



VOLUNTARY PEER REVIEW OF COMPETITION LAW AND POLICY:

**ALBANIA**



UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**VOLUNTARY PEER REVIEW OF COMPETITION LAW AND POLICY:**

**ALBANIA**

Full Report



UNITED NATIONS  
New York and Geneva, 2015

## NOTE

UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to competition policy. UNCTAD seeks to further the understanding of the nature of competition law and policy and its contribution to development and to create an enabling environment for an efficient functioning of markets. The work of UNCTAD is carried out through intergovernmental deliberations, capacity-building activities, policy advice, and research and analysis on the interface between competition policy and development.

Voluntary peer reviews of competition law and policy carried out by UNCTAD fall within the framework of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices, adopted by the General Assembly in 1980. The Set seeks, among other things, to assist developing countries in adopting and enforcing effective competition law and policy suited to their development needs and economic situation.

The views expressed in this report are those of the authors and do not necessarily reflect the views of the United Nations Secretariat. The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Material in this publication may be freely quoted or reprinted, but acknowledgement is requested, together with a reference to the document number. A copy of the documentation containing the quotation or reprint should be sent to the UNCTAD secretariat.

This publication has not been formally edited.

UNCTAD/DITC/CLP/2015/1

## ACKNOWLEDGEMENTS

UNCTAD Voluntary Peer Reviews of Competition Law and Policies are conducted at annual meetings of the Intergovernmental Group of Experts on Competition Law and Policy or at five-yearly United Nations Conferences to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. The substantive preparation is carried out by the Competition and Consumer Policies Branch of UNCTAD.

This report was prepared for UNCTAD by Kiril Pangelov, Director of Legal Analyses and Competition Policy Directorate at the Bulgarian Competition Authority. The substantive backstopping and review of the report was the responsibility of Graham Mott and former Head of the Consumer Policies Branch, Hassan Qaqaya.

UNCTAD would like to acknowledge the enriching assistance of Albanian Competition Authority officials, particularly Lindita Milo (Lati), Servete Gruda, Koco Broka, Diana Dervishi, Ermal Nazifi, Pajtim Melani, Daniela Mehmeti, and all other officers who contributed to this report, as well as all the persons, representatives of different public and private sector institutions who were interviewed.

## **ACRONYMS**

<b>GDP</b>	:	<b>Gross Domestic Product</b>
<b>LPG</b>	:	<b>Liquefied Petroleum Gas</b>
<b>OECD</b>	:	<b>Organization of Economic Cooperation and Development</b>
<b>SAA</b>	:	<b>Stabilization and Association Agreement</b>
<b>TFEU</b>	:	<b>Treaty on the Functioning of the European Union</b>
<b>UNCTAD</b>	:	<b>United Nations Conference on Trade and Development</b>

## Table of Contents

	Page
<b>I. Political, Economic and Historical Context</b>	<b>7</b>
1.1. Political Development	7
1.2. Economic Development	8
1.3. Accession to the European Union	11
<b>II. Development of Albanian Competition Policy</b>	<b>11</b>
2.1. First competition law of 1995	12
2.2. Second Competition law of 2003	13
2.3. Reform in competition law (2010)	14
<b>III. Institutional Framework</b>	<b>15</b>
3.1. Legal status and competence of the Authority	15
3.2. Composition and organization of the Albanian Competition Authority	16
3.3. Independence of the Authority	19
3.4. Operations of the Authority	20
3.5. Administrative Resources	24
<b>IV. Substantive competition law</b>	<b>26</b>
4.1. Legal sources of the Albanian competition law	26
4.2. General objectives and applicability of Albanian competition law	28
4.3. Substantive antitrust provisions	29
4.4. Substantive provisions on mergers and acquisitions	34
<b>V. Procedural aspects of Albanian competition policy</b>	<b>38</b>
5.1. Handling of complaints	38
5.2. General rules of infringement proceedings	39
5.3. Investigation of competition cases	40
5.4. Procedural status of parties involved in infringement proceedings	44
5.5. Decision-making on competition cases	47
5.6. Specific rules of the notification proceedings	51
5.7. Judicial review of the authority's decisions	53
5.8. Civil proceedings on private competition enforcement	55
<b>VI. Sanctioning Policy</b>	<b>57</b>
6.1. Sanctions for substantive competition law infringements	57
6.2. Sanctions for procedural competition law infringements	58
6.3. Sanction setting method	59
6.4. Leniency policy	61
6.5. Execution of sanctions	64

<b>VII. Sector-related competition policy</b>	<b>64</b>
7.1. Energy sector	65
7.2. Telecommunications sector	67
7.3. Banking sector	69
7.4. Insurance sector	71
7.5. Public procurement and concessions	73
7.6. Transport sector	75
7.7. Fuels market	77
<b>VIII. Findings and recommendations</b>	<b>79</b>

## **I. Political, economic and historical context**

### **1.1. Political development**

Albania is a South-East European country situated on the west coast of the Balkan Peninsula. In the west it is separated from Italy by the Strait of Otranto and the Adriatic and Ionian seas. Boasting a total area of 28,748 sq km, Albania has land borders with Montenegro to the north, the former Yugoslav Republic of Macedonia and Kosovo (United Nations Administrative Region, Security Council resolution 1244 (1999)) to the east and Greece to the south. The capital city, Tirana, is located in the central part of the country.

Albania gained its independence from the Ottoman Empire as a result of the Balkan War in 1912. In its subsequent political development, Albania changed its form of State several times by replacing the constitutional monarchy with republican forms of government.

After World War II, the Albanian Resistance movement, headed by the Communist Party of Enver Hoxha, took control of the country. Albania became a communist State under the name of the Socialist People's Republic of Albania. Originally Enver Hoxha maintained good relations with the former Union of Soviet Socialist Republics and other countries of the Eastern Socialist bloc, but after Stalin's death Albania reoriented its policy mainly to China's Mao Zedong. After the end of Mao's ruling, contacts with China weakened, and Albania became increasingly isolated and maintained minimal international relations with the outside world.

The communist regime in Albania fell in the early 1990s; the first democratic parliamentary elections in 1992 were won by the Democratic Party of Albania, and Sali Berisha assumed the presidency of the republic. Albania began to seek closer ties with the West in order to eliminate the international isolation of the country and to improve its economic situation. As a result of the Albanian Rebellion of 1997, new parliamentary elections were held that brought the Socialists party and their allies to power. Sali Berisha resigned, and Rexhep Meidani was elected President of Albania. In November 1998 the new Albanian Constitution was approved by national referendum and led to the establishment of a democratic system of State government under the form of a unitary parliamentary republic, based on the rule of law and protection of the fundamental human rights. The country was governed by the Socialist Party from 1997 to 2005 when the Democratic Party won again the parliamentary elections. In 2005 the former Albanian President Sali Berisha became Prime Minister in the newly established Government and remained in office for two subsequent mandates until September 2013.

Gradually Albania has overcome its international isolation and is now a member of some of the most important global and regional international organizations and institutions such as the United Nations (1955), the Organization for Security and Cooperation in Europe



(1991), the European Bank for Reconstruction and Development (1991), the International Monetary Fund (1991), the World Bank (1991), the Organization of Islamic Cooperation (1992), the Council of Europe (1995), the World Trade Organization (2000), the Central European Free Trade Agreement (2007) and the North Atlantic Treaty Organization (2009). Albania is a potential candidate for membership of the European Union.

## 1.2. Economic development

The Albanian economy is in transition from a centrally commanded economic organization to a free market economy.

During the 46-year communist regime, Albania had a very rigorously centralized economy controlled by the Government without any forms of market mechanisms.<sup>1</sup> All essential aspects of the country's economic life – investments, production, trade, pricing, setting of the workers' wages, etc. – were determined by the State on the basis of the so-called "five-year plans". The planned character of the Albanian economy and its social development was explicitly provided for in the Constitution of 1976 (art. 25). It recognized private property only as the personal belongings of people and their earnings from wages (art. 23). All means of production were State-owned (art. 16) and trade was explicitly ruled as a State monopoly (art. 27). The economic isolation of the country was very much aggravated by the Constitution statement that in establishing socialism, Albania relied mainly on its own forces (art. 14).

Lack of investments and innovations, inefficiencies and mismanagement of national industries, trade and agriculture were the main characteristics of the Albanian economy during the years of communist rule. The international isolation of the country, the lack of foreign aid, and higher rates of population growth gradually lead to a total collapse of the socialist economy in Albania. At the end the communist regime Albania was ranked among the poorest countries in Europe in terms of GDP per capita amounting to only \$1,881 (1991) and \$1,825 (1992).<sup>2</sup> At that time extreme poverty and informal economy were widespread in Albanian society although they were not officially recognized until 1991.<sup>3</sup> As a multidimensional phenomenon, poverty in Albanian society was not limited to basic livelihood elements such as food, clothing and housing, but also encompassed a lack of hope, exclusion from economic and social life, an inability to support family and maintain social traditions, lack of adequate infrastructure, low security, low quality of health and limited education services.<sup>4</sup> The economic and social conditions that persisted during the 1900s led to significant emigrant waves, especially to neighbouring Italy and Greece.

---

<sup>1</sup> M Muço, 1997, *Economic Transition in Albania: Political Constraints and Mentality Barriers*, North Atlantic Treaty Organization Individual Fellowship Programme 1995–1997, June.

<sup>2</sup> International Monetary Fund, 2006, *World Economic Outlook Database*, April.

<sup>3</sup> United Nations, 2010, *Albania National Report on Progress Toward Achieving the Millennium Development Goals*.

<sup>4</sup> World Bank, 2001, *A Qualitative Assessment of Poverty in 10 Areas of Albania*, Washington, D.C.

After decades of central planning, the Albanian economy was not adequate to serve the needs of its society and to provide good quality living standards for the Albanian population. It was then recognized that a reorientation towards market-based systems was the only option for achieving economic progress. Therefore, in the mid-1990s a long and difficult period of transition was started from a planned to a market economy. Many important structural reforms have been launched since then: privatization of the State-owned industrial plants (the so-called combinants);<sup>5</sup> liberalization of the prices and currency exchange rates; deregulation of trade; restitution of agricultural land; establishment of commercial banking; implementation of tax reforms; establishment of a new legal framework, especially governing property ownership; creating conditions for entrepreneurship and protecting market competition.<sup>6</sup>

#### Country data (2013)

Population	2.8 million
Territory (sq. km.)	28,75 km <sup>2</sup>
GDP (current in United States dollars)	12.90 billion
GDP growth (annual percentage)	1.3%
Currency	Lek
Income level	Upper middle income
Inflation (annual percentage)	1.9%
Unemployment (annual percentage)	16.9%
Life expectancy at birth	77 years

*Source: World Bank, World development indicators, 2013*

As a result of the structural reforms in the mid-1990s Albania made impressive economic progress, achieving one of the fastest rates of GDP annual growth in Europe: 9.4 per cent (1994), 8.9 per cent (1995) and 9.1 per cent (1996). However, in 1997 Albania was hit by a severe crisis due to widespread fraudulent investment operations (financial pyramids), which caused the Albanian Rebellion of 1997 and for several months threw the country into anarchy, violence and plundering. At that time Albania undertook several additional reforms

<sup>5</sup> This term refers to conglomerates of State-owned businesses in the former communist countries that encompass several different types of economic activity carried out under a common administration.

<sup>6</sup> S Gruda and L Milo (Lati), 2010, SMEs development and competition policy in Albania, Portal on Central Eastern and Balkan Europe [PECOB's] Papers Series, School of Economics, Tirana University.

with a view to improving its monetary policy and financial sector regulation and strengthening the national government. It successfully removed some of the factors that had caused the crisis and succeeded to turn the country back again on the path of the economic growth.<sup>7</sup> After the drastic decrease of GDP in 1997 (minus 10.2 per cent), Albania again put itself among the European countries with positive economic development in terms of the GDP growth: 12.7 per cent (1998), 10.1 per cent (1999) and 7.3 per cent (2000).<sup>8</sup>

Albania is now considered a middle-income country that has maintained positive growth trends and financial stability, as is one of the fastest-growing economies in Europe. The average annual real growth rate of 6 per cent in the first decade of the 21<sup>st</sup> century has caused a halving of poverty and a doubling of the country's exports.<sup>9</sup> The private sector, consisting mainly of small and medium-sized enterprises (SMEs), is the major motor of Albania's economic growth, accounting for 75 per cent of GDP and 83 per cent of employment.

There are still some key challenges of economic development connected with low industrial productivity and the existence of an informal economy, whose contribution to GDP varies, according to different estimates, between 24 per cent (World Bank) and 58 per cent (Government of Albania).<sup>10</sup> In terms of the quality of its business environment, Albania has registered certain improvements but still ranks below most other European countries.<sup>11</sup>

In recent years Albanian economic growth has slowed, reflecting the existing difficulties faced by the European countries that are its major international trading partners (Italy, Greece and Spain).<sup>12</sup> Despite the fact that the country has not been directly affected by the global financial crisis, the Albanian Government has been forced to put in place some budgetary restraints by reducing the fiscal revenues plan, cutting expenditure and increasing the budget deficit to around 6.1 per cent of GDP for 2013.<sup>13</sup>

---

<sup>7</sup> European Bank for Reconstruction and Development, 1999, *Transition Report 1999: Ten Years of Transition – Economic Transition in Central and Eastern Europe, the Baltic States and the CIS*, London.

<sup>8</sup> International Monetary Fund, 2006, *World Economic Outlook Database*, April.

<sup>9</sup> World Bank Group, 2013, *Albania -Partnership Programme Snapshot*.

<sup>10</sup> S Gruda and L Milo (Lati), 2010.

<sup>11</sup> World Bank, 2013, *2014 Doing Business report – Albania*.

<sup>12</sup> European Bank for Reconstruction and Development, 2013, *Transition Report 2013, Country Assessments – Albania*.

<sup>13</sup> Law No. 119/2012 of 17 December 2012, amended by Law No. 6 of 4 October 2013.

### **1.3. Accession to the European Union**

The European integration of Albania is seen as one of the most significant desires of the Albanian nation in the post-communist years, as the vast majority of Albanians support the country's accession to the European Union.<sup>14</sup>

Albania has been recognized as a potential candidate country for accession to the European Union since June 2003 when the Thessaloniki European Council was held. In June 2006 the country signed the Stabilization and Association Agreement (SAA) with the European Union. Shortly after SAA's entry into force on 1 April 2009, Albania submitted its official application for European Union membership on 28 April 2009.<sup>15</sup>

Since the entry into force of the SAA, Albania has been legally obliged to fulfill the so-called "Copenhagen criteria",<sup>16</sup> namely: political criteria (democracy, rule of law, human rights, protection of minorities) and economic criteria (functioning market economy and capacity to cope with competition pressure within internal market of the European Union).

In this context the SAA provides the agenda of reforms that Albania has to implement in the process of its integration with the European Union. The key element of the integration process is the harmonization of Albanian legislation with European law, and some of the most important parts are the SAA chapters on economic and commercial provisions including competition law clauses. The obligation to approximate European standards within Albanian competition policy is provided for in art. 70 and art. 71 of the SAA, and some of the main requirements in this area include further convergence of legislation, empowerment of the national competition authority, and enhancement of its autonomy and building its administrative capacity. All of these requirements reflect the direct link between effective competition policy and the existence of free market economy as a precondition for accession to the European Union.<sup>17</sup>

## **II. Development of Albanian competition policy**

The historical development of the Albanian competition policy reflects the political and economic changes in the country during the years after the fall of communism and has been very much influenced by the progress of Albania's integration into the European Union.

---

<sup>14</sup> Albanian Institute for International Studies, 2012, *The European perspective of Albania: Perceptions and Realities*.

<sup>15</sup> European Commission, 2013, *Albania 2013 Progress Report, Enlargement Strategy and Main Challenges 2013–2014*, Brussels.

<sup>16</sup> The European Union membership criteria elaborated by the Copenhagen European Council held in June 1993.

<sup>17</sup> P Broka and A Laci, 2010, *Development of Competition Law and Policy and its Implementation as a Challenge for the European Union Integration*.

## 2.1. First competition law of 1995

Competition policy in Albania effectively began in 1995 when the first competition law was adopted.<sup>18</sup> Albania was one of the first countries from the Western Balkans to have drafted their own national competition laws.<sup>19</sup>

The Competition Act of 1995 has provided the foundations of the institutionalization of competition policy in Albania by providing for the establishment of the first public body to deal with competition protection in the country: the Directorate of Economic Competition. This, however, was not a completely independent institution, as it was part of the Ministry of Trade and Tourism.<sup>20</sup>

In its substantive part, the Act firstly outlined its main objectives, consisting of definitions of the rules of market players and their rights and obligations under the conditions of fair competition.<sup>21</sup> The law was applicable both to undertakings that operate within Albanian territory and outside if the conduct could affect the domestic market.<sup>22</sup> The Act contained seven parts and 69 articles, including provisions on dominant position, horizontal and vertical agreements, merger control and unfair competition. Unlike European Union competition law standards, a rebuttable presumption for market dominance was put in place regarding undertakings with market share of 40 per cent or more and an obligation for these to be split into separate units was provided for in the law.<sup>23</sup> Merger control was also outlined under the dominance test and, thus, the mergers resulting in entities with 40 per cent or higher market share had to be considered incompatible with the competition law.<sup>24</sup> The anticompetitive horizontal and vertical arrangements between undertakings were listed in a prohibition and were declared null and void.<sup>25</sup> The chapter on unfair competition contained a series of provisions providing for prohibitions of illegal actions against competitors and consumers, such as misleading consumers on the origin of products, misleading and comparative advertising, organizing fortune games, unfair attraction of consumers, trademark infringements, ruining competitors' reputation, etc. In 1998, by specific amendments within this chapter of the law, additional rules were introduced prohibiting print media to be sold below cost.<sup>26</sup> In cases where infringements were established, the Directorate of Economic Competition was empowered to impose sanctions but those suffering damages as a result of illegal conduct could bring civil actions directly before the courts, with a view to ceasing the infringement and/or receiving compensation for the damages caused.<sup>27</sup>

---

<sup>18</sup> Law No. 8044 of 7 December 1995.

<sup>19</sup> MA Dutz and M Vagliasindi, 2002, *Competition policy implementation in transition economies: an empirical assessment*, European Bank for Reconstruction and Development, London.

<sup>20</sup> Albanian Council of Ministers, decision No. 248 of 14 June 1997.

<sup>21</sup> Art. 1, Law No. 8044 of 7 December 1995.

<sup>22</sup> Art. 2, Law No. 8044, of 7 December 1995.

<sup>23</sup> Art. 5, Law No. 8044 of 7 December 1995.

<sup>24</sup> Art. 13, Law No. 8044 of 7 December 1995.

<sup>25</sup> Arts. 16–19, Law No. 8044 of 7 December 1995.

<sup>26</sup> Law No. 840 of 10 September 1998 on an amendment of Law No. 8044 of 7 December 1995.

<sup>27</sup> Arts. 62–63 of the Law No. 8044 of 7 December 1995.

Most of the provisions contained in the first competition law of Albania remained only on paper and were not applied in practice. Several reasons could be underlined to explain the lack of implementation of this law: the lack of public awareness of the existence of the competition act; the lack of institutional independence of the body in charge of its enforcement; the gaps and noncompliance with European Union standards, mixing of different legal institutes into one law, causing ambiguities and contradictions in the legal provisions; and the specific economic and political situation in the country during the 1990s. All of these factors contributed to the poor enforcement practice under the first Albanian competition law. The difficulties in its application were noticed by the European Commission, which emphasized in its progress reports for Albania the need for drafting of an entirely new law that would ensure the establishment of an independent body and better protection of free and effective competition in the country.<sup>28</sup> In this context, the reform of Albanian competition legislation became indispensable after the approval of the new Constitution of 1998, which gave additional impetus to the development of the market economy in Albania and intrinsically required that an effective mechanism for competition protection be put in place.

## **2.2. Second competition law of 2003**

The advancement of the negotiations for conclusion of the SAA between Albania and the European Union, in combination with the lack of satisfactory competition protection under the first national Competition Act, determined the necessity to deeply reform the Albanian competition law in full compliance with European Union legal standards.

The new law was approved in 2003 with the main objective to protect free and effective competition in the market place, to define the rules of conduct by undertakings, as well as the institutions responsible for protection of competition and their competencies.<sup>29</sup> This law entered into force on 1 December 2003 and created conditions for considerable improvements of the legal and institutional framework of the competition in the country with a view to guaranteeing effective implementation of competition policy. A very important step forward was the establishment of an independent national competition authority empowered to fully enforce the law.<sup>30</sup> The new law has been designed to provide protection of the public interest against any distortions of market competition and thus the rules on unfair competition have been left to be dealt with under the Albanian Civil Code. The new law is regarded as *lex generalis* applicable to all sectors of the Albanian economy without having certain markets or types of economic activity excluded or exempted from its scope of application.

On the basis of the Competition law of 2003, several acts of secondary legislation were also adopted in order to complete the national legal framework of competition protection

---

<sup>28</sup> European Commission, 2003, *Albania Stabilization and Association Report 2003*, Brussels.

<sup>29</sup> Law No. 9121 of 28 July 2003, *Fletorja Zyrtare* No. 71 (2003), pp. 3189–3211.

<sup>30</sup> P Broka and A Laci, 2010, *Development of Competition Law and Policy and its Implementation as a Challenge for the European Union Integration*.

in line with European Union standards. The National Competition Policy<sup>31</sup> was also adopted by the Albanian Competition Authority to underline the general objectives pursued by the national competition policy, namely protecting the freedom of economic activity of market participants, reducing market entry barriers, establishing a friendly environment for the promotion of entrepreneurship, fostering fairness in business relations, deregulating specific sectors of the economy and lowering tariffs or removing quota or licences. The National Competition Policy was compiled by the Albanian competition authority on the basis of similar experiences of some other countries from the Balkan region, such as Bulgaria, Romania and Croatia, which in 2006 were in more advanced positions in the process of European integration, as well as taking into consideration the specific features of the Albanian competition culture and legal infrastructure.<sup>32</sup>

### **2.3. Reform of competition law (2010)**

The Competition Act of 2003 was amended in 2010 with a view to achieving further approximation with European Union legislation and to improving its practical implementation.<sup>33</sup>

Similarly to art. 106 of the Treaty on the Functioning of the European Union (TFEU), the Albanian competition act is applicable to public undertakings and undertakings granted by the State with special or exclusive rights to perform certain economic activities. In accordance with the amendments, the competition rules apply to undertakings entrusted with the performance of services of general economic interest or having the character of a revenue-producing monopoly, as far as competition law enforcement does not obstruct the fulfilment of the tasks assigned to them. In practice, the Authority has been empowered to assess public contracts and concessions granted by the State to certain undertakings and to possibly exempt them from the application of competition rules, provided that the legal requirements for exemption are met in each particular case.

In the field of restrictive agreements, similarly to the European Commission's powers, the Competition Act has been amended in order to empower the national competition authority with the ability to grant not only individual exemption from the general prohibition but to also block exemptions to certain categories of agreements between undertakings, as well as to apply de minimis rule towards the agreements of minor impact on competition.

As regards unilateral conduct by dominant undertakings, the amendments of 2010 removed the relevant legal provision, which allowed the abusing undertaking to prove that its practice was committed for objective reasons of legal or economic nature and thus it did not constitute an infringement.

---

<sup>31</sup> Competition Commission decision No 43 of 28 December 2006.

<sup>32</sup> S Gruda and L Milo (Lati), 2010.

<sup>33</sup> P Broka and E Nazifi, 2011, Novelties in Albanian competition law, Risitë në të drejtën shqiptare të konkurrencës, *Revista Studime Juridike*.

In the sphere of merger control, following the European Union development, a new test for merger appraisal has been introduced, as the previous dominance test have been replaced by the significant impediment of the effective competition test. This amendment has significantly increased the role of economic analysis in merger cases.<sup>34</sup> In addition, the threshold of the turnover required for merger notification has been decreased, and certain improvements in the merger proceedings have been put in place.

The sanctioning policy has also been amended by removing the previously existing minimal level of 2 per cent of the undertaking's turnover for setting sanctions and fines are now determined with a higher degree of flexibility: up to 10 per cent of the infringer's turnover. In practice, the authority has also been empowered to impose symbolic sanctions in cases where such sanctions would guarantee an adequate deterrent effect.

### **III. Institutional framework**

Competition policy in Albania is enforced by the Authority, which was established on 1 March 2004 on the basis of Law No. 9121 on competition protection, of 28 July 2003. It is also the national authority responsible for the enforcement of Community acquis in the process of Albania's integration in the European Union.

