



## **REPUBLIC OF CROATIA**

### **AGENCY FOR THE PROTECTION OF MARKET COMPETITION**

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## **R E P O R T**

### ***on the work of the Agency for the Protection of Market Competition***

***(March 1998 - April 1999)***

***Zagreb, May 1999***

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*Pursuant to Article 38 of the Law on the Protection of Market Competition ("Narodne novine" No.48/95, 65/97, 89/98, I submit to the Croatian State Parliament the following*

## **Report on the work of the Agency for the Protection of Market Competition**

**(March 1998 - April 1999)**

### **1. INTRODUCTION**

*In the foregoing reporting period, the Agency for the Protection of Market Competition (hereinafter: the Agency) completed most of the cases of 1997, received and resolved 570% more cases than in the period before and finalised the first phase of creating the economic conditions of work. In addition, it has implemented the necessary amendments and supplements to the Law on the Protection of Market Competition (hereinafter: LPMC).*

*1. The observed tendencies from the first year of operation also repeated themselves in 1998. **Most of the cases of limiting the approach to the market have taken place in the commercial and service industries,** and the LPMC has also been applied to **new services,** such as: **the maintainance of buildings of residence, funeral services, telecommunication services, credit-card services, services of the technical examination of vehicles, services of professional athletes and electronic media.***

*In service industry activities, in which the proceedings were previously conducted on the basis of the LPMC, this year, **violations of the same type have been recorded** (waste dumps, compulsory vehicle insurance at stations for the technical examination of vehicles, bus transport).*

*The discipline and the number of **concentration** notifications have increased, as well as the interest of domestic and foreign entrepreneurs in the instructions concerning the method of notifying the Agency of concentrations.*

*2. At the same time, proceedings brought by the Agency against **public and utility companies** have been very frequent, but so has the readiness during the proceedings with which the parties have refrained from restricting operating conditions (Zagrebacki velesajam, HPT, HT and MIORH).*

**3.** *In two years of operation, the LPMC has proved to be applicable and enforceable in business practice on the Croatian market. The practices of competition reported so far to the Agency have always been met by the corresponding general or special prohibitions according to the LPMC. The Agency has been able to act efficiently on the basis of its resources and powers.*

Some kind of an **exception** are the limitations to approaching the market that arise on the basis of:

- regulations, rules of procedure, concessions and acting on the basis of public powers, and**
- administrative acts of local administration, cities and municipalities.**

*On the basis of such decisions, rights or benefits are given to a single entrepreneur such as a private enterprise, or a company of mixed or private ownership.*

*Occurrences with very bad effects on economic activities have been observed. These effects result from regulations that are inappropriate to a market economy.*

*Namely, **in some service industries, a restriction of public powers in passing regulations (rules of procedure and the like) has not been made in order to protect general public interests from an economic activity.** As a result, **some economic subjects (public enterprises or private companies) are both the regulators of the activity and competitors on the market.** They take advantage of their position in such a way that they organise their activity as they like and are not guided by the principle of free entrepreneurship (areas: certifications, telecommunications, stations for the technical examination of vehicles, maintenance of fire extinguishers, concessions for bus transport and the like).*

*In such cases, the activity of the Agency is limited to rendering an opinion, cooperating with the Government of the Republic of Croatia and government administration bodies, giving proposals to amend legislation, etc. However, in such cases, efficiency depends on the extent to which the competent bodies for administrative supervision and for the implementation of regulations take into consideration the new demands of market order and the discipline of market competition.*

## **2. LEGAL FRAMEWORK FOR THE AGENCY'S OPERATION**

*In the course of 1998, the amendments and supplements of the LPMC were adopted after a third reading in the Croatian Parliament ("Narodne novine", No. 89/98).*

*The adoption of these amendments and supplements to the LPMC has increased the efficiency of the Agency in several ways.*

**4. Specially urgent and temporary measures** have been introduced (Article 36a) that are pronounced in a proceeding when an entrepreneur is threatened by direct, harmful effects.

On the basis of such special power arising from the LPMC, three urgent measures have been passed in the case against HZZO (Croatian Institute of Health Insurance), GHETALDUS and Marin Getaldic on the signing of utterly restrictive contracts with more than 100 opticians; in the case of the "Smoki Trade" Station for the Technical Examination of Vehicles when "Croatia Osiguranje" d.d. required loan and issued a payment order because the entrepreneur from Benkovac, "Smoki Trade", did not respect the exclusivity agreement of "Croatia osiguranje" d.d., challenged by the Agency and which in the meantime become contrary to Articles of the Law on Insurance Mediation. A temporary urgent measure has been passed in a more recent case against TVORNICA DUHANA ROVINJ in a proceeding on the violation of free market competition by the acquisition of shares of TVORNICA DUHANA ZADAR contrary to the Decision issued by the Agency on approving the concentration.

**5. The obligation of publishing the Agency's Decisions** in "Narodne novine" was established and 11 Decisions have been published since then.

Such a practice has given the first results because after the publication of each Decision the Agency hears from entrepreneurs from the same field of activity or practice who have queries and who submit new applications.

**6. The legal obligation of publishing a Gazette** will be fulfilled when the Agency acquires the necessary financial means for its publication. Material of almost 100 pages and the best publisher and editorial board have already been chosen.

**7. The extension of special statutes of limitation to 5 years** has also proved to be of importance and has been carried out at the last minute because the first cases resolved by the Agency and dealt with by the Administrative Court or Petty Offence Courts are close to the end of the limitation period.

**8. The definition of employee status** at the Agency with regard to the relevant regulations and the position of employees' have enabled the Agency to equip itself with a sufficient number of qualified and committed staff.

