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**Assessing and Communicating the Benefits of Competition Interventions – Note by
Croatia**

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This document reproduces a written contribution from Croatia submitted for Item 6 of the 75th meeting of Working Party 2 on 12 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

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1. Introduction

1. Transparency of the work of a competition authority as public institution helps to clarify its mandate and competence to the public but at the same time it contributes to further promotion of competition. Effective enforcement of competition law and competition culture are inseparable interlinked because without constant competition advocacy efforts by competition authorities explaining benefits of competition to all stakeholders, there is no sufficient awareness and thus, not completely efficient enforcement. To that end, communicating benefits and goals of competition is crucial in order to make respecting competition rules as something recognized as a positive for consumers, business and public in general. In order to achieve that, the competition authorities use different communication tools and competition advocacy activities such as communication strategies, regular informing of the public about its decisions and activities, in the form of press releases, public consultations, announcements or statements, articles in the media, publication of decisions and relevant strategic documents, issuing of legal opinions on the conformity of laws and other legislation with competition rules, educations and trainings, cooperation with different institutions, awareness raising campaign, publishing of market studies or results of sector inquiries, publications on different topics in competition law in the newsletter etc.

2. This contribution in the first part describes annual reports on the activities of the competition authority, their relevance for transparency and for promotion of competition. Furthermore, it presents the communication strategy and different communication tools used by the Croatian Competition Agency (further: CCA) explaining in more details some of the specific tools, legal opinions, education, and cooperation with other institutions.

2. Annual report on the work-inevitable and crucial element for transparency and promotion of competition law implementation

3. The CCA has legal obligation to submit its annual reports to the Parliament. For the performance of its activities the CCA is responsible to the Croatian Parliament and it submits to the Croatian Parliament the Annual Report on its work every year not later than on 30 June of the current year. The Annual Report on the work of the CCA contains the data on assignments and relieves from duty of the president and the members of the Council, the allocated financial resources and changes in the budget allocated compared with the previous years.¹ This is the obligatory content of the Annual Report prescribed by the law and the rest is on the CCA to freely decide what to report once a year. The intention is to cover all of its relevant activities in the reporting year for both competences of the CCA: competition (antitrust and merger) and unfair trade practices in the food supply chain (UTP). The Annual Report usually consists of several chapters, one main chapter is dedicated to the enforcement of competition including legislative changes, the examples of enforcement practice, cases in prohibited agreements, abuse of a dominant position and mergers, advocacy with emphasis on legal opinions and sector inquiries. The other main chapter presents the work of the CCA in its second competence, UTP, legislative changes,

¹ Croatian Competition Act, Official Gazette No. 79/09, 80/13, 41/21, Article 26, paragraphs 6 and 7. Available at: <https://www.aztn.hr/en/competition/legal-framework/>

the examples of cases and other activities. Separate chapter is dedicated to international cooperation and main activities of the CCA within European Competition Network (ECN), International Competition Network, OECD and other international organizations or events.

4. The Report also contains relevant statistics, number of opened cases, solved cases, adopted decisions, fines imposed, judgements of the review courts etc.²

5. There is no legal obligation to publish the annual report, however, taking into account the importance of transparency of its work, the CCA regularly publishes its annual reports on its web site. Recently it started publishing the summary of the Report in the form of brochures in Croatian and English language in order to distribute them and further spread the visibility of the CCA and promote competition. The Annual Reports on the work of the competition authority can serve as an important communication tool for emphasising the benefits of competition and the relevance of the independent regulator designated for its implementation. The Report is presented by the president of the Council or vice-president of the Council before the Government and Parliament and after its formal adoption by the Parliament it is published on the website of the CCA. So far there was no practice to present the Annual Report to the public but often the most interesting cases or statistical data from the Report are shared in public events related to competition or unfair trade practice or to the media.

6. The quantitative or qualitative assessment and concrete impact of the activities done by the competition authority is rather difficult in smaller authorities like the CCA due to budgetary and resources restraints. However, there is an indirect assessment through different sources of information about the impact of the CCA's work and activities on the market and on consumers. This source of feedback information on CCA's intervention includes comments from the market participants, information from the media, reports, changed practices or agreements, lower prices, more choice of products or services etc. The use of more elaborated assessment with the application of methodology like OECD methodology from 2014 is under consideration for future activities provided sufficient resources could be dedicated to this demanding task.

