



REPUBLIC OF ALBANIA  
-COMPETITION AUTHORITY-  
COMPETITION COMMISSION

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DECISION

No. 290 of 23 July 2013

On

imposing fines to undertakings Ferlut SHA, Tirana Lines Shpk, Alba Trans Shpk, Tirana Urban Trans SHA and Parku i Transportit Urban të Udhëtarëve shpk on grounds of restricting the competition in the generic and student monthly ticket market in relation to the public transportation in the city of Tirana

The Competition Commission, composed of

- Lindita Milo (Lati) Chair
- Rezana Konomi Deputy Chair
- Servete Gruda Member
- Koço Broka Member
- Iva Zaimi Member

in its meetings of 11, 15 and 23 July 2011 reviewed the Case with:

**Subject-matter:** Determination whether there is a prohibited agreement in the generic and student monthly ticket market in relation to the public transportation in the city of Tirana among undertakings FERLUT SHA, TIRANA LINES SHPK, ALBA-TRANS SHPK, TIRANA-URBAN-TRANS SHA and PARKU I TRANSPORTIT URBAN TË UDHËTARËVE SHPK and OTTO-AL SHPK

**Legal basis:** Article 24 (d); Article 26; Article 4 (1); Article 74 (1) (a) and Article 75 (1) of Law no. 9121 of 28 July 2003 “On Competition Protection” (hereinafter the “Law”);  
Law No. 8485 of 11 November 1999 “Administrative Procedure Code”.

**Undertakings under investigation:** Decision no. 262 of 14 January 2013 of the Competition Commission listed the undertakings under investigation: FERLUT SHA, TIRANA LINES SHPK, ALBA-TRANS SHPK, TIRANA-URBAN-TRANS SHA, PARKU I TRANSPORTIT URBAN TË UDHËTARËVE SHPK and OTTO-AL SHPK

**Investigation period:** Decision no. 262 of 14 January 2013 of the Competition Commission specified the period under investigation from 1 January 2007 till 31 December 2012.

After reviewing the

- the working group Report on the in-depth investigation into the public passenger transportation market in Tirana, initiated by Competition Commission Decision no. 262 of 14 January 2013, and the Secretary General Report;
- the working group case file
- the claims submitted by the undertakings under investigation FERLUT SHA, ALBA-TRANS SHPK, and TIRANA-URBAN-TRANS SHA in the respective hearings on 21 May 2013, 22 May 2013 and 11 June 2013, and the written arguments submitted to the Competition Authority by means of Letters no. 204/3 of 21.05.2013, no. 241 of 11.06.2013 and no. 204/4 of 22.05.2013,

### **THE COMPETITION COMMISSION NOTES THAT:**

#### **I. Case under review**

1. ALBA-TRANS SH.P.K submitted a complaint to the Competition Authority on 12 November 2012 whereby it claimed that the National Urban Transportation Association (SHKTQ), composed of its members: Tirana Urban Trans, Tirana Lines and Ferlut, which operate in the area of urban passenger transportation, unfairly sold generic monthly tickets while not recognizing the generic monthly tickets that the complainant had sold in October-November 2012.
2. In addition, on 27 November 2012 Gerard-A Sh.p.k submitted a complaint to the Competition Authority through which it claimed that since Gerard-A was not an SHKTQ member, the Association arbitrarily decided to not issue the respective ticket cards for the October monthly tickets.
3. Some of the undertakings under investigation are members of the National Urban Transportation Association in Tirana (SHKTQ). The Association was founded in Tirana on 15 December 2003, and was registered as a legal entity, operating in the city of Tirana.

#### **II. PROCEDURE**

4. Based on the abovementioned complaints, the Competition Commission, with proposal from the Secretariat, and pursuant to Article 42(1) of the Law, adopted Decision No. 252 of 26 November 2012 whereby it decided to initiate an inquiry into the urban passenger transport market in the city of Tirana in order to determine whether there were any indications of competition restriction.
5. The inquiry found that the SHKTQ members had refused to issue monthly ticket cards to Gerard – A SHPK in accordance with the amount specified by the Municipality of Tirana, and had refused to recognize the monthly passes issued by ALBA-TRANS SHPK which had not been accompanied with cards bearing the SHKTQ logo. Those facts might amount to competition obstruction, restriction or distortion in the relevant market.
6. The inquiry also found printed and electronic evidence at the undertakings operating in the urban passenger transport market in the city of Tirana and at SHKTQ, which showed that undertakings FERLUT SHA, TIRANA- LINES SHPK,

ALBA-TRANS SHPK, TIRANA-URBAN-TRANS SHA, PARKU I TRANSPORTIT URBAN TË UDHËTARËVE SHPK and OTTO-AL SHPK had reached an agreement whereby they had blocked the sales of half of the student monthly tickets in 2007 and about 80% of the student monthly tickets for the period 2008-2012. Within the meaning of Article 4 (1) (b) and (c) of the Law such an agreement could amount to competition restriction or distortion in the market in the form of restricting and controlling the number of sold student monthly tickets.

7. The Competition Commission, with proposal from the Secretariat and pursuant to Articles 24 and 43(1)(d) of the Law and Article 12 of the Regulation on the functioning of the Competition Authority, adopted Decision No. 262 of 14 January 2013 whereby it decided to initiate an in-depth investigation against the undertakings operating in that market.
8. In addition, the Competition Commission took Decision No. 263 of 14 January 2013 "On taking provisional measures on the selling of student monthly tickets in the urban passenger transportation in the city of Tirana," whereby, pursuant to Articles 4(1), 24(d) and 44(1) and (2) and given the risk of serious irreparable harm to competition since there was a potential violation of Article 4 of the Law, it decided to: *Take the following provisional measures for eliminating any anticompetitive effects in accordance with Article 44(1): Immediate distribution and sales without delay by these undertakings: FERLUT SHPK, TIRANA LINES SHA, ALBA TRANS SHPK, TIRANA URBAN TRANS SHA and PARKU I TRANSPORTIT URBAN TË UDHËTARËVE SHPK. The provisional measures required the immediate and prompt distribution and selling of the entire amount of monthly tickets for students by the undertakings under investigation as per the quantities specified by the City of Tirana, as of January 2013.*
9. The Municipality of Tirana data on January-February 2013 show that Ferlut, Tirana Urban Trans and Parku i Udhëtarëve sold all their student monthly tickets for that period. The same two-month data show that Tirana Lines had sold 52% of the number of student monthly tickets for that period. The data on Alba Trans are only in terms of value, which is estimated to be about 60% of the number of student monthly tickets allocated for January-February 2013. OTTO AL exited the market in June 2012.
10. Based on the above, all the undertakings under investigation in the urban passenger transportation market in the city of Tirana complied with the Competition Commission Decision No. 263 of 14 January 2013 and independently issued student monthly tickets.
11. Competition Commission Decision no. 273 of 18 March 2013 "On an amendment to Decision No. 262 of 14 January 2013 On initiating an in-depth investigation into the urban passenger transportation service market in the city of Tirana" extended the deadline for the report to 15 April 2013, because the information from the parties and the regulator (Municipality of Tirana) was incomplete. The Commission considered that ensuring complete and detailed information in order to better see the behaviour of undertakings in the market was necessary to ensure more objective decision-making.
12. Pursuant to Article 39 of the Law, the Competition Commission invited the undertakings under investigation to a hearing by means of Letter No. 240 of 7 May 2013 and made available the in-depth investigation report and case file. Only FERLUT SHA, ALBA-TRANS SHPK and TIRANA-URBAN-TRANS SHA submitted their claims in writing and orally in the hearings.

### **III. COMPETITION ASSESSMENT**

The competition assessment is carried out for a relevant market, which means the products or services that are deemed as substitutable by consumers or other clients in terms of their features, prices and functions, and which are supplied or demanded by undertakings in a geographic area under the same competition conditions that is separate from other bordering areas.

#### **III.1. Relevant market**

Pursuant to Article 3 (7) of the Law and Competition Commission Decision no. 76 of 7 April 2008 "On approving the guidelines on the determination of the relevant market", the relevant market is determined in two aspects:

- a. Product Market
- b. Geographic Market

##### **III.1.1 Relevant Product Market**

13. Passenger transportation is a regular transport line service at fixed frequency and itineraries, where passengers may be picked up and dropped off in already designated stops. In the city of Tirana this service is provided only by buses that serve the needs of the population of Tirana within its borders or connecting important economic and social centres with certain areas in the city.

14. The urban transportation service is provided against the following tickets:

- one-fare tickets;
- one-line monthly ticket;
- generic monthly ticket (generic pass);
- generic student monthly ticket for all lines in the city (student pass).

15. Product features:

- A generic monthly ticket (pass) is a prepaid monthly ticket that provides access to all the urban bus lines for any person. The price of generic monthly tickets are set by Council of Ministers' Decrees<sup>1</sup>.
- A student monthly ticket (pass) is a prepaid monthly ticket that provides access to all the urban bus lines for students and pupils. The price of student monthly tickets are set by Council of Ministers' Decrees at half the price of generic monthly passes, with the goal to support such special categories as students and pupils<sup>2</sup>.

16. The urban transportation service is an exclusive right granted for respective lines; however, there is a cross-cutting element to this service as generic and student monthly ticket bearers may use all lines. So, a general monthly ticket and student monthly ticket may be used on all public passenger transportation services in the city of Tirana.

17. The monthly ticket is a travel fare ticket and as such is issued and distributed by the Directorate General of Taxes, on the basis of a template that is specified by the same Directorate. Urban passenger transportation tickets are distributed through the companies bearing a licence for that kind of transportation, which have to provide passengers with a ticket as proof of a contract with them (as per Article 10(a) of Law No. 8308 of 18 March 1998).

