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The International Comparative Legal Guide to:

Merger Control 2011

A practical cross-border insight into merger control

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The general authority for merger control in the Republic of Croatia is the Croatian Competition Agency (hereinafter "the Agency").

However, in some particular sectors there are other relevant authorities. These are as follows:

The Croatian Financial Services Supervisory Agency (hereinafter: "the CFSSA") supervises acquisitions of investment funds as well as leasing and investment companies.

The Croatian Post and Electronic Communications Agency renders preliminary opinions in the cases of a merger on the telecommunication market.

The merger control of banks is exercised also by the Croatian National Bank.

1.2 What is the merger legislation?

The merger control legislation is set out in the Competition Act (Official Gazette no. 122/2003). This Act holds substantive and procedural provisions. The Croatian Parliament adopted a new Competition Act (Official Gazette 79/2009), which is entering into force as of 1 October 2010 (hereinafter: "the Competition Act of 2009"). The new act introduces substantial changes in the procedure before the Agency, and broadens significantly the scope of the Agency's authority.

Subsidiary law with respect to the proceedings before the Agency is the General Administrative Proceedings Act (Official Gazette 47/09), which was adopted in 2009 and came into force on 1 January 2010.

For appeal proceedings before the Administrative Court, the Administrative Disputes Act applies.

There are also various pieces of legislation including provisions applicable to the merger process. These are:

- The Companies Act (Official Gazette the Company Act (Official Gazette 111/93, 34/99, 52/00, 118/03, 107/07, 146/08, 137/09);
- The Capital Market Act (Official Gazette 88/08, 46/08, 74/09);
- The Act on Takeover of Joint Stock Companies (Official Gazette 109/07, 36/09);
- The Labour Act (Official Gazette 149/09);
- The Civil Code (Official Gazette 35/05, 41/08);
- The Investment Promotion Act (Official Gazette 138/06); and
- The Electronic Communications Act (official Gazette 73/08).

Pursuant to Article 70.2 of the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and its Member States (SAA) Croatian rules regarding competition are to be applied and interpreted in accordance with the rules, measures, and principles of the competition law of the European Union. Accordingly, the Competition Act in Article 35 prescribes that in the assessment of different forms of prevention, restriction or distortion of competition that may affect trade between the Republic of Croatia and EC, the Agency (the Council of the Agency as the authorised body) applies the criteria arising from the correct application of the competition rules of the EU.

1.3 Is there any other relevant legislation for foreign mergers?

Croatian law does not discriminate towards foreign investors, whether legal or natural person, and as a principle, offers them equal treatment as Croatian investors.

The principle of equal treatment is prescribed by the Constitution of the Republic of Croatia, which provides that "….rights acquired by investment of capital shall not be restricted by law or any other legal act" and "….foreign investors shall be granted free transfer and repatriation of profit and the capital invested".

However, all direct foreign investments (not only in equity, e.g. subordinated loans are also qualified as such) should be reported to the Croatian National Bank within 30 days upon completion of the transaction. Since this subsequent reporting is envisaged merely for statistical purposes (balance of payment of the Republic of Croatia, calculation of foreign debt) no clearance/approval by the said regulator is required.

1.4 Is there any other relevant legislation for mergers in particular sectors?

Specific merger control instruments exist with respect to several industries being "usual suspects" in many jurisdictions.

In financial services, companies must hold licences issued by the respective regulators. Transfers of shares in banks, pension funds, leasing and insurance companies are subject to prior approval of the regulator as well. The CFSSA supervises acquisitions of investment funds as well as investment companies.

Under the Energy Act, all potential energy undertakings should receive a licence issued by the regulator in charge.

In the field of telecommunications, the Law on Electronic Communications prescribes the obligation of the operators and service

providers to obtain the opinion issued by the Croatian Post and Electronic Communications Agency on the possible impact of the concentration on the respected market, and submit it to the Agency.

The transfer of shares in broadcasting should be approved both by the respective regulator and the Agency. Media companies are bound by specific merger control requirements with respect to concentration. Namely, pursuant to the Law on Media, public informing companies are always obliged to submit the application of merger control, notwithstanding the thresholds mentioned below in question 2.4.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught – in particular, how is the concept of "control" defined?

