

**Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures**

Croatian competition Agency, Croatia

The following template is submitted by **Croatian competition Agency, Croatia** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

<http://www.aztn.hr/en/about-us/>

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The equal treatment is guaranteed by Constitution of the Republic of Croatia. For instance, Article 14 “All persons shall be equal before the law“ or Article 46 „Everyone shall be entitled to file petitions and complaints and to submit proposals to governmental and other public bodies and to receive responses“.

More specifically in the competition law proceedings, Competition law and General administrative procedure Act by their provisions protect equal procedural rights and safeguards for all the parties, regardless if they are undertakings from Croatia or from other countries. For example, Articles 37-53 (initiative to start the proceeding, procedural order on the initiation of the proceeding, right to access the file, surprise inspections, statement of objections, protection of business secrets including legal privilege, commitments, leniency, oral hearing etc.) Link to Competition Act: <http://www.aztn.hr/en/antitrust-and-mergers/legal-framework/>

Furthermore, some procedural rules are ensured by EU legislation which is already in force, such as EU Regulation 1/2003 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003.)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0001&from=EN>

EU Directive on damages claims Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance OJ L 349, 5.12.2014. regulates the rights of the victims of breaches of competition law and protects some evidence from leniency applicants in the latter damages claims proceedings before the civil courts

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0104&from=FR>

or the EU legislation which is being transposed at the moment in Croatia, Directive (EU) 2019/1 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (ECN+Directive), OJ L 11, 14.1.2019.). The latest Directive already in Chapter II Fundamental rights, Article 3 “Safeguards” ensures that the proceedings concerning infringements of Article 101 or 102 TFEU, including the exercise of the powers referred to in this Directive by national competition authorities, shall comply with general principles of Union law and the Charter of Fundamental Rights of the European Union. Member States shall ensure that the exercise of the powers is subject to appropriate safeguards in respect of the undertakings' rights of defence, including the right to be heard and the right to an effective remedy before a tribunal.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

The Croatian Competition Agency (CCA) publishes all its important decisions or summaries of decisions in its website. Press releases are also prepared and communicated to the public and media. In addition, for merger cases and for adoption of commitments there is a public

consultation procedure envisaged during which all interested parties, competitors, consumers or other participants on the market can submit their comments.

Competition law and General administrative procedure Act by their provisions protect equal procedural rights and safeguards for all the parties, regardless if they are undertakings from Croatia or from other countries. See reply under b) Non-discrimination.

All the applicable national and EU legislation is publicly available, published in the Official Gazette/Official Journal and on the web site of the CCA. As provided for in the Article 59 of the Competition Act, decisions of the CCA shall be submitted to the parties to the proceedings within 30 days from the day of the expiry of the time period for the adoption of a decision. Where the proceedings have been initiated upon the initiative filed by a complainant, the decision will be submitted within the above stated time period also to the complainant. Where the decisions of the CCA contain data which are covered by the obligation of business secrecy within the meaning of Article 53 of this Act, each party and complainant shall be submitted a copy of a decision containing no confidential data.

Furthermore, the parties are acquainted with their procedural rights primarily through the statement of objections and through the explanations given in each decision of the CCA. Details of some procedures are also elaborated in some byelaws, for example, Regulation on the method of setting up fines, Regulation on immunity from fines and reduction of fines.

Link: <http://www.aztn.hr/en/antitrust-and-mergers/legal-framework/>

d) Investigative Process

- i. *Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. *Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. *Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

After the preliminary investigation of the market is completed and if there is a sufficient indication with preliminary evidence, the CCA will adopt formal conclusion to start the proceeding. The content of this conclusion-order to initiate proceeding is regulated by Article 39 of the Competition Act “**Procedural order on institution of the proceedings**”: A procedural order on institution of the proceedings within the meaning of the provisions of this Act shall in particular contain: 1. reference to the related case; 2. the provisions of this Act pursuant to which the proceedings have been initiated; 3. facts of the case, practices or circumstances which led to the initiation of the proceedings; 4. request for submittal of the

relevant data and documentation in the sense of Article 41 hereof. Against the procedural order on initiation of the proceedings no appeal and no legal action at the High Administrative Court of the Republic of Croatia is allowed. The same will apply in merger cases if the CCA decides to assess the merger in the second phase. For merger proceedings, the details of procedure are further developed in the Regulation on notification and assessment of concentrations (link: <http://www.aztn.hr/en/antitrust-and-mergers/legal-framework/>)

Furthermore, in each competition case the parties will have the opportunity to submit their replies, to send additional information, explanation and relevant evidence including the reply to the statement of objections. Article 48 of the Competition Act provides: "The parties to the proceedings shall be informed by the CCA in writing of the preliminary established facts in the Statement of Objections in order to ensure the relevant parties to express their views on all relevant facts and circumstances of the case before the oral hearing is set.

