CROATIAN COMPETITION AGENCY

Annual Report for 2003

September 2004

THE REPUBLIC OF CROATIA
CROATIAN COMPETITION AGENCY

Annual Report on the work of the CCA for 2003

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PREFACE

Competition law and policy are of essential importance to all countries which base their economies on the principle of free market, where the distribution of resources is a result of the relationship between supply and demand on the market and not a result of state-related measures aimed at intervening in the affairs of undertakings. The ultimate objective of the application of competition law and policy is to create a market where the undertakings are equally represented and perform their activities under the same conditions, irrespective of their size and market power, with the aim of their market position to be evaluated primarily by the quality of goods or services they provide. On the one hand competition law is applied so as to affect the structure of the market, while on the other hand, to affect the practices of undertakings in the particular market. Undertakings are forced to adjust their market behaviour to rules which do not allow the creation of a monopoly and prevent abuse of existing dominant position in the market or prevent the creation of cartels which as a rule result in price fixing agreements or partitioning of the market.

Where undertakings perform their business activities in accordance with relevant competition regulations, it results in an increase in creativity of the undertaking through technological improvements – innovations, lowering of production costs, improvement of the economic efficiency of the undertaking which enhances their competitiveness on both the national and international markets. Undertakings offer goods and services which are competitive relating to price and quality because their access to a particular market, on which efficient competition exists, is dependant only on the quality and price of the goods or services concerned. On the other hand, consumers are given the freedom of choice among a broad range of offered products, from a greater number of suppliers, at a lower price and of better quality.

In this sense competition law undertakes the task to prevent particular practices and business activities which may place some undertakings at a competitive disadvantage and thereby challenge free competition between undertakings.

However, for the efficient implementation of competition law it is necessary to simultaneously develop a so called “competition culture”, i.e. actively engage in competition advocacy or raise the awareness and knowledge of undertakings, consumers, government and other state bodies, judicial bodies and the wider public regarding the importance and role of competition law and policy in further development of market economy in our country and its role in the strengthening of competitiveness of Croatian undertakings.

The above mentioned duties fall within the competence of the Croatian Competition Agency (hereinafter referred to as: the Agency), being a *sui generis* authority in the implementation of the Competition Act. However it should be noted that the Croatian Competition Agency, as the general competent authority, covers all competition issues, unless according to any other separate regulation,

these have been put under the authority of any other body responsible for the issues concerned in the specific sectors.

So it is, for example, that other legislation covering competition issues are also significant in certain markets, these include: Telecommunications Act (Official Gazette No 122/03, 158/03, 177/03 and 60/04), Banking Act (Official Gazette No 84/02) and Decision regulating market competition within the banking sector (Official Gazette No 48/2003), laws in the energy sector (Energy Act, Electricity Market Act, Act on Petroleum and Petroleum Related Products, Gas Market Act, Act Regulating Energy-Related Activities, all published in the Official Gazette No 68/01), Media Act (Official Gazette No 163/2003), Electronic Media Act (Official Gazette No 122/2003), Postal Act (Official Gazette No 172/2003). According to the provisions of these acts competition issues are entrusted to other regulators. Although the legislation in question entrusts separate regulators with competition issues, they do not entirely regulate competition in the respective sectors, but merely provide for particular provisions, which separately or additionally, cover specific competition issues. For this reason the Competition Act is at the same time the primary source of competition law for the sectors covered by the relevant legislation. This makes the co-operation between the Agency and regulatory bodies in particular sectors indispensable for the protection of competition therein. In 2003 the Agency signed the Agreement on Cooperation with the Croatian National Bank as a separate regulator in the banking sector. It also launched an initiative for the concluding of agreements on co-operation which would define in detail the form and manner of cooperation between the Agency and other regulatory bodies.

The activities of the Agency in 2003 were, in a significant measure, concentrated on the drafting of the new Competition Act (Official Gazette No 122/2003) and proposing bylaws (Regulation on the definition of relevant market and Regulation on the notification and assessment of concentrations) which are adopted by the Government of the Republic of Croatia, pursuant to the proposal of the Competition Council, by which the Croatian competition law is harmonised with the EU acquis communautiare.

The first piece of legislation by which the area of protection of competition was regulated in the Republic of Croatia was the Competition Act from 1995 (Official Gazette No 48/95, 52/97 and 89/98).

Even though this legislation was partially harmonised with EU legislation relating to competition, upon the conclusion of the Stabilisation and Association Agreement between the European Community and its Member States and the Republic of Croatia (Article 69 and Article 70), the Republic of Croatia undertook the commitment of priority and full harmonisation of competition legislation with provisions of Article 81, Article 82 and Article 86 of the Treaty establishing the European Community (hereinafter: the Treaty).

The need for the passing of a new Competition Act also arose from the fact that up until then the existing Competition Act from 1995, throughout its many year of implementation, displayed lack of clarity and inconsistencies on numerous occasions, both relating to substantive and procedural provisions, which ultimately resulted in the legal insecurity of parties to which it applied. The new Competition Act (Official Gazette No 122/2003) introduces a large number of novelties concerning both its substantive and procedural provisions.

With the entering into force of the Competition Act 2003, Croatian legislation regarding protection of competition has been fully harmonised with provisions of the Treaty. More precisely, Article 81 of the Treaty covers the area of prohibited agreements between undertakings and the possibility of exemption from such prohibition, Article 82 of the Treaty regulates abuse of dominant position of undertakings and Article 86 of the Treaty provides for the application of competition law on legal and natural persons entrusted with the operation services of general economic interest and are subject to special EU rules.

Even though the Competition Act 2003 has been applicable from 1 October 2003 the process of harmonisation of legislation in this area with the EU acquis communautaire has not yet been completed. The Competition Act 2003 foresees the passing of a series of bylaws through which this area will be harmonised with secondary EU legislation which is subject to frequent changes. Other than those listed, an important source of competition law in the EU is also judicial practice (case law). Therefore, in the aim of effective implementation of the Competition Act and application of the EU standards and criteria, it shall be necessary to invest significant efforts into the institutional strengthening of the Agency and additional education of Agency employees. Taking into the account the fact that the matter in question is a relatively new branch of law which has been applied for little more than seven years, the specialisation of judges who will make decisions regarding the legality of Agency decisions will be indispensable.

Namely, the Competition Act 2003 explicitly stipulates the obligations of the Agency to apply the EC criteria and standards, as well as the instruments of their interpretation in the assessment of means of prevention, restriction or distortion of competition which may affect trade between the Republic of Croatia and the European Community. The above mentioned obligation, *mutatis mutandis*, also relates to other competent bodies applying this legislation, especially the Croatian courts.

The Competition Act 2003 has also significantly changed the internal organisational structure of the Agency. It abolishes the institute of the director general and the former Competition Advisory Body and introduces a new, differently established body which manages the activities of the Agency and makes decisions regarding all matters for which the Agency is competent.

This managing body is the Competition Council (hereinafter referred to as: the Council). The Council has five members appointed by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia for a period of five years. At the head of the Council is the President of the Council who represents, speaks for and manages the Agency and organises and supervises the work and activities of the Agency, supervises and is responsible for its expert performance. The Council takes the decisions in its sessions by a majority of at least three votes. A quorum consists of three members of the Council of which at least one must be the president or his deputy.

Other than the Council responsible for the management and issuing of decisions, the Agency has its expert team which carries out all administrative and professional activities for the needs of the Council. Therefore it was necessary to pass a new Statute of the Agency which the Council adopted in its session on 4 December 2003.

In this report period, irrespective of the fact that the Agency, for nearly six months, was without a person authorised for representing and taking decisions (in the period from 30 April 2003, i.e. from the retirement of the former director general of the Agency, Hrvoje Momčinović, MSc, until the mid-October 2003, that is until the Croatian Parliament appointed the undersigned president of the Council and the members of the Council; Decision published in Official Gazette No 167/2003 from 22 October 2003), 78 % of the cases which were received in 2003 were resolved (considering assessments of agreements of undertakings, concentrations, abuse of dominant position, expert opinions, opinions on compatibility of legal proposals with the provisions of the Competition Act and activities related to international cooperation). The afore stated points to the high level of promptness maintained by the Agency, the efficiency and professional work of the expert team and professional status of the Council members, who are now permanently employed in the Agency, which enables them to regularly hold the sessions of the Council and promptly make the decisions.

Alongside the above mentioned, and regardless of the fact that its current number of employees is significantly under the number necessary for effective implementation of the Competition Act, with the entry into force of the State Aid Act (Official Gazette No 47/03, 60/04), the Agency also became competent to authorise and monitor the implementation of general and individual state aid and to order recovery of general and individual state aid granted contrary to legislation. The report on the activities of the Agency in the area of state aid for 2003 has been drafted by the Agency and adopted by the Croatian Parliament.

In conclusion, in the process of accession to the EU, the area of competition is of exceptional importance first and foremost because of timely preparation of Croatian undertakings for the existing business conditions on the EU common market. However, regardless of its importance, the harmonisation and constant adjustment of Croatian legislation with the EU acquis communautaire is not and

must not be an end in itself. It is necessary to ensure simultaneous and proper enforcement of the legislation concerned and this not only by continuing the institutional strengthening of the Agency which has been entrusted with these tasks, but also by the appropriate training aimed at the Croatian judicial system regarding the matter in question. On the other hand, to raise the awareness and the level of knowledge among the government and other public authorities, business community, consumers, judiciary and general public regarding the importance and role of competition law and policy in the further development of market economy in our country and its role in raising competitiveness of Croatian undertakings, are of equal if not greater importance than the harmonisation of legislation in this area with the EU acquis communautaire.

However, in accordance with the Opinion of the European Commission (AVIS) regarding competition in the Republic of Croatia, the ensuring of full efficiency in the implementation of competition regulations requires the efficiency of the Agency but also the efficiency of the courts making decisions on the legality of the decisions issued by the Agency (Administrative Court of the Republic of Croatia) as well as misdemeanour courts pronouncing penalties for violations of the provisions under the Competition Act.

The attempt of the new Competition Act 2003 has been to prescribe penalties (fines) for violations of the provisions which are in full compliance with the comparative EU law, whereby the fines concerned are lower than the fines that had been regulated by the former Competition Act from 1995, in order to enable the misdemeanour courts to pronounce adequate fines for infringements of the law, as well as to extend the limitation periods (relative limitation period being three years, whereas absolute limitation amounting to six years) in order to improve the enforcement efficiency relating to competition issues. Nevertheless, we do not consider this to be enough.

Namely, even under the new Competition Act 2003, the Agency does not have the authority to pronounce fines for violations of the provisions of the act in question. As in the former Competition Act, fines are pronounced by misdemeanour courts which are based on the decisions taken by the Agency, whereas appeals against the decisions taken by the misdemeanour courts are decided upon by the High Misdemeanour Court of the Republic of Croatia. On the other hand, the legality of the decisions of the Agency, but also of those made by other regulatory bodies, is decided upon by the Administrative Court of the Republic of Croatia. Such a system is the result of a general system of judicial protection against the decisions of administrative authorities, which in the case of implementation of competition regulations fails to ensure timely and effective legal protection, and what is more, lacks legal safety (leading to lengthy administrative disputes without the possibility of pronouncing penalties, the unfeasibility of specialising the required number of judges for, as a rule, a small number of cases to be decided upon, non-pronouncement of penalties by misdemeanour courts because of limitations or similar). Within the EU member

states such a system exists only in the Republic of Slovenia, which upon realising its inefficiency has proceeded to work on urgent amendments to its law.

With the objective of achieving the full efficiency in the implementation of competition regulations and given that it is a commercial or economy related issue in question, it would be more logical and economically more appropriate to solve this problem by determining one court (Commercial court) as the competent court in monitoring the legality of decisions made by the Agency and other regulatory bodies, which would also include the authority to prescribe penalties. Such reorganisation of the system would also enable systematic education and specialisation of the judges. However, this can only be achieved through deep seated changes in the Croatian legal system. Thus, one of the priorities of the Agency regarding its future activities is the launching of an initiative for essential amendments to all necessary legislation which would enable efficient implementation of competition regulations.

President of the Competition Council

Olgica Spevec

1. Introduction

The Croatian Competition Agency (hereinafter referred to as: the Agency) drafted the Annual report on its activities in 2003 in accordance with the provisions of Article 36 of the Competition Act[1] (hereinafter referred to as: the Act).[2] The report on the activities of the Agency has been structured and drafted according to the methodology for drafting of such annual reports by the European Commission. The report contains the review of the activities and the analysis of the current state of affairs and procedures initiated by the Agency pursuant to the provisions of the Competition Act in the period from 1 January 2003 to 31 December 2003.[3]

The Agency carries out administrative and expert activities relating to competition issues, activities relating to approval and monitoring of the implementation of general and individual state aid and orders the recovery of general and individual state aid granted or used contrary to the legislation. The above mentioned competencies of the Agency are stipulated by the provisions of the Competition Act and the State Aid Act[4]. The report in question encompasses a review of the activities of the Agency only in relation to activities relating to competition issues (anti-trust) which are carried out by the Agency in accordance with the provisions of the Competition Act. The Annual report on the activities of the Agency relating to state aid and the Annual report on state aid which are considered competition activities in a so called "wider sense"[5] are obligatory for the Agency according to the State Aid Act and are drafted within a separate report[6].

The area of competition was regulated for the first time in the Republic of Croatia by the Competition Act passed in 1995 which, along with introducing the basic competition rules which are in force in the European Union, ensured the founding of and the activity of the Agency as an independent authority entrusted with the implementation of competition rules regulated by this Act. In regards to the accession process of the Republic of Croatia to the European Union and after the signing of the Stabilisation and Association Agreement between the European Community and its Member States and the Republic of Croatia (hereinafter

[1] Official Gazette No 122/2003.
[2] Competition Act (Official Gazette No 122/03). The Act was adopted by the Croatian Parliament on the 15 July 2003, entered into force on 7 August 2003 and has been applied since the 1 October 2003.
[3] Article 36 of the Competition Act: "The Council shall prepare the annual report of the activities of the Agency in the preceding year and submit it to the Croatian Parliament."
[4] Official Gazette No 47/2003 and 60/2004.
[5] The Competition Act is a part of the anti-trust system which regulates the relations between undertakings. Other than the afore mentioned, there also exists the system of protection of competition in a wider sense, which falls outside the scope of the Competition Act and which encompasses all forms of state intervention in the market for the benefit of the individual undertakings (legislation on public procurement, on granting of special or exclusive rights, that is legislation on state aid).
[6] Annual report on the activities of the Competition Agency relating to state aid and the Annual report on state aid for 2003 which were drafted by the Agency (Class: 031-02/2004-01/61) and submitted to the Croatian parliament which adopted the same on the 2 July 2004.

referred to as: the SAA), the Republic of Croatia adopted the National association program and the Plan for the harmonisation of legislation with the acquis communautaire. By signing the SAA the Republic of Croatia, also assumed the obligation of priority and full harmonisation of the legislation in the area of competition with the provisions of Article 81, Article 82 and Article 86 of the Treating establishing the European Community. [7]

The importance and role of the area of competition in raising competitiveness of the Croatian economy, that is the role of competition law and policy and the role of the Agency as an umbrella institution for the implementation of this branch of law, in the accession procedure of the Republic of Croatia into the European Union, relating to the conclusions from the Opinion of the European Commission on competition in the Republic of Croatia, is covered in greater detail in Chapter 2, on pages 11 to 13.

With the aim of executing these obligations, a significant part of the Agency's human resources spent nearly three years (starting from 2001 to July of 2003) drafting the law and the implementing bylaws. The new Competition Act was drafted as the fundamental legislation in the area of competition. The provisions of the new Competition Act stipulate that the Government of the Republic of Croatia, upon the proposal of the Competition Council (hereinafter referred to as: the Council), shall adopt a series of bylaws which will regulate in greater detail individual areas determined by the Act. The provisions of Article 67 of the Competition Act also stipulate the deadlines for the adoption of these bylaws (three or six months from the date the Competition Act enters into force).

In accordance with the above mentioned, the Government of the Republic of Croatia, upon the proposal of the Council, adopts the Regulations which regulate in details the following areas:

- relevant market,
- notification and assessment of concentrations,
- conditions for granting block exemption to so called vertical agreements[8],
- conditions for granting block exemption to so called horizontal agreements[9],

[7] Title VI – "Common rules on competition, taxation and approximation of laws", chapter 1 – "Rules on competition", Article 81, Article 82 and Article 86 of the Treaty of Amsterdam as the consolidated version of the Treaty of establishing the European Community. This is the primary source of the EU law pursuant to which the relevant competition regulations in the EU Member States as well as the provisions of the Competition Act were established. (Official Journal C340, 10/11/1997 www.europa.eu.int).

[8] Agreements between undertakings not operating on the same level of production or distribution, and in particular the following categories of agreements: exclusive distribution agreements, selective distribution agreements, exclusive purchase and franchising agreements.

[9] Agreements between undertakings operating at the same level of production or distribution, and in particular the following categories of agreements: agreements on research and development and specialisation agreements.

- conditions for granting block exemption to agreements on transfer of technology, licensing and know-how,
- conditions for granting block exemption to agreements on distribution and servicing of motor vehicles,
- conditions for granting block exemption for insurance agreements,
- agreements of minor importance[10].

In accordance with the above mentioned, throughout 2003 the Council adopted the Draft Regulation on notification and assessment of concentrations and Draft Regulation on definition of relevant market in the cases where the Competition Act[11] applies. The harmonisation of legislation in the area of competition with the acquis communautaire, that is the new Competition Act and bylaws necessary for its implementation are covered in greater detail in Chapter 3, on pages 16 to 37.

During 2003 a total of 349 files have been opened and a 150 of this total have been administrative cases. There are three basic categories of administrative cases which fall within the scope of the Agency. They are assessment of agreements, assessment of abuse of a dominant position and assessment of concentrations. Other than those listed, an important area of the activity of the Agency are expert activities, for example giving opinions regarding the compatibility of draft proposals of laws and other legislation with the provisions of the Competition Act. A more detailed review of the activities of the Agency in 2003 and the review of the activities of the Agency in relation to three mentioned basic categories of administrative cases, also including a description of selected cases from the individual categories is covered in Chapters 4 and 5, on pages 39 to 54.

Activities in the scope of international cooperation constitute a significant part of the activities of the Agency. Namely, the subject matter of the activities of the Agency necessitates intensive cooperation with other competition authorities abroad and numerous international organisations such as the institutions of the European Union, UNCTAD, WTO, OECD, the World Bank, EBRD, etc. Cooperation with international organisations demands active participation of the representatives of the Agency in conferences, seminars and meetings at home and abroad. During 2003 the Agency opened one hundred files relating to international cooperation (participation in seminars, cooperation with other competition authorities abroad and various international organisations). In the

[10] Article 13 of the Competition Act: "Agreements of minor importance are defined as agreements in which the parties to the agreement and the controlled undertakings have an insignificant common market share, under the condition they do not contain the provisions that, in spite of the insignificant market share, lead to prevention, restriction or distortion of competition".

[11] The Government of the Republic of Croatia at its session held on the 15 April 2004 adopted four Regulations, these are: the Regulation on the notification and assessment of concentrations, the Regulation on the definition of relevant market, the Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles and the Regulation on agreements of minor importance.

accession process of the Republic of Croatia to the EU, consultative technical meetings were held with the European Commission, including the meeting of the Subcommittee on internal market of the Interim Committee and the Republic of Croatia in which the representatives of the Agency also took part. In April of 2003 the implementation of the CARDS project 2001 started, under the title "Support to the development of competition policy in Croatia in line with EU standards and practices", of which the Agency is a beneficiary. The activities of the Agency in the area of international cooperation are covered in Chapter 6, on pages 57 to 59.

One of the important areas of the activities of the Agency, other than its operating function in the implementation of the Competition Act, is the development of a so called "competition culture", i.e. competition advocacy, in raising awareness and the level of knowledge of undertakings, government and other public authorities, judiciary, consumers and general public regarding the importance and role of competition law and policy which is covered in detail in Chapter 7, on pages 61 to 64.

Along with the drafting of the new Act and bylaws, during 2003 a new Statute of the Agency was also drafted and subsequently adopted by the Council in its session of 4 December 2003.[12]

The new Statute of the Agency, which was adopted pursuant to the provisions of the new Competition Act, stipulates the new internal organisation of the Agency. The most significant changes in the internal organisation of the Agency are in relation to its administrative and managing function. Instead of the director general, according to the new Act, the administrative and managing function is assumed by the Competition Council. The Council is the managing body of the Agency and decides on all matters for which the Agency is competent; it consists of five members, one of which is the President of the Council.[13] The President of the Council represents, speaks for the Agency and manages its activities.[14] In managing the Agency the president of the Council organizes and runs business activities of the Agency, supervises the work and is responsible for its expert performance[15]. A detailed account of the new internal organisation is given in Chapter 8, on pages 64 to 68, whereas the budget of the Agency and issued and collected administrative fees are dealt with in Chapter 9, on pages 68 to 70.

Final considerations on the problems relating to the enforcement of competition law and policy as well as the solutions to the observed shortcomings, that is challenges and priorities facing the Agency with the aim of efficient

[12] The Decision promulgating the Statute of the Agency was subsequently adopted by the Croatian Parliament at is third session held on 30 January 2004.
[13] Article 31, paragraph 1 of the Competition Act
[14] Article 30, paragraph 4 of the Competition Act
[15] Article 30, paragraph 5 of the Competition Act

implementation and advocacy of this branch of law are covered in detail in Chapter 10, on pages 70 to 71.

Appendix 1 of this report contains the Opinion of the European Commission (AVIS) on competition in the Republic of Croatia.

Appendix 2 contains a detailed statistical survey of the activities of the Agency in 2003 by case categories, while Appendix 3 outlines the number and structure of the employees of the Agency.

Appendix 4 outlines the budget of the Agency, whereas Appendix 5 contains the State Audit report.

Along with the Report on the activities of the Agency in 2003, we have also submitted the Outline of the activities in 2002 which was drafted by the expert team of the Agency. Given that the former director general of the Agency Hrvoje Momčinović, MSc, tendered his resignation to the Croatian Parliament on the 8 April 2003 and entered retirement on the 1 May 2003, and since the Agency until the appointment of the new managing body, the Competition Council, in line with the provisions of the new Competition Act, did not have the appointed individual authorised for representing and speaking for the Agency, it was not possible to submit the Annual report on the activities of the Agency in 2002[16] to the Croatian Parliament. For these reasons a so called technical report in the form of an Outline of the activities of the Agency in 2002 is submitted as a supplement to the Annual report on the activities of the Agency in 2003 and is contained in Appendix 6 of this Annual report.

[16] Article 16 of the former Competition Act (Official Gazette No 48/95, 52/97 and 89/98), which was in force until the 30 September 2003, stipulates that the Agency is obligated to carry out an integral analysis of the state and procedures initiated pursuant to the provisions of this Act and to submit it in the form of an annual report to the Croatian Parliament.

2. The importance and role of competition in the accession procedure of the Republic of Croatia to the EU

By signing the Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Croatia (hereinafter referred to as: the SAA), the Republic of Croatia has taken its first steps towards the establishment of close and permanent relations with the European Union founded on reciprocity and mutual interest which will enable the formalising and further strengthening of these relations, with the ultimate aim – membership in this political and economic community of the countries of the "old continent". At the same time, along with fulfilling the political criteria, the Republic of Croatia has assumed a series of obligations relating to the modifications and harmonisation of the legal and economic system to the EU rules and standards. One of the priority areas for the Republic of Croatia is the area of competition, not only involving the harmonisation of the legal system but also the accelerated implementation of the relevant EU rules in our country. Namely, until the entering into force of the SAA, which is preceded by its ratification by the Member States of the European Union, the Interim Agreement on Trade and Trade-related Matters between the European Community and the Republic of Croatia (hereinafter referred to as: the Interim Agreement), has been in force since the beginning of 2002. It contains the provisions on trade and trade-related matters from the SAA as well as the provisions on competition, intellectual, industrial and commercial property rights, the implementation of which will not suffer deferment.

From the provisions of the SAA and the Interim Agreement relating to the area of competition which are specified in Chapter 3.1.2 of this Report, it is obvious that the Republic of Croatia assumed the obligation, both to the application of the competition rules corresponding to those relevant in the EU and almost immediate harmonisation of the legislation in the area of competition with the relevant EU legislation. Moreover, along with the assumed obligations regarding the application of competition rules in the EU, it also assumed the obligation to apply "instruments regarding the interpretation adopted by Community institutions", which also includes secondary legislation of the EU competition authorities, but also the judicial practice or case law, particularly of the European Court of Justice.

In accordance with the acquis communautaire, competition encompasses the anti-trust policy and the control of state aid, thus the acquis communautaire covers the rules and procedures for preventing anti-competitive behaviour of undertakings (restrictive agreements between undertakings and abuse of a dominant position), as well as for preventing the governments from granting state aid which would distort competition in the single market. Generally, the competition rules are directly applied in the territory of the European Union and

the Member States must fully cooperate with the European Commission in regards to the implementation of these rules.

Competition policy has been a part of the activities of the EU from its establishment, i.e. from the signing of the Treaty establishing the European Community in 1958, as a part of the policy directed towards the creation of economic integration among the Member States. It was only possible to achieve such economic integration through strengthening of the single market as a key aspect of the EU common market, that is to say by removing all the barriers deferring the trade between the Member States.

The role of competition policy as an instrument for the creation of a common market is therefore particularly important for understanding of the EC competition law. It differentiates and unifies the EU competition law in relation to competition law in any other country and even in the individual Member States.

Namely, the EU competition law wishes to fulfil two objectives. The first is regulating competition between undertakings, which is also the case with other countries that have opted for market economy, and second, the more demanding and more complex is the creation of a European common market. The latter of these two objectives has often dictated the development of competition legislation and practices in the EU.

As the EU developed and matured, it became more evident that competition law and policy played a central role in this development. Basically, the EU competition law relating to anti-trust regulates the following:

- prohibiting of agreements between undertakings which affect or may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market (Article 81 of the Treaty establishing the European Community);
- prohibiting of abuse of a dominant position by one or more undertakings within the common market (Article 82 of the Treaty establishing the European Community);
- prohibiting of measures which contravene with the afore mentioned provisions of the Treaty, especially Article 12 and Articles 81 to 89, which cover public undertakings and undertakings to which the Member States grant special or exclusive rights.

Even though at first glance it appears that concentrations are excluded from identified forms of distortion of competition under the Treaty establishing the European Community, such a conclusion is incorrect. Valid interpretation should also take into account the third identified form of distortion of competition, in other words concentrations. Any concentration is primarily based on some agreement between undertakings; hence concentrations are also encompassed within the first category listed above.

Provisions provided for in the Treaty establishing the European Community which relate to competition are accordingly included in the provisions of the SAA and the Interim Agreement and are cited under subparagraph 3.1.2. of this Report.

2.1. The role of the Agency in the accession process to the EU and the importance of competition law and policy in raising competitiveness of the Croatian economy

After the adoption of all bylaws laid down by the Competition Act, the process of harmonisation and adjustment of legislation in this area shall not be completed. This is an “active” legal problem which is constantly being modified and amended also in the European Union, so that the harmonisation of Croatian legislation with the EU acquis will be a constant and continuous process or better to say task.

The second task shall be the application and implementation of the adopted rules in a manner that will affect the establishment of a market economy in which the same rules shall apply to all economic entities in the market, irrespective of their size or market power. Therefore the basic function of competition law and policy is to prevent practices and business activities on the market which may place certain undertakings at a competitive disadvantage and thereby challenge free competition between undertakings.

Furthermore, the efficient application of competition regulations affects the behaviour of undertakings in the market because they are forced to adjust their behaviour on the market with the rules preventing the creation of monopolies or abuse of an already existing dominant position on the market, or preventing the creation of a cartels which as a rule have as their effect price fixing agreements or partitioning of the market. The result of such behaviour is the increase of creativity of the undertaking through technological improvements – innovations, lowering of production costs, improvement of the economic efficiency of the undertakings which leads to an increase in their competitiveness on both national and foreign markets. Undertakings offer goods and services which are competitive in respect to price and quality because their access to a particular market, on which efficient competition exists, is dependant only on the quality and price of the good or service in question. On the other hand, consumers are

given the opportunity of choosing among a wide range of offered products and services, from a greater number of suppliers, under lower prices and of better quality.

However, the administrative role of the Agency as the competent authority in the implementation of competition law is not sufficient. It is necessary to simultaneously develop a so called “competition culture”, i.e. actively engage in competition advocacy or raise awareness and knowledge of undertakings, government and other public authorities, judiciary, consumers, and the general public regarding the importance and role of competition law and policy in further development of a market economy in our country and its role in raising competitiveness of Croatian undertakings.

In this respect the greatest responsibility shall be borne by the Agency but also by other public authorities insofar as they are willing to ensure its autonomy and independence, that is to ensure all necessary working conditions (first and foremost through the allocation of financial resources which are a prerequisite for its institutional strengthening), but also within the framework of its activities by ensuring the adoption and, what is more important, the implementation of legislation which shall not be contrary to the provisions provided for in the Competition Act.

However, it must be stressed that there are also sector regulators which have been entrusted with competition issues pursuant to special regulations concerning particular industries. For example, the Croatian National Bank in the banking sector, the Energy Regulatory Council for activities in the energy market, the Croatian Telecommunication Agency in the area of telecommunication services, the Council for Electronic Media in the area of electronic media, the Council for Postal Services which covers postal activities and ensures an equal and effective postal services market. Although, in principle, we consider the existence of special bodies for competition issues for particular sectors a good solution, the negative side of such organisation is the lack of legislative coordination of these bodies. It is undisputable that these special regulatory bodies have specialised knowledge of their respective sectors, however, they lack knowledge and experience in the area of competition, which on the other hand the Agency indisputably has at its disposal. Along with the afore mentioned, the majority of legislation, which regulates these sectors and the application of which is put under the competence of particular regulators, there are no provisions which would regulate in detail individual institutes of distortion of competition. The activities of these regulators most often consist of monitoring of the price of goods and/or services, issuing of licenses (concessions) for access to the market, promotion of free market entry, welfare of the users and their interests, determining the conditions for access to infrastructure which represents a natural monopoly etc. For this reason the Competition Act is simultaneously the source of competition law for sectors to which these provisions apply. Therefore we consider that cooperation between the Agency and sector regulators is

essential. The most expedient solution, in our opinion, for obligatory legislative regulation of cooperation between the Agency and particular regulatory bodies we see in the conclusion of cooperation agreements, which the Agency has already entered into with the Croatian National Bank and Energy Regulatory Council. During 2003 it also initiated the conclusion of agreements with the remaining sector regulators. Without such intensive cooperation between sector regulators and the Agency as the general authority competent for competition issues, such protection of competition in all sectors or on all markets shall not be uniform, that is to say equally developed, which leads to legal insecurity.

In conclusion, about the role of the Agency in the accession process of the Republic of Croatia to the EU, the Opinion of the European Commission (AVIS) on competition in the Republic of Croatia speaks for itself.

In this part of the Report we shall present only the conclusions ensuing from the Opinion of the European Commission on competition, while the entire content of the Opinion of the European Commission on competition can be found in Appendix 1 of this Report.

