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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Croatia****5 June 2018**

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More documentation related to this discussion can be found at www.oecd.org/daf/competition/consumer-facing-remedies.htm

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1. In this contribution, Croatian Competition Agency wishes to present its cases which are examples of remedies designed to eliminate possible negative effects of concentrations, in three cases, and of an abuse of dominant position in one case.

2. The three concentrations involve Agrokor, a conglomerate integration which consists of some of the most significant undertakings on the territory of the Republic of Croatia, with regard to their offer of products and their presence on domestic market. Majority of those undertakings have a long tradition and represent very well recognized and leading brands on the market. Their products are distributed on the whole market of the Republic of Croatia through retail network performed by the undertakings which are members of the AGROKOR group. Besides the distribution through the retail network of undertakings/members of the AGROKOR group, those products are also distributed through the retail chains and stores of their competitors. Hence, the AGROKOR group is present in most of the retail stores on the territory of all counties of the Republic of Croatia.

3. Among the mentioned undertakings, the undertaking KONZUM is mostly active in retail sale activities in non-specialized retail stores, it is the most significant member of the AGROKOR group for retail sale of groceries and market leader on the retail market in groceries on the territory of the Republic of Croatia. The market power of the undertaking KONZUM is also due to the great number of its own retail stores (small retail stores for every day shopping, KONZUM MAXI as medium sized retail stores and SUPER KONZUM as big retail markets appropriate for bigger weekly family shopping). Besides retail sale activities, the undertaking KONZUM has also developed a broad network for wholesale of groceries covering the whole territory of the Republic of Croatia.

4. In the cases described below, the relevant market for retail of groceries in Croatia proved to be extremely asymmetric, taking into consideration the market power of the undertaking AGROKOR which is reflected through its market share and position on the relevant market, financial strength, access to sources of supply on the market, connection to other undertakings, the ability to dictate market conditions in relation to its supply and demand and the ability to exclude other competitors from the market. These circumstances on the market allow AGROKOR to act significantly independently from its competitors, consumers, buyers or suppliers in the relevant market.

5. This is also underpinned by a strong portfolio of products and wide range of activities carried out by the participating undertakings causing a portfolio effect (demand is responsive to variety differentials, i.e. variety advantage gives AGROKOR group a demand advantage where the consumers are attracted by a broad range of all-in-one-place products, which reduces the revenue of its rivals). Under such circumstances, this may consequently lead to foreclosure to the disadvantage of the consumers given that the suppliers' choice is narrowed down, whereas AGROKOR might increase its prices or in any other way affect consumers' advantages. Additionally, the portfolio effect of the AGROKOR group takes into account its significant market and financial power as a buyer of products and its potential influence on the suppliers of the products which it offers in its wholesale and retail centres.

6. Taking into account all the mentioned concerns, Croatian Competition Agency conducted in-depth investigations in the cases described below, and opened proceedings which involved public consultations (inviting all interested parties to submit their comments on the proposed concentration), issuing the statement of objections (presenting to the parties the results of the proceeding and pointing out the negative effects that the concentration in question could have on the market), giving the parties an opportunity to propose measures which would eliminate negative effects of the proposed concentrations, and holding an oral hearing which concluded the collecting evidence procedure before the CCA.

7. Finally, with the last example described below, we wanted to present a case where a market, previously liberalised, was foreclosed to the detriment of consumers, but where a competition was successfully restored owing to the application of interim measure and implementation of commitments by the undertaking in question.

1. Agrokor-Mercator - Conditionally approved concentration (decision of 24 March 2014)

8. The merger in question dealt with two undertakings holding retail networks on the whole territory of the Republic of Croatia. The implementation of the concentration would lead to the overlap of activities in the relevant market of retail in groceries which would be particularly noticeable in certain counties. At the same time, implementation of the concentration would also have effects on the market for supply of goods.

9. By the implementation of concentration, undertaking Konzum, the affiliated company of Agrokor would as a leading undertaking on the retail market further strengthen its position on the territory of Croatia and increase asymmetry of the market as a consequence. Besides, purchasing power of Konzum would be strengthened towards suppliers.

