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Support to promotion of reciprocal understanding
between the European
Union and the Western Balkans

National report

COMPETITION AND STATE AID

under

The Specific Grant Agreement RELEX I-2 190202 REG 4-14

DRAGICA KARAIĆ
(M.Sc, Ministry of Economy, Labour and Entrepreneurship)

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I. Summary

The primary objectives of competition policy are, in the first place, promotion, protection and preservation of competition by ensuring the most efficient allocation of resources, increasing the efficiency of national economy, and ensuring maximum benefit to the consumers. Beside these, the preservation of individual rights and freedom has equal importance. Mostly considered are the right to entrepreneurial undertaking, decentralisation and dispersion of power, and support to small and medium-sized entrepreneurial activity. Wider social objectives such as the maintenance of the employment rate, environmental protection, and social policy are to be emphasized as well.

Certainly there are certain conditions necessary for the development of efficient market competition. The existence of rules and norms of market competition, i.e. adequate legislative framework, efficient implementation of legal acts such as transparent rules of procedures, the right to defence and the use of legal remedies. Last but not least, there is the exis-

tence of an institution with competence in the implementation of the adopted rules and procedures.

In the Opinion of the European Commission on Croatia's application for membership in the European Union, adopted at the session held on 23 April 2004, it is stated that the Government of the Republic of Croatia is determined to enforce the conclusions of the Opinion and the specific recommendations of the European partnership, particularly, among others, the improvement of business environment. Furthermore, Croatian Government has given all the ministries and state administration bodies the task of undertaking a thorough analysis of the Opinion of the EC and preparing proposals of measures in accordance with the conclusions of the Opinion and the priorities of the European partnership. The Government shall adopt the National programme of the Republic of Croatia for Integration to the EU in 2004. A special portion is dedicated to competition policy and the antitrust sector.

II: Stabilisation and Association Process

The Stabilisation and Accession Agreement (SAA) with the European Union is very important for the overall economy of Croatia. Based on SAA provisions, Croatia establishes political and economic relationships, and foresees the establishment of the free trade sector.

The European Union is the most important Croatian foreign trade partner, with the share of 55% in the total Croatian foreign trade balance. The enforcement of the trade section within the SAA, which is in power since 1 January 2002, is going to have a strong impact on trade conditions at Croatian market, and will contribute to and accelerate structural reforms in Croatian economy.

1. Stabilisation and Association Agreement

A significant turning point in the relations between Croatia and the European Union took place in 2000, after Parliamentary elections in January 2000 and the election of the President of the Republic. Since then, a rapid development of relations with the EU has started. In May 2000, the Commission adopted a "Feasibility Report" proposing the opening of negotiations for a "Stabilisation and Association Agreement (SAA)". Since November 2000, Croatia benefits from autonomous trade measures granted unilaterally by the European Union to the countries of the Stabilisation and Association process. The Stabilisation and Association Agreement was signed in October 2001, and an Interim Agreement on trade and trade-related matters (IA) is in force since 1st January 2002.

In both documents mentioned, priority fields are established in the matter of alignment of Croatian and EU legislation. Those priorities are market competition, trade issues, consumer protection, and state aids.

Furthermore, a resolution adopted in December 2002 by all political parties in Croatian Parliament defined Croatia's accession to the EU as a strategic national goal and asked the Government to submit an application for EU membership. This application was submitted by the Government in February 2003. The cross-party consensus on the political goal of EU membership was also maintained after the change of Government following the November 2003 Parliamentary elections. The new Government has announced the priorities: membership in the European

Union and NATO, relations with neighbours, development of economic diplomacy, and changing Croatia's international image.

Stipulations of the Stabilization and Association Agreement (SAA), as well as the Interim Agreement (IA), impose certain obligations to Croatia. SAA Articles 69 and 70 specify the activities incompatible with the correct implementation of the SAA (Agreement) provisions in the extent in which they might influence trade relations between EU and Croatia.

For example:

- all agreements between entrepreneurs, decision by the entrepreneurs' association, restrictions or market competition abuses;
- dominant market position abuse by one or more entrepreneurs in the Community or Croatian market, entirely or in their segments;
- any state aid which disturbs or threatens to disturb market competition giving the advantage to certain entrepreneurs or certain products.

The following quote of the SAA states: "any attitude opposite to the provision of this Article shall be evaluated according to the criteria which result from the application of the rules on market competition within the Community, and especially by the Articles 81, 82, 86 and 87 of

the European Union Foundation Agreement, and the interpretation instruments adopted by the community institutions, incompatible with the correct Agreement's application, to the extent that they might influence the trade between the Community and Croatia"

This quote of the SAA provisions points to the system of market competition and institutional building by which a framework for the efficient implementation of its provisions will be established for the benefit of both the European Union and Croatia. In other words, the standards applied for market competition within EU member countries should be applied in Croatia as well.

Thus, the SAA and IA on trade and trade-related matters provide 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 enterprises, abuses of dominant position), Article 86 (public enterprises and enterprises with special or exclusive rights) and of Article 87 (State aid). It also states 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 discipline for the steel sector, including the obligation for Croatia to present a restructuring and conversion programme for its steel industry to the Commission.

III. Competition in Croatia

2.1. Legal Framework

The legal framework of competition in Croatia has been regulated by the following acts and bylaws:

COMPETITON ACT (Official gazette No. 122/2003)

COMPETITION ACT - AMENDED (Official Gazette No.89/98)

REGULATION ON THE REGISTER OF CONCENTRATIONS (Official Gazette No. 30/97)

REGULATION ON NOTIFICATION AND ASSESSMENT OF CONCETRATIONS (Official Gazette No. 51/04)

REGULATION ON THE DEFINITION OF RELEVANT MARKET (Official Gazette No. 51/04)

REGULATION ON BLOCK EXEMPTION GRANTED TO AGREEMENTS ON DISTRIBUTION AND SERVICING OF MOTOR VEHICLES (Official gazette No. 105/04)

REGULATION ON AGREEMENTS OF MINOR IMPORTANCE (Official Gazette No. 51/04)

REGULATION ON BLOCK EXEMPTION GRANTED TO THE ENTREPRENEURS NOT ACTING ON THE SAME LEVEL OF PRODUCTION OR DISTRIBUTION

(Official gazette No. 51/04)

DECISION ON THE COMPETITION AGENCY STATUTE APPROVAL (Official Gazette No. 15/04)

The Opinion of the EC emphasized all necessary activities taken by Croatian Competition Agency within its competence, and actions that are to be taken, particularly relating to constant alignment of Croatian legislation with the *acquis* and the proper application of the relevant regulations in the assessment of all forms of prevention, restriction and distortion of competition, institutional capacity building of Croatian Competition Agency.

2.2.1. Restriction of competition

In the Opinion of the EC states, the Article 266 of the General Administrative Procedure Act regulates those decisions which do not fall under the competence of the Croatian Competition Agency and other regulators, but can only be challenged before the court.

Legislative provisions that provide for the authority of the Competition

Agency to decide upon the nullity of the agreements in the agreement assessment procedure contradicts the provisions stipulated by the Act on Obligatory Relations, according to which this authority is given exclusively to the courts. Thus, the ongoing amendments to the Act on Obligatory Relations are expected to transfer the current procedure to the Competition Agency which, in its deci-

sions on the assessment of the agreements, if the related agreements fall under Article 9 of the Competition Act, and which cannot be exempted within the meaning of Article 10 of the Competition Act, qualifies them as prohibited agreements, and in its explanation pronounces the relevant agreement *ex lege* null and void.