The Competition Act adopts the notion of concentration that occurs by:

- mergers or acquisitions of undertakings; and
- acquisition of control or prevailing influence by one or more undertakings over one or more undertakings or a part of undertaking, in particular by:
  - acquisition of majority shares;
  - acquisition of majority voting rights; or
  - in any other way according to the provisions of the Companies Act and other regulations.

An undertaking is deemed to be under the control of another undertaking if the "controlling undertaking" with respect to the "controlled undertaking", directly or indirectly:

- holds more than 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 board or similar managing or supervising body; or
- in any other way exercises a decisive influence on its business.

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

Acquisition of any minority interest is caught by merger control if such an acquisition would provide the acquiring undertaking with any of the controlling possibilities as defined above in question 2.1 (such as the appointment of more than half of the management board members).

2.3 Are joint ventures subject to merger control?

A joint venture performing functions of an independent economic unit on a lasting basis constitutes a concentration, within the meaning provided by the Competition Act. This notion of a joint venture subject to merger control corresponds to the "full function joint venture" under the EC Merger Regulation.

A joint venture with the objective to co-ordinate competition among undertakings that remain independent does not constitute a concentration and is assessed according to the Competition Act provisions regarding agreements.

The threshold for application of merger control to a joint venture is the same as in the standard cases of concentration.

2.4 What are the jurisdictional thresholds for application of merger control?

The parties to the concentration are obliged to notify the concentration to the Agency if the following conditions are cumulatively met:

- the total turnover of all undertakings – parties to the concentration, arising out of the sale of goods and/or services worldwide, amounts to at least 1 billion HRK (approximately 137.92 million Euro) in the financial year preceding the concentration (and, as of 1 October 2010, if at least one of the parties to the concentration has its seat and/or branch office in the Republic of Croatia); and
- the total turnover of each of at least two parties to the concentration arising out of the sale of goods and/or services in the domestic market, amounts to at least 100,000,000.00 HRK (approximately 13.79 million Euro) in the financial year preceding the concentration.

The total turnover referred to above is to be calculated taking into account the turnovers of all the associated companies of the undertaking (on the group level) acquiring the control or prevailing influence in the concentration save the turnover arising out of the sale of goods and/or services among the companies within the group.

If the concentration consists of a merger or acquisition of a part or parts of one or more undertakings, irrespective of whether those parts are constituted as legal entities, the calculation of the turnover includes only the turnover deriving from the parts being the subject of the concentration. However, two or more transactions regarding this "acquisition of parts of undertaking" effected within a two-year period shall be considered to constitute one concentration, effected on the day of the last transaction.

2.5 Does merger control apply in the absence of a substantive overlap?

Merger control is applicable subject to the thresholds described under question 2.4 above. No substantive overlap is required for merger control to apply.

2.6 In what circumstances is it likely that transactions between parties outside Croatia ("foreign to foreign" transactions) would be caught by your merger control legislation?

Under the Competition Act still in force, it is not necessary that foreign parties have Croatian subsidiaries in order to be caught by Croatian merger legislation. It suffices that all the parties to the concentration are present in the Croatian market through sale of goods and/or services, provided that each party to the concentration has achieved a total turnover in the Croatian market of at least 100,000,000.00 HRK (approximately 13.79 million Euro) in the financial year preceding the concentration.

However, the Competition Act of 2009 will introduce a significant change in this respect – in order to apply Croatian merger legislation, in addition to turnover thresholds stated under question 2.4 above, at least one of the parties to the concentration will have to have its seat and/or branch office in the Republic of Croatia.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

With respect to media mergers the notification to the Agency is obligatory irrespective of the jurisdictional thresholds.

With respect to banks no merger can be performed without the consent of the National Bank irrespective of the Competition Act thresholds.

The CFSSA supervises acquisitions of investment funds as well as leasing and investment companies.