The conclusions of the Opinion of the European Commission are as follows: It is necessary to:

- increase the independence of the Agency;
- amend the legislation which limits the independence of the Agency or contravenes with the provisions of the Competition Act (Article 266 of the General Administrative Procedure Act which enables under stipulated conditions extraordinary annulment of final and executive decisions of the Agency, as well as the provisions under the Act on Obligatory Relations which stipulates the exclusive competence of courts for determination of nullity of agreements);
- institutionally strengthen the Agency (increasing its administrative capacities) and continue with education of its employees;
- constantly harmonise the legislation in the area of competition with the acquis communautaire;
- ensure the efficient implementation of competition regulations by the Agency with the objective of introducing Croatian undertakings to a similar competition environment as exists in the European Union much sooner than full membership of the Republic of Croatia into the Community is achieved;
- ensure efficient implementation of competition regulations through an effective judicial system which can efficiently deal with administrative disputes pertaining to the decisions of the Agency and may render decisions in accordance with the EC acquis communautaire.

3. Harmonisation of legislation in the area of competition with the EU acquis communautaire

3.1. Competition Act

3.1.1. The reasons for the adoption of a new Competition Act

The area of competition was regulated for the first time in the Republic of Croatia by the Competition Act passed in 1995 (Official Gazette No 48/95, 52/97 and 89/98; hereinafter: the CA 1995) which, along with introducing basic competition rules based primarily on the rules valid in the European Union, ensured the founding and setting up of the Competition Agency as a legal entity entrusted with the implementation of the CA 1995 in question. The Agency is autonomous in carrying out of the activities determined by the CA 1995 and for its activities is directly responsible to the Croatian Parliament which also founded it according to the Decision of the Croatian Parliament on the founding of the Agency (Official Gazette No 73/95). It commenced its activities as early as in the beginning of 1997.

The CA 1995, even though it had been amended on several occasions, could not efficiently follow the achievements and decisions of the European legislation which had evolved significantly since its adoption.

Furthermore, with by signing the Stabilisation and Association Agreement between the European Communities and its Member States and the Republic of Croatia, the Republic of Croatia assumed the obligation of priority and full harmonisation of legislation in the area of competition with the provisions of the relevant EC law.

Also, the need for the adoption of a new Competition Act also arose from the fact that up until then the existing CA 1995, throughout its many year of application, displayed lack of clarity and inconsistencies on numerous occasions, both in a substantive and procedural sense, which ultimately resulted in the legal insecurity of the parties.

Starting from the assumed obligations from the SAA which have been taken over to the Interim Agreement on Trade and Trade-related Matters between the European Community and the Republic of Croatia (hereinafter: the Interim Agreement), during 2002 and 2003 the Agency began with intensified activities on the preparation of the new act (which began back in 2001), and consequently on the 15 July 2003 the Croatian Parliament adopted the new Competition Act (Official Gazette No 122/2003; hereinafter: the Act), which entered into force on the 7 August 2003 and started to apply on the 1 October 2003.

3.1.2. Relevant provisions of the Treaty establishing the European Community and Stabilisation and Association Agreement between the European Communities and their Member states and the Republic of Croatia in the area of competition pursuant to which the new Competition Act was drafted

The primary source of competition (anti-trust) law in the EU are provisions provided for in Articles 81, 82 and 86 of the Treaty establishing the European Community which are fully incorporated into the new Competition Act.

Article 81 (former Article 85) of the Treaty establishing the European Community regulates prohibited agreements and possibility of exemption from general prohibitions, and states, cit.:

"1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or source of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parities of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and
(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question."

Article 82 (former Article 86) of the Treaty establishing the European Community regulates abuse of a dominant position, and states, cit.:

"Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transaction with other trading parties, thereby placing them at a competitive disadvantage;
(d) making 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. "

Article 86 (former Article 90) of the Treaty establishing the European Community regulates implementation of competition law to legal or natural persons carrying out activities of special interest and have been granted special rights in the EU, and states, cit.:

"1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States."

The obligation of the Republic of Croatia to harmonise its legislation with the EU acquis communautaire ensues from Article 69 of the Stabilisation and Association Agreement between the European Communities and their Member states and the Republic of Croatia (Official Gazette – International agreements, No 14/01; hereinafter: the SAA). This obligation was assumed upon the signing of the afore mentioned Agreement (29 October 2001). It must be completely fulfilled within six years of signing the SAA. The area of competition, however, is explicitly mentioned as one of the priority areas for harmonisation which will be under particular scrutiny of the European Commission.

Article 69 of the SAA states, cit.:

"1. The Parties recognise the importance of approximation of Croatia's existing legislation to that of the Community. Croatia shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community acquis.
2. The approximation will start on the date of the signing of the Agreement, and will gradually extend to all the elements of the Community acquis referred to in this Agreement by the end of the period defined in Article 5 of this Agreement. In particular, at an early stage, if will focus on fundamental elements of the Internal Market acquis as well as on other trade-related areas, on the basis of a programme to be agreed between the Commission of the European Communities and Croatia. Croatia will also define, in agreement with the Commission of the European Community, the modalities for the monitoring of the implementation of approximation of legislation and law enforcement actions to be taken."

Article 70 of the SAA in the section which regulates competition (anti-trust) issues (without the provisions regarding state aid), states:

"1. The following are incompatible with the proper functioning of the Agreements, in so far as they may affect trade between the Community and Croatia:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;
(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Croatia as a whole or in a substantial part thereof;

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular Articles 81, 82, and 86 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions."

3. The parties shall ensure that an operationally independent body is entrusted with the powers necessary for the full application of paragraph 1 (i) and (ii) of this Article, regarding private and public undertakings and undertakings to which special rights have been granted. "

Article 40 of the SAA states, cit.:

"Croatia shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fourth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and Croatia. The Stabilisation and Association Council shall be informed about the measures adopted to attain this objective."

As can be derived from the cited provisions of the Treaty establishing the European Community and the SAA, Croatia has committed to the development and application of competition rules modelled upon those applicable in the European Union and not only in regards to the application of primary but also secondary legislation[17] and the EC case law. At the same time Croatia has also committed to the development of an institutional framework by which this system and rules shall be applied in our country and which shall ensure operational independence of the body which shall have the authority for the efficient implementation of these rules.

3.1.3. Subject matter and application of the Act

The Competition Act shall be applied to all forms of prevention, restriction or distortion of competition in the territory of the Republic of Croatia or outside its territory if they shall have effect in the territory of the Republic of Croatia, unless regulated differently by particular regulations for certain markets[18]. Consequently, this Act regulates the competition issues as general legislation (*lex generalis*) and is applicable to all industries, except to those which are regulated by special laws (*lex specialis*).

So it is, for example, that other legislation regulating competition are also significant in certain markets, these include: Telecommunications Act (Official Gazette No 122/03, 158/03, 177/03 and 60/04), Banking Act (Official Gazette No 84/02) and Decision regulating market competition within the banking sector (Official Gazette No 48/2003), laws in the energy sector (Energy Act, Electricity Market Act, Act on Petroleum and Petroleum related products, Gas Market Act, Act Regulating Energy-related Activities, all published in the Official Gazette No 68/01), Media Act (Official Gazette No 163/2003), Electronic Media Act (Official Gazette No 122/2003), Postal Act (Official Gazette No 172/2003). Under these pieces of legislation the competition issues are entrusted to particular regulators. Although the legislation in question entrusts separate regulators with competition issues, they do not entirely regulate competition in the respective sectors, but merely provide for particular provisions, which separately or additionally, cover specific competition issues.

The Competition Act applies to all companies, sole traders, tradesmen and other legal and natural persons that participate in economic activities in trade of goods and/or services and foreign legal and natural persons, provided that their participation in the trade of goods and/or services affects the home market[19].

The Act shall also apply to legal persons, whose founders, shareholders or holders of share capital are the state or local and regional self-government units, also including all legal and natural persons entrusted pursuant to special regulation with the operation of services of general economic interest, or to which are by exclusive rights allowed to undertake certain business activities, insofar as the application of this Act does not obstruct the performance of the particular task assigned to them by special regulations and for the performance of which they have been established. This

[17] Secondary EC legislation implies regulations, directives, guidelines, decisions, recommendations and opinions adopted by the European Commission or the EC Council.
[18] Article 2 of the Competition Act
[19] Article 3 of the Competition Act

provision of the Competition Act (Article 4) is fully harmonised with paragraph 2 of Article 86 of the Treaty establishing the European Community, and regulates the application of competition law to legal or natural persons carrying out business activities of special interest and have been granted special rights in the European Union.

The Act also applies to any undertaking controlling another undertaking as well as to undertakings controlled by another undertaking[20].

The term undertaking to which the provisions of the Competition Act are applied means all subjects (legal or natural persons, state bodies, associations, societies) which participate in the trade of goods and services in the widest sense, even if such trade occurs only once. Neither the legal status of such subject carrying out business activities in the market, nor its method of financing shall be relevant. What is relevant shall be considered its participation, even temporarily, in the trade of goods and services in the market.

3.1.4. Prohibited Agreements

Article 9 of the Competition Act introduces the term prohibited agreement, while Article 10 of the Competition Act, the conditions for individual or block exemption of agreements from application of the provisions of the Competition Act on prohibited agreements. These two articles are in essence a translation of Article 81 of the Treaty establishing the European Community.

Article 9 of the Competition Act which introduces the term prohibited agreement is a prohibitive provision which in general prohibits agreements between undertakings which have as their object or effect prevention, restriction of distortion of competition in the relevant market.

Under the mutual term agreement between undertakings the Competition Act presupposes contracts, explicit or tacit agreements, concerted practices, decisions made by associations of undertakings. Consequently, the form of the agreements is not stipulated. It encompasses all forms of written and verbal agreements, collusions, or concerted practices between undertakings, regardless of the fact whether such mutual agreements are regulated by the Act on Obligatory Relations, i.e. whether they are legally binding for the parties to the agreement.

In items 1 to 5, paragraph 1 of Article 9 of the Competition Act, explicitly prohibited agreements are defined by means of an illustrative list of provisions, that is the identified activities which may result in prevention, restriction or distortion of competition.

[20] Article 5 of the Competition Act

Consequently, explicitly prohibited agreements are those which:

1. directly or indirectly fix purchase or selling prices or any other trading conditions,
2. limit or control of 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.

Such agreements shall be *ex lege* void if they cannot be exempted from application of the provisions of this Act relating to prohibited agreements by means of individual or block exemptions.

Individual or block exemption from general prohibition within the meaning of Article 10 of the Competition Act may be granted to any agreement which cumulatively fulfils two positive and two negative criteria. In a wider sense, the positive effects of such agreements must outweigh their negative effects in the relevant market.

The following are positive criteria:

- the agreement must contribute to improving the production or distribution of goods and/or services, or promote technical or economic progress, while
- allowing consumers a fair share of the resulting benefit.

The following are negative criteria:

- restrictions which are not indispensable to the attainment of the listed objectives (objectives explained under positive criteria) may not be imposed on the undertakings, and
- the undertakings may not be afforded the possibility of eliminating competition in respect of a substantial part of the contract goods and/or services.

The listed positive and negative criteria listed above are the basic criteria which must be fulfilled for any agreement to be granted exemption from prohibition.

Other than the listed criteria the Government of the Republic of Croatia may, upon the proposal of the Council, for particular categories of agreements prescribe conditions for individual and block exemption from prohibition. These are agreements which by their nature impose on the parties to the agreement particular restrictions which are necessary for realising the objectives for which the parties agreed to the conclusion of the agreement in the first place.

Complying with the rules and practices of the EC institutions, the new Competition Act stipulates the following categories of agreements which fall under block exemption:

- agreements between undertakings not operating on the same level of production or distribution, so called vertical agreements, and in particular:
    - ❖ agreements on exclusive distribution,
    - ❖ agreements on selective distribution,
    - ❖ agreements on exclusive purchase,
    - ❖ agreements on franchising.
- agreements between undertakings operating on the same level of production or distribution, so called horizontal agreements, and in particular:
    - ❖ agreements on research and development,
    - ❖ agreements on specialisation.
- agreements on transfer of technology, license and know-how,
- agreements on distribution and servicing of motor vehicles, and
- insurance agreements.

Upon the proposal of the Competition Council the Government of the Republic of Croatia shall pass special legislation defining the conditions that must be contained within the afore mentioned agreements, the restrictions or conditions which they may not contain and other conditions which must be fulfilled for applicability of block exemption.

A significant novelty relating to agreements is that undertakings are not obliged to notify to the Agency agreements which meet the criteria for block exemption. The advantage of this kind of arrangement for the Agency is that it can now devote is work to cases which significantly prevent, restrict or distort competition, thus avoiding the unnecessary administrative activities, that is assessment of generally undisputable cases which are common in commercial law (agreements on exclusive distribution, exclusive purchase, franchising, licensing etc.). On the other hand, undertakings can enjoy greater legal safety as they are acquainted in advance with the conditions that such agreements must contain, or which restrictions they may not contain so that block exemption may be applied. However, the Agency reserves the right to initiate the procedure for assessment of agreements *ex offo* from the standpoint of so called cumulative effect of the agreement[21].

Agreements which are not covered by block exemption but contain certain restrictions may, at the request of the parties, be exempted from application of the provisions of the Competition Act relating to prohibited agreements for a limited period of time by means of a decision taken by the Agency. In this case it shall be considered individual exemption and the assessment on whether the Agency will or will not approve such individual exemption, shall be dependant on a complete

[21] These are negative effects on competition which individual agreements in combination with other similar agreements produce on the same relevant market.

analysis of conditions in the market in which this particular agreement produces effects.

The provisions on prohibited agreements shall not apply to agreements of minor importance, which are defined as agreements in which the parties to the agreement and the controlled undertakings have an insignificant common market share, under the condition they do not contain the provisions that, in spite of the insignificant market share, lead to prevention, restriction or distortion of competition[22]. Just as Member States regulate matters related to minor importance agreements within the EU law, so too, this Act empowers the Government of the Republic of Croatia, upon the proposal of the Competition Council, to regulate the conditions which must be met by minor importance agreements or which restrictions they may not contain. In the case that a particular agreement meets these conditions it does not need to be submitted to the Agency for assessment.

3.1.5. Dominant position and restrictive practices

The provisions of the Competition Act dealing with the definition and determining of a dominant position of undertakings represent a significant novelty as compared to the solutions offered by the CA 1995. Whereas the old CA 1995 contained provisions according to which any undertaking was in a dominant position if its market share in the market or a part therein exceeded 30 %, the new Act regulates the existence of a dominant position in respect of the market power of the undertaking whereby its market share is in no way the sole or exclusive criteria in the assessment of its market power, or a dominant position.

Therefore the new Act ensues from the definition that an undertaking is in a dominant position when it can act on the market considerably independently of its real or potential competitors, consumers, buyers, etc., and especially if it has no competitors in the market and if it has significant market power in relation to his real or potential competitors[23]. An undertaking shall be presumed to be in a dominant position when it holds more than 40 % of the market share in the relevant market, and it shall be presumed that more undertakings are in a dominant position if three or fewer undertakings hold more than 60 % of the market share in the relevant market, and if five or fewer undertakings hold more than 80 % of the common market share in the relevant market[24].

Consequently, in the assessment of a dominant position and its abuse, the market share has been identified as a refutable legal premise and not an established fact. The Act determines that every abuse of a dominant position shall be prohibited and establishes an illustrative list of some explicitly prohibited abuses. These are for example, imposing of unfair purchase or selling prices or other unfair trading conditions, limiting of production, markets or technical development to the prejudice of consumers, applying of dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage, making the

[22] Article 13 of the Competition Act
[23] Article 15, paragraph 1 of the Competition Act
[24] Article 15, paragraph 3 and 4 of the Competition Act

conclusion of contracts subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such contracts[25]. In accordance with Article 17 of the Competition Act the Agency has at its disposal a series of measures and instruments, the objective of which is to prevent and prohibit abuse of a dominant position and to prescribe deadlines for their implementation, and which ensure competition among undertakings in the market.

3.1.6. Concentrations of undertakings

The Act also brings significant innovations to the third important segment of competition law, concentrations of undertakings.

Subsequently, prohibited concentrations shall be considered those that create a new, or strengthen a dominant position of one or more undertakings, individually or as a group, if they can significantly influence the prevention, restriction or distortion of competition, unless the participants in that particular concentration provide valid evidence that their concentration will lead to strengthening of competition in the market, bringing benefits that will prevail over negative effects produced by the creation or strengthening of their dominant position[26]. The Act ensues from the Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings[27].

A concentration of undertakings shall be deemed to arise by means of: merger or association of undertakings, acquiring control or prevailing influence of one or more undertakings over another undertaking, i.e. of more undertakings or a part of an undertaking, or parts of other undertakings, in particular by: 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 Companies Act and other regulations[28].

Unlike the former CA 1995 the new Act also introduces joint venture having the nature of a permanent independent economic unit as a special form of concentration.

The notification of concentration shall be submitted to the Competition Agency within eight days following the publication of a public bid or the conclusion of a contract through which the control or prevailing influence of an undertaking is acquired.

Obligatory notification of concentration to the Agency shall arise if the following conditions are simultaneously met:

- the total turnover of all the undertakings – parties to the concentration, realised by the sale of goods or services in the global market, amounts to at least 1 billion Kuna in the financial year preceding the concentration[29], and
- the total turnover of each of at least two parties to the concentration realised by the sale of goods or services in the Republic of Croatia, amounts to at least 100 million Kuna in the financial year preceding the concentration[30].

[25] Article 16 of the Competition Act
[26] Article 18 of the Competition Act
[27] This Regulation was later amended by the Regulation (EEC) No 1310/97 and 447/98.
[28] Article 19, paragraph 1 of the Competition Act
[29] In the former Competition Act this turnover amounted to 700 million Kuna.

Even though the established amounts may seem high, in any case higher than those stipulated by the former CA 1995, compared to other EU Member States it is evident that the established amounts correspond to the economic power of the Croatian economy[31].

The Act does not envisage the possibility that the Agency ex officio requests the parties to the concentration to submit a notification of concentration. In such cases the Agency may file a misdemeanour claim against the undertaking which failed to carryout its legal commitments.

The implementation of concentration shall be prohibited upon notification of intent to create a concentration until the Agency issues its final decision by which the concentration in question may be assessed as compatible, not compatible or conditionally compatible.

The new Competition Act, modelled upon the EU practice, introduces a completely new mechanism[32] of dividing concentrations into ones that do not raise objections and the conditionally approved ones. The criteria for classification of the particular concentration into one or the other category is whether, on the basis of data contained in the notification and all other data and knowledge which the Agency has at its disposal, it is reasonable to presume that the implementation of the concentration concerned shall or shall not have as a result a significant prevention, restriction or distortion of competition.

Given such a division, the method of assessment and possible maximum duration of the procedures also differ. Namely, the assessment procedure for the concentrations raising no objections is closed in the so called first phase. The assessment of concentrations in the first phase is usually made on the basis of available data at the moment of the submittal of the notification. On the basis of these data the Agency makes the assessment on whether it is reasonable to presume that the implementation of the concentration in question, given its possible effects on the prevention, restriction or distortion of competition, would not raise any objections or even would not be proclaimed prohibited. From this point of view we have named such concentrations as concentrations raising no objections.

The decision on the above assessment must be rendered by the Agency within 30 days from the date of issuance of the written notice confirming a complete notification of concentration.

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[30] In the former Competition Act this turnover amounted to 90 million Kuna.

[31] As a comparison, obligatory notification of concentration for example in Austria arises if the total turnover of the parties to the concentration on the global market exceeds 200 million Euros, on the national market 15 million Euros, and if every of at least 2 parties to the concentration realises a turnover of over 2 million Euros on the global market. In Germany obligatory notification of concentration arises if the total turnover of the parties to the concentration on the global market exceeds 500 million Euros and if at least one party to the concentration realises a turnover which exceeds 25 million Euros on the German market.

[32] A legal decision on assessment of concentration at two levels is in accordance with EU legislation (Regulation on control of concentration of undertakings (EEC), number *4064/89, from 21 December 1989.)*.

If the Agency assesses to the effect that it is a concentration raising no objections it shall not issue a resolution on the institution of the proceedings. Normally, the Agency shall not issue a decision regarding the assessment of such concentration. In this case the concentration concerned shall be deemed compatible upon the expiry of 30 days from the date of the submittal of the complete notification.[33] The Agency shall render a decision only as an exception and upon the explicit request of the notifying party.

If the Agency estimates that the data from the notification and other evidence submitted with the notification, including the knowledge acquired by the Agency are not sufficient for the assessment of the possible effects of the notified concentration on the prevention, restriction or distortion of competition in the relevant market, and decides that it shall be necessary to acquire additional data and/or carryout additional expert evaluation, it shall pass a resolution instituting the procedure for the assessment of the concentration concerned. This is the moment when the assessment procedure is moved to the so called second phase.

In this case the Agency must complete the procedure, as a rule, within three months at the latest, following the day of passing the resolution on institution of the proceedings[34]. The resolution on instituting the proceedings may neither be appealed against nor is it allowed to commence an administrative dispute.

In the second phase of the assessment of concentration, the parties to the concentration should increase their efforts to provide evidence that the concentration in question shall produce positive effects which are going to outweigh its restricting effects to such an extent, that its implementation will in fact contribute to the strengthening of competition in the relevant market.

The Competition Act explicitly lists the types of administrative acts or decisions which are rendered by the Agency in concentration assessment procedures and they are:[35]

- decisions by which the concentration is declared compatible,
- decisions by which the concentration is declared incompatible,
- decisions by which the concentration is declared conditionally compatible,[36]
- decisions which stipulate interim measures,[37]
- decisions which annul or amend the decision on the compatibility of concentration,[38]
- decisions by which special remedies are stipulated for the restoring of efficient competition for prohibited concentrations,[39]

[33] Article 26, paragraph 1 of the Competition Act.
[34] Article 56, paragraph 1 of the Competition Act - The possibility of extending this deadline (under specific conditions) is regulated in paragraph 5 of Article 56 of the Competition Act.

[35] Article 57 of the Competition Act.
[36] These are decisions on compatibility of concentrations in accordance with Article 26 of the Competition Act.
[37] These are decisions on interim measures in accordance with Article 55 of the Competition Act.
[38] These are decisions on the annulment or amendment of decisions in accordance with Article 27 of the Competition Act.
[39] These are decisions stipulating special measures for the restoring of efficient competition for prohibited concentrations in accordance with Article 28 of the Competition Act.

- other decisions or procedural orders which the Agency issues in accordance with the Act.

The key issue regarding conditionally compatible concentrations are measures (remedies) which may be determined by the Agency. The problem lies in the fact that these measures are not explicitly stipulated by the Act or bylaws, but are described within the Competition Act in a manner that enables a very wide range of measures. We hold that the legislator's intentions were thus achieved and therefore, we hold that such a legislative solution is very pragmatic and up to date.

Basically the measures concerned are indispensable for ensuring efficient competition on the relevant market, necessary for the elimination of possible negative effects of the concentration in question on competition and the establishment of efficient competition. When determining such measures the Agency will take into account all circumstances of any particular individual case of concentration, as well as the real conditions on the relevant market concerned and overall economic and other circumstances which may affect the determining and keeping the prescribed measures in force.

There are three types of measures (remedies):

- behavioural remedies relating to the parties to the concentration (after the implementation),
- structural remedies,
- a combination of behavioural and structural remedies.

The Agency shall also determine such remedies in cases when a concentration has been implemented contrary to the decision of the Agency in which the same is declared incompatible (prohibited),[40] and in the event that the concentration has been implemented without the obligatory notification of concentration and/or without the decision of the Agency, which subsequently resulted in the prevention, restriction or distortion of competition[41]. The remedies are usually determined for a specific period of time.

For example, the Agency may particularly: order for the shares or share capital acquired to be transferred or divested and/or prohibit or restrict the realisation of the voting rights attached to the shares or share capital of the parties to the concentration.

One of the most important modifications introduced by the new Competition Act is the omitting of the provision which existed in the former CA 1995 and which covered the concentrations arising in the process of privatisation. Namely, according to Article 26 of the former CA 1995, the activities of the Agency in regards to this matter were reduced exclusively to the issuance of an opinion to the Croatian Privatisation Fund or retirement funds, and only at their particular request, as to whether the sale of shares or share capital to a specific buyer may result in the creation of a concentration which would produce anti-competitive effects. Thus, the above mentioned provision implicitly suspended the application of the Competition Act in

[40] Article 26, paragraph 3 of the Competition Act.
[41] Article 18 of the Competition Act.

relation to matters of concentrations of undertakings which resulted from the privatisation process. In this way competition rules were not applied to a very significant segment of expansion and growth of Croatian undertakings which took place in the privatisation process, which most certainly had very serious consequences on competition matters in our country. Given that the new Act contains neither a similar nor identical provision, the application of the provisions relating to concentrations of undertakings is beyond doubt also for cases where such concentrations arise in the privatisation process.

3.1.6.1. The Regulation on notification and assessment of concentrations

The Draft Regulation on notification and assessment of concentrations was adopted by the Council pursuant to paragraph 4 of Article 19 of the Competition Act[42].

The subject matter of this Regulation are the undertakings obliged to submit a prior notification of concentration, the method of submittal, the content and form of the notification, the documentation and data which are to be enclosed to the notification, the form and content of the announcement on acquisition of shares or share capital falling within the normal activities of the banks, insurance companies and other financial institutions, and the assessment criteria of the compatibility of concentrations of undertakings in the proceedings carried out by the Competition Agency within the meaning of the provisions stipulated by the Competition Act.
The obligation of harmonisation of the Croatian legislation with the EC acquis communautaire also presupposes harmonisation of secondary EC legislation. Consequently, the Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings and Commission Notice on the implementation of the Council Regulation (EC) No 4064/89 on the control of concentrations between undertakings were used in the drafting of this Regulation.

The Regulation, other than the form of the notification in a narrower sense, also regulates the manner of filling in, the language of the notification, number of copies, the accuracy and completeness of data, as well as the obligations regarding the pointing out the confidentiality of data listed in the notification.

An innovation, in regards to the form and manner of filling in the notification, is the abandoning of a prescribed printed notification form. Namely, the printing of specially printed forms was foreseen in earlier legislation.[43] However, in practice, such a form has never been printed for it showed to be inappropriate and awkward to fill out. For that reason the Regulation on concentrations stipulates that the notification must be submitted in written and electronic form. The only condition is that the notification must be submitted on an A4 sheet of paper.

The notification and all enclosed documents are submitted in the Croatian language or a certified translation in the Croatian language. The notifying party must enclose the original or a certified copy of the original (in a foreign language) along with the certified translation.

[42] The Government of the Republic of Croatia later adopted the Regulation on notification and assessment of concentrations (Official Gazette No 51/2004) at its session of 15 April 2004.
[43] Ordinance on the manner of keeping the Register on concentrations, Official Gazette No 30/97.

One copy of the notification and enclosed documents are submitted unless the Agency expressly requests additional copies of the notification and its supplements. The Competition Act only stipulates the minimal content of the notification.[44]As to other documents the Act states the obligation of submitting the data stipulated by the Regulation on concentrations.[45] The Regulation on concentrations identifies two main categories of data which constitute the content of the notification.

The first category consists of obligatory data. A total of nineteen such data are foreseen by the Regulation. This data may be divided into a number of subcategories.

The first subcategory consists of data on the undertakings – parties to the concentration (company, place of establishment, business activity). The second consists of specific technical data (data about the agent, representative and contact person). The third consists of data relating to the legal form and legal basis for the concentration, while the fourth contains data necessary for calculation of thresholds. Into the fifth subcategory is entered data necessary for defining the relevant market, its structure and the market power of the undertakings.

The latter subcategory consists of the data which are most important to the Agency for making a decision on the compatibility of concentration. These are data by which the concentration is explained pursuant to its legal and economic grounds, and also the data which are made available pertaining to the fact that the implementation of concentration will allow consumers the resulting benefit.

Unfortunately, the notifying parties to concentrations, their agents or representatives, pay the least attention to this last subcategory. This subcategory of data is not given enough attention even in cases where the notifying party knows or has a reason to believe that it is likely that, from the standpoint of possible effects on competition, the concentration in question may be raise competition concerns.

In regards to this matter it is good to keep in mind that the Agency usually assesses concentrations on the basis of data contained in the notification. This means that the Agency itself does not need to find reasons or evidence which would justify the creation of an incompatible concentration; the burden of proof lies solely with the parties to the concentration.[46]

Other data that the notifying party must include fall into the category of non-obligatory data.

As the notifying party must support the data given in the notification with evidence, so shall the categories of obligatory and other data be supplemented with obligatory and other enclosed documents in the notification.

[44] Article 45, paragraph 1, item 1 and item 2 and paragraph 2 of the Competition Act.
[45] Article 45, paragraph1, item 3 of the Competition Act.
[46] Article 18 of the Competition Act.

The Agency shall initiate the assessment proceedings of a notification, immediately upon the receipt of the notification.[47] The notification shall be assessed by an authorised person in the Agency.

When the authorised person in the Agency establishes that the notification is in formal and legal terms accurate and complete, it shall issue a special receipt to this effect.[48] If the Agency itself has to collect certain data (because the notifying party was not able to collect them on its own) the notification shall be considered complete only when the Agency has collected all the missing data.

The issuance of the receipt, in terms of legal effects, is of exceptional importance in the procedure of the assessment of concentration. Hence, its form and content is stipulated in detail in the Regulation on concentrations. The most important part of the receipt is the date of issuance and special instructions for the notifying party which are of critical importance to the continuing course of the procedure.

The time limit in which the Agency must render a decision regarding the assessment of concentration shall begin on the date the receipt is issued, regarding which the receipt contains special instructions.

The first instruction is that the date of the submittal of the notification shall stand for the prohibition of any further implementation of concentration for all the parties of the concentration.[49] The prohibition shall continue until the Agency renders a final decision by which the concentration is assessed as compatible or until the expiry of the period set by the decision by which the concentration shall be pronounced conditionally compatible.[50]

The second instruction is that the time limit for assessment of concentration in the first phase,[51] shall start on the date of the submittal of the notification and that the concentration shall be considered compatible if the Agency shall within 30 days following the submittal of the notification issue a resolution on the initiation of the assessment proceedings of its compatibility.

The assessment procedure on the compatibility of the concentration, from the standpoint of possible effects of its implementation on competition actually starts after the issuance of the notice confirming the completeness of the notification. In regards to this the Agency uses a number of criteria; however, to be able to apply these criteria to the case at hand, the Agency must beforehand define the relevant market in which the notified concentration shall produce effects. The method and criteria for defining of the relevant market is stipulated by the Act and Regulation on the definition of relevant market.[52]

[47] Article 25 of the Competition Act.
[48] Article 45, paragraph 3 of the Competition Act.
[49] Article 22, paragraph 3 of the Competition Act.
[50] If the concentration in question is beyond dispute within the meaning of Article 26, paragraph 1 of the Competition Act, which shall be assessed in the so called first phase, the prohibition shall stand until the expiry of the time limit of 30 days from the day of issuing of the receipt.
[51] Article 26, paragraph 1 of the Competition Act 2003.
[52] Article 7 of the Competition Act 2003.

The fundamental criteria for assessment of compatibility of concentration are stipulated by the Act[53] and Regulation on concentrations. The Competition Act defines three categories of criteria. Some of these are quantitative while others are based on experience.

