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# Croatia: Overview

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Croatian competition law is built on two legal sources: the Constitution of the Republic of Croatia on one hand, and the Treaty on the Functioning of the European Union (TFEU) together with the entire EU competition acquis on the other. Article 49 of the Constitution of the Republic of Croatia proclaims that entrepreneurial and market freedom shall be the basis of the domestic economic system, that the state shall ensure an equal legal status to all undertakings on the market and that abuse of monopolies is forbidden. Such constitutional provisions present the basis for the development of domestic competition law rules aimed at the realisation of free market competition. The first Croatian Competition Act was enacted in 1995 and resulted in a systematic regulation of the Croatian competition law for the first time. In 2003, a new law was adopted that tried to deal with several inconsistencies and shortcomings of the 1995 Act. Bearing in mind its strong determination to accede to EU membership, Croatia strived to harmonise its law with EU competition law. As a consequence, the 2003 Act has to a large extent already been deemed harmonised with the acquis. However, the largest shortfall of the 2003 legislation has been its slow and poor execution – namely the sanctioning of infringements by the misdemeanour courts, which eventually resulted in inadequate protection of the free market competition.

The current Competition Act was adopted on 24 June 2009, in the course of the EU-accession negotiations. The new Competition Act entered into force on 1 October 2010 and introduced a number of novelties in terms of the powers and tools that enable the Croatian Competition Agency (the Agency) to target its enforcement activity at areas that pose the most risk to consumers. Competition law would fall short of its intended goal – the effective protection of competition – if the Agency was not authorised to directly sanction infringing undertakings, undertake actions to eliminate the consequences of anti-competitive activity and consequently deter other undertakings from engaging in such practices. So, in line with the new Competition Act, infringements of competition rules are no longer treated as misdemeanours. Instead, they are considered *sui generis* violations and the Agency is finally empowered to impose fines for the infringements and not just to establish the infringement of the competition law. The Agency can also carry out leniency programmes applicable to undertakings that cooperate within the investigation and detection of cartels. In addition, the Agency may conduct dawn raids on business premises, apartments, land and means of transport, and temporarily seize objects. Further, the right of defence has also been improved: in the course of investigative proceedings, and before the oral hearing or the final decision of the Competition Council, a statement of objections will be submitted to the parties. Also, in accordance with the new law, the damages claims relating to the infringements of the Competition Act will fall under the competence of the relevant commercial courts. This clearly and indisputably establishes the right to compensation for undertakings and consumers who suffer damages from infringements of the competition rules.

Before Croatia's accession to the European Union on 1 July 2013, the Competition Act was further amended on 21 June 2013 to enable the direct application of articles 101 and 102 of the TFEU and to empower the Agency to directly apply these articles together with the Council Regulation 1/2003 and Regulation 139/2004 on the control of concentrations between undertakings, as well as to cooperate with the European Commission and other competition authorities within the Network of Competition Authorities.

Now that the Agency has these powers, Croatian competition laws has been fully aligned and harmonised with the EU acquis and all the prerequisites for effective competition enforcement have been fulfilled.

## Regulatory framework

Croatian competition rules are set out in the 2009 Competition Act, as amended in 2013. The Competition Act establishes the competition regime and regulates the powers, duties, internal organisation and proceedings of the Croatian Competition Agency, which is entrusted with the enforcement of the Act. The Act applies to all forms of prevention, restriction or distortion of competition by undertakings within the territory of Croatia or outside its territory, if such practices take effect in the territory of Croatia.

In 2010 and 2011 the Croatian government passed a dozen subordinate regulations upon the proposal of the Agency to implement the 2009 Competition Act. The regulations include:

- the Regulation on the Definition of Relevant Market;
- the Regulation on Agreements of Minor Importance;
- Regulations on Block Exemptions Granted to Certain Agreements;
- the Regulation on Block Exemptions Granted to Agreements in the Transport Sector;
- the Regulation on Block Exemption Granted to Insurance Agreements;
- the Regulation on Block Exemptions Granted to Certain Categories of Horizontal Agreements;
- the Regulation on Block Exemptions Granted to Certain Categories of Vertical Agreements;
- the Regulation on Block Exemptions Granted to Agreements on Distribution and Servicing of Motor Vehicles; and
- the Regulation on Block Exemptions Granted to Certain Categories of Technology Transfer Agreements.