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<sup>1</sup> Council of Ministers' Decree No. 146 of 26 February 1998, amended by Council of Ministers' Decree No. 637 of 21 May 2008.

<sup>2</sup> Article 22 of the agreement. Under the service agreement on passenger transportation in urban lines in the City of Tirana, urban transportation operators undertake to observe the legal framework and acts issued by local governments in relation to the transportation of certain categories of passengers, such as: - Students and pupils; - Free transportation of the disabled, etc.

18. Based on the above and on the Relevant Market Instruction, the relevant product market is the selling of generic and student monthly tickets to urban passenger transportation in the city of Tirana.

### III. 1.2 Geographic Market

19. The undertakings under investigation operate in the urban passenger transportation market in the city of Tirana. In the context of evaluating the behaviour of those undertakings, the city of Tirana is the geographic market.

## III. 2. MARKET BEHAVIOUR OF UNDERTAKINGS

### III.2.1. Undertaking behaviour in terms of selling generic monthly tickets

20. Alba-Trans sh.p.k and Gerard-A Sh.p.k submitted a complaint to the Competition Authority whereby they claimed that the National Urban Transportation Association (SHKTQ), composed of its members: Tirana Urban Trans, Tirana Lines and Ferlut, operating in the urban passenger transportation market, had committed a violation of the Competition Protection Law in the form of setting unfair conditions for selling generic monthly passes.

21. Alba-Trans had several disagreements with SHKTQ and withdrew from its membership and did not collect the monthly ticket cards bearing SHKTQ logo for the month of July 2012. The rest of SHKTQ members issued the following announcement (see the facsimile in this Decision) which they posted on every bus and monthly ticket selling kiosks.

## N J O F T I M !

joftojmë qytetarët se në kuadër të luftës  
undër falsifikimit dhe informalitetit,  
konetë e muajit Korrik-2012, e në vazhdim  
do të njihen vetëm të shoqëruar me kartonin  
miratuar nga Bashkia e Tiranës dhe  
hoqata. Çdo karton tjetër është i pa  
lefshëm.



Pjesa para



Pjesa mbrapa

SHOQATA KOMBETARE E TRANSPORTIT QYTETAS

NOTICE

We inform the citizens that in the context of fighting forgery and informality, as of July 2012 only monthly tickets affixed to the ticket card approved by the Municipality and the Association will be recognized. Any other ticket cards will be considered as invalid.

National Association of Urban Transportation

22. An electronic copy of this announcement was also found in the SHKTQ office. The purpose of this SHKTQ action was to prevent the selling of generic monthly tickets by Alba-Trans, which is an undertaking with a long standing in this market.
23. Gerard-A Sh.p.k claimed that, under an agreement, SHKTQ members had posted a notice bearing the following title on urban buses and monthly ticket sale kiosks: BEWARE OF FAKE MONTHLY TICKETS AND CARDS. The contents of the announcement, however, point to the non-recognition of generic and student monthly passes sold by that operator without the respective card.
24. Since Gerard-A was not an SHKTQ member, the Association decided to not issue it the monthly ticket card for October 2012. The inspection in the SHKTQ office found an Association decision dated 29.10.2012, taken at a meeting attended by representatives from Ferlut, Tirana Lines, Tirana Urban Trans and by the SHKTQ Secretary and President; contrary to the Municipality of Tirana act allocating 5,500 monthly ticket cards to GERARD-A SHPK the Association members decided to issue only 1,200 monthly ticket cards to the new operator Gerard-A SHPK for November 2012, thus preventing their competitor from selling the number of monthly passes allocated by the Municipality.
25. The SHKTQ member undertakings contested the Municipal decision for allocating such a large number of monthly tickets to Gerard-A sh.p.k, because the decision was not in line with the methodology as per the number of vehicles and seats. In response to that objection, representatives from the Municipality of Tirana stated that the large number of monthly tickets allocated to that undertaking was based on the larger area it covered, which is far from the centre of the city, and also reflects the economic situation of the population in that area. The area also includes the Student Quartiers and is widely used by students living there.
26. According to Ferlut, it is precisely the local government intervention that led to SHKTQ members, Ferlut included, refusing to issue cards for the month of November 2012. Such a thing is also recognized by the European Court case law—the Sugar Cartel case, no. 40/73 (1975), where the behaviour of the operators in the form of competition restriction was caused by the government interference in their affairs. As a result, there was no prohibited agreement within the meaning of Article 4 of the Competition Protection Law.
27. The Municipality of Tirana stated that it would not recognize any monthly passes without the respective cards in October 2012 in a number of letters it sent to all the urban transportation operators in the city of Tirana, informing them that, “given the issues arising from the non-recognition of monthly tickets that do not have the card produced by SHKTQ, the Municipality of Tirana will no longer recognize the monthly ticket card that is produced by SHKTQ.” Nevertheless, SHKTQ member undertakings took a decision on 29 October 2012, whereby they decided to not recognize any monthly tickets without their card.
28. The claim that this behaviour of the undertakings was a response to the Municipality decision is not valid, as the situation is not the same as the Sugar Cartel case, because in that case it was the Italian Government the one that had

encouraged companies to conclude agreements with each other, and it was even an Italian Government policy to have the same sugar prices. (Paragraph 54 of the case).<sup>3</sup> The undertakings' behaviour was their response to the measure taken by the Municipality, and had direct effects on market competition and consumers.

29. In the hearings, Ferlut claimed that it had not refused to recognize Alba Trans its monthly tickets without SHKTQ cards for July 2012. Regarding that claim Alba Trans stated that, "...we have not had this issue with Ferlut SHA. In other words, this company has recognized all monthly tickets without cards that our company has issued." In addition, Ferlut claimed that regardless SHKTQ refusal to issue cards to Gerard – A SHPK, the Municipality of Tirana ordered that all monthly tickets issued by the operators were to be recognized as of November regardless whether they were accompanied by cards. Gerard-A was therefore not affected negatively by the Association decision.
30. The SHKTQ members' agreement, as stated in the SHKTQ decisions, which is direct evidence, to refuse recognition of card-less monthly tickets, and issue a limited number of cards to Alba Trans shpk and Gerad – A SHPK, restricted the selling of monthly tickets. In this way, accompanying cards were used as a means to restrict the monthly ticket selling market. This restriction was put an end to when the Municipality of Tirana ordered that monthly tickets be also sold without cards. The order was stated in its Letter No. 9645/1 of 29.10.2012, which was sent to all urban transportation operators.
31. The card used to accompany the monthly tickets has to contain security elements and the personal details of the ticket bearer, and is a legal instrument intended to protect the market against forgery and informality; however, as clearly shown by the decisions and announcements posted on the SHKTQ members' buses, this instrument was used as a means for restricting the sales of monthly tickets of two competitors in their market.
32. *In conclusion, the behaviour of SHKTQ members (TIRANA-URBAN-TRANS, FERLUT and TIRANA LINES) in terms of refusing to issue monthly ticket cards to Gerard – A and the refusal of Tirana Urban Trans and Tirana Lines to recognize any Alba-Trans card-less monthly tickets not bearing the SHKTQ logo amounts to an agreement within the meaning of Article 3 (4) of the Competition Protection Law, which pursuant to Article 4 (1) (b) and (c) of Law No. 9121 of 28 July 2003 "On Competition Protection", as amended, this might be a prohibited agreement because it provides for market sharing and controlling.*

### **III.2.2 Undertaking behaviour in the market in relation to student monthly tickets in 2007-2012**

33. In relation to the selling of student monthly tickets in the period under investigation the following facts were found:
34. **In 2007**, in reference to SHKTQ decisions, secured by the working group during the investigation, for January-November 2007 the undertakings under investigation had agreed to block 50% of the total number of student monthly tickets, and for the period beginning in December 2007 they had agreed to block 80% of them. Also in reference to those decisions OTTO AL was found to have not observed SHKTQ decisions for the period January-November 2007. The

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<sup>3</sup> Judgment of the Court of 16 December 1975. - Coöperatieve Vereniging "Suiker Unie" UA and others v Commission of the European Communities. - Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73, accessed on EU website <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61973CJ0040:EN:HTML>

documents that the Competition Authority inspectors reviewed show that this undertaking did not implement those decisions; indeed, the rest of the operators asked for measures to be taken for the agreement to be observed by that operators as well (Decision 12.5.2007, 22.5.2007 of SHKTQ etc.). With reference to the number of student monthly tickets received and sold by the undertakings under investigation, the investigation found that the amount of student monthly tickets in January-November 2007 was 50% of the quantity of allocated monthly tickets, while in December 2007 it was 20%.

