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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE****Working Party No. 3 on Co-operation and Enforcement****Access to the case file and protection of confidential information – Note by  
Croatia**

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This document reproduces a written contribution from Croatia submitted for Item 4 of the 130th OECD Working Party 3 meeting on 2-3 December 2019.  
More documents related to this discussion can be found at  
[www.oecd.org/daf/competition/access-to-case-file-and-protection-of-confidential-information.htm](http://www.oecd.org/daf/competition/access-to-case-file-and-protection-of-confidential-information.htm)

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## Croatia

### 1. Access to the case file

#### *Article 47*

*(1) Parties to the proceedings have the right of access to case files after they have received a Statement of Objections referred to in Article 48 of this Act. The Agency shall make a photocopy of the file or of single documents at the expense of the parties concerned.*

*(2) The request for access to files referred to in paragraph (1) hereof shall be submitted to the Agency in writing.*

*(3) The Agency shall set the date and time for inspection of the file within fifteen days following the receipt of the request referred to in paragraph (2) hereof.*

*(4) By way of derogation from paragraphs (1) and (2) hereof, drafts of the decisions of the Agency, official statements, protocols and typescripts from the sessions of the Council, internal instructions and notes on the case, correspondence and information exchanged between the Agency and the European Commission, between the Agency 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 this Act, may neither be inspected nor copied.*

*5) The person who filed the initiative and the persons who, based on the separate decision of the Agency, have been granted the same procedural rights which are enjoyed by the person who filed the initiative, shall enjoy the right of access to the documents which served as a basis for the decision of the Agency as follows: after the receipt of the decision referred to in Article 38 of this Act stating the reasons on the basis of which there was no public interest or no grounds for the initiation of the proceedings, after the receipt of the decision of the Agency establishing no infringement of competition rules under the provisions of this Act (Article 58 paragraph (1) point 13) or after the receipt of the decision on termination of the proceeding. In such a case, the provisions of paragraph (2) and (4) of this Article also refer to their right of access to file. The Agency shall set the time of access to file without delay, but not later than eight days from the receipt of the written request.*

*6) By way of derogation from paragraph (5) of this Article, the persons referred to under Article 36 paragraphs (2) and (3) hereof may not exercise the right of access to files as long as the proceeding is carried out by the Agency. However, they may be submitted the short form of the Statement of Objections referred to under Article 48 of this Act, provided they request the submittal of such a document in writing.*

*(7) The Agency shall deny access to file by means of a decision.*

### 2. Protection of confidential information

1. Where the data and documentation are covered with the obligation of secrecy, the undertakings who submit these data and documentation to the Agency shall in their writing

identify information that would be considered confidential and provide necessary argumentation. They also shall submit to the Agency a copy of business documentation which does not contain business secrets – non-confidential version.

2. In case where the undertaking 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 undertaking to submit the documentation concerned freed of business secrets. If they do not act in compliance with the reminder of the CCA, it shall be assumed that the writing and/or business documentation concerned does not contain data which are covered by the obligation of business secrecy.

3. However, in practice some undertakings do not send confidential and non-confidential version of documentation and although we could proceed with this documentation, based on our law, like there are no business secrets involved, usually we review the documents received and decide on our own which data will be treated as confidential in line with practice we developed over years and based on EC guidance– some data are deleted, market shares are replaced by ranges...

## Competition Act

### *Article 41*

*(1) The Agency 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;*

*(4) Where the data and documentation referred to in paragraph (1) hereof are covered with the obligation of secrecy, the undertakings and other legal and natural persons referred to under paragraph (1) of this Article who submit these data and documentation to the Agency shall in their writing identify information that would be considered confidential and provide necessary argumentation.*

*(5) In the case referred to in paragraph (4) of this Article the undertakings and legal and natural persons referred to in paragraph (1) of this Article shall also submit to the Agency a copy of business documentation which does not contain business secrets. In case where the undertaking or a legal or natural person referred to in paragraph (1) hereof 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 Agency shall send the reminder to the person/s concerned to submit the documentation concerned freed of business secrets. If the party to the proceedings or any legal or natural person referred to under paragraph (1) hereof does not act in compliance with the reminder of the Agency, it shall be assumed that the writing and/or business documentation concerned does not contain data which are covered by the obligation of business secrecy.*

## **Dawn raid**

### *Article 45*

(1) *The conduct of surprise inspection shall not extend to correspondence, notices and other communication which is considered confidential information between the undertaking against which the proceeding is carried out and its lawyers duly authorised to act, who are obliged to keep their communication covered by the obligation of professional secrecy pursuant to special rules.*