The Competition Law has been established with the objective to protect free competition of enterprises in the market. Free competition is of essential importance for all countries that base their economies on the free market principle-where the distribution of resources

depends on the relationship between supply and demand, and is not a result of state-related measures aimed at intervening in the affairs of enterprises.

Competition rules are applied with the objective to create a market where enterprises are equally represented and perform their activities under the same conditions, with the aim of their market position to be evaluated primarily by the quality of goods or services they provide. In this sense, the Competition Law undertakes the task to prevent particular practices and business activities that may place some enterprises at a competitive disadvantage and thereby challenge free competition between enterprises.

2.2.2. Anti-trust violations

The new Croatian Competition Act came into power on 7 August 2003, and its application started on 1 October 2003. The Competition Agency is also responsible for the next four regulations that came into power on 29 April 2004. The first one is the **Regulation on Notification and Assessment of Concentration**, which was adopted according to Article 19 of the Act. It contains detailed provisions on the procedure of notification and assessment of concentration.

The second one is the **Regulation on the Definition of Relevant Market**,

adopted pursuant to Article 7 of the Act. It stipulates methods, criteria and procedure in defining the relevant market, which represents the basis for the calculation of market shares in the proceedings before the CA. The next one is the **Regulation on Block Exception Granted to Certain Categories of Vertical Agreements**. The provisions of the Regulation make it possible to switch to the system of block exemption granted to certain categories of vertical agreements which are in line to the Commission Regulation No. 2790/99. The fourth is the **Regulation on Agreements of Minor Value**.

2.2.3. Cartel agreements and abuses of dominant position of enterprise

Traditional forms of protection of free enterprise through application of competition rules, such as ban on cartels, prohibition of abuse of dominant position, or prohibited concentrations, cannot entirely ensure equal opportunities for business

success, simply because they ignore an entity with a major influence on the economy - the State. The transition from centrally planned economy to market economy thus involves the need to redefine the role of the State in economic life. State interventions in

the economy may take various forms (subsidies, guarantees, debts write-off, preferential sale of state-owned real estate, etc.) and significantly influence the competitive position and the final business success of individual enterprises. It is therefore necessary to regulate the system of approval and monitoring of State aid in order to achieve the social-economic goals of the State, while, at the same time, abiding by the principle of equal rights to success for all market players.

The new Competition Act came into power by its publication in the Official Gazette No. 11/03, and the implementation of its provisions started on 1 October 2003. The need to create a new Competition Act was imposed to Croatia by the SAA, as well as the IA provisions, in application since 1 January 2002. These

two agreements encompassed issues related to market competition, trade, consumer protection, and state aid.

The Competition Act regulates all impediments, limitations, or abuses of competition rules on the territory of Croatia, or abroad if they have impact in Croatia. There are exemptions to these provisions for particular products and services. The Competition Act regulates the competition issues as the *lex generalis* with the exemption of those issues regulated by a special act, *lex specialis*.

The Competition Act applies to companies, sole traders, craftsmen, and other legal and private entities which, in undertaking their business activities, participate with their products and/or services in business transactions producing impact on domestic market.

2.2.4. Mergers and acquisitions

The liberalization of utilities and enterprises that carry on activities for the concentrations are very often related to mergers, joint ventures, and acquisitions. In the same way as the Regulation on Concentrations regulates this area in the EU, in Croatia, the Competition Act defines all these cases of concentration as a legal act in which joint venture is the result of business activity. The Act enforces the obligation to the entrepreneur to announce to the CCA the intention of concentration. The procedure is very similar to that in other European countries. For example, it introduced the "silent administration" in the case that the CCA does not respond within 30 days from the date of written request. In

that case, the concentration is permissible.

The Regulation on Notification and Assessment of Concentrations as a by-law document provides separate provisions stipulating the acquisition of shares or share capital in the normal course of business of banks, insurance companies, and other financial institutions. Banks, insurance companies and other financial institutions have to communicate to the CAA the acquisition of shares or share capital in other enterprises, carried out in their normal course of business, which includes transactions and dealing with securities, on their own account or on the account of third parties.

2.2.5. Relevant market

The new Competition Act introduced a new term of the relevant market in Article 7.

This term defines which market is the relevant market for particular products or services as the object of entrepreneurial activity. It is the task of the Competition Agency to suggest to Croatian Government which is the relevant market within the terms of the Competition Act provisions. This is a novelty in the law, and provides a great deal of help in practical provision implementation. It was common practice which imposed such a legal solution, since, in competition issues procedure, this was often the first and most important step. The benefits are both continued alignment with the EU *acquis* and safe legal environment for entrepreneurs in their undertakings.

According to the Competition Act, as well as Article 81 of the Treaty, the agreements, contracts, silent agreements between entrepreneurs are prohibited if

their objective is or effects the prevention, restriction or distortion of competition, i.e. price agreements, division of market, etc.

The Competition Act foresees certain cases that occur on the market, such as direct or indirect selling or buying price agreements, division of the supply or sale market.

The next novelty in the Competition Law is precise individual or group exemptions definition, and the related permission procedure. Exceptions from the general prohibition of conclusion of agreements have the objective to improve production or distribution, to promote technological or economic development, and at the same time to provide benefit for the consumers. If those agreements meet the criteria for exemptions, the entrepreneurs need not submit their request to the CCA. This provision is in full alignment with EU legislation and, on the other hand, simplifies the operation of the CCA.

2.2.6. Antitrust control of state monopolies in the process of privatisation

A dominant position on the market has been regulated within the legal framework of Article 82 of the Treaty. Dominant position depends on the market power of the enterprise and its behaviour on the market. Market conditions for dominant position criteria are met when there are no competitors, the enterprise has a significant market share and financial power, dictates unfair market conditions, through its behaviour it excludes other competitors from the market, and, finally, its market share does not exceed 40% of dominant position.

The Competition Act defines the dominant position of the entrepreneurs on the market as well. The definition starting point is that the entrepreneur is in a dominant position if she or he can act in a manner independent from their real or potential competitors, consumers, buyers etc. The CA provisions define the most frequent situations related to dominant market position. When defining dominant with an assumption of 40% of market share, it is, therefore, not a fact, but rather a debatable assumption.

The Competition Act prohibits abuse of the dominant position especially as concerns unfair pricing or other trade conditions, production restriction, market or technological development, unequal business criteria for the same business activity, agreements stipulation under additional conditions not in direct relation to the main contract.

The strict role of the Competition Agency has been provided by Article 17 of the Competition Act, which accordingly gives to the CA all the necessary instruments and measures aimed to prevent and prohibit the abuse of the dominant position on the market.

2.2.7. Concentrations

On the basis of the Regulation on Notification and Assessment of Concentrations (Official Gazette No. 51/04) market concentrations have been regulated, and the main procedure involves the obligatory notification to the Competition Agency within 8 days from the date of public offer or conclusion of the agreement at the latest, and if the following conditions are met:

- total turnover of all entrepreneurs that participate in the concentration amounts up to 1 billion Kuna or more on the worldwide market;
- total turnover of each of at least two entrepreneurs in the concentration is 100 million Kuna or more at Croatian market.

The Competition Agency introduced a fast procedure of concentration assessment, and the Agency will not call for entrepreneurs to notify of the concentration unless it is a prohibited concentration. By the Competition Act, prohibited is a concentration which creates a new or dominant market position for one or a group of entrepreneurs, if doing that creates an impediment, limitation or disturbance in the market competition.

However, there are exemptions to the rule, in cases when entrepreneurs can prove that there will be a competition improvement, or that the positive impact of such concentrations would be more important than the negative one.

The legal framework for that lays in the Regulation on the concentrations within EU, and the respective Act, as with their provisions the case of concentrations has been defined. Within a business activity, a joint venture is also considered as concentration if it shall continue to act as a business unit with permanent business activity.

