



2022 ANNUAL REPORT

CROATIAN COMPETITION AGENCY



Intro



**Mirta Kapural,
PhD, LLM**

**President of the
Competition
Council**

This brochure provides an overview on the main activities of the Croatian Competition Agency (CCA) in the year 2022. Throughout 2022, like in the previous years, the CCA played an active role in maintaining open, efficient, and fair competition in the Republic of Croatia.

Therefore, in 2022, the work of the CCA was focused on detecting and sanctioning of the most serious infringements of competition law, primarily prohibited horizontal agreements between competitors (cartels), specifically, bid-rigging agreements in public procurement. In this regard, as part of an agreement with the Ministry of the Economy and Sustainable Development, the CCA gained access to the Electronic Public Procurement Data Base and initiated the development of a digital toolkit aimed at detecting a greater number of bid-rigging cases in public procurement. In 2022 the CCA identified one bid-rigging cartel in public procurement and fined the participants HRK 2.155,000 or EUR 286,018.

Equally, the CCA continued with its day-to-day operation by having been engaged in identifying and sanctioning infringements relating to abuse of a dominant position by undertakings that distorts the competitive structure of the market. In the same

way, activities continued in the area of ex ante merger control, directly arising from acquisitions of and mergers between undertakings and the consolidation of individual markets. One concentration in 2022 was assessed as conditionally compatible and the participants of the concentration have been imposed remedies for the elimination of the anticompetitive effects of the concentration concerned in the relevant market.

At the same time, in 2022 the CCA continued to focus on implementation of the Act on the amendments to the Act on the prohibition of unfair trading practices in the business-to-business food supply chain (Revised UTPs Act 2021).

The CCA sanctioned several undertakings for imposing unfair trading practices and continued to be active in raising awareness about its decisions in this area, and particularly, by publishing the updated Guidebook of Q&As replying to queries of the addressed actors and explaining the UTPs rules. The CCA believes that active advocacy in the area of unfair trading practices in the business-to-business food supply chain can contribute to the reduction of infringements and encourage the actors to obey the rules and promote fair trading practices in the supply of food and agri products.

In 2022 the CCA resolved 699 cases in the areas of competition and unfair trading practices in the business-to-business food supply chain, thereof 67 administrative cases.

In 2022 the CCA resolved 699 cases in the areas of competition and unfair trading practices in the business-to-business food supply chain, thereof 67 administrative cases.

As in previous periods, the CCA remained active in promoting competition law and policy during the year 2022, complementing the enforcement of competition rules.

This activity includes so called non-administrative cases (opinions on draft laws and proposed regulations and opinions on the compliance of the laws and regulations in effect), market studies that contribute to better understanding of specific relevant markets, transparency and engaged communication with all stakeholders, conferences, trainings and workshops and international conferences on current and specific topics related to competition. An integral part of these activities is the collaboration with all stakeholders, specific regulators, relevant ministries, state administration bodies, the Government of the Republic of Croatia, undertakings, and associations of undertakings, as well as the academia and European and international community.

Market investigations are 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. These legal and economic analyses very often enable the CCA to detect indications for infringement proceedings.

Besides the preliminary market investigations in 75 relevant markets that were linked with concrete cases, in 2022 the CCA conducted four sector inquiries including the market investigation into the provision of food delivery services via digital platforms in the Republic of Croatia, the retail groceries' market (market research in food, beverages, toiletries and household supplies), the insurance market and the press publishing mar-

ket. After the Republic of Croatia received the candidate status in January 2022, the CCA further intensified its international activities with the OECD Competition Committee regarding the negotiations on the full membership of the Republic of Croatia in the OECD. The potential of this membership will bring another valuable global component to the work of the CCA and contribute to the development of best practices in Croatia.

In 2022 the CCA celebrated its 25th anniversary by organizing the international conference "25 Years of Challenges and Success" that was held in Zagreb on 28 September 2022. Prominent speakers from the 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.

In 2022 the CCA updated and redesigned its website with the view to improving its communication with the public and created its LinkedIn page that raised its presence in the community.

The main objective of the CCA as the general, national regulatory authority in charge of competition 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 enhancing their choice, creation of high-quality innovative goods and services at lower prices, that at the same time encourage undertakings to improve effectiveness and innovation in the market. The same endeavour will continue to be made in the area of unfair trading practices, in other words, the CCA will remain focused on preventing unfair trading practices, aiming to establish, ensure, and protect fair trading practices that safeguard participants in the food supply chain. As the president of the Competition Council, I will advocate for the continued successful implementation of these activities and goals.

In 2022 the CCA celebrated its 25th anniversary by organizing the international conference "25 Years of Challenges and Success" that was held in Zagreb on 28 September 2022.

HIGHLIGHTS OF THE YEAR 2022

7 April

CCA signed the cooperation agreement with the State Commission for Supervision of Public Procurement Procedures

11 April

CCA signed the cooperation agreement with the Croatian Financial Services Supervision Agency

13 April

CCA signed the cooperation agreement with the Croatian Energy Regulatory Agency

20 April

CCA adopted a decision on a bid-rigging agreement – cartel in public procurement in the case: 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, fining the members of the cartel a total of HRK 2.155,000 (EUR 286.018) for the hard core infringement of competition rules

CCA 25TH ANNIVERSARY

The CCA celebrated its 25th 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"

28 September

20 October

CCA signed the cooperation agreement with the Ministry of the Economy and Sustainable development on the use of the Croatian Electronic Public Procurement Data Base



CCA

OUR CONTRIBUTION TO COMPETITIVE MARKETS AND THE CROATIAN ECONOMY

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.

RULES 5

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 the barriers and addressing the 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 enhancing their choice, creation of high-quality innovative goods and services at lower prices, that at the same time encourage undertakings to improve effectiveness and innovation in the market.

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, OG 79/09, 80/13 and 41/21) and Articles 101 and 102 of the Treaty on the functioning of the European Union, OJ C 115, 09.05.2008 (TFEU). In other words, the CCA applies the national competition law under the national Competition Act in parallel to European competition law contained in 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 2021 on 1 March 2022. For the first time this piece of legislation has regulated the area of unfair trading practices in the business-to-business 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 buyers with respect to their suppliers. The UTPs Act seeks to establish, ensure and promote fair-trading practices that would protect the participants in the business-to-business food supply chain.

About CCA

COMPETITION COUNCIL

The CCA is run and managed by the Competition Council consisting of five members. The president and the members of the Council are all employed in the CCA. They are appointed and relieved from duty by the Croatian Parliament, upon the proposal of the Government of the Republic of Croatia for a five-year term of office. The conditions for the appointment, the term of office and the scope of competence of the Council are regulated by the Competition Act. 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. At the same time, the president and the members 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.

As the managing body of the CCA the 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.

CCA EXPERT TEAM

Everyday administrative tasks are carried out by the expert team of the CCA, that consists 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 and investigation activities, whereas the Council adopts the decisions on the basis of which the case is resolved.

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.