The first category of criteria serves to define the structure of the relevant market, both in regards to existing and potential market competitors. These criteria define the possibilities of market supply and they are used to evaluate the costs, risks, technological, economic and legal conditions necessary to enter or to withdraw from the relevant market. Other than these, all other possible effects of concentration on competition in the relevant market should also be evaluated.

The second category of criteria serves to define the market share, market position, economic and financial power and business activities of the undertaking operating on the relevant market. Into this category also fall the criteria for defining the internal and external advantages for the parties to the concentration in relation to their competitors, and possible changes in business operations of the parties to the concentration after the concentration in question has been implemented.

The third category of criteria serves to define the effects of concentration on other undertakings, especially relating to the consumer benefit and other objectives and effects of the proposed concentration. These effects are in particular the decrease in prices of goods and services, shorter distribution courses, lowering of transportation, distribution and other costs, specialisation of production and all other benefits directly deriving from the implementation of the concentration.

3.1.7. Procedural provisions

As opposed to the Competition Act from 1995, the new Competition Act establishes a whole series of procedural provisions (Articles 39 – 60), which regulate procedures brought before the Competition Agency, so that the general procedural provisions of the General Administrative Procedure Act (hereinafter: GAPA) which within the meaning of Article 39 of the Act are subordinately applied, shall still be applied but less than it was according to the old CA 1995.

The objective of the new procedural provisions is to speed up the proceedings before the Agency, and because of the specific activities of the Agency, to ensure the efficiency and effectiveness of the work of the Agency and to avoid stalling and prolongation of the proceedings. As apposed to GAPA, the administrative procedure is initiated before the Agency only when it has issued procedural order on initiating the proceedings on the basis of the request of the party or ex officio. This procedural order may neither be appealed nor is it allowed to commence an administrative dispute.[54]

The Agency shall not institute the proceedings if it finds that the related activity has a minor effect on competition or if it has insignificant effect on development and maintenance of efficient competition, i.e. that the initiation of such proceedings is not

[53] Article 25, paragraph 2 of the Competition Act 2003.
[54] Article 46 of the Competition Act.

in the public interest. Such legislative regulation has as its objective for all resources of the Agency to be directed towards significant prevention, restriction or distortion of competition, thus the Agency does not have to deal with minor issues.[55]

The Agency shall institute proceedings ex officio, if it finds that the practice concerned is likely to cause considerable prevention, restriction or distortion of competition and:
- on the basis of an anonymous notification, if it deems necessary to protect the identity of the notifying party, and/or
- if, having regard to all the circumstances of the case, it proves likely that the notifying party has insufficient funds to initiate and conduct the proceedings (Article 41, paragraph 3 of the Competition Act).

The request or initiative for initiating proceedings before the Agency may be submitted by:
1. any legal or natural person having a legal or economic interest,
2. any professional or economic interest association of undertakings,
3. a consumer association, or
4. the Government of the Republic of Croatia, state administration bodies and regional and local self-government authority units.

Following the example of Council Regulation (EC) No 1/2003[56] the powers given to the Agency by the new Competition Act in carrying out the proceedings are equivalent to the powers of the European Commission and national competition authorities in the EU Member States.

In carrying out enquires the Agency shall by means of written requests, request from the undertakings, in writing or through oral statements, all the required data, and ask for submittal of the required data and documentation, request from the undertaking concerned to ensure direct inspection of all business premises, all immovable and movable property, business books, data bases and other documentation, request other necessary data and information from other persons, which the Agency deems may contribute to solve and clarify certain issues and request from the undertakings to pursue other activities which it deems necessary for the purpose of stating all the facts relevant to the procedure.[57]

Similarly, the Agency may request the competent misdemeanour court in Zagreb to issue a written warrant ordering the search of particular persons, apartments or business premises, and the seizure of objects and documents in possession of the undertakings or a third person if there is reasonable doubt that the party to the proceedings or a third person, holds in possession documents or other instruments relevant to the establishing of the material truth in the proceedings.

The Agency shall request the competent misdemeanour court to issue a written warrant in cases when a party to the proceedings or a third person fails to act in

[55] Article 41, paragraph 2 of the Competition Act.
[56] Council Regulation (EC) No 1/2003 introduced significant changes relating to the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty which applies from the 1 May 2004.
[57] Article 48 of the Competition Act.

accordance with the request of the Agency regarding the submittal of data or information which are important for market study prior to the formal initiating of the proceedings within the meaning of the Act (Article 37 item 8 and 9 of the Competition Act).

Given the above, and because of the security of parties and the protection of their business interests, Article 51 of the Competition Act explicitly stipulates that the president and members of the Council, as well as employees of the Agency, shall keep and not disclose information classified as an official secret, irrespective of the way they came to know it, and the obligation of official secrecy shall also continue to be in effect after the expiry of their engagement with the Agency.

An official secret shall be considered all which is defined to be an official secret by law or other regulations, all which is defined to be an official or a business secret on the basis of bylaw regulations or other regulations of the undertakings, all that undertakings have defined as a business or an official secret, all correspondence with the European Commission and other authorities of the European Communities.

Without prejudice to the above mentioned, data and documents which have been made accessible to the general public in any way, or decisions of managing or administrative bodies of the undertakings published to be available to the general public pursuant to particular regulations, shall not be considered an official secret. Similarly, the data considered to be an official secret shall be exempted from publication in the Official Gazette, the official journal and web pages of the Agency.[58]

Parties to the proceedings carried out before the Agency have the right of access to case files upon a written request. The Agency shall make a photocopy of the file or of single documents at the expense of the party.

However, drafts of the decisions of the Agency, official statements and protocols from the sessions of the Council, internal instructions and notes on the case, correspondence and information exchanged with the European Commission or other authorities of the European Communities, as well as other documents considered an official secret, may neither be inspected nor photocopied.[59]

It is obligatory to hold the oral hearing in all cases with parties of contrary interests. The oral hearing is, as a rule, public.

The Agency is entitled to conduct the oral hearing in any case when it deems useful. Without prejudice to the above, if the Agency, after it has received the written statement of the party against which it has started the proceedings, decides that the facts of the case between the parties is beyond dispute and that there are no other hindrances preventing the decision to be made, and if it is in the public interest, the Agency may render a decision without calling for the oral hearing.

The Competition Act foresees that the Agency, in the case that a regularly summoned party fails to appear at an oral hearing twice, shall not convene another

[58] Article 51 of the Competition Act.
[59] Article 50 of the Competition Act.

oral hearing, but shall make its decision on the proceedings on the basis of its own findings, data and documentation it has at its disposal. However, there is no intention to limit or challenge the party's right to defence, which shall always be requested a written statement regarding the facts and circumstances which the Agency has established in the investigation procedure before the rendering of its final decision, in accordance with Article 143 of the GAPA, as well as the EU practice.
The Agency makes decision, in which it: assesses the compliance of agreements with the provisions of the Act, determines the exemption of an agreement, determines the existence of abuse of a dominant position, assesses the compatibility of concentrations, imposes interim measures, determines particular measures to be taken in order to restore efficient competition in the case of prohibited concentrations etc.[60]

Against the decisions, or resolutions by which a procedure before the Agency is closed, no appeal is allowed, but the injured party may file an administrative dispute before the Administrative Court of the Republic of Croatia within 30 days of the delivery of the decision or resolution of the Agency.[61]

Decisions of the Agency are published in the Official Gazette *Narodne novine*, along with judgements or decisions of the Administrative Court on lawsuits regarding the decisions of the Agency. In regards to this it needs to be noted that data which is considered an official secret are neither published in the Official Gazette nor in any other publication or web page of the Agency.[62]

3.1.8. Penalty clause

Pursuant to the decision of the Agency, upon violation of the provisions of the Act, the Agency makes a claim to the misdemeanour court to start the minor offence proceedings against the undertaking concerned and the responsible person of the respective undertaking.

Fines for infringements of legislation on competition are imposed by misdemeanour courts, whereas the Agency does not have the right to impose fines.

The new Act establishes three categories of fines, depending on the severity of the infringement, modelled after Council Regulation (EC) No 1/2003. These are fines for severe violations of the provisions of the Act, fines for other violations of the provisions of the Act and fines for persons that are not parties to the proceedings.[63]

A severe violation of the Act shall be considered: concluding of a prohibited agreement or participating in an agreement that causes distortion, restriction or prevention of competition, abuse of dominant position, participating in a prohibited concentration of undertakings and any other activity contrary to the decision of the Agency. For the afore mentioned infringements of the Act a fine may be imposed of at the most 10 % of the value of the total annual turnover of the undertaking (legal or

[60] Article 57 of the Competition Act.
[61] Article 58 of the Competition Act.
[62] Article 59 of the Competition Act.
[63] Article 61, 62 and 63 of the Competition Act.

natural person), in the financial year preceding the year when the infringement was committed.

For severe violations of the provisions of the Competition Act the responsible person of the undertaking – legal person concerned shall be fined an amount ranging from 50,000.00 do 200,000.00 Kuna.

For other violations of the provisions of the Competition Act a fine may be imposed of at the most 1 % of the value of the total annual turnover of the undertaking (legal or natural person), in the financial year preceding the year when the infringement was committed. As other violations of the Act, shall be considered:

- submitting to the Agency of incorrect or untrue information which may influence the rendering of a decision on individual exemption of an agreement (Article 14, paragraph 1),
- failing to act according to the request of the Agency (Article 47, paragraph 3, Article 48, paragraphs 1 and 3),
- failing to act according to the decision of the Agency (Article 57, item 8)
- failing to act according to the written order of a misdemeanour court (Article 49).

For other violations of provisions of the Competition Act the responsible person of the undertaking – legal person concerned shall be fined an amount ranging from 15,000.00 do 50,000.00 Kuna.

Fines for persons that are not parties to the proceedings are stipulated by provisions of Article 63 of the Competition Act. The undertaking – legal person that is not a party to the proceedings before the Agency shall be fined for the infringement committed an amount ranging from 15,000.00 to 50,000.00 Kuna if it fails to act upon the request of the Agency (Article 37, items 8 and 9 and Article 48, paragraph 1, items 3 and 4 and paragraph 3).

A fine in an amount ranging between 5,000.00 to 10,000.00 Kuna is also foreseen for the responsible person of the legal person in question who does not hold the position of a party to the proceedings before the Agency and who does not act according to the requests of the Agency.

The undertaking – natural person that is not a party to the proceedings before the Agency and that fails to act according to the request of the Agency shall be fined for the infringement an amount ranging from 5,000.00 to 10,000.00 Kuna (Article 37, items 8 and 9 and Article 48, paragraph 1, items 3 and 4 and paragraph 3).

A significant innovation in the new Act is the introduction of longer limitation periods compared to the CA 1995.

The limitation periods according to the old CA 1995 were, five years for relative limitation, while in regards to absolute limitation due to an oversight in the former CA 1995 there was no stipulated time period set for absolute limitation. As a consequence of this omission, the High Misdemeanour Court of the Republic of Croatia assumed a position whereby absolute limitation was defined in accordance

with the Misdemeanour Act (for initiation of misdemeanour proceedings absolute limitation takes effect after the expiry of two years from the date on which the infringement was committed, while for the execution of fines the limitation period expires after two years from the date on which the decision on misdemeanour becomes legally valid). Consequently, for the majority of cases before misdemeanour courts, absolute limitation has taken effect within the meaning of the Misdemeanour Act.

Pursuant to the new Competition Act relative limitation for both the initiation of misdemeanour proceedings and execution of fines takes effect after expiry of three year period calculated from the date on which the infringement was committed or from the date on which the decision on the infringement becomes legally valid. Absolute limitation is explicitly stipulated for both listed cases and takes effect after the expiry of six years.[64]

The Act also explicitly defines interruptions to limitation periods.

The Act also regulates the method of cooperation between the Agency and the competent courts regarding the cases relating to prevention, distortion or restriction of competition in the Republic of Croatia.

Naturally, this primarily refers to the cooperation of the Agency with misdemeanour courts. However, the stated provisions of the Act also indicate the obligation of the Agency to cooperate with other judicial bodies, such as courts of general competency and the State attorney's office. This cooperation by all means relates to criminal proceedings which such bodies institute or conduct pursuant to Article 288 of the Penal Code *("Abuse of monopolistic or dominant position in the market")*. [65]

3.2. Regulation on the definition of relevant market

During 2003 the Agency began drafting and the Council in its session held on 4 December 2003 adopted the Regulation on the definition of relevant market in cases to which the Competition Act is applied. The afore mentioned Regulation was passed pursuant to Article 7, paragraph 2 of the Competition Act. The Act determines the obligation of the Government, upon the proposal of the Council, to adopt a regulation defining the relevant market.[66] On one hand, this Regulation ensures the harmonisation of this part of the competition system with the EU acquis, while on the other hand it ensures the legal security of undertakings to which this Act applies, since for the first time they are going be able to understand more easily the criteria and methods by which competition authorities define relevant market for every particular product and/or service. The objective of the definition of relevant market is

[64] Article 64 of the Competition Act.
[65] Article 65 of the Competition Act.
[66] The stated obligation of the Council and Government was met by the adoption of the Regulation on the definition of relevant market (Official Gazette No 51/104)

to identify the goods and/or services and also territories in which the undertakings compete.

The starting point and first step in the application of legislation in the area of competition is the definition of relevant market concerned in each particular case of restriction, prevention or distortion of competition. Defining the relevant product and geographic market is on of the most important activities in each particular case of assessment of restriction, prevention or distortion of competition before the Agency.

A relevant product market comprises of all products which are regarded as interchangeable or substitutable, by reason of the product's characteristics, their prices and their intended use[67]. At the same time it shall be assumed that a product is a substitute product when it can be reasonably expected that the buyers, or consumers of the relevant product would switch to readily available substitutes in response to hypothetical (5–10%) but permanent relative price increase in the relative product, or that the buyers of the relevant product would switch to an equivalent or related product of a different supplier in response to or as a reaction to the mentioned increase in price of a relevant product. The described method of definition of relevant market has been developed in the USA and today it applies in nearly all countries developing their national legislation in this area.

The Regulation stipulates that relevant geographic market covers the whole territory of the Republic of Croatia or a part therein, and in exceptional cases it can be defined on an international or global level[68]. Here it is important to note that in the analysis of the relevant geographic market, for each particular case, the Agency pays particular attention to the conditions for entry to the market, particularly relating to transport costs, access to distribution channels and associated costs, current patterns of purchases and customers' usage patterns etc.

[67] Article 5 of the Regulation on the definition of relevant market.
[68] Article 6 of the Regulation on the definition of relevant market.

4. Activities of the Competition Agency in 2003

During 2003 a significant part of the administrative capacities of the Agency was focused on drafting of the new Competition Act and implementing bylaws. Subsequently the activities of the Agency in 2003 were marked by changes related to the adoption and entering into force of the new Competition Act (Official Gazette No 122/03). Namely, until the application of the new Act the Agency carried out activities and was structured in accordance with the CA from 1995 (Official Gazette No 48/95, 52/97 and 89/98). The application of the new Competition Act resulted in significant changes in the legislative framework, as it has already been described in Chapter 3 of this Report, and in the internal organisation of the Agency. The new internal organisation is covered in detail in Chapter 8 of this Report.

Other than the drafting of the new Competition Act and the bylaws, in this reporting period the Agency has opened a total of 150 administrative cases which constitutes the primary activity of the Agency covering the assessment of agreements (a total of 51 cases), assessment of abuse of a dominant position (a total of 46 cases) and assessment of concentrations (a total of 53 cases).

In this reporting period the Agency has also performed expert activities such as issuing of prior expert opinions at the request of undertakings (a total of 43 files), issuing opinions regarding the draft proposals of acts and other legislation (a total of 18 files opened), other non-administrative files (a total of 38 opened files) and activities regarding international cooperation (a total of 100 opened files).

Out of the total number of handled files/cases the Agency has closed 78 % thereof in this reporting period.

Before entering into the analysis of the individual areas which the Agency has dealt with in 2003, it must be noted that in this reporting period the Agency operated without a person authorised for representing or rendering of decisions for nearly six months. The former director general of the Agency MSc Hrvoje Momčinović rendered an irrevocable resignation to the Croatian Parliament for the position of director general on the 8 April 2003 and pursuant to the Agreement on termination of employment dated 30 April 2003 he ceased employment and got retired. The Croatian Parliament pursuant to the provisions of the former CA 1995 which was in force until 30 September 2003 did not appoint a new director general, nor acting director general[69], while in the Agency there was no one occupying the position of deputy director general. For these reasons, right up to 15 October 2003 when the Croatian Parliament pursuant to the provisions of the new Competition Act which applies from the 1 October 2003, appointed Olgica Spevec, a graduate economist as the President of the Council, MSc Mirna Pavletić Župić as a member of the Council and Msc Nikola Popović as a member of the Council (Decision of the Croatian Parliament No 2403), that is on 17 October 2003 when the Croatian Parliament appointed the two remaining members of the Council, Vesna Podlipec, LLB and Milivoj Maršić, a graduate economist (Decision of the Croatian Parliament No 2404),

[69] In accordance with Article 29 of the former CA 1995 which was applied until 30 September 2003 the activities of the Agency were managed by a director general appointed and relieved by the Croatian Parliament.

the Agency operated without a head official authorised for representing and speaking for the Agency. Both afore mentioned Decisions of the Croatian Parliament regarding the appointment of the president and members of the Council were published in the Official Gazette No 167/03 of 22 October 2003.

The finalising of 78 % out of the total number of received files/cases points to the maintained high level of effectiveness of the Agency, which is a result of both the efficient and expert work of the expert team and also the professional status of the members of the Council as employees of the Agency which enables the prompt holding of sessions of the Council and rendering of decisions.

5. Basic activities of the Agency – anti-trust

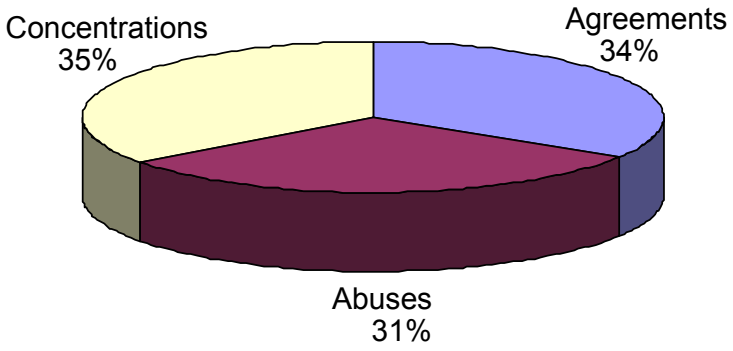
The Competition Act regulates three identified forms of the activities of undertakings which may prevent, restrict or distort competition. These are prohibited agreements, abuse of a dominant position and prohibited concentrations. Subsequently the basic activities of the Agency concerning anti-trust cover the following areas:

- assessment of agreements between undertakings,
- prevention and elimination of abuse of dominant position, and
- control of concentrations of undertakings.

5.1. Assessment of agreements between undertakings

During 2003 a total of 51 cases were opened in the area of assessment of agreements[70]. They represent a share of 20.5 % of the total number of cases. In so far as the basic activities of the Agency are observed, then the share of assessment agreements is 34 %.

Figure 1 The structure of opened cases relating to basic activities of the Agency in the reporting period

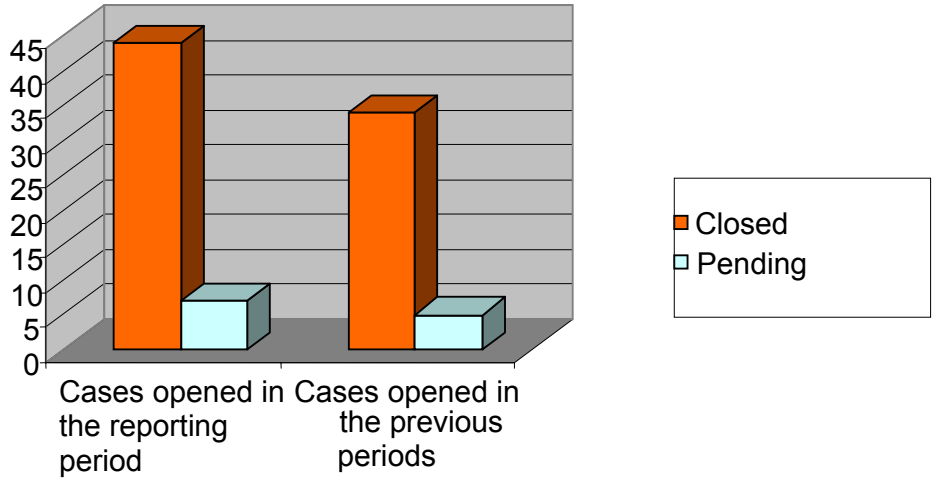


Source: The CCA, Economic analysis department

A total of 44 cases or 86.3% have been closed whereas 7 cases or 13.7% are still pending. Along with newly opened cases in the area of assessment of agreements, the Agency also processed 39 cases from the previous periods. Out of this total, 34 or 87.2 % have been closed.

[70] See Appendix 2, Table 2

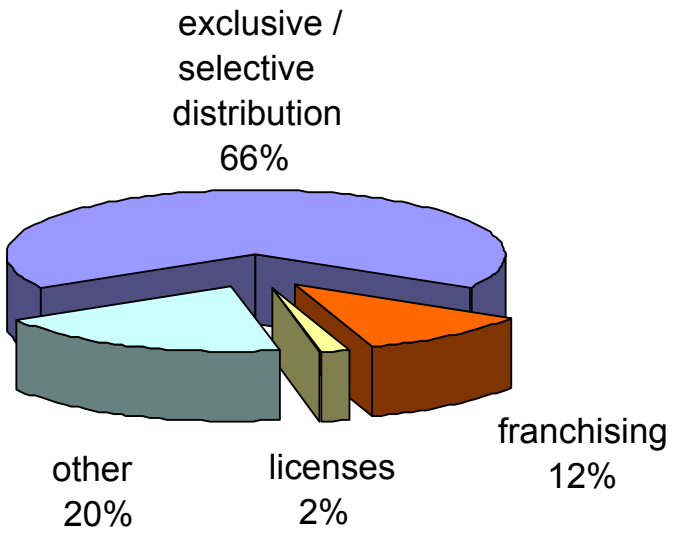
Figure 2 Number of closed cases and cases still pending in the area of assessment of agreements handled in the reporting period.



Source: The CCA, Economic analysis department

According to the case categories of the received agreements in the reporting period, 34 of these were classified as exclusive or selective distribution which is 66.7%. A total of 6 cases or 11.8% were classified as franchising. The rest involved various forms of business cooperation, know-how agreements etc. A total of 10 cases or 19.6% were classified in this category.

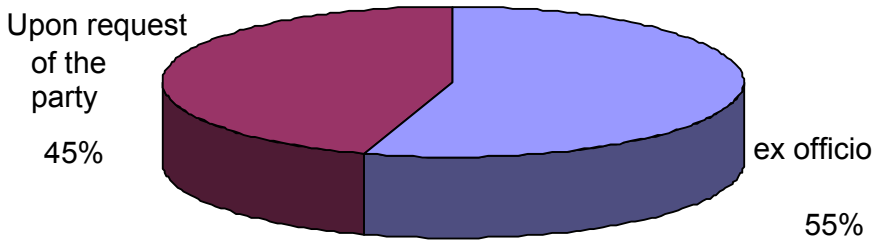
Figure 3 The structure of cases in the area of assessment of agreements according to their classification



Source: The CCA, Economic analysis department

According to the form of initiation of the proceedings in the area of assessment of agreements, a total of 28 cases or 54.9% were initiated *ex officio*, while 23 or 45.1% were initiated upon the request of the party.

Figure 4 Structure of cases in the area of assessment of agreements according to the form of initiation of the proceedings



Source: The CAA, Economic analysis department

5.1.1. Selected case 1: Assessment of the Agreement on Cooperation between INA – Industrija nafte d.d., Zagreb and MOL Hungarian Oil and Gas PLC, Hungary

On 18 August 2003 the Agency received a request by the undertaking MOL Hungarian Oil and Gas PLC, with its place of establishment in the Republic of Hungary, Budapest, Oktober huszonharmadika u.18 (hereinafter referred to as: MOL) for assessment of the Cooperation Agreement relating to INA – Industrija nafte d.d. (Cooperation Agreement), concluded on 17 July 2003, between the undertaking INA - Industrija nafte d.d. with its place of establishment in Zagreb, Avenija Većeslava Holjevca 10 (hereinafter referred to as: INA) and the undertaking MOL.

The Agency established that in this particular case it is an agreement referred to in Article 11, paragraph 2 of the former Competition Act from 1995 (Official Gazette No 48/95, 52/97 and 89/98; hereinafter: CA 1995) which, in terms of the provisions of Article 12, falls under the obligatory notification to the Agency for assessment of compliance with the provisions of the CA 1995.

Upon the examination of the provisions of the Agreement in question, the Agency established that it is an agreement which the above mentioned undertakings concluded with the aim of realizing the strategic objectives in accordance with the Business plan of INA d.d. The Agreement foresees that it shall enter into force after the conditions listed in the agreements which MOL had concluded with the Government of the Republic of Croatia concerning the acquisition of shares have been fulfilled.

Namely, the Republic of Croatia selected MOL as a strategic investor within the meaning of the Act on Privatisation of INA Industrija nafte d.d. (Official Gazette No 32/2002). Pursuant to the afore mentioned act and in the context of acquisition of shares by MOL, on 17 July 2003, the Agreement on the sale of twenty five percent plus one share of INA was concluded between the Government of the Republic of Croatia and the undertaking MOL.

For the needs of the assessment of the Agreement on Cooperation between INA and MOL, the Agency carried out an overall economic analysis and in this particular case defined two relevant markets as follows:

1. wholesale of petroleum, gas, petroleum products, oils and lubricants in the Republic of Croatia,
2. retail trade of motor fuel, oils and lubricants in the Republic of Croatia.

On the basis of the analysis it was established that in this particular case this is a cooperation agreement between two undertakings operating on the same relevant wholesale and retail market of petroleum, gas, petroleum products, oils and lubricants.

According to the provisions of the agreement in question between INA and MOL, the wholesale of MOL products shall be carried out exclusively through connected undertakings of MOL in the Republic of Croatia, i.e. through INA. In this way the market share of INA on the wholesale market shall be increased and shall amount to almost 90%.

The relevant provision of Article 7 of the CA 1995 stipulates that prohibited agreements are the agreements which have as its objective, consequence or possible effect restriction of free competition, and particularly agreements by which the market or sources of supply are divided between undertakings or by which the sales or purchase volume of goods are controlled. In accordance with the provisions of Article 8 of the CA 1995, the compatibility of agreements is determined upon examination and assessment of market conditions. Upon economic analysis it was established that the implementation of this agreement would not significantly affect the range and differentiation of goods relating to supply and demand, the number of competitors and their market shares, nor the supply of the market or consumers with goods. This derives from the fact that INA holds a significant dominant position in the relevant market irrespective of the provision of the agreement in question. Given that, according to the Agreement, MOL is entrusted with all operations relating to wholesale through connected undertakings, i.e. the company INA, the market share of INA is increased by the share realised by MOL operating independently on the wholesale market. Taking into account the data from the economic analysis, it was established that the strengthening of a dominant position through the increase in the market share of INA d.d. on the wholesale market was not significant compared to its share in the period preceding the agreement which exceeded 80%.

From all the above mentioned it was concluded that even though the Agreement in Articles 7.2.1 and 7.2.4 contains provisions which hinder market entry, the implementation of the Agreement will not result in significant restriction of free competition.

To be precise, upon the analysis of other provisions of the Agreement it was established that there exists an obligation on the strategic investor to participate in further research of oil fields in the Republic of Croatia and in the world using the latest technologies with the objective of lowering the costs, and to ensure further investments in the modernisation of the oil refineries in Sisak and Rijeka so as to enable supply with the products which will meet the EU standards and will thus be able to be placed on the EU market by 2005. These obligations of the strategic investors ensue from the provisions of Articles 5.1.2 and 5.2 of the Cooperation Agreement. Within the meaning of the provisions of Article 10 of the CA 1995, agreements which contain restrictions contributing to improving the production and distribution of goods and services, to promoting of technical and economic progress and to increase of the competitiveness of undertakings in international markets, at the same time improving the quality of goods and the market supply and shortening of distribution channels, are not considered prohibited agreements.

Given the high market share of the undertaking INA d.d. in the relevant market, it was established that it is necessary to impose behavioural measures on the undertaking in question during the period of three subsequent years. These measures establish the obligation of the undertaking INA d.d. to submit the relevant financial indicators regarding its market power and the relevant information relating to the changes in structure of the share holders.

As a result, the Competition Council determined that the Cooperation Agreement in question contains certain restrictions of exclusiveness; however, applying Article 10 of the CA 1995, the same may not be considered an agreement within the meaning of Article 7 of the CA 1995 and therefore it does not contravene the provisions of the CA 1995.

5.1.2. Selected case 2: Assessment of the Agreement on exclusive distribution between Zagrebačka pivovara d.d., Zagreb and 23 undertakings with their place of establishment in the territory of the Republic of Croatia

The Agency received under various file numbers Cooperation Agreements concluded between the undertaking Zagrebačka pivovara d.d., with its place of establishment in Zagreb, Ilica 224 and twenty three (23) different undertakings with their place of establishment in the Republic of Croatia.

The agreements in question were concluded for a period of five (5) years.

Upon examination of the received agreements the Agency established that in this particular case the agreements in question are standard agreements by which the undertaking Zagrebačka pivovara d.d grants the other party to the agreement exclusive right to distribute its products in the particular territory of the Republic of Croatia, that is the exclusive right to their promotion in the allocated territory.

In the received standard Cooperation Agreements in the provision of Article 16 under the title Rights of a partner - Distribution of other products, it was agreed that the exclusive distributor is given unlimited right to distribution of other products, including the competing products to those manufactured by Zagrebačka pivovara d.d.

From the above mentioned, the nature of the exclusive agreements in question derives from the very nature of the exclusive active promotion of the products manufactured by Zagrebačka pivovara d.d. which is granted to the exclusive distributor in the particular territory, whereas the right to exclusive distribution of the products of the undertaking Zagrebačka pivovara d.d. by the exclusive distributor is not protected by imposing a so called non-compete obligation.

Competition law considers this kind of obligation as a non-prohibited obligation which means every direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell the substitute products which compete with the contract products, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than eighty per cent (80%) of the buyer's total purchases of the contract products and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding financial year. The non-compete obligation, the duration of which does not exceed five years shall not be considered as a prohibited.

Moreover, in this particular case the rights and obligation of the parties are based on identical or similar facts and on the same legal grounds in regards to which the Agency has the subject matter jurisdiction, so the Agency issued a resolution on opening a joint assessment proceedings including all submitted agreements applying the provisions of Article 127, paragraph 1 and 3 of the GAPA.

The assessment proceedings of the above mentioned agreements was initiated to determine the compatibility of the same with the provisions of the CA 1995, that is to determine whether this is a case of a prohibited agreement under Article 7, paragraph 1 of the CA 1995, which has as its consequence the nullity of the agreement within the meaning of Article 7, paragraph 2 of the CA 1995.