In their written replies the parties to the proceedings may also propose that the CCA should hear other witnesses and present additional evidence.

The parties have one month from the receipt of the Statement of Objection to reply.

The CCA shall not base its decisions on the facts and circumstances in respect of which the parties to the proceedings have not been granted right of defence. With regard to the request for information (Article 41 Competition act), the CCA is empowered to:

1. request, in writing, from the parties to the proceedings or other legal or natural persons, professional associations or economic interest groups or associations of undertakings, consumers associations, public administration authorities and local regional self-government units to submit all necessary information in writing, or to make oral statements in respect of all relevant data and documentation;
2. request, in writing, from the parties to the proceedings to ensure direct inspection of all business premises, all immovable and movable assets, business books, data bases and other documentation;
3. request, in writing, from the parties to the proceedings to carry out other activities which the Agency finds necessary in order to establish the facts of the case.

The written requests have to contain the legal basis, the subject and the purpose of the request, the time limit for its implementation and the penalty clause in case the request in question should be disobeyed by the parties to the proceedings or other legal or natural persons. The time for the parties and other persons to reply to the requests for information from the CCA are according to the General Administrative Act at least seven days, in practice it is usually 15 working days for replies.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The dead-lines to conclude the competition proceedings are set by the law (Article 57 of the Competition Act) but crucial factor is the moment when all the facts in the case have been determined. Thus, according to the law, the decision on prohibited agreements and the decision establishing abuse of a dominant position shall be adopted by the CCA within the time limit of 4 months following the day on which it established all the facts of the case relevant for the adoption of a final decision, or at the latest within 4 months from the day of the conclusion of the main hearing held in the fine proceedings. The decision relating to the assessment of concentration shall be adopted by the CCA within 3 months from the day of the adoption of the procedural order on the initiation of the proceedings. The decision on the commitments undertaken by an undertaking and the decision on non-compliance with the set conditions, obligations and time limits shall be taken by the CCA within 3 months from the day on which all the facts relevant for the adoption of a decision are established. By derogation, the CCA may extend the time limit for adoption of the decision on the assessment of a concentration to 3 months where it finds necessary to carry out additional expertise or analyses defining the state of facts and examination of the evidence, about which it shall inform the parties to the proceedings before the expiry of the prescribed time limits.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

Where the data and documentation collected from the parties or third persons are covered with the obligation of secrecy, the undertakings and other legal and natural persons who submit these data and documentation to the CCA shall in their writing identify information that would be considered confidential and provide necessary argumentation. The undertakings and legal and natural persons shall also submit to the CCA a copy of business documentation which does not contain business secrets. In case where the undertaking or a legal or natural person only indicates the data which it finds to be covered by the obligation of business secrecy and fails to provide a consolidated version of the text and/or business documentation containing no business secrets, the CCA shall send the reminder to the person/s concerned to submit the documentation concerned freed of business secrets (Article 41 Competition Act).

Legal professional privilege applies according to Article 45 Competition Act, any letters, notices and other communication between the undertaking against which the proceedings have been

initiated and its lawyers duly authorised to act shall be excluded from the surprise inspection to the extent they constitute confidential or privileged information.

Drafts of the decisions of the CCA, official statements, protocols and typescripts from the sessions of the Council, internal instructions and notes on the case, correspondence and information exchanged between the CCA and the European Commission, between the CCA and other international competition authorities and their networks and other documents which are covered by the obligation of business secrecy in the sense of Article 53 of Competition Act, may neither be inspected nor copied (Article 47 Competition Act).

A copy of the short form of the Statement of Objections which does not contain data which are covered by the obligation of business secrecy may be submitted upon request to the person who filed the initiative or to any person which holds the view that his/her rights or legal interest is decided upon to the proceedings carried out by the Agency. Article 53 Competition Act defines business secrets and secrecy obligation according to which members of the Council and the employees of the CCA shall keep and not disclose the information classified as a business secret, irrespective of the way they came to know it, whereby the obligation of business secrecy shall continue to be in effect 5 years after the expiry of their engagement with the CCA. Under the term business secret, shall be considered, in particular the following: 1. all which is defined to be a business secret by law or other regulations; 2. all which is defined to be a business secret by the undertaking concerned if accepted as such by the CCA; 3. all correspondence between the CCA and the European Commission and between the Agency and other international competition authorities and their networks . A business secret shall be in particular business information which has actual or potential economic and market value, the disclosure or use of which could result in economic advantage for other undertakings.

