

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

**Annual Report on Competition Policy Developments in Croatia**

-- 2016 --

**21-23 June 2017**

*This report is submitted by Croatia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.*

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## 1. Changes to competition laws and policies, proposed or adopted

### 1.1. Summary of new legal provisions of competition law and related legislation

1. The Croatian Competition Agency (the Agency; CCA), a legal person with public authority, was established by the Decision of the Croatian Parliament of 20 September 1995 and became operative in early 1997. The CCA independently and autonomously performs the activities within its scope and powers regulated under the **Competition Act** (Official Gazette 79/09) and the Act on the **Amendments to the Competition Act** (Official Gazette 80/13). The CCA is accountable for the delivery of its objectives to the Croatian Parliament. During 2016, there were no changes in the existing legislative framework.

### 1.2. Government proposals for new legislation

2. In 2016, the capacities of the Croatian Competition Agency were largely occupied by the Agency's work on drafting two legislative proposals: the draft proposal of the **Damages Act** for the infringement of competition law and the draft proposal of the Law on unfair trading practices in the food supply chain, both of which were submitted to public consultation in late 2016 and are currently in the parliamentary and governmental procedure respectively. The Agency's involvement was particularly pronounced in the process of drafting the Damages Act because it was based on the authority given to it by the Ministry of the Economy, Entrepreneurship and Crafts as a legal sponsor of the act to lead the national expert working group.

3. The act transposes the *Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union* into the Croatian national law.

4. The proposed draft act follows the Damages Directive in twenty articles but at the same time has to be adjusted to the Croatian Civil Obligations Act and the Civil Procedure Act. The compensation for damages will be decided in first instance by the Croatian commercial courts that generally rule in the compensation for damages procedures in other related areas. The changes imposed by the Damages Directive are significant, as it is designed to use national courts to help victims of anticompetitive conduct and cartel behaviour obtain damages for losses suffered. The Damages Directive, which entered into force on 25 December 2014 after more than a decade of debate and negotiation, promotes a less fragmented standard for private antitrust damages actions across all Member States.

5. In practice this will mean that the actions for damages may be filed by any natural or legal person that has suffered harm on the account of the infringement of competition rules but also by any citizen – consumer or competitor in the market in which competition has been distorted, or a legal person that believes it has been paying a higher price of goods or services or works due to the infringement of competition rules. In other words, once the Act on Damages enters into force, the undertakings that have been involved in the infringement of competition provisions may face the risk of being sued for damages. The harm will be properly quantified in the claims for damages whereas the courts will decide on the amount of compensation. The new provisions will ensure the deterrent effect on undertakings and send a clear message that the violation of competition does not pay.

6. In order to wrap up the public consultation process and inform expert audience about the specificities of the new act, the Agency hosted an international conference titled “Transposition of the Damages Directive – What are the expectations?”, held in Zagreb on 5 December 2016, which gathered about a hundred lawyers, judges, corporate lawyers and members of academia.

7. When it comes to the activities of drafting the proposal of the **Law on unfair trading practices in the food supply chain**, the Agency's representative was a member of the working group as an institution representative who understands the issue of the relationship between large and small undertakings/producers with traders, or the problem of negotiating power of undertakings. Namely, before the food product reaches the final consumer, it passes through a supply chain that makes a number of different market actors (manufacturers, processors, traders, etc.) who add their contribution in terms of product quality and value. But due to recent phenomena such as increased market concentration, undertakings in the chain have very different levels of negotiating power. Although differences in negotiating power are a common and legitimate occurrence in trade relations, imbalances sometimes may be so much that they lead to so-called unfair trading practices. The European Commission has identified four main forms of unfair trading practices applied by traders: retroactive abuse of vague or incomplete terms of contract, excessive and unforeseeable transfer of costs or risk to the other party, use of confidential information and unfair termination of business relationship. Since this is a problem that is close to the current competences of the Agency, and the Agency also has enforcement powers, the Agency has been proposed in the draft law as the implementing authority.

## 2. Enforcement of competition laws and policies

### 2.1. Action against anticompetitive practices

#### *2.1.1. Summary of activities of competition authorities - courts*

8. Activities of Croatian Competition Agency in 2016 may be summarized as follows: over 60 markets where detailed market research was conducted on the relevant market, more than 100 opinions on laws, legislative proposals and assessment of regulatory effects, active management or participation in drafting two legislative proposals (as described above), one prohibited agreement established, five procedures completed by way of commitments, three sectoral studies completed, dynamism of activity in the area of assessment of concentrations, especially in the second half of the reporting year.

9. Last year was mostly marked by the specific task of the Agency to work on a proactive promotion of competition law and competition policy, or to advocate the benefits that competition brings to consumers and entrepreneurs. In addition to its role in enforcing competition rules, this is another, equally important activity of the Agency aimed at creating a culture of competition for undertakings, consumers, public administrations and the wider public. The preventive action of the Agency primarily relates to the contribution to the creation and harmonization of the legislative framework of the Republic of Croatia with the regulations on the protection of competition. Namely, the Agency has a statutory obligation to provide expert opinions on the compliance of draft legislative proposals and other regulations, as well as applicable laws and other regulations with the regulations on market competition. At the request of the Croatian Parliament, the Government of Croatia, the state administration bodies, the units of local

and regional self-government and the legal entities with the public authority, the Agency submits this opinion. This is the obligation of the Agency established by the Competition Act, whose purpose is to promote the culture of competition and to raise awareness that all Croatian regulations must comply with compulsory competition rules. In addition, the Agency gives opinions and statements on inquiries from state institutions, local self-government units and entrepreneurs. In 2016, it gave over 100 opinions and statements.

10. Based on an analysis of the existing regulations and recommendations for their alignment with the competition rules, the Agency made some significant opinions and statements during the 2016 upon requests of state institutions, local self-government units and undertakings, which also had a positive perception in public. In all these cases, a very demanding and detailed legal analysis of regulations in various markets was conducted: the waste management market, electricity supply, public procurement of electronic communication services in the fixed network, tax consultancy services, student transport, public procurement in the activities of travel agencies, abandoned animals welfare, etc.