CCA FINANCING

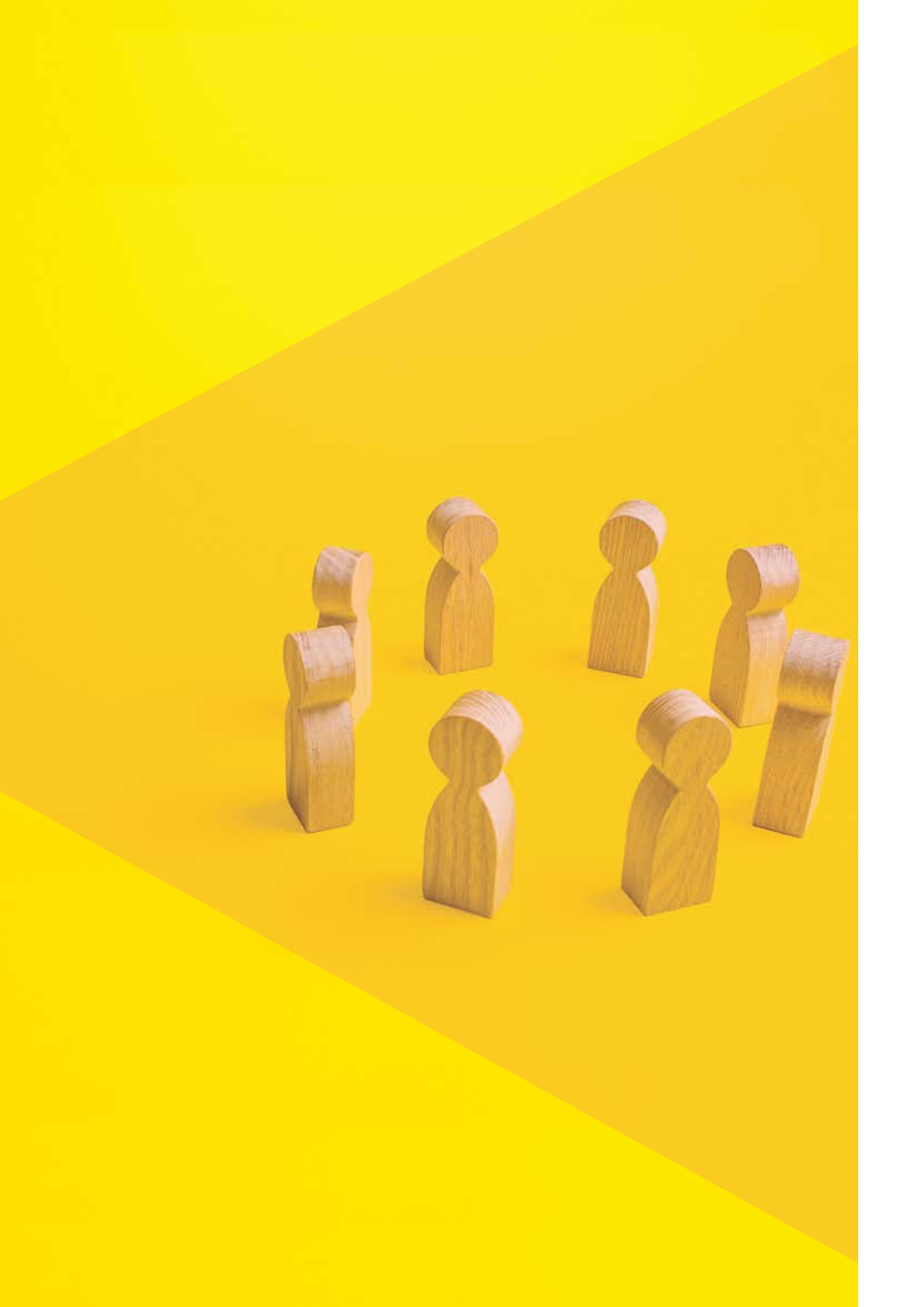
The CCA has no operational or financial revenue of its own. The CCA is financed exclusively from the State Budget of the Republic of Croatia. In compliance with the financial capacity of the State Budget of the Republic of Croatia the CCA is ensured resources in terms of sufficient qualified staff, financial means, technical and technological expertise, and equipment. 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 responsible distribution of 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 HRK 16.852,771 or EUR 2.236,747. The total executed budget in 2022 amounted to HRK 16.261,945 or EUR 2.158,331 which was 96.49% of the current plan for 2022.

FINES

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.



2022 IN FIGURES

RESOLVED CASES IN 2022

699

cases in the areas of competition and unfair trading practices in the business-to-business food supply chain

67

administrative cases

44

submitted complaints or initiatives

CONCRETE PROCEEDINGS

75

investigations in relevant markets

22

in the area of alleged prohibited agreements

21

in the area of alleged abuse of dominance

32

in the area of merger control

IMPOSED FINES IN 2022:

Total amount of **2.585.000,00 HRK** 343.088,46 EUR
both in the area of competition and unfair trading practices

IMPOSED FINES 2010 – 2022



37,510,100.00 HRK

in total 4,978,445.82 EUR

29,970,600.00 HRK

in the area of competition 3,977,782.20 EUR

7,539,500.00 HRK

in the area of unfair trading practices 1,000,663.61 EUR

PROHIBITED AGREEMENTS

36
resolved cases

22
administrative cases

14
non-administrative cases

EXAMINATION CONDUCTED

22
relevant markets

ABUSE OF A DOMINANT POSITION

21
relevant markets

27
resolved cases

23
administrative cases

4
non-administrative cases

MERGER CONTROL

26
resolved cases

12
administrative cases

14
non-administrative cases

MARKET INVESTIGATION

32
relevant markets

PROHIBITED CONCENTRATIONS

0

COMPETITION ADVOCACY

83
resolved cases

20
expert opinions

59
answers to different queries

4
cooperation cases

IN 2022
THE CCA
PUBLISHED

76 decisions

REPLIED TO

27 queries of the journalists

PUBLISHED

69 press releases

The CCA published 11 issues of its monthly e-bulletin AZTInfo 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.

Enforcement of competition law



2.155.000,00 HRK

286.017,65 EUR

**OF IMPOSED FINES IN 2022
FOR THE INFRINGEMENTS OF THE
COMPETITION ACT**

In 2022 the CCA continued to implement the national and European competition law as its core activity, with a focus on eliminating hard core restrictions and active collaboration with the European Commission (EC). In pursuit of this goal, the CCA concentrated on the practices of undertakings that directly produce anticompetitive effects and, consequently, adversely affect growth and the functioning of the economy.

Infringement proceedings in the area of competition law, dealing with, for instance, conclusion of a prohibited agreement between undertakings or the abuse of a dominant position, are highly complex. It is necessary to conduct detailed economic and legal analyses and at the same time protect the parties' rights to defence in the proceeding. These procedures are comprehensively regulated by the Competition Act, and they are always initiated ex officio, whereas a broad range of individuals may submit a complaint for the initiation of the proceeding.

Within the concrete case proceedings that were closed in 2022 the CCA carried out preliminary market 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.

Cases in the area of prohibited agreements

One of the priorities of the CCA in 2022 was again the elimination of hardcore restrictions of competition 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, or are engaged in any other behaviour in the market that produces harm to the consumers and the economy as a whole and therefore constitutes the most serious infringement of competition rules.

In the area of assessment of prohibited agreements in 2022 the CCA resolved a total of 36 cases, 22 thereof were administrative and 14 non-administrative cases. In these cases, the CCA conducted preliminary market investigations in 22 relevant markets. Here we list some of the relevant markets investigated in 2022 in administrative cases:

- public procurement procedure covering 14 groups of food products for the public purchaser - a social care institution providing soup kitchen services by concluding a four-year frame agreement in the public procurement procedure carried out by the institution "Dobri dom" of the City of Zagreb in 2012,
- provision of personal protection services,
- sale of drugstore products,
- driving schools' category B licence driver training,
- sale of water meter devices in the territory of Croatia,
- distribution of new motor vehicles of KIA Motors, provision of repair and maintenance services and sale of spare parts for motor vehicles of KIA Motors car make in the territory of Croatia,
- provision of leasing services,
- capital market and pension funds management,
- public procurement in the provision of school bus transportation services,
- distribution of motor vehicles, repair and maintenance of motor vehicles and sale of spare parts of Hyundai car make.



36
resolved
cases

22 administrative cases

14 non-administrative cases

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

Example of a prohibited horizontal agreement (bid rigging cartel) case in public procurement:

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

THE CCA FOUND THAT THE BIDDERS CONCERNED CONCLUDED A PROHIBITED HORIZONTAL AGREEMENT (CARTEL) IN THE SENSE OF ARTICLE 8 PARAGRAPH 1 ITEMS 1 AND 3 OF THE COMPETITION ACT, BY FIXING AND COORDINATING THE PRICES IN THEIR BIDS AND BY COLLUDING ON THE ALLOCATION OF INDIVIDUAL CONTRACTS WITH THE VIEW TO CREATING A DESIGNATED WINNING BIDDER IN THE TENDERING PROCEDURE CONCERNED. FOR THE HARD-CORE RESTRICTION OF COMPETITION RULES THE UNDERTAKINGS CONCERNED WERE IMPOSED A TOTAL FINE IN THE AMOUNT OF HRK 2,155 MILLION (EUR 286,018).

In its infringement decision of 28 April 2022, the Croatian Competition Agency (CCA) found that in the period from 4 June 2012 to 1 January 2014 the undertakings Agro-Vir d.o.o., Agrodalm d.o.o. and Diljexport d.o.o., all from Zagreb, concluded a bid rigging agreement in the public procurement procedure covering 14 groups of food products for the public purchaser – a social care institution providing soup kitchen services “Dobri dom” of the City Zagreb by concluding a four-year frame agreement in the public procurement procedure carried out by the institution “Dobri dom” of the City of Zagreb in 2012.

The CCA found that the bidders concerned concluded a prohibited horizontal agreement (cartel) in the sense of Article 8 paragraph 1 items 1 and 3 of the Competition Act with the objective of prevention, restriction and distortion of competition, by fixing and coordinating the prices in their bids and by colluding on the allocation of individual contracts with the view to creating a designated winning bidder in the tendering procedure concerned.