35. **In 2008**, referring to the sales data and the SHKTQ documents secured in the investigation, in relation to the amount of student monthly tickets allocated to and sold by each of the undertakings operating in the urban passenger transportation market in the city of Tirana (Ferlut, Alba Trans, Tirana Lines and Tirana Urban Trans), it was found that they had blocked the selling of 80% of the allocated quantity for January-December 2008. In 2008, with reference to SHKTQ Decisions (SHKTQ Decision of 25.11.2008) the investigation found that OTTO AL had been given only 50% of the monthly ticket cards, without which no monthly tickets could be sold, as such tickets would not be recognized by SHKTQ members. So the monthly ticket card was used by SHKTQ as a form of pressure to make its members observe the agreement. This fact is also stated in an SHKTQ document:

**NJOFTIM PER DETYRIMET**  
( PER KUJTESE )

DREJTUAR DREJTORAVE : “FERLUT; “TIRANA LINES”; “ALBA TRANS”  
TE SHOQERIVE “TIRANA URBAN TRANS” “OTTO-AL”

Ne zbatim te vendimeve te mara nga vete anetaret( pronaret ) e SHKTQ, ne lidhje me kartonat e aboneve, ju kujtojme :

Para marjes se kartonave per abone per muajin **TETOR - 2008** cdo shoqeri te zbatoje pikat si me poshte :

1. Te jete bere likuidimi i kuotes shoqates per muajin Shtator – 08 ( Sejcili te sjelli mandatin e likuidimit)
2. Te dorzoje per bllokim sasine prej 80 % e aboneve te studentit per muajin Tetor-08, prane zyres se SHKTQ.
3. Te dorzoje prane zyres se SHKTQ, nje kopje te Proces – Verbalit te marjes se aboneve nga Dega e Tatimeve te Tiranes per muajin Tetor - 08, qe ka te shenuar numurin e serive te aboneve.
4. Mandatin e shlyerjes se kartonave te muajit Shtator-08, ne Nr. e llogarise se shtypshkronjes “Albdesign”.
- 5.

Ne se ndonje shoqeri nuk do te zbatoje pikat e me sipërme, nuk do ti jepen kartonat e aboneve. Kjo do te zbatohet edhe per muajt pasardhes.

**NOTICE ON OBLIGATIONS  
(REMINDER)**

To the managing directors of: Ferlut, Tirana Lines, Alba Trans, Tirana Urban Trans, Otto-Al.



Pursuant to the decisions taken by the Association members in relation to the monthly ticket cards, we would like to remind you of the following:

Prior to receiving the ticket cards for the month of October 2008 every company must comply with the following:

1. Pay the Association membership fee for the month of September 2008 and present proof thereof;
2. Submit for blocking 80% of the student monthly tickets for the month of October 2008 to the Association office;
3. Submit to the Association office a copy of the record of the receipt of monthly tickets from Tirana Regional Tax Office for the month of October 2008, where the series numbers of monthly tickets are recorded;
4. Submit proof of payment for the ticket cards of September 2008 to the bank account of Albdesign printing house.

Unless a company complies with the above it will not be given any monthly ticket cards. This will also apply in the future months.

36. **In 2009**, referring to the sales data and the SHKTQ documents secured in the investigation, in relation to the amount of student monthly tickets allocated to and sold by each of the undertakings operating in the urban passenger transportation market in the city of Tirana (FERLUT, ALBA TRANS, TIRANA LINES, TIRANA URBAN TRANS and PARKU I TRANSPORTIT URBAN TE UDHETARVE), it was found that they had blocked and not sold 80% of the allocated quantity for January-December 2009.
37. **In 2010**, referring to the sales data and the SHKTQ documents secured in the investigation, in relation to the amount of student monthly tickets allocated to and sold by each of the undertakings operating in the urban passenger transportation market in the city of Tirana (Ferlut, Alba Trans, Tirana Lines and Tirana Urban Trans), it was found that they continued the same behaviour and blocked the selling of 80% of the allocated quantity for January-December 2010.
38. **In 2011**, referring to the sales data and the SHKTQ documents secured in the investigation, in relation to the amount of student monthly tickets allocated to and sold by each of the undertakings operating in the urban passenger transportation market in the city of Tirana (Ferlut, Alba Trans, Tirana Lines and Tirana Urban Trans), it was found that they had blocked and not sold 80% of the allocated quantity for January-December 2011.
39. **In 2012**, referring to the sales data and the SHKTQ documents secured in the investigation, in relation to the amount of student monthly tickets allocated to and sold by each of the undertakings operating in the urban passenger transportation market in the city of Tirana (Ferlut, Alba Trans, Tirana Lines and Tirana Urban Trans), it was found that they had blocked and not sold 80% of the allocated quantity for January-June 2012.
40. SHKTQ decisions and recommendations were not observed by several undertakings—whether SHKTQ—as shown below:
  - a. The inspection at ALBA TRANS found electronic tables on 2011 and 2012 showing the quantity of generic monthly tickets, student monthly tickets and monthly tickets allocated to that undertaking and the quantity of sold monthly tickets for each type. The tables also include a row, next to the heading “Blocked”, corresponding to the student monthly ticket column, which also shows the quantity of student monthly tickets that were blocked and unsold by the undertaking.

- b. At ALBA-TRANS SHPK the inspection found electronic correspondence between an employee of ALBA-TRANS and the Secretary General of SHKTQ. The correspondence, taking place on 27.07.2012, 20.09.2012, 08.10.2012, 10.10.2012 and 16.10.2012, is about the ban on sales of student monthly tickets and a quota of only 20% of the total quantity as allowed for sale. The ban would be put in place by the Association and have effect on all operators. An e-mail sent to the SHKTQ Secretary General by the ALBA-TRANS employee confirmed the blocking of 80% of the student monthly tickets (4,240 out of 5,300 student monthly tickets) that were available to that undertaking.
- c. At TIRANA LINES SHPK, a letter was found bearing the subject line: "Summary table on the planned monthly ticket cards", with information on February 2012, which shows the actual quantity of received generic, student and line-specific monthly tickets for each of the undertakings operating in the urban passenger transportation market in the city of Tirana: FERLUT SHA, TIRANA LINES SHA, ALBA TRANS SHPK, TIRANA-URBAN-TRANS SHA, PARKU I TRANSPORTIT URBAN TË UDHËTARËVE SHPK and OTTO-AL. The column corresponding to student monthly tickets shows that 80% of the quantity of those tickets were blocked by all the undertakings, and only 20% were made available for sale.
41. All orders placed for student and generic monthly ticket cards for all urban passenger lines in Tirana were found at SHKTQ, with information on the months they had been ordered for in 2011 and 2012. A comparison of the total number of generic monthly tickets with student ones shows that the number of ordered cards is the same as the quantity of generic monthly tickets plus 20% of the quantity of student monthly tickets.
42. In the hearings FERLUT SHA and ALBA-TRANS SHPK admitted the existence of an agreement among the undertakings operating in the urban passenger transportation market in the city of Tirana, but they claimed that, since all the operators in that market participated in the decision-making, then it does not meet the condition of Article 4 (1) of Law No. 9121, which requires not only the existence of an agreement but it also requires that the agreement in question be prohibited under that provision. In the specific case, the decisions taken by the market operators did not intend to prevent, restrict or distort market competition, because they did not harm any of the market operators since all of them were parties to those decisions.
43. In addition, in its submissions FERLUT SHA stated that: *"In the specific case, the decisions taken could have harmed the consumers in question—who are students—but not the competition because none of the urban passenger transportation undertakings were caused any damage since they all participated in the decision."*
44. An agreement among all market operators may not be deemed as a prohibited agreement only if it can be proved that most of the benefits deriving from that agreement are transferred to the consumers. This fact was not proved in the case of the undertakings under the investigation in relation to the amount of 80% of the student monthly tickets, which had a direct impact on the consumer group—students—who were forced to buy tickets at a price 50% higher.
45. The parties claimed that their behaviour resulted from failure to receive any reimbursement for student monthly tickets and for the rest of categories of passengers eligible for free public transport access. They also claimed that the behaviour was necessary to protect them against forgery and various abuse by

users of monthly tickets, i.e. the use of monthly tickets by people who were not students.

46. Based on the laws and regulations under which the market under investigation operates and the evidence collected during the investigation it was proved that the undertakings operating in the relevant market should have been reimbursed and that the Municipality of Tirana, throughout the period under investigation (2007-2012), was aware of the restrictions imposed on selling the student monthly tickets and took no measures.
47. The parties should use legal remedies to address the issue of reimbursement and that of forgery and abuse, in cooperation with the responsible institutions and prosecution bodies; but they could never use a means that is prohibited by the Competition Protection Law and be part of agreements prohibited by that Law.
48. The Competition Protection Law aims at protecting free and effective competition in the market, which means freedom to compete and not be subject to anticompetitive agreements and abuse of a dominant position, even though operators' interests could be achieved by violating the law.

In conclusion, undertakings Ferlut sha, Tirana Lines sha, Alba Trans shpk, Tirana Urban Trans sha, Parku i Transportit Urban të Udhëtarëve shpk and Otto-al shpk, through decisions taken in the SHKTQ, reached an agreement under which they did restrict the sale of more than 50% of the quantity of student monthly passes for 2007 and about 80% of the quantity of student monthly passes for 2008-2012. The evidence showed that Otto-al shpk had not complied with the National Urban Transportation Association decisions and had exited the respective market in June 2012. The decisions taken by the SHKTQ members to limit the quantity of student monthly tickets sold are direct evidence of an agreement reducing the decision-making independence of the parties. Within the meaning of Article 3 (4) of the Competition Protection Law, that comprises an agreement, which, under Article 4 (1) (b) of the Law, is a prohibited agreement.

In determining the fine, pursuant to Article 75 of the Law and the Regulation on fines and their leniency the Competition Authority took into consideration the violation gravity and duration, other mitigating and aggravating circumstances for each undertaking, and the cooperation with the complainant undertaking.