**9. An increase in the number of institutions** which, on the basis of Article 26 of the LPMC, may turn to the Agency for an opinion regarding the possible existence of illegal concentrations **when they sell the shares belonging to Funds has so far not resulted in any effects.** Neither the Croatian Privatisation Fund nor the new retirement and disability funds have asked the Agency for such an opinion.

### **3. CONDITIONS AND METHODS OF WORK**

**10. In the middle of 1998, pursuant to the Decision by the Government of the Republic of Croatia, the Agency, having invested a great deal of effort**

and energy, finally obtained and equipped **new and larger business premises of eight rooms on the 7<sup>th</sup> floor of the business tower “Zagrepcanka”**. The Government of the Republic of Croatia is the owner of the space. Thus, the conditions for hiring new employees were created and on the basis of two public competitions, two consultants, a journalist-editor and five trainees were hired.

The Agency now employs 18 people, among whom there are nine lawyers and six economists.

At the same time, the Agency keeps its own accounting operations which were previously carried out by the Office for General Administrative Services of the Parliament and the Government of the Republic of Croatia. For this purpose, one qualified person is employed.

The responsibilities to carry out the work are divided **among the Deputy Director and the Heads of the Department for Monopolies, Department for Agreements, Department for Research and Statistics, Department for Concentrations and Department for International Cooperation.**

The consultants and trainees are not designated to specific departments because there are still not enough of them regarding the number of departments and type of work to be done. A lawyer and an economist work together on each case and the latter gathers the necessary statistical data.

**Thanks to a larger number of employees, the Agency has been able to carry out investigations more frequently, talk to entrepreneurs and gather financial and other information according to its obligations and authorisations pursuant to the LPMC.**

11. Within the limits of its financial possibilities, the Agency is equipped with legal and economic literature on market competition. Employees use the necessary databases on CD ROM Celex and Justis discs as an essential source of data on cases and decisions from the USA, EU and other European countries. The information on such cases is then compared with the cases resolved by the Agency.

The fact that the Agency is well equipped with people and sources of data has enabled it to monitor certain areas of the economy and to **establish the situation and relations regarding competition and to initiate proceedings on the basis of its own knowledge and priorities** and in such a way to enable new entrepreneurs to enter the market in formerly closed economic sectors.

The Agency's employees **expand their knowledge also outside the Agency** at international seminars, postgraduate studies, lectures and seminars organised by the Office for European Integrations, at the Diplomatic School and different conferences organised in Zagreb. Six employees are enrolled in postgraduate study programmes in law and economics at the University of Zagreb.

#### **4. ACCOMPLISHMENT OF COMPETENCIES AND TASKS**

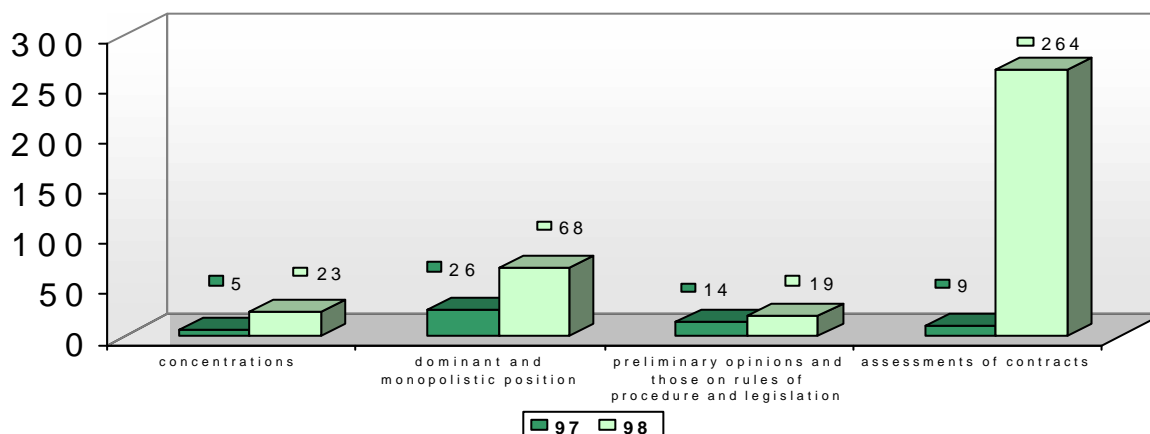
12. During this reporting period, the Agency has received 365 applications for the initiation of proceedings to determine whether an obstruction of free market competition exists and to assess restricting contracts, as well as 19 applications for an opinion on draft laws and rules of procedure.

13. In relation to the previous year, the number of requests for an assessment of contracts increased by 2.833%, of concentrations by 360% and of notifications regarding obstructions of free market competition by 161%.

Table 1.

	'97	'98	increase in %
<b>1. RECEIVED REQUESTS</b>	55	369	570 %
<b>2. Assessment of contracts</b>	9	264	2833 %
<b>3. Preliminary opinions and the opinions on rules of procedure and legislation</b>	14	19	35 %
<b>4. Concentrations</b>	5	23	360 %
<b>5. Requests for the initiation of proceedings to establish an abuse of a dominant and monopolistic position</b>	26	68	161 %

\* NOTE: It is possible that in one case a preliminary expert opinion is asked for and an assessment of a contract or the establishment of a dominant or monopolistic position.



**Source:** Agency for the Protection of Market Competition of the Republic of Croatia, Department of Research and Statistics, 1999.

