



Croatia, which lies in South-eastern Europe, emerged into the new millennium from a decade in which it experienced a bitter war as the former Yugoslavia broke up; and several years of authoritarian nationalism.

Although Croatia declared its independence from Yugoslavia in 1991, it took four years of sporadic, but often bitter, fighting before occupying Serb armies were mostly cleared from Croatian lands. Under UN supervision, the last Serb-held enclave in Eastern Slovenia was returned to Croatia in 1998.

### Economy

The Government of Croatia's (GoC) economic stabilisation programme, introduced in 1993 and based on tight monetary and incomes policy, has been very successful in reducing inflation to 3-4 percent per annum since 1994, earning plaudits from the IMF and World Bank. By early 2003, Croatia had made sufficient progress to apply formally for EU membership, becoming the second former Yugoslav Republic after Slovenia to do so. Croatia became an official candidate country in June 2004. The Government is committed to a policy of privatisation. Several SOEs have been privatised.

### Competition Evolution and Environment

The Croatian *Law on the Protection of Market Competition* (LPMC) was approved by the Croatian Parliament on June 27, 1995 and published in the Official Gazette No 48/95. Competition law has been established with the main objective to protect fair competition in the market.

The initial premise for the enactment of competition law in Croatia was the establishment of fair and efficient market competition as the basic feature of a market economy. Competition law aims to prevent particular practices and business activities, which may place some undertakings at a competitive disadvantage, thereby challenging fair competition among firms.

### PROFILE

Population:	4.4 million***
GDP (Current US\$):	28.8 billion***
Per Capita Income: (Current US\$)	10,240 (Atlas method)*** 5,370 (at PPP)**
Surface Area:	56,540 sq. km
Life Expectancy:	74.1 years**
Literacy (%):	98.1 (of ages 15 and above)**
HDI Rank:	48***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

The Croatian Competition Law has been in force since 1995, which was reviewed in 1997 and 1998. The LPMC incorporates the fundamental regulations of the EU in the area of competition law. Specifically, the LPMC is based on the provisions of Articles 81 and 82 of the *Treaty on European Union*.

The adoption of the competition law met the constitutional obligation of the State to encourage economic development and achieve social welfare in market economies through strict application of market competition regulations.

### Competition Law and Institutions

Although the LPMC was approximated to the Law of the EU to a high degree, the Agency for the Protection of Market Competition (APMC) felt the need to draft a new competition law, *The Competition Act*. There were several important reasons for the adoption of a new regulation governing the area of the protection of market competition. The provisions of the *Stabilisation and Association Agreement (SAA) with the EU*, signed in October 2001,

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foresaw that the Croatian legal system would be brought in line with the legal system of the EU gradually and completely.

Another valid reason for the adoption of a new competition law was the need to include additional procedural provisions, which can regulate the proceedings conducted before the Agency.

It was proposed that the draft law on competition will use terms: 'Competition Act' instead of the old term 'Law on the Protection of Market Competition', 'Competition Agency' instead of 'Agency for Protection of Market Competition' and 'Competition Council' instead of the 'Council for the Protection of Market Competition', and in so doing, to achieve better acceptance and understanding, with regards to those who the law addresses.

With the adoption of the new Competition Act, the Croatian competition law would completely conform to the regulations of the EU.

As such, the Competition Act was again revised in 2003 and became effective on August 07, 2003; it has been applied since October 01, 2003. The Act had to be brought in compliance with the EC *Acquis Communautaire*. This new Competition Act 2003 regulates, more precisely, the rules on the protection of competition, but also conforms to the new resolutions that have been recently incorporated in the EC regulations.

#### **Croatian Competition Agency (CCA) & State Aid**

Whilst the administrative and professional jobs, relating to the protection of competition, will be performed by the 'Croatian Competition Agency', the managing body of the agency will be the Competition Council.

The Croatian Competition Agency (earlier referred to as the Agency for the Protection of Market Competition) was first established by the Decision of the Croatian Parliament of September 20, 1995, and began its operations in early 1997. The basic tasks of the Agency do not include only implementation of Law and other competition regulations, but also a proactive competition policy. The Agency should also actively promote the concept of free market competition and its protection, while addressing businesses, consumers and State Administration authorities.

The Agency may decide upon interim measures, where it deems that particular activities of restriction, prevention, or distortion of competition represent a risk, by creating a direct restraining influence on undertakings or on particular sectors of the economy.

The Republic of Croatia, by signing the Stabilisation and Association Agreement with the EU and their Member States, has assumed the obligation to establish a State Aid system, conforming to the EU State aid system.

According to Croatian legislation, state aid shall be considered as all actual and potential expenses, or decreased revenue of the State, granted in any form whatsoever by the provider of state aid, providing a benefit in the market to the recipient of such state aid. Since state aid directly influences competition, there is a need to monitor it, particularly in the market economy oriented countries.

The *State Aid Act* was introduced on April 02, 2003, and the Regulation on State Aid on August 06, 2003. These regulations laid down the state aid system in the Republic of Croatia. Under Article 5 of the Act, the Croatian Competition Agency is designated as a responsible authority for authorising, monitoring of the implementation and recovery of general and individual state aid.

