

Croatian Competition Agency
Annual plan for 2014-2016

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President's introduction



In line with the best practices, in all the areas of its work and committing itself at the same time to transparency, the Croatian Competition Agency traditionally works out and publishes its annual plan. There is no legal provision that would bind the Agency to do so, but we strongly believe that such a strategy statement contributes to openness of our work for all stakeholders and to development of

competition culture amongst citizens and businesses. This is particularly important in the context of the Croatian integration in the EU internal market and the challenges our economy faces due to a long financial and economic crisis.

As a public body that is financed exclusively from the State budget we have prepared the Annual Plan for the period from 2014 to 2016 and defined the key strategic objectives and the activities we will focus on in achieving these objectives in the forthcoming period.

In the following three years we will concentrate on maximizing the effects of our activities and dedicate our capacities to most harmful practices in the market for both the consumers and other competitors, that is, to hard core restrictions of competition and particularly cartels. In detecting cartels we will cooperate with the European Commission and the EU national competition authorities. In that sense we will intensify our activities aimed at promotion of immunity programmes that although they are a common practice in the EU they still have not been recognized and accepted in Croatia.

We will continue to conduct market surveys and particularly focus on sectors that indicate market failures generating from the behaviour of the undertakings in the market, a particular market structure, consumers' behaviour and habits, interventions of the State in the form of market regulation and other factors that may have negative effects on a particular market.

The third strategic objective is competition advocacy and strengthening of competition culture. The Agency promotes effective competition among undertakings, the State authorities and the general public. It issues opinions assessing the compliance of draft proposals for laws and the existing laws and other legal acts with competition rules, it publishes its decisions, opinions and views, communicates with the media, the academia and the widest public.

We believe that our objectives are realistic and reasonably achievable. In any case they stand for our primary values: integrity, effectiveness and credibility of the competition regime.

Mladen Cerovac, LL.M.

President of the Competition Council

1. Competition and Croatian Competition Agency

The first Competition Act in Croatia was adopted as early as in 1995. The Croatian Competition Agency (hereinafter: Agency or CCA) was established by the decision of the Croatian Parliament of 20 September 1995. It became operative in early 1997 when it was allocated the resources for its work from the State budget. Since then the Competition Act has undergone a number of revisions whereas the latest revision entered into force on 1 July 2013 – the day of the accession of the Republic of Croatia to the European Union. From its founding days until today the Agency has changed and developed but it has always been the enforcer of competition law.

1.1. Competition policy

Competition policy is a mix of measures and behaviour rules that a particular national competition authority applies to make sure businesses and companies compete fairly with each other. To preserve well-functioning product markets, most authorities like the Agency must prevent or correct anti-competitive behaviour. To achieve this, the Agency monitors any behaviour that constitutes prevention, restriction or distortion of competition and limitation of entrepreneurial freedom relating to the trade of goods and provision of services in the market.

This makes competition policy inseparable from competition law. The standard concept and the objective of competition rules stemming from competition law worldwide is to stimulate economic performance based on competitive markets and efficient undertakings but taking into account the interest of the consumers.

It is the mission of the Agency, within its legal powers, to ensure competition that will bring overall benefit to consumers that buy the goods and use the services and to increase consumers' welfare. Effective competition helps reduce prices, creates wider choice for consumers and improves quality of goods and services. Competing undertakings produce better and new products, foster innovation and improve their business performance. By doing so they become more competitive in the domestic and foreign markets and at the same time positively affect economic growth.

1.2. Role of the Croatian Competition Agency

Croatian Competition Agency (CCA) is a legal person with public authority which autonomously and independently performs the activities in the scope of its competence under the Competition Act (OG 78/09 and 80/13), Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003, relating to the implementation of Articles 101 and 102 of the Treaty on the Functioning of the European Union, OJ C 115, 09.05.2008, and Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.01.2004.

This makes the Agency a public body in charge of application of the national and part of the European competition law. The mission of the Agency is to help the market to function better for the consumers, undertakings and the economy as a whole. The forces of competition make undertakings improve their performance. Competing markets foster innovation and creativity, they lead to wider choice and improve the quality of goods and services. Thus, it is the task of the Agency to remove the barriers, weaknesses and restrictions that hinder the forces of competition.