#### **3.1. Legal status and competence of the Authority**

The Authority is both a public entity and a legal entity, independent when performing its tasks. It is located in the capital city of Tirana. The Authority is composed of the Competition Commission, which is the decision-taking body, and the Secretariat, which is the operational administration of the authority. The competence of the Authority, which is exercised by the decision-taking body, includes the following duties:<sup>35</sup>

- ✓ Outlines the national competition policy;
- ✓ Approves regulation on the internal functioning of the Authority;
- ✓ Supervises the Secretariat in the application of the competition law;
- ✓ Takes decisions on the basis of the competition law;
- ✓ Issues regulations and guidelines for the implementation of the law;
- ✓ Submits the Authority's annual report to the Parliament;
- ✓ Gives opinions to the Parliament on competition-related issues;
- ✓ Gives recommendations to public administration and non-governmental

---

<sup>34</sup> S Gruda B Bushati and A Dibra, 2012, Control of mergers and acquisition: Its impact on the market development in Albania, *Journal of US[United States of America]-China Public Administration*, vol. 9, No. 3.

<sup>35</sup> Law No. 9121, art. 24.



organizations on competition;

- ✓ Represents the Authority in its relationships with its counterparts;
- ✓ Sets the priorities of investigations and the related deadlines.

### **3.2. Composition and organization of the Albanian Competition Authority**

The Authority is composed of a decision-making body and an investigative body so that both are functionally separated within the Authority's unitary organizational structure and which is approved by the Albanian Parliament.<sup>36</sup> The functional separation between the Competition Commission and the Secretariat is established with a view to guaranteeing procedural fairness and effectiveness in competition law enforcement.

#### **3.2.1. Competition Commission: The Authority's decision-making body**

The Competition Commission is a permanent collegial body consisting of five members that exercise the decision-making powers of the Authority.<sup>37</sup>

##### *a) Election of members of the Competition Commission*

The Commission's members are elected by the Parliament for five-year fixed terms of office with the possibility to be re-elected not more than twice consecutively. The Parliament takes the election decision by a simple majority of votes in the presence of more than half of all members of Parliament. One candidate is proposed by the President of Albania, two are proposed by the Council of Ministers and two are proposed by Parliament. The Chair of the Commission is elected by Parliament among the elected members of the Commission, and the deputy chair is subsequently elected by a majority of votes of all the Commission's members in its first sitting.

The criteria for election of the members are provided for in the law and include: Albanian citizenship; at least 15 years of working experience; a doctorate or experience as a university lecturer in law or economics; and no record of disciplinary dismissals from work. In fact, finding candidates that meet the election requirements has proven challenging for Parliament, and during most of the time of the Commission's functioning (2006–2012) it has had at least one vacant position at any given time.

##### *b) Duties of the Chair of the Competition Commission*

The Competition Commission is headed by the Chair, who is elected by Parliament. The Chair exercises the executive management of the daily work of the Authority, chairs the

---

<sup>36</sup>

Law No. 9584 of 17 July 2006.

<sup>37</sup> Law No. 9121, art. 19.

meetings of the decision-making college, and ensures implementation of the law. In the absence of the Chair, the Deputy Chair carries out the duties of the Chair. In the absence of both the Chair and the Deputy, one of the members of the Commission is to implement the tasks as defined in art. 25 of the law, namely:

- ✓ Prepares, calls and leads the Commission meetings;
- ✓ Coordinates work among the Commission members;
- ✓ Signs the Commission's acts, except for the decisions signed by the whole college;
- ✓ Represents the authority in relations with third parties.

### **3.2.2 Secretariat: *The Authority's investigatory body***

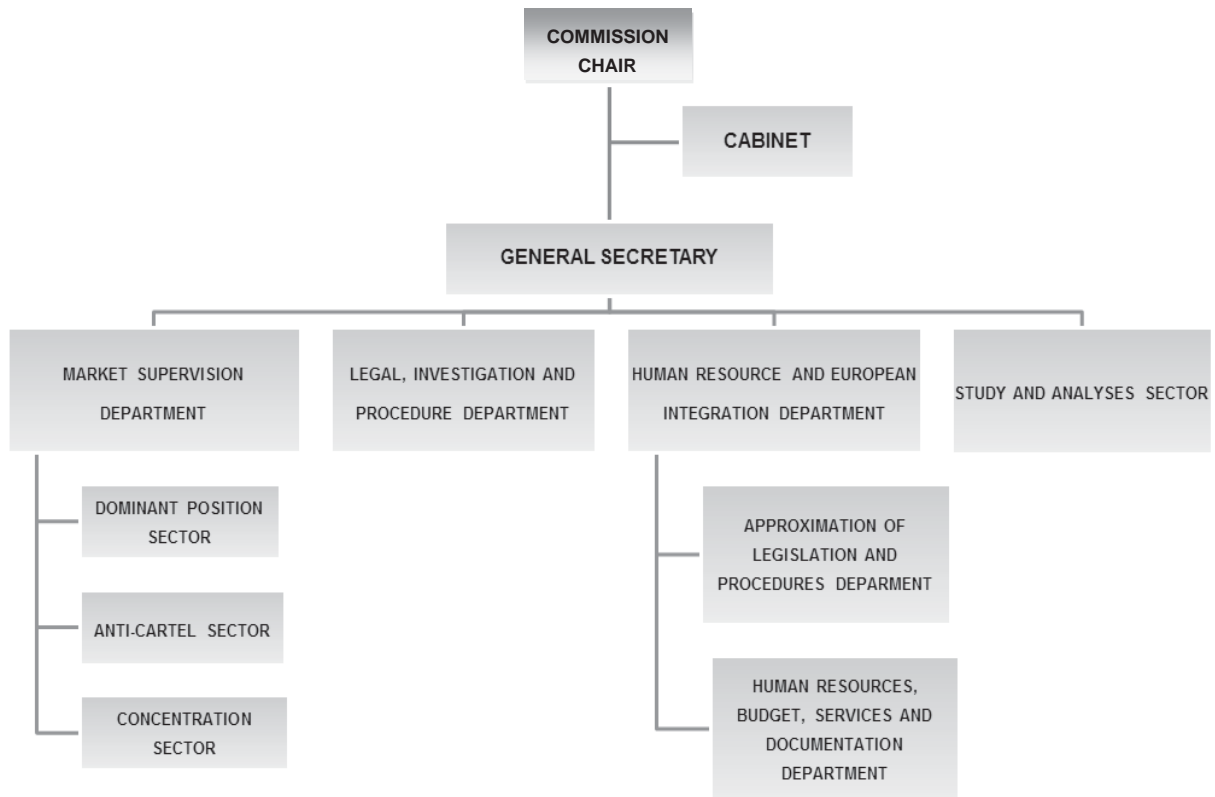
The Secretariat is the Authority's investigatory body, which conducts administrative investigations and studies under competition law in accordance with the Code of Administrative Procedures. The Secretariat officials have the status of civil servants and are organized into departments and sectors, which are headed by a Secretary-General, who is elected by the Competition Commission. The main responsibilities of the Secretariat connected with competition law enforcement are explicitly provided for in the Act:<sup>38</sup>

- ✓ Monitors and analyses market conditions to the extent necessary for the development of free and effective competition;
- ✓ Conducts investigations as to competition law infringements;
- ✓ Drafts and submits investigation reports to the Commission for decision-taking;
- ✓ Ensures publication of decisions, by-laws and the annual report of the authority;
- ✓ Supervises the implementation of the decisions taken by the Commission.

---

<sup>38</sup> Law No. 9121, art. 28.

Figure 1  
**Albanian Competition Authority, 2014**



*a) Organizational structure of the Secretariat*

The organizational structure of the Secretariat is approved by the Albanian Parliament (decision No. 96, 30 April 2007) and currently consists of three main departments and one sector.

The Market Supervision Department is divided into three sectors in accordance with the main fields of operation under the competition law: Dominant Position Sector, Anti-cartel Sector, and Concentrations Sector, and deals with the monitoring, research and investigation of market conditions and identification of anticompetitive practices in the market.

The Legal, Investigation and Procedure Department deals with competition impact assessments of draft or effective legal acts of central or local authorities; the procedural representation of the Authority before the review courts; and the preparation of documentation relevant to court proceedings to which the authority is party.

The Department of Human Resource and European Integration deals with personnel management, payments, training activities, coordination and preparation of documentation, communications and public relations.<sup>39</sup> A specialized sector on the approximation of

<sup>39</sup> Law No. 8549 of 11 November 1999.

legislation and procedures has been established within the Department to deal with the harmonization of domestic legislation with European Union competition law.

The Study and Analysis Sector is an independent unit within the organizational structure and conducts sector inquiries and monitors the market conditions with a view to enhancing competition in the country.

Each department has a director, who is in charge of the management of its work and the efficient use of the human resources at his or her disposal. The directors distribute the workload and control the performance of the civil servants. The directors are obliged to report on a regular basis to the Secretary-General.

#### *b) Duties of the Secretary-General*

The Secretary-General is in charge of the daily work of the Secretariat. There is no Deputy Secretary-General in the organizational structure of the Authority, so that in the case of his/her absence the competences are delegated by approval of the Chair of the Commission, to one of the directors of departments.

The Secretary-General approves all the procedural reports made by the officials of the Secretariat and implements the duties assigned to him/her in accordance with the Act, namely:

- ✓ Applies the rules on dealing with competition cases;
- ✓ Drafts and submits the investigatory reports to the Commission;
- ✓ Prepares the annual report of the Authority;
- ✓ Cooperates with other institutions to resolve cases;
- ✓ Signs all the written correspondence of the Secretariat.

### **3.3. Independence of the Authority**

The Authority is specifically constituted under law as an independent specialized State body, which is financed by the State budget. The Authority has a separate budget line within the annual law on the State budget. Its organizational structure is approved and may be amended only by the Parliament. The Authority reports on its activities only to the Parliament.

Members of the College are elected and dismissed by the Parliament on the basis of criteria and procedure, which are outlined in detail in the law. The members of the Commission are proposed under a quota system by the President of Albania, the Council of Ministers and Parliament. The mandate principle applies to them, with an opportunity of being re-elected only once. The Competition Act expressly outlines the functions and activities that are incompatible with the position of a member of the Competition

Commission, such as participation in the leadership of political parties or commercial associations.

The functions on investigation and resolution of competition cases are internally separated between the Competition Commission and the Secretariat, as this functional separation establishes procedural safeguards for the independent conduct of case studies. The employees' status as civil servants allows them to perform their functions objectively, fully and impartially. All of the employees and members of the Authority are obliged to comply with the rules on keeping professional secrecy, as well as avoidance of conflicts of interest.<sup>40</sup> The members of the Commission and all Secretariat employees are subject to professional secrecy and cannot divulge to any person or authority confidential information acquired owing to their duties, except in cases of testify before a court. This obligation continues to apply after the termination of their duty.<sup>41</sup>

The Authority also adopted a Code of Ethics, which determines the general ethical standards for the activity of the Authority in the light of its mission as an independent institution protecting competition in the market.<sup>42</sup> The officials are expected to carry out their tasks with responsibility, professionalism, devotion and decisiveness, dedicating the appropriate time and energy to them. They should act impartially, avoid unfair favours, gifts or any other type of profit that affects or can potentially affect impartiality while exercising their tasks.

Furthermore, capacity strengthening has been recognized by the Authority as a tool to enhance the independence of the competition institution.<sup>43</sup> In this regard, an additional increase in the number of staff is outlined, as well as the need for continuous training of the competition experts, especially focused on the use of econometric analysis when dealing with anticompetitive practices. The constant improvement of the Authority's administrative capacity-building is vital with a view to ensuring an adequate degree of independence and sustainability of its authority and impartiality of its decision process.<sup>44</sup>

### **3.4. Operations of the Authority**

In accordance with the applicable Competition Act, the Authority's operations are based on investigation (research) and decision-making in the following main areas:

- ✓ Antitrust enforcement;
- ✓ Merger control;
- ✓ Sector inquiries;

---

<sup>40</sup> Law No. 9367 of 7 April 2005.

<sup>41</sup> Law No. 9121, art. 30.

<sup>42</sup> Law No. 9131 of 8 September 2003.

<sup>43</sup> Albanian Competition Authority Annual Report for 2012 and Main Goals for 2013.

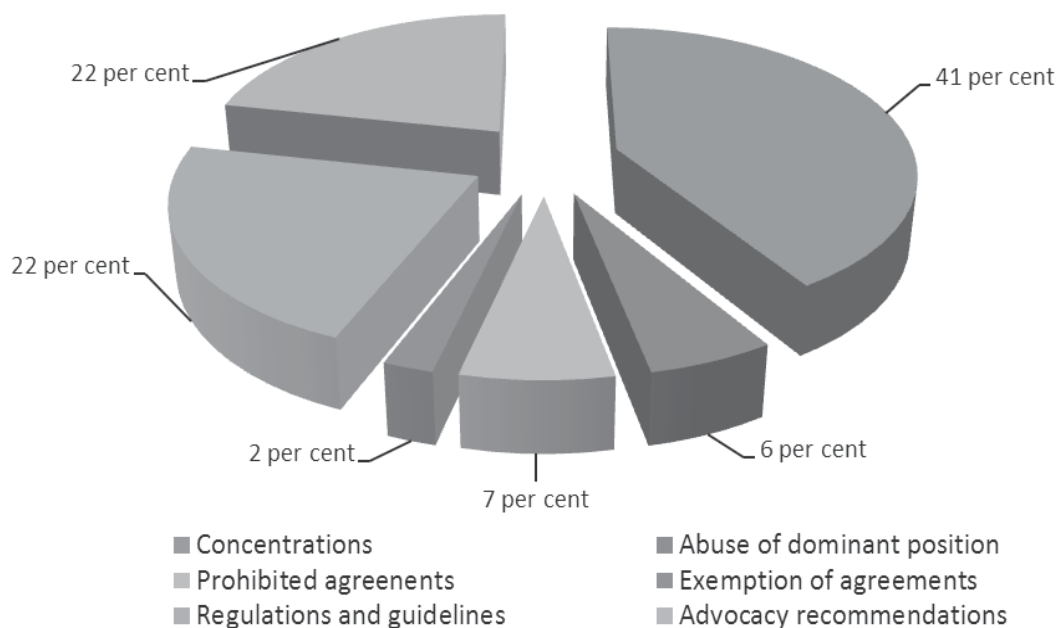
<sup>44</sup> S Gruda and P Melani, 2010, Some challenges of competition authorities of small countries toward European integration: The case of Albania, *Western Balkans Policy Review*, vol. 1, Issue 1.

- ✓ Competition advocacy;
- ✓ Legislation approximation.

### *Antitrust enforcement*

The Authority is empowered to enforce the antitrust rules prohibiting undertakings from entering into collusive agreements that have as their object or affect the prevention or distortion of market competition. These national rules cover both horizontal agreements between undertakings and vertical restraints, as well as cartels. Moreover, the Authority applies a prohibition of abuse of a dominant position of undertakings that have such market power that allows them to unilaterally implement anticompetitive behaviour in the market to the detriment of their suppliers, customers and competitors. In the investigation of these illegal conducts, the Authority exercises its investigatory powers conferred on it by the law. The Authority has jurisdiction to establish antitrust infringements, as well as to impose sanctions or other remedial measures on the infringers of competition rules.

Figure 2  
Decisional practice of the Authority by type of activity, 2004–2013



### ***Merger control***

The Authority exercises ex ante control over all operations between independent undertakings (mergers, acquisitions of control or establishment of joint ventures) that represent a form of concentration of economic activity and may produce negative effects on competition in the relevant domestic markets affected by these operations. In this respect, the competition law provides for a notification regime under which the merging parties are obliged to inform the Authority, on preliminary basis, of the upcoming transaction. The Authority assesses the transaction and gives clearance, provided that the concentration is not capable of leading to a significant impediment of effective competition within the market. Otherwise, the competition authority may give conditional clearance or may even prohibit the merger. In case of a failure to notify, the Authority may impose fines on the merging parties, the amount of which depends on whether the transaction results in competition restrictions.

### ***Sector inquiries***

The Authority may conduct general inquiries in any sector of the economy, on its own initiative or following a request by Parliament or other regulators if the rigidity of prices or other circumstances suggest that competition is being restricted or distorted in the market. In its sector inquiries it may request undertakings or associations of undertakings to provide all the information necessary for conducting the study. The information gathered is used in the drafting of an industry-wide report, the results of which are published with a view to receiving the comments of all stakeholders in the relevant sector. On the basis of the final findings of the sector inquiries, the Authority has the power to initiate formal investigations of antitrust infringements or to provide recommendations addressed to the State bodies, the Government or Parliament for improving competition in the sector.

### ***Competition advocacy***

Competition advocacy is one of the main areas of the Authority's operations. It is also regarded as one of the institutional goals of the Authority, which aims at promoting and encouraging competition by reviewing laws and regulations from the perspective of competition philosophy.<sup>45</sup> The competition impact assessment of legislation carried out by the Authority is explicitly provided for in the Competition Act.<sup>46</sup> Under the Act, all central and local administration bodies may require the Authority's estimation for any draft normative act that, in particular, includes quantitative restrictions concerning trading and market access, establishment of exclusive rights or special rights in certain regions for certain undertakings or products and imposing uniform practices in prices and selling conditions. The Authority assesses the degree of restriction or prevention of competition brought by draft normative acts and may issue recommendations to the legislator or the competent policymaker.

---

<sup>45</sup> Albanian Competition Authority Annual Report for 2012 and Main Goals for 2013.

<sup>46</sup> Law No. 9121, arts. 69 and 70.

As regards the regulated sectors, the Authority is also empowered by law to participate in regulatory reforms by assessing the regulatory barriers to competition incorporated in the economic and administrative regulations, for reasons of protecting a general economic interest. In this case, the Authority issues appropriate recommendations to the relevant sector regulators. The cooperation with other State bodies has led to a series of recommendations issued by the Authority in relation to the markets of, inter alia, electricity, gas, electronic communications, public procurement and insurance. Although the Authority's recommendations are of a non-binding nature, Parliament has adopted specific resolutions on the Authority's activity by which it had asked the relevant State authorities to comply with the advocacy opinions issued by the Authority.

In addition, the Authority facilitates its activities in the field of competition advocacy by formal or informal means, such as concluding memorandums of understanding or maintaining close inter-institutional ties with some of the most important regulatory institutions and non-governmental organizations in Albania.<sup>47</sup> Within these inter-institutional operations, many direct bilateral meetings, round tables, training activities, workshops and conferences are regularly organized on issues identified by the Authority during its monitoring and investigations of markets. One of its major concerns is connected with the dissemination of the competition philosophy within the judiciary. This is addressed by organizing training events for judges in cooperation with the School of Magistrates.

Competition advocacy is a tool for enhancing the competition culture of society, and this is clearly outlined and understood within competition policy in Albania.<sup>48</sup> In fact, the development of competition culture in Albania is a pending process whose progress, similarly to other South-East European countries, is very much dependent on the Authority's effectiveness in the field of competition advocacy, with a view to overcoming the limited awareness of the benefits from the competition-driven market system and the general lack of education on competition rules and to preventing conflicting policy objectives pursued by some national policymakers.

### ***Legislation approximation***

Following the commitments undertaken by Albania within the process of its European Union integration, the Authority has set the approximation of the national competition law to the European rules among its most important priorities.<sup>49</sup> Within this part of its operation, the

---

<sup>47</sup> These include the Ministry of Economy, Trade and Energy; the Central Bank of Albania; the Electronic and Postal Communications Authority; the Financial Supervisory Authority; the Energy Regulatory Authority; the Water Regulatory Authority; the Public Procurement Agency; the Civil Aviation Authority; the Supreme State Audit Institution; the Directorate-General of Taxes; the Directorate-General of Customs; the Association for the Protection of Consumers and the Tirana Chamber of Commerce.

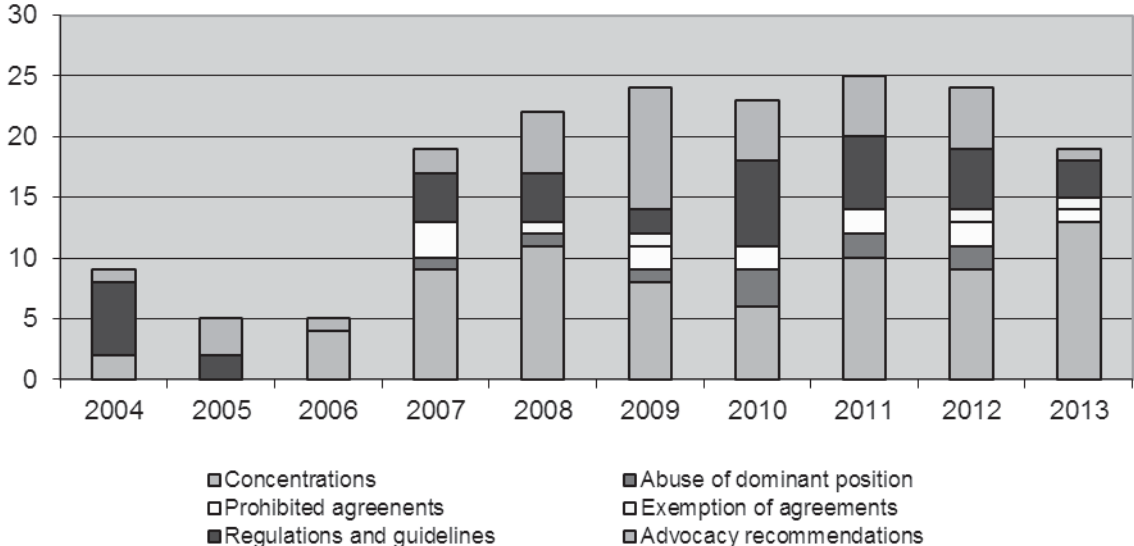
<sup>48</sup> European Movement in Albania, 2012, Is Albania ready for fair competition? Strengthening enforcement and developing advocacy mechanisms, policy paper.

<sup>49</sup> Albanian Competition Authority Annual Report for 2012 and Main Goals for 2013.



Authority prepares and adopts acts of secondary legislation (regulations) or soft-law (guidelines) by which it transposes European Union competition standards into the national legislation, with a view to establishing a legal and institutional framework to allow Albania to integrate into the internal market of the European Union. In this regard, the Authority is in constant contact with the Ministry of European Integration and submits regular reports on the progress it has made with the time frame of the National Implementation Plan, where a description is given as to the degree of alignment with the European Union law of all national legal acts in the area of competition.

Figure 3  
**Decisional practice of the Authority, 2004–2013**



**3.5. Administrative resources**

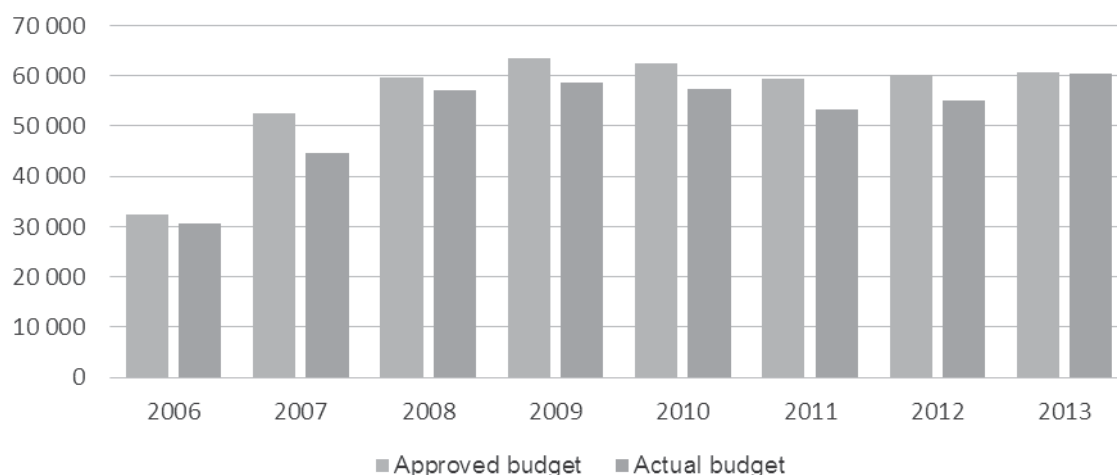
*3.5.1. Financial resources*

The Authority’s annual budget is approved by Parliament as a separate article in the State budget law. The Authority does not spend the revenues collected from fines imposed under the Competition Act, as they are directly disbursed to the State budget.