It is the role of the Competition Agency to regulate the emerging market concentrations. The mechanism has been regulated by the Competition Act in such a way that it is compulsory to notify the Competition Agency of the intention to create a concentration within eight days from the date of the public announcement, or the relevant contract stipulation which makes possible the control or the dominant position of the entrepreneur.

Once the application on the intended concentration is submitted to the CCA, all further implementation must stop until the CCA issues a resolution stating

that the concentration has been approved, disapproved or approved conditionally. As in other European countries, there is the provision of "silent administration". In case that the Competition Agency does not issue the relevant document within a period of 30 days after the submission of the application on the concentration to the applicant, the concentration is considered granted.

The number of criteria to be met for the concentrations as mentioned above, such as total turnover of 1 billion HRK on worldwide market or 100 million of HRK on Croatian market, are slightly higher than in other EU member countries or candidate countries, but are correspondent to the level of the economic development in Croatia.

In comparison with this, there is the case of Austria, where the obligation of concentrations application occurs where

the total turnover of the entrepreneurs in concentration on worldwide market exceeds EUR 200 million, or EUR 15 million on the local market.

There is also the case of Germany, where at least two entrepreneurs must register turnover on worldwide market exceeding EUR 500 million, or at least one of the actors exceeding the amount of total turnover on the local market of EUR 25 million.

The law is also regulating those concentration cases which enter implementation despite negative resolution of impermissible concentration issued by the CCA. In such cases, the CCA has a wide range of possibilities and legal instruments such as: order to transfer or to part the acquired shares or equities; to prohibit or to limit the right of vote related to the shares or to equities among the actors of the concentration.

IV. State Aid

3.1. Control of State Aid

In this part, the notification system for state aid schemes and state aid on different levels and different categories are described.

In the Opinion of the EC in the field of state aid the implementation of Croatian state aid legislation is considered as the major priority. The activities aimed at raising awareness among state aid providers are under way, particularly the notification of the procedure obligations which are to be abided by and the relevant laws.

The Competition Agency issues the decisions on individual state aid proposals. As to the state aid schemes, the Competition Agency issues opinions which are binding. This distinction in the naming of respective acts is not of a nature to bring discrepancy relating to their effectiveness in the relevant proceedings before the Competition Agency. This issue remains for the future practice of Croatian Competition Agency.

The existing and future Croatian legislation that may be of concern in view of its compatibility with state aid rules laid down in the State Aid Act, particularly mentioned in the European Commission Avis, is to be submitted to Croatian Competition Agency for review, as potential existing aid will be assessed and accordingly aligned with the state aid rules.

Croatian Competition Agency provided the first report on State Aids for the period 2002-2003. In this public document, the description of state aid partly follows the methodology used by the European Commission in preparing its reports on state aid within the European Union.

Considering the fact that it is the first report prepared by the Agency since the entry of the Act into force, the data given in the report are generally based on the data of the Ministry of Finance gathered as part of monitoring the budgeting process at state level.

At present the Agency is acquainted only with the amount of total state aid at local level, not yet with the data illustrative of the structure of this aid. Likewise, no data are available to the Agency on the write-off of debts, profit tax reliefs as incentives for employment, investment, etc., which under certain conditions are also considered state aid.

Furthermore, also due to the lack of data when it comes to government guarantees, this Report takes as state aid only the protested guarantees, not the approved guarantees contravening Article 74 of the Regulation.

An integral and transparent overview of granted state aid, as required by the European Commission and Croatian legislation, will thus be possible once the Agency has agreed with the relevant min-

istries - state aid providers - on all schemes and criteria for authorising general and individual aid. To this end, in course of 2004, the Agency, in co-operation with the relevant ministries, will create its own database, which will meet all the requirements regarding the adjustment of granted state aid as requested by the European Commission.

State aid in agriculture and fisheries is subject to special regulations, not to the provisions of the Act and the Regulation on State Aid. The amounts of this state aid are included in the Report and they correspond to data available and collected thanks to the co-operation between the Agency and the responsible ministry, in compliance with Article 19 of the Act.

Overall, the present Report should be considered as the first step in determining the value and extent of state aid being granted in Croatia. Full transparency of data related to state aid will be possible once the state aid allocation system has become wholly operational and the Agency has assessed all the state aid schemes in Croatia.

Like other countries in transition, now new Member States, Croatia needs some time and adjustments to the new state aid system. Hence the data provided in this Report should not be considered final. On the contrary, as the system evolves, with the missing data being collected and processed, in the next Report already they will surely be revised and supplemented.

3.2. Overview of state aid in 2001, 2002 and 2003

The data presented in this Report are related to the state aid in 2001, 2002 and 2003 from the State Budget.

Summary data for 2001 are also given, for easier comprehension of trends shown in Table 1. - next page

Table 1:

State aid in Croatia in 2001, 2002 and 2003, compared with GDP, state budget expenditures and employment

	Measure	2001	2002	2003	½	Indices	
						03/01	03/02
State Aid ¹	in HRK mil.	6.388,7	4.911,5	5.987,0	76,9	93,7	121,9
State Aid	in EUR mil. ²	855,4	663,1	791,6	77,5	92,5	119,4
GDP ³	in HRK mil.	165.639,5	176.429,0	189.040,0	106,5	114,1	107,1
GDP	in EUR mil.	22.177,0	23,820.0	24,994.0	107,4	112,7	104,9
State Expenditure 4	in HRK mil.	57,812.0	73,639.6	80,446.6	126,9	139,2	109,6
State Expenditure	In EUR mil.	7,740.0	9,905.7	10,636.3	128,0	137,4	107,4
Employed persons 5	Number	1,348,380.0	1,359,015.0	1,392,509.8	100,8	103,3	102,5
State Aid share in GDP	in %	3,9	2,8	3,2	72,2	82,1	113,8
State Aid per employee	in HRK	4,738.3	3,614.0	4,299.4	76,3	90,7	119,0
State Aid per employee	in EUR	634.4	487.9	568.5	76,9	89,6	116,5
State Aid share in government expenditure	in %	11.1	6.7	7.4	60,6	67,3	112,2
State Aid per capita 6	in HRK	1,452.0	1,116.3	1,360.7	76,9	93,7	121,9
State Aid per capita	in EUR	194.4	150.7	179.9	77,5	92,5	119,4

1 Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

2 Croatian National Bank's average rate against 1  was 7.468966 HRK in 2001, 7.406773 HRK in 2002, 7.563414 HRK in 2003

3 Source: Croatian Bureau of Statistics

4 Source: Statistical survey of the Ministry of Finance - Budgetary expenditure

5 Source: Croatian Bureau of Statistics census

The state aid granted in Croatia in 2003 amounted to HRK 5,987.0 million, which is 6.3% less than in 2001, but 21.9% more than in 2002. A comparison of the values in € equivalents shows a 7.5% reduction in relation to 2001, and a 19.4% increase in relation to 2002.

The share of state aid in GDP, 3.9% in 2001, dropped to 2.8% in 2002, whereas in 2003 it grew to 3.2%. Equally

so, the share of state aid in government expenditure diminished in 2002, and grew in 2003.

Per capita state aid in 2003 amounted to HRK 1,360.7, which is a 6.3% reduction in relation to 2001, and a 21.9% increase in relation to 2002.

The data on state aid over the previous three years show the state aid volume to be the highest in 2001, the lowest in 2002.

3.2.1. Anti-trust regulator

3.2.2. Administrative Capacity of the Antitrust Regulator

Pursuant to the SAA, Croatia is obliged to establish an independent operational body to act with regard to market competition protection, and an independent body entrusted to act in the capacity of state aid provider.