#### **FOR THESE REASONS:**

The Competition Commission, pursuant to Articles 4 (1) (b) and (c), 24 (d), 74 (1) (a) and 75 of Law no. 9121 of 28 July 2003 "On Competition Protection", and the Regulation on fines and their leniency,

#### **HAS DECIDED:**

- I. *With regard to the refusal to recognize the generic monthly tickets not accompanied with cards bearing SHKTQ logo pertaining to Alba-Trans and the refusal to issue generic monthly ticket cards to Gerard-A:*
1. Impose on FERLUT SHA a fine of ALL 337,133 for participation in a prohibited agreement;
2. Impose on TIRANA LINES SHA a fine of ALL 424,080 for participation in a prohibited agreement;

3. Impose on TIRANA URBAN TRANS SHA a fine of ALL 828,274 for participation in a prohibited agreement;
- II. *With regard to the restriction of selling student monthly tickets in 2007-2012:*
1. Impose on FERLUT SHA a fine of ALL 1,263,618 for participation in a prohibited agreement;
  2. Impose on TIRANA LINES SHPK a fine of ALL 777,618 for participation in a prohibited agreement;
  3. Impose on ALBA-TRANS SHPK a fine of ALL 615,434 for participation in a prohibited agreement;
  4. Impose on TIRANA-URBAN-TRANS SHA a fine of ALL 1,302,498 for participation in a prohibited agreement;
  5. Impose on PARKU I TRANSPORTIT URBAN TË UDHËTARËVE SHPK a fine of ALL 530,906 for participation in a prohibited agreement;
- III. The Commission hereby concludes the in-depth investigation into the urban passenger transportation market in the city of Tirana against undertakings FERLUT SHA, TIRANA LINES SHPK, ALBA-TRANS SHPK, TIRANA-URBAN-TRANS SHA, PARKU I TRANSPORTIT URBAN TË UDHËTARËVE SHPK and OTTO-AL SHPK
- IV. The Secretary General shall be charged with enforcing this Decision and communicating it to the undertakings listed above and to the Municipality of Tirana.

This Decision shall enter into force immediately.

#### **COMPETITION COMMISSION**

**Servete GRUDA**  
 (\_\_\_\_\_)
   
**Member**

**Koço BROKA**  
 (\_\_\_\_\_)
   
**Member**

**Iva ZAJMI**  
 (\_\_\_\_\_)
   
**Member**

**Rezana KONOMI**  
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**Deputy Chair**

**Lindita MILO (LATI)**

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**CHAIRPERSON**

## Minority Opinion

by **Koço Broka**, Member of the Commission

Regarding Competition Commission decision no. 290 of 23 July 2013 **On imposing fines to undertakings Ferlut Shpk, Tirana Lines Sha, Alba Trans Shpk, Tirana Urban Trans Sha and Parku i Transportit Urban të Udhëtarëve shpk on grounds of restricting the competition in the monthly generic and student ticket market in relation to the public transportation in the city of Tirana**

I voted against the Decision for the following reasons:

**I- The majority position.** At the end of the in-depth investigation, based on the working group Report on the in-depth investigation into the urban passenger transportation market in Tirana, the Secretary-General report, the claims submitted by the undertakings under investigation in writing and in the hearings, and the working group case file, the majority of the Competition Commission members decided the following in its meetings:

*“With regard to the refusal to recognize the generic monthly tickets not accompanied with cards bearing SHKTQ logo pertaining to Alba-Trans and the refusal to issue generic monthly ticket cards to Gerard-A: 1. Impose on **FERLUT SHA** a fine of ALL 337,133 for participation in a prohibited agreement; 2. Impose on **TIRANA LINES SHA** a fine of ALL 424,080 for participation in a prohibited agreement; 3. Impose on **TIRANA URBAN TRANS SHA** a fine of ALL 828,274 for participation in a prohibited agreement;*

*With regard to the restriction of selling student monthly tickets in 2007-2012: 1. Impose on **FERLUT SHA** a fine of ALL 1,263,618 for participation in a prohibited agreement; 2. Impose on **TIRANA LINES SHA** a fine of ALL 777,618 for participation in a prohibited agreement; 3. Impose on **ALBA-TRANS SHPK** a fine of ALL 615,434 for participation in a prohibited agreement; 4. Impose on **TIRANA-URBAN-TRANS SHA** a fine of ALL 1,302,498 for participation in a prohibited agreement; 5. Impose on **PARKU I TRANSPORTIT URBAN TË UDHËTARËVE SHPK** a fine of ALL 530,906 for participation in a prohibited agreement.”*

II- My position as a Commission member vis-à-vis the Working Group Report, the Secretary-General Report and the decision taken by the majority of the Competition Commission members on the basis of the evidence and facts administered in the investigation case file and the claims submitted by the parties in writing and in the hearings is that: - The working group did not perform a full, objective and impartial investigation; They did not collect the necessary and indispensable information that would enable sound objective judgment that would identify the issues, causes and culpability and amount of fines, and especially how the situation in terms of restricted competition in the selling of monthly generic and student tickets could be overcome. Therefore, I did not approve of the Working Group Report, and have asked for the reestablishment of a working group that would conduct a full investigation relying on evidence and facts. Based on the above, I did not agree with the

Commission *majority* position, either, and I, therefore, voted AGAINST its decision, and rather proposed the conducting of an objective and impartial investigation and collecting full and accurate information before a decision is made. Facing an incomplete investigation and inaccurate data, the Decision that the Commission, or at least I, would take would be distorted.

**II.1 Initiation of investigation upon a request from concerned undertakings or a complaint from third parties.** A feature of this investigation is that it was based on complaints submitted by the undertaking *ALBA –TRANS SHPK*, which had operated in that market for a long time, and a complaint submitted by the undertaking *Gerard-A*, which entered the market in September 2012. The complaints were filed against the National Urban Transportation Association (SHKTQ), which was composed by its members: *Tirana Urban Trans Sha*, *Tirana LinesSHA*, *Ferlut SHA*; therefore, the complaints were against other competitors in the market of generic and student monthly tickets. In essence, the initiation of the investigation on that basis was lawful and complied with the provisions of the Competition Protection Law.

The essence of the complaint of *ALBA–TRANS SHPK* was not to denounce a prohibited agreement—such as the banning of selling student monthly tickets up to 50% in 2007 and up to 80% in 2008-2012. **In my opinion, that was a prohibited agreement distorting competition in the relevant market. I have taken the position to prohibit such an agreement, but also to fully and objectively verify it in practice.** The undertaking in question operated in the same market where the undertakings it submitted a complaint against operated. In its complaint it submitted that the three competitor undertakings “**unfairly sold generic monthly passes while not recognizing the generic monthly passes that the complainant had sold in October-November 2012**” (see Paragraph 1 of the Commission Decision). Based on a review of those complaints, I was personally for the initiation of an inquiry and an in-depth investigation, while being aware of the challenges of such investigations (i.e. complaints against one’s competitors), without any prior presumption of culpability.

As already stated in the Competition Commission publication “National Competition Policy”, the situation can deteriorate if state intervention is not effective. The practice has shown that the solution do not lie only between imperfect markets and state intervention, but in many cases between imperfect markets and imperfect or deficient state interventions. Paul Hayne the renowned economist underlines in his book “The Economic Way of Thinking”<sup>4</sup> that “**The history of government intervention in the economic life discovers such a model of care for competitors’ special interests that is as powerful as the interest shown for competition. And those two are not identical, even though our rhetoric uses them interchangeably quite often.**”

Given that the interest in protecting competition does not coincide with competitors’ interests, the Competition Commission has taken a careful approach to its decision-making. In this respect, Paragraph 4 of Decision No. 273 of 18 March 2013 “On an amendment to Decision No. 262 of 14 January 2013 On initiating an in-depth investigation into the urban passenger transportation in the city of Tirana states that “**the Commission considered that ensuring complete and detailed information in order to better see the behaviour of undertakings in the market was necessary to ensure more objective decision-making.**” This was accepted by all the Competition Commission members, without any dissenting opinions. **However, unfortunately, in my opinion not only was**

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<sup>4</sup>Hayne, Paul. *Mënyra Ekonomike e të Menduarit* (The Economic Way of Thinking), Libri Universitar Publishing House, Tirana, 1994.

**that Decision not implemented**—I am providing evidence and facts attesting to that below—but the **working group was also deliberately bypassed without any controls by the Secretariat’s superior bodies. I reiterate that it was bypassed deliberately, and not because of lack of knowledge, for at least the following reasons.**

II.2. In the Competition Commission meeting on 27.6.2013 on the working group’s counterarguments against the claims submitted by Tirana Urban Trans shpk, Ferlut sha and *ALBA –TRANS SHPK*, after noting the working group’s failure to reflect the requirements of the Commission Decision No, 273 of 18 March 2013, I underlined this issue by suggesting that “the Legal Affairs Department prepared a material on the Competition Authority staff responsibilities in the market and on individuals violating legal requirements causing damage to third parties.”

Needless to say, in a country adopting the market economy and democracy the authority of a state institution including the Competition Authority does not imply unlimited or arbitrary rights and power of the administration to impose fines; in the contrary, it implies power that requires professional skills and integrity when checking the actions of “players” distorting competition, in line with the room provided for in the laws and regulations. At the same time the Constitution protects the right of citizens and companies to **demanding fair and equal treatment in front of the law by state institutions.**

II.3. Based on the above and in the conditions of acute shortcomings in the in-depth investigation, and pursuant to the Competition Protection Law requirements, I explicitly requested the provision of full information, albeit in synthetic form, prior to the Commission taking a decision, in line with the following requirements:

**“For as objective decision-making as possible.**

In order for an objective decision to be taken by me the following information needs to be provided:

1. Market operators, new entries and exits in the relevant market in the investigation period 2007-2012 + 2013 (See attached Annex 1).
2. A completed table (see attached) on the ordered and sold generic and student monthly tickets. The data are to be taken from the Directorate General of Taxation which issues and distributes monthly tickets and the Municipality of Tirana.
3. The Municipal Order on supplying Gerard-A in the first and following months (October, November and December 2012 and January, February, March, April, May and June 2012) with 5,000 monthly tickets, with disaggregated information on how many student tickets and generic tickets, the position taken by the Association, and how many were delivered in fact.
4. Statistical tables for December and for the years of 2007, 2008, 2009, 2010, 2011 and 2012, using the Municipal form.
5. A consolidated table for each operator, technical and financial indicators for the period 2007-2012 (see page 7).
6. A consolidated table on technical and financial indicators for 2011 and 2012 for all the operators (with comparative data by table type in pages 6 and 7, *ibid*).
7. Statistical tables for June 2013, with monthly and cumulative data, using the Municipal form page 6. (in order to confirm the implementation of the Competition Commission Decision).
8. The financial statements (taken from NRC) for the six operators for the period 2007-2012, and for GERARD-A for 2012 (except for the financial statements already provided).