3. Communication strategy and examples of communication tools used by the CCA

7. In the area of raising awareness about the importance of compliance by the businesses community with competition rules, the CCA's priority remains to advocate competition law towards undertakings, State bodies and the general public but also to judiciary and to the other sectoral regulators and academic institutions. The CCA puts lot of efforts in competition advocacy initiatives. It promotes competition with the transparency of its activities and decisions, opinions and annual reports published on its website and through the available communication channels based on the CCA's Communication Strategy. Constant communication of benefits of competition is based on the well-developed and regularly updated communication strategy. The last communication strategy was adopted and published in the form of a brochure in 2022.³ The Communication Strategy contains short analysis of present situation, starting point of the view of institution in the public and it determines the communication goals which the CCA intends to achieve when communicating with public. The Strategy addresses different

² For example, Annual Report of the CCA for 2021., <https://www.aztn.hr/ea/wp-content/uploads/2023/01/Summary-GI-2021-1.pdf>

³ Communication strategy, 2023, <https://www.aztn.hr/ea/wp-content/uploads/2023/02/AZTN-Komunikacijska-strategija.pdf>

stakeholders (Government, Parliament, public institutions, undertakings, media, academic society, judiciary, general public, international community) and the best possible communication approach towards them.

8. There is the need to update the communication strategy every couple of years in order to improve it and to adjust it to current communication trends and where necessary to introduce some new communication tools. In the continuation some of the most commonly used communication tools are presented.

9. The CCA ensures the transparency of its work by publishing on its website its activities, decisions, opinions, annual reports, work plan, mission statements, guidelines, results of sector inquiries, all court decisions, judgements related to the proceedings before the CCA, relevant articles written by its experts and press releases drafted by its communication officer.

10. Media announcements- the CCA's experts answer inquiries from the media, journalists, prepare for media interviews or statements in business or daily papers, the president or other designated experts give statements on TV or issue regular press releases.

11. Social networks-Since 2022 the CCA formed its page on business social network LinkedIn where regularly announces important activities of the CCA particularly in the field of promotion of competition like organization or participation in competition events (roundtables, conferences, seminars, webinars), publications, guest lectures.

12. Newsletters and Brochures- the CCA issues a monthly electronic Newsletter called *AZTN INFO* presenting its work and its most important decisions and investigations for the current month together with an overview of interesting news from the European Commission and other EU national competition authorities. The application to receive the E-Newsletter is very simple, by email so broad range of stakeholders can obtain it.

13. One of the good examples of creating an effective dialogue with the business community to encourage them to comply with competition rules and to adjust their behaviour on the market in line with competition rules is the publication of guides and brochures for undertakings available on the web site of the CCA.

14. For instance, a short guide for undertakings in detecting and reporting bid-rigging has been produced providing simplified indicators to help identify potentially prohibited agreements in a bidding process.⁴ Another simple brochure is called “*No to Cartels*” with 10 key questions and answers about cartels.⁵ Both of these brochures are available also in hard copy so they can also be distributed during some competition law related events (conferences, seminars, roundtables).

15. Association for promotion of competition- it is very useful to have special association in the form of the NGO whose aim is to promote competition law and policy and build the network of competition law specialists. In Croatia, this is Croatian Competition Law and Policy Association (HDPPTN) as an umbrella national association

⁴ Short Guide for detecting bid rigging, CCA:
http://www.aztn.hr/uploads/documents/brosure/vodic_za_narucitelje.pdf

⁵ No to cartels-10 golden questions:
http://www.aztn.hr/uploads/documents/novosti/ne_kartelima.pdf

established to promote, develop and promote competition law and policy, as well as to bring together national and international competition law experts.⁶

16. Compliance programs are seen as set of rules and recommendations for doing business with the aim to ensure compliance with competition law. The CCA published on its website Guide for compliance programs “*Practical Guide for undertakings to establish a Competition Compliance Programme*” in order to prevent the behaviour of undertakings contrary to the rules of competition and it is modelled on the practices of the European Commission and other national competition authorities. It is a practical guide with simple instructions for creating individual compliance programmes in order to ensure that undertakings behave in accordance with the competition rules. The Guide consists of five parts: Basic principles of competition, Prevention, Identification of risks, Risks management and Recommendations.⁷

17. From the side of undertakings, competition compliance programs present a very good instrument which can help to prevent any competition law infringements by educating internally its staff (management and employees) about competition law. In that respect, compliance programs can be seen as complementary tool for public enforcement of competition law.

18. Market studies and sector inquiries are excellent tools for detecting possible competition problems on certain markets and for the competition advocacy. These sector inquiries have the purpose of gaining in-depth understanding of how particular sectors or markets work. At the same time they contain analysis of possible market barriers and the legal framework regulating the particular markets, which is the prerequisite for effective enforcement of the rules falling under the scope of the CCA. These legal and economic analyses very often enable the CCA to detect indications for infringement proceedings. The results of the sector inquiries are published on the web site of the CCA and serve as useful source of information about certain markets. Recent sector inquiries include groceries retail market (conducted regularly every year), insurance market, press publishing market and food delivery services via digital platforms.