That independent body would be entrusted to release state aid programmes and individual state aid, and to enforce the reimbursement of illegally released state aid.

There are also other commitments Croatia is obliged to enforce by the SAA provisions, such as gradual alignment of the existing and future legislation with European Union legislation, the *acquis communautaire*.

The mentioned legislation alignment, especially in the first stage, would be aimed at basic legal acts, those related to internal market and other areas relevant to trade issues.

Croatian Competition Agency (CCA) was first established by the Decision of Croatian Parliament of 20 September 1995, and it started to operate early in

1997 as an independent and autonomous legal entity with public authorizations. Croatian Competition Agency performs administrative and professional activities relating to protection of competition as well as the authorization, monitoring and recovery of general and individual state aid. The authority of the Competition Agency mentioned here has been regulated by the Competition Act (Official Gazette, No 122/2003) and the State Aid Act (Official Gazette, No. 47/2003).

The new Competition Act entered into force on 7 August 2003, and has been in application since 1 October 2003. Pursuant to the provisions of this Act, the regulations defining the contents and elements for notification and criteria for assessment of concentrations, as well as the definition of relevant market have been drafted, and the new Statute of the Competition Agency has also been adopted, whereas other regulations necessary for the implementation of the new Act are to be submitted to Croatian Government, such as the regulation on block and individual exemption and on agreements of minor importance.

3.2.3. Operational Framework

3.2.4. Competition Council

The managing body of Croatian Competition Agency is the Competition Council, consisting of five members, one of which is the appointed President of the Council. The president and the members of the Council are appointed for a five-year-term of office and may be re-appointed by Croatian Parliament on the proposal of the Government of the Republic of Croatia.

The expert team of the Competition Agency performs administrative and professional activities in the area of competition.

The expert team of the Competition Agency consists of lawyers and economists holding a university degree and having specific knowledge in the area of com-

petition and state aid. At present, the Competition Agency has 26 employees.

The Competition Agency may institute the proceedings ex officio or upon the request of a party. The Agency initiates the proceedings by issuing a separate procedural order and has the authority to gather data and information relevant for the inquiry from the enterprises-parties to the proceedings, other enterprises and persons in the proceedings in question, or irrespective of the relevant proceedings. Legal protection against the decisions of the Competition Agency in the administrative procedure consists of the right of the injured party to file an administrative dispute before the Administrative Court of the Republic of Croatia.

3.2.5. Competition Law Enforcement

Competition Law has been established with the objective to protect free competition of enterprises in the market. Free competition is of essential importance for all countries which base their economies on the principle of free market-where the distribution of resources depends on the relationship between supply and demand, and is not a result of state-related measures aimed at intervening in the affairs of enterprises. Competition rules are applied with the

objective to create a market where all enterprises are equally represented and perform their activities under the same conditions, with the goal of evaluating their market position primarily by the quality of goods or services they provide. In this sense, the Competition Law undertakes the task of preventing particular practices and business activities which may place some enterprises at a competitive disadvantage and thereby challenge free competition between enterprises.

3.2.6. Ensuring Independence and Professional Literacy of the Regulator

In the Opinion of the EC related to Croatian application for EU membership (*avis*) of 20 April 2004, in the part dedicated to market competition, it is stated that Croatia has made significant steps necessary to establish a legal framework for state aids. However, the problem is in adequate implementation of the system in common practice. For that reason, administrative capacity building of Croatian Competition Agency is to be further improved. A secure implementation of the

legal competencies of the CCA should also be provided by the possibility of the legal cases evidence registration, by training of all stakeholders representatives, and by increased transparency of all state aids. Furthermore, state aids are to be transformed into forms less harmful for the market competition. Once implemented, such interventions will provide necessary prerequisites for the full compliance with EU legal acquirement within the field of state aids.

3.2.7. Enforcement record of the regulator

The current year 2004 is crucial for Croatia with respect to the implementation of the regulations related to the area of the competition and, especially, state aids. This will be in line with the constant EU verification of Croatian readiness to really act in accordance to the legislation in vigour, and to really implement

all the obligations took over by the SAA signing. The establishment of a solid and satisfactory enforcement record of the regulator, which is in line with the same practice in the EU, shall be part of the constant monitoring of the readiness of Croatia to join the EU community as a member state.

3.2.8. Promoting Competition Advocacy within economic operators and media

On 1 July 2004, in Istanbul, Turkey, the First Meeting of South East Europe Authorities Network took place.

The agenda for the meeting covered three subjects: a review of progress in the competition policy area in each of the SEE countries; competition advocacy, aiming at the establishment of inter-ministerial working groups in each SEE country involving competition authorities, ministries, privatisation agencies, regulatory authorities etc., with OECD expert advice; and future activities, based on current and future funding from the investment Compact and other donors.

As the result of discussions, participants drew the following most important conclusions:

- Important reforms strengthening competition law and institutions have recently been implemented or are under way in all SEE countries.
- The lack of competition culture remains a major problem, resulting in the lack of support for pro-competitive reform and/or sufficient resources for competition authorities.

- Competition authorities need to demonstrate concrete results in their fight against competitive restraints most harmful to consumers, in particular hard-core cartels.
- International cooperation should support competition authorities' efforts in the field of competition advocacy as well as competition law enforcement.
- The role of OECD in facilitating the effective implementation of the established competition rules and the Monitoring Instruments as a valuable tool to keep track of progress in the competition policy area across the SEE Region.

In order to enhance the competition culture throughout the region, it is essential to promote the continuation of

the SEE Competition Initiative through the organization of a series of seminars, workshops and peer reviews. Those events will be designed to bring together SEE competition leaders, the private sector, governmental institutions, NGOs and the media of the host country, and leading representatives of the international competition community, in order to discuss relevant competition policy subjects and to inform the appropriate groups on the benefits of market rivalry and its positive effect on economic development.

Last but not least, the participants agreed to appoint a regional chairmanship on a rotating basis, selected among the SEE Competition Authorities. By unanimous decision of the SEE participants, the chair will be held by the representative of Croatian Competition Agency for the coming 12 months.

4. EU Assistance for Competition Policy

The EU has consolidated its assistance in 2000 under the Community programme for Assistance, Reconstruction, Development and Stabilisation (CARDS), at the same time as launching the Stabilisation and Association process (SAP). In accordance with the CARDS regulation, a Country Strategy Paper, defining the main areas for co-operation for the period 2002-2006 was adopted in December 2001. The associated multi-annual indicative programme (MIP) sets out in more details the priorities for the 2002-2004 period. Within the CARDS National programmes, the total financial allocation for the period 2001 to 2004 amounts to EUR 257 million for the following five main areas: democratic stabilisation, economic and social develop-

ment, justice and home affairs, administrative capacity building, and environment and natural resources.

Since January 2002, the EC Delegation in Zagreb is responsible for the management of assistance and implementation has been speeded up.

Through the CARDS 2001/10 Project technical assistance has been provided for the institutional capacity building of Croatian Competition Agency, and for the legislation alignment regulating this sector with the acquis. The implementation of the CARDS 2001 has started on 15 January 2003. Apart from that, CCA financing has been provided by the state budget.

5. Competition and state aids

The European commission Opinion on Croatian membership application states that the country has made significant efforts to align its legislation with the *acquis*, particularly in the areas related to the Internal market and trade.

The new Competition Act came into power on 7 August 2003 and has been in application since 1 October 2003. Pursuant to the provisions of this Act, the regulations defining the contents and ele-

ments for notification and criteria for assessment of concentrations, as well as the definition of relevant market have been drafted, and the new Statute of the Competition Agency has also been adopted, whereas other regulations necessary for the implementation of the new Act are to be submitted to Croatian Government, such as the regulation on block and individual exemption and on agreements of minor value.

