

C O N F E R E N C E R E P O R T S

8th Competition Law and Policy Conference in Memory of Prof. Vedran Šoljan “Goals of Competition Law and the Changing World”, Dubrovnik, Croatia, 25–27 May 2023

The Šoljan conference series, established in 2009, honours the memory of the late Professor Vedran Šoljan (1962–2008), one of Croatia’s competition law pioneers. His book on the abuse of dominance, an adaptation of his PhD thesis (*Vladajući položaj na tržištu i njegova zlouporaba u pravu tržišnog natjecanja Europske zajednice*. Zagreb, Ibis grafika, 2004) remains his most notable legacy. As Croatia’s EU pre-accession process in the early 2000s brought about wide-ranging changes in the national legal system, Vedran’s book was much appreciated by local practitioners hungry for knowledge on the novel area of competition law. Vedran’s role was one of a bridge builder: his intellectual curiosity about the functioning of EU competition law linked perfectly with Croatia’s early enforcement efforts, as well as more than a few legislative adjustments performed at the national level. He was also a dear colleague of mine in the Law Department at the Faculty of Economics and Business-University of Zagreb (EFZG), where we collaborated on a project related to the reform of EU merger control rules in the mid-2000s.

EFZG was the birthplace of the Šoljan conference series. At first, it was a small-scale event that continued the merger control project after Vedran’s untimely death; later, it developed into a fully-fledged conference, a tribute to his work and legacy. Most of the conferences so far have been held in Zagreb. In 2023, we moved to the beautiful Dubrovnik. Even though the old Ragusa, famous for its motto of liberty, was attractive for many also as a place where the *Game of Thrones* series was filmed, and despite the appeal of fine May weather, the organizers managed to persuade the speakers as well as the audience to spend most of their day(s) indoors discussing competition law issues.

The vision of the Šoljan conferences has initially been to interconnect the members of the relatively small Croatian competition law community, as well as to create a forum to exchange views between all relevant stakeholders (the competition authority, practitioners, judges, corporate lawyers, and scholars). This goal found its institutional fulfilment in 2018 with the formation, based on an academic initiative, of the Croatian Association for Competition Law and Policy (*Hrvatsko društvo za pravo i politiku tržišnog natjecanja*, HDPPTN). The partnership with the Croatian Competition Agency, which supported the Šoljan conferences from early on, proved

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fruitful as they provided a place to exchange ideas between the national enforcer and the broader community. In addition, the organizers continuously strived to bring, to Croatia, contemporary policy and scholarly debate in the field of European competition law, both from Brussels and Luxembourg. As mentioned, the aim was to build bridges between Croatia and other jurisdictions in the broader community of post-socialist European countries, helping to explore relevant challenges to building functioning competition law systems.

The group of the co-organisers of the 2023 Conference (EFZG and its European Documentation Centre, the Croatian Competition Agency (AZTN), and the Croatian Competition Law and Policy Association) fittingly showcases the evolution of this forum as a collaborative effort. In particular, the collaboration with Vlatka Butorac Malnar (University of Rijeka), the President of HDPPTN, proved instrumental in making this Conference a success. The support of Dr Mirta Kapural, President of the Croatian Competition Council, was extremely valuable for us going forward. As always, the assistance of Alexandr Svetlicinii (University of Macau, Member of the Organizing and Programme Committee) was absolutely essential in helping to create a meaningful conference programme. We were also happy to have the 2023 Conference supported by many organizations, such as ASCOLA and its SEE and Central Europe Chapters, the Centre for Antitrust and Regulatory Studies of the University of Warsaw, the ELI Croatian Hub, and the Budapest OECD-GVH's Regional Centre for Competition.

In the years before Croatia acceded to the EU in 2013, the topics explored at the Šoljan conferences mostly related to addressing issues related to understanding how EU competition law functioned, following the most recent developments, both at the national and the supranational level, as well as discussing ongoing enforcement efforts in Croatia. In the years after EU accession, the conferences moved away from its early national law standpoint and towards a rich comparative perspective, in particular, vis-à-vis the competition law systems in CEE and SEE, all the while keeping track of the most pressing policy, normative and enforcement issues.