In the assessment proceedings of this agreement the Agency applied, apart from the provisions of the then valid Competition Act from 1995, the methods, criteria and standards of the comparative EU law concerning exclusive distribution, which were in force at the time of the conclusion of the agreement in question.

The Agency based its competence regarding the application of these rules on the provisions of Article 70, paragraph 2 of the Stabilisation and Association Agreement between the European Communities and their Member States, concluded 29 October 2001 (Official Gazette – International agreements, No 14/01; hereinafter: the SAA).

The SAA regulates competition under Articles 40, 69 and 70. Within the meaning of Article 70 paragraph 2 any practices contrary to the competition rules shall be assessed on the basic criteria arising from the competition rules applicable in the Community, in particular from Article 81, 82 and 86 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions.

The provisions of Article 40 and 70 of the SAA correspond in content to the provisions of Articles 27 and 35 of the Interim Agreement on Trade and Trade-related Matters between the Republic of Croatia and the European Communities. The Interim Agreement was also concluded on 29 October 2001, has been temporarily

applied from 1 January 2002, and it entered into force on 1 March 2002 and shall apply until the entry into force of the SAA. Namely, the Croatian Parliament at its session held on 5 December 2001 adopted the Act on the Ratification of the Interim Agreement on Trade and Trade-related Matters between the Republic of Croatia and the European Community, published in the Official Gazette, International agreements, No 15/01.

Accordingly, applying all listed criteria, the Competition Advisory Body at its 70th session, held on 8 April 2003, and within its competence referred to in Article 30 paragraph 2, item 1 and paragraph 3 of the CA 1995, assessed a part of the provision under Article 11, paragraph 5 of the Cooperation Agreement contravening the provisions of the CA 1995. The part of the provision in question stipulated that the exclusive distributor of the products manufactured by Zagrebačka pivovara d.d. shall inform this undertaking as to the sales volume of its products as compared to the distribution of other competing products.

Given that the afore mentioned provision, in this particular part, makes the conclusion of the agreement subject to acceptance of other obligations which by their nature or according to commercial usage have no direct connection to the subject of the agreement (in this particular case the obligation to report on the turnover realised with the competing undertakings of Zagrebačka pivovara d.d.), which represents the restriction of competition prohibited by the provision of Article 7, paragraph 1, item 3 of the CA 1995, the agreement provision concerned is within the meaning of Article 7, paragraph 2 of the CA 1995 Act is ex lege null and void.

Pursuant to Article 19 of the CA 1995, the Agency defined the relevant market in this case as the beer distribution market in the Republic of Croatia. This market was assessed as well structured, with about 500 distributors-wholesalers present therein. Before the conclusion of the agreement in question the undertaking Zagrebačka pivovara d.d. had not been present in this market. Accordingly, the Agency took the stand that the undertaking Zagrebačka pivovara d.d., irrespective of its dominant position in the beer manufacturing and sales market in the territory of the Republic of Croatia, will by the conclusion of the twenty three (23) agreements in question not have a significant effect on the relevant beer distribution market. This is particularly justified because the agreements in question leave open the possibility for the ability of the exclusive distributor to acquire rights to distribute the competing products of Zagrebačka pivovara d.d.

However, given that the undertaking Zagrebačka pivovara d.d on the beer manufacturing and sales market in the Republic of Croatia holds a dominant position, and also to prevent so called spill over effects of its prevailing influence on the beer distribution market in the territory of the Republic of Croatia, the Agency, closed this case and in its decision from 8 April of 2003 ordered the undertaking concerned to not only eliminate the nullified provisions from the afore mentioned agreements but also to submit to the Agency for assessment any further cooperation agreements by which the existing distributive network of this undertaking may be expanded. In this case the final assessment of the Agency, regarding the possible newly concluded agreements, would depend on the results of a detailed economic and legal analysis of the market position of the undertaking Zagrebačka pivovara d.d. and other parties

to the agreement in the relevant beer distribution market in the territory of the Republic of Croatia.

The undertaking Zagrebačka pivovara d.d. acted fully in accordance with the decision of the Agency. The agreements in question remained in force without the void provision.

5.2. Concentrations of undertakings

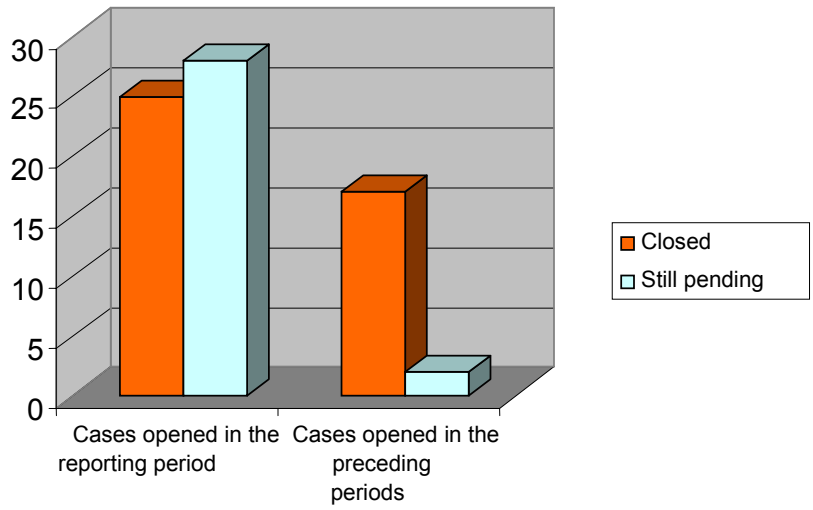
In 2003 a total of 53 cases relating to assessment of concentrations were opened, which is an increase of 39.5% compared to the preceding year.

It can be concluded that, even though the "first wave" of concentrations in the Croatian market has passed (in the period between 1997 to 2000, 128 concentrations were implemented; the highest number was noted in 1999[71]), the process of growth of the Croatian economy has continued with mergers and acquisitions by Croatian undertakings (Lura, Europapress holding, Konzum, Našicecement and others), but also with the entry of foreign undertakings (MOL, Phoenix, Heineken International, ERA Velenje and others) into the Croatian market.

In regards to the business activity concerned, the highest number of concentrations covered the retail industry. Other industries which were represented by a number of concentrations were food and beverages industry, other manufacturing industries, press distribution, wholesale in pharmaceutical products and others. A total of 25 cases were closed, which given that these are very complex inquiry proceedings, points to a high level of efficiency of the work of the expert team of the Agency. Along with the new cases relating to assessment of concentrations, the Agency also handled 19 cases from the preceding periods, whereby 17 of the latter were closed in 2003.

[71] Attention has to be paid to the new methodology applied here. Namely, the reporting period for 2002 and 2003 consists of 12 months; previous reports were based on variously defined reporting periods (less than 12 months).

Figure 5 Number of closed concentrations cases and cases still pending in the reporting period



Source: The CCA, Economic analysis department

Within the meaning of Article 18, paragraph 1 and 2 of the Competition Act, the following are the forms of concentration:

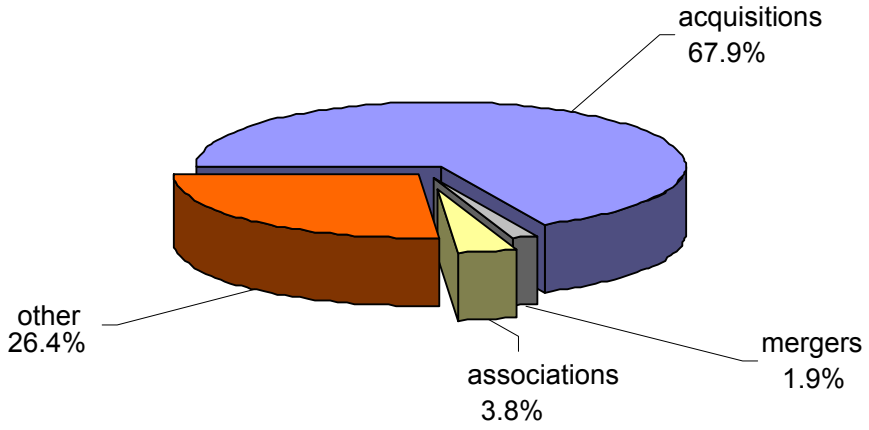
1. acquisitions of the majority of share capital and majority of voting rights,
2. mergers,
3. associations,
4. creations of a joint venture,
5. other forms (lease of property/part of a property, managing of business activities, etc.).

The highest number of concentrations of undertakings in the reporting period were in relation to the *acquisition of majority share capital and majority voting rights* (36 cases), i.e. 67.9% of the total number of concentrations, which amounts to more than 2/3 of the total number of concentrations. No cases of joint venture were noted.

In regards to the total number of initiated cases, 10.3% of the cases covered the acquisition of the majority of share capital and majority of voting rights.

The remaining number of cases consisted of mergers and associations of undertakings (smaller part), and other forms (lease of property, managing of business activities). These make up the remaining 32.1%. Compared to the total number of initiated cases, these cases make up 4.9% (a total of 17 cases).

Figure 6 Structure of the opened cases relating to concentrations of undertakings according to category



Source: The CCA, Economic analysis department

5.2.1. Selected case 3: Notification of a concentration between Lura d.d., Zagreb and Sloboda d.d., Osijek

The undertaking Lura d.d., with its place of establishment in Zagreb, Ulica grada Vukovara 271 (hereinafter: Lura d.d.), submitted to the Agency on 13 December 2002 the notification of a planned concentration, which was to be created by the acquisition of the majority share capital and majority of voting rights in the undertaking Sloboda d.d. Tvornica keksa i kruha (bread and biscuits factory), with its place of establishment in Osijek, Ulica J. Huttler 20 (hereinafter: Sloboda d.d.) by the party submitting the notification, i.e. LURA d.d.

The Agency established that the notification was submitted within the prescribed period but was not complete because it did not contain all data stipulated by Article 7 of the Ordinance. The notifying party supplemented the Notification on several occasions and on 7 February 2003 it was found complete.

The legal form of the concentration in question[72] is acquisition of the majority of share capital and majority of voting rights by Lura d.d in the stock capital of the undertaking Sloboda d.d.

It was established that the parties to the concentration fulfilled the conditions referred to in Article 22, paragraph 1 of the CA 1995 and that in this particular case the implementation of the planned concentration is subject to obligatory notification.

[72] Certain data are not listed in the Decision published in the Official Gazette, given that they are classified a business secret.

The relevant market, in accordance to Article 19 of the CA 1995, is defined as follows:

a) as the relevant product market: the market of flour products (biscuits, waffles, crackers, bakery products and industrial cakes),

b) as the relevant geographic market: the territory of the Republic of Croatia.

The relevant market in 2001 was characterised by significant imports of flour products. Lura d.d was also one of the importers and was present on the relevant market solely through imports before the implementation of the concentration in question. At the same time, there were ten undertakings operating in the market, which were also manufacturers of flour products. Sloboda d.d. was also one of these manufacturers. There are ten undertakings that produce flour products operating in the relevant market. Only two of them have a market share exceeding 10%. The undertaking second in size is Sloboda d.d. with a market share of 10-20%. The undertaking Kraš d.d. has the highest market share in the relevant market and it amounts to 20-30%.

Manufacturers of flour products, regardless the relatively large shares in production, hold significantly lower market shares in the relevant market. So for example, Kraš d.d. with a share in production of (...) percent, has a share of 20-30% in the relevant market. Sloboda d.d., with a share in production of (…) percent, has a share of 10-20% in the relevant market. The reason for this is the high total market share of imports which exceed 40% and are the result of liberalised import of flour products and lowering of tariffs and quotas.

One of the undertakings present in the relevant market solely through imports was Lura d.d. The market share of this undertaking was relatively low (… %). The other party to the concentration, the undertaking Sloboda d.d. appeared in 2001 as an importer. However, its market share realised through imports is not significant, given that it is less than 1%.

The undertaking Lura d.d. directly enters into the relevant market only after the implementation of the concentration in question, given that up until then it was only present therein indirectly, i.e. through imports. With the implementation of the concentration Lura d.d. takes over the market share of the undertaking Sloboda d.d., which in 2001 amounted to 10-20%. If to this we add the market share Lura d.d realised through imports, the market share of both parties to the concentration in the relevant market after the implemented concentration would be 10-20%.

The Agency calculated the concentration ratio. In this particular case CR_2 is 37.9, whereas CR_4 is 44.97.[73]
It is not possible to calculate the Herfindahl - Hirschmann index (hereinafter: HHI)[74] because the Agency does not have at its disposal the data on the total number of importers and their exact market shares.

In this particular case, irrespective of the relatively high CR indexes, this is a well structured market. Good structure refers to both the number of competitors operating in the market concerned and also the range of products, especially because of the high share of imports.

With the implementation of the concentration concerned, the undertaking Lura d.d. also acquires 34 stores of SLOBODA d.d., 32 stores are located in Osijek and two are in the wider area of the city of Osijek. These are non-specialised stores offering primarily food, beverages and household hygiene products. The undertaking Sloboda d.d. sold its flour products among other places, also in the wider area of the city of Osijek and Osijek itself and in through its own retail network. Lura d.d. did not have its own retail stores in this area, however, other undertakings carrying out the same activities operate here.

The market share of Sloboda d.d. realised in 2001 from the sales through its own retail network and the market shares of other undertakings that also have a retail network in the area of the city of Osijek were calculated on the basis of the realised turnover of the undertakings after the deduction of the value added taxes.

Lura d.d. will take over the retail market share of the undertaking Sloboda d.d. in the area of the city of Osijek. It can be presumed that Lura d.d., after the implementation of the proposed concentration, will continue with the distribution of products manufactured by Sloboda d.d through this retail network, but it will also sell the range of Lura d.d. products through the same retail network. In this way the implemented concentration shall also have an indirect effect in terms of improvements of the supply in the retail network.

The board of management of Lura d.d. states in its report that one of the strategic decisions of this undertaking is developing from a Croatian dairy company into a regional foodstuffs company.

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[73] **Concentration ratio (CR)** (CR index). Along with the Herfindahl-Hirschmann Index, one of the common indicators of market concentration. It shows the total (common) market share of *two or more of the largest undertakings* operating in a market. Depending on the number of undertakings whose market share is involved it is indicated as: CR2, CR3, CR4, etc.

[74] **Herfindahl-Hirschmann index (HHI)** one of the most well known and most often used measures *(indexes) of market concentration*. It is based on the total number and size distribution of firms in the industry. It is computed as the sum of the squares of the relative size of all firms in the industry. It is most often expressed in the range of 1.000 to 10.000. So that for example: HHI for a market in which there exists a symmetric duopoly (there are only two competitors in the market of which each has a 50 percent market share) shall amount to 5.000. Generally it is held that a market in which the HHI is less than 1.000 is less concentrated, a market in which the HHI is between 1.000 and 1.800 is moderately concentrated and one that exceeds the HHI of 1.800 is a highly concentrated market.

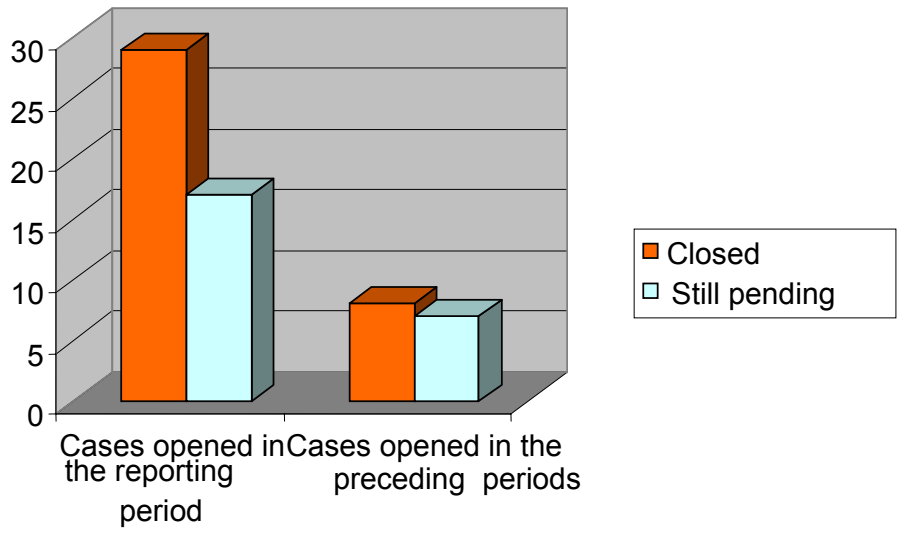
With this concentration the undertaking Lura d.d. enters the confectionary industry in which it has up until now not been present. The reasons are: the complementary nature of confectionary and dairy products, this is a perspective branch of economy of a similar business orientation, it is also expected the costs will be saved as to the development of common brands, supply, sales and distribution. From the standpoint of benefits to consumers the notifying party states that the implementation of the concentration will lead to joint production programs of the parties to the concentration. In this way competition in confectionary products in the national market will be strengthened, which will also have a positive impact on the supply and the range, quality and retail price of products.

The Competition Advisory Body examined the concentration in question at its sessions held on 21 January 2003 and 18 February 2003 and decided on the compatibility of this concentration[75].

5.3. Abuses of dominant position

During 2003, 46 cases on abuse of dominant position were opened. A total of 29 cases or 63.1% were closed, whereas the remaining 17 cases or 36.9% are still pending. Along with the new cases opened on abuse of dominant position, the Agency also processed 15 cases from the preceding periods. Eight of these were closed in 2003, which is 53.3%, whereas seven cases are still pending (46.7%).

Figure 7 Number of closed cases and cases still pending relating to abuse of dominant position in the reporting period



Source: The CCA, Economic analysis department

[75] The Decision was published in the Official Gazette, No 49/2003.

The number of undertakings that have certain "exclusive" rights is decreasing, or the respective rights are being limited pursuant to the obligations under international agreements (for example, the implementation of the SAA), so there are fewer cases involving such undertakings.

The Competition Act stipulates the following forms of abuse of a dominant position[76]:

1. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
2. limiting production, markets or technical development to the prejudice of consumers;
3. applying dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
4. making 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.

There is an equal number of all four identified forms of abuse of a dominant position. A certain number of proceedings are in relation to objections regarding the implementation of public tenders, falling under the competence of the State Commission for the Control of Public Procurement Procedures.

The proceedings on establishing the presence of abuse of a dominant position requires furnishing evidence and thorough analyses of the market positions and behaviour of the undertakings against which the proceedings has been initiated, also including the overall existing situation in the market. Subsequently, the cases on abuse of a dominant position, in principle, take longer than other cases instituted before the Agency, meaning that more time is necessary to solve these cases.

Compared to the total number of initiated cases, 13.18% of them were abuses of a dominant position.

5.3.1. Selected case 4: Determination of distortion of competition – AMC Međimurje d.o.o., Čakovec and Autohrvatska Pula d.o.o., v. P.Z. Auto d.o.o., Velika Gorica

On 15 May 2002 the Competition Agency received the request from the undertaking AMC Međimurje d.o.o., with its place of establishment in Čakovec, to initiate proceedings for determining distortion of competition, within the meaning of the provisions of Article 33, paragraph 1, item 3 of the Competition Act 1995 (Official Gazette No 48/95, 52/97 and 89/98), against the undertaking P.Z. Auto d.o.o., with its place of establishment in Velika Gorica, Zagrebačka bb.
The submitter of the request substantially stated that the undertaking P.Z. Auto d.o.o. general importer of Volkswagen group cars for the territory of the Republic of Croatia, groundlessly refused any further business cooperation connected to the distribution of personal vehicles of the registered trade mark Volkswagen.

[76] Article 16 paragraph 2 of the Competition Act

Given that on 17 May 2002 the Agency received a request under class: UP/I-030-02/2002-01/42 from the undertaking Autohrvatska Pula d.o.o., with its place of establishment in Pula, Splitska 7,to initiate proceedings for determining the distortion of free competition against the undertaking P.Z. Auto d.o.o., and given that in this particular case the rights and obligations of the parties are based on identical or similar facts and on the same legal basis in regards to which the Agency has subject matter jurisdiction, the Agency merged the above mentioned cases into one proceeding.

In the separate inquiry proceedings, the Agency established the following facts:

- The submitters of the request, the undertaking AMC Međimurje d.o.o. and Autohrvatska Pula d.o.o., conducted business with the undertaking P.Z. Auto d.o.o. according to the Letter of Intent, concluded on 10 December 1999, at which point the trade agreement with the then general importer of Volkswagen group cars for the territory of the Republic of Croatia Zubak d.o.o. was terminated consensually. Namely, the undertaking P.Z. Auto d.o.o. itself became the new general importer of Volkswagen group cars.
According to the Letter of Intent the contractual relationship started on 1 January 2000.
- The Letter of intent laid down the basic rights and obligations of the parties to the agreement. In relation to this, in Article III of paragraph 1 of the Letter of Intent the authorised dealers of Volkswagen group cars committed to have the facades of the facilities constructed according to the directions of the principal and according to the instructions of the importer, the undertaking P.Z. Auto d.o.o.
- The undertakings AMC Međimurje d.o.o. and Autohrvatska Pula d.o.o. did not receive from P.Z. Auto d.o.o, within two years of their business cooperation, any directions or standards regarding the appearance of the showroom or service facilities, within the meaning of the provision under Article III, paragraph 1 of the Letter of Intent.

The minimum standards for the VW program was submitted by the undertaking P.Z. Auto d.o.o. only upon the request of the Agency, however, these only contain basic elements regarding the equipment and size of the business premises of individual dealers.

These standards, according to the statement of the attorney of the undertaking P.Z. Auto d.o.o., were not applied, they were solely guidelines and represented expectations regarding the equipment and size of the showrooms of the dealers with which the letter of intent for VW cars was concluded, and which should have been realised by stages within a particular period upon the conclusion of trade agreements with these undertakings.

Thus, no authorised car dealer of the registered trade mark Volkswagen in the territory of the Republic of Croatia, including the submitters of the request AMC Međimurje d.o.o. and Autohrvatska Pula d.o.o. was acquainted with these standards nor were any of the dealers requested to act in compliance with these standards.

In this particular case the Agency defined within the meaning of the provisions of Article 19 of the CA 1995, the relevant market as the market of authorised car

dealers of the registered trade mark Volkswagen in the territory of the Republic of Croatia. In this relevant market the undertaking P.Z. Auto d.o.o. holds a monopolistic position given that the undertaking in question is the general importer of the motor vehicles in question in the Republic of Croatia which restricts the supply of the of motor vehicles of the registered trade mark Volkswagen exclusively to this undertaking.

Given that this is a case of refusal of further business cooperation, not grounded on previously determined business and qualitative criteria, the behaviour of the undertaking P.Z. Auto d.o.o. lead to distortion of competition by abuse of a monopolistic position in the relevant market stipulated under Article 20, item 3 of the CA 1995.

Given that there were no previously established business and qualitative criteria which are to be met by the undertakings which are or want to become authorised car dealers of Volkswagen registered trade mark in the territory of the Republic of Croatia, the undertakings AMC Međimurje d.o.o. and Autohrvatska Pula d.o.o. were placed at a competitive disadvantage as compared to other authorised VW car dealers.

As a consequence of the above mentioned, this proceedings was closed on 18 February 2003 by issuing of the decision establishing that the undertaking P.Z. Auto d.o.o abused its monopolistic position in the relevant market of authorised car dealers of the registered trade mark Volkswagen in the territory of the Republic of Croatia.

By means of the same decision it was ordered that the undertaking P.Z. Auto d.o.o should continue business cooperation with all authorised car dealers of the registered trade mark Volkswagen in the territory of the Republic of Croatia on the grounds of the Letter of Intent concluded among them. In addition, the undertaking P.Z. d.o.o. was ordered to provide for qualitative and objective criteria which are to be met by the authorised car dealers of the registered trade mark Volkswagen within the network system in the territory of the Republic of Croatia, and to submit them to the Agency for examination in order to avoid any possible discriminatory behaviour. Finally, the undertaking P.Z. Auto d.o.o. was ordered within the time period of one (1) year to conclude agreements with those undertakings meeting the qualitative and objective criteria for a period of five (5) years.

In compliance with the decision of the Agency from 18 February 2003, the undertaking P.Z. Auto d.o.o. shall be obliged to conclude agreements on distribution and servicing of motor vehicles with the existing car dealers of the registered trade mark Volkswagen with which it has conducted business on the basis of the Letter of Intent, after the expiry of the established time period, if they shall meet all the criteria of the authorised dealers' network. The agreement in question shall be concluded for a minimum period of five (5) years.

6. International cooperation

Activities in the area of international cooperation constitute a significant part of the activities of the Agency. Namely, the nature of the activity of the Agency necessitates intensive cooperation with other competition authorities abroad and numerous international organisations such as the EU institutions, UNCTAD, WTO, OECD, the World Bank, EBRD, etc. The cooperation with the international organisations demands active participation by the representatives of the Agency at conferences, seminars and meetings at home and abroad.

During 2003 the Agency opened one hundred files in the area of international cooperation (participation at seminars, cooperation with other competition authorities abroad and various international organisations).

6.1. European Union

In the accession process of Croatia to the European Union, during 2003 consultative technical meetings were held with the European Commission, including the meeting of the Subcommittee on Internal Market of the Interim Committee European Community-Republic of Croatia in which the representatives of the Competition Agency also participated.

In June 2003 a technical meeting was held in Brussels at which then actual Draft Competition Act was reviewed, which was in the form of an unofficial translation submitted to the competent EC Directorate through the Delegation of the European Commission in Zagreb. The representatives of the EC Directorate-General for competition, commenting on the individual provisions of the Act, communicated their observations in regards to the institutional organisation of the Agency, at which point they pointed out the importance of preserving its independence.

In September the representatives of the Agency participated in technical consultations with the European Commission, with the view to clarifying particular questions from the Questionnaire which was submitted to Croatia by the European Commission in July. In the preparations of the answers in the area of competition there were no difficulties, given that for the most part the questions were of legal nature. The representatives of the EC were acquainted with the developments in the area of competition, primarily the entry into force of the new Competition Act.

The focus of the meeting of the Subcommittee on Internal Market, held in Brussels in December, was the harmonisation of Croatian legislation with the EU acquis. The representatives of the Agency presented the activities regarding the harmonisation of legislation in the area of competition and state aid as priority areas within the Stabilisation and Association Agreement.

6.1.1. The EU CARDS Programme

The implementation of the CARDS Project 2001 started in April 2003, under the title "Support to the development of competition policy in Croatia in line with EU standards and practice". The Project encompasses the following three components:

1) support to the Agency regarding the drafting of laws and bylaws;
2) the strengthening of institutional and administrative capacities of the Agency through training of employees;
3) education and competition advocacy relating to public administration authorities and the Croatian general public.

The first phase of the Project, which consisted of drafting bylaws which were to be passed pursuant to the Competition Act, was successfully completed in August and the following bylaws were drafted: the Draft Regulation on concentrations, Draft Regulation on vertical agreements and Draft Regulation on horizontal agreements. In September the implementation of the Project was temporarily suspended because of the fact that the remaining part of the Project could only have been carried out successfully after the appointing of the new management of the Agency and the establishment of the complete internal organisation. After the new Competition Council became operational, the implementation of the project was continued in January 2004.

Similarly, preliminary documentation for future implementation of the projects from the CARDS Programme has been drafted for the budget years 2002 and 2003. The CARDS Project 2002, "Support to the state aid system in the Republic of Croatia", will be carried out in the form of *twinning* and will cover the support to the establishment of a legal-institutional framework for the implementation of the state aid system (such as the establishment of a comprehensive computerised data base including the recording, authorising and monitoring the implementation of state aid in the Republic of Croatia). The CARDS Project 2003, "Further strengthening of the Croatian Competition Agency and implementation of competition law and policy", will be directed towards the implementation of the established legislative framework in the area of competition.

6.2. OECD and WTO

In February 2003 the representatives of the Agency participated in the meeting of competition experts in Geneva, organised by UNCTAD and the WTO Working Group on the Interaction between Trade and Competition Policy.

The UNCTAD meeting was held with the objective of collecting opinions and comments from the member countries of the United Nations in which competition law and/or policy has already been regulated, on the drafting of an international codex which would contain provisions on competition – a Model Competition Law. The Advisory Body of the Croatian Competition Agency also debated about the problems concerning codifying the legislation on competition, within the context of the adoption of the UNCTAD Model Law, and rendered its positive opinion thereof.

The WTO working group on competition law tied its themes into the discussion started within the framework of the UNCTAD competition forum. The themes of the working group covered the following:

- elements under paragraph 25 of the Doha Ministerial Declaration;
- nature and scope of consent mechanisms which could be applied within multilateral competition policy frameworks;
- possible elements of progressiveness and flexibility which could be included in multilateral competition policy frameworks;
- technical assistance and capacity building pursuant to the provisions under paragraph 24 of the Doha Ministerial Declaration;
- other issues including exchange of experiences and national legislation.

In July the Regional seminar for countries of Central and Eastern Europe and Central Asia on competition policy, also organised by the WTO, was held in Budapest. This gathering dealt with the role of competition in transitional countries and competition as an instrument for economic reform in eastern and central Europe and central Asia. Participants of the seminar also participated in the workshop titled “Suggestions for International Cooperation in the Area of Competition Policy”.

6.3. Expert training through participation in international seminars

Expert training of the employees in the area of competition is a permanent priority of the Agency, given the specific nature of the work and need for constant monitoring and harmonisation with new trends and practices in competition law and policy. In this context, following is a short review of educational seminars at which employees of the Agency were present.

In February the representatives of the Agency participated in the 10th International Competition Law Forum, which was organised by the Global Competition Forum in St. Gallen, Switzerland.

The regular annual seminar on competition law and policy, organised by the OECD, was held in Vienna in March. This seminar, which is held for the non-member states of OECD, involves intensive education for the employees of national competition authorities.

Newly hired employees of the Agency, trainees in economic sciences and law, began their education in the field of competition at the seminar titled “Unilateral Refusals to Deal and Essential Facilities”, held in Ljubljana and was organised by the United States Federal Trade Commission, United States Department of Justice Antitrust Division, and the Competition Office of the Republic Slovenia.

Further training was continued at a seminar in Budapest which was organised by the Federal Trade Commission, Bureau of Competition and Department of Justice, Antitrust Division, of the Government of the United States of America titled “Regulated Industries Seminar”. Specific themes of the seminar covered competition and the electrical energy market as well as competition and the telecommunications market.

7. Competition Advocacy

The operational role of the Agency in the implementation of competition law is not enough. It is necessary to simultaneously develop a so called "competition culture", i.e. actively engage in competition advocacy or raise the awareness and knowledge of undertakings, government and other public authorities, the judiciary, consumers, and the general public regarding the importance and role of competition law and policy in further development of the market economy in our country and its role in raising competitiveness of the Croatian undertakings.

It is important to point out that awareness regarding the need of competition advocacy in the European Union appeared significantly late after the start of the application of this law and was more intensively developed only by mid-seventies of the 20th century. The summary of the Report on competition advocacy and competition policy which was drafted by the representatives of the ICN working group at the conference held in Naples in 2002 pointed out the significant role of this activity in so called transition countries. It was assessed that competition advocacy should be even more important than the operational function of implementation of competition regulations. The reasons for such an assessment lie first and foremost in the fact that this is a branch of law which has been only recently introduced into the legal systems of the so called transition countries, where so called "weak" bodies are authorised for the implementation of this branch of law (lack of administrative capacities, necessary experts, data bases necessary for a very complex economic analysis in the proceedings carried out by these bodies), unprepared judiciary (lack of specialised judges in the branch of law which until recently has not even been present as a regular subject at law faculties in these countries, inability to impose penalties because of limitation periods) and lack of knowledge regarding the competition rules by the government and other public authorities which often pass legislation in contravention of the basic competition rules. Finally, this legislation is also unknown to consumers or those to whom this legislation applies.