With the exception of the first regulation, all contain conditions under which those agreements are exempted from the general regime set out in the Competition Act.

The Regulation on the Notification and Assessment of Concentrations provides rules for the concentration-notification process as well as forms for a standard notification and simplified merger notification in its appendices 1 and 2, which contain a list of documents required to be submitted to the Agency by the undertakings along with the notification.

If the Agency finds an infringement of the competition rules, the Regulation on the Method of Setting Fines stipulates the criteria that the Agency will follow when fining undertakings. The Regulation on Immunity from Fines and the Reduction of Fines stipulates the criteria that the Agency will consider in deciding whether to grant immunity from fines or whether to reduce fines for cartel members who come forward, supply evidence and inform the Agency of the existence of a cartel.

### Regulatory bodies and enforcement

#### The Croatian Competition Agency

The Agency, which is responsible for implementing the competition regulation, is an independent legal entity with public authority that autonomously performs activities within the powers granted to it by the Competition Act. The Agency is responsible only to the Croatian parliament, which ratifies the Statute of the Agency and appoints the members of the Competition Council, which is the managing body of the Agency. The Competition Act expressly prohibits any method or form of influence on the Agency that could impair its independence and autonomy. It further provides that members of the Competition Council may not be state officials, persons who perform duties in any administrative body of a political party, members of supervisory boards and executive bodies of undertakings, or members of any kind of interest associations, which could lead to a conflict of interest.

The Competition Council consists of five members with adequate expertise and at least 10 years' experience in the field of competition law. At the head of the Competition Council is the President, who represents the Agency and administers its everyday affairs. The Competition Council's competences include:

- undertaking compatibility-assessment proceedings and the proceedings concerning the imposition of fines due to infringements of competition rules, concluding the proceedings and deciding on the adoption of measures (obligations, conditions and deadlines) necessary to restore effective competition and imposing fines;
- instructing the Agency's team of experts to conduct preliminary investigations;
- proposing to the government the adoption of subordinate legislation and issuing opinions on the compliance of proposed draft laws and other legislation with the Competition Act;
- issuing opinions and statements on the development of comparative practices in the area of competition law;
- issuing expert opinions at the request of the Croatian parliament, the Croatian government, central administration authorities and other public authorities;
- defining methodological principles for competition studies and market investigation; and
- promoting activities related to competition advocacy and raising awareness on the role and significance of competition law and policy.

The Agency holds wide competences that enable it to effectively ensure a level playing field for all market participants.

As a general rule, a procedure of determining prohibited agreements and abuses of dominant position is initiated by the Agency ex officio, while in contrast, the procedure for assessing concentrations is initiated by the parties to the concentration. However, there are exceptions to this rule that enable the Agency to still initiate the procedure ex officio in cases where there is no notification of concentration.

Fines for severe infringements of the competition law can be imposed in the amount of up to 10 per cent of the total turnover of the undertaking realised and quoted in the last year's financial statements, specifically if an undertaking concludes a prohibited agreement or participates in any other way in an agreement that resulted in undue distortion of competition, abuses a dominant position, participates in the implementation of a prohibited concentration or does not act in compliance with the certain decisions of the Agency.

For less severe infringements, undertakings may be fined in the amount of up to 1 per cent of the total turnover quoted in the past year's financial statements if the undertaking:

- fails to submit the obligatory prior notification of concentration to the Agency;
- submits to the Agency incorrect or misleading information in the concentration appraisal proceedings;
- fails to act in compliance with the request of the Agency; or
- obstructs the enforcement of the injunction of the High Administrative Court.

When setting the fine, the Agency takes into account all mitigating and aggravating circumstances, such as the gravity of the infringement, the duration of the infringement and the damage caused to competing undertakings and consumers.

