MERGER CONTROL

Croatia

LEXOLOGY
Getting The Deal Through

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Merger Control

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Quick reference guide enabling side-by-side comparison of local insights into legislation and regulators; scope of legislation; thresholds, triggers and approvals; notification and clearance timetable; substantive assessment; remedies and ancillary restraints; involvement of other parties or authorities; judicial review; enforcement record and reform proposals; and recent trends.

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Croatia

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LEGISLATION AND JURISDICTION

Relevant legislation and regulators

What is the relevant legislation and who enforces it?

Merger control, as well as other aspects of competition law, is substantially governed by the Competition Act , which entered into force on 1 October 2010. In addition, there are numerous regulations that set out the procedural framework and define the standards for its application. One of the most relevant regulations is the Regulation on the Notification and Assessment of Concentrations (Official Gazette, No. 38/11), which provides information on the content and form of the notification as well as the assessment criteria for concentrations.

In preparation for Croatia's accession to the European Union on 1 July 2013, the Competition Act was substantially amended to comply with EU competition law. The Competition Act was most recently amended on 24 April 2021, primarily to transpose the ECN+ Directive into Croatian law, but also to introduce additional changes to the merger control regime.

Since Croatia's accession to the European Union, the EU Merger Regulation (EUMR) has been directly applicable; hence, mergers falling within the scope of the EUMR are reviewed by the European Commission (one-stop-shop principle) and not by the Croatian Competition Agency (CCA), except for cases in which the European Commission decides to refer the assessment of a particular concentration to the CCA under the terms of the EUMR.

The CCA remains competent to review national merger control cases under the Competition Act. The CCA is an independent authority. The decision-making body within the CCA is the Competition Council, which consists of five members, one of whom is the president of the Competition Council.

Law stated - 05 May 2023

Scope of legislation

What kinds of mergers are caught?

A concentration is constituted by:

- a merger of two or more independent undertakings, or parts thereof;
- the acquisition of direct or indirect control or decisive influence of one or more undertakings over one or more other undertakings, or over one or more parts of other undertakings, in particular by:
  - acquisition of the majority of shares or share capital;
  - obtaining the majority of voting rights; or
  - in any other way according to the provisions of the Companies Act; or
- the creation of a joint venture by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity.

A concentration does not arise if:

- banks or other financial institutions, investment funds or insurance companies, in their ordinary course of business, which includes transactions and dealing with securities, for their own account or for the account of third parties, hold shares on a temporary basis with a view toward reselling them, provided that they do not exercise their voting rights in respect of those shares for the purpose of determining the competitive behaviour of that undertaking (ie, they exercise such voting rights solely with a view of preparing the disposal of the entire or a

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part of the undertaking or its shares, do not undertake any operation that may distort, restrict or prevent competition and carry out the disposal within one year following the acquisition) – if disposal is not reasonably possible within this period, it may, upon request, be extended by the CCA;
- the acquisition of shares or share capital is the result of an internal restructuring of an undertaking (intra-group merger); or
- control is acquired by an office holder or administrative officer in the event of a bankruptcy, liquidation or winding up of an undertaking in accordance with the bankruptcy laws and the Companies Act.

Law stated - 05 May 2023

What types of joint ventures are caught?

The creation of a joint venture by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity (full-function joint venture), constitutes a concentration.

Law stated - 05 May 2023

Is there a definition of 'control' and are minority and other interests less than control caught?

In general, control may be obtained through the transfer of rights, contracts or other means, by which one or more undertakings, either separately or jointly, taking into account all legal and factual circumstances, gain the ability to exercise decisive influence over one or more undertakings on a lasting basis.

An undertaking is deemed to be controlled by another undertaking if the controlling undertaking, directly or indirectly:

- holds more than half of the share capital or half of the shares;
- may exercise more than half of the voting rights;
- has the right to appoint more than half of the members of the management board, supervisory committee or a similar administrative or managing body; or
- has the right to manage the business operations of the undertaking in another way on the basis of a special agreement on the functioning of the undertaking, through which the possibility of exercising decisive influence on a more permanent basis is acquired.

Minority interests (including board or management representation and contractual arrangements) are caught, provided that they confer control by any means described above.

Law stated - 05 May 2023

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

The CCA must be notified of a concentration where in the business year preceding the concentration:

- the combined total worldwide business turnover of the undertakings concerned amounted to at least 1 billion kunas (that is, €132,722,808.41) and at least one of the undertakings concerned has its seat or a subsidiary in

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Croatia; and
- the individual total business turnover realised in Croatia by each of at least two undertakings concerned amounted to at least 100 million kunas (that is, €13,272,280.84).