The CCA also found that the undertaking Marino-Lučko d.o.o. from Lučko subsequently joined the collusive agreement concerned in the period from 1 January 2013 to 1 January 2014 and thereby concluded a prohibited horizontal agreement with

the objective of prevention, restriction and distortion of competition within the meaning of Article 8 paragraph 1 item 3 of the Competition Act.

For the hard-core restriction of competition rules the undertakings concerned were imposed a total fine in the amount of HRK 2,155 million (EUR 286,018).

In the application of the relevant EU criteria, the CCA particularly found in the course of the investigation that the bid riggers practices, such as submitting tenders with identical or suspiciously similar quotes for the entire duration of the four-year frame agreement and almost identical bids for the conclusion of individual public procurement contracts for 2012, identical bids of different bidders within the same group of products, suspicious and courtesy tenders of the same bidder for individual years within the same group of products, sub-contracting and contract allocation in public procurement agreements and bid suppression schemes, taken together, were all solid indications of the existence of a hard-core restriction of competition and a bid-rigging cartel.

Material evidence of the suspected irregularities in the public procurement procedure concerned was collected in the



For the hard-core restriction of competition rules the undertakings concerned were imposed a total fine in the amount of HRK 2.155 million (EUR 286,018).

surprise inspections of the premises of Agrodalm and Diljexport. In this particular case, the CCA found that the bidders violated the provisions of Article 8 of the Competition Act. Concretely, the bidders concluded a bid-rigging cartel by fixing and coordinating the prices in their bids conspiring on the outcome of the public procurement procedure and colluding on the allocation of individual contracts with respect to a particular group of products and a particular year with the view to creating a designated winning bidder in the public procurement procedure based on the frame agreement for a particular group of products and a particular year.

The collusive bid rigging practices in the public procurement procedure concerned eliminated any risk of competition in the bidding procedure. Such collusive cartel practices that result in horizontal price fixing are considered likely to have anticompetitive effects, especially on the price, volume or quality of the products or services concerned and therefore it is not necessary to prove their actual effect on the market for the purpose of the application of Article 8 of the Competition Act. Agreements on market

sharing or market allocation constitute hard core restrictions of competition rules “by object” and they are explicitly prohibited by Article 8 paragraph 1 of the Competition Act.

In other words, the CCA found the prohibited agreement concerned contained restrictions of competition by object where the harmful nature of the agreement by its very nature has the potential of restricting competition where it is unnecessary to demonstrate any actual effects on the market. However, in this particular case, the CCA also found that the agreement concerned at the same time produced actual and significant anticompetitive effects relating to the subject matter of the prohibited agreement concerned.

In its ruling of 14 September 2022, the High Administrative Court of the Republic of Croatia rejected the claim for cancellation of the decision of the CCA of 28 April 2019, rejecting at the same time the proposed postponement of the claim, the imposition of the interim measure and the recovery of the litigation costs. By the ruling of the High Administrative Court the decision of the CCA became legally valid.

Cases in the area of abuse of dominance

Abuse of a dominant position by an undertaking/s on the market is also a hard core restriction of competition that impedes the competitive market structure and prevents the competitors from market entry or growth. Within the meaning of the Competition Act the undertaking which holds more than a 40 per cent market share in the relevant market can be presumed to be dominant but this is a rebuttable legal presumption. When identifying a dominant position on the market, a whole range of factors are taken into account, such as, for example, the time during which the undertaking holds a high market share and its market position, its economic power, advantageous access to sources of supply or the market, economic links with other undertakings, legal or factual barriers to entry, the ability to impose market conditions with regard to its supply or demand and the ability to exclude competitors from the market by targeting other undertakings.

Dominance is not prohibited but abuse of dominance definitely is, and it takes the most typical forms like:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
- making the conclusion of contracts subject to acceptance

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

Abusive exclusionary practices are particularly detrimental to competition. This is why in 2022 the CCA continued to investigate whether certain undertakings have been involved in such abusive practices.

In 2022 the CCA conducted a preliminary market investigation in 21 relevant markets relating to alleged abuse of dominance. Here are some of the markets that have been investigated by the CCA within administrative cases:

- provision of seasonal transportation services for tourist groups on the route from the port of Gruž to the special traffic regime zone,
- provision of bus scheduled services on the lines: Zagreb-Munich Zagreb-Vienna, Zagreb-Mostar, Split-Ljubljana, Rijeka-Zagreb, Rijeka-Ljubljana, Split-Zadar, Rijeka-Zadar, Rijeka-Šibenik and Rijeka-Split,
- provision of chimney sweeper's services in the City of Zagreb,
- provision of funeral services,
- provision of gas supply services,
- distribution of textbooks,
- sale of water flossers.



27
resolved
cases

23 administrative
cases
4 non-administrative
cases

Example of abuse of dominance case:

CCA V HEALTH CENTRES POLIKLINIKA MARIN MED AND POLIKLINIKA GLAVIĆ FROM DUBROVNIK

THE CCA DISMISSED THE INITIATIVE FOR THE INITIATION OF THE INFRINGEMENT PROCEEDING AGAINST THE HEALTH CENTRES POLIKLINIKA MARIN MED AND POLIKLINIKA GLAVIĆ DUE TO LACK OF STANDING TO ACT EX OFFICIO IN THE SENSE OF THE COMPETITION ACT.

The submitted initiative essentially claimed that the cost of a complete blood count (CBC) test, which can be conducted in a private laboratory in Zagreb for an average of around HRK 70 was significantly higher in Dubrovnik, ranging between HRK 150 and 250. According to the initiative, there are two private health centres in Dubrovnik, Poliklinika Marin Med and Poliklinika Glavić, providing this type of medical examination. Poliklinika Marin Med conditions the blood collection service for children with payment for a consultation with their paediatric specialist, costing approximately HRK [...], while Poliklinika Glavić does not condition the service but charges, allegedly, two to three times higher cost of this test than in Zagreb and the rest of Croatia. The initiative also mentioned high prices for other tests such as gastroscopy, dermatological examinations, and other medical examinations. During the preliminary market investigation in the provision of paid CBC testing services in Dubrovnik, it was established that only legal entities registered for the conduct of medical -biochemical analysis could provide this service. These include the Glavić Healthcare Institution, the Maldini Laboratory, and the Dubrovnik General Hospital. One of these medical-biochemical laboratories has been used by Poliklinika Marin Med, against which the complaint was filed. It was also found that neither Poliklinika Glavić nor Poliklinika Marin Med perform medical-biochemical tests that include CBC testing.

Regarding the claims about the prices of other tests (gastroscopy, dermatological examination), which are also significantly higher than in the rest of Croatia, it should be noted that CCA did not conduct a detailed analysis of these prices, primarily because they are subject to specific rules. Furthermore, during the preliminary market investigation, it was found that there was a significant number of registered institutions that provided the healthcare services in Dubrovnik. Specifically, there have been 23 institutions, of which 19 were established by private individuals and legal entities, and four were established by the city/county. Concerning the claims that Poliklinika Marin Med conditions CBC testing with a consultation with a paediatric specialist, the response from Poliklinika Marin Med indicated

that the participation of a paediatric specialist was necessary for the interpretation of the results due to different reference values for children. The responses from Dubrovnik General Hospital and the Dubrovnik Health Centre also indicated that the service of examining children by a paediatric specialist was immediately available and accessible within the public health care network. The analysis of the pricelists of the registered medical-biochemical laboratories showed that prices for the mentioned service in Dubrovnik did not significantly differ and averaged around HRK 51, which was contrary to the claims found in the initiative that prices ranged from HRK 150 to 250. The prices for this service in Dubrovnik were also comparable to those in Zagreb, averaging around HRK 52. It was also evident that deviations from the prices prescribed by the Croatian Chamber of Medical Biochemists were not significant. Additionally, Poliklinika Glavić's response contradicted the initiative's claims about prices ranging from HRK 150 and 250. According to Poliklinika Glavić, services from another economic entity, the Glavić Healthcare Institution (an entity personally connected to Poliklinika Glavić), were used for the comparison. It was evident from the provided invoice from the Glavić Healthcare Institution that the mentioned price did not refer only to the CBC test but also included two additional services, resulting in a higher bill. This was confirmed by the invoice issued by the Glavić Healthcare Institution.

In conclusion, based on all the provided data and documentation, and the analysis of facts and circumstances, the CCA found that there were no indications that Poliklinika Marin Med and Poliklinika Glavić could hold a dominant position in the relevant market for the provision of paid CBC testing services in Dubrovnik, in other words, in this particular case the CCA found that neither Poliklinika Marin Med nor Poliklinika Glavić could abuse their dominant position on the account of the fact that they did not hold a dominant position within the meaning of Article 13 of the Competition Act in the first place. In line with the above arguments the CCA decided to dismiss the case concerned.

