
THE CARTELS AND LENIENCY REVIEW

THIRD EDITION

EDITOR
CHRISTINE A VARNEY

LAW BUSINESS RESEARCH

THE CARTELS AND LENIENCY REVIEW

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Third Edition

Editor
CHRISTINE A VARNEY

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EDITOR'S PREFACE

Cartels are a surprisingly persistent feature of economic life. The temptation to rig the game in one's favour is constant, particularly when demand conditions are weak and the product in question is an undifferentiated commodity. Corporate compliance programmes are useful but inherently limited, as managers may come to see their personal interests as divergent from those of the corporation. Detection of cartel arrangements can present a substantial challenge for both internal legal departments and law enforcement. Some notable cartels managed to remain intact for as long as a decade before they were uncovered. Some may never see the light of day. However, for those cartels that are detected, this compendium offers a resource for practitioners around the world.

This book brings together leading competition law experts from more than two dozen jurisdictions to address an issue of growing importance to large corporations, their managers and their lawyers: the potential liability, both civil and criminal, that may arise from unlawful agreements with competitors as to price, markets or output. The broad message of the book is that this risk is growing steadily. In part due to US leadership, stubborn cultural attitudes regarding cartel activity are gradually shifting. Many jurisdictions have moved to give their competition authorities additional investigative tools, including wiretap authority and broad subpoena powers. There is also a burgeoning movement to criminalise cartel activity in jurisdictions where it has previously been regarded as wholly or principally a civil matter. The growing use of leniency programmes has worked to radically destabilise global cartels, creating powerful incentives to report cartel activity when discovered.

The authors of these chapters are from some of the most widely respected law firms in their jurisdictions. All have substantial experience with cartel investigations, and many have served in senior positions in government. They know both what the law says and how it is actually enforced, and we think you will find their guidance regarding the practices of local competition authorities invaluable. This book seeks to provide both breadth of coverage (with chapters on 34 jurisdictions) and analytical depth to those practitioners who may find themselves on the front lines of a government inquiry or an internal investigation into suspect practices.

Our emphasis is necessarily on established law and policy, but discussion of emerging or unsettled issues has been provided where appropriate.

This is the third edition of *The Cartels and Leniency Review*. We hope that you will find it a useful resource. The views expressed in this book are those of the authors and not those of their firms, the editor or the publisher. Every endeavour has been made to make updates until the last possible date before publication to ensure that what you read is the latest intelligence.

Christine A Varney

Cravath, Swaine & Moore LLP

New York

January 2015

Chapter 7

CROATIA

*Marijana Liszt*¹

I ENFORCEMENT POLICIES AND GUIDANCE

i Statutory framework

Croatia's statutory framework regarding the procedures for determining restrictive agreements (including cartels), as well as other cases of the prevention, restriction or distortion of competition, the imposition of fines and the implementation of leniency programmes, consists of the following fundamental pieces of legislation: the Competition Act (Official Gazette No. 70/2009 and No. 80/2013), the Regulation on the method of setting fines (Official Gazette No. 129/2010) and the Regulation on immunity from fines and reduction of fines (Official Gazette No. 129/2010).

In addition, in the assessment of specific horizontal agreements between undertakings, the Croatian Competition Agency (the Agency) can apply the following legislative framework currently in force:

- a* the Regulation on block exemption granted to certain categories of horizontal agreements (Official Gazette No. 72/2011);
- b* the Regulation on block exemption granted to certain categories of technology transfer agreements (Official Gazette No. 9/2011) and the Regulation on agreements of minor importance (Official Gazette No. 9/2011);
- c* the Regulation on block exemption granted to agreements in the transport sector (Official Gazette No. 78/2011);
- d* the Regulation on block exemption granted to insurance agreements (Official Gazette No. 78/2011); and
- e* the Regulation on the definition of relevant market (Official Gazette No. 9/2011).²

1 Marijana Liszt is a partner at Posavec, Rašica & Liszt.

2 Cited regulations are available in both Croatian and English on the Agency's website: www.aztn.hr.

Regarding the statutory framework and rules applicable to cartels in Croatia, the actual Competition Act was adopted only recently, on 24 June 2009, in the course of the Croatian–EU accession negotiations, thereby fulfilling one of the closing benchmarks for Chapter 8 – Competition policy. 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 Agency to target its enforcement activity at areas that pose the most risk to consumers. In line with the new Competition Act, infringements of the competition rules are no longer treated as minor offences, but are considered *sui generis* violations. The Agency is empowered not only to establish the infringement of the competition law, but also to impose fines for such infringement. The Agency is now also empowered to carry out leniency programmes applicable to undertakings that cooperate within the investigation and detection of cartels (hard-core agreements) between competitors. In addition, the Agency can conduct dawn raids on business premises, apartments, land and means of transport, and temporarily seize objects. Furthermore, the right of defence has been improved – during 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. In addition, in accordance with the new law, damages claims relating to 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 that have suffered damages from infringements of the competition rules.