See also question 1.4 above.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

The Competition Act has special provisions for the case when the concentration is based on a merger of a part or parts of one or more undertakings, irrespective of whether those parts are constituted as legal entities. Two or more such transactions which take place within a two-year period are considered to constitute one single concentration.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

Where the jurisdictional thresholds are met, the notification to the Agency is compulsory. The intention to concentrate has to be notified immediately, and at the latest within eight days after the public offer is made or the agreement is signed, whatever occurs earlier. On the other hand, the Competition Act of 2009 provides that notification has to be filled when thresholds are met, after conclusion of the contract i.e. after publication of a takeover bid and before implementation of the concentration, without determining a specific filing period.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

Even though the thresholds are met, a concentration is not deemed to arise where:

1. credit institutions or other financial institutions or investment funds or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis (not longer than 12 months) securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking;
2. acquisition of shares or interest which is the result of internal structural changes in either the controlled or controlling undertaking (such as merger, acquisition, transfer of legal title etc.); and
3. creation of a joint venture by two or more independent undertakings performing on a lasting basis all the functions of an autonomous economic entity which leads to the coordination of the competitive behaviour of undertakings that remain independent thereby significantly impeding competition.

Under the Competition Act of 2009, the exception is also where control is acquired by an office-holder or administration officer – relating to bankruptcy, liquidation or winding up – according to the national Bankruptcy Law and the Companies Act.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

When a concentration is effected without due notification and clearance, and this concentration has led to the prevention, restriction or distortion of competition, according to the Competition Act the Agency shall propose all indispensable measures aimed at restoring efficient competition in the relevant market. Particularly, it is able to issue a ruling by which it can:

- order for shares or share capital acquired to be transferred or divested; or
- prohibit or restrict the realisation of voting rights attached to the shares or share capital of the undertakings – parties to the concentration, and order the joint venture or any other form of control by which a prohibited concentration has been put into effect to be terminated.

The fine for not filing a notification on the concentration intention or for filing false data consists of:

- a fine amounting to no more than 1% of the value of total annual turnover in the financial year preceding the year when the infringement was committed; and
- a fine for the responsible person within the undertaking to the amount of 15,000.00 to 50,000.00 HRK.

The transaction that has not been cleared is valid unless the Agency finds that it substantially impedes competition and takes measures (described here above) to protect free market competition.

Under the Competition Act of 2009, the Agency may, *ex officio*, by means of a separate decision, propose all necessary measures, whether behavioural or structural, aimed at restoring efficient competition in the relevant market, and set the deadlines for their adoption where the concentration concerned has been implemented without the obligatory prior notification of concentration. On the basis of such decision, the Agency may, in particular:

1. order for the shares or interest acquired to be transferred or divested; and
2. prohibit or restrict the exercise of voting rights related to the shares or interest in the undertakings party to the concentration, and order the joint venture or any other form of control by which a prohibited concentration has been put into effect to be removed.

Such decision of the Agency may also contain the imposition of a fine prescribed for the committed infringements.

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

It is not possible to carve out local completion of a merger to avoid delaying global completion. When the notification to the Agency is made, the concentration parties have to notify whether they have or plan to notify any other authority outside Croatia regarding the respective concentration, and if any other authority has assessed such a concentration, they are to deliver such a decision to the Agency.

The Competition Act of 2009 provides as an exception, that the Agency may, in predominantly justified cases, upon the request of a party to the concentration, permit the implementation of particular actions relating to the implementation of the notified concentration before the expiry of the prescribed time period (within which the Agency should make its decision) i.e. before the decision approving the merger is made. In deciding on the request, the Agency shall take into account all circumstances of the relevant case, particularly the nature and gravity of the damages which might be posed on the parties to the concentration or on third parties, and the effects of the implementation of the concentration concerned on competition.

3.5 At what stage in the transaction timetable can the notification be filed?

The intention to concentrate has to be notified immediately, and at the latest within eight days after the public offer is announced or the agreement is entered into, whatever event occurs earlier.

The Competition Act of 2009 provides that, as an exception, the notification can be filed even before the contract is signed i.e. before the takeover bid is published if they, *bona fide*, provide evidence of the proposed conclusion of the contract or announce the invitation to tender.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

The Agency should issue and deliver to the notifying party a decision on the initiation of the concentration assessment proceedings within 30 days following the receipt of the complete notice. If such a decision is not delivered to the notifying party within this timeframe, the concentration is deemed cleared.