With a view to disclosing the most severe infringements of the provisions of the Competition Act or article 101 TFEU, the Agency may grant immunity from a fine to a cartel member who first comes forward and informs the Agency of the existence of a cartel and supplies evidence that will enable the Agency to initiate the proceeding in connection with the alleged cartel, or to the first cartel member who submits information and evidence that will enable the Agency to find the infringement in connection with the alleged cartel in the previously initiated proceedings where the Agency had no sufficient evidence to adopt a decision (ie, to detect the existence of a cartel). Immunity from a fine may not be granted to the undertaking who was the originator (leader) or instigator of the cartel.

For full leniency, an undertaking:

- must provide decisive evidence;
- must cooperate genuinely and fully on a continuous basis and expeditiously from the time it submits its application;
- must end its involvement in the cartel immediately following its application to the Agency, except for what would, in the Agency's view, be reasonably necessary to preserve the integrity of the surprise inspections; and
- must not have destroyed, falsified or concealed evidence of the cartel, nor disclosed the fact or any of the content of its contemplated application to the Agency when contemplating making its application.

#### Judicial control

Against the decisions of the Agency establishing the infringements of the competition law and imposing fines, no appeal is allowed. However, the injured party may bring a claim before the High Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision. The High Administrative Court, in a panel consisting of three judges, will examine and decide upon both elements of the decision: the part regarding infringement and the part regarding the fine. An undertaking may initiate this procedure under enumerated number of reasons, including:

- the misapplication or erroneous application of substantive provisions of competition law;
- manifest errors in application of procedural provisions;

- incorrect or incomplete facts of the case; and
- inappropriate fines and other issues contained in the decisions of the Agency.

#### Private enforcement

Damages claims related to infringements of the Competition Act or articles 101 and 102 TFEU shall fall under the competence of the relevant commercial court. The infringing undertakings are liable for the resulting damages. The commercial court dealing with a damages claim shall take account of the final decision of the Agency establishing infringement of the Competition Act or article 101 or 102 TFEU, without prejudice to article 267 TFEU. The commercial court may even interrupt the proceeding until the decision of the Agency, the European Commission or other competition authority in other member states has been final. It shall inform the Agency without delay about the submitted damages claim regarding breach of competition law.

In such damages claims, civil litigation law shall be applicable to private litigators.

#### Prohibited agreements

The types of conduct that fall under the prohibitions of the Competition Act relate to undertakings. The Competition Act defines undertakings as companies, sole traders, tradesmen and craftsmen and other legal and natural persons who are engaged in the production or trade of goods or the provision of services, and who thereby participate in economic activity. The Competition Act also applies to state authorities and local and regional self-government units where they directly or indirectly participate in the market and all other natural or legal persons, such as associations, sports associations, institutions, copyright and related rights holders, and similar who are active in the market. Further, undertakings are also considered as persons engaged in a direct or indirect, permanent, temporary or single participation in the market, irrespective of their legal form or ownership structure, form of financing and intent or effect to make profit, notwithstanding their place of establishment or residence within the territory of the Republic of Croatia or outside its territory.

The Competition Act also applies to undertakings entrusted with the operation of services of general economic interest having the character of a revenue-producing monopoly or that are, by special or exclusive rights granted to them, allowed to undertake certain economic activities, insofar as the application of the Competition Act does not obstruct, in law or in fact, the performance of the particular tasks assigned to them by separate rules or measures and for the performance of which they have been established.

Article 8 of the Competition Act provides that all agreements between two or more independent undertakings, decisions by associations of undertakings and concerted practices, which have as their object or effect the distortion of competition in the relevant market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production, markets, technical development or investment, share markets or sources of supply, apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage, make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts shall be prohibited.

Such agreements particularly refer to:

- contracts and particular provisions thereof;
- implicit oral or explicitly written-down arrangements between undertakings;
- concerted practices resulting from such arrangements;
- decisions by undertakings or associations of undertakings;
- general terms of business; and
- other acts of undertakings that are or that may constitute a part of these agreements and similar, regardless of whether they are horizontal or vertical agreements.

