

Croatia

Chamber of commerce:

Croatian Chamber of Economy
Rooseveltov trg 2
10000 Zagreb
Croatia
Tel: +385 1 4561 555
Fax: +385 1 48 28 380
Email: hgk@hgk.hr
Web: www.hgk.hr

Professional body:

Croatian Bar Association
Koturaska 53
10000 Zagreb
Croatia
Tel: +385 1 617 12 70
Fax: +385 1 617 06 86
+385 1 617 08 38
Email: hr.oodvjetnicka.komora@zg.tel.hr

New Croatian competition act: enhanced enforcement and further EU harmonisation

Ronald B Given and Danijel Pribanic
Wolf Theiss
Zagreb

In 2009 the Croatian Parliament passed a new Competition Act that will become effective October 1 2010.

The most important changes are that the national competition authority, the Croatian Competition Agency (the Agency), will now be enabled not only to initiate and prosecute proceedings against perpetrators, but to also levy fines, and that a leniency program is being introduced.

More efficient enforcement

Under the previous law the Agency was not authorised to decide on the culpability of the parties or to levy fines. For example, if a distributorship agreement contained a prohibited provision, the Agency could only declare the agreement as being null and void. In order to levy a fine (the law contemplates fines up to 10% of annual turnover), the Agency had to forward the case to one of Croatia's 115 unspecialised and overloaded misdemeanor courts. In some cases the misdemeanor courts questioned the Agency's authority and quite often, due to the short statute of limitations for misdemeanor cases, cases would be dismissed as being time barred.

Furthermore, in these matters defendants are entitled to file a special complaint with the Croatian Administrative Court, which often further delayed a decision for a few years and increased the likelihood of dismissal on the basis of the passing of the statute of limitations.

Under the new law it is the Agency which decides the merits of the case and levy fines, and if a case comes before the Croatian Administrative Court, it must be treated with priority. Also, the basic statutory limitation

for breaches of the competition law has been lengthened from two to five years.

Leniency program

One of the crucial obstacles in efficient enforcement of the anti-cartel rules is that parties to such arrangements often remain silent in hope of avoiding fines. The new law introduces a leniency program for those who provide information on cartels to the Agency before the initiation of the proceedings.

Additional significant changes

These are some of the additional significant changes in the new law:

- (i) subject to receiving a court order, the Agency will now be authorised to carry out searches without giving notice to the subjects;
- (ii) commercial agreements executed by governmental authorities are now covered;
- (iii) the Agency will no longer give its approval for individual agreements that are not covered in a block exemption;
- (iv) the Agency will have to hold hearings and provide written, factual support for its decisions to the parties;
- (v) the definition of business secrets has been EU-harmonised, and;
- (vi) parties are now able to gain the Agency's consent for a proposed concentration in advance of any acquisition of the target's shares.

Concluding comments

The changes introduced with the new Competition Act are generally aimed to further harmonise the competition law enforcement mechanism in Croatia with the one existing in the EU.

It is to be expected that these newly introduced powers of the Agency and the other adjustments of the national competition law should raise the awareness of possible fines that could be imposed to those companies found to be breaching the competition law rules in Croatia. Companies should now scrutinise their existing operations using the same legal standards created in the practice of the

European institutions, as this practice is, by the provisions of the Croatia's stabilisation and association treaty with the EU and the rulings of the Croatian authorities, directly applicable in Croatia.

Financial and corporate

Recommended firms

Tier 1

Bogdanovic Dolicki & Partners
Porobija & Porobija
Zuric i Partneri

Tier 2

Divjak Topic & Bahtjarevic
Hanzekovic Radakovic & Partners
Markovic & Pliso
Savoric & Partners
Vukic Jelusic Sulina Stankovic Jurcan & Jabuka

Tier 3

Babic & Partners
Cipic-Bragadin
CMS Zagreb
Schoenherr in co-operation with
Croatian lawyers
Travas & Partners
Vukmir & Associates
Wolf Theiss

With escalating levels of sovereign debt and with investors reportedly unwilling to risk investment into the country there has been relatively little or no work to report of. "We still have huge problems since the crisis," says one partner. "It has affected the overall situation across all markets." Another partner adds: "All the industries broke down in 2009, and it will get worse in 2010 in my opinion."

Croatia's deep-rooted problems stem from the country's budget deficit, and the president has looked at ways to raise extra capital for the desperate economic situation. "They [the gov-

ernment] are raising taxes but employment is at its highest in five years," says one partner. "VAT rose from 22% to 23% and a crisis tax of 4% has also been added that people are paying on top of their salaries." Another partner says: "I don't think the government is doing a very good job."

In an attempt to get the economy moving again, the government has offered to lend the banks money so they can start lending to the public to get the real-estate market in motion. "According to the financial experts this is a bad move as there is no liquidity to lend the banks," says one partner.

Nevertheless, some international law firms have enjoyed some activity in project finance due to the cross-border connections, with some money coming from Austria and Germany. One international lawyer says: "We are running close to capacity. It's hard to be bleak about that. We have a good book of business."