For the purpose of turnover calculation, the revenues from the sale of goods or the provision of services have to be taken into account. The relevant turnover is calculated by adding together the respective turnovers of the following:

1. the undertaking concerned;
2. undertakings in which the undertaking concerned, directly or indirectly:
   1. owns more than half of the shares or capital or business assets;
   2. has the power to exercise more than half of the voting rights;
   3. has the power to appoint more than half of the members of the supervisory board, the administrative board or bodies legally representing the undertakings; or
   4. has the right to manage the undertakings' affairs;
3. undertakings that have in the undertaking concerned (acquiring or controlling undertaking) rights or powers listed in point (2);
4. undertakings in which the undertakings referred to in point (3) have the rights or powers listed in point (2); and
5. undertakings in which two or more undertakings as referred to in points (1) to (4) jointly have the rights or powers listed in point (2).

Turnover generated by sales or services between companies belonging to the same group, as well as turnover arising from taxes and parafiscal contributions, is not taken into account. In the case of an acquisition of one or more parts of an undertaking or of a group of undertakings, irrespective of whether such parts constitute independent legal entities, only the turnover pertaining to the parts subject to the concentration are taken into account for the purpose of the turnover calculation.

For the purpose of the turnover calculation of banks and other institutions that provide financial services, after the deduction of indirect taxes related to them, the sum of the following income items has to be taken into account:

- income from interest rates and similar income;
- income from securities (ie, income from shares and other variable yield securities, income from participating interests in economic entities, and income from shares in affiliated economic entities);
- commissions receivable;
- net profit on financial operations; and
- other operating income.

For insurance companies and companies that perform reinsurance activities, the value of the gross premiums, which includes amounts paid and received in relation to the insurance contracts issued by or on behalf of an insurance company, including reinsurance premiums, after the deduction of taxes and parafiscal contributions charged by reference to the amounts of individual premiums or in relation to the total premium volume, have to be taken into account.

Concentrations falling within the jurisdiction of the European Commission are, in general, not subject to Croatian merger control (one-stop-shop principle). According to article 19, paragraph 7 of the Competition Act, the European Commission may decide to refer the assessment of a concentration to the CCA, irrespective of the concentration having a Community dimension and regardless of whether the Croatian national thresholds are met (since the higher turnover thresholds stipulated by the EUMR are met). Should this be the case, the parties to the concentration must

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submit a respective Croatian merger notification to the CCA within 30 days of the date of receipt of the relevant decision of the European Commission.

Irrespective of whether the above-mentioned turnover thresholds are met, in specific situations in the media, postal or electronic communications sectors, a filing with the CCA or the Croatian Regulatory Authority for Network Industries (HAKOM) may be required.

Except in the situations described above, the general rule is that there is no obligation to notify a concentration to the CCA if the thresholds set forth by article 17 of the Competition Act are not met.

Law stated - 05 May 2023

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

If a transaction constitutes a concentration within the meaning of the Competition Act and if the statutory turnover threshold requirements are cumulatively met, the filing is mandatory.

Law stated - 05 May 2023

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

The Competition Act requires local effects insofar that – in addition to a certain domestic minimum turnover generated by at least two of the undertakings concerned – at least one of the undertakings concerned is required to have its seat or a subsidiary in Croatia. As a result, purely foreign-to-foreign mergers usually fall outside the scope of the CCA's jurisdiction.

Law stated - 05 May 2023

Are there also rules on foreign investment, special sectors or other relevant approvals?

There are no provisions that relate specifically to foreign investments. In the following sectors and others, provisions related to merger control exist.

Media sector

The CCA has sole competence to decide on concentrations involving media companies.

The Media Act (Official Gazette, No. 59/04) requires media companies to notify all concentrations to the CCA, irrespective of whether the turnover thresholds stipulated under the Competition Act are met. The Media Act also prohibits concentrations that would result in a combined market share of more than 40 per cent in the markets comprising all daily or all weekly newspapers in Croatia, respectively.

Furthermore, under the Electronic Media Act (Official Gazette, No. 111/21), for the purposes of preserving media pluralism and content diversity in electronic media, electronic media undertakings are required to notify any change of ownership or control to the Electronic Media Agency, irrespective of whether the turnover thresholds stipulated under the Competition Act are met and regardless of whether the CCA may be undertaking an independent assessment of the underlying concentration.