11. The Agency closed the year 2016 with a project that is an important part of its competition advocacy activities– the Guide for contracting authorities in detecting and tipping-off bid-rigging cartels in public procurement. The Guide was prepared and published by the CCA experts on the web site of the CCA and as a booklet that will be distributed to the contracting authorities involved in public procurement on various occasions with the view to helping them detect bid-rigging cartels. In the context of competition rules it is essential for the participants in the public procurement procedure, particularly the contracting authorities, to be able to detect the signs that point at possible bid-rigging or collusive tendering. The surveillance of public procurement activities is therefore indispensable especially where the abuse of these rules eliminates competition. In order to detect and report about the bid-rigging cartels it is necessary to train all the participants in the public procurement procedure about the suspicious forms, behaviours and patterns of bid-rigging agreements. Only the trained participants will be able to detect unsound behaviour and the signs that the undertakings who infringe competition rules leave behind in the tendering procedure. Here the public administration officers as well as the undertakings involved play a very important role in detecting and sanctioning the risks linked to bid-rigging cartels in public procurement because they help the competent authorities to eliminate cartels and optimize use of the tax payer's funds effectively. The CCA Guide is therefore a clear set of questions and answers for contracting authorities about the possible suspicious signs that may point at a bid-rigging cartel or collusive tendering. Some of the infringements are illustrated by a number of examples whereas the contracting authorities are given certain guidelines in reducing the risks of bid-rigging in public procurement. The printing of the CCA Guide came in chorus with the adoption of the new Croatian Public Procurement Act that entered into force on 1 January 2017. In the forthcoming period the competent Ministry of the Economy and Entrepreneurship plans to organize a series of training programmes for undertakings and contracting authorities with the objective of making the new public procurement rules known to the parties concerned. Therefore, we believe that the CCA Guide comes at the right time and that it will qualitatively contribute to the training of the public officials in the area of proper application of public procurement rules<sup>1</sup>.

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<sup>1</sup> The CCA Guide in Croatian language can be downloaded here: [http://www.aztn.hr/uploads/documents/brosure/vodic\\_za\\_narucitelje.pdf](http://www.aztn.hr/uploads/documents/brosure/vodic_za_narucitelje.pdf)

12. Apart from preparing and publishing the Guide, the Agency is proactive in promoting its content, especially as the printing of the Guide coincided with the adoption of the new Public Procurement Act. Therefore, the Agency offered cooperation with the Ministry of Economy, Entrepreneurship and Crafts which, in cooperation with the State Public Administration School And the Croatian Chamber of Commerce, conducts a cycle of education for public contracting authorities regarding the adoption of the new Public Procurement Act, actively participates in the promotion of the Guide to Entrepreneurship and Craftsmen's Associations and at various professional conferences; via electronic mail the Guide was submitted to representatives of the Croatian Parliament, Association of Cities in the Republic of Croatia And the Croatian county community.

13. As for the activities of the courts, in 2016, the High Administrative Court of the Republic of Croatia issued 14 judgments in relation to the decisions of the Agency. In 11 cases, the Agency's decisions became final and in three cases the High Administrative Court of the Republic of Croatia upheld the parties' claims. In these particular cases the unsatisfied parties had filed administrative dispute against CCA decisions concerning betting shops; concerning the imposition of fine on the V group active in personal security services market; and concerning the existence of a prohibited agreement on the market of nautical berths.

### *2.1.2. Description of significant cases*

14. When it comes to the Agency's enforcement activities, the current competence of the Agency includes the establishment of prohibited agreements between undertakings and the determination of measures, conditions and deadlines for eliminating the harmful effects of prohibited agreements, the establishment of abuse of the dominant position of undertakings and the ban on any further conduct leading to abuse, as well as the determination of the measures, conditions and deadlines for eliminating the harmful effects of such behaviour, as well as the assessment of concentrations between undertakings. Enforcement statistics of the Agency was similar to the 2015 level: 641 solved cases in 2016.

15. In the mentioned **prohibited agreement case**, imposed a fine amounting to HRK 1.557.000 was imposed on the undertaking Gorenje Zagreb. The CCA opened an *ex officio* proceeding against the undertaking Gorenje Zagreb based on the complaint made by a party afforded a protected identity status. The infringement proceeding was initiated following a preliminary market investigation in which there have been indices of the possible restriction of passive sales regarding the rebate and pricing policy and criteria used with undertakings engaged in online sales compared with the traditional brick and mortar shops. However, the data and observations collected in the course of the proceeding lead the CCA to the conclusion that besides the likely restriction of passive sales there has been a reasonable doubt of fixed or minimum sale price maintenance, meaning that the price fixing and the price discounters offered to certain undertakings who sell Gorenje products have been a result of pressure from, and/or incentives offered by Gorenje Zagreb, whether orally or in its email communications. Therefore, the CCA asked for the order of the High Administrative Court of the Republic of Croatia on the basis of which it carried out a surprise inspection of the business premises of Gorenje Zagreb. During the dawn raid evidence was found that Gorenje Zagreb used the pressure and explicitly asked for acquiescence to its unilateral business policy by other undertakings. On one hand, Gorenje Zagreb used its rebate policy to induce the buyers to comply with its imposed sales prices; on the other hand, it suspended further delivery of its products to undertakings that have not complied with the restrictive agreement thus

preventing the deviations from the standard price level by other undertakings. In short, Gorenje Zagreb has been for a longer period of time engaged in resale price maintenance (RPM) – imposing a fixed or minimum sale price that was to be observed by its buyers. Furthermore, Gorenje Zagreb has implemented a monitoring system that enabled it to control whether a certain buyer has deviated from the imposed price level by reducing the price below the price level and to compare these prices with the recommended prices. It acted so on its own initiative but implementing measures to identify price-cutting distributors and based on reports of other members of the distribution network that deviate from the standard price level. The awareness of the fact that they have been constantly monitored by Gorenje Zagreb or by any other competitors, created pressure on the will of other buyers to comply with the imposed obligations. Therefore, the CCA has opened no proceedings against other undertakings that as weaker parties complied to what was imposed on them by Gorenje Zagreb and that needn't have been their true will. Within the proceeding at issue Gorenje Zagreb expressed its will to undertake commitments to restore competition in the relevant market concerned. However, the CCA did not accept the offer taking into account the relatively long duration and the gravity of the infringement. When imposing the fine in this particular case the CCA took into account all relevant facts and circumstances of the case. There have been no aggravating circumstances. The mitigating circumstances have been Gorenje Zagreb's cooperation with the CCA during the procedure and the fact that this undertaking had previously not been sanctioned for the infringement of competition rules. It is the assessment of the CCA that the level of the fine in question amounting to HRK 1.557.000 has as its effect both general and specific prevention, in other words, it will have a deterrent effect on undertakings when considering engaging in competition infringements.