5.1. State Aids

According to Croatian legislation, state aid includes all actual and potential expenses or decreased revenue of the state granted in any form whatsoever by the provider of state aid, by providing a benefit in the market to the recipient of state aid. Since state aid directly influences free competition there is the need to monitor it, particularly in market economy oriented countries. The eventual objective of this moni-

toring is a gradual decrease and suspension of state aid in general.

The State Aid Act entered into force on 2 April 2003. The Regulation on State Aid (Official Gazette, No 121/2003) was adopted pursuant to the provisions of the State Aid Act and entered into force on 1 August 2003.

5.1.2. State Aid Categories

Pursuant to the provisions of the Act and in line with the EU methodology, state aid is divided into horizontal, sectoral and regional, and state aid to agriculture and fisheries. Horizontal state aid is intended for all sectors and businesses, hence it is considered to be distorting competition to a much lesser extent than the sectoral one,

which is allocated to specific branches of, and groups in the economy. The purpose of regional state aid is to prevent the concentration of production in specific areas and to encourage the economic development of low-income regions or those lagging behind in development compared with the overall economy.

5.1.3. State Aid in Croatia in 2002, by instrument

State subsidies are to be considered as expenditure increase or decrease of state income, and they are divided into different instruments. In the European Union, the instruments of state aid are divided into four basic groups, depending whether the final financial benefit for the state aid's beneficiary is equal to gross or to net state aid amount.

- subvention and tax exemption
- equity share
- favourable loans and tax proration
- state collateral

5.1.4. Overview of State Aid in Croatia

In the following Tables 2 and 3, state aid in Croatia is shown according to the most frequent instruments.

Table 2.

State aid in Croatia in 2002, by instruments

in 000 HRK

Category	subsidies	preprint	payment against loans, write-offs	guarantee	TOTAL
1. Agriculture and fisheries	1,617,022.4	0,0	0,0	148,979.8	1,766,002.2
2. Industry and services	2,230,867.0	421,218.0	0,0	458,256.5	3,110,341.6
2.1 Horizontal Objectives	287,235.1	0,0	0,0	0,0	0,0
R & D	0,0	0,0	0,0	0,0	0,0
Environmental protection	0,0	0,0	0,0	0,0	0,0
Rehabilitation and restructuring	0,0	0,0	0,0	0,0	0,0
Small and medium-sized enterprises	27,235.1	0,0	0,0	0,0	27,235.1
Specialisation	0,0	0,0	0,0	0,0	0,0
Employment	80,000.0	0,0	0,0	0,0	80,000.0
Arts	0,0	0,0	0,0	0,0	0,0
Energy saving	0,0	0,0	0,0	0,0	0,0
Additional horizontal objectives	180,000.0	0,0	0,0	0,0	180,000.0
2.2 SPECIFIC SECTORS	1,943,631.9	421,218.0	0,0	458,256.5	2,823,106.5
Steel production	0,0	0,0	0,0	0,0	0,0
Transport	1,414,869.1	150,000.0	0,0	13,425.0	1,578,294.1
Shipbuilding	399,148.0	0,0	0,0	253,593.1	652,741.1
Tourism	101,794.8	0,0	0,0	-39,867.1	61,927.7
Other sectors	27,000.0	0,0	0,0	231,105.5	258,105.5
Financial services	820.0	271,218.0	0,0	0,0	272,038.0
3. Regional aid	22,000.0	0,0	0,0	13,194.4	35,194.4
Total	3,869,889.4	421,218.0	0,0	620,430.8	4,911,538.1

Source: Ministry of Finance- List of state schemes in 2002.

In 2002 and 2003, subsidies accounted for the largest proportion of state aid allocation instruments, with the share of subsidies in the structure of overall aid allo-

cation instruments reduced from 78.8% in 2002 to 72.0% in 2003. The share of proprietary interests and guarantees in 2003 also dropped in relation to 2002.

Table 3.

State aid in Croatia in 2003, by instruments

in 000 HRK

Category	subsidies	preprint	payment against loans, write-offs	guarantee	TOTAL
1. Agriculture and fisheries	1,595,898.3	0.0	211,328.1	140,891.6	1,948,118.0
2. Industry and services	2,277,706.8	205,000.0	711,420.9	282,165.6	3,476,293.3
2.1 Horizontal Objectives	412,687.2	0.0	0.0	0.0	412,687.2
R & D	27,800.0	0.0	0.0	0.0	27,800.0
Environmental protection	6,000.0	0.0	0.0	0.0	6,000.0
Rehabilitation and restructuring	0.0	0.0	0.0	0.0	0.0
Small and medium-sized enterprises	32,787.2	0.0	0.0	0.0	32,787.2
Specialisation	0.0	0.0	0.0	0.0	0.0
Employment	90,000.0	0.0	0.0	0.0	90,000.0
Arts	16,100.0	0.0	0.0	0.0	16,100.0
Energy saving	0.0	0.0	0.0	0.0	0.0
Additional horizontal objectives	240,000.0	0.0	0.0	0.0	240,000.0
2.2 SPECIFIC SECTORS	1,865,019.6	205,000.0	711,420.9	282,165.6	3,063,606.1
Steel production	0.0	0.0	0.0	0.0	0.0
Transport	1,241,937.2	75,000.0	80,253.3	5,709.9	1,402,900.4
Shipbuilding	468,726.5	0.0	507,451.2	10,948.1	987,125.8
Tourism	118,760.5	0.0	1,417.1	93,003.8	213,181.3
Other sectors	35,595.5	0.0	122,299.4	172,503.8	330,398.6
Financial services	0.0	130,000.0	0.0	0.0	130,000.0
3. Regional aid	136,295.9	0.0	0.0	126,332.7	262,628.6
4. State aid on local level	300,000.0	0.0	0.0	0.0	300,000.0
Total	4,309,901.0	205,000.0	922,749.0	549,389.9	5,987,039.9

Source: Ministry of Finance - List of state aid schemes in 2003

5.1.5.State Guarantees in Croatia

Table 4:

State guarantees in 2002 and 2003

	2002	2003	Index 03/02
Issued	6,495,024.9	9,430,267.1	145.2
Protested - paid	754,778.7	696,198.0	92.2
Returned to the budget	134,348.8	146,808.1	109.3
Net state aid	620,430.8	549,389.9	88.5

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

Pursuant to Article 74 of the Regulation on State Aid, state guarantees issued are not considered state aid if the following requirements have been met:

- that the loan beneficiary is not in financial difficulties,
- that the loan beneficiary could obtain a loan under market conditions on the financial market without the state's mediation,
- that the state guarantee is related to a specific financial transaction, limited in amount and duration,
- that the state guarantee does not cover more than 80% of the specific commitment,
- that the state guarantee is calculated at a market price.

An assessment as to which state guarantee shall, according to these criteria, be considered state aid can only be made within the procedure of approving these guarantees by the Agency. However, since in the course of 2001, 2002 and 2003 the Agency was not able to do so (there was no Act), for the purposes of this Report only protested guarantees have been considered state aid, as already mentioned in the introduction.

Therefore, in the forthcoming period, it will be necessary to adjust and present those state guarantees which are to be considered 100% state aid, not just the protested guarantees, which will certainly require some corrections of given data.

5.1.6.State Aid Categories-examples

Pursuant to the provisions of the Act and in line with EU methodology, state aid is divided into horizontal, sectoral and regional, and state aid to agriculture and fisheries. Horizontal state aid is intended for all sectors and businesses, hence it is considered to be distorting competition to a much lesser extent than the sectoral one,

which is allocated to specific branches and groups in the economy. The purpose of regional state aid is to prevent the concentration of production in specific areas and to encourage the economic development of low-income regions or those lagging behind in development compared with the overall economy.