The Electronic Media Act stipulates specific market threshold requirements that denote prohibited concentrations. In those instances, the Electronic Media Agency is authorised to order the shareholding structure of a media company to

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be changed (otherwise its media licence could be withdrawn), in addition to other statutory restrictions.

Postal and electronic communications sectors

According to article 116 of the Electronic Communications Act (Official Gazette, No. 76/22), operators with significant market power and operators who have been granted licences to use radio frequencies are obligated to notify HAKOM of any intention to merge or consolidate, or of any other type of joint or coordinated action (irrespective of whether the turnover thresholds are met). Prior to the implementation of any such operation, HAKOM must issue its approval. If the operation qualifies as a concentration exceeding the turnover thresholds, a notification must be filed with the CCA. In the course of the assessment, the CCA may invite HAKOM to comment on the case.

Law stated - 05 May 2023

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

There is no explicit filing deadline; however, the notification has to be submitted to the Croatian Competition Agency (CCA) prior to the intended implementation of the concentration and following the conclusion of the merger agreement, or following the publication of the invitation to tender on the basis of which control or decisive influence will be acquired by the controlling undertaking.

The parties may submit the notification even before the conclusion of the merger agreement or the publication of the invitation to tender if they are able to provide, in good faith, evidence of the proposed conclusion of the merger agreement or the announcement of the invitation to tender. In the case of a breach of the filing obligation, the CCA may impose a fine of up to 1 per cent of the undertaking's total annual turnover realised in the preceding business year.

Law stated - 05 May 2023

Which parties are responsible for filing and are filing fees required?

There are two scenarios to consider.

In the case of an acquisition of an entire undertaking, or parts of one or more undertakings by another undertaking, the notification has to be submitted by the undertaking acquiring control.

In all other cases, the parties to the concentration have to submit a joint notification in relation to the concentration.

Special filing fees for the submission of a notification, as well as for the CCA's assessment and decision, were abolished in 2021.

Law stated - 05 May 2023

What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

The intended concentration must not be implemented prior to clearance (suspension obligation). There are two waiting periods to consider.

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First, following the submission of the notification, the CCA assesses the completeness of the merger notification. The Competition Act does not provide for a specific time frame; in practice, it is thus recommended to be in contact with the CCA during this stage to ensure that this period is short.

Second, once the CCA has issued the confirmation of completeness, it then assesses the intended concentration in one or two phases, depending on whether the intended concentration raises competition concerns.

In Phase I, the CCA has 30 days to clear the intended concentration. If no decision clearing the intended concentration or a procedural order on the initiation of the compatibility assessment in Phase II is adopted prior to the expiry of this waiting period, the intended concentration is presumed by law to be approved in Phase I. In that case, the CCA usually issues a letter of comfort to the notifying party, typically without any delay, confirming the compatibility of the notified concentration.

If, however, the CCA takes the view that the intended concentration gives rise to competition law concerns, it shall adopt a procedural order on the initiation of Phase II proceedings. Once the CCA has initiated Phase II proceedings, it must issue a decision within three months (which may be extended by an additional three months, if this is necessary to carry out additional market analysis). If no decision is adopted prior to the expiry of the waiting period, the intended concentration is presumed by law to have obtained clearance in Phase II.

According to article 19(6) of the Competition Act, the CCA may, in particularly justified cases and upon the request of the parties, permit the implementation of particular actions relating to the implementation of the notified concentration before the expiry of the applicable waiting period. When deciding on such a request, the CCA takes into account all circumstances of the case, in particular the nature and gravity of the damages that might be posed to the parties to the concentration or third parties, and the effects of the concentration on competition. From publicly available information, one can derive that such pre-clearance implementation is rarely granted.

Law stated - 05 May 2023

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

There are two principal categories of sanctions for closing or integrating the activities of the merging businesses prior to clearance. The distinction between the two is made based on whether the notifiable concentration would have to be prohibited.

If the concentration has been closed prior to clearance and the requirements for obtaining clearance have not been met (irrespective of whether a notification has been submitted to the CCA), the CCA may impose a fine of up to 10 per cent of the undertaking's total annual worldwide turnover generated in the preceding business year. The fine is imposed where the infringement has been committed intentionally or negligently. Notions of intent and negligence should be interpreted in line with the case law of the Court of Justice of the European Union, not in line with the meaning assigned to them in criminal matters.

Where the concentration could in principle obtain clearance but has been closed prior to clearance (irrespective of whether a notification has been submitted), the CCA may impose a fine of up to 1 per cent of the undertaking's total annual turnover generated in the preceding business year. An undertaking could also be fined up to 1 per cent of its total annual turnover generated in the preceding business year if the merger filing provides incorrect or false information about the parties and their businesses.

