POSLOVNI SISTEM MERCATOR d.d., Slovenia and MERCATOR - H d.o.o.; Požega / PRESOFLEX d.o.o., Požega, DOCU GROUP DEUTSCHE HOLDING GmbH, Germany / SPRINGER SCIENCE + BUSINESS MEDIA DEUTSCHLAND GmbH, Germany, RASPERIA TRADING LIMITED, Cyprus / RAIFFEISEN - HOLDING NIEDERÖSTERREICH-WIEN reg. Gen.m.b.H., Austria / UNIQA VERSICHERUNGEN AG, Austria*.
  The examples of vertical mergers are: *AGROKOR d.d., Zagreb / UNEX MPG d.o.o., Zagreb, W2005, The Netherlands and DVADESET OSAM d.o.o., Zagreb / ARENATURIST d.d., Pula* with associations, *COLAS S.A., France / CESTA-VARAŽDIN d.d., Varaždin*;
- Undertakings with their seat outside Croatia have chosen concentrations they entered into with the Croatian incumbent firms rather than opting for Greenfield investment. These have usually been Croatian undertakings holding a relatively low market share and using a technology which cannot be competitive, but at the same time with valuable brands and/or important human resources. E.g. *COLAS S.A., France / CESTA-VARAŽDIN d.d., Varaždin ili PHOENIX Pharmahandel Aktiengesellschaft & CoKG, Germany / Unipharm d.o.o., Zagreb*;
- The number of concentrations in the sales market is growing. E.g. *KONZUM d.d., Zagreb / JADRAN TRGOVINA d.o.o., Rovinj, POSLOVNI SISTEM MERCATOR d.d., Slovenia and MERCATOR - H d.o.o.; Požega / PRESOFLEX d.o.o., Požega*;
- There continues to be an increase in the number of concentrations that have been implemented in the media sector, primarily in the press publishing sector *SLOBODNA DALMACIJA d.d., Split / ŠIBENSKI LIST d.o.o., Šibenik*, but there is also a significant number of concentrations in the electronic media sector;
- Out of a total number of assessed contractions, there were two extra-territorial horizontal mergers which had effect on the Croatian market, namely the previously mentioned *DOCU GROUP DEUTSCHE HOLDING GmbH, Germany / SPRINGER SCIENCE+BUSINESS MEDIA DEUTSCHLAND GmbH, Germany, RASPERIA TRADING LIMITED, Cyprus / RAIFFEISEN-HOLDING NIEDERÖSTERREICH-WIEN reg. Gen.m.b.H., Austria / UNIQA VERSICHERUNGEN AG, Austria.*

4.3.1. Agrokor d.d., Zagreb and Tisak d.d., Zagreb

Conditionally compatible concentration between undertakings

The Agency rendered the concentration between the undertakings Agrokor d.d. and Tisak d.d.[18] conditionally compatible within the meaning of competition rules. With the mentioned decision, the Agency ordered a number of conditions and obligations which the undertakings must implement to remove the possible negative effects of the concentration in question which could significantly impede competition, primarily in the relevant food and non-food retail market. In this particular case, the imposed remedies especially took into account the fact that Agrokor d.d. confers decisive influence on the decisions of the undertakings within the Agrokor group. This conglomerate merger consists of more than thirty undertakings which are active at all stages of production or distribution processes and involves a wide range of activities in the territory of Croatia and in the region. This is also underpinned by a strong portfolio of products and wide range of activities carried out by the participating undertakings causing a so called portfolio effect. A portfolio effect arises if consumer demand is responsive to variety differentials, i.e. where variety advantage gives Agrokor group a demand advantage where the consumers are attracted by a wide range of all-in-one-place products, which is not the case with its rivals. Under such circumstances, this may consequently lead to foreclosure to the disadvantage of the consumers given that the suppliers' choice is narrowed down whereas Agrokor might increase its prices or in any other way affect consumers' benefit. Additionally, the portfolio effect of the Agrokor group takes into account its significant market and financial power as a buyer of products and its potential influence on the suppliers of the products which it offers in its wholesale and retail centres.

With the view to eliminating the above mentioned anticompetitive effects, the imposed measures involve the prohibition of the reallocation of Tisak's outlets to retail food and non-food outlets within the period of the following three years. Furthermore, Agrokor has been imposed an obligation, to ensure within the period of the following two years, that Tisak's supply must consist of at least 25 % of substitute products to the products which are supplied by Agrokor and its connected undertakings, whereby substitutes are considered products made by the competing undertakings to the Agrokor group in the food and non-food products retail market. In addition, the Agency ordered the undertaking Tisak that all the existing agreements concluded with the suppliers in respect of all kinds of products sold in the wholesale and retail should remain in effect within the period of one year whereby the commercial terms (e.g. deadlines and terms of payment) must remain the same or be more favourable than the existing ones used in the agreements in force provided that they are non-discriminating and transparent in respect of all suppliers. The Agency also prohibited Agrokor to sell its own brand products (Konzum d.d.) at Tisak's points of sale (such as its own brands "K plus", "Rial" or any other possible brands that may be created by the same undertaking or by the undertaking Tisak). Finally, in order to ensure transparency in the implementation of the imposed measures aimed at the elimination of the anticompetitive effects of the concentration in question, the Agency ordered Agrokor to appoint an independent auditing company, subject to the approval of the Agency, which will be in the following three years in charge of monitoring the implementation of the said remedies to restore effective competition in the relevant market.

[18] The Agency's Decision, Class: UP/I 030-02/2006-02/33, of 15 March 2007 (Official Gazette 37/07).

The undertakings Agrokor d.d. and Tisak d.d. fully comply with the imposed measures.

In addition, the Agency has already received the first audit report which enables the Agency to monitor the implementation of the measures which should eliminate the possible negative effects of this concentration.

The first audit report of AGROKOR d.d. has to contain data on the existing status of undertaking TISAK d.d. prior to the implementation of the concentration concerned. The submitted audit report contained the mentioned data for the period from 1 January 2006 until 31 December 2006. The second and the third audit report will cover the operations of the participating undertakings in the years following its implementation. AGROKOR d.d. has to submit its second audit report to the Agency no later than 30 April 2008 and its third report by 30 April 2009.

4.3.2. Slobodna Dalmacija d.d., Split and Šibenski list d.o.o., Šibenik

Compatible concentration

The Agency rendered the concentration between Slobodna Dalmacija d.d. and Šibenski list d.o.o.[19] compatible within the meaning both of the competition rules and the rules regulating the media.

The main characteristic of this horizontal merger is that the parties to concentration did not timely notify the Agency on their intent to create concentration, in spite of the fact that the cumulative criteria relating to the aggregate annual turnover of the participating undertakings in the world market and Croatian market in the year preceding the implementation of the concentration in question have been fulfilled.[20] Therefore, the Agency submitted a request against the undertaking Slobodna Dalmacija d.d. and its responsible persons to initiate minor offence proceedings to the competent minor offence court and proposed fines regulated by the Competition Act.[21]

After it had carried out the assessment of the concentration concerned the Agency rendered the concentration compatible in phase II. It was established that it neither creates nor strengthens a dominant position of the participating undertakings and as such does not produce anticompetitive effects which would prevent, restrict or distort competition in the relevant general-information weekly magazines publishers' market within the territory of the Republic of Croatia.

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[19] The Agency's decision, Class: UP/I-030-02/2007-02/09, of 9 November 2007 (Official Gazette 129/07).

[20] Article 22 paragraph 2 of the Competition Act regulates that the notification of the intent to create a concentration, shall be submitted to the Agency for assessment without delay, and at the latest within 8 days following the day of the publication of the public bid or the day of the conclusion of the contract through which the control or decisive influence of an undertaking is acquired, that period shall begin when the first of these events occurs.

[21] Article 62 paragraph 1 item 2 of the Competition Act regulates that the undertaking - legal or natural person shall be fined at the most with 1% of its total annual turnover in the financial year preceding the year when the infringement was committed, if it fails to notify the Agency on the proposed concentration (Article 22). Article 62 paragraph 2 of the same Act regulates that in such a case, the responsible person of the undertaking shall also be fined an amount ranging from HRK15, 000 to 50,000.

After the implementation of the concentration in question (after taking over the undertaking Šibenski list), the market share of the undertaking Europapress holding d.o.o. (which is a majority share holder in Slobodna Dalmacija) in the general-information weekly magazines market increased by some 2 % so that their joint market share is some 20% to 30 % which is significantly lower than the permissible level of a 40 % market share conditioning the compatibility of concentration in the weeklies market within the meaning of the provisions of the Media Act.

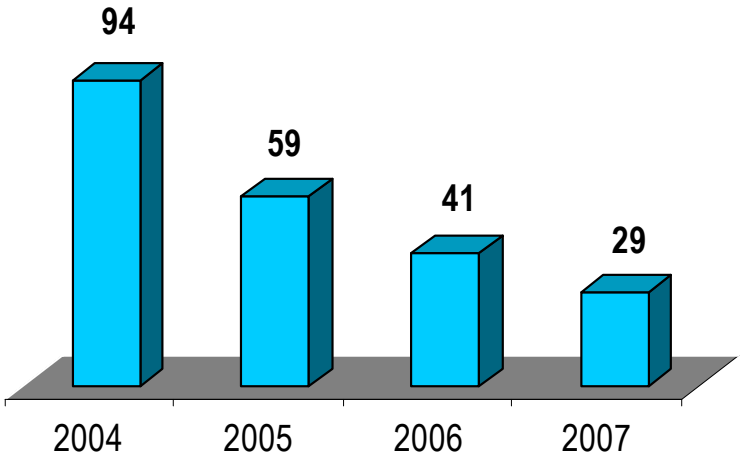
4.4. Competition advocacy

Similar as in other transitional economies, one of the priorities of the CCA has always been promotion of competition policy. Competition advocacy includes raising awareness and understanding of the benefits of competition on productivity growth of the national economy and its beneficial effects for consumers. In addition, competition advocacy contributes to: creation and coordination of legislative framework which will stimulate competitive environment for development of entrepreneurship; freedom of each individual to start with entrepreneurial activities establishing a public environment that encourages competition, compliance with the laws and supports the legitimacy of the Agency's advocacy and enforcement functions. In particular, the Agency often responds to the requests of the parties, organises and participates in public conferences on competition issues, numerous seminars and workshops for judges and undertakings, lectures, internal and external seminars in cooperation with EU aid projects, the Croatian Chamber of the Economy, the Croatian Association of Employers and the ministries. The international Competition Day was held in November 2007 in Zagreb on the Agency's 10th anniversary.