Leniency statements are protected from disclosure by the provisions of Regulation on immunity from fines and reduction of fines,

http://www.aztn.hr/uploads/documents/eng/documents/legislation/REGULATION_ON_IMMUNITY_FROM_FINES_AND_REDUCTION_OF_FINES_.pdf,

Law on damages claims for the breach of competition law (OG, 69/2017, Articles 7 and 9)

https://narodne.novine.nn.hr/clanci/sluzbeni/2017_07_69_1607.html

Where the decisions of the CCA contain data which are covered by the obligation of business secrecy within the meaning of Article 53 of Competition Act, each party and complainant shall be submitted a copy of a decision containing no confidential data.

EU Regulation 1/2003, recital 32 in Preamble determines that the confidentiality of information exchanged in the network of EU competition authorities should be safeguarded. It continues with the Article 28 which provides that information collected shall be used only for the purpose for which it was acquired. The Commission and the competition authorities of the Member States, their officials, servants and other persons working under the supervision of these authorities as well as officials and civil servants of other authorities of the Member States shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy. This obligation also applies to all representatives and

experts of Member States attending meetings of the Advisory Committee. This is without prejudice to Article 12 on the Exchange of information: For the purpose of applying Articles 101 and 102 of the TFEU, Commission and the competition authorities of the Member States shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information. Information exchanged shall only be used in evidence for the purpose of applying Article 101 or Article 102 of the TFEU and in respect of the subject-matter for which it was collected by the transmitting authority. However, where national competition law is applied in the same case and in parallel to EU competition law and does not lead to a different outcome, Information exchanged may also be used for the application of national competition law. Information exchanged can only be used in evidence to impose sanctions on natural persons where: the law of the transmitting authority foresees sanctions of a similar kind in relation to an infringement of Article 101 or Article 102 of the TFEU or the information has been collected in a way which respects the same level of protection of the rights of defence of natural persons as provided for under the national rules of the receiving authority.

Finally, Article 31 of ECN+ Directive regulates Access to file by parties and limitations on the use of information: Access to file by parties and limitations on the use of information. 1. Member States may provide that where a national competition authority requires a natural person to provide information that information shall not be used in evidence to impose sanctions on that natural person or on her or his close relatives. 2. Member States shall ensure that national competition authorities, their officials, staff and other persons working under the supervision of those authorities, do not disclose information that was acquired on the basis of the powers referred to in this Directive and that is of the kind covered by the obligation of professional secrecy, except where such disclosure is allowed under national law. 3. Member States shall ensure that access to leniency statements or settlement submissions is only granted to parties subject to the relevant proceedings and only for the purposes of exercising their rights of defence.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Article 33 of the Competition Act Conflict of interest: The persons employed in the CCA may not be members of management or supervisory boards, or boards of undertakings, members of any other interest associations that could cast doubt on their impartiality while conducting the proceedings falling under the competence of the CCA. It is allowed to be a member of and to participate in scientific associations and projects, provided that this does not affect their impartiality in conducting the proceedings.

ECN + Directive elaborates the issue of conflict of interests in the recitals 19 and 20 and in Article 4 on Independence of national competition authorities.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

i. Statement of objections is one of the most important rights of defence of the parties in the Article 48 of the Competition Act provides "The parties to the proceedings shall be informed by the CCA in writing of the preliminary established facts in the Statement of Objections in order to ensure the relevant parties to express their views on all relevant facts and circumstances of the case before the oral hearing is set. In their written replies the parties to the proceedings may also propose that the CCA should hear other witnesses and present additional evidence (Article 48 Competition Act).

ii. Right of access to file is guaranteed for the parties to the proceedings after they have received a Statement of Objection. The CCA shall make a photocopy of the file or of single documents at the expense of the parties concerned. (Article 47 Competition Act).

iii. Oral hearing, as a rule a rule, in the proceedings establishing distortion of competition carried out by the CCA oral hearings will be held and they shall not be public in the legitimate interest of the protection of business secrets and other confidential information. Besides the parties to the proceedings the person who filed the initiative referred to in Article 37 of this Act may also be summoned to the oral hearing. Where the person who filed the initiative submits a written request to be heard, the Agency is obliged to summon him/her as a witness.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or*

rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.