In addition, the CCA may order any indispensable measures aimed at restoring effective competition in the relevant market and set appropriate deadlines for their adoption. In particular, the CCA may:

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- order acquired shares or share capital to be transferred or divested; or
- prohibit or restrict the exercise of voting rights attached to the shares or share capital and order the joint venture (or any other form of control by which the concentration has been put into effect) to be removed.

There are no publicly available cases in which the CCA has recently imposed such sanctions to restore competition.

Law stated - 05 May 2023

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The sanctions for closing before clearance (gun jumping) are also applicable in foreign-to-foreign mergers; however, we are not aware of these sanctions having been applied in practice to such mergers since the introduction of the Competition Act, as they usually fall outside the scope of the Croatian merger control regime (among other things, a merger filing is only required if at least one of the undertakings concerned has its seat or a subsidiary in Croatia).

Law stated - 05 May 2023

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

The Competition Act does not explicitly provide for hold-separate (carve-out) solutions. Foreign-to-foreign concentrations are therefore assessed and treated in the same way as local concentrations. The Competition Act includes an additional local jurisdictional threshold requirement, according to which at least one of the undertakings concerned is required to have its seat or a subsidiary in Croatia. If this (additional) requirement is not met, a concentration does not require a notification in Croatia.

As a result, since the introduction of the Competition Act, most foreign-to-foreign mergers that could require hold-separate (carve-out) solutions fall outside the scope of the application of the Croatian merger control regime. The CCA may, in particularly justified cases and upon the request of the parties, permit the implementation of particular actions relating to the implementation of the notified concentration before the expiry of the applicable waiting period.

Law stated - 05 May 2023

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

The Takeover Act (Official Gazette, No. 109/07) stipulates that the deadline for requesting approval from the Croatian Financial Services Agency to publish the public offer for shares in stock companies is suspended until merger clearance is granted by the CCA; therefore, potential acquirers are not required to submit their public offers before the CCA has issued the merger clearance.

Law stated - 05 May 2023

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

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The information and documentation to be submitted in a merger notification are set out in article 20 of the Competition Act and in the Regulation on the Notification and Assessment of Concentrations (the Regulation).

Among other things, the following must be provided:

- information on the parties to the concentration (eg, names; registered seats; excerpts from the commercial register; nature of the business, ownership and control; description of the distribution and retail networks; and annual financial reports for the preceding business year);
- power of attorney;
- description of the intended concentration;
- certified copies or originals of all documents on the basis of which the concentration takes place;
- definition of the relevant markets;
- market shares held by the undertakings concerned on the relevant markets;
- information on main competitors and their market shares in the relevant markets;
- description of the distribution and retail networks in the relevant markets, and the relevance of research and development;
- economic rationale of the concentration;
- description of the benefits expected to result from the concentration for consumers; and
- if available, copies of analyses, reports or studies related to the relevant markets.

The CCA may request additional information from the undertakings concerned, such as information on the number of their employees, their top five suppliers and customers or sales figures (value and volume). If some of the information set forth in the Regulation is not available to the parties, this must be stated in the filing, together with information regarding where the undertakings tried to collect the data concerned, the reasons why this collection was not successful and where the CCA could obtain the missing information.

The notification and all documents attached thereto need to be submitted in the Croatian language. In addition, all documents submitted to the CCA must be in the form of an original or a certified copy bearing an apostille (depending on the jurisdiction of origin of a particular document). If a document requires translation, both the original or a certified copy and its certified Croatian translation have to be provided.

The Competition Act also envisages the possibility to submit a short-form notification in cases that – from experience – usually do not give rise to competition law concerns. The Regulation, which defines the precise content of short-form notifications, was published in the Official Gazette, No. 38/11 and came into force on 9 April 2011.

According to article 20 of the Competition Act, a short-form notification may be submitted if:

- none of the parties to the concentration are engaged in business activities in the same relevant product and geographic market (ie, no horizontal overlaps), or in a market that is upstream or downstream of a market in which another party to the concentration is engaged (ie, no vertical relationship);
- two or more of the parties to the concentration are engaged in business activities in the same relevant product and geographic market (horizontal relationship), provided that their combined market share is less than 20 per cent, or when one or more of the parties to the concentration are engaged in business activities in a relevant product market that is upstream or downstream of a product market in which any other party to the concentration is engaged (vertical relationship), provided that none of their individual or combined market shares at either level is 30 per cent or more;
- a party to the concentration is to acquire sole control of an undertaking over which it already has joint control; or
- in cases in which two or more undertakings acquire control over a joint venture, where the joint venture has no, or negligible, actual or foreseen activities within Croatia.

