

# COMPETITION REMEDIES IN PRACTICE: OVERVIEW OF RECENT CASES IN CROATIA

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# Croatian legislative framework regarding merger remedies

- CCA's remedy powers and procedures similar to European Commission's, but with differences
- notifying party may submit commitments in phase 1 or phase 2
- submitting commitments → phase 2 must be launched
- guiding principles → effectiveness, proportionality, legal certainty
- end goal → adequate addressing of competition concerns

# CCA practice in merger remedies

merger remedies → general preference for structural remedies

- direct and comprehensive dealing with competition issues
- no need for ongoing monitoring and enforcement
- in practice → most commonly mixed remedies

intensified since 2005

- 6 mergers conditionally approved with remedies

most common sectors

- food retail
- telecom sector

# Food retail mergers in Croatia & remedies (1)

## food retail sector in Croatia

- characterized by a large retailer also present in the upstream supply market
- vertical issues arising from the mergers → effects on buyers and suppliers

## mixed remedies → necessary to fully address competition concerns

### structural remedies

- divestiture of retail stores aimed to reduce presence and market shares

### behavioral remedies

- number of measures aimed to eliminate the possible negative effects on buyers and suppliers

# Food retail mergers in Croatia & remedies (2)

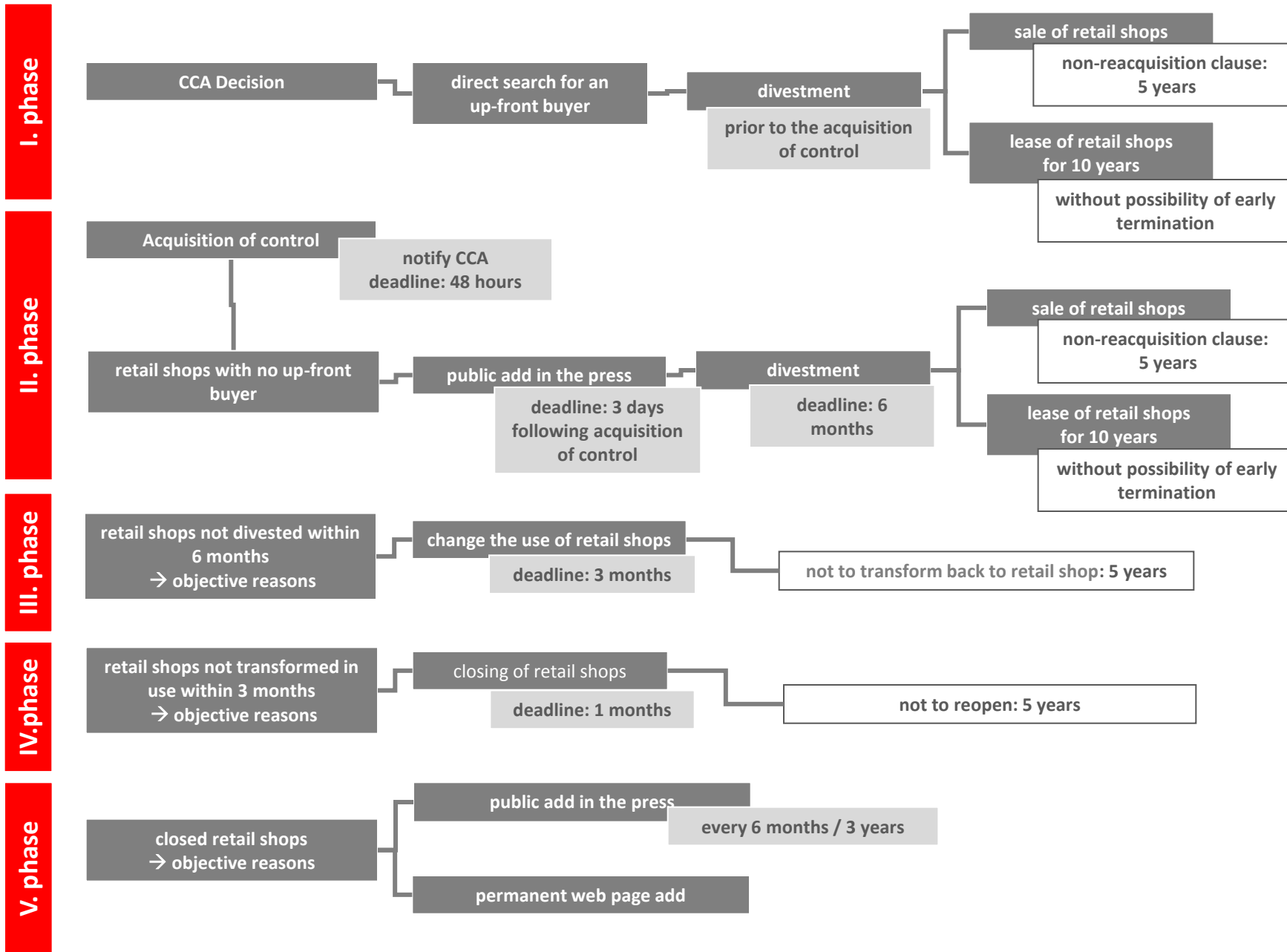
## structural remedies → case example (1)