With the view to facilitating the development of competition culture the Agency maintains its web site www.aztn.hr where it publishes its decisions and opinions about competition issues (e.g. market analysis for the provision of taxi services, audit services and lawyers' services, opinion on the package of energy laws etc.). The Agency also publishes regular press releases from the sessions of the Competition Council which are in principle held twice a month, replies to journalists' questions and cooperates with the media, publishes brochures. Its proactive role includes also the responses to certain competition issues which do not directly fall under its jurisdiction, but which are of the public interest (e.g. Lactalis taking over Dukat). It indicates the actual or potential effects certain behaviour of undertakings in the market may have on competition, and especially in the context of deregulation and liberalization of certain sectors in the market.

The number of requests, and particularly their content, has been reduced. While in 2004 the interest of the business community was focused on new block exemption regulations, during 2007 the requests made by undertakings and their lawyers were mostly directed to explanations and issuing opinions on more complex issues pertaining to the legal regime and practice of the Agency.

Picture 6 Number of issued **opinions i**n the period 2004 – 2007



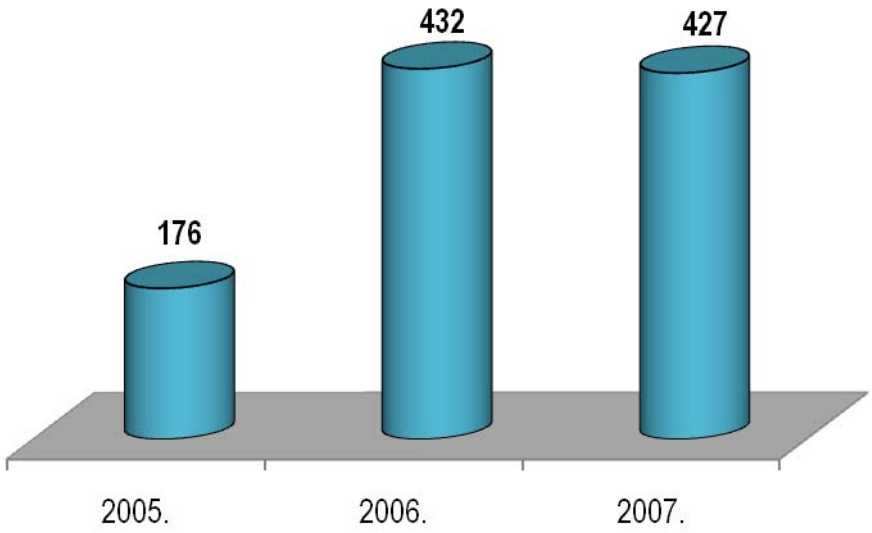
Source: CCA

As already mentioned above, the Agency also conducts investigations concerning the possibilities of market entry, including the legal barriers and other restrictions which may challenge competition in certain markets.

The Agency's efforts in the area of competition advocacy have had good results, especially concerning its presence in the media. **"Quantitative and qualitative analysis of media releases in the period from 1 January to 31 October 2007"** made by media intelligence agency Briefing has shown a positive trend in the public perception of the Agency. During the observed period **427 articles** and features about the Agency and competition were published.

Out of the above mentioned number, 74 % (318 articles) dealt with anti-trust and mergers, while the rest pertained to state aid. In the area of state aid, the majority of press releases pertained to aid to shipbuilding and the increasing trend of sectoral aid in Croatia. For the sake of comparison, in 2005, 176 articles were published about the Agency and competition, while in 2006, this number increased to 432. The aforementioned confirms that competition has positioned itself in the media and public and has been recognized and accepted as a part of inevitable practice in the Croatian economy.

Picture 7 Media releases in the period 2005-2007



Source: „Quantitative and qualitative analysis of media releases in the period from 1 January to 31 October 2007, Briefing - media intelligence, 2007
Note: Data on media releases from January to October 2007.

Only 9% (or 37 articles) out of all media releases in 2007 had a negative tone. However, it should be emphasized that this negative connotation was not only used when talking about the Agency, but pertained to the general attitude or perception of competition in Croatia.

The analysis showed that the Agency is present in the media as a benchmark and a synonym for a competition regime which the undertakings can rely upon, and that its role and function are clearly defined: to ensure a level playing field and fair competition for all.

4.4.1. Analysis of the audit service market

In 2007, after the new Audit Act and Audit Service Fees entered into force, the Agency implemented audit service market investigation which established that Audit Service Fees set minimum price for the provision of audit services which may have significant anticompetitive effects. In addition, other neighbouring markets may be at risk of a spill-over and consequently adversely affect the interest of consumers. Primarily, the negative effects on the auditing services market may involve appreciable restriction or elimination of competition in the market concerned and exclusion from the market of small and less popular audit service providers whereas benefits would be drawn only by the big and distinguished audit companies with significant market and financial power. Further, the lack of competition in the market might generate higher prices charged for the audit services and higher costs for the service users, subsequently reducing their competitiveness and finally to the disadvantage of consumers. Therefore, the Agency proposed the relevant provisions of the Audit Act to be altered, particularly the ones which empower the Audit Association to autonomously, by means of set fees and compensations, fix prices for the provision of audit services. Furthermore, the Agency proposes the provision relating to the obligation of service providers to apply the fees fixed by

the Audit Service Fees to be deleted. In other words, it is the opinion of the Agency that the Audit Service Fees should not impose restrictions on audit service providers and audit service users as to freely set prices in every particular case. The fees established by the Audit Services Fees may in this sense only be regarded as recommended or maximum prices for the provision of particular services whereas the fees concerned should be adopted by the Ministry of Finance. The standing point of the Agency in this matter has been substantiated by the decisions of the European Commission and national authorities of the EU Member States on the basis of which the fees concerning the provision of audit services are considered anticompetitive, contrary to the public interest and as such unacceptable.

4.4.2. Comment of the Agency released on Lactalis S.A., France taking over Dukat d.d., relating to the announcement of refusal to deal of Agrokor d.d. with Dukat d.d.

The Agency's responded that the announced refusal of the Agrokor Group to deal with Dukat only on the account of its structural (ownership) change might be understood as a rather radical and inappropriate behaviour. In other words, although any undertaking, even the one which due to its market power holds a dominant position in the relevant market (e.g. Agrokor together with its connected undertakings, particularly Konzum), may take reasonable steps in order to protect its business interests, these practices must be duly justifiable and proportionate to the new conditions that occurred on a particular market. If the refusal to deal announced by Agrokor is though only its response to the structural change undergoing in Dukat, or in other words the means to use its market power as a buyer of Dukat products, this will undoubtedly generate negative effects, both on Dukat and its suppliers (subcontractors and milk producers) and consumers or buyers of the products concerned. In that case, the practice concerned may be considered as abuse of a dominant position by Agrokor in line with Article 16 of the Competition Act. Therefore, Agrokor should as soon as possible either submit the relevant data and duly justified reasons for the termination of business operations with Dukat or withdraw his announced decision on refusal to deal. Otherwise, the Agency will initiate the proceedings for the establishment of abuse of a dominant position in compliance with the definition on prohibited practices regulated by the competition rules and the prescribed fines in the amount of up to 10 % of the undertaking's aggregate turnover.

4.4.3. Opinion on the Draft Code of Practice for Estate Agents

Upon the request by the Ministry of the Economy, Labour and Entrepreneurship, the Agency decided that the Draft Code of Practice for Estate Agents contains certain provisions that could produce anticompetitive effects. Even though the Agency is aware that it is in legislator's jurisdiction to regulate a certain market, especially for the purpose of increasing professionalism and creating conditions for better provision of services for the benefit of consumers, the legislator has to ensure that such regulation does not create restrictions and hindrances for certain activities, i.e. prevent market access to new competitors, in particular small undertakings.

Within the Draft Code of Practice, the mentioned barriers are reflected in a number of obligations imposed on the estate agents in regard to meeting the minimum criteria for real estate agents (such as signing of full-time employment contracts with the real estate agent), and several ambiguous and unclear provisions concerning the share of competences between the Ministry in question and the Croatian Chamber of the Economy (hereinafter: CCE). Furthermore, within the meaning of the proposed Draft, the proposed method for fixing the fees would be established by the CCE with consent of the Ministry. The Agency finds that it contravenes with competition rules for professional associations to be empowered to fix the fees and other charges for the provision of the services concerned.

In addition, the Agency warned that these fixed fees should in no way limit the service providers or their clients in their freedom to determine the charges in every particular case. In this regard, these fixed fees must only represent recommended or maximum prices for particular services, the setting of which imposes no obligation or possible sanctions for the agents and their clients to agree on a different price.

A freely functioning price system is one of the most significant tools of effective competition. A different price for the same service encourages competitors to run cost-effective business operations and enables optimum prices for the provided services to the consumers' benefit, wider choice and lower prices of services.

Fixed fees for provided services are generally considered anticompetitive and unacceptable and against the general interest. Only a freely functioning price system for the provision of services can ensure strengthening of competition and resulting benefits for the consumers.

Therefore, if it is for some reason justifiable to determine the agent fees, this should be done by the Ministry which would, on the basis of transparent and clear criteria, fix the fees for the provision of services in question taking special account of the interest both of the service users and service providers.
In this regard, the Agency decided that the Draft Code of Practice for Estate Agents does not contribute to strengthening competition in the real estate market, given that the provisions thereof may have anticompetitive effects and impede competition. In addition, the Agency doubts that the Draft Code, with all the above mentioned imposed barriers, is designed to limit "grey market" as mentioned in the explanation of the Draft Code.[22]

4.4.4. Opinion on the Agreement between the cinema operators and film distributors

Upon the request by the Croatian Chamber of Commerce (CCC), the Agency issued an opinion on the compatibility of a vertical agreement that is intended to be entered into between the cinema operators and film distributors with the provisions of the Competition Act.

