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Competition in the Food Supply Chain – Contribution from Croatia

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More documentation related to this discussion can be found at: oe.cd/gfc24.

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Competition in the Food Supply Chain

- Contribution from Croatia –

1. Restricted agreements

1.1. CCA vs Čakovečki mlinovi and Tvornica stočne hrane

1. On 26 October 2023 the Croatian Competition Agency (CCA) opened ex-officio infringement proceeding against the undertakings Čakovečki mlinovi d.d. from Čakovec and Tvornica stočne hrane d.d. from Čakovec, based on indices that these undertakings fixed the purchase price of wheat in the relevant market in the period from 2020 – 2022 and thereby participated in a cartel within the meaning of Article 8 paragraph 1 of the Competition Act. The alleged infringement was communicated to the CCA on 12 July 2022 by the Committee for Agriculture of the Croatian Parliament raising concerns about possible secret price arrangements between the purchaser of wheat in 2022.
2. The CCA carried out the preliminary market investigation in the relevant market and sought for circumstantial evidence to open an infringement proceeding against the purchasers of wheat with the view to establishing whether they violated competition rules by entering a prohibited price agreement in the period from 2019 – 2022.
3. The data and information analysed during the preliminary market investigation revealed that out of 17 wheat purchasers only the agreements of the undertakings Čakovečki mlinovi and Tvornica stočne hrane contained the identical wheat purchase prices in all five categories of wheat in 2020, 2021 and 2022.
4. In line with its powers and based on the search order of the High Administrative Court, the CCA commenced a surprise inspection of the premises of the undertakings concerned reasonably suspecting that the evidence of the conclusion of a prohibited price fixing agreement might be held on the premises of the undertakings concerned and/or in the possession of their employees.
5. According to the established facts of the case and after an in-depth review of gathered evidences, insufficient evidence of infringement was found and on 30 October 2024 decision was adopted by the CCA that there are no longer grounds for actions against the undertakings concerned.

2. Mergers

2.1. Perutnina Ptuj/Toni

6. The CCA cleared in the first phase the concentration between the undertakings in the form of acquisition of a controlling interest of the undertaking Perutnina Ptuj over the undertaking Toni, active in the purchase, drying, and storage of grains.
7. This vertical integration will primarily produce effects in the grain purchase market (wheat, corn) in the northern regions of Croatia (Međimurje, Varaždin, and Koprivnica-Križevci counties), the wholesale grain market (wheat, corn) in the territory of the Republic of Croatia, the production and sale market of fresh and processed poultry meat in the

territory of the Republic of Croatia, and the retail market of fertilizers and agricultural protective agents in specialized stores (ag chemicals suppliers) in the northern regions of Croatia (Međimurje, Varaždin, and Koprivnica-Križevci counties).

8. The concentration will have no negative effects on competition, as the market power of the company Toni in the corn and wheat purchase and wholesale market is not significant, and it is unlikely to negatively affect the overall availability of grains for competitors operating in the connected production and sales of poultry meat and processed poultry meat products market.

9. As this concentration does not lead to the creation or strengthening of a dominant position of its participants, it does not impede effective competition, and it could be cleared in the I phase without opening of the compatibility assessment procedure.

2.2. Agronom/Ruris Agro

10. In 2024 the CCA also clears acquisition of direct controlling interest over the undertaking Ruris Agro d.o.o. by the undertaking Agronom (part of Agrofert Group based in the Czech Republic that is active in industries related to the chemical industry, food industry, agriculture, distribution of farming and construction machinery and vehicles, as well as activities related to the forestry sector, renewable energy sources and fuels, logistics, and media). Ruris Agro, based in Županja performs the activities in the market, such as the purchase and wholesale of grains and oilseeds (mainly wheat and soybeans) and the wholesale and retail of farming materials (fertilizers, seeds, plant protection products, and other raw materials).

11. A complete notification of the concentration between these undertakings was received on 11 June 11, 2024, followed by the CCA request for information on its website for all interested parties to submit comments and opinions on the concentration, so that the collected data could contribute to clarifying and better understanding the situation on the relevant markets.