Merger control

In the sense of competition rules, a concentration between undertakings arises where a change of control on a lasting basis is created by:

- acquisition or merger of two or more independent undertakings or parts thereof that establish a new company or continue to operate under the name of one of these;
- acquiring direct or indirect control or decisive influence of one or more undertakings over one or more other undertakings, or of one or more undertakings or a part of an undertaking, or parts of other undertakings, in particular by: acquisition of the majority of shares or share capital, or obtaining the majority of voting rights, or in any other way in compliance with the provisions of the Companies Act.

The creation of a joint venture by two or more independent undertakings performing on a lasting basis all the functions of an autonomous economic entity also constitutes a concentration within the meaning of competition rules.

As a rule, mergers (concentrations between undertakings) are a 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/s 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.

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. In other words, no concentration exceeding the said thresholds can be implemented without the compatibility assessment and approval of the CCA.

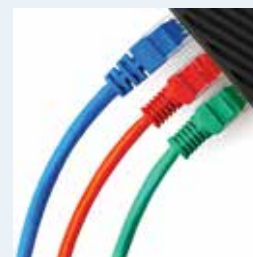
The task of the CCA is to carry out ex ante investigations into these transactions and run the checks into their possible beneficial effects on market structure and consumer interests, that should outweigh the anticompetitive effects of the concentrations, such as the decline in the number of competitors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

In 2022 the merger control cases involved the analysis of 32 relevant markets. Here we list some of these relevant markets:

- wholesale in unleaded fuels,
- wholesale in diesel fuels,
- wholesale in extra-light heating oil,
- retail in motor fuels (unleaded petrol and diesel fuels) in the segments of petrol stations located on and outside the highways,
- retail in liquefied petroleum gas (LPG) in the segments of cylinder and natural gas engines,
- production and sales of energy cables,
- production and sales of telecommunication cables,
- production and sales of ship cables,
- production and sales of railway cables,
- wholesale in agricultural machinery and spare parts,
- provision of power lines construction services,
- provision of infrastructure construction services,
- provision of design services for infrastructure, power lines, and other facilities,
- retail of broadband internet access,
- retransmission of pay-tv channels,
- groceries retail (food, beverages, toiletries and household supplies), and
- footwear and fashion accessories retail etc.

32

relevant
markets



Example of merger assessment case:

CONDITIONALLY APPROVED CONCENTRATION GRAND AUTOMOTIVE LLP/GRAND AUTOMOTIVE RD LTD. AND RENAULT NISSAN HRVATSKA D.O.O.

The CCA conditionally approved the concentration between Grand Automotive LLP/Grand Automotive RD Ltd. and Renault Nissan Hrvatska. Through its connected undertakings Grand Automotive LLP is an authorised distributor of Hyundai, Nissan and Ford new motor vehicles in the Republic of Croatia. In the post-merger period Grand Automotive LLP will transfer its shares in Renault Nissan Hrvatska to a special purpose vehicle under its control - Grand Automotive RD Ltd.

In one reply to its request for information the CCA received the concerns of one undertaking active in the sales and servicing market as an authorised repairer and re-seller of spare parts. The undertaking who has requested confidentiality expressed its concerns relating to the alleged unequal treatment of the members of the selective distribution system, breach of confidentiality of data between competitors in the case of multi-brand servicing and practices denying or restricting access to original spare parts and technical information to independent repairers. In the course of the assessment the CCA requested additional information and documentation from competitors in the relevant market: Porsche Hrvatska and Emil Frey Group as the most significant multi-brand importers and repairers, and other independent repairers.

The relevant markets in this particular case included: the sale of new motor vehicles (passenger cars and light commercial vehicles), the sale of original spare parts for Hyundai, Ford, Renault, Nissan and Dacia motor vehicles and the repair and maintenance of Hyundai, Ford, Renault, Nissan and Dacia motor vehicles, all in the territory of the Republic of Croatia. The investigation in the relevant markets was conducted in line with the practice of the CCA and the European Commission dividing the new motor vehicles market into two segments - passenger cars and light commercial vehicles segments where the brands of both the acquiring and the target company have been present.

In 2021, in the sale of new motor vehicles in the passenger cars segment in the territory of the Republic of Croatia, the most significant market share was held by Porsche Hrvatska, the authorized representative of 5 motor vehicle brands, namely Volkswagen, Škoda, Audi, Seat and Cupra, that held a [20-30]% share. It was followed by Renault Nissan Hrvatska with a two-fold smaller market share of about [10-20]%, and Emil Frey Group (Alfa Romeo, Citroen, Peugeot, Fiat, Jeep, Fuso, Smart,

Mercedes-Benz, DS) with about [10-20]% share. Other market participants held the shares of less than 10%. With the implementation of the concentration in question, the post-merger market share of the participants of the concentration in question would amount to [20-30]% and Grand Automotive LLP would become the most important competitor of Porsche Hrvatska.

In the sale of new motor vehicles in the segment of light commercial vehicles in the territory of the Republic of Croatia in 2021, the most significant market share was held by Emil Frey Group, an authorized representative for Alfa Romeo, Citroen, Peugeot, Fiat, Jeep, Fuso, Smart, Mercedes-Benz, DS), that was almost [30-40]% in the segment of light commercial vehicles, followed by Renault Nissan Croatia with around [20-30]% market share. Third place was taken by Grand Automotive LLP with about [10-20]% share. In the post-merger period Grand Automotive LLP would become the leading competitor in this market segment, with a post-merger market share of [30-40]%, followed by the current leader - Emil Frey Group with [30-40]%, and one percentage point less.

The relevant markets for the sale of original spare parts and the provision of repair and maintenance services for motor vehicles are closely linked and dependent on the market for the sale of new motor vehicles. This is due to the nature of the new motor vehicles sector, with obvious vertical links between the manufacturer and all the way to the final distributor, where it is common for an authorized importer, the representative of the manufacturer of a certain brand, to be authorised by the manufacturer to set up an authorized network of sellers and repairers for a particular brand, while the importer/distributor exerts very significant influence in the distribution pyramid scheme and usually has a significant market power in the aftermarket. The markets for the provision of motor vehicle repair and maintenance services and the sale of spare parts are determined by the brand, and thus separated from each other. With regard to the way of carrying out the mentioned activities, it is necessary to distinguish between authorized and independent repairers of motor vehicles of the brand, i.e., authorized and independent distributors of spare parts for the specified brand. Spare parts of a specific brand are usually distributed through an authorized repair network, therefore the distributors of spare parts of a particular brand are, as a rule, at the same time authorized repairers of that brand. In the case of malfunction, the consum-

er can only turn to a repairer that is trained to repair a specific brand and who has the appropriate special and diagnostic tools that, as a rule, differ from brand to brand. Consequently, the competitive constraints of the repairers of a particular brand on the repairers of other brands are rather insufficient.

In the motor vehicle sector, due to the presence of a complex supply chain, different economic entities operate and interact at different levels. When it comes to repairs and maintenance, authorized and independent repairers are service providers, while on the demand side the main participants are individuals and economic entities. Spare parts are supplied by original equipment suppliers, directly or by manufacturers, and by independent suppliers, while on the demand side the main participants are repairers and, to a lesser extent, economic entities that manage fleets and individuals. Therefore, when considering the aftermarket of motor vehicles, it is important to take into account its special features, one of which is reflected in the costs for the end customer. Namely, the costs borne on average by consumers for motor vehicle repair and maintenance services represent a very high portion of the total consumer expenditure on motor vehicles. Competitive conditions in the motor vehicle aftermarket also have a direct bearing on public safety, in that vehicles may be driven in an unsafe manner if they have been repaired incorrectly, as well as on public health and the environment.

Although competition between individual brands of vehicles within authorized repairers' networks is restricted by strict and detailed quality criteria and large investments required from authorized repairers, independent repairers continue to exert considerable competitive constraints on authorized repairers and give consumers the opportunity to choose regarding the services provided and the prices. Namely, the business models and operating costs of independent repairers differ from those in authorized repairers' networks. Effective competition on the

markets for the purchase and sale of spare parts, as well as for the provision of repair and maintenance services for motor vehicles, depends on the degree of competitive interaction between authorized repairers, as well as between authorized and independent operators, including independent spare parts suppliers and repairers. The latter's ability to compete depends on unrestricted access to essential inputs such as spare parts, repair tools or diagnostic or other equipment and technical information and data generated in the vehicle. Without access to these essential inputs, independent repairers would not be able to compete effectively in the marketplace with authorized repairers, as they would not be able to provide consumers with high quality services that contribute to the safe and reliable operation of motor vehicles. This aspect is becoming even more relevant with the increasing use of the installed digital technologies and the development of alternative fuel vehicles that require special know-how, tools and spare parts. The inability to access the essential technical information can result in a decline in the market position of independent operators/repairers, which in turn produces harm to the consumers in terms of a significant reduction in the choice of spare parts, higher prices of motor vehicle repair and maintenance services, a reduction in the choice of repair and maintenance services providers and potential safety issues.

