

## Summary Annual Report of the Croatian Competition Agency for 2023

In compliance with its legal obligation under the Competition Act OG 79/09, 80/13, 41/21, and 155/23<sup>1</sup>, and the Act on the prohibition of unfair trading practices in the business-to-business food supply chain OG 117/17, 52/21 and 27/24<sup>2</sup>, the Croatian Competition Agency (CCA) submits its **Annual Report for 2023** to the Croatian Parliament. The Annual Report for 2023 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 fostering effective competition 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** in effect 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 202, 7.6-2016 (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, 4.1.2003, 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, 29.1.2004.

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

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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.

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** (UTPs Act). For the first time this piece of legislation has regulated the area of unfair trading practices in the food supply chain in Croatia. The full application of the UTPs Act started on 1 April 2018. 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, OJ L 111, 25.4.2019 (Directive (EU) 2019/633) and entered into force on 1 September 2022. The second revision of the UTPs Act entered into force on 14 March 2024.<sup>3</sup>

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>4</sup>.

The CCA is run and managed by the **Competition Council** consisting of 5 members<sup>5</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<sup>6</sup>. 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<sup>7</sup>. The members of the Council cannot be state officials, persons who perform duty in any administrative body of a political party, members of supervisory boards and executive bodies of undertakings, or members in any kind of interest associations, which could lead to conflict of interest. The president and any member of the Council cannot be relieved from office due to the reasons linked with the

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<sup>3</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, and Act on the Amendments to the Act on the prohibition of unfair trading practices in the business-to-business food supply chain, OG 27/24).

<sup>4</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>5</sup> The terms used in this text, which have a gender meaning, refer equally to the male and female gender.

<sup>6</sup> Article 27 of the Competition Act.

<sup>7</sup> Article 28 of the Competition Act.

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<sup>9</sup>. The president or the vice-president of the Council must be present at the session. In the report year there had been **45 sessions of the Council** in which 212 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.

In accordance with the law the Competition Council is, as a rule, composed of five members. However, due to the Croatian Parliament appointing the former Council member, Mirta Kapural, PhD, as the president of the Council, one position on the Council remained vacant. Consequently, on 31 December 2023, the Council consisted of four members: one economist and three legal professionals. Hence, during the report year the Council members were: Mirta Kapural, PhD, LL.M., president of the Council (serving her first term from October 2021 to October 2026), Vesna Patrlj, LL.M., vice-president of the Council (serving her third term from March 2019 to March 2024), Ljiljana Pavlic, MSc, economist, Council member (serving her second term from January 2019 to January 2024), and Denis Matić, LL.M., Council member (serving his second term from January 2019 to January 2024).

As of the time of writing this Annual Report, the Council is composed of the Council president Mirta Kapural, PhD, LL.M., the vice-president Branimira Kovačević, MSc, economist (serving her first term since 28 February 2024), and the Council members - Denis Matić, LL.M., (serving his third term since 28 February 2024), Hrvoje Šeremet, LL.M. (serving his first term since 28 February 2024), and Sandra Mikinac, LL.M., (serving her first term since 28 February 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.

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

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

The CCA exercises its powers independently and impartially in the common interest of the effective enforcement of the provisions falling under its jurisdiction. This means that 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 about its work 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. 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 2023 amounted to EUR 2.316,854. The total executed budget in 2023 amounted to EUR 2.308,556 which was 99.64 % of the current plan for 2023.**

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.

All activities of the CCA in the area of competition and unfair trading practices in the food supply chain in 2023 were carried out with a smaller number of professional staff compared to the previous year. Specifically, as of 31 December 2023, the CCA had 53 employees, whereas in 2022, there were 56. In 2023, the employment of five workers was terminated.

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. At the same time, within its powers, it is responsible for the implementation of the rules in the area of unfair trading practices that should ensure fair treatment of all the participants in business-to-business food supply chain.