12. The concentration concerned will primarily produce effects in the purchase of grains and oilseeds (commodities) market, the wholesale of grains and oilseeds (commodities), the wholesale of raw materials (seeds, fertilizers, and plant protection products), and the retail of seeds, fertilizers, plant protection products, and other raw materials in specialized stores (so-called agricultural pharmacies) in the Republic of Croatia.

13. Additionally, Agronom is present in the territory of the Republic of Croatia in contracting field agricultural production with cooperators, trading and servicing tractors and other agricultural machinery, producing animal feed, seed wheat, barley, and soybeans, fattening pigs and cattle, and field agricultural production and seed production.

14. By implementing the concentration in question, Agrofert aims to achieve additional diversification and deepen synergy in the scope of operations of the participants to the concentration, given that even before the concentration, they were suppliers of agricultural raw materials to each other, and considering that Agrofert has so far been less present in the area where Ruris Agro operates.

15. Consequently, it is not likely that this concentration could have any anticompetitive effects it does not create new or strengthen a dominant position of the participants to the concentration.

2.3. Mlin i pekare, Plodinec, Allianz ZB, PBZ CO/Čakovečki mlinovi

16. The CCA cleared in Phase I the concentration between the undertakings in the form of acquisition of direct controlling interest on a permanent basis over the undertaking Čakovečki mlinovi d.d., Čakovec by MLIN I PEKARE, PLODINEC, ALLIANZ ZB, PBZ CO (on its own behalf for the benefit of the funds).

17. The concentration will produce effects on the following relevant markets: the groceries retail market (primarily food, beverages, toiletries and household supplies); production and imports of bakery products; wholesale of bakery products; retail of bakery products; grain procurement (wheat and corn); flour production and wholesale: a) to industrial buyers and b) to retail chains and wholesalers. For all these markets, the territory of the Republic of Croatia is the relevant geographic market, except for the flour production market, that covers the EU area. Additionally, regarding the groceries retail market, the relevant areas include not only the territory of the Republic of Croatia but also the following counties: Varaždin, Zagreb, Krapina-Zagorje, Bjelovar-Bilogora, Osijek-Baranja, Požega-Slavonia, Međimurje, Primorje-Gorski Kotar, Virovitica-Podravina, Istria, and the City of Zagreb.

18. A detailed analysis of the available data for all identified relevant markets lead to the conclusion that in none of the identified relevant markets does the concentration result in a significant strengthening of the acquirer's position. In the flour production market, even if a more narrowly defined market is considered, i.e., the territory of the Republic of Croatia, as well as in the entire EU region, the position of the participants to the concentration will not be significant in the post-merger period. Regarding the markets related to the bakery sector, the implementation of the proposed concentration will not impede competition in either the production or wholesale and retail of bakery products. There are numerous undertakings present in these markets that produce bakery products and participate in wholesale and retail, and additionally, from the perspective of the end consumers, besides the large market players in the sector concerned, there are also many undertakings active in the retail that are not part of large undertakings.

19. At the same time, in the retail market, both in the territory of the Republic of Croatia and in the observed counties, it is evident that there is no significant strengthening of the acquirer's position. There is a large number of undertakings, particularly large retail chains, that are among the leading ones at the national level, as well as numerous undertakings that are not part of large undertakings.

20. Given that the concentration in question produces no significant effects in the relevant market, particularly taking into account that it does not create or strengthen a dominant position of its participants and as such cannot produce anticompetitive effects, the CCA cleared the notified concentration in the first phase.

2.4. Tommy/Brodokomerc Nova

21. The CCA cleared in phase I the concentration between the undertakings in the form of the acquisition of a direct controlling interest on the permanent basis over the undertaking Brodokomerc Nova, by the undertaking Tommy. This is a horizontal merger in the groceries retail market (retail market in food, beverages, toiletries and household supplies) in the territory of the Republic of Croatia, particularly in Primorje-Gorski Kotar County.

