

## Summary Annual Report of the Croatian Competition Agency for 2022

In compliance with its legal obligation under the Competition Act OG 79/09, 80/13 and 41/21<sup>1</sup>, and the Act on the prohibition of unfair trading practices in the business-to-business food supply chain OG 117/17 and 52/21<sup>2</sup>, the Croatian Competition Agency (CCA) submits its **Annual Report for 2022** to the Croatian Parliament. The Annual Report for 2022 outlines the CCA activities in the previous year and informs the political scene, the economic operators, professional stakeholders, and the general public about the operation of the CCA, ensuring the transparency and raising awareness about the importance of competition culture and the prohibition of unfair trading practices in the business-to-business food supply chain in the Republic of Croatia.

As one of the milestones of the market economy the purpose of competition law is to ensure a level playing field for all market operators regardless of their size, market power or other features. Therefore, the main task of the CCA is to ensure the maximum benefit for the consumers in the form of a wider choice, lower prices and better quality of products and services, and to facilitate improvements in productivity and innovation of the actors in the market. Effective competition boosts economic development based on competitive markets, effective allocation and use of limited resources and investment for innovation. Besides the proactive action of the CCA, the achievement of these objectives depends on the activities of other government authorities in the creation of clear and enforceable rules regulating the behaviour in the market and their capacity to apply these rules in practice.

In accordance with the **Competition Act** OG 79/09, 80/13 and 41/21 in effect<sup>3</sup> the CCA is a stand-alone and independent legal person with public authority which, as a general, national regulatory authority in charge of competition in all markets, performs the activities within its scope and powers regulated by the Competition Act and Articles 101 and 102 of the Treaty on the functioning of the European Union, OJ C 115, 09.05.2008 (TFEU) and:

- the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003, relating to the implementation of Articles 101 and 102 of the Treaty on the Functioning of the European Union, OJ C 115, 09.05.2008, and
- the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.01.2004.

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<sup>1</sup> Article 26, paragraphs 6 and 7 of the Competition Act.

<sup>2</sup> Article 16 of the Act on the prohibition of unfair trading practices in the business-to-business food supply chain.

<sup>3</sup> Article 26 paragraphs 1 to 3 of the Competition Act.

In other words, the CCA applies national competition law in parallel to Articles 101 and 102 TFEU.

The competition rules (antitrust rules) implemented by the CCA include any prevention, restriction or distortion of competition by any undertaking in the market in the form of a prohibited agreement between undertakings and abuse of a dominant position in the market. The CCA is also responsible for ex-ante merger control.

Since 7 December 2017 the CCA has been also in charge of the implementation of the **Act on the prohibition of unfair trading practices in the business-to-business food supply chain**, OG 117/17 and 52/12; (UTPs Act). The full application of the UTPs Act started on 1 April 2018 and the application of the Revised UTPs Act on 1 March 2022<sup>4</sup>. For the first time this piece of legislation has regulated the area of unfair trading practices in the food supply chain in Croatia.

The UTPs Act defines the rules and measures for the prevention of imposition of unfair trading practices, it provides a list of the unfair trading practices in the food supply chain, the imposition of which enables the use of the strong bargaining power of the buyer with respect to their suppliers. The UTPs Act seeks to establish, ensure and promote the fair-trading practices that would protect the participants in the food supply chain.

**The internal structure and operation** of the CCA, its internal acts and other matters relating to the operation of the CCA are regulated by the CCA Statute that is adopted by the Croatian Parliament.<sup>5</sup>

The CCA is run and managed by the **Competition Council** consisting of 5 members<sup>6</sup>. The president and the members of the Council are all employed in the CCA. The president and the members of the Council are appointed and relieved from duty by the Croatian Parliament, upon the proposal of the Government of the Republic of Croatia. The president and the members of the Council are appointed for a five-year term of office. From the date of entry into effect of the Act on the Amendments to the Competition Act on 24 April 2021<sup>7</sup> the Government of the Republic of Croatia makes a public call for the proposals of the candidates for the president of the Competition Council and its members before it proposes their appointment to the Croatian Parliament. However, the present members of the Competition Council that had been appointed before 24 April 2021 continue with their mandates until the expiry of the period to which they had been appointed.

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

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<sup>4</sup> Act on the Amendments to the Act on the prohibition of unfair trading practices in the business-to-business food supply chain, OG 52/21.

<sup>5</sup> The decisions on the ratification of the Statute and the Amendments to the Statute of the Croatian Competition Agency by the Croatian Parliament are published in Official Gazette 22/11, 74/14, 60/18 and 63/22.

<sup>6</sup> The terms used in this text, which have a gender meaning, refer equally to the male and female gender.

<sup>7</sup> Act on the Amendments to the Competition Act, OG 41/21.

the Council cannot be state officials, persons who perform duty in any administrative body of a political party, members of supervisory boards and executive bodies of undertakings, or members in any kind of interest associations, which could lead to conflict of interest. The president and any member of the Council cannot be relieved from office due to the reasons linked with the orderly performance of their duties and orderly exercise of their powers in the application of the Competition Act and Articles 101 and 102 TFEU<sup>8</sup>.

As the managing body of the CCA, the Competition Council adopts its decisions in its sessions, with the majority of at least three votes, where no member of the Council can abstain from voting. The president or the vice-president of the Council must be present at the session<sup>9</sup>. In the report year there had been **49 sessions of the Council** in which 229 items of the agenda had been discussed and resolved.