In recent years (2010–2013), the Authority’s annual budget approved by Parliament has remained relatively stable, with no significant increases or decreases, at about lek 60 million (about \$600,000). The Authority’s actual expenditure represents, on average, 90 per

cent of the approved budget, with the biggest percentage (over 70 per cent) distributed for personnel expenses.<sup>50</sup>

Figure 4  
**Annual budget of the Authority, 2006–2013**  
*(Thousands of Albanian lek)*



### 3.5.2. Human resources

The total number of the Authority's staff is 36, 25 of which are expert officials composed of 13 economists, 9 lawyers, 2 information technology experts and 1 linguist.

The officials, who are engaged in the study of competition cases, have the status of inspectors, and their wages are legally fixed. Compared with other civil servants in Albania, the salaries of the inspectors in the Authority are about 20 per cent higher. However, there is no mechanism applicable for additional payments and extra incentives for the inspectors working for the Authority. Every year an attestation of the performance of each official is made by an immediate supervisor, but as a result promotion is not feasible in terms of job or salary as the Authority inspectors initially occupy the highest possible rank in the system of the State administration of Albania.

The staff training activities have been regarded as a tool to increase the administrative capacity and independence of the competition institution. In recent years the entire staff of the Authority has participated in many training activities within different projects or cooperation mechanisms such as the European Union Twinning project with Italy and Hungary, the European Union Instrument for Pre-Accession Assistance, the OECD Regional Centre in Budapest and the UNCTAD Competition Forum in Sofia. These activities have undoubtedly contributed to the expert capacity-building of the Authority and have helped it to attract and retain employees with high educational backgrounds and adequate motivation for professional development in the area of competition policy.

<sup>50</sup> Albanian Competition Authority, annual reports for 2010, 2011, 2012 and 2013.

### 3.5.3. *Information resources*

The Authority maintains an official website,<sup>51</sup> which provides detailed information in Albanian and English on its activities, competition legislation, Commission decisions, annual reports, press releases and other publications. The Authority publishes a bulletin of decisions together with its annual report for the respective year and disseminates publications, brochures and information booklets on issues of competition policy. Examples are the Competition Glossary, a summary of primary and secondary legal framework on competition; Guidelines on Competition in Public Procurement: How to Prevent and Detect Bid Rigging in Public Procurement; Guidelines on Regulatory Impact Assessment and Competition in Regulated Markets.

As regards available information resources, it is worth noting that the Authority lacks a library within its internal administrative structure. There are no physical or electronic library information sources that could be used by Authority officials for their day-to-day work. Although the Authority constantly tries to improve its information resources by gathering books, training materials and other sources of information on competition, the specialized literature on competition law and economics is still not institutionally available in the form of a real library so as to ensure an adequate level of awareness of its employees and any other persons in Albania interested in the development of competition policy at national, European and global levels. In this context, subscriptions to some of the most important economic and legal magazines and publications in the competition field from the country and abroad should be procured, so as to institutionalize the access of all members and staff to these sources of information on the latest developments in competition law and policy. In addition, knowledge management within the Authority is crucially important, as young officials should have access to all sources of information collected by other officials and members of the Authority as a result of their expert training in Albania and abroad. In this regard, it is recommended that a library be established in the competition authority with a view to collecting all the information resources produced or used by the Authority.

## **IV. Substantive competition law**

### **4.1. Legal sources of Albanian competition law**

Competition law in Albania is based on the Albanian Constitution, which specifies in article 11 that the economic system of the Republic of Albania is based on private and public property, as well as on a market economy and on the freedom of economic activity. This constitutional principle is further developed at a legislative level in Law No. 9121 of 28 July 2003, as amended in 2010.

---

<sup>51</sup> See [www.caa.gov.al](http://www.caa.gov.al), accessed 27 May 2015.

On the basis of the Competition Act, several acts of secondary legislation have also been issued by the Authority: regulation on the exemption of the categories of specialization agreements,<sup>52</sup> regulation on the exemption of the categories of research and development agreements,<sup>53</sup> regulation on the exemption of the categories of technological transfer agreements,<sup>54</sup> regulation on block exemption of the categories of vertical agreements and concerned practices, regulation on block exemption of the categories of vertical agreements and concerned practices in motor vehicle sector, regulation on the categories of the agreements and practices concerned in the market of air transport, regulation on the implementation of article 6 of the Act towards some categories of the agreements, decisions and practices in the insurance sector,<sup>55</sup> regulation on agreements of minor importance (de minimis),<sup>56</sup> regulation on fines and leniency,<sup>57</sup> regulation on investigation procedures, regulation on the implementation of the procedures for the concentration of undertakings,<sup>58</sup> guidelines on the evaluation of vertical agreements,<sup>59</sup> guidelines on the evaluation of horizontal agreements,<sup>60</sup> guidelines on relevant market definition,<sup>61</sup> guidelines on the form of the notification of the agreements,<sup>62</sup> guidelines on the form of the notification of concentrations,<sup>63</sup> guidelines on the evaluation of the effects of the legislation on competition<sup>64</sup> and others.

In the area of State aid control, which also falls within the scope of competition law under European Union standards,<sup>65</sup> there is a separate law applicable in Albania.<sup>66</sup> This law is to be enforced by institutions other than the national competition authority – the State Aid Commission and the State Aid Sector within the Ministry of Economy. This Commission is tasked with receiving, assessing and authorizing State aid schemes notified by regional or local State bodies in the country. The implementation of the Albanian State aid law is poor, mainly due to the lack of independence and adequate administrative capacity of the competent bodies, which are reportedly unable to fully enforce the State aid rules.<sup>67</sup> Generally, there are preparations for the revision of State aid legislation in Albania but they are still at an early stage.

---

<sup>52</sup> Albanian Competition Authority decision No. 190 of 26 May 2011.

<sup>53</sup> Albanian Competition Authority decision No. 187 of 3 May 2011.

<sup>54</sup> Albanian Competition Authority decision No. 179 of 2 March 2011.

<sup>55</sup> Albanian Competition Authority decision No. 286 of 21 May 2013.

<sup>56</sup> Albanian Competition Authority decision No. 203 of 8 November 2011.

<sup>57</sup> Albanian Competition Authority decision No. 120 of 10 September 2009.

<sup>58</sup> Albanian Competition Authority decision No. 80 of 5 May 2008.

<sup>59</sup> Albanian Competition Authority decision No. 145 of 15 April 2010.

<sup>60</sup> Albanian Competition Authority decision No. 137 of 15 February 2010.

<sup>61</sup> Albanian Competition Authority decision No. 76 of 7 April 2008.

<sup>62</sup> Albanian Competition Authority decision No. 14 of 26 January 2005.

<sup>63</sup> Albanian Competition Authority decision No. 82 of 23 June 2008.

<sup>64</sup> Albanian Competition Authority decision No. 68 of 24 December 2007.

<sup>65</sup> Art. 107 of the Treaty on the Functioning of the European Union.

<sup>66</sup> Law No. 9374 of 21 April 2005, Fletorja Zyrtare No. 36 (2005), page 36.

<sup>67</sup> European Commission, 2013, *Albania 2013 Progress Report, Enlargement Strategy and Main Challenges 2013–2014*, Brussels.

Furthermore, competition law is distinct from consumer protection policy, which is dealt with by the Ministry of Economic Development. There is a specific directorate on the protection of consumers established within the Ministry and empowered by consumer protection laws to identify violations and impose sanctions. In practice, consumer protection law enforcement is not very effective, and the penalties are not sufficient deterrents, which is generally recognized and criticized by non-governmental organizations in the field of consumer protection in Albania.<sup>68</sup> Moreover, the Law on Consumer Protection<sup>69</sup> also contains some rules on so-called unfair competition, such as bans on misleading, unfair and comparative advertising, but these rules fall out of the scope of the national competition policy.

#### **4.2. General objectives and applicability of Albanian competition law**

The general objective of competition law is the protection of free and effective competition in the market by setting behavioural rules for the undertakings.

The protection of competition is perceived as an instrument for inducing economic efficiencies, optimal allocation of limited resources, technical progress and flexibility for adapting to a changing economic environment, which ultimately leads to the enhancement of the economic welfare of the society. In this context, the mission of the competition authority is to keep markets competitive and protect the competition process from any kinds of restrictions arising from the private or public sector. The protection of competition is essential for the economic development of the country, as it is a means of setting equal conditions for entrepreneurship, inducing innovation, increasing consumer welfare by improving the choice and quality of products, and achieving market equilibria.<sup>70</sup>

To realize its main objective, the Competition act declares itself applicable to all undertakings and associations of undertakings, which directly or indirectly have or may have an influence in the market; public undertakings and undertakings that have been granted exclusive or special rights by the State; and undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly insofar that in law or in fact their activity is not obstructed by the application of competition rules. The national competition rules cover all undertakings that operate in the territory of Albania (territoriality principle), as well as undertakings that operate abroad, when their activities affect or could affect competition in the domestic markets (effects principle). The law is also applicable to all central and local administration bodies, which are obliged to ensure free and effective competition when carrying out the assigned tasks related to the regulation of economic activity in the country.

---

<sup>68</sup> Albanian Consumers Association, Consumer Protection Office – ZMK (Albania)

<sup>69</sup> Law No.9902 of 17 April 2008.

<sup>70</sup> S Gruda, P Melani, and B Bushati, 2011, Application of competition policy and law in small and transition economies: Albanian case, *EuroEconomica*, Issue 4(30).

The Competition Act provides for very clear legal definitions with a view to facilitating its applicability.<sup>71</sup> An undertaking is any legal or natural person, private or public, that performs an economic activity. Public and local administration bodies, as well as public authorities and entities, are considered undertakings only if they are engaged in economic activity. An economic activity means any type of manufacturing, commercial, financial or professional activity, associated with the purchase or sale of goods, as well as with the offering of service. “Product” means any goods sold or purchased, or services offered in the market by an undertaking. A relevant market is the market of those products, which are mutually interchangeable from the point of view of the consumer related to its characteristics, price and their intended use in the area, and that are supplied and demanded by the undertakings concerned in a geographic area where the competition conditions are sufficiently homogenous and that can be clearly distinguished from neighbouring areas. “Association of undertakings” means any kind of legal or factual association, legal or natural person, private or public, profitable or not profitable, that represents the interests of member undertakings.

### **4.3. Substantive antitrust provisions**

The substantive antitrust provisions, that the Authority is empowered to enforce, cover collusive agreements between undertakings (art. 4) and abuse of dominant positions (art. 9).

The provisions on unfair competition, which were provided for in the Competition Act until 2003, are not within the scope of the current law. Such provisions are partly contained within the national legislation on protection of consumers or the legislation on protection of intellectual property rights.

#### **4.3.1. Collusive agreements**

##### *a) General prohibition*

Similarly to art. 101 (1) TFEU, the Competition Act contains, in art. 4, a general prohibition for all types of agreements having as their object or effect the prevention, restriction or distortion of competition. The prohibition specifies a list of the most common forms of prohibited conduct, although it is not exhaustive:

- ✓ Directly or indirectly fixing prices or other trading conditions;
- ✓ Sharing markets or sources of supply;
- ✓ Limiting or controlling production, trade, technical development or investment;
- ✓ Applying to certain parties dissimilar conditions for equivalent transactions, thereby placing them at a competitive disadvantage;
- ✓ Making the conclusion of contracts subject to acceptance by the other party of supplementary obligations or to the conclusion of additional contracts that, by their nature

---

<sup>71</sup> Law No. 9121, art. 3.

or in accordance with commercial usage, have no connection with the subject of the main contract or to its performance.

In accordance with the legal definition provided for in the Act, “agreement” has a very broad meaning covering any kinds of the agreements and/or concerted practices of two or more undertakings, and decisions or recommendations of associations of undertakings, regardless of their form, written or not, or binding force.

#### *b) Individual and block exemptions regime*

Albanian competition law provides for a regime of individual and block exemptions for collusive agreements between undertakings. The possibility for the Authority to grant block exemptions has been introduced by the amendments to the law of 2010. Prior to this only individual exemptions could have been granted.

According to art. 5, the benefit of the individual exemption from prohibition may be attributed to an agreement that contributes to better production and distribution or promotes technological or economic progress if a fair share of these efficiencies is passed on to consumers. Furthermore, that it does not include unnecessary limitations on the activities of the participating undertakings and does not significantly restrict competition regarding services or products, subject to these agreements.

The Authority’s power to grant block exemptions as to certain categories of agreements between undertakings is provided for in art. 6 of the Act. It clarifies that the Competition Commission may approve regulations on certain categories of agreements that could be exempted from the general prohibition upon conditions set in these regulations. Based on this power and following the European Union initiatives in this field, the Authority has granted several block exemptions in the sectors of research and development, vertical agreements, motor vehicles, insurance, agreements on specialization and technology transfer agreements among others.

#### *c) Applicability of de minimis rule*

From the legal amendments in 2010, the de minimis rule is applied to all agreements that do not significantly restrict competition. They are legally exempted from the general prohibition if the aggregate share of all the undertakings that are parties therein does not exceed 10 per cent of the relevant market in case of horizontal agreements and 15 per cent of any of the affected markets if the agreement is vertical. The de minimis rule is objectively applicable to all types of agreements between undertakings, as there are no hard-core restrictions that are explicitly excluded from its scope of application.

In order to calculate the market share under the de minimis rule, it is necessary to determine the relevant market, as defined in the guidelines on the definition of relevant markets. In cases where it is impossible to classify a certain agreement as horizontal or

vertical, a 10 per cent threshold of market share is applicable. When competition in the relevant market is restricted by the cumulative effect of the agreement for the sale of products offered by various undertakings, the market share threshold is reduced to 5 per cent for all types of agreements, as it is presumed that the cumulative restrictive effect is unlikely to exist if less than 30 per cent of the relevant market is covered by the parallel agreements.

In this regard a special regulation on agreements of minor importance has been issued by the Authority, which specifies that in case of de minimis, the Authority shall not launch investigative procedures in relation to agreements that meet the criteria of this rule.

#### *d) Nullity of the prohibited agreements*

The prohibited agreements under art. 4 of the Act, which are not exempted under the regime of individual or block exemptions and are not covered by the de minimis rule, are declared by the Act to be null and void.

The nullity of the prohibited agreements is an automatic legal consequence of the breach of the general prohibition. as it affects the legal implementation of the agreement itself in terms of time, territory, and inter-parties. In this context, any interested person, natural or legal, may invoke nullity before the national civil courts with a view to protecting its subjective rights or legitimate interests affected by the agreement.

#### *e) Notification regime for the agreements*

Unlike the European Union competition policy under which the general prohibition on restrictive agreements takes effect ipso jure, the applicable competition law in Albania foresees a notification regime regarding the agreements between the undertakings and, respectively, empowers the Authority to make preliminary assessments of their compliance with the general prohibition. The notification regime is not applied to such agreements, which are exempted from the general prohibition by virtue of the Authority's regulations on block exemptions of certain categories of agreements between undertakings.

Under art. 49 of the Act, undertakings or associations of undertakings are obliged to notify the Authority of any agreements and changes thereto by providing in any event the following information: (a) name or other designation and place of business or registered seat of the participating undertakings; (b) kind of economic activity; (c) form, content and object of the agreements; (d) market shares of the undertakings indicating the basis of their calculation and estimation; and (e) the authorized person to represent the undertakings during the procedures. The notification submitted to the Authority must provide all grounds on the basis of which it may decide whether the agreement falls within the scope of a regulation for block exemption or be granted individual exemption from the prohibition.

In this respect the Authority has issued specific guidelines on the notification of agreements with a view to helping the notifying parties to fully implement its notification



obligations under the law. All information required by the approved notification form must be correct and complete. Incorrect or misleading information may make the notifying party liable to fines of up to 1 per cent of their total turnover, in accordance with art. 73 of the Act. The Authority may also revoke its decision on the compatibility of a notified agreement, provided it is based on incorrect or misleading information for which the notifying undertakings are responsible.

#### *f) Cartels*

Albanian competition law does not contain a legal definition of the notion of cartel, and there is no special treatment of cartels different from other types of collusive agreements under Albanian law. All types of breaches of the general prohibition of art. 4 of the Act are regarded as serious infringements under the rules for setting sanctions, provided for in art. 74 of the Act, without having distinct rules applicable specifically to cartels.

Generally, participation in a cartel is considered administrative infringement and the Authority has the right to impose pecuniary sanctions of up to 10 per cent of the annual turnover of participants. There are no criminal penalties for cartel behaviour contained in the Albanian Criminal Code,<sup>72</sup> and the introduction of criminal liability for cartels is not necessarily considered suitable for Albania<sup>73</sup> as, under the Competition Act, the Authority may impose personal fines not exceeding lek 5 million (about \$50,000) on individuals, who intentionally or negligently carry out, or cooperate to carry out, actions to lessen competition.<sup>74</sup>

There are not many cartel cases within the Authority's enforcement practice, although a positive trend has been observed in recent years in terms of an increase in the number of complaints received by the Authority. One of the most important determinants of effective anti-cartel practice is the full implementation of a leniency programme, which gives incentives for the cartelists to voluntarily disclose their illegal conduct. The effectiveness of the leniency programme, which has not been applied in Albania since its adoption in 2004, depends heavily on a strong sanctioning policy that should provide a sufficient deterrent effect, as well as expectations of inevitable punishment for the cartelists.

Public awareness of competition rules is crucial for the effectiveness of anti-cartel enforcement. Several decisions of the Authority have addressed the so-called naive cartels, whereby the undertakings involved were totally ignorant of the fact that they were participating in an illegal price-fixing or market-sharing cartel and therefore posted announcements about it throughout the media. This is indicative of the fact that public

---

<sup>72</sup> Law No. 7895, Criminal Code of Albania of 27 January 1995

<sup>73</sup> P Broka, and E Nazifi, "Are criminal punishments necessary for proper enforcement of competition law in Albania?" Proceedings of the international conference on criminal law and the economy, University of Tirana, University of Utrecht, 2010.

<sup>74</sup> Law No. 9121, art. 78.

awareness of the scope and objectives of the rules on collusive agreements needs to be further enhanced.<sup>75</sup>

#### ***4.3.2. Abuse of dominant positions***

Similarly to TFEU art. 102, a general prohibition of abuse of dominant positions by one or more undertakings in the market is provided for in art. 9 of the Competition Act. The abuse is regarded as a type of unilateral anticompetitive behaviour of one or more undertakings having such a strong market position, which allows them to take any market conduct independently from their suppliers, competitors and clients. Therefore, the dominant position itself is not forbidden under Albanian competition law but only the abuse of such a position.

##### *a) Dominant position on the market*

The law does not use the term “monopoly” or “monopoly position” but defines only the notion of “dominant position”. According to the law, a dominant position is one of economic strength enjoyed by one or more undertakings that enables them to prevent effective competition in a market by giving them the power to behave, in regard to demand or supply, independently of other market participants such as competitors, customers or consumers.<sup>76</sup>

The main factors that should be assessed with a view to determining whether there is market dominance of certain undertakings are also provided for in the law: relevant market shares of the investigated undertakings and those of the other competitors; barriers to entry to the relevant market; the potential competition; the economic and financial power of the undertakings; the economic dependence on suppliers and purchasers; the countervailing power of buyers/customers; the development of the undertaking’s distribution network and access to the sources of supply of products; the undertaking’s links with other undertakings; and other characteristics of the relevant market, such as the homogeneity of the products, the transparency of the market, the undertaking cost and size symmetries and the stability of demand or free production capacities. None of these factors is decisive by itself but all should be considered together in the light of the market context where the respective undertakings operate.

Albanian competition law acknowledges that several undertakings can enjoy a collective dominant position. In such cases it should be ascertained whether these

---

<sup>75</sup> Albanian Competition Authority decision No. 56 of 24 September 2007, decision No. 57 of 1 October 2007, decision No.67 of 24 December 2007, decision No.146 of 17 June 2010; decision No. 191 of 26 May 2011.

<sup>76</sup> Law No. 9121, art. 3.

undertakings compete effectively with each other and they are able to have common conduct in the market.<sup>77</sup>

b) *Prohibited unilateral conducts by dominant undertakings*

According to art. 9 of the Act, any abuse of a dominant position of one or more undertakings in the market is forbidden. The law provides a non-exhaustive list of examples of different unilateral practices that may constitute an abuse of a dominant position:

- ✓ Directly or indirectly fixing unfair prices of sale or purchase, or other conditions of unfair trade;
- ✓ Limiting production, markets or technical development;
- ✓ Implementing unequal conditions for the same trade actions with the parties, putting them in an unfavourable state of competition;
- ✓ Setting conditions for the signing of contracts with other parties, in which the latter agree to additional obligations, which because of their nature or according to trade practices, are not linked to the mentioned contracts.

The prohibition of the abuses of market dominance is based on the understanding, similar to European Union law, that the dominant undertakings bear special responsibility not to operate in the market in a distortionary manner that could affect the competitive process and harm its suppliers, competitors and customers. Therefore, the prohibition covers both exclusionary and exploitative abuses, as they are usually part of one anticompetitive strategy of the dominant undertakings aimed at the exclusion of its competitors and market foreclosure, which will then allow illicit exploitation of its suppliers or customers.

#### **4.4. Substantive provisions on mergers and acquisitions**

Merger control is one of the main pillars of the Authority's activity. It is based on the different types of operations or transactions that are subject to the compulsory notification regime under the Competition Act and the assessment methodology applied with a view to authorizing or prohibiting these operations or transactions.

---

<sup>77</sup> P Broka, 2010, Abuse of dominant position under competition protection legislation, Abuzimi me pozitën dominuese sipas legjislacionit për mbrojtjen e konkurrencës, *Revista Studime Juridike*, No. 2.

#### ***4.4.1. Forms of concentrations of undertakings***

According to the law, a concentration of undertakings is deemed to arise where a change of control on a lasting basis results from:<sup>78</sup>

- ✓ Merger of two or more independent undertakings or parts of undertakings;
- ✓ Acquisition, by one or more natural persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or any other legal means, of direct or indirect control of the whole or parts of one or more other undertakings;
- ✓ Direct or indirect control of one or more undertakings or parts therein.

The creation of a joint venture also constitutes a concentration (concentrative joint venture), if it does not include the coordination of competitive activities between two or more independent undertakings, as in this case, it is to be assessed under the rules of restrictive agreements (cooperative joint venture).

Similar to the European Union law, the Act acknowledges that the control within the meaning of provisions on mergers and acquisition may be constituted by rights, contracts or any other means, which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by ownership or the right to use all or part of the assets of an undertaking and rights or contracts that confer decisive influence on the composition, voting or decisions of the management organs of an undertaking.

As regards the financial, credit or insurance institutions, there are special rules in place. If they acquire shares in another undertaking for the purpose of resale, then this transaction is not deemed to constitute a concentration as long as they do not exercise the voting rights attached to the shares and they are expected to conduct the resale within one year.

#### ***4.4.2. Notification regime for concentrations***

The undertakings that take part in a transaction in one of the forms of concentrations have the obligation to preliminarily notify the Authority of the operation, in order to receive an authorization. This obligation is dependent on the merging parties' turnover of the financial year preceding the concentration, as a local nexus of their turnover with the Albanian territory is always required. The concentration should be notified, provided that the combined total turnover of all participating undertakings worldwide is more than lek 7 billion (about \$70 million) and the turnover of at least one of the undertakings amounts to more than lek 200 million (about \$2 million) in the internal market of Albania. Alternatively, the merger is notifiable if the aggregate turnover of all the undertakings in the internal market is more than lek 400 million (about \$4 million) and the turnover of at least one undertaking realized

---

<sup>78</sup>

Law No. 9121, art. 10.

on the domestic market is more than lek 200 million (about \$2 million). The aggregate turnover comprises the revenues derived by the undertakings in the preceding business year from the sale of products falling within the undertakings ordinary activities and after deduction of taxes directly related to turnover. Where the concentration consists of the acquisition of parts of one or more undertakings, only the turnover relating to these parts is taken into account for the notification.

The notification obligation lies with the merging companies (in case of a merger), with the undertaking acquiring control (in case of a takeover) and with the undertakings acquiring joint control (in case of a creation of joint venture). The obligation to notify has to be implemented within 30 days from the signing of the contract of a merger, acquisition of control or the creation of a joint undertaking. In case of a failure to notify, the Authority may impose fines on the obliged parties not exceeding 1 per cent of their aggregate turnover in the preceding business year. If the undertakings put into effect an un-notified concentration, which results in competition restrictions, the fine is up to 10 per cent of their turnover.