In the case concerned, in the post-merger period, the acquirer will increase its market power by expanding the portfolio of motor vehicle brands for which it will be the authorized importer and the operator of the authorized distribution and repair network, and it will become one of three most significant authorized multi-brand importers in the territory of the Republic of Croatia, both in the passenger cars segment and the light commercial vehicles segment. Due to already mentioned special features of the sector in which it operates, it will have a significant impact on the entire distribution and repair network for Ford, Hyundai, Renault, Dacia and Nissan vehicles, espe-



cially on the secondary aftermarket. Namely, in all authorized service networks for Ford, Hyundai, Renault and Dacia vehicles (with the exception of Nissan), mixed qualitative-quantitative selective distribution system is in use, which, as a rule, is considered more restrictive than the purely qualitative distribution system, since it imposes additional criteria in terms of the limited number of authorized repairers. Grand Automotive LLP also stated that it intends to keep the existing authorized network as in effect now.

Particularly regarding the restrictions that arise from the special features of the sector concerned, the role of the authorized importer of motor vehicles becomes important in the aftermarkets. Namely, the markets for the provision of motor vehicle repair and maintenance services and the sale of spare parts are defined by the brand, and thus separated from each other. Therefore, the competitive constraints of the repairers of a particular brand on the repairers of other brands are rather insufficient. Consequently, the dual role of the authorized importer is to ensure, on one hand, effective competition between authorized repairers without breaching data confidentiality between competing undertakings by imposing the IT business systems that would compromise it, taking into account the fact that authorized importers are often, as in the case concerned, authorized distributors and repairers themselves and compete with other members of the authorized network. On the other hand, the authorized importer can contribute to effective competition between authorized and independent repairers, primarily by granting free access to essential inputs such as spare parts, tools, training, technical information and other data generated in the vehicle.

In light of increasing digitization and technological developments in the sector in question, denying or restricting access has multiple fallouts, both for independent repairers, who are usually smaller undertakings and for whom access to informa-

tion, data and spare parts is a necessary prerequisite for their operation, as well as for end consumers, since any reduction in the choice of spare parts, or in the number of repairers, directly increases the price of maintenance during the vehicle's service life. At the same time, distinguishing between repairs and maintenance within the warranty period and outside the warranty period, and obtaining clear information from the authorized importer about what is mandatory and what is not for maintaining the warranty on the motor vehicle, also has a great impact.

As a result of the above, taking into account the structure of the relevant market with regard to existing and potential competitors, general indicators of market shares, information and documentation obtained from the undertakings, the CCA found that this concentration can only be allowed subject to remedies that would eliminate anticompetitive effects of the concentration in the market for the sale of original spare parts for motor vehicles of the Hyundai, Ford, Renault, Nissan and Dacia brands, and in the market for the provision of repair and maintenance services for motor vehicles of the Hyundai, Ford, Renault, Nissan and Dacia brands in Republic of Croatia. Consequently, in August 2022, the CCA accepted the commitments undertaken by the notifying party Grand Automotive LLP/Grand Automotive RD Ltd with a view to eliminating the negative effects of the concentration concerned within the set deadlines.

Concretely, Grand Automotive LLP and Grand Automotive RD Ltd have committed to a transparent operation within the meaning of competition rules, application of equal selective distribution criteria to all members of the authorised distributors' network, ensuring confidentiality of information between competing multi-brand repairers and easier access to original spare parts and technical information to independent repairers.

SALE OF NEW MOTOR VEHICLES IN THE SEGMENT OF LIGHT COMMERCIAL VEHICLES IN THE TERRITORY OF THE REPUBLIC OF CROATIA IN 2021

EMIL FREY GRUPA **30-40%**

RENAULT NISSAN HRVATSKA **20-30%**

GRAND AUTOMOTIVE LLP **10-20%**

NOTIFICATIONS OF CONCENTRATIONS

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.

Competition advocacy



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 as its important complementary part. 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. Competition advocacy activities

include important market studies, the publishing of the CCA decisions on its website, press releases, the monthly e-bulletin AZ-TNinfo and other communication activities that ensure transparency in the work of the CCA. The CCA experts often write articles and research papers, give lectures, organize and participate in trainings, workshops and international conferences covering the relevant competition issues.

The primary enforcement activity of the CCA is thereby significantly enhanced by

competition advocacy. 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.

Example of competition advocacy case:

CCA OPINION ON CROATIAN BAR ASSOCIATION DIRECTORY ENTRY FEES

Pursuant to its powers under Article 32 paragraph 1 item a) of the Competition Act the CCA is empowered to collect data and information from legal or natural persons, professional associations or economic interest groups, associations of undertakings, consumers associations, public administration authorities and local and regional self-government units that may have certain knowledge that can contribute to the investigation of the market and identifying market positions, regardless of the concrete cases handled by the CCA. In this particular case, the CCA investigated into the provisions regulating the membership in the Croatian Bar Association particularly regarding the Decision on registration fees for the entry into the Croatian Bar Association directory applicable to different categories of lawyers and found that the amount of the registration fee of HRK 37,500 (EUR 4,977) for the first registration of a lawyer in Bar Association directory is excessive and constitutes a barrier to entry to that category of persons.

Under the Lawyers' Act, attorneys at law must be members of the Bar Association as an independent and autonomous organisation founded as a legal entity. One of the mandatory requirements of each attorney is the obligatory payment of the membership fee. Consequently, in view of the importance of the service provided by lawyers as members of the Bar Association, it is indisputable from the point of view of the competition rules that lawyers, members of the chamber, are undertakings, in that regard, an association of undertakings.

Within the meaning of competition rules, it is also common ground that the chamber has the right to determine the amount of the registration fee in question, taking into account the different categories of persons registered in the directory of the Bar Association depending on whether they are lawyers' trainees, trainees with insufficient length of service, or persons who are registered into the directory of the Bar Association for the first time (so-called 'other lawyers'). In that regard, specified, adequate, and proportionate differences in the level of the registration fee may be regarded as objectively justified. However, the amount of the registration fee should not be significantly different. Namely, as membership in the Bar Association for lawyers is mandatory and as payment of the registration fee is mandatory, it is concluded that the payment of the registration fee is a condition for entry into the market for the provision of legal services. Therefore, any condition for entry or participation in the market that is disproportionate, excessive, restrictive, certainly constitutes a barrier to entry and participation in that market from the point of view of competition rules.



With respect to the requirements for the entry into the attorneys' register the CCA collaborated with the European Competition Network (ECN) and requested the relevant data from several jurisdictions regarding the matter: Austria, Belgium, Bulgaria, Cyprus, Czechia, Denmark, Estonia, France, Germany, Malta, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and also consulted the registry rates in other countries, Albania and Serbia. The CCA concluded that the registration fee in most of the countries was on average between EUR 100 and EUR 300, while some countries did not apply registration fees as such. It was also concluded that the differences in the fees depending on the category of registers (lawyers) were significantly smaller compared to the Republic of Croatia and, as a rule, amounted to around EUR 200 on average.

Considering all the above, the CCA concluded that the amount of the registration fee of HRK 37,500 (EUR 4,977) for the first registration of a lawyer in Bar Association directory is excessive and constitutes a barrier to entry to that category of persons. From the point of view of competition rules, the amount of the registration fee in question is regarded as a financial condition or a possible financial barrier to entry into that market. Therefore, this fee should not be significantly different and excessive, disproportionate, and restrictive.

Sector inquiries

Market investigations are also one important part of the CCA regular activities. These legal and economic analyses are research projects with the purpose of gaining in-depth understanding of how particular sectors or markets work. They give us insight into 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 sector inquiries 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 study into the provision of food delivery services via digital platforms in the Republic of Croatia, the retail groceries' market (market research in food, beverages, toiletries and household supplies), the insurance market and the press publishing market – all available on the CCA website.