We believe that sustainable economic development relies on competitive markets in a pro-competitive environment.

In that sense our activities in the next three years will be predominantly focused on:

1. Enforcement of competition law where special attention will be paid on elimination of hard core restrictions, and close cooperation with the European Commission in detecting cartels;
2. Market studies;
3. Competition promotion by implementing competition advocacy and awareness rising activities among undertakings, the State and the widest public.

Besides the above mentioned key areas we will continue with our regular activities covering merger control, international cooperation and issuing of expert opinions.

What follows is the description of the environment and the trends that have been established the basis of risk assessment and used for the definition of strategic objectives that are explained in detail in the second part of this document.

2. Environment and trends

We recognize the general setting and trends that in the past years most significantly influenced setting the priorities in the work of the Agency in the period from 2014 to 2016. In the time of crisis and limited financial resources, the leverage of the Agency must be visible, clear and prompt in the elimination of the weaknesses in the market functioning.

2.1. Economic climate

Negative trends in the Croatian economy, accompanied by the negative forecasts for businesses, the absence of foreign investment, the shrinking personal consumption expenditures and austerity policy directly affect the operation of the Agency and its financing. On the other hand, they at the same time define its strategic focus. The planned budget envisaged for the operation of the Agency in the period from 2014 to 2016 goes hand in hand with the measures taken by the government to reduce expenditures in an attempt to shrink its growing budget deficits. This has significantly influenced the strategic objectives of the Agency in the following three years and the concrete decision to concentrate on the fight against cartels and other hard core restrictions – the behaviours of undertakings particularly thriving in the time of crisis due to low economic growth rates and negative economic growth rates that put a downward pressure on profit.

2.2. Revisions of legislative framework and its impact

The changes listed below caused a substantial increase in the scope of the activities of the CCA.

The accession of the Republic of Croatia to the EU on 1 July 2013 meant the inclusion of Croatia as a full Member State into the internal market and the change of competence for the national competition authority, concretely, empowering the Croatian Competition Agency for the direct application of the EU *acquis* in the area of competition (system of parallel powers). It means the obligatory cooperation between the CCA and the national competition authorities of the Member States and the European Commission through the European Competition Network (ECN). As of 1 July 2013 the CCA also became empowered for the application of competition law in the banking sector – involving credit unions and credit institutions (where the Croatian National Bank lost the competence in the area of competition in the banking sector and this power was resumed by the CCA).

On the other hand, a significant shift of competence happened for the CCA itself in the area of State aid. Namely, six months after the EU accession the CCA completely lost all its competences in this area and the Ministry of Finance became solely in charge with State aid issues at the national level.

Due to the still vivid legislative activities, particularly with respect to further revisions of the domestic rules on the basis of the ever developing rules in the area of competition at the EU level, we do not expect any reduction in the performance of these activities. The CCA is included in revision processes directly through its participation in the working groups both at

the national and the EU level, and indirectly by giving expert opinions on the proposed laws and other legislative acts. Despite the fact that this is a very demanding part of work, we consider it important and compliant with the goals of the Agency. Namely, this is the way how possible anticompetitive harm can be avoided or likely anticompetitive effects spotted, revised and eliminated at the very beginning of the drafting process.

Following the rapid developments on the markets in general and taking into account the above mentioned changes in respect of the Croatian inclusion into the internal market, bearing in mind the limitations imposed by the current economic environment and the need for further financial consolidation, we believe in the importance of competition promotion and strengthening of competition culture where there are still regulatory barriers present. We promote the benefits of competition for undertakings bringing effectiveness and innovation. These benefits for consumers generate from new business models as a competitive advantage. On the other hand, the benefits of competition also spill over to consumers in the form of lower prices and to the economy in general in the form of raising competitiveness.

The Agency is particularly interested in and promotes the legislative changes that cover the liberalization processes or opening of certain closed, monopolistic markets. Similarly as in Europe, the liberalization processes in Croatia are followed by the establishment of regulators in charge of particular markets, concretely, empowered by *ex-ante* regulation of the markets concerned. The competition authority – the CCA – conducts all *ex-post* activities relating to, most commonly, preventing abuse of a dominant position (as shown in the recent cases handled by the Agency). In that sense, the CCA follows particularly the trends in the European telecommunications market, liberalization of the national railway transport services and the changes in the electric energy market.

