

**REPUBLIC OF ALBANIA
-COMPETITION AUTHORITY-
COMPETITION COMMISSION**

DECISION

No. 410, Date 31.03.2016

“On administration of electronic data during inspections from the Competition Authority”

Competition Commission, with participation of:

- Mrs. Lindita Milo (Lati) Chairperson
- Mrs. Servete Gruda Vc. Chairperson
- Mr. Koço Broka Member
- Mrs. Iva Zajmi Member
- Mr. Eduart Ypi Member;

In the meeting dated 31.03.2016, with the participation of Mrs. Lindita Milo (Lati), Mrs. Servete Gruda, Mrs. Iva Zajmi, Mr. Koco Broka, reviewed the case with:

Object: Review of draft regulation “On administration of electronic data during inspections from the Competition Authority”, in accordance to Law no. 9121, date 28.07.2003 “On Competition Protection” (amended), and Regulation “On investigative procedures of the Competition Authority”.

Legal Framework: Law no. 9121, dated 28.7.2003 "On Protection of Competition", (amended), Article 24, letter dh), article 84, as well as Regulation “On investigative procedures of the Competition Authority”.

Competition Commission after reviewing the draft regulation “On administration of electronic data during inspections from the Competition Authority” and the report of the General Secretary;

DECIDED:

1. To approve the Regulation “On administration of electronic data during inspections from the Competition Authority” based on the test below this decision
2. This decision comes to power immediately.

REGULATION
ON
ADMINISTRATION OF ELECTRONIC DATA DURING INSPECTIONS FROM THE
COMPETITION AUTHORITY

Pursuant to the Regulation "On the investigative procedures of the Competition Authority", and pursuant to article 24, letter **dh**, and Article 84 of Law 9121, dt.28.07.2003 "On Protection of Competition" (as amended), the proposal of the Secretariat Commission Competition

DECIDED:

HEAD I

General Dispositions

Article 1

Objective

The purpose of this regulation is the detailed interpretation of the right to request an inspection on electronic records, the right to copy and manage that data, for the purpose of investigation and law enforcement.

Article 2

Scope of application

This regulation provides a detailed explanation of the right to inspect, in terms of electronic data.

In further describes the protective measures discussed during the inspection in connection with electronic data. At the same time, this regulation allows enterprises involved some control means to verify whether these safeguards are respected during the investigation.

Article 3

Definitions

Pursuant to this regulation, the following terms shall have the following meanings:

1. **"Law"**: means the Law No. 9121 dated 28.07.2003 "On Protection of Competition" with changes and its relevant definitions;
2. **"Data"**: means all the data in electronic or personal form
3. **"Personal Data"**: They will have the same meaning as provided in article 3 of Law no. 9887, dated 10.03.2008 "On the protection of personal data" (as amended). Personal data of individuals who are employees of the company (eg name, phone number, email address, etc.) Can be included in the content of the documents / data, which may be related to the object of the investigation, and that can be copied, or administered during an inspection and be part of the investigation file;
4. **Lawyers Judicial-Professional Privilege**: Confidentiality of communications between the subject under investigation and lawyer, jurists ruled that staff are part of the subject under investigation.

5. **Data Set:** The gathering of data in any electronic form
6. **Set the data within the scope:** Any type of data that from the nature or content are considered important to the application of the law
7. **Group of data within the scope:** Grouping of data, which are defined as within field-enforcement action before the selection procedure regarding the implementation of legal and professional privilege of lawyers and selective enforcement procedure of personal data;
8. **Group of data object to investigation:** Grouping of data, which are defined as within the scope after the implementation of the control procedure regarding the implementation of legal and professional privilege of lawyers and implementation of the control procedure in respect of personal data;
9. **“Hash” value:** It represents a calculation algorithm, mathematically verifiable, based on the content of an electronic file (file), in order to preserve the integrity in case of a change to its content. The aim of calculating the value of "hash" is to maintain the integrity of the electronic file after every change in an electronic file will be automatically reflected on a string "hash" variety;
10. **Inspector/s:** Represent the inspector/s of the Competition Authority, authorized by the Competition Commission for conducting the inspection
11. **Termination of Investigation:** The outcome of the decision-making process after an investigation, or where the final decisions required further monitoring procedures, the outcome of these proceedings;
12. **Securement of data:** Carrying forward the data from the inspector in an electronic data carriers (HDD, USB, CD, DVD or computer).
13. **Forensics ICT:** For purposes of this regulation, Forensics ICT means using methods of scientific or technical field of Information Technology and Communication during the investigation for the search, selection, copying and storage of electronic data within the legal parameters to be submitted as evidence or proof in trial. Forensics ICT tools enable inspectors to seek, copy, and rediscover electronic data while respecting the integrity of the ICT systems and enterprise databases.