[22] The Ministry amended and modified the Draft Code taking into account the remarks and proposals made by the Agency in its opinion.

On the basis of the agreement the cinema operators and film distributors wanted to regulate the application of a four-month-video-window that is a period between the beginning of film release in theatres and the video and DVD release of different formats (also known as „holdback"). According to the CCC, the agreement in question is in line with the relevant practice and criteria used by the EU Member States. In addition, the CCC supported their opinion with the report on the subject matter made by the International Video Federation, with its central office in Brussels.

Until recently, film licences and distribution agreements granted to license holders (for a specified time period) exclusive rights to cinema release whereas after the expiry of this period, the licence holder would also gain the right to other forms of video distribution. However, nowadays many licensing agreements do not contain such provisions and cinema operators or others who are engaged in film release encounter the problem of films being released at the same time in cinemas and on DVDs or a very short time thereupon.

Taking into account the specific nature of the market concerned, the Agency consulted the relevant practice and criteria used by the EU Member States and established that in EU, the holdback in question is negotiated between the film distributors and cinema operators. While film distributors want this period to be shortened, it is in the interest of the cinema operators for this period to remain as long as possible. Therefore, a compromise is usually sought through informal arrangements or by virtue of agreements concluded between the individual cinema operators and film distributors. In most EU countries, the holdback is decided on a case by case basis and usually takes four to six months. Various factors such as quality of a film, the market position of the cinema operator, status and connections of a cinema operator in a specific country, release season etc. influence the duration of the holdback.

The Agency established that by now, neither the national competition authorities nor the European Commission found holdback practice to be incompatible with competition rules.

The primary reason for such a business practice is to ensure survival on the market of cinema operators. Unlike other branches of film distribution, cinema operators incur very high costs, which is why the period in which they have exclusive rights for the film release is very important to them. If the holdback period is shortened to less than four months, it can be assumed that many potential visitors will give up on going to the movies and wait for the film to be available in video distribution.

On the other hand, it is in the interest of film distributors for the film to be released in cinemas, but also that video distribution starts as soon as possible so that they can get their investment return since the film has the biggest media promotion (i.e. when the audience is most interested in the film) during its distribution in cinemas.
Given the situation, it is understandable that film distributors in cooperation with cinema operators are trying to find a solution which would be acceptable to both sides.

Taking into consideration the current specifics of the film distribution market, the Agency established that the intention of the cinema operators and film distributors to regulate the application of a four month period between the regular film release in theatres and in video and

DVD release (in different formats) is not in contradiction with the provisions of the Competition Act.

However, it was emphasized that any subsequent change of the agreement in question to shorten or to extend the holdback period or to regulate the conclusion of separate horizontal agreements in question (i.e. concerted practice between the undertakings operating in the same relevant market such as an agreement between the cinema operators or between film distributors) should be assessed within separate proceedings in order for the Agency to establish whether such horizontal agreements represent prohibited agreements within the meaning of Article 9 of the Competition Act.

Furthermore, the Agency noted that the conclusion of the agreement in question may not be made binding for any parties, whether cinema operators or film distributors, in other words, they must be given the freedom to choose whether they want to conclude the proposed agreement or not, with no sanctions for those who don't wish to sigh the holdback agreement concerned. What is more, these parties must be given choice to enter any other particular agreements regulating holdback in every particular legal matter.

Finally, the Agency concluded that from the aspect of competition rules, instead of the uniform agreement in question, it would be more appropriate for cinema operators and film distributors to conclude separate agreements which would regulate the application of a reasonable time period between the beginning of the regular film release in theatres and the video and DVD distribution on different formats.

4.4.5. Opinion on landscape service activities in the Town of Rijeka

Upon the request made by the undertaking Parkovi plus d.o.o., with its central office in Rijeka, the Agency has given its opinion on the intent by the Town of Rijeka to entrust the provision of landscape service activities to its own company. The Town Council of Rijeka has supported the conclusions made by the City Hall based on which as of 1 January 2008, the landscape maintenance would be entrusted to a new economic entity which would be established within the utility company Čistoća, while during 2007, the public surfaces would be maintained the same way they had been until then, i.e. on the basis of a public tender.

The landscape service activities in the Town of Rijeka have been provided by four private companies, including the undertaking Parkovi plus d.o.o. whose opinion was that the above would result in abolition of competition, challenge the employment of 150 workers and jeopardize the private capital invested in this business activity.

The analysis of the provisions of the Utility Services Act has indisputably established the authority of the Town of Rijeka to entrust the provision of all utility services, including the landscape maintenance to one of its companies. Furthermore, any legal or natural person may set up a company for the performance of lawful businesses. The terms and the mode of establishment and legal forms of companies are regulated by the Companies Act.

In accordance with the constitutional provisions under Article 134 of the Constitution of the Republic of Croatia, the main task of the local self-government units is the performance of the activities within the local scope which are directly related to the needs of the citizens including the landscape maintenance.

However, despite the fact that the establishment of companies by local and regional self-government units is in accordance with both the Companies and the Utility Services Act, the decision made by the Town of Rijeka to revoke the existing practice involving the performance of landscape maintenance on the basis of a public tender and to entrust the provision of these services to its own company, although legal, is not desirable from the standpoint of the main principles of competition law and policy given that development of market economy and competition is one of the basic tasks of the state and its local and regional government.

Article 49 of the Constitution of the Republic of Croatia stipulates that it is the fundamental task of the state and local and regional units to ensure equal legal position of undertakings in the market. This provision is further developed in the Croatian Competition Act which provides that to ensure all undertakings equal conditions on the market means equal access to the market and equal opportunities to stay and survive on the market. The task of the state and local and regional self-government units is to implement competition policy whose aim is to create favourable conditions and business environment which would facilitate the development of entrepreneurship and strengthen competition.

Even though the case in question pertains to utility activities relating to landscape maintenance which is primarily entrusted to the local self-government units (given that it is directly related to the needs of the citizens), the Agency holds the opinion that in the situation where the Town of Rijeka has entrusted the provision of such services to other undertakings for many years, the abolition of such a practice is not desirable. Even if the claims by the Town of Rijeka relating to the recently increased prices by the undertakings which have been performing the mentioned services until now were reasonably acceptable, the Town of Rijeka could have, by means of a public tender, ensured competition between undertakings and achieved a lower price of those services, to the benefit of the service users - all citizens of the Town of Rijeka.

Given that the mentioned activity is financed by the citizens, when making such decisions, the local self-government units should primarily assess if such a decision is cost-effective. On the other hand, the local self-government units, in addition to economic effects, have to take into account the development of entrepreneurship and the social aspect of their decisions, since it is rather certain that in the mentioned case the undertakings who have been providing the landscape services in the Town of Rijeka will lose a major part of their turnover and possible cause redundancies.

Therefore, it is the Agency's opinion that although the Town of Rijeka is acting in accordance with the law, the entrusting of the service in question to its own company which almost generally results in a higher price and lower quality of services and eliminates competition from the market should not be regarded as desirable. Furthermore, the Agency holds the opinion that through a public tender, the Town of

Rijeka could have ensured fair competition between undertakings and lower prices for the services in question, to the benefit of all its citizens.

4.4.6. Opinion on permissibility of parallel imports of products through passive sales

Responding to the request made by an attorney's office the Agency has given its opinion on permissibility of parallel imports of a product through passive sales into the geographic territory of a trademark holder (licensee) of a labelled product imported through passive sales into the Republic of Croatia. In addition, the Agency established that the invitation by the national trademark licensee of a labelled product to conclude sublicensing agreements with other parties who are engaged in imports of the labelled products in question in the Republic of Croatia cannot be considered abuse of a dominant position by the undertaking on the market, given that such behaviour is in accordance with separate rules regulating the national trademark protection.

From the aspect of the Croatian competition regulations, there are no hindrances for parallel imports of products through passive sales to the market already reserved by the exclusive distributor of the same products. Given that the case in question refers to trademark, the Regulation on block exemption granted to certain categories of technology transfer agreements (Official Gazette 2/05) cannot apply, given that, in accordance with Article 3 paragraph 2, it is applicable to licensing agreements directly related to the production of the contract products. However, the Regulation on block exemption granted to certain categories of vertical agreements (Official Gazette 51/04) which allows parallel imports through passive sales can apply to the case in question.

In the part pertaining to the use of trademark labels on the packaging of various types of products, prior to giving an expert opinion, the Agency requested an opinion of the State Intellectual Property Office of the Republic of Croatia.

Article 11 of the Trademark Act regulates that placing on the market in the territory of the Republic of Croatia, of a product designated by a trademark, by the holder of the trademark, or with his express authorization, shall exhaust for the territory of the Republic of Croatia, the exclusive rights conferred by the trademark in respect to such a product, unless there are justified reasons for the holder of the trademark to retain the exclusive rights conferred by the trademark, especially where the condition of the product is changed or impaired after it has been put on the market.

Therefore, the principle of national exhaustion of trademark rights is applied in the Republic of Croatia, authorizing the trademark holder, i.e. licensee, to prevent the import of the product designated with the same trademark into the Republic of Croatia if expressly authorized by the licensing agreement. Given that exclusive rights conferred by the trademark are in contradiction with the free trade of goods with the Community internal market, in order to reconcile the mentioned contradiction, the case law developed by the European Court of Justice introduced

the application of unitary rights at Community level which has become a part of EC acquis and has been implemented by the national legislations of EU Member States.

According to IPRs, the exhaustion of rights conferred by the trademark implies that the holder of rights, after placing the product designated by a trademark on the market cannot control further commercialization of that product by referring to his exclusive rights.

After assessing the submitted documentation, it was established on the basis of the licensing agreement and its annexes, one undertaking was granted an exclusive right to trademark in the territory of the Republic of Croatia, as well as the authorization of sublicensing in the territory of the Republic of Croatia.

Taking all above mentioned into account, the Agency established that from the aspect of competition, no undertaking may impose on other undertakings restrictions concerning the import of products in the territory of the Republic of Croatia labelled with registered trademark through passive sales. Similarly, nor may sublicensing agreements entered into by the licensee – national licence holder for the trademark concerned, be considered abuse of a dominant position in line with the provisions of the Trademark Act.