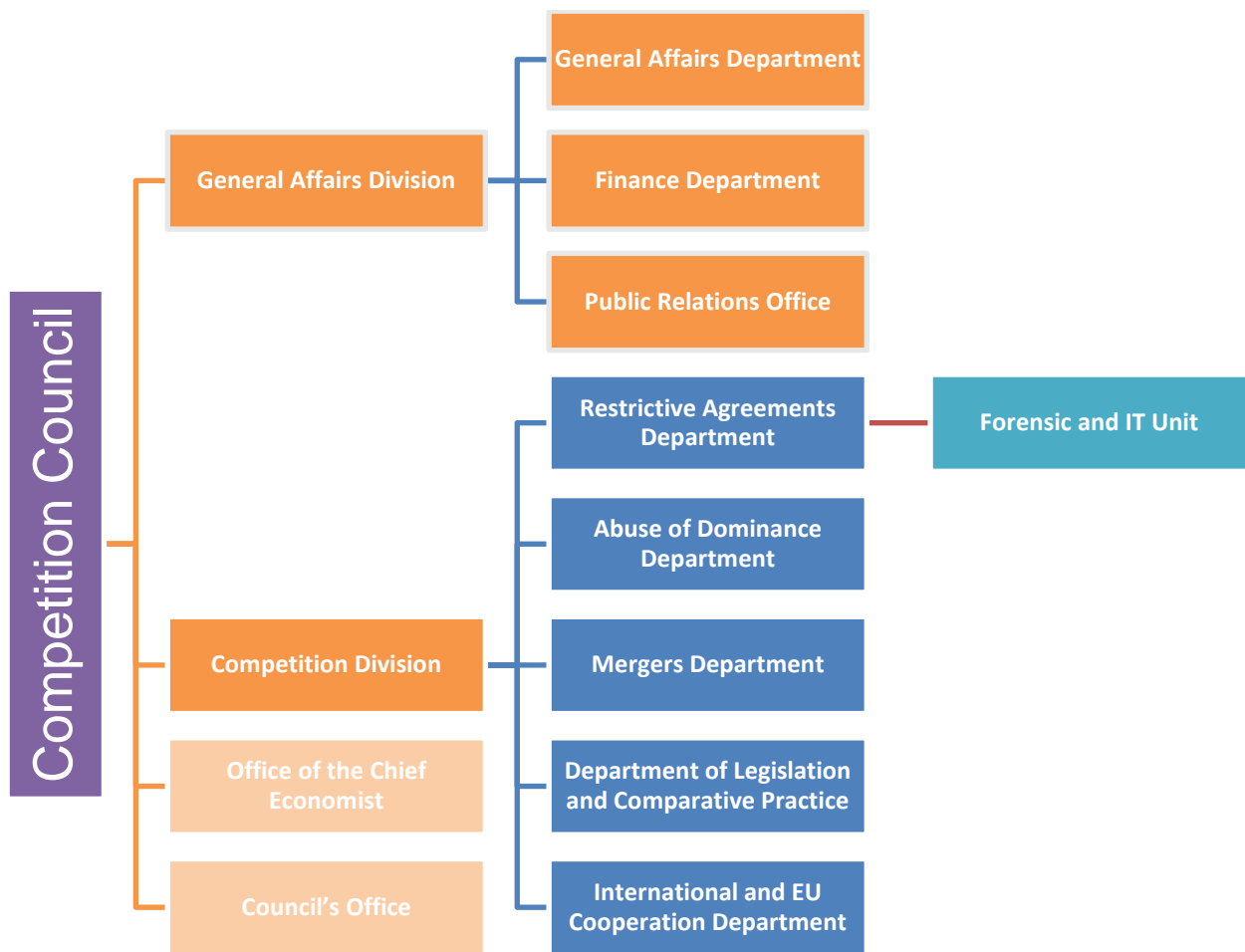
2.3. Organizational changes

The year 2014 was the first year of the new management authority of the CCA – the Competition Council which was given the mandate, in line with the previously described legislative changes (new competences after the EU accession and loss of State aid competences), to change the previous organizational structure. Although this restructuring of the Agency was influenced by the external factors, it has also been the result of the policy of the new Competition Council and its president, Mr Mladen Cerovac.