Again, the working group submitted an incomplete reply.

More specifically: The data in Table 2 does not include the data on OTTO-AL. The first requirements of paragraph 3 has not been met. I asked for a copy of the Municipal Order issued to SHKTQ to supply Gerard-A as of October 2012, so that I could make an assessment as to where that Order was based (which law or other acts, which criterion applied to the allocation of generic and student monthly tickets). It was a known fact that the allocation was based on two indicators from 2007 to June 2012: (1) number of buses for each line; and (2) the capacity of each bus. The letter was (and is) necessary to compare the position of the Municipality with that of the SHKTQ and the accused undertakings, and not simply to have a cover letter on the production and distribution of urban transportation fare tickets sent to the Directorate General of Taxation.

It was a known fact that in its cover letter to the Directorate General of Taxation on the production and distribution of tickets the Municipality of Tirana did not compare them with the actual sales in the previous months and that it had not taken any measures in relation to the failure to sell the tickets during the period under investigation, since it is the regulatory and supervisory authority it should have taken measures against a prohibited agreement which violated market competition. One of the letters of the fined undertakings under investigation states that “During this period no sanction or penalty was imposed on us by the Municipality of Tirana with regard to purchases or sales in 2012.”

The information under paragraph 4 and, therefore, under paragraphs 5 and 6 was not provided. It suffices to say that during the period under investigation and in 2011, six operators operated in the relevant market, while in its reply the working group refer only to four operators—Tirana Urban Trans shpk, Ferlut SH A, ALBA –TANS SHPK, and Tirana Lines SHA—without any information on how the rest of operators had acted (OTTO-AL SHPK, PARKU i TRANSPORTIT URBAN Të UDHETARVE SHPK ), which might or might not have sold the monthly tickets issued and distributed by the Directorate General of Taxation during the period under investigation 2007-2012.

According to the Parku i Transportit Urban të Udhëtarve letter No. S52/1 dated 8.02.2013 sent to the Competition Authority, in 2012 the number of student monthly tickets bought and sold was 6,571 and 6,507, respectively, in 2011 4,500 and 4,500, and in 2010 4,500 and 4,500 respectively. This information is different from the one provided in the abovementioned table. This undertaking was treated with the same coefficient of years of violation (six) as the rest of the undertakings which committed violations for a period of six years (see, below, the section on the fine calculation table). In any case, after the investigation team made all the respective checks and verifications of the data from various sources, it should specify which are the accurate data, where they were taken from, and which operator did not submit accurate information.

The Municipal form that was attached to my queries was intended to explicitly provide information on **the number of student and generic monthly tickets that were purchased and sold**. The working group, however, replied only on the total revenues reported under tickets, monthly tickets, etc., while failing to provide a break-down for student monthly tickets (number and amount) and generic monthly tickets.

It should be noted that, in general, the working group has provided the information that was submitted by the undertakings in terms of information on student and generic monthly tickets (in number and amount for every month and year in the period under investigation and for the months of January and February 2013). One of the complainant undertakings, which also received the most lenient sanction—Alba Trans—did not provide any information on the number of generic and student monthly tickets for the period under investigation and the months of January and February, which would have helped us see how it had implemented the Competition Commission



Decision No. 263 of 14 January 2013 on interim measures. The companies have not, therefore, been treated equally.

As Paragraph 9 of the Commission majority decision admits, “the data on Alba Trans are only in terms of value, which is estimated to be about 60% of the number of student monthly passes allocated for January-February 2013.”

Based on this fact and on the fact that Tirana Lines purchased 3,900 student monthly tickets and sold 2,010 of them in January-February 2013, I cannot agree with Paragraph 10 of the Competition Commission majority Decision, which states:

“10. *Based on the above, all the undertakings under investigation in the urban passenger transportation market in the city of Tirana complied with the Competition Commission Decision No. 263 of 14 January 2013 and independently issued student monthly tickets.*”

Indeed, the evidence, data and facts highlight that the Competition Commission Decision requirements were implemented only in part by some undertakings, and were not implemented at all by other undertakings, including the complainant.

The failure to provide information for question number 7, which would shed full and clear light on whether the Competition Commission Decision No. 263 of 14 January 2013 was being implemented by the individual undertakings, **does confirm that the working group’s failure to make a full, objective and impartial investigation was deliberate** and seriously jeopardizes the role and activity of the Competition Commission and Authority by substituting competition protection with protection of competitors, which leads to serious harming of business confidence in our institution.

In my opinion, without complete information based on the same methodology (which is possible to be objectively obtained by the Competition Authority) on the relevant market indicating what it looks like in the specific case, including the issuance, distribution and sales of generic and student monthly tickets for all the operators under investigation, both individually and aggregated and both in terms of number and value for every year in the period under investigation we could not know the real situation and the culpability or its degree for each individual operator, nor would the Competition Commission be able to issue any recommendations and measures in line with the requirements of the Law. The working group gave information on *ALBA –TRANS SHPK, which differs methodologically from the information on the rest of the undertakings*. In these conditions, as a member of the Commission I can hardly reach an objective and impartial judgment without risking that competition protection be transformed into partial protection of certain competitors and that certain competitors be punished unfairly. This is not a hypothetical possibility but a real one.

II.4 It suffices to consider that the **relevant market**—to which no one in the Competition Authority objects—is “**the selling of generic and student monthly tickets to urban passenger transportation in the city of Tirana.**” Article 4 (1) and (3) of the Regulation on fines and their leniency stipulate that “When determining the basic amount, the Commission shall use the amount of revenues from the sale of an undertaking’s products to which the committed violation in the relevant market is related directly or indirectly. The Commission shall take into account the amount of revenues from sales made by an undertaking in the last financial year of the participation in the violation. This is referred to as “amount of sales”. ... 3. When determining the amount of sales for an undertaking the Authority shall use complete and reliable data it has on that undertaking. When the data made available by the undertaking are incomplete or unreliable

the Authority may determine its amount of sales on the basis of the incomplete data it has secured and/or any other information which it deems available.”<sup>5</sup>

But has the reference value of the fine been determined by the Working Group, as seen from Letter No. 108/1 of 23.07.2013 from the Working Group, which was also the basis of the Competition Commission majority decision?

Some of the indicators used as a basis for the calculation of the fine by the Working Group and the majority of the Competition Commission members.

1.2. Based on the above it was found that the calculation of the fine did not take into account the relevant market value but in one case it is based on the actual sales of student monthly tickets (which is 1/5 of the issued monthly tickets in 2008-2012), and in another case the actual sales of the generic monthly tickets.

2. From the fine calculation procedure it can be gathered that in both cases the undertakings put an end to the competition distortion in the respect they were fined for.

In reality this did not happen. According to Table 1 “Amount of allocated and sold student monthly tickets in January and February 2013” submitted attached to the in-depth investigation report (page 11 on companies Alba-Tans and Tirana Lines) the claim was not proven that the undertakings had observed Competition Commission Decision No. 264 of 14 January 2013 and made available the entire quantity of student monthly tickets. Regardless the evidence and facts, the working group has taken the commitment to issue the certificate of competition virginity in this market.

The same applies to the claim that the undertaking puts an end to the violation with regard to accompanying monthly ticket card. Currently generic monthly tickets are used with accompanying cards (to which I do not have anything against and I do not consider as a violation by the undertakings) both in June 2012—that is after the beginning of the competition investigation—and in June and July 2013.

3. With regard to the leniency of the fine imposed on Alba Tans, I personally think that we are not in the situation specified in Article 77 (1) of Law No. 9121 of 28 July 2003 “On Competition Protection”, which states that “An undertaking that has been a party to a prohibited agreement within the meaning of Article 4 may be treated leniently by revoking its fine fully or partly if it contributes to the detection and abolishment of the prohibited agreement and the identification of the responsible persons by providing information not previously available to the Authority.”

The decision taken by the Competition Commission majority decision includes partial and non-objective positions that are not based on evidence and facts. This shows that the overall activity of the Competition Authority has not yielded any real effects in this market in terms of restoring competition, apart from the imposed fine.

### III. Market Regulation

**III.1.** The selling of generic and student monthly tickets in the urban transportation market in the City of Tirana is a **completely regulated market** with the key players—in addition to the undertakings operating in this market—being:

**Council of Ministers.** Urban transportation single fares and generic, line-specific and student monthly tickets are set by the Government (the Council of Ministers) and may not be set by the operators freely.

**The Directorate General of Taxation** issues and distributes generic, line-specific and student monthly tickets

**The Municipality of Tirana** licenses the undertakings operating in this market, and regulates and supervises their operations, including the distribution of generic and student monthly tickets.

**Travel agents** selling monthly tickets.

**III.2. Operators in the relevant market.** Operators which operated in this market in the period subject to the in-depth investigation 2007-2012 were the following:

- 1.FERLUT Shpk; throughout the period
- 2.TIRANA LINES SHA throughout the period
- 3.TIRANA URBAN TRANS SHA throughout the period
- 4.PARKU I TRANSPORTIT URBAN Të UDHETARVE SHPK- throughout the period
- 5.OTT-AL SHPK –from 2007 till June 2012
- 6.GERARD Only for the period September-December 2012 and after that.