22. After having received the complete notification of the concentration concerned on 9 September 2024 the CCA published the request for information from all interested parties with the view to receiving further written comments and explanations with respect to the

market situation and the likely effects of the concentration at issue on its website. No replies to this request for information were submitted to the CCA within the prescribed deadline.

23. The acquisition of Brodokomerc makes evident the intention of Tommy to further strengthen its position in Primorje-Gorski Kotar County and enter the segment of smaller retail formats, thereby raising competitive constraints of its rivals both in the territory of Primorje-Gorski Kotar County and across the Republic of Croatia.

24. On the national level, based on the data for 2023, following the implementation of the concentration in question, Tommy will retain the 6th position in the market ranking and achieve a post-merger market share of [5-10%].

25. Taking all of the above into account, as well as the fact that the post-merger market share in Primorje-Gorski Kotar County will be relatively low, around [5-10%], it is not likely that the proposed concentration could produce significant anti-competitive effects in the market, as this concentration does not create or strengthen a dominant position of its participants.

3. Sector inquiries

26. Sector inquiries are also one important part of the CCA regular activities. These sector inquiries are research projects with the purpose of gaining in-depth understanding of how particular sectors or markets work.

27. The CCA regularly conduct grocery retail market inquiry every year for almost 20 years, since 2006 and is done like fact-finding mission where the CCA sends out questionnaires to market participants ordering addressee to provide certain information. There is mandatory obligation to respond to a request for information. Such a lengthy period of regular annual grocery retail inquiries enables CCA to present results that are often reached by comparing and contrasting the results to prior inquiries' findings.

28. The CCA publishes its inquiry report, in order to maximise the audience access to the analysis and conclusions.

29. Grocery retail market inquiry key findings for 2023 are set out below.

3.1. Grocery retail market inquiry

30. The Croatian Competition Agency (CCA) carried out the Groceries retail market investigation (including food, beverages and toiletries and household supplies) in Croatia for 2023. The sample included 44 undertakings that, according to their realized turnover, represented the largest undertakings operating in the grocery retail market.

31. There were four retailers less in the 2023 sample compared to the previous 2022 market research.

32. The turnover from grocery retail in the Republic of Croatia of all undertakings from the sample in 2023 amounted to EUR 7.73 billion. In 2023, a nominal grocery retail turnover growth of EUR 1.07 billion was recorded compared to the previous 2022, when it amounted to EUR 6.66 billion, showing that the grocery retail market rose by 16.1%. For the sake of comparison, the growth rate had been 15.7 % in the previous period, or EUR 0.9 billion.

33. This was certainly influenced by the general inflation trends and especially in the part related to the food and non-alcoholic beverages component in the consumer price index.

34. In 2023, there was a total of 5.140 sales outlets of the sampled retailers, which rose by 144 compared to the previous 2022, representing a growth of 2.9%. For the sake of comparison, in 2022 the rise was 3.5% compared to 2021, or 177 more outlets.

35. The total net sales space of all sales outlets of the surveyed undertakings in 2023 amounted to 1.6 million square meters, recording an increase in net sales space of 59,000 square meters compared to the previous 2022, representing a growth of 3.8%.

3.1.1. Market structure and trends in grocery retail market in 2023

36. Konzum plus was the largest grocery retailer in 2023. Its market share in the observed 2023 amounted to 20% - 30% and recorded a slight increase in market share compared to 2022, with a double-digit turnover growth in groceries retail. In 2023, it had 637 outlets (in the previous 2022 it had 628 outlets).

37. Furthermore, the trend of increasing turnover in groceries retail of the Schwarz Group members continued. In 2023, Lidl recorded double-digit turnover growth according to relative indicators. Lidl's market share in the observed 2023 amounted to 10%-20%. The other Schwarz Group member, Kaufland, also recorded the rise in its turnover and market share in the range between 5%-10%. Overall, both Schwarz Group members had a combined market share of 20%-30% in 2023.

