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Screening report

Croatia

Chapter 8 – Competition Policy

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I. CHAPTER CONTENT

The competition *acquis* covers both anti-trust and State aid control policies. It includes rules and procedures to fight anti-competitive behaviour by companies (restrictive agreements between undertakings and abuse of dominant position), to scrutinise mergers between undertakings, and to prevent governments from granting State aid which distorts competition in the internal market. Generally, the competition rules are directly applicable in the whole of the Union and Member States must co-operate fully with the Commission in enforcing them. The competition *acquis* is based on Article 31 (State monopolies of a commercial character), Articles 81-85 (Rules applicable to undertakings), Article 86 (Public undertakings and undertakings with special or exclusive rights) and Articles 87-89 (Rules applicable to State aid) of the EC Treaty.

The *acquis* under this chapter is to a large extent linked to obligations under the EU-Croatia Stabilisation and Association Agreement (SAA) presently in force.

In the field of **anti-trust**, national competition authorities must closely co-operate with the Commission in Community competition procedures. Since 1 May 2004, all National competition authorities are also empowered to apply fully the provisions of the Treaty in order to ensure that competition is not distorted or restricted. National courts may also apply EU anti-trust rules directly so as to protect the individual rights conferred on citizens by the Treaty.

In the field of **State aid**, the decision as to whether or not aid granted by Member States is compatible with the Common Market can be taken only by a supranational and independent authority. Exclusive authority for scrutinising the state aid measures was conferred on the European Commission by the Member States.

The term **liberalisation** refers to Article 3 of the EC Treaty which states that the activities of the Community shall include a system ensuring that competition in the internal market is not distorted. For this purpose, there is a specific surveillance system in the case of public undertakings and undertakings to which Member States grant special or exclusive rights. With respect to the liberalisation of specific sectors, reference is made to the relevant sector specific negotiating chapters.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Croatia and the discussion at the screening meeting.

Croatia indicated that it can accept the *acquis* regarding competition policy. Croatia indicated that it does not expect any difficulties in implementing the *acquis* by accession.

II.a. Anti-trust including mergers

The Competition Act of 2003 contains the basic rules on restrictive agreements, dominant position and merger control. Croatia considered its anti-trust legislation to be generally in line with the *acquis*.

Croatia stated that in the absence of rules or uncertainties in the interpretation, Article 35 (3), of the Competition Act is applicable. Under this provision, the national competition authority's (the Competition Agency's) assessment of the prevention, restriction or distortion of competition that may affect trading between Croatia and the EU must be based on the criteria arising from due application of competition rules within the EU.

Procedural rules are contained both in the Competition Act and in the General Administrative Procedure Act (GAPA). Croatia considers that the main differences with the EU *acquis* relate to the burden of proof, the jurisdiction for imposing fines, the leniency programme and Article 266 of the GAPA on the government's powers to overturn decisions. In addition, Croatia stated that the Competition Agency is not authorised to impose, reduce or waive fines. Croatia plans to fully align its procedural rules with the *acquis* by 2008.

The Croatian Competition Agency (CCA) is planning, together with the Ministry of Justice to initiate the changes to the relevant legislation with the view to strengthening the efficiency and effectiveness of the CCA relating to the deficiencies of the current court system (particularly in respect of imposing fines and shift of the Court jurisdiction relating to the decisions of the CCA). In compliance with the relevant EU practice, the CCA will support the introduction of the leniency programme for cartels.

As to secondary legislation, Croatia has adopted sector-specific rules in the field of banking and telecommunications. Pursuant to the Banking Act, competition issues in the banking sector fall entirely under the authority of the Croatian National Bank. Croatia considers that its secondary legislation is fully aligned with the *acquis* except for the EU-specific rules in the field of transport, where Croatia intends to adopt such rules as soon as the modernisation process in the EU is completed.

The authority responsible for anti-trust in Croatia is the Competition Agency. In 2005, it adopted 93 decisions relating to anti-trust, including restrictive agreements (5), abuse of dominant position (3) and merger control, five of them imposing bans. A number of decisions were advocacy cases, e.g. commenting on legislation or providing expert opinion.