The decision on the law which will be given priority in the application relating to the case in question, whether it will be the Competition Act or the Trademark Act, falls under the jurisdiction of the competent court and not of this Agency.

5. ADMINISTRATION AND ENFORCEMENT OF THE STATE AID ACT

The state aid regime in the Republic of Croatia is regulated by the State Aid Act published in the Official Gazette 140/2005 which replaced the first, 2003 State Aid Act. The State Aid Act in effect has be aligned with the EC acquis and regulates the general conditions and rules for granting, monitoring the implementation and recovery of state aid and thereby fulfils the international commitments undertaken by the Republic of Croatia in the area concerned.

The State Aid Act provides for a state aid control system in compliance with the commitments undertaken by the Republic of Croatia under the Stabilization and Association Agreement between the Republic of Croatia and the European Communities and their Member States (SAA). As referred to in Articles 69 and 70 of the SAA, Croatia committed itself to approximation of laws with the relevant EU rules in the area of competition also involving the rules for authorisation and monitoring of state aid by the time of its accession to the EU. It is necessary to point out here that the provisions and time limits in respect of competition rules as laid down under Article 70 of the SAA began to run on 1 March 2002, the day of the entry into force of the Interim Agreement on trade and trade-related matters between the European Community and the Republic of Croatia, which remained in force until the entry into force of the SAA on 1 February 2005.

Important provisions of Article 70 of SAA relating to state aid

1. *Any state aid which distorts or threatens to distort competition by favouring certain undertakings or certain products in so far as they may affect trade between the Community and Croatia shall be prohibited.*
2. *Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular from Articles 86 and 87 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions.*
3. *Croatia shall establish an operationally independent authority which is entrusted with the powers necessary to authorize State aid schemes and individual aid grants and to order the recovery of State aid that has been unlawfully granted.*
4. *Transparency in the area of State aid shall be ensured by providing a regular annual report or equivalent (Agency's decisions are published in the Official Gazette), following the methodology and the presentation of the Community survey on State aid.*
5. *Croatia shall establish a comprehensive inventory of aid schemes instituted before the State Aid Act came into force (2 April 2003) and align them with the existing rules of the Community within a period of no more than four years (1 March 2006) from the entry into force of the Interim Agreement.*
6. *Within three years from the entry into force of the Interim Agreement, Croatia shall submit to the Commission of the European Communities its GDP per capita figures harmonized at NUTS II level. The Agency and the European Commission shall jointly evaluate the eligibility*

of the regions of Croatia as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the relevant Community guidelines.

7. Rules on state aid controlled by the Agency do not apply to agriculture and fisheries.

5.1. New legislative framework

The system of state aid control (authorisation, monitoring of implementation and recovery of state aid) was first established in the Republic of Croatia under the State Aid Act (Official Gazette 47/2003, 60/2004) and Regulation on state aid (Official Gazette 121/2003).

The implementation of that system in practice as well as the comments received from the European Commission indicated that it is necessary for the system to be modified and improved in order to become fully adjusted to the relevant EC rules in this area which will strengthen its effectiveness. Consequently, the new, amended State Aid Act was drafted and put into effect in December 2005 (Official Gazette 140/2005).

This 2005 State Aid Act necessitated adequate modifications of the Regulation on state aid which subsequently entered into force in May 2006 (Official Gazette 50/2006). The new Regulation on state aid stipulates the content, procedure and other important elements of the assessment of aid relating to its compliance with the State Aid Act. Given that the assessment of compatibility of state aid is carried out on the basis of the rules arising from Article 70 of the SAA[23], the 2005 Regulation on state aid stipulates that upon the proposal of the minister of finance, the Government of the Republic of Croatia shall issue decisions on the publication in the Official Gazette of the lists of relevant EC state aid rules containing the texts of the legislation covering the particular rules translated into Croatian and the provisions concerning the method of implementation of the rules in question.

Pursuant to Article 3 of the Regulation on state aid, the Government of the Republic of Croatia adopted in November 2006 the Decision on publication of the lists of state aid rules (Official Gazette 121/2006). The rules will be translated and subsequently published in accordance with a previously established sequence and once published they will become a constituent part of the legislative framework of the Republic of Croatia used in the assessment of compatibility of aid. This will mean full alignment of the Croatian state aid rules with those in effect within the European Community.[24]

Within the meaning of the above mentioned commitment it is to be noted here that until the end of 2007, the following publication of state aid rules have been published:

(i) the Decision on the publication of the rules on state aid for rescuing and restructuring firms in difficulty (Official Gazette 20/2007)

[23] Article 2 of the Regulation on state aid.

[24] Until individual rules have been published in the Official Gazette the relevant provisions of the 2003 Regulation on state aid shall apply (Official Gazette 121/2003).

(ii) the Decision on the publication of the rules on de minimis aid (Official Gazette 45/2007),
(iii) the Decision on the publication of the rules on state aid for research, development and innovation (Official Gazette 84/2007),
(iv) the Decision on the publication of the rules on state aid for environmental protection (Official Gazette 98/2007).

The Ordinance on the form and content of the notification and the method of data collection and keeping the state aid register (Official Gazette 11/05) sets the rules relating to data collection which are necessary in the assessment procedure relating to state aid proposals and establishes the method in which annual reports are drafted.

5.2. Definition of state aid

State Aid rules and the state aid regime in the Republic of Croatia principally comply with the relevant rules applied in the European Union falling under Articles 86 and 87 of the EC Treaty. The definition of state aid is provided in Articles 3 and 4 of the State Aid Act.

Article 3 paragraph 1 of the State Aid Act quotes:

Within the meaning of the State Aid Act, state aid shall mean any actual and potential expenditures or decreased revenue of the state granted in any form whatsoever by the aid provider, which distorts or threatens to distort competition by favouring certain aid beneficiaries, insofar as it may affect the international commitments undertaken by the Republic of Croatia, arising under the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States.

In addition, state aid rules apply only to measures that satisfy all of the following criteria:

(i) State resources

In accordance with Article 3 of the State Aid Act, „state aid shall mean any actual and potential expenditures or decreased revenue of the state granted in any form whatsoever by the aid provider. " In accordance with Article 2 of the State Aid Act „the providers of state aid shall be the Republic of Croatia through authorised legal entities and central public administration authorities, local and regional self-government units and any legal entity granting or administering state aid within the meaning of this Act". Therefore, fully complying with the practice in the European Union, the state aid rules in the Republic of Croatia are applied to **all forms of state aid granted at the state and local level.** Therefore, state resources also include funds managed and granted by private or public bodies appointed by the state, if their resources originate from the state budget or if the intermediate body appointed by the state has discretionary power when deciding on the allocation of the resources. State aid rules also apply to measures if the decreased revenue of the state is a result of a decision made by the state or regional or local administration relating to different allowances, such as tax and contribution advantages.

(ii) Economic advantage:

The aid should constitute an economic advantage that the undertakings would not have received in the normal course of business. Besides the direct forms of state aid such as grants, tax advantages or interest rate rebates and state guarantees, there are less obvious forms of aid which in the same manner benefit a particular undertaking or group of undertakings in the market. Less obvious transactions satisfying this condition are given below:

- a firm buys/rents publicly owned land at less than the market price;
- a company sells land to the State at higher than market price;
- a company enjoys privileged access to infrastructure without paying a fee;
- an enterprise obtains risk capital form the State on terms which are more favourable than it would obtain from a private investor.

When deciding if the investment of the state made into a private undertaking or a public company constitutes an economic advantage, the **market economy investor principle** is applied. The test involves the assessment carried out by the authorized body involving whether the undertaking is receiving advantage which he couldn't have received under normal market conditions. Apparently, with every mentioned investment, the state should act in a way that would be acceptable to a private investor under normal market conditions.

(iii) Selectivity:

State aid must be selective and thus affect the balance between certain firms and their competitors. "Selectivity" is what differentiates state aid from so-called "general measures" – measures which apply without distinction across the board to all firms in all economic sectors or regions. As an example, fiscal measures such as decrease in the corporate tax rate constitute a general measure which applies to all undertakings and therefore does not satisfy the selectivity criteria and consequently may not be considered state aid.

The selectivity criterion is also satisfied if the scheme applies to particular regions or economic sectors. A scheme is considered selective if the authorities administering the scheme enjoy a degree of discretionary power.

(iv) Effect on competition and trade

Aid must have a potential or actual effect on competition and trade between the Republic of Croatia and the EU Member States. It is sufficient if it can be shown that the beneficiary is involved in an economic activity and that he operates in a market where there is trade and exports or operations directly linked to exports.

In regard to exports, it should be emphasized that whether or not the undertaking is involved in export activities is not decisive. Effect on trade is present if the activities by other foreign undertakings are prevented in the relevant market. In general, taking into consideration the increasing international business cooperation, it is relatively easy to meet the effect on trade criterion. Moreover, if the undertaking carries out a business activity in the sector characterized

by **overcapacity** in which manufacturers from other EU Member States compete on the market, any state aid granted to such an undertaking will have an effect on the trade between Croatia and the EU Member States and on the competition, given that his presence in the market prevents the competitors from increasing their market share. This criterion is not considered to be met unless the relevant market **is liberalized** and if the business activities concerned are carried out on a **purely local market.**

5.2.1. Categories of state aid

Within the meaning of the State Aid Act there are exemptions from the general ban on state aid. The exemption categories are listed below.

a) Horizontal aid

Cross-industry or "horizontal" rules cover particular categories of aid which are aimed at tackling problems which may arise in any industry or region, such as:

- aid for small and medium-sized enterprises;
- aid for research and development and innovation;
- aid for environmental protection;
- risk capital measures;
- aid for services of general economic interest;
- aid for the rescue and restructuring of firms in difficulty;
- employment aid, and
- training aid.