#### **Sectoral Regulation**

The subject matter of the protection of free market competition is, for some activities (markets) in Croatia, regulated by special regulations. Thus, also significant for market competition in Croatia are the provisions of the regulations, which additionally, partially or completely, regulate certain issues of market competition.

Some of the regulations include the *Banking Law; the Law on Telecommunications; Law on Electric Energy Market; Law on Gas Market;* etc, as well as accompanying bylaws. Rules, which affect market competition, are also contained in the *Insurance Act; Law on Mediation and Representation in Insurance; Law on Municipal Economy; Law on Trade,* etc.

Besides the Croatian Competition Act, the *Regulation on the Administration of the Register of Concentrations* also constitutes part of the legal framework for protecting market competition in the Republic of Croatia.

Special regulations on certain activities (industry, markets) provide for special *regulatory authorities*. Their jurisdiction also includes the protection of free market competition. These numerous sectoral authorities include *the Council for Telecommunications,* and *the Council for Regulation of Energy Activities.* *The Croatian National Bank* also plays a restricted, specific role in protecting market competition in the area of banking activities. In the area of insurance activities, this role pertains to *the Direction for Supervision of Insurance Companies.* It could also be asserted that a similar post belongs to *the Securities Commission.*

#### **Energy Sector**

The Croatian Government plans to restructure, liberalise and privatise the energy sector. This restructuring is expected to emphasise compatibility with the EU.

Major energy reform legislation was passed by the Croatian Parliament in July 2001, and were operationalised on January 01, 2002. This included five new laws:

- Law on Energy;
- Law on Electricity Market;
- Law on Energy Regulatory Agency;
- Law on Oil and Oil Derivatives Market; and
- Law on Gas Market.

### **Telecommunications Sector**

The Law on Telecommunications was passed on June 30, 1999; regulating telecommunications, radio, television and cable television, the relations between providers and users of telecommunications services, as well as the construction, maintenance and use of telecommunications facilities and equipment, and of radio stations.

With this Law, an independent regulatory authority in Telecommunications, the Croatian Institute of Telecommunications, was established, which undertakes all organisational and other measures necessary for a undisturbed performance of functions and fulfillment of obligations in international telecommunications associations, in accordance with this and other laws.

### **Financial Sector**

The new Central Bank Law (i.e. the Law on the Croatian National Bank) was introduced in April 2001, with the primary objective being price stability. It gave the Croatian National Bank (CNB) the exclusive responsibility for monetary and exchange rate policies; ensuring the independence of the central bank; prohibiting lending to the Government; and formalising the procedures for consultation and information sharing between the CNB and the Ministry of Finance.

### **Anticompetitive Business Practices<sup>1</sup>**

A new Law on Trade, the first statute of an independent Croatia to regulate trade issues, became effective on February 01, 1996. The Law was prepared pursuant to the requirements of the WTO and of EU legislation, and to further Croatia's effort to join the WTO. Although the new Law attempts to regulate all issues concerning trade, sources indicate that unfair competition provisions exist:

- 1) Unfair competition is generally defined as acts that are contrary to good trade practices and that impede free competition or harm consumers;
- 2) Specific acts that may be considered as unfair competition include:
  - Advertising or sales methods that harm the goodwill or reputation of another merchant;
  - The sale of goods that may cause confusion with respect to, *inter alia*, their origin, means of production, quantity or quality;

- The unjustified use of another's name, trade name, trademark, or other designation, even with the owner's consent, that could cause confusion in the market; and
- The unlawful use of another's trade secrets.

- 3) In addition to remedies of damages, the new Law establishes fines for corporations and individuals, although there is no provision for injunctive relief.

#### **Box 66.1: Violation of Privacy and Commercial Damages**

One of the leaders in the Croatian food industry is currently in the process of launching a new product. The decision was made to accompany the launch with a large advertising campaign. Targeting younger consumers, the company based the campaign on football and a popular football player in particular, by using his look-alike. The look-alike of one of the most popular football players worldwide appeared in the promotional video, eating the product.

The conclusion was that the advertising, as described above, would not be allowed under Croatian legislation. This not only represents the violation of the celebrity's privacy, but also commercial damages, as the celebrity might have been deprived of potentially exploiting his image or name.

The general opinion was that the campaign could be allowed under certain conditions. The fact that the person in the promotional video is not the famous player, but his look-alike, should be clearly emphasised. To ensure that privacy rights of the famous player are not violated, the name of the look-alike should likewise be clearly disclosed.

Under these conditions, it cannot be claimed that the famous player's privacy rights are violated, since the difference between him and his look-alike is undoubtedly presented. In addition, as a celebrity, the famous player has, by implication, waived certain aspects of his privacy, as stipulated in Section 3 of Article 7 of the Law on Media.