38. The turnover growth in the groceries retail in the observed 2023 was recorded by 37 retailers.

39. The highest nominal rise in groceries retail turnover in 2023 was recorded by Konzum plus (by more than 200 million euro), followed by Lidl, Spar, Studenac and Kaufland (all four recorded growth in the range from 100 to 200 million euro). They were followed by Plodine and Tomy (nominal growth ranged between 50 million to 100 billion euro), KTC and Eurospin (growth ranging from 20 million to 30 million euro).

40. In the observed year 2023, regional retailers - Boso, Ribola, Mlin i pekare, NTL and Decentia also experienced turnover growth in the grocery retail ranging from 10 to 20 million euro. Some smaller local retailers, such as Trgovina Krk, Trgočentar, Zabok, Gavranović and Bakmaz all grew by less than 10 million euros.

41. However, Studenac kept the lead in the number of outlets (1,257 outlets in 2023), predominantly of small format such as small stores and supermarkets.

42. The list of "Top 10" in 2023 remained unchanged: Konzum plus, Lidl, Plodine, Spar, Kaufland, Studenac, Tommy, KTC, Trgovina Krk, NTL.

43. The highest rise in the market share among top ten grocery retailers in 2023 compared to 2022 was recorded by Studenac and Spar, followed by Konzum plus.

3.1.2. Moderate rise in market concentration

44. In 2023 asymmetry between the leader in the market Konzum plus and its second rival Lidl remained the same.

45. Compared with 2022 the report year showed a mild rise of the concentration ratio CR10 (the market shares of the 10 biggest retailers in the market), that was 86.7 in 2023 and 86.4 in 2022. The CR10 increase was primarily due to the rise in market shares of Studenac and Spar, less of Konzum plus.

46. The results of the analysis of the five-top-rivals (CR5) indicated that the concentration ratio CR5 was 66.4 in 2023, and 66.2 in 2022. In other words, there has been a slight change in the first five rivals (Konzum, Lidl, Plodine, Spar, Kaufland) as well as

the change in the respective market shares and the “distribution” of market shares in 2023 compared with 2022.

47. Herfindahl-Hirschman Index (HHI) amounted to 1,408 in 2023 (1,405 in 2022), indicating that the grocery retail market for in Croatia was weakly concentrated. In other words, it proved a competitive structure of the grocery retail market in Croatia.

3.1.3. Market situation and changes at the regional level

48. In the observed year of 2023, turnover rise was recorded in all 20 counties and in the City of Zagreb, just like in 2022. The highest turnover from retail was recorded in the City of Zagreb (1.3 billion euro), followed by Split-Dalmatia County (1 billion euro), Primorje-Gorski Kotar County (678,7 million euro), and Istria County (614 million euro), Zadar County (522 million euro), Zagreb County (less than 505 million euro), and Osijek-Baranja County (little more than 402 million euro).

49. The highest nominal rise in the realized turnover in the grocery retail at the regional market level (City of Zagreb and twenty counties) was in 2023 recorded in the City of Zagreb where 169 million euro rise in turnover was recorded (an increase of 14.7 percent compared to 2022), followed by Split-Dalmatia County, where the turnover rise amounted to slightly less than 142 million euro (increase of 16 percent compared to 2022, Primorje-Gorski Kotar County, where turnover rise of 82 million euro was recorded in 2023 compared to 2022 (increase of 13.7 percent, and Istria County with turnover rise of 79.4 million euro (increase of 14.9 percent compared to 2022). The significant increase in grocery retail in Split-Dalmatia, Istria, and Primorje-Gorski Kotar counties has been likely influenced by inflation and the growth in tourism indicators and consumption in those counties.

50. Konzum Plus remained the leading retailer in the City of Zagreb and six counties (Zagreb, Krapina-Zagorje, Varaždin, Karlovac, Lika-Senj, and Osijek-Baranja counties), as in the previous year of 2022.

51. Tommy remained the leading retailer in three counties in the Adriatic region, in its home Split-Dalmatia County, Šibenik-Knin County, and Zadar County.