The 2023 Dubrovnik Conference illustrated the event's evolution in terms of the choice of the topics covered. The overarching issues, such as antitrust goals, were skilfully discussed by the keynote speaker, Prof. Spencer Weber Waller (Loyola University Chicago, also a Fulbright Specialist in Croatia at the time), who provided rich insights into US developments. The ensuing roundtable, moderated by Jasminka Pecotic Kaufman (University of Zagreb), continued to examine the ever-green topic of competition law's goals and objectives through the arguments presented by Oles Andriychuk (Newcastle University), Malgorzata Kozak (University of Utrecht), Marek Martyniszyn (Queen's University Belfast) and Giorgio Monti (University of Tilburg).

Institutional resilience of competition authorities was discussed in a panel moderated by Sinisa Petrovic (University of Zagreb) that included a notable group of enforcers (Mirta Kapural of the Croatian NCA, Margarida Matos Rosa formerly of the Portuguese NCA, Kamil Nejezchleb of the Czech NCA, Andrej Matvoz of the Slovenian NCA, Nebojsa Jovovic of the Monenegrin NCA).

An academic panel, moderated by Dubravka Aksamovic (University of Osijek), critically examined key issues related to judicial review in several Central and East

European jurisdictions. The panellists (Maciej Bernatt for Poland, Ondrej Blazo for Slovakia, Alexandr Svetlicinii for Bulgaria, Ana Vlahek for Slovenia, and Jasminka Pecotic Kaufman for Croatia) presented therein the highlights of their respective national reports prepared within the collaborative research project titled 'Beyond ECN+ Directive – Empirical Study Mapping Judicial Review of National Competition Law Decisions', directed by Or Brook (University of Leeds) and Barry Rodger (University of Strathclyde).

Most interestingly, the panel moderated by Ana Vlahek (University of Ljubljana) examined the under-researched topic of collective consumer redress in the area of antitrust. Miguel Sousa Ferro (University of Lisbon) presented his study on collective consumer redress in Europe, pointing to the inefficiencies of most of the existing systems, as well as identifying features likely to produce satisfactory results. Then, Vlatka Butorac Malnar (University of Rijeka) discussed 'the myth' of collective consumer antitrust redress in Croatia, and focused on *incasso-cession* as the only currently available procedural tool that may substitute collective redress. In addition, Lena Hornkohl (University of Vienna) focused on the concept of fair funds, known from US law, and its 'transposability' to consumer private enforcement in the EU. Subsequently, Mariya Serafimova (Court of Justice of the EU) analysed the power of courts to estimate harm and the impact of disclosure under the recent CJEU case law. Finally, Zoltan Marosi (DLA Piper Budapest) focused on the Hungarian experience of consumer compensation by the Hungarian NCA (GVH), the advantages and disadvantages of a 'public redistribution' method, and its applicability in the field of antitrust.

The culmination of this Conference's intellectually stimulating debate occurred at the 'Rethinking Article 102 TFEU' panel, skilfully moderated by Vlatka Butorac Malnar (University of Rijeka). The panel brought together a number of antitrust powerhouses including Giorgio Monti (University of Tilburg), Assimakis Komninos (White & Case), Massimiliano Kadar (DG COMP), and Renato Ferrandi (Italian Competition Authority). The first part of the panel was dedicated to the review of Article 102 at the EU level, starting with the overview of the Article 102 package of 27 March 2023, followed by a discussion on recent CJEU case law, and the shift in the applicable legal standard. The discussion then proceeded to the consequences of the transition of the legal standard to the effects-based approach, as well as the expectations of the Policy Brief and the initiative for new Guidelines on exclusionary abuse. Expressing their somewhat diverging views, the panellists debated the risk of under-enforcement of Art 102 and the ability to administer the effects-based approach.

The 2023 Šoljan Conference intended also to combine the policy, enforcement, and academic debate with practical elements of training in the area of competition law for both scholars and practitioners. The Dubrovnik event included a workshop on researching and publishing in the area of competition law, aptly taught by Professor Waller. A series of compliance workshops was also conducted for local and regional practitioners, which addressed practical issues related to drafting competition law complaints before the competition authority, drafting antitrust damages claims, and drafting antitrust appeals. The compliance workshops, led by highly qualified

Croatian practitioners (Mislav Bradvica of BMWK, Mario Krka of DTBK, Marijana Liszt of Liszt & Partners, Martina Prpic of KPS) and experienced scholars (Professors Dubravka Aksamovic, Vlatka Butorac Malnar, Sinisa Petrovic, and Jasminka Pecotic Kaufman) proved to be a genuine laboratory for the exchange of skills and ideas, most fruitfully stimulated by the participation of a number of colleagues from the Croatian NCA.

For more information on the Šoljan Conference, please visit <https://pptn.net.efzg.hr>.

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