10. Namely, Agrokor is vertically integrated holding system which is besides the retail in groceries market also present on the supply markets. Market power of undertaking Konzum being part of this system and its influence on the relevant market derives from the fact that Konzum is at the same time the supplier of groceries and in this supply of groceries, retailers which are at the same time its competitors appear as purchasers. This merger would additionally strengthen negotiating power of Agrokor towards suppliers of undertaking Konzum on one hand, and in relation to buyers of food production chain of the group, on the other hand. This would enable Agrokor to spill over its economic and market power from one market to the other and this could also indirectly affect the structure of the retail market. All this was very important in the context of possible foreclosure of the markets for competitors and purchasers.

11. Therefore, the Agency allowed the concentration conditionally, obliging Agrokor to comply with very strict and comprehensive measures and conditions to remove negative effects of the concentration on competition. In order to respect the requirements set by the Agency, Agrokor modified and complemented proposed measures and obligations several times. Finally, on 25 February 2014, the Agency accepted proposed measures and conditions as realistic and sufficient to remove negative effects of the concentration on competition.

12. Accepted measures from the final proposal can be divided in two groups:

1. Structural measures in the form of divestiture of sales facilities of the parties to concentration with precisely determined conditions with the aim to remove negative horizontal effects of concentration.
 2. Behavioural measures in the form of monitoring the behaviour of Agrokor towards suppliers of the parties to the concentration, especially towards suppliers of Mercator-H with the aim to remove negative vertical effects of the concentration.
13. The Agency has concluded that the implementation of measures for removing the negative effects of this concentration indirectly leads to positive effects on competition and consumer interests that would not occur in the absence of this concentration.

2. Agrokor d.d., Zagreb and Tisak d.d., Zagreb - Conditionally compatible concentration between undertakings (decision of 15 March 2007)

14. The Agency rendered the concentration between the undertakings Agrokor d.d. and Tisak d.d. conditionally compatible within the meaning of competition rules. With the mentioned decision, the Agency ordered a number of conditions and obligations which the undertakings had to implement to remove the possible negative effects of the concentration in question which could significantly impede competition, primarily in the relevant food and non-food retail market.

15. In this particular case, the imposed remedies especially took into account the fact that Agrokor d.d. confers decisive influence on the decisions of the undertakings within the Agrokor group. This conglomerate merger consists of more than thirty undertakings which are active at all stages of production or distribution processes and involves a wide range of activities in the territory of Croatia and in the neighbouring region.

16. With the view to eliminating the above mentioned anticompetitive effects, the imposed measures involved the prohibition of the reallocation of Tisak's outlets to retail food and non-food outlets within the period of the following three years. Furthermore, Agrokor was imposed an obligation, to ensure within the period of the following two years, that Tisak's supply must consist of at least 25 % of substitute products to the products which are supplied by Agrokor and its connected undertakings, whereby substitutes are considered products made by the competing undertakings to the Agrokor group in the food and non-food products retail market. In addition, the Agency ordered the undertaking Tisak that all the existing agreements concluded with the suppliers in respect of all kinds of products sold in the wholesale and retail should remain in effect within the period of one year whereby the commercial terms (e.g. deadlines and terms of payment) must remain the same or be more favourable than the existing ones used in the agreements in force provided that they are non-discriminating and transparent in respect of all suppliers. The Agency also prohibited Agrokor to sell its own brand products (Konzum d.d.) at Tisak's points of sale (such as its own brands "K plus", "Rial" or any other possible brands that may be created by the same undertaking or by the undertaking Tisak). Finally, in order to ensure transparency in the implementation of the imposed measures aimed at the elimination of the anticompetitive effects of the concentration in question, the Agency ordered Agrokor to appoint an independent auditing company, subject to the approval of the Agency, which will be in the following three years in charge of monitoring the implementation of the said remedies to restore effective competition in the relevant market.

17. The undertakings Agrokor d.d. and Tisak d.d. fully complied with the imposed measures, about which the Agency was regularly informed through audit reports.

3. Agrokor d.d. Zagreb / PIK Vrbovec d.d. Vrbovec – Conditionally compatible concentration (decision of 28 December 2005)

18. The specificity of the concentration in question is the fact that both the business activity (food sector) of the undertakings parties to the concentration and the ownership ties within the Agrokor group indicated possible negative effects of the concentration in question on competition and consumers. Moreover, it had to be taken into account that PIK Vrbovec d.d. was a firm in difficulty, the acquisition of which, on the part of one of the biggest Croatian undertakings in this sector, would mean the restoration of long term viability and maintenance of infrastructure. The Agency rendered the concentration between the undertakings Agrokor d.d. and PIK Vrbovec d.d. conditionally compatible. The Council proposed the remedies to restore conditions for effective competition which would be distorted as a result of the proposed concentration in the relevant food and non-food retail market and the relevant meat wholesale market covering fresh baby beef and pork and processed baby beef and pork products. In this particular case, the imposed remedies especially took into account the fact that Agrokor acquired PIK Vrbovec in the privatisation process.