19. New communication competition tools: future developments require adaptation of existing and development of new communication tools to promote benefits of competition. It became evident that besides the use of traditional communication tools, those tools have to be more adjusted to digital business sphere with increasing usage of on line webinars on platforms or topical podcasts as new applicable competition advocacy tools.

4. Legal opinions- dual tool for competition advocacy promotion and for alignment of national legislation with competition rules

20. The CCA promotes competition through its opinions on laws and bye-laws and other activities preventing anti-competitive practices. With regard to this competition advocacy activity, the CCA is very active and it issues a large number of legal opinions every year. To date, the CCA has issued significant number of legal opinions on laws and draft laws and their compatibility with the competition rules, including legal opinions provided at the request of natural and legal persons. Only in 2022 the CCA issued 20

⁶ <https://hdpptn.hr/en/>

⁷ Practical Guide for undertakings to make Compliance Program at CCA's web site: <http://www.aztn.hr/ea/wp-content/uploads/2015/05/compliance-with-competition-law.pdf>

opinions on the conformity of laws with competition rules and 59 responses to different requests. The Competition Act provides that the CCA issues expert opinions at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities in compliance with separate rules and local and regional self-government units, regarding the compliance with Competition Act of draft proposals for laws and other legislation, as well as other related issues raising competition concerns. The central administration authorities or other state authorities may be requested to communicate to the CCA draft proposals for laws and other legislation for the purpose of assessment and issuing expert opinions on their compliance with Competition Act, if it finds that they may raise competition concerns. The CCA can issue expert opinions assessing the compliance of the existing laws and other legal acts with Competition Act, opinions promoting competition culture and enhancing advocacy and raising awareness of competition law and policy and give opinions and comments relating to the development of the comparative practice and case law in the area of competition law and policy. The expert opinions of the CCA are not binding, but they are recognised and usually respected and they can serve as an important element in adjusting legal documents to be completely in line with competition rules. At the same time, expert opinions contribute to promotion of competition and in some cases they have positive impact on the liberalization of some markets (taxi services in the past) or on the change of practice or behaviour on the market.

4.1. Example of expert legal opinion: Entry fees to the Registry of the Bar Association

21. The opinion on the entry fees to register in the registry of the Bar Association was based on the analysis of the chamber system in Croatia including Bar Association and on comparative analysis conducted with other EU and neighbouring countries. The result of the analysis showed that the entry fees for the first entry into the registry of bar association in Croatia was excessive (5.000 euros). Thus, the opinion of the CCA stated that this represents financial barrier to entry considering that the membership to the Bar Association is mandatory and that such huge differences should not exist between paralegals and persons applying for the first time for Bar Association Registry. Any condition that is disproportionate, overburdensome or restrictive is obvious barrier to enter and participate on the market and provide this service.

4.2. Example of expert legal opinion: The CCA opinion on public procurement rules relating to the purchase of fixed telephony services

22. The CCA communicated its opinion on public procurement rules relating to the purchase of fixed telephony services to the State Office for Central Public Procurement. This opinion is the result of the cooperation between the Croatian Regulatory Authority for Network Industries (HAKOM) and the CCA that are both in charge of the electronic communications markets. In the sense of competition rules the CCA holds the view that where deciding on the public procurement process itself and its requirements regarding the criteria and specifications the State Office for Central Public Procurement should take into account all the aspects of this specific market. Given the fact that on the electronic communications market – provision of fixed telephony services there are players of different market power and taking into account the specific nature of these services, the bidding criteria should be proportionate to the objectives that need to be achieved, whereas they should at the same time facilitate participation in the bidding to a larger number of interested bidders. This is why the CCA supports the separation of the subjects of the procurement contracts in several procurement groups.

23. In the opinion of the CCA regarding public procurement there are also two potential categories of service users. The first category of users depends of the coverage location and distinguishes the users that would require from their service providers to provide the service in the whole territory of Croatia. On the other hand, the second category of users would like to have the service provided merely at a certain location. The second category of users defines the users that may have safety or some other justified requirements that must be met by the potential bidders, in other words, criteria that are normally not necessary for the provision of regular services and are normally not required by the users. Thus, the CCA holds the view that where the users want to have the service provided in the whole territory of Croatia and/ or have specific requirements that must be met by the bidders the public tender procedure should appropriately specify these specific criteria. The competitive criteria for other users should be defined in the way to facilitate access to the bidding and to the market to a larger number of bidders.

5. Educational activities-significant role for promotion of competition and work of the competition authority

24. Awareness raising about benefits and advantages of competition is of paramount importance for building of competition culture in the society, primarily among business and for effective competition enforcement. Thus, the efforts to educate and explain competition rules form part of constant ongoing activities of the CCA. Once a year the CCA organizes one national or international conference dedicated to current competition law issues with prominent experts from the CCA, practice, representatives of relevant ministries, regulators, business, lawyers, professors of competition law. Moreover, the experts from the CCA are often invited to participate in different roundtables or seminars about competition and present competence of the CCA or its recent enforcement practice. Many competition related events are organized by the Faculties of Economy or Law or by the Croatian Competition Law and Policy Association in which the expert from the CCA regularly give their contributions and the CCA is a co-organizer in some of those events.