14. From the total number of received requests, 79% were resolved, 7.9% of the received requests were rejected because of a lack of competence. Most of the rejected requests (11) were complaints against decisions regarding the selection of tenderers in public invitations for tenders in accordance with the Law on the Supply of Goods, Services and Surrendering of Works. The Ministry of Finance is competent for such complaints. The Agency transfers such cases to the competent body and gives instructions to the submitter. Four wrongly directed requests were concerned with protection in cases of violation according to Articles 57 and 58 of the Law

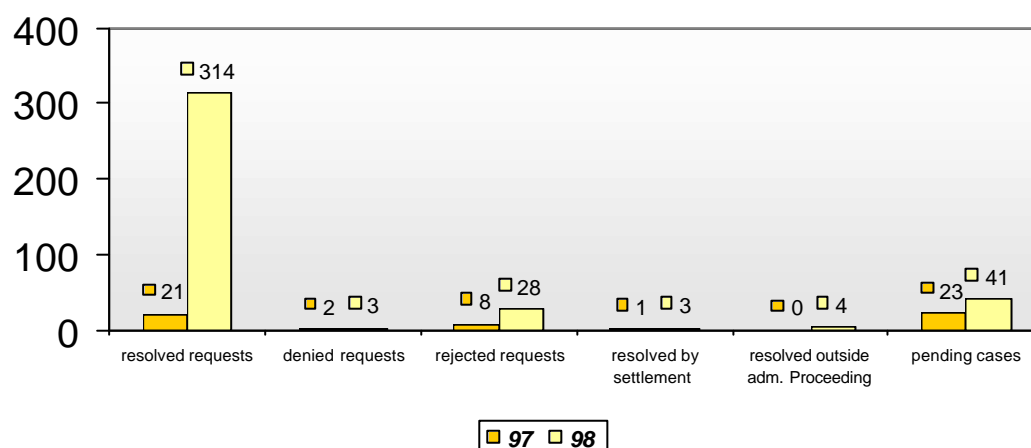
on Trade and the Agency referred the submitters to the Commercial Court for the Protection of Their Rights.

Table 2.

	'97	'98	increase in %
1. Resolved requests	21	293+21	1295 %
2. Denied requests	2	3	50 %
3. Requests rejected for lack of competence	8	28	250 %
4. Resolved by settlement between parties	1	3	200 %
5. Resolved outside administrative proceedings	0	4	400 %
6. Pending cases	23	38+3	65 %

NOTE: In the case of resolved requests, it is important to emphasise that from the total number of requests initiated in '97, 21 requests were resolved in '98 and 3 requests that were in the process of being resolved in '98 had been submitted in '97.

A Comparison of cases of '97 and '98



Source: Agency for the Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 1999.

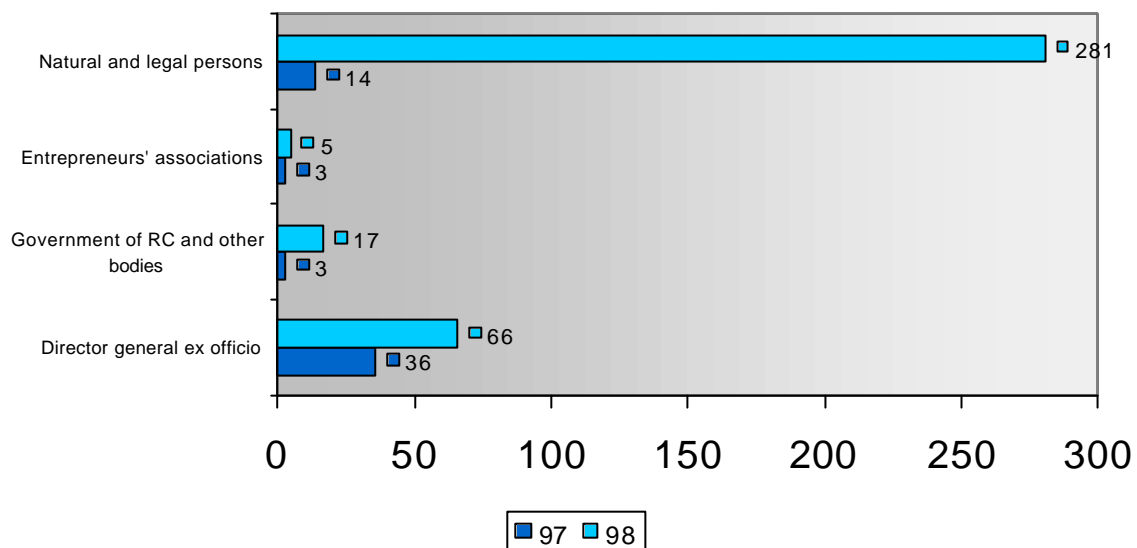
**15. Increased activity by entrepreneurs' associations in reporting cases has been observed. In 1998, the Association of Craftsmen turned to the Agency several times and submitted 14 requests for the initiation of proceedings.**

The number of requests by entrepreneurs increased by 466% and the director of the Agency ex officio initiated 281 proceedings or 1907% more than in 1997. Such a large number results from the cases of assessing the restricting agreements of 110 opticians that the Agency conducted against HZZO, GHETALDUS and Marin Getaldic.



Table 3.

	'97	'98	increase in %
<b>1. Association of entrepreneurs (crafts &amp; economic interests)</b>	3	17	466 %
<b>2. Natural and legal persons</b>	35	66	88 %
<b>3. Government of the RC and government administration bodies</b>	3	5	66 %
<b>4. Director of the Agency ex officio</b>	14	281	1907 %



**Source:** Agency for the Protection of Market Competition of the Republic of Croatia, Department for Research and Statistics, 1999.