II.b. State aid

Procedural regulations:

The new State Aid Act (OG 140/05), which entered into force on 6 December 2005 and which replaced the previous one, as well as the Regulation on State Aid of 2003 (OG 121/03) that shall be replaced by a new one in the coming future, contain the main procedural principles of State aid control. Croatia considers that its State aid legislation is generally in line with the *acquis*. The provisions of the new State Aid Act have increased the powers of the Croatian Competition Agency, improved the State aid monitoring system and broadened the possibility to recover unlawful State aid. In particular, if a proposal for a law includes State aid, it has to be submitted to the Competition Agency for its prior binding opinion before being sent to the Government or Parliament. A proposal for granting State aid must also be submitted to the Competition Agency for prior authorisation, in a similar way as was provided by the previous 2003 State Aid Act.

Rules on reference/discount rates and recovery interest rates:

The main provisions are the State Aid Act and the Act on Interest rates based on which the Croatia has adopted regulations stipulating the maximum amount of interest rates and penalty rates. Croatia considers its legislation in this area to be only partially aligned, but it does not expect any difficulties in implementing this part of the *acquis* by accession.

Financial transfers to public undertakings:

The main provisions are the Regulation on State Aid, the State Budget Act, the State Budget Execution Act, the State Audit Act and the Ordinance on Financial Reporting in State Budget Accounting, together with a series of sector-specific legal acts. Croatia considers its legislation in this area to be only partially aligned due to the fact that some laws (i.e. Act on Oil and Oil Products Market (OG 68/01) and the Act on Gas Market (OG 68/01, 87/05) do not contain provisions regarding separate accounting. Croatia does not expect any difficulties in implementing this part of the *acquis* by accession.

State guarantees:

Croatia indicated that the notification procedure has not been fully observed but that the new State Aid Act will improve the situation since it strengthens the notification obligation. Furthermore, it is expected that the new Regulation on State Aid would make the Croatian legislation in this area compatible with the EU guarantee procedures and that it would improve transparency.

Public land sales:

According to Croatia, the new Regulation on State Aid will expand the scope of the current Regulation and include in more detail specific rules on the sale of land by public authorities in line with the *acquis*. The main institutions dealing with public land sales are the local administrative units (cities, municipalities and counties), the Privatisation Fund and the Central State Administrative Office for State Property Management of the Government. The Privatisation Fund has in its portfolio at present approximately 490 publicly-owned buildings and land, which represents only a minor part of the publicly-owned land and buildings in Croatia.

Export credit insurance:

The main provisions in this area are the State Aid Act, the Regulation on State Aid, the Act on the Croatian Bank for Reconstruction and Development, the Regulation on the Intermisiterial Council for Export Insurance and a Mandate Agreement of 1998. Croatia considers that there are currently no private export-credit insurers on the market and that the general terms and conditions are aligned with the rules in place in the OECD. However, Croatia indicated that it still needs to align the Regulation on State Aid with the *acquis* in this area.

Fiscal aid and direct business taxation:

Croatia stated that there is no relevant general provision in this field but that the EU *acquis* in its entirety represents an important interpretative instrument in the application of the Croatian laws in the case of absence of adequate rules or uncertainties in the interpretation

thereof. In this sense and in compliance with article 70 of the SAA, Article 6 (4) of the State Aid Act states that the CCA shall apply in those cases the criteria arising from the *acquis*. In fact, the CCA has been using this interpretative tool in its work. Fiscal State aid measures are prescribed in the Profit Tax Act, Profit Tax Ordinance and Income Tax Act. Croatia is currently making an assessment study to quantify the impact of the alignment of its legislation with the *acquis* in this area and has prepared a new draft on the Profit Tax Act which is being consulted with the Commission and is about to be adopted by the Parliament. In addition, Croatia is preparing a regional aid map. As regards fiscal aid regimes, between 2001 and 2004, 32 companies received tax and tariff incentives under the 2000 Investment Promotion Act amounting to some 2 434 779 593 HRK (approx. 329 068 738 euros), 5 616 jobs have been created, tariff incentives reached a total of approximately 23 million HRK (approx. 3.1 million euros) and tax incentives a total of approximately 60 million HRK (approx. 8.1 million euros). Under the Free Zones Act of 1996, 15 free zones have been established. Companies benefit from profit tax exemption (50% reduction) for investments above 1 million HRK (approx. 135 153 euros) in the first year of investment and five subsequent years. Draft amendments of the Investment Promotion Act are currently being consulted with the Commission services and are to be adopted shortly. In addition, Croatia has special tax regimes for the Areas of Special State Concern, for Hilly and Mountainous Areas and for the Reconstruction and Development of Vukovar. Apart from the results of the impact assessment study, Croatia indicated that the alignment of the Profit Tax Act, the Profit Tax Ordinance and Income Tax Act is linked to the Act on regional Development to be adopted in 2006. Both the draft Act on regional development and the regional aid map under preparation will provide a model for future State aid measures to disadvantaged areas, whereby war will no longer be a criterion but rather economic and demographic criteria..

