



REPUBLIC OF ALBANIA COMPETITION AUTHORITY

2010 ANNUAL REPORT

AND

MAIN GOALS FOR 2011

Competition Authority

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Table of Contents

A. Introductory Remarks	3
B. Competition Authority Operation Principles and Mission.....	5
C. Main Activities	5
D. Organizational Structure, Administrative Capacity Strengthening and Budget Execution	8
D.1. Organizational Structure	8
D.2 Administrative Capacity Strengthening	10
D.3 2010 Budget Execution	10
I. Aspects of Competition Law and Policy Implementation	11
I.1 Prohibited Agreements	11
I.2 Abuse of a Dominant Position.....	13
I.3 Control of Concentrations.....	16
I.4 Market Study and Monitoring	19
II. Competition Advocacy	24
II.1. Evaluation of draft legal acts of other institutions.....	24
II.2. Recommendations from market monitoring and investigation	25
II.3 Regulatory Reform (RIA)	27
II.4 Cooperation with Other Regulators and Institutions	28
II.5 Execution of Competition Commission’s Decisions.....	28
III. Complaints and Competition Culture	29
III.1 Complaints: an important tool.....	29
III.2 Increased Competition Culture	33
IV. European Integration in the Area of Competition	35
IV.1 Legislation Updating.....	35
IV.2 European Commission Questionnaire - Competition Policy.....	40
IV.3 European Commission Technical Assistance	41
IV.4. Cooperation with international institutions.....	42
V. Main Goals for 2011.....	42
V. 1. Market Supervision	42
V.2 Liberalization and Exclusive rights.....	43
V.3 Increased Competition Advocacy and Culture.....	43
V.4 Administrative Capacity Strengthening	44
V.5 Consolidation of Institutional Cooperation and International Relations.....	45
Annex 1 – Statistical Data on Competition Commission Decisions.....	46
Annex 2 - Administrative decisions (fines) issued by the Competition Commission	47
Annex 3: Matrix of Competition Authority’s Assessments and Recommendations, 2010	48
Annex 4: European Commission Progress Report on Albania, 2010 (Competition)	54
Shtojce 5: Struktura e Autoritetit të Konkurrencës	56

A. Introductory Remarks

The Albanian economy has been characterized by two main processes in the period it has functioned as a market-oriented economy: privatization and liberalization, and integration into the global economy. Those processes have highlighted the significance of competition promotion and protection through legal and institutional tools, as a conducive factor to the overall economic growth.

The basic legal instruments include the Competition Protection Law and the National Competition Policy. Competition promotion needs reflecting in the philosophy underlying all legal acts that are drafted by all regulators and central and local institutions affecting the functioning of the markets.

The basic institutional instrument for competition protection is the Competition Authority. But that is not the only one. The system that enables the good operation of markets includes the regulators of markets with specific features, and decision-making institutions of the central and local government. One of the main lines of actions of the Competition institution's activity, therefore, is the close cooperation with all those institutions and the strengthening of the instruments needed to increase competition promotion or reduce competition restrictions stemming from legal provisions or the practices of those institutions.

In its entirety, the philosophy of the Competition Institution operation is its continuous improvement by learning from the issues and consolidating the continuous growth, being guided by European standards and best practices, which has been positively assessed by our direct national and international overseers: the Parliament of Albania and the European Commission through its resolution and progress report.

The careful monitoring of any signals emitted by market players and factors, with a view to identifying potential competition restrictions caused by anti-competition practices, has enabled an increased variety of markets under monitoring or enquiry by the Competition institution. The experience of other similar authorities shows that complaints from various market operators should be the main tool for initiating market supervision procedures. To that end, the legal and procedural consolidation of complaint handling and, above all, the increased credibility of the Competition institution through responsible and professional handling of all submitted complaints have been a couple of the aspects of further improvement of our work and a challenge for the future.