Generally competition advocacy covers all the activities of the Agency which do not fall under its operational implementation of the Competition Act.

In spite of the limited resources the Agency is engaged in competition advocacy through the publishing of its decisions in the Official Gazette, publishing its own official journal i.e. publications, through informing about its work on its own web page (http://www.crocompet.hr), by organising press conferences, by presentations of its expert employees at expert gatherings (lectures, forums, seminars, postgraduate courses, conferences, symposiums), by publishing articles of expert employees in expert journals, etc.

In the reporting period the Agency held six press conferences, issued two public announcements on its web site, issued a publication titled "An Insight into Croatian Competition and State Aid" in the English and Croatian language and published nine decisions in the Official Gazette. In this reporting period the Official Gazette also published 11 judgements of the Administrative Court of the Republic of Croatia resulting from lawsuits against the decisions of the Agency. At the same time the

Agency has modernised and improved the content of its web page modelling it after the web pages of competition authorities in developed countries of the EU.
In achieving the task of competition advocacy the experts of the Agency, at the invitation of organisers, held a number of noted lectures (presentations) on competition issues and published a number of articles in expert journals.

However, because of the lack of financial resources but also the inadequate number of employees who must spend all their available working hours solely on the implementation of legislation and therefore cannot devote time to competition advocacy essential for the purpose of the realisation of the objective, which is primarily of a preventive nature, the Agency invests additional effort. As to how successful it will be in this regards will not depend on it alone but also on other public authorities insofar as they are willing to ensure its autonomy and independence, that is ensure for it all necessary working conditions (first and foremost through the allocation of financial resources which are a prerequisite for its institutional strengthening), but also within the framework of its activities by ensuring the adoption and implementation of legislation which shall not contravene the provisions provided for under the Competition Act.

Finally, also of great importance are the activities of the Agency connected to cooperation with other regulatory bodies. In our opinion expounded on in point 2.1 of this Report, the most adequate way to regulate the necessary legislative framework for the cooperation between the Agency and particular regulatory bodies we see in the conclusion of cooperation agreements, which the Agency has already entered into with the Croatian National Bank and Council for Energy Regulation, and also initiated the conclusion of cooperation agreements with the remaining sectoral regulators. Without such intensive cooperation between the regulators and the Agency as an authority of general jurisdiction, the protection of competition in all sectors and in all markets shall not be uniform, that is to say equally developed, which leads to legal insecurity.

For example, the subject of the Agreement mentioned above provides for the cooperation between the Competition Agency and the Council for Energy Regulation in the energy market in the Republic of Croatia, which is aimed at ensuring the effective application of the competition rules. For the purpose of the implementation of the Agreement the joint Cooperation Committee is going to be established, consisting of two members of the Competition Council and two members of the Council for Energy Regulation. The main role of the Committee shall be to exchange all relevant data, information and documentation, with the objective of avoiding the conflict of competence or failing to incur penalties for the behaviour in the energy market which causes the prevention, restriction or distortion of competition.

The Agency also cooperates intensively with certain bodies and institutions with which the competence of the Agency borders, overlaps or is in some way complementary. Cooperation takes place with the following authorities: Directorate for the Supervision of Insurance Companies, State Agency for Deposit Insurance and Bank Rehabilitation, Croatian Chamber of Commerce, Central Depositary Agency, Croatian Securities Commission and Croatian Bureau of Statistics.

Two basic forms of cooperation exist with these bodies:

- exchange of data between the Agency and the corresponding bodies;
- establishing of bilateral coordination bodies (Cooperation Committee) consisting of representatives of the Agency and other bodies.

Namely, within the inquiry proceedings which are carried out in assessment of concentrations, assessment of agreements and determining of abuse of a dominant position, the Agency analyses the changes in the relevant market, market shares of undertakings and their competitors, structure of the share capital holders in the stock capital of the undertaking – party to the concentration/agreement and their financial position and market power. In regards to this the Agency requires detailed data bases which other bodies or institutions have at their disposal.[77] The exchange of data also includes the exchange of publications.

Coordination bodies (Cooperation Committees) have been established for the purpose of examining specific issues of mutual interest for both the Agency and the other corresponding body associated with competition law and policy in the Republic of Croatia. The cooperation between the Agency and the above mentioned bodies shall be expanded outside the stated frameworks in accordance to needs.

The cooperation with the above mentioned institutions is based on the comparative practice and has proved to be essential for the efficient implementation of competition rules.

[77] The Agency does not have adequate funds for the acquisition of such data bases.

8. Internal organisation of the Croatian Competition Agency

The new Act has significantly changed the internal organisation of the Agency. The Agency is a legal person with public authority which as an independent entity autonomously carries out activities within its scope and powers regulated by the Act for which it is responsible to the Croatian Parliament[78]. The new Competition Act eliminates the institutes of a director general and Competition Advisory Body and introduces a new body which manages the activities of the Agency and decides on all matters for which the Agency is competent. This is the Competition Council (hereinafter: the Council). The Council has five members which are appointed by the Croatian Parliament, upon the proposal of the Government of the Republic of Croatia, for a period of five years. At the head of the Council is the president of the Council who represents, speaks for and manages the Agency and also organises and manages the work and operations of the Agency, manages expert work and is responsible for the expert work of the Agency.

On 15 October 2003 the Croatian Parliament pursuant to the provisions of the new Competition Act which applies from the 1 of October 2003 appointed Olgica Spevec, a graduate economist as the President of the Council, MSc Mirna Pavletić Župić as a member of the Council and MSc Nikola Popović as a member of the Council (Decision of the Croatian Parliament No 2403), and on the 17 October 2003 the Croatian Parliament appointed the two remaining members of the Council, Vesna Podlipec, LLB and Milivoj Maršić, a graduate economist (Decision of the Croatian Parliament No 2404). Both above mentioned Decisions of the Croatian Parliament regarding the appointment of the president of the Council and members of the Council were published in the Official Gazette No 167/03 of the 22 October 2003. The first constituting session of the Council was held after the appointment of the Council, and the first working session on 29 October 2003.

The president and members of the Council perform their duties in a professional capacity. The Council issues decisions on all general and individual acts at its sessions, with the consent of a majority of at least three votes, whereby no member of the Council may abstain. The conditions for appointing the members of the Council and reasons for relief from office are regulated in detail by the Act.[79] The management function of the Competition Council refers to the following activities: deciding on all issues within the competence of the Agency pursuant to the Act, proposing to the Government the adoption of legislation within the meaning of the Act, adoption of bylaws foreseen by the Act, making administrative decisions to be implemented at the conclusion of the proceedings before the Agency, assessment of the compliance of draft laws and other relevant legislation with the Competition Act, defining of methodological principles for studies on competition, issuing of opinions and expert advice on decisions and development of comparative practices in the field of competition law and policy etc.[80]

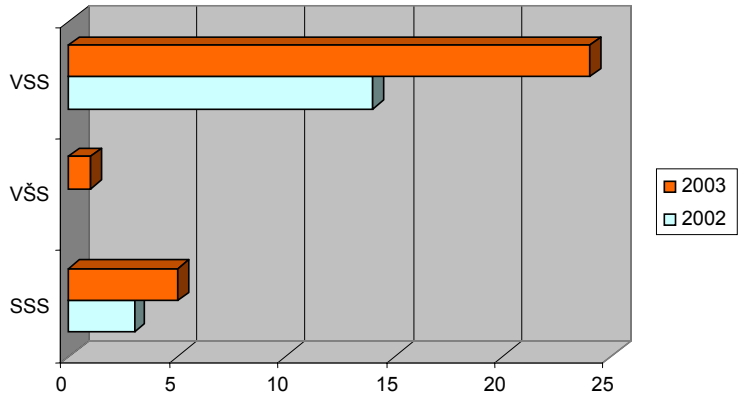
[78] Article 30 of the Competition Act.
[79] Article 32 and 33 of the Competition Act.
[80] The scope of the Council is regulated by Article 35 of the Competition Act.

The expert team of the Agency performs administrative and professional activities relating to competition, in particular[81]: conducts the proceedings on individual issues and after establishing all relevant facts and circumstances relevant for decision making reports to the Competition Council thereon, which then renders a decision, draws up drafts of bylaws within the meaning of the Act, draws up drafts on administrative decisions implemented in the conclusion of the proceedings before the Agency, draws up drafts giving opinions on draft laws and other legislation etc.

During 2003 a new Statute of the Agency was drafted and consequently adopted at the session of the Council of 4 December 2003. The new Statute of the Agency was adopted pursuant to Article 67, paragraph 4 of the new Act which stipulates the obligation of the Council to submit the Statute of the Agency for approval to the Croatian Parliament[82]. The Statute of the Agency stipulates a new internal organisation (see figure 9). The Croatian Parliament ratified the Statute of the Agency at its session held of 30 January, and it entered into force on 12 February 2004.

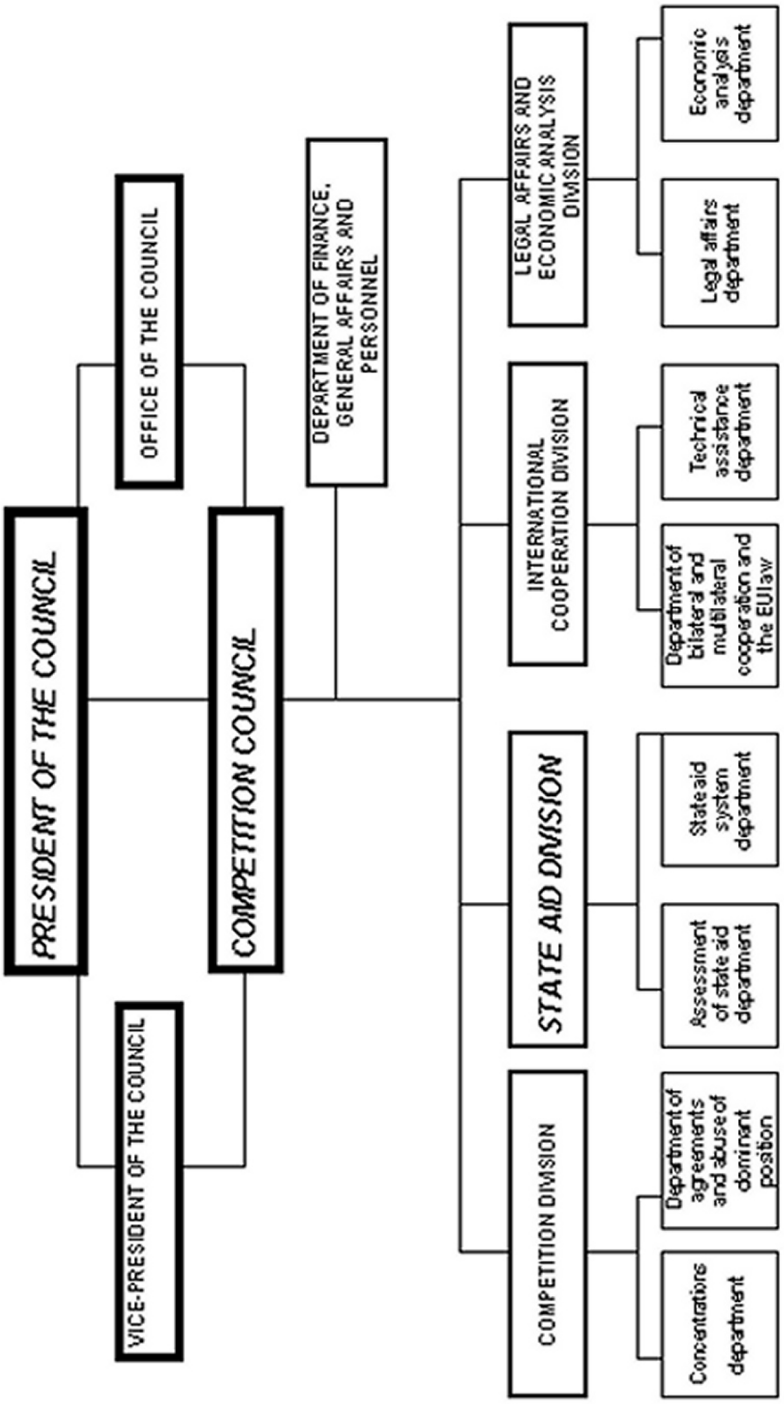
On 31 December 2003 a total of **30 people were employed** in the Agency[83]. Because of the new internal organisation, members of the Council are professionally employed in the Agency. Of the total number of employees in 2003, six were trainees. At the time of drafting this report there was a total of 34 employees in the Agency, of which four are members of the Council. The expert team of the Agency consists of 22 employees who are directly involved in the proceedings before the Agency. All of them hold a university degree, i.e. 100%. Of this number, three hold masters degrees in science. Of the total of 22 employees that constitute the expert team of the Agency 12 are lawyers, of which nine or 75% took their bar exam. There are 9 economists and one interpreter who is at the same time a certified court interpreter for English and German, all of them holding a university degree. The average age of the staff is 33. All stated data speak for high qualification, expertise and particularly young and ambitious staff.

Figure 8 Number of employees in the CCA on 31 December 2003



[81] Article 37 of the Competition Act.
[82] See note 12
[83] See Appendix 3, Table 15

Figure 9 Internal organisation of Croatian Competition Agency



In the sense of the new competences entrusted to the Agency relating to the implementation of the State Aid Act and the increase in the volume of work resulting from the new Competition Act and respective bylaws that are under adoption, it will be necessary to significantly increase the current number of employees in the following year or two, because otherwise the successful implementation of competition regulations will not be possible. The optimum number of employees necessary for the implementation of these two laws is 64. This number has been calculated using the comparison with similar bodies of the EU Member States such as Slovakia, Lithuania, Latvia and Estonia, which given the scope of activity, market size and population, are adequate examples.

9. The budget of the Agency and issued administrative fees

The funds for the activities pursued within the scope of the Agency are provided from the budget of the Republic of Croatia[84]. **The budget of the Agency after the budget revision amounted to 6,317,499 Kuna** which is 46% more as compared to 2002[85]. **The total expenditure in 2003 amounted to 5,729,878 Kuna** which is 34% more than in 2002. The amount of remaining funds was 587,621.00 Kuna. The amount of approved funds after the budget revision for current expenditure in 2003 was 5,047,263.00 Kuna, which is an increase of 23% compared to 2002. The approved funds from the budget for material expenses was 1,947,780 Kuna compared to 1,626,440 Kuna in 2002. The funds which have been approved from the budget for capital expenses in 2003 amounted to 682,615 Kuna compared to 157,170 Kuna in 2002.

Under the Act on Administrative Fees (Official Gazette No 8/96, 77/96, 95/97, 131/97, 68/98 and 116/2000), the tariff numbers from 105 to 108 establish special fees relating to competition matters. The fees refer to files and activities which the Agency carries out in its proceedings.

In particular, the competition administrative fees were established by the Act on the Amendments to the Act on Administrative Fees (Official Gazette No 131/97). Article 14 of this Act determines that a new subheading shall be introduced in to the Act on Administrative Fees (Official Gazette No 8/96) “Competition Fees”, which covers the tariff numbers 106, 107 and 108. According to this provisions administration fees for the following were introduced:

- expert opinions,
- a notification for entry into the Register on concentrations,
- a notification for entry of a change into the Register on concentrations,
- a notification for assessment of agreements of undertakings,
- a decision on entry into the Register on concentrations,
- a decision on assessment of agreements of undertakings (block and individual exemptions),
- other decisions or resolutions by which the proceedings before the Agency are concluded.

The Government of the Republic of Croatia, by the Regulation on amendments to Tariffs of the Act on Administrative Fees (Official Gazette No 116/2000), amended the tariff number 107. This tariff number stipulates the amount of administrative fees for:

- a decision on assessment of concentrations between undertakings,
- a decision on entry into the Register on concentrations,
- a decision on assessment of agreements of undertakings (block and individual exemptions).

[84] Article 30, paragraph 7 of the Competition Act
[85] See Appendix 4, Table 16

The revenue from administrative fees collected by the Agency is in its entirety the revenue of the State budget of the Republic of Croatia. **In 2003 the Agency issued administrative fees of 2,925,489 Kuna, of which 2,848,689 Kuna, or 97.37% of the amount of issued fees was paid into the State budget of the Republic of Croatia.**

The new Competition Act entered into force on 7 August 2003 and it significantly altered the method of the proceedings carried out by the Agency. Technically it means the introduction of a new method of filing and different activities pursued by the Agency. Subsequently, the Tariffs of Administrative Fees must be altered, subheading 18, “Competition Fees” (tariff numbers from 105 to 108) and brought into compliance with the filing methods and other activities of the Agency envisaged by the Competition Act.

10. Conclusion

In conclusion, in the process of accession to the EU, the area of competition is of exceptional importance first and foremost because of timely preparation of Croatian undertakings for the existing business conditions on the EU common market. However, regardless of its importance, the harmonisation and constant adjustment of Croatian legislation with the EU acquis communautaire is not and must not be an end in itself. It is necessary to ensure simultaneous and proper enforcement of the legislation concerned and this not only by continuing the institutional strengthening of the Agency which has been entrusted with these tasks, but also by the appropriate training aimed at the Croatian judicial system regarding the matter in question. On the other hand, to raise the awareness and the level of knowledge among the government and other public authorities, business community, consumers, judiciary and general public regarding the importance and role of competition law and policy in the further development of market economy in our country and its role in raising competitiveness of Croatian undertakings, are of equal if not greater importance than the harmonisation of legislation in this area with the EU acquis.

In this respect the greatest responsibility shall be borne by the Agency but also other state bodies insofar as they are prepared to ensure its autonomy and independence, that is all necessary working conditions (first and foremost through the allocation of financial resources which are a prerequisite for its institutional strengthening), but also by ensuring the adoption and implementation of legislation which shall not contravene with the provisions provided for in the Competition Act.

Although, in principle, we consider the existence of special bodies entrusted with competition issues covering particular industries in the Republic of Croatia a good solution, the negative side of such an establishment is the lack of legislative framework regulating coordination between these bodies. It is undisputable that these special regulatory bodies have specialised knowledge of their respective sectors, however, they lack knowledge and experience in the area of competition, which on the other hand is within the domain of the Agency. Furthermore, the majority of legislation regulating these sectors and the application of which is given under the competence of particular regulators, fail to regulate the individual instances of distortion of competition in detail. The activities of these regulators most often consist of price monitoring for goods and/or services, issuing licenses (concessions) for market entry, favouring of open market entry, interest and welfare of the users, determining of the conditions for access to infrastructure which is a natural monopoly etc. For this reason the Competition Act is simultaneously the source of competition law for sectors to which these provisions apply. That makes the cooperation between the Agency and sectoral regulators indispensable. The best solution, in our opinion, for obligatory legislative regulation of cooperation between the Agency and particular regulatory bodies we see in the conclusion of cooperation agreements, which the Agency has already entered into with the Croatian National Bank and Council for Energy Regulation, but also initiated the conclusion of similar agreements with the remaining sectoral regulators in 2003. Without such an intensive cooperation between the regulators and the Agency as the general competition authority, the regulating of competition in all sectors or on all markets shall not be uniform and equally developed, which leads to legal insecurity.

The attempt of the new Competition Act 2003 has been to prescribe penalties (fines) for violations of the provisions which are in full compliance with the comparative EU law, whereby the fines concerned are lower than the fines that had been regulated by the former Competition Act from 1995, in order to enable the misdemeanour courts to pronounce adequate fines for infringements of the law, as well as to extend the limitation periods (relative limitation period is three years, whereas absolute limitation amounts to six years) in order to improve the enforcement efficiency relating to competition issues. Nevertheless, we do not consider this to be enough.

Namely, even under the new Competition Act 2003, the Agency does not have the authority to pronounce fines for violations of the provisions of the act in question. As in the former CA 1995, fines are pronounced by misdemeanour courts which are based on the decisions taken by the Agency, whereas appeals against the decisions taken by the misdemeanour courts are decided upon by the High Misdemeanour Court of the Republic of Croatia. On the other hand, the legality of the decisions of the Agency, but also of those made by other regulators, is decided upon by the Administrative Court of the Republic of Croatia. Such a system is the result of a general system of judicial protection against the decisions of administrative authorities, which in the case of implementation of competition regulations fails to ensure timely and effective legal protection, and what is more, lacks legal safety (leading to lengthy administrative disputes without the possibility of pronouncing penalties, the unfeasibility of specialising the required number of judges for, as a rule, a small number of cases to be decided upon, non-pronouncement of penalties by misdemeanour courts because of limitations or similar). Within the EU member states such a system exists only in the Republic of Slovenia, which upon realising its inefficiency has proceeded to work on urgent amendments to its law.

With the objective of achieving the full efficiency in the implementation of competition regulations and given that it is a commercial or economy related issue in question, it would be more logical and economically more appropriate to solve this problem by determining one court (Commercial court) as the competent court in monitoring the legality of decisions made by the Agency and other regulators, which would also include the authority to prescribe penalties. Such a system would also enable systematic education and specialisation of the judges. However, this can only be achieved through deep seated changes in the Croatian legal system. Thus, one of the priorities of the Agency regarding its future activities is the launching of an initiative for essential amendments to all necessary legislation which would enable efficient implementation of competition regulations.

LIST OF APPENDICES

Appendix 1 Chapter 6 Opinion of the European Commission (AVIS)

Chapter 6: Competition policy

The competition *acquis* covers both anti-trust and State aid control policies. It includes rules and procedures to fight anti-competitive behaviour by companies (restrictive agreements between undertakings and abuse of dominant position), and to prevent governments from granting state aid which distorts competition in the Internal Market. Generally, the competition rules are directly applicable in the whole Union, and Member States must fully cooperate with the Commission on the enforcement of theses rules.

The *Stabilisation and Association Agreement / Interim Agreement on trade and trade-related matters* provides for a competition regime to be applied in trade relations between the Community and Croatia based on the criteria of Articles 81 and 82 of the EC Treaty (agreements between undertakings, abuses of dominant position), Article 86 (public undertakings and undertakings with special or exclusive rights) and of Article 87 (State aid). It also provides that an operationally independent public body must be entrusted with the powers necessary for the full application of this competition regime. Furthermore, the Interim Agreement stipulates specific State aid disciplines for the steel sector, including the obligation for Croatia to present a restructuring and conversion programme for its steel industry to the Commission.

In the **antitrust sector**, the *legislative framework* in Croatia is provided by the Competition Act adopted in June 2003 and in force since October 2003. It replaced a previous law from 1995 and contains the main principles of the Community anti trust rules. In particular, the legislation encompasses the prohibition of restrictive agreements, as well as the abuse of dominant position. However, certain aspects of the Croatian Competition Act, such as the procedure for the automatic nullity of restrictive agreements, still need further amendment to become fully in line with the *acquis*. Also the conditions for granting exemptions from the prohibition of restrictive agreements need to be fully brought in line with the cumulative conditions of Article 81 EC Treaty. Furthermore, the Croatian General Administrative Procedure Law potentially interferes with the Croatian Competition Act. In order to ensure the full independence of the Agency for the Protection of Market Competition, the possibility to issue an extraordinary annulment decision on the basis of the Croatian General Administrative Act against the decision of the Agency for the Protection of Market Competition needs to be excluded.

As regards *administrative capacity*, the Agency for Protection of Market Competition (APMC) is in charge of implementing the Croatian competition law. The Agency was established in 1995. According to the Competition Act, the Agency acts as an independent entity autonomously performing its activities. In September and October 2003 the president and the other four members of the Committee for Market Competition, the management and decision-making body of the Agency, were appointed. The Agency currently employs 28 people, including the five members of the Committee. It still remains to be seen to what level the administrative capacity of the APMC is already developed in reality. Given the recent entry into force of the

legal framework, there is not yet sufficient information on the *enforcement record* of the Agency. In the near future, the most important challenge for the Agency is to ensure the effective application and enforcement of the antitrust rules in relation to undertakings so that they become sufficiently accustomed to a competition environment similar to that of the Community well before full membership. This also requires a well-functioning judicial system that can effectively deal with appeal procedures against decisions of the Agency and render decisions in conformity with the Community *acquis*. Moreover, public administration and the relevant economic operators will need to have a sufficient understanding of competition law and policy.

In the field of **State aid**, prior to 2003 no comprehensive legal framework existed in Croatia. In 2003 Croatia took important steps for creating such a framework by adopting the State Aid Act and the Regulation on State Aid, which respectively entered into force in April and July 2003. However, it remains to be seen whether, in practice, this framework provides sufficient powers for the controlling authority to ensure a full and proper control of all new and existing aid schemes in line with the Community *acquis*.

In order to fully comply with the EU *acquis* in the State aid field, the Agency for the Protection of Market Competition, as State aid controlling body, must be entitled to authorize general aid schemes and not only to give an opinion. Certain additional amendments to the Croatian State aid law will be necessary. Amongst those, one urgent amendment is related to Article 4 (3) d) of the Croatian State Aid Act according to which State aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible. This provision should be applied only in very specific (rather exceptional) circumstances. More generally, the awareness of aid schemes going beyond direct budgetary support, particularly as fiscal aid is concerned, appears to be low in Croatia. In this context the compatibility of the Act on Areas of Special State Concern, the Free Zones Act and the Investment Promotion Act with the *acquis* remains to be determined.

Concerning *administrative capacity*, in addition to the competence for anti-trust, the Agency for the Protection of Market Competition has also been made responsible for the implementation of the State Aid Act and for the drafting of the necessary by-laws. It will need the necessary additional administrative resources to this effect. Procedural rules have to be in place to enable the national state aid monitoring authority to receive notifications of all proposed aid projects from the aid granting bodies and to obtain from them all necessary information as well as to express its opinion prior to the grant of the proposed aid (standstill clause).

The challenge for the Agency will be to establish rapidly a credible *enforcement* record as the authority controlling State aid. At this stage the legal framework and the administrative structure are too recent to draw conclusions on this. Reliable data on the use of state aid in the Croatian economy is very limited and transparency is low. No reliable state aid inventory exists at present. Under Article 35 of the Interim Agreement Croatia is obliged to provide the Commission with a comprehensive State Aid inventory as well as with a regular annual report on state aid. The State aid inventory is crucial and the Agency for the Protection of Market Competition must ensure early on that all relevant measures are covered and that these measures

have been assessed so as to establish their compatibility under Article 87 of the EC Treaty.

As regards **public undertakings and undertakings with special or exclusive rights** entrusted with the operation of public services, the Croatian Competition Act is fully applicable to them, in accordance with Article 86 of the EC Treaty.
As regards undertakings entrusted with the operation of services of general economic interest, the Croatian Competition Act has taken over the wording of Article 86 (2) of the EC Treaty except for the proportionality test. That allows too broad a scope of action for undertakings operating services of general interest. Therefore, in the absence of any limitation there is a risk that such undertakings may fully back out of the scope of the Competition Act.
Finally, with regard to the liberalisation of specific sectors, it remains to be seen how sector specific legislation will impact on the effective application of the general competition rules in the sectors covered (telecommunications, banking, energy, petroleum and petroleum products and gas). The liberalisation of specific sectors of the economy is dealt with in the relevant sector specific chapters.

Conclusion
In the field of anti-trust, the basic legislative framework is now in place. The approximation process with the *acquis* must continue and the Agency for the Protection of Market Competition needs to be strengthened. In parallel, the Agency will have to build up a credible enforcement record.
Regarding State-aid, important steps towards creating the necessary legal framework have been taken in 2003 but it needs to be completed. Croatia will have to increase transparency and awareness of State-aid rules and to ensure an effective control of State aids, in particular by giving the Agency all the necessary powers. Developing the appropriate administrative capacity of the Agency for the Protection of Market Competition will be crucial. Overall, in the field of competition, Croatia will have to make considerable and sustained efforts to align its legislation with the *acquis* and to effectively implement and enforce it in the medium term.

