



**REPUBLIC OF CROATIA**

**AGENCY FOR PROTECTION OF MARKET COMPETITION**

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# **REPORT**

*on the work of the*

**AGENCY FOR PROTECTION OF MARKET  
COMPETITION**

***(April 2000 - April 2001)***

***Zagreb, May 2001***

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# **1. WORK OF THE AGENCY FOR PROTECTION OF MARKET COMPETITION (April 2000 - April 2001)**

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## **1.1. INTRODUCTORY REMARKS**

Competition law in the Republic of Croatia has come to life by adoption of the Law on Protection of Market Competition ("Official Gazette" No. 48/95, 52/97 and 98/98). The Law is based upon the principles contained in the Treaty Establishing the European Community (provisions of Article 85 and Article 86). The Law on Protection of Market Competition regulates rules of conduct and the system of measures aimed at protecting free and effective market competition. The Law applies to companies, sole proprietors and craftsmen, as well as other legal and natural persons that participate in the trade of goods and services through their economic activities. The provisions of the Law shall apply accordingly to each legal and natural person engaged in a single or temporary trade of goods and services, as well as to all legal and natural persons with registered office or residence is abroad, provided that their participation in the trade of goods and services has an effect on the domestic market.

The implementation bylaw, rendered on the basis of the Law on Protection of Market Competition, is the Bylaw on the Methods of Keeping the Register on Concentrations ("Official Gazette" No. 30/97).

The purpose of competition is to ensure free access to the market and to prevent distortions upon free market competition. The starting points of this branch of law are:

1. prohibition to abuse dominant monopolistic position,
2. prohibition to enter into agreements whose aim, consequence or possible effect is restriction or prevention of free market competition, and
3. evaluation of concentrations (various forms of affiliations and associations of undertakings) resulting in a new, or strengthening an existing, monopolistic and dominant position in the market - in the way which significantly or permanently restricts or abolishes free market competition.

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## 1.2. ANALYSIS OF THE SITUATION

Professional and administrative affairs connected with protection of market competition are performed by the Agency for Protection of Market Competition, which is an independent authority, subordinated to the Croatian Parliament. The Agency employs 18 employees, including 8 lawyers and 6 economists. Six employees are regular postgraduate students in law and economic studies of the Zagreb University. Five lawyers have passed the bar exam and the remaining three shall pass it soon.

The bodies of the Agency are the Director and the Council for Protection of Market Competition. The Council, consisting of the president and eight members, makes proposals to the Director of the Agency regarding measures to be taken to protect market competition. The Director undertakes the measures to protect market competition and manages the operations of the Agency.

Within its information activities, the Agency publishes the Gazette. The first volume of the Gazette, printed in both Croatian and English in December 1999, contains the relevant regulations, reports on the work and a series of cases and decisions of the Agency. The second volume of the Gazette, published in December 2000, contains the decisions of the Agency which present a series of legal and economical standpoints of the Agency with respect to the practices of undertakings - participants of competition. The volume also includes scientific papers in the area of competition law. The Agency, being a specialized authority for implementation of competition law, publishes the Gazette to achieve transparency of its operations.

### 1.3. REVIEW OF THE WORK OF THE AGENCY

The Agency for Protection of Market Competition has begun with its work at the beginning of the year 1997. From its foundation until April 1, 2000, the Agency has received in total **1481 cases**.

The structure of the received cases during the last four years of the Agency's work is shown in the Table 1 and Picture 1 of the Report.

**Table 1**

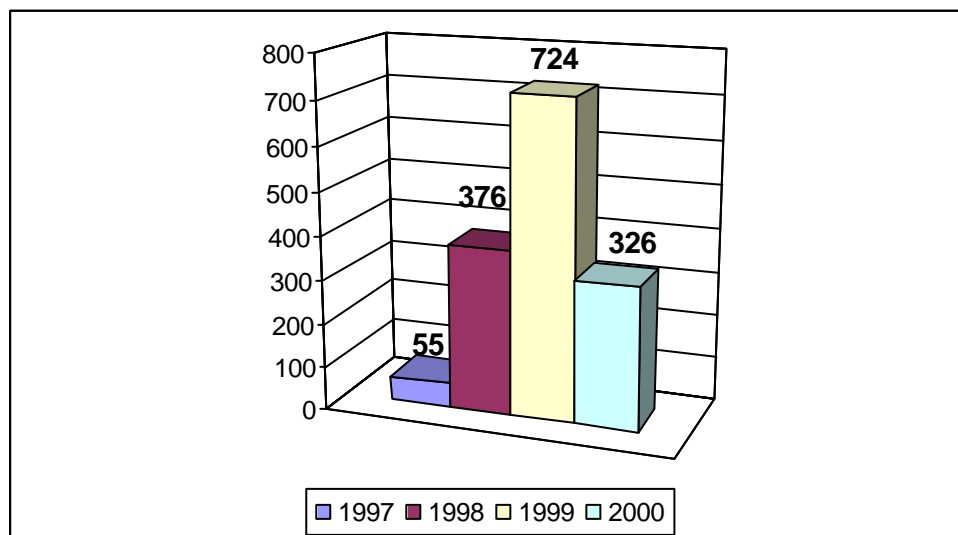
**Proceedings initiated in 1997, 1998, 1999 and 2000**  
(according to subject)

	1997	1998	1999	Ratio in % 99/98	2000	Ratio in % 2000/99
1	2	3	4	5	6	7
Initiation of proceedings to establish abuse of dominant or monopolistic position and distortions upon free market competition	27	68	90	32,35%	52	-42,22%
Evaluations of agreements	9	264	534	102,27%	147	-72,47%
Concentrations	5	25	64	156,00%	34	-46,88%
Opinions	14	19	36	89,47%	93	158,33%
<b>Total proceedings initiated</b>	<b>55</b>	<b>376</b>	<b>724</b>	<b>92,55%</b>	<b>326</b>	<b>-54,97%</b>

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

**Picture 1**

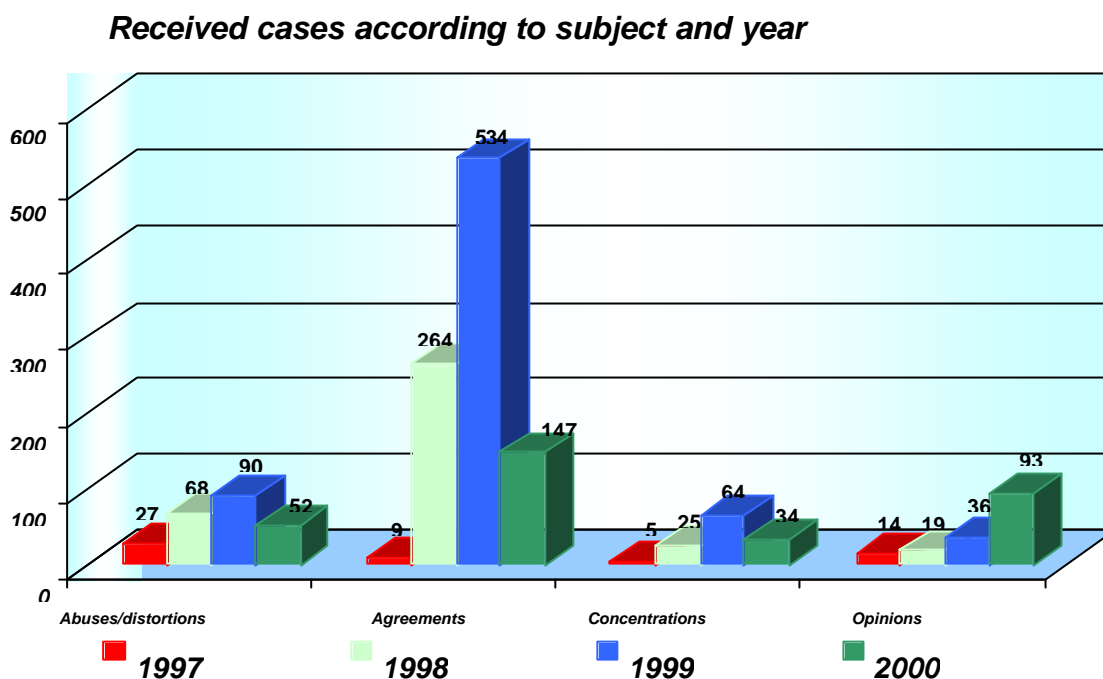
**Total number of initiated proceedings in 1997, 1998, 1999 and 2000**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001.

Analysis of received cases according to subject is shown in the following graph (Picture 2).

**Picture 2**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

In the **year 2000** in relation to 1999 a decrease of **54,97 percentage points** in received cases can be noticed. Decrease of **13,29 percentage points** may be also observed in relation to the year 1998.

Such obvious decrease of the number of received cases in the year 2000 occurred because the number of the cases initiated *ex offo* has significantly decreased in the period from May 26, 2000 to October 24, 2000 (Tables 5, 6, 8 and Pictures 5, 8,10, 12). The reason thereto was the fact that on May 26, 2000 the former Director Dr. sc. Deša Mlikotin Tomic was released from duty. After that, the majority of the members of the Council resigned.

On June 1, 2000, the House of Representatives of the Croatian Parliament has rendered the Decision on Appointment of M.Sc. Hrvoje Momcinovic as the new Director. The new members of the Council were appointed on September 14, 2000 and the Council held its first session on October 24, 2000.

Therefore, in the period from the release of the former Director in May 2000 until the first session of the new Council in October 2000 there was no proceedings initiated *ex offo*, which has a direct impact on the decrease of the number of initiated proceedings.

The review of the resolved cases and the cases which were or are in progress in 1997, 1998, 1999 and 2000 is shown in the Table 2.