Aid to promote culture and heritage conservation may also be considered to fall under the above mentioned horizontal rules although it is not applicable in all industries and regions. If the criteria in respect of granting of such aid are satisfied, the aid in question poses most insignificant anticompetitive effects.

b) Regional aid

This aid category involves aid measures to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment. The aim of such aid is the promotion of the less-favoured areas mainly by supporting initial investment and job creation linked to the investment.

c) Sector specific aid

Industry specific or sectoral rules apply to particular industries where state aid may significantly impede competition. The separate rules applicable in this context are the following:

- General sectors:

The sectors featuring specific types of problems or conditions currently include shipbuilding, steel, synthetic fibres industry, audiovisual production, broadcasting, electricity production and postal services.

- Transport:

Transport includes: road transport, inland waterways transport, rail transport, maritime transport and air transport.

- Agriculture and fisheries:

In the agriculture and fisheries sector separate state aid rules apply. Within the meaning of the Croatian State Aid Act, Article 1 paragraph 2, state aid to agriculture and fisheries fall outside the scope of the State Aid Act and the jurisdiction of the Competition Agency.

d) *De minimis* **aid**

De minimis aid covers small amounts of state aid whereby the ceiling of such aid is EUR 200.000, a grant equivalent of aid to a particular undertaking over a period of three fiscal years. For undertakings active in the road transport sector, the ceiling of such aid is EUR 100.000.

De minimis aid does not constitute state aid in the sense of the State Aid Act and are therefore not subject to the notification requirement. It may be cumulated with other categories of aid which are allowable under the State Aid Act.

5.3. Activities of the Agency in the area of state aid

Within the meaning of Articles 5 and 6 of the State Aid Act the scope and the authority of the Agency in the area of state aid are specified as follows:

The Croatian Competition Agency shall authorise and monitor the implementation of state aid and order the recovery of unlawfully granted state aid or aid used in contravention of the rules. The Agency performs, among others, the following activities: assesses the state aid proposals and aid schemes; collects, processes and registers the data on state aid; cooperates with other competent authorities, aid providers and aid beneficiaries in the preparation of draft proposals for laws and other regulations concerning state aid, promotes improvements in the state aid system etc. It also draws annual reports which are submitted to the Croatian Parliament and co-operates with international state aid authorities and the European Commission, particularly relating to the harmonization and effective enforcement of the state aid rules.

In 2006 the above mentioned activities were carried out by a staff consisting of nine (9) employees, the fact that significantly determined the pace of resolving cases.

In the time period from 2003 – 2007 the Agency received a total of 346 aid proposals. By the end of 2007 the Agency resolved 284 cases or 82 % of the total.[25]

Until the end of 2007, out of the total of 170 administrative proposals received, the Agency resolved 122 cases or 72%. Out of the total of 176 non-administrative proposals received, until the end of 2007 the Agency resolved 162 cases or 92%. It should be emphasized that the total number of the received administrative proposals includes 42 proposals for granting state aid for shipbuilding of which the Agency was able to resolve only 9 cases, while the remaining 33 unresolved proposals will be resolved only after the complete and amended individual restructuring plans of the shipyards in question have been submitted to the Agency. The total percentage of 82% resolved cases make a high efficiency rate.

The Government of the Republic of Croatia has adopted the List of existing aid schemes which was drafted by the Agency. It also passed the resolution on the approval of the Adjustment Programme of the Croatian State Aid System to the EU State Aid System and the Alignment Programme of the Existing State Aid Schemes to the Criteria Stipulated in Article 70 paragraph (2) of the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States, stating the priority of the implementation of the new state aid regime.[26]

During 2007, the majority of the activities of the Agency have been focused on the following sectors and cases:

5.3.1. Shipbuilding

Based on the obligations deriving from Article 70 paragraph 2 of the SAA, Croatia committed itself to drawing of a comprehensive list of existing aid schemes in effect when the State Aid Act came into effect (2 April 2003), and to aligning of the aid schemes in question with the relevant EU state aid rules in effect within a time period of not longer than four years.

The existing legal acts which served as a legal basis for the allocation of grants and state guarantees in shipbuilding have been included in the list of the existing aid which needs to be brought into compliance with the EU state aid rules in the area of shipbuilding and state guarantees. Such legal basis is for example the Resolution of the Government of the Republic of Croatia of 22 August 2002 on the basis of which the Ordinance on grants to shipbuilding and Ordinance on grants to small shipbuilding have been adopted. The said government Resolution also determined that the Government of the Republic of Croatia will subsidize shipbuilding in the Croatian yards with at least 10 % of the realised sales price of the projects contracted to be delivered until 31 December 2006.

Taking into account the fact that the Croatian shipyards are considered firms in difficulty and that, in principle, they are not able to obtain loans under normal market conditions without state guarantees under lower than average premiums for construction financing guarantees, it is clear

[25] 39 cases from 2004 pertaining to data collection from the counties for the purpose of the annual report are not included, given that in the subsequent years such cases were handled as one case.
[26] The Resolution was published in Official Gazette 125/2004.

that all state guarantees, whether end-financing or construction financing guarantees constitute state aid without exemption.

Under the above described circumstances, the only possible way to ensure the survival and long-term viability of the Croatian shipyards is to prepare the relevant restructuring plans to serve as the legal basis for any future state aid awards in the shipbuilding sector given that the provisions of the State Aid Act and the obligations undertaken under the SAA do not allow granting of operating aid to cover operating costs unless provided for in the restructuring plan. Thus, any aid which is not in line with the state aid rules in the shipbuilding sector would be considered illegal and therefore prohibited.

Rescuing and restructuring of the Croatian shipyards started in December 2005 when the Croatian government issued the Decision on the establishment of a Committee for the preparation of the Draft National Programme for Restructuring of the Croatian Shipbuilding Industry.

The whole restructuring procedure started in the second half of 2006 when the Agency received from the Ministry of the Economy, Labour and Entrepreneurship four requests for approval of rescue aid for the shipyards concerned.

The Agency authorised rescue aid in the form of state guarantees for shipyards in the amount of HRK 4.2 billion on 21 September 2006. Out of the above mentioned total sum HRK 1.7 billion was granted to Brodosplit Brodogradilište d.o.o., HRK 625 million to Brodotrogir d.d., HRK 1.7 billion to 3. Maj brodogradilište d.d. and HRK 221 million to Brodogradilište Kraljevica d.d.

The rescue and restructuring process continued in 2007. On 18 January 2007 the Agency authorised rescue aid to Brodosplit Brodogradilište specijalnih objekata d.o.o. in the form of state guarantees covering the loans in the amount of HRK 140 million. Rescue aid in question was approved by the Agency for the period of six months. It was the obligation of the Ministry of the Economy, Labour and Entrepreneurship to submit to the Agency reports proving that the approved resources have been used in compliance with the principles of rescue aid.

One of the conditions for granting rescue aid was for all shipyards to, within six months following the receipt of rescue aid, to draft individual restructuring plans and submit them to the Agency for assessment in the sense of the provisions of the State Aid Act.

The restructuring plans were submitted on 27 February 2007 pursuant to the State Aid Act and the Decision on the publication of the state aid rules for rescuing and restructuring (Official Gazette 20/07). At the same time, one of the criteria for the opening of the EU accession negotiations in Chapter 8: Competition policy commits the Republic of Croatia to adopt the restructuring plans for each particular shipyard which must approved by the European Commission prior to the opening of the negotiations in the Chapter concerned. Thus, the mentioned plans for the following shipyards were submitted for assessment to the European Commission:

(i) 3. Maj Brodogradilište d.d., Rijeka,
(ii) Brodotrogir d.d., Trogir,

(iii) Brodogradilište Kraljevica d.d., Kraljevica,
(iv) Uljanik Brodogradilište d.d., Pula,
(v) Brodosplit-Brodogradilište d.o.o., Split,
(vi) Brodosplit-Brodogradilište specijalnih objekata d.o.o., Split.

During 2007, supported by the experts hired by the European Commission and the German experts from the Phare 2005 Twinning project implemented in the Agency, the Agency analysed in detail all the submitted restructuring plans for each shipyard. The analysis established that the situation in all five shipyards (with exception of Uljanik) was rather serious and that significant efforts are needed, by both the managements of the shipyards and the shipyard owners, to revise the proposed restructuring plans.

Namely, based on the data and information contained in then submitted restructuring plans, it was not possible to give a positive assessment of the shipyards' sustainability on the market once the restructuring process has been completed and to guarantee their long-term viability without aid. It was therefore that after the first assessment had been carried out by the Agency in February 2008 the restructuring plans were submitted to the competent ministry for revision.

5.3.2. Steel

In line with the obligations under Article 70 of the SAA, and Protocol 2, as its constituent part, Croatia may grant state aid for rescuing and restructuring of the steel industry until 1 March 2007. Under the same agreement Croatia undertook the obligation to draw up a restructuring programme for the Croatian steel industry.

For Croatia, similarly as in the shipbuilding sector, the rescue and restructuring process in the steel industry started on 1 December 2005 when the Government of the Republic of Croatia took the Decision on the establishment of a Committee for the preparation of the Draft restructuring programme for the Croatian steel industry.

Given that two steel works Željezara Split d.d. and Valjaonica cijevi Sisak d.o.o. constitute firms in difficulty the sole possibility of awarding state aid to these undertakings was the drawing up of a restructuring plan.

The basic criteria under which state aid for rescue and restructuring may be granted to firms in the steel sector are as follows:

- after the restructuring, the company must be able to carry out its operations under normal market conditions without state aid,
- the amount and intensity of aid is limited to the minimum needed for the restoration of the firm's long-term viability and is degressive, and
- the restructuring plan involves the overall reorganisation and capacity reduction of the steel activities in the Republic of Croatia.

In 2007 the Government of the Republic of Croatia adopted the Restructuring Programme for the Croatian Steel Industry for 2007 – 2013. This decision marked the beginning of the restructuring process in this sector.

Furthermore, the Agency received and analyzed the individual restructuring plans for Valjaonica cijevi Sisak d.o.o. and Željezara Split d.d., but has not made its final assessment given that in the meantime, calls for public tender for their privatization were published.

Together with the Croatian Privatization Fund and the Ministry of the Economy, Labour and Entrepreneurship, the Agency participated in defining the terms of the public tenders and the content of the bidding documentation so as to make the purchasing requirements more transparent to the new investors.