Table 5:

Shares of state aid in 2002 and 2003, by category

Category	2002			2003		
	in 000 HRK	In 000 EUR.	share %	in 000 HRK	In 000 EUR.	share %
1. Agriculture and fisheries	1,766,002.2	238,430.7	36.0	1,948,118.0	257,571.2	32.5
2. Industry and services	3,110,341.1	419,392.1	63.3	3,476,293.3	459,619.6	58.1
2.1 Horizontal Objectives	287,235.1	38,780.1	5.8	412,687.2	54,563.6	6.9
R & D	0.0	0.0	0.0	27,800.0	3,675.6	0.5
Environmental protection	0.0	0.0	0.0	6,000.0	793.3	0.1
Rehabilitation and restructuring	0.0	0.0	0.0	0.0	0.0	0.0
Small and medium-sized enterprises	27,235.1	3,677.1	0.6	32,787.2	4,335.0	0.5
Specialisation	0.0	0.0	0.0	0.0	0.0	0.0
Employment	80,000.0	10,800.9	1.6	90,000.0	11,899.4	1.5
Arts	0.0	0.0	0.0	16,100.0	2,128.7	0.3
Energy saving	0.0	0.0	0.0	0.0	0.0	0.0
Additional horizontal objectives	180,000.0	24,302.1	3.7	240,000.0	31,731.7	4.0
2.2 SPECIFIC SECTORS	2,823,106.5	381,152.0	57.5	3,063,606.1	405,056.0	51.2
Steel production	0.0	0.0	0.0	0.0	0.0	0.0
Transport	1,578,294.1	213,088.0	32.1	1,402,900.4	185,485.1	23.4
Shipbuilding	652,741.1	88,127.6	12.3	987,125.8	130,513.3	16.5
Tourism	61,927.7	8,361.0	1.3	213,181.3	28,185.9	3.6
Other sectors	258,105.5	34,847.2	5.3	330,398.6	43,683.8	5.5
Financial services	272,038.0	36,728.3	5.5	130,000.0	17,188.0	2.2
3. Regional aid	35,194.4	4,751.6	0.7	262,628.6	34,723.6	4.4
4. State aid on local level	-	-	-	300,000.0	39,664.6	5.0
Total	4,911,538.1	663,114.4	100.0	5,987,039.9	791,579.0	100.0

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

Viewed by category, it is obvious that the sectoral aid accounts for the bulk of state aid in 2002 and 2003, making up 57.5% in 2002 and 51.2% in 2003 of the overall state aid structure. Second largest is the aid to agriculture and fisheries, accounting for 36.0% in 2002 and 32.5% in 2003 respectively. The share of horizontal aid is almost negligible, accounting for 5.8% in 2002 and 6.9% in 2003. What is

encouraging is a growing trend of horizontal state aid in 2003. A significant rise in the share of regional aid is also noticeable, from 0.7% in 2002 to 4.4% in 2003. Since the Agency does not have the data on the allotment of aid granted from local and regional budgetary sources, such aid has been presented in an aggregate amount as a separate category.

5.1.7. Agriculture and fisheries

The provisions of the Act and Regulation on State Aid do not apply to state aid in agriculture and fisheries. However, state aid to agriculture and fisheries has been included in this Report in terms of amounts allocated within the period covered by this Report, consistent with

data obtained from the competent Ministry. State aid to agriculture and fisheries amounted to HRK 1,766.0 million in 2002 and HRK 1,948.1 million in 2003 respectively. The correlation between total aid and aid exclusive of agriculture and fisheries is given in the table below.

Table 6:

Total aid, aid to agriculture and fisheries

	2002	2003	Index 03/02
Total aid	4,911,538.1	5,987,039.9	121.9
Aid to agriculture and fisheries	1,766,002.2	1,948,118.0	110.3
Aid exclusive of agriculture and fisheries	3,145,535.9	4,038,921.9	128.4

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

State aid to agriculture and fisheries was increased by 10.3% in 2003 in comparison with 2002. The reason behind this apparent increase largely lies in the write-off of claims by Croatian Privatisation Fund against the agribusiness *PIK Vrbovec*, 19 industrial farms in *IPK Ratarstvo-*

stočarstvo d.o.o., the sugar factory *IPK Tvornica šećera d.o.o.* and the cereals storage & processing company *IPK Croatia d.o.o.*, amounting to HRK 211.3 million. The amounts of allocated subsidies and issued guarantees were approximately equal in both years.

5.1.8. Industry and services

5.2. Horizontal objectives

As previously stated, the share of horizontal state aid accounted for 5.8% in 2002 and 6.9% in 2003 of the overall state aid structure in Croatia in 2002 and 2003, significantly below the sectoral ones. Within the horizontal objectives in 2002, aid was allocated only to small and medium-sized enterprises, plus state aid for employment, whereas in 2003 aid was also provided for R&D, environment protection

and the arts. This group of aid also includes those indicated under "additional horizontal objectives", which refer to the Preferential funding programme under loans for export incentives, i.e., subsidised interest rates through Croatian Bank for Reconstruction & Development (HBOR). In terms of instruments, subsidies constituted an exclusive allocation instrument in 2002 and 2003.

Table 7:

Horizontal state aid in 2002 and 2003

in 000 HRK

Category	2002	2003	Index 03/02
R & D	-	27,800.0	-
Environmental protection	-	6,000.0	-
Arts	-	16,100.0	-
Small and medium sized businesses	27,235.1	32,787.2	120.4
Employment	80,000.0	90,000.0	112.5
Additional horizontal objectives	180,00.0	240,000.0	133.3
TOTAL	287,235.1	412,687.2	143.7

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

The share of horizontal aid in the overall volume of state aid in the EU in 2002 accounted for 50.7%. Since horizontal aid is the most effective in the economy

as a whole, in subsequent state aid allocation the share of horizontal aid in the overall volume of state aid should be increased, and that of sectoral aid decreased.

5.2.1. Specific sectors

5.2.2. Transport

The transport sector comprises land, maritime and air transport. Under the Regulation on State Aid, land transport comprises railway and road transport, as well as inland waterways transport.

In the structure of aid earmarked for land transport in 2002, those directed to railway transport accounted for the largest portion, amounting to HRK 626.5 million. Within the aid to maritime transport, incentives to shipping lines accounted for HRK 303.3 million, while the aid to seaports amounted to HRK 85.1 million. In air transport, the

bulk of provided state aid refers to proprietary interest in Croatia Airlines.

In 2003, again, within the aid earmarked for land transport, those directed to railway transport accounted for the largest portion, amounting to HRK 812.1 million. In air transport, the write-off of claims and a proprietary interest in Croatia Airlines accounted for the funds amounting to HRK 150 million. In maritime transport, the bulk of state aid was provided for incentives to shipping lines and a renewal of the passenger fleet.

Table 8:

State aid to the transport sector in 2002 and 2003

in 000 HRK

Type of transport	2002	2003	Index 03/02
Land transport	1,007,553.8	856,347.9	85.0
Maritime transport	388,435.1	388,817.1	100.1
Air transport	168,880.2	151,998.4	90.0
Guarantees	13,425.0	5,709.9	42.5
TOTAL	1,578,294.1	1,402,900.4	88.9

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

According to state aid allocation instruments, subsidies accounted for the largest portion, 89.6% in 2002 and 88.5% in 2003. Proprietary interests accounted for 9.5% in 2002, and 5.3% of the structure in 2003.