Under the Competition Act or article 101 of TFEU regarding prohibited agreements, the decision of the Agency on the finding of a prohibited agreement will first declare the existence of a prohibited agreement, participants in the agreement, the type of agreement, the goods or services that the agreement has affected or may affect, the geographical area in which the agreement takes effect, the term of the agreement, the objective of the agreement and the manner of implementation of the agreement. The Agency will also determine the extent, terms and conditions for the removal of harmful effects of the prohibited agreement and finally impose an administrative fine in accordance with the provisions of Competition Act.

The provisions of the Competition Act regarding prohibited agreements are applicable to all sectors of the economy and online agreements. The Competition Act does not differentiate between the size of the businesses (in practice, however, this is an important factor in assessing the market share or abuse of possible dominance), nor does it differentiate between domestic and foreign businesses. The rule also addresses pre-contractual behaviour by prohibiting aggressive practices, discrimination, abuse of bargaining power and the unfair breaking off of negotiations (which was actually introduced by case law).

#### The exemptions

Certain categories of agreements are granted exemption from general prohibition if, throughout their duration, they cumulatively contribute to improving the production or distribution of goods or services or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit, do not impose on the undertakings concerned restrictions that are not indispensable to the attainment of those objectives, and do not enable such undertakings the possibility of eliminating competition in respect of a substantial part of goods.

As mentioned above, in 2011 the Croatian government passed a number of regulations providing exemptions to certain agreements. Those regulations all contain provisions that define content such agreements must contain as well as the restrictions or conditions that such agreements may not contain.

#### Agreements of minor importance

Certain agreements are not considered to be prohibited owing to the minor impact they have on the market. The Competition Act defines agreements of minor importance as agreements in which the parties to the agreement and the controlled undertakings have an insignificant common market share, provided that such agreements do not contain hard-core restrictions of competition that lead to the distortion of competition, in spite of the insignificant market share of the parties. The Regulation on Agreements of Minor Importance sets the conditions with which agreements of minor importance must comply, as well as the restrictions or provisions that such agreements may not contain.

### Recent case law of the Agency

The most debated case is that against the Croatian Orthodontic Society (COS), a voluntary dentist's association. In 2013 the Agency initiated ex officio proceedings against COS after information that orthodontists had concluded a minimum-pricing agreement leaked out to the media. During the proceeding, it was established that the COS indeed adopted such a price list under the name 'Minimum prices for orthodontists' services' and published it on its website. Since such a price list falls under article 8 of the Competition Act as a prohibited (cartel) agreement with the object of distortion of competition, the COS was fined 150,000 kuna, while the price list was declared null and void.

However, surprisingly, the Agency's decision was overturned by the High Administrative Court on 20 April 2015. In the vast majority of instances the Court confirms the Agency's decisions, however, in this case, the Court held that the price list did not represent a prohibited agreement because it had never been applied in practice and had no obligatory effect on the COS's members. As there is no ordinary avenue for appealing the Court's ruling, the Agency had to resort to an extraordinary legal remedy – for the first time in its 18-year operation – by requesting the State Attorney's Office for an extraordinary review of the legality of the ruling to be conducted by the Supreme Court. The Agency is of the opinion that the High Administrative Court's decision denies the very concept of prohibited agreements as defined under the Competition Act and the EU acquis, thus making room for price agreements in professional and other interest associations of undertakings. Whether or not this is indeed so depends on the Supreme Court's decision.

Further, in 2014 the Agency established hard-core restrictions of competition rules in two cases involving vertical price restrictions and minimum resale price restrictions. In the first case, Dukat and Konzum inserted provisions in the annexes to the sales agreement which were concluded between these parties by which Konzum was obliged to apply minimum wholesale and retail prices imposed by the undertaking Dukat and if failing to do so Dukat was allowed to terminate the supply of its products. A similar provision concerning minimum resale price restrictions was found in Kutjevo and KTC's agreement. The undertakings were fined a total of 1.63 million Kuna, taking into account the relatively short duration of the infringements, the non-application of the prohibited provisions and the undertakings' initiative to revise the challenged provisions.