On 20 July 2007 a Share Purchase Agreement on the transfer of business shares of Valjaonica cijevi Sisak was concluded. Pursuant to the contract concerned the company Commercial Metals International AG Baar Switzerland (CMI) became the sole owner of the company which remains in business under the name CMC Sisak d.o.o. On 3 August 2007 a Sale Purchase Agreement on transfer of Željezara Split d.d. Kaštel Sućurac shares was signed between the Croatian Privatisation Fund and the undertaking Złomrex S.A., Poraj, Poland.

Based on the public tender, the new investors had to submit their business plans in addition to the restructuring plans for both steelworks to the Ministry of the Economy, Labour and Entrepreneurship for assessment. After the analysis has been carried out, the Ministry will submit the restructuring plans to the Agency for final assessment.

Restructuring plans, submitted by the new investors, are at the moment of drafting of this annual report being amended jointly by the European Commission, the Agency and the competent Ministry.

5.3.3. Preliminary binding opinion

In accordance with the Article 10 paragraph 1 of the State Aid Act, before any draft proposals for laws which contain state aid are submitted to the Government of the Republic of Croatia, ministries and other public administration authorities must notify the state aid proposals to the Agency for a preliminary binding opinion. In 2007 the Agency issued positive preliminary binding opinions on the following draft proposals:

- Draft proposal for the Act on State aid for Education and Training,
- Draft proposal for the Act on Audiovisual Works,
- Act on the Amendments to the Act on the Promotion of the Development of Small Businesses.

5.3.3.1. Preliminary binding opinion on the Draft Proposal for the Act on State Aid for Education and Training

Preliminary binding opinion

The Agency received a request for issuing a preliminary binding opinion on the final Draft Proposal for the Act on State Aid for Education and Training from the Ministry of the Economy, Labour and Entrepreneurship.

The preliminary binding opinion established that the Draft Proposal provides for the criteria for granting state aid for training of employees, in accordance with Article 35 of the Regulation on state aid. In accordance with Article 2 paragraph 2 of the State Aid Act, the beneficiaries of training aid shall be legal and natural persons who perform an economic activity and therefore participate in the trade of goods and services.

The final Draft Proposal provides for calculations and methods for granting state aid for general training in accordance with Article 36 of the Regulation through tax base reductions in line with the rules for granting regional aid, for aid for workers in the maritime transport sector in line with Article 38 of the Regulation and for additional aid in the case of general and specific training for disadvantaged workers.

The Draft Proposal defines the eligible costs both of general and specific training in accordance with Article 37of the Regulation.

In its preliminary binding opinion, the Agency established that the aid intensities and eligible costs for training aid contained in the Draft Proposal in question comply with the relevant state aid rules governing training aid.

Given that the Draft Proposal provides for additional reduction in the individual tax base, if the beneficiary of state aid is in the in region which is eligible for regional state aid, the main precondition for the application of the regional aid rules is, in the opinion of the Agency, the establishment of the regional aid map.

In its opinion on the Draft Proposal for the Act on Audiovisual Works, the Agency established that it does not contain state measures. However, given that the Act in question regulates the adoption of the Ordinance on the procedure and the criteria for the implementation of the National Programme and other bylaws which shall be considered aid schemes, the competent ministry must include in the said Ordinance the following criteria:

- the aid must be directed to a cultural product, the content of the aided production must be important for the development of the Croatian culture,
- aid intensity must be in principle limited to 50 % of production budget,
- the producer must be free to spend at least to 20 % of the film budget outside the Republic of Croatia.

In its opinion on the Act on the Amendments to the Act on the Promotion of the Development of Small Businesses, the Agency established that it did not contain the provisions contrary to the State Aid Act, however in order to avoid any lack of clarity, the relevant ministry has to include into the Act explicit provisions stating that all incentives regarded as state aid will be granted in compliance with the relevant state aid rules, and that all future aid schemes and individual aid which may be granted on the basis of this Act, must be submitted to Agency for approval.

5.3.4. State aid control

In line with Article 5 of the State Aid Act, the Agency authorises and monitors the implementation of state aid and orders the recovery of unlawfully granted state aid or aid used in contravention of the rules.

The Agency monitors the implementation of authorised state aid ex officio or upon the proposal of aid beneficiaries, aid providers and any legal or natural person having a legal interest.

Where the Agency establishes any irregularities in monitoring the implementation of state aid, it shall adopt a decision ordering the aid provider and/or aid beneficiary to remedy the irregularities in question within no longer than 3 months.

Where the aid provider and/or aid beneficiary does not remedy the irregularities in question, the Agency shall order the aid provider and/or aid beneficiary recovery of the awarded state aid in the part in which irregularities have been established, increased by statutory interest on arrears payable from the date on which the established irregularities occurred.

In 2007 the Agency opened three monitoring proceedings on its own initiative: one in the case of state aid granted to the undertaking Croatia airlines in 2005 and 2006, the other relating to the implementation of state aid granted for restructuring to the undertaking Slavonija IMK d.d. Osijek and in the case of the implementation of state aid granted to undertaking Rockwool d.d. from Potpićani.

Furthermore the Agency opened in 2006 on its own initiative two additional monitoring proceedings. Given the sectors in which the aid schemes in question have been implemented – that of the textile and leather industry and automotive parts sector – and a large number of aid beneficiaries and necessary data which must be collected, these cases are still pending and planned to be closed in the first half of 2008.

5.3.5. State aid for rescuing and restructuring

State aid for rescuing and restructuring firms in difficulty is considered to be state measures which may most significantly impede competition. However, rescue and restructuring aid may be granted under certain conditions when it is necessary to initiate and accelerate structural reforms in certain sectors.
The Decision on the publication of the rules on state aid for rescuing and restructuring firms in difficulty (Official Gazette 20/2007) provides for the rules applicable to undertakings in all sectors, except to those operating in the coal or steel sector, agriculture, fisheries and aquaculture. General terms of granting aid in line with the mentioned Decision are as follows:

- the undertaking must qualify as a firm in difficulty,
- aid beneficiary must draw up a restructuring plan which must restore the long-term viability of the firm,
- aid beneficiary will be expected to make a significant contribution to the restructuring plan form its won resources involving capacity reduction,
- restructuring aid may not be granted where less than 10 years elapsed since the restructuring period ("one time, last time" principle).

5.3.5.1. Restructuring plan of the undertaking Varteks d.d. Varaždin (textiles industry)

State aid for restructuring

The Agency received a request for approving the Decision proposals for giving state guarantee on behalf of Zagrebačka banka d.d., Privredna banka Zagreb d.d. and Croatian Bank for Reconstruction and Development for the implementation of the restructuring process in the undertaking Varteks d.d.

In the meantime, the Government of the Republic of Croatia has adopted the mentioned Decision which is why the Agency had to subsequently authorize the Government's Decisions which contain state aid in the form of state guarantees, in accordance with the Article 15 paragraph 1 of the State Aid Act which was in force at the end of 2004, i.e. when the request was submitted.

The basis of the request were financial difficulties of the undertaking Varteks where the absence of a state guarantee would challenge the implementation of the restructuring process which already started, whereas at the same time it would question the undertaking's survival on the market. In the mentioned case, the state guarantees indisputably constitute state aid since the undertaking qualifies as a firm in difficulty.

Article 16 paragraph 1 of the Regulation on state aid, regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.
During the proceedings, the Agency also established that in addition to state aid in the form of state guarantees, the undertaking received soft loans from the Croatian Bank for Reconstruction

and Development. Moreover, the undertaking in question also received grants by the Ministry of the Economy, Labour and Entrepreneurship.

State aid contained in state guarantees, soft loans and grants altogether amounted to HRK 122.322.336, in the period from 2003 to 2006 for the implementation of the restructuring process.

In line with Article 18 paragraph 1 of the Regulation on state aid, state aid for restructuring may be granted if the undertaking submits a credible and substantiated restructuring plan. During the proceedings it was established that the restructuring plan described the circumstances that led to the company's difficulties, anticipated the ways of solving the difficulties, additional resources, duration of the restructuring process, undertaking's own contribution to the restructuring process (30 % of the total restructuring costs) and compensatory measures. In addition, it was also established during the proceedings that the undertaking concerned has rescheduled the loans and carried out the necessary structural adjustments (made workers redundant, introduced rationalization/improvement of the business processes in the loss-making garment plants divested movable and immovable assets). The implemented structural adjustments contained also compensatory measures leading to capacity reductions and keeping the company in business.

In regard to the above-mentioned, the Agency passed a decision on subsequent approval of state aid for restructuring in the form of state guarantees and soft loans until completing of the firm's restructuring process i.e. until 31 December 2007.

Taking into account that large firms must contribute in the restructuring process from their own resources with at least 50 % of the total restructuring costs, and that until the decision of the Agency was taken, the undertaking contributed with some 30 % of its own resources in the restructuring process, the Agency decided to order the competent ministry to submit to the Agency evidence on the firm's own contribution in the restructuring process of the remaining 20% by 30 April 2008 at the latest.

Given that the undertaking in question committed itself in the restructuring plan to divestiture of assets worth HRK 38 million, the competent ministry was also ordered to submit to the Agency evidence on the implementation of the mentioned measure until 31 May 2007.

In addition, the restructuring plan provided for the structural solution of the issues related to the Garment Division in Tivar and Security and Environmental Protection Service, which is why the ministry was ordered to submit to the Agency evidence on the implementation of the mentioned measures until 30 April 2008.

Furthermore, the ministry must submit to the Agency Annual Reports on Implementation of the Restructuring Plan and financial statements for 2005, 2006, 2007 and 2008, at the latest by 31 May of the current year for the previous year.

Given that state aid for restructuring may be granted only once in a ten year period, the undertaking Varteks d.d. was prohibited from receiving state aid for restructuring until 4 April 2017.
In addition, the undertaking Varteks d.d. may not receive state aid regardless of its form until the completion of the restructuring process, i.e. until 31 December 2007.

The undertaking Varteks d.d. was not content with the Agency's decision and has filed an administrative dispute before the Administrative Court. In its reply to the Administrative Court, the Agency maintained its position. The administrative dispute is still pending. The undertaking concerned also challenged the enforceability of the decision of the Agency until the Administrative Court has reached its ruling. The Agency rejected this request of the undertaking in question.