Rules on the assessment of State aid with horizontal objectives and regional aid:

Croatia considers its legislation to be in line with the *acquis*. In some areas, e.g. research and development and risk capital, the new Regulation on State Aid will provide for detailed rules. In the case of employment and training aid, Croatia stated that all the measures currently implemented are aligned with the *acquis*.. As regards aid to SMEs, the definition of an SME will be amended in the relevant legislation to bring it into line with the *acquis*.

As regards regional aid, the relevant Croatian rules are contained in the State Aid Act and the Regulation on State Aid. A draft Act on the Regional Development of Croatia has been prepared to form a coherent framework in line with the *acquis*. It will be adopted in 2006. The existing regional acts will be aligned accordingly.

Rescue and restructuring aid:

The 2003 Regulation on State Aid contain some rules regarding rescue and restructuring aid but Croatia has no specific legislation in this field. In the absence of detailed and specific rules, the CCA can make use of the subordinate application of the *acquis* in line with article 6 (4) of the State Aid Act. Croatia indicated that the total aid amount is diminishing but that some rescue and restructuring aid is being given to the textile, aluminium and metal sector with the final aim to make companies sustainable in order to privatise them. Measures have been adopted to stimulate the development of the textile, leather and shoe industries. Croatia

will submit further information on the State aid measures taken in these sectors as well as in the automobile and tourism sectors.

Steel:

The Croatian authorities adopted a decision in December 2005 to set up a commission for the purposes of drafting a national restructuring programme both for ferrous metallurgy over a 3-month period and for black metallurgy, and for the privatisation of both Sisak Pipe Rolling Mill and Split Iron Mill. Croatia stated that by the end of December 2005, the Ministry of Economy, Labour and Entrepreneurship would join forces with the Competition Agency to draft a list of the State aid measures granted to producers of iron and steel since March 2002. To date such a list has not yet been received by the Commission.

Privatisation:

The legal framework is the Privatisation Act and the process for most of the companies of the Privatisation Fund's portfolio is expected to conclude in 2008 (excluding shipyards). The privatisation process started in 1991 with approximately 3000 companies. According to article 13 of the Privatisation Act, all public utilities were excluded from this process and are envisaged to be privatised by separate laws. Today there are 962 public companies in the portfolio of the Croatian Privatisation Fund out of which the Fund holds majority shareholdings in 111 companies (80 active companies and 31 companies in liquidation). In exceptional cases (large privatisation process), the Croatian government has the possibility to grant debt write-offs and debt sales with a discount for State receivables in order to make the companies sustainable prior to their privatisation.

Shipbuilding:

The legal framework is made up of two Government Conclusions of 2002, the State Aid Act and the Regulation on State Aid. On 1 December 2005, the Government adopted a Decision to set up a commission for drafting a blueprint for a national restructuring programme for the Croatian shipbuilding sector by April 2006. According to Croatia, this programme takes into consideration the recommendations of the LeaderSHIP 2015, of the independent consultant and the individual restructuring plans of each shipyard and will define the manner and transition period needed for restructuring and survival of the Croatian shipbuilding industry in the context of the Croatian accession to the EU. Croatia underlined the importance of the sector in terms of trade balance and employment. Shipbuilding accounts for 1.4% of its GDP; it makes up 1.8% of net salaries and 2% of tax contributions. It provides 12 928 jobs of which 10 120 workers are directly employed. There are additional sub-contractors and around 17000 workers indirectly employed in the shipbuilding sector. The sector is estimated to give employment to a total of 35000 workers. According to Croatia this sector is experiencing difficulties due both to external causes (among others, current exchange rate, changes in input prices) and to internal causes (inherited losses, technological backwardness, production programme and costs, personnel, management).