25. Role of business associations in recognizing the significance of promoting competition and compliance with competition rules is also very important especially taking into account that prohibited agreements had been often concluded in the meetings of certain business associations. With the aim of educating its members about competition rules, associations should also engage in promotion and education activities. The CCA has very good experience in long term cooperation with chamber of commerce which produced several joint workshops, conferences and seminars about different competition law topics aimed at large scale of stakeholders (undertakings, lawyers, judges, other associations, public administration, general public, academia, journalists). Similar good cooperation exists also with Croatian Association of Employers (HUP) where the CCA gave several trainings in competition law for its employees and for its members-representatives of undertakings. The said association also hosted last annual conference of the CCA and it will host another international seminar on advanced EU competition law with Academy of European Law (ERA).

26. Another good example of competition compliance promotion through education is education for students of universities in Croatia, mostly at Faculties of Law and Faculty of Economy in Zagreb, Rijeka, Osijek and other Croatian cities where experts from the CCA often teach students about competition law and professors participate in events about competition law organized by the CCA. The National School for Public Administration has ongoing program in competition law created by the expert from the CCA where once or

twice a year civil servants from different public administration bodies learn about basic concepts of competition law.

27. The trainings on competition with engagement of the experts from competition authority is crucial for promotion of competition but also for better understanding of the work of the CCA.

28. It is important to have good forum where there is open exchange of opinions, where we learn from each other and to discuss some open questions in practice or in legislation, including the way how to improve competition enforcement in Croatia.

6. Cooperation with other regulators and relevant institutions

29. Another important element in building communication and promoting benefits of competition for better enforcement is cooperation with different stakeholders. To that end, the CCA concluded cooperation agreements with several sector regulators. In the period from December 2021 until April 2022, the CCA signed cooperation agreements with four regulators-Croatian Telecom regulator-Croatian Regulatory Authority for Network Industries, Croatian Financial Services Supervisory Agency, Croatian Energy Regulator and Croatian State Commission for Supervision of Public Procurement Procedures. The cooperation agreements provide for mutual cooperation in promoting competition with offering each other expert help in the form of expert opinions, exchange of information about competition related topics in specific sectors, on joint organization of events and trainings. Besides the formal cooperation agreements, there is already very good practical cooperation, for instance in the form of education about prohibited agreements in public procurement (bid rigging) provided by the CCA experts to the officials of State Commission for supervision of public procurement procedures. In addition, special cooperation agreement was concluded with the Ministry of Economy granting the CCA access to the Electronic Registry of public procurement in order to discover more potential bid rigging agreements.

30. As already mentioned, another good example of competition promotion is cooperation with academic institutions universities in the form of education for students, study visits of students to the CCA, possibilities of student internship in the CCA, invitations and/or organizations of conferences. So far, the cooperation agreements are concluded with the Faculty of Law in Rijeka, Faculty of Law in Osijek and with the Faculty of Economy in Zagreb. The signature of the cooperation agreement with the Faculty of Law is also planned very soon. Regardless of the cooperation agreements, the cooperation with said faculties exists for many years and the experts from the CCA often as guest lecturers provide education for students and give support to students who prepare their thesis in the field of competition law. This is excellent way of combining research with practice and build competition law doctrine and practice in Croatia.

7. Final remarks/Conclusion

31. All the presented communication tools taken together are effective. The use of only one or two communication tools would be insufficient but applying all of them continuously and with adjustments for specific stakeholders gives the best results. The annual reports serve as accountability tool for the work of the competition authority and as the tool for its transparency. The press releases and statements to the media reach broader audience and spread the importance of competition for consumers and businesses. The legal opinions enable compliance with competition rules and sector inquiries provide the

knowledge about specific markets. Education, trainings and contributions at different events educates and promotes benefits of competition among different stakeholders. The cooperation agreements create more formal bounds between competition authorities and other institutions with more profound dedication to jointly promote competition values. The cooperation with trade or business associations gives unique opportunity to prevent infringements of competition rules by undertakings and to explain the significance of competition for their business. International cooperation and bilateral agreements of cooperation between competition authorities have also important part to play in cross border promotion of competition. Many of the presented communication tools can also play relevant role as a source of information about impact assessment of the activities and work of competition authorities especially for competition authorities which do not have yet developed and used methodology for such assessment. Hence, there are many communication competition advocacy tools developed and used by competition authorities with some new ones emerging in the digitalization era like podcasts and on-line webinars.