- divestiture of almost 100 retail stores
- represented almost 60 % of total annual revenue of the target

## divestment plan

- steps for implementing
- entailed 5 phases of divestment
- each phase related to predictable complications that could arise and steps to be taken in order to proceed with the divestment successfully

# Divestment Plan



# Food retail mergers in Croatia & remedies (3)

structural remedies → case example (2)

## main risks

- scope of the divestiture package may not be adequate to attract one suitable buyer
- lack of a suitable buyer in certain areas → certain geographical areas were not as attractive as others
- divestment plan would not be implemented in its entirety in the accepted time frame due to unforeseen complications
- deterioration of assets value until divestment

# Food retail mergers in Croatia & remedies (4)

## behavioral remedies → case example (1)

- the acquirer will retain exposure on shelves of the target's retail network of 3 top products of his top 5 suppliers under the same or better conditions which they had prior to the merger
- the acquirer will enable in its retail network the exposure of products of at least three competitors on 30 % of the shelf, in product segments where producers from the acquirer's group have high market share (above 40 %), and under the same or better conditions from the ones that the acquirer approves to its suppliers in its sales network for that product segment

## duration of measures

- 3 years → due to the time needed to adapt to the new market structure, bearing in mind the size of the country and business conditions



# Food retail mergers in Croatia & remedies (5)

behavioral remedies → case example (2)

## main risks

- more complex and resource intensive than structural remedies
- insufficient care is taken over their design in terms of specification → when the remedies are not sufficiently clear and raise doubts of interpretation for implementation or monitoring
- too much specification and detailing leads to overburdening the monitoring process → complications with implementation
- monitoring risks → not monitored by experts, not enough active and informed monitoring and enforcement

# Food retail mergers in Croatia & remedies (6)

indirect positive effects of the remedies → case example

due to the structural measures

1

- the acquirer's competitors were enabled to increase their market presence and market shares by acquiring retail stores in attractive locations

due to the behavioural measures

2

- increase of choice for the final consumer → by enabling the acquirer's competitors to be present with their products on the shelves of the acquirer's retail network

# Telecom mergers in Croatia & remedies (1)

## 2 mergers approved conditionally

- interrelated mergers → the same acquirer
- mixed remedies

## 1st merger

- conditionally approved based on failing firm defense for a limited period of time  
→ target was in the procedure of pre-bankruptcy settlement due to insolvency

## 2nd merger

- strengthening the target of the first merger by acquisition of a competitor

combined remedies → monitored jointly

CCA's reasoning

→ to create conditions for a viable competitor to remain in the fixed telephony market