The increasing consolidation of the Competition Authority activity and public profile is shown not only in the increased number of complaints in general but also in the filing of complaints about practices that are subject to the Competition Law. The increased experts' professionalism and expertise is considered as a necessity for responding to the increased number of demands to supervise the game of market operators and protect the functioning of the market against anti-competitive practices. The more present and active the competition protection institution intervention becomes the more sophisticated the operators' anti-competitive behavior becomes. This stage of development was kept in account when applying for EU IPA-2008 funding, which is being implemented through a technical assistance and twinning project. More specifically, the improvement of administrative capacities in using investigative

techniques and economic analyses is one of the key factors to increased institutional independence and consolidation of the Albanian Competition Institution.

In cooperation with the technical assistance, the Competition Commission has developed a draft advocacy strategy for the Competition Law and Policy and a liberalization strategy for those industries where exclusive and special rights have been granted. Those industries were identified under the inter-institutional network that was organized to prepare the answers to the EU Questionnaire, in which the Competition Authority was responsible for Chapter 8 "Competition Policy". The significance of the inter-institutional network lies in it not being an ad-hoc phenomenon but a process of the future, because future reporting to the European Commission will have the same structure and responsibility. From that perspective, the Authority will undergo a change to its inter-institutional relations in order to increase its intervention power in cases where exclusive and special rights are granted in the stage of drafting legislation.

Since late 2010 judicial enforcement offices have been a new partner for the Competition Institution, as the collection of fines is going to increase the effectiveness of Competition Commission decisions against anti-competitive practices.

Active cooperation and experience exchange have characterized the relationships between the Authority and such international partners as OECD-Regional Center for Competition and the International Competition Network (ICN).

B. Competition Authority Operation Principles and Mission

The Competition Authority operates pursuant to Law no. 9121 of 28 July 2003 “On Competition Protection” (amended by Law no. 9499 of 3 April 2006 and Law no. 10317 of 16 September 2010) and the National Competition Policy. The rules and principles of the Authority operation stem from the Constitution of the Republic of Albania and from the best administrative tradition. The activities of the Albanian Competition Institution are guided by the principles of justice, equality and impartiality in the execution of its functional tasks.

The Competition Authority operates as an independent public institution the mission of which is to use legal tools for protecting and promoting free and effective competition and a functioning market with the ultimate goal of materializing the biggest possible gains for consumers.

The fulfillment of this mission has been possible by the action pursuant to the Competition Commission vision consisting of objective assessment of market operators’ behavior and effective evaluation of the legislation drafted by central and regulatory institutions related to the functioning of the market. In addition, the vision is based on the European competition law and best practices from similar authorities in other countries, with which we have cooperated and exchanged experience continuously. The activities for fulfilling the mission, however, have especially taken into account such specific features of the Albanian economy as market size, extent of informality, the level of competition culture, etc.

In 2010 the vision was materialized with the setting of objectives through comprehensive discussions among the Competition Authority structures. Those objectives include: consolidation of staff training with deeper knowledge of economics and law, so that it is capable of applying the methodology and best practices in its study and investigation of markets under the law; increased advocacy through close and interactive cooperation with regulators and central institutions; ensuring complete transparency in the decision-making procedures and implementation of its functional tasks; and professional handling of procedures with the judicial and enforcement authorities.

C. Main Activities

In its efforts for implementing the Competition Protection Authority in 2010, the Competition Authority took into account the recommendations of the Albanian Parliament Resolution and the European Commission Progress Report, and carried out its activity in fulfillment of its mission to protect and promote free and effective competition in the Albanian market.

The European Commission Progress Report underlined that the Albanian legal framework in the field of competition is generally based on EU rules and that the necessary administrative structures are in place. The revision of the Competition

Protection Law aligned the competition legislation with the *acquis* further, while intensive efforts are being made with the EU-funded experts to complete the implementation legislation framework. More specifically, this is related to the inclusion of Article 106 of the Treaty of Lisbon, i.e. the right to control over exclusive and special rights; block exemption of agreements that mainly aim at promoting investment in new technologies, specialization and research and development; promotion of small business development through exemption of agreements among undertakings the aggregate market share of which is no more than 10-15%; promotion of consolidating the complaint instrument available to market operators, as a basic tool of effective competition protection in the market; increased oversight and prevention power of the competition institution with regard to changes to market structures deriving from share purchase agreements.