16. Regarding the **abuses of the dominant position**, all proceedings in 2016 were completed by accepting the commitments by undertakings concerned, notably on the following markets: printing market, market of machinery and equipment for gardening, market for the servicing and sale of spare parts for Yanmar marine engines, and the funeral services market. All undertakings concerned provided the Agency with evidence that all the commitments undertaken were fulfilled within the prescribed deadlines. Following are the short summaries of the mentioned cases.

17. In the **printing market**, the Agency accepted the commitments of the undertaking Tisak with the view to eliminating possible anticompetitive effects in the commission sales of newspapers in the proceedings that has been carried out by the CCA against the undertaking concerned. The CCA initiated an *ex officio* proceeding against the undertaking Tisak based on the initiative made by the association of undertakings Ultra gros and Narodni trgovački lanac (NTL). These are associations of undertaking founded with the objective of obtaining more favourable conditions for their members in the supply of particular joint purchased products. The complainants stated in the initiative that Tisak refused to give rebates to the associations concerned although the same rebates have been given to other buyers in the newspapers commission sales, which in their view challenges the very reason for establishment of such associations. In the course of the proceeding Tisak proposed the commitments to remedy the possible anticompetitive effects. Concretely, Tisak proposed to the CCA to review its terms of business in the commission newspapers sales that has been applied since 1 January 2014 in the way as to implement the provisions that would clearly identify and acknowledge associations of undertakings as buyers in the distribution of newspapers and commission sales of newspapers. In accordance with this proposal the associations of undertakings would be awarded an extra group rebate that would bring benefits for each individual member of

the group (association of undertakings). The CCA accepted the commitments made by Tisak assessing the measure proportional to the possible negative effects of the existing terms if they were not changed. In the monitoring procedure Tisak will in the following two years submit to the CCA semi-annual reports on the effects produced by the measures concerned demonstrated by the evidence that the associations of undertakings have been granted a status of a buyer and that the additional group rebates have been awarded. The revised terms of business must be published by Tisak on its web site throughout the monitoring period. However, even before the CCA approved the remedies concerned, Tisak already published the new General terms for commission rates in newspapers sales. These General terms entered into force on 1 January 2016 and they already contain the above measures approved by the CCA and new provisions regulating the newspapers distribution conditions for particular points of sale. Given that in the proceeding in question the CCA was limited only on the subject involving the definition of an association of undertakings and its right to enjoy extra rebates for the group, the CCA could not provide for any prior (*ex ante*) assessment concerning other provisions contained in the General terms concerned. Thus, the CCA will open a new proceeding and carry out a preliminary market investigation in the market concerned and assess the possible effects of the General terms that define the distribution and financial conditions for distribution of newspapers to particular points of sale.

18. In the **market of machinery and equipment for gardening**, the Agency opened the ex-officio infringement proceeding against the undertaking Drezga d.o.o., an authorised distributor for Husqvarna Group products, based on the fact that the contracts this undertaking concluded with its business partners contained provisions imposing obligations on the buyer to sell all the final products and the accompanying spare parts from the export programme of the seller in the territory of Croatia, preventing the passive selling of the contract products – re-export to other countries. In the course of the proceedings Drezga committed itself to change the provisions on authorised sales and repair of Husqvarna Group products and other products in the authorised sales contracts and offered to allow its business partners the passive sales outside the territory of Croatia, yet imposing the obligation on them to refrain from active selling. In addition, with the view to preventing any possible future infringements of competition rules, Drezga committed itself to draw up a compliance programme and train its management and commercial staff on competition rules and the importance of the compliance of the behaviour of any undertaking with these rules. The CCA found the above commitments proposed by Drezga adequate to eliminate competition concerns and restore effective competition in the relevant market concerned. Within three-month-period Drezga must submit to the CCA the copies of the amended agreements revising the current agreements on authorised sales for 2016. The compliance programme must be also communicated to the CCA within the period of 30 days. In case of non-compliance on the side of Drezga with the above listed commitments the CCA would start a separate infringement proceeding and impose sanctions on the undertaking concerned.

19. In the **market for the servicing and sale of spare parts for Yanmar marine engines**, the Agency accepted the commitments offered by the undertaking Navela from Pula in the proceeding against this undertaking in the distribution of the said spare parts. The proceeding against the undertaking Navela was initiated by the CCA, first, due to the indices that Navela refused to deliver and to sell the spare parts for one vessel, unless the whole business was transferred to another, specified service provider. Second, there have also been indices that the Standard Contracts for Maintenance and Repair of Marine Engines, Purchase of Engines and Spare Parts of Yanmar brand that Naval has concluded