The president of the Competition Council represents and speaks for the CCA and manages its activities. In managing the CCA, the president of the Council organizes and runs the operational activities of the CCA, supervises and is responsible for its expert performance. The vice-president of the Council is elected on the proposal of the president of the Council by a majority vote of the members of the Council.

The Competition Council as a rule consists of five members but at the moment it consists of four members. In 2022 the Government of the Republic of Croatia made a public call for the proposal of a candidate for the member of the Council that is subsequently appointed by the Croatian Parliament. So far the Government of the Republic of Croatia has not proposed a candidate for the member of the Council. The selection of the candidate for the fifth member of the Council is expected soon and the appointment by the Croatian Parliament during 2023.

The CCA is currently run by the Competition Council consisting of Mirta Kapural, PhD, president of the Council (first term of office October 2021 – October 2026), Vesna Patrlj, LL.M., vice-president of the Council (third term of office March 2019 - March 2024), Ljiljana Pavlic, MSc, MBA, member of the Council (second term of office January 2019 - January 2024), and Denis Matić, LL.M., member of the Council (second term of office January 2019 - January 2024).

The everyday administrative tasks are carried out by the expert team of the CCA, that comprises of masters of law with a passed Bar Exam, masters of economics specialized in competition law and policy and IT experts specialised in digital forensics. There is a team of at least one lawyer and one economist handling a case, accompanied, when necessary and depending on the complexity of the case, by an IT expert. The expert team of the CCA performs administrative activities and investigations, whereas based on so established facts, the Competition Council decides on the basis of which the CCA resolves a case.

The CCA is an independent in its operation and exercises its powers independently impartially

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<sup>8</sup> Article 29 paragraph 4 of the Competition Act.

<sup>9</sup> Article 31 of the Competition Act.

in the common interest of the effective enforcement of the provisions falling under its jurisdiction. The Council and the expert team of the CCA exercise their powers independently of any political or other influence and receiving no instructions from the Government of the Republic of Croatia or any public or private authority in carrying out of its tasks and powers, and reports to the Croatian Parliament.

The CCA has no operational or financial revenue of its own. The CCA is financed exclusively from the State budget of the Republic of Croatia. In compliance with the financial capacity of the State Budget of the Republic of Croatia the CCA is ensured sufficient resources in terms of qualified staff, financial means, technical and technological expertise and equipment, to ensure they are able to perform their tasks effectively. On the other hand, the CCA is independent regarding the purposeful spending of the financial means allocated to it for the enforcement of its powers, without prejudice to and in full compliance with the provisions of the Act on the Execution of the State Budget.

The CCA obliges itself to effectively perform its obligations and responsibly distribute the allocated financial resources from the State Budget.

**The planned funds for the regular operational activities falling under the scope of the CCA in the State budget for 2022 amounted to EUR 2.236,747. The total executed budget in 2022 amounted to EUR 2.158,331 which was 96.49 % of the current plan for 2022.**

**The fines set and imposed by the CCA for the infringements of the Competition Act and the UTPs Act are contributed to the State budget of the Republic of Croatia.**

**The fines imposed for the infringements of the Competition Act and the UTPs Act in 2022 amounted to a total of EUR 343,088<sup>10</sup>.**

**Since it was empowered to impose fines in the both the area of antitrust and merger control, and consequently in the area of unfair trading practices, until the end of 2022, the CCA imposed a total amount of fines worth EUR 4.978,446 (EUR 3.977,782 in the area of antitrust and merger control, and EUR 1.000,664 in the area of unfair trading practices).**

In 2022 the number of workers who carried out all the activities of the CCA in the area of antitrust and merger control and unfair trading practices was higher than in the previous year. Concretely, on 31 December 2022 the CCA had 56 employees, whereas in 2021 it employed 49 workers. The rise in the number of employees was linked to the wider scope of the activities related to the implementation of the Revised UTPs Act 2021 that entered into force on 1 September 2021 and started its full application on 1 March 2022.

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<sup>10</sup> Fixed conversion rate: EUR 1= HRK 7.53450.

The task of the CCA is to ensure the proper functioning of the market that produces benefits for the consumers, undertakings and the economy as a whole, by removing barriers and market failures through effective enforcement of competition rules and the rules on the prohibition of unfair trading practices.

The main objective of the CCA as an expert authority and competition regulator in all markets is to create and ensure effective competition through enforcement and advocacy activities, that would facilitate long term growth, benefit the economy of Croatia, ensure maximum benefit for consumers and procompetitive effects enhancing their choice of innovative goods and services of high quality and lower prices at the same time encouraging undertakings to improve efficiency and innovation in the market.

**In 2022 the CCA resolved 699 cases in the areas of competition and unfair trading practices in the business-to-business food supply chain. In 2022 the CCA resolved 67 administrative cases which is a rise compared to 2021 when there had been 43 administrative cases resolved.**

The following table indicates the resolved cases in 2022:

	Number of resolved cases in 2022		
	Competition	Unfair trading practices	Total
Administrative cases	57	10	67
Non-administrative cases	563	69	632
Total:	620	79	699

Source: CCA

This slight drop in the number of resolved cases compared to 2021 was the result of the fall of the number of non-administrative cases, particularly the notifications of concentrations that were notified to the European Commission (EC) and then transmitted to the CCA under the Council Regulation (EC) No 139/2004<sup>11</sup>, where the effects of these concentrations on competition in the Croatian market had to be assessed. At the same time, within the European Competition Network (ECN) cooperation, a well-placed authority to deal with the compatibility assessment procedure is decided. In other words, it is the obligation of the EC to transmit the obligatory notification of a concentration to all national competition authorities in any case of concentrations with an EU dimension. As a rule, these are concentrations that produce effects in at least three Member States. The job of the CCA in

<sup>11</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.01.2004.

these cases is to assess the effects of these concentrations on competition in the Croatian market.