**Table 2**  
**Review of resolved cases and cases in progress in 1997, 1998, 1999 and 2000**

Cases	1997	1998	1999	Ratio in % 99/98	2000	Ratio in % 2000/99
1	2	3	4	5	6	7
<b>RECEIVED</b>	<b>55</b>	<b>376</b>	<b>724</b>	<b>92,55%</b>	<b>326</b>	<b>-54,97%</b>
In progress	24	35	128	265,71%	60	-53,13%
Resolved	31	341	596	74,78%	266	-55,37%

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

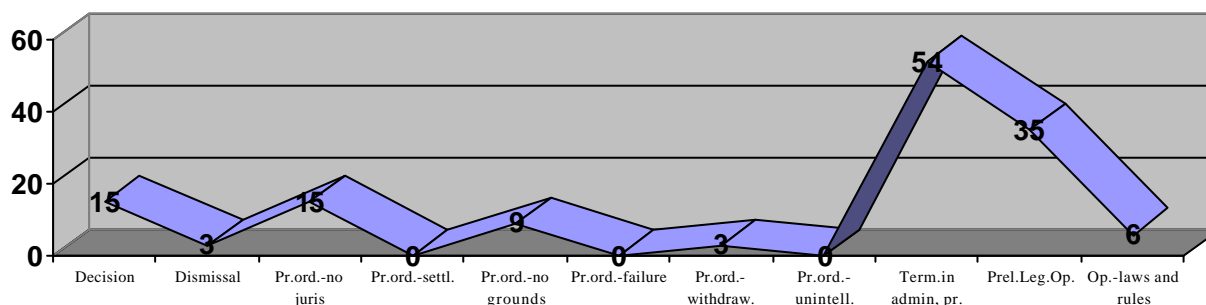
With respect to cases received in **1998**, the Agency has concluded until April 1, 2001 all cases received by then (**100%**). Of the cases received in **1999**, about **80%** were resolved until April 1, 2000. Of the remaining **20%**, which were in progress by the end of the reporting period, another **80%** were resolved by April 1, 2001, which in total represents **96%** resolved cases from the total number received in **1999**.

It may be observed that from the total number of **326** cases in the year **2000**, **266** cases were concluded, which is **81,59%** of the total number of the cases received in that year. Considering the number of resolved cases in previous years, it may be noted that the Agency in average completes **84,25%** of received cases in the year of receipt.

Picture 3 shows the structure of the Agency's decisions

**Picture 3**

**Structure of the Agency's decision April 2000 - April 2001**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

It should notice that the number of preliminary legal opinions and the number of resolved cases in administrative as presented in Picture 3, partially overlap. Namely, in a high number of cases, the parties have submitted to the Agency copies of the documents indicating initiation of administrative proceedings. However, after the Agency had started the administrative proceedings, it was established that the parties requested only issuance of a preliminary legal opinion.

Therefore, the Agency terminated the administrative proceedings and issued preliminary legal opinions on the parties. Specifically, this situation in most cases occurs in case when the legal pleading of the party indicates that it concerns notification of a concentration of undertakings. After the Agency issues a request to the party to amend the notification in accordance with the Law on Protection of Market Competition, the notification shows that

in fact the party only makes an inquiry to whether the requirements for notification have been met in the particular case or not. The Agency resolves such inquiries in the form of preliminary legal opinion, out of administrative proceedings. Therefore, the administrative case opened in the same issue needs to be resolved in administrative procedure.

Also, the number of the cases resolved by a decision in the year 2000 is relatively small. The reason thereto is the fact that in some cases several proceedings, which were based on the same factual and legal ground, were joined into one, so that several request were resolved by a single decision.

The Table 3 shows percentage shares of resolved cases in the total number of the cases received in the year 2000, as well as the structure of the Agency's decision in the resolved cases.

**Table 3**

**Percentage of resolved cases in the total number  
of resolved and received cases in the year 2000**

	Number of resolved cases in the year 2000	Share in the total number of received cases in %	Share of the total number of resolved cases in %
1	2	3	4
Decision	15	4,60	10,71
Decision on dismissal	3	0,92	2,14
Procedural order - dismissal on grounds of no jurisdiction	15	4,60	10,71
Procedural order - termination - settlement	0	0,00	0,00
Procedural order - termination - no grounds for proceedings	9	2,76	6,43
Procedural order - termination - failure to submit documents	0	0,00	0,00
Procedural order - termination - withdrawal of request	3	0,92	2,14
Procedural order - dismissal - unintelligible request	0	0,00	0,00
Termination in administrative proceedings	54	16,56	38,57
Preliminary legal opinions	35	10,74	25,00
Opinions on laws and rules	6	1,84	4,29
<b>Total</b>	<b>140</b>	<b>42,94</b>	<b>100,00</b>
<b>Total number of received cases in 2000</b>	<b>326</b>		

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001



## 1.4. CASE STRUCTURE ACCORDING TO LEGAL QUALIFICATIONS

Table 4 shows the number of resolved cases and the number of cases in progress according to legal qualifications pursuant to the Law on Protection of Market Competition.

**Table 4**

### Resolved cases according to legal qualifications

	1997	1998	1999	Ratio in % 99/98	2000	Ratio in % 2000/99
1	2	3	4	5	6	7
<b>Abuses</b>	<b>27</b>	<b>68</b>	<b>90</b>	<b>32,35%</b>	<b>52</b>	<b>-42,22%</b>
In progress	11	12	41	241,67%	23	-43,90%
Resolved	16	56	49	-12,50%	29	-40,82%
<b>Agreements</b>	<b>9</b>	<b>264</b>	<b>534</b>	<b>102,27%</b>	<b>147</b>	<b>-72,47%</b>
In progress	7	12	44	266,67%	7	-84,09%
Resolved	2	252	490	94,44%	140	-71,43%
<b>Concentrations</b>	<b>5</b>	<b>25</b>	<b>64</b>	<b>156,00%</b>	<b>34</b>	<b>-46,88%</b>
In progress	5	8	38	375,00%	20	-47,37%
Resolved	0	17	26	52,94%	14	-46,15%
<b>Opinions</b>	<b>14</b>	<b>19</b>	<b>36</b>	<b>89,47%</b>	<b>93</b>	<b>158,33%</b>
In progress	1	3	5	66,67%	10	100,00%
Resolved	13	16	31	93,75%	83	167,74%

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

The decrease in the number of resolved cases in abuses, evaluation of agreements and evaluation of concentrations is shown in Table 4. The decrease is logical considering the fact that the number of received cases is lower than in previous years (see explanation to Picture 2). However, it should notice a significant increase in the number of preliminary legal opinions issued.

In relation to the year 1997, preliminary legal opinions increased for **538,46%** in the year 2000. In relation to the year 1997, the percentage decreased to **418,75%**, while in the year 1999, it rose for **93,75** percentage points compared to the year 1998. Nevertheless, the year 2000 shows an increase in the number of issued opinions compared to the year 1999 of **167,74%**.

This institute, which was introduced in the practice of the Agency in 1998, has been very practical and efficient. Namely, it provides the possibility to the parties to obtain a legal opinion of the competent authority in a specific case.

Such an opinion may be obtained in a relatively short period, but without disclosure of all details of the intended transaction, even without disclosing the true identity of the parties. However, it enables the party to evaluate whether it will initiate administrative proceedings in a specific case later on or not (e.g., if it is necessary to notify a concentration of undertakings or not).

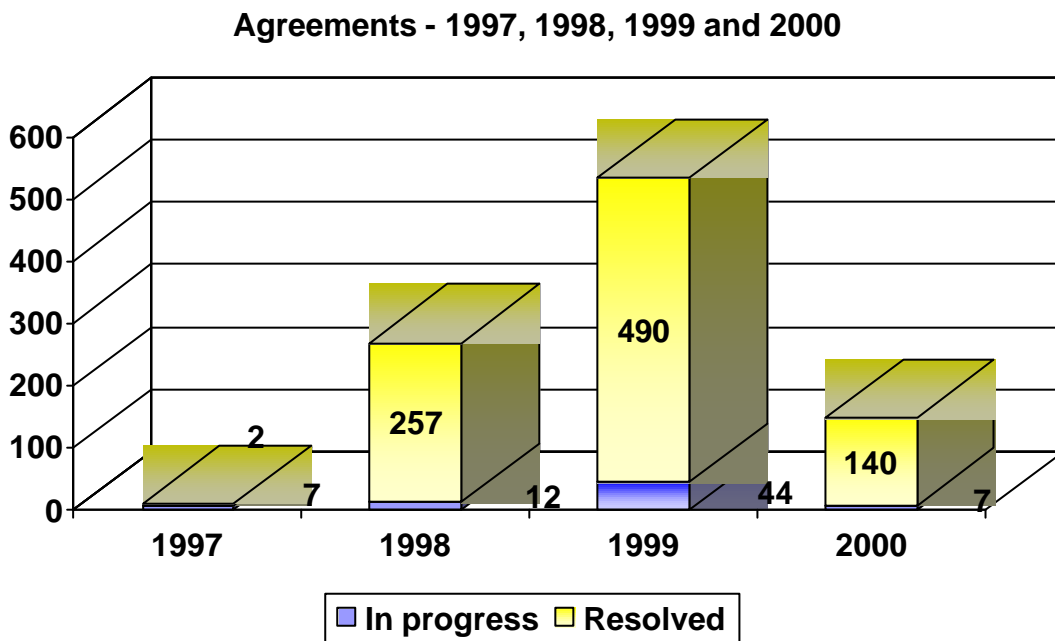
## 2.1. Agreements

The preceding reporting period (1999/2000) indicated that the reason for a high number of agreements received for evaluation was the fact that the undertakings concluded agreements with identical contents with a number of undertakings. This resulted with **534** proceedings of evaluation of agreements in 1999, which was **73,76%** of the total proceedings initiated.

In difference to the year 1999, in the year 2000 the proceedings of evaluation of agreements participate in the total number of proceedings initiated with **45,09%**.

Picture 4 gives a review of initiated and resolved evaluations of agreements in the years 1997, 1998, 1999 and 2000.

**Picture 4**

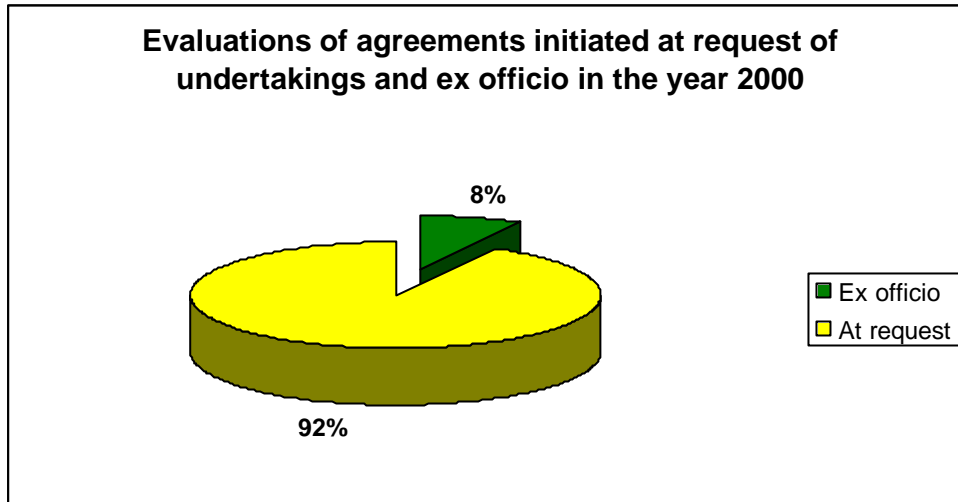


Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

The year 1999 is characterized by the fact that almost **96%** of evaluations of agreements were initiated by the Agency *ex officio*. The Picture 5 indicated the opposite situation in the year 2000.