At the micro level this policy is based on the viewpoint that competition law, economy and theory of industrial organization work complementary and in synergy, together with special technological knowledge as a must, particularly in fighting cartels.

At the macro level this policy understands that the activities of the Agency should be focused on the restrictions on the market that produce most significant and direct harm to the consumers and other undertakings.

Thus, this policy shift also reflects itself in the new organizational structure of the Agency, as shown in Picture 1. The “core” business of the Agency is of key importance whereas the minimum necessary ancillary services are kept to maintain a stable and sustainable operation of the Agency.



Picture 1: CCA new organizational structure

3. Strategic goals in the period from 2014 - 2016

There are three strategic goals in the period from 2014 – 2016 with a view to maximizing the effects of the actions of the Agency in the time of the reduced budget. Namely, the CCA is financed solely from the State budget and taking into account the evident effects of the crisis in 2014 and the forecasts of modest economic growth in 2015 no rise in the budget of the Agency that would ensure a higher level of functional equipment and consequently a wider set of activities of the Agency has been planned. Furthermore, in the context of the worsening entrepreneurial climate, the fall of the standard of living and the negative trends in the labour market, the Agency will focus its activities on market distortions that produce direct and most significant harm to the consumers and undertakings: cartel agreements and other hard core restrictions.

3.1. Enforcement of competition law with the stress on elimination of hard core restrictions and active role in the cooperation with the European Commission in detecting cartels

Besides the cartels, as the most severe infringements of competition rules, other agreements between undertakings, horizontal agreements between competing undertakings, or vertical agreements that are concluded between non-competing undertakings, may under certain conditions be found restrictive, that is to say, prohibited, on the account of their predominantly negative effects on competition. In that sense in the period from 2014 – 2016 the Agency will particularly focus its activities on the practices on the market involving non-compete obligations, retail price maintenance, fixing prices, restrictions of passive sales, exchange of commercially sensitive information and recommended prices agreed by associations of undertakings.

The above mentioned priorities include also abuse of a dominant position by undertakings, particularly the main types of exclusionary abuse, such as refusal to supply, fidelity-inducing discounts, tying and bundling. Of special interest in this sense are markets that have undergone or are still undergoing liberalization (telecommunications and postal services, water supply etc.).

Where hard core restrictions are at work we opt for a clear, strict and consistent fine policy, because we believe in deterrent effect of fines, in the case of new infringements committed by other undertakings or repeated infringements by the same undertakings.

Cartel activities constitute the most serious infringements of competition law. A cartel agreement is usually oral, informal and secret. This makes the detection of cartels difficult and the detection process long. In that sense the comparative practice shows that surprise inspections and forensic investigative expertise constitute effective tool in the detection of cartels. In addition, the Croatian Competition Act provides for immunity from fine for the whistle-blower – a leniency applicant who is a member of a cartel and first comes forward and informs the Agency on the existence of a cartel and supplies evidence which enables the Agency to open the proceeding, or where the Agency has already opened a proceeding, a member of a cartel who can first supply the relevant evidence on the existence of the cartel.

However, the leniency programme has not been applied by the CCA so far, simply because there have been no applications. This complies with the experience of some other EU Member States. In future, the CCA will use its best efforts to take all actions aimed at the promotion and presentation of the leniency programme.

On the other hand, taking into consideration the effectiveness of surprise inspections, the CCA is planning intensified activities aimed at detecting and prosecuting cartels. Preparations in this area of the CCA activities started in early 2013.

As previously stated, since the Croatian accession to the EU in the system of parallel powers the CCA may apply the national competition rules or directly apply of the EU *acquis* in the area of competition. At the same time the CCA committed itself to cooperation with the European Commission that has given the fight against cartels one of the highest priorities in the forthcoming period. One of the modes of cooperation is also the conduct of surprise inspections (so called dawn-raids) that are usually performed within the investigation procedure aimed at collecting evidence of the existence of cross-border cartels. It is generally accepted that price-fixing cartel agreements produce the biggest harm for the affected markets, final consumers of goods and users of services and for economies as a whole. That is why the cartel cases enjoy the priority of the highest public interest.