The National Association of Urban Transportation (SHKTQ) also operates in this market.

**III.3 Regulation of prices and tariffs.** In this regulated market, the price of tickets in general and of generic, line-specific and student monthly tickets which account for the revenues of the undertakings in this market are set by the Government (the Council of Ministers) and such prices are set for a specific period. The prices last changed by Council of Ministers' Decree No. 637 of 21 May 2008.

Urban transport tariffs (in ALL)						
No.	Item	Unit	CoMD-146-26.2.1998	CoMD 45-22.1.2004	CoMD-637-21.5.2008	Increase 2008/2004 in %
1	One-way ticket	ALL	15	20	30	150.00
2	Line-specific monthly ticket	ALL	?	600	900	150
3	Generic monthly ticket	ALL	?	800	1200	150
4	Student monthly ticket	ALL	330	400	600	150

This situation continues despite the major changes occurring in this market, what with the fuel prices and the renewal of vehicles, which directly affects the expenses of market operators. Needless to say, if only for these reasons, this market is a problematic one. However, given that the prices/tariffs in this market have increased three to four times more than the average increase of ICK compared with

1990, any SHKTQ claim for subsidies would require a special study to be conducted by the respective authorities under the Council of Ministers and the Municipality.

The refusal to sell student monthly tickets (i.e. the prohibited agreement to restrict competition) occurred both before the last increase in tariffs of May 2008 and after it, although their increase was not a small one (50%), given that the price increase took into consideration the possibility for the private operators to purchase new vehicles for the delivery of this service.

While in March this year the undertakings operating in this market asked the Prime Minister to increase the price of one-fare tickets and monthly tickets (a double increase, following the request they had submitted to the Municipality a few years before), it is not up to the Competition Authority to respond to such a request in lieu of the players regulating and supervising this market. In the best scenario, when the Authority addressed the complaints on this market, it should first obtain information on the annual and monthly economic, financial and technical indicators from the Municipality, which it should then compare with the financial statements of the undertakings. Only after this, it can give a complete opinion and recommendations based on the Competition Protection Law. As a result, I personally stand by my position that the agreement among the undertakings operating in this market to not sell student monthly tickets (50% in 2007 and 80% in 2008-2012) was concluded separately from the rest of the circumstances and issues in the market. In any case, such issues can be addressed by the authorities regulating the market, the Council of Ministers and the Municipality, in connection and cooperation with the market operators and their associations.

**III.4. Market operation rules** affecting the selling of student monthly tickets in the urban passenger transportation in the city of Tirana in the period subject to the in-depth investigation 2007-2012.

Both during the investigation and in the in-depth investigation report no light was completely and clearly shed on the rules and **especially the implementation of those rules by the regulatory players**; this underlies the activity and behaviour of the undertakings, even though the legal acts were listed in the in-depth investigation report (see page 7).

The complaints submitted to the Competition Authority indicate that in this market there were problems with regard to the behaviour of both the undertakings and the market regulators and supervisors. But as it happens in quite a number of cases, the problem does not seem to lie in the issues per se but in how state institutions, including the Competition Authority in our case, are involved in dealing with them.

Furthermore, in the case of the Competition Authority the core issue is how they were treated by the inquiry and investigation working group and by the Secretariat overseeing the working group, and how the evidence and facts were treated by the Advisor to the Competition Commission Cabinet, and to see whether the facts and evidence have been dealt with completely and impartially. The Competition Commission decision-making depends on this.

#### **III.4.1. Laws and regulations**

As I also mention above, one of the significant players participating in and affecting the regulation of this market is the Directorate General of Taxation, which issues and distributes generic, line-specific and student monthly tickets. Its activity in this respect during the period under investigation (2007-2012) was governed, inter alia, by the: Council of Ministers' Decree No. 183 of 28 March 2007 on the organization, printing and issuance of road transportation tickets;

Instruction No. 11 of 25 March 2007 on the organization, printing and issuance of road transportation tickets;

Council of Ministers' Decree No. 643 of 11 June 2009 on the production, distribution and selling of road transportation tickets to passengers.

### **III.4.2 The Directorate General of Taxation and its activity and impact on the functioning of the relevant market and the restoration of competition in the market**

The Council of Ministers' Decree and Instruction of 2007 required that:

“Travel agencies that have been licensed by the Ministry of Transport and tax authorities shall collect passenger tickets and monthly tickets at the Directorate General of Taxation at production price in an organized manner.

The Directorate General of Taxation shall sign an agreement with transport and passenger associations in order to coordinate efforts for ensuring compliance with the road transportation legislation.

The Directorate General of Taxation shall also issue special rules on the handling of requests, delivery of orders and distribution of road passenger tickets.”

The spirit and the letter of the regulatory acts was for the tickets to be sold by travel agencies, while the allocation of monthly tickets to undertakings was also regulated by the coordination between the Directorate General of Taxation and transport and passenger associations, such as SHKTQ.

On the other hand, Council of Ministers' Decree No. 643 of 11 June 2009 required, inter alia, that:

“Tickets for road transportation of passengers in urban, interurban, periurban and international services shall be collected by the companies licensed for this type of transportation or by transportation agency representatives (if a licensed company has a travel agency). Tickets shall be collected at Regional Tax Offices at their production cost.”

Thus, it is not difficult to see that under the new regulations (which, it should be noted, have not repealed any previous regulations, thus causing the potential for legal cacophony) the Directorate General of Taxation is not obliged to cooperate with travel agencies anymore or coordinate with passenger associations, but it rather cooperates directly with transportation associations or transportation agency representatives.

This change to the legal acts, while not repealing the 2007 Council of Ministers' Decree and Instruction, leaves the cooperation with transportation association in the shadows. It also causes a loophole and does not create the conditions required for the necessary transparency that the operators in this market need so that they can know what the issuance, distribution and sales of generic and student monthly tickets are for the entire market and for each undertaking in particular. **Given that the holders of monthly tickets of a specific undertakings also travel on the rest of undertakings' lines, that transparency is not only necessary but also an indispensable condition for the functioning of competition in this market. Revenues of each undertaking actually depend on the sales of generic and student monthly tickets and on how they are allocated to the various**

**undertakings. As a result, the undertakings' interest in them or the allocation of monthly ticket cards is not only lawful but also conducive to the real protection of competition.**

The lack of transparency shown by the Directorate General of Taxation towards the Competition Authority, given that it failed to provide the formally requested information on the issuance and distribution of generic and student monthly tickets, which the working group intended to compare with the company and Municipality data on their sales both during the investigation period and subsequently, has not allowed for a complete and objective investigation and, as a result, has not led to an objective decision by the Competition Commission. In my opinion, the lack of transparency needs to be eliminated not only vis-à-vis the Competition Authority, but also vis-à-vis any undertaking operating in this market asking for such information. The transparency is a precondition for avoiding prohibited agreements harming competition in this market and also a must for restoring competition in this market. As a result, I think that it should also be included in the decision and recommendations issued by the Competition Commission to enable restoration and functioning of competition in the relevant market.

#### **4.2.3. Municipality activity in regulating this market**

Pursuant to Article 10 (b) of Law No. 8308 of 18 March 1998 “On Road Transportation”, as amended, “Transportation tariffs shall be subject to the provisions of the Law on Prices and Tariffs. State-subsidized passenger transportation tariffs shall be approved by the Council of Ministers.” Under Article 14 of that Law “based on population needs for urban transportation, municipal councils shall specify lines, and organize, fund and decide on this type of transportation within their jurisdictions. Urban transportation shall be provided with buses only by companies the objects of which in their memoranda of association include the activity of passenger transportation. Mayors shall issue the urban transportation licenses.”

Both de jure and de facto the Municipality of Tirana has full comprehensive supervision of this market, enabling both maintenance and restoration of competition in it. It provides complete monthly and annual information on the number of generic and student monthly tickets that have been issued, distributed, sold, ordered and documented in the economic and financial statements of the undertakings, as well as other technical, economic and financial data that enable not only detection of prohibited agreements harming the market, competition and consumers, but also avoidance of them and restoration of market competition. The behaviour of each undertaking in this market directly relies on the Municipality activity.

In this respect, it is only natural to enquire which was the regulation issued by the Municipality of Tirana—it being the direct regulator of this market—governing the distribution of generic and student monthly tickets in Tirana.

According to the information provided in the investigation file and the explanations given by the Municipality of Tirana:

“Monthly ticket allocation is based on an agreement among the operators.

This was changed by Tirana Mayor’s Ordinance No. 281 of 12 April 2012 on the method of allocation of the number of urban passenger monthly tickets, which stated that:

1. Monthly tickets shall be allocated to urban transportation operators on the basis of annual statements reported for each line covering the previous fiscal year.

2. The allocation of the number of monthly tickets to each line shall be planned annually.
3. The Department of Transportation and Mobility shall implement this Ordinance.
4. This Ordinance shall enter into force immediately.”

The Ordinance, however, was changed by Tirana Mayor’s Ordinance No. 281/1 of 25 July 2012 revoking Tirana Mayor’s Ordinance No. 281 of 12 April 2012 on method of allocation of the number of urban passenger monthly tickets:

1. Revoke Tirana Mayor’s Ordinance No. 281 of 12 April 2012 on the method of allocation of the number of urban passenger monthly tickets.
2. Conduct a survey-based study on the determination of the real passenger structure for every line.
3. Reaffirm the allocation in power prior to Ordinance No. 281 of 12 April 2012 pending completion of the study.
4. The Department of Transportation and Mobility shall implement this Ordinance.
5. This Ordinance shall enter into force immediately.”