**16. The level of acceptance of the new legal discipline of market competition** and the Agency's impact have been increased. This is primarily reflected in an increased number of applications of concentrations, better cooperation with entrepreneurs-applicants and particularly in an increased number of banks. The adoption of the discipline of market competition is also reflected in the acceptance of settlements and the willingness to refrain from the practice of restrictions in the course of the proceedings. Although only 7 such cases have been registered (Table 2), we have to bear in mind that this is a question of large areas of restriction in the sector of telecommunications (HPT, HT, HZMO, HV and Zagreb Fair - ZV).

**17.** At the same time, violations established and confirmed by decisions in 1997 in some cases **were repeated in the following year of 1998** ("Komunalac" - Opatija, Croatia Osiguranje, Presecki Bus). In other cases there were efforts to eliminate these entrepreneurs from the market by other entrepreneurs dealing in the same business area (public utility companies) but in some other region (the entrepreneur Ecooperativa in Rijeka after Opatija).

## **5. RELATIONS WITH THE PUBLIC AND THE MEDIA**

**18. The interest of the wider public and the media in the work and in the decisions of the Agency have been on a constant increase.** The report for 1998 aroused interest, as well as regular press coverage.

Naturally, **most queries and contributions, as well as misunderstandings,** were directed to the cases conducted in **connection with the concentrations of the largest and the most complex companies** and activities (Globus Group, Agrokor and Tvornica duhana Rovinj).

The Agency has established very good cooperation with journalists and all major media.

**19. Since the beginning of its operations until May 1, 1999, the Agency announced 26 regular items of press coverage** on the results of the sessions of the Council for the Protection of Market Competition and **10 items of extraordinary coverage** that were concerned with individual cases from the scope of activity of the Agency.

### **MEDIA**

- **In 1997: a total of 45 items of media coverage**

In the course of 1997, the first year of its operation, the Agency participated in the domestic media with **36 contributions** on its activities and operations. In **9 releases** the activities of the Agency were indirectly treated.

- **In 1998: a total of 74 items of coverage**

In 1998, when the Agency until November still was not fully manned and technically equipped, there was a total of **74 items of coverages+:** **63** dealt directly with the activities of the Agency and in **11** of them the Agency was indirectly mentioned.

- **In 1999: before May 1, 69 items of coverage**

Until May 1, 1999, **69 releases** appeared on the Agency's activities: **in 55,** the work of the Agency was directly treated and in **14** only indirectly.

Texts or coverage about the activity of the Agency in the period from 1997 to May 1, 1999 were published by: Hina, HTV, Otvorena televizija, Croatian Radio, Obiteljski Radio, Radio 101, Otvoreni Radio, Radio "Plavi 9", Radio BBC - Studio Zagreb, RFE (Radio Free Europe) - Studio Zagreb, Vecernji List, Vjesnik, Slobodna Dalmacija, Novi List, Jutarnji List, Glas Slavonije, Glas Istre, Glas Podravine & Prigorja, Zadarski List, Primorsko-goranski dnevnik, La Voce Del Popolo, Varaždinske Vijesti, the weeklies Tjednik, Feral Tribune and Imperijal, professional magazines Banka, Privredni Vjesnik and Poslovni Tjednik, Hrana Info-HOK - the gazette of the Croatian Chamber of Trades and Crafts and the Reports of the Croatian Parliament.

### **Published interviews with the Director of the Agency**

Since the beginning of the operation of the Agency, 20 interviews or releases with the Director, Professor Dr. Deša Mlikotin Tomic have been published or broadcast by: Hina, HTV, Otvorena Televizija, Hrvatski Radio, Obiteljski Radio, RFE - Studio Zagreb, Vjesnik, Vecernji List, Novi List, Slobodna Dalmacija, Obzor, Banka, professional magazines HUP-Novosti and Hrana and the weekly Gloria.

In summary, since the beginning of the operation of the Agency for the Protection of Market Competition, 208 items of media coverage have been published or broadcast about it, about its work and its Director.

Table 4.

	1997.	1998.	1.1.-1.5. 1999.	Total
1. Items of media coverage about the Agency	45	74	69	<b>188</b>
2. Interviews with the Director	3	8	9	<b>20</b>
<b>3. Total</b>				<b>208</b>

**Source:** The Agency for the Protection of Market Competition of the Republic of Croatia, Department for Public Relations, 1999.

**20.** In spite of numerous items of coverage about the Agency, only HTV (Croatian Television) has not found it appropriate to mention the Agency and its operation in the two years of its existence in daily informative programmes. Although several releases have been prepared, none of them has “passed” editorial review.

The same was the case with the coverage and the press conference on the occasion of the anniversary of the work of the Agency. The Agency had contacted the editor-in-chief and the editor of the Economic Department of Croatian Television with a letter but received no reply and the situation has not changed since then.