As noted in last year's report, 2010 was considered the year of **advocacy** for competition. The Competition Commission achieved that goal by playing a proactive role in consultation tables organized with regulators and other public institutions and local government institutions. Participants in those consultation round tables discussed the recommendations resulting from the monitoring or investigations carried out by the Competition Authority in the relevant markets. With a view to achieving that goal a Competition Advocacy Strategy was developed in cooperation with technical assistance experts, under which gradual instruments are going to be proposed to legislative institutions with the aim to increase the binding power of the Competition Commission recommendations.

Pursuant to the Law, with a view to protecting competition against anti-competition practices of market operators or restriction effects of laws and regulations, if any, market **research, monitoring and investigation** activities have been carried out following complaints or signs of potential competition restrictions. Last year market research, monitoring and investigation activities that had started in 2009 were completed in: the pharmaceutical market; the free professions market; the treasury bills market; the banking service market; the market of domestic production of gasoil; the market of new vehicle procurement. In addition, in 2010 other monitoring and investigation activities were carried out in: the electricity distribution and retail market; the loading-unloading and storing of gas via sea routes; the internet market; and the market of import and wholesale of basic foodstuff: sugar, rice and vegetal oil.

The **number of submitted complaints** has increased over the years. In 2010 11 complaints were filed, out of which 6 complaints were about alleged competition restrictions as per the Competition Protection Law. Based on filed complaints, the following markets were inquired: gas imports; electronic communications; milk processing; physical and premises security; supermarkets (regarding specific products); digital broadcasting; and the insurance market. It should be noted that now we receive complaints from market operators against other operators operating in the same market or other subordinate markets. In addition, the Competition institution has handled other filed complaints with the same responsibility addressing them to the relevant competent institutions.

In response to the Albanian Parliament Resolution and the newly created situation, the Competition Authority has reduced its **investigation time-limits**, which is also reflected

in the new amendments to its substantial law and in its increased administrative capacity and accountability to taxpayers.

The Competition Authority in 2010 is reflected in 34 decisions taken by the Competition Commission, which indicate the multifaceted activity of the Competition Institution pursuant to the Law. More specifically, as shown in Annex 1 “Statistical Data on Competition Commission Decisions, by year”, the decisions taken include six decisions with recommendations for central institutions such as the Ministry of Finance, Ministry of Economy, Trade and Energy, Bank of Albania, Ministry of Innovation and Information Technology and the Public Procurement Agency and such regulators as the Financial Supervisory Authority, the Energy Regulatory Entity and the Electronic and Post Communications Authority; 3 decisions with penalties and commitments against companies which were found to have violated the law on grounds of prohibited agreements and abuse of a dominant position; 7 decisions containing merger or share purchase authorizations, and 7 decisions with recommendations for improving and aligning secondary legislation with the substantial Competition Law and the European *acquis*. Eleven other decisions reflected the body of procedures followed by the Competition Authority, which are based on the principles of transparency and equality.

A novelty in 2010 was related to the **collection of fines** imposed by the Competition Commission. With the entry into force of the amendments to the Competition Protection Law, fines imposed by the Competition Commission are enforceable orders, which have to be collected by the judicial enforcement service pursuant to the Civil Procedure Code. There are at least six cases so far on which court orders on the issuance of the enforcement order have been issued and submitted to the Judicial Enforcement Office, which has initiated its proceedings.

The Competition Authority was the responsible body for preparing Chapter 8 “Competition Authority” of the European Union questionnaire. The implementation of that task enabled a detailed review of the legal framework and current practices in the Albanian competition law. The analysis helped identify the incompatibilities with the European competition law, which were taken into consideration in the proposed amendments to the Competition Protection Law. Another significant aspect is related to the inter-institutional networking efforts, which helped identify the extent of liberalization in various industries, especially with regard to exclusive and special rights. Networking has been an efficient competition advocacy tool.