So, according to these bylaws the requirements and rules on the basis of which the undertakings and SHKTQ had operated are still in power. But instead of applying this rule and equal requirements to a new entrant (Gerald-A), the allocation of monthly tickets is specified not on the basis of equal criteria but by the Municipality.

So, it was the Municipality the one that distorted the competition in the relevant market, and not FERLUT SHPK, TIRANA LINES SHA, TIRANA URBAN TRANS SHA and SHKTQ which seek to allocate as many monthly tickets as calculated on the basis of equally specified criteria for everyone. In this respect, their position on the distribution of monthly tickets together with respective cards is a just action contributing to the protection of competition in the market. As a result, I am against the Competition Commission majority decision to impose a fine on FERLUT SHA, TIRANA LINES SHA and TIRANA URBAN TRANS SHA *with regard to the refusal to recognize the generic monthly tickets not accompanied with cards bearing SHKTQ logo pertaining to Alba-Trans and the refusal to issue generic monthly ticket cards to Gerard-A.*

In my opinion, the competition in this market was distorted by its regulator, the Municipality, which did not observe equal rules for all the operators in the market and specified by itself the number of monthly tickets to be allocated to the individual operators, while failing to apply equal criteria to everyone. Competition is distorted when instead of applying the same criteria to a new entrant (in this case, Gerard-A), the number of generic and student monthly tickets is specified.

The Commission should, therefore, make a decision to issue relevant recommendations on restoring competition in this market pending completion of the study and replacement of the current criteria and rules with new rules and criteria.

At the same time, the Municipality should be more transparent vis-à-vis the Competition Authority. I am referring to the transparency the Municipality of Tirana should demonstrate in relation to its legal obligation to provide the information requested by the Working Group on 28 January 2013, among other things the number of total monthly tickets received and sold by each operator in January 2007-December 2012, disaggregated by type (generic and student) and month.

Having the information on the issuance and allocation of the generic and student monthly tickets, and their sales, as detailed in tables submitted to the Municipality and in the undertakings' financial statements. The direct regulator, which is the Municipality of Tirana, has all the means to achieve and monitor competition in this market, by fighting any distortion coming from the potential behaviour of individual undertakings. The fact that it did not provide the Competition Authority with complete information on all the undertakings shows that its role in the protection and promotion of competition is deficient. The Competition Commission should use this piece of information in the context of performing its statutory functional tasks.

#### **4.3. Equal treatment of all undertakings in the market**

As shown above, six undertakings operated in the relevant market during the period under investigation 2007-2012. While the Working Group claimed that "With reference to the printed and electronic evidence that was found at the undertakings operating in the urban passenger transport market in the city of Tirana and at SHKTQ, it was found that undertakings FERLUT SHPK, TIRANA- LINES SHA, ALBA-TRANS SHPK, TIRANA-URBAN-TRANS SHA and PARKU I TRANSPORTIT URBAN TË UDHËTARËVE SHPK had reached an agreement through decisions taken by SHKTQ whereby they had blocked the sales of half of the student monthly passes in 2007 and about 80% of the student monthly passes for the period 2008-2012"; thus, this is a violation committed by five, and not six, companies, excluding OTTO-AL.

While I agree with the Competition Commission decision on this case with regard to the prohibited agreement on the restriction of sales of student monthly tickets, I disagree with regard to the investigation and identification of the number of undertakings involved in that agreement.

In its arguments against the issue of the number of undertakings involved in the agreement not to sell student monthly tickets, which was raised in the hearings, the Working Group underlined that,

"The undertaking claims that until July 2012 OTTO AL operated, too, and we do not understand why the competition inspectors did not impose a fine on that company, too." With regard to OTTO AL, page 24 item 2 of the Report states that OTTO AL was going to be given only 50% of the respective cards. That decision sought to restore the balance of competition within the group of transport operators "With regard to this claim we clarify that OTTO AL has not operated since July 2012. The working group reviewed all the data and tables collected during the investigation in relation to OTTO AL, which showed that, as already stated by ALBA TRANS, SHKTQ members have restricted the distribution of monthly ticket cards to OTTO AL several times in order to control the number of monthly tickets that undertaking was to sell. **In addition, the data on the quantity of monthly tickets that undertaking received and sold did not prove its participation in the agreement.**"

In fact, the investigation file contains no data on the quantity of generic and student monthly tickets received and sold, but only data on the total revenues from the sale of monthly tickets by OTTO-AL in 2007-2012. No inspection was carried out in that undertaking, and no data were collected. The letter that OTTO-AL sent to the Competition Authority on 15 February 2013, which was registered by the Authority with number 54/4, stated that "Given that the financial wind-up actions for OTTO-AL were carried out in June 2012, we would like to inform you that OTTO-AL does not have any data or information on the urban passenger transportation that you have requested."

**Thus, the position on OTTO-AL was not based on complete evidence or facts.**

Based on the above, I vote against the Competition Commission majority decision.



The reason for this is that no complete and accurate information was obtained, and the treatment was impartial and not based on evidence and facts, which has seriously harmed the role of the Competition Authority in the protection and restoration of competition in the market.

I detach myself from the Working Group's method and position in relation to the collection of evidence and facts, the quality of checking them, and their unfair and unequal treatment of the undertakings under investigation, and their inconsistent presentation to the Competition Commission. The stance that the Working Group took in this investigation, from the conduct of investigation to the collection of evidence to the submission of reports and counterclaims, is, in my opinion, a model of non-engagement of the Competition Authority in the protection of competition in the market.

Therefore, based on the above and on Article 46 (c) "Revocation of Decisions" of Law No. 9121 of 27 July 2003 "On Competition Protection", as amended, I propose the revocation of the Competition Commission majority decision.

**Commission Member**

**Koço Broka**

## Minority Opinion

I, Rezana Konomi, Competition Authority Commission member, do not agree with the conclusions drawn by the majority of the Commission members with regard to the in-depth investigation into the urban road passenger transportation market in the City of Tirana, and submit my opinion below:

Competition Commission Decision no. 262 of 14 January 2013 decided to initiate an in-depth investigation into the public passenger transportation market in the city of Tirana against the undertakings operating in this market: Ferlut Shpk, Tirana Lines Sha, Alba Trans Shpk, Tirana Urban Trans Sha, Parku i Transportit Urban te Udhetareve Shpk and Otto Al. Following the procedure, in order to address the current concerns on the market the Competition Commission took Decision No. 263 of 14 January 2013 whereby, it decided to: "Take the provisional measures for the immediate and prompt distribution and selling of the entire amount of monthly tickets for students by the undertakings under investigation as per the quantities specified by the City of Tirana, as of January 2013, pursuant to Articles 4(1), 24(d) and 44(1) and (2) of Law No. 9121 of 28 July 2003 "On Competition Protection".

At the end of the in-depth investigation the majority of the Commission members decided the following:

1. With regard to the refusal to recognize the generic monthly tickets not accompanied with cards bearing SHKTQ logo pertaining to Alba-Trans and the refusal to issue generic monthly ticket cards to Gerard-A, impose fines on Ferlut SHA, Tirana Lines SHA and Tirana Urban Trans SHA for participation in a prohibited agreement.
2. With regard to the blocking of selling student monthly tickets at the amount of 50% in 2007 and 80% in 2008-2012, impose on fines Ferlut SHA, Tirana Lines SHPK, Alba-Trans SHPK, Tirana Urban Trans SHA and Parku i Transportit Urban te Udhetareve SHPK for participation in a prohibited agreement.

Article 1 of Law No. 9121 of 28 July 2003 "On Competition Protection" lays down the purpose of the Law. It states that "The purpose of this Law is to protect free and effective competition in the market, by laying down the rules on undertakings' behavior, and the institutions responsible for competition protection and their responsibilities." In this respect, whenever the Competition Authority finds that market competition is being harmed, obstructed or distorted it has the right to look into the issue fully and comprehensively and identify any problems and culprits and penalize them for it. One of the most serious forms of harming free and effective competition in the market includes prohibited agreements, in accordance with Article 4 of the Organic Law. Article 4 (1) (b) and

(c) of Law No. 9121 of 28 July 2003 “On Competition Protection” provides that “Prohibited agreements shall include any agreements intending or producing the obstruction, restriction or distortion of competition in the market, especially those agreements that restrict or control markets, technical development or investment, allocate market shares or supply sources...”. Within the meaning of this provision, for an agreement to be prohibited it first has to either include in its subject-matter or produce as a consequence the obstruction, restriction or distortion of competition in the market.

What should have been investigated in our specific case? It was first important to prove whether the agreement (or the behavior of the Association members, as materialized in the relevant decisions) vis-à-vis Gerald-A Sha by way of refusing to supply it with cards for 5,500 monthly tickets for the month of November 2012 and giving it only 1,200 ticket cards for that month intended or resulted in competition obstruction, restriction or distortion. To that end a full investigation should have been made into the behavior of the Association members, the reasons for and causes of the refusal to supply that operator with 5,500 monthly tickets under the allocation made by the Municipality. The investigation should also have looked into why the Municipality had decided to allocate that operator a number of monthly tickets not in compliance with the long-standing methodology, which it applied to the rest of the operators. The failure to look into those causes fully led to the wrong and superficial conclusion that the Association’s behavior in question was a tool to exert pressure on Gerald-A, since the latter was not a member of the Association. For us to make a fair judgment of the behavior, it is important to understand how the market functioned until the moment when Gerald-A first emerged.