That is to say, besides the administrative cases that are handled by the CCA in the area of competition, a great part of the activities of the CCA involves so called non-administrative cases in the area of competition advocacy (opinions on draft laws and proposed regulations and opinions on the compliance of the laws and regulations in effect), market studies, responses to queries that cannot be classified as initiatives for the opening of an infringement proceeding in the sense of the Competition Act, preliminary market investigations carried out at the stage where the CCA has to decide whether there is enough circumstantial evidence to open an infringement case, data base cases, assessments of notifications of concentrations under the Council Regulation (EC) No 139/2004, assistance cases with other regulators and authorities, international co-operation cases, internal acts of the CCA, access to files responses and other replies to addressees of the Competition Act.

Similarly, in the area of unfair trading practices, the CCA has been receiving a large number of queries from natural and legal persons that have not been directly connected with the concrete administrative (investigation) cases but have been urgently responded to by the CCA in so called non-administrative cases. Within its powers, in these non-administrative cases the CCA requires information, documentation and written explanations directly from the alleged infringers and investigates the received and analysed information for the existence of possible circumstantial evidence for the opening of an administrative proceeding.

On 31 December 2022 there were 32 pending administrative cases, 24 in the area of competition, 8 in the area of unfair trading practices. In 15 cases of these 24 unresolved administrative cases in the area of competition the proceeding was opened in 2022 whereas in 9 cases the proceedings were opened in the previous years. In the area of unfair trading practices in 3 cases out of 8 pending cases on 31 December 2022 the proceedings were opened in 2022, whereas in 5 cases the proceedings were opened earlier. At the moment of the conclusion of this report (July 2023), 10 more administrative cases that were pending on 31 December 2022 have been closed – seven in the area of competition and three in the area of unfair trading practices.

The key and most important objective of the CCA in the past period has been related to the CCA's core activity, which is the enforcement of national and European competition law within its powers, with an emphasis on eliminating hard core restrictions of competition and active cooperation with the European Commission. Within this objective, the focus of CCA's work was on the activities of undertakings that directly distort competition and limit the national economic growth.

The proceedings identifying distortion of competition in the form of conclusion of a prohibited agreement between undertakings and abuse of a dominant position by an undertaking in the market are very complex due to the necessity of a detailed economic and legal analysis and

the protection of the right of the parties to be heard in the proceedings, and they are therefore defined in detail under the Competition Act. The six phases of the proceeding have been extensively described in the Summary Annual Report of the Croatian Competition Agency for 2021<sup>12</sup>. They are always initiated ex post, while a wide range of persons can submit an initiative for the initiation of the proceeding<sup>13</sup>.

In 2022 the CCA resolved a total of **44 submitted initiatives or complaints** within the meaning of the Competition Act and the General Administrative Procedure Act respectively (hereinafter: GAPA)<sup>14</sup> for the initiation of ex-officio administrative proceeding.

Within the concrete case proceedings that were closed in 2022 the CCA carried out the **investigations in 75 relevant markets**, 22 thereof were in the area of assessment of prohibited agreements between undertakings, 21 in the area of alleged abuse of a dominant position in the market and 32 in the area of assessment of compatibility of concentrations between undertakings.

One of the priorities of the CCA in 2022 was again the elimination of hardcore restrictions within the meaning of the Competition Act **contained in prohibited agreements**, particularly, horizontal agreements that are concluded between competitors (cartels) which have as their object or effect the distortion of competition in the relevant market, and in particular those which directly or indirectly fix purchase or selling prices, limit or control production, markets, technical development or investment, share markets or sources of supply, where the participants to the agreement are engaged in other prohibited behaviour that mostly harms the consumers and the economy as a whole and constitutes the most serious infringement of competition rules.

In the area of **prohibited agreements** in 2022 the CCA **resolved a total of 36 cases in this area**, **22** thereof were administrative and **14** non-administrative cases. In these cases, the CCA conducted preliminary market investigations in 22 relevant markets.

In the group of 22 administrative cases, in one case the CCA took the infringement decision identifying distortion of competition in the form of the conclusion of a prohibited horizontal agreement (cartel) within the meaning of Article 8 of the Competition Act in the public procurement proceeding<sup>15</sup>. In two cases the CCA terminated the proceeding due to absence of legal presumption for any further action<sup>16</sup>. In 17 cases the CCA took the decision dismissing

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<sup>12</sup> <https://www.aztn.hr/ea/wp-content/uploads//2023/01/Summary-GI-2021-1.pdf>

<sup>13</sup> Article 37 of the Competition Act.

<sup>14</sup> Article 37 of the Competition Act and Article 42 of the General Administrative Procedure Act, OG 47/09.

<sup>15</sup> CCA v Agro-Vir d.o.o., Zagreb, Agrodalm d.o.o., Zagreb, Diljexport d.o.o., Zagreb and Marino-Lučko d.o.o. Lučko, UP/I 034-03/2017-01/021, 28.4.2022.