The Competition Act was further amended on 21 June 2013, before Croatia’s accession to the European Union on 1 July 2013, to empower the Agency to apply directly Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), as well as to cooperate with the European Commission and the other competition authorities within the European Competition Network (ECN).

Now that the Agency is entrusted with the imposition of fines and the implementation of leniency procedures, Croatian law in the field of competition has been fully aligned and harmonised with the EU *acquis*, and all the prerequisites for effective enforcement have been fulfilled. The only remaining controversy is the question of why Croatian competition law did not also accept the possibility of settlement in cases of cartels, in spite of the fact that this tool has proven to be an efficient institute of EU competition law. However, theoretically the possibility of a settlement exists under the Croatian Administrative Procedure Act, according to which the official person handling the case will endeavour to reach a settlement between the parties with conflicted interests by which they would either completely or partially resolve the matter. A settlement contrary to the laws, public interest and third-party rights is not permitted. The settlement has the effect of an enforceable decision rendered in the administrative procedure. Although a general administrative procedure law applies subsidiarily in the proceedings under the scope of the Agency, to this day the Agency has not used this tool in the cartel procedures before it.

ii Anti-cartel agenda of the Agency in 2013

The Agency's Annual Report for 2013³ reiterates its position on cartels by stating that other competitors, and especially consumers, can be harmed to the largest extent by direct horizontal agreements between competitors (cartels) through which the competitors agree on prices, share markets of supply or demand, or use other forms of anti-competitive behaviour. The highest price paid for such anti-competitive behaviour, and often for a long period, is by other market players and end consumers in the form of a 'private tax', as prices that are the consequence of an illegal agreement are, in general, higher than the true market prices.

For these reasons, cartels are considered the most dangerous form of infringement of the Competition Act, and the Agency claims that its highest priority is to fight illegal price agreements between competitors, no matter the size of their market share or relevance in the market. Article 8 of the Competition Act uses the term 'prohibited agreements' and states the following:

There shall be prohibited all agreements between undertakings, contracts, single provisions of agreements, explicit or tacit agreements, concerted practices, decisions by associations of undertakings the object or effect of which is to prevent, restrict or distort competition in the relevant market, and in particular those which: 1. directly or indirectly fix purchase or selling prices or any other trading conditions; 2. limit or control production, markets, technical development or investment; 3. share markets or sources of supply; 4. apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage; 5. 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.

However, according to Article 8, there is a significant difference between cartels and other prohibited agreements: the causing of the prevention, restriction or distortion of competition in the relevant market by either the object or the effect of such an agreement. If it can be established that the agreement has as its object the distortion of competition (and the object can, in substance, be attributable to a cartel), then it is unnecessary to analyse the real effects of a cartel on the market, as such restrictions usually and most probably will lead to negative effects on market competition.

Article 2g of the Regulation on immunity from fines and the reduction of fines defines cartels as:

[...] secret and prohibited horizontal agreements entered into between two or more independent undertakings, or decisions by associations of undertakings or concerted practices of undertakings at the same level of production or distribution chain, which have as their object distortion of competition between competitors, whereas cartel members may agree on such matters as purchase or sale prices, allocation of markets, allocation of customers, limit total industry output and/or

3 www.aztn.hr/uploads/documents/tn/godisnja_izvjesca/godisnje_izvjesce_AZTN_za_2013.pdf.

sales and technological development, bid-rigging and similar, which harm the consumers through higher prices and less choice of goods and/or services.

In consideration of the fact that such horizontal agreements are perceived as presenting the greatest threat to competition and that such infringements are susceptible to the highest penalties foreseen by law, and bearing in mind that the Agency only set the first fine for an established cartel by itself in 2012,⁴ the Agency published a leaflet, 'No to Cartels', in 2012, containing 10 short questions and answers and basic information about the harmfulness of cartels. The objective of the campaign is to prevent and discourage undertakings and their associations from prohibited activities on the markets; it also serves as a general source of advocacy on the competition culture.