Postal services:

The main provisions in this field are the Postal Act of 2003, as amended in 2005, and the Ordinance on standards, criteria, and the procedure for the exercise of the public operator's

right to indemnification from State funds of 2005. Croatia stated that there are provisions on universal and reserved postal services, on services provided under free market conditions on indemnification of the public operator when services' prices do not cover their costs and on separate accounting. Croatia added that there is an independent regulatory body.

Broadcasting:

The provision in this area is the Act on Croatian Radio-Television of 2003.

Audiovisual production:

The relevant provisions are the Regulation on State Aid, the Ordinance on the selection and identification of public needs in culture of 2001 and the Ordinance defining criteria for establishing programmes of public needs in the field of cinematography and their financing. Under these provisions, State aid to the audiovisual industry may be granted under certain conditions. If the proportion of aid is greater than 50%, the proposal is submitted to the Competition Agency, which in justifiable cases has the right to make a decision outside the limitations, in accordance with the State Aid Act.

The main authority responsible for state aid matters in Croatia is the Competition Agency. It is currently developing its administrative capacity. The number of staff in the State aid sector has increased to 9 (from 4 in 2004). A number of training activities have been undertaken. In 2004, the Competition Agency concluded 27 state aid cases (decisions and opinions), most of them approvals and only one finding of incompatible aid. The annual State aid report for 2004 was adopted by Croatia and sent to the Commission. The CCA has also recently drafted and the Government adopted a list of existing aid measures as well as a conclusion regarding the alignment of these measures with the *acquis*.

II.c. Liberalisation

Public undertakings and undertakings with special or exclusive rights:

The legal framework is provided by the State Aid Act and the Act on market competition protection of 2003, which applies to companies performing services of general economic interest. Croatia considers that both are in line with Article 86(2) of the EC Treaty. The new Regulation on State Aid will further align Croatian rules with the EU *acquis* in this area.

State monopolies of a commercial character:

Croatia indicated that there are no national monopolies of a commercial character.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall Croatia has not reached a satisfactory level of alignment with the *acquis*; nor does it have the administrative capacity to do so at this stage. Croatia needs to further align its legislation, strengthen its administrative capacity and have a more effective enforcement record. Special attention is needed in particular as regards State aid to steel and shipbuilding as well as in the area of fiscal aid.

Given that in the Competition chapter the Candidate Countries' present legal obligations under the association agreements are equivalent to those of the *acquis* in the field of competition, the Commission notes that its assessment could carry specific legal implications. Therefore, the Commission assessment must be understood as being based on a provisional appraisal of the information provided by the Croatian authorities and is without any prejudice to the outcome of any further procedure to be carried out at a later stage.

III.a. Anti-trust, including mergers

The Competition Act of 2003 requires further alignment. In addition to the need for general fine-tuning of the provisions, a single competition regime still needs to be created to ensure that the Competition Act applies to all sectors, particularly banking and telecommunications. As regards Article 226 of the General Administrative Procedures Act, the Government's power to overturn decisions has to cease to be applied altogether. Since substantive and sector-specific rules are concerned, it is useful for Croatia to provide the relevant industries with guidelines on the application of Article 81(3) of the EC Treaty.

Although Croatia has continued to develop its administrative capacity, there is a need to further increase staff numbers, budget resources and training, and to ensure full independence in the process of decision making. The enforcement record still needs considerable improvement, particularly as regards the economic and legal assessment of anti-trust and mergers cases. It should focus more on preventing the most serious distortion of competition, in particular in the field of restrictive horizontal agreements and dominant positions. The obligation by the Competition Agency to explicitly rule upon ancillary restraints, as was the case under the old EU merger control system, proves to be cumbersome from a workload standpoint. Furthermore, it is essential that a whole new system for fining be introduced that allows for sufficiently deterrent sanctioning.