In cases of breaches of the notification regime, the legal consequences are provided by the Act, along with the rules on suspension prior to authorization being granted by the Authority. More specifically, if a concentration has been put into effect before its notification to the Authority, or prior to being assessed and authorized by it, or before the conditions attached to the authorization have been duly fulfilled, all legal and contractual transactions conducted in breach of these rules are declared to be of no legal effect, unless a derogation has been granted by the Authority under the rules on the so-called temporary clearance of concentrations.<sup>79</sup>

#### ***4.4.3. Appraisal of concentrations***

As per the amendments of the Competition Act of 2010, the Authority applies the significant impediment of effective competition test instead of the pure dominance test for concentration appraisal. Therefore, following the example of European Union merger control, the Authority has been empowered to prohibit concentrations that significantly impede effective competition a market or in a part thereof, in particular as a result of creation or strengthening of a dominant position. For appraising concentrations, the Authority takes into account the need to protect and develop free and effective competition in the market, having regard to the considerations of the market structure and the actual or potential competition of the undertakings operating in the field.

During the evaluation the Authority takes into consideration the efficiency gains deriving from the concentration if certain conditions are fulfilled. The economic efficiencies resulting from the concentration must meet all the following conditions in order to determine merger authorization:

- ✓ They should contribute to the improvement of consumer wellbeing or, at

---

<sup>79</sup> Law No. 9121, art. 60.

least, neutralize the potential negative effects that the concentration would have;

✓ They should have resulted from the concentration and no other alternative ways to generate them exist except the concentration under review;

✓ They must be verifiable.

In certain cases the Authority might not forbid a concentration on the basis of considerations of failing firm defence, provided that one of the participating undertakings seriously risks bankruptcy and exiting the market, and there is no other less anticompetitive way than the concentration itself to avoid such failure.

Generally, the introduction of the new appraisal test for concentrations has increased the role of economic analysis in merger cases but still it has not caused considerable change in the Authority's decisional practice, given the fact that it has not yet reviewed any concentration that could create or strengthen dominant position on the market. Furthermore, so far there have not been any of decisions for blocking mergers that do not comply with the new significant impediment of effective competition test or decisions imposing remedies in merger cases.

It is worth mentioning that in its practice in the field of merger control, the Authority also has reviewed some foreign to foreign transactions where at least one of the participating undertakings has had a branch or a distributor on Albanian territory. In the case of the takeover by Japan Tobacco Inc. of several companies operational outside the territory of Albania, the Authority had accepted the concentrations for review under the national merger control regime because a subsidiary of Japan Tobacco Inc. had been active in the Albanian market.<sup>80</sup> Similarly, in the Procter and Gamble/Sarah Lee merger case, the two foreign undertakings participating in the transaction were present only through distributors of their products in the Albanian market.<sup>81</sup>

In this context, the International Competition Network recommended practices for merger notification procedures should be underlined. Although the jurisdictions are sovereign with respect to the application of their own laws to mergers, it recommends that they should be asserted only over those transactions that have an appropriate local nexus with the jurisdiction concerned. With a view to screening only transactions that are likely to result in appreciable competitive effects within the respective territory, merger notification thresholds should incorporate appropriate standards of materiality as to the level of local nexus required for merger notification. Determination of a transaction's nexus to the jurisdiction should be based on activity within that jurisdiction, as measured by reference to the activities of at least

---

<sup>80</sup> Decision No. 271 of 26 February 2013, decision No. 238 of 26 July 2012 and decision No. 200 of 15 September 2011.

<sup>81</sup> Decision No. 139 of 24 February 2010.

two parties to the transaction in the local territory and/or by reference to the activities of the acquired business in the local territory.<sup>82</sup>

## **V. Procedural aspects of Albanian competition policy**

### **5.1. Handling of complaints**

Based on the Competition Act, the Authority can act upon complaints, its own initiative (ex officio), leniency applications, merger notifications, and requests by State bodies.

The complaints are required to be made in a specific form (the Model Complaint Form), which can be submitted to the Authority either electronically or on paper. Those who are unable to submit a complaint in writing or do not wish to do so may present it orally. In this case the protocol official notes the complaint, takes note that the person who presents it has not formally deposit it and signs the protocol together with another employee of the Authority. Within 24 hours from the time of arrival at the institution, the complaint must be distributed to the Secretary-General, who identifies the sector or department that is tasked to deal with the issue. The Secretary-General assesses whether the complaint is within the jurisdiction of the Authority and notifies the Competition Commission on that assessment. The complainant should be notified by the Secretary-General on its proceeding no later than 15 days from the date of its receipt by the Authority.

The Authority takes into consideration all complaints addressed to the institution but processes only those that fall with the scope of the Act. A substantial proportion (about 30 per cent) of the signals and complaints, received by the Authority fall outside the scope of its jurisdiction under the Act. For these signals and complaints, a thorough examination is not carried out by the Authority but they are forwarded to the relevant authority or institution. In cases where the complaints are outside the scope of the Act, the complainant receives an answer from Authority outlining all the reasons why the complaint has not been taken into consideration. The Authority also takes into account anonymous complaints if they concern issues that are under its jurisdiction. These complaints are recorded in the Protocol Book.

A general register for all the incoming and outgoing correspondence is maintained within the Authority in compliance with special rules on archives.<sup>83</sup> The outgoing correspondence, before being sent, is submitted in original to the archive office, where it is registered and its delivery is confirmed. The Authority also maintains a special register, where the notifications of agreements and concentrations are registered. Upon receipt of a notification, the Secretariat issues a written certification where the registration number and date are denoted. The Secretariat informs the Commission in writing on the exact date of the

---

<sup>82</sup> International Competition Network, 2003, Merger Working Group, Recommended practices for merger notification procedures.

<sup>83</sup> Law No. 9154 of 6 November 2003.

submission of the notification and the annexed documentation, of the form of notification from the participating parties in a concentration or in an agreement. In order to ensure confidentiality with regard to all materials of the correspondence and documents within the register, the staff of the Authority is bound to uphold professional secrecy under the Competition Act.

## **5.2. General rules of infringement proceedings**

### ***5.2.1. Initiation of proceedings***

The infringement proceedings before the Authority can be instituted on the basis of complaints, ex officio by its own decision following its findings from a sector inquiry or by a request by Parliament or another State body. The Authority has never received a leniency application.

Under the Act, a complaint can be lodged by anyone on all issues related to competition law without the need of a legitimate interest to be demonstrated on behalf of the individual or the undertaking that submits the complaint. However, due to the insufficient number of complaints received by the Authority, most of the infringement proceedings are ex officio initiated by its own decisions.

### ***5.2.2. Preliminary investigation***

Upon approval by the Competition Commission, the Secretariat may initiate a preliminary investigation by its own initiative (ex officio) or following a complaint related to the prevention, restriction or distortion of competition. The Secretariat initiates a preliminary investigation whenever the Commission requests it.

Prior to the amendments to the Competition Act in 2010, only the Secretary-General was authorized to approve the opening of a preliminary investigation. After 2010, however, the initiation of a preliminary investigation became subject to the approval of the Commission. In practice, until now there have not been any cases in which the Commission has not approved the initiation of a preliminary study on the proposal of the Secretariat.

The purpose of the preliminary investigation is to establish whether there are sufficient data on which well-founded doubts can occur regarding the perpetration of an antitrust violation and justification for opening an in-depth investigation. Preliminary investigations do not give the right to access the Authority's case files. During this stage, the Authority keeps the name of the complainant confidential if the latter requests it.



### **5.2.3. *In-depth investigation***

Provided there are indications of competition restrictions, in-depth investigation proceedings are started by a decision of the Competition Commission on the basis of which the Secretariat takes all the necessary investigatory steps foreseen in the Act.

The Authority gives notice of the opening of an in-depth investigation in the Authority's Official Bulletin, where it states the purpose of the investigation, the parties concerned and invites interested third parties to come forward if they wish to take part in the investigation. However, non-publication of this notice is also possible under the procedural rules, as they do not prevent the investigation from being conducted without it.

### **5.2.4. *Deadlines***

The deadline for the preliminary investigation is not specially regulated by the Act but given the general rule in art. 32, which refers to the Code of Administrative Procedure, the duration of the preliminary investigation should not exceed three months.

The duration of an in-depth investigation is explicitly provided for in art. 43 of the Act: six months from the date of opening of proceedings, with possibility of extension by a decision of the Competition Commission, without explicit specification of the duration of the extension. The deadline of the in-depth investigation can be extended in cases where further investigatory measures are needed to be undertaken with a view to collecting additional information or to entrusting specialized expertise for examining the facts of the case.

## **5.3. Investigation of competition cases**

The investigation of cases is conducted by the Secretariat officials on the basis of the Competition Commission's decisions for opening cases. The Secretariat deals with all procedural steps (such as preparing the correspondence with the parties, drafting reports, drafting proposals for decision on substance, etc.) and investigatory steps (such as requests for information, conducting dawn raids, information gathering, interviews, etc.) needed for the full and objective resolution of the case. The Secretariat investigators conduct the administrative investigations in accordance with the Code of Administrative Procedures,<sup>84</sup> the Competition Act and the acts of secondary legislation applicable to the Authority's infringement proceedings.

The Authority has the power to set priorities in its activity and it does it on annual basis.<sup>85</sup> As it has no specific rules on priority setting, in this respect the Authority takes into consideration the most problematic cases that have been examined in the previous period, as well as the social importance of its intervention in certain sectors or markets. In this context,

---

<sup>84</sup> Law No. 8485 of 12 May 1999.

<sup>85</sup> Law No. 9121, art. 24.

the Authority can prioritize its work on investigations within the related deadlines by assessing the most appropriate allocation of its limited resources. Prioritization of casework can be manifested most clearly as to the investigations that have been started *ex officio*. However, if a complaint is filled within the required form, the Authority has no power to refuse initiation of infringement proceedings based on the grounds that the case does not fall within its priorities. Also, it cannot terminate or suspend investigatory work on a case at the expense of other pending cases, on grounds relating to priority setting.

### ***5.3.1. Intra-institutional organization of the investigatory process***

The investigatory work on individual cases is performed by working groups of officials established by an order of the Secretary-General on the basis of a proposal by the Director of the Market Monitoring Department. An official from the Juridical and Integration' Department is also included in each working group on the proposal of the Director of this Department. The Secretary-General appoints the head of the working group.

The investigation on competition cases is carried out by the members of the working teams, and the director is responsible for ensuring a full and timely study in each case. The working group, in consultation with the Secretary-General and the directors of the directorates, defines the investigatory strategy on the case. Within the case investigation, the working group exercises the investigative powers provided for under the Act: requests for information, appointment of external experts, opinions of the sector regulators, interviews, and conduct of on-site inspections.

After the investigation has been finalized, the working group presents a report to the relevant directors and to the Secretary-General by providing all the factual, legal and economic analysis of the case, as well as a proposal concerning the manner of conclusion of the proceedings. The report of the investigative phase is achieved by consensus or majority vote, if such approach becomes necessary, during the conclusive meetings of the working group. In the event that no consensus can be reached by the members of the group, the members holding a minority opinion are named, and the minority opinion is attached to the report of the working group. After receiving the report of the working team, the Director makes comments and gives observations before it is submitted to the Secretary-General. The Secretary-General may return the report with instructions to the working team. Members of the decision-making body have no power to interfere in the investigatory phase of the cases, as the goal is to provide a functional separation between investigation and decision-making on the case. Once the report is prepared by the working group and reviewed by the director, the Secretary-General submits it to the Competition Commission. In case of a disagreement between the members of the case team or between the team and the Secretary-General, the different opinions may be separately justified and further presented for consideration by the decision-making body.

### ***5.3.2. Investigatory powers of the Secretariat***

The Secretariat exercises all the necessary investigatory powers provided for in the Act with a view to establishing the facts relevant to the case resolution. According to the Act, the officials of the Authority have full authority to undertake any investigative procedures such as requests for information, dawn raids, search and seizure activities on the undertakings' premises and interviews.

#### *a) Request for information*

The Authority, by means of a request for information, may always ask the parties to its proceedings and any third party, including persons, natural or legal, to provide all the information necessary for the full implementation of the Competition Act, including confidential information or business secrets. All requests for information and any other correspondence with the parties to the proceedings are signed by the Secretary-General.

When the respective persons do not provide the information required within the period set in the request of the Secretariat or provides incomplete information, the Commission may demand the information concerned by a decision. In any case the Secretariat's requests for information and the Commission's decisions in this regard should set the legal basis, the purpose and the time limit within which the required information must be provided, as well as the fines foreseen in the Act in case of non-compliance with the request or the decision.

#### *b) Collection of information from State authorities*

All central and local administration bodies, as well as other public institutions, are under the obligation provided for in the Competition Act, to cooperate with the Authority and ensure the provision of information and evidence necessary for the resolution of competition cases.<sup>86</sup> Such requests for information from the State authorities are usually sent by the officials of the Authority in cases concerning regulated or recently liberalized markets.

#### *c) On-the-spot inspections of business premises*

On-the-spot inspections are one of the main information-gathering tools used in competition cases, and the Authority has experience in conducting dawn raids in potential abuse of dominant position cases and cartel cases. The Secretariat carries out about six on-site inspections per year, affecting undertakings established in all regions of Albania. Simultaneous inspections at various undertakings have also been carried out by the Authority's inspectors and the inspection techniques have been improved by employing information technology in dawn raids.

---

<sup>86</sup> Law No. 9121, art. 34.

Inspections of business premises are carried out on the basis of a Commission decision, and no court warrant is needed. The Commission takes into consideration the request of the Secretariat and issues an authorization for inspections. The Secretariat investigators must present the authorization when conducting an investigation, which contains the object and the purpose of the investigation as well as the sanctions foreseen in the Act with respect to this procedure.

During the inspection, the Authority is empowered by law<sup>87</sup> to require, if necessary, the assistance of the police. The Authority and the State police have signed a memorandum of understanding with a view to facilitating their interaction when conducting on-the-spot inspections as a fact-finding measure in competition cases. At the inspection, the investigators of the Secretariat have the power to carry out searches in the business premises of the respective undertaking by conducting the following actions:

- ✓ Entering into the premises of undertakings or their vehicles during working hours;
- ✓ Examining the books and other business records, irrespective of the medium on which they are stored, such as in a written or electronic form;
- ✓ Taking or providing copies or extracts from the books or records;
- ✓ Sealing any premises, books or business records for not more than 72 hours, if it is necessary for the investigation;
- ✓ Asking any representative or staff member of the undertaking for explanations relating to the subject matter for facts and documents regarding the object and the purpose of the inspection.

*d) On-the-spot inspections of non-business premises*

Unlike the dawn raids on business premises, the inspections of non-business premises, in which the Authority has no experience, could be carried out only after preliminary judicial authorization has been granted by the Administrative Court that has jurisdiction over the place of the inspection.

During such an inspection, the Secretariat investigators, authorized by the court, are empowered to enter the domicile of the administrators, managers, directors and other staff members, as well as the domicile and business premises of individuals and legal persons, whether external or internal, in charge of commercial, accounting, administrative, tax and financial management, between 7 a.m. and 6 p.m. They have also the power to search other premises, equivalent to the domicile, if there is reason to believe, given the facts and particular circumstances of the case, such premises are to contain books or other professional documents deemed necessary to prove a serious infringement under the Competition Act.

---

<sup>87</sup> Law No. 9121, art. 35.

#### *e) Seizure of evidence*

If necessary for the investigation, the investigators may seize objects that may serve as evidence in the investigation for not more than 72 hours. By request of the Authority, the time limit of the seizure may be extended for not more than six months by the Administrative Court that has jurisdiction where the seizure takes place.

The investigators must take minutes, a copy of which must be presented to the person affected by the seizure, as the person must be informed, without undue delay, of the seizure and of the right to seek judicial protection.

#### *f) Interviews*

The Authority enjoys the power to request information in written and in oral form at any given time during the investigation on cases. Usually during the inspection of business premises, an interview is scheduled with the manager or other representative of the undertaking for further clarifications. But due to the extremely sensitive nature of the inspection of non-business premises, the interview is not foreseen when this investigatory measure is undertaken. The clarifications and information given at the interview are recorded in a protocol signed by the inspectors and the interviewee and included with the evidence materials within the case file.

### **5.4. Procedural status of parties involved in infringement proceedings**

Parties to the Authority's infringement proceedings are the complainant, who has filed a claim that a competition infringement has been committed, the respondent, to whom the infringement is to be established, as well as interested third parties to the proceedings. The procedural status of participants in the proceedings determines their rights and obligations towards the competition authority, both at the investigation and case resolution stages.

#### ***5.4.1. Procedural rights of the parties to the proceedings***

According to the procedural rules under the Competition Act, the parties under investigation have the right of defence. Procedural fairness is guaranteed by giving the parties the opportunity to know about, and to take an active part in, the proceedings, to be aware of the allegations against them, to present their version and evidence, and to object to and challenge the findings and final conclusions of the competition authority. The right of defence exists during the whole procedure, with only its scope changing, given the respective procedural stage in which this right is exercised.

*a) Right to be informed about the proceedings*

The parties in the infringement proceedings are informed of its initiation by an official letter delivered to them, in cases when the Authority requires information and data regarding the investigation. In cases where the Authority intends to conduct on-the-spot inspections (dawn raid), parties are informed of the initiation of proceedings when are notified of the authorization issued by the Competition Commission or, respectively, by the Administrative court for conducting the dawn raids.

*b) Right to access the case file*

During the preliminary investigation, parties are not given access to the Authority's case file. Only after the final report of the investigatory team has been prepared and submitted to the decision-making body is access to the case file granted to the parties, prior to the hearing session being held.

In substance, the parties are given access both to the report of the investigatory team and to all the evidential material gathered during the investigation, on the basis of which the case has been substantiated, with the exception of commercial and business secrets indicated as such by the parties.

*c) Right to submit observations and objections*

Unlike the procedural framework of the European Union law and of the most of the European Union member States, the Albanian Competition Act does not recognize the legal principle of statement of objections.

Still, the Authority has the power to issue a report that is delivered by the investigatory team after the conclusion of the investigation procedures at the final stage of the in-depth investigation. The report contains all the factual findings as well as the economic and legal assessments of the facts relevant to the case resolution. This report is given to the parties under investigation together with the relevant information gathered during the investigation, with the exception of the confidential information delivered by other parties. The parties have the right to reply to the investigation report by submitting in written form their observations and arguments against the findings and assessments contained in it.

*d) Right to be heard*

It is explicitly provided by the Competition Act that before the final decision is made, the undertakings and the associations of undertakings have the right to be heard on the subject of the proceedings.<sup>88</sup> Similarly to European Union standards, the Competition Commission bases its decisions only on objections on which the parties concerned have been able to comment.

An oral hearing is organized in each case, regardless of whether the defendant parties have specifically requested to exercise their procedural right to be heard or not. The hearing

---

<sup>88</sup> Law No. 9121, art. 39.

session before the decision-making body is organized by the Commission Cabinet, which is a unit separate from the Secretariat. The members of the investigatory team from the Secretariat that have prepared the report take part in the hearing and may pose questions or make comments in accordance with the order established by the Chair of the Commission.

*e) Right of confidential treatment*

The right of confidential treatment belongs to the parties in the proceedings and to any other person who submits information in the course of proceedings. All these persons have the right to indicate the documents that are claimed to contain production, commercial or other secret information, which should be regarded by the Authority as confidential.

According to the Act, each member of the Commission and all Secretariat officials must respect confidentiality and must not divulge confidential data obtained during their work to any person or institution, unless testifying in a trial. This remains valid even after the termination of work relations. The Authority's publications must not contain information constituting commercial secrets.

*f) Privilege against self-incrimination*

Albanian law does not provide for privilege against self-incrimination in the infringement proceedings before the competition authority, as this privilege is granted only in criminal proceedings and thus it has no application in administrative procedures.

**5.4.2. Procedural obligations of the parties to the proceedings**

Along with their procedural rights, parties to the infringement proceedings have certain obligations to the competition authority, which are provided for in the Competition Act to facilitate fact-finding and guarantee full and effective enforcement of competition rules. In cases of failure to duly implement these obligations, the Act foresees sanctions to the respective parties.

*a) Obligation to cooperate with the competition authority*

Under the Competition Act, every undertaking, person or State authority is bound to fully cooperate with the Authority and to provide any piece of information that may be relevant to the investigation. Such cooperation may be asked by means of a request for information or an interview but in any case a lack of cooperation constitutes an infringement, which is punishable by a sanction amounting up to 1 per cent of the infringer's turnover (if it is an undertaking) or a fine not exceeding lek 5 million (if the infringer is an individual).

*b) Obligation to provide correct, complete or non-misleading information*

The Authority may always request information required for the implementation of the Act, from the parties to the proceedings or any third party. The parties cannot rely on the confidentiality of their business secrets in order to refuse to supply the information requested. On the contrary, they are obliged to provide complete, accurate and non-misleading information. In case of a failure to comply with this obligation, they are subject to sanctions up to 1 per cent of the infringer's turnover or an individual fine not more than lek 5 million.

*c) Obligation not to oppose the Authority's inspections*

The undertakings under investigation are obliged not to oppose the Authority's on-the-spot inspections but rather must provide all required books or other business records in complete form. Moreover, during the inspections they should answer provide accurate, complete or non-fraudulent answers. In cases of obstructing inspections or breaking the seals put on the inspected premises by the Authority's inspectors, the respective parties to the infringement proceedings receive sanctions of up to 1 per cent of their turnover or individual fines.

## **5.5. Decision-making on competition cases**

### ***5.5.1. Intra-institutional organization of the decision-making process***

Decision-making on competition cases is performed by the Competition Commission, which as a collegiate body takes decisions in meetings. Commission meetings are valid when at least four members are present and the Chair or the Deputy also attends.

The Commission resolves competition cases during regular meetings but, if necessary, the Chair may call extraordinary meetings. The Chair decides on the agenda of the meetings, which includes the issues that have been presented by the Secretariat or by the other members of the Commission. The Commission may take decisions only on those issues that have been included in the agenda, except in cases when the majority of the Commission decides otherwise.

In the Commission meetings, the Secretary-General and the department heads are eligible to work together with the investigatory working group on the case under consideration. These meetings are usually not public but in certain cases and upon approval by the Commission, they may be open to the public and the media.

Prior to making a decision, the Commission may, at any moment during the decision-making process, organize a hearing where the parties are given the opportunity to present their opinions in writing or verbally. The Commission may also invite third parties or external experts who have been involved in addressing the issues under consideration, to such hearings.



Decisions are taken by a simple majority of members present, as abstention is not permitted, and the Chair's vote is decisive. Should full consensus not be reached, the member of the Commission who has voted against the majority justifies its minority opinion, which is then published in the Authority's Official Bulletin together with the decision taken. The decisions of the Commission should be associated with the relevant arguments not later than 15 days from their adoption.

The Commission Cabinet prepares minutes of the meetings, which are signed by the members of the Commission attending the meeting and registered on the register of the Authority.

### ***5.5.2. Types of Commission decisions***

The Commission may take different types of decisions at any stage of the administrative proceedings before the Authority. The so-called procedural decisions of the Commission aim at facilitating or determining the further procedural course of the cases, whereas the decisions on substance lead to resolving the subject matter of the cases.

Some of the most important Commission decisions on procedure are as follows: decisions for opening a preliminary investigation; decisions for opening an in-depth investigation; decisions for requesting information; decisions for authorizing on-the-spot inspections; decisions for suspension of proceedings and decisions for terminating proceedings.

Major Commission decisions on substance include decisions for establishing infringements and imposing sanctions; decisions for ordering the termination of infringements, including by imposing behavioural or structural measures to restore competition; decisions for adopting interim measures; decisions for establishing that no infringement has been committed; decisions for approving commitments of undertakings; decisions for block exemption of agreements between undertakings; decisions for an individual exemption of an agreement between undertakings; decisions for authorizing a concentration between undertakings; decisions for prohibiting a concentration between undertakings; decisions for approving the results of a sector inquiry and decision for giving advocacy opinions and recommendations.