with the members of its network, contained provisions that may raise competition concerns. At an early stage of both separate proceedings Navela reacted by offering commitments to eliminate possible anticompetitive effects in the market. In the course of the preliminary market investigation it has been established that the spare part at issue was the Engine Control Unit (ECU) that is not a typical spare part that has been regularly delivered to unauthorised repairers but a unit that falls under a special replacement protocol provided by Yanmar, applicable within and outside the warranty period, a fact that has been confirmed by an independent expert witness in the field of engineering and shipbuilding. It was the view of the expert witness that the diagnostics, replacement, programming and starting the operation may solely be carried out by an authorised and trained operator that has been certified by Yanmar service centre whereas the diagnostics and programming requires special equipment and an adequate programme (firmware) applicable to a particular series and type of Yanmar engines. At an early stage of the proceeding Navela offered remedies committing to deliver the spare parts for Yanmar marine engines to any interested operators, including the unauthorised repairers. In the case of specific inquiries, including the ECU and other electronics that requires specific training and tools, Navela shall first of all refer every customer to the authorised repairers' network. Should the customer refuse such a proposal, it would have to sign a statement confirming that it does not agree to be referred to an authorised repairer and takes the responsibility for all consequences that may arise as a result of the incorrect replacement of a spare part, including the consequences that such behaviour may have on third persons and their property. With respect to the Service Agreement Navela offered to review the challenged provisions thereof. The revised Service Agreement will contain provisions regulating that the invoice price and the final cost due to rebates are to be considered a maximum price of the product for the final consumer. Should the service sell the products to final consumers above the maximum price, Navela holds the power to terminate such an agreement. At the same time, the provision that empowered Navela to terminate the agreement should the repairer purchase the spare parts from the any other source than Navela was deleted. The CCA found that the above commitments in both proceeding are voluntarily proposed by Navela and are adequate to eliminate possible competition concerns that could have arisen had the behaviour of Navela in the relevant market remained unchanged sufficient to restore effective competition in the relevant market concerned. In addition, in the market tests that have been carried out in this matter the CCA has not received any comments.

20. In the case of **funeral services market**, the Agency accepted the commitments offered by Flora VTC in the course of the ex-officio proceeding that it opened against this undertaking in April 2016. The CCA established within the proceeding that on the basis of the Prices for Funeral Services adopted on 23 October 2015 Flora VTC has tied the price of the burial service (that is discharged as a public service) to the sales of its own funeral supplies and mortuary equipment (that it carries out as a commercial service) thereby limiting the access to the market concerned for the competing undertakings. Soon after the initiation of the proceeding Flora VTC offered the disapplication of the part of the Prices for Funeral Services giving 10% discount on the burial service if a client also bought funeral supplies from the undertaking concerned. Flora VTC offered also to make this decision public on its website, thus restoring the situation before the challenged 10 % discount entered into force. The CCA assessed that it is appropriate to accept commitments offered by the party under investigation. It found that the nature of the commitments and their ability to quickly and effectively solve the competition concerns are sufficient to address the identified competition concerns and eliminate possible anticompetitive effects in the relevant market in the sales of funeral supplies and

mortuary equipment in the territory of the town of Virovitica. Such a decision also takes into consideration the interests of the economic operators who can continue to perform the same activities in the market, whereas it enables the users of these services to freely choose the undertaking that will provide them with funeral supplies and mortuary equipment. The commitments accepted are binding on the undertaking and the CCA will carry out the monitoring of the proper implementation of its decision. Should Flora VTC not comply with the undertaken commitments, the CCA shall decide to re-open the infringement proceeding and impose the appropriate sanctions.

## 2.2. Mergers and acquisitions - Summary of significant cases

21. The reporting period, in particular the second half of 2016, was marked by the dynamism of activities in the area of control of concentration between undertakings, which is a direct consequence of increased activity of mergers of businesses in particular markets, particularly in telecommunications, retail consumer goods and the media. All the proceedings conducted in 2016, except one, were completed at level-one assessment, as it has been established that there would be no negative effects on competition. No concentration was declared incompatible with competition rules.

22. At the end of July 2016, the Agency received a notification of intended concentration of the undertakings Optima and H1 Telekom, at the same time requesting from the Agency to partially annul its 2014 decision on the conditional approval of concentration HT / Optima in the sense of prolonging the conditional approval for the next three years, until July 10, 2021. In relation to the intent of implementing the concentration of Optima and H1 Telekom, the Agency has opened the proceeding of concentration assessment, which by the end of 2016 entered its second stage due to the significant effects of the concentration in question on the relevant fixed telephony market in the Republic of Croatia. In the same market, the Agency received in 2016 the notification of concentration VIPnet / Metronet Telekomunikacije, which was at the end of January 2017 approved within the first-phase proceedings.

23. When it comes to the retail market for consumer goods, the Agency was notified in 2016 of the concentration Spar AG, Austria / Billa, Billa nekretnine and Minaco (in early 2017 approved in the first phase) and of the concentration by which Muller from Zagreb intends to acquire the part of Konzum dd (Kozmo) from Zagreb. The approval of this concentration was adopted by the CCA at the end of February 2017. The 2016 report was marked by further consolidation on some other markets such as the hotel market, where Valamar Riviera from Poreč acquired the Imperial hotel chain from Rab, the meat and meat products market where the meat industry of the brothers Pivac from Vrgorac acquired Vajda from Čakovec, as well as the print media market on which JOJ Media House a.s. from Slovakia acquired Novi list from Rijeka, Glas Istre Novine from Pula and RTD from Zadar, while the trend of consolidation of the shopping center market began with the concentration by which MSREF VIII Global-GP, LP, USA acquired the City Center, Zagreb and Mantu, Zagreb, i.e. the management of shopping centers City Center One.

24. In addition, work in the area of control of concentrations was also marked by the continued monitoring of the implementation of the measures and conditions envisaged to eliminate the adverse effects of concentrations on competition, accepted by the Agency in its decisions on conditional approvals from 2014. These are: Agrokor / Poslovni sistemi Mercator, Republic of Slovenia, and Hrvatski Telekom / OT-Optima Telekom, where the Agency in 2016 followed the implementation of complex, multi-annual measures related

to large group operations in both cases. For the purposes of oversight and regular reporting to the Agency on the implementation of the measures, trustees were appointed to monitor the measures and conditions set out in the mentioned decisions. The trustees were approved by the Agency; in relation to the parties to the concentration they have an irrevocable mandate. During 2016, the process of divestiture was fully completed in order to reduce Agrokor's market power in the relevant market, while behavioural measures should last until mid-2017. From the comprehensive and detailed reports received from the trustee, it follows that Agrokor adheres to all the measures and conditions from the Agency's decision; hence, the trustee's reports have been accepted by the Agency. The oversight of HT / Optima's behavioral measures, which encompassed a total of five reports by the trustee, shows that compliance with the measure and the terms from the decision is observed by the parties to the concentration.