<sup>16</sup> CCA v 15 driving schools in Osijek-Baranja County, Class: UP/I 034-03/20-01/023, 14.10.2022; CCA v Sokol Marić d.o.o., Zagreb, Securitas Hrvatska d.o.o., Zagreb, AKD-Zaštita d.o.o., Zagreb, Klemm Security d.o.o., Zagreb, Bilić-Erić d.o.o., Sesvete, V Grupa d.o.o., Zagreb and Arsenal-Ivezić d.o.o., Varaždin, UP/I 034-03/14-01/002, 28.12.2022.

the complaint due to lack of standing to act. Two administrative cases that were opened based on the GAPA were closed by a written observation of the CCA.

**Abuse of a dominant position by an undertaking** on the market where due to its market power, it can act in the relevant market to a considerable extent independently of its actual or potential competitors, consumers, buyers or suppliers also impedes the competitive market structure and prevents the competitors from market entry or growth. This is particularly the case with abusive exclusionary practices that are detrimental to competition. This is why the CCA continued to investigate in 2022 whether certain undertakings have been involved in such abusive practices.

In 2022 the CCA **resolved 77 cases in this area**, **23** thereof were administrative and **four** non-administrative cases. With a view to investigating whether there is sufficient circumstantial evidence to open ex officio proceeding relating to alleged abuse of a dominant position in 2022 the CCA conducted a preliminary market investigation in 21 relevant markets.

In 22 cases the CCA dismissed the initiative of the complainant due to lack of standing to act. One administrative case that was opened based on the GAPA was closed by a written observation of the CCA.

As a rule, **mergers (concentrations between undertakings)** are normal and common part of business and a justified form of consolidation or restructuring processes of companies or whole industries as a response to the challenges amid the changes in the relevant markets with a view to achieving the savings and synergies that will ensure the new economic entities increase in performance. Unlike the assessment of possibly prohibited agreements between undertakings or abuse of a dominant position by an undertaking in the market which is carried out ex-post on the CCA's own initiative, the assessment of compatibility of concentrations between undertakings is carried out ex-ante, based on the merger notification of the undertakings concerned in the sense of the criteria for obligatory notification under the Competition Act<sup>17</sup>. In other words, the participants to the concentration **must notify the concentration** prior to its implementation, where they **cumulatively** fulfil the criteria for notification in terms of turnover thresholds in the Croatian and global market, as stipulated in Article 17 paragraph 1 of the Competition Act. That is to say, no concentration exceeding the said thresholds can be implemented without the compatibility assessment and approval of the CCA.

The task of the CCA is to carry out ex ante investigations into these transactions and run the checks into their possible beneficial effects on market structure and consumer interests, that should outweigh the anticompetitive effects of the concentrations, such as the decline in the number of competitors or the rise in collusive behaviour or possible creation or strengthening of a dominant position.

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<sup>17</sup> Article 38 paragraph 2 of the Competition Act.



In the area of assessment of compatibility of concentrations in 2022 the CCA **resolved a total of 26 cases** (12 administrative and 14 non-administrative cases). These cases involved the analysis of 32 relevant markets.

In other words, out of 26 cases handled in the area of merger control by the CCA in 2022, in 12 administrative cases the CCA assessed the compatibility of the notified concentrations, whereas in 14 non-administrative cases the CCA provided replies to queries of third parties, carried out in-depth market investigation into the ownership structure based on the information obtained from third parties and the public, analysed the data contained in the EC documentation regarding the effect of the concentrations concerned in the Croatian market and held meetings with respect to the possible notification of concentrations.

Out of 12 cases where the CCA assessed the compatibility of the notified concentrations, 10 of them were cleared in Phase I based on the fact that they had no significant effect on competition nor did they create or strengthen the existing dominant position in the market. In one case the CCA deemed one concentration conditionally compatible subject to remedies within the meaning of Article 22 item 2 of the Competition Act<sup>18</sup>. In one case the CCA dismissed the notification of concentration based on lack of standing to act in the sense of compatibility assessment of the business transactions concerned<sup>19</sup>.

In 2022 no concentration was assessed as prohibited.

In addition, in 2022 there were **377 notifications of concentrations that were notified to the EC and then transmitted to the CCA**, where the effects of these concentrations on competition in the Croatian market had to be assessed. At the same time, within the European Competition Network (ECN) cooperation, a well-placed authority to deal with the compatibility assessment procedure is decided. In other words, it is the obligation of the EC to transmit the obligatory notification of a concentration to all national competition authorities in any case of concentrations with an EU dimension. As a rule, these are concentrations that produce effects in at least three Member States.

**Market investigations** are also one important part of the CCA regular activities. These sector inquiries are research projects with the purpose of gaining in-depth understanding of how particular sectors or markets work. It is also the analysis of possible market barriers and the legal framework regulating the particular markets, which is the prerequisite for effective enforcement of the rules falling under the scope of the CCA. These legal and economic analyses very often enable the CCA to detect indications for infringement proceedings.

Besides the market investigations, as previously mentioned, in 75 relevant markets that were linked with concrete cases, the CCA conducted **four sector inquiries** including the market investigation into the provision of food delivery services via digital platforms in the Republic

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<sup>18</sup> GRAND AUTOMOTIVE RD Ltd. / GRAND AUTOMOTIVE LLP., RAMLA, IZRAEL and RENAULT NISSAN HRVATSKA d.o.o., Zagreb, UP/I 034-03/22-02/005, 1.4.2022.