(2) *Where the undertaking or its lawyer refuse the access to file and documentation pleading confidential or privileged information as referred to under paragraph (1) of this Article, the authorised person of the Agency has the right of access to the files concerned. Should in the view of the authorised person of the Agency the information concerned not be regarded as confidential or privileged in the sense of paragraph (1) of this Article, the authorised person of the Agency shall in the presence of the undertaking and its lawyers duly authorised to act, if the latter is present, file the document concerned or its photocopy in a separate envelope, properly dated and sealed by the Agency and signed by all the parties and lawyers concerned.*

(3) *In the case referred to under paragraph (2) of this Article in deciding over the preliminary issue the provisions of the General Administrative Procedure Act shall accordingly apply.*

### **Statement of Objections**

#### *Article 48*

(4) *A copy of the short form of the Statement of Objections referred to in paragraph (1) of this Article 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 referred to in Article 37 paragraph (1) of this Act. The Agency shall set a time limit of one month from the receipt of the short form of the Statement of Objections within which the person who filed the initiative may inform the Agency in writing of his/her views.*

(5) *A copy of the short form Statement of Objections referred to in paragraph (1) of this Article which does not contain data which are covered by the obligation of business secrecy shall be transmitted by the Agency upon request to any person whose right or legal interest has been acknowledged by the Agency by means of a separate decision, in other words ensuring this person the same rights in the proceeding that are enjoyed by a person who filed the initiative, instructing the person concerned that he/she holds the power to inform the Agency of his/her observations in a written reply to the Statement of Objections within a time limit of one month from the day of its receipt*

### **Oral Hearing**

#### *Article 50*

(1) *As a rule, in the proceedings establishing distortion of competition carried out by the Agency 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.*

## **Secrecy obligation**

### *Article 53*

*(1) Members of the Council and the employees of the Agency 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 Agency.*

*(2) Under the term business secret referred to in paragraph (1) of this Article, 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 Agency;*
- 3. all correspondence between the Agency and the European Commission and between the Agency and other international competition authorities and their networks.*

*(3) A business secret referred to in paragraph (1) of this Article 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.*

*(4) The Agency will in particular apply the following non-exhaustive list of criteria to determine whether information can be deemed to constitute a business secret:*

- 1. the extent to which the information is known outside the undertaking;*
- 2. the extent to which measures have been taken to protect the information within the undertaking, for example, through non-compete clauses or non-disclosure agreements imposed on employees etc.;*
- 3. the value of the information for the undertaking and its competitors.*

*(5) In principle, the Agency considers that the following information would not normally be covered by the obligation of business secrecy in the sense of this Act:*

- 1. information which is publicly available, including information available through specialised information services or information which is common knowledge among specialists in the field;*
- 2. historical information, in particular information at least five years old, irrespective of the fact whether they have been considered a business secret;*
- 3. annual and statistical information. Turnover is not normally considered as a business secret, as it is a figure published in the annual accounts or otherwise known to the market, and*
- 4. data and documentation on which the decision of the Agency is based.*

*(6) By way of derogation from paragraphs (1) and (2) of this Article and in line with Article 41 paragraph (5) of this Act, where the undertaking submits to the Agency confidential documentation and data and fails to provide a copy of the relevant documentation and/or data containing no confidential information, the Agency shall after it has sent a reminder thereof to the undertaking concerned,*

*finally assume that such a writing and/or documentation does not contain data which are covered by the obligation of business secrecy.*

*(7) Within the meaning of the Council Regulation (EC) No 1/2003 and the Council Regulation (EC) No. 139/2004, and by way of derogation from the obligation of protection of business secrecy by the Agency provided under this Article, the Agency may disclose, use or exchange information covered with the obligation of business secrecy with the European Commission or the competent national competition authorities of the EU Member States, and use these information as evidence exclusively in the proceedings relating to establishment of distortion of competition under Article 101 or 102 of the TFEU*

### ***Submittal and publication of decisions***

#### *Article 59*

*(1) Decisions of the Agency 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 within the meaning of Article 57 of this Act. 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 Agency 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.*

### ***Cooperation with judicial and other authorities***

#### *Article 66*

*(1) The Agency shall cooperate with the competent judicial, regulatory and other authorities in resolving the cases in respect of undue distortions of competition in the territory of the Republic of Croatia.*

*(3) Upon the written request of the Agency referred to under Article 41 of this Act all central administration authorities, public authorities in compliance with separate rules and local and regional self-government units shall free of charge submit to the Agency any requested data and documentation, including the data and documentation covered with business secrecy obligation, regardless of the specific rules regulating confidentiality. The Agency shall treat such data and documents in line with Article 53 of this Act.*