Very recently, the Agency has reached two decisions concerning prohibited horizontal agreements. The first concerns personal protection services and involved seven undertakings that participated in a meeting in 2013, where they agreed on a minimum price for personal protection security services. In the second, it was established that representatives of nine marinas participated in the meeting of the Council of the Croatian Association of Nautical Tourism (Croatian Marina Association) under the aegis of the Croatian Chamber of Commerce in October 2012 where they announced that in 2013 they would not raise prices of their berthing services, whereas those who 'would raise prices, would do so merely by the percentage of inflation in the Republic of Croatia.' The Agency imposed symbolic fines of 5.325 million kuna for the former and 2.263 million kuna for the latter. Remarkably, the Croatian Chamber of Commerce, whose representative should at least have warned the participants of their illegal behaviour, was also fined 100,000 kuna.

### Abuse of dominant position

While anti-competitive agreements are based upon some form of prohibited cooperation between mutually independent competitors,

abuse of a dominant position is generally based on the prohibited and independent activity of a sole (rarely more) undertaking fuelled by its dominant strength on the relevant market. Pursuant to article 13 of the Competition Act, any abuse by one or more undertakings of a dominant position in the relevant market shall be prohibited. The existence of dominant positions and abuse of such positions are cumulative in effect, meaning that the attainment of a dominant position is not prohibited in itself. Solely prohibiting the attainment of a dominant market position would not only be contrary to the accepted principles of entrepreneurial freedom, but would also hinder economic development and ultimately cause negative effects for market competition. Therefore, the abuse of a dominant market position actually means that market participants in such a position assume special liability toward the market and its participants. This means that such undertakings cannot act unilaterally without consideration of the effects of their business activity on the overall market, their competitors and consumers. In other words, an undertaking holding a dominant position on the market cannot undertake activities that have a distorting effect on the market competition which also includes business activities that are considered legal (eg, a decision not to sell products to an undertaking that will have a distorting effect on the market). An undertaking that does not hold a dominant position on the market can freely choose its business partners since such decision does not have a distorting effect on market competition due to the undertaking's insignificant market position. What is permitted to an undertaking with a smaller (insignificant) market share is not always permitted to an undertaking in a dominant position.

The Competition Act provides that an undertaking can be presumed to be in a dominant position when, due to its market power, it can act in the relevant market to a considerable extent independently of its actual or potential competitors, consumers, buyers or suppliers, as is particularly the case when an undertaking has no significant competitors in the relevant market or holds significant market power in relation to its actual or potential competitors, particularly related to:

- its market share and the period of time for which this market position has been held;
- its financial power;
- access to sources of supply or to the market itself;
- connected undertakings;
- legal or factual barriers for other undertakings to enter the market;
- the capability to dictate market conditions considering its supply or demand; or
- the capacity of foreclosure against competitors by redirecting them to other undertakings.

An undertaking that holds more than 40 per cent of the market share in the relevant market may hold a dominant position.

The first step for the Agency to explain the allegedly abusive conduct likely to restrict competition and thereby harm consumers is to analyse the conditions on the market, including:

- the relevance of entry barriers;
- the position of and counter-strategies available to competitors;
- the part of the market affected by the conduct; and
- possible evidence of actual foreclosure and implementation of an exclusionary strategy.

In the case of predatory pricing conduct, the Agency will, as part of its general assessment, investigate whether the conduct is capable of

also excluding equally efficient competitors, in which case the conduct can restrict effective competition and harm consumer welfare. The second step is for the undertaking to rebut any finding of a likely negative effect by proving that it is bound to create efficiencies that leave consumers better off overall.

Upon establishing the abuse of dominance, the Agency issues a decision establishing a dominant position whereby it determines whether an undertaking is dominant and the practices of the undertaking abusing this position and consequently distorting competition, including the duration of the abusive practices concerned. Following that, the Agency immediately orders a cessation of any abusive practices by the undertaking, finally imposing the measures, conditions and deadlines for the removal of adverse effects of such practices as well as fines for the infringements. The Agency imposes both structural and behavioural remedies. Structural remedies are imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy.