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However, even in those cases, the CCA may require a full notification to be made if it finds that the concentration may lead to a significant impediment of effective competition.

If the merger filing provides incorrect or false information about the parties and their businesses, the CCA may impose a fine of up to 1 per cent of the undertaking's total annual turnover generated in the preceding business year.

Law stated - 05 May 2023

Investigation phases and timetable

What are the typical steps and different phases of the investigation?

Following the submission of the merger notification, the CCA first assesses its completeness. The Competition Act does not provide for a specific time frame for the review of the completeness of the notification. Once the CCA has issued the confirmation of completeness, the CCA assesses the intended concentration in one or two phases, depending on whether the intended concentration raises competition concerns.

Law stated - 05 May 2023

What is the statutory timetable for clearance? Can it be speeded up?

In Phase I, the CCA has 30 days to clear the intended concentration. If no decision or procedural order on the initiation of the compatibility assessment decision is adopted prior to the expiry of this time period, the intended concentration is presumed to be approved in Phase I. In that case, the CCA usually issues a letter of comfort to the notifying party confirming the compatibility of the concentration concerned.

If the CCA initiates Phase II proceedings, it must issue a decision within three months. This waiting period may be further extended by an additional three months if this would be necessary to carry out additional market analyses. If no decision is adopted by the CCA prior to the expiry of the waiting period, the intended concentration is presumed by law to have obtained clearance in Phase II.

It is evident from publicly available information that the CCA usually clears concentrations in Phase I (ie, within 30 days of the day when the complete filing was submitted).

The Competition Act does not provide the possibility for the parties to obtain a waiver or to apply for expedited proceedings.

Law stated - 05 May 2023

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

The Competition Act introduced to the Croatian merger control regime the substantive test for the assessment of concentrations that is applied by the EU Merger Regulation (EUMR). According to article 16 of the Competition Act, the Croatian Competition Agency (CCA) assesses whether the intended concentration would significantly impede effective competition in the market, in particular as a result of the creation or strengthening of a dominant position.

In assessing concentrations, the CCA regularly takes into account special circumstances revolving around the specific case. For instance, in a vertical merger between a meat products manufacturer and a grocery retail chain (cleared in

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2005), as well as in two other horizontal mergers between telecommunications operators (conditionally cleared in 2014 and 2017), the CCA took into consideration the failing firm defence raised by the parties to these concentrations.

Law stated - 05 May 2023

Is there a special substantive test for joint ventures?

Similar to the rules under the EUMR, if the effect or object of a full-function joint venture is the coordination of the competitive behaviour of undertakings that remain independent, such coordination will be appraised in the review process under the rules on prohibited agreements.

Law stated - 05 May 2023

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

In essence, the CCA investigates the intended concentration on the basis of:

- the structure of the relevant market;
- actual and potential competitors in the relevant market;
- supply and potential market supply;
- the costs, risks, and technical, economic and legal conditions necessary to enter into or withdraw from the relevant market;
- the possible effects of the intended concentration on competition in the relevant market;
- the market shares and market position, economic and financial power, and business activities of the undertakings concerned in the relevant market;
- internal and external advantages for the parties to the concentration in relation to their competitors;
- possible changes in the business operations of the parties to the concentration following the implementation of the concentration; and
- the effects of the concentration on other undertakings, especially relating to consumers' benefit, as well as other objectives and effects of the intended concentration, in particular:
  - decrease in prices of goods or services;
  - decrease in transportation, distribution or other costs;
  - specialisation in production; and
  - other benefits directly deriving from the implementation of the intended concentration.

Law stated - 05 May 2023

Non-competition issues

To what extent are non-competition issues relevant in the review process?

The Competition Act does not expressly mention non-competition issues such as industrial policy, sustainability, employment or public interest issues as being relevant in the assessment process. In practice, however, the CCA may take into account non-competition issues.

Law stated - 05 May 2023

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Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

Economic efficiencies are part of the appraisal of the concentration and are taken into account on the condition that they are advantageous to consumers.

Law stated - 05 May 2023

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

Based on the assessment of the concentration under the substantive test, the Croatian Competition Agency (CCA) may, following the initiation of Phase II proceedings, issue:

- a clearance decision, by which the concentration is deemed compatible with competition rules;
- a decision declaring the concentration conditionally compatible with the Croatian competition rules, provided that within given time limits certain measures are taken and conditions are met (provisional measures); or
- a decision prohibiting the implementation of the concentration.