In 2023 the CCA resolved 661 cases in the areas of competition and unfair trading practices in the business-to-business food supply chain. In 2023 the CCA resolved 53 administrative and 608 non-administrative cases.

The fines imposed for the infringements of the Competition Act and the UTPs Act in 2023 amounted to a total of EUR 363,337.

Since it was empowered to impose fines in the both the area of antitrust and merger control and unfair trading practices, until the end of 2023, i.e., since 1 October 2010 and 7 December 2017, respectively, the CCA imposed a total amount of fines worth EUR 5.341,783 (EUR 4.259,619 in the area of antitrust and merger control, and EUR 1.082,164 in the area of unfair trading practices).

The following table indicates the resolved cases in 2023:

	Number of resolved cases in 2023		
	Competition	Unfair trading practices	Total
Administrative cases	46	7	53
Non-administrative cases	566	42	608
Total:	612	49	661

Source: CCA

A slight drop in the number of resolved cases compared to 2022 when there had been a total of 699 resolved cases 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, where the effects of these concentrations on competition in the Croatian market had to be assessed. 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. The job of the CCA in these cases is to assess the effects of these concentrations on competition in the Croatian market. Concretely, in 2023 the number of transmitted notifications was 360, which means that it dropped by 17 compared with 2022 when the CCA decided upon 377 notifications with an EU dimension.

The reason for the decrease in the number of resolved administrative cases, with a total of 53 cases resolved in the reporting year compared to 67 in the previous reporting year, is also due to leaving of four experts/employees, three lawyers and one economist, and moving to new positions outside the CCA. Due to the inability to promptly replace these four experts, the remaining experts/employees took over their cases. All of the above, combined with the complexity of the procedures that the CCA handles and the already insufficient number of employees, resulted in a slightly lower number of resolved administrative cases.

Regrettably, the outflow of expert staff continued in this reporting year as well, as these highly educated employees with specific competencies and experience are rare and therefore highly sought after in the labour market by private sector employers who can offer them significantly better financial and other material conditions. An additional challenge for the CCA has been the professional training of the new employees, which, due to the complexity of the tasks, can take longer before they become fully independent in their work.

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 2023 there were 37 pending administrative cases, 30 in the area of competition, 7 in the area of unfair trading practices. In 23 cases of these 30 unresolved administrative cases in the area of competition the proceeding was opened in 2023 whereas in 7 cases the proceedings were opened in the previous years. In the area of unfair trading practices in 5 cases out of 7 pending cases on 31 December 2023 the proceedings were opened in 2022, whereas in 2 cases the proceedings were opened earlier.

In other words, 4 unresolved cases opened in 2022, and two cases opened in in 2021 were still pending on 31 December 2023. In the area of unfair trading practices there were two pending cases.

At the moment of the conclusion of this report (July 2024), 15 more administrative cases that were pending on 31 December 2023 have been closed – 14 in the area of competition and one 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 and the national competition authorities. 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 or 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:

*(i) Phase One – Preliminary market investigation.* If based on the initiative of a complainant this phase can take up to maximum six months, after the relevant market has been defined.

*(ii) Phase Two – Procedural order.* By means of a procedural order the CCA initiates the proceeding where it finds that the initiative of a complainant contains sufficient circumstantial evidence to open an administrative (investigation) proceeding. At this stage the parties are requested to submit written comments and necessary documentation in the time period that can neither be shorter than 8 days nor longer than 30 days from the day of the receipt of the procedural order. At this stage the CCA can conduct a surprise inspection, make economic and legal analysis or take any necessary steps with the view to establishing the facts of the case. The parties can be requested to submit additional information relevant to the case in an appropriately set deadline.