#### Recent case law: abuse of dominant position

In July 2014 the Agency, upon the initiative of the undertaking Auto Maksimir, initiated proceedings against the undertaking Peugeot Hrvatska, based on the indicia that Peugeot Hrvatska abused its dominant position in the market for repair and maintenance services and resale of spare parts for Peugeot motor vehicles in the territory of the Republic of Croatia. Peugeot Hrvatska allegedly applied selective criteria in a non-transparent manner when, as an authorised distributor for Peugeot cars, it decided to accept or exclude certain distributors or repairers in the network after 31 December 2013, thus unjustifiably denying access to the relevant markets to Auto Maksimir, a long-standing Peugeot motor vehicles repairer. To prevent harm to competition and consumers, the Agency adopted an interim measure ordering Peugeot Hrvatska to take Auto Maksimir back into the authorised repairers network.

In 2014, the Agency adopted a decision on interim measures against the water supply and sewage operator Vodoopskba i odvodnja (VIO), which by adopting new general and technical conditions (GTCs) abused its dominant position and foreclosed the once-liberalised market of water meter and telemetry device 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. In the end, the Agency accepted VIO's proposal of the revised GTC as a commitment by which it reopened the relevant market and enabled alternative operators to continue to discharge the services concerned, while potential alternative operators have been given free access to the market. At the same time, end-users have been given the possibility of freely choosing the operator who would provide the services of water meter reading and billing.

#### Concentrations

Business transactions that may have the characteristics of a concentration are often beneficial for the market. These positive effects may include an increase in competitiveness, a strengthening of economies of scale and the provision of benefits to consumers because, as a rule, they bring lower prices, better quality and more diverse offerings. However, concentrations as defined by competition law (mergers) may also in the longer term have adverse effects on competition and on the best interests of consumers, as they may reduce the number of competitors on the market.

Pursuant to the Competition Act, a concentration between undertakings is deemed to arise where there is a lasting change of control that results from a merger of two or more independent undertakings or parts thereof, or where there is an acquisition of control or decisive influence by one or more undertakings over one or more other undertakings, or parts of one or more other undertakings, in particular by the acquisition of the majority of shares or share capital, or obtaining the majority of voting rights, or in any other way in compliance with the provisions of the Company Law and other rules.

Acquisition of control may be effected through the transfer of rights or contracts, or by other means, by which one or more undertakings, either separately or jointly acquires the possibility to exercise decisive influence over one or more other undertakings on a lasting basis, taking into consideration all legal and factual circumstances.

The creation of a joint venture by two or more independent undertakings that have all the characteristics of autonomous economic undertakings also constitutes a concentration.

However, not every merger described by the relevant provisions of the Competition Act is considered to require Agency review, which only applies to mergers that exceed a certain turnover threshold. The threshold aims to cover only mergers that can have an effect on the relevant market.

Consequently, undertakings are obliged to notify the Agency of any plans for a merger, provided the following conditions are both met:

- if the total annual consolidated turnover of all parties to the concentration generated from the sale of goods or services on the world market amounts to at least 1 billion kuna according to the financial statements for the financial year preceding the merger; and
- if at least one participant of the merger has a seat or its affiliate has a seat in Croatia and the total income of at least two parties to the concentration in Croatia according to financial reports amounts to at least 100 million kuna in the financial year preceding the merger.

Although the Competition Act stipulates that a concentration is considered permissible if the Agency does not adopt a conclusion about instituting proceedings for the assessment of concentrations within 30 days from receiving a complete notification of intended merger, it is the practice of the Agency that the parties are issued with a certificate indicating first-level approval of the merger and to inform the public to that effect on the Agency website.

The participants in the concentration are obliged to submit an application to the Agency without delay, and no later than eight days after the conclusion of the contract that forms the concentration and before the implementation of the contract. The content of the notification of concentration is thoroughly described in the Regulation on the Notification and Assessment of Concentrations Between Undertakings, but the Agency can demand any documents considered necessary for the assessment of the concentration.

If the Agency decides to initiate a more thorough assessment of the concentration, three possible decisions may be made within the statutory time limit of three months from the date of the notification of the concentration:

- a decision approving the concentration;
- a decision conditionally approving the concentration if certain conditions and measures are met within the time frame specified by the Agency; and
- a decision refusing approval for the concentration.