Evaluations of agreements initiated at request of undertakings participate in the total number of evaluations of agreements in the year 2000 with **92%**, while the Agency initiated *ex officio* only **8%** of the proceedings. The reasons for such situation are stated above in the commentary to Picture 2.

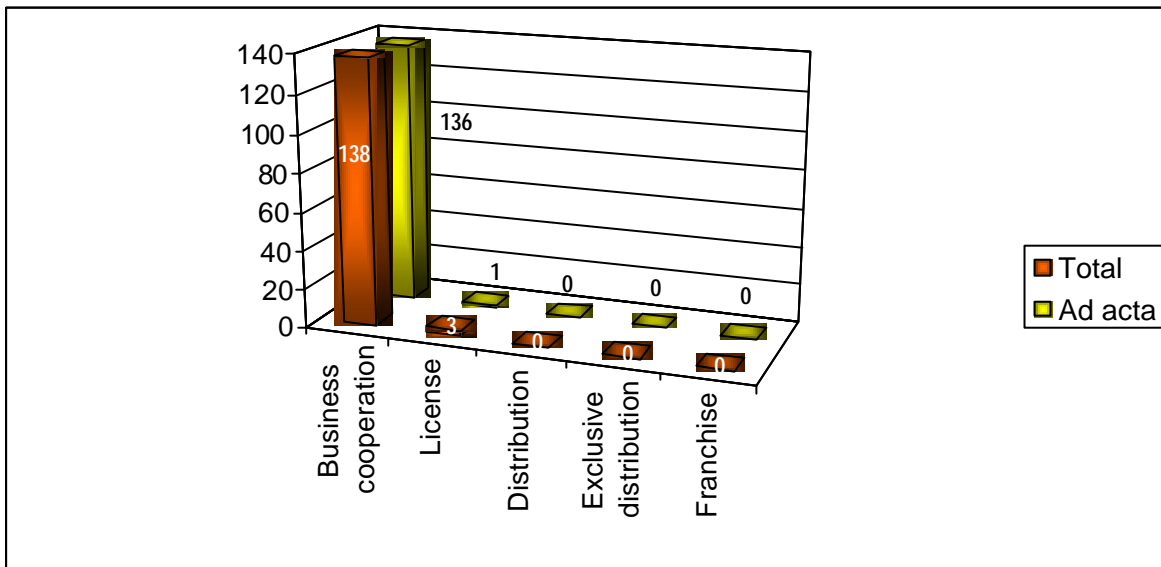
**Picture 5**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

The analysis of agreements received in the year 2000, according to types of evaluated agreements, is presented in the following graph (Picture 6).

**Picture 6**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

It is noticeable that the highest number of agreements, as well as in preceding years, relates to agreements on business cooperation, which participate in the total number of initiated evaluation proceedings with **93,88%**. The agreements on exclusive distribution follow with **2,72%**, license agreements with **2,04%** and distribution agreements with **1,36%**.

In difference to preceding years, no franchising agreement was reported to the Agency in the year 2000.

The review of the ratio between the proceedings of evaluation of agreements in 1999 and in 2000 shows the following result:

- ❑ the number of initiated proceedings of evaluation of agreements on **business cooperation** decreased for **71,72 percentage points**,
- ❑ the number of initiated proceedings of evaluation of **license** agreements decreased for **75,00 percentage points**,
- ❑ the number of initiated proceedings of evaluation of **distribution** agreements decreased for **75,00 percentage points**,
- ❑ the number of initiated proceedings of evaluation of **exclusive distribution** agreements decreased for **20,00 percentage points**, and
- ❑ no **franchising** agreement was reported.

The reasons for such situations are described above in the commentary to Picture 2.

### 1.4.2. Abuse of dominant or monopolistic position and distortions upon free market competition

Decrease of initiated cases for determination of abuse of dominant or monopolistic position and distortions upon free market competition (hereinafter: abuses) in relation to preceding two years has two causes.

The first is stated above in the commentary to Picture 2. The second cause is gradual development of awareness on existence of the Law on Protection of Market Competition. This development is the result of the Agency's actions as well as publishing of its decisions in the "Official Gazette of the Republic of Croatia" and the Gazette of the Agency. The undertakings were also educated through the first seminar on competition law, which was held in March 13-17, 2000 in Zagreb organized by the Agency. In addition, the representatives of the Agency have held presentations in various professional conferences.

In the year **2000**, in total **52** cases requests to establish abuse were received and proceedings were initiated. In relation to the year 1999, this is a decrease of the number of initiated proceedings for **42,22 percentage points**, while in relation to the year 1998, it presents a decrease for **23,53 percentage points**.

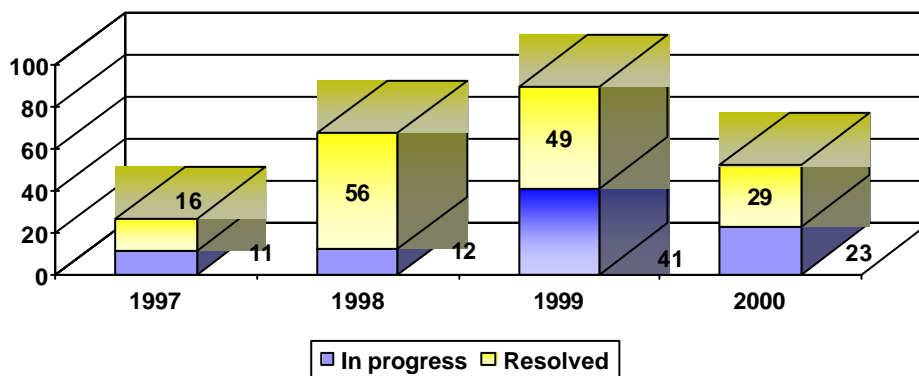
The results of the statistic analysis of initiated and concluded cases in the year 2000 show that at the end of the reporting period 2000/2001 **29 cases** were **concluded**, which forms **55,77%** of the total proceedings initiated to establish abuse in 2000. Therefore, on April 1, 2001 **23 cases** were in progress, which is **44,23%** of the total proceedings initiated in the reporting period April 2000 - April 2001 (see Picture 7).

Proceedings conducted to establish abuse require collection of evidence and exhausting analysis of market position and practices of the undertakings against which the proceedings were initiated, as well as the research of the current situation in the market in general. Therefore, in principal, the cases of abuse are carried out longer than other cases initiated before the Agency. Namely, those cases require more time to be resolved.

When analyzing the disputed situations, the employees of the Agency encounter many unknowns and difficulties, and in a high number of cases they consult the authorities for protection of market competition in other countries, the foreign literature and the decisions of the European Commission in similar cases in European Community.

Picture 7

Abuses- 1997, 1998, 1999 and 2000



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001  
 Agency for Protection of Market Competition, May 2001

Of the total of **52** cases initiated in the year 2000, **5 cases** were initiated by the Director of the Agency **ex officio**, while **47 cases** were initiated at the request of the applicant (see Table 5 and Picture 8).

**Table 5**  
**Ratio of the number of cases initiated ex officio and at request of the applicant in the years 1997, 1998, 1999 and 2000**

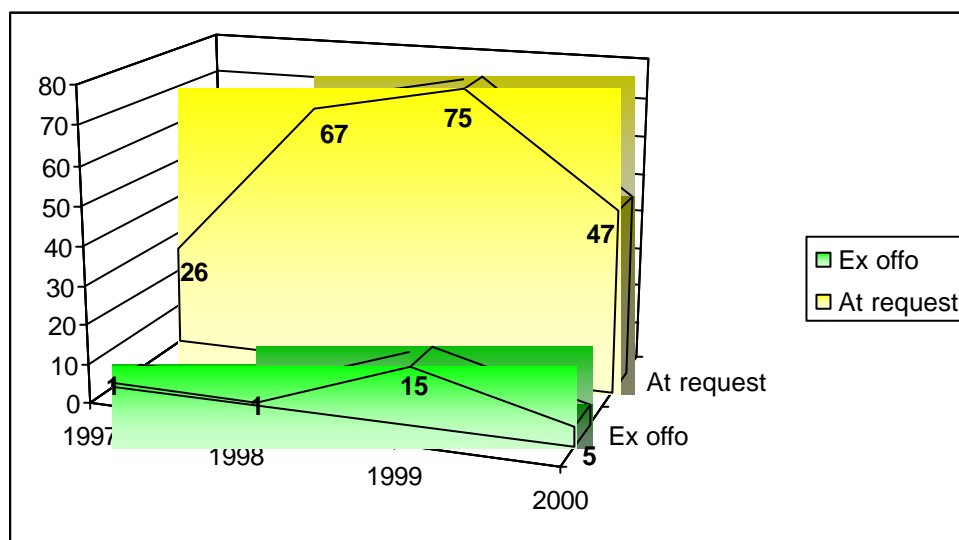
	1997	Share in relation to total number of abuses	1998	Share in relation to total number of abuses	1999	Share in relation to total number of abuses	2000	Share in relation to total number of abuses
1	2	3	4	5	6	7	8	9
<b>At request</b>	26	96,30%	67	98,53%	75	83,33%	47	90,38%
<b>Ex Offo</b>	1	3,70%	1	1,47%	15	16,67%	5	9,62%
<b>Total</b>	<b>27</b>		<b>68</b>		<b>90</b>		<b>52</b>	

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

Considering the data from the year 1999, it can be noticed that, expressed in percentage, the number of cases initiated ex officio was almost cut in half - in the year 1999 such cases represented **16,67%** of the total number of initiated cases of abuses, while in the year 2000 the percentage falls to **9,62%**. The reason thereto is stated above in the commentary to Picture 2.