*(iii) Phase Three – Statement of Objections.* The CCA is obliged to communicate a non-confidential copy of the Statement of Objections to the complainant (the person who has filed the initiative) and all persons that have been granted the rights of the complainant by the decision of the CCA, exclusively upon a written request of the person concerned. These persons can also send their comments on the Statement of Objections within the same deadline as granted to the parties to the proceeding. The Statement of Objections ensures the party the right of defence given that in the period of one month from the receipt of the Statement of Objections the party can respond to the preliminary established facts and circumstances in writing, suggest their comments and propose other witnesses to be heard or other evidence to be examined. Also, once it has received the Statement of Objections, the party can ask for access to file. However, after it has received the Statement of Objections, the party cannot propose commitments (remedies, conditions and deadlines) with the view to eliminating the anticompetitive effects of their behaviour or failure to act.

*(iv) Phase Four – Oral hearing.* The oral hearing is mandatory called for in the shortest possible period after the expiry of the time period for the submittal of the replies to the Statement of Objections and after the CCA has carried out the analysis of the submitted comments. However, in some complex cases the CCA may call for oral hearing even before the adoption of the Statement of Objections, whereas it must call for oral hearing after the expiry of the

deadline for the submittal of comments on the Statement of Objections, as previously mentioned. Thus, in such cases two oral hearings are held.

*(v) Phase Five – Decision of the Competition Council about the infringement and fine setting.* The Competition Council decides whether the infringement has been committed or not). If it finds no infringement the proceeding is terminated.

*(vi) Phase Six – Adoption of the decision.* The CCA takes its decision in line with the decisions of the Council within the time limit of 4 months following the day on which it has established all the facts of the case relevant for the adoption of the decision, i.e., not later than within 4 months from the day of the conclusion of the oral hearing held, in other words, the CCA takes a single decision on infringement and the imposition of a fine for the identified infringement

The proceeding is always initiated ex post, while a wide range of persons can submit an initiative for the initiation of the proceeding<sup>10</sup>.

In 2023 the CCA resolved a total of **48 submitted initiatives or complaints** within the meaning of the Competition Act and the General Administrative Procedure Act respectively (GAPA)<sup>11</sup> for the initiation of ex-officio administrative proceeding.

Within the concrete case proceedings that were closed in 2023 the CCA carried out the **investigations in 63 relevant markets**, 18 thereof were in the area of assessment of prohibited agreements between undertakings, 23 in the area of alleged abuse of a dominant position in the market and 22 in the area of assessment of compatibility of concentrations between undertakings.

One of the priorities of the CCA in 2023 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 2023 the CCA **resolved a total of 29 cases in this area**, **nine** thereof were administrative and **20** non-administrative cases. In these cases, the CCA conducted preliminary market investigations in 18 relevant markets.

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<sup>10</sup> Article 37 of the Competition Act.

<sup>11</sup> Article 37 of the Competition Act and Article 42 of the General Administrative Procedure Act, OG 47/09 and 110/21.



In the group of nine resolved 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<sup>12</sup>. In one case the CCA terminated the proceeding due to absence of legal presumption for any further action<sup>13</sup>. In six cases the CCA took the decision dismissing the complaint due to lack of standing to act<sup>14</sup>. One administrative case was closed by a written observation of the CCA<sup>15</sup>.

**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 2023 whether certain undertakings have been involved in such abusive practices.

In 2023 the CCA resolved 27 cases in this area, 22 thereof were administrative and five non-administrative cases. In these cases, the CCA conducted a preliminary market investigation in 23 relevant markets.

In 13 cases thereof the CCA dismissed the initiative of the complainant due to lack of standing to act<sup>16</sup>. Three administrative cases were terminated due to a finding that there was no basis

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<sup>12</sup> AZTN v Keindl Sport d.o.o. Zagreb, Class: UP/I 034-03/2018-01/005, 20. 7. 2023.

<sup>13</sup> AZTN v ROSIS UNUS d.o.o. Sveti Križ Začretje, Class: UP/I 034-03/17-01/006, 28.12. 2023.