Example of sector inquiry:

CCA MARKET STUDY INTO ON-LINE FOOD DELIVERY IN CROATIA IN 2021

In November 2021 the Croatian Competition Agency (CCA) launched a market investigation into the provision of food delivery services via digital platforms in the Republic of Croatia with the aim of determining the relevant facts relating to the pricing method for the provision of online food delivery services, inspecting the mutual relations between digital platforms and their most important partners - restaurants and catering establishments, and the mutual relations between the digital platforms and the food delivery workers (mandataries). The emphasis of the research was additionally focused on the general terms and conditions used by individual digital platforms that actively provide food delivery services in the Republic of Croatia, as well as the contractual relations with restaurants and other catering establishments. The reason for carrying out this sectoral research, among other things, has been the fast-emerging influence of digital platforms in the provision of food delivery services in the Republic of Croatia, particularly due to the spread of the COVID-19 pandemic in the past two and a half years. The analysis has covered the legislative framework and the implementation in the provision of online food delivery services. General indicators of the online food delivery market in the Republic of Croatia have been determined, such as the turnover of the individual digital platforms, the number of service users - restaurants and catering facilities, the pricing and price calculation in the provision of online food delivery services, the mutual relations between the digital platforms and their most important partners - restaurants and catering establishments, and the mutual relations between the digital platforms and delivery workers. The understanding of the comparative practice of the European Commission and individual national competition authorities has also been included in the market analysis.

The main source of law in this area is the Electronic Commerce Act that has transposed into the Croatian legal system the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market. The Act on the Implementation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services, entered into force on 12 December 2020. The Regulation (EU) 2019/1150 aims to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency, fairness, and effective redress possibilities, creating at the same time predictable, sustainable and trusted online business environment within the internal market open to innovation. For the purpose of this research, the CCA created a sample of undertakings that primarily provide online food delivery services, i.e., three digital plat-

forms that are dominant in the market concerned. These are Wolt Zagreb d.o.o., Zagreb, Bolt Services HR d.o.o., Zagreb and GlovoApp Technology d.o.o., Zagreb. The founders of these undertakings with their seats in the Republic of Croatia are parent companies in Finland in Helsinki (Wolt), the Republic of Estonia in Tallinn (Bolt) and the Kingdom of Spain in Barcelona (Glovo). Wolt started providing online food delivery services in the Republic of Croatia in December 2018, Glovo started in March 2019, and Bolt in May 2020.

The research showed that at the end of 2021, one digital platform provided online food delivery services in 27 towns and cities and covered the territory from the western to the southern part of the Republic of Croatia, including the four biggest cities: Zagreb, Split, Rijeka and Osijek. Second surveyed digital platform has provided these services in 11 towns and cities, also including the cities of Zagreb, Split, Rijeka and Osijek, whereas third provider of these services has been active in three cities (Zagreb, Split, Osijek) with an expansion plan. In relation to the structure of the online food delivery market in the Republic of Croatia in the period from 2019 to 2021, the research results showed that the undertaking Wolt represented the most significant online food delivery platform. In the part that referred to the way in which the relations with delivery workers (mandataries) as an important stakeholder in the food delivery chain have been regulated, the research results showed that digital platforms used general terms of business and contracts with delivery workers (mandataries). One of the digital platforms stated that its relations with delivery workers had been regulated in a specific way, given that the digital platform concerned did not directly employ couriers and that the couriers could work through a partner company or be self-employed. All three digital platforms stated that they perform their activities exclusively as intermediaries between the restaurants, the delivery workers and the persons who order food. In the part referring to the requirements that must be met by delivery workers, the results of the research have essentially been the same for all three digital platforms. In the market study in question, the CCA carried out the analysis of the comparative practice of the European Commission and national competition authorities in the provision of online food delivery services. In that sense, it examined the relevant research studies in online food delivery market made by some national competition authorities. Based on the results of the research, the CCA will continue to investigate into the compliance of provisions under the agreements concerned with the Competition Act.

More information about the market study into on-line food delivery in Croatia in 2021 can be found on the CCA website.

Judicial review



In 2022 the High Administrative Court took 9 decisions in the area of competition and in all of them it dismissed the claims of the claimants and upheld the decisions of the CCA in their entirety. Thereby the decisions of the CCA became legally valid.

Against the decision of the CCA in the area of antitrust and merger control no appeal is allowed but the dissatisfied party can take action against the decision of the CCA by filing a complaint for an administrative dispute at the High Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision.

The claim shall be decided over by a panel of three judges with respect to the following points:

- misapplication or erroneous application of substantive provisions of competition law,
- manifest errors in application of procedural provisions,
- incorrect or incomplete facts of the case,
- inappropriate fine and other issues contained in the decision of the CCA.

Against the decision of the CCA identifying an infringement of the Competition Act and Article 101 or 102 TFEU and imposing a fine or a periodic penalty payment, a claim may be filed by the injured party to the proceeding, whereas against the decision of the CCA on the basis of which the proceeding is terminated, a claim may be filed also by the complainant and the person who has been granted the same procedural rights that are enjoyed by the complainant. Against the decision of the High Administrative Court of the Republic of Croatia rejecting the claim of the claimant in an administrative dispute, i.e., confirming the legality of the decision of the CCA, a constitutional complaint can be filed in cases regulated by the Constitution of the Republic of Croatia. For example, this can be done when the dissatisfied party believes that its right to a fair trial has been violated (Article 29 paragraph 1 of the Constitution of the Republic of Croatia) or when it believes that there has been a violation of the legality of individual acts of the state administration and public authorities and their judicial control (Article

19 of the Constitution of the Republic of Croatia). 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.

Against the decision of the CCA in the area of unfair trading practices in the business-to-business food supply chain 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 trading practices in the food supply chain, (ii) essential violation of procedural provisions, (iii) inaccurate or incomplete facts of the case, and (iv) incorrect decision about the 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 trading practices in terms of the UTPs Act, in 2022 one judgement was issued in which the claimant's claim for annulment of the decision of the CCA was rejected, together with the request for compensation for the costs of the administrative dispute. The High Administrative Court also dismissed the appeal of the appellant in one case and upheld the decision of the first instance court that dismissed the belated claim and made the decision of the CCA legally valid after the claim expiry date.

IN 2022, in two rulings the High Administrative Court rejected the appeals of the re-sellers and upheld the rulings of the first instance courts rejecting the claims for cancellation of the decisions of the CCA on the infringement of UTPs Act. By these rulings the CCA infringement decisions became legally valid and the parties made payments of the respective amounts of fines into the State Budget.

Enforcement of the rules on the prohibition of unfair trading practices in the business-to-business food supply chain

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.

In 2022 the CCA closed ten administrative proceedings. In five decisions thereof the CCA found that the party to the proceeding used its strong bargaining power and imposed on its suppliers unfair trading practices. For the infringements concerned the CCA imposed fines, whereas it terminated the proceedings in four cases due to lack of standing to act. In one case the CCA decided on the protection of identity of a person who filed a written submission.

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 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 area of unfair trading practices, the CCA has also 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.

79
resolved
cases

10
administrative
cases

69
non-administrative
cases

In the period from 1 January 2022 to 31 December 2022, the CCA imposed fines totalling HRK 430,000 (EUR 57,071) on the undertakings that committed the infringements and imposed unfair trading practices in the sense of the UTPs Act. During the same period, a total of HRK 2.609,980 (EUR 346,404) in fines and HRK 321,098 (EUR 42,617) in penalty charges were paid into the State Budget of the Republic of Croatia based on the CCA infringement decisions.



Example of unfair trading practices case:

CCA V DAIRY PROCESSING COMPANY
PIK RIJEKA, D.D.

The CCA opened ex officio infringement proceeding against the dairy processing company PIK Rijeka within the meaning of the UTPs Act with the view to establishing whether this buyer of raw milk used its strong bargaining power and imposed unfair trading practices on its suppliers.

The investigation found that PIK Rijeka used its strong bargaining power and imposed several unfair trading practices on its raw milk suppliers within the meaning of the UTPs Act.

The CCA found that PIK Rijeka purchased raw milk from its suppliers based on a standard purchase agreement for 2019 and 2020 (Milk Purchase Agreement) that did not clearly define the terms and deadlines of the delivery of agri or food products concerned, which contravenes with the UTPs Act regulating that any business deal must be based on an agreement concluded between the processor and the supplier in a written form.

Besides, after the 2019 agreements ceased to be in effect until the conclusion of the subsequent 2020 agreements, PIK Rijeka made business deals with its suppliers without any written agreement, what is more, it even made business transactions before the period concerned without any agreement in a written form, which contravenes with the UTPs Act and constitutes an unfair business practice.