5.3.5.2. Restructuring plan of the undertaking Sloga Tvornica obuće d.d. Koprivnica (footwear industry)

State aid for restructuring

Upon the request made by the Ministry of the Economy, Labour and Entrepreneurship in regard to approving the Proposed Decision on equity participation of the Republic of Croatia in the undertaking Sloga Tvornica obuće d.d., the Agency assessed the compliance of the state aid contained in the Proposed Decision which finds its legal basis the Restructuring plan of the undertaking Sloga d.d.

In the course of the proceedings it was established that the restructuring plan described the circumstances that led to the company's difficulties. Furthermore, it was established that the restructuring plan provides for rationalisation of activities particularly related to reduction of low-profit job-processing and increase in production of its own products which yield higher profits. The relocation of the current plants into a new production plant adapted to actual production volumes together with redundancy measures contributes to ensuring the undertaking's long-term viability in the market. The amount and intensity of aid is limited to a minimum given that the contribution by the undertaking Sloga Tvornica obuće d.d. in this particular case amounts to 62 % of the total restructuring costs.

In order to avoid significant distortion of competition, during the restructuring process, the undertaking Sloga Tvornica obuće d.d. provided for compensatory measures which indicate that the capacity utilization in the last year of restructuring will be 39 %. In addition, in its restructuring plan, the undertaking Sloga Tvornica obuće d.d. provides that until the completion of the restructuring on 31 December 2009, the Republic of Croatia will, as a majority owner, sell its share capital and thus ensure that the undertaking is taken over by a private investor.

Given the above, the Agency established that the restructuring plan in question is in compliance with state aid rules for rescuing and restructuring of firms in difficulty, and that the exemption provided in Article 4 paragraph 3 item d) of the State Aid Act (i.e. pertaining to state aid facilitating development of certain economic activities or of certain economic areas) may apply

to the conversion of debt into equity (outstanding payments of taxes and contributions) as included in the Proposed Decision concerned.

Furthermore, on the basis of Article 13 paragraph 3 of the State Aid Act, the Agency requested the competent ministry to submit on a regular basis the relevant data and reports as evidence that measures contained in the restructuring plan are implemented in accordance with the Agency's decision.

5.3.6. Services of general economic interest

Pursuant to Article 4 paragraph 3 item e) services of general economic interest (SGEI – such as transport, investment in infrastructure, provision of utility services and similar) are services of economic character but of general interest. The legal and natural persons entrusted with the provision of SGEI or which are by exclusive rights allowed to undertake certain business activities, for certain services of general economic interest to operate on the basis of principles and under conditions that enable them to fulfil their missions, financial support from the state intended to cover some or all of the specific costs resulting from the public service obligations may prove necessary.

A financial support given to an enterprise in order to compensate for the additional costs of operating a SGEI may constitute state aid in the sense of Article 3 paragraph 1 of the State Aid Act. However, the financial support compensating for the costs of operation of such services will not constitute state aid where the amount of the public assistance only offsets the additional costs of the undertaking. In order to assess whether an economic advantage is conferred upon the recipient, the following four criteria must be met cumulatively in order to exclude that the measure constitutes state aid:

- First, the recipient company must actually be entrusted with public services obligations and those obligations must be clearly defined;
- Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;
- Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant revenue and a reasonable profit;
- Fourth, when a company is not chosen following a public procurement procedure, the level of compensation must be determined by a comparison with an analysis of the costs that a typical company in the sector would incur (taking into account its revenues and a reasonable profit from discharging the obligations).

If these criteria are not met cumulatively, then the measure at issue does constitute state aid. However, such state aid may be authorized under Article 4 paragraph 3 item e) if it is necessary to the operation of the SGEI and does not significantly affect trade between the Republic of Croatia and the EU Member States.

Administrative cases handled by the Agency in this area in 2007 particularly related to the SGEI in the air transport and maritime transport sector.

5.3.6.1. Decision on authorisation of state aid to the undertaking Croatia Airlines d.d.

Aid/public service compensation

The Ministry of the Sea, Tourism, Transport and Development asked the Agency to deliver its opinion on the compatibility of aid in the form of subsidies under the aid scheme "Measures to enhance regional air connectivity 2007 – 2011" supporting scheduled domestic airlines of the undertaking Croatia Airlines.

The Ministry planned to authorize aid to compensate for the costs on the following routes: Zagreb – Split – Zagreb, Zagreb – Pula – Zagreb, Dubrovnik – Osijek – Dubrovnik, Zagreb – Dubrovnik – Zagreb, Zagreb – Zadar – Zagreb, Zagreb – Brač – Zagreb, Split – Osijek – Split, connecting and positioning flights and costs of the terminal control system. The aid amount was calculated on the basis of the revenue foregone and to cover the costs incurred in the discharge of public service obligations by the undertaking Croatia Airlines on the above mentioned lines in 2006.

In the proceedings carried out by the Agency it has been established that in this particular case all criteria for state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest have been met.

In addition, this decision was based on the Decision of the Croatian Government as of 25 January 2007 within the meaning of which seven scheduled domestic airlines have been established services of general economic interest, entrusted with the undertaking Croatia Airlines from 2007 until 2011 on the above mentioned flights.

In order to avoid overcompensation, the Agency established that the minimum compensation for public service discharge does not exceed the revenue forgone by the undertaking Croatia Airlines on the domestic flights concerned in 2006.

Given the public service obligation of the undertaking Croatia Airlines is to maintain the level of service recorded in 2006 in the following five years, the competent Ministry has to ensure that in the period from 2008 to 2011, these costs must correspond to the established 2006 public service obligation (in this particular case the number of scheduled domestic airlines).

Furthermore, the Ministry must submit to the Agency annual reports involving regular checks of costs and total subsidies awarded to the undertaking Croatia Airlines at the latest by 31 January of the current year for the previous year.

5.3.7. Direct application of the State Aid Act

In 2007, the Agency also handled certain state aid cases which could not be resolved on the basis of directly applicable state aid rules. Given the specificity of these cases the Agency decided to act within the meaning of Article 4 paragraph 3 item d) of the State Aid Act which stipulates the compatibility of state aid to facilitate the development of certain economic activities or of certain economic areas.

5.3.7.1. Incentives for broadband internet access

Direct application of the State Aid Act

Upon the request of the Croatian Telecommunications Agency, the Competition Agency decided on the subsequent approval of state aid contained in the proposed Decision on incentives for the development of broadband internet access in economically disadvantaged areas.

Namely, the above mentioned Decision of the Government of the Republic of Croatia concerning the development and investment in broadband internet access in rural and less developed regions of the Republic of Croatia – areas of special state concern and disadvantaged towns and municipalities in mountainous areas, was adopted without prior approval of the Agency. In the sense of the State Aid Act, Article 14 paragraph 2, the Agency assessed state aid contained in the said measure ex post.

Sate aid concerned will be granted to undertakings which are to be selected by the Croatian Telecommunications Agency in accordance with the public procurement procedure. The final beneficiaries of the infrastructure and broadband internet access concerned will be households, schools, scientific and cultural organisations. The Decision of the Croatian Government also provides for state aid for infrastructure – broadband internet access – which will connect regional school districts on the coast with CARNET (Croatian Academic and Research Network).

Aid will be awarded in the form of grants on the basis of a public tender for specified geographic areas and for islands. The aid intensity in specified geographic areas may not exceed 85 % of the eligible costs whereas on islands this cap amount may not exceed 70 % of eligible costs of investment in broadband infrastructure.

Aid beneficiaries are undertakings registered for the provision of telecommunications services in the Republic of Croatia.

Although Article 4 paragraph 1 of the State Aid Act stipulates the general ban on state aid, the measure concerned which constitutes state aid within the meaning of Article 3 paragraph 1 of the State Aid Act may be exempted from the general ban on the basis of Article 4 paragraphs 2 and 3.Taking into account that state measure in question may be granted exemption in the sense of the justification provided for under Article 4 paragraph 3 item d), the Agency subsequently authorised state aid in the form of grants for disadvantaged areas for publically selected telecom providers who would make investment in broadband infrastructure.

5.3.8. Other activities of the Agency relating to state aid

Based on the requests made by aid providers, the Agency's representatives participated in the activities of various working groups responsible for the alignment of the legislative framework and aid schemes with state aid rules in effect, such as the working group in charge of the revisions of the Free Zones Act and for the drafting of the strategy and capacity building for regional development in Croatia.

Twinning project CARDS 2002 which objective was to provide support to the Agency in the implementation of state aid rules was successfully completed in the first quarter of 2007. Germany and Slovenia were in charge of the project's implementation.

In the second quarter of 2007, a new Twinning project PHARE 2005 started which actually continues with the support to the Agency in the implementation of state aid rules. Germany is in charge of the project's implementation.

Within both projects, a number of seminars for aid providers and aid beneficiaries have been held, with contributions from the in-house and external experts.

In 2007, the activities involving the establishment of a comprehensive state aid data base also continued. The functioning of the new data base has been tested.

6. INTERNATIONAL COOPERATION

In 2007, the Agency continued good cooperation with the European Commission. Worth mentioning is particularly the internship of two CCA employees in the European Commission's Directorate General for Competition. At the same time the Agency strengthened its cooperation with the relevant national authorities in the region.

The implementation of the largest part of EU CARDS assistance projects was finalised, and PHARE project on competition and state aid started. Training of the Agency's expert staff and other competition stakeholders continued both through a number of projects and competition-relevant organizations: OECD, ICN, UNCTAD etc.

The most important international event last year was the organization of the Competition Day in Zagreb on 13 November 2007, the international conference which marked the Agency's 10th anniversary. In addition to the Croatian competition experts and representatives of the Croatian institutions, the conference was attended by the representatives of the European Commission (Directorate General for Competition), national competition authorities of the EU Member States (Germany, Slovenia, Hungary, Bulgaria and Romania) and countries in the region (Albania, Macedonia, Serbia, Montenegro and Bosnia and Herzegovina).