<sup>14</sup> AZTN v COM1 d.o.o., Split, Domagoja Paradija , H&D INFO Zagreb and EFCo Grupa d.o.o., Dubrovnik, Class: UP/I 034-03/22-01/021, 30.3.2023.; CCA – preliminary market investigation into banking services market, Class: UP/I 034-03/23-01/008, 15.12.2023; CCA – preliminary market investigation into regular road maintenance, Class: UP/I 034-03/23-01/007, 15.11. 2023; CCA – preliminary market investigation into milk and dairy products market, Class: UP/I 034-03/23-01/004, 2.11. 2023; CCA – preliminary market investigation into milk and dairy products market, Class: UP/I 034-03/23-01/003, 2.11.2023; AZTN – preliminary market investigation into lab equipment procurement, Class: UP/I 034-03/23-01/002, 29.12. 2023.

<sup>15</sup> CCA - preliminary market investigation into Ericsson/Aastra/Mitel sale, installation and servicing of home telephone systems, Class: UP/I 034-03/23-01/006, 29.12.2023.

<sup>16</sup> CCA v EPPS Elektronsko pismo Pošte Slovenije d.o.o., Class: UP/I 034-03/22-03/013, 15.9.2022; CCA v Dimnjak d.o.o., Class: UP/I 034-03/22-03/014, 17.10.2022; CCA v local and regional self-government units, Class: UP/I 034-03/22-03/017, 9.12.2022; CCA v Croatian Health Insurance Fund, Class: UP/I 034-03/22-03/015 10.11.202.; Preliminary market investigation – complaint against Diveks j.d.o.o., Class: UP/I 034-03/22-03/018 30.12.2022; Preliminary market investigation into cabotage sector – complaint against Ministry of the Sea, Transport and Infrastructure, Coastal Shipping Agency, Rijeka Port Authority, County Port Authority Cres, Jadrolinija; Class: UP/I 034-03/22-03/016, 2.12.2022; Preliminary market investigation – complaint by Primax d.o.o. against Zagrebački holding d.o.o. – Subsidiary Čistoća, Class: UP/I 034-03/23-03/003 od 17.3.2023; Preliminary market investigation - complaint by Velux Hrvatska krovni prozori d.o.o. against Wieneberger, Class: UP/I 034-03/23-03/004, 12.4.2023; Preliminary market investigation – complaint by attorney Tibaut against Istarski vodovod d.o.o., Class: UP/I 034-03/23-03/010, 5.6.2023; Preliminary market investigation into electronic payments – complaint by Miroslav Solde regarding the practices of Erste&Steiermarkische bank d.d., Class: UP/I 034-03/23-03/015, 30.7.2023; Preliminary market investigation – complaint by Auto promet Sisak d.o.o. against Čažmatrans promet, Class: UP/I 034-03/23-03/008, 19.5.2023; Preliminary market investigation – complaint by Encro kula d.o.o. against Croatian Transmission System Operator d.d., Class: UP/I 034-03/23-03/007, 16.11.2023; Preliminary market investigation into passenger transportation by sea in Korčula Archipelago, Class: UP/I 034-03/23-01/010, 3.7.2023.

for any further steps in the proceeding<sup>17</sup>. Two administrative cases were closed by the decision accepting the commitments proposed by the undertakings concerned<sup>18</sup>. One case was closed by the decision on finality of the act<sup>19</sup> whereas another case was closed by the decision on the incompleteness of the reasoned submission<sup>20</sup>. One case was closed by the response to the reasoned submission within the meaning of the GAPA<sup>21</sup>.

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>22</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 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 concentration, such as the decline in the number of competitors or the rise in collusive behaviour or possible creation or strengthening of a dominant position.

In the area of assessment of compatibility of concentrations in 2023 the CCA **resolved a total of 27 cases** (17 administrative and 10 non-administrative cases). These cases involved the analysis of 22 relevant markets.

In 17 administrative the CCA carried out assessments of the concentrations concerned whereas in 10 non-administrative cases it replied to the queries of third parties, held meetings regarding the obligatory notification of concentration, studied the ownership structure of the

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<sup>17</sup> CCA v Hrvatska pošta d.d., Class: UP/I 034-03/21-01/011, 4.8.2021; CCA v Hrvatski telekom d.d., Class: UP/I 034-03/17-01/018, 11.10.2017; CCA v KNAUF d.o.o., Class: UP/I 034-03/22-03/004, 7.2.2022.