In addition, some of the suppliers did not get receipts for made

deliveries, which also constitutes an infringement of the UTPs Act.

Moreover, PIK Rijeka imposed unfair trading practices on the suppliers by calculating the premium according to the volumes specified in litres of raw milk instead of kilos that lead to the reduction of payment to the prejudice of the suppliers and caused a non-transparent fall in the value of the delivered raw milk. PIK Rijeka thereby imposed an unfair trading practice within the meaning of the UTPs Act.

Finally, the CCA found that in the period from January 2020 to May 2020 PIK Rijeka made payments to some of its suppliers over the period exceeding 30 days from the date of the receipt of the invoice i.e., outside the mandatory payment deadline under the UTPs Act, or later than 30 days from the date of the receipt of the lab results of the central quality control laboratory for the suppliers that do not issue an invoice, which contravenes with the provisions of the UTPs Act and constitutes an unfair trading practice.

For these serious infringements of the UTPs Act PIK Rijeka was imposed a fine in the amount of HRK 100,000 (EUR 13,272).

The CCA prohibited PIK Rijeka any further behaviour that constitutes unfair trading practices and also ordered PIK Rijeka to supply evidence on the paid difference for the undervalued premium plus the penalty charges.

PIK Rijeka was imposed a fine in the amount of HRK 100,000 (EUR 13,272) for serious infringement of the UTPs Act.



International cooperation

In 2022 international activities involved multilateral cooperation and bilateral contacts with competent authorities in and outside the EU. At the same time, the CCA continued its activities in the multilateral cooperation forums.

CCA AND OECD

After the Republic of Croatia received the candidate status in January 2022, the CCA further intensified its activities with the OECD Competition Committee about 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, have 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.

As part of the work of the Competition Committee, the president of the Competition Council, Mirta Kapural, PhD, LL.M., participated through written contributions on the topic of interim measures in the enforcement of competition law and on the topic of undertaking commitments in abuse of dominance proceedings. She also took part in an oral intervention concerning the Annual Report of the CCA for 2021, with a focus on legislative changes and most significant cases in the past year. Besides the president of the Competition Council, the vice-president Vesna Patrlj, LL.M., also participated in the OECD Global Forum on Competition held in Paris.

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. 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.

ADOPTION OF THE EU REGULATION – DIGITAL MARKETS ACT (DMA)

Within the European Council working group for competition, a total of 23 meetings were held in 2022 on the topic of the 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). Branimira Kovačević, MSc, head of the Department for International and European Cooperation in the CCA and 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.



COOPERATION WITHIN EUROPEAN COMPETITION NETWORK (ECN)

The trend of numerous requests for information between the agencies through the ECN 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, LL.M, president of the Council. The topics of the meetings of the heads of national authorities were the 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) 1/2003, current merger control issues, leniency program, notice on the relevant market and Article 102 TFEU.

CCA 25TH ANNIVERSARY

In 2022 the CCA celebrated its 25th 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”. At the beginning of the conference the participants were addressed by Mirta Kapural PhD, LL.M, president of the Competition Council and the opening presentations were given by Olivier Guersent, the European Commission Director General of the Directorate General for Competition (DG COMP), Richard Whish, Professor Emeritus (University of London, Kings College) and professor Vesna Tomljenović, PhD, judge (General Court of the European Union). The conference started with a panel of the OECD experts discussing

the rapidly accelerated digital economy market. This new area poses a challenge for competent authorities throughout the EU and beyond. The second panel was dedicated to “25 years of the CCA and 20 years of the Council Regulation 1/2003”. In June 2022, the European Commission launched a public consultation seeking feedback on the implementation of the Council Regulation 1/2003. At the time of its adoption, Regulation 1/2003 fundamentally reformed the way EU antitrust rules were implemented. As for the third topic of the conference, new vertical rules (Vertical Block Exemption Regulation (“VBER”) accompanied by the new Vertical Guidelines,) were discussed, which were adopted after a thorough evaluation and revision of the 2010 rules. Prominent speakers from the EU member states, the OECD, national competition authorities, business and academia, lawyers and judges discussed these important topics and used this opportunity to exchange experience and best practices.



Communication and transparency

Transparency of the operations of the CCA and its communication with the public is achieved through different communication channels. Active competition advocacy activities have been carried out in the form of trainings and workshops for undertakings and consumers and open communication with the public, both in the area of competition and unfair trading practices in the business-to-business food supply chain. The CCA regularly publishes its decisions and press releases on its website and responds to the questions of all the addressed actors.

COMMUNICATION STRATEGY

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, the CCA continues to publish on its website its decisions, opinions and annual reports, 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.

ADVOCACY AND TRAINING

During 2022, the CCA employees were active in competition advocacy and held 16 expert papers, trainings and workshops and published articles in the area concerned. The Croatian Society for Competition Law and Policy (HDPPTN), supported by the CCA, organized the 7th Conference on Competition Law and Policy in memory of professor Vedran Šoljan: "New trends and (old) implementation challenges – are we ready for a new era?", that took place on 12 and 13 May in Opatija. The president of the Competition Council, Mirta Kapural, PhD, LL.M, participated in the opening of the conference and in the discussion panel on the recent practice and development of the legislative framework in the European and Croatian competition law.

Besides the traditional international annual conference that is organized by the CCA, throughout the year the CCA experts also held a series of papers in other conferences, workshops and seminars that have been organized by other institutions such as the Croatian faculties of law and faculties of economics and business, the Croatian Society for Competition Law and Policy (HDPPTN), the State Academy for Public Administration and associations of undertakings. In this way, the CCA communication with the public is deepened and redirected to professional and qualified public, primarily undertakings, the judiciary, attorneys, and the academia. To that end, competition law was explained to the students of the Law Faculty of the University of Rijeka on

9 November 2022 where the president of the Competition Council, Mirta Kapural, PhD, LL.M, gave a lecture on competition law for the students and explained key definitions used in competition law, the powers of the CCA, and prohibited agreements between undertakings – cartels. In the Croatian Chamber of Trades and Crafts on 13 July 2022, the president of the Competition



Council Mirta Kapural, PhD, LL.M and the vice-president of the Competition Council Vesna Patrlić, LL.M, gave a presentation on key definitions in competition law, such as the notion of undertaking, the relevant market, the powers of the CCA, the prohibited agreements of associations of undertakings, the importance of compliance programs and the procedures carried out by the CCA. The president of the Competition Council also delivered an online paper for the Entrepreneurial Info portal on the topic of prohibited agreements and participated in an online conference for colleagues from the competition authority of Bosnia and Herzegovina. Three workshops were organized by the Croatian Employers' Association (HUP): one for HUP employees and two for its members (undertakings). A workshop was also held at the Croatian Chamber of the Economy, dealing with the powers of the CCA and the latest amendments to the Competition Act.



Additionally, there was a workshop for the colleagues from the competition authority of Kosovo at the invitation of the Agency for Electronic Media, a workshop for employees of the Cro-

atian Chamber of Trades and Crafts, and expert papers at the Vienna University of Economics and Business, the Academy of European Law in Trier, the Competition Law Forum in Budapest, the Faculty of Law in Rijeka, and the Faculty of Economics in Pula. The training about the Competition Act typically covers fundamental concepts of competition law, the work of the CCA, and collaboration with the European Commission (EC), prohibited agreements, abuse of a dominant position, notion of concentration, and competition advocacy. In the area of unfair trading practices in the business-to-business food supply chain, the CCA experts usually discuss the importance of fair-trading practices in relationships between buyers and suppliers in the food supply chain. The competition advocacy activities often focus on the latest developments and novelties in competition law. In this way, the CCA communication extends beyond the general public to a specialized and qualified audience, primarily including the undertakings, the judiciary, legal professionals, and academic community.

SECTORAL COOPERATION - HANFA, DKOM, HERA

CCA AND CROATIAN FINANCIAL SERVICES SUPERVISORY AGENCY (HANFA)

On 11 April 2022 the president of the Competition Council, Mirta Kapural, PhD, LL.M., and the president of the Board of the Croatian Financial Services Supervisory Agency, Ante Žigman, PhD signed a cooperative agreement between the two authorities, committing themselves to ensuring effective competition in the Republic of Croatia. The parties committed themselves to cooperation in the area of competition in the financial services market including the capital market, the insurance market, the pension insurance based on individual capitalized savings, leasing, factoring and other financial services falling under the jurisdiction of the HANFA with the view to ensuring effective competition. These markets also include the provision of services in the digital market and on digital platforms or the respective distance marketing of financial services.