<sup>19</sup> PROFIL KLETT d.o.o., Zagreb / TRISSET d.o.o., Zagreb, UP/I 034-03/22-02/010, 23.9.2022.

of Croatia<sup>20</sup>, the retail groceries' market (market research in food, beverages, toiletries and household supplies)<sup>21</sup>, the insurance market<sup>22</sup> and the press publishing market<sup>23</sup>.

In 2022 the CCA also continued with its intense activities involving proactive competition advocacy and development of competition culture and raising awareness about the significance of competition for the economy and consumers, particularly in the sense of creation of the whole institutional and economic environment that would promote the entry of the undertakings to the market and the removal of actual and administrative barriers for the development of competition.

In that sense, besides the enforcement of the rules under its scope involving the administrative proceedings and case handling, one of the important roles of the CCA is active **competition advocacy**. Concretely, the CCA is empowered to issue expert opinions regarding the compliance with competition rules of draft proposals for laws and other legislation, as well as the existing laws and other legal acts and other comments on related issues raising competition concerns. The primary enforcement activity of the CCA is thereby significantly enhanced by competition advocacy.

In 2022 there were **83 resolved advocacy cases**, thereof **20 expert opinions on laws, 59 answers to different queries about competition issues and four cooperation cases**.

In 2022 the CCA cooperated closely with the Ministry of the Economy and Sustainable Development. On 20 October 2022 the Cooperation Agreement was signed on the use of the Electronic Public Procurement Classifieds of the Republic of Croatia in the area of competition.

**For the infringements of the Competition Act in 2022 the CCA imposed the fines in the total amount of EUR 286,018.**

In the context of judicial review, against the decisions of the CCA no appeal is allowed but the injured party may file a claim and start an administrative dispute before the High Administrative Court of the Republic of Croatia (hereinafter: High Administrative Court). The council of three judges decides about the claim against the decisions of the CCA.

Regarding the judicial review of the decisions of the CCA, it must be noted that exclusively the CCA lawyers who passed the Bar Exam and have more than four years of experience thereafter represent the CCA in courts in the proceedings carried out against the decisions of the CCA in

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<sup>20</sup> Available on the CCA website <https://www.aztn.hr/aztn-proveo-istrazivanje-trzista-digitalnih-platfomi-za-pruzanje-usluga-dostave-hrane/>

<sup>21</sup> Available on the CCA website <https://www.aztn.hr/ea/wp-content/uploads/2016/10/Prikaz-tr%C5%BEi%C5%A1ta-trgovine-na-malo-mje%C5%A1ovitom-robom-prete%C5%BEno-hranom-pi%C4%87ima-i-higijenskim-proizvodima-za-doma%C4%87instvo-u-Republici-Hrvatskoj-u-2021.-godini-1.pdf>

<sup>22</sup> Available on the CCA website <https://www.aztn.hr/bruto-premija-zivotnih-i-nezivotnih-osiguranja-u-2021-godini-iznosila-je-118-milijardi-kuna-uz-rast-od-11-milijarde-kuna-u-odnosu-na-2020/>

<sup>23</sup> Available on the CCA website <https://www.aztn.hr/ea/wp-content/uploads/2022/09/Istrazivanje-trzista-tiska-za-2021.-2.pdf>

the area of competition and unfair trading practices. Thus, the CCA does not use any attorneys' services but relies on its own experts.

In the report year the **High Administrative Court took 9 decisions on the basis of which it dismissed the claims of the claimants and upheld the decisions of the CCA in their entirety<sup>24</sup>.**

With respect to the enforcement of the **rules in the area of unfair trading practices in the business-to-business food supply chain**, that is to say, the UTPs Act, in 2022 the CCA **resolved 79 cases, thereof 10 administrative cases and 69 non-administrative cases.**

On 31 December 2022 eight administrative cases against the undertakings PLODINE d.d., Rijeka, PEMO d.o.o., Dubrovnik, BOSO d.o.o., Vinkovci, TOMMY d.o.o., Split, MLIN I PEKARE d.o.o., Sisak and PPK - BJELOVAR d.d., Bjelovar, and SETOVIA VOĆE d.o.o., Zagreb were pending<sup>25</sup>.

All administrative proceedings that had been opened before 1 September 2021 were closed pursuant to the UTPs Act 2017 then in effect, that is to say, before the entry into force of the Revised UTPs Act 2021<sup>26</sup>. The Annual Report for 2022 therefore uses the terminology from both pieces of legislation.

In 2022 the CCA **closed ten administrative proceedings with nine decisions given that some cases were joined.** In five decisions thereof the CCA found that the party to the proceedings used its strong bargaining power and imposed on its suppliers unfair trading practices. For the infringements concerned the CCA imposed fines<sup>27</sup>, whereas it terminated the proceedings in four cases<sup>28</sup>. In one case the CCA decided on the protection of identity of a person who filed the written submission<sup>29</sup>.

In five administrative cases the CCA acted following the allegations from anonymous complaints, while the remaining cases were opened as a result of detected circumstantial evidence during the market investigation carried out by the CCA based on the analysis of the

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<sup>24</sup> <https://www.aztn.hr/odluke/odluke-sudova/>

<sup>25</sup> CCA v PLODINE d.d., Rijeka, UP/I 034-03/18-04/010; CCA v PLODINE d.d., Rijeka, UP/I034-03/19-04/002; CCA v PEMO d.o.o., Dubrovnik, UP/I034-03/19-04/004; CCA v SETOVIA VOĆE d.o.o., Zagreb, UP/I034-03/19-04/009; CCA v BOSO d.o.o. Vinkovci, UP/I034-03/21-04/002; CCA v PPK-BJELOVAR d.d., Bjelovar UP/I 034-03/22-04/002; CCA v MLIN I PEKARE d.o.o., Sisak, UP/I 034-03/22-04/003; CCA v TOMMY d.o.o., Split, UP/I 034-03/22-04/005.