*Source: Paper from Vukmir & Associates (vukmir@vukmir.net)*

### **Consumer Protection**

One of the important laws recently enacted in Croatia is the new *Consumer Protection Act* that came into force on September 08, 2003. It represents an enormous advancement towards the protection of consumers' rights in Croatia. Before the enactment of the Law, provisions

<sup>1</sup> <http://www.ladas.com/BULLETINS/1996/0896Bulletin/Croatia1.0896.html>

related to consumer protection were contained in several Croatian laws, such as the Law on Trade, the Law on Obligations, the Law on Standardisation, etc.

In general, this enactment is in line with the obligations that Croatia undertook by signing the Stabilisation and Association Agreement with the EU. The Law is based on several EU directives.

- The general principles of the new Act will allow a consumer to be better informed about the products or services that he or she is purchasing from the very onset of the transaction, whilst placing more checks and balances on the ability of sellers or advertisers to inappropriately influence the market place. In other words, the Law regulates misleading and comparative advertising. For example, the Act does not allow sellers to charge a fee for shopping bags if such bags are imprinted with the name/logo of the seller, since the buyer is providing a benefit to the seller by advertising on behalf of the seller;
- This Act also regulates pricing, more precisely the way the product's price should be indicated and in which cases;
- Another important issue is that the new law enables customers to return the merchandise within the allowed period of time; and
- An interesting provision also relates to the need to protect public health of consumers by ensuring that shopping bags are balanced and not too heavy for the consumer.

The Ministry of the Economy is the responsible authority for the implementation of consumer policy. Consumer associations are established by consumers as non-profit organisations tasked to promote and protect consumer rights.

Financial support to non-governmental consumer associations is also provided by the EC through its CARDS 2002 project, entitled 'Capacity Building in the Area of Consumer Protection', which includes IT equipment and technical assistance required for their work.

Furthermore, a law on Media was enacted in 2003 replacing the earlier Law on Public Information of 1996. This law contains very few provisions related to privacy protection.

### **Concluding Observations and Future Scenario**

The Croatian Competition Law sets the basis for the balancing of disadvantages and benefits for certain types of agreements which, although restrict competition to a certain extent, have to be considered useful in the business sense. Also, there has been a revision of the Croatian Commercial Act, which has integrated distribution agreements in the Croatian legal system.

### **Box 66.2: Claim for Compensation of Damages**

A Croatian marketing agency recently published an advertisement, for a Croatian telecommunications company, consisting of a photograph reproducing an image of a sailboat with its crew. The photo in question was printed on a jumbo-billboard and placed at many spots around the country. The author of the photo gave the marketing agency his consent to use the photo in the campaign.

After launching the campaign, the owner of the sailboat approached the marketing agency with the request to remove the photo and to be compensated for his claimed damages. The owner of the sailboat claimed that, with the launching of the advertising campaign, he could not find a sponsor since all potential sponsors believed that he was being sponsored by the telecommunications company from the advertisement. It was also claimed that the privacy rights of the owner of the sailboat were infringed upon, as he appeared on the advertisement. The owner requested the compensation of material and non-material damages.

It was concluded that the claims of the owner of the sailboat had no legal ground. In fact, all the elements that could make the sailboat recognisable had been removed before producing the final image of the photo. Further, it was not possible to identify the owner of the sailboat, nor any other member of the crew, so there was no violation of privacy rights or personal data as set in the Croatian Law on the Protection of Personal Data.

*Source: Paper from Vukmir & Associates*

Due to all these positive changes, and keeping in mind that Croatia is approaching the European economic integration, special attention must be paid to any legislative changes in the EU. For further development and better implementation of the Croatian competition law, the harmonisation with the new block exemption regulation of the EU will be a great challenge.

Over time, pursuant to the provisions of the SAA, the activities of the Agency to harmonies with the laws of the EC will intensify. The implementation of the SAA demands institutional strengthening of the Agency, primarily in the sense of increasing of the number of employees, specialists in competition law, etc.

The Competition Agency needs to focus on the promotion of competition law and policy. Sporadic presentations of experts employed in the Agency in professional meetings,

and the publication of professional papers in this area, are not sufficient to boost a proactive competition policy.

The Agency should organise, at least twice a year, specialised seminars in the area of competition law and

policy, primarily for the experts whose activities are connected to this legal area (such as judges of the Administrative Court of the Republic of Croatia, judges of the High Magistrate Court of the Republic of Croatia, magistrate courts and lawyers).

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### **Suggested Readings**

1. Paper on the 'New Competition Act 2003' by the *Croatian Competition Authority*
2. Annual Report 2001-2002
3. Paper entitled 'Consumer Protection Came into Force' ([http://www.croatiaemb.org/in%20the%20spotlight/Consumer\\_protection\\_act.htm](http://www.croatiaemb.org/in%20the%20spotlight/Consumer_protection_act.htm))
4. Paper by 'Vukmir & Associates' [vukmir@vukmir.net](mailto:vukmir@vukmir.net)
5. Paper on 'The New Block Exemption Regulation and Croatian Competition Law' by *Hana Klein Horak*
6. 'An Energy Overview of Croatia' paper by *Government of Croatia*
7. Paper on the 'Law on Telecommunications' from the *Official gazette of Republic of Croatia*