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**COMPETITION AND POVERTY REDUCTION**

**Contribution from Croatia**

-- Session I --

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## COMPETITION AND POVERTY REDUCTION

-- Croatia\* --

1. In many policy areas, including competition policy, could be assessed measures and tools aimed for the reduction of poverty. This paper is aimed to explore the impact of the free market competition on the poor. However, it shall consider the impact of the competition on poverty reduction for the benefit of two sides: the consumers, as the demand side and the small entrepreneurs, as the supply side. In further parts there shall be given the answers to the questions and points for consideration in relation to the legal background and ways of implementation of the Competition Act (2009) of the Republic of Croatia.

### **1. Defining poverty and identifying its causes**

2. The starting point for the identification poverty or, better said impoverishment, could be the fact, that due to the economic crisis many people have lost their jobs, or suffered decrease in their incomes in other ways, which caused lessening of the buying power on their side. That fact lead towards the lessening of the goods and services that they could afford to themselves and their families, and to the difficulties when they wish to achieve some essential goods and services for lower prices. At the other hand, more difficulties were caused because, at the same time, some essential goods, such as food (bread, milk, meat) and the services, such as utilities (electricity, gas, water supply etc), have increased in their prices. The question is how is the best way for the competition policy to be involved in order to improve this situation. In further text is going to be provided some observations from the perspective of the implementation of competition law and policy in order to improve the described situation on the market.

### **2. Competition's effect on markets for essential items, in principle**

3. The fair and effective competition policy shall be directed in combating monopolies on the market, which could have private or public origins. Such monopolies could be damaging for the small entrepreneurs, as well as other entrepreneurship which are weaker than them. The vital role of the competition law and policy implementation is to work towards the establishment of the free and fair competition on the market, whereas many business initiatives could compete, and by lowering the prices of their products as well as increasing the quality of the produced goods and services achieve greater benefits for the consumers and improve their welfare and living standards. By the notion of competition policy, there should be understood the set of measures and implementing tools that go beyond just prosecuting the cases in order to cease the infringements of the competition law, but also the instruments of the competition advocacy, in order to help the various groups of market participants, such as business community, government ministries, consumers and wider public, to better understand the goals and achievements on the progress of the public welfare in general under the framework of fair and free competition on the market. The vital role, however shall play the competition agency as the leading agent for the establishing this state of welfare.

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4. Specifically, the actions which could the Agency undertake in preventing the damaging effects of the anticompetitive behavior and the infringements of the competition rules, relate to the conducting procedures for the protection of the free market competition.

5. According to the Competition Law, there shall be prohibited all agreements between two or more independent undertakings, decisions by associations of undertakings and concerted practices, which have as their object or effect the distortion of competition in the relevant market, and in particular those which:

1. directly or indirectly fix purchase or selling prices or any other trading conditions;
2. limit or control production, markets, technical development or investment;
3. share markets or sources of supply;
4. apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
5. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

6. Within the meaning stated above, agreements particularly refer to contracts, particular provisions thereof, implicit oral or explicitly written down arrangements between undertakings, concerted practices resulting from such arrangements, decisions by undertakings or associations of undertakings, general terms of business and other acts of undertakings which are or may constitute a part of these agreements and similar, notwithstanding the fact if they are concluded between undertakings operating at the same level of the production or distribution chain (horizontal agreements) or between undertakings who do not operate at the same level of the production or distribution chain (vertical agreements).

7. However, certain categories of agreements shall be granted exemption from general prohibition, stated above, and consequently shall not be prohibited if they, throughout their duration, cumulatively comply with the following conditions:

1. they contribute to improving the production or distribution of goods and/or services, or to promoting technical or economic progress,
2. while allowing consumers a fair share of the resulting benefit,
3. they do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and
4. they do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of goods and/or services in question.

8. Finally, agreements that prevent, restrict or distort competition within the meaning as described above, and which do not fulfil the conditions to be exempted, shall be *ex lege* void, by which, the undertakings – parties to the agreement bear the burden of proof of demonstrating that the agreements are compatible with the CL.<sup>1</sup>

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<sup>1</sup> CL; Art. 8.