**Picture 8**

**Ratio of abuses initiated at request or ex officio from 1997 to 2000**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

### 1.4.3. Concentrations

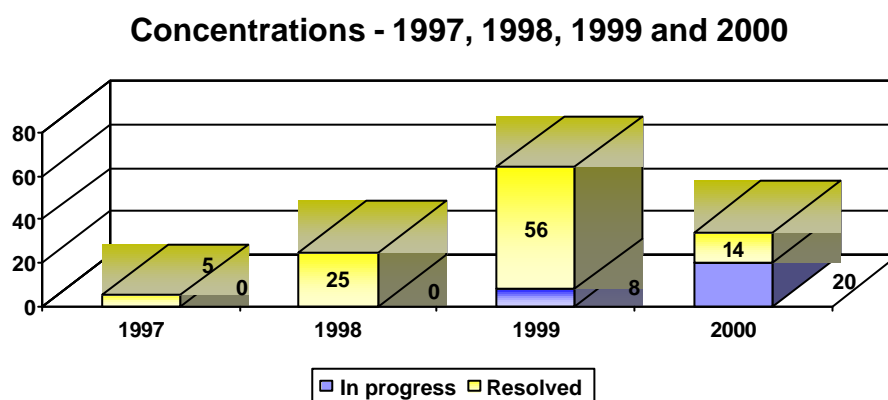
Modern legislations in competition law pay special attention to the issues of merger and other forms of associations of participants of market competition, considering the fact that control of concentrations of undertakings may significantly influence the modification of the structure of the specific market and consequently the level of market competition.

Considering that the industrial revolution has been replaced by revolution in informatics, which has a significant impact to the modern business operations, global markets today are swept by globalization and the phenomenon of concentrations is only one of its "products", the purpose whereof is to maximize profits and eliminate competition, etc.

Although concentrations, in principal, are legal business strategies, it should nevertheless bear in mind that the market structures should remain competitive. Lack of regulations and, in particular, the fact that undertakings are not familiar with the policy of their competitors, may lead to creation of new or strengthening of the current dominant position, which diminishes the overall interests of the economy and the market in which the undertakings compete.

Picture 9 shows the changes in number of received notifications of concentrations of undertakings for evaluation in the period from 1997 to 2000.

**Picture 9**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

The total number of notified concentrations in the year 2000 in relation to the year 1999 decreased for **46,87 percentage points**, while in relation to the year 1998 it increased for **36 percentage points** (Picture 9, Table 6).

The reason for the decrease of notified concentrations in the year 2000 is described above in the commentary to Picture 2. Table 6 shows the same. Namely, the total number of concentration is considerably lower than in the year 1999. In particular, the number of concentrations, which were notified in the year 2000 by the participants of the concentrations, is equal to the number of notified concentrations in the previous year. However, the number of concentrations notified upon request of the Agency (ex officio) is considerably lower.

**Table 6**

**Review of initiated evaluations of concentration  
at request of the parties and ex officio**

	1997	Share in relation to total number of concentrations	1998	Share in relation to total number of concentrations	1999	Share in relation to total number of concentrations	2000	Share in relation to total number of concentrations
1	2	3	4	5	6	7	8	9
At request of parties	2	40,00%	15	60,00%	22	34,38%	22	64,71%
Upon request of the Agency	3	60,00%	10	40,00%	42	65,63%	12	35,29%
<b>Total</b>	<b>5</b>		<b>25</b>		<b>64</b>		<b>34</b>	

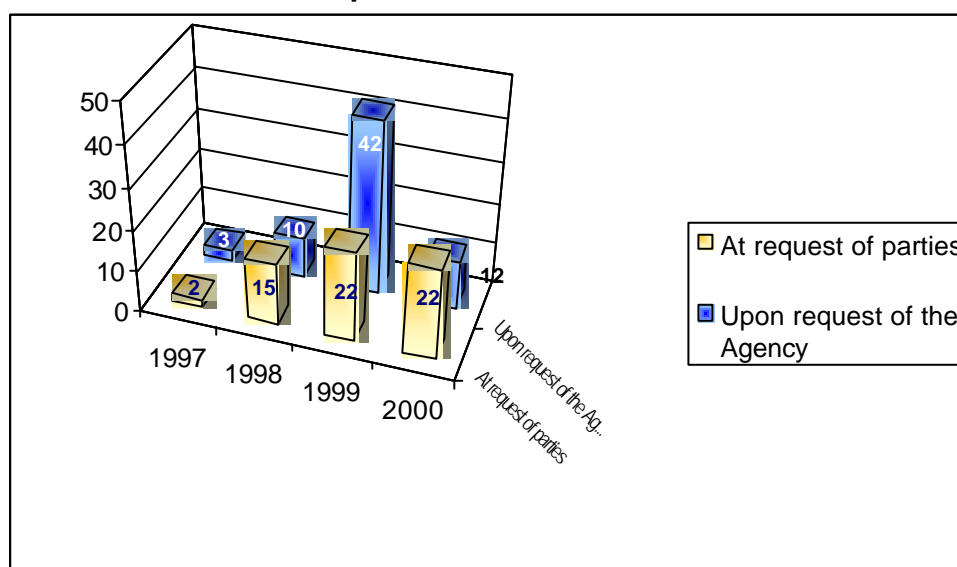
Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

Therefore, in the year **2000**, the Agency initiated **22** proceedings of evaluation of concentrations at request of undertakings, while it requested from the undertakings to notify concentration in **12** cases. Therefore, **64,71%** of evaluations of concentrations was initiated **upon notification** of the parties, and **35,29%** of the cases were initiated **ex officio** (Table 6 and Picture 10).

In the year **1999**, **34,38%** of the cases was initiated **upon notification** of the parties, while **65,63%** of the cases was initiated **ex officio** (Table 6 and Picture 10).

**Picture 10**

**Review of initiated evaluations of concentration  
at request of the parties and upon request of the Agency  
in the period from 1997 to 2000**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001



#### 1.4.4. Preliminary legal opinions

The Agency issues preliminary legal opinions within the scope of its activities pursuant to the provisions of Article 30, paragraph 1, item 3 and item 6 of the Law on Protection of Market Competition and Tariff No. 105 of the Law on Administrative Taxes ("Official Gazette" 131/97).

**Table 7**

**Ratio of issued preliminary legal opinions in 1997, 1998, 1999 and 2000**

Opinions	1997	1998	1999	Ratio in % 99/98	2000	Ratio in % 2000/99
1	2	3	4	5	6	7
<b>Preliminary legal opinions</b>	5	7	22	<b>214,29%</b>	87	<b>295,45%</b>

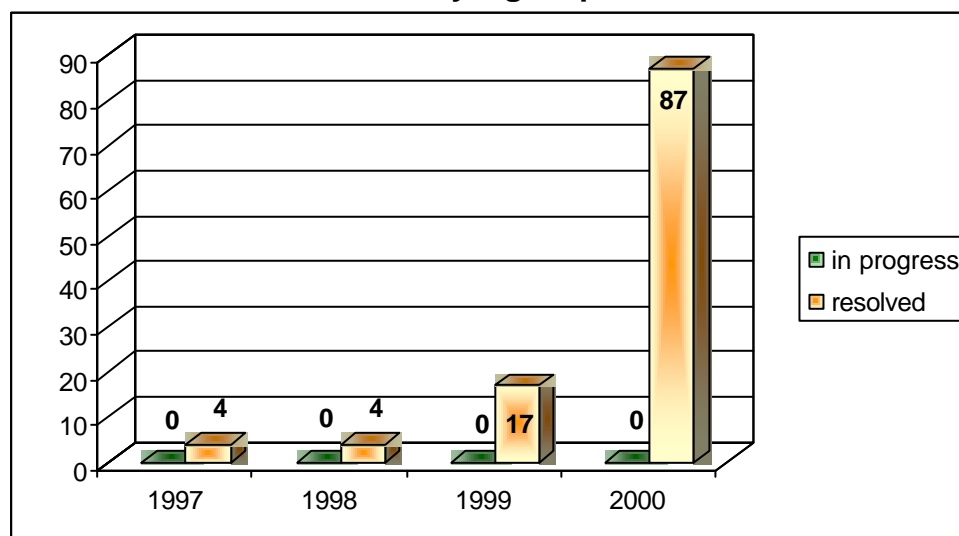
Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

In the year **2000**, the Agency has issued in total **87 preliminary legal opinions**, which forms in relation to **22 opinions** issued in the year **1999**, an **increase of 295,45 percentage points**.

Picture 11 presents the ratio of resolved preliminary legal opinions and opinions in progress. The Picture shows that none of the received request for opinion is not in progress, which confirms prompt reactions of the Agency.

**Picture 11**

**Preliminary legal opinions**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

### 1.4.5. Opinions on laws and other acts

With respect to **opinions on laws and other acts**, the number of such opinions, in relation to the year **1999**, has fallen for **57,14 percentage points** in the year **2000**. The reason for such decrease is in the fact that the proposers of the laws failed to submit draft laws and other acts to the Agency to issue an opinion (Table 8).

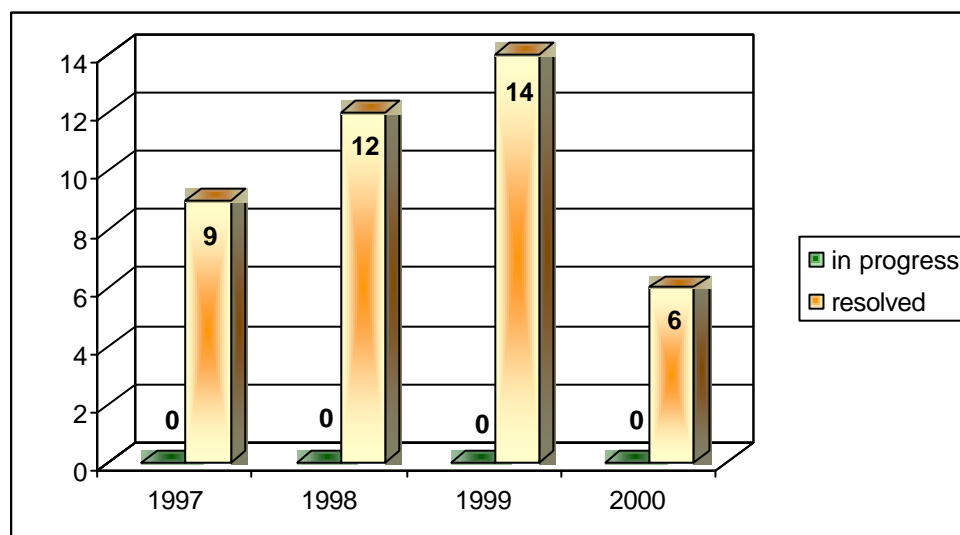
**Table 8**  
**Ratio of issued opinions on laws and other acts in 1997, 1998, 1999 and 2000**

Opinions	1997	1998	1999	Ratio in % 99/98	2000	Ratio in % 2000/99
1	2	3	4	5	6	7
<b>Opinions on laws and other acts</b>	<b>9</b>	<b>12</b>	<b>14</b>	<b>16,67%</b>	<b>6</b>	<b>-57,14%</b>

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

**Picture 12**

### Opinions on laws and other acts



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

Namely, the procedure of issuance of an opinion is not itself time-consuming. The Agency mostly issues opinions connected to the application of the Law on Protection of Market Competition to a specific problem.