The CCA may also, on its own initiative or upon request of a party to the concentration, withdraw or amend a decision when:

- the decision is based on incorrect or false information that has been essential for decision-making;
- any of the parties to the concentration have not fulfilled the conditions and obligations determined in the CCA's decision; or
- the parties to the concentration cannot duly fulfil the proposed conditions or observe the set deadlines because of unpredictable circumstances beyond their control.

Law stated - 05 May 2023

Remedies and conditions

Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

In practice, the CCA accepts both structural and behavioural remedies.

An example is the acquisition of a Slovenian food retail business by a Croatian major food production and retail conglomerate, conditionally cleared by the CCA in 2014. In its decision, the CCA rendered a complex economic and behavioural analysis of the merger, and ordered a number of measures to counterbalance the anticompetitive effects of the concentration. In particular, these measures included the divestment of 96 retail outlets in the combined network of both undertakings (by either terminating lease agreements, or renting or selling the shops to third parties), and the imposition of an obligation on the acquirer to ensure that the three bestselling products of five of the target's largest suppliers were offered in its retail network for at least three years. The CCA appointed a monitoring trustee to ensure

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that the measures were duly implemented.

In 2009, in the course of the acquisition of a local Croatian oil company by a Hungarian oil company, the CCA demanded that the Croatian target company sell one of its local subsidiaries. In its clearance decision, the CCA listed certain requirements to be observed to ensure the future business integrity of the disposed subsidiary after being sold to third parties. In the same year, in a case regarding the acquisition of a local retail chain, the CCA ordered the disposal of certain retail stores. In both cases, the acquirer was ordered to nominate a monitoring trustee to monitor compliance with the remedies.

In 2014, the CCA imposed a set of remedies on the parties to a concentration in the telecommunications sector. In this case, the CCA accepted the measures proposed by the parties to the concentration, aimed at eliminating the negative effects of the concentration on competition. Among other remedies, the concentration was limited to a period of four years following the acquisition. This concentration was initially cleared by the CCA accepting a failing firm defence because control over the target was acquired in a pre-bankruptcy settlement process. In this case, in 2017, the CCA partially repealed the initial clearance from 2014, imposing a revised set of remedies on the parties to the concentration. The new remedies were requested and accepted, due to the impact of extraordinary circumstances.

Also in 2017, the CCA conditionally cleared another concentration in the telecommunications sector, imposing a combined set of structural and behavioural remedies on the parties to the concentration.

The most recent example of the CCA imposing remedies is a merger in the automotive industry, which was conditionally cleared in Phase II in 2022. To remedy the identified competition concerns, the CCA accepted a proposal from the undertakings concerned and imposed a broad set of remedies, which were primarily behavioural and included – among other conditions – the application of equal selective distribution criteria to all members of the authorised distributors' networks, the prevention of information exchange concerns between competing multi-brand repairers, and easier access to original spare parts and technical information to independent repairers.

Law stated - 05 May 2023

What are the basic conditions and timing issues applicable to a divestment or other remedy?

There are two scenarios relating to remedies (including divestments) that may apply.

First, the parties to a concentration may at any time during the proceedings (eg, already in the notification) offer commitments, upon their own initiative, to remove serious doubts as to the compatibility of the concentration with Croatian competition rules.

Second, the CCA may, if it reaches the preliminary conclusion that a concentration may be cleared only subject to conditions or obligations, invite the undertakings concerned to suggest certain remedies to obtain merger clearance. Upon such a notice, the parties have one month to propose suitable remedies to the CCA.

When assessing remedies, the CCA takes into account whether they are adequate to restore efficient competition. In the event that the CCA does not accept or only partly accepts the proposed remedies, it is authorised to impose other behavioural or structural measures, conditions, obligations and deadlines to ensure effective competition under article 22 of the Competition Act.

Law stated - 05 May 2023

What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

We are not aware of any foreign-to-foreign mergers in which the CCA has requested remedies. No foreign-to-foreign mergers were assessed by the CCA in 2020, and the CCA cleared foreign-to-foreign mergers in Phase I and without the

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imposition of remedies in 2019 (two mergers), 2021 (one merger) and 2022 (one merger).

Law stated - 05 May 2023

Ancillary restrictions

In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

The Competition Act does not contain explicit provisions on ancillary restrictions. However, the CCA generally takes the European Commission's decisional practice into account; therefore, in practice, ancillary restraints directly related to and necessary for the concentration are usually covered by the CCA's clearance decision.

Law stated - 05 May 2023

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Are customers and competitors involved in the review process and what rights do complainants have?

