

Comparative Overview of the Competition Authorities in Serbia, Montenegro and Croatia

Kluwer Competition Law Blog

November 13, 2019

Slavica Joković

Please refer to this post as: Slavica Joković, 'Comparative Overview of the Competition Authorities in Serbia, Montenegro and Croatia', *Kluwer Competition Law Blog*, November 13 2019, <http://competitionlawblog.kluwercompetitionlaw.com/2019/11/13/comparative-overview-of-the-competition-authorities-in-serbia-montenegro-and-croatia/>

Protection of competition in the market of Serbia, Montenegro and Croatia is ensured by the relevant competition authorities, namely:

- in Serbia: The Commission for Protection of Competition,
- in Montenegro: The Agency for Protection of Competition,
- in Croatia: The Croatian Competition Agency.

The establishment, position, organisation and competences of the Commission for Protection of Competition in Serbia are regulated by the Law on Protection of Competition („Official Gazette of the Republic of Serbia“, no. 51/2009 and 95/2013).[1] The Commission for Protection of Competition is an autonomous and independent organisation that is accountable for its work to the National Assembly of the Republic of Serbia to which it submits the Annual Report on its activities by the end of February of the current year for the preceding year.[2]

According to Article 21 of the Law on Protection of Competition (the Law), the Commission for Protection of Competition performs numerous activities, as follows: decides on the rights and obligations of undertakings in accordance with the Law; proposes regulations for implementation of the Law, and issues instructions and guidelines; monitors and analyzes conditions of competition in the market; gives opinions on draft regulations, as well as regarding implementation of current regulations in the field of protection of competition; keeps records on notified agreements, undertakings that have a dominant position in the market, as well as concentrations; organises, undertakes and supervises implementation of measures that secure protection of competition; etc.

Bodies of the Commission for Protection of Competition are the Council and the President. Four Council members and the President of this Commission shall be appointed (for five years term, with the possibility of reappointed) and dismissed by the National Assembly at the proposal of the competent committee in charge of trade.

Financing of this Commission is secured from revenues generated from its activities: fees payable in accordance with the Law; donations except donations made by undertakings to whom the Law applies; revenues from the sale of its publications and other sources.[3]

The Commission has its Statute (which is enacted by the Council, with the prior approval of the Government), that more closely regulates the internal organisation, manner of operations and conducting proceedings before the Commission.[4] The Statute contains provisions on advocacy and representation, authorities of the Commission, proceedings before the Commission, its bodies, internal organisation, technical service, financing, transparency and informing, etc.

Pursuant to the Article 73 of the Stabilisation and Association Agreement (between the European Communities and their member states on the one part, and the Republic of Serbia, on the other part), there is an obligation of appropriate implementation of criteria arising from the application of the competition rules applicable in the EU.

The Activity Report of the Commission for Protection of Competition in 2018, that is available on its web-site[5] includes an overview of the most important proceedings. In general, the Commission continues with the implementation of activities aiming at harmonization of national regulations with the EU *acquis communautaires*.

In Montenegro, the Law on Protection of Competition (“Official Gazette of Montenegro“, no. 44/2012 and 13/2018) regulates the protection of competition in the market of Montenegro, but also the control and monitoring of compliance of State Aid.[6] Furthermore, this Law contains provisions concerning the Agency for Protection of Competition (Article 19 – 25b), including its competencies, financing and bodies.

Pursuant to this Law, the Agency for Protection of Competition as an independent authority, monitors and analyses conditions of competition in the market; approves exemptions from the prohibition of certain agreements; likewise approves concentrations of undertakings; takes measures against undertakings for infringement of competition in the market. In addition, it exercises the control of compliance of the State aid with the Law regulating State aid, as well as of compliance of the award and use of granted State aid; monitors the implementation and the effects of the granted State aid; orders recovery of unlawful and non-compliant State aid; collects data on planned State aid, as well as on the use and effects of granted State aid; conducts administrative procedure and take decisions in individual administrative matters; files request for initiating misdemeanour proceedings to the competent court and/or issue misdemeanour orders in accordance with the Law regulating misdemeanours; keeps records of approved and notified concentrations; controls the implementation of measures imposed by decisions; etc.[7]

The bodies of the Agency are the Director, and the Council with the President and two members, that are appointed for four years term and may be reappointed. Among other requirements, it has been foreseen that a person may be appointed as a President or member of the Council if he is a Montenegrin national (Art. 20c of the Law). In addition, the Director of the Agency, the Deputy Director or the Associate Director may be a person who, additionally to general requirements, is a Montenegrin national and a resident of Montenegro (Art. 21a of the Law).