Under the "guarantees" category, overall protested guarantees issued in the transport sector have been quoted, because data are lacking as to the number of protested guarantees issued per specific type of transport.

5.2.3 Shipbuilding

State aid to the shipbuilding sector amounted to HRK 652.7 million in 2002, and to HRK 987.1 million in 2003, thus accounting for a proportionately larger share of the overall state aid. This share was 13.3% in 2002, and 17.5% in 2003. The reason for the 2003 rise was a reprogramming of loans to shipbuilding

in the amount of HRK 490 million, as well as a rise in subsidies for ship construction scheme. The volume of protested guarantees issued for shipbuilding in 2003 dropped by 95.7% compared with 2002. data are lacking as to the number of protested guarantees issued per specific type of transport.

Table 9:

State aid to the shipbuilding sector in 2002 and 2003

in 000 HRK

Instrument	2002	2003	Index 03/02
Subsidies	399,148.0	468,726.5	117.4
Loans, write-offs	-	507,451.2	-
guarantees	253,539.1	10,948.1	4.3
TOTAL	652,741.1	987,125.8	151.2

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

5.2.4. Tourism

State aid to the tourist sector has largely been approved for programmes listed below:

- creating new jobs, with a view to encouraging the development of small and medium-sized enterprises,
- subsidies for foreign and domestic organised tourist transportation,
- increase in the competitiveness of travel agencies.

State aid in tourism increased from HRK 62 million in 2002 to about HRK 213.2 million in 2003, i.e., by 244%. The share of aid to tourist sector in the overall volume of state aid increased from 1.3% in 2002 to 3.8% in 2003. The subsidies for tourism had a rise of 16.7% in 2003. A significant impact on the 2003 rise came from the fact that the guarantees in 2002 had an adverse effect, i.e., the returns of paid guarantees exceeded the amounts paid against protested guarantees.

Table 10:

State aid to the tourist sector in 2002 and 2003

in 000 HRK

Instrument	2002	2003	Index 03/02
Subsidies	101,794.8	118,760.5	116.7
Loans, write-offs	-	1,417.1	-
guarantees	-39,867.1	93,003.8	-
TOTAL	61,927.7	213,181.3	344.2

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

5.2.5. Other sectors

The "other sectors" in 2002 indicated the funds for protested guarantees in the area of the economy, and the subsidies to Croatian Post for severance pays and the construction of post offices. In 2003, in addition to the guarantees and subsidies to Croatian Post, also included were the write-offs of claims by Croatian Privatisation Fund

against other industry branches, outright grants to businessmen endorsed by Croatian Agency for Small Businesses, and aid to *Vjesnik d.d.* newspaper publishing house. The volume of these funds was increased by 28% in 2003 compared with the year before, amounting to HRK 330.4 million.

Table 11:

State aid to other sectors in 2002 and 2003

in 000 HRK

Instrument	2002	2003	Index 03/02
Subsidies	27,000.0	35,595.5	131.8
Loans, write-offs guarantees	- 231,105.5	122,299.4 172,503.8	- 74.6
TOTAL	258,105.5	330,398.6	128.0

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

5.2.6. Financial services

The current transfers of Croatian Guarantee Agency have been quoted under this category of state aid for 2002. Proprietary interests in 2002 and 2003 relate to the interest in the capital stock of Croatian Postal Bank.

An essential characteristic of aid in the financial sector in 2003 is its decrease from HRK 272 million to HRK 130 million, a drop by about 52%.

Table 12:

State aid to the financial services sector in 2002 and 2003

in 000 HRK

Instrument	2002	2003	Index 03/02
Subsidies	820.0	-	-
prop. int.	271,218.0	130,000.0	47.9
TOTAL	272,038.0	130,000.0	47.8

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

5.2.7. Regional Aid

Regional state aid is allocated with the view to encouraging the development of less developed regions of the Republic of Croatia, identified as such in the map of regional state aid.

Regional aid accounted for 0.7% of the overall state aid structure in 2002, whereas in 2003 it rose significantly to the share of 4.7%. This is the result of a growing

amount paid against protested guarantees, as well as the allotment of grants out of the means of the Regional Development Fund to all counties. The volume of subsidies designed for the development of the Adriatic islands in 2003 was not significantly changed compared to 2002. The instruments of allocating state aid were subsidies and guarantees.

Table 13:

Regional state aid in 2002 and 2003

in 000 HRK

Instrument	2002	2003	Index 03/02
Subsidies	22,000.0	136,295.9	619.5
Guarantees	12,194.4	126,332.7	957.5
TOTAL	35,194.4	262,628.6	746.2

Source: Ministry of Finance - List of state aid schemes in 2002, Report on central government state aid in 2003

Regarding regional aid, it should be pointed out that, within the process of Croatia's association with the EU, a policy will need to be formulated appropriate for the regional development of this country, whereby a more rapid development of the regions falling behind the country's average would be facilitated through, inter alia, a

system of regional state aid, thereby ensuring uniform development of the country as a whole. Therefore a rise should be expected in the volume of state aid intended for the development of less developed regions. The EU budgetary appropriations to this end account for over 20% of the total volume, right behind those for agriculture.

V: Summary of the Recommendations

This is the first ever Annual Report on state aid that the Agency has prepared in compliance with Article 19 of the State Aid Act. The Report covers the state aid granted in Croatian economy for the years 2002 and 2003 from the state budget. At present the Agency does not possess its own database on state aid, so that all data presented herein have been taken from the Ministry of Finance. The State Aid Act and the Regulation on State Aid entered into force in 2003, so the reporting methodology of the European Union could not be wholly applied in this Report. For that reason, in the 2004 Report on state aid, certain corrections to the presented data will have to be made.

The structure and amount of state aid are determined by significant changes Croatia has undergone in the past ten years, primarily as regards post-war recovery, investments in agriculture, restructuring of some sectors of the economy, road construction and tourism. At the same time, these are the strategic signposts of Croatia's long-term development. State aid can be said to have contributed to keeping the economy afloat over the observed period. The granted amounts of state aid are directly linked to the potentials of fiscal pol-

icy. As shown by data given in the Report, sectoral aid accounts for the bulk of aid, whereas very small amounts have been granted as state aid allocated in accordance with horizontal objectives. This ratio should be changed in the nearest future, regardless of the fact that, according to the prevailing opinion and practice in the European Union, the share of state aid in GDP should be decreasing. State aid surely ought to be considered as public funds which have to be used efficiently and as originally planned, and the spending of which has to be transparent at any given moment. For the Agency and state aid providers, the next period must be a period of adjusting the existing state aid schemes under which state aid is allocated. In other words, the existing schemes must be brought in line with the criteria inherent in the new system of state aid.

The specified tasks will surely be carried out in a satisfactory manner, because in this area satisfactory relations have already been established with the European Commission, co-operation is continued with the International Bank for Reconstruction and Development through the SAL programme, and so is with the World Bank and the International Monetary Fund.

a) Short-term recommendations

The importance of the competition and state aid in the process of the association of Croatia in the EU is very high on the list of policy priorities because of proper preparation of Croatian entrepreneurs to the business conditions existing on the internal European market. Certainly, the continuous alignment of Croatian legislation with *acquis communautaire* is very important but it is not a goal for itself.

Proper implementation of the legislation has equal importance.

The institutional capacity building of Croatian Competition Agency as the main regulator who has a task to execute the activities related to the market regulations

is the next important task.

Croatian legislative system should be strengthened in such a way as to respond to the high requirements of a such legislative issues.

Public awareness level should be increased with adequate knowledge of governmental and other state administration bodies, and the public should be informed about importance, policy, role and the law on the competition for the future economic development of the country.