The Croatian Competition Agency (CCA) may gather information ex officio. It may also require from the undertakings concerned and from third parties (eg, customers and competitors) additional information that it considers necessary for the assessment of the concentration.

Further, the facts that a notification has been submitted and that Phase II proceedings have been initiated are made public on the CCA's website, inviting third parties to submit their observations and comments on the intended concentration.

Access to the CCA's case file may only be granted to the parties to the proceedings. According to the Croatian general administrative procedure rules, a 'party' may be an individual or an entity that is authorised to participate in the proceedings for the purposes of protecting its rights or legal interests. In practice, however, only the undertakings concerned are admitted as parties to the merger control proceedings and, accordingly, third parties may not be admitted as parties to the proceedings. The undertakings concerned have the right to access the case files only once they have received a statement of objections in Phase II.

In addition to the provisions of the General Administrative Procedure Act (Official Gazette, No. 47/09), the general rules stipulated in the Competition Act on third parties' rights in the proceedings apply. Although they cannot be admitted as parties to the merger control proceedings, interested third parties may submit their comments and observations on the intended concentration following the CCA's publication thereof.

Law stated - 05 May 2023

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

With regard to the publicity given to the process, the facts that a notification has been submitted and that Phase II proceedings have been initiated are made public on the CCA's website, inviting third parties to submit observations and comments on the intended concentration. Decisions made by the CCA are published on its website as well. Access to

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the case file may only be granted to the parties to the process.

The CCA may not disclose business secrets (ie, information that is defined to be a business secret by law or by the undertakings concerned). Business secrets, among other things, encompass any business information that has actual or potential economic and market value, the disclosure of which could result in an economic advantage for other undertakings.

In particular, the CCA does not consider the following to be covered by the secrecy obligation:

- information that is publicly available, including information available through specialised information services or information that is common knowledge among specialists in the field;
- historical information, in particular information that is at least five years old;
- statistical information; and
- data and documentation on which the CCA's decision is based.

Against this background, it is generally advisable to explicitly mark any confidential information as such in the merger notification, and in any other comments, statements and documents sent to the CCA. Case-related information that is made public by the CCA is generally published in a non-confidential version.

Law stated - 05 May 2023

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

The CCA has concluded cooperation agreements with several national competition authorities – for example, those of Albania, Austria, Bosnia and Herzegovina, Bulgaria, Hungary, Kosovo, North Macedonia, Montenegro, Romania, Serbia and Turkey. In addition, the CCA is a member of the International Competition Network.

Since 1 July 2013, the CCA has been a member of the European Competition Network (ECN); among other things, it participates in the ECN's Merger Working Group. The CCA also participates in the Organisation for Economic Co-operation and Development's Competition Committee and attends its meetings.

Members of the CCA also regularly participate in conferences, summits and other high-level meetings organised by other competition authorities, thereby ensuring that Croatia is involved in the international competition law dialogue. As for recent developments, in 2019 the CCA carried out an EU twinning light project in Montenegro aimed at strengthening the administrative capacities of the Montenegrin competition authority through training its staff, particularly in relation to complex economic analyses, evidence collection procedures and surprise inspections (dawn raids).

Furthermore, the transposition of the ECN+ Directive into Croatian law, which was completed by the most recent amendments to the Competition Act that entered into force on 24 April 2021, is expected to further facilitate and streamline cooperation between the CCA and national competition authorities in other EU member states.

Law stated - 05 May 2023

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

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A legal action for judicial review against the decision of the Croatian Competition Agency (CCA) must be filed directly with the Croatian High Administrative Court within 30 days of the date on which the CCA decision was served. Decisions of the High Administrative Court may be further appealed, on limited grounds, before the Croatian Constitutional Court, which has recently tended to intervene in competition matters.

In the past, most of the judicial reviews brought before the then-competent Croatian Administrative Court (which decided competition law cases until mid-2013) were dismissed; the recent practice of the Croatian High Administrative Court has shown that the judges' tendency to reject these remedies in most cases has not changed. According to publicly available information, only a handful of judicial reviews have been undertaken in relation to merger control proceedings and the vast majority of follow-on administrative disputes relate to other infringements of competition law.

Law stated - 05 May 2023

Time frame

What is the usual time frame for appeal or judicial review?

Previously, the judicial review performed by the Croatian Administrative Court could take up to two years. Depending on the complexity of the case, it could take even longer.