In late 2013 the Agency initiated a number of high-profile cartel cases. While some are still pending, in one of the mentioned cases the existence of a cartel was established.

The key policy of the Agency regarding cartels in the upcoming period was published in its current Annual Plan 2014–2016.⁵

II COOPERATION WITH OTHER JURISDICTIONS

International cooperation by the Agency is carried out under international commitments undertaken by Croatia. In addition to bilateral cooperation with competition authorities in other countries, great importance is placed on multilateral cooperation. In the context of the negotiations for the accession of Croatia to the EU, a close relationship was established with the European Commission. The Agency also participates in the work of a number of fora, both at bilateral and multilateral level (Organisation for Economic Co-operation and Development, International Competition Network, etc.); however, particular importance is given to future cooperation within the ECN. Croatia became a full member of the ECN on 1 July 2013, and the latest modifications of Croatia's competition law in 2013 ensure that the conditions for mutual cooperation with European competition authorities in cases where Articles 101 and 102 TFEU are applied have been met.

The Agency can, on its own behalf, or on behalf of the European Commission or other EU Member States' competition authorities, conduct surprise inspections of business premises, land and means of transport, examine all records and objects relating to the business, seal any business premises or records, and seize objects and documents

4 In line with the new 2009 Competition Act, infringements of competition rules are no longer treated as minor offences, but as *sui generis* violations, and the Agency is now empowered to impose fines for infringements and to set the criteria for the imposition of fines as laid down in a separate by-law adopted by the Croatian government. Before this, the imposition of fines was within the remit of the misdemeanour courts, which proved to be highly inefficient.

5 The Agency has published its Annual Plans since 2006, and the fight against cartels has always been enumerated as a priority. The Annual Plans can be found at www.aztn.hr/o-nama/24/programi-rada.

found on such premises, particularly if it can be reasonably assumed that evidence might be destroyed or concealed.

In the sense of Council Regulation (EC) No. 1/2003, the Agency shall provide all necessary assistance to the European Commission in the preparation and carrying out of a surprise inspection on the territory of Croatia. In addition, the Agency may empower officials from another Member State's competition authority to participate in a surprise inspection on the territory of Croatia, or can carry out the inspection itself on behalf of that national competition authority.

According to the latest amendments of the Penal Code (Official Gazette Nos 125/2011 and 144/2012), bid rigging is also presumed to be a criminal offence. In such cases, the Croatian legislation on possible extradition, fully aligned with the EU *acquis*, shall also be applicable.

III JURISDICTIONAL LIMITATIONS, AFFIRMATIVE DEFENCES AND EXEMPTIONS

Article 2 of the Competition Act shall apply to all forms of prevention, restriction or distortion of competition by undertakings within the territory of Croatia, and outside Croatian territory if such practices have an effect in the territory of Croatia.

Under Council Regulation (EC) No. 1/2003, the Agency has the power to withdraw the benefits of a block exemption from, and to decide that the European Council Block Exemption Regulations will not apply to, a particular agreement that is not aligned with the provisions of Article 101(3) TFEU having effect in the territory of Croatia, or in some part of the Croatian territory that may have features of a separate geographic market.

The Competition Act only applies to undertakings. According to the Competition Act, undertakings are considered to be companies, sole traders, tradespeople and craftspeople, and other legal and natural persons who are engaged in the production of or trade in goods or the provision of services, and thereby participate in economic activity. The definition also includes 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. The undertaking definition applies to any persons engaging 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, and irrespective of their place of establishment or residence (e.g., within the territory of Croatia or outside the territory of Croatia).

Undertakings controlled by another undertaking are considered to be single economic entities. The parent company may be held liable for the actions of its subsidiary if it:

- a* directly or indirectly holds more than half of the share capital or half of the shares of the subsidiary;
- b* may exercise more than half of the voting rights of the subsidiary;

- c* has the right to appoint more than half of the members of the management board, supervisory committee, or similar administrative or managing body of the subsidiary; or
- d* in any other way exercises a decisive influence on the right to manage the business operations of the subsidiary.

Among the affirmative defences available to defendants in Croatia is the statute of limitations. Proceedings investigating infringements of the Competition Act and Articles 101 and 102 TFEU, and the imposition of fines, shall be subject to a limitation period of five years from the day on which the infringement was committed. Each interruption of the limitation period shall start this time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the five-year limitation period has elapsed.