Appendix 2 Statistical review of the CCA activities in 2003

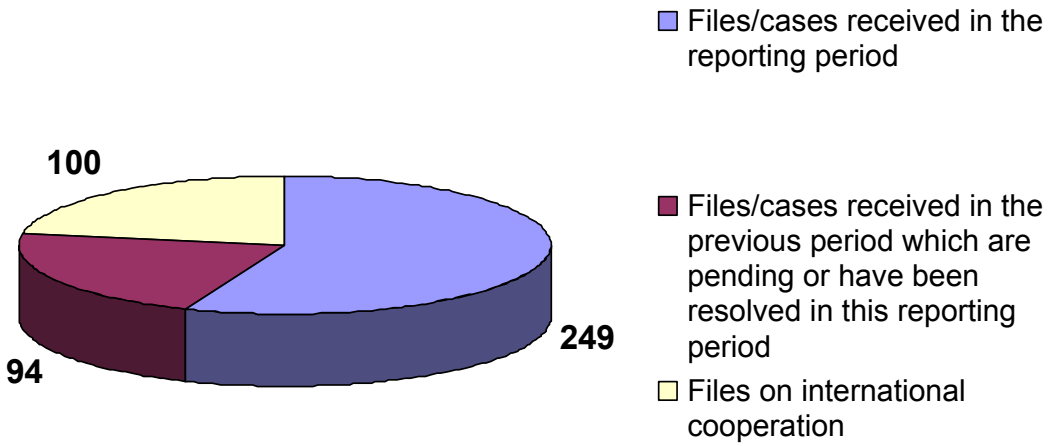
2.1. Total number of files/cases

Table 1 Total number of files/cases handled out in the reporting period

	Number of files/cases
Files/cases received in the reporting period	249
Files/cases received in the previous periods which are pending or have been resolved in this reporting period	94
Files on international cooperation	100
Total	**443**

Source: CCA, Economic analysis department

Figure 1 Total number of files/cases handled in the reporting period



Source: CCA, Department of economic analysis

Table 2 Files/cases opened in the reporting period

	Resolved	Pending	Total	Share in total no of files/cases (in %)
Abuses	29	17	46	13,18
Concentrations	25	28	53	15,19
Agreements	44	7	51	14,61
Total no of administrative cases	**98**	**52**	**150**	**42,98**
Preliminary expert opinions	37	6	43	12,32
Other non-administrative files	37	1	38	10,89
Opinions on laws and other acts	13	5	18	5,16
Total no of non-administrative files	**87**	**12**	**99**	**28,37**
International cooperation	**88**	**12**	**100**	**28,65**
Total number of files/casis	**273**	**76**	**349**	100,00
Share in total no of files/cases (in %)	78,22	21,78	100,00	

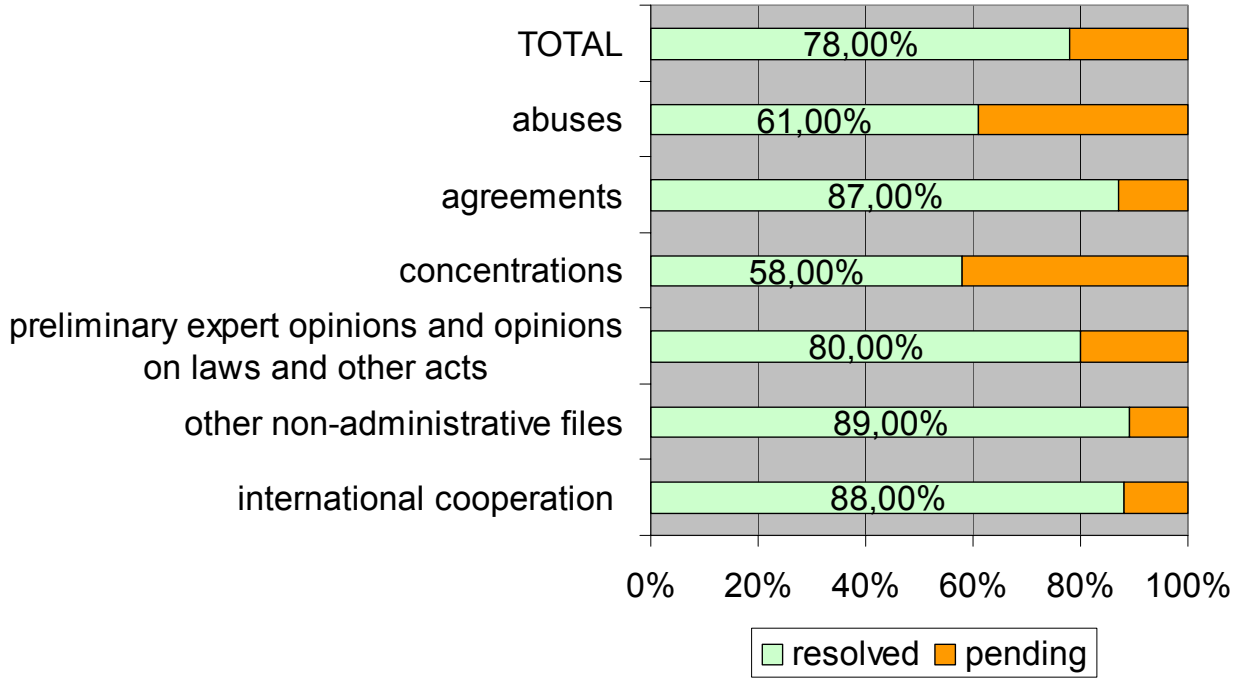
Source: CCA, Department of economic analysis

Table 3 Files/cases opened in the previous periods which are under course/have been resolved in this reporting period

	Resolved	Pending	Total	Share in total no of files/cases (in %)
Abuses	8	7	15	15,96
Concentrations	17	2	19	20,21
Agreements	34	5	39	41,49
Total no of administrative cases	**59**	**14**	**73**	**77,66**
Preliminary expert opinions	2	0	2	2,13
Other non-administrative files	12	5	17	18,09
Opinions on laws and other acts	0	2	2	2,13
Total no of non-administrative files	**14**	**7**	**21**	**22,34**
Total number of files/casis	**73**	**21**	**94**	**100,00**
Share in total no of files/cases (in %)	77,66	22,34	100,00	

Source: CCA, Department of economic analysis

Figure 2 Share of resolved files/cases out of total number of files/cases handled in the reporting period by category



Source: CCA, Economic analysis department

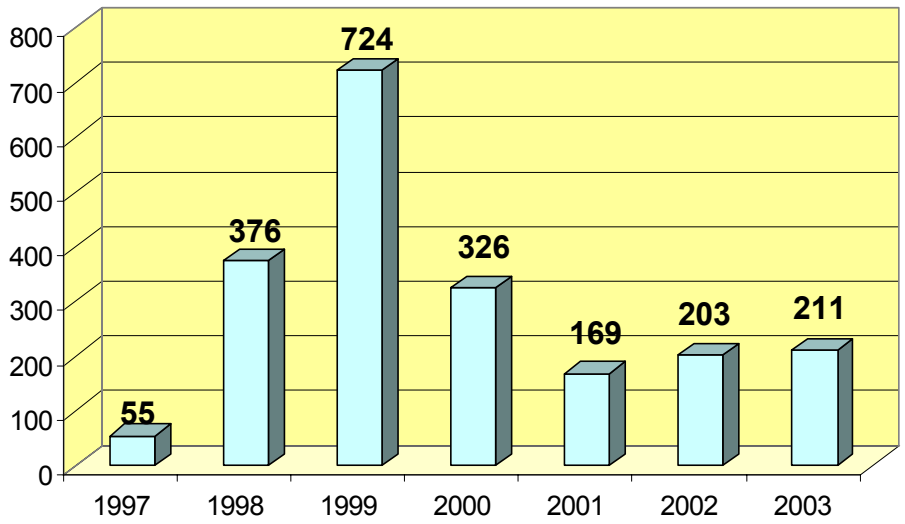
Table 4 Comparative review of the total number of files/cases since the establishment of the Agency

	1997	1998	1999	2000	2001	2002	2003	Ratio in % 2003/2002
ADMINISTRATIVE CASES:								
ABUSES	27	68	90	52	48	57	46	-19,30%
AGREEMENTS	9	264	534	147	23	73	51	-30,14%
CONCENTRATIONS	5	25	64	34	26	38	53	39,47%
TOTAL	**41**	**357**	**688**	**233**	**97**	**168**	**150**	-10,71%
PRELIMINARY EXPERT OPINIONS AND OPINIONS ON LAWS AND OTHER ACTS	14	19	36	93	72	35	61	74,29%
Subtotal:	**55**	**376**	**724**	**326**	**169**	**203**	**211**	**3,94%**
OTHER NON-ADMINISTRATIVE FILES	-	-	-	-	60	61	38	-37,70%
INTERNATIONAL COOPERATION	-	-	-	-	73	74	100	35,62%
TOTAL					**302**	**338**	**349**	3,25%

**Subtotal represents the sum of abuses, agreements and concentration cases, as well as preliminary expert opinions and opinions on laws and other acts*

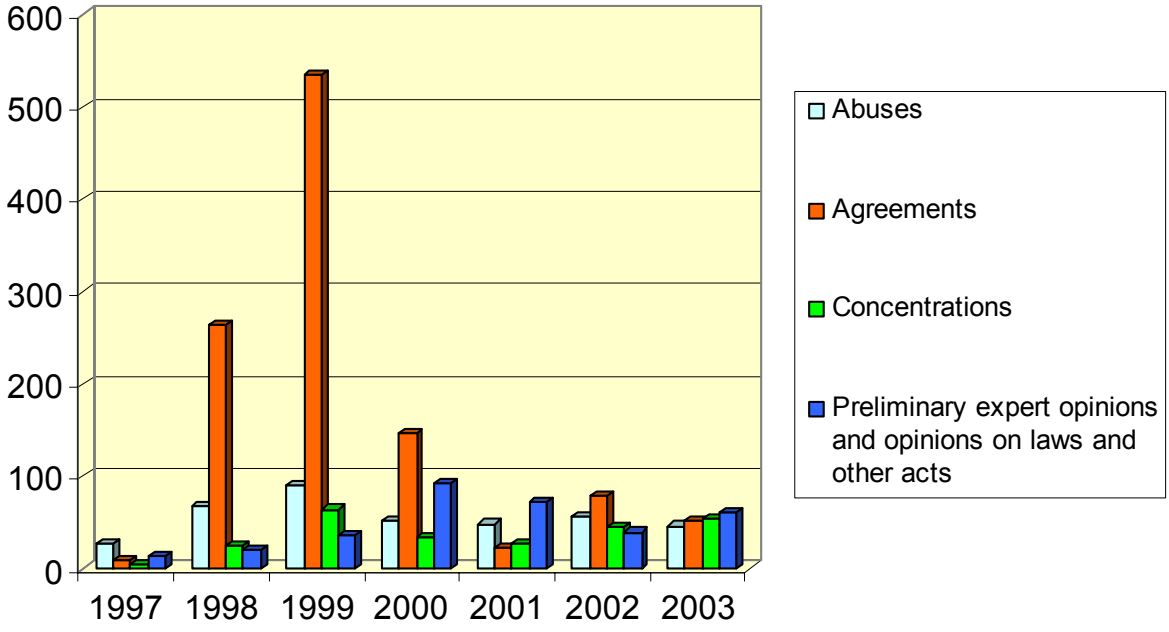
Source: CCA, Economic analysis department

Figure 3 Total number of opened files/cases in the period 1997 – 2003



Source: CCA, Economic analysis department

Figure 4 Total number of opened files/cases by category in the period 1997 – 2003



Source: CCA, Economic analysis department

2.2. Review by category of the files/cases

Table 5 Review of opened files/cases, by category, in the reporting period

DESCRIPTION	Number of files/cases	Structure in %
CONCENTRATIONS	**53**	**15,19**
acquisition of the majority of shares/share capital or obtaining the majority of voting rights	36	10,32
mergers	1	0,29
associations	2	0,57
other (lease, joint venture etc.)	14	4,01
ABUSES OF DOMINANT AND MONOPOLISTIC POSITION	**46**	**13,18**
AGREEMENTS	**51**	**14,61**
Franchising	6	1,71
Licensing	1	0,29
exclusive /selective distribution	34	9,74
other (business cooperation)	10	2,87
PRELIMINARY EXPERT OPINIONS AND OPINIONS ON LAWS AND OTHER ACTS	**61**	**17,48**
preliminary expert opinions	43	12,32
■*obligatory/non-obligatory notification of concentration*	3	-
■ *other opinions (interpretation of the provisions of the Competition Act)*	40	-
opinions on laws and other acts	18	5,16
OTHER NON-ADMINISTRATIVE FILES	**38**	**10,89**
INTERNATIONAL COOPERATION	**100**	**28,65**
international seminars&conferences	19	5,44
other means of cooperation with international institutions and competition authorities; CARDS and other projects	81	23,21
TOTAL NUMBER OF FILES/CASES:	**349**	**100,00**

Source: CCA, Economic analysis department

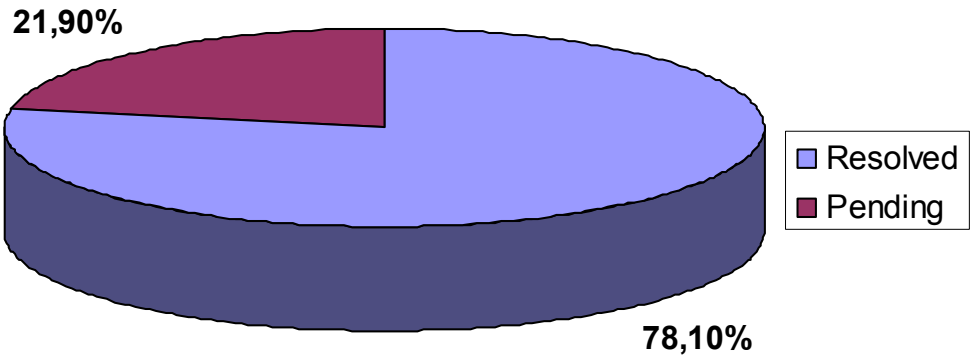
2.3. Review of resolved files/cases

Table 6 Number of resolved files/cases and files/cases pending in the reporting period compared to the total number of files/cases handled

	Resolved	Pending	Total No	Share of resolved files/cases in total
Files/cases received in the reporting period	273	76	349	78,22 %
Files/cases received in the previous periods which are pending or have been resolved in this reporting period	73	21	94	77,66 %
Total	**346**	**97**	**443**	**78,10 %**

Source: CCA, Economic analysis department

Figure 5 Structure of resolved files/cases and files/cases pending compared to total number of files/cases handled in the reporting period



Source: CCA, Economic analysis department

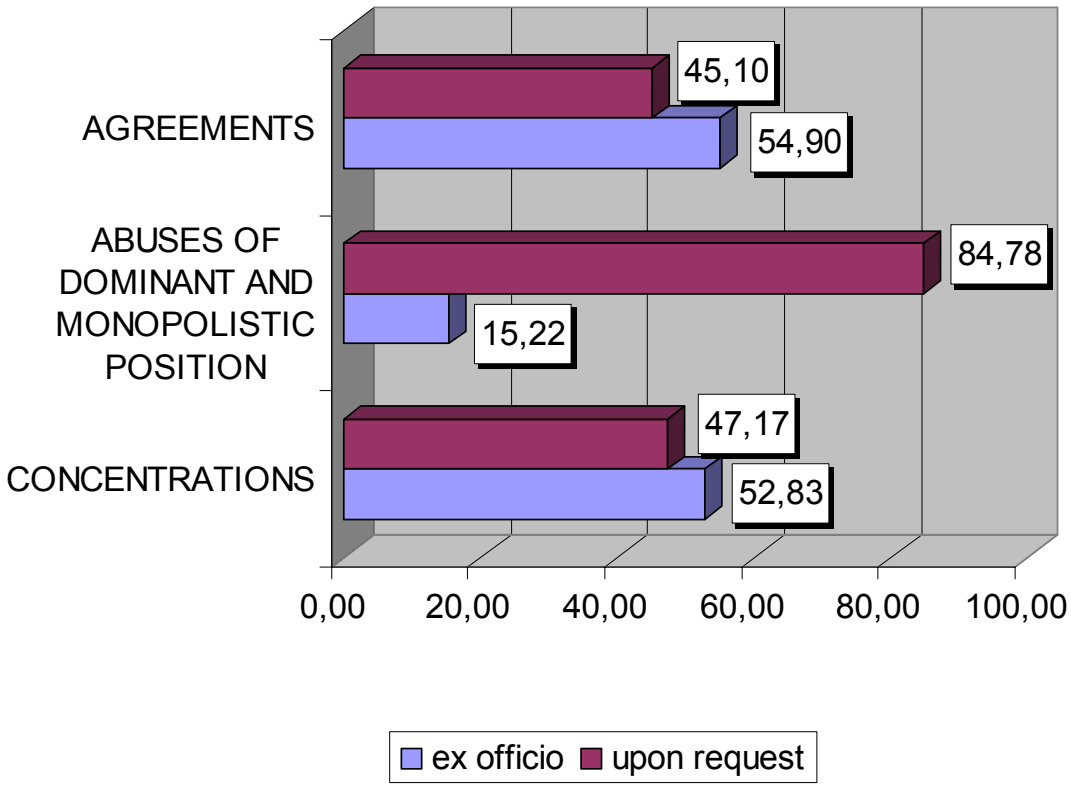
2.4. Review according to the method of initiation of proceedings

Table 7 Number of cases according to the method of initiation of proceedings, which have been opened in the reporting period

DESCRIPTION	No of cases	Structure in %
CONCENTRATIONS	**53**	**100,00**
ex officio	28	52,83
upon request	25	47,17
ABUSES OF DOMINANT AND MONOPOLISTIC POSITION	**46**	**100,00**
ex officio	7	15,22
upon request	39	84,78
AGREEMENTS	**51**	**100,00**
ex officio	28	54,90
upon request	23	45,10
Σ ex officio	63	42,00
Σ upon request	87	58,00
TOTAL NO OF CASES:	**150**	**100,00**

Source: CCA, Economic analysis department

Figure 6 Structure of cases (in %) according to the method of institution of proceedings which have been opened in the reporting period



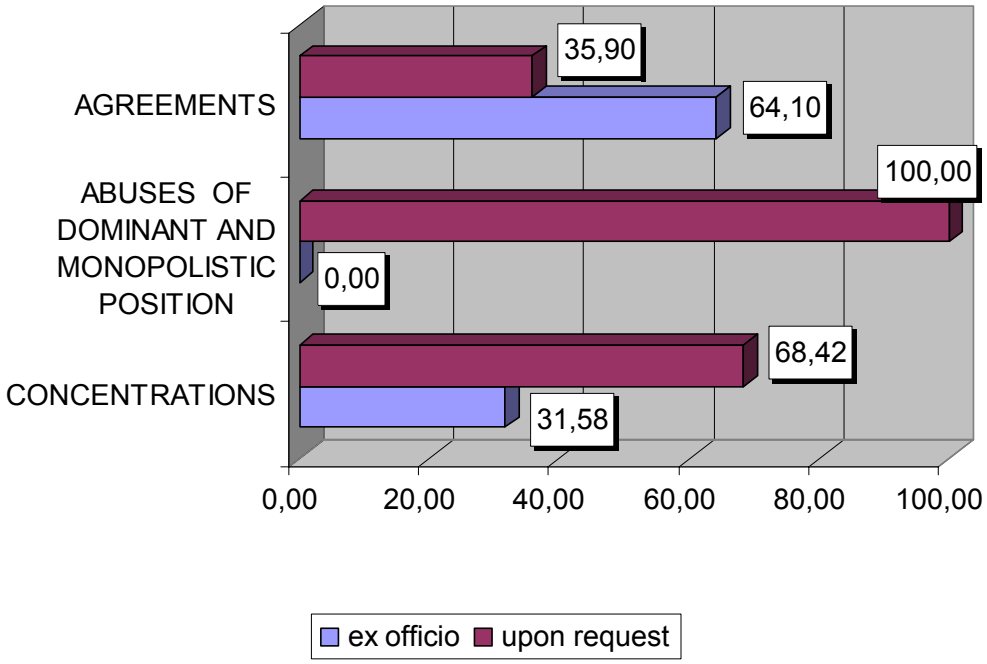
Source: CCA, Economic analysis department

Table 8 Number of cases according to the method of institution of proceedings, which have been opened in previous reporting periods, which are pending/have been resolved in this reporting period

DESCRIPTION	No of cases	Structure in %
CONCENTRATIONS	**19**	**100,00**
ex officio	6	31,58
upon request	13	68,42
ABUSES OF DOMINANT AND MONOPOLISTIC POSITION	**15**	**100,00**
ex officio	0	0,00
upon request	15	100,00
AGREEMENTS	**39**	**100,00**
ex officio	25	64,10
upon request	14	35,90
∑ ex officio	31	42,47
∑ upon request	42	57,53
TOTAL NO OF CASES:	**73**	**100,00**

Source: CCA, Economic analysis department

Figure 7 Structure of cases (in %) according to method of institution of proceedings, which have been opened in previous reporting periods, which are pending/have been resolved in this reporting period



Source: CCA, Economic analysis department

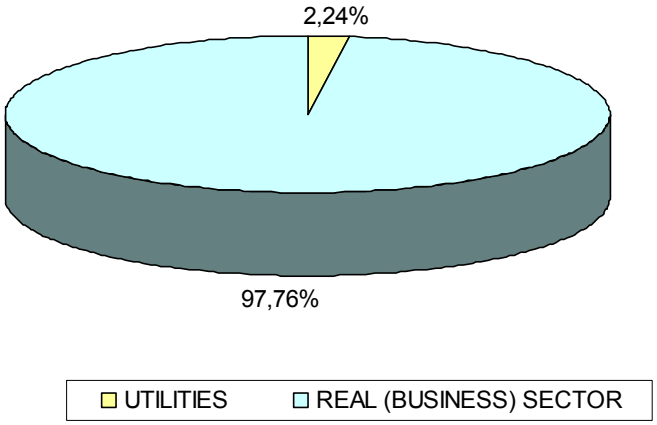
2.5. Review of cases by business activities of the parties (sectors):

Table 9 Structure of administrative cases by sectors:

	Cases opened in the previous periods	Cases opened in the reporting period	Total	Structure
UTILITIES	**2**	**3**	**5**	**2,24%**
water supply & waste water management	1	0	1	0,44%
energy & district heating supply	0	2	2	0,90%
public transport	0	0	0	-
graveyard maintenance	0	0	0	-
maintenance of municipal sanitation & waste disposal	1	1	2	0,90%
outdoor markets	0	0	0	-
REAL (BUSINESS) SECTOR	**71**	**147**	**218**	**97,76%**
manufacturing industries	**8**	**22**	**30**	**13,46%**
services	**63**	**125**	**188**	**84,30%**
● retail & wholesale	44	82	126	56,50%
● financing institutions	4	4	8	3,58%
● catering & tourism	0	3	3	1,35%
● transport	0	2	2	0,90%
● media	4	4	8	3,58%
● telecommunications	0	3	3	1,35%
● other	11	27	38	17,04%
TOTAL NO OF BUSINESS ACTIVITIES:	**73**	**150**	**223**	**100,00%**

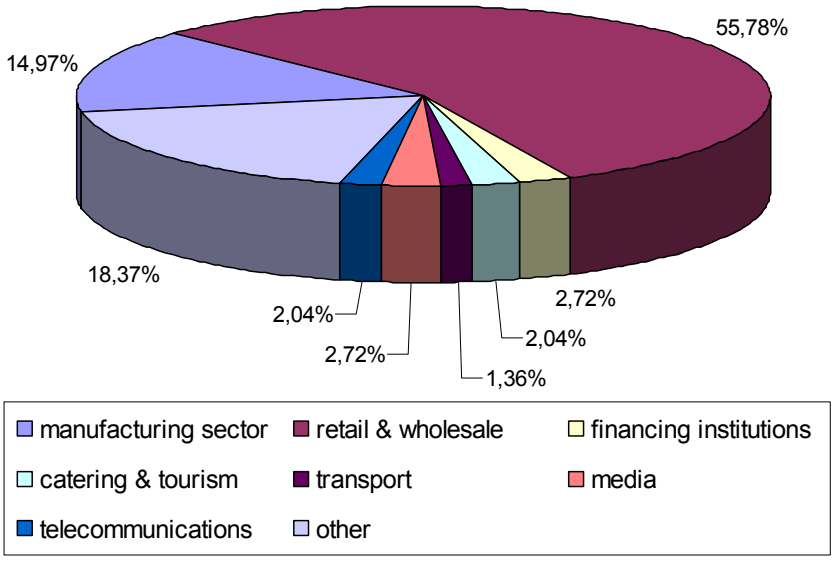
Source: CCA, Economic analysis department

Figure 8 Structure of administrative cases that have been opened in the reporting period by business activities of the parties (sectors)



Source: CCA, Economic analysis department

Figure 9 Structure of administrative cases in Real/business sector that have been opened in the reporting period



Source: CCA, Economic analysis department

2.6. Review of cases by place of establishment of the parties

Table 10 Place of establishment of the parties in the administrative cases opened in the reporting period

PLACE OF ESTABLISHMENT	AGR	ABU	CON	Total	Structure
A) Counties					
ZAGREBAČKA	3	5	4	12	3,87%
KRAPINSKO-ZAGORSKA	4	5	2	11	3,55%
SISAČKO-MOSLAVAČKA	0	2	1	3	0,97%
KARLOVAČKA	1	1	3	5	1,61%
VARAŽDINSKA	0	1	4	5	1,61%
KOPRIVNIČKO-KRIŽEVAČKA	1	1	3	5	1,61%
BJELOVARSKO-BILOGORSKA	1	3	3	7	2,26%
PRIMORSKO-GORANSKA	4	2	2	8	2,58%
LIČKO-SENJSKA	0	0	0	0	0,00%
VIROVITIČKO-PODRAVSKA	2	0	3	5	1,61%
POŽEŠKO-SLAVONSKA	0	0	1	1	0,32%
BRODSKO-POSAVSKA	0	1	0	1	0,32%
ZADARSKA	1	1	3	5	1,61%
OSJEČKO-BARANJSKA	3	4	5	12	3,87%
ŠIBENSKO-KNINSKA	0	0	1	1	0,32%
VUKOVARSKO-SRIJEMSKA	1	0	2	3	0,97%
SPLITSKO-DALMATINSKA	0	4	7	11	3,55%
ISTARSKA	0	5	2	7	2,26%
DUBROVAČKO-NERETVANSKA	2	2	1	5	1,61%
MEĐIMURSKA	0	2	4	6	1,94%
GRAD ZAGREB	50	58	42	150	48,40%
Total:	**73**	**97**	**93**	**263**	**84,84%**
B) ABROAD (parties with their place of establishment outside the territory of the Republic of Croatia)	**33**	**0**	**14**	**47**	**15,16%**
TOTAL (A+B):	**106**	**97**	**107**	**310**	**100,00%**

AGR – agreements, ABU – abuses of dominant/monopolistic position,
CON - concentrations

Source: CCA, Economic analysis department

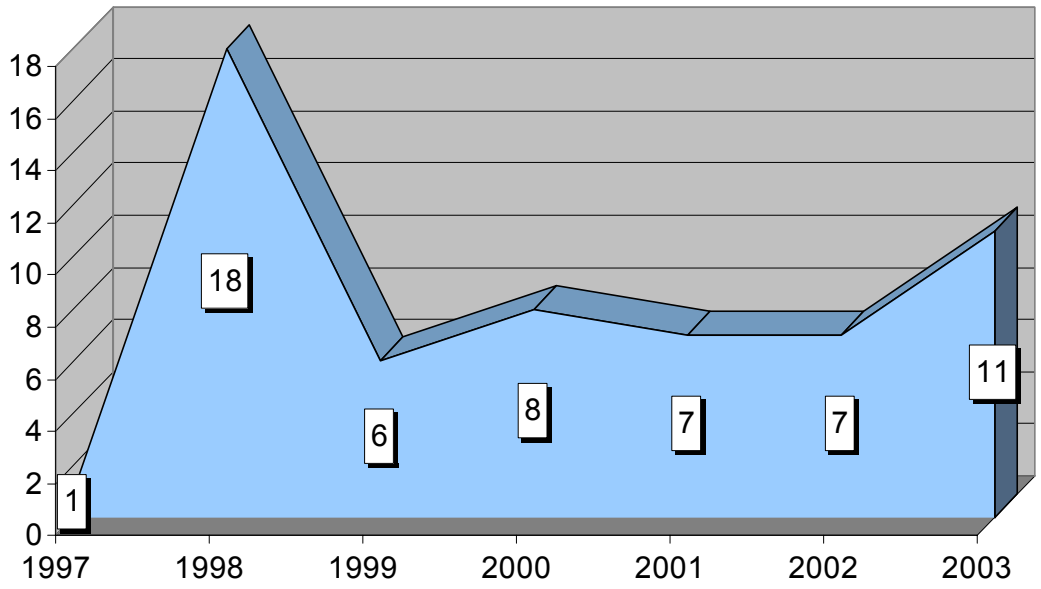
2.7. Review of cases by number of initiated proceedings at the Administrative Court of the Republic of Croatia and misdemeanour courts

Table 11 Claims filed at the Administrative Court of the Republic of Croatia, in the period 1997 – 2003

	1997	1998	1999	2000	2001	2002	2003	Total	Structure
TOTAL	**1**	**18**	**6**	**8**	**7**	**7**	**11**	**58**	**100,00%**
Pending	**0**	**3**	**3**	**6**	**6**	**7**	**8**	**33**	**56,90%**
Resolved	**1**	**15**	**3**	**2**	**1**	**0**	**3**	**25**	**43,10%**
Claim accepted	0	2	0	1	0	0	1	4	16,00%
Claim denied	1	11	2	1	1	0	1	17	68,00%
Claim dismissed	0	2	0	0	0	0	0	2	8,00%
Claim withdrawn	0	0	1	0	0	0	1	2	8,00%

Source: CCA, Economic analysis department

Figure 10 Number of claims filed at the Administrative Court of the Republic of Croatia, period 1997 – 2003



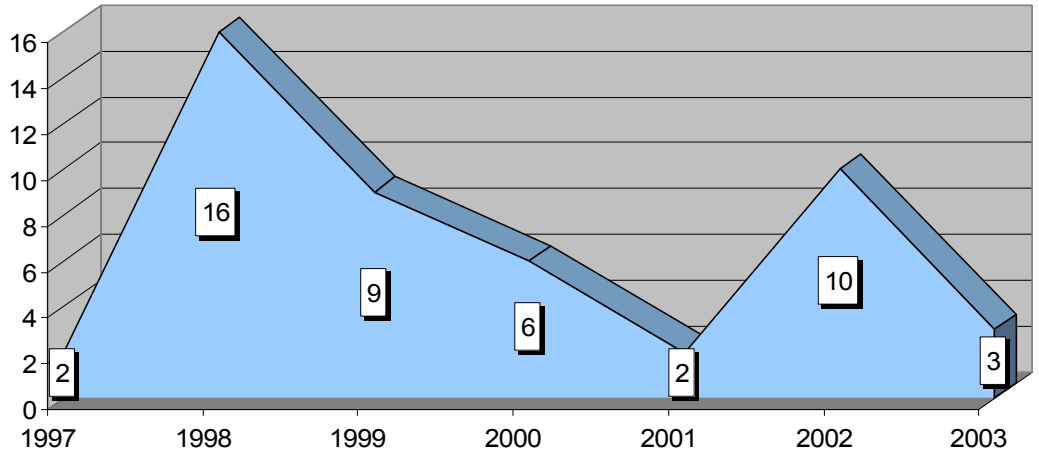
Source: CCA, Economic analysis department

Table 12 Number of claims at misdemeanour courts of the Republic of Croatia, period 1997 – 2003

	1997	1998	1999	2000	2001	2002	2003	Total	Structure
TOTAL	**2**	**16**	**9**	**6**	**2**	**10**	**3**	**48**	**100,00%**
Pending	**0**	**4**	**0**	**0**	**2**	**5**	**0**	**11**	**22,92%**
Resolved	**2**	**12**	**9**	**6**	**0**	**5**	**3**	**37**	**77,08%**
Penalty	0	2	1	1	0	0	0	**4**	10,81%
Claim denied	0	0	2	0	0	0	0	**2**	5,41%
Claim dismissed	0	2	2	2	0	0	0	**6**	16,22%
Statute of limitation	0	7	2	1	0	0	0	**10**	27,03%
Claim withdrawn	2	1	0	1	0	5	3	**12**	32,43%
Suspension/deferral of decision of proceedings	0	0	2	1	0	0	0	**3**	8,11%

Source: CCA, Economic analysis department

Figure 11 Number of claims filed to the magistrate courts of the Republic of Croatia, 1997- 2003



Source: CCA, Economic analysis department

2.8. Number of files/cases presented at the meetings of the former Competition Advisory Body and Competition Council

During the year 2003, the former Competition Advisory Body held four meetings in the period 1st January – 8th April 2003, and seven meetings were held by the Competition Council in the period 29th October – 31st December 2003.

Table 13 Number of files/cases presented at the meetings of the former Competition Advisory Body [86] in the reporting period

Description	No of files/cases	Structure
I Total no of administrative cases (1+ 2+ 3)	52	68%
1 Agreements	26	34%
2 Abuses	9	12%
3 Concentration	17	22%
II Opinions on laws and other acts	6	8%
III Other expert opinions	4	5%
IV Other files	15	19%
Total:	77	100%

Source: CCA, Economic analysis department

Table 14 Number of files/cases presented at the meetings of the Competition Council in the reporting period[87]

Description	No of files/cases	Structure
I Total no of administrative cases (1+ 2+ 3)	41	78%
1 Agreements	23	44%
2 Abuses	7	13%
3 Concentration	11	21%
II Opinions on laws and other acts	3	6%
III Other expert opinions	2	4%
IV Other files	6	12%
Total:	52	100%

Source: CCA, Economic analysis department

[86] In the period 1st January 2003 - 8th April 2003.
[87] In the period 29th October 2003 – 31st December 2003.