III.b. State aid

Procedural regulations:

The State Aid Act has been improved, particularly as regards the possibility of the Competition Agency to issue binding decisions in the State aid sector. The State Aid Act, together with the Regulation on State Aid, represent partial alignment with Community State aid rules but significant further alignment is still needed. The current control system is insufficient, particularly as regards the power of the government to overturn decisions. As in the case of anti-trust, there is a need for general fine-tuning of the provisions. While the possibility of approving State aid measures retrospectively is understandable, given the relative newness of the State aid system in Croatia, it would nevertheless be preferable that recourse to this provision should remain the exception. Croatia should enforce proper state aid control; in particular, government debt forgiveness or debt rescheduling should be made conditional on the implementation of a proper restructuring plan and submitted for prior authorisation to the state aid monitoring authority.

Rules on reference/discount rates and recovery interest rates:

At this stage, the Commission considers that the Croatian legislation in this area is not in line with the *acquis*. In general terms, the interest rates Croatia applies when asking for the recovery of illegal State aid are not always at the market rate and that Croatia always fixes interest rates at the highest level.

Financial transfers to public undertakings:

At this stage, the Commission considers that the Croatian legislation in this area is not in line with the *acquis*. Croatia has to ensure co-operation among the different administration agencies. It seems that the current system as described by the Croatian authorities is not fully transparent. Croatia needs to make sure that both the authorities and the aid beneficiaries abide by the conditions for granting State aid in this area. As regards the notification obligation, the Ministry of Finance has made regular reports in 2005 and the notification system can be considered to be satisfactory.

State guarantees:

At this stage, the Commission considers that the Croatian legislation in this area is not in line with the *acquis*. In general terms, the Croatian legislation in this area is not correctly applied and that co-operation between the relevant ministries is not satisfactory.

Public land sales:

At this stage, the Commission considers that the Croatian legislation in this area is not in line with the *acquis*. In general, the Croatian system of public land sales needs to be modified so that public owned real estate can be sold in principle under market conditions and open procedures.

Export credit insurance:

At this stage, the Commission considers that the Croatian legislation in this area is not in line with the *acquis*. Croatia cannot grant state aid for export-credit insurance for marketable risks because it currently lacks of a market for export-credit insurance for marketable risks, which according the *acquis* is a pre-condition for granting such type of aid.

Fiscal aid and direct business taxation:

The system currently in place in Croatia is not in line with the *acquis*. Taking into account the fact that the longer the current regime is in place the more difficult it will be to address the situation in future, Croatia should urgently align its existing and future fiscal aid schemes with the EU rules in this area. At present, incompatible fiscal aid is granted under at least three acts: the Investment Promotion Act, the Profit Tax Act and the Free Zones Act.

- As regards the Croatian Investment Promotion Act, it is still not a compatible aid scheme. An aid scheme must cover all the conditions of the relevant framework/regulation, i.e. it must explicitly mention eligible investments and costs, maximum aid intensities, provisions on cumulation of aid, ex post control measures, etc. One main problem with the existing Croatian Investment promotion Act is that it is not clear if and to what extent the different aid measures provided for under the Act can be cumulated with each other.

In addition, the maximum aid intensity ceilings are also not explicitly mentioned in some articles.

- As regards the Croatian Profit Tax Act (as adopted on 3 December 2004), it contains several provisions which amount to State aid and which are not in compliance with EU State aid rules. Although some of these provisions were partially included in the Profit Tax Act of 2000, most of them have been substantially amended and must be considered as new aid measures. The main provisions that have so far been identified as incompatible with the State aid rules relate to several double reductions of the tax base, areas of special state concern, fiscal benefits for R&D firms, investment incentives, fiscal benefits for firms established in Free Zones, vocational rehabilitation/employment of persons with disability, and fiscal benefits granted specifically to companies established in the City of Vukovar and in the mountainous regions. These provisions are selective and constitute state aid that must be aligned with the relevant guidelines/framework
- As regards the Croatian Law on Free Zones, the fiscal provisions have not been drafted in a manner compliant with EU State aid rules. The reductions in the profit tax rate are selective and constitute State aid. This State aid should be aligned with the relevant guidelines/framework.

Rules on the assessment of State aid with horizontal objectives and regional aid

At this stage, the Commission considers that the Croatian legislation in this area is not in line with the *acquis*. Croatia needs to adopt a regional aid map before granting any regional aid measures. In addition, the Croatian authorities need to make a link with eligible expenses when making their assessments.