9. Furthermore, another important role of the Competition Agency is combating the abuses of market power coming from the dominant position and resulting from the restrictive practices. Namely, an undertaking can be presumed to be in a dominant position when, due to its market power, it can act in the relevant market to a considerable extent independently of its actual or potential competitors, consumers, buyers or suppliers and this is particularly the case when an undertaking:

1. has no significant competitors in the relevant market, and/or
2. holds a significant market power in relation to its actual or potential competitors, and particularly relating to the following:
  - its market share and a period of time in which this market position has been held, and/or,
  - its financial power, and/or,
  - access to sources of supply or to the market itself, and/or,
  - connected undertakings, and/or,
  - legal or factual barriers for other undertakings to enter the market, and/or,
  - the capability to dictate market conditions considering its supply or demand, and/or,
  - the capacity of foreclosure against competitors by redirecting them to other undertakings.

10. Within the meaning of the CL, an undertaking which holds more than 40% of the market share in the relevant market may hold a dominant position, and two or more legally independent economic entities may hold a joint dominant position if they act to a considerable extent independently of their competitors and/or customers and/or consumers on the relevant market.

11. Any abuse by one or more undertakings of a dominant position in the relevant market is prohibited, based on the CL, particularly involving the behaviour which consists of:

1. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
2. limiting production, markets or technical development to the prejudice of consumers;
3. applying dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
4. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.<sup>2</sup>

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<sup>2</sup> CL, Art. 12. and 13.

12. Perhaps the most important role of the Competition Agency in the establishing the free and fair market competition and therefore achieving the welfare for the consumers, and at the same time, protecting the small businesses, lies in the regulation of the concentrations. Namely, a concentration between undertakings shall be deemed to arise where a change of control on a lasting basis results from:

1. merger association of two or more independent undertakings or parts thereof;
2. acquiring control or decisive influence of one or more undertakings over one or more other undertakings, or of one or more undertakings or a part of an undertaking, or parts of other undertakings, in particular by:
  - acquisition of the majority of shares or share capital, or
  - obtaining the majority of voting rights, or
  - in any other way in compliance with the provisions of the Company Law and other rules.

13. Acquisition of control pursuant to stated above, may be effected through transfer of rights, contracts or by other means, by which one or more undertakings, either separately or jointly, taking into consideration all legal and factual circumstances, acquire the possibility to exercise decisive influence over one or more other undertakings on a lasting basis. However, 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 shall also constitute a concentration within the meaning of the CL. The detailed rules and criteria for the assessment of concentrations are set in Government's Regulation.

14. Furthermore, there shall be kept in mind that the concentration shall not be deemed to arise within the meaning of the CL, if:

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. The 12 month period may be extended by the Agency upon request, where such institutions or companies can show that the disposal was not reasonably possible within the period set;
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.);
3. 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.

15. Finally, 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 where such a joint venture has as its object or effect coordination of the competitive behaviour of the undertakings that remain independent which leads to significant impediment to competition shall not constitute a concentration and shall therefore be appraised as an agreement, based on the corresponding rules of the CL. By concluding this part, there should be mention that the concentration of undertakings which would significantly impede effective competition in the market, in particular where such a concentration creates or strengthens a

dominant position of the undertakings parties to the concentration shall be deemed incompatible with competition rules and therefore prohibited<sup>3</sup>.

### **3. Competition's effect on markets for essential items, in reality**

16. The ways how the competition agency can intervene in market circumstances in order to achieve the benefits for the consumers and entrepreneurs mostly severe affected by the poverty, but also for the sake of other market competitors, is through efficient and fair implementation of the competition law and policy. The Croatian Competition Law (2009; furthermore: CL; the Law) provides the protection of the free market competition.

17. Firstly, the CL lays down the competition rules and establishes the competition regime, regulates the powers, duties, internal organisation and proceedings carried out by the Croatian Competition Agency (furthermore: CA; the Agency), entrusted with the enforcement of the Law. The scope to application of the Law is related to all forms of prevention, restriction or distortion of competition (hereinafter: distortion of competition) by undertakings within the territory of the Republic of Croatia or outside its territory, if such practices take effect in the territory of the Republic of Croatia.<sup>4</sup>

18. Secondly, the CL applies also to undertakings which are entrusted pursuant to separate laws with the operation of services of general economic interest, those having the character of a revenue-producing monopoly, or, which are by special or exclusive rights granted to them allowed to undertake certain economic activities, insofar as the application of the Law would not obstruct, de facto or de jure, the performance of the particular tasks assigned to them by separate rules or measures and for the performance of which they have been established.<sup>5</sup>

19. Concluding this part it is possible to establish that the Agency would and shall intervene in all cases when it would be put into the consideration whether some kind of anticompetitive behaviour had caused the violation of the Competition Law, and therefore, damaged the welfare of the consumers or caused damage for the other entrepreneurs on the market.