<sup>26</sup> Act on the Amendments to the Act on the prohibition of unfair trading practices in the business-to-business food supply chain, OG 52/21, 14.5.2021 that entered into force on 1.9.2021.

<sup>27</sup> CCA v EUROTEx GLOBAL TRADE d.o.o. Zagreb (former GLAVICE d.o.o., Zagreb), UP/I 034-03/18-04/026, 19.10.2022; CCA v PREHRAMBENO INDUSTRIJSKI KOMBINAT d.d., Rijeka, UP/I 034-03/20-04/003, 19.10.2022; CCA v SETOVIA VOĆE d.o.o., Zagreb, UP/I 034-03/18-04/023, 19. 10. 2022; CCA v FERMOPROMET, d.o.o., Majške Međe, UP/I 034-03/18-04/027, 6. 12. 2022; CCA v TRGOCENTAR d.o.o., Zabok, UP/I 034-03/22-04/004, 28. 12.2022.

<sup>28</sup> CCA v SLAVONIJA ŽUPANJA d.d., Županja, UP/I 034-03/18-04/030, 3. 3. 2022; CCA v KOKA d.d., Varaždin, UP/I 034-03/22-04/001, 19. 10. 2022; CCA v AMMA GRUPA d.o.o., Zagreb, (former MARINADA d.o.o., Slatina), UP/I 034-03/19-04/003, 21. 12. 2022; CCA v KAUF LAND HRVATSKA k.d., Zagreb, UP/I 034-03/20-04/001, 28. 12.2022.

<sup>29</sup> Request for identity protection, UP/I 034-03/22-04/006, 17. 11. 2022.

documentation requested within the meaning of Article 17 paragraph 1 of the UTPs Act that regulates the CCA's power in collecting data.

As part of the completed administrative procedures, the CCA analysed a large number of contracts concluded with suppliers of traders, buyers and/or processors, as well as annexes to contracts and general terms, in addition, extensive economic documentation was processed in the form of analytical cards, invoices, purchase blocks, delivery notes, receipts, weighing certificates, calibration reports, payment certificates, price lists, commercial conditions as well as other documentation related to the report time in each of the completed administrative procedures.

In the period from 1. January 2022 to 31 December 2022 the **total sanctions imposed by the CCA for the imposition of unfair trading practices in the business-to-business food supply chain amounted to EUR 57,071.**

**In the same time period, for the infringements of UTPs rules EUR 346,404 were paid by the undertakings that violated the UTPs rules into the State budget, plus EUR 42,471 of penalty interest.** These amounts have been paid into the State budget after the infringement decisions of the CCA have become legally valid.

The administrative proceeding under the UTPs Act is a complex one. It requires a multidisciplinary approach to each particular case and investigation into all relevant facts and circumstances relevant for the adoption of a decision. The duration of the proceeding depends not only on the volume and complexity of information and documentation that is subject to the analysis and processing by the CCA but also on the activity of the party concerned and their cooperation with the CCA and their willingness to voluntarily remedy their behaviour that resulted in imposition of unfair trading practices in the food supply chain.

The experts of the CCA are empowered to handle the proceedings by applying the UTPs Act. The expert staff consists of lawyers that have passed the Bar Exam and have at least four years of experience in legal jobs after they have passed the Bar Exam. Expert economists are engaged in the proceeding in the part relating to economic issues in the cases concerned.

**The Croatian Act on the Amendments to the Act on the prohibition of unfair trading practices in the business-to-business food supply chain** (hereinafter: Revised UTPs Act 2021) entered into force on 1 September 2021 but its full application started on 1 March 2022. The Revised UTPs Act 2021 transposed the Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (hereinafter: Directive (EU) 2019/633) that has regulated for the first time the area of unfair trading practices in food supply chain in the EU.

The objective of the Revised UTPs Act 2021 is to rectify the existing irregularities in business-to-business relationships in the agricultural and food supply chain by providing clearer

definition of unfair trading practices, empowering the CCA as a competent enforcement authority and institutional cooperation and strengthening of all enforcement authorities of the Member States and the EC.

Against this decision of the CCA no appeal is allowed but the party may take action against the decision of the CCA by filing a complaint for an administrative dispute at a competent administrative court regarding: (i) the violations of material law in the area of unfair trade practices in the food supply chain, (ii) essential violation of procedural provisions, (iii) inaccurate or incomplete facts of the case, and (iv) incorrect decision on fine and other issues that are decided by the CCA<sup>30</sup>. The High Administrative Court decides in the second instance.

With respect to lawsuits challenging the infringement decisions of the CCA, identifying that a re-seller, purchaser and/or processor imposed unfair trade practices in terms of the UTPs Act, in 2022 one competent administrative court issued **one judgement in which the claimant's claim for annulment of the decision of the CCA was rejected**, together with the requests for compensation for the costs of the administrative dispute<sup>31</sup>.