Although the Croatian High Administrative Court (which took over competency in 2013) has recently performed several judicial reviews in a much shorter time (ie, within a few months of the submission of the request for judicial review), showing an improvement in the overall duration of proceedings, other recent cases have shown that the judicial review process still tends to be rather lengthy.

Law stated - 05 May 2023

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

What is the recent enforcement record and what are the current enforcement concerns of the authorities?

Because of the relatively high domestic notification thresholds, the number of merger control cases is rather small in Croatia. According to publicly available data, the Croatian Competition Agency (CCA) cleared a total of 11 concentrations in 2022: 10 concentrations were cleared in Phase I and one concentration was conditionally cleared in Phase II, with the imposition of behavioural remedies addressing the competition concerns arising from the concentration. One merger notification was dismissed by the CCA in 2022, as neither the general turnover thresholds nor the special notification requirements applicable to the media sector had been met. In 2021, six concentrations were cleared by the CCA in Phase I and seven notifications were dismissed as either the turnover thresholds or the related statutory requirements had not been met.

In 2021, the CCA performed two independent reviews of concentrations that had not previously been notified upon the initiatives of interested third parties, ultimately concluding that in neither of those cases had the turnover thresholds triggering the notification requirement been met. Seven concentrations were cleared by the CCA in 2020 (six in Phase I and one in Phase II) and three merger notifications were dismissed as the statutory requirements for the CCA's assessment had not been met. Further, according to publicly available information, the CCA cleared 14 concentrations in 2019 and 11 concentrations in 2018 – all but one were cleared in Phase I.

Although there have been, according to publicly available information, no recent cases in which the CCA imposed fines for implementing concentrations prior to or without its approval, the CCA has in the past imposed a number of rather

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symbolic administrative fines that ranged from approximately €130 to €4,000 on undertakings operating in the media sector for violations of the merger filing obligation.

Foreign-to-foreign mergers usually fall outside the scope of the Croatian merger control regime (among other things, a merger filing is required only if at least one of the undertakings concerned has its seat or a subsidiary in Croatia). According to information published by the CCA, only one foreign-to-foreign merger was cleared in Phase I in each of 2022 and 2021, no such mergers were assessed by the CCA in 2020, and two such mergers were assessed and cleared in Phase I in 2019.

Law stated - 05 May 2023

Reform proposals

Are there current proposals to change the legislation?

The latest amendment of the Competition Act entered into force on 24 April 2021. These amendments were primarily enacted to transpose the ECN+ Directive into national law; however, alongside aligning the Competition Act with the EU acquis, the amendments also encompassed changes to the local merger control regime. Although there are currently no publicly announced proposals to change the legislation, the Competition Act may shortly be subject to a minor amendment to adjust the turnover thresholds in light of Croatia's recent accession to the euro area. As of 1 January 2023, the euro is the official currency of Croatia.

Law stated - 05 May 2023

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

In 2022, the Croatian Competition Agency (CCA) cleared a total of 11 concentrations. In particular, 10 concentrations were cleared in Phase I, which involved undertakings active in various businesses and industries, including the banking sector, print and audiovisual media, consumer electronics, grocery retailers, and clothing stores. In one of these cases, the CCA cleared a concentration involving a takeover of one of the most prominent television services providers in Croatia, which represented one of the most significant transactions in the Croatian market in 2022. In another case, the CCA cleared a transaction by which a local bank that is majority owned by the Croatian state acquired the Croatian subsidiary and banking operations of a major Russian bank, the business of which was affected by the restrictions imposed under the sanctions regime.

In addition to the concentrations cleared in Phase I, in 2022, the CCA also dismissed one merger filing as the statutory thresholds had not been met. It also conditionally cleared one concentration between undertakings operating in the automotive industry (sale of motor vehicles, spare parts and service) in Phase II, imposing a complex set of behavioural remedies to address the identified competition concerns arising from the transaction in question.

Global developments – particularly the war in Ukraine, increased inflation rates and developments in the energy sector – are likely to have an adverse effect on mergers and acquisitions in Croatia and worldwide. The operations of the CCA, as well as those of other competition agencies, are likely to be affected by global crises and political developments. An illustrative example is the above-mentioned CCA clearance of a local merger involving one of the most prominent Russian banks, the business of which was affected by the sanctions regime and – absent this transaction – might have caused a serious disruption in the local financial market. Similar cases may occur and it will be interesting to see how competition agencies will deal with the failing firm defence as well as non-competition issues, such as industrial and

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public interest concerns.

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Jurisdictions

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Brazil	TozziniFreire Advogados
Bulgaria	Boyanov & Co
Canada	McMillan LLP
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Denmark	Kromann Reumert
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