There has also been significant investment in renewable energy. "It [renewable energy] is just off the charts at the moment," according to one lawyer. Another partner agrees: "We have recently seen new investment into the energy sector."

Bogdanovic Dolicki & Partners

Bogdanovic Dolicki & Partners has sustained its tier one status despite some peers noting that the firm has lost some market recognition over the years. "They are good," says one partner, "I think their position reflects their work."

The firm has a best-friends agreement with the newly-merged law firm Hogan Lovells which is giving the firm a solid book of work and clients from abroad that has sustained the growth through the recession.

The firm has principally focused its efforts in setting up joint ventures and has experience in dealing with an array of different clients from banks, insurance companies, industrial and commercial enterprises and tour operators.

Leading lawyers

Mirko Bogdanovic
Tin Dolicki

Porobija & Porobija

Porobija & Porobija has remained a solid tier one law firm in Croatia following a series of deals across the different legal disciplines. "They have been extremely active in the market," says a partner.

The firm has benefited from a strong overseas contacts that have resulted in a series

of high profile deals with some big-branded companies.

In the banking market, managing partner Boris Porobija led a team advising the Royal Bank of Scotland on the reorganisation of a borrower's debt and equity structure.

On the M&A side the firm is advising the pharmaceutical company, Teva regarding the acquisition of the minority shareholders of Pilva in a deal valued at K200 million (€700,000).

Leading lawyers

Boris Porobija

Zuric i Partneri

Zuric i Partneri has built on the foundations of last year, improving its M&A side of the firm by establishing itself both domestically and internationally. "The firm is very profitable and deals principally with international clients," says one peer.

Despite the desperate economic situation in Croatia, the firm has remained a strong presence, with a series of banking and M&A deals that have impressed the market.

Appointed head of banking and finance relatively recently, Bojan Frasn has impressed peers through the work that he has undertaken. "Bojan is a really good lawyer. I have always enjoyed working with him on deals," says one competitor.

Leading lawyers

Dusko Zuric
Ratko Zuric

Divjak Topic & Bahtijarevic

Divjak Topic & Bahtijarevic had a string of different high-profile clients this year, and has been building up its international capabilities to focus more on cross-border deals.

The law firm can boast clients such as Google (incorporation of Croatian operations), Samsung, Marks & Spencer, Allianz and Mastercard Europe over the past year.

The firm this year advised engineering group Asea Brown Boveri (ABB) in the €15 million acquisition of the Croatian engineering group Exor. The deal makes ABB the largest engineering group in the region, passing Siemens in the process.

In another highlight, head of department Damir Topic advised Croatian Telekom in the acquisition of Croatian IT integrating firm, Combis, for €30 million.

Leading lawyers

Damir Topic

Hanzekovic Radakovic & Partners

Hanzekovic Radakovic & Partners advised Nexus, a private-equity fund, on the €20 million acquisition of the drugstore chain Kozmo in December 2009. "They were willing and showed great initiative," says one client.

Kruno Knezevic and Damir Metelko advised Getro on the €141 million sale to Mercator in February 2010. The deal was structured as a long-term lease to allow the buyer to complete the acquisition with less financial exposure.

"Kruno Knezevic is one of the finest lawyers in Croatia," says a peer. "He has a great entrepreneurial mind and is probably number one."

Leading lawyers

Kruno Knezevic

Savoric & Partners

Savoric & Partners has had another a solid year and managed to get itself on some high-profile deals in the project-finance market.

One highlight saw managing partner Boris Savoric lead a project finance team advising JPMorgan on the financing of the new Croatian motorway, Highway Rijeka-Zagreb. The deal, which exceeded €100 million, was one of the biggest loans to Croatian infrastructure to have been completed.

The firm also advised CIB Bank and a syndicate of other national banks in the financing of a new shopping and entertainment centre in Zagreb, as well as a new sports stadium in December 2009.

Other ranked firms

Babic & Partners advised a multinational corporation involved in the electronics industry on the acquisition of a local company in Croatia.

Peers note that **Schoenherr in co-operation with Croatian lawyers** has found it tougher going than most law firms this past year, with many partners noting that the team hasn't been visible this year.

However the firm still boasts a healthy deal list, advising Time Warner on the Croatian elements of a joint venture with another Croatian broadcaster. On the M&A side the law firm is advising Mercator on its acquisition of Croatian retailer Getro.

Wolf Theiss is advising Eetek Holding Energia-Hatekonysagi regarding a series of renewable energy investments into the country ranging from biomass power plants to biogas power plants to wind farms. The proposed investments, worth an estimated €20 million,

will make Eetek the market leader in renewable energy in Croatia.

Leading lawyers: Ronald Given

Other notable firms

Glinska & Miskovic in association with DLA Piper advised Geofoto on a €4 million equity investment by the European Bank of Reconstruction and Development (EBRD). Geofoto is one of the market leaders in geospatial information in south eastern Europe and the EBRD is supporting it to help expand operation onto an international level.