25. Like in previous years, in 2016 the Agency dealt with control of concentrations in the media and electronic media market, albeit to a lesser extent than in previous reporting periods. Namely, undertakings participating in concentrations in this sector often fail to fulfil the legal obligation to notify concentration to the Agency. This trend is repeated year after year, and was present in 2016. Since the failure to notify constitutes a violation of the Competition Act, the Agency in such cases initiates the procedure *ex officio*, and imposes fines of up to one percent of the total undertaking's income from the year prior to the concentration.

### 3. The role of competition authorities in the formulation and implementation of other policies

26. Apart from the insurance market research (described below under 5), two more examples should be mentioned here, falling within the advocacy activities of the Agency.

27. The greatest impact in 2016 resulted from the opinions delivered by the Agency in previous periods, based on an analysis of the existing regulations and recommendations for their alignment with the competition rules. Thus, as a result of the long-standing advocacy efforts of the Agency, legislative activities were announced in 2016, relating to the driving schools market and taxi services.

28. Namely, in recent years the Agency has repeatedly pointed out, on several occasions, the need for consideration of certain amendments to secondary legislation regulating the activity of driving schools in the part open to competition, since it considers that effective competition in the market would have a positive impact on end users through the quality and price of the service in such a way that all interested parties who meet the qualitative criteria (both existing and new) should be able to enter and operate in that relevant market without being imposed additional conditions or criteria which administratively restrict the number of undertakings.

29. Similarly, the Agency does not prejudice the powers of the local self-government units which, based on special regulations, regulate the manner and the conditions for conducting a taxi service in their area. In its opinions the Agency suggests that the provisions of special regulations should allow equal access and participation to all market participants in order for them to compete in terms of price and quality of service, that the provisions of special regulations should not specifically protect a particular category of business (taxi carriers) and that the administrative determination of the cost of transport reduces the possibility of competition between undertakings, while the provision of limiting the number of competitors in the market may pose a legal barrier to market

access. In 2016, the Agency continued its proactive approach to accessing this market and, for example, gave its opinion on the City of Split's Decision on the Transportation of the City of Split.

## 4. Resources of competition authorities

### 4.1. Resources overall

#### 4.1.1. Annual budget

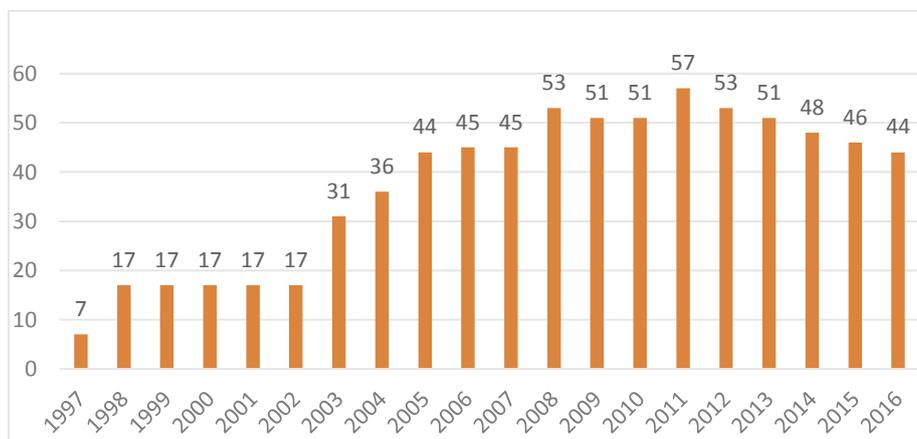
30. Planned resources for carrying out activities within the competence of the Agency in the State Budget for 2016 amounted to HRK 10,343,072.00 (1,524,482.70 USD). Execution of expenditures amounted to HRK 10,197,912.03 which represents 98.60% of the plan.

#### 4.1.2. Number of employees (person-years)

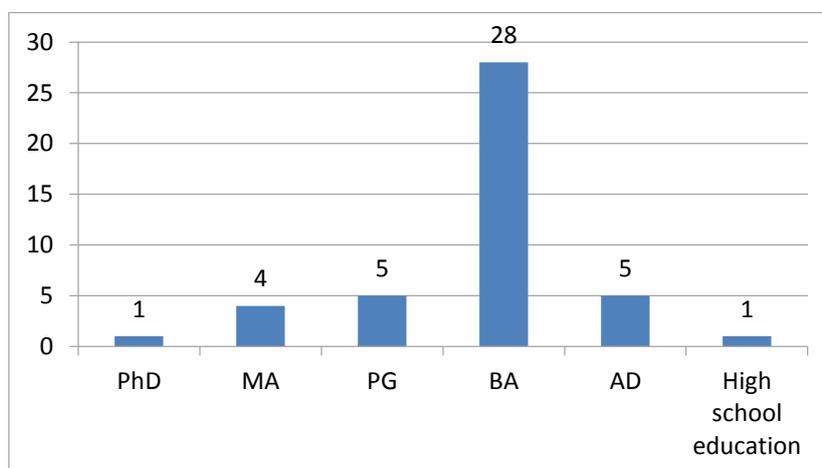
Economists	17
Lawyers	18
Other professionals (IT & PR)	4
Support staff	5
All staff combined	44

31. In 2016, the Agency had 44 employees, including five members of the Competition Council. Employees title structure is shown in the following graphs:

**Figure 1. Number of employees in the Agency in the period 1997-2016**

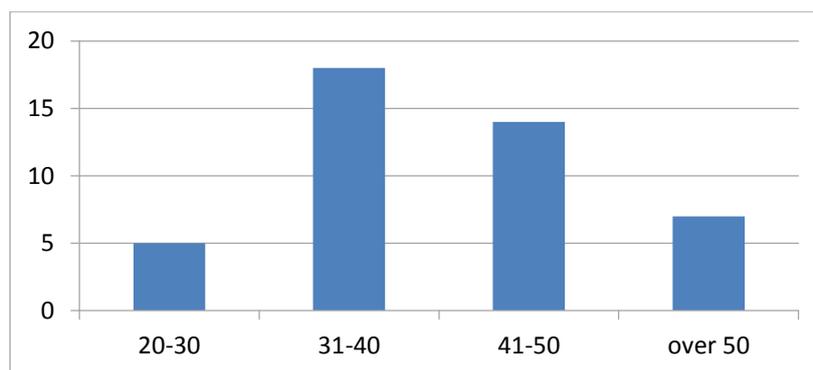


Source: Croatian Competition Agency

**Figure 2. Employees structure by degree of professional qualification**

*Note:* PhD-Doctoral degree, MA-Master, PG-Post graduates, BA-University graduates, AD-Associate degree, High school education

*Source:* Croatia Competition Agency

**Figure 3. Employees structure by age**

*Source:* Croatia Competition Agency.