Administrative capacity building to efficiently implement the Competition Law and National Policy, through continuous training, was another achievement for the Competition Authority in 2010. With financial support from OECD Regional Office and the State Budget funds our technical staff was trained in competition issues in seminars organized by the European Union, OECD, ICN, etc. In addition, the Authority receives technical assistance and is implementing a twinning project under IPA-2008.

The activities of the Competition Authority were appraised by the European Commission in its Progress Report in which it confirmed the developments in the area of legislation approximation and Competition Law and Policy implementation. In addition, the Competition institution has received continuous support from the Parliament of Albania, through its resolutions on the Competition Authority activity, which include positive results and tasks for the future.

D. Organizational Structure, Administrative Capacity Strengthening and Budget Execution

In the performance of its activity as an independent public institution the mission of which is to protect free and effective competition in the market the Competition Authority has considered the efforts for increasing its staff expertise through training as a very important factor for its independent operation.

The Competition Authority structure remained the same in 2010 as it had been set in the Parliament of Albania Decision no. 182 of 12 May 2008, with 32 staff, of which 20 were technical staff members consisting of economists and lawyers (11 and 9, respectively).

D.1. Organizational Structure

The Competition Authority is made up by the Competition Commission, which is its decision-making body, and the Secretariat, which is its administrative and investigative body. The organizational chart of the Competition Authority is shown in Annex 5.

- **Competition Commission**

The Competition Commission is a collegial body that makes decisions on the investigations of restrictions imposed on free and effective competition in the market. In 2010, the Competition Commission made visible progress both towards decision-making related to the implementation of the law in anti-trust cases, encouraging discussions in the Commission and alternative opinions, and in increasing its transparency through the organization of hearings with relevant parties and consultations with central institutions and regulators. The Competition Commission continues to exercise its legal functions with the participation of four Commissioners, including the Chair.

- **Secretariat**

The Competition Authority Secretariat is the administrative body charged by the law with the monitoring and investigation activities to ensure free and effective competition in the market. The Secretariat has three Departments and an Analysis Unit. It monitors the market conditions, carries out administrative investigations and writes investigation reports, which it submits to the Competition Commission for further decision-making. In 2010 the Secretariat significantly increased the number of monitoring and investigation cases in various sectors and markets in order to interrupt anti-competition practices and to ensure free and effective competition in the market.

Market Supervision Department

The Market Supervision Department supervises the market behavior of undertakings pursuant to the Competition Protection Law and the National Competition Policy. The Department has three units to coincide with the three main pillars specified in the Law: the Abuse of a Dominant Position Unit, the Anti-Cartel Unit and the Merger Unit.

Following the changes to the Structure, the specialists and heads of units of this Department are now classified as inspectors, which has increased their market investigative powers and has led to a better combination and division of tasks within the Department and the working groups that are established under the Competition Authority.

Legal and Procedures Department

The Legal and Procedures Department prepares the legal argumentation of the Secretariat's activity products, drafts regulatory acts under the Competition Protection Law, and represents the Authority in court proceedings to defend the Commission decisions in lawsuits initiated by affected parties. The Department is organized into two units: the Procedure and Legislation Approximation Unit, and the Legal Affairs and Investigation Unit. The main activities of the Department in 2010 included the drafting of legal amendments and the preparation of the questionnaire answers, which were carried out in close cooperation with the Market Supervision Department.

Internal Service Department

The Internal Service Department provides the necessary support for the normal operation of the Competition Authority in the fulfillment of its mission to protect free and effective competition in the market. The Department manages human resources in line with the requirements and procedures laid down in Law no. 8549 of 11 November 1999 "Civil Servants' Status," and plans the development of capacities through training by using all possible resources such as OECD, ICN, RCC, ITAP, Tirana University, etc. Another line of action in the activity of the Department is the management of the Authority finances and having full responsibility for the preparation and management of budget funds in accordance with the legislation on the management of the Albanian State Budget.