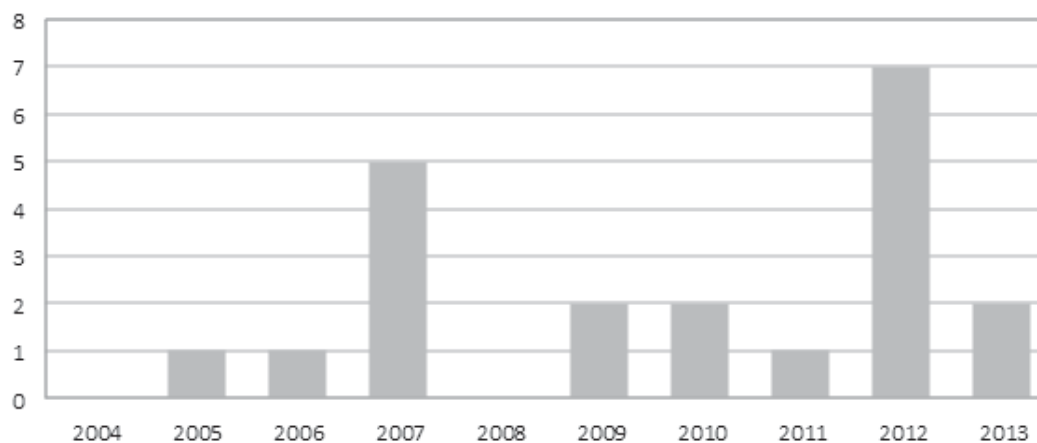
#### ***a) Infringement decision***

According to the law, in cases where the Commission finds that an infringement constituting a prohibited agreement or an abuse of dominant position has been committed, it issues a decision establishing the infringement and requiring the infringers concerned to bring the illegal conduct to an end.

To ensure the full termination of the infringement, the Commission may impose sanctions with a view to ensuring both the punitive and deterrent effects of its decision. The

Commission is also empowered, by its decision, to impose periodic penalty payments until the established infringement has been completely stopped by the respective undertakings or associations of undertakings.

Figure 5  
Albanian Competition Authority decisions, 2004–2013



#### *b) Commitment decision*

Where the parties under investigation offer commitments capable of meeting the Authority's objections and preliminary estimations expressed in the investigation report communicated to them, the Commission may, by decision, approve these commitments and make them binding on the undertakings as real legal obligations. When approving commitments the Authority, by its decision, closes the administrative proceedings without establishing the respective infringement.

Although the Authority is legally empowered to issue commitment decisions, there are no specific rules contained in the law, acts of secondary legislation or guidelines adopted by the Authority regarding the exact scope of its power and the methods and criteria to be applied when evaluating or market testing the commitments proposals from businesses. Also, there are no clear rules as to the procedure applied by the Authority in such cases, as well as the third parties' rights to present observations or comment on the proposed commitments. However, in its decision-making process on cases of an abuse of market dominance, the Authority has evaluated proposed commitments with a view to providing rapid and effective correction of the conduct and fast remedy to market competition.<sup>89</sup>

The Authority may revoke its commitment decision in cases where at least one of the following alternatives occur: some of the facts that have served as a basis of taking the decision have changed, the parties do not comply with the commitments or the decision is

---

<sup>89</sup> Albanian Competition Authority decision No. 142 of 15 March 2010.

based on incorrect information or was obtained by means of deceit.<sup>90</sup> Although not specifically provided for in the Act, it is largely beyond doubt that in the event of revocation of a commitment decision, the Authority may issue a subsequent infringement decision establishing the infringement and imposing sanctions. In addition, it is empowered to impose sanctions on the addressees of the commitment decision for failure to comply with the conditions and obligations established under the commitment decision itself.<sup>91</sup>

*c) Decision on interim measures*

In urgent cases where there is a risk of serious and irreparable damage to competition caused by an antitrust infringement established on prima facie basis, the Competition Commission may issue a decision adopting interim measures. Such a decision may be taken at any time of the infringement proceedings, based on a request from the parties thereof or upon the Authority's own initiative.

The decision on interim measures aims at rapidly restoring competition in the market and it is therefore taken just for the period of time specifically needed for achieving this objective, with the possibility renewal if necessary. The Act does not provide for specific interim measures that can be adopted in antitrust cases but makes general reference to both structural and behavioural remedies that can be imposed in merger cases.<sup>92</sup> In addition, legal reference to all necessary measures gives the Authority a higher degree of when choosing interim measures in certain cases, with the possibility to apply them in combination.

*d) Decision on structural or behavioural remedies*

The Competition Commission may adopt decisions for imposing behavioural or structural remedies in both infringement proceedings in antitrust cases and notification proceedings in merger cases. In infringement proceedings, where an antitrust infringement has been established, the Authority imposes the remedies as a means to ensure the termination of the infringement. In merger cases, the remedies are imposed with a view to neutralizing any possible anticompetitive effects of the concentration that has been conditionally authorized by the Authority. In any case, based on the principle of proportionality, structural remedies are envisaged only when the behavioural measures (to act or not to act in a specified way) are not proved efficient enough to overcome the respective competition concerns.

Similarly to the interim measures, the Act does not provide for particular measures that can be imposed as remedies specifically in cases of antitrust infringements but makes reference to the non-exhaustive list of possible structural or behavioural remedies that can be imposed in merger cases: (a) sale of parts of undertakings; (b) transfer of any kind of

---

<sup>90</sup> Law No. 9121, art. 46.

<sup>91</sup> Law No. 9121, art. 74.

<sup>92</sup> Law No. 9121, arts. 44 and 61.

participation in an undertaking's activity; (c) breaking or concluding contractual relationships; (c) granting licences; (d) obligation to act or not to act in a certain way; and (e) any other remedy enabling the elimination of anticompetitive effects. In any case, the Authority is bound to give undertakings the opportunity to participate in the process of determining the appropriate remedies in a particular case.

## **5.6. Specific rules of the notification proceedings**

The Authority is empowered to open notification proceedings when dealing either with requests for individual exemption of agreements from the general prohibition or requests for authorization of concentrations of economic activity. The notification proceedings are initiated by the respective applicants who, in this way, fulfil their obligations to notify the Authority for its transactions that are subject to preliminary control by virtue of the Competition Act. The specific features of the notification proceedings determine the special framework under which they pass and the different procedural rights and obligations of the participants therein, compared to the infringement proceedings under the Act.

### ***5.6.1. Notification proceedings for exemption of agreements***

The Commission has exclusive competence to decide upon notifications of agreements for granting individual exemptions. The notification submitted to the Authority must contain detailed descriptions of the scope, content and object of the agreement, the relevant market and market shares of the participant therein, as well as the grounds for granting an individual exemption with respect to the agreement in question.

On the basis of an assessment of the legal requirements under art.5 of the Act, the individual exemption is given by a decision of the Competition Commission and enters into force on the date the notification has been completed. The exemption may be granted under the condition that certain obligations will be implemented by the parties to the agreement.

The exemption is limited in time but upon request it may be extended by the Commission, provided that the legal conditions of art. 5 of the Act are fulfilled by the parties. On the other hand, the Commission may retroactively revoke its decision on an individual exemption if some of the material facts have changed or the parties contravene an obligation associated with it, or the exemption is based on incorrect information or was obtained by means of deceit, or the parties abuse the granted exemption.

In cases of a refusal to grant individual exemptions, the Commission is banned from imposing sanctions related to the associated infringement prior to the issue of a final court judgement on the Commission's decision to refuse the exemption.

### ***5.6.2. Notification proceedings for authorization of concentrations***

After receiving a notification in compliance with the Authority's Guidelines on the notification in merger cases, the Authority confirms in writing to the notifying undertakings upon receipt of the notification and the institution of proceedings on it. The notification of a concentration is also published in the Authority's Official Bulletin but the lack of publication does not prevent the beginning the notification proceedings and the time limits associated with it. The publication states names, residency, economic activity of the undertakings concerned, as well as the nature of the concentration, and the deadline for the stakeholders to submit in writing their observations regarding the notified transaction.

#### *a) Preliminary assessment*

The concentration case firstly goes through a preliminary assessment (first phase), under which the possible existence of any indicators of significant impediment of competition are looked for. The burden of proof that the concentration complies with the appraisal test rests with the notifying party. If the concentration does not show any such indications, the Commission authorizes the concentration within two months from the date of the notification. Otherwise, the Commission may authorize the concentration upon conditions or it may open an in-depth assessment. Provided that during the first phase, within one month as of the date of notification, the participating undertakings propose commitments of taking measures for eliminating the restrictions of competition, the Commission will have two weeks to decide whether to open an in-depth investigation or to authorize the concentration based upon the proposed commitments. If the Commission's decision has not been communicated to the parties within the deadline set, the concentration is deemed cleared and may be put into effect by the parties.

#### *b) In-depth assessment*

Within three months of the date of initiation of in-depth assessment (second phase), the Commission should decide whether to prohibit the concentration. Provided that during the second phase and, within two months from the date of initiation of the in-depth assessment, the participating undertakings propose commitments of taking measures for eliminating the significant restriction of competition, the Commission will have two months to decide whether to prohibit the concentration or to authorize it upon the proposed commitments. If the Commission's decision has not been communicated within the deadlines set, the concentration is deemed cleared and may be put into effect, unless the deadline has been extended by the Commission by request or with consent of the notifying party. The specified deadlines can be suspended by a Commission's decision if the in-depth assessment has been obstructed by the undertakings participating in the concentration.

Prior to taking a decision after the in-depth assessment of the concentration, the Commission gives the notifying parties, as well as interested third parties related to the notified concentration, the possibility to be heard before the decision-making body.

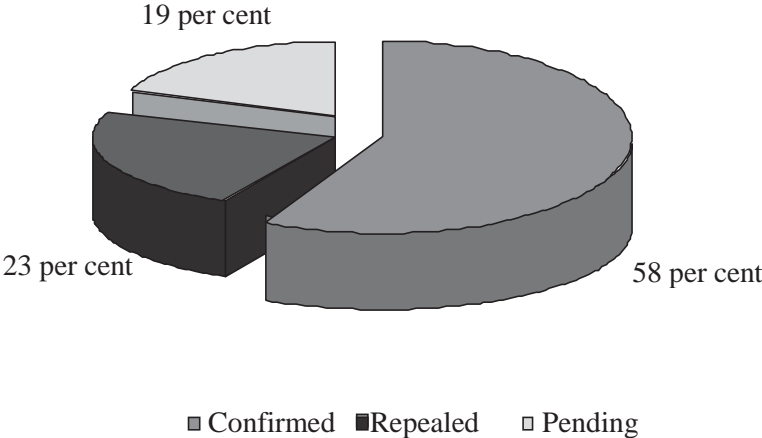
**5.7. Judicial review of the Authority’s decisions**

According to the Competition act, the Authority’s decisions are open to appeal before the District court in Tirana, which reviews both the establishment of the facts and the application of the law. An appeal can be lodged within 30 days from the date of the notification of the Authority’s decision. The appeal does not have a suspension effect but the Court may decide for a suspension of the Authority’s decision. The District court has the power to revoke, confirm or alter the decision of the Authority.

The judgements of the District Court are subject to appeal before the Court of Appeals in Tirana, whose judgements are subject to final review rendered by the Supreme Court of Albania.

Figure 6

**Judicial review of Albanian Competition Authority decisions before the District Court, 2005–2012**

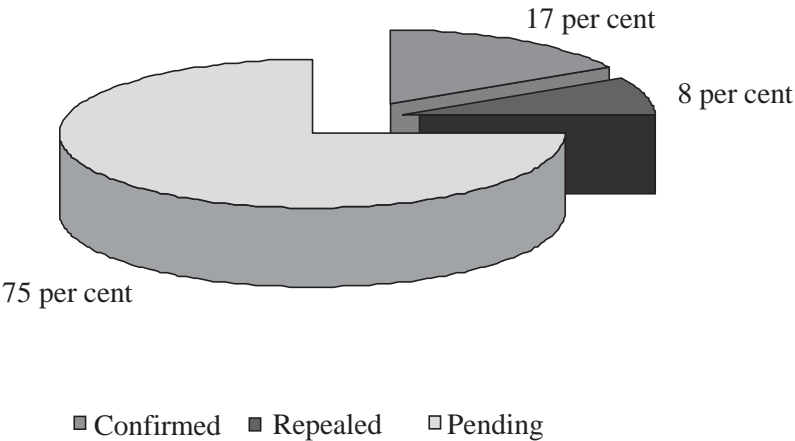


Currently in Albania, a reform in the field of administrative justice has been carried out and affects public competition law enforcement in the country. The reform aims at achieving a higher degree of specialization of judges who administer justice in the field of administrative law. As a result of the reform the review court, which exercises control on the legality of Authority decisions, has been changed – the District court has been replaced by the

newly established Administrative Court in Tirana, which is tasked to review any decision of the Authority adopted after November 2013. In total six administrative courts have been established in different regions of Albania and they are empowered to act as the first-instance courts for all administrative cases instituted against any acts of regulatory administration, including appeals of both decisions of State administrative bodies and implementing orders.

The judgements of the Administrative Courts are subject to further judicial review by the Administrative Court of Appeal, established in Tirana. This Court will act as an appellate court to all regional administrative courts. Its judgements and rulings may be appealed before the Supreme Court of Albania, in which a special administrative chamber functions as the final body on administrative cases.

Figure 7  
**Judicial review of Albanian Competition Authority decisions before Supreme Court of Albania, 2005–2012**



By virtue of an interpretative decision issued by the Supreme Court of Albania on 6 December 2013, which has a binding effect on the judiciary, all courts that hear administrative cases in the country are obliged to transfer all their pending cases to the relevant administrative court. This transfer will not happen automatically but as a result of explicit rulings of reference issued by each of the judicial chambers that deal with the respective administrative cases. Therefore, the expectations are for a gradual transfer of about 1,600 administrative cases by the end of 2014. In this context, all competition cases pending before the District Court are expected to be transferred to the Administrative court in Tirana.

Following judicial reform, the Authority’s decisions are to be subject to appeal before the newly created Administrative Court in Tirana, which will administer justice in chambers

consisting of only one judge. The implementing orders as to the Authority's decisions will be also open to appeal before this court. This Court will have jurisdiction to issue authorizations for on-site inspections of non-business premises conducted by the Authority. The judges of the Administrative court in Tirana will have a higher degree of specialization in the field of administrative justice but they will not be specifically specialized in the area of competition law.

In the proceedings before the Administrative Court, the burden of proof lies with the State authority whose decision is under judicial review. The Court acts on the substance of the case, reviewing both the establishment of facts and the application of the law. The Administrative court administers justice only on the basis of the law, but in the event that the Authority has applied some acts of secondary legislation (for example the methodology of market definition, the methodology for setting sanctions, etc.), the court will also apply them inasmuch they do not contravene the law. However, incidental judicial control is also possible with respect to the issued Authority acts of secondary legislation, which have rather normative character in the field of the public competition enforcement.

#### **5.8. Civil proceedings on private competition enforcement**

In addition to the public enforcement of competition rules, which is performed by the Authority, the Albanian Competition Act explicitly provides for the right of any natural or legal person to seek civil protection before the District Court of Tirana of its subjective rights affected by competition law infringements. Pursuant to the Act, each person impeded in its activity by a prohibited agreement between undertakings or by an abusive practice of a dominant company may challenge this action in court and request: (1) removal or prevention of the practices restricting competition that may be carried out or are carried out in contradiction of these articles; (2) reparation or compensation from damages caused by these practices, in accordance with the relevant provisions of the Civil Code.<sup>93</sup> Action may be undertaken despite the existence of proceedings before the Authority or prior decision thereof on the same subject matter.

Albanian competition law provides that the rules for exemption from the general prohibition of agreements between undertakings cannot be applied by the civil courts, as the competition authority has exclusive competence to grant exemptions. In this context, in a case when a civil court is approached by an action based on a subjective right resulting from an agreement between undertakings within the meaning of art. 4 of the Act, and a party to the court's proceedings invokes considerations regarding the conformity of the agreement with the conditions for exemption from the general prohibition, the civil court will have to suspend its proceedings and wait until the Authority takes its decision to grant an exemption for the agreement in question.

---

<sup>93</sup> Law No. 9121, art. 65.



According to the Act, the power to issue authorizations for concentrations between undertakings also belongs exclusively to the Authority and such a request falls outside the civil courts' jurisdiction.

The right of civil action is attributed to any person, natural or legal, regardless of its legal or factual position against the offender – supplier, competitor, purchaser, etc. Any person impeded in its activity can bring legal action and there are no limitations for the indirect purchasers under the Act. The actions are brought before the District Court of Tirana under the general framework provided for in the national Civil Code. According to the Civil Code, there is a general limitation period of three years on actions for damages arising from civil liability.

Within the court proceedings, the decision of the Authority constitutes material evidence regarding the fact of the committed infringement and can be disregarded by the court only if it is a forgery, is out of the scope of the law or not in the required form. Respectively, the court's ruling on a case that has preliminary importance to the antitrust proceedings before the Authority is binding upon the authority.

In order to ensure termination of illegal conduct, the District Court of Tirana may rule that a certain contract, being a prohibited agreement, is null and void in whole or in part, with a retroactive effect, or may require the defendant to conclude contracts on market terms with the impeded undertaking, under the conditions usually pertaining to the business concerned. The District Court of Tirana may also issue a judgement on provisional remedies in cases of urgency, due to the risk of serious and irreparable harm caused by a *prima facie* infringement.

In order to ensure full compensation of the injured party, the court may condemn the offender to provide reparations for damages caused by the infringement. Under the Albanian Civil Code any person who illegally and through his/her fault causes damage to another person or to his/her property, is obliged to compensate for the damages caused. In such a case the claimant bears the burden of proof regarding all the constituting elements of the offender's civil liability, namely: conduct, its illegality, damages caused and the causality between the illegal conduct and the damages. Pursuant to the Civil Code, the damages are illegal when they result immediately and directly from the violation of the interests and rights of the other person, which are protected by the law. As the fault in the civil liability is presumed, the offender in the court proceedings bears the burden of proof regarding his/her innocence.<sup>94</sup>

Despite the existing legal framework, there are no cases of private litigation in Albania so far. This situation could be explained mainly by the lack of public awareness of the possibility for civil protection against competition infringements, the lack of credibility of the judiciary, the length of civil court proceedings and the lack of procedural instruments for the private parties to easily obtain evidence for antitrust infringements. In this context, it is important to highlight the direct link between the effectiveness of public and private competition enforcement, as the latter depends largely on the ability of victims to use and refer to the Authority's final decisions establishing antitrust infringements. These decisions

---

<sup>94</sup> Arts. 608 and 609 of the Albanian Civil Code.

are to be regarded by the civil courts as evidence bearing material evidential value as to the fact of the offender's illegal conduct. As in most South-East European countries, the lack of a significant number of final judgements in the field of public enforcement of competition, in combination with the lack of procedural incentives for submission of direct actions before the civil courts, determines the inefficient functioning of private competition enforcement in Albania.

## **VI. Sanctioning policy**

The Albanian Competition Act provides for sanctions for both substantive competition law infringements and for the so-called procedural infringements. All sanctions under the Act are of an administrative nature and are imposed by the Authority's decisions in which it establishes the respective infringement and the infringer. The Authority's sanctioning policy has both punitive effects and deterrent effects.

### **6.1. Sanctions for substantive competition law infringements**

For the substantive infringement of competition (the so-called serious offenses under the Act), the Act provides for administrative fines that may be imposed on the undertakings or associations of undertakings that have committed the infringements, but also on individuals who have committed or contributed to these infringements.

#### ***(a) Sanctions on undertakings and associations of undertakings***

Based on art. 74 of the Act, the Commission may impose on undertakings or associations of undertakings sanctions not exceeding 10 per cent of their aggregate annual turnover in the previous financial year, when they have committed some serious infringement outlined in the Act, namely:

- ✓ Antitrust infringements in prohibited agreements between undertakings or abuse of a dominant position;
- ✓ Implementation of concentrations that result in competition restrictions, in contradiction with the obligation to notify or the obligation to suspend the concentration until it has been authorized;
- ✓ Failure to comply with: the Authority's decisions ordering an infringement to end, imposing structural or behavioural remedies; commitment decisions; decisions ordering interim measures; decisions granting individual exemptions; decisions granting conditional authorization of a concentration; or decisions prohibiting a concentration.

### ***(b) Sanctions on individuals***

An individual could be imposed a fine of not more than lek 5 million (about \$50,000) if he/she, intentionally or negligently, carries out or cooperates to carry out actions that have been qualified and sanctioned by the Authority as competition infringements.

The Competition act provides for five-year prescribed time limits for the imposition of a fine on an individual who has committed or has facilitated a substantive (so-called serious) infringement. However, in cases when a natural person has committed a procedural (so-called non-serious) infringement, the limitation period is three years from the time the offense has been committed.<sup>95</sup>

## **6.2. Sanctions for procedural competition law infringements**

### ***(a) Single procedural fines***

Single procedural fines up to 1 per cent of the infringer's aggregate annual turnover may be imposed by the Commission's decisions on an undertaking or an association of undertakings for a procedural (non-serious) infringement, in particular, by:

- ✓ Providing incorrect, incomplete or misleading information in response to a decision or request for information;
- ✓ Not providing the information within the deadline specified in the decision or the request for information;
- ✓ Providing incorrect, incomplete or misleading information or additional data in the notification of an agreement or a concentration;
- ✓ Providing the required books or other business records in incomplete form during an inspection in business premises or refusing to submit them;
- ✓ Providing inaccurate, incomplete or fraudulent answers or obstructing the inspections, or refusing to answer any questions on facts;
- ✓ Breaking a seal put by the officials during an on-the-spot inspections;
- ✓ Not notifying a concentration that is subject to the merger control.

### ***(b) Periodic penalty payments***

Periodic penalty payments are intended to compel offenders to fulfil particular obligations or to comply with the Authority's decisions ordering the termination of the violation or imposing measures to restore competition, or just facilitating the study in the administrative proceedings before the Authority. Therefore, periodic penalty payments of up

---

<sup>95</sup> Law No. 9121, art. 78.

to 5 per cent of the offender's daily turnover from the previous financial year shall be imposed on a daily basis until the termination of the unlawful behaviour. Specifically, the Authority may impose periodic penalty payments if it is necessary to induce the offenders to commit any of the following actions prescribed in art. 76 of the Act:

- ✓ To cease a substantive antitrust infringement in accordance with the decision by which it has been established;
- ✓ To comply with a decision ordering interim measures;
- ✓ To comply with a commitment made binding by a commitments decision;
- ✓ To supply complete and correct information in accordance with the decision or request for information;
- ✓ To submit to an on-the-spot inspections in business premises;
- ✓ To take the necessary measures for restoring the competition.

### **6.3. Sanction-setting method**

The method for setting sanctions is provided for in the Act but the Authority has also issued a special regulation on fines and leniency from fines where it has specified all of the criteria to be taken into consideration when determining the amount of sanctions.

Generally, in the calculation of the sanctions, the Authority follows the turnover-based approach, as the turnover is determined by the total value of sales of all the products directly or indirectly affected by the infringement, realized by the undertaking during the last financial year when the infringement occurred. The sales value is determined after deducting any taxes, duties and other tariffs directly related to the sales, as is foreseen in the applicable law. When setting the sanctions, the legal maximums of the percentage of the turnover to be taken into account depend on the type of the infringement committed – either substantive or procedural infringement. Whether to take the undertaking's annual or daily turnover depends on the type of sanction provided for in the law for the respective infringement – either a single sanction or a periodic penalty payment. In any case, when fixing the fine, regard shall be given both to the gravity and to the duration of the infringement as well as to the aggravating and mitigating circumstances on a case-by-case basis. Provided that it is possible to calculate or objectively estimate the illegal gains acquired by the infringers, such a gain constitutes the minimal amount of the sanction. Furthermore, in particular cases a symbolic fine may be imposed when it could provide adequate deterrent effect.

The Authority applies a two-step method on setting sanctions as, initially, a basic sanction is calculated for each of the undertakings or association of undertakings that have taken part in the established infringement and, subsequently, the basic amount may be increased by taking into account aggravating circumstances, or may be reduced by taking into account attenuating circumstances.

***(a) Calculation of a basic amount of the sanction***

The basic sanction is associated with a percentage of the value of sales, depending on the degree of gravity of the infringement, multiplied by the duration of the infringement.

*Gravity of the infringement*

The percentage of value of sales that shall be considered is up to 30 per cent of the total sales value, depending on a number of factors that determine the gravity of the infringement, such as the nature of the infringement, the share of the combined market all companies concerned, the geographical extent of the infringement and whether the anticompetitive practice was implemented. As a rule, horizontal agreements that concern price setting, market divisions and restrictions of production, which are secret by their very nature, are among the most harmful restrictions of competition. Therefore, the percentage of sales value to be considered for such violations will generally be in the upper level of the scale.

*Duration of the infringement*

Based on the duration of participation of each undertaking in the infringement, the value determined on the basis of sales is further multiplied by the number of years of participation in the infringement, given that periods of less than six months account for half a year, and periods longer than six months but shorter than a year account for a full year.

Regardless of the duration of participation of the undertaking in the infringement, the Authority shall include into the base value of the fine an amount from 15 per cent to 25 per cent of sales value in order to prevent the undertakings from entering into horizontal agreements or other types of serious infringements.