Fines imposed by the Agency shall be subject to a limitation period of five years. The time shall begin to run on the day on which the decision of the Agency becomes final or the decision of the court is enforceable. In the event of interruption, the limitation period for the enforcement of a fine shall expire at the latest on the day on which a period equal to twice the five-year limitation period has elapsed.

In Croatia, there are no exceptions to the ban on hard-core cartels, and no industry is exempted.

IV LENIENCY PROGRAMMES

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:

- a* to a cartel member who is the first to come forward and inform the Agency of the existence of a cartel, and who supplies evidence that will enable the Agency to initiate proceedings in connection with the alleged cartel; or
- b* to the first cartel member who submits information and evidence that will enable the Agency to find an infringement in connection with the alleged cartel in previously initiated proceedings where the Agency did not have sufficient evidence to adopt a decision (i.e., to detect the existence of a cartel).

Immunity from a fine may not be granted to an undertaking that was the originator (leader) or instigator of the cartel.

For full leniency, an undertaking must:

- a* provide decisive evidence;
- b* cooperate genuinely, fully, on a continuous basis and expeditiously from the time it submits its application;
- c* end its involvement in the cartel immediately following its application to the Agency, except if its continuing involvement would, in the Agency's view, be reasonably necessary to preserve the integrity of any surprise inspections; and
- d* when contemplating making its application, 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.

Undertakings disclosing their participation in a cartel that do not meet the conditions for immunity may be eligible to benefit from a reduction of fine if they provide the Agency with evidence that represents significant added value with respect to the evidence already in the Agency's possession, and that substantially contributes to the closure of the proceeding concerned.

Once the leniency application has been accepted, the undertaking must genuinely, fully and continuously cooperate with the Agency. This includes, in particular:

- a* providing the Agency promptly with all relevant information and evidence relating to the cartel that comes into its possession or is available to it;
- b* remaining at the Agency's disposal to answer promptly any request that may contribute to the establishment of the facts;
- c* making current (and, if possible, former) employees that may have knowledge of a cartel available for interviews with the Agency; and
- d* not disclosing the fact or any of the content of its application before the Agency has issued a statement of objections.

Only businesses (undertakings), and not individuals, can be beneficiaries of the leniency programme in Croatia.

To date, there have been no cases of the Croatian leniency programme being applied.

V PENALTIES

Participation in a hard-core cartel is a civil and administrative offence, while bid rigging is also a criminal offence.

Fines are administrative, and are determined by the Agency. A fine not exceeding 10 per cent of the total turnover of the undertaking in the last year for which financial statements have been completed shall be imposed on an undertaking that concludes a prohibited agreement or participates in any other way in an agreement that results in undue distortion of competition in the sense of Article 8 of the Competition Act or Article 101 TFEU. Fines can be imposed on undertakings and associations of undertakings. Representatives of undertakings cannot be fined.

When setting a fine, the Agency shall fully take into account all mitigating and aggravating circumstances, such as the degree of gravity of the infringement, the duration of the infringement and the damage caused to competing undertakings and consumers. The Agency uses the following two-step methodology when setting the fine: first, it determines the basic amount for each undertaking; and second, it adjusts that basic amount upwards or downwards depending on the mitigating and aggravating circumstances in each particular case. The basic amount of the fine will be determined and set at a level of up to 30 per cent of the undertaking's turnover that was generated exclusively from the activity of the undertaking carried out in the relevant market where the infringement was committed. The amount determined on the basis of turnover will be multiplied by the number of years of participation in the infringement of the Competition Act or of Article 101 TFEU. The Agency will then take into account circumstances (aggravating

or mitigating) that respectively result in an increase or decrease in the basic amount, as previously determined.

In the case of a cartel, the following mitigating circumstances shall be considered in particular:

- a* where the undertaking provides evidence that the infringement has been committed as a result of negligence;
- b* where the undertaking provides evidence that its involvement in the infringement is substantially limited and thus demonstrates that, during the period in which it was party to the offending agreement, it actually avoided adopting competitive conduct in the market; and
- c* where the undertaking concerned has effectively cooperated with the Agency outside the scope of the criteria for granting immunity from and reduction of fines.

The following aggravating circumstances shall be considered in particular: where an undertaking continues the same actions or repeats the same or a similar infringement, refusal to cooperate with or obstruction of the Agency in carrying out its investigations; and an undertaking's role as leader or instigator of the infringement, and all other steps taken to coerce other undertakings to participate in the infringement.