The influence of public awareness of the importance of competition has a crucial role in the increase of Croatian entrepreneurs competition.

b) Long-term recommendations

The stipulation of the SAA with EU impose to Croatia an obligation to continuously and gradually align the existing and future legislation with legal acquirement of the Community (*acquis*).

In the first stage, advantage is given to the basic legal acquirement (*acquis*) regulating internal market and trade-related matters.

The Republic of Croatia overtook the obligations pursuant to the SAA and IA provisions, to implement the rules of market competition valid within the EU.

Beside the necessary fast legislation harmonisation of the competition and state aid with the EU, the next obligations are to implement the rules of competition; it is the emphasized obligation to implement "instruments of interpretation adopted by Community institutions".

This includes both the secondary legislation of EU bodies responsible for competition issues and juridical practice, and court decisions, especially of the European Court of Justice.

VI: Conclusions

The importance of the issues of the market competition and state aid is visible as one of the major priorities emphasized in the Stabilisation and Accession Agreement of the Republic of Croatia to EU. The legislation alignment of these issues with the *acquis communautaire* is defined in the National Programme of Accession to EU 2004 as well.

Special authority has been given to Croatian Competition Agency along with the State Aid Act enforcement due, to which CCA competencies are to approve the requests for state aid, to control the implementation as well as the pay-back of state aid. The state aid provisions enforcement are novelties in Croatian legislation. Thus, the controlling of the compliances of state aid covers the regulation agreed with-

in international free trade agreements with the EU, WTO and bilateral agreements as well.

For that reason, administrative capacity building of Croatian Competition Agency is to be further improved. A secure implementation of the legal competencies of CCA should also be provided by the possibility of legal cases evidence registration, by the training of all stakeholders representatives, and by a rise of the transparency of all state aids. Furthermore, state aid is to be transformed into forms less harmful for the market competition. Once implemented, such interventions will provide the necessary prerequisites for the full compliance with the EU legal acquirement within the field of state aids.

APPENDIX 1

Extract from Croatian Competition Agency report

This Appendix contains a survey of cases of cases submitted to the Agency and processes in the period between 22 October 2003 and 1 May 2004, i.e., from the date of setting up the Competition Protection Board (hereinafter: the Board).

Their structure is given below:

Designation	No.	%
1. Administrative	117	42 %
1.1 competition	106	38 %
1.2 state aids	11	62 %
2. Non-administrative	146	53 %
3. Opinions on laws and bylaws	13	5 %
Total	276	100 %

Source: Croatian Competition Agency, Analysis & IT Section

APPENDIX 2

Administrative cases

Designation	No.	%
• Concentrations	36	34 %
• Abuse of power and monopolisti position	34	32 %
• Contract appraisal	53	34 %
Total competition	106	100 %

Source: Croatian Competition Agency, Analysis & IT Section

APPENDIX 3

State Aid

Designation	No.	%
• Guarantees	3	27 %
• Written-off debts	6	54 %
• Other (financial restructuring)	2	19 %
Total state aids	11	100 %

Source: Croatian Competition Agency, Research, Analysis & IT Section

APPENDIX 4

Other Agency's activities; Non-administrative cases

Designation	No.	%
• Monitoring (specific markets/businessmen - traders) research projects	14	10 %
• Prior expert opinions issued upon request made by:	6	4 %
a) Croatian Privatisation Fund, in respect of state aids ¹ and the privatisation of Slobodna Dalmacija d.d.	5	3 %
b) Ministry of Finance (issuance of surety for Brodotrogir d.d.)	1	1 %
• Opinions issued ² in relation to the interpretation of the Competition Act and the Agency's bylaws, other opinions (e.g., complaints against bid invitations, etc.)	112	76 %
• Institutional co-operation (other regulatory bodies, ministries, Croatian Chamber of the Economy, Croatian National Bank, Public Audit Service, Insurance Companies Supervisory Board, Croatian Bureau Commission, Central Depository Agency, etc.)	14	10 %
Total non-administrative	146	100 %

Source: Croatian Competition Agency, Research, Analysis & IT Section

1. Writing of debts pursuant to a Government decision concerning four hotels. The cases were subsequently reassigned for administrative procedure.
2. These opinions were issued in a non-administrative procedure and refer to specific requests by the parties for the interpretation of the provisions of the Competition Act and the Agency's bylaws (Rules on the Register of Concentrations).

Classification of cases	No.	%
• Proposed by the parties (state administration bodies and institutions)	6	46 %
• Proposed by the Agency, viz.	7	54 %
a) implementing legislation (Regulations)	5	40 %
b) internal regulations (Statute, Board's Rules of Procedure)	2	15 %
Total opinions on laws and by-laws	13	100 %

Source: Croatian Competition Agency, Analysis & IT Section

- Draft Proposal of the Act on Amendment to the Trade Act (Ministry of the Economy)
 - Act on Amendments to the Trade Act (Constitutional Court)
 - Telecommunications Act (Initiative to harmonise the Telecommunications Act with the Consumer Protection Act and the Code of Obligations)
 - Draft Proposal of the Media Act (Ministry of Culture)
 - Draft Regulation on Subsidies to Small Shipbuilding (Ministry of the Economy, Labour and Entrepreneurship)
 - Draft Proposal of the Act on Amendments to the Postal Act (Ministry of the Sea, Tourism, Transport and Development; in the pipeline)
 - Draft Proposal of the Act on Amendments to the Act on State Subsidies in Agriculture, Fisheries and Forestry, along with the respective Proposal (Ministry of Agriculture, Forestry and Water Management; in the pipeline)
- Acting at the proposal of the Board, the Government passed four by-laws in the area of competition (Cf. above Table), which came into force on 29 April 2004:
1. Regulation on the notification and assessment of concentrations
 2. Regulation on the definition or relevant market
 3. Regulation on block exemption of agreements between enterprises operating on a different level of production or distribution
 4. Regulation on agreements of minor importance (all published in the Official Gazette No. 51/04).
- Due to a transformed organisational structure of the Agency, and pursuant to the new Competition Act and the State Subsidies Act, the Competition Protection Board adopted a new Statute of the Agency, ratified by the Parliament of Croatia on 30 January.
- Other Agency's internal regulations have either been drafted or are in the pipeline.

List of Abbreviations and acronyms

HRK	- Croatian currency Kuna
SAA	- Stabilisation and Accession Agreement
CCA	- Croatian Competition Agency
CC	- Competition Council
MF	- Ministry of Finance
MELE	- Ministry of Economy, Labour and Entrepreneurship
EU	- European Union
EC	- European Commission
GDP	- Grosse Domestic Product
GAPA	- General Administrative Procedure Act
AOR	- Act on Obligatory Relations
TREATY	- European Commission Treaty
AVIS	- Opinion of the European Commission on the Application of Croatia for Membership of the European Union
COMMISSION	- European Commission
ACQUIS	- acquis communautaire
IA	- Interim Agreement on trade and trade -related matters
PF	- Croatian Privatisation Fund
OECD	- Organization for Economic Cooperation and development
SEE Countries	- South East Europe Countries
WTO	- World Trade Organization

Sources of Information

1. European Commission Opinion on the application of Croatia for membership of the European Union, Bruxelles, 2004
2. Annual report of the work of Croatian Competition Agency concerning the state aid and Annual Report on State Aid for 2003, Zagreb, 2004
3. Report on the Interim Committee between the European Community and the Republic of Croatia, Zagreb, 2004
4. Croatian Competition Agency web site : www.crocompet.hr
5. Ministry of Economy, Labour and Entrepreneurship web site: www.mingorp.hr
6. Ministry of European Integration web site: www.mei.hr

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