## **6. CASES AT THE ADMINISTRATIVE COURT AND PETTY OFFENSE COURTS**

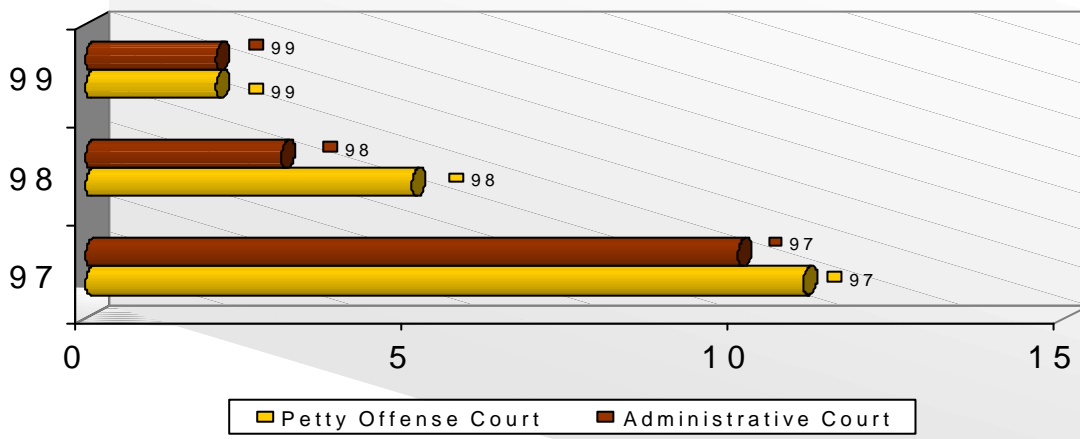
**21.** The Agency is not satisfied with the way and the speed of solving cases at second instance upon appeal to the Administrative Court. In addition, the petty offense courts are not at all active in pronouncing punishments.

The Agency has submitted citations in several cases. No fine has been pronounced for violation of the LPMC. In citations for failure to execute decisions, according to Article 40, paragraph 1, point 4 and paragraph 2 of the LPMC, the petty offense courts refuse to pronounce fines, referring to the nonexistence of a judgment from the Administrative Court and the amount of the fine. The same has been decided by the Higher Petty Offense Court.

22. The Agency is aware that this is also a question of a new subject-matter for courts and it has several times tried to establish a connection to meet with the Heads of these courts, but with no success.

Table 5.

Against the decision of the Agency:	'97	'98	'99 1. and .mths.
1. To initiate an administrative proceeding with the Administrative Court of the RC	10	3	2
2. The Agency may on the basis of the decision submit a request to the Petty Offense Court for the initiation of a proceeding for a petty offense	11	5	2
3. Higher Petty Offense Court	0	1	0
<b>Resolved requests at courts:</b>			
4. Administrative Court	0	0	0
5. Petty Offense Court	0	1	0
6. Higher Petty Offense Court	0	0	1



Source: Agency for the Protection of Market Competition of the Republic of Croatia, Department of Research and Statistics, 1999

## **7. SPENT AND EARNED FINANCIAL RESOURCES**

23. In the 1998 budget, the Agency was granted Kn 4,846,365.00. Of that amount, 63% was realised and remitted, i.e. Kn 3,094,296.93. **Most of the rest of the budgetary funds were not remitted because the Agency, due to insufficient space, was not able to employ the approved and planned new employees.**

24. As a result of its work, the Agency **collected Kn 900,444.00 of dues** according to tariff numbers 105 to 108, and **invoiced Kn 1,308,777.00 on the basis of delivered decisions Kn 1,308,777.00** (most of the unpaid dues are from the Globus Group).

**The dues are paid directly into the State Budget. The Agency does not have its own resources.** The Ministry of Finance has not fulfilled the agreement on the use of part of the paid dues for limited budgetary funds for expert opinions and statistical research for proceedings and decisions on the basis of which the dues are charged.

25. According to the consolidated financial report, i.e. when, from the funds from the Budget, **the paid dues, tax and surtax and value added tax to the amount of Kn 1,933,278.45** that the Agency regularly paid and returned to the Budget is deducted, the total expenditures of the Agency in 1998 amount to Kn 1,161,018.48.

Table 6.

Description	Amount	Realised amount
1. Total approved funds for the Agency in the 1998 Budget	4.846.365,00	
2. Allocated funds from the Budget	3.094.296,93	63,85 %
3. Total amount returned to the Budget (taxes, VAT, administrative fees)	1.933.278,45	39,89 %
4. Net expenditures of the Agency	1.161.018,48	

Source: Agency for the Protection of Market Competition, Department for Accounting and Finance, 1999.

26. Furthermore, since the last quarter of 1998 and **later in 1999**, the Agency **has recorded a permanent delay in the payment of funds for its operation which endangers the execution of its basic tasks (sending mail, investigations, petrol and the like). The payment of fees to the members of the Council are always delayed by two to three months.**

### **8. THE ACTIVITY OF THE COUNCIL FOR THE PROTECTION OF MARKET COMPETITION**

27. As a counselling and professional body provided for in the LPMC, the Council decides on the matters to be carried out by the Agency and proposes measures to its Director.

The Council has had 11 meetings which take place as a rule once a month. **None of the scheduled meetings has been cancelled for the lack of a quorum.** There were 125 points on the agenda of these meetings. Each case is discussed on the basis of documents, analyses and proposals prepared by an expert service and the Director of the Agency.

28. In 1997, there was a **change in the membership of the Council** and, on the proposal of the Director, 3 new members were proposed. One member, an Assistant Professor at the Faculty of Economics left the Council to work as a practising lawyer and the MP, Mr. Pankretic, died. As for the President of the Croatian Chamber of Commerce as a member of the Council, it was decided that there was a question of a conflict of interest because the Council resolves the cases of the members of the CCC and the president who is elected by these members.

### **9. ABUSES OF DOMINANT POSITIONS**

**29.** A significant number of cases were conducted because of an **abuse of a dominant position** (Articles 13 to 20 of the LPMC). A dominant position is assumed when an entrepreneur has a share of more than 30% in the market in which the effect of restriction is present or in the entire market of the Republic of Croatia. It is decided that its strength (market, financial and other) is such that it can behave independently of its competitors.