The Agency may also increase the fine to exceed the amount of gains improperly made as a result of the infringement, where it is possible to estimate that amount. Exceptionally, the Agency may, upon the request of and evidence furnished by the undertaking concerned, grant a further reduction of the fine on the basis of objective evidence that imposition of the fine as provided for in the Competition Act would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value. In such a case, and in similar cases where no significant impediment of competition has been established or where the infringement did not have negative effects on competition, the Agency may impose a symbolic fine. However, the justification for imposing such a fine should be given in its decision.

In a single case from 2014 in which the Agency established a cartel, it imposed a symbolic fine of 150,000 kuna on the Croatian Orthodontic Society, which concluded a prohibited agreement by adopting a price list on minimum prices for orthodontics services. The following facts were considered mitigating circumstances that the Agency took into consideration in the imposition of the fines:

- a* that fixing the minimum price for the provision of dental and orthodontic services is generally legally permitted (the power is vested with a different authority);
- b* that the price list was not binding for the members of the Society;
- c* that the members faced no consequences for failing to comply with the price list;
- d* that the price list encompassed only a part of the orthodontics services that were simultaneously available within the public health-care system; and
- e* that the Society gathers experts and is not primarily focused on generating profit.

The Agency also declared the price list null and void.

The imposition of fines under the provisions of the Competition Act is without prejudice to the criminal liability of the person on whom a fine pursuant to the Competition Act has been imposed.

VI 'DAY ONE' RESPONSE

Participation in a cartel must be proven through an investigation process by the Agency, and dawn raids are conducted with the assistance of law enforcement authorities.

The Agency is empowered to conduct dawn raids on business premises, other premises, land and means of transport, which includes the right to enter and inspect any premises, land and means of transport at the seat of the undertaking against which the procedure is being carried out, as well as in any other location where the undertaking concerned performs its business activities, in order to:

- a* examine the books and other records related to the business, irrespective of the medium on which they are stored;
- b* take or obtain, in any form, copies of or extracts from such books or records, irrespective of the medium on which they are stored;
- c* seize the necessary documentation and retain it for as long as it takes to make photocopies where, due to technical reasons, it is not possible to make photocopies during the inspection;
- d* seal any premises and books or records for the period and to the extent necessary for the inspection;
- e* ask any representative or member of staff of the undertaking for explanations of the facts or documents relating to the subject matter and purpose of the inspection and record the answers;
- f* ask any representative or member of staff of the undertaking to submit a written statement regarding the facts or documents relating to the subject matter and purpose of the inspection, and set the deadline within which this statement must be submitted; and
- g* perform any other actions in accordance with the purpose of the inspection.

Where the objects, books or other documentation are temporarily seized, the Agency shall make an administrative note thereof and, without delay, issue a certificate on the seizure of objects and documentation concerned. The objects, books and documentation that have been seized shall be retained for as long as it takes to establish the facts and circumstances contained in the evidence concerned, but not longer than the day after the day on which the Agency closes the proceedings in the case concerned.

If a reasonable suspicion exists that books or other records related to the proceedings carried out by the Agency are being kept in any other premises, land and means of transport of undertakings against which no proceedings have been initiated, or in the homes of directors, managers and other members of staff of the undertakings against which the proceedings have been initiated, or other persons, a surprise inspection shall be conducted in the presence of two adult witnesses.

The authorised persons of the Agency shall exercise their powers of surprise inspection upon production of an identity card and a warrant to carry out such surprise inspection, issued by the High Administrative Court of the Republic of Croatia, to the party to the proceeding or the proprietor of the premises and objects thereof. Where other authorised persons are also involved in conducting the inspection, they must produce a written authorisation to participate in the inspection, certified by the Agency, to the party to the proceedings or the proprietor of the premises.

Where the authorised persons find that an undertaking opposes an inspection and obstructs the examination of business books and other documentation, or in any other way hinders or resists the surprise inspection of the premises, the authorised persons may, with the assistance of law enforcement authorities, enter the business premises in spite of the opposition on the part of the undertaking and conduct their inspection of the books and other documentation.

The legal representatives or employees of the undertaking are obliged to cooperate with the authorised persons conducting the dawn raid. Upon the request of the authorised persons, persons using or having access to computers or other data carriers are obliged to enable access to such computers or other devices, and to provide sufficient information to enable their undisturbed use.