CCA's view

behavioral remedies

→ most appropriate choice in the attempt to eliminate possible negative effects

structural remedies

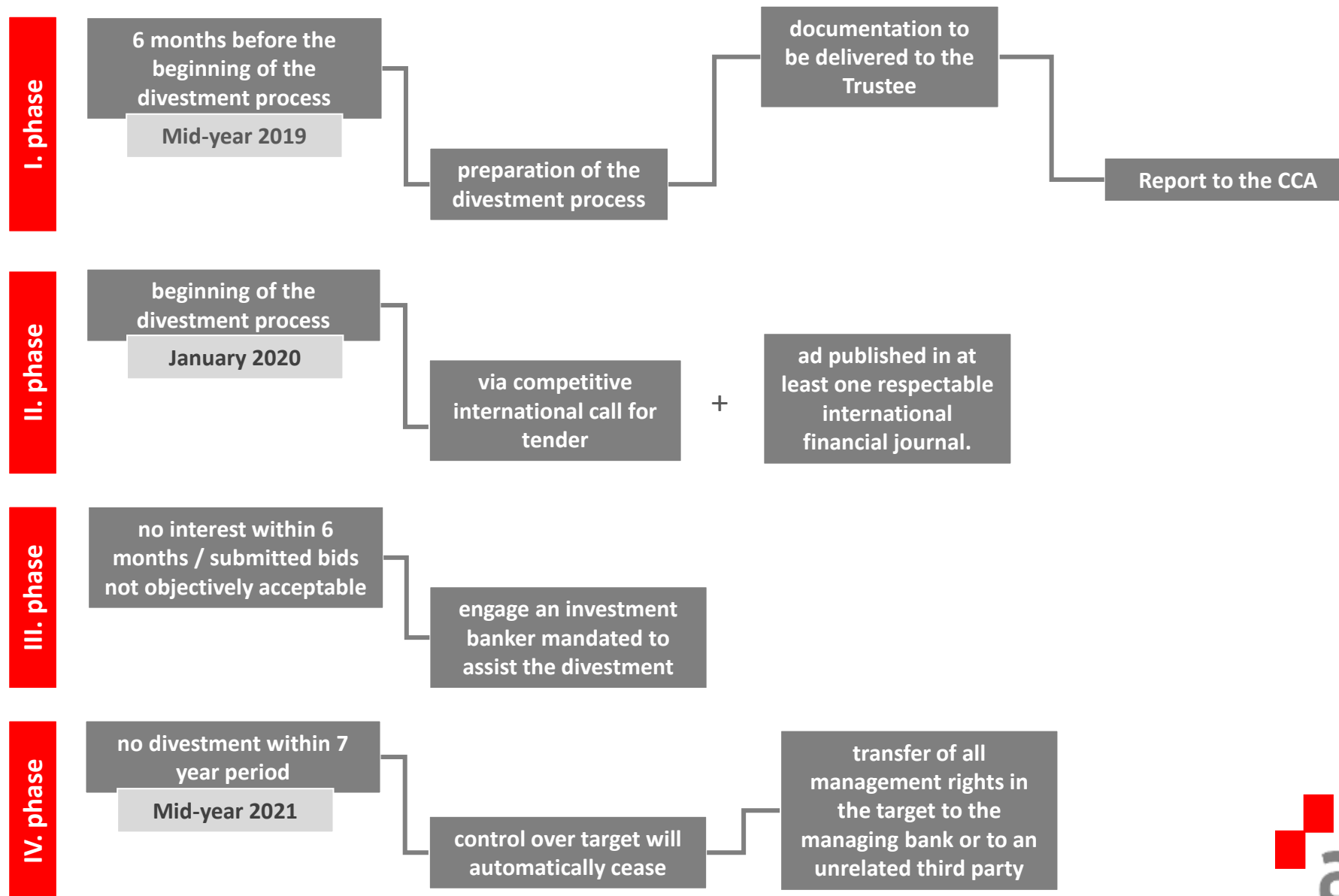
→ preserve a competitor on the fixed telephony market as a viable undertaking for a suitable buyer after the expiration of the merger