### 1.5. RATIO BETWEEN CASES INITIATED AT REQUEST OF UNDERTAKINGS, ASSOCIATIONS OR STATE ADMINISTRATION AUTHORITIES AND CASES INITIATED OFFICIALLY

The ratio between the cases initiated at request of undertakings, professional and economic and interest associations and the Government of the Republic of Croatia, as well as state administration authorities and the cases initiated officially (ex officio) by the Director of the Agency is presented in the Table 9.

**Table 9**

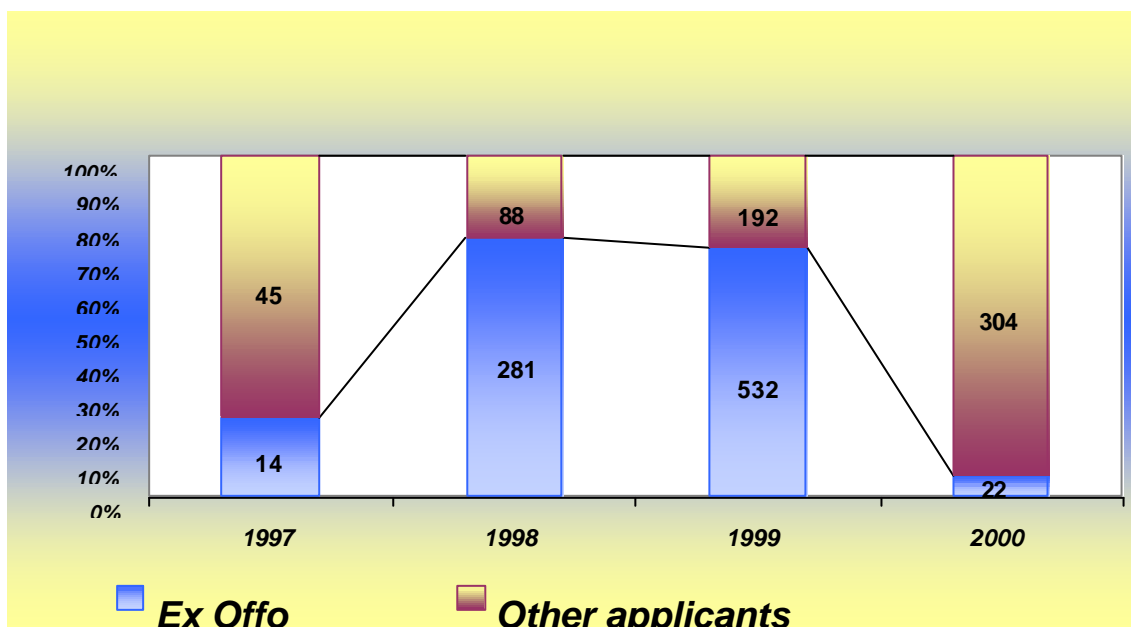
**Cases initiated at request of undertakings, business associations and societies, the Government of the Republic of Croatia and state administrative authorities or officially**

APPLICANTS	1997	1998	1999	2000	Ratio 2000/1999 (%)
1	2	3	4	5	6
Professional and economic and interest associations of undertakings	3	17	12	10	-16,67%
Natural and legal persons	35	66	160	275	71,88%
Government of the Republic of Croatia and state administration authorities	3	5	20	19	-5,00%
Director of the Agency ex officio	14	281	532	22	-95,86%

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

**Picture 13**

**Ratio of the cases initiated ex officio and by request of other applicants (1997-2000)**



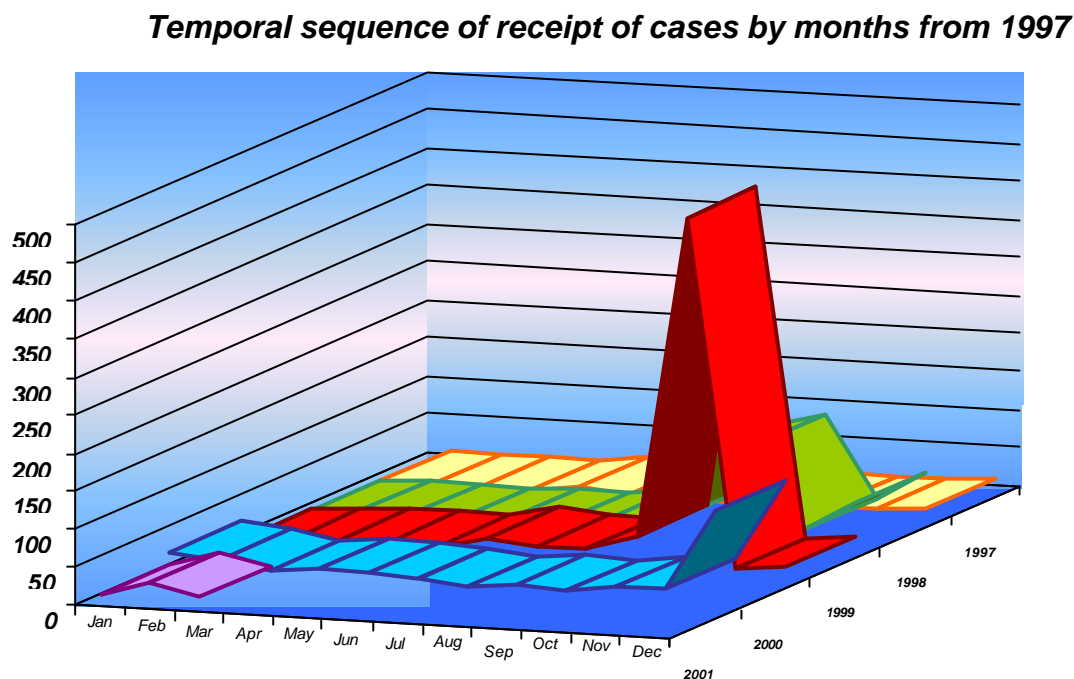
Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

Picture 13 shows the ratio of the cases initiated at request and the cases initiated ex officio in the past four years of the Agency's activities.

## 1.6. TEMPORAL SEQUENCE OF RECEIPT OF CASES DURING YEARS 1997, 1998, 1999 AND 2000 (by months)

Picture 14 shows temporal sequence of receipt of cases by months during the past four years.

**Picture 14**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

During the year **2000**, on average **27,16** cases were received per month. In relation to 60,33 cases per month received in the year 1999, the deviation is considerable, but, as it has been already stated, it is by appearance only, since in October 1999 a large number of agreements has been submitted for evaluation,

Further analysis of the cases received per day will show that the Agency in average receives or initiates **1,23** case per working day.

Table 9 presents the review of months in which the Agency receives the highest number of cases.

**Table 10****Number of received cases per months in the period of 1997 to April 1, 2001**

	YEAR					TOTAL
	1997	1998	1999	2000	2001	
1	2	3	4	5	6	7
<i>January</i>	4	4	8	30	15	<b>61</b>
<i>February</i>	3	7	11	23	35	<b>79</b>
<i>March</i>	3	5	13	15	19	55
<i>April</i>	2	4	16	20		42
<i>May</i>	10	8	15	20		53
<i>June</i>	5	6	29	16		56
<i>July</i>	4	15	21	8		48
<i>August</i>	2	9	21	8		40
<i>September</i>	5	108	42	10		<b>165</b>
<i>October</i>	3	124	464	19		<b>610</b>
<i>November</i>	5	18	7	21		51
<i>December</i>	9	57	13	127		<b>206</b>

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

## 1.7. COURTS

Table 11 shows the number of requests for initiation of offense proceedings submitted by the Agency against undertakings for violations of the provisions of the Law on Protection of Market Competition.

The same Table shows the number of complaints submitted by the undertakings to the Administrative Court against the decisions of the Agency as well as the number of cases in which magistrate courts and the Administrative Court of the Republic of Croatia have rendered their decisions.

**Table 11**

### Initiated and concluded cases at magistrate courts and the Administrative Court

	Total initiated	Concluded by decision of the Court	Total concluded	In progress (as per April 1, 2001)
1	2	3	4	5
<b>MAGISTRATE COURTS</b>	<b>Proceedings initiated at request of the Agency</b>			
1997	2	0	2	0
1998	16	4	5	11
1999	9	2	2	7
2000	6	3	4	2
2001	0	0	0	0
<b>ADMINISTRATIVE COURT</b>	<b>Proceedings initiated against decisions of the Agency</b>			
1997	1	1	1	0
1998	18	5	5	13
1999	6	1	1	5
2000	8	0	0	8
2001	0	0	0	0
<b>Total proceedings initiated before magistrate courts until April 1, 2001</b>				<b>33</b>
Total concluded				13
<b>Total proceedings initiated at the Administrative Court until April 1, 2001</b>				<b>33</b>
Total concluded				7

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

The Agency has initiated 6 proceedings before magistrate courts in the year 2000, of which **3** were completed by the courts, which presents **50%** of the cases initiated. In the year 1999, the situation was somewhat different - the Agency initiated **9** proceedings, of which only **2** were resolved, which is **22,22%**.

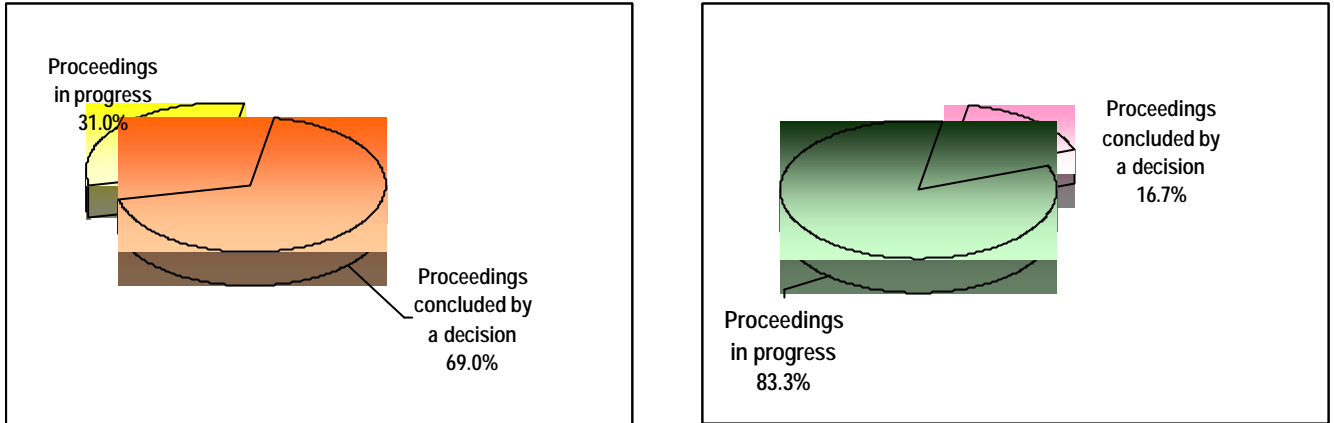
In **3** resolved cases in the year 2000, the Agency has appealed to the High Magistrate Court in **2** cases, while in the third case the rendering of the decision was postponed.