Rescue and restructuring aid:

Important criteria of the EU legislation in this area, namely the “one time, last time” principle, are currently not applied. The adoption of aligned guidelines is required in order to ensure transparency and to make effective the state aid control system. As regards the State aid measures granted to the textile sector, leather and shoes industries as well as the automobile and tourism sectors, Croatia still must provide the Commission with detailed information, as agreed during the screening meeting

Steel:

The two existing companies (Sisak Pipe Rolling Mill and Split Iron Mill) are experiencing serious difficulties and are constantly obtaining operating aid. Moreover, the companies will need additional aid for restructuring and restoring viability, which is unlikely without privatisation. Under the existing legal framework, Article 5 of Protocol 2 on steel products to the Stabilisation and Association Agreement (SAA), Croatia may exceptionally grant State aid for restructuring purposes for five years after the entry into force of the Agreement, provided that it leads to the viability of the benefiting firms under normal market conditions at the end of the restructuring period, the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability and are linked to global rationalisation and reduction of capacity in Croatia. Since Croatia has not yet adopted a restructuring programme in line with the conditions set out in Article 5 of the SAA and since it is granting State aid to companies in difficulties in the steel sector, Croatia is currently in

breach of the SAA. Croatia must provide the relevant individual business plans and a national restructuring programme in line with the requirements set out in Article 5 of Protocol 2 to the SAA. In this context, the appointment of a high-level commission to finalise a national restructuring programme is welcomed but not sufficient.

Privatisation:

At this stage the Commission considers that the Croatian legislation in this area is not in line with the *acquis*. Croatia sees privatisation as a tool for restructuring public companies, especially if they are in difficulty. Accordingly, Croatia did not dispute that it regularly grants operating aid to companies in difficulties before it is able to sell these companies. It is very likely that such operating aid is incompatible aid and thus is in breach of the State aid rules. Any privatisation should be assessed by a competition authority in order to ensure that no State aid is granted to the company or the buyer.

Shipbuilding:

The Commission assesses that the major Croatian shipyards are experiencing difficulties and benefiting from State aid in the form of debt write-offs, direct contract-related operating aid and extensive guarantees. This is in breach of the SAA, under which such operating aid is prohibited.

Given Croatia's obligations under the SAA, and the subsequent need to fully apply EU Competition rules in advance of accession, substantial and urgent action would now be required from the Croatian authorities in this field. The starting point of such a process is a restructuring plan for each shipyard, which the Commission would need to approve and monitor implementation. The commitment by Croatia to present a national restructuring programme by April 2006 and its intention to decrease operating aid gradually is welcomed.

Nevertheless, it is of utmost importance that Croatia addresses the problems and needs of each shipyard in its respective individual restructuring plans, which should ensure the capability of restoring long-term viability and also should limit State aid to the minimum necessary. A national restructuring programme, if adopted by Croatia, should then reflect the conclusions stemming from these individual restructuring plans.

Postal services:

At this stage, the Commission considers that the Croatian legislation in this area is in line with the *acquis*.

Broadcasting:

At this stage, the Commission considers that the Croatian legislation in this area is in line with the *acquis*.

Audiovisual production:

At this stage, the Commission considers that the Croatian legislation in this area is in line with the *acquis*.

The administrative capacity in the area of State aid is insufficient. The Competition Agency urgently needs further qualified staff, in order to deal with the upcoming increased workload. The knowledge of civil servants and administrative staff employed in other ministries and aid granting bodies dealing with State aid issues is not sufficient. Co-operation and awareness-raising activities are crucial.

III.c. Liberalisation

Public undertakings and undertakings with special or exclusive rights:

The Croatian system currently in place does not fully reflect EU rules. Croatia should define the scope of Services of General Economic Interest (SGEI) in its legislation. Croatia needs to ensure that anti-trust rules and EU State aid rules are applied in full to public undertakings and undertakings with special or exclusive rights, in accordance with Article 86 of the EC Treaty and with the definition of undertaking in the *acquis*. Croatia also needs to ensure that EU rules on the transparency of financial relations between public authorities and public undertakings apply.

State monopolies of a commercial character:

The statement by Croatia that there are no monopolies of a commercial character is welcomed. Croatia should keep the Commission informed of any new developments in this area.