All letters, notices and other communications between the undertaking against which the proceedings have been initiated and its lawyers shall be excluded from the surprise inspection to the extent that they constitute confidential or privileged information. Where the undertaking or its lawyer refuses access to files and documentation by pleading confidential or privileged information, the authorised person of the Agency still has the right of access to the files concerned. Should the information concerned not be regarded as confidential or privileged, in the view of the authorised person of the Agency, such authorised person shall, in the presence of the undertaking and its lawyers (if the latter are present), file the document concerned or its photocopy in a separate envelope, properly dated and sealed by the Agency, and signed by all the parties and lawyers concerned.

The parties to the proceedings and persons who were subject to the inspection may provide their written comments on the inspection report within 15 days of the day of receipt of the inspection report.

The undertaking party to the proceedings can be sanctioned with a fine not exceeding 1 per cent of the total turnover in the last year for which financial statements have been completed if it obstructs the enforcement of the injunction of the High Administrative Court in the case of a dawn raid.

VII PRIVATE ENFORCEMENT

No appeal is allowed against decisions of the Agency that establish infringements of the competition law and impose fines, but the injured party may bring a claim before the High Administrative Court of the Republic of Croatia within 30 days of receipt of the decision.

Damages claims relating to infringements of the Competition Act or Articles 101 and 102 TFEU shall fall under the competence of the relevant commercial courts. The infringing undertakings are liable for the damages caused by such infringements. The competent commercial court dealing with a damages claim shall take into account the final decision of the Agency establishing an infringement of the Competition Act or Articles 101 or 102 TFEU, without prejudice to Article 267 TFEU. The commercial court may even interrupt the proceedings until the decision of the Agency, the European Commission or any other competition authority in other Member States has become

final, and the commercial court shall inform the Agency without delay about the submitted damages claim regarding a breach of competition law.

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

VIII CURRENT DEVELOPMENTS

To date, the Agency has issued 14 decisions establishing cartels. In most of these cases, there were written proofs of the cartel agreements. An important role was also played by associations of the undertakings that served as the sponsors of the cartels, sanctioned the members of the agreements if they did not stick to an agreed price and themselves established minimum prices.

Since the adoption of the latest Competition Act, the Agency is empowered to establish infringements (cartels) and impose fines, and the potential amount of the fine is now substantial enough to present a real threat to infringing undertakings. The most recent decision imposing fines was the *Orthodonts* case described above in Section V, *supra*. Only the association was fined in that particular case, not its members.⁶

In December 2013, the Agency initiated two major proceedings. The first is against the Croatian Insurance Bureau and 12 undertakings, insurance companies and members of the Bureau, regarding the allegations that the decision to revoke the power of one insurance company (Generali) to issue the motor insurance certificate or the 'Green Card' represented a prohibited agreement. Additionally, an assessment will be made as to whether this decision could constitute an act of retribution for Generali's earlier decision to lower the compulsory third-party insurance premium.

The second proceeding was initiated against the Croatian Chamber of Economy, the Association of Nautical Tourism and its nine members (marinas) to establish whether the marinas that participated in the meeting of the association exchanged information relating to future pricing policies for their berth and mooring services.⁷

Both cases are still pending and will certainly have a great impact on further developments of Croatian competition law in the field of cartels.

In conclusion, we expect that the future work of the Agency and the imposition of substantial fines in some pending cases will have greater success in the promotion of competition and awareness-raising within the business community than all the competition advocacy and continuous education on competition compliance has had so far.

6 Official Gazette of the Republic of Croatia No. 81/2014.

7 www.aztn.hr/article/1491/osiguravatelj-i-marine-pod-lupom-agencije.

Appendix 1

ABOUT THE AUTHORS

MARIJANA LISZT

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After graduating from Zagreb Law School and obtaining a master's degree in EU Law at the University Carlos III of Madrid, Marijana Liszt also completed master's-level studies in EU Law at Zagreb Law School, writing her thesis on the legal framework of the State Aid Law as a part of EU Competition Law. She is now a PhD candidate at the Law School of the University of Rijeka, preparing a thesis on the public financing of services of general economic interest from the state aid law perspective. Marijana has been a practising attorney-at-law since 2002 and is one of the three founding partners in the law firm Posavec, Rašica & Liszt. Her fields of expertise are competition law, including state aid law, commercial law, company law and sports law. Consequently, she is in charge of these fields of law within the firm. During Croatia's EU accession negotiations, Marijana was appointed by the government as the head of the Working Group for Chapter 8 – Competition Policy, and served in that position from 2005 until the closing of the negotiations. Marijana 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 conferences throughout the region. In addition to Croatian, Marijana speaks fluent English, Spanish and German and has solid knowledge of Italian.

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