If the Agency finds that the concentration might have the effect of considerable prevention, restriction or distortion of competition in the relevant market, it shall issue the decision on the initiation of the concentration assessment proceedings. The timeframe for these second stage proceedings is three months. Within this timeframe the Agency should rule the concentration allowed, prohibited, or conditionally allowed (subject to certain conditions and measures prescribed by the Agency).

The Agency may extend the second stage proceedings deadline for subsequent periods of three months in cases where it is necessary to carry out additional expertise or analyses of evidence and facts, or where delicate industries or markets are concerned. The Agency has the obligation to inform the concerned parties about this extension of the deadline before the expiry of the prescribed time limit.

The Competition Act of 2009 prescribes an additional stage in the proceedings, by obligating the Agency to issue a Notification on Facts Determined in the Proceedings, being a specific procedural decision closing the fact-finding part of the Agency's activities. Upon receiving the Notification, the parties to the concentration (and other parties holding a legal interest in the outcome of the case) have the right to submit their arguments in relation to the facts outlined in the Notification.

Furthermore, the Competition Act of 2009 prescribes an obligation of the Agency to conduct oral hearings before reaching its decisions. Due to sensitivity of the data provided in this type of proceedings, the hearings are not open to the public.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

When the notification is filed with the Agency it is prohibited for all of the parties to complete the concentration transaction, until the Agency has taken the final decision authorising it, or until the compulsory waiting period of 30 days as of submitting the complete notification has ended.

The undertaking shall be fined a maximum of 10% of the total annual turnover in the financial year preceding the year when the infringement was committed, if it participates in prohibited concentration of undertakings or fails to act in accordance with the decision of the Agency regarding the concentration. The responsible person within the undertaking shall also be fined for such infringement in the amount of 50,000.00 to 200,000.00 HRK.

3.8 Where notification is required, is there a prescribed format?

The form for the notification is prescribed by the Regulation on notification and criteria for concentrations assessment.

The concentration notification should be accompanied by:

- the original or a certified copy or a certified translation (if the original is not in Croatian) of the document representing the legal grounds for the concentration;
- annual financial reports for the parties to the concentration for the financial year preceding the concentration; and
- other data required by the concentrations regulation.

When notifying the concentration, the party is obliged to state whether it has submitted or intends to submit the request for clearance to some other body authorised to assess concentrations outside the territory of the Republic of Croatia, and, if any such body has rendered a decision with respect to the concentration, it is obliged to deliver such a decision to the Agency.

The Agency shall issue a confirmation on the receipt of the concentration notification when it receives all documentation and data stated above, and the date of such confirmation is the day from which all proceedings and relevant deadlines are calculated.

3.9 Is there a short form or accelerated procedure for any types of mergers?

The applicable legislation in Croatia does not provide a possibility for any kind of accelerated procedure or short form for any types of mergers different from the uniform procedure described above in question 3.6.

However, the Competition Act of 2009 does envisage a short form of concentration application, which will be followed by an accelerated procedure before the Agency. The accelerated procedure will be possible in cases of concentrations where, though the economic thresholds for submitting a concentration application are met, it is evident that the concentration will not impede competition in the relevant market, under the criteria set out by the Competition Act for concentration assessment.

3.10 Who is responsible for making the notification and are there any filing fees?

The parties to the concentration are responsible to file the notification with the Agency. They can make a joint filing.

The fees for clearance are administrative fees, and amount to a maximum of 255,000.00 HRK.

The Bylaw on administrative fees (Official Gazette No. 141/2004) prescribes the exact amount of fees in the process of notification.

Notification fees are as follows:

a) notification under special laws, in the cases when there is obligation to file the notification with the Agency notwithstanding the thresholds mentioned in question 2.4 – 5,000.00 HRK;

b) notification when thresholds mentioned in question 2.4 are fulfilled – 10,000.00 HRK;

c) if one of the parties requires a special resolution stating that the concentration has been deemed allowed (I level), an additional fee in the amount of 10,000.00 HRK is to be paid; and

d) in the circumstances mentioned under question 3.6 (if the Agency finds that the concentration might have the effect of considerable prevention, restriction or distortion of competition in the relevant market) (II level), the fee for the Agency's decision is 150,000.00 HRK.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed? Are non-competition issues taken into account?