6.1. European Union

As already mentioned above, for the first time in the Agency's practice, two expert staff members did their internship in the corresponding services of the European Commission's Directorate General for Competition. After the candidates were selected in Brussels, two employees of the Competition Division were sent for a 3-month internship in the mentioned Directorate General (Department for trade and other distribution services and Department for concentrations). The interns were directly involved in the everyday work of their departments and also underwent training usually implemented for interns in the European Commission. Given the Agency's limited budget, the internships were financed through direct assistance of the British Embassy in Zagreb.

6.1.1. EU assistance projects

The CARDS 2003 project "Further strengthening of the Croatian Competition Agency and implementation of competition law and policy" which was commenced in October 2005 was completed in the reporting year. During a period of 16 months, the project was managed by an Italian consortium which gathered experts from several European countries. The project's results were assessed as exceptionally successful. Within two main components, training of the Agency's expert staff and competition advocacy, a number of seminars were held both in-house and outside the Agency (in other regulators, chambers of the economy, universities), an informative brochure was published for business community, and during the entire project, expert assistance was provided in the Agency's everyday work through counselling on particular cases.

One of the components of PHARE 2005 project „Strengthening of capacity to manage and enforce EU competition and state aid policies“, which in cooperation with Germany started in April and will be implemented during a period of 20 months, is a extension of the mentioned CARDS project. Overall objective of this twinning project is strengthening of the capacities to manage and enforce European rules regulating market economy in this area. It is especially aimed at the Competition Agency, state administration and judiciary with the objective of implementing competition and state aid rules. Furthermore, the project's objective is to raise awareness on state aid and to improve enforcement of the public administration authorities, regional and local administration units and judiciary and the business sector. In the area of state aid, the project is a follow up to the formerly completed *twinning* project CARDS 2002. The Project's partner is the German Ministry of the Economy and Technology and in its competition component it is supported by the German Cartel Office.

In the area of shipbuilding, during 2007 CARDS project which provided support to the restructuring of the Croatian shipbuilding industry was also implemented in the Agency. The project's objective was for independent consultants with a long-year international working experience, who have also worked in shipyards and took part in the projects of sectoral restructuring in many countries, to provide expert assistance primarily to the Agency and the European Commission in assessing all aspects of the individual restructuring plans prior to their approval.

At the end of 2007, PHARE project „Croatian maritime sector: state aid and market access“, started, which is being implemented at the relevant ministry, whereas the Agency is included as a co-beneficiary on the account of the state aid component.

6.2. Multilateral and bilateral cooperation

In addition to regular bilateral cooperation with the national competition authorities of the EU Member States, the Agency concluded another cooperation agreement (with the Republic of Macedonia) and was during the year intensively engaged multilaterally (OECD).

6.2.1. Multilateral cooperation

In June 2007, with the support from the Hungarian Competition Agency, Croatia submitted a request for observer status in the OECD's Competition Committee, for the period of the next two years (2008-2009). Although intensive contacts were made with similar bodies of the OECD members with the objective of getting their support, the mentioned request was not viewed positively.

Also worth mentioning is the completion of the regional CARDS 2003 project which the Italian experts had been implementing for several years from their central office in Macedonia. The project was basically focused on judges' training and assistance in the justice reforms. The programme in Croatia was completed by a regional round table on competition and IPRs law in Zagreb.

6.2.2. Bilateral cooperation

The Regional Competition Conference was held in October 2007 in Ohrid and organized by German GTZ (Deutsche Gesellschaft für technische Zusammenarbeit), which gathered the representatives of the national competition authorities of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia and Serbia. The main part of the conference focused on the implementation of competition and state aid law and policy, including the national legislative solutions in regard to imposing sanctions, whereas at the end of the conference the representatives of the Agency and the Macedonian Competition Commission signed the Agreement on Cooperation, similar to the agreements already concluded with the Romanian Competition Council and Competition Committee of Bosnia and Herzegovina.

Also worth mentioning is the visit by the president of the Slovenian Competition Office, as well as the meeting with the Montenegrin assistant minister of internal trade and competition and assistant minister for industry and entrepreneurship. In addition, in cooperation with the Ministry of Foreign Affairs and European Integration, the Agency received a visit from the Albanian delegation, eleven senior state officials engaged with the alignment of the relevant rules from various areas of the EC *acquis*.

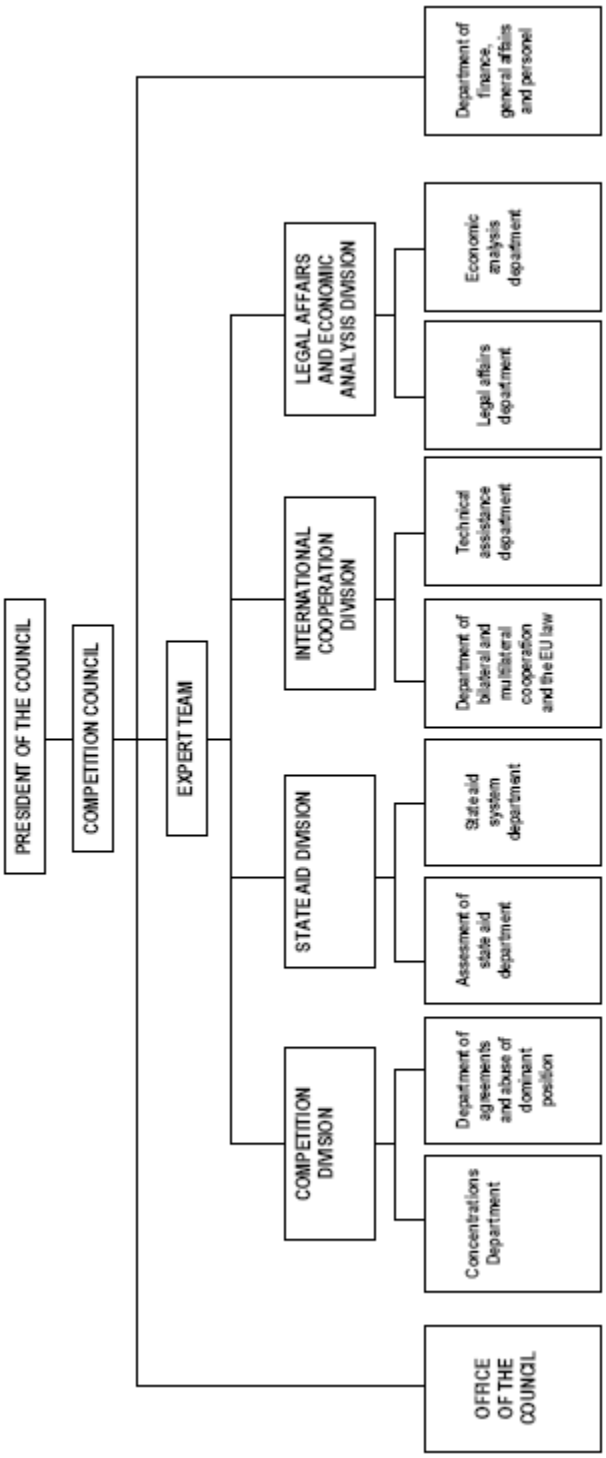
6.3. Professional training and international events

Similar as in previous years, the Agency participated, within its limited resources, in all relevant seminars and gatherings relating to revisions and reforms in the area of competition law and policy.

Such was the work of the OECD's Regional Competition Centre in Budapest which traditionally gathers the heads of competition authorities and relevant bodies of the countries in the region at regular annual conferences. In 2007, the main topic was combating cartels and given its vital importance for effective competition, it was discussed both by the senior officials and at the seminar of the Regional Centre for the representatives of the expert staff. The seminar's objective was to introduce the investigative and analytical procedures which are applied in cartel cases. Another seminar on abuse of a dominant position was held at the end of the year.

Another global event particularly important in the competition area was the regular annual meeting of the Competition Department within the American Bar Association, i.e. the annual conference on international competition law and policy organized by Fordham Competition Institute. Such meetings are always thematically focused on the latest competition developments from the perspectives of various countries and their legislative solutions.

7. Organisational chart of the Croatian Competition Agency



Source: CCA

8. Total number of registered and resolved cases/files in the area of anti-trust and merger control in 2007

Category of case/file	No of cases/files registered in 2007	No of decisions/opinions/ procedural orders/interim measures and others in 2007
I ADMINISTRATIVE CASES:		
1 AGREEMENTS	4	5
2 ABUSES	12	14
3 MERGERS	29	28
Total:	**45**	**47**
II ADVOCACY (OPINIONS):		
1 OPINIONS ON DRAFT LEGISLATIONS	13	12
2 OTHER EXPERT OPINIONS UPON REQUEST OF THE PARTIES	16	17
Total:	**29**	**29**
Subtotal ADMINISTRATIVE CASES + ADVOCACY (I+II)	**74**	**76**
III OTHER NON-ADMINISTRATIVE FILES	87	73
IV STATISTICAL REPORTS, INTERNATIONAL PROJECTS AND COOPERATION (international cooperation; cooperation with public administration authorities and other institutions)	58	58
V INTERNAL ACTS AND PUBLICATIONS OF THE CCA	10	10
TOTAL (I-V)	**229**	**217**

Source: CCA

9. CCA IN 2007- FACTS IN BRIEF

40 employees

5 members of the Council

302 total received files

229 received antitrust and merger control files

73 total received state aid files

270 total solved cases

217 total solved antitrust and merger cases

- 2 decisions on restrictive agreements
- 3 decisions on abuse of dominance
- 25 approved concentrations
- 29 opinions on draft laws and upon the request of the parties
- 10 CCA internal acts and publications
- 41 statistical reports and international projects
- 8 investigation proceedings
- 99 non-administrative files (e.g. transfer of jurisdiction)

53 total solved state aid cases

- 10 decisions on authorisation of state aid
- 3 non-aid decisions
- 3 opinions
- 6 procedural orders (termination, dismissal)
- 31 non-administrative files (answers to aid providers' requests)

7 rulings of the Administrative Court of the Republic of Croatia

6 - upheld decisions of the CCA
1 - revoked decision of the CCA

20 requests for initiation of minor offence proceedings

427 articles and press comments about the CCA and/or competition issues

- 390 in favour/unbiased
- 37 negatively biased