The situation in magistrate courts in the year 1999 was in a way similar. Namely, of two resolved cases initiated before magistrate courts, the Agency has appealed to the High Magistrate Court in one case, while in the other case it withdrew the request during the proceedings.

During the year 1998, of the total number of initiated proceedings before magistrate courts, 5 cases were resolved, of which 4 of them ended with a decision and in one case the Agency withdrew from the request. In one case the Agency has appealed against the decision of the magistrate court, but the High Magistrate Court denied the appeal. The Agency has lodged a request for protection of legality, which also was not accepted.

**Picture 15**

**Review of resolved cases at magistrate courts  
1999 2000**



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

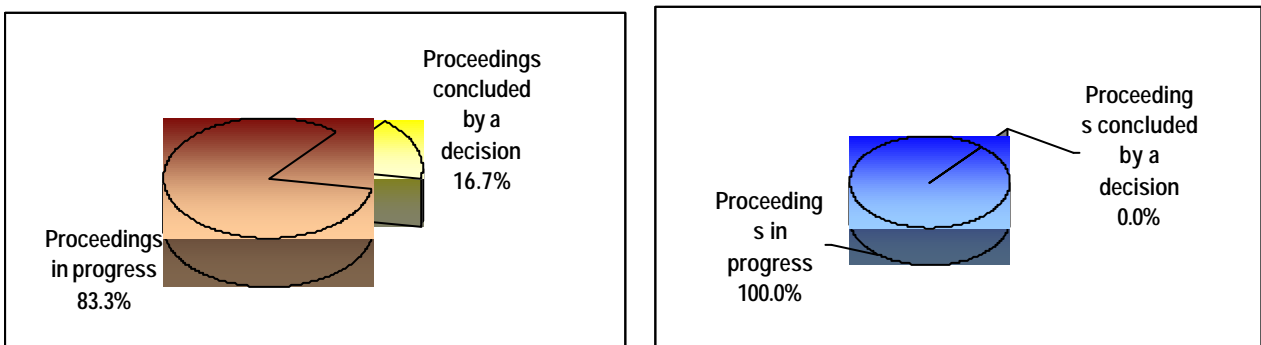
However, in all stated cases except two, the magistrate courts rendered orders by which the rendering of the final decision was postponed until the Administrative Court rendered the decision upon the complaint in the same case, so declaring the decision of the Administrative Court without grounds as a preliminary issue. The court has pronounced a sentence only in one case (the Magistrate Court in Varaždin).

From the beginning of the work of the Agency until today, 33 complaints have been lodged to the Administrative Court against decisions of the Agency. In 6 proceedings the complaints were denied, while in one case the proceedings were terminated on the grounds that the party has withdrawn the complaint.

**Picture 16**

**Review of resolved cases at the Administrative Court**

**1999 2000**



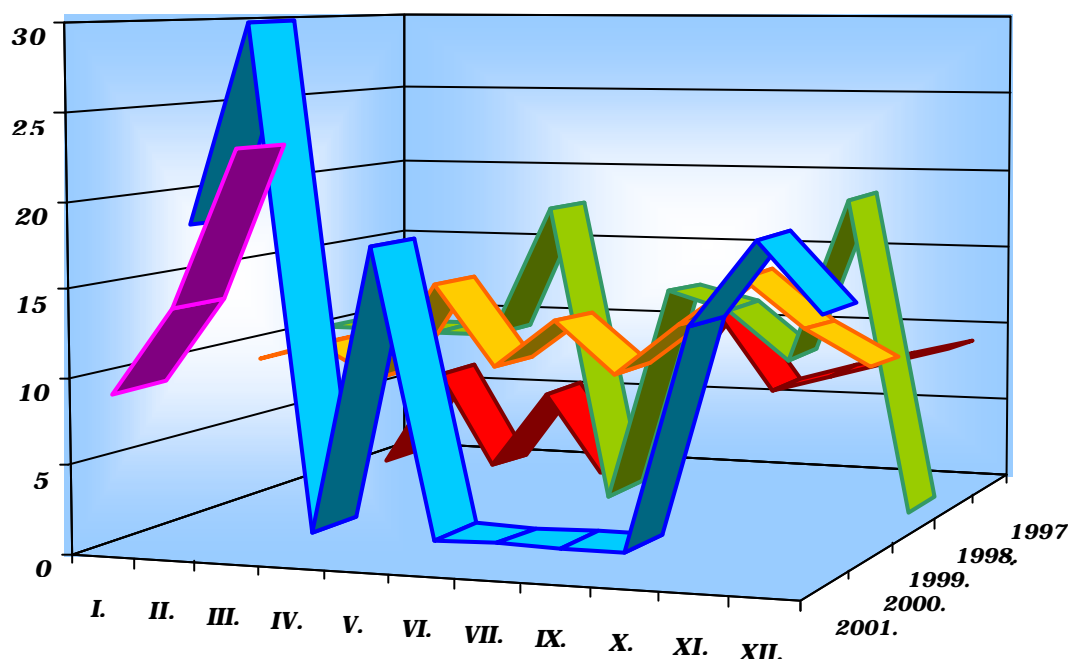
Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

## 1.8 SESSIONS OF THE COUNCIL

The Sessions of the Council for protection of Market Competition in the years 1997, 1998 and 1999 were generally held once a month. In the third trimester of the year 2000 such practice has changed. Namely, since the old Council resigned and the new had not been nominated, the sessions have not been held and a delay in rendering of the decisions occurred (Picture 16 and Table 11).

**Picture 16**

***Number of items on agendas of the Council's sessions***



Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001

**Table 12.**

**Numbers of the items on agenda of the Council's sessions held**

YEAR	MONTHS											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1997	0	6	0	5	0	6	11	0	6	7	8	9
1998	10	10	10	10	18	0	13	0	12	9	19	0
1999	9	10	8	14	9	12	9	0	12	15	12	10
2000	18	30	0	17	0	0	0	0	0	13	18	14
2001	9	14	23									

Source: The Agency for Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 2001



## 2. OPINIONS ON LAWS AND OTHER ACTS

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### 1. DRAFT LAW ON ISSUANCE AND TRADE OF SECURITIES (THE SECURITIES ACT)

In accordance with Article 30, paragraph 1, item 4 of the Law on Protection of Market Competition, the Agency for Protection of Market Competition has reviewed the Draft Law on Issuance and Trade of Securities exclusively from the point of protection of free and efficient market competition.

The Agency has no jurisdiction to issue opinions concerning the way in which the new Securities Act shall regulate the matter, namely, whether it shall regulate the matter in substance or shall opt for the concept of regulation of public issuance and trade in securities enumerating certain types of securities.

Also, the Agency has no jurisdiction to issue opinions in cases of conflicts of provisions of two or more laws, such as conflict between the provisions of the Companies Act ("Official Gazette" No. 111/93 and 34/99), the provisions of the Securities Act ("Official Gazette" No. 107/95) and the Law on Amendments and Modifications of the Securities Act ("Official Gazette" No. 142/98).

Furthermore, the regulation of dematerialized securities as records in the computer system of the Central Depository Agency or securities in the form of a document pursuant to Article 234 of the Law on Obligations ("Official Gazette" Nos. 53/91, 73/91, 3/94 and 7/96) is also beyond jurisdiction of the Agency.

The regulation of the method in which the Securities Commission shall enforce its supervisory authorities and the way in which the authorization to undertake certain actions in the process of supervision shall be regulated is also beyond the jurisdiction of the Agency. Furthermore, beyond jurisdiction of the Agency is the organization of the Securities Commission in performance of its authorities; the issue if it would render decisions on offenses in summary proceedings or if it would impose interim measures and penalties for offenses or shall apply the provisions of the General Administrative Proceedings Act ("Official Gazette" No. 53/91) in proceedings conducted ex officio or at the request of a party, as well as the issue if the Securities Commission should render decisions in which it would order the remedy of illegalities established in supervision proceedings in all subjects on the market.

Namely, all of the above stated provisions have no impact on free market competition and are not contrary to the provisions of the Law on Protection of Market Competition.

However, having in mind the constant trend of expansion and modernization of capital markets, the Agency is of the opinion that the securities market should be regulated in accordance with the standards of international economic associations by introducing to the Croatian market the financial instruments, which do not exist in the Republic of Croatia, but are traded in on international capital markets.

Concerning the inquiry with respect to the restrictive provision of Article 36 of the Law on the Foreign Exchange System, Foreign Exchange Operations and Gold Transactions ("Official Gazette" No. 91A/93), which regulates that foreign currencies from the currency accounts and foreign currency savings deposits of national natural persons may not be transferred abroad as capital without special authorization of the Croatian National Bank, the Council deems that it is not the restriction of trade in securities and restriction of transfer of capital for natural and legal persons, or free investments, considering that it concerns the efflux of foreign currencies which is subject to control of the Republic of Croatia.

Furthermore, the Council for Protection of Market Competition deems that the provisions of the new Securities Act allow regulation of prices for services or fees of the Central Depository Agency, but considering its current monopolistic position, the Council suggests that the price list of services be submitted to the Agency for Protection of Market Competition or even a consent of the Agency for Protection of Market Competition be sought to approve such price list.

However, the regulation of sanctions for issuer of securities for failure to enlist in the depository of the Central Depository Agency in connection to public trade and realization of rights on the basis of such transactions is also beyond jurisdiction of the Agency for Protection of Market Competition.

The Council for Protection of Market Competition has rendered its opinion of the Final Draft Law on Takeover of the Joint Stock Companies at its 9<sup>th</sup> session held on October 2, 1997.

The said opinion essentially states that the percentage of votes in a general assembly of a joint stock company, the acquisition whereof is connected to issuance of mandatory offer for takeover or purchase of shares, should be increased from 25% to 33% for legal, political and economical reasons, considering the efficient protection of minority shareholders, as well as the need to protect free market competition.