According to the Competition Act, concentrations are prohibited when they create or strengthen the dominant position of one or more undertakings, individually or jointly, if they can substantially impede, restrict or distort the competition, unless concentration participants provide valid evidence that the concentration will actually lead to strengthening of competition in the market, with benefits that will prevail over negative effects of creation or strengthening dominant position.

When assessing each individual concentration, the Agency is obliged to scrutinise all possible effects of the concentration, as well as potential obstacles for other undertakings to enter the relevant market. In doing so, the Agency is obliged to take into account also the potential for reduction of prices of merchandise and/or services in question, reduction of distribution lines, reduction of transport or other costs, and other consumer benefits which could arise from the planned concentration.

4.2 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

Third parties are entitled to participate in the regulatory scrutiny process provided they are able to prove a qualified, legal interest (e.g. the outcome of the process – merger would adversely affect their business). However, such a participant is not given access to documents containing sensitive data or business secrets of the parties, internal memos of the Agency and correspondence with EC (if any).

4.3 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?

If the undertaking submits to the Agency incorrect or untrue information in the concentration assessment proceedings or fails to act according to the decision of the Agency, it shall be fined with a maximum of 1% of the value of its total annual turnover in the financial year preceding the year when the infringement was committed. In such an event, the responsible person of the undertaking (legal person) shall also be fined in the amount of 15,000.00 to 50,000.00 HRK.

The undertaking that is not a party to the proceedings before the Agency shall be fined for the infringement in the amount of 15,000.00 to 50,000.00 HRK if it fails to act upon the request of the Agency. A responsible person of the legal person in question shall also be fined in the amount of 5,000.00 to 10,000.00 HRK.

A natural person that is not a party to the proceedings before the Agency and that fails to act according to the request of the Agency shall be fined for the infringement in amount of 5,000.00 to 10,000.00 HRK.

If a fine is to be imposed upon an infringer the Agency shall propose such ruling to the misdemeanour court that will then take a decision on the matter. The misdemeanour proceedings should be started within the period of three years from the infringement of the Competition Act.

It should be noted that the upcoming Competition Act of 2009 will authorise the Agency to directly decide to impose fines to the infringing party, without having to turn to the competent misdemeanour court. This novelty is designed to make the process of competition law enforcement more efficient in relation to the current state in this field.

4.4 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The employees of the Agency are obliged to keep and not disclose information classified as an official secret, irrespective of the way they came to know it, and this obligation continues to be in effect after the expiry of their engagement with the Agency.

The term "official secret" includes the following:

- all data and documentation defined to be an official secret by law or other regulations;
- data defined to be an official or business secret on the basis of an act of the undertakings in the ownership of the state (or regional/local government) or incumbent operators; and
- correspondence with the European Commission and other authorities of the European Communities.

The parties to the proceedings before the Agency have the right of access to the respective files, save the official secret data.

In full accordance with the *acquis communitaire*, the Competition Act of 2009 will provide more detailed and transparent criteria which have to serve as the basis for estimating whether certain information represents a business secret.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

The regulatory process ends with the expiration of the 30-day period after the submission of complete notification, when it is considered that the respective concentration is cleared unless the Agency initiated second phase of merger review within that period, or by the ruling of the Agency which states the concentration allowed, prohibited, or conditionally allowed (subject to certain conditions and measures prescribed by the Agency).

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Under the Competition Act currently in force, it is not possible to negotiate remedies with the Agency. However, the Agency can decide that the concentration can be conditionally allowed, subject to fulfilment of conditions and measures prescribed by the Agency.

On the other hand, the Competition Act of 2009 will provide parties with the possibility to approach the Agency with their proposal of remedies required for elimination of negative competition effects of the concentration. However, the Agency is not bound by such proposal. In the event that the Agency does not accept or just partly accepts the remedies proposed by the parties to the concentration, it is authorised to define and impose other behavioural and/or structural measures, conditions, obligations and deadlines for the restoration of effective competition in the market.

5.3 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

The Agency issues the ruling on conditionally allowed concentration after the second stage of in-depth concentration assessment.

Under the Competition Act of 2009, parties to the concentration can file their proposal of remedies already after the Agency has made decision on initiation of the concentration assessment proceedings, but in any case before the Agency issues the Notification on Facts Determined in the Proceedings.