<sup>18</sup> CCA v Hrvatske šume d.o.o. and Wood Processing Association of the Croatian Chamber of the Economy, Class: UP/I 034-03/21-01/017, 7.1.2021; CCA v Hrvatske šume d.o.o., Class: UP/I 034-03/21-01/005, 17.6.2021.

<sup>19</sup> CCA v local and regional self-government units, Class: UP/I 034-03/23-03/009, 1.6.2022.

<sup>20</sup> Preliminary market investigation in the chimney's inspection services– complaint made by Vlado Keser against licenced chimney sweepers in the City of Zagreb, Class: UP/I 034-03/23-03/013, 25.7.2023.

<sup>21</sup> Š. P. – inquiry about the case, Class: 034-08/23-01/059, 24.7.2023.

<sup>22</sup> Article 19 and Article 38 paragraph 2 of the Competition Act.

undertakings based on the information from third parties and the public, and analysed the data contained in the cases referred to it by the European Commission as to their effects in the Republic of Croatia.

Out of 17 administrative cases concerning the assessment of compatibility of concentrations, in 11 cases the concentrations were cleared in Phase I given the fact that they did not produce significant effects on competition, as they neither created a new nor strengthened an existing dominant position of the undertakings involved. In two cases, the CCA dismissed the notification of concentration since they did not meet the legal criteria for assessment<sup>23</sup>. In one case the CCA carried out the probe in Phase II where the decision was issued rendering the concentration compatible<sup>24</sup>.

In one case the CCA has been monitoring the implementation of the commitments undertaken by the undertaking concerned in the sense of the decision of the CCA on conditionally compatible concentration taken in 2022<sup>25</sup>.

In 2023 no concentration was assessed as prohibited.

In addition, in 2023 there were **360 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 63 relevant markets that were linked with concrete cases, in 2023 the CCA conducted **three sector inquiries** including the

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<sup>23</sup>MEDIA SOLUTIONS d.o.o., Osijek / NOVI LIST d.d., Rijeka, Class: UP/I 034-03/23-02/007, 4. 8.2023; "PLURALIS B. V., Netherlands / TELEGRAM MEDIA GRUPA d.o.o., Zagreb, Class: UP/I 034-03/23-02/003, 7.4. 2023.

<sup>24</sup>EKO-FLOR PLUS d.o.o., Oroslavlje / REOMA GRUPA d.o.o., Zagreb, Class: UP/I 034-03/22-02/011, 3. 11. 2023.

<sup>25</sup> GRAND AUTOMOTIVE RD Ltd. / GRAND AUTOMOTIVE LLP., RAMLA, IZRAEL / RENAULT NISSAN HRVATSKA d.o.o., Zagreb, Class: UP/I 034-03/22-02/005, 1.4.2022.

retail groceries' market (market research in food, beverages, toiletries and household supplies)<sup>26</sup>, the press publishing market<sup>27</sup> and the motor fuels market<sup>28</sup>.

In 2023 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 other words, 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 2023 there were **74 resolved advocacy cases**, thereof **13 expert opinions on laws, 58 answers to different queries about competition issues and three cooperation cases**.

In 2023 the CCA signed cooperation agreements with the Faculty of Law, University of Zagreb and Faculty of Economics and Business, University of Zagreb.