Namely, considering the legal obligation of control of takeover pursuant to the provisions of the Law on Protection of Market Competition and obligation to notify concentrations, the Council deems that the threshold of 25% is too low since it would signify from the point of view of the Law on Protection of Market Competition that the dominant influence is gained already with 25% of the shares and each and every such acquisition should be notified to the Agency for Protection of Market Competition, which is not in accordance with the conditions of the Croatian economy, privatization and openness to foreign investment.

Disposing of 25% of the votes in a general assembly of a joint stock company does not open possibility to freeze rendering of the respective decisions of the assembly, considering that the Companies Act regulates that some decisions of the general assembly may be rendered only with three quarters of the share capital represented in the general assembly at the time of rendering of the decision.

Consequently, the provisions of the Law on Takeover of the Joint Stock Companies should be conformed with the provisions of the Law on Protection of Market Competition by regulating the obligation that each person who intends to acquire more than the regulated percent of votes in the general assembly of a company (33%), regardless of the percentage it has already got at that point and even in the case it has no votes at all, should notify the intention of concentration to the Agency for Protection of Market Competition before making the offer to buy shares and before notifying thereupon the Securities Commission of the Republic of Croatia, providing other conditions regulated by the Law on Protection of Market Competition have been fulfilled.

If the Agency assesses that the acquisition of shares would not lead to distortion upon free market competition, the acquirer would be obliged to issue the offer for takeover of the company in accordance with the provisions of the Law on Takeover of Joint Stock Companies, in relation to all shares it intends to acquire and not only the shares by acquisition whereof it would acquire voting rights above the regulated threshold.

## **2. THE LAW ON LOTTERIES AND ENTERTAINMENT GAMES**

The Agency for Protection of Market Competition has received on April 26, 2000 the proposal of the undertaking NOVOMATIC ALPHA AUTOMATEN (A) and MAYER GROUP for evaluation of conformity of the provisions of the Law on Lotteries and other Entertainment Games ("Official Gazette" No. 61/91, 2/94, 56/95) or, respectively, the Law on Lotteries ("Official Gazette", no. 36/98) with the Constitution.

Enclosed to the letter of the Constitutional Court were copies of the proposal for evaluation of conformity with the Constitution of the provisions of Article 5, paragraph 2, Article 13, paragraph 3, Article 47a, paragraph 1, Article 47b, paragraph 1 and Article 52, paragraph 1 of the Law on Lotteries and Entertainment Games and Article 4, Article 10, paragraph 1 and Article 37, paragraph 1 of the Law on Lotteries, which were submitted to the Constitutional Court of the Republic of Croatia by the undertakings NOVOMATIC ALPHA AUTOMATEN (A) and MAYER GROUP, both with the seat in the Republic of Austria, represented by the Law Office Korper-Haramija, with the seat in Zagreb, Prilaz Gjüre Deželica 16, on the grounds that they deem that the stated provisions are contrary to the provisions of the Article 5, paragraph 1, Article 14, paragraph 2, Article 48, paragraph 1, Article 49, paragraphs 1, 2 and 4, Article 50, paragraph 2 and Article 51, paragraph 2 of the Constitution of the Republic of Croatia.

In connection to the cited provisions of the Law on Lotteries and other Entertainment Games ("Official Gazette" No. 61/91, 2/94, 56/95) and the Law on Lotteries ("Official Gazette", No. 36/98), the Agency restricts its actions to issuance of the opinion on the status of the cited Laws from the point of view of the Law on Protection of Market Competition.

In the specific case, it concerns monopoly or exclusive right founded by a special law (Article 5, paragraph 2 and Article 13, paragraph 3 of the Law on Lotteries and Entertainment Games connected to Article 3 of the Law on Amendments and Modifications of the Law on Lotteries and Entertainment Games and Article 10, paragraph 1 of the Law on Lotteries).

The Law on Protection of Market Competition does not forbid monopolies. The cited Law in Article 20 only forbids certain practices of the undertakings enjoying monopolistic position in the market. It relates to abuses

directed to maintaining of such position in the way that to restrict or hinder the access of other undertakings to the market in which the monopolist is already active.

Furthermore, Article 4 of the Law on Protection of Market Competition regulates quote: "This Law shall not apply to legal and natural persons who have, pursuant to special legal provisions, been entrusted with the task of performing public services, or have been granted special and exclusive rights or concessions, but only in the cases in which the application of the Law would prevent the accomplishment of the tasks which are established by special regulations and for which they were set up." unquote.

Organization of lotteries and entertainment games is the activity which is entirely regulated by special laws.

In the specific case, "Hrvatska lutrija (*Croatian Lottery*)" d.o.o. has the exclusive right regulated by law to organize classical lotteries (Article 10, paragraph 1 of the Law on Lotteries), while the right to organize special games in gaming-houses is the priority right of the Republic of Croatia which may be conveyed by concession granted by the Government of the Republic of Croatia (paragraph 2 of the same Article).

Consequently, the provisions of the Law on Protection of Market Competition may not be applied to the activities of organization of classical lotteries and special games in gaming-houses, since it concerns monopoly regulated by a special law.

### **3. PROCUREMENT ACT (LAW ON PROCUREMENT OF GOODS AND SERVICES AND ASSIGNMENT OF WORKS)**

On March 8, 2001, the Agency for Protection of Market Competition (hereinafter referred to as: the Agency) has received the letter from the Ministry of Finance to which the Draft Law of Procurement Act was enclosed for the Agency to issue an opinion.

The introduction of the Draft Law of Procurement Act states that the Law is a part of the program of the Government of the Republic of Croatia and the pre-access strategy for accession in accordance with the requirements of the institutions on the market of the European Union, and therefore the basics for drafting of the Act are the legal provisions of the Republic of Croatia, Directives of the European Union in the area of public procurement, requirements of the World Trade Organization and the World Bank as well as rules, models and procedures of specialized institutions for procurement.

In accordance with the provision of Article 30, paragraph 2, item 4 of the Law on Protection of Market Competition ("Official Gazette" No. 48/95, 52/97 and 89/98), review of draft laws and other regulations relating to protection of free and efficient market competition is within the jurisdiction of the Council for Protection of Market Competition.

Consequently, the Council for Protection of Market Competition has issued the following opinion Article its 44<sup>th</sup> session held on April 24, 2001:

1. The provision of Article 14, paragraph 1, items 2 and 3 of the Draft Law of Procurement Act means restriction of free market competition.

Namely, by stipulation of the provision of Article 14, paragraph 1, item 2 of the Draft Law of Procurement Act, the undertakings which have not been previously engaged in services or works for legal persons enumerated in Article 3 of the Draft Law of Procurement Act but have effective references for successful performance of services and works for legal persons not encompassed with the Act are excluded from the competition.

Furthermore, the condition that the offeror should not be under bankruptcy proceedings is also a restriction of free market competition, since in that way the undertakings, which are undergoing the bankruptcy proceedings with transformation, are also excluded from the competition, although their economic position especially requires they be allowed to compete.

2. Article 15 of the Draft Law of the Act regulates that the employer may not impose other requirements concerning capacity of the offeror nor it may impose requests by which the offeror would be brought in unequal position, so the question is which authority would be competent to resolve such disputes.

3. The provision of Article 17, items 1 and 3 of the Draft Law of the Act are also considered restricting for free market competition. Namely, the Council for Protection of Market Competition deems that financial abilities of the offeror may be successfully proved by balance sheets or excerpts thereof, which can be easily provided by large and small undertakings or craftsmen, since they are obliged to make annual financial reports, so

obtaining financial statements from banks or other authorized authorities is entirely unnecessary. Furthermore, item 3 of the cited Article means restriction of free market competition because it regulates that the financial ability of the offeror is proved by statements of the bank or another authorized authority on turnover of the offeror in the previous three (3) years. Namely, such evidence may not be provided by the offerors who have recently accessed the market or who are in business less than three (3) years.

4. Article 18, items 3 and 6 of the Draft Law of the Act restricts the possibility to prove professional and technical abilities of the offeror by regulating that the offeror should provide a report on the average number of the number of employees and executives in the past three (3) years as well as to supply the list of the same or similar works in the stated period. Therefore, as well as in the previous Article, stipulation of such provisions restricts the access to the market for undertakings which are not in the business long enough to supply such evidence, by which they are put in an unequal position.

5. Furthermore, Article 25 regulates the obligation of the employer to publish the public invitation for bids, pre-bidding and two-instance solicitation for tenders in the "Official Gazette", by which the undertaking "Official Gazette" is unjustifiably facilitated in acquiring the monopolistic position in that activity.

6. Considering that the Article 57, item 2 of the Draft Law of the Act regulates that the offer for which the offerors in connection to the invitation for bids have concluded an agreement which represents a prohibited restriction of competition shall be unacceptable, the question arises who and upon which criteria shall assess such situation.

#### **4. LAW ON TELECOMMUNICATIONS**

The Agency for Protection of Market Competition received on September 6, 2000 the Draft Law on Telecommunications from the Ministry of Maritime Affairs, Transportation and Communications and the Administration of Post and Telecommunication.

The opinion of the Agency for Protection of Market Competition (items 1, 2 and 3) was rendered on the basis of the decision of the Council for Protection of Market Competition rendered at its 37<sup>th</sup> session held on October 24, 2000. The opinion relates to Chapter VIII of the Draft Law on Telecommunications titled "Market Competition", Articles 31 to 38.

1. The Council for Protection of Market Competition is unwilling to grant any exclusive right to any undertaking, thus also to Hrvatski Telekom d.d., in the area of fixed network, regardless of the restricted duration of such right.

2. The entire chapter of the Draft Law on Telecommunications relating to market competition should be conformed to terminology of the Law on Protection of Market Competition.

3. In the part of the Draft Law on Telecommunications relating to market competition it should insist to exact distinction of jurisdiction between the Institute for Telecommunications and the Agency for Protection of Market Competition, especially with respect of precise definition of the telecommunication market. Namely, the particular question is which one of them shall be competent in case of distortion upon free market competition in which the parties are two sellers of telecommunication equipment (such as traders engaged in sale of cellular phones) none of which is HT d.d. Therefore, in such and similar situations it should determine whether the Agency for Protection of Market Competition or the Institute for Telecommunication shall have the jurisdiction over the matter.

#### **5. DRAFT LAW ON AUDITING**

The Agency for Protection of Market Competition received in October 17, 2000 the pleading of the Ministry of Finance by which it seeks the opinion on the Draft Law on Auditing from the aspect of market competition.

According to the provisions of Article 7 and Article 34, paragraph 2 of the Draft Law, only authorized auditors having the license of the Chamber and the junior auditors entering into employment for three-year time with an independent auditor or auditing company may perform auditing. This means that only a junior auditor may become an authorized auditor and moreover, one may become a junior auditor only by employment with an auditing office or company.