***(b) Adjustment of the basic amount of the sanction***

In calculating the fine, the Authority takes into consideration the circumstances that may lead to an increase (aggravating circumstances) or a decrease (attenuating circumstances) of the basis amount determined on the basis of the gravity and duration of the infringement.

*Aggravating circumstances*

The basic amount can be increased by up to 100 per cent when the Commission finds aggravating circumstances such as repeated infringement of the same type by the same undertaking (recidivism), refusal to cooperate with the Authority or attempts to obstruct the Authority's investigations or the role of leader in, or instigator of the infringement. In addition, the Commission may increase the amount of the fine imposed on the undertakings that have a large annual turnover as a result of the sale of products related to the infringement. An increase may be given in order to exceed the amount of gains improperly made as a result of the infringement when it is objectively possible to estimate that amount.

### *Attenuating circumstances*

The basic fine may be reduced provided that:

- a) The undertaking has ceased infringement as soon as the Authority has intervened, with the exception cartels;
- b) The infringement has been committed negligently;\*
- c) The involvement in the infringement has been very limited and there has not been any practical implementation of the illegal conduct;
- d) The undertaking has effectively cooperated with the Authority outside the Leniency Programme;
- e) The infringement has been authorized, motivated or supported by the public authorities or the legislation;
- f) The undertaking is not able to pay the sanction.

### *(c) Legal maximum of the sanction*

In any case, the amount of the fine for substantive competition infringement should not exceed 10 per cent of the annual turnover of the preceding financial year, realized by the undertaking or the association of undertakings. The legal maximum of the sanctions for procedural infringement is 1 per cent of the annual turnover of the respective undertaking or association of undertakings. As regards the periodic penalty payments, the Act prescribes for a legal maximum of 5 per cent of the average daily turnover in the business year, which is calculated from the date the infringement decision has been taken. Where a fine is imposed on an association of undertakings, its amount should not exceed the respective legal maximum of 10 per cent or of 1 per cent of the aggregate turnover from the preceding business year of each of the active member undertakings in the market affected by the infringement.

## **6.4. Leniency policy**

Since 2004 the Authority has adopted a leniency policy with a view to facilitating the detection of prohibited agreements between undertakings but it has not yet received a leniency application under this programme.

The leniency policy is based on the Competition Act, which prescribes that the Commission may grant total or partial immunity from fines to the undertaking which, together with others, engaged in a practice prohibited by the law, provided that it helps the Authority obtain evidence and identify the perpetrators based on information not previously available to the Authority.<sup>96</sup> The conditions for lenient treatment and the applicable procedure are further detailed in the Authority's special Regulation on Fines and Leniency.

The Albanian leniency programme is designed to be applied to undertakings engaged in restrictive agreements. Unlike most European Union Member States' leniency programmes, which apply only in cartel cases, it is not specified in the legal framework of

---

<sup>96</sup> Law No. 9121, art. 77.

Albania that the leniency policy covers just cartels, as the Act and the Regulation refer to the general notion of prohibited agreements between undertakings. In this context, it could be assumed that the leniency policy could be at least theoretically applicable to both horizontal and vertical agreements but still from the particular provisions on the conditions for leniency it becomes clear that cartels are undoubtedly the main target of this programme. Based on the leniency programme, undertakings can profit from two types lenient treatment – full immunity and partial leniency, depending on the order of the applications for leniency and the importance of the evidence submitted by the applicants. The undertakings under investigation are advised by the Authority on the opportunity they have to benefit from a leniency programme if they cooperate with the Authority with a view to establishing the infringement committed.

### *Immunity from fines*

Immunity from fines is granted only to the first to come to the Authority to reveal the prohibited agreement. The undertaking should come forward to assist the Authority in detecting the illegal conduct and identifying the respective infringers by providing evidence and information that have not been formerly in the possession of the Authority and enabling it to proceed with the launch of investigation proceedings or the establishment of an infringement, constituted in a prohibited agreement between undertakings. Full immunity can not be conceded if, at the time when the leniency application is submitted, the Authority has already launched an investigation, or has already had sufficient information with a view to launching such an investigation or to taking a decision on the case. In this context, the Authority does not accept leniency applications presented after the completion of the investigation report on the case.

The granting of immunity from fines is associated with specific obligations that must be duly implemented by the immunity applicant, namely:

- ✓ To describe the prohibited agreement by noting its purpose, scope, time frame and participants, the way of functioning, the products concerned and the markets impacted;
- ✓ To identify itself, as well as the names, addresses and offices of all participants to the agreement;
- ✓ To disclose the names, positions and addresses of the individuals who have been involved in the conduct;
- ✓ To indicate whether it has withdrawn from participation to agreement;
- ✓ To be available for answering any requests for information related to the conduct;
- ✓ To refrain from destruction, falsification or correction of the relevant information pertaining to the agreement.

If the immunity applicant has acted as a leader of the conduct, an initiator or instigator to the launch of the prohibited agreement or to its continuation, it is explicitly excluded from the possibility of immunity from fines.

The procedure for granting immunity starts upon written application by the undertaking interested in obtaining relief from sanctions. The Commission then issues advice on leniency to the undertakings indicating the conditions for its application. This advice is transmitted to the undertakings and remains confidential. The Commission determines the time frame within which the applicant must submit all the necessary information, in order to fulfil the criteria for immunity from fines. If the conditions specified in the advice on leniency have not been met, the applicant does not qualify for immunity from fines. The Authority notifies the undertaking on such defaults in writing by indicating that it may withdraw its application for immunity from fines or, instead, may transform it as a request for partial leniency from fines. The Authority does not take into consideration other requests for immunity from fines that concern a given infringement before making a decision on an ongoing application concerning the same infringement.

### *Partial leniency from fines*

The undertaking that notifies of participation in a prohibited agreement but does not meet the criteria for immunity from fines, may apply for a reduction of the fine. It must give the Authority information that provides additional value to the detection of the illegal conduct. The leniency regulation contains explicit definition on added value, which is the evidence that has not been previously available and that enables the Authority to prove the suspected infringement. Direct evidence is deemed to having a greater value than indirect evidence.

In the evaluation of leniency, the Authority takes into consideration the evidence provided and the time when the application for leniency was been submitted. Through its final decision on the case, the Commission determines the level of leniency for all applicants sequentially, as for the first undertaking the reduction is 30–50 per cent; for the second, 20–30 per cent; for any subsequent undertakings the reduction is 20 per cent. When determining the exact degree of the fine reduction in a particular case, the Authority takes into account the extent and continuity of the cooperation by the applicant as from the date of its submission. The leniency programme does not provide for extra credit, e.g. additional reductions of the fine (leniency plus), if an applicant provides information about another cartel in the same or another market.

The procedure for partial leniency from fines is to be instituted on the basis of a written application to the Authority, upon receipt of which the Authority issues a written confirmation as to the date on which the relevant evidence was received. The leniency programme does not provide for a marker system so that the leniency application is deemed to be submitted when all the available evidence with added value has been provided. After the evaluation of the evidence and their evidential value in the case, the Authority informs the



undertaking in writing, not later than the date on which the investigation report is sent to the undertaking, whether it qualifies for a reduction of the fine or not.

### **6.5. Execution of sanctions**

The sanctions imposed by the Authority's decisions become executable in accordance with the Civil Procedure Code after entry into force of the respective decision. In compliance with the Civil Procedure Code, the Authority submits all the required documentation to facilitate the execution of its enforceable decisions to the Judicial Enforcement Service, which is tasked to act on the basis of "execution orders" issued by the District Court of Tirana. The Authority has no obligation to pay enforcement fees to the Judicial Enforcement Service.

In practice, the enforcement of fines imposed by the Authority has not shown to be effective. On one hand, most of the fines imposed by the Authority do not appear to have been collected, as many court appeal decisions are still pending. On the other hand, the statistics demonstrate that the total amount of the fines collected by the Judicial Enforcement Service represent not more than 25 per cent of the enforceable sanctions, and there is a significant percentage (74 per cent) of the fines for which no execution court orders have yet been issued.<sup>97</sup> Overcoming this problem has been recognized as one of the main challenges facing the Authority.

## **VII. Sector-related competition policy**

The Authority has implemented competition policy in some of the main sectors of the economy by addressing, by means of its competition enforcement powers or advocacy interventions, different competition-related concerns in these sectors. On one hand, the Authority has been called upon to ensure that the competition rules are fully respected by all the economic operators regardless of their ownership, State-owned or private, in order to prevent or terminate any forms of market behaviour that lead to distortions or restitutions of competition in the relevant sectors. On the other hand, by maintaining active cooperation with the policymakers and sector regulators, the Authority ensures that implementation of the most important transitional processes related to reformation and modernization of the sectors is conducted in accordance with the principles laid down in the competition policy. Since the beginning of the Authority's operations, special attention has always been given to the compliance of those State measures that might affect competition.<sup>98</sup> In this regard, the Authority has adopted guidelines on competition impact assessment, which set the criteria to

---

<sup>97</sup> Albanian Competition Authority Annual Report for 2012 and Main Goals for 2013.

<sup>98</sup> Albanian Competition Authority decisions Nos. 28 and 29 of 23 December 2005; Albanian Competition Authority decision No. 49 of 21 March 2007; Albanian Competition Authority decision No. 72 of 19 February 2008; Albanian Competition Authority decision No. 99 of 30 December 2008.

be taken into account by administrative bodies with a view to avoiding anticompetitive measures.

### **7.1. Energy sector**

The energy market in Albania consists mainly of the electricity market, as there is no centralized heating market in the country, and the gas supply market is in a very early stage of development. Currently, national policymakers and the National Energy Sector Regulator are revising the energy sector strategy in accordance with the recommendations of the European Commission, as expressed in its progress reports on Albania.

As in all the neighbouring Balkan countries, except Bulgaria, there is a shortage of electricity generation in Albania, so that the country imports electricity. Electricity is generated only by hydropower plants in Albania, so that Albania remains overdependent on hydropower and vulnerable to hydrological conditions. In recent years Albania's electricity generation capacity has improved with the exploitation of a new Ashta hydroelectric plant, which has been operational since September 2012.<sup>99</sup> Moreover, after authorization by the Authority, some of the major hydropower plants, Ulez, Shkopet, Bistrica 1 and Bistrica 2, were privatized in April 2013 from the State-owned power utility, KESH, to the Turkish company, Kurum International.<sup>100</sup> These transactions are expected to lead to certain improvements in electricity generation facilities.

Although there is a legal opportunity for the establishment of solar power generators and wind energy generators, in Albania there is still no real investment interest in renewable energy sources. There is a relatively new law on renewable energy but some additional amendments are currently under preparation, which aim at further alignment with European Union energy law and are deemed to facilitate greater penetration of these sources in the energy market in Albania. In this respect a national renewable energy action plan is also under preparation.

As regards the market level of electricity transmission in Albania, there is only one power grid operator that acts as a wholesaler of electricity: the State-owned company KESH. It is still a vertically integrated undertaking that operates both on wholesale and generation levels. The lack of unbundling of the two types of operations determines some of the major competition concerns in this market, as well as the low financial liquidity of the whole sector, which has caused significant difficulties at the distribution level. The legal dispute between the distribution company CEZ Shperndarje and KESH was taken into account by the National Energy Sector Regulator and in January 2013, it withdrew the distributor's licence and put the company under public administration. In turn, the company CEZ started arbitration

---

<sup>99</sup> European Commission, 2013, *Albania 2013 Progress Report, Enlargement Strategy and Main Challenges 2013–2014*, Brussels.

<sup>100</sup> European Bank for Reconstruction and Development, 2013, *Transition Report 2013, Country Assessments – Albania*.

proceedings against Albania in May 2013, and some other strategic investors, such as EVN, have terminated their projects in the country. This unfavourable coincidence is perceived as damaging to investor confidence and the investment climate in the Albanian energy market.

The National Energy Sector Regulator exercises ex ante control over the operations on the electricity market, including the pricing of electricity supply both at the wholesale and retail levels. It is legally obliged to cooperate with the Authority on the basis of the Energy Act, with a view to establishing more competition in the relevant electricity markets in Albania. Cooperation between the Authority and the National Energy Sector Regulator represents a responsibility of both institutions in accordance with the recommendations of the European Commission. Additionally, the Authority and the energy regulator have concluded a memorandum of understanding that allows them to discuss any regulatory measure prior to it being undertaken.

In this context, the Authority has issued several competition advocacy recommendations to the National Energy Sector Regulator with a view to increasing competition in the electricity market.<sup>101</sup> In the opinion of the Authority, a well-functioning electricity market and maintenance of a secure electricity supply at competitive prices are key factors for ensuring economic growth and increasing consumer welfare. The traditional structure of the national electricity market is characterized by the existence of a single vertically integrated business unit acting as a natural monopoly. Competition is created by unbundling that structure into its components, while identifying those elements that can be actively involved in competition and those activities that should be maintained under regulation. Although visible progress has been made in this respect, a priority for Authority activity remains taking further measures for the liberalization of this market. This has been embodied in a series of decisions that aim at promoting competition and the support for the National Energy Sector Regulator. In such a context, the Authority has made the following recommendations to the Ministry of Economy, Trade and Energy and the National Energy Sector Regulator:

- (a) To ensure functional and financial segregation of the Public Wholesale Supplier from KESH, which would establish the conditions for competition at this market level for all interested parties and would enable competitive transactions;
- (b) To ensure real financial segregation of the distribution system operator and the public retail supplier so that they operate as financially separate entities within those market segments have been liberalized, which would lead to increased competition;
- (c) To expedite the tariff-customer agreement revision process, setting obligations for the public retail supplier in order to protect consumers through the observance of service quality indicators (supply vs. interruption of electricity and accurate billing).

---

<sup>101</sup> Albanian Competition Authority decision No. 159 of 19 November 2010.

In recent years, the Authority has made special efforts on the issue of competition liberalization in the energy and gas sectors. Several meetings at the decision-making level have been organized between the members of the Authority and the National Energy Sector Regulator. The Authority has publically emphasized the importance of close cooperation between the two entities for the well-functioning of the markets.<sup>102</sup> This effective cooperation includes preliminary discussions of the legal acts and regulations that have to be prepared in the field of energy and gas, as well as implementation of the Authority recommendations in this field that reflect the opinions of various stakeholders in these markets.<sup>103</sup>

## **7.2. Telecommunications sector**

Albania transposed the European Union's 2003 regulatory framework by amending the Law on Electronic Communications in 2008. By virtue of this law, in 2000 the Electronic and Postal Communications Authority was established as an independent sector regulator in the field of electronic communications and postal services in Albania.<sup>104</sup>

In the market for fixed voice telephone service there is only one operator, the incumbent Albtelecom, which has significant market power and is thus subject to ex ante regulation. Albtelecom remains the dominant fixed-telephony player and still has 94 per cent market share by fixed voice telephony minutes. However, it holds only 60 per cent market share by retail revenues. Progress has been made with implementing competitive safeguards since fixed number portability was introduced in September 2012.<sup>105</sup> Fixed telephony has a very low penetration rate (11 per cent), which has encouraged consumers to use mobile telephony, and now Albania has a high mobile penetration rate (165 per cent). In the market of mobile telephony, Vodafone holds the biggest market share (35 per cent of subscriptions); the second is AMC (33 per cent) but the third market entrant, Eagle, has also gained significant market share (24 per cent). Mobile number portability as a competitive safeguard was introduced in May 2011.<sup>106</sup> In the postal market in Albania, there is a single operator, Albanian Post, and it is still State-owned, holding a 100 per cent market share in the provision of universal postal services.

The Electronic and Postal Communications Authority and the Albanian Competition Authority have closely cooperated since their establishment and have signed an memorandum of understanding. The main areas in which the two institutions cooperate are the market

---

<sup>102</sup> Albanian Competition Authority, 2014, Meeting of the Competition Commission and the Board of the National Energy Sector Regulator on liberalizing competition in the energy and gas sector, 30 September.

<sup>103</sup> Albanian Competition Authority Annual Report for 2013.

<sup>104</sup> Law No. 9918 of 19 May 2008 and Law No. 10132 of 11 May 2009.

<sup>105</sup> European Commission, 2013, *Albania 2013 Progress Report, Enlargement Strategy and Main Challenges 2013-2014*, Brussels.

<sup>106</sup> CULLEN International, Supply of Services in Monitoring Regulatory and Market Developments for Electronic Communications and Information Society Services 2011–2013: Enlargement Countries Monitoring Report 3, April 2013

analyses of the telecommunications sectors that are subject to deregulation – in some of these markets undertakings with significant market power operate and, consequently, their market behaviour is subject to ex ante regulation exercised by the Telecommunications Sector Regulator. When defining the relevant markets and identifying the undertakings holding significant market power, the Telecommunications Sector Regulator consults with the Authority. Very often, however, the views and recommendations of the Authority are of a general and abstract nature, so that it seems recommendable for the Authority to give more specific advice in order to be more useful to the sector regulator.

In its recent practice, the Authority has conducted a sector inquiry into the landline telephony market and initiated investigation proceedings on the mobile telephony retail market.<sup>107</sup>

In its sector inquiry, the Authority analysed the market structure and the degree of competition of prepaid telephony card services in Albania. It established that in this segment, several service providers operate and there are adequate conditions for effective competition. The Authority noted that there is a sufficient degree of price competition since the sale prices of the main market player, Altelecom's Alblue Cards, had reflected the costs of providing the service. Since there were no indications established for anticompetitive conduct by the market operators, the Authority ended its sector analysis without initiating infringement proceedings. However, the Authority recommended that the Electronic and Postal Communications Authority should oblige the incumbent operator to financially administer its costs and revenues on the provision of the prepaid card service in separate financial accounts to ensure higher transparency and prevent anticompetitive pricing of the service.

The Authority has also initiated investigation proceedings into the mobile telephony retail market following two complaints submitted to the Authority.<sup>108</sup> As a result of the preliminary investigation, an in-depth investigation was initiated against Vodafone JSC with a view to establishing an abuse of its market position.

As a result of the study within the investigation proceedings, the Authority concluded that Vodafone is the largest mobile operator both in terms of revenue derived and the number of active SIM cards. On the basis of its analysis, the Authority estimated that Vodafone had held a dominant position in the mobile telephony retail market during 2011–2012. In this context, the Authority investigated whether the dominant firm had abused its position mainly in its behaviour towards competitors by the price conditions, offers, bonuses and tariff plans it had applied at the retail level to attract new customers through number portability. The Authority's analysis showed that the market strategy of this operator causes certain competition concerns in the relevant market and thus has a negative impact on long-term market competitiveness of smaller competitors by applying different prices for call generation and termination within and outside its mobile network (on-net versus off-net calls). The

---

<sup>107</sup> Albanian Competition Authority decision No. 231 of 5 July 2012.

<sup>108</sup> Albanian Competition Authority decision No. 258 of 21 December 2012.

analysis of similar cases has shown that such price discrimination can be used as a mechanism for market foreclosure and pushing smaller operators to exit the market.

In its decision on this particular case, however, the Authority concluded that Vodafone's behaviour did not constitute an abuse of a dominant position and for this reason the investigation was closed without establishing any competition infringement by the dominant mobile operator. The Authority based its conclusions on the fact that Vodafone publicly committed itself to equalizing the price rates for calls within and outside its network. In addition, the Authority decided to address certain recommendations to the Electronic and Postal Communications Authority with a view to taking immediate regulatory measures aimed at preventing market exits by smaller operators, in particular:

(a) To modify the existing pricing model by significantly reducing the cost of call termination for smaller to larger operators, so promoting fair and effective competition in the relevant market;

(b) To force reductions of the tariff differences for off-net/on-net calls and calls outside packages, specifically for the operator that has a dominant position;

(c) To conduct market analysis on retail mobile telephony and find solutions to the existing competition concerns in this market by applying concrete regulatory measures for reducing tariffs difference for calls within and outside Vodafone's network and for monitoring the implementation of Vodafone's public engagement to correct its market behaviour.<sup>109</sup>

### **7.3. Banking sector**

The Authority and the Central Bank of Albania have cooperated within a memorandum of understanding signed in 2006. An example is the recommendations made by the Authority of the need for increased transparency in bank loans market to achieve greater consumer protection. Most of the recommendations were taken into account by the Central Bank, and banks are now required to notify their customers of any change in bank loan agreements; they are prohibited from unilaterally changing loan contracts, including with respect to the applicable interest rates, fees and commissions on the loans.

In Albania there are 16 licensed commercial banks, the largest of which, Raiffeisenbank, holds a market share of about 30 per cent. All commercial banks are members of the Association of Commercial Banks in Albania, although this is not a legal requirement. The Central Bank and the Association cooperate, as the former often requires an advisory opinion from the Association before adopting any regulation in the banking sector. According to the Central Bank, the Association of Commercial Banks can not influence the commercial conduct of its members. The Association collects and publishes on its website information

---

<sup>109</sup> Albanian Competition Authority decision No. 303 of 16 January 2014.

about the state of play in the banking sector, which is used by both the central bank and the whole society.

The Authority has conducted a sector inquiry into the banking market to assess commercial banks' behaviour with regard to their transparency and level of bank service fees, in comparison with the banking service of homogenous banks in the region. Monitoring for the period 2009–2010 has been initiated following a general expression of concerns by businesses and individuals in Albania with regard to increased banking service commissions and a lack of transparency on behalf of banks.<sup>110</sup>

As a result of its study, the Authority concluded that the lack of transparency is reflective of the lack of elasticity of demand for bank services, which makes it difficult to assess the degree of effective competition among market operators. Commercial banks generally have applied different fees for the same services and, for some of their services, they have applied commissions in euros rather than in the local currency, thus exposing consumers to currency exchange risk. The assessment of transparency indicators has showed that not all commercial banks have a website and, therefore, they have not published their terms and conditions in Albanian, despite an obligation to inform their customers in the official language of Albania. Moreover, the Authority has established that in some instances the banks have not informed customers of changes to their terms and conditions with regard to banking services, especially when increasing their account or bank card commissions. The comparison with service fees of banks in the region belonging to the same bank groups shows that banks operating in Albania have applied higher bank service fees (e.g. fees for closing current accounts, account maintenance, plastic cards) than their sister banks in the region, making it more difficult for customers to avail of such services and change banks.

In this context, the Authority has decided to address several recommendations to both the Central Bank of Albania and the Consumer Protection Commission, as the Authority's principle position on this matter is that increased transparency would give customers more choice and, thus, enhance competition among banks. Therefore, the Central Bank of Albania has been approached with the recommendation to take measures to strengthen the implementation of laws and regulations on commercial bank transparency, especially where banks unilaterally increase their customer service fees and do not inform their customers; and to increase commercial bank transparency on bank and financial products and services by imposing an obligation to post and update information on their terms and conditions on their websites. On the other hand, the Consumer Protection Commission has been recommended to take the legal initiative for establishing a special public institution (ombudsman) for the protection of consumers against potential abuse by commercial banks.

Furthermore, after some concerns expressed by customers of bank services, the Authority has recently conducted market monitoring on the relations between banks and insurance companies to assess their behaviour with regard to arrangements for life and

---

<sup>110</sup> Albanian Competition Authority decision No. 174 of 25 January 2011.

collateral insurance of borrowers.<sup>111</sup> The analysis focused on the concern that the banks restrict borrowers' choices in selecting insurance companies for their collateral or life insurance, and that they are not transparent when giving information to borrowers about the insurance conditions of the bank loans, which, according to the Authority, ultimately would affect competition on the market.

As a result of the monitoring conducted in 2013, the Authority found that all Albanian banks explicitly stipulate in the loan agreements that borrowers have to take out collateral and life insurance for the entire loan repayment period. Borrowers are under the obligation to keep the same insurance company throughout the whole loan repayment period and must obtain the bank's consent as to the insurance company to be selected by the borrower. In this context, the Authority found that competition between insurance companies is in practice eliminated after the loan agreement has been signed. The Authority also found double standards and a lack of transparency, since some banks took a more restrictive approach to individual borrowers in terms of selecting the insurance company, compared with business entities. It has been established that in the agreements between insurance companies and banks, the latter are treated as agents (insurance brokers) that receive service fees from insurance companies. Therefore, the banks are inclined to channel their customers towards those insurance companies that pay the highest fees.