Through its existence the Association had a constant correspondence with the Municipality in relation to the methodology to be applied to the allocation of generic and student monthly tickets in the urban transportation service in Tirana, based on two indicators: (1) the number of buses for each line; and (2) the capacity of each bus. Quite aware of the fact that it was not the best method possible, but lacking any other detailed studies on a better allocation of monthly tickets, the Municipality accepted and applied the Association-proposed method, while ensuring a fair and equal allocation among operators in order to avoid any unfair gains. As long as this method and model was applied by the Municipality, there were no concerns between it and the Association and market operators. The problems began when Gerald-A entered the market. From the beginning the Municipality allocated it a number of monthly tickets that was in conflict with the previous commercial practice, which it had accepted and applied for several years, and thus introduced a situation of inequality in the market, a distortion and restriction of competition. The Association, incited by this wrong action of the Municipality, which harmed their lawful rights and distorted free competition, responded by taking a decision to treat operator Gerald-A like the rest of operators, and allocate it monthly tickets in accordance with the allocation model applied to the rest of the operators. Also, in order to assure that operator that the intention was not to prejudice or preclude its activities, the Association stated in its

decision that when the number of vehicle was increased the operator had the right to apply for the respective changes in line with the actual inventory of its vehicles. This was also identified in the record of the interview the Working Group had with the managing director of a company, which clearly points to the intention of achieving equal allocation of monthly tickets among the operators. The attitude the Association had to that operator cannot be considered as a form of pressure to prevent its activities, but rather as a way of restoring free competition, addressing the inequality resulting from the unfair actions of the Municipality, which harm the lawful interests of the rest of the operators. We can ask a natural question: If that operator had been given all the ticket cards as per the number of monthly tickets allocated by the Municipality, would the result be free, fair and effective competition among the operators, while the treatment by the Regulator which should have ensured the equality was a serious violation? If that had happened, would we draw the conclusion that competition was distorted? In my opinion, yes, we would. The operators whose interests were harmed by the Supervisor, which should have ensured such interests, responded and took self-regulatory initiatives to ensure free and effective competition and equal treatment; they cannot be considered as culprits, especially since the Association decision-making (or agreement) did not meet the condition laid down in Article 4 (1): *an agreement intending or producing the obstruction, restriction or distortion of competition in the market*. Since the condition was not met, in accordance with the Law the Association's decisions (agreement) on this issue may not be considered as prohibited. There is another reason, in my opinion, why the behavior of the Association may not be considered as prohibited. The Association's response through its decision-making resulted from a cause that was both legitimate and fair: it rather contributed to the restoration of free competition in the market—for which the Authority is mandated by the Law—and did not make an agreement to obstruct or distort competition. Between action and omission in respect of the Municipality's violation, the Association gave priority to responding through the mechanisms it availed of, and the end it intended fully justified the means. Because of this, the Association's decision-making (considered as an agreement) may not, in my opinion, be considered as prohibited. In the contrary, I underline its good intention to ensure market equality, because only in this way it could start a fair play among competitors. We cannot put the blame on those entities that contribute to the restoration of competition, let alone punish them when they seek to protect market equality.

Under the EU competition law, if the Competition Authority claims that this type of behavior was used as a means of pressure—which was the wrong conclusion, in my opinion—the burden of proof lies with the Authority in accordance with the general principle of the law. Any suspicion is in favor of the undertaking until the opposite is proven; no conclusions can be drawn on unverified or incompletely investigated hypotheses. Among other things, the Authority should not only collect evidence and ensure that it is accurate and reliable, but it should also investigate in order to see whether the evidence contains the entire information to be considered while assessing the full picture. It should also base all its conclusions on

such evidence. In my opinion, in this investigation the Secretariat did not act in compliance with the provisions of the Albanian law and the EU case-law; it carried out a simple and superficial analysis of the data, without a full assessment to see whether there were any violations of competition rules.

On the other hand, the Association's requirement for applying monthly tickets to their accompanying cards was, in my opinion, both just and lawful, because the card contained certain security elements that would minimize any harm resulting from the informal market and widespread forgery of monthly tickets by abusive beneficiaries. Such concerns are also underlined in the records of the interviews with the managers of the operators and in the correspondence between the Association and the Municipality, as well as in the constant reports to the respective authorities. The purpose of the initiative was, in my opinion, both right and justified; it did not harm competition, nor did it incur any additional costs to consumers: it merely put some discipline on the market and fought the negative phenomena that were still difficult to be managed by the supervisory entity. The state is harmed more from them if they are not addressed appropriately. The other reasons that are mentioned in the investigation report are only doubts, which have not been proven.

2. With regard to the behavior of the undertakings in the market in terms of restricting the selling of student and generic monthly tickets I have already mentioned my opinion against it, and I do not agree with the rest of the Commission members regarding their judgment and conclusions at the end of the investigation. I am presenting my arguments below:

The urban road transportation service market is completely regulated and supervised by the state, which does not exclude any competition. The only segment where the undertakings can be rivals is that of selling generic and student monthly tickets in the relevant geographic market: the city of Tirana. Existence of competition, in its essence, implies a relationship that is established among a number of undertakings that sell goods and services of the same type at the same time to an identifiable number of consumers. This means that each undertaking can enter relations of conflict or rivalry with other undertakings that have the same geographic extension in the market. The Association, whose members include all the operators in the market, decided on the basis of their will to restrict the selling of student monthly tickets—this decision did not harm or affect any of the competitors in this market. Within the meaning of Article 4 (1) of Law No. 9121 of 29 July 2003 “On Competition Protection”, the condition specified therein was not met: it was a joint decision (agreement) which did not intend to obstruct, restrict or distort the existing competition in the market. The Organic Law prohibits those agreements which harm competition and not any other agreements that have other intentions rather than obstruction of competition, and this has to be investigated, proven and argued. The question that was raised and had to be fully answered at the end of the process on the basis of the whole set of facts is:

*Why did the operator decide, based on their own free and common will, to restrict the selling of student monthly tickets?*

In the hearings that took place at the Competition Authority, the operators submitted a number of reasons for forcing them to act in that way. On the other hand, the investigation report and, based on it, the decision of the majority of the Competition Commission members did not go beyond listing the subsequent decisions of the Association on this issue, outlining the degree of restricting the selling of student monthly tickets in the various periods and years, but failing to analyze the causes and reasons, consequences and causal relations that should exist in order to prove a violation of the Competition Law. I have always been of the opinion that this action was a violation, but I cannot agree with the majority decision that found it to be a violation of the Competition Law. The reasons that the operators presented on the restriction of the selling of student monthly tickets were all real reasons and their veracity cannot be denied. The failure to provide students with student cards, the benefiting of non-student customers, the various forgery and frauds that were reported to the Association time and again made operators feel less secure and be more sensitive, leading to their response; on the other hand, state authorities did not comply with their abovementioned obligations, nor did they provide the subsidies for the price differences in relation to selling student monthly tickets at a lower price. The working group found that the restriction was a result of the operators' lack of interest in selling student monthly tickets, since they were more interested in selling generic monthly tickets, which brought in a higher price. That finding is very shallow. The strategies that the operators employed in this market that is both controlled by the state and informal in its operation, in the context of reducing losses and increasing profits was a smart solution to remain competitive in that market, which has seen the entry and exiting of other operators for reasons that remain undiscovered. The bearing of student transportation costs by the operators is an additional burden on them, which is neither fair nor legal. That is an obligation that belongs to the state authorities and cannot be transferred to third parties, because it is part of state social policies and harms competition.

As I noted above, I share the opinion of the rest of the Commission members that the restriction of the selling of monthly tickets, regardless the legitimate economic reasons, was indeed a violation; however, it was not a violation of competition in the market. The Competition Authority has jurisdiction exclusively on competition protection. In my view, the actions of the Association harmed consumer rights, which are protected by Law No. 9902 of 17 April 2008 "On Consumer Protection". The scope of that Law is to "protect consumers in the market and lay down the rules and establish the relevant institutions for the protection of consumer rights. Its scope includes all types of relations between businesses and consumers in relation to consumer goods or services." In this respect, our Organic Law authorizes us to intervene only in those cases where there are agreements restricting or preventing competition, which ultimately harms consumers. However, if the Association's actions did not harm competition but rather favored fair competition, while only harming consumers, are we allowed to penalize the operators within the remit of the Competition Protection Law?

In my opinion upon finding such a violation or any issues in the market the Competition Authority may defer the case to the competent consumer protection authorities. The Competition Authority should stop those agreements that harm competition and not those agreements that do not harm competition per se but harm only consumer rights. An agreement harming competition leads to the harming of consumer protections, while an agreement that might harm consumer rights not only always harms, prevents or restricts competition as well. The case under review is a typical case of such an agreement. Therefore, I think that the Association's decisions, which have been held as an agreement, intended to address the situation in the market and the problems resulting from the state failure to fulfill its obligations, the lack of cooperation among all the players, and did not intend or result in competition prevention, restriction or distortion, as required in Article 4 (1) of the Competition Protection Law.

For this reason, the operators cannot be held responsible for the state authorities' omission. I cannot join the rest of the Commission members in blaming all the operators in the market of selling generic and student monthly tickets only because the Association acted as a body to contribute to the restoration of a fair balance in the market, set equal playing field for everyone and have free and effective competition.

The effective role of the Competition Authority in this investigation case should have focused on the identification of those market segments that demonstrated issues, concerns, omissions or irregularities, after identifying the market, its players, the rules of the game and the role of the authorities responsible for this regulated market, and the giving of the contribution to the setting of behavior rules for the operators and the identification of responsibilities and persons responsible for the protection of competition in the market, while ensuring restoration of free and effective competition.

Commission Member

Rezana Konomi