The Agency deems that the cited provisions are restricting from the aspect of free market competition, since in such way auditing offices or companies gain a position which enables them to regulate competition

themselves and to control the market of rendering auditing services. The Agency did not find other provisions of the Draft Law to be contrary to the Law on Protection of Market Competition.

#### **6. THE LAW ON PREVENTION OF CONFLICT OF INTEREST IN PERFORMANCE OF PUBLIC DUTIES AND NATIONAL ANTICORRUPTION PROGRAM**

The Agency received from the Ministry of Justice, Administration and Local Self-Government the Draft of the measures for prevention of conflict of interests in performance of public duties on the basis of which the Law and the National Anticorruption Program shall be made (November 17, 2000). Considering that the drafting of the cited acts is not under the exclusive jurisdiction of the Agency, the Agency shall be requested to join the project if needed and to issue opinions according to individual stages of completion. The legal opinions shall be based on the area of the Agency's activities in the part in which it relates to practices which restrict or prevent free market competition.

The case was closed in administrative proceedings.

### 3. INTERNATIONAL COOPERATION

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The responsibilities of the Department for International Cooperation within the Agency for Protection of Market Competition are:

- coordination of activities of the Agency relating to the adjustment obligation in the procedure of entering into the Stabilization and Association Agreement with the European Union (SAA);
- coordination of activities of the Agency in fulfillment of the obligations undertaken in the international treaties in the part in which such treaties relate to competition policy - treaties on membership of the Republic of Croatia in the UN (UNCTAD) and WTO;
- organization and maintenance of cooperation with competition authorities of the state members of the EU and non-members: USA and other states in transition;
- cooperation with the World Bank;
- cooperation with OECD – Department for Competition and Department for Cooperation with Non-Members;
- representation of the Agency for Protection of Market Competition at international forums on competition law, especially in the work of the Intergovernmental Group of Experts of UNCTAD and the Working Group for Interaction between Trade Policy and Competition policy of WTO;
- transmission of foreign experiences from the area of competition law.

In the period from April 1, 2000 to March 31, 2001, the Department has opened 51 case (2000) and 15 cases (2001), which in the reporting period is more than 60 cases relating to international cooperation.

The detailed review of the work is presented herein below:

In the year 2001, the Agency has continued the cooperation on bilateral grounds with competition authorities from various European countries. In that way, bilateral cooperation has been established with the agencies for protection of market competition in Hungary, Bulgaria, Italy, Germany, Romania, France, Czech Republic and Slovak Republic, etc. Among non-European countries, the Agency has established bilateral cooperation with Federal Trade Commission of USA and the Ministry of Justice of USA, Department for Competition Law.

The Agency also continued the cooperation with international organizations, which are: the World Bank, World Trade Organization (WTO) and the UN Commission for Trade and Development (UNCTAD), as well as Foundation of the Government of the Federal Republic of Germany for international legal aid – IRZ Stiftung.

Within the cooperation activities, the Agency has sent the laws and regulations regulating competition law in the Republic of Croatia.

In addition, the Agency has sent at request of law offices from Belgium, Germany and France reports on individual issues in competition law relating to intended transactions of their clients with respect to investments in the Croatian economy. The law offices requested guarantees that the Croatian market is regulated by laws which regulate competition law, free access to the market and equal position of foreign and domestic investors.

The Agency has been invited to participate in the work of several seminars on competition law in European countries, in which, however, it could not participate for the lack of financial funds.

The Agency is a beneficiary of the funds from the World Bank loan, so the presence of the representative of the Agency at the session of the Working Group for interaction between trade and competition policy of WTO in Geneva in June 2001 was funded from that source. The presence of the representative of the Agency at the session of the Working Group for interaction between trade and competition policy of WTO with the session of the international group of experts for competition law of UNCTAD in September 2000 was funded from the same source. The deputy Director and a professional assistant and principal and the counselor were present at the sessions.

At the request of the European Bank for Reconstruction and Development, the Agency has supplied statistic information specified according to areas of application and implementation of the Law on Protection of Market Competition for the year 2000. The stated data are used as the database at disposal of EBRD, by which the state of the economy in each member state of EBRD is assessed.

At the request of the World Bank, the Agency has supplied statistic information specified according to areas of application and implementation of the Law on Protection of Market Competition for the year 2000. The stated data are used as the database on the state of market competition at disposal of the World Bank, on the basis of which the analytical departments of the World Bank make the economical reports for individual world regions.

Within the cooperation with OECD, the Agency participated in realization of contacts with OECD via the Ministry of Economy and the Ministry of Foreign Affairs and has achieved direct contacts with the OECD Direction for competition law and OECD Direction for cooperation with non-member states. Upon invitation of OECD, the Agency participated in the work of the Investment Forum of OECD in Paris in May 2000, where the Agency was represented by the Deputy Director and the Head of the Agreements Department.

Within the cooperation with OECD, upon invitation of OECD, two expert associates from the Agency (a lawyer and an economist) participated in the work of the Seminar on Competition Law of OECD, which is held each year in Vienna during February/March and lasts for 14 days. The representatives of all European non-member states in transition attend the Seminar and exchange the experiences and analyze the case studies from the work of the same agencies or competition authorities. The presence at the Seminar was financed by donation by OECD, while the transportation costs were paid from the funds of the World Bank loan.

The Agency has realized a significant and intensive cooperation with the Ministry for European Integrations. Several representatives of the Agency participated in each one-day conference on law and system of the European Union organized by the Ministry for European Integrations. All employees of the Agency who work on the cases attended the conferences.

The Agency is included in the work of the Ministry of Economy in connection to the Stability Pact - Investment Treaty. At the request of the Ministry of Economy, the Agency appointed a member of the Country Economic Team for cooperation in issues of application of the Investment Treaty, M.Sc. (Econ.) Mirna Pavletic Župic, the Head of the Department for International Cooperation. The Agency has submitted several reports on the state of the competition law and policy and the application of the Law on Protection of Market Competition, within the obligations of making of the Report for the Stability Pact.

The representatives of the Agency, the Director, the Deputy Director and the Head of the Department for International Cooperation visited in September 2000 the Federal Trade Commission of USA. The visit was the result of years of cooperation and communication via electronic mail and exchange of opinions with the experts of the Federal Trade Commission. The study visit was financed from the funds of the loan for technical assistance of the World Bank for staff education and training.

The Agency has established the cooperation with the Foundation of the Government of the FR Germany for legal aid – IRZ Stiftung. The cooperation begun with the agreement on revision of the Law on Protection of Market Competition by German legal experts for the purposes of harmonization of regulations with the legal system of the European Union. During the last trimester of the year 2000 and the first trimester of the year 2001, this kind of cooperation resulted with the first revision of the Law on Protection of Market Competition prepared by Prof. dr. Siegfried Klaue, counselor of IRZ Stiftung and the former official of Bundeskartellamt (Competition authority of the Federal Republic of Germany). The continuance of the project is foreseen for the entire year 2001 and the foreseen result is the draft of the amendments and modifications of the Law on Protection of Market Competition as needed for harmonization with the European Union. The future cooperation related to the material aid to the Agency. In that respect, the Agency has obtained from IRZ Stiftung a donation of expert literature - books on the subject of competition law and one computer with a printer. Furthermore, IRZ Stiftung financed the three-day stay of four representatives of the Agency (the deputy Director, head for agreements, counselor and expert associate) at the seminar on competition within the cooperation on the Stability Pact, which was organized in September 2000 in Ohrid, Macedonia.

The Ministry for European Integrations has included a representative of the Agency in the Technical Group for harmonization of the legislature. The representative of the Agency, as a member of the Technical Group, participated in the first round of technical negotiations on the Stabilization and Association Agreement in Brussels on January 25-26, 2001.

Upon invitation of the Slovenian Office for Protection of Competition, the representatives of the Agency: Director, Deputy Director and the Head of the Department for International Cooperation, made a one-day visit to the Office. The topics of the conversation were connected to the adjustment of the competition system to the one of the European Union and the Slovenian experiences with that respect. Also discussed were the

issues of amendments of the Law on Protection of Market Competition and the representatives of the Agency advised with the Slovene colleagues upon the matter.

The Agency is involved in the program of technical assistance of the European Union - CARDS, which is implemented through the Ministry of European Integrations and it shall be granted some non-repayable financial funds for institutional development. The details of the financial arrangement shall be finalized by end of 2001.

Within the implementation of the project connected to the loan of the World Bank for technical assistance, the Agency has made a choice of experts to work on institutional development and adjustment of laws and by-laws. The project is under way and shall last until the year 2004.



## 4. FINAL REMARKS

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The theory of perfect competition and its normative derivative - the economy of prosperity, have shown that free market competition provides the greatest prosperity in the society. The same theory has shown that there are various institutional requirements to be fulfilled in order to achieve free competition on the market.

The competition policy is one of the fundamental policies for establishment of normal functioning of the market within a single national economy (internal market).

With respect to a market within a national economy, one must bear in mind that it poses new challenges before young and undeveloped undertakings as well as the ones with long years of tradition, large share in the relevant market and market potential. This results in many positive but also in negative consequences for the market, in which the last word should be the one of the legislative dimension of competition law.

In order to survive in the conditions of entry of the Republic of Croatia into the European and global integrations, the undertakings with high market potential and economic strength, build up their position in the market regardless of the means it takes and focus to a particular part of the market. They jeopardize the position of weaker undertakings as well as the ones which access the market for the first time and exclude them from the market, which has extremely negative impacts on both competitive and social dimension of the market and the market as a whole.

However, the analysis of the work of the Agency for Protection of Market Competition in the year 2000 shows some improvements. The undertakings have grown more informed of the competition theory and practice and pay more attention to them. This reflects in two directions: the undertakings consult law offices on certain business plans and strategies in order not to violate the provisions of the Law on Protection of Market Competition. At the same time, they use legal institutes of protection of market competition in protection of their business interests.

The number of the cases the Agency resolves in a year does not reflect its true activity. The undertakings have shown a growing interest and contact the Agency by phone or in person seeking interpretation of the provisions of the Law on Protection of Market Competition, asking questions on certain business strategies - whether they are contrary to the provisions of the Law on Protection of Market Competition or not - and on various situations on the market. The agency encourages such contacts. By cooperation with undertakings and their representatives, as well as active participation of the Agency in various professional forums, the Agency promotes the competition law and policy. The Agency cooperates with the state authorities in the same way.

Director

M.Sc. Hrvoje Momcinovic