**30.** The capacity to remove competitors may, however, **also result from other circumstances, such as exclusive rights, the powers to regulate the activities by giving permits to those who can or cannot operate and under what kind of conditions (compensations, quota, professional supervision, etc.)**

Examples of the latter are public utility companies, public companies, the Center for Vehicles d.d., Stations for the Technical Examination of Vehicles, and holders of concessions. Such privileged entrepreneurs were discovered by the Agency in cases when they prevented other entrepreneurs from approaching the market, which was often **neither justified by public interest nor performed in an consistent way.**

On the basis of reports and its own investigations, the Agency has become aware that entrepreneurs who are privileged **regularly use their power to eliminate or restrict their competitors, mostly by developing rules of procedure by which they give powers to themselves and permissions to their competitors.**

**31.** Examples of the restriction and elimination of competitors were established in the cases which were conducted against HPT, **later HT, as an entrepreneur with a privileged and monopolistic position.**

It was established that it is a discriminating practice that a Cronet connection is charged Kn 600 when customers come with their own device and Kn 100, if the device is bought from HPT. There is also no justification of a technical or other nature (preventing black-marketeering) that, when a person comes with his or her own device, they have to supply a receipt or customs declaration. The HPT practice of issuing certificates to entrepreneurs-importers is also restricting because HT has for months been delaying the issuing of certificates and the State Inspection in the meantime seals the entrepreneurs' warehouses.

In the mentioned cases, HPT or HT has agreed to give up such practices and change the restricting provisions of its rules of procedure.

**32.** Prescribing the conditions for an invitation for bids install a newspaper kiosk is also a form of restriction to entering the market. According to these conditions, the applicant **must have five (5) years of experience in the branch.** The General Hospital in Požega **annulled such a competition and called another one without any restrictions.**

**33.** The provisions of the invitation for bids a **concession for bus transport in the City of Šibenik,** according to which a bidder must have at least 30 buses and about 60 employees, are also restrictive. Only one partly

privatised company owned by the city - **Autotransport Šibenik** fulfils these conditions. Other entrepreneurs cannot even apply to invitation for bids. The Ministry of Administration and the Ministry of Transport and Communications have given their opinion stating that they do not see any irregularities in such conditions of inviting bids.

**34. The Public Utility Company of the City of Rijeka** has restricted the disposal of industrial waste of **Luke Rijeka** to a private entrepreneur because it was established that in the waste there was also communal waste and, as a result, they prohibited its disposal by the company *Ecooperativa d.o.o.*

**35.** In the City of **Opatija**, after the first Decision of the Agency of 1997, **Komunalac d.d.** continued to increase the charge of garbage disposal to *Ecooperativa* by more than 500%.

**36. Vestal, a company for the maintenance of flats**, turned to the Agency because **Stanoing** (the former **Stanoinvest**) did not want to submit the documentation for certain buildings. **Vestal** signed a contract for the maintenance of three buildings in **Varaždin** but cannot carry out its operations properly without this documentation.

**37. The Public Utility Company from Rijeka** charges much more for the transporting of the dead by private undertakers and also sets other restrictions for them in carrying out these jobs.

**38.** Several proceedings have been conducted against **Presecki Bus** from **Krapina** which blackmails the Ministry of Education and Sports according to the principle "all or nothing". As the largest carrier in **Zagorje**, it is systematically taking over all other bus carriers (even by purchasing shares from the Croatian Privatisation Fund) and jobs (transport of students) in the market of **Zagorje**.

**39.** The City Gasworks **laid down in its rules of procedure the obligation of passing an exam of professional and technical capacity for each contractor of gas facilities as a condition to participate in a bid invitation.** The exam was organised by the City Gasworks which charged up to Kn 5,700.00. The proceeding was initiated by the construction company for gas-installation "**Zagorski Metalac**" from **Zabok** because there was no foundation for such a restriction to enter the market in either gas or construction regulations (a restriction to public bid invitations).

A more thorough review of all the cases of abuse can be found in the supplement to the Report.

## **10. RESTRICTIVE AGREEMENTS**

**40.** There has been a number of agreed restrictions in the practice of the Agency because in the cases against **HZZO**, **Ghetaldus** and **Marin Getaldic**, **there was a large number of opticians.**

**41.** The analysed agreement between **HZZO** and the producers of contact lenses and frames was forbidden, according to which HZZO had to make payments for sight appliances only to **Ghetaldus and Getaldic**. These producers had signed agreements with 100 opticians, obliging themselves to buy the appliances only from them to the annual value of Kn 100,000 with the same fine by virtue of the same agreements. HZZO decided to compensate for the costs of sight appliances only to those who had such agreements.

This practice was justified by black-marketeering and the protection of quality, although there are other producers of sight appliances in Croatia and a regular charge of customs duties falls within the competence of the Ministry of Finance.

**42.** The same reasons of black-marketeering and forgery were stated as justification by five major importers of videograms for the restrictions they had been making with video-shopkeepers, to: a) regularly purchase **whole packages containing 30 videograms**, and b) **to purchase two or more copies of good films**. During the proceeding, the contractual conditions improved and decisions were issued against **Continental d.d., UCD d.o.o., Jadran film d.d. and VTI d.o.o.**, all from Zagreb.

**43.** In the 256 agreements the Agency has assessed, the existence of restricting provisions was established. Those involved were mostly **wholesalers and distributors or franchisees**. The most frequent restrictive provisions were the agreements regarding prices and the level of sales margins. The Decisions required such provisions to be deleted.

**44.** An assessment of agreements that **insurance companies make with the companies which maintain flats** and residential buildings and tenants is being carried out at present, in which, **apart from the insurance of buildings, favourable conditions for other types of insurance are offered**.