Article 4

Best Practices

The inspector performs the inspection, collection and management of electronic data in accordance with best practices (best practice), set in officially recognized international standards for ICT Forensics, and best practices developed by the Competition Authority. As such practice can serve to store the data provided on its premises for the duration of the investigation under Article 8, paragraphs a, next, to this regulation. The reason is that only the data set obtained, could prove the origin of data qualified as evidence. Group data provided may be required if further investigation is required. Inspector uses only programs and tools that are considered within the standard for the ICT industry, as long as it is possible.

HEAD II

Protective measures in exercising the Right to Inspection and Data Securement

Article 5

Protective measures in defining the set of data that are secured during the inspection

1. During the search and selection of data during the inspection, the investigation focuses on the object;
2. Before exercising the right to conduct inspection of records under the Act, the inspector delivers to the undertaking representatives an official copy of the decision of the Competition Authority Commission to open an investigation and inspection authority.

Article 6

Protective measures in defining the set of data within the scope

1. When data are examined in order to determine if the data is data within-scope Inspector allows the undertaking representatives to be present during the examination;
2. Inspector will not assess more than necessary data to determine whether they constitute information within the scope of action;
3. At the end of the inspection, the representative of the undertaking are made available a copy of the inspection including a list of the data set provided and relevant hash values;

Article 7

Protective measures in defining the set of data object to investigation

1. If reasonably claimed that the group of data within the scope may contain personal data, inspectors enable the undertaking representative to identify and explain, in writing, which information part of a group of data object to investigation is personal;
2. The inspector examines this claim. In case the claim is accepted, the data in question are not included in the data set under investigation.

Article 8

Protective measures in the administration of data

1. In cases where the search and selection process that data in the undertaking environments is not completed within the duration of the inspection, the inspector will provide an electronic copy of the data or will levy electronic devices containing uninspected data, if not available copying. The holder of the uninspected electronic databases or the seized electronic device are stamped provided within the standards set by the legality in force, and then moved to the premises of the Competition Authority. Inspector undertakes to return the equipment seized within the period prescribed by law and allows the company representatives to be present during further inspection of the data in question;
2. If reasonably claimed that the group of data within the scope may contain personal data the holder of the electronic data in question is provided with stamping and moved into the premises of the Competition Authority. Inspectors enable undertaking representatives, after reviewing the claims, to be present during the removal of the seals;

Article 9

Protective measures in reuse, availability to third parties

1. The data contained in the data set object to investigation can be reused in another procedure by the Authority, and may be offered to third parties;

2. The data contained in the data set that are provided, but not included in the data group under investigation under Article 3, paragraph f of this Regulation (of personal data and data protected by professional privilege of lawyers and legal) cannot be reused in another procedure Authority nor made available to third parties;
3. The inspector, and the specialist, who compiles and manages data signs a record where the data can be reused in another procedure by the Authority or made available to third parties. In this record, the inspector marks which group of data are received the data concerned.

Article 10

Safeguard of the data

1. The data is included in the data set provided, the data set within the scope or in the data set object-investigation, which were not taken into account as evidence in the investigation report and will be saved at least to the length of the proceedings on the subject-trial decision, based on the investigation report. Reuse in a new investigation, gives them a new term, indefinite storage, in accordance with the preceding paragraph of the same provision.
2. The data are contained in the investigation file stored up to 5 years, before disposal, in accordance with the Law "On Archives in RA" (as amended).

Article 11

Entry to power

This regulation comes to power immediately.