Financing of this Agency is secured from fees payable in accordance with the Law; Budget of Montenegro, and other sources (except donations made by undertakings to whom the Law applies).[8] The Agency for Protection of Competition submits its Annual Report to the National Assembly and Government by the end of June of the current year for the preceding year.

In Accordance with the Competition Act (Official Gazette 79/2009 and 80/2013), the Croatian Competition Agency (CCA) is a legal person with public authority that reports annually to the Croatian Parliament. It performs the activities autonomously and independently, in the scope of its competence under the Competition Act, and particularly with respect to direct application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (the TFEU).

The Competition Council is the managing body of the Agency that consists of five members (one of whom is the president), which may be appointed (for a five-year term with the possibility of reappointment) from any citizen of Croatia who holds a university degree in legal or economic studies and has ten years of work experience in this field. They shall be appointed and relieved from duty by the Croatian Parliament on the proposal of the Government.

In 2017, the Agency was empowered for the implementation of the Act on the prohibition of unfair trading practices in the business-to-business food supply chain (Official Gazette 117/17), that entered into force on December 7, 2017.

Internal organisation and operation of this Agency are set in its Statute that was approved by the Croatian Parliament. Besides the activities of the CCA relating to the enforcement of competition rules, it is also actively involved in competition advocacy. Where the EU law applies, the CCA closely cooperates with the European Commission and the national competition authorities within the European Competition Network (ECN). Where the CCA establishes an infringement of the Competition Act or Articles 101 or 102 of the TFEU, it sets and imposes fines on undertakings that have committed the infringement up to 10 per cent of the turnover of the undertaking concerned.

The enforcement of the Act on the prohibition of unfair trading practices in the business-to-business food supply chain has implied structural, organizational and human resources requirements because the CCA is the authority in charge. The CCA Statute was revised on June 29, 2018 in order to incorporate the changes of the organisational structure, namely, the establishment of the Unfair Trading Practices Division and the expansion of the jurisdiction concerning the Competition Council and the expert team. The CCA is financed exclusively from the State Budget and has no other revenue. Administrative fees and fines set and imposed by the CCA are contributed to the State budget.

The 2017 Annual Report of the CCA is available on its web-site including the list of CCA decisions in 2017, the list of rulings of the High Administrative Court of the Republic of Croatia in 2017 and the list of sanctions imposed by the CCA on undertakings for infringements of competition rules in 2017.[9]

Three above mentioned competition authorities publish their reports and decisions on the web sites that are publicly available free of charge. That is why their remarkable common characteristic is transparency of its activities, decisions, opinions and annual reports. There are also similarity concerning the organisational structure of the Commission or Agency, afterwards, election and re-election of its members and president.

Therefore, if we compare the main characteristics of the Agency for Protection of Competition in Montenegro, the Commission for Protection of Competition in Serbia and the Croatian Competition Agency, the essential difference between them concerns the scope of activities because the Montenegrin Agency includes State Aid competencies, and the CCA is the authority in charge of the enforcement of the Act on the prohibition of unfair trading practices in the business-to-business food supply chain. Consequently, the CCA and the Montenegrin Agency have to cope with some specific challenges. Concerning financing, the CCA is financed exclusively from the State Budget, therefore the Commission in Serbia and the Agency in Montenegro are also financed from the other revenues, as well.

The main general difference between three competition authorities results from their status vis-à-vis the European Union, because Serbia and Montenegro are the countries candidates and Croatia is a member of the EU. Accordingly, Serbia and Montenegro have continued to harmonise their legislation with the *acquis communautaire* in the area of competition, whereas Croatia benefits all advantages of the membership.

[1] Law on Protection of Competition, Article 20-32

[2] Law on Protection of Competition, Article 20

[3] Law on Protection of Competition, Article 31

[4] Statute of the Commission for Protection of Competition (“Official Gazette of the Republic of Serbia“, no. 49/2010)

[5] The Commission for Protection of Competition: www.kzk.gov.rs

[6] The Agency for Protection of Competition in Montenegro: www.azsk.me

[7] The Law on Protection of Competition (“Official Gazette of Montenegro“, no. 44/2012 and 13/2018), Article 19

[8] The Law on Protection of Competition (“Official Gazette of Montenegro“, no. 44/2012 and 13/2018), Article 24

[9] The Croatian Competition Agency: <http://www.aztn.hr/godisnja-izvjesca/>