**For the infringements of the Competition Act in 2023 the CCA imposed the fines in the total amount of EUR 281,837.**

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

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<sup>26</sup> Available on the CCA website <https://www.aztn.hr/ea/wp-content/uploads//2024/01/Trgovina-na-malo-2022-prikaz-stanja-final.pdf>

<sup>27</sup> Available on the CCA website <https://www.aztn.hr/ea/wp-content/uploads//2023/07/Prikaz-stanja-trazista-tiska-2022-3.pdf>

<sup>28</sup> Available on the CCA website: <https://www.aztn.hr/ea/wp-content/uploads//2024/05/Priopcenje-motorna-goriva-RH.pdf>

In the report year the **High Administrative Court took 6 decisions on the basis of which it dismissed the claims of the claimants and upheld the decisions of the CCA in their entirety<sup>29</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 2023 the CCA **resolved 50 cases, thereof 7 administrative cases and 43 non-administrative cases**. Of the seven completed administrative cases, six were initiated as a result of market research in the agricultural and food product sector. Based on the collected and analysed documentation and data, indications were found for the initiation of administrative proceedings *ex officio*. One administrative proceeding was initiated following an anonymous complaint from an earlier date.

From 1 January 2023 to 31 December 2023, 14 reasoned submissions were received, four of them were anonymous. Ten of these had been resolved until 31 December 2023. Nine out of ten did not provide sufficient indications for the initiation of administrative proceedings, while in one the CCA opened an administrative proceeding. As for the four unresolved reasoned submissions, investigations were still ongoing on 31 December 2023.

Three reasoned submissions from earlier periods (two from 2022 and one from 2021), including two anonymous and one signed, were resolved in 2023.

In summary, the Division of the Prohibition of Unfair Trading Practices resolved 13 reasoned submissions in 2023, 10 of which were received in 2023, and three from previous periods (2021 and 2022). Four of these resolved cases were based on anonymous submissions, while nine were named.

On 31 December 2023, seven administrative proceedings were ongoing against the following re-sellers<sup>30</sup>: DJELO d.o.o., Bilice, KONZUM plus d.o.o., Zagreb, TP VARAŽDIN d.o.o., Varaždin, STUDENAC d.o.o., Omiš, PPK-BJELOVAR d.d., Bjelovar, and two administrative proceedings against TOMMY d.o.o., Split, joined in one case for procedural efficiency<sup>31</sup>.

Since some of the proceedings initiated by the CCA prior to 1 September 2021—before the adoption of the 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 (Revised UTPs Act 2021)—were conducted and closed under the provisions of the previous Act on the prohibition of unfair trading practices in the business-to-business food supply chain, OG 117/17 and 52/12 (UTPs Act) this Report uses terminology from both acts.

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<sup>29</sup> <https://www.aztn.hr/odluke/odluke-sudova/>

<sup>30</sup> CCA v DJELO d.o.o., Class: UP/I 034-03/23-04/006; CCA v KONZUM plus d.o.o., Class: UP/I 034-03/23-04/004; CCA v TP VARAŽDIN d.o.o., Class: UP/I 034-03/23-04/003; CCA v STUDENAC d.o.o., Class: UP/I 034-03/23-04/001; CCA v TOMMY d.o.o., Class: UP/I 034-03/22-04/005; CCA v PPK-BJELOVAR d.d., Class: UP/I 034-03/22-04/002; CCA v TOMMY d.o.o., Class: UP/I 034-03/23-04/005.

<sup>31</sup> Class: UP/I 034-03/22-04/002 and Class: UP/I 034-03/23-04/005 joint case Class: UP/I 034-03/22-04/005.

In 2023, the CCA closed seven administrative cases under the provisions of the UTPs Act. 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>32</sup>, whereas it terminated the proceedings in two cases where there was no legal grounds for any further action<sup>33</sup>. Two cases from 2022 remained pending.

From 1 January 2023 to 31 December 2023, the CCA imposed fines totalling EUR 81,500 on for the infringements of the UTPs Act<sup>34</sup>. During the same period, EUR 42,491 in fines was paid into the State Budget of the Republic of Croatia. These payments were made for two infringements found by the CCA in 2023 and two that had been established in previous years.

Against the decision of the CCA in the area of unfair trading practices 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. 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 2023 the 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. The claimant appealed against the first instance decision to the High Administrative Court. The decision in the second instance is still pending.