CCA AND STATE COMMISSION FOR THE SUPERVISION OF PUBLIC PROCUREMENT PROCEDURES (DKOM)

On 7 April 2022 the president of the Competition Council Mirta Kapural, PhD, LL.M., and the president of the State Commission for the Supervision of Public Procurement Procedures Maja Kuhar, LL.M., signed a cooperative agreement between the two authorities, committing themselves to ensuring effective competition in the Republic of Croatia. Both authorities committed themselves to join forces and contribute to protection and advocacy of sustainable and effective competition policy in the area of public procurement at the same time ensuring free access for entrants to all markets and preventing all forms of possible distortion of competition and abuse of strong market power by the undertakings in the relevant market and connected markets within their scope of action. The cooperation will particularly focus on the detection of cartels in public procurement procedures.



CCA AND CROATIAN ENERGY REGULATORY AGENCY (HERA)

On 13 April 2022 the president of the Competition Council Mirta Kapural, PhD, LL.M. and Danijel Žamboki, MScE, the president of the Management Board of the Croatian Energy Regulatory Agency (HERA), signed a cooperation agreement. The subject of this agreement is cooperation between the CCA and the HERA in competition issues, particularly in the electricity and gas market, heating energy, oil and oil derivatives market, and renewable energy sources in the Republic of Croatia with the view to ensuring effective competition in the specific markets concerned.

By entering into this agreement, the parties committed themselves to base their cooperation on mutual trust and understanding, in line with their powers under the Competition Act, the Act on Regulation of Energy Activities, the Energy Act, the Electricity Market Act, the Gas Market Act, the Thermal Energy Market Act, the Oil and Oil Derivatives Market Act, the Act on Renewable Energy Sources and High-Efficiency Cogeneration, and other laws and ancillary provisions in the area of energy.

Archive digitization



The digitizing process of converting any hard-copy, or non-digital record into digital format was completed at the end of 2022. After having obtained the consent of the Croatian State Archives in 2017 the CCA started to digitize its documents and records. The digitizing process was carried out by the trained employees of the CCA within their regular working hours. The equipment used in the digitizing process was the CCA's own equipment with no extra costs for the CCA budget. By the end of 2022, 12,000 items have been converted into the digital form, more than 2,000 administrative cases and some 10,000 non-administrative cases have been scanned or 500 GB digital files.

The Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the in-

ternal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014, fully equates the qualified electronic signatures with handwritten signatures.

In practice, documents transmitted electronically will be signed by an authorized person using a digital signature, while documents transmitted through postal service providers will be signed manually and stamped by the public authority.

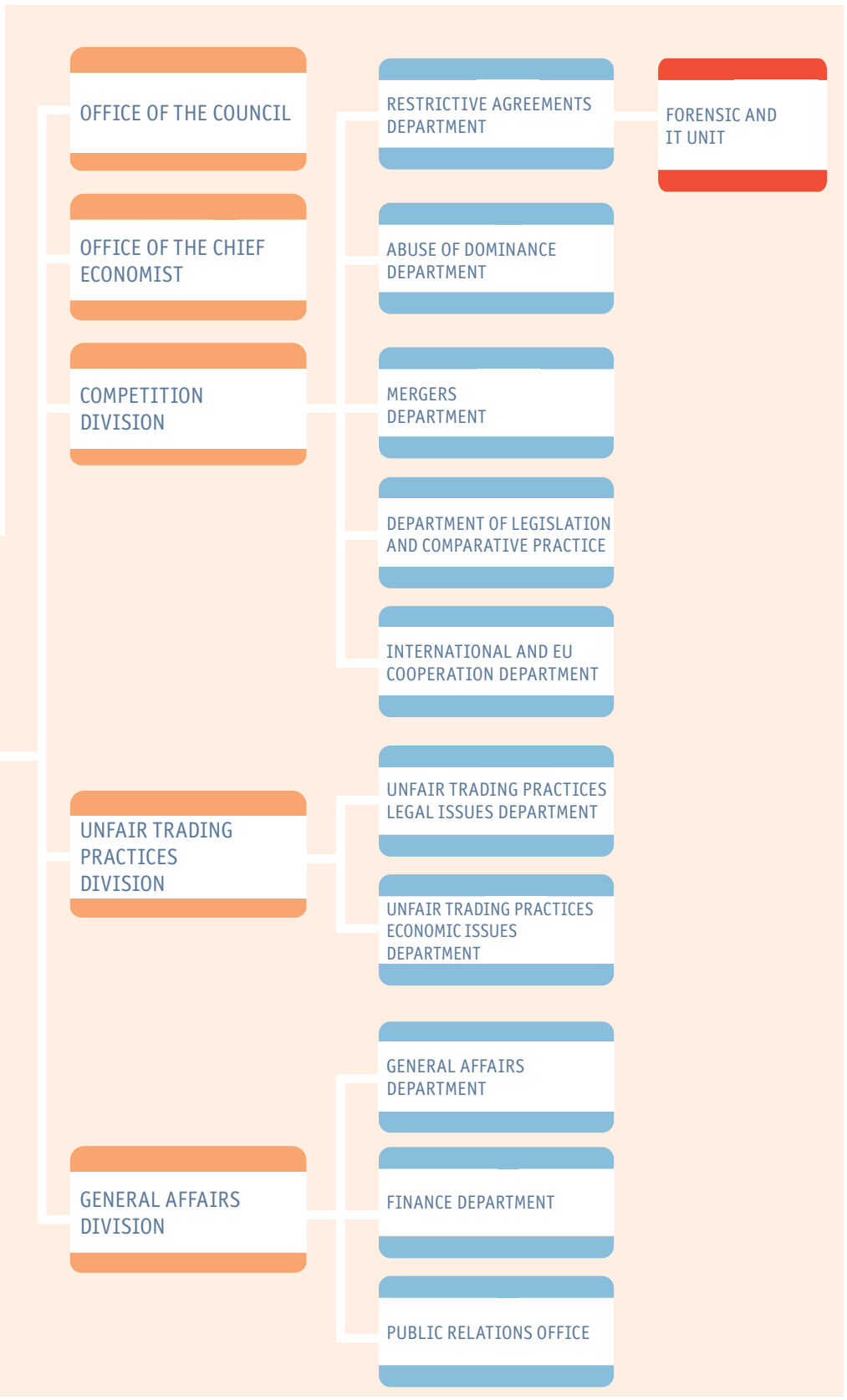
The regulation has adopted provisions on electronic identification and provides the possibility of a digital qualified seal for the verification of documents generated through automated processing in the system, eliminating the need for the digital signature of an official. In 2022 qualified certificates for electronic signatures have been obtained by all signatories of the CCA.

Organizational structure

On 31 December 2022 the CCA had 56 employees.

The work of the CCA is organized in five major units:

- Competition Council (three lawyers and one economist)
- Office of the Council (one economist)
- Office of the Chief Economist (two economists)
- Competition Division (11 lawyers, 12 economists and two IT-experts)
- Unfair Trading Practices Division (four lawyers and four economists)
- General Affairs Division (two lawyers, two economists, two MAs in humanities, one BS in economics, one clerk and one driver).



45 average age

34 women
22 men

AVERAGE AGE

The average age of employees is 45. There are 34 women and 22 men employed, 46 of them is directly involved in the enforcement of the laws within the scope of the CCA, the remaining 10 carry out other tasks closely related to the enforcement and the operation of the CCA.

STAFF

The majority of the CCA employees hold a university degree. No less than 23% of employees hold a post graduate degree whereas 75% hold a graduate degree, two employees have a secondary vocational education.

The majority of employees, a total of 80%, holds a master's degree in law or a master's degree in economics. All legal professionals acting as case handlers must pass the Bar exam. Additionally, to conduct the proceeding related to imposing fines, a minimum of four years of work experience after passing the Bar exam is required.

23%
postgraduates

75%
undergraduates

2
secondary
vocational education

80%
masters
of law

61% women
in CCA

75%
women in
Competition
Council

64%
women in
other leading
positions

SEX STRUCTURE

There are more women (61%) than men employed in the CCA. The non-discrimination principle requires equal treatment of an individual or a group based on employability criteria. There are 64% women in leading positions and 75% of the members of the managing body of the CCA – the Competition Council – are women.

Croatian Competition Agency, Savska cesta 41, 10000 Zagreb, Hrvatska

Editor: CCA, PR Office

Phone: +385 1 617 64 48

Web: www.aztn.hr

E-mail: agencija.ztn@aztn.gov.hr

Design: Ognjena Brkanović

Photos: Envato Elements

The logo for aztn, featuring a stylized 'a' composed of two red squares stacked vertically, followed by the lowercase letters 'ztn' in a dark blue, sans-serif font.