19. Consequently, the imposed structural measures involved the divestiture of several retail outlets (termination of lease agreements, transfer of assets to other undertakings or reallocation of the retail outlets in the territory of two counties (Zagreb and Varaždin), where Agrokor's market shares exceeded 40 %.

20. In addition, Agrokor has been imposed an obligation, to ensure within the period of the following three years, that its wholesale and retail includes the meat products in question provided by other competing undertakings to the undertaking PIK Vrbovec and the undertakings members within the Agrokor group. The supply in question must amount to not less than 25 % of the sales volume of the processed products in question, and not less than 20 % of the sales volume of the fresh meat in question.

21. Finally, the Competition Council ordered the undertakings Konzum and PIK Vrbovec (members within the Agrokor group) that the agreements which had been concluded with the buyers of the products in question before the concentration has been implemented, should remain in effect within the period of one year, in order to enable the undertakings involved to adjust to the new market conditions.

4. Croatian Competition Agency v. Vodoopskrba i odvodnja d.o.o., Zagreb-VIO (decision from 28 October 2014)

22. Based on the initiative of the undertaking Brunat d.o.o., the Agency opened the proceeding against the undertaking Vodoopskrba i odvodnja d.o.o. from Zagreb. In the proceedings the Agency wanted to determine whether certain provisions of general and technical conditions for the provision of water services that the undertaking Vodoopskrba i odvodnja d.o.o. adopted in July 2013 represent abuse of a dominant position on the relevant public water supply market with effects on the market in the provision of services involving water meter and telemetry devices installation for the measurement of

water consumption, providing data for billing and reporting, in the territory the city of Zagreb, Samobor, Sveta Nedjelja and the municipality of Stupnik.

23. In the course of the proceeding, the Agency primarily analysed the provisions of General Terms which introduced the obligation for the existing inside water meters in the old buildings to be connected with the automatic water meter reading network (AWMR network

24. For the undertakings which so far have been involved in the installation of telemetry devices, reading and billing of so collected data on water consumption have been as of 1 January 2014 prohibited to install telemetry devices in the old buildings whereas new competitors have been prevented from entering the market. Moreover, on 1 January 2014 also started a transitional period in which these undertakings were still allowed to perform distant readings from local networks. Upon the expiration of this transition period distant reading would be exclusively provided by Vodoopskrba i odvodnja.

25. In the sense of competition law it is not advisable or justifiable to re-regulate a once liberalized market if there are no concrete indicators which would point to objectively justified reasons for such a practice.

26. For all the reasons stated above, the Agency also adopted a decision on interim measure and ordered the undertaking Vodoopskrba i odvodnja to temporarily cease-and-desist the application of the provisions under the General and Technical conditions for water supply services which prevented the undertakings from the provision of services which they had been discharging before the challenged provisions entered into force and preventing final consumers from freely choosing the provider of the services concerned. Besides, the Agency ordered Vodoopskrba i odvodnja to continue issuing the licences for the installation of water meters in the old buildings which were to be connected to the automatic measurement system not connected to the AWMR network and to ensure that at least one apartment with an inside water meter which is not included in the AWMR network should be connected to the automatic measurement system.

27. As a result of the proceeding carried out by the CCA competition has been restored in the provision of services relating to water meter and telemetry devices installation and the measurement of water consumption providing data for billing and reporting, in the territory of Zagreb, Samobor, Sveta Nedjelja and the municipality of Stupnik.

28. As a result of the proceeding initiated by the CCA involving alleged abuse of a dominant position by the undertaking concerned and based on the provisions contained in the General and Technical Conditions adopted by the same undertaking in July 2013 on the basis of which once liberalised market was foreclosed, and owing to the interim measure ordering the undertaking VIO as long as the proceedings is carried out to temporarily cease-and-desist the application of the challenged provisions under the GTC, VIO on its own initiative offered the commitments aimed at restoring effective competition thereby brining its monopolistic position caused by the adoption of the said GTC to an end.