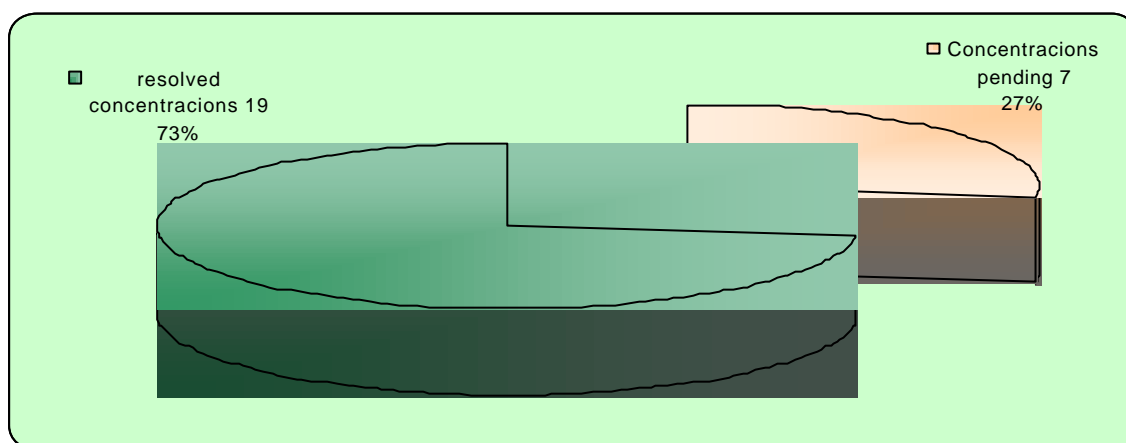
## 11. CONCENTRATIONS

45. So far, the Agency has received applications for 23 concentrations in the following sectors:

- retail sale of food and groceries, insurance, banking, tobacco industry, chemical industry, electrical industry, printing, hotel industry, production of cement, production of glass, production of sugar, ect.

Foreign companies: 8  
Domestic companies: 9  
Banks: 6

Table 7.



NOTE: The number of resolved concentrations was increased by another 3 which began to be studied in '97.

Source: Agency for the Protection of Market Competition of the Republic of Croatia, Department of Research and Statistics, 1999.

46. All applications were approved, with monitoring measures being prescribed, except for the merger of Diona d.d. In Split, sale of 1/3 of Dalma was ordered and the placing of 1/3 in exclusive distribution and 30% to open routes of supply. Similar decisions were passed for the mergers with Univerzal d.o.o. in Bjelovar and OTP in Karlovac.

The Globus Group, which applied to the Agency for concentration, started its execution but because of too high a concentration in the Globus Group and for some other reasons, a deconcentration was carried out through bankruptcy proceedings. Unfortunately, the Agency was not able to prevent this to happen by its Decision.

47. The processes of assessing concentrations have proved to be very demanding and long-lasting, both in the professional and administrative sense.

48. It has been established that in applications and acquisitions, banks, which dispose of numerous and diverse portfolios, have been very active.

More detailed information on concentrations is supplemented to this Report.

## **12 . OPINIONS, INCENTIVES AND PROPOSALS REGARDING THE COMPETITION ADVOCACY**

**49.** The Council has issued several declarations and opinions on the laws and other regulations and on the practice of some government administration bodies regarding their possible effects on the restriction of market competition in accordance with the competencies referred to in Articles 30, paragraph 1, point 3 and 6 of the LPMC.

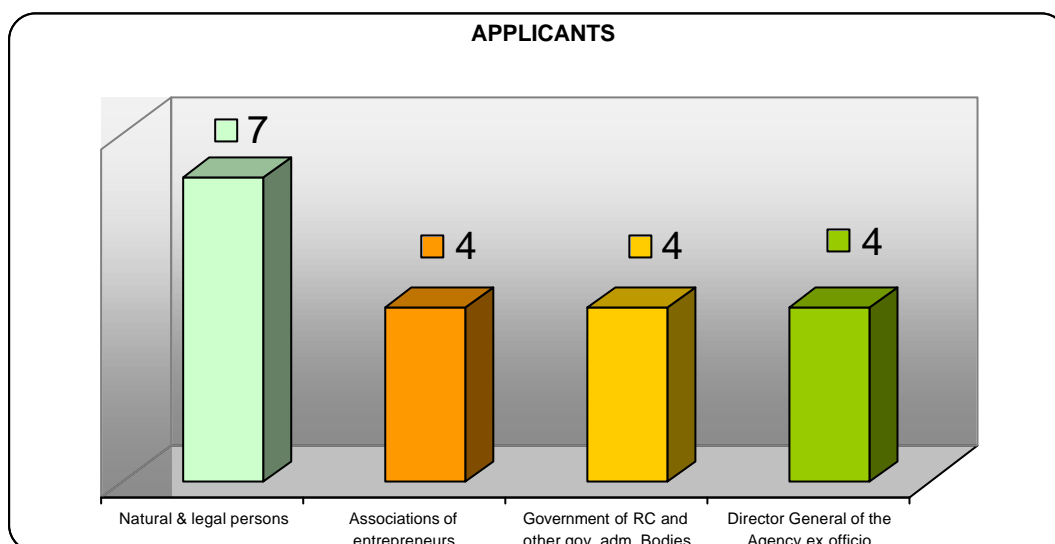
**50.** So far, the only indisputable impact of the Agency's activity on issues of regulation has been the new Law on Mediation and Representation in Insurance ("Narodne novine" 27/99) which has introduced a provision according to which a Station for the Technical Examination of Vehicles must either allow all insurance companies to be present in order to sell compulsory vehicle insurance or, if it does not have the necessary conditions, to none of them.