Research and Analysis Unit

Pursuant to Decision no. 96 of 30 April 2007 on the approval of the Competition Authority organizational and staffing structure, the mission of this Unit is the survey of market conditions and performance of economic analysis of various market structures. Regardless the positioning of employees in various specific units or departments, teamwork is a special characteristic of work in the Competition Authority. Thus, in any investigation the working groups include employees from various different units or departments. In the framework of the Competition Advocacy Strategy, the Research and Analysis Unit was involved in the project and in 2010 it carried out research into, and analysis of, the methodologies employed by the European Commission, OECD, ICN or specific institutions such as OFT (market study). To that end, a best practices paper with regard to market studies is going to be presented during the implementation of the project in 2011.

D.2 Administrative Capacity Strengthening

The average number of training days for the Competition Authority staff increased significantly in 2010. All the civil servants of the Competition Authority Secretariat attended the mandatory training sessions organized by the Training Institute of Public Administration. All Competition Authority employees participated in the two training events in the area of competition organized by TAIEX (European Commission Technical Assistance Unit) in Tirana: (i) a workshop on statistical and econometric analysis; and (ii) a workshop on prohibited agreements and penalty leniency.

The workshops organized by OECD Regional Competition Center in Hungary were an opportunity that was used completely by the Competition Authority staff: more than 90 percent of the Secretariat staff participated in them.

In addition, Competition Authority staff were trained by EC-funded Technical Assistance experts, GTZ experts, the International Competition Network, etc. Other training events were organized in other areas related to competition issues, such as approximation of legislation with European Union *acquis* in the areas of commerce, copyright, etc.

D.3 2010 Budget Execution

Pursuant to Law no. 101190 of 4 December 2009 “2010 Budget” the Competition Authority managed a budget of ALL 62,360,000 which was executed at an average rate of 92.20%.

The biggest execution gap was related to the salary and social contribution item line (ALL 4,114,000) due to the failure to fill three vacancies (one Commission member and two inspectors). The Parliament was notified of the vacancy of the Commission member. Regarding the inspectors’ vacancies the Authority implemented the procedures for staffing approval in the Parliament, which were postponed following Council of Ministers’ Decree no. 591 of 23 July 2010 “On disciplining budget funds,” which suspended any structural changes with financial implications. That item line also includes the salaries for December 2010, which were deferred to January 2011.

The item lines “supplies and general services” and “investment” were executed at the rate of 96% and 92.50%, respectively. The small execution gap of about ALL 730,000 was related to procurement procedures.

In 2010, the Competition Authority contributed ALL 2,342,000 as revenues to the State Budget, of which ALL 2,135,000 came from merger inspection procedures, with the rest (ALL 206,000) from the sale of a vehicle under auction procedures.

I. Aspects of Competition Law and Policy Implementation

The Competition Protection Law has three main pillars for protecting the level game of market operators against anti-competitive practices: prohibited agreements; abuse of a dominant position and control of concentrations, which are also the main aspects of the Competition Authority activities.

I.1 Prohibited Agreements

Agreements which have as their subject or effect the prevention, restriction or distortion of competition in the market, and in particular those which: directly or indirectly fix purchase or selling prices or any other trading conditions; limit or control production, markets, technical development, or investment; share markets or sources of supply; are always prohibited. Price or production quantity fixing make customers pay higher prices or not receive the quantity of goods they wish. Prohibited agreements harm the social wellbeing, generate inefficiencies and transfer wellbeing from consumers to the parties to those agreements.

The Competition Authority has carried out monitoring and investigations with the aim to discover agreements or concerted practices among operators in several markets, which are:

- **Investigation into the Procurement of New Vehicles**

As already presented in the 2009 Report, the Competition Commission adopted its Decision no. 135 of 21 December 2009 to initiate an investigation into the market of new vehicle procurement to ascertain whether there was bid rigging which would restrict competition in that market. Following that the Secretariat carried out the investigative procedures in accordance with the Law and the Administrative Procedure Code, at the end of which it submitted the Investigation Report to the Competition Commission. The Investigation Report stated that an analysis of the market undertakings' behavior showed that they had been involved in bid rigging, which pursuant to Law no. 9121 of 28 July 2003 "On Competition Protection" (Article 4(1)(a)) is considered as a prohibited agreement since it aimed at limiting competition in the market of new vehicle procurement.