On the basis of those findings, the Authority made several recommendations to the Financial Supervisory Authority and the Central Bank of Albania to increase transparency and eliminate competition concerns:

(a) After being authorized by the Bank of Albania, the commercial banks should apply to the Financial Supervisory Authority for a licence to operate as intermediaries in insurance markets (brokerage) for their own borrowing clients;

(b) Commercial banks should be obliged to increase their transparency in terms of their intermediation for insurance services by clearly stating the conditions and premiums offered by the potential insurers for the type of insurance required, and ensure that information is advertised clearly and coherently;

(c) Commercial banks should not specify in the loan agreement the insurance company with which the customer is to be insured and should allow borrowers to select the insurance providers.

#### **7.4. Insurance sector**

The Financial Supervisory Agency, which is sector regulator for the insurance market, and the Authority cooperate actively, as a memorandum of understanding was signed between them in 2006. Cooperation between the two institutions is conducted both in relation to case

---

<sup>111</sup> Albanian Competition Authority Annual Report for 2013.



studies and in preparation of legislation. The two institutions have collaborated in solving the case on compulsory civil liability insurance of motorists, as well as in the case of bank insurance. Also, the Authority has consulted the sector regulator on the adoption of national rules for a block exemption of certain categories of agreements between undertakings in the insurance sector. There is no case in which the Authority has adopted a decision affecting the financial markets, and in particular the insurance market, without having solicited the sector regulator. In turn, the sector regulator has published, for public consultation, a draft of a new insurance law and related regulations in this sector. The usual forms of cooperation that have been applied so far are exchanging letters and opinions, as well as informal meetings between the members of the decision-making bodies of both institutions.

There are 11 insurers operating in the Albanian insurance market, 9 of which are licensed only for property insurance, and 2 operate on both property insurance and life insurance markets. The biggest player in the property insurance market holds a market share of 30 per cent on the segment of insurance against civil liability of motorists. Some of the main features of the insurance market are related to high capital requirements for the insurance companies, which are a kind of administrative barrier to market entry, and pricing of some of the insurance products, e.g. of civil liability insurance by setting a minimum amount for the risk premium, which may restrict competition between the insurers.

In its enforcement practice, the Authority has conducted investigations on the market of civil liability insurance of motorists. On the basis of publicly announced information, in February 2012 the Authority initiated infringement proceedings against eight insurers that had simultaneously increased premiums for civil liability insurance of motorists on 1 February 2012.<sup>112</sup> In the course of the investigation, parallel unannounced on-the-spot inspections were conducted and one of the companies under inspection obstructed the Authority's inspectors in entering their business premises. On that occasion the Authority cooperated with the police and subsequently adopted a decision by which it imposed a fine of lek 664,000 (about \$6,500) on the insurers for obstructing the on-the-spot inspection.<sup>113</sup> On the basis of the evidence gathered, the Authority decided during the investigation that the insurers had participated in collusive conduct with aim of restricting competition by fixing the insurance premium of civil liability insurance for motorists. For this infringement, the Authority imposed sanctions of nearly lek 90 million (about \$900,000) on the eight insurance undertakings that had participated in the infringement.<sup>114</sup>

In addition, the Authority have made several recommendations to the Financial Supervisory Agency:

(a) To amend the legal framework of the civil liability insurance of motorists<sup>115</sup> with a view to reducing the minimum period allowed for changing insurance premiums;

---

<sup>112</sup> Albanian Competition Authority decision No. 222 of 11 April 2012.

<sup>113</sup> Albanian Competition Authority decision No. 216 of 1 March 2012.

<sup>114</sup> Albanian Competition Authority decision No. 246 of 9 October 2012.

<sup>115</sup> Regulation No. 110 of 28 July 2011.

(b) To implement the bonus-malus system, providing opportunities of diversifying and applying differentiated premiums to individual insurance policies that are expected to enhance the competition among the insurers;

(c) To avoid joint work among insurers' actuaries in calculating risk premiums that should be carried out by the sector regulator on the basis of data submitted independently by the insurance companies.<sup>116</sup>

In fact, the insurance market has been under constant oversight by the Authority due to competition concerns resulting from undertakings' behaviour in the market and/or Financial Supervisory Authority regulatory decisions.<sup>117</sup> The Albanian Competition Authority has continuously made efforts to eliminate existing competition concerns, especially concerning compulsory motor vehicle insurance,<sup>118</sup> both by giving recommendations to the sector regulator<sup>119</sup> and by initiating infringement proceedings against market operators.<sup>120</sup>

## **7.5. Public procurement and concessions**

In the field of public procurement, the Authority closely collaborates with the Public Procurement Agency, which is the administrative body that gives methodological guidance on the conduct of contracting authorities in public procurement processes and maintains an electronic register of contracts and a list of experts who are able to assist contracting authorities in these procedures. Separately, there is a procurement commission, which is an independent State authority, consisting of five members appointed by the Council of Ministers. This commission hears appeals against the decisions of contracting authorities and resolves all legal disputes on the legality of acts, actions and omissions of the contracting entities under the national Law on Public Procurement.<sup>121</sup> Its decisions may be appealed before the Administrative Court of Appeals in Tirana.

The main area of cooperation between the Authority and the Public Procurement Agency relates to the prevention and detection of bid-rigging behaviour in public procurement procedures. In this regard, the Authority has issued guidelines on countering bid rigging in public procurement, based on the relevant OECD guidelines. In addition, it has made several advocacy recommendations in order to amend the applicable laws on public procurement in Albania in a way that would ensure a more effective fight against this form of collusive conduct.

In its practice on competition advocacy, the Authority has noted that bid rigging occurs when economic operators that are expected to compete among themselves instead

---

<sup>116</sup> Albanian Competition Authority decision No. 247 of 10 September 2012.

<sup>117</sup> Albanian Competition Authority decision No. 269 of 18 February 2013.

<sup>118</sup> Albanian Competition Authority Annual Report for 2013

<sup>119</sup> Albanian Competition Authority decision No. of 31 March 2014.

<sup>120</sup> Albanian Competition Authority decision No. 297 of 18 November 2013.

<sup>121</sup> Law No. 9643 of 20 November 2006.

secretly agree to increase prices or reduce the quality of their goods or services. Such secret agreements cause adverse consequences for buyers and taxpayers, reduce public confidence in the competitive bidding process and reduce the benefits of a competitive market. Bid rigging is a prohibited practice and is investigated and penalized under the Competition Act.

In this context, the Authority made recommendations to the Public Procurement Agency, the Council of Ministers and the Parliament of Albania to amend the Law on Public Procurement to introduce bans from public procurement bidding, of between one and three years, for any economic operator found by the Authority to have been involved in bid rigging or collusion. In addition, the Authority proposed that the legal framework on public procurement should provide for an obligation of the contracting authorities to inform the Authority if they have identified indications of prohibited agreements during the procurement procedures, as outlined by the Authority's guidelines. The Authority also recommended that the Public Procurement Agency include a certificate of independent bid determination in the standard tender documents and that both institutions maintain close cooperation, including the preparation of joint instructions on combating bid rigging, a guide on detecting and reducing bid rigging and a brochure on bid-rigging signals.<sup>122</sup>

As a result of the Authority's advocacy, the Public Procurement Act was amended<sup>123</sup> in December 2012, and a blacklist introduced to include all undertakings prohibited, for up to three years, in procedures to award of public contracts based on previous participation in collusion in public procurement procedures. Other legal grounds for inclusion in lists specified in the Act include the failure to execute or incomplete execution of a public procurement contract. When deciding to include an undertaking on the blacklist, the Public Procurement Agency acts as a quasi-judicial body, whose decisions are open to repeal before the Administrative Court in Tirana, although they are preliminarily enforceable. Currently the black list includes 17 companies.

In its continuous efforts to increase its effectiveness in fighting bid rigging, the Authority further recommended that the Public Procurement Act include an explicit legal definition of bid rigging in public procurement and that the contracting authorities should be obliged to exclude subcontracting among bidders participating in the same procurement procedure, as this behaviour conflicts with the principle of independent bidding.<sup>124</sup>

Furthermore, the Authority dealt with several cases on bid rigging, including imposing interim measures and sanctions on bidders.<sup>125</sup> In the course of its investigation into the personal and physical security market in 2012, the Authority adopted a decision instructing the undertakings (Eurogjici Security Sh.p.k, Eurogjici Security 1 Sh.p.k, Toni Security Sh.p.k, Sajmiri AL Sh.p.k, Nazeri 2000 Sh.p.k and Dea Security Sh.p.k.) to end any collusion in public procurement procedures in the private security market and to submit independent bids

---

<sup>122</sup> Albanian Competition Authority decision No. 158 of 12 November 2010.

<sup>123</sup> Law No. 9643, art. 13, para. 3.

<sup>124</sup> Albanian Competition Authority decision No. 243 of 11 September 2012.

<sup>125</sup> Albanian Competition Authority decision No. 219 of 16 March 2012.

under public procurement tenders.<sup>126</sup> Based on the findings of this case and after conducting a hearing, the Authority established the bid-rigging behaviour of the undertakings and imposed sanctions of lek 2.5 million (about \$65,000).<sup>127</sup>

Apart from the Authority's visible actions in the field of public procurement and bid rigging, during 2014 it conducted several evaluations on concession agreements, such as the certification services of technical tests of vehicles, national lottery, fiscal stamps, the concession of the port of Durrës and the like.<sup>128</sup> In these areas, the State has granted exclusive rights to certain companies by means of concessions or contracts for public-private partnership. As an independent State body, the Authority is empowered to assess the effects of certain concessions on competition and to give recommendations to highlight some problematic public contracts.

As regards the public service for technical inspection of vehicles, the Authority recommended<sup>129</sup> that the Ministry of Transportation and Infrastructure should require the provider Société Générale de Surveillance SA to create more consumer choice for the mandatory annual technical inspection of vehicles in Tirana. In the long-term, the Authority suggested that the Ministry should consider providing technical inspection of vehicles by several operators after obtaining the Authority's opinion on the matter and conducting market research on the function of relevant market, in full compliance with European Union rules and principles on awarding concessions.

With regard to the concession of the design, production, distribution and monitoring of fiscal stamps, and following the increase of business costs for fiscal stamps, the Authority recommended that the Ministry of Finance and Ministry of Economic Development, Trade and Enterprise conduct economic and technical evaluations on the applicability of the terms of the concession contract and economic analysis to justify the concession.<sup>130</sup>

## **7.6. Transport sector**

As a result of the delay in its development from the time of communism, the Albanian transport sector is still underdeveloped in comparison with other European countries, although significant improvements have been observed in the last decade.

In the road transport sector, Albania has made efforts in the construction of new roads and the introduction of modern traffic signs, although some roads in the country continue to deteriorate due to a lack of adequate maintenance. All roads are State-owned and are managed by the General Roads Directorate, which has been recently transformed into an autonomous agency, the Albanian Road Authority, which is tasked with, inter alia, overseeing the contract

---

<sup>126</sup> Albanian Competition Authority decision No. 220 of 16 March 2012.

<sup>127</sup> Albanian Competition Authority decision No. of 26 July 2012.

<sup>128</sup> Albanian Competition Authority decision No. 319 of 13 June 2014.

<sup>129</sup> Albanian Competition Authority decision No. 312 of 18 April 2014.

<sup>130</sup> Albanian Competition Authority decision No. 337 of 11 November 2014.

of road maintenance works to the private sector.<sup>131</sup> Albanian railways are also underdeveloped, as the first railroad was built in 1947 between the seaport of Durres and the capital city of Tirana and Elbasan. The Albanian railway infrastructure, with 447 km of railways, does not yet provide adequate links to neighbouring countries. The only railway link going outside of Albania is between the cities of Shkodra and Podgorica, the capital of Montenegro, which was built in the early 1980s and runs along Lake Skadar. It provides freight service only. The maritime transport sector in Albania is based on the country's main seaports in Durres, Vlora, Saranda and Shengjiun, which provide regular ferry services between Albania, Italy and Greece. Currently, in Albania there is only one international airport: Tirana International Airport Nënë Tereza, by which the country is linked to nearly 30 destinations serviced by more than 15 airlines.<sup>132</sup> The airways transport sector is managed by the Civil Aviation Authority, with which the Authority has concluded a memorandum of understanding.

In the transport sector, the Authority has made several investigations to establish the existence of competition infringements.

On road transport, the Authority has conducted an infringement proceeding into the urban passenger transport market in Tirana with a view to establishing alleged competition restrictions in the market of monthly passes and student passes.<sup>133</sup> After beginning the in-depth investigation, simultaneous dawn raids at undertakings' offices were made.<sup>134</sup> The evidence collected showed that the undertakings operating in the relevant market had significantly restricted the sale of student monthly tickets. The Authority established that the major providers of urban transport in Tirana, acting within the National Urban Transportation Association, had colluded not to sell more than 50 per cent of the quantity of student monthly passes for 2007 and about 80 per cent of the quantity of student monthly passes for 2008–2012. The collusive agreement by Association members was found to have limited the market independence of the urban services providers and thus affected competition and consumers. The Authority imposed sanctions on all collusion participants (lek 6,079,561) for violation of article 4 of the Competition Act. In addition, the Authority sent a letter to the Tirana municipal authorities recommending that the Municipality should conduct a study on the methodology of monthly pass distribution for each operator.<sup>135</sup> In its response, the Municipality of Tirana informed the Authority of the study's results and engaged to submit to the Authority the monthly pass distribution methodology, before its final approval.<sup>136</sup>

---

<sup>131</sup> European Bank for Reconstruction and Development, 2013, *Transition Report 2013, Country Assessments – Albania*.

<sup>132</sup> United Nations, International Civil Aviation Organization, members, Albania – country profile, 2013.

<sup>133</sup> Albanian Competition Authority decision No. 252 of 26 November 2012.

<sup>134</sup> Albanian Competition Authority decision No. 262 of 14 January 2013.

<sup>135</sup> Albanian Competition Authority letter No. 349 of 2 October 2013.

<sup>136</sup> Letter No. 9787/3 of 19 November 2013 to the Municipality of Tirana.

On maritime transport, the Authority conducted an inquiry into maritime international shipping of vehicles and passengers in the city of Vlora.<sup>137</sup> In the beginning of 2012, the Authority began a preliminary investigation on the basis of a letter publicized in the media on behalf of the two port service companies operating in the Port of Vlora. In this letter they stated that they had suspended the provision of their services and had applied a joint service schedule, operating their respective boats on alternate days and imposing new and higher prices on the Vlora–Brindisi–Vlora line. At the end of the inquiry, based on the findings of the behaviour of the undertakings, the Authority decided to close the case because there was no competition infringement committed by the service providers, and the market distortion was successfully resolved as a result of intervention by the Ministry of Public Works and Transport and the Port of Vlora Authority.<sup>138</sup>

Regarding the air transport sector, the Authority conducted a market monitoring to establish the most important competition patterns in the air passenger transport market in Albania.<sup>139</sup> Monitoring was completed in the first half of 2013, with a report submitted for comments to the Civil Aviation Authority. As a result of the analysis, the Authority came to several competition-related conclusions that were publicly discussed with stakeholders and experts in the sector. According to the Authority report, the air passenger transport market consists of two basic services that are complementary to each other: airport services and airline services. Those services are regulated by the relevant State regulatory authorities. The airport services are rendered to airline companies by Tirana International Airport, which is the only operator in the airport service in the country and undoubtedly enjoys a dominant position in that market, since airline companies do not have alternatives for such services. The airport fees were last changed in 2007 and, as under the Concession Law the fees have to be changed every three years, revision is long overdue. In this context, the Authority has concluded that there is not a methodology or a regulation approved by the State sector regulator with regard to airport fees. In the Authority's opinion, the airport service market consists of only one operator, and since there are no other competitors, the sector regulator should exert its influence on the regulation of fees by orienting them towards costs, in order to prevent any abuse of the dominant position.

## **7.7. Fuels market**

Due to the high level of sensitivity of Albanian society to any fluctuations of diesel and petrol prices, the fuels markets have been monitored regularly by the Authority.<sup>140</sup> To identify any changes in the structure of the fuel market – diesel, petrol and liquefied petroleum gas (LPG) – or anticompetitive pricing by market participants, the Authority has

---

<sup>137</sup> Albanian Competition Authority decision No. 218 of 23 February 2012.

<sup>138</sup> Albanian Competition Authority decision No. 248 of 11 October 2012.

<sup>139</sup> Albanian Competition Authority Annual Report for 2013.

<sup>140</sup> Albanian Competition Authority Annual Report for 2012.

initiated inquires several times to observe signs of competition restrictions as a result of anticompetitive coordination or abuses of dominance. The Authority's monitoring methodology usually consists of assessing market concentration indicators, import and wholesale price dynamics, and the large undertakings' behaviour with regard to sale prices.

As a result of market monitoring, in 2012 the Authority found that the petrol and diesel import markets are relatively concentrated, but none of the market participants can behave independently from their competitors and customers. In this context, based on the main indicator of market share, the Authority considered that none of the three major undertakings in the market has an individual dominant position but the relevant market has an oligopolistic structure. In addition, as to the increase by nearly 24 per cent of the fuels prices observed at the beginning of 2012, the Authority found that it was due to the rise in international market prices and the appreciation of the United States currency by 8 per cent over this period. Analysing the wholesalers' response to the import prices increase and the effects on end users, the Authority concluded that there were objective factors in determining the observed pricing dynamics, and no indications of illegal anticompetitive conduct by participants were found.

The LPG market in Albania also showed oligopolistic characteristics with a very high index of concentration, as the leading undertaking was found to have a 47 per cent market share in 2011 and one of 53 per cent in 2012.<sup>141</sup> At the same time the number of importing undertakings fell from 19 in 2011 to 13 in 2012. Price analysis showed that the gas wholesale prices applied by the four largest undertakings followed the average monthly gas purchase prices and that the undertakings did not apply the same prices. Retail prices did not reflect the established gas purchase price reductions. The observed price increase by 3.8 per cent was justified by the depreciation of the local currency against the United States dollar in 2012. On the basis of its market monitoring in the LPG market, the Authority expressed its intention to continue monitoring and to focus the assessment on the gas selling intermediary structures, which were not originally included. The Authority faced difficulties in conducting this analysis due to a lack of accurate data provided by the National Directorate General of Taxation.

In addition to market monitoring, the Authority has also initiated an investigation on the possible abuse of a dominant position by the port operator providing LPG loading-unloading services in Porto-Romano, situated near to the Albanian seaport of Durres. Following complaints from two undertakings operating in the LPG importing and wholesale market in 2011, the Authority conducted an inquiry. The Authority found that Romano Port sh.a. had demanded that some of the importers of liquid gas take on additional obligations regarding conditions for allowing the unloading of their products in the deposits built on the coastal area, despite the undertaking being under obligation to satisfy the requests of any operator and the subject of additional conditions running contrary to the law.

---

<sup>141</sup> Albanian Competition Authority Annual Report for 2013.

The Authority established that Romano Port sh.a. had had a dominant position in the market during the period under investigation. The dominant firm had repeatedly and unjustifiably refused to perform the process of unloading LPG for some of the operators that had invested in storage capacity. The refusal was found to relate to direct economic interests that operator had in downstream markets of the storage and wholesale selling of LPG, which has led to restrictions of competition in those markets. The Authority imposed a fine on Romano Port sh.a. of lek 6.7 million (about \$61,500), representing 2.35 per cent of its total turnover for 2010. Moreover, the Authority instructed the dominant firm not to make the provision of the loading-unloading service subject to any conditions that would cause restrictions or distortions of competition in the related markets of storage, importing and wholesale of LPG.<sup>142</sup> In the following years the Authority continuously monitored the market conditions in the LPG market with a view to establishing any further distortions of the competition resulting from the dominant player's behaviour.<sup>143</sup>

## **VIII. Findings and recommendations**

Albania has a modern legal and institutional framework for competition protection, which is constantly being aligned with European Union competition law. National law allows for an effective competition policy with respect to all sectors of the economy. Success in this regard depends primarily on the continuous efforts of the Authority to enhance the competition culture of economic operators in the country and to assist national policymakers in refraining from any measures that might have adverse effects on competition. The involvement of the Authority in regulatory reforms and the implementation of competition advocacy by providing numerous recommendations to sector regulators undoubtedly have beneficial effects on the functioning of the relevant markets. Fighting cartels is a challenge that requires both improving the national leniency policy and increasing coordination with partner State authorities, as regards actions against bid rigging in public procurement. In general, improving the administrative capacity and continuous training of the Authority's staff are essential for the effective implementation of national competition policy.

---

<sup>142</sup> Albanian Competition Authority decision No. 221 of 11 April 2012.

<sup>143</sup> Albanian Competition Authority decision No. 277 of 3 April 2013 and decision No. 289 of 4 July 2013.



Recommendations on those issues that need to be addressed or improved are listed below:

#### Recommendation 1

Continue to align the national competition framework with European Union standards in competition policy

Addressed to: Albanian Competition Authority, legislature, Government

Following the commitments undertaken by Albania within the process of European Union integration, the country has been aligning its national competition legislation with European rules. In this regard, the applicable competition law has been approximated to European Union competition law and many acts of secondary legislation and soft law have been adopted by the Authority. It is recommended that these efforts continue in order to establish an effective competition framework reflecting the latest developments and achievements of European Union competition policy, and ultimately facilitate Albania's accession to the European Union.

#### Recommendation 2

Create institutional capacity for effective State aid control

Addressed to: Government, legislature

State aid control under European Union law falls within the scope of competition policy. In Albania there is a separate law that is supposed to be enforced by institutions other than the national competition authority: the State Aid Commission and the State Aid Sector within the Ministry of Economy. These bodies receive, assess and authorize the State aid schemes notified by regional or local State bodies in the country. In fact, the number of State aid notifications by the Government is very low, and there have been none by local authorities. Moreover, the staff of the State Aid Sector comprises only two officials. In this context, the implementation of the national State aid law is very poor, mainly due to the lack of independence and adequate institutional and administrative capacity of the relevant bodies.

Therefore, it is recommended that any upcoming revision of the national system of State aid control, and its possible inclusion within the remit of the Authority, be made only after thorough analysis of the experiences of European Union Member States that have gone through similar economic and political developments, with a view to fostering the approximation of national State aid policy to European Union competition policy.

### Recommendation 3

Increase the effectiveness of consumer protection

Addressed to: Government, legislature

Competition and consumer protection are two sister policies that complement each other in ensuring consumer welfare by guaranteeing that the consumers can benefit from competitive markets in terms of variety of products, higher quality, reasonable prices and easy access to correct product information.

In Albania, competition law is distinct from consumer protection law, the latter dealt with by a directorate within the Ministry of Economic Development. This body is legally empowered to establish violations and impose sanctions under the Consumer Protection Law which also contains rules on so-called unfair competition, such as bans on misleading, unfair and comparative advertising. However, the implementation of this law has been criticized by non-governmental organizations dealing with consumer protection in Albania due to its poor enforcement, ineffectiveness and lack of deterrence as a result of the sanctions imposed. Therefore, it is recommended to increase the effectiveness of the national consumer protection policy by following the best European and world practices in this field, including the United Nations Guidelines for Consumer Protection.

The creation of adequate institutional capacity in the bodies entrusted with these functions is a crucial prerequisite of any workable system for consumer protection. Based on the experience of some European Union countries, there are two main approaches to resolve the issue. On one hand, there are examples where consumer protection and competition policies are focused and attributed within one agency able to deal with cases in both fields (e.g. Denmark, Italy, the Netherlands, Poland and the United Kingdom). This option allows for the use of combined resources within a single authority to pursue the respective objectives of consumer protection and competition policies, so their complementary natures become much more visible for both economic operators and consumers. On the other hand, there are some European Union countries where the competition authority is distinct from the agency engaged in consumer protection (e.g. Bulgaria, France and Germany). This option requires that each body has enough resources, enjoys operational independence and enjoys adequate enforcement powers to implement each policy respectively. In any case, the effectiveness of consumer protection policy is unthinkable without the active involvement of non-governmental organizations and consumer associations, which play a fundamental role in providing information, conducting awareness-raising activities, promoting consumer education and facilitating collective actions for consumer protection.

#### Recommendation 4

Reduce the criteria for election of members of the Albanian Competition Authority

Addressed to: Legislature

The criteria for election of competition authority members put unreasonably heavy requirements on any candidate looking for appointment to the Authority's decision-making body, namely: to have at least 15 years of working experience; a doctorate or experience as a university lecturer in law or economics. Finding candidates that meet these election requirements has proven very challenging for the Albanian Parliament, and during most of the time of the Commission's functioning it as had at least one vacant position. This was the case between 2006 and 2012.