We estimate that these provisions have been at issue in several cases and have led to disputes among insurance providers. Unfortunately, even after the mentioned Law became effective, there has been a tendency to preserve the same practice as before.

**51.** The Agency has declared itself regarding several draft laws and restrictive regulations and Rules of Procedure.

Table 8.

<b>1. Total number of opinions</b>	19	Participation in total number of proceedings in %
<b>INITIATORS OF PROCEEDINGS:</b>		
2. Professional and craftsmen's associations	4	21 %
3. Natural and legal persons	7	37 %
4. Government of the RC and government administration bodies	4	21 %
5. Director General of the Agency ex officio	4	21 %



**Source:** Agency for the Protection of Market Competition, Department for Research and Statistics, 1999.

## **52. Regulations that the opinions and decisions referred to:**

- *The Law on the Tourist Industry*
- *Draft Law on the Regulation of Public Services*
- *Proposal of the Agreement on the possibilities to establish the lowest prices in transport and security services*
- *Law on Croatian Chamber of Architects and Civil Engineers*
- *Law on Sea Ports*
- *Law on Islands*
- *The Law on Amendments and Supplements to the Law on Trade*
- *Proposal of minimal technical requirements for business premises dealing with trade*
- *Maritime Code (concessions)*
- *Croatian Network of Consultants*
- *Rules of Procedure of the Krka National Park and Other National Parks*
- *Law on Traffic Security (expert supervision of the Stations for the Technical Examination of Vehicles)*

## **13. INTERNATIONAL COOPERATION**

**53.** *The Agency has maintained and expanded the circle of international institutions it cooperates with.*

*These are first of all institutions which, according to their position and functions, like the **Agency**, but under different names perform the same type of activity in **Russia, the Czech Republic and Slovakia** and that the Director of the Agency has visited.*

*The Agency has maintained constant relations with the Federal Trade Commission in Washington and the Office of Cartels of the Federal Republic of Germany via electronic mail. We receive their opinions, similar case reports and literature.*

A representative of the French Council for Competition visited us in Zagreb and we also exchange documentation with them.

The representatives of the Agency visited the Slovenian Office for Competition in Ljubljana.

**54.** The Director of the Agency participates in the sessions of the Working Group for Competition of the **World Trade Organisation (WTO)** between Croatia and WTO and the costs are covered by the Ministry of Economy. At the meetings of this Group, the Director of the Agency has on several occasions presented some views of the law on competition and explained the organisation and implementation of the Croatian legislation on competition.

**55.** The Heads and advisers participated at the meetings of representatives of agencies concerned with competition at seminars organised by the OECD in Bulgaria and Austria.

Thanks to some remaining funds from the **loan for technical assistance**, two Heads and an economic adviser participated in the Seminar on competition organised by The World Bank in Washington.

**56.** The Agency has had very active cooperation with the **representatives of the World Bank** who have on several occasions visited the Agency in order to develop a joint proposal for including the Agency in the project of the Loan for Technical Assistance (TAL2). These efforts were successful because the Loan Agreement was signed and the Agency became one of its beneficiaries.

**57.** The funds to participate in international cooperation have **become insufficient** because the Agency has been receiving more and more invitations and is obliged to invite and entertain representatives of other agencies and international organisations. The Agency cannot accept proposals for the joint financing of seminars and conferences because it does not dispose of sufficient funds of its own. In its international affairs, the Agency cooperates with the Ministry of Foreign Affairs and it regularly informs it about its business results.

**58.** Along with the development of its own activity and other basic activities, the number of resolved cases has been increasing and thus also the costs of the necessary investigations, visits to different cities and regions in Croatia to promote the authority and the activity of the Agency by informing entrepreneurs, associations and local government bodies (counties, cities, municipalities) with which the Agency is more and more involved.

#### **14. COOPERATION WITH OTHER INSTITUTIONS AND GOVERNMENT ADMINISTRATIVE BODIES**

**59.** The Agency has developed very good relations with the Ministry of Economy. As for other ministries, like the Ministry of Education and Sports, the Ministry of Maritime Affairs, Transport and Communications, the Ministry of Physical Planning, Construction and Housing, cooperation is limited to correspondence. The Agency asks for the opinions and explanations which

*subsequently mostly arrive. Unfortunately, with these ministries, within whose competences are the activities which are dealt with in the cases and opinions by which the Agency introduces the principles and rules of competition, we have not developed a direct contact or exchange of opinions. The same is true for the Administrative Court and Petty Offence Courts.*

*60. The Agency has developed very good cooperation with the Ministry of the Interior on issues connected with the Law on the Security of Traffic, in relation to the expert supervision of the Stations for the Technical Examination of Vehicles.*

*61. In its future plans, the Agency will have to make more effort to inform the government administration bodies about its work and about the law on market competition. The same is true for the Croatian Chamber of Commerce which does not express any interest in acquainting its members about the rules of market discipline and competition. If the reverse were the case, restrictions of market competition and long and expensive cases conducted by the Agency could be prevented.*

#### **15. RESEARCH AND DEVELOPMENT OF THE AGENCY**

*62. Within research projects, the Agency has organised a project in which 25 scientists from the field of law and economics have participated. The papers dealt with a comparative legal and economic analysis of the provisions of the LPMC and established areas of necessary supplementary regulation. The materials are prepared for publication but because of the lack of funds to publish almost 350 pages, they have not appeared yet.*

**DIRECTOR GENERAL**

***Dr Deša Mlikotin Tomic***