## Recent case law

During 2014 the Agency cleared the concentrations between the following undertakings in the first phase: NCP d.o.o., Šibenik and Županijski radio Šibenik d.o.o., Šibenik; EZPADA AG, Zug, Switzerland and PROENERGY d.o.o., Zagreb; Adria Media Group d.o.o., Beograd, Republic of Serbia and Adria Media Zagreb d.o.o.; Plava laguna d.d., Poreč and Istraturist Umag d.d., Umag; Euro poticaji d.o.o., Zagreb and EPH d.o.o., Zagreb; Ericsson AB, Stockholm, Sweden, by Ericsson Nikola Tesla d.d., Zagreb and Business unit for providing the construction services and maintenance of infrastructure of undertaking HT d.d., Zagreb; Spar Hrvatska d.o.o., Zagreb and part of undertaking Dinovadiona d.o.o., Zagreb (20 retail shops in City of Zagreb and Zagreb County); Carso Telecom BV, Netherlands and Telekom Austria Aktiengesellschaft, Austria/VIPnet d.o.o., Zagreb; OTP banka Hrvatska d.d., Zadar and Banco Popolare Croatia d.d., Zagreb; Adris grupa d.d., Rovinj and Croatia osiguranje d.d., Zagreb; Autor d.o.o., Zagreb and 24sata TV d.o.o., Zagreb.

Dreaded by suppliers (Agrokor is a vertically integrated holding system, which in addition to the retail groceries market, is also

present on the supply markets), the high-profile merger between the retail leader Agrokor and Slovenian Mercator was conditionally approved in 2014, obliging Agrokor to comply with proposed commitments: 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; and behavioural measures in the form of monitoring the behaviour of Agrokor towards suppliers of the parties to the concentration, especially towards suppliers of Mercator Croatia with the aim to remove negative vertical effects of the concentration. The implementation of these measures is being monitored by a trustee appointed by the Agency (PricewaterhouseCoopers).

Further, the Agency has also decided to conditionally clear the concentration by which Hrvatski Telekom acquired control over Optima telekom in the procedure of pre-bankruptcy settlement. Interestingly, the Agency accepted the 'failing-firm defence' of Optima as it determined that in the case of Optima's exit from the market, the competitive structure of the relevant market would be distorted at least to the same extent as if there were no concentration.



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Marijana Liszt has been a practising attorney-at-law since 2002 and is one of the three founding partners in the Law Firm Posavec, Rašica & Liszt. After graduating from the Zagreb Law School and obtaining a master's degree in EU law at the University Carlos III of Madrid, she completed the master's course in EU law at the Zagreb Law School, focusing on state aid law. In 2005 she was appointed by the government of the Republic of Croatia as head of the working group on Chapter 8 – Competition Policy and served in that position from 2005 until the closing of the negotiations in 2011. She is now a PhD candidate at the Law School of the University of Rijeka, working on a thesis in the topic of state aid law, in particular the public financing of services of general economic interest. Her fields of expertise are competition law, including state aid law, commercial law, company law and sports law. Marijana also teaches competition law and state aid law as a guest lecturer at the Zagreb and Rijeka Law Schools and is often invited to give lectures on these topics at various scientific and expert conferences throughout the region. At the same time, Marijana is author of a number of scientific and expert articles in the fields of competition and state aid law.



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Posavec, Rašica & Liszt is a law firm headquartered in Zagreb, with its branch office in Dubrovnik. The partnership between attorneys Srećko Posavec, Marko Rašica and Marijana Liszt formally began on 1 January 2003, and today, after 12 years of solid foundation, is a medium-sized law office with three partners, two associate lawyers, four junior lawyers and an office administrator.

Mr Posavec is an experienced litigator and an expert in labour law and public procurement procedures; Mr Rašica is a trademark attorney who successfully manages the newly opened branch in the very south of Croatia, Dubrovnik, covering also a variety of legal areas; Mrs Liszt is focused on competition and state aid law with permanent interest for commercial and company law. Upon taking her master's degrees in European law both in Madrid and Zagreb, she acted as head of the working group on Chapter 8 during the accession negotiations between Croatia and the European Union. The law firm provides services in various legal fields, including company and commercial law, civil law, sports law, labour law, competition and state aid law, intellectual property law, media law and insurance law, all pursuant to the interests and competencies of its founders.

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