These requirements are criticized in Albania due to their inconsistency, especially as the Authority is just 10 years old, so that it appears to be objectively impossible to have candidates possessing greater experience in the implementation of national competition policy. Moreover, the legal requirements, which apply cumulatively, put too much emphasis on the academic background of members of the decision-making body. Rather, the requirements should reflect the nature of the Authority as a State enforcement body that should have the capability of effective practical performance of its legal duties and comprehensive communication of results thereof to the general public. Furthermore, the process of opening of Albania to international markets and development of competition policy at national and international levels has been very intense in the last few years, so it seems appropriate to allow younger professionals, who have gained, either in domestic or foreign educational institutions, sufficient training in the latest developments of competition law or economics, to have the chance to be elected as members of the Authority. In this context, it is recommended to reconsider whether the election requirements should be reduced to broaden the range of potential candidates and avoid any future long-term vacancies on the decision-making board. This would ensure the Authority could have continuous and effective exercise of its functions.

#### Recommendation 5

Continue safeguarding the independence of the Albanian Competition Authority

Addressed to: Albanian Competition Authority, Government, legislature

The national legislation of Albania provides sufficient safeguards for the independence of the competition authority and guarantees objective performance of its functions. The Authority is specifically constituted under the law as an independent specialized State body that is financed by a separate budget line in the annual budget of the State. Members of the college are elected and dismissed by the Parliament, which is also tasked with approving its organizational structure. Further, the Authority reports on its

activities to the Parliament only. The law provides for a mandate principle as to the members of the decision-making board, as well as the principle of incompatibility of the functions of board members with conflicting functions in political or economic life. The function of investigations is internally separated from the resolution of competition cases and is performed by employees that enjoy the status of civil servants. All case handlers and decision-makers within the Authority are obliged to comply with the rules on professional secrecy and avoidance of conflicts of interest, as well as to respect the Authority's code of ethics, with the aim of exercising their duties impartially and objectively.

In this context, it appears that there are enough institutional and procedural guarantees for the Authority's independence. At the same time, it is recommended that the existence of this adequate level of independence, which has already been achieved, is continuously guaranteed and reflected in all daily activities of the Authority, so that it becomes an irrevocable reality respected by all other public authorities, including Parliament and the Government, as well as economic operators in Albania. The full and consistent implementation of the guarantees for the Authority's independence is a crucial precondition of effective national competition policy.

Simultaneously, further capacity strengthening is recognized as a tool to enhance the Authority's independence. In this regard additional increases in the budget and the number of staff are highly recommended, as well as continuous training for competition experts. It is essential for the functionality of a competition authority to have a predictable, sustainable and adequate level of financial resources and trained staff. Constant improvement of administrative capacity is vital to ensure the sustainability and impartiality of the Authority's decisional practices.

#### Recommendation 6

Consider abolishing the notification regime for agreements between undertakings

Addressed to: Albanian Competition Authority, legislature

Competition law in Albania provides for a notification regime regarding agreements between the undertakings and empowers the Authority to make preliminary assessments of their compliance with the general prohibition. The notification regime is not applied to agreements that are exempted from the general prohibition by virtue of the regulations issued by the Authority on block exemptions of certain categories of agreements between undertakings.

In this regard it should be noted that in European Union competition law, the notification regime of agreements between undertakings was abolished 10 years ago, in accordance with the Council Regulation 1/2003, to allow the European Commission to concentrate its decision practices on fighting cartels, which are regarded the most harmful infringement of competition. Under European Union competition policy, the general

prohibition on restrictive agreements takes effect ipso jure. European Union Member States have also reformed their national competition regimes in a similar manner in order to establish the same legal standards for treatment of collusive agreements. Therefore, it is recommended that during the pre-accession period, Albania should also abolish its notification regime for these agreements and replace it by the ipso jure application of the general prohibition.

#### Recommendation 7

Increase public awareness of anti-cartel policy

Addressed to: Albanian Competition Authority, legislature

The Authority is empowered to fight cartels but the competition law does not contain a legal definition of cartel, and there is no special treatment of cartels different from other types of collusive agreements under the national law. In fact, there are not many cartel cases within the Authority's enforcement practice, although there a positive trend has been observed in recent years in terms of an increase in the number of complaints received and cartel cases opened by the Authority.

Given that several decisions of the Authority have addressed the so-called naive cartels (where participants are ignorant of the fact that they are engaging in illegal price fixing or market-sharing cartels and thus post related announcements through media), it is indicative that public awareness of the scope and objectives of the rules on collusive agreements needs to be further enhanced. Therefore, it is highly recommended that the Authority continue its efforts to increase public awareness of anti-cartel rules and of the harmful nature of the cartels, as this is crucial for the effectiveness of national anti-cartel enforcement. In this regard, the Authority should be even more active in conducting outreach activities and information campaigns addressed to businesses, their associations and lawyers providing legal services to businesses. Increased public awareness of anti-cartel policy would play a preventive role against cartels, but at the same time would facilitate detection of the most serious distortions of competition.

#### Recommendation 8

Enhance leniency policy in cartel cases

Addressed to: Albanian Competition Authority, legislature

Under Albanian competition law, participation in a cartel is considered an administrative infringement, and the Authority has the power to impose pecuniary sanctions on the participants of up to 10 per cent of their annual turnover. In order to facilitate anti-

cartel enforcement, the Authority has since 2004 adopted a leniency programme. However, it has yet to receive a leniency application under this programme. The lack of practical implementation of the national leniency policy is considered to be one of the most significant challenges facing the Authority, which recognizes that this policy is one of the most important determinants of the effectiveness of its anti-cartel practice.

In this context, it should be underlined that the applicability of a leniency programme depends very much on a strong sanctioning policy that provides sufficient deterrent effects, as well as the certainty of punishment for participants. Therefore, it is recommended that the effectiveness of the leniency policy be enhanced by much stronger sanctions imposed by the Authority in cartel cases.

In addition, the national leniency programme is designed to be applied to undertakings engaged in restrictive agreements. Unlike most European Union Member States, it is not specified in the legal framework that the leniency policy covers just cartels, as the law and the respective acts of secondary legislation refer to the general notion of prohibited agreements between undertakings. In this context, it could be assumed that the Albanian leniency policy could be at least theoretically applicable to any kind of horizontal or vertical agreement, so that it ultimately appears that the programme has a very wide scope. In this context, it seems much more appropriate to focus the policy solely on secret cartels and to use this legal instrument for detecting and fighting only this type of anticompetitive conduct that, by default, is the most difficult to reveal.

Moreover, this policy should be enhanced by reflecting European and other best practices in this field. For instance, it seems appropriate to make efforts to attract leniency applicants by including some extra incentives in the programme, e.g. additional reductions of fines, i.e. leniency plus, if the applicant provides information on another cartel in that or another market. Furthermore, it is recommended that the leniency procedure be amended in order provide for a marker system that would facilitate the participation of more undertakings in the programme. The current programme prescribes that the leniency application is to be submitted only after all the available evidence with added value has been provided, which puts unjustifiable burdens on potential applicants and discourages participation. It is also recommended to provide sufficient procedural guarantees for protecting the confidentiality of all leniency documents and the anonymity of whistleblowers and their statements. In this regard, the best practices within the European Competition Network and the achievements of the International Competition Network should be taken into consideration.

As regards the necessity to overcome the so-called mentality factor that is common in most South-East European countries, where leniency policies are also not very effective, long-term information campaigns and outreach activities should be initiated with the aim of successfully communicating to businesses the benefits that may arise from active participation in the leniency programme and the risks connected with refraining to do so. Businesses will be much more willing to participate if they are convinced of the real benefits of doing so, particularly if there is a sufficient confidence in the ability of the Authority to accurately and objectively implement modernized leniency procedures.

## Recommendation 9

Fight against bid rigging by coordinating actions with the relevant authorities dealing with public procurement and anti-corruption policies

Addressed to: Albanian Competition Authority, anti-corruption authorities Public Procurement Agency

The fight against bid rigging in public procurement is a recognizable area of the Authority's operations, where it closely cooperates with the Public Procurement Agency. In this regard, the Authority has issued guidelines on countering bid rigging in public procurement on the basis of the relevant OECD guidelines. In addition, it has made several recommendations to amend applicable laws on public procurement in order to ensure more effective prevention. As a result of these interventions, the Public Procurement Act was amended and a blacklist introduced to include all undertakings prohibited from participating in procurement procedures for a specific period of time, due to previous involvement in collusion. The Authority has also proposed that the contracting authorities should be obliged to inform of identified symptoms of bid rigging, as well as the inclusion of Construction Industry Development Board standards in the tender documents submitted by candidates. Furthermore, the Authority has dealt with several cases on bid rigging, including by imposing interim measures and sanctions on bidders.

Accordingly, it is recommended that the Authority continue its efforts to fight bid rigging. In carrying out this activity, it is appropriate to conduct combined operations with the Public Procurement Agency in promoting guidelines on bid rigging to increase the contracting Authority's awareness of this form of cartel under competition law. Simultaneously, it is important that both the contracting authorities and the participants in the procedures be further trained to differentiate bid rigging from other forms of illegal conduct in public procurement. It must be made perfectly clear that procedural violations of the applicable rules under the Public Procurement Act shall be addressed by the Procurement Commission, the independent State authority that hears appeals and resolves all legal disputes on the legality of acts of contracting entities. On the other hand, it should be noted that public procurement may also be linked with corruption during the procedures or control stages, so that enforcement action on appropriate prevention and punishment may be taken by anti-corruption authorities.

In view of the above, it is clear that the public procurement process can be associated with interrelated illegal conduct, of which bid rigging cartels are one. As such, it is important to unite and coordinate efforts of all relevant State bodies (the Albanian Competition Authority, the Public Procurement Agency, the Public Procurement Commission and anti-corruption authorities) to jointly raise the overall awareness of contracting authorities, candidates and participants in the public procurement procedures of the possible types of unlawful scenarios therein and on related protection mechanisms. Furthermore, enhanced cooperation will lead to increased exchanges of information, so that shared data can be used

by any of these authorities to exercise its own control powers, improve the rule of law and guarantee more competition across public procurement.

#### Recommendation 10

Continue strengthening tools for competition advocacy

Addressed to: Albanian Competition Agency, legislature, policymakers

Competition advocacy is one of the main areas of the Authority's operations and represents one of its institutional objectives. Its powers to conduct competition impact assessments of legislation and participate in regulatory reforms are explicitly provided for in the Competition Act, as well as its ability to issue recommendations to legislators, policymakers and sector regulators. The Authority has given many useful recommendations in relation to the electricity, electronic communications, public procurement, banking services and insurance markets. In addition, it has facilitated its advocacy activity by concluding a series of memorandums of understanding and maintaining close inter-institutional ties with some of the most important regulatory institutions and non-governmental organizations in the country. It is admirable that the Authority has adopted guidelines for competition impact assessments, by which it has set the criteria to be taken into account by administrative bodies to avoid anticompetitive incidences.

Bearing in mind that developing Albanian competition culture is an ongoing process whose progress, similarly to other South-East European countries, is very much dependent on the Authority's effectiveness in the field of competition advocacy, it is highly recommended that the Authority's efforts in this field should continue in order to overcome the limited general awareness of the benefits from competition and prevent potentially conflicting policy objectives pursued by some national policymakers.

Accordingly, it is recommended that further actions be taken to promote the guidelines on competition impact assessments, raising the awareness of all State bodies on the existence of such guidelines and the need for compliance with competition rules when carrying out self-assessments. The guidelines should be upgraded regularly in accordance with the best practices in the field of competition advocacy, in which case it is appropriate to take account of the latest developments of the OECD Competition Assessment Toolkit.

Further, it should be noted that there is a need to continually strengthen the policy role of the recommendations given by the Authority to other State bodies. Given that consultation with the Authority is not obligatory and the recommendations are non-binding under the applicable competition law, it is admirable that Parliament has adopted specific resolutions requiring all relevant State authorities to comply with opinions issued by the Authority. In this regard, it seems appropriate the will to strengthen the role of competition advocacy, demonstrated at the highest level, be transformed into particular legal provisions in the Competition Act. These should oblige all central or local authorities responsible for drafting



legislative or general administrative acts, which have real or potential effects on any economic activity of enterprises in the country, to always carry out a preliminary self-assessment of their draft acts for compliance with competition rules. This self-assessment should be carried out on the basis of the Authority's guidelines on competition impact assessment. If there is a necessity for a thorough assessment of a draft act, the relevant policymaker should be obliged to request an assessment from the Authority. In this case, the Authority's in-depth evaluation should be binding for the policymaker, which may differ from the given recommendations only after publicly presenting its specific policy reasons for such differentiation.

It is further recommended that the Authority elaborate its own self-evaluation methodology or the effectiveness of its advocacy interventions, in order to continuously improve and further strengthen its tools for competition advocacy.

#### Recommendation 11

Enhance the competition culture of economic operators in Albania

Addressed to: Albanian Competition Authority

The competition culture of economic operators and their associations is crucially important for effective market competition. In this regard, the Authority should continue its efforts to make business better understand competition rules and the instruments in place for ensuring a level playing field. The Authority should more actively use the instruments of so-called soft law by issuing general guidance on the essential aspects of the economic activity of enterprises, such as the possibilities and limitations for information sharing between competitors, the role of associations of undertakings and the acceptable limits of their involvement in the formation processes of entrepreneurs' market strategies and the benefits of the adoption and application of internal corporate competition compliance programmes. Through these general guidelines, the Authority should expand knowledge of competition rules in an appropriate way, without undermining its enforcement actions in specific cases.

Moreover, it is recommended that the Authority start, when appropriate, the compilation, summary and publication of its accumulated enforcement practices and advocacy initiatives conducted in certain sectors of the economy, in the form of advisory reports. This will help economic operators in these sectors to better orient themselves with the competition norms with which they should comply.

Furthermore, the Authority should continue to closely work with consumers and their organizations, making them aware of the benefits of competitive markets and freedom of choice, which is one of the main counterpoints to anticompetitive behaviour.

## Recommendation 12

Introduce detailed rules on commitments decisions

Addressed to: Albanian Competition Authority, legislature

Where the parties under investigation offer commitments capable of meeting the Authority's objections and preliminary estimations expressed in the investigation report, the Commission may, by decision, approve these commitments and make them binding for the undertakings as real legal obligations. In such cases, the Authority closes the administrative proceedings without establishing the respective infringement.

In light of the above, it is recommended specific rules be elaborated, by means of amendments to the law or regulations, providing the exact scope of the Authority's power to approve commitments and the methods and criteria to be applied when evaluating or market testing the commitments proposals from businesses. There is also a need for clear rules concerning the procedure applied and the procedural requirements in terms of timing and ways to propose commitments in the course of the Authority's proceedings, as well as regarding the right of third parties to be informed of proposed commitments and to present observations or comments thereto. In its decisional practice to date, the Authority has evaluated proposed commitments with a view to providing rapid and effective correction of the conduct and fast remedy for market competition. Therefore, it is recommended to introduce clear guidance on the specific methods and approaches that are to be applied, and to ensure a sufficient degree of legal certainty for undertakings submitting proposals and adequate clarity for any third party possibly affected by such an outcome (and thus would be interested in intervening when the Authority is requested to approve commitments). It is also necessary to clarify the legal consequences of revocation of a commitment decision when the undertaking has failed to comply i.e. whether another commitments decision would still be possible or, in addition to the sanction imposed for non-compliance, if the Authority would have the power to issue a new decision establishing the previously investigated infringement and impose a sanction.

## Recommendation 13

Increase public awareness of private competition enforcement

Addressed to: Albanian Competition Authority, Government, judiciary

In addition to public enforcement of competition rules, which is performed by the Authority, the Albanian Competition Act explicitly provides for private competition enforcement. Any natural or legal person has the right to seek civil protection, before the District Court of Tirana, of its subjective rights affected by an infringement of competition law. This protection includes the removal or prevention of the practices restricting competition and compensation for the related damages caused.

Despite the existing legal framework, there have been no cases of private litigation in Albania so far. This situation is primarily due to the lack of public awareness of the civil enforcement of competition rules, and it is strongly recommended that efforts be made to remedy this situation. In this context, it is important to highlight the direct link between public and private competition enforcement, as the effectiveness of the latter depends largely on the ability of victims to use and refer to final decisions of the Authority that establish competition infringements. Accordingly, appropriate outreach activities should be organized to increase general awareness of the existence of this kind of legal protection. The main target groups of these activities should be economic operators, consumers, lawyers and consumer associations. Moreover, it is advisable that, whenever the review courts ultimately confirm some of the Authority's decisions, the Authority publishes comprehensive press releases to explicitly note the civil provisions for the prejudiced persons of Competition Act and the legal force the Authority's final decision provided to those pursuant of civil protection against the identified offenders. The Authority's final decisions should be regarded by the national civil courts as bearing material evidential value for the offender's illegal conduct. As in some other South-East European countries, the lack of a significant number of final judgements in the field of public enforcement of competition, in combination with the lack of procedural incentives for submission of direct actions before the civil courts, determines the inefficient functioning of private competition enforcement in Albania.

#### Recommendation 14

Strengthen capabilities to conduct on-the-spot inspections in competition cases

Addressed to: Albanian Competition Authority

On-the-spot inspections are one of the major tools for gathering information in competition cases. The Authority carries out about six on-the-spot inspections per year, affecting undertakings established in all regions of Albania. Simultaneous inspections at multiple places have also been carried out by the Authority, and its investigatory techniques during dawn raids have also include the usage of forensic information technology. The Authority can rely on the assistance of the State police, with which it has signed a memorandum of understanding.

The applicable law prescribes sufficient powers to the Authority in carrying out inspections, but the Authority needs detailed internal guidelines or manuals to describe the practical aspects that may arise in the exercise of these statutory powers. Accordingly, internal manuals that reflect the experience accumulated in the Authority's practice up to now should be prepared in order to increase the inspectors' capabilities to quickly and easily overcome emerging practical difficulties during on-the-spot inspections.

Moreover, it is recommended that on-the-spot inspections as a means of evidence gathering be conducted not only in cartel cases, but in other competition cases as well. The

effectiveness of such inspections depends primarily on well-trained inspectors and the availability of enough and well-trained forensic information technology experts that have at their disposal reliable forensic software, which is capable of guaranteeing the authenticity of digital evidence and forensic images collected during searches. The recruitment of at least one more forensic information technology expert is recommended, as currently there is only one within the Authority's staff. It is also necessary to provide specific funding in order to constantly improve the knowledge of forensic information technology experts and to upgrade the forensic software.

#### Recommendation 15

Establish the function of chief economist to facilitate the use of economic analysis in competition cases

Addressed to: Albanian Competition Authority

Since the last amendments to the competition law, the Authority assesses notified market concentrations and gives clearance on the basis of the significant impediment of effective competition test. The introduction of the new appraisal test for mergers and acquisitions has potentially increased the role of economic analysis in these cases, although it has not yet led to considerable change in the Authority's decision practice as, so far, there have not been any decisions for blocking mergers due to non-compliance with the new test or decisions imposing remedies in merger cases.

It is recommended, in line with most European Union Members States, to establish the function of chief economist, who will be in charge of quality control of all economic analyses carried out by the Authority. The function of chief economist is a horizontal one and should be implemented for all types of competition cases that require in-depth econometric analysis, such as primarily mergers and acquisitions, but also cases of exclusive or exploitative abuse of a dominant position and assessments of vertical and non-cartel horizontal agreements between undertakings. As there is a legal consultant's function available in any proceedings instituted before the Authority, it is recommended that an economic consultant's function be introduced in order to give the decision-making board expert advice as to appropriate economic methods for evaluation in certain cases. In order to be really useful, the chief economist's function should be entrusted to one or more experts who hold an advanced university degree in economics with a specialization in industrial organization and have significant professional experience, preferably in competition matters.

#### Recommendation 16

Establish workable systems for the execution of sanctions imposed by the Albanian Competition Authority

Addressed to: Government, judiciary, legislature

The sanctions imposed through the Authority's decisions become executable in accordance with the Civil Procedure Code after entry into force of the respective decision. In order to facilitate the execution of its enforceable decisions, the Authority submits all required documentation to the Judicial Enforcement Service, which is tasked with acting on the basis of execution orders issued by the District Court of Tirana.

However, the practical execution of fines imposed by the Authority has shown to be ineffective. On one hand, most of the fines imposed by the Authority do not appear to have been collected, as many court appeal decisions are still pending. On the other hand, the statistics show that the total amount of the fines collected by the Judicial Enforcement Service represent not more than 25 per cent of the enforceable sanctions and there is a significant percentage of fines for which no execution court orders have yet been issued.

Therefore, it is recommended that appropriate measures be taken to establish workable systems for the execution of sanctions imposed by the Authority. These may include, for example, amendments to the law entrusting the execution of sanctions to private enforcement agents or bailiffs, and the introduction of strict deadlines to be met by the relevant courts in issuing execution orders. It is also important to intensify the process of the three-instance judicial review, as evidenced by the fact that 75 per cent of the cases brought before the court of cassation are still pending. Such measures are necessary to overcome the inefficient execution of sanctions, as the current situation directly decreases the effectiveness of the Authority's enforcement practices by undermining the deterrent effect of its sanctioning policy.

#### Recommendation 17

Introduce a precise system for career planning and extra incentives for staff of the Albanian Competition Authority

Addressed to: Albanian Competition Authority

The Authority's officials have the status of inspectors, and their wages are legally fixed. Compared with other civil servants in Albania, the salaries of the Authority's inspectors are about 20 per cent higher. However, there is no mechanism for additional payments and extra incentives, with no feasible prospect of promotion, as they already occupy the highest rank in the State administration system.

In this context, it is recommended that a precise system for career planning and extra incentives for the competition authority's staff be introduced. This system should be linked with a mechanism of periodic assessment of implementation for competition experts and bonuses for those who achieve better results and contribute more to the Authority's effectiveness. Furthermore, it is necessary to provide opportunities for promotion or progression, in terms of job or salary, so as to strengthen the motivation for continued employment at the Authority.

## Recommendation 18

Continue to seek technical assistance and training activities for the staff of the Albanian Competition Authority

Addressed to: Albanian Competition Authority

Staff training activities are one of the most important tools to increase the administrative capacity and independence of the Authority. During recent years, the Authority's entire staff has participated in many training activities within different projects or cooperation mechanisms, such as the European Union twinning project with Italy and Hungary, the European Union Instrument for Pre-Accession Assistance, the OECD Regional Centre in Budapest and the UNCTAD Competition Forum in Sofia.

It is highly recommended that technical assistance and training activities for staff be continued in order to contribute to the Authority's expert capacity-building and help it attract and retain employees with strong educational backgrounds and motivation for professional development in the area of competition policy.

## Recommendation 19

Training in competition law for judges

Addressed to: Albanian Competition Authority, Government, judiciary,

One of the main concerns regarding the judiciary is the need for increased training of judges in the field of competition law, which combines both legal and economic aspects. This necessity is addressed by the Authority by organizing training events for judges in cooperation with the National School of Magistrates.

The need for training activities for judges is now even greater due to judicial reform carried out in the country. This reform has affected public competition law enforcement, as the review court, which exercises control on the legality of the Authority's decisions, has been changed – the district court has been replaced by the administrative court in Tirana. This court is now tasked with reviewing any decision adopted by the Authority after November 2013. This court acts as a first-instance court whose judgements and rulings are subject to further judicial review by the newly established Administrative Court of Appeal, located in Tirana. Its judgements and rulings may be appealed before the Supreme Court of Albania, acting as a final instance of cassation.

The judicial reform does not envisage the establishment of specialized competition courts or specialized chambers on competition law within the country's newly established administrative courts. Competition cases will be handled as regular administrative cases based on the general rules of administrative procedure. As such, there is a greater need for training

activities for national judges in Albania regarding specificities of competition cases, which would require continuous cooperation between the National School of Magistrates and the Authority. Given the ongoing process of Albania's integration into the European Union, training should prepare the national judges in the application of European Union law in the field of competition.

#### Recommendation 20

Establish a library within the Albanian Competition Authority

Addressed to: Albanian Competition Authority

Although the Authority constantly seeks to improve its information resources by gathering books, training materials and other sources of information on competition, it still lacks a library within its internal administrative structure. The specialized literature in competition law and economics is still not institutionally available in the form of a real library, which would ensure an adequate level of awareness of both its employees and any other persons interested in the development of competition policy at national, European and global levels.

In this context, it is recommended that a library to be established within the Authority. It should provide, in physical and electronic terms, all available and relevant books and publications in the area of competition. Subscription to the most important domestic and foreign economic and legal magazines and periodicals in this field should also be ensured.

Moreover, knowledge management within the Authority is crucially important, as young officials should have access to all sources of information collected by other officials and members of the Authority as a result of their expert training activities both within the country and abroad. In this regard, it is recommended that the library should also contain all information resources produced or used by the Authority.