An analysis of the competition—based on OECD Guidelines for Fighting Bid Rigging in Public Procurement—showed that the undertakings under investigation had used the scheme of subcontracting (supplies), the cover pricing scheme by agreeing in advance who would submit the winning bid, and the rotation bidding scheme.

Pursuant to Article 39 of the Law, the Competition Commission organized hearings with the undertakings under investigation: "Classic" sh.p.k; "Ultra motors" sh.p.k; "Noti" sh.p.k; and "Hyundai Auto Albania" sh.p.k., which submitted their objections to the Investigation Report in the hearings and in a written form, which were taken into account by the Competition Commission.

In the proceedings, the Competition Commission, acting with a majority of votes, took Decision no. 154 of 1 October 2010 which prohibited the bidding agreement (collusion) in the market of new vehicle procurement, among "Classic" sh.p.k; "Ultra

motors” sh.p.k; “Noti” sh.p.k; and “Hyundai Auto Albania” sh.p.k. as a prohibited agreement pursuant to Article 4 of Law no. 9121 of 28 July 2003 “On Competition Protection.” In addition, it decided to impose penalties on them in accordance with the fine calculation regulation, with the following fines: ALL 25,712,000; ALL 1,517,000; ALL 2,994,000; and ALL 5,383,000. The dissenting opinion was posted on the Competition Authority official website and official journal.

The undertakings appealed against Decision no. 154 of 1 October 2010 of the Competition Authority Commission on the fine imposed because of the prohibited bidding agreement. The case is still under judicial review in Tirana District Court.

- **Inquiry into the Bread Production and Trading Market in the Region of Korca**

Based on the information it received from the media on the rise in bread prices announced by the association of bread producers in the Region of Korca, the Competition Authority decided to initiative a preliminary inquiry into the bread production and trading market in the Region of Korca to establish whether there was a prohibited agreement pursuant to the Competition Protection Law. In the proceedings the Authority inspectors carried out immediate inspections in the field. In addition, data and information was received from the Regional Tax Department in Korca and the Municipalities of Korca, Kolonja, Pogradec and Devoll. There were also inspections in the undertakings operating in the bread production and trading market in the Region of Korca.

On 31 May 2010 a hearing was organized by the Competition Commission with the bread producers and merchants in the Region of Korca, where several of them participated. The hearing was organized in order to identify the factors that had an impact on the level of competition in the relevant market under investigation. Based on the Secretariat Report “On the Inquiry into the Bread Production and Trading Market in the Region of Korca” and the arguments submitted by the parties in the hearing, pursuant to Articles 24 (d) and 45 (2) of Law no. 9121 of 28 July 2003 “On Competition Protection,” the Competition Commission, acting by a majority of votes, decided to close the inquiry into the bread production and trading market in the Region of Korca and accept the commitment of the parties to restoring competition in the market, by Decision no. 146 of 17 June 2010 “On closing the preliminary inquiry into the bread production and trading market in the Region of Korca”.

Given this case, pursuant to the Competition Protection Law and Policy the Competition Commission issued a press release to draw business associations’ attention to the need to protect their members’ interests in compliance with the law and not be involved in collusion practices for immediate price rises, price fixing or market sharing.

- **Prohibited Agreement Case Law**

In 2010 the Authority Secretariat defended Commission decisions which had been appealed against by affected parties. Undertaking “Bloja” sh.a. appealed against Decision no. 125 of 8 October 2009 of the Competition Commission before Tirana

District Court. The Court decided to admit the lawsuit application, which was then appealed against with Tirana Court of Appeals. Until 2011, the Competition Commission had not managed to get hold of the transcript of Tirana Court decision, although the court proceedings had been completed in April 2010. “Atlas” sh.a., too, took action before Tirana District Court petitioning for annulling in part Decision no. 125 of 8 October 2009 of the Competition Commission. In that case, too, the court panel decided to admit the lawsuit application, which is going to be appealed against with Tirana Court of Appeals.