If it is inclined to adopt the remedies proposed by the parties, the Agency is obliged to publicise its intention on its web pages, inviting any interested party to provide its objections regarding remedies in the case at hand. Such objections should be provided in written form, within 20 days of publication of the Agency's intention to accept the proposed remedies.

Following their acceptance, the Agency is authorised to supervise application of the remedies. If the parties are found to have failed to apply them timely and/or correctly, they will be considered to be in breach of the Competition Act, and can be fined by the Agency. If the parties to the concentration fail to fulfil the remedies, the Agency may, depending on the reasons for such failure, withdraw or amend the decision.

5.4 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

In cases when a divestment remedy is required by the concentration decision, it is standard for the Agency to prescribe relatively short deadlines for execution of divestment. The object of divestment is often overlapping activities of the concentration parties. It is not uncommon for the Agency to prescribe certain requirements to be met by potential acquires of the divested undertakings.

Divestment remedy can be subject to additional terms and conditions, as decided by the Agency on a case-by-case basis.

5.5 Can the parties complete the merger before the remedies have been complied with?

Under the applicable Competition Act, the parties to the concentration cannot complete the merger before they meet all the conditions prescribed by the Agency. Namely, the Agency can conditionally allow the planned concentration, pending fulfilment of all the remedies imposed by the Agency in its decision. In such cases the fulfilment of the remedies is a condition to completion of the transaction.

Exceptionally, the Competition Act prescribes that the Agency can, for especially justified reasons, authorise the parties to the concentration to proceed with the action needed for executing the transaction even before the remedies have been complied.

On the other hand, pursuant to the Competition Act of 2009, the rule will be that the parties to the concentration may pursue the activities relating to the implementation of the concentration concerned as of the day of the receipt of the decision by the Agency declaring the concentration conditionally compatible.

5.6 How are any negotiated remedies enforced?

In the event that the parties to the concentration fail to comply with the conditions and obligations specified by the decision of the Agency within the prescribed time limits, the Agency will, taking into account the reasons for non-compliance regarding the conditions and obligations concerned, withdraw or amend the decision on the basis of which it rendered the concentration conditionally compatible.

Further, non-compliance with the Agency ruling has general consequences as described in questions 3.3 and 3.7 herein.

5.7 Will a clearance decision cover ancillary restrictions?

Under the Croatian material and procedural rules, the Agency may not approve additional competition restraints (ancillary restrictions) within merger proceedings, but only in separate proceedings for individual exemption of a particular ancillary restriction.

5.8 Can a decision on merger clearance be appealed?

Decisions of the Agency are subject to an appeal to the Administrative Court of the Republic of Croatia according to the Administrative Disputes Act. This appeal is the full appeal on the merits.

5.9 Is there a time limit for enforcement of merger control legislation?

The limitation period for the Agency to take action before the misdemeanour court is three years from the infringement. This period is broken by every action of the Agency aimed against the infringer; however the absolute limitation period is six years after the infringement.

As was stated under question 4.3 above, the Competition Act of 2009 will authorised the Agency to take direct action against the infringers, rather than merely turning to the misdemeanour court, which, under current regulation has to conduct an additional proceeding to render a decision on fines to be imposed for breaches of the Competition Act. The limitation period for the Agency under the Competition Act of 2009 will be five years from the infringement. This period is broken by every action of the Agency aimed against the infringer; however the absolute limitation period is ten years after the infringement.

6 Miscellaneous

6.1 To what extent does the merger authority in Croatia liaise with those in other jurisdictions?

The Agency is a member of the International Competition Network.

As mentioned under question 1.2 above Croatian rules regarding competition are to be applied and interpreted in accordance with the rules, measures, and principles of the competition law of the European Union.

The Competition Act of 2009 represents an additional step in the process of legislative adjustment of Croatian law to the legislation which is already adopted in the European Union.

6.2 Please identify the date as at which your answers are up to date.

August 2010.

IMPORTANT NOTE

As stated above, a new Competition Act has been adopted in 2009 bringing about significant changes in the merger control procedure, the most important of which have been summarily presented above. However, the application of the new Act starts on 1 October 2010, until when the current Competition Act remains in force.

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