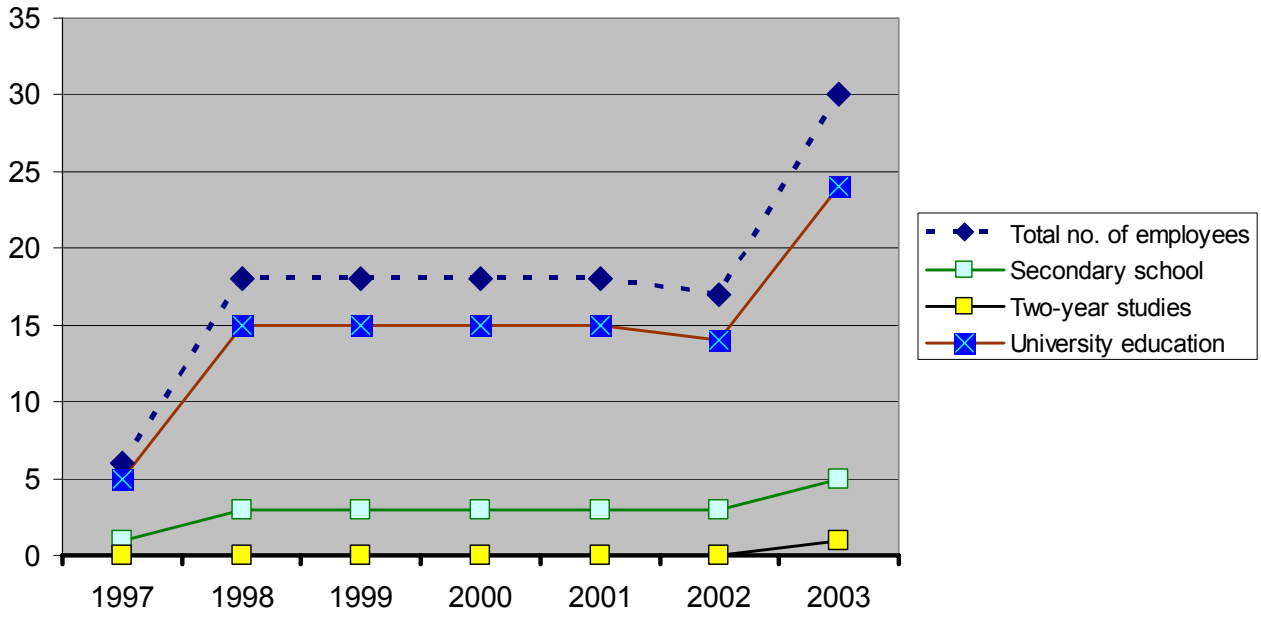
Appendix 3 Number and structure of employees of the CCA

Table 15 Table of comparison of the total No of employees of the Agency

	2002	2003	Ratio in % 2003/2002
Secondary school education	3	5	+ 66,67%
Two-year studies	-	1	-
University education	14	24	+ 71,43%
Total no of employees	**17**	**30**	**+ 76,47%**

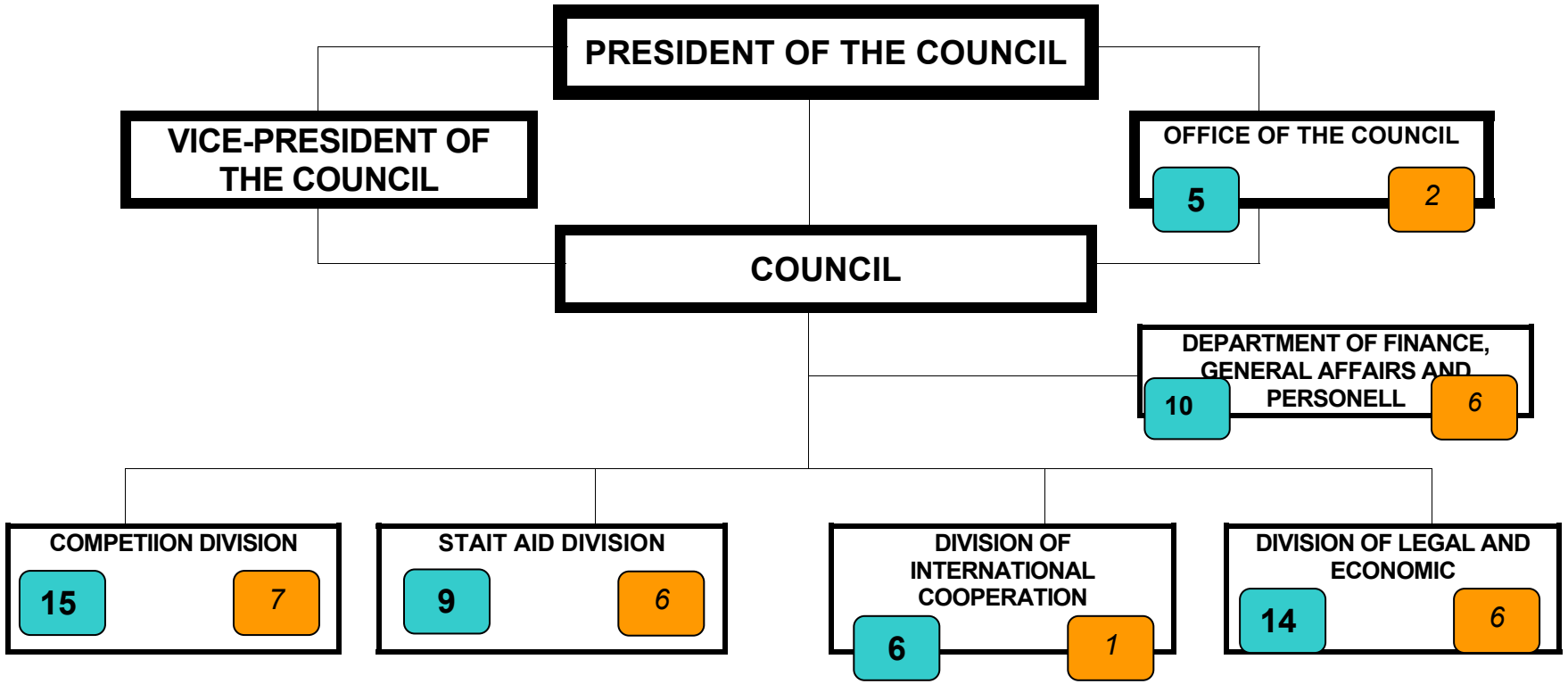
Source: CCA, Economic analysis department

Figure 12 Changes in number of employees in the period 1997 – 2003



Source: CCA, Economic analysis department

Figure 13 Comparison of the current number of employees with the number estimated necessary for the enforcement of the Competition Act according to the systematic job specification under the Ordinance on internal organisation of CCA

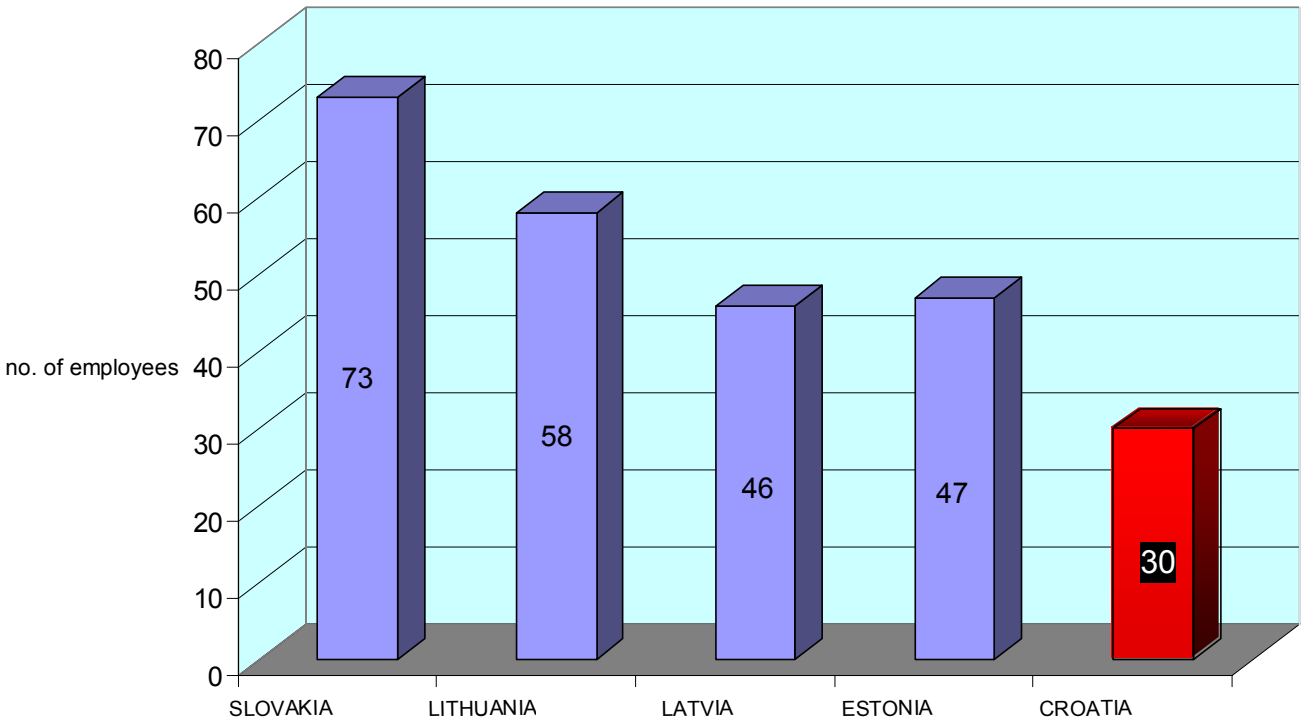


LEGEND:

x - necessary No of employees according to the job systematization under the Ordinance on internal organisation of the CCA, according to the particular organisational units

x – number of employees at the moment of drafting of this Annual Report

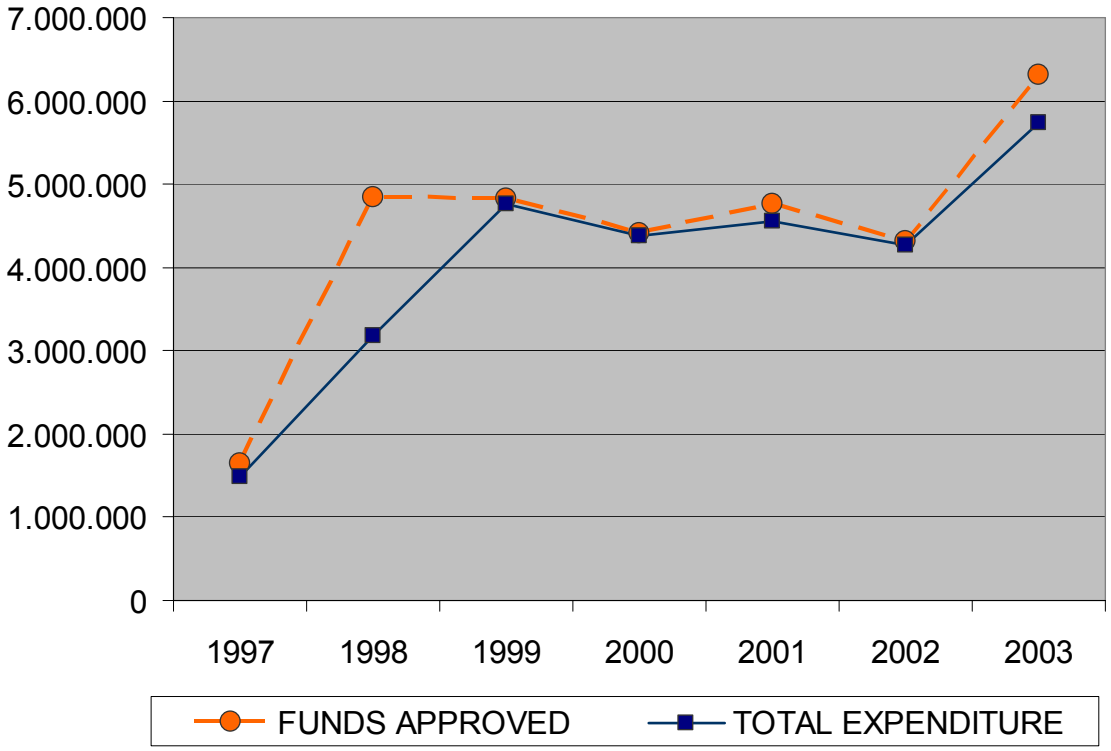
Figure 14 Number of employees in some other national competition authorities in the year 2003



Source: official web sites of the national competition authorities, visited on the 1st of September 2004

Appendix 4 Budget of the Agency

Figure 15 Funds approved from the Central Budget and total expenditure of the Agency, in the period 1997 - 2003



Source: CCA, Economic analysis department

Table 16 Funds approved (after the Budget revision) and total expenditure of the Agency, in the in period 1997 – 2003

In Croatian Kuna

Position	1997	1998	1999	2000	2001	2002	2003	Ratio 2003/2002
A. FUNDS APPROVED FROM THE CENTRAL BUDGET	**1.648.361**	**4.846.365**	**4.826.278**	**4.406.499**	**4.760.692**	**4.314.820**	**6.317.499**	**146**
1. Current expenditure	1.012.618	2.418.807	4.510.153	4.335.867	4.258.346	4.116.240	5.047.263	123
1.1. salaries	287.941	1.270.458	2.981.755	2.940.875	2.598.930	2.489.800	3.099.483	124
1.2. material expenditure	724.677	1.148.349	1.528.398	1.394.992	1.659.416	1.626.440	1.947.780	120
2. Capital expenditure	476.943	755.898	253.211	50.328	297.640	157.170	682.615	434
B. TOTAL EXPENDITURE (1.+2.)	**1.489.561**	**3.177.705**	**4.763.364**	**4.386.195**	**4.555.986**	**4.273.410**	**5.729.878**	**134**
C. REMAINING (A-B)	**158.800**	**1.668.660**	**62.914**	**20.304**	**204.706**	**41.410**	**587.621**	-

Source: CCA, Economic analysis department

Appendix 5 State Audit Office Report

This Appendix presents the opinion of the State Audit Office, published in the Report on Audit of Financial Statements and Operations of the Agency in 2003, Class: 041-01/04-01/185, No: 613-01-02-04-6. The audit was conducted in the period from 24 May until 8 July 2004.

Quotation:"

III. OPINION

1. In accordance with the provisions of the State Audit Act, we have audited the financial statements and operations of the Croatian Competition Agency as at 31 December 2003 and for the year then ended, and have expressed an unconditional opinion thereon.

2. The audit was conducted in accordance with International Standards on Auditing of the International Organisation of Supreme Audit Institutions – INTOSAI.

3. In the opinion of the State Audit Office, the financial statements of the Croatian Competition Agency for the year ended 31 December 2003, present fairly and accurately, in all material aspects, operations during the year and the position at the year-end, as well as fair financial position, results of financial operations and expenses in accordance with their designated purpose.

Financial statements were prepared in accordance with regulations in the areas of accounting of state budget and state budget beneficiaries, while the operations were run in accordance with the regulations on the Agency's authority."

Appendix 6 Overview of the activities of the Agency in 2002

STATISTICAL REVIEW OF THE ACTIVITIES OF THE AGENCY IN THE PERIOD from 1st March 2002 – 28th February 2003

Statistical review of the activities of the Agency consists of three respective parts:

- Number and structure of the employees of the Agency;
- Review of the files/cases;
- Budget of the Agency.

All covered files/cases were handled in the period **1st March 2002 - 28th February 2003,** which represents the reporting period of the Report for 2002.

1. NUMBER AND STRUCTURE OF THE EMPLOYEES OF THE AGENCY

2. REVIEW OF THE CASES CARRIED OUT
   - 2.1. Total number of files/cases handled
   - 2.2. Review according to the category of files/cases
   - 2.3. Review of the share of resolved files/cases in the total no of files/cases
   - 2.4. Review of the files/cases according to the method of imitation of the proceedings
   - 2.5. Review of files/cases by business activities of the parties
   - 2.6. Review of files/cases by place of establishment of the parties
   - 2.7. Review of files/cases by number of initiated administrative and misdemeanour proceedings

3. BUDGET OF THE AGENCY

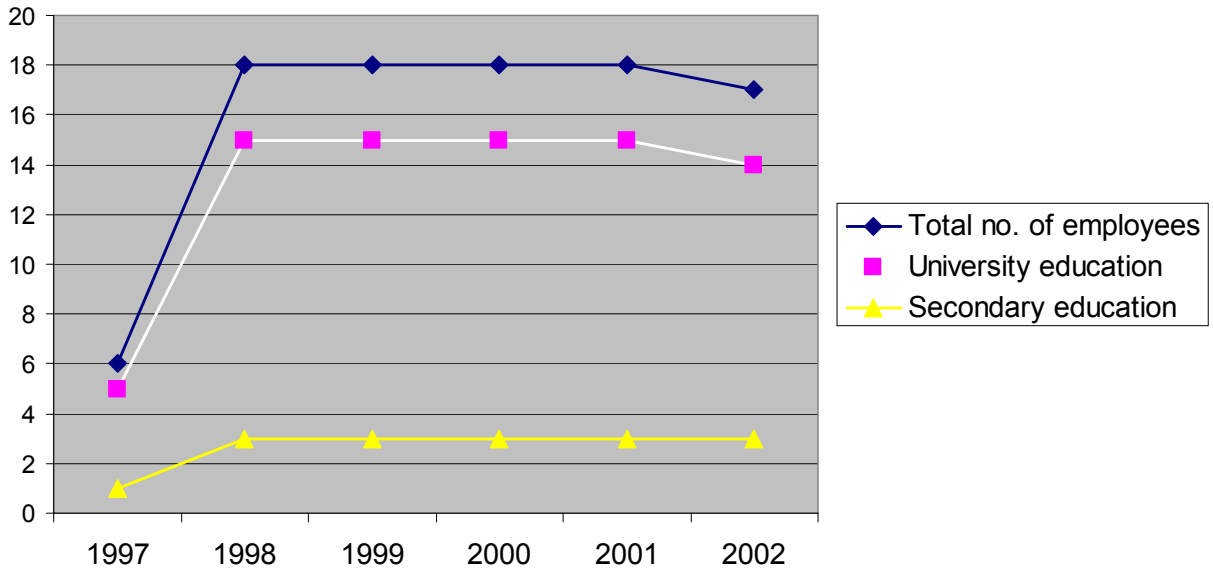
1. Number and structure of the employees of the Agency

Table 1 Comparison of the total No of the employees of the Agency

	2001	2002	Ratio in % 2002/2001
Total no of the employees	**18**	**17**	**-5,56%**
University education	15	14	-6,67%
Secondary school education	3	3	0,00%

Source: CCA; Department for Research and Statistics

Figure 1 Changes in number of employees in the period 1997 – 2002



Source: CCA; Department of Research and Statistics

2. REVIEW OF THE FILES/CASES WHICH WERE HANDLED

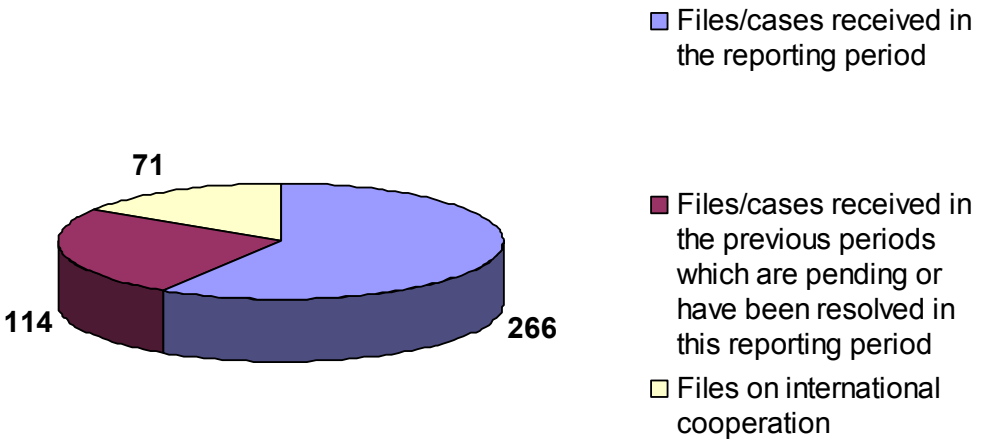
2.1. Total number of files/cases which were handled in the reporting period

Table 2 Total number of files/cases handled in the reporting period

	Number of files/cases
Files/cases received in the reporting period	266
Files/cases received in the previous periods which are pending or have been resolved in this reporting period	114
Files on international cooperation	71
Total	**451**

Source: CCA; Department of Research and Statistics

Figure 2 Total number of files/cases handled in the reporting period



Source: CCA; Department of Research and Statistics

Table 3 Files/cases opened in the reporting period

	Resolved	Pending	Total	Share in total no of cases (in %)
Abuses	45	11	56	21,05
Concentrations	26	18	44	16,54
Agreements	51	28	79	29,70
Total no of administrative cases	**122**	**57**	**179**	**67,29**
Preliminary expert opinions	22	2	24	9,02
Other non-administrative files	36	12	48	18,05
Opinions on laws and other acts	11	4	15	5,64
Total no of non-administrative files	**69**	**18**	**87**	**32,71**
Total number of files/cases	**191**	**75**	**266**	**100,00**
Share in total no of files/cases (in %)	71,80	28,20	100,00	

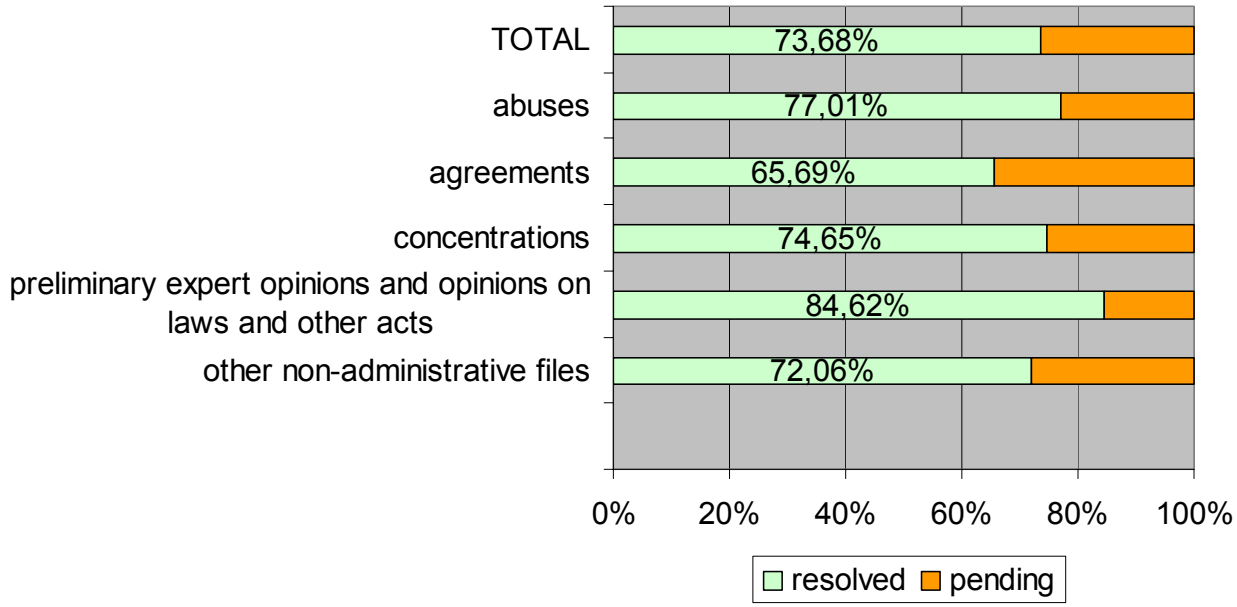
Source: CCA; Department of Research and Statistics

Table 4 Files/cases opened in the previous periods which are pending or have been resolved in this reporting period

	Resolved	Pending	Total	Share in total no of files/cases (in %)
Abuses	22	9	31	27,19
Concentrations	27	0	27	23,68
Agreements	16	7	23	20,18
Total no of administrative cases	**65**	**16**	**81**	**71,05**
Preliminary legal opinions	9	2	11	9,65
Other non-administrative files	13	7	20	17,54
Opinions on laws and other acts	2	0	2	1,75
Total no of non-administrative files	**24**	**9**	**33**	**28,95**
Total number of files/cases	**89**	**25**	**114**	**100,00**
Share in total no of files/cases (in %)	78,07	21,93	100,00	

Source: CCA; Department of Research and Statistics

Figure 3 Share of resolved files/cases handled in the reporting period, by category



Source: CCA; Department of Research and Statistics

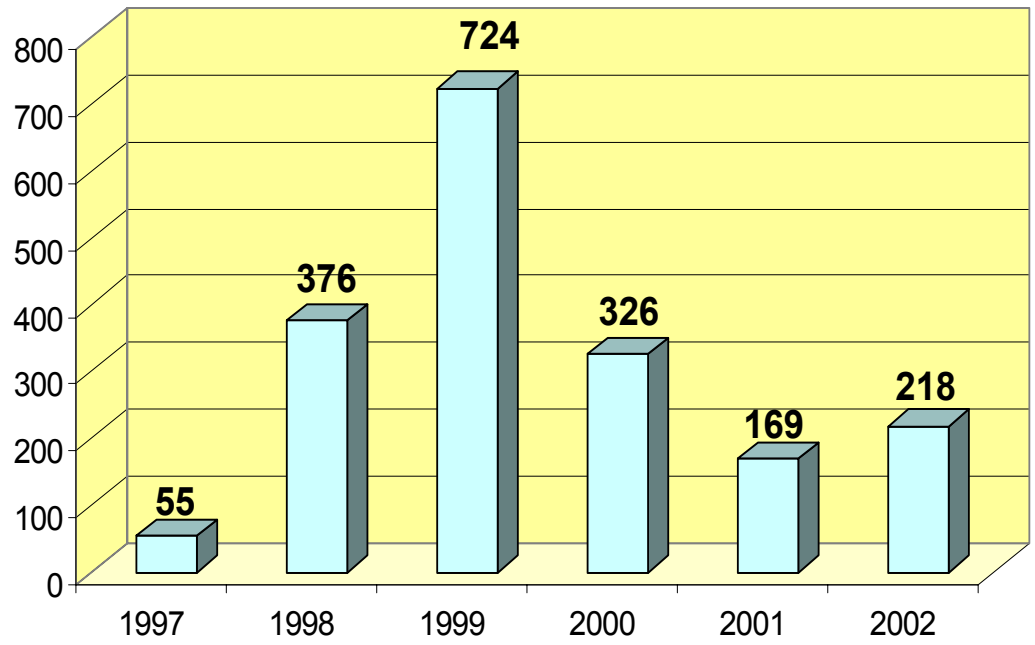
Table 5 Comparative review of the total number of files/cases since the establishment of the Agency

	1997	1998	1999	2000	2001	2002	Radio in % 2003/2002
ADMINISTRATIVE CASES:							
ABUSES	27	68	90	52	48	56	16,67%
AGREEMENTS	9	264	534	147	23	79	243,48%
CONCENTRATIONS	5	25	64	34	26	44	69,23%
TOTAL:	**41**	**357**	**688**	**233**	**97**	**179**	84,54%
NON-ADMINISTRATIVE FILES:							
PRELIMINARY EXPERT OPINIONS AND OPINIONS ON LAWS AND OHTER ACTS	14	19	36	93	72	39	-45,83%
Subtotal*:	**55**	**376**	**724**	**326**	**169**	**218**	28,99%
OTHER NON-ADMINISTRATIVE FILES	-	-	-	-	60	48	-20,00%
INTERNATIONAL COOPERATION	-	-	-	-	73	71	-2,74%
TOTAL:					**302**	**337**	11,59%

** Subtotal represents the sum of abuses, agreements and concentration cases, as well as preliminary expert opinions and opinions on laws and other acts*

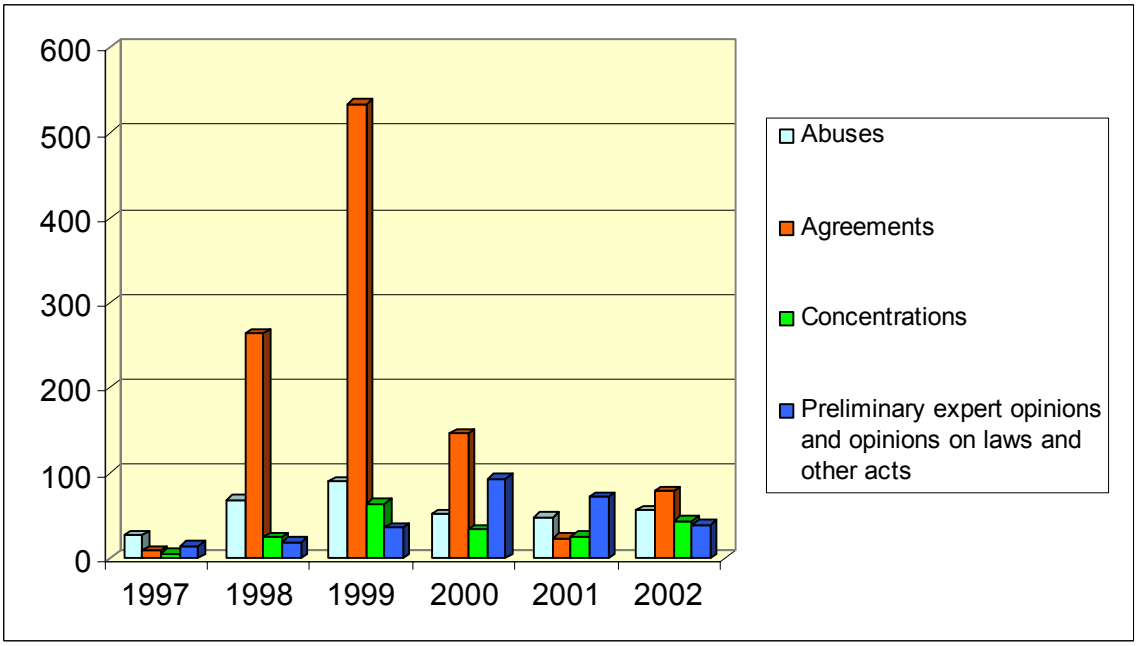
Source: CCA; Department of Research and Statistics

Figure 4 Total number of opened files/cases in the period 1997 – 2002



Source: CCA; Department of Research and Statistics

Figure 5 Total number of opened files/cases in the period 1997 – 2002



Source: CCA; Department of Research and Statistics

2.2. Review by category of the file/case

Table 6 Review of opened files/cases, by category, in the reporting period

DESCRIPTION	Number of files/cases	Structure in %
CONCENTRATIONS	**44**	**13,06**
acquisition of the majority of shares/share capital or obtaining the majority of voting rights	37	10,98
mergers	4	1,19
associations	3	0,9
ABUSES OF DOMINANT AND MONOPOLISTIC POSITION	**56**	**16,62**
AGREEMENTS	**79**	**23,44**
franchising	27	8,01
licensing	10	2,97
exclusive /selective distribution	30	8,90
other (business cooperation)	12	3,56
PRELIMINARY EXPERT OPINIONS AND OPINIONS ON LAWS AND OTHER ACTS	**39**	**11,57**
preliminary expert opinions	24	7,12
■*obligatory/non-obligatory notification of concentration*	5	-
■ *other opinions* (interpretation of the provisions of the Competition Act, other)	19	-
opinions on laws and other acts	15	4,45
OTHER NON-ADMINISTRATIVE FILES	**48**	**14,24**
INTERNATIONAL COOPERATION	**71**	**21,07**
international seminars&conferences	15	4,45
other means of cooperation with international institutions and competition authorities; CARDS and other projects	56	16,62
TOTAL NUMBER OF FILES/CASES:	**337**	**100,00**