### **4. Competitive markets versus “pro-poor” government controls/interventions**

20. Croatian Competition Agency is frequently advised in relation to issue the expert opinions which are aimed for the assessment of possible anticompetitive impacts outstanding from the various measures consisted in laws and regulations before they are adopted in governmental procedure, and sent to the Parliament. This is the most efficient tool of the competition advocacy, because the Agency could react already in early stage and comment on the draft law which could harm the consumers or the competition. The requests for providing the legal opinions come most frequently already from the ministries, when such acts, i.e., laws and bylaws are already in preparatory stage.

21. The legal base is constituted in the provision the CL, i.e. , the Agency issues expert opinions at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities in compliance with separate rules and local and regional self-government units, regarding the compliance with this Act of draft proposals for laws and other legislation, as well as other related issues raising competition concerns. Furthermore, the central administration authorities or other state authorities may be requested to communicate to the Agency draft proposals for laws and other

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<sup>3</sup> CL, Art. 15. and 16.

<sup>4</sup> Croatian Competition Law (2009); Art. 1 and 2.

<sup>5</sup> CL; Art. 3., Par. 4.

legislation for the purpose of assessment and issuing expert opinions on their compliance with this Act, if it finds that they may raise competition concerns. Finally, the Agency issues expert opinions assessing the compliance of the existing laws and other legal acts with this Act, opinions promoting competition culture and enhancing advocacy and raising awareness of competition law and policy and give opinions and statements relating to the development of the comparative practice and case law in the area of competition law and policy to the state and local authorities.<sup>6</sup>

## **5. Competition's effect on poor, small entrepreneurs and job seekers, in principle**

22. Effective enforcement of the Competition Law shall contribute to the state of more competition on the market, which could provide positive effects on consumers' welfare, help small entrepreneurs and other kinds of undertakings, through improving the protection of the free competition on the market, which shall guide to the greater level of the entrepreneurs' protection against the hard core cartels and other kind of damaging infringement of competition.

## **6. Competition's effect on poor, small entrepreneurs and job seekers, in reality**

23. Competition Agency had issued many expert opinions in the domain of the competition advocacy, where it demonstrated that the various associations of the entrepreneurs shall not be allowed to fix the minimum prices. In most cases the opinions of the Agency were honored, and the fixation of the prices abolished. In the remaining situations, where the opinions were disregarded, Agency had started the investigations before the open the cases in order to assess the anticompetitive infringements of the CL, and establish the unlawful agreements among the entrepreneurs. For example, the Agency had issued the expert opinion that the taxi drivers should be given more flexible conditions and easier access to the market, by abolishing the strict rules on numerus clausus for certain areas (City of Zagreb, City of Dubrovnik and City of Rijeka). This resulted in more market entrants, and more businesses competing for the customers, which brought to the reduction of prices. Now in the area of the City of Zagreb, instead of one taxi association (in which were associated taxi drivers, and which tended to discuss the prices and business conditions among their members), operate 3 or 4 more taxi companies, with more vehicles, and the prices are reduced. The other case was when the association of the Chamber of Commerce, discussed the prices of the bread products, and established the uniform price for their members to sell the bread. After the conducting the proceeding against the infringement of the CL, the Agency had declared the existence of the infringement, by contracting unlawful agreement among the entrepreneurs and fined the violation of the CL. These two cases, among many other demonstrate how effective can be the full enforcement of the competition law in combating the infringements of the competition which damage consumers and small businesses.

## **7. Competition policy toward poverty - Conclusion**

24. The competition policy shall in any case be directed towards the helping the poorest consumers, as well as the consumers in general in achieving their rights to receive goods and services under fair terms and fair prices. Furthermore, the competition policy shall also be directed towards the helping small businesses in order to achieve the fair play on the market, and to be capable to enter the market and to be secured from the private and public monopolies which could ruin their businesses, by imposing the unfair trade and business conditions. The primarily role of the competition agencies shall focus on these two goals, in order to fight the poverty and to achieve the economic welfare for both, consumers and businesses which are present on the market.

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<sup>6</sup> CL; Art. 25.