**In 2022, in two rulings the High Administrative Court dismissed the appeal of the re-sellers<sup>32</sup>** and upheld the rulings of the first instance courts rejecting the claim for cancellation of the decision of the CCA on infringement of UTPs Act and imposed unfair trading practices, upholding the infringement decisions of the CCA. By the rulings of the High Administrative Court the CCA infringement decisions became legally valid and the parties made payments of the respective amounts of fines plus penalty interest into the State Budget immediately after the respective decisions became legally valid.

The High Administrative Court also dismissed the appeal of the appellant<sup>34</sup> in one case and upheld the decision of the first instance court that dismissed the claim and made the decision of the CCA legally valid<sup>35</sup>.

Another important segment of the operation of the CCA are its **international cooperation** activities. In 2022 international activities took place both through multilateral cooperation and

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<sup>30</sup> Article 20 paragraph 2 of the UTPs Act.

<sup>31</sup> Judgement of the Administrative Court in Split, 14 Usl-2647/21-5 2 May 2022, rejecting the claim of the claimant JASENSKA d.o.o., Opuzen seeking the annulment of the CCA decision UP/I 034-03/19-04/001, 18.12.2020

<sup>32</sup> Ruling of the High Administrative Court: Usž-4116/21-3, 20.4. 2022, dismissing the appeal of Narodni trgovački lanac d.o.o. Sesvete and upholding the ruling of the Administrative Court in Zagreb: Usl-3234/19-6, 27. 5. 2021., rejecting the claim for cancellation of the decision of the CCA of 18. 4.2019, rejecting at the same time the recovery of the party's litigation costs.

<sup>33</sup> Ruling of the High Administrative Court: Usž-58/22-2, 26. 1. 2022, dismissing the appeal of KAUF LAND HRVATSKA k.d., Zagreb: Usl-1846/20-8, 7. 10. 2021, rejecting the claim for cancellation of the decision of the CCA of 29. 5. 2020 rejecting at the same time the recovery of the party's litigation costs.

<sup>34</sup> Decision of the High Administrative Court Usž-3015/22-3, 7. 9.2022, dismissing the appeal against the decision of the Administrative Court in Split Usl-3066/21-14, 24.3. 2022.

<sup>35</sup> CCA v AGRO GOLD d.o.o., Opuzen, UP/I 034-03/18-04/024, 29. 7.2021.

through bilateral contacts with competent authorities in and outside the EU. At the same time, the CCA continued its activities in the multilateral cooperation forums.

After the Republic of Croatia received the candidate status in January 2022, the CCA further intensified its activities with regard to the negotiations on the full membership of the Republic of Croatia in the OECD. The president of the Council as a member, and the head of the Department for International and European Cooperation as her replacement, regularly participated in the meetings of the Negotiating Group coordinated by the Ministry of Foreign and European Affairs. In close collaboration with the ministry, the CCA prepared the necessary self-assessment for 11 OECD legal instruments in the area of competition, and after having received the comments from the OECD, a revised text of the self-assessment was finally incorporated into the comprehensive Initial Memorandum for the Republic of Croatia. The Government of the Republic of Croatia adopted the Initial Memorandum in October 2022 and submitted it to the OECD. Then came the next phase, in which the CCA filled out an initial comprehensive questionnaire on the institutional and legislative framework in the area of competition and the CCA enforcement record.

From 28 – 30 September 2022 in Zagreb the CCA hosted a three-day seminar in collaboration with the OECD-GVH Regional Centre for Competition in Budapest, run together by the Hungarian competition authority and the OECD, and the Ministry of Foreign and European Affairs. This was at the same time the 25<sup>th</sup> anniversary of the operation of the CCA. Experts from 16 east, south-east and central European countries gathered in Zagreb to discuss ex ante regulation and the implementation of competition rules in digital markets.

Within the European Council working group for competition, a total of 23 meetings were held in 2022 on the topic of adoption of the Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) - DMA. The DMA entered into force on 1 November 2022 and started to apply on 2 May 2023.

The DMA empowers the Commission to adopt implementing rules in compliance with Article 291 paragraph 2 TFEU. To that end, Article 50 of the DMA stipulates that the Commission will be assisted by the Digital Markets Advisory Committee (DMAC). MSc Branimira Kovačević, head of the Department for International and European Cooperation in the CCA and Ms Maja Radišić Žuvanić from the Directorate for Trade and Public Procurement of the Ministry of Economy and Sustainable Development as her replacement, were appointed members of the DMAC representing the Republic of Croatia.

The trend of numerous requests for information between the agencies through the ECN2 network continued in 2022. **The CCA received and replied to 73 requests for information** (which is on average 2.7 requests per Member State) and sent three requests to other Member States. In this way, the CCA advocates active cooperation between the Member States. In the period from 1 January to 31 December 2022, 24 representatives of the CCA

participated in meetings of working groups, subgroups and advisory committees, a total of 39 times (out of 45 meetings 30 were held online).

Two meetings of the heads of the EU national competition authorities were held in June and November 2022. At both meetings, the CCA was represented by Mirta Kapural, PhD, president of the Council. The topics of the meetings of the heads of national authorities were Act on Digital Markets (DMA), coordination of the implementation of the DMA with the implementation of competition law, 20 years since the adoption of the Council Regulation (EC) no. 1/2003, current merger control issues, leniency programs, notice on the relevant market and Article 102 TFEU.

Transparency of the CCA activities is achieved through different communication channels with the general public. **Active competition advocacy** activities have been carried out through trainings and workshops for undertakings and consumers and open communication with the public, both in the area of competition and the area of unfair trading practices in the business-to-business food supply chain, where it was necessary to introduce the relatively new rules to the addressed actors.