52. Studenac was the leader in Dubrovnik-Neretva County and for the first time in Bjelovar-Bilogora County, whereas Mlin i pekare, Sisak remained the market leader in the Sisak-Moslavina County and took the lead in Požega-Slavonia County (operating as NewMiP d.o.o. since October 2023).

53. In 2023, KTC was the largest retailer in Virovitica-Podravina County, Boso has been the long-standing leader in the Vukovar-Srijem County and Trgovina Krk was the largest groceries retailer in Međimurje County, also due to the merger with Metss from Čakovec.

54. Members of the Schwarz Group were leading in two counties. Lidl was the leading retailer in Koprivnica-Križevci, while Kaufland is the leading retailer in Brod-Posavina County.

3.1.4. Supermarkets keeping the lead

55. The results of the market investigation showed that supermarkets achieved the highest grocery retail turnover in Croatia in 2023, amounting slightly more than 4 billion euro. Compared to 2022, there has been an increase of 581 million euro, or 17 percent.

56. Hypermarkets followed, with a turnover of 1.56 billion euro in 2023, marking an increase of 196.5 million euro compared to 2022, or 14.4 percent.

57. Self-service stores generated a turnover of almost 1.52 billion euro in 2023, with an increase of 192.2 million euro compared to 2022, or 14.5 percent.
58. Small stores recorded a total turnover of 649.6 million euro in 2023, showing an increase of 102.3 million euro compared to 2022, or 18.7 percent.
59. For comparison, in the previous study for 2022, the highest turnover growth compared to 2021 was also recorded in supermarkets, followed by self-service stores, hypermarkets, and small shops. That is to say, hypermarkets replaced self-service stores with the second-highest turnover growth in the grocery retail market in Croatia.
60. Supermarkets as a type of a retail outlet continued to dominate the sales structure based on both turnover and the net sales area. In the observed year of 2023, grocery retail is significantly dominated by supermarkets and hypermarkets, as more than two-thirds, specifically 72 percent, of total turnover in the grocery retail was generated through sales in supermarkets (51.8 percent) and hypermarkets (20.2 percent).
61. Similar as in the previous year, in 2023 self-service stores held the share of more than 42% of all retail outlets, followed by small shops with 39%, supermarkets with 16 % market share and hypermarkets with a little less than 3 %.
62. Regarding the criterion of the net sales area, supermarkets continued to have the largest share, accounting for just over 49 percent, and rising, of the total net sales area in 2023. They were followed by self-service stores with a share of 21.8 percent. Hypermarkets followed with a share of 21.6 percent, and small stores with a share of about 7.5 percent. What changed here compared to 2002 was that self-service stores replaced hypermarkets in the second place regarding the net sales area.
63. No shop format indicated a decline in net sales area, unlike in 2022 when hypermarkets lost some of their net sales area.

3.1.5. On-line shopping and loyalty programmes

64. The results of the inquiry for 2023 showed that groceries on-line shopping has still not taken a significant share in the total turnover structure of the groceries retail shops. The highest share in the on-online grocery retail turnover in 2023 was recorded by the biggest retailer Konzum plus.
65. Seven retailers reported turnover by e-commerce on their own platforms in 2023. No new retailer has generated turnover on its own platform.
66. In 2023 loyalty programmes were applied by 14 groceries retailers. No new undertaking launched such a reward programme. Like in 2022, Konzum plus, followed by the members of Schwarz Group, Lidl and Kaufland, and KTC had the highest number of members in their loyalty reward programmes.
67. Regional retailers such as Robin and Dergez had worth mentioning loyalty programmes in place.
68. Due to the introduction of the euro as the official currency in the Republic of Croatia, from the beginning of 2023, the minimum purchase value of goods and/or services required to earn additional points in loyalty programmes is now stated in euros. Additionally, the thresholds for earning a certain number of points within the loyalty programmes of individual retailers have been significantly increased, requiring higher purchase value.

3.1.6. Gross margin

69. Similarly, as in 2021 and 2022, in 2023 the CCA investigated the average gross margins of retailers applied across eight categories of products. The categories that were selected by the CCA were: meat and meat products, poultry meat and eggs, bakery products (bread, pastries), milk and dairy products, fresh fruit and vegetables, soft drinks and water, confectionery products (biscuits, chocolates, candies, etc.) and basic food products (flour, sugar, rice, noodles, edible oils, etc.).