Source: CCA; Department of Research and Statistics

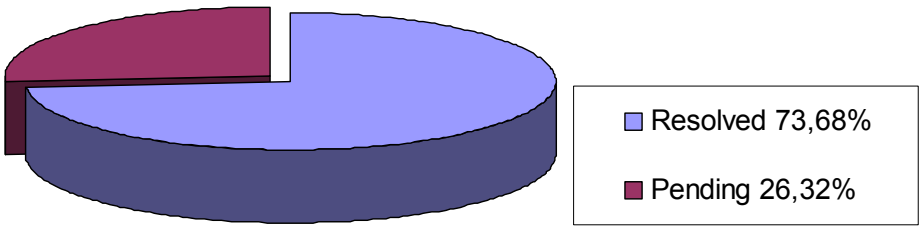
2.3. Review of resolved files/cases

Table 7 Number of resolved files/cases and files/cases pending in the reporting period compared to total number of files/cases handled

	Resolved	Pending	Total	Share of resolved files/cases in total (in %)
Files/cases received in the reporting period	191	75	266	71,80
Files/cases received in the previous periods which are pending or have been resolved in this reporting period	89	25	114	78,07
Total	**280**	**100**	**380**	**73,68**

Source: CCA; Department of Research and Statistics

Figure 6 Structure of resolved files/cases and files/cases pending compared to total number of files/cases handled in the reporting period



Source: CCA; Department of Research and Statistics

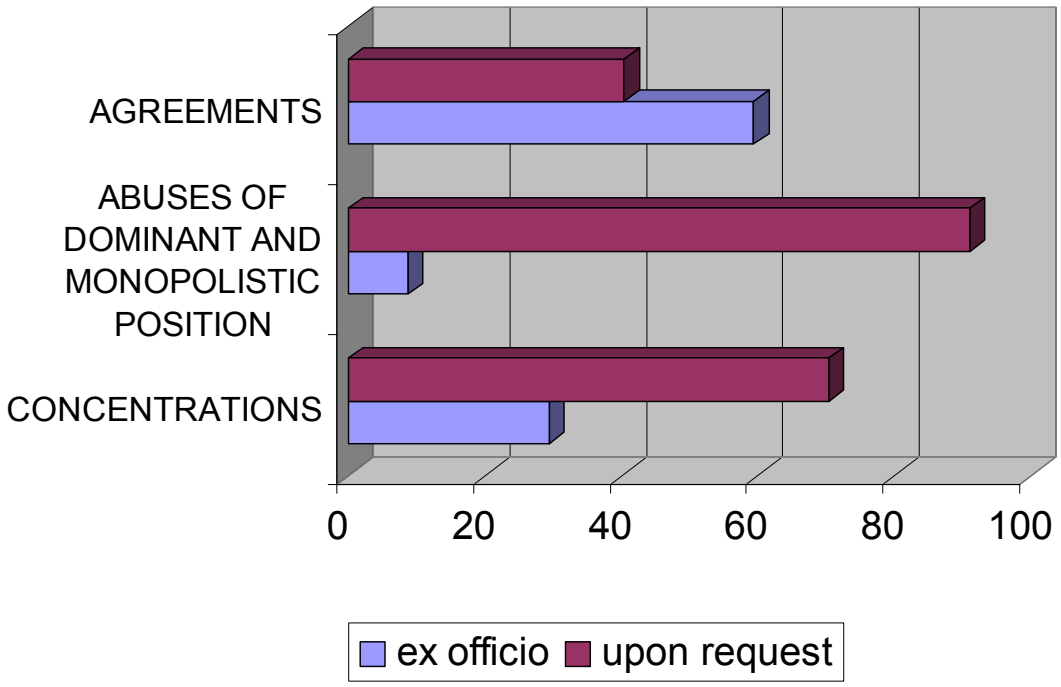
2.4. Review according to the method of initiation of proceedings

Table 8 Number of cases according to the method of initiation of proceedings, which have been opened in the reporting period

DESCRIPTION	No of cases	Structure in %
CONCENTRATIONS	**44**	**100,00%**
ex officio	13	29,54
upon request	31	70,46
ABUSES OF DOMINANT AND MONOPOLISTIC POSITION	**56**	**100,00**
ex officio	5	8,93
upon request	51	91,07
AGREEMENTS	**79**	**100,00**
ex officio	47	59,49
upon request	32	40,51
∑ ex officio	65	36,31
∑ upon request	114	69,69
TOTAL NO OF CASES:	**179**	**100,00**

Source: CCA; Department of Research and Statistics

Figure 7 Structure of cases (in %) according to the method of initiation of proceedings, which have been opened in the reporting period



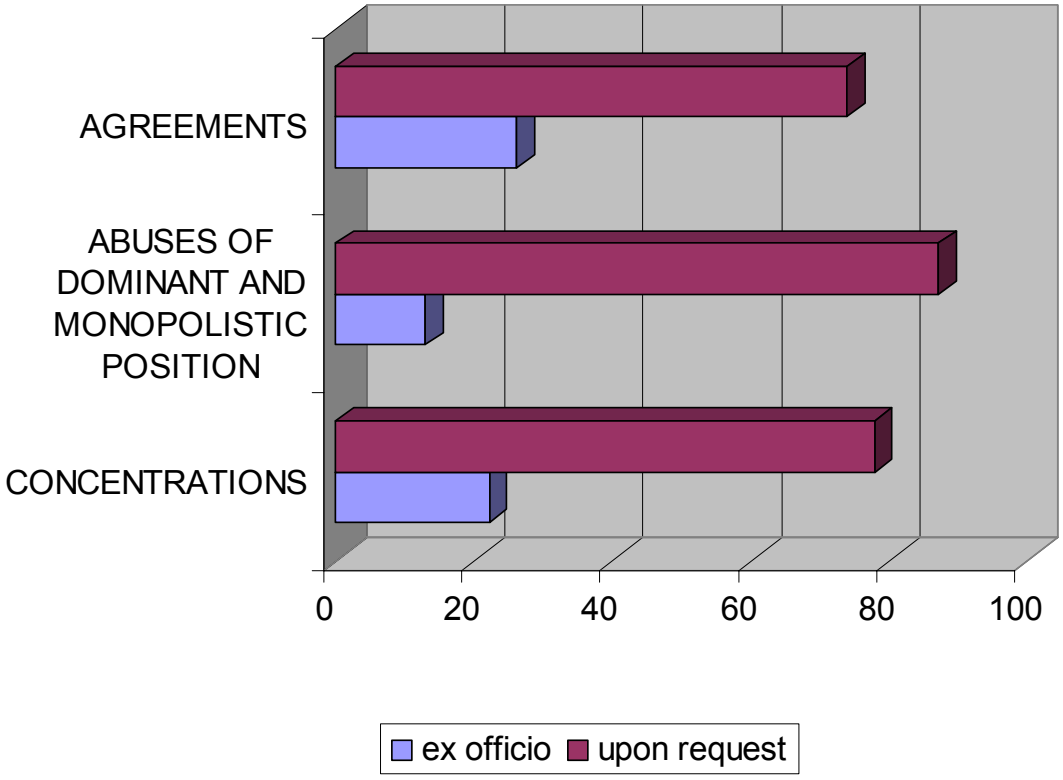
Source: CCA; Department of Research and Statistics

Table 9 Number of cases according to the method of initiation of proceedings, which have been opened in previous reporting periods, which are pending/have been resolved in this reporting period

DESCRIPTION		No of cases	Structure in %
CONCENTRATIONS		**27**	**100,00**
ex officio		6	22,22
upon request		21	77,78
ABUSES OF DOMINANT AND MONOPOLISTIC POSITION		**31**	**100,00**
ex officio		4	12,90
upon request		27	87,10
AGREEMENTS		**23**	**100,00**
ex officio		6	26,09
upon request		17	73,91
∑	ex officio	16	19,75
	upon request	65	80,25
TOTAL NO OF CASES:		**81**	**100,00**

Source: CCA; Department of Research and Statistics

Figure 8 Structure of cases according to the method of initiation of proceedings, which have been opened in previous reporting periods, which are pending/have been resolved in this reporting period



Source: CCA; Department of Research and Statistics

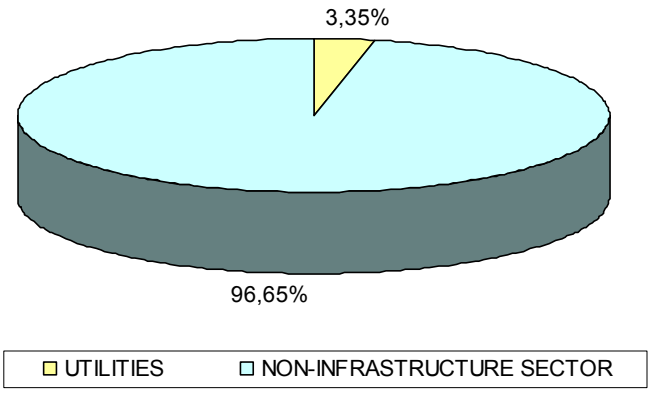
2.5. Review of cases by business activities of the parties (sectors)

Table 10 Structure of administrative cases by business activities:

	Cases opened in the previous periods	Cases opened in the reporting period	Total	Structure
UTILITIES	**5**	**6**	**11**	**4,24%**
water supply & waste water management	-	1	1	
energy & district heating supply	1	3	4	
public transport	1	-	1	
graveyard maintenance	2	-	2	
maintenance of municipal sanitation & waste disposal	1	1	2	
outdoor markets	-	1	1	
NON-INFRASTRUCTURE SECTOR	**76**	**173**	**249**	**95,76%**
manufacturing industries	**21**	**32**	**53**	**20,38%**
services	**55**	**141**	**196**	**75,38%**
● retail & wholesale	21	77	98	37,69%
● financing institutions	7	18	25	9,62%
● catering & tourism	6	4	10	3,85%
● transport	3		3	1,16%
● other	18	42	60	23,08%
TOTAL NO OF BUSINESS ACTIVITIES	**81**	**179**	**260**	**100,00%**

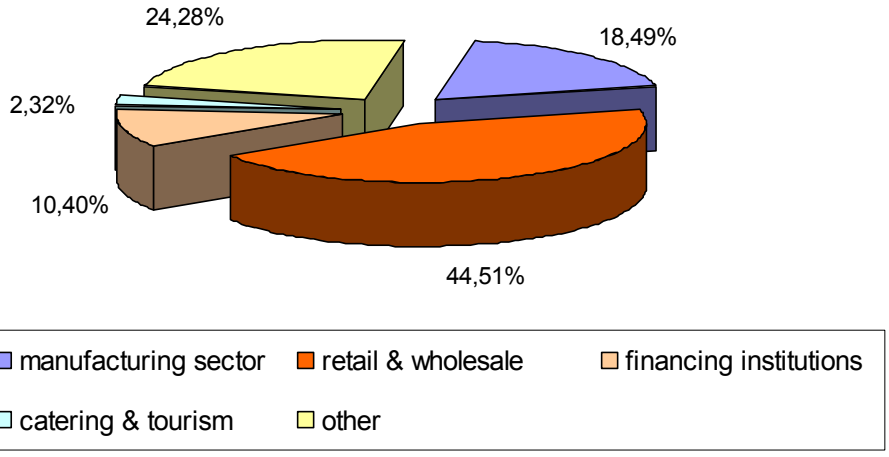
Source: CCA; Department of Research and Statistics

Figure 9 Structure of the administrative cases that have been opened in the reporting period by business activities of the parties (sectors)



Source: CCA; Department of Research and Statistics

Figure 10 Structure of the administrative cases of Real/business sector that have been opened in the reporting period



Source: CCA; Department of Research and Statistics

2.6. Review of cases by place of establishment of the parties

Table 11 Place of establishment of the parties in administrative cases in the reporting period

PLACE OF ESTABLISHMENT	Total	Structure
A) COUNTIES		
ZAGREBAČKA	12	3,18%
KRAPINSKO-ZAGORSKA	5	1,33%
SISAČKO-MOSLAVAČKA	6	1,59%
KARLOVAČKA	10	2,65%
VARAŽDINSKA	5	1,33%
KOPRIVNIČKO-KRIŽEVAČKA	5	1,33%
BJELOVARSKO-BILOGORSKA	0	0,00%
PRIMORSKO-GORANSKA	8	2,12%
LIČKO-SENJSKA	0	0,00%
VIROVITIČKO-PODRAVSKA	0	0,00%
POŽEŠKO-SLAVONSKA	0	0,00%
BRODSKO-POSAVSKA	2	0,53%
ZADARSKA	8	2,12%
OSJEČKO-BARANJSKA	15	3,98%
ŠIBENSKO-KNINSKA	2	0,53%
VUKOVARSKO-SRIJEMSKA	1	0,27%
SPLITSKO-DALMATINSKA	24	6,37%
ISTARSKA	12	3,18%
DUBROVAČKO-NERETVANSKA	5	1,33%
MEĐIMURSKA	3	0,80%
GRAD ZAGREB	178	47,21%
Total:	**301**	**79,90%**
B) ABROAD (parties with their place of establishment outside of territory of the Republic Croatia)	**76**	**20,16%**
TOTAL (A+B):	**377**	**100,00%**

Source: CCA, Department of Research and Statistics

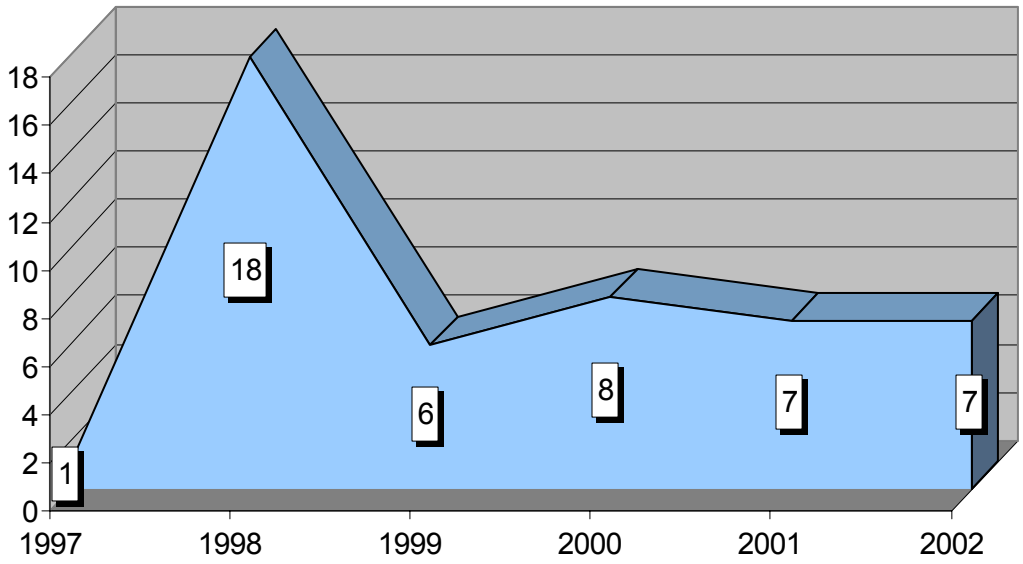
2.7. Review of cases by number of initiated proceedings at the Administrative Court of the Republic of Croatia and misdemeanour courts

Table 12 Claims filed to the Administrative Court of the Republic of Croatia in period 1997-2002

	1997	1998	1999	2000	2001	2002	Total	Structure
Total	**1**	**18**	**6**	**8**	**7**	**7**	**47**	**100,00%**
Pending	**0**	**3**	**3**	**6**	**6**	**7**	**25**	**53,19%**
Resolved	**1**	**15**	**3**	**2**	**1**	**0**	**22**	**46,81%**
Claim accepted	0	2	0	1	0	0	3	13,64%
Claim denied	1	11	2	1	1	0	16	72,73%
Claim dismissed	0	2	0	0	0	0	2	9,09%
Claim withdrawn	0	0	1	0	0	0	1	4,54%

Source: CCA; Department of Research and Statistics

Figure 11 Number of claims filed to the Administrative Court of the Republic of Croatia in period 1997-2002



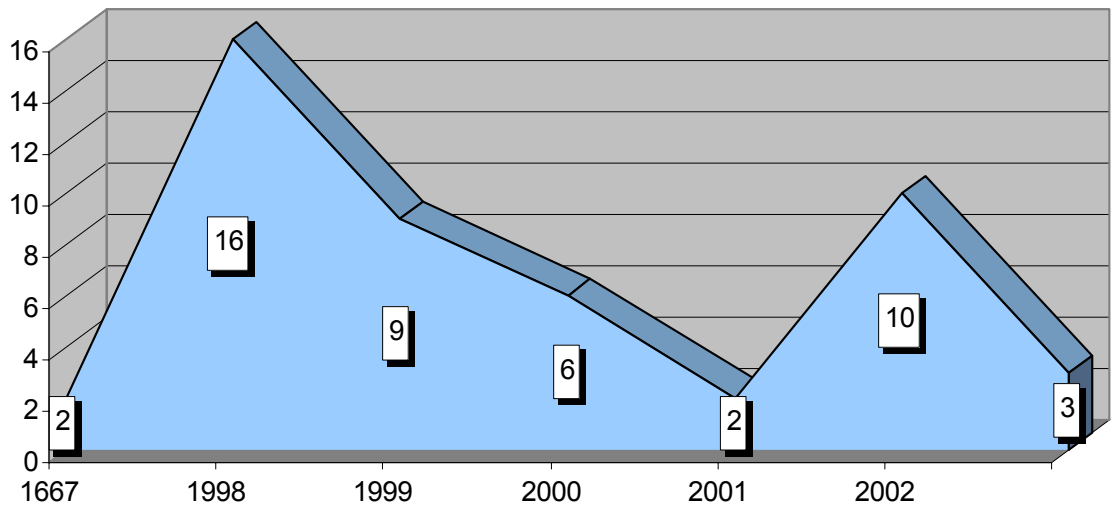
Source: CCA, Department of Research and Statistics

Table 13 Number of claims filed to the magistrate courts of the Republic of Croatia in period 1997-2002

	1997	1998	1999	2000	2001	2002	Total	Structure
UKUPNO	**2**	**16**	**9**	**6**	**2**	**10**	**45**	**100,00%**
Pending	**0**	**4**	**0**	**0**	**2**	**5**	**11**	**24,44%**
Resolved	**2**	**12**	**9**	**6**	**0**	**5**	**34**	**75,56%**
Penalty	0	2	1	1	0	0	**4**	11,76%
Claim denied	0	0	2	0	0	0	**2**	5,88%
Claim dismissed	0	2	2	2	0	0	**6**	17,65%
Statute of limitation	0	7	2	1	0	0	**10**	29,42%
Withdrawal	2	1	0	1	0	5	**9**	26,47%
Termination of proceedings/suspension of rendering of decision	0	0	2	1	0	0	**3**	8,82%

Source: CCA, Department for Research and Statistics

Figure 12 Number of claims filed to the magistrate courts of the Republic of Croatia in period 1997-2002



Source: CCA; Department of Research and Statistics

3. BUDGET OF THE AGENCY

Table 14 Budget of the Agency in the period 1997 - 2002

Position	1997	1998	1999	2000	2001	2002	Index 2002/2001
A. FUNDS APPROVED FROM THE CENTRAL BUDGET	**1.648.361**	**4.846.365**	**4.826.278**	**4.406.499**	**4.760.692**	**4.314.820**	**91**
1. Current expenditure	1.012.618	2.418.807	4.510.153	4.335.867	4.258.346	4.116.240	97
1.1. salaries	287.941	1.270.458	2.981.755	2.940.875	2.598.930	2.489.800	96
1.2. material expenditure	724.677	1.148.349	1.528.398	1.394.992	1.659.416	1.626.440	98
2. Capital expenditure	476.943	755.898	253.211	50.328	297.640	157.170	53
B. TOTAL EXPENDITURE (1.+2.)	**1.489.561**	**3.177.705**	**4.763.364**	**4.386.195**	**4.555.986**	**4.273.410**	**94**
C. REMAINING (A-B)	**158.800**	**1.668.660**	**62.914**	**20.304**	**204.706**	**41.410**	-

Source: CCA; Department of Research and Statistics

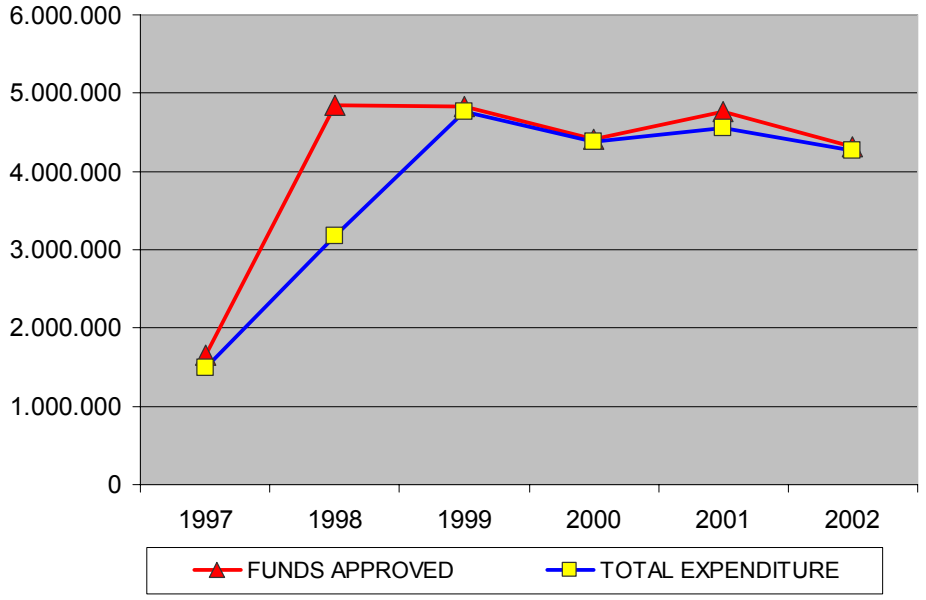


Table 15 Budget of the Agency 2002

Account/account title (1)		Budget revision for 2002 (2)		SPENT in 2002 (3)		INDEX (3) / (2)
3	**Expenses**	**4.160.320**		**4.116.239,63**		**98,94**
31	**Staff expenses**	**2.496.522**		**2.489.800,22**		**99,73**
311	**Salaries**	**2.141.100**		**2.106.691,13**		**98,39**
3111	Salaries in money	2.141.100		2.106.691,13		98,39
312	**Other staff expenses**	**0**		**23.206,91**		
3121	Other staff expenses	0		23.206,91		
313	**Contributions on salaries**	**355.422**		**359.902,18**		**101,26**
3131	Pension insurance contributions	187.346		184.335,26		98,39
3132	Health insurance contributions (including contributions for business trips)	149.877		148.572,24		99,13
	Work accident contribution, 0,47%	0		9.087,87		
3133	Employment contributions	18.199		17.906,81		98,39
32	**Material expenses**	**1.661.798**		**1.625.093,27**		**97,79**
321	**Costs allowance to staff**	**158.137**		**161.701,00**		**102,25**
3211	Business trips	75.000		79.055,62		105,41
3212	Allowance for commuting, field work and family-separated living	39.137		39.306,41		100,43
3213	Expert training of staff	44.000		43.338,97		98,50
322	**Expenses for office material and energy**	**191.500**		**180.814,27**		**94,42**
3221	Office material and other material expenses	144.000		143.440,47		99,61
3223	Energy	40.000		31.820,45		79,55
3225	Small items and car tires	7.500		5.553,35		74,04
323	**Services expenses**	**911.761**		**890.123,59**		**97,63**
3231	Telephone, post and transport	154.900		134.663,83		86,94

3232	Short-term and capital maintenance	216.261		216.128,00		99,94
3233	Advertising and communication	13.000		11.968,71		92,07
3234	Public utilities	135.000		136.502,77		101,11
3235	Rent and lease	246.600		245.742,51		99,65
3237	Intellectual and personal services	75.000		74.761,51		99,68
3238	IT services	10.000		10.000,00		100,00
3239	Other services	61.000		60.356,26		98,94
329	**Other operational expenses**	**400.400**		**392.454,41**		**98,02**
3291	Allowances to the commissions' members	364.400		360.927,08		99,05
3292	Insurance premium	10.000		9.566,38		95,66
3293	Entertainment allowance	18.000		17.997,75		99,99
3294	Membership fees	8.000		3.963,20		49,54
34	**Financial expenses**	**2.000**		**1.346,14**		**67,31**
343	**Other financial expenses**	**2.000**		**1.346,14**		**67,31**
3431	Bank and payment system services	2.000		1.346,14		67,31
4	**Expenses (purchase of non-financial assets)**	**154.500**		**157.170,62**		**101,73**
41	**Expenses for the purchase of non-produced assets**	**20.000**		**32.327,14**		**161,64**
412	**Intangible assets**	**20.000**		**32.327,14**		**161,64**
4123	Licenses	20.000		32.327,14		161,64
42	**Expenses for the purchase of produced fixed assets**	**134.500**		**124.843,48**		**92,82**
422	**Plants and equipment**	**134.500**		**124.843,48**		**92,82**
4221	Office equipment and furniture	128.500		119.539,26		93,03
4222	Communication equipment	6.000		5.304,22		88,40
425	**Intangible produced assets**	**0**		**0,00**		
4262	Investments in computer programmes	0		0,00		
TOTAL:		**4.314.820**		**4.273.410,25**		**99,04**

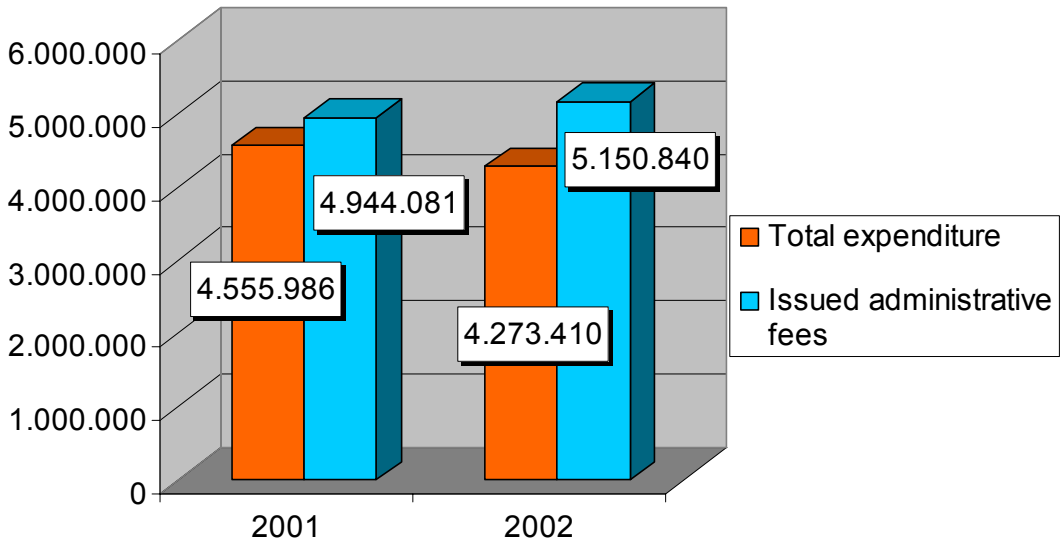
Table 16 Total expenditure and administrative fees issued by the Agency in the period 2001 - 2002

in Croatian Kuna

	2001	2002	Ratio in % 2002/2001
Total expenditure	4.555.986	4.273.410	- 6,20%
Issued administrative fees	4.944.081	5.150.840	+ 4,18%

Source: CCA; Department of Research and Statistics

Figure 13 Total expenditure and administrative fees issued by the Agency in the period 2001 - 2002



Source: CCA; Department of Research and Statistics

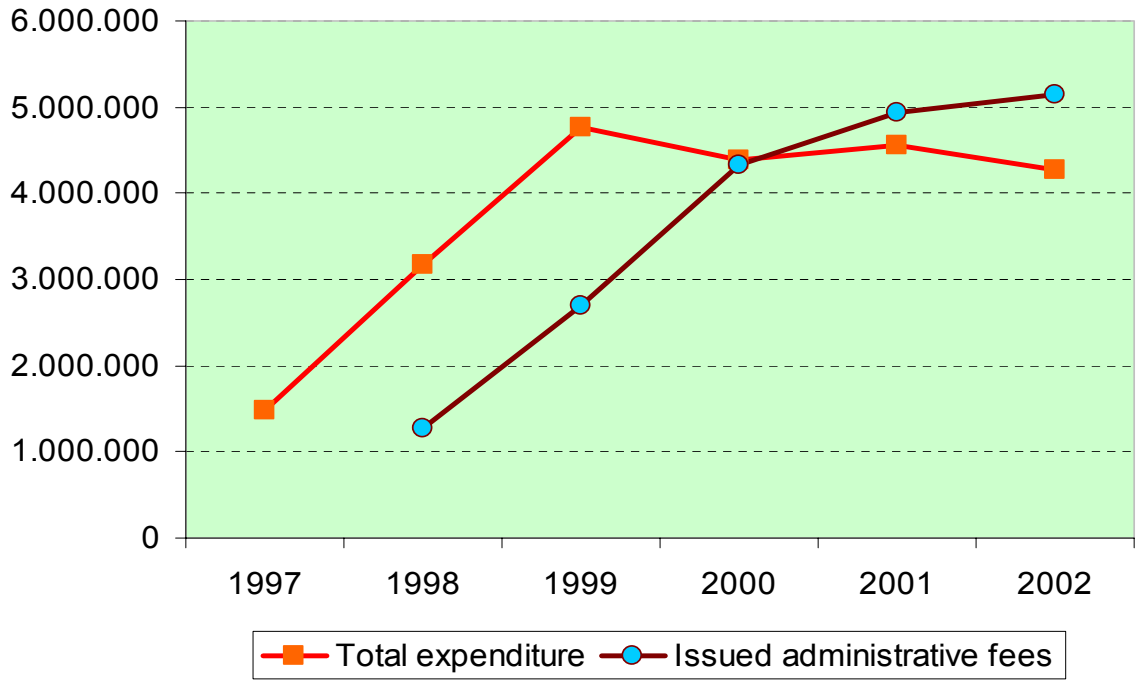
Table 17 Total expenditure and administrative fees issued by the Agency in the period 2001 - 2002

in Croatian Kuna

	1997	1998	1999	2000	2001	2002
Total expenditures	1.489.561	3.177.705	4.763.364	4.386.195	4.555.986	4.273.410
Issued administrative fees	-	1.266.778	2.704.435	4.320.400	4.944.081	5.150.840

Source: CCA; Department of Research and Statistics

Figure 14 Total expenditure and administrative fees issued by the Agency in the period 2001 - 2002



Source: CCA; Department of Research and Statistics