32. Most of the employees are graduated economists or lawyers, a total of 80%. All lawyers-case handlers must have passed a bar examination, and out of a total of 18 lawyers, 17 have passed a bar examination.

#### **4.2. Human resources (person-years) applied to:**

- Enforcement against anticompetitive practices: 14
- Merger review and enforcement: 5
- Advocacy efforts: 3

#### **4.3. Period covered by the above information**

1 January-31 December 2016

## 5. Summaries of or references to new reports and studies on competition policy issues

33. In 2016, the Agency completed three in-depth sectoral market researches in 2016: market research on compulsory car insurance in Croatia, market research on oil derivatives market and its regular annual groceries retail market research in the Republic of Croatia.

34. The objective of the market study of **compulsory car insurance** was to identify the changes this market has undergone compared with the findings of the CCA market investigation covering 2013 and 2014. The CCA focused in this market inquiry first, on establishing facts with respect to risk zones, i.e. determining the amount of compulsory insurance contribution (functional premium), and second, on analysing the pricing of insurance premiums depending on the registration areas. A comparative analysis of prices was carried out based on a sample of vehicles. The analysis showed that risk zones are still to a certain extent used for the calculation of the functional premium and the overheads. This model is based on aggregate statistical data and indicators. However, it has been established that individual insurers use their own statistical data and develop their own actuary models. The use of the uniform functional base (zone) has positive effects on road transport operators. On one hand, the price of the compulsory third party insurance dropped, on the other hand, extreme differences in prices that formerly depended on the geographically determined zone of risk and therefore produced harm for the road transport operators with registration plates in high-risk zones have been abolished. For the sake of comparison, the CCA market inquiry for 2013 showed that the price that all insurance companies charged for the insurance policy for a truck selected by the CCA as a sample in the geographical area of Daruvar (the lowest risk zone) was 12,000 Kuna. No more favourable offer was possible at that time. On the other hand, the price of insurance for the truck carrying the Zagreb or Krapina registration plates was some 22,000 Kuna – again charged by all insurance companies and no more favourable conditions. Namely, all insurance companies used in principle the same elements for calculation of the third party insurance premium, particularly the geographical criterion consisting of seven risk zones applicable under the former Basic Premium Scheme that was in effect in the territory of the Republic of Croatia and valid for the calculation of the third party motor insurance premium for almost thirty years. The most recent CCA inquiry shows that three years later the road transport operators have a wider choice springing from the product differentiation in respect of the third party motor insurance policies. Concretely, the application of the uniform risk zone criterion on the whole territory of the Republic of Croatia brought about lower prices and more favourable terms in third party motor insurance for all road transport operators. Particularly significant savings of more than 50% of the former insurance policy price are recorded now by the trucks with the Zagreb and Krapina licence plates. The prices are the same for all trucks of the same make and category within the territory of Croatia. In the sense of competition rules the CCA welcomes the changes, in particular on the account of the fact that these removed competition concerns that were raised in the last year market investigation. On many occasions the CCA has reacted publicly and indicated that if a truck displays licence plates from a certain region it does not necessarily mean that it carries out its transport services exclusively in the area concerned. On the contrary, the transport activity is at least marked by the area in which the truck was registered and got its licence plates. Transport is provided within the national borders or even within the EU integral market and this mostly affects the conditions and the competitiveness in the transport sector. Therefore, the changes spotted in the market may have positive effects on competitiveness of certain transport operators, both in the Croatian and the EU market.

35. In case of **oil derivatives market**, inspired by the general public and the political interest raised by sudden and constant fluctuations in the prices of motor fuels in the last quarter of 2014, the Agency started in January 2015 a sector inquiry into the oil derivatives market, in particular, into the Croatian motor fuels retail and wholesale market. The object of the market inquiry was to establish the relevant facts about the way and mechanisms used in setting the prices of fuels in the period after the liberalization of this market in Croatia in February 2014, concretely from February 2014 to February 2015. It should be noted here that the formula for the calculation of the price cap for oil derivatives was revoked on 20 February 2014. What followed was free price setting on each particular petrol station but also price volatility. In compliance with the data available to the CCA during the inquiry, although the law now provides for a possibility of daily changes in the price of fuels, the corrections concerned still follow the regular time intervals (in principle once a week on Tuesday). At the same time, the obligation on the oil derivatives retailers to regularly publish the prices of oil derivatives and motor fuels on their web sites has also been repealed. In this market inquiry the CCA used a survey questionnaire involving, among others, five undertakings that place more than 90 % of all the fuels on the Croatian market – INA, Petrol, Lukoil Croatia, Tifon and Crodux Derivati Dva. In accordance with the data collected in the inquiry, in 2014 a total of 2.5 billion tonnes of liquid fuel oil was placed on the Croatian market where the five retail leaders sold 2 billion tonnes. The retail revenue was stable but indicating a rising trend compared with 2013 and a falling trend with respect to the volumes of sold motor fuels. The falling trend that started in 2009 thereby continued. The most significant fall was in the sold volumes (both retail and wholesale) of heating oil and gas oil and gasoline. However, the diesel fuels (both in retail and wholesale) showed a more significant rising trend. In 2014 the imports of motor fuels considerably rose, where the amounts of imports of diesel fuels doubled, similarly as the imports of gasoline and LPG. The data from the inquiry show that there were some 900 petrol stations in Croatia in 2014. As to the structure of the retail price of motor fuels it appears that it consists of the purchase price, the premium of the economic entity (margin), excise duty (including the duties charged by the Croatian Motorways, Croatian Roads and Croatian Railways) and taxes (VAT). The biggest share in the retail price holds the purchase price and the excise taxes. The purchase price holds the share of some 30 % to 35 %; excise taxes hold some 40 %, whereas VAT's share is about 20 %. It is important to note here that the VAT and the excise taxes fully, and to some extent the purchase price of the fuel, constitute the price elements that are beyond the influence of the traders. The only one element of the price which is decided upon by the traders and that is not defined by the input variables is the margin. Its share in the price of fuel is the smallest – some 5 % to 10 %.