70. The indicators taken into account by the CCA included the gross margins in 2023 compared to 2022 (at the end of the respective year).

71. The indicators regarding the average margins of surveyed retailers in 2023 for eight categories were as follows: meat and meat products - 23.7 percent, poultry and eggs - 24.1 percent, bakery products - 37.2 percent, milk and dairy products - 21.4 percent, fresh fruit and vegetables - 29.9 percent, non-alcoholic beverages and water - 25.9 percent, confectionery products - 31.7 percent, basic food products (flour, sugar, rice, noodles, edible oils, etc.) - 24 percent.

72. The results of this research showed that the average gross margins for food products in 2023 were the highest in the category of bakery products and confectionery products, and relatively high in the category of fresh fruit and vegetables and non-alcoholic drinks.

73. When comparing average gross margins in 2023 to those in 2022, of the eight observed product categories, the research results showed a slight decrease in average margins in four categories (meat and meat products, poultry and eggs, milk and dairy products, basic food products), while the remaining four categories show a slight increase in average margins (fruit and vegetables, confectionery products, non-alcoholic beverages and water, and bakery products).

74. It must be noted here that certain food products included in the CCA survey, were in 2023 subject to the government Decision on Direct Measures for Price Control for Individual Food Products, OG 104/22, 5/23, 31/23, and 37/23 and the Decision on Direct Price Control Measures for Certain Products in Retail Trade OG 107/23), which came into effect on 18 September 2023. The list of products covered by the latest Decision has been expanded to 30 products and includes, in addition to food products, a smaller number of non-food products.

3.2. Sector inquiry into vertical relations between suppliers and retailers in the food and non-food supply chain in the Republic of Croatia

75. The CCA starts in 2024 to investigate into the vertical relations between suppliers and retailers in the food and non-food supply chain in the Republic of Croatia, primarily focusing on the relationship between primary producers, distributors, and retailers.

76. The CCA plans to conduct this sector inquiry during 2024 and, upon its completion, publish the results of the inquiry on its website.

77. The aim of the investigation is, among other things, to identify the following facts and circumstances:

- contractual relationship in vertical supply chain between primary producers, distributors, and retailers of food and non-food products, particularly in terms of financial and commercial terms of business,
- general business terms, i.e., general terms of purchase and/or sale of retailers and suppliers,

- provisions applied in determining the price of goods and margins by primary producers, distributors, and retailers,
- market power of individual suppliers of food and non-food products,
- other facts in vertical relations between primary producers, distributors and retailers with the view to gaining better understanding of the market situation.

78. The investigation will help CCA to identify whether there are any “market imperfections” in that vertical supply chain that would point at any anti-competitive behaviour within the meaning of competition rules and significant market power of undertakings.

79. In the context of the aforementioned investigation, it is necessary to make reference to the powers of the CCA, particularly bearing in mind that the CCA is not a price regulator. In other words, high prices of goods or high margins do not *per se* constitute an infringement of competition rules. However, if the CCA finds any indications of likely anti-competitive behaviour or abuse of dominance by an undertaking/s in the market, the CCA can initiate administrative proceeding against the undertaking/s concerned.

80. This type of market inquiry should by its nature be clearly distinguished from the separate regular annual retail groceries’ market inquiry (market research in food, beverages, toiletries and household supplies) in the Republic of Croatia that has been carried out by the CCA for many years now and that will also be continued in the future. At the same time, this market inquiry should also be separated from the cases that are handled by the CCA pursuant to the rules on the prohibition of unfair trading practices in the food supply chain.

81. The CCA has published a call for evidence, inviting views, the delivery of data and information from all undertakings active in the food and non-food vertical supply chain, professional associations, employers’ associations, consumer protection associations, and other legal or natural persons who may have any information that is relevant for the market inquiry concerned and that can contribute to understanding of the market situation.