Thus, the fight against cartels, the adequate sanctions that are imposed on cartel members and the cross-border cooperation stand in the focus of the majority of competition authorities. The CCA, like many similar competition authorities across the EU, is empowered to conduct dawn raids of business premises, land and means of transport, to examine all records and objects relating to the business, to seal any business premises or records and to seize objects and documents. Taking into account the current economic situation in Croatia that actually facilitates such anticompetitive practices, it is clear why the fight against cartels has become a strategic objective of the Agency.

In the period concerned the CCA will continue its normal course of activities, the intensity of which is beyond control or influence of the Agency, and depends exclusively on external factors, concretely, activities in the area of merger control, expert opinions and international cooperation activities.

The activities of the CCA relating to merger control depend exclusively on the business transactions of undertakings involved. There is a restructuring and consolidation trend spotted in the number of markets conditioned partly by the negative economic trends. However, there is a rising complexity in the concentrations that are notified to the CCA which speaks for maturing markets. What significantly influenced the rise in the scope of activities of the CCA was the above mentioned change in competence due to the EU accession, particularly regarding the notification and assessment of compatibility of concentrations where in line with the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.01.2004, under the rules governing the referral of concentrations from the Commission to Member States and in line with the submission procedure, well placed authority to deal with the case is decided. Within the meaning of its powers under the EC Merger Regulation, at the request of the Commission, the competent authorities of the Member States – in our case the CCA – shall also undertake the inspections on the premises of the undertakings and

associations of undertakings in the territory of the Republic of Croatia which the Commission considers to be necessary.

From the day of the EU accession there has been an increase in the international cooperation activities of the CCA. This means close cooperation with the European Commission and the European Competition Network (ECN). On the other hand, the CCA cooperates with international competition organizations and takes part in competition policy fora both at bilateral and multilateral level (OECD, ICN). Bilateral cooperation is established with national competition authorities in other countries.

3.2. Market surveys

In the period from 2014 – 2016 the Agency will continue to carry out market investigations into particular sectors (sector-wide reviews) and perform other market analyses that will be based on the recent economic research, the newest economic theory and the improved economic knowledge of our staff, that includes the EU comparative practice and the decisions of the European Commission and the European courts.

Conducting market surveys systematically ensures an informed and well-structured approach in the CCA activities planning and setting priorities, which we find is of key importance considering the lack of human and material resources.

Where such market investigations indicate irregularities that contravene competition rules, the CCA will open separate investigation proceedings. At the same time, the market investigations into particular sectors and other market analyses are the source of information on the basis of which the CCA issues opinions and recommendations upon request of the Government of the Republic of Croatia, public administration authorities, local and regional self-government units with the view to removing entry barriers on certain markets that are the result of the regulatory framework. The CCA will, *inter alia*, perform the grocery retail market analysis, the press publishing and distribution market study and market investigations in the provision of financial services, insurance services and electronic trade.

3.3. Competition promotion

The Agency promotes competition law and we find that under the circumstances described above this practice of promoting competition culture has shown as a cost saving but effective tool that contributes to spreading the knowledge, raising competition culture and, consequently, the necessary change in the behaviour of the undertakings. We are planning to draft Guidance for undertakings for working out their compliance programmes. We will continue to issue our E-Newsletter and publish the decisions and opinions we issue on our web site and, where applicable, in the Official Gazette. Transparency is our priority and in light of the limited budgetary resources the above set activities do not entail high costs for competition promotion.

We will continue to communicate with the media, the general public, the academia and the business community. In doing so we believe we disseminate knowledge about the concrete cases and views of the Agency and raise awareness of the importance of competition law

and culture. In order to improve the communication to all stakeholders we are planning to redesign the CCA web site.

The Agency will continue to issue expert opinions on the compliance of draft legislation and existing laws and other legislative acts with competition rules. By doing so we take an active part in the creation and adjustment of the legislative, regulatory framework that will ensure effective competition and enhance competitiveness. These activities at the same time contribute to rationalization and lessen the need of the CCA to act *ex post*, i.e. once the infringement has already been committed.

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In Zagreb, on 29 May 2014