36. Within this market inquiry the CCA carried out a detailed comparative analysis of the margins used by the undertakings in setting the prices of oil derivatives in the first post-liberalization year and the margin that had been defined in the pre-liberalization period. As mentioned before in this text, until 20 February 2014 the margin of the energy subject involved was defined, whereas following this date the margin has been set freely. As an example, in the pre-liberalization period the margin for one litre of eurosuper BS 95 and eurodiesel BS was between 60 and 76 Lipa, keeping the level of 66 Lipa on the eve of the liberalization. Thus, in accordance with the data established in the market inquiry, in the first post-liberalization year (February 2014 – February 2015) the margins calculated by the relevant undertakings reflected the values that were actually required by the administrative order in the pre-liberalization period. At the same time, the margins differed among the undertakings concerned. In respect of the input purchase price of fuel in the vertical fuel supply chain (production – wholesale – retail) the results of the inquiry

show that the fuel price in the oil trading is basically based on Platts pricing “Mediterranean cargoes” subheading “CIF Med (Genova/Lavera)” from the Platts European Marketscan. In the pre-liberalization era, the price quotation concerned was mandatory in the pricing formula for oil derivatives. Here the inquiry showed that the suppliers outside Croatia hold a significant share in the purchase of fuels. The CCA also compared the retail prices of motor fuels in the period from February 2014 to February 2015. This analysis showed that the retail prices of fuels differed among different undertakings in the same time intervals. These differences were not substantial and were in compliance with the established facts about the structure of the fuel retail price. It means that exactly the different margins applied by different traders reflect the different retail prices of fuel. Yet, given the fact the margins hold the lowest share in the final fuel price, these price oscillations are negligible. The changes in the prices are, on the other hand, following the benchmark price assessments of CIF Med quotations under the Platts European Marketscan. In the one-year period at issue the retail prices fell relatively significantly – some 0.80 Kuna to one Kuna per litre of fuel. However, this was primarily due to the oscillations in the input variables: the fuel purchase price and the dollar exchange rate. These elements are commonly used in oil trading and they subsequently produce the change in the retail prices. On one hand, there are changes in the fuel pricing that are the consequence of effective competition, and on the other hand, there are changes in the fuel pricing that may raise competition concerns. A number of national competition authorities in the EU thus carried similar market inquiries in the oil derivatives trading. The CCA compared various market studies with its own. The comparative analysis that was carried out showed that there are equal patterns in the most national markets. First of all, there is a small number of vertically integrated entities and the national markets use the benchmark Platts quotations. The CCA market investigation indicates asymmetry in the speed of the price adjustment as in other countries. This pricing phenomenon known as “rocket and feathers” means that prices of fuel increase promptly whenever prices of inputs increase, but take time to decrease after input price decreases. Such asymmetric price transmission must not be a sign of collusive practices between undertakings. Nevertheless, we cannot rule it out where solid and convincing evidence would indicate such behaviour. In this sense, the CCA will keep monitoring the motor fuels trading activities in Croatia. In conclusion, the sector analysis carried out by the CCA showed that in the period to which the analysis refers there were no indicators in Croatia that would in the post-liberalization period point toward any significant changes in the traders’ margins that amount to some 5 % to 10 % of the retail price. The key influence on the retail price is attributable to the input variables that are in general beyond the traders’ control, i.e. the purchase price of the fuel, excise and other taxes.

37. Lastly, the Agency carried out the **groceries retail market** investigation, covering food, beverages and sanitary products for households. The 2016 market investigation covered the year 2015 and involved a sample of 50 undertakings that in accordance with their turnover and the number of groceries outlets i.e. food chains represent significant participants in the market. In comparison with the previous year the market research included two undertakings less due to the fact that the outlets of Merkur 5, which is not engaged in retail any more, had been taken over by Studenac whereas Mercator-H had been taken over by Konzum in 2014. At the same time the market research included one new undertaking – Istarski supermarketi d.o.o. from Poreč that leased a number of Dinova-Diona outlets in Istria and Primorje-Gorski Kotar County. This market investigation, on the other hand, did not include the groceries retailers that carry out their businesses under the Trades Act or the shops whose primary activity is not the selling of food, such as petrol stations or chemists or other specialized stores that sell

particular groups of food products, such as bakers and butchers shops etc. The realized turnover of all the undertakings that were included in the market investigation for 2015 amounted to 33.1 billion Kuna and compared with 2014 rose by 4.5 %. The market shares held by the first ten retailers in 2015 compared with 2014 indicated a slight increase in the market concentration primarily due to the fact that some undertakings withdrew from the market whereas the retail turnover of the largest retail establishments (big chain stores) rose. The concentration ratio CR10 (the market shares of the 10 biggest retailers in the market) has been rising year after year. Asymmetry in the retail market has continued to decline, in other words, the discrepancy between the leaders in the market (like Konzum) and its competitors has been diminished. However, the withdrawal from the market of Mercator-H and the divestiture and/or lease of the outlets to the direct rivals (the same happened in the case of Dinova-Diona) was simultaneously followed by the strengthening of other, smaller and medium-sized retailers in some counties and the market entry of the previously mentioned new competitor (Istarski supermarketi in Istria County). The retail market in Croatia is also known for a big number of competitors of different market power where big retail chains or the top five (Konzum, Lidl, Plodine, Kaufland and Tommy) together hold some 65 % market share or roughly two thirds of the retail market. In 2015 no takeovers of competitors were recorded. Nevertheless, the market was dynamic thanks to divestitures of parts of assets or outlets of certain retailers. Concretely, this refers to the decision of the CCA on the basis of which the concentration between Agrokor and Mercator-H was conditionally approved involving the commitments of Agrokor (Konzum) to implement divestiture measures in the course of 2015 (described above under merger decisions). Namely, a number of undertakings – competitors of Konzum took over the outlets of Konzum and/or Mercator-H, such as Trgostil, Prehrana Trgovina, Metss, Mlin i Pekare, Lonia, Trgočentar Zabok, Pevec.