The representatives of the CCA participated in a number of meetings of the national enforcement authorities under 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 and discussed the relevant issues in the area concerned, particularly the challenges of cross-border collaboration. A special working group was formed for the drafting of the forms whose members were two representatives of the CCA.

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<sup>32</sup> MLIN I PEKARE d.o.o., Class: UP/I 034-03/22-04/003; PLODINE d.d., Class: UP/I 034-03/19-04/002; PLODINE d.d., Class: UP/I 034-03/18-04/010; ULTRA GROS d.o.o., Class: UP/I 034-03/23-04/002; BOSO d.o.o., Class: UP/I 034-03/21-04/002.

<sup>33</sup> SETOVIA VOĆE d.o.o., Class: UP/I 034-03/19-04/009; PEMO d.o.o. and its legal successor STUDENAC d.o.o., Class: UP/I 034-03/19-04/004.

<sup>34</sup> MLIN I PEKARE d.o.o., Class: UP/I 034-03/22-04/003 – EUR 1,500; PLODINE d.d., Class: UP/I 034-03/19-04/002 EUR 15,000; PLODINE d.d., Class: UP/I 034-03/18-04/010 – EUR 30,000; ULTRA GROS d.o.o., Class: UP/I 034-03/23-04/002 – EUR 15,000; BOSO d.o.o., Class: UP/I 034-03/21-04/002 – EUR 20,000.

Another important segment of the operation of the CCA are its **international cooperation** activities. In 2023 international activities took place both through multilateral cooperation and 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. After the CCA filled out an initial comprehensive questionnaire on the institutional and legislative framework in the area of competition and the CCA enforcement record, first OECD mission followed in February 2023. The OECD prepared then the pre-accession report which was discussed with the Croatian delegation led by the president of the Competition Council in early December 2023 in Paris during the Global Forum on Competition.

Within the European Council working group for competition, a total of six meetings were held in 2023 on the topic of evaluation of the current framework for the application of EU competition rules in Council Regulation (EC) No 1/2003, the guidance initiative and re-examination of Article 102 TFEU, further simplification of merger control procedure, the re-examination of the notice on the relevant market, implementation of the Digital Markets Act (DMA). All meetings were held in Brussels, and attended by Ivan Palčić from the Permanent Representation of the Republic of Croatia to the EU and the CCA representative from Zagreb Branimira Kovačević, MA, head of the International and EU Cooperation Department.

The Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) - DMA entered into force on 1 November 2022 and started to apply on 2 May 2023. The DMA was transposed into the Croatian legislative framework by the Regulation on the implementation of the Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act); OG 131/23, that entered into force on 11 November 2023. The enforcement authority has been identified in Article 3 thereof as the Croatian Competition Agency.

The trend of numerous requests for information between the national competition authorities through the ECN2 network continued in 2023. The CCA received and replied to 85 requests for information (which is on average 3.2 requests per Member State) and sent six 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 2023, 23 representatives of the CCA participated in meetings of working groups, subgroups and advisory committees, a total of 60 times (out of 65 meetings 37 were held online).

Two meetings of the heads of the EU national competition authorities were held in June and November 2023. 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 the

enforcement of the Act on Digital Markets (DMA), coordination of the implementation of the DMA with the implementation of competition law, evaluation of the Council Regulation (EC) no. 1/2003 and Article 102 TFEU, the experience with the new ECN+ powers, inflation in the food sector. The president of the Council held a presentation on national measures in respect of inflation.

Spanish National Markets and Competition Commission (CNMC) hosted the International Competition Network (ICN) annual conference in Barcelona from 18 – 20 October 2023. It gathered an unprecedented number of some 100 jurisdictions represented by the members and NGAs attending the event. The plenary sessions included the Advocacy Working Group, the Agency Efficiency Working Group, the Cartel Working Group, the Merger Working Group, the Unilateral Conduct Working Group, and a number of breakout side sessions. The president of the CCA Competition Council Mirta Kapural, PhD moderated the plenary session “Anti-cartel enforcement in the digital era”.