According to valid procedural rules applicable in competition law proceedings, primarily General Administrative Procedure Act, each party in the proceeding (undertaking) can be represented by legal counsel. The authorized legal counsel can submit written statements and evidence on behalf of its client-party in the competition law proceeding. Article 32, General Administrative Procedure Act (GAPA): "A party may be represented in proceedings by a person authorized for representation, a legal representative, temporary representative, joint representative and attorney-in-fact (hereinafter: person authorised to represent the party). The person authorized to represent the party shall be obliged to provide proof of authorization to represent the party, and if additional conditions with regard to a form of authority are prescribed by law, authority must be granted according to those conditions. During proceedings, the official person shall always address the person authorized to represent the party, when such a person has been designated."

Legal professional privilege applies according to Article 45 Competition Act, any letters, notices and other communication between the undertaking against which the proceedings have been initiated and its lawyers duly authorised to act shall be excluded from the surprise inspection to the extent they constitute confidential or privileged information.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Decisions of the CCA are submitted to the parties to the proceedings within 30 days from the day of the expiry of the time period for the adoption of a decision. Where the proceedings have been initiated upon the initiative filed by a complainant, the decision will be submitted within the above stated time period also to the complainant. Where the decisions of the CCA contain data which are covered by the obligation of business secrecy, each party and complainant shall be submitted a copy of a decision containing no confidential data. Summary decisions of the CCA are published in *Official Gazette*. Decisions of the CCA, decisions of the High Administrative Court of the Republic of Croatia concerning the claims filed against the decisions of the CCA and other decisions adopted by the CCA shall be published on the web site of the CCA. Data considered to be covered by business secrecy obligation are exempted from the publication.

Article 49 Competition Act "Commitments": Following the initiation of the proceedings and at the latest before the Statement of Objections has been notified, a party to the proceedings may offer

its commitments to the CCA.

The commitments undertaken shall mean meeting certain conditions and obligations within a set time periods, in order to eliminate the negative effects on competition due to its actions or a failure to act.

The CCA shall by means of a decision make the commitments in question binding on the undertakings if the proposed conditions and obligations, within a set time periods are by the CCA deemed satisfactory for the removal of competition concerns and restoration of effective completion. The decision of the CCA shall establish a specified time period in which the undertaking in question must comply with the commitments. The decision shall also oblige the undertaking concerned to furnish evidence from which it is evident that it complied with the set commitments and on the basis of which the CCA may establish that there are no longer grounds for action against the undertaking concerned.

The CCA may accept the proposed commitments in the cases where the infringement is of short duration, where the undertaking concerned is open to cooperation to the proceedings carried out by the CCA and commits itself to meeting certain conditions and obligations in the first six months of the proceedings, where the action by the CCA involves a large number of parties and in other particular cases where the CCA deems the acceptance of the proposed commitments justified and appropriate for efficiency reasons with the view to re-establishing of effective competition in the relevant market without carrying out unnecessary lengthy procedures.

The CCA shall give notice on intention to accept commitments and to that end publish a summary of the case and the main content of the proposed commitments on its web site. The interested parties shall be requested to submit their written replies in the form of comments, observations and statements within 20 days from the day of the publication of the request for information.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The claim referred to in paragraph (1) of this Article shall not postpone the enforcement of the decision, save for the part of the decision which relates to the imposed fine.”

Article 67 Competition Act “Judicial review”: Against the decisions of the CCA which establish the infringements of Competition Act and Articles 101 and 102 TFEU and impose fines, and against the decisions by which the proceeding is terminated on the account of dealing with the preliminary issue, no appeal is allowed but the injured party may bring a claim before the High Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision.

The claim shall be decided over by a panel of 3 judges concerning the following points of the decision concerned:

1. misapplication or erroneous application of substantive provisions of competition law; 2. manifest errors in application of procedural provisions; 3. incorrect or incomplete facts of the case; 4. inappropriate fine and other issues contained in the decisions of the CCA.

Against the procedural orders adopted by the CCA during the proceedings, no appeal is allowed but within 30 days the injured party may bring a claim before the High Administrative Court of the Republic of Croatia.

The claim shall not postpone the enforcement of the decision, save for the part of the decision which relates to the imposed fine.