38. The groceries market investigation proved that the competitive structure of the market was retained and the interests of the consumers protected, which both are seen as competition efficiencies. In comparison with 2014 the turnover of 40 groceries retailers rose, whereas 10 retailers recorded the fall in their turnover. A more significant decline was recorded by Dinova-Diona, which resulted in the drop of this undertaking from the 11th to the 26th position on the list of the biggest retailers with respect to the turnover they realized from the groceries retail. The reason for the fall of Dinova-Diona can be detected in its business decision dating from 2013 when it decided to abandon its retail business and let its competitors like Ribola, Gavranović, Spar, Lonia, Konzum and Istarski supermarketi take over its outlets. In 2015 the leading ten retailers – Konzum, Lidl, Plodine, Kaufland, Tommy, Spar, Billa, Studenac, KTC and NTL had a compound turnover from the groceries retail worth 27.3 billion Kuna, which is an increase of 6.3 % compared with the previous year. The concentration ratio CR10 (the market shares of the 10 biggest retailers in the market) in 2015 was 82.4 %, which is a moderate increase if compared with 2014 when CR10 was 81 %. It was the first time that Narodni trgovački lanac d.o.o. (NTL) had joined the “top 10 retailers list” but this was in the first place due to the fact that Mercator-H, which was taken over by Konzum, was not active in the groceries retail market. NTL’s turnover has also been increasing. Besides NTL there are two more retailers who have indicated a rising trend compared with the previous year (KTC jumped from place 10 to place 9 on the “top 10 retailers list”, whereas Studenac moved from place 9 to place 8). In 2015 Konzum recorded the rise of the turnover and remained the most significant groceries retailer in Croatia. However, its market share (a compound market share of Konzum and Mercator-H) lowered from [30-35] in 2014 to [25-30] in 2015. A double-digit growth of the turnover in 2015 compared with the previous year was also recorded by Spar, NTL, Plodine, Lidl, Tommy, Studenac etc. In

the “top 10 retailers” group Spar had the highest double-digit growth in 2015 compared with the previous year. This was first of all the result of the takeover of 20 outlets of Dinova-Diona dating from summer 2014. 19 out of 20 outlets were taken over in the City of Zagreb. Stepping into the category of the convenience store around the corner Spar took the second position in the retail turnover in the City of Zagreb. Compared with 2014 the report year shows the fall in asymmetry, in other words indicates a smaller difference between the leading Konzum and the second retailer on the list – Lidl. Namely, Lidl increased its market share. So did Kaufland (both are the members of the Schwarz group), making the Schwarz Group members taken together the biggest competitor of Konzum.

39. Regionally, the leading position is held by Konzum in twelve counties and in the City of Zagreb. This is one county more than in the previous year on the account of the fact that in 2015 Konzum took a leading retailer position in Požega-Slavonia County for the first time. From the total turnover realized from the retail in Croatia in 2015 Konzum realized 19 % in the City of Zagreb, 13.1 % in Split-Dalmatia County, 9.2 % in Primorje-Gorski-Kotar County, 6.9 % in Istria, 6.3 % in Zagreb County, 6.1 % in Zadar-County and 5.2 % in Osijek-Baranja County. This means that almost two thirds of the total turnover from the retail in the Republic of Croatia was realized in the City of Zagreb and the six above mentioned counties. In other words, some 34.2 % or about one third of the total turnover was realized in the fourteen remaining counties. The highest number of retail chains is situated in the City of Zagreb (a total of 18 retail chains), followed by Zagreb County and Primorje-Gorski Kotar County (17) and Varaždin County (16), whereas the lowest number of chain stores can be found in Dubrovnik-Neretva County (6) and Lika-Senj County (6) and in Vukovar-Srijem County (8). The most significant markets in Croatia are big cities – the City of Zagreb, Rijeka, Split and Osijek.

40. The results of the market investigation indicate that 70 % of the turnover was realized in large format stores. In the analysis by shop type it is the supermarkets that realized the highest turnover of 47 %, whereas their domination of 45 % is also indicated in the net average sales area. In addition, hypermarkets and supermarkets and self-service markets have all recorded turnover growth in 2015. Concretely, hypermarkets’ turnover grew by 11 %, self-service markets’ by 4 % and supermarkets’ by 3 %. On the other hand, the turnover of small shops declined by 4 % in 2015 compared with the previous year. The most powerful retail group in Croatia has been Schwarz Group (Lidl and Kaufland) whereas Ultragros has had the highest number of members (22) in the retail market at the moment. In 2015 a local retailer Istarski supermarketi became an Ultragros member by leasing a significant number of former Dinova-Diona and Istracommerce outlets. NTL Group had nine members in 2015 including the parent company Ntl d.o.o. and the indirectly connected companies Trgovina Krk and Trgostil (linked by Čakovečki mlinovi). The big majority of the outlets belonging to the former member Biljmerkant remained in the Group on the account of the extension of the lease agreement. This means positive effects for the consumers throughout Slavonia taking into account that these outlets operate in small towns and villages. In that sense, the market investigation shows that regional and local retailers were successful in 2015 and increased their turnover and market shares in certain counties, at the local or regional level, like Studenac, Mlin i Pekare, Lonia, KTC, Djelo, Metss, Pemo, Ribola and Boso. For example, Studenac was able to significantly increase its turnover first of all due to its expansion based on the acquisition of a noteworthy number of outlets from the local retailer Merkur 5 similarly as in the takeover of Kerum outlets before. The raising trend of local retailers has been well illustrated by the retailer Mlin i Pekare from Sisak, a retailer that indicated a double-digit revenue growth compared with 2014 whereas it has expanded its retail activities

from two to six counties in the last four years. Finally, it is worth mentioning that NTL took the second position overthrowing Lidl from this position as early as in 2014 and kept that position in 2015 primarily due to the lease of the majority of outlets of Biljemerkač in Osijek-Baranja County. NTL is turning into a national retailer given the fact that since 2015 it has had outlets in a total of nine counties and the City of Zagreb (one in Soblinec and one in Lučko).