Regarding bilateral cooperation, Mirta Kapural, PhD, LL.M, president of the Council, and Irakli Lekvinadze, PhD., president of the Georgian Competition Agency, signed a cooperation agreement during the ICN Conference in Barcelona on 20 October 2023. The purpose of this agreement is to promote cooperation between the agencies of these two countries in the enforcement of competition law and policy, as well as to exchange expert experience and information on specific cases from their practice. The CCA has already signed similar agreements with competition authorities from Albania, Austria, Bosnia and Herzegovina, Bulgaria, Montenegro, Kosovo, Hungary, Romania, North Macedonia, Serbia, and Turkey.

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.

During 2023, the CCA employees were active in competition advocacy and held some 20 expert papers, trainings and workshops and published articles. The topics generally 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 has been 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 compliance with the principles of transparency, independence, neutrality and professionalism in the communication with the parties and the public, in line with its publicly



available **Communication Strategy**<sup>35</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 2023 the CCA published 66 decisions, replied to 25 queries of the journalists and 23 queries of the parties and published 74 press releases. The CCA published 10 issues of its monthly e-bulletin AZTNinfo**<sup>36</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 2023 all the activities in the area of competition and unfair trading practices have been realized by less employees than in the preceding year. Concretely, on 31 December 2023 the CCA had **53 employees**, while there had been 56 employees in 2022.

In 2023 CCA two recruitment processes, one to fill a vacant position in the General Affairs Sector, and one in the Department for legislation and comparative practice, following a notice of one employee in 2022. 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, Administration and Digital Transformation, the Ministry of Finance, and the Ministry of the Economy in accordance with the rules then in force<sup>37</sup>.

In line with its obligations under the positive law, in 2023 CCA also revised the existing or adopted a series of new internal acts.

On 18 January 2023, the CCA adopted the Annual education and professional development plan for the CCA employees for 2023 that lists the planned funds for education and professional development.

The following new internal acts were adopted in 2023:

- Ordinance on minor value procurement contracts,
- Rules for managing the CCA archives and documents,
- Staff rules,
- Safety at work rules, and
- Standing orders on the work of the Council.

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<sup>35</sup> Available on the CCA website <https://www.aztn.hr/ea/wp-content/uploads//2023/02/AZTN-Komunikacijska-strategija.pdf>

<sup>36</sup> Available on the CCA website <http://www.aztn.hr/aztn-info/>

<sup>37</sup> Decision on the prohibition of new employment of civil servants and employees in public services, OG 35/22.

All above listed documents are available on the website of the CCA and thereby accessible to the public.

In 2023 there were 11 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 on the implementation of the Act on the Right of Access to Information for 2023 and it was published on the CCA website.

On 25 September 2023 the Administrative Inspection of the Ministry of Justice, Administration, and Digital Transformation conducted an on-site inspection of the CCA operations. Administrative supervision is a process used in public administration systems to ensure legality, correctness, and efficiency of the work of administrative bodies. The primary purpose of administrative supervision is to monitor and evaluate the work of these bodies to ensure compliance with rules, policies, and procedures. The subject of the inspection was the application of laws governing administrative procedures, the implementation of regulations on office operations, the use of seals and stamps bearing the Croatian coat of arms, the application of regulations concerning the exercise of public authority, and the analysis of actions taken in response to reasoned submissions. Since no irregularities or deficiencies requiring intervention by the administrative inspection were identified during the review, no measures were imposed on the CCA. Accordingly, the absence of measures in the inspection report reflects high level of legality and accuracy in the conduct of administrative procedures by the CCA.

\*\* The Annual Report of the Croatian Competition Agency for 2023 in the Croatian language is available on the web site of the CCA, including three attachments: the List of CCA decisions in 2023, the List of rulings of the courts in 2023, and the List of sanctions imposed by the CCA in 2023.

In Zagreb, 13 June 2023