# Telecom mergers in Croatia & remedies (2)

structural remedies → case example

- measures related to the limited period of the merger
  - steps and procedures for the divestment of the target after the expiry date

# Divestment Plan



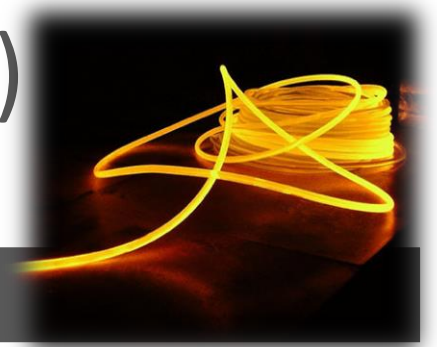
# Telecom mergers in Croatia & remedies (3)

behavioral remedies → case example (1)

→ → → a number of strict and comprehensive measures and conditions

- measures that ensure that during the merger management over the target will not lead to target's assets being undercapitalized as compared to the initial situation at the beginning of the period of the merger
- series of measures that ensure the independence of target's business during the merger → Chinese Wall
- measures such as ensuring that the acquirer will not offer employment to target's key employees, protect the confidentiality of target's user database, not take any actions that would restrict the current sales activity of target's sales partners, not sell target's retail points

# Telecom mergers in Croatia & remedies (4)



behavioral remedies → case example (2)

→ → → a number of strict and comprehensive measures and conditions

- measures to ensure protection of the current users of target's wholesale services, including the service of dark fibre lease
- measures to ensure access at the wholesale level to available capacities in the built optical network of the target to other operators on the market (existing and/or new), at cost-oriented and market-established prices
- measures that will not allow preferential treatment of the target in terms of providing acquirer's wholesale services compared to other operators present in the relevant market

# Telecom mergers in Croatia & remedies (5)

## key risks → case example

- **risk of lack of specification → when the remedies are not sufficiently clear and raise doubts of interpretation for implementation or monitoring**
- **circumvention risks → a limitation on the behaviour of the merging parties may lead to other restrictive behaviour not foreseen in the remedies**
- **monitoring and enforcement risks → high information volume or complexity required for the monitoring exercise, information asymmetry between the parties and the competition authority or the monitoring trustee, as well as the long duration of the remedy**
- **risk of conflict with the regulatory framework**



# Conclusion on merger remedies and lessons learned from practice (1)

**1** behavioral more effective, or benefit from being implemented

- in regulated environment; and/or
- where expert monitors exist

**2** take advantage of third parties' industry knowledge

**3** importance of using market testing

→ it helps tailor the remedies and to anticipate problems that could arise in the implementation phase, useful in achieving effective and proportionate remedies

**4** importance of cooperation with sector regulators

→ their specific knowledge is key when designing remedies, in terms of what are the indicators that are measurable and comparable, what can be monitored and, in the end, implemented

# Conclusion on merger remedies and lessons learned from practice (2)



## Trustee

- 1** competence and skills of the Trustee are key
  - be more thorough when choosing the Trustee
- 2** competence on paper Vs competence in practice
- 3** replacement of Trustee during the Monitoring process
- 4** meeting with the Trustee before the beginning of the Monitoring period
  - lack of experience and knowledge of the Trustee in competition leads to friction and lack of understanding of roles (Trustee Vs Authority)
- 5** regular, short meetings with the Trustee facilitates monitoring
- 6** in regulated markets
  - importance of establishing communication between the authority, the regulator and the Monitoring trustee
    - ⇒ facilitates quick reactions in case of unforeseen issues with implementation

# Useful links

**[www.aztn.hr](http://www.aztn.hr)**

Agencija za zaštitu tržišnog natjecanja

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The views and opinions expressed in this presentation are those of the author and do not necessarily represent official policy or position of the Croatian Competition Agency.

A grayscale photograph of a tall, modern skyscraper with a grid-like facade, viewed from a low angle. The building is partially obscured by the text.

**QUESTIONS**

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**THANK YOU FOR YOUR ATTENTION !**