During 2022, the CCA employees were active in competition advocacy and held 16 expert papers, trainings and workshops and published articles. The topics included concepts of competition, the work of the CCA and cooperation with the EC, prohibited agreements between undertakings, abuse of a dominant position, concentrations between undertakings and competition advocacy, along with practical examples, and the importance of fair-trading practices in the business-to-business food supply chain. At the same time, education is often focused on all current issues and news in the development of competition law. In this way, the CCA communication with the general public is deepened and redirected to professional and qualified public, primarily undertakings, the judiciary, attorneys and academia.

**In 2022 the CCA celebrated its 25<sup>th</sup> anniversary** by organizing the international conference "25 Years of Challenges and Success" that was held in Zagreb on 28 September 2022 in collaboration with the OECD-GVH Regional Centre for Competition in Budapest. The conference ran in three panels: "Ex-ante regulation and competition enforcement in digital markets"; "25 years of the CCA and 20 years of the Council Regulation 1/2003" and "Vertical rules - novelties and challenges". Prominent speakers from the EU member states, OECD, national competition authorities, business and academia, lawyers and judges discussed these important topics and used this opportunity to exchange experience and best practices<sup>36</sup>.

In compliance with the principles of transparency, independence, neutrality and professionalism in the communication with the parties and the public, in line with its publicly

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<sup>36</sup> More about the conference available on the CCA website <https://www.aztn.hr/odrzana-medunarodna-konferencija-aztn-a-25-godina-izazova-i-uspjeha/>

available **Communication Strategy**<sup>37</sup>, the CCA continues to publish on its website its decisions, opinions and annual reports, the relevant articles written by its experts and press releases about the opened and closed cases. The representatives of the CCA are present in the media and maintain contact with the journalists. The CCA publishes different related content and guides and its representatives participate in conferences, trainings and workshops as paper holders or participants covering the specific matters in the area of competition law and policy and unfair trading practices. All press releases, the legislative framework and summaries of the CCA decisions are translated into the English language and published on the CCA website.

**In 2022 the CCA published 76 decisions, replied to 27 queries of the journalists and 19 queries of the parties and published 69 press releases. The CCA published 11 issues of its monthly e-bulletin AZTNinfo**<sup>38</sup> containing the monthly updates of the CCA decisions and other activities and reports about the most recent decisions and developments in the comparative practice in the area of competition law and policy in the EU and globally.

In 2022 all the activities in the area of competition and unfair trading practices have been realized by more employees than in the preceding year. Concretely, on 31 December 2022 the CCA had **56 employees**, while there had been 49 employees in the same period in 2021.

At the end of 2021, the CCA began the recruitment process due to the need for new workers and to fill vacant positions, which were created due to the entry into force of the Revised UTPs Act 2021, and the leaving of several employees during 2021. In 2022, seven new workers had been employed at the CCA based on indefinite employment contract (with a trial period of 6 months). To fill the vacancies concerned the CCA had to obtain the necessary prior approvals from the Ministry of Justice and Administration and the Ministry of Finance, which had been regular procedure under the regulations then in force, while based on the Decision on the prohibition of new employment of civil servants and employees in public services, OG 35/22 of 17 March 2022, these rules changed and prior consent for employment must be sought from the Ministry of the Economy and Development.

It must be noted here that additional challenge for the CCA is that in this complex branch of law it takes some time for the new staff to be trained and equipped to work independently.

In line with its obligations under the positive law, in 2022 CCA also revised the existing or adopted a series of new internal acts. A new Statute of the CCA was adopted by the Council and ratified by the Croatian Parliament on 27 May 2022.

On 1 March 2022, the CCA also adopted the Annual education and professional development plan for the CCA employees for 2022 that lists the planned funds for education and professional development.

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<sup>37</sup> Available on the CCA website <https://www.aztn.hr/ea/wp-content/uploads//2023/02/AZTN-Komunikacijska-strategija.pdf>

<sup>38</sup> Available on the CCA website <http://www.aztn.hr/aztn-info/>



The following internal acts were adopted in 2022:

- Ordinance on the use of official state cars, business trips and reimbursement of travel expenses, use of mobile phones, business credit cards and representation funds,
- Ordinance on education and professional development of workers,
- Ordinance on salaries and material rights of workers,
- Rulebook on the official identity card of an authorized person in the Competition Agency,
- Ordinance on internal reporting of irregularities,
- Ordinance on the use of seals and stamps and their preservation,
- Ordinance on video surveillance, and
- Ordinance on the collection, processing, use and protection of personal data.

All above listed acts are available on the website of the CCA and thereby accessible to the public<sup>39</sup>.

In 2022 there were 5 requests for access to files. All requests have been complied with within the deadline and the decisions on the received requests have been communicated to the persons who asked for access to files. The information commissioner has been communicated the Report about the implementation of the Act on the Right of Access to Information in 2022 and it was published on the CCA website.

\*\* The Annual Report of the Croatian Competition Agency for 2022 in the Croatian language is available on the web site of the CCA, including three attachments: the List of CCA decisions in 2022, the List of rulings of the courts in 2022, and the List of sanctions imposed by the CCA in 2022.

Done at Zagreb, 19 June 2023

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<sup>39</sup> <https://www.aztn.hr/o-nama-1/opci-akti/pravilnici/>