1.2 Abuse of a Dominant Position

- **Investigation into the market of domestic production of diesel D2 fuel**

The monitoring, preliminary inquiry and initiation of the investigation into the market of domestic production and trading of diesel fuel for vehicles started in 2009 and completed in 2010. At the end of the investigation, the Secretariat argued that “Armo” sh.a. had abused with its dominant position in the D2 diesel market as it had applied different prices to the same transactions on the same days towards other companies operating in the wholesale of D2 diesel. Pursuant to Article 9 (2) (c) of Law 9121 of 28 July 2003 “On Competition Protection”, that company had violated the law.

Based on the investigation report and the written and oral submissions of the Company, the Competition Commission, pursuant to Article 39 of the Law, determined by Decision no. 150 of 20 July 2010 that “Armo” sh.a. had abused with its dominant position. The abuse of a dominant position was proved for the period of 1 January 2009 - 22 August 2009, in the D2 diesel fuel market, where unequal trading conditions were set for the same transactions with different undertakings. For the established violation, “Armo” sh.a. was imposed a fine of ALL 271,880,720.

“Armo” sh.a took action to court against Decision no. 150 of 27 July 2010 of the Competition Authority. The case is still under judicial review in Tirana District Court.

- **Investigation into in the market of loading-and-unloading and storing of liquefied petroleum gas (LPG)**

Based on complaints from liquefied petroleum gas import operators and concerns from OSHA, in 2010 the Competition Authority carried out monitoring, inquiry and investigation into the market of loading-and-unloading and storing of liquefied petroleum gas (LPG) via sea routes.

The investigation showed that the import of liquefied gas via sea routes was done only in two ports—“Vlora-1” and “Porto Romano”—operated under concession agreements that grant exclusive rights in the respective geographic areas. It also showed a significant increase in the degree of concentration in the LPG import market. Following an assessment of the evidence collected during the inspections, the Secretariat prepared a Report “On taking interim measures in the market of loading-and-unloading

and storing liquefied gas”, whereby it proposed to the Competition Commission to take interim measures.

After reviewing the Report and hearing the parties in a hearing organized pursuant to Articles 24 (d) and 44 of the Law, the Competition Commission approved Decision no. 140 of 10 March 2010 “On taking interim measures in the loading-and-unloading and storing liquefied gas market,” with the goal to intervene in the market immediately.

During the inquiry the Secretariat assessed the behavior of undertakings (1) PIA sha in the market of loading-and-unloading and storing LPG, (2) “Romano Port” sh.a in the market of loading-and-unloading of liquefied gas, and (3) “Inter Gaz” sh.a in the market of storing of liquefied gas, and found that those companies had abused their dominant position in the respective markets due to the conditions set for the provision of services, pursuant to Article 9 (2) of the Law.

The Competition Commission approved Decision no. 147 of 23 June 2010 whereby it decided to initiate an investigation into the market of loading-and-unloading and storing of the liquefied gas via sea routes.

After the completion of the investigative procedures, the working group prepared the final report whereby it found that (i) undertaking “PIA” Sh.a had a dominant position in the market of loading-and-unloading and storing of liquefied gas, (ii) undertaking Romano Port Sh.a had a dominant position in the market of loading-and-unloading of liquefied gas, and (iii) undertaking Intergaz SHA had a dominant position in the market of storing of LPG in the area of Porto-Romano, Durrës. In addition, the Secretariat alleged that undertaking PIA sha in the market of loading-and-unloading and storing of LPG, under Article 9 (2) (d) of Law no. 9121 of 28 July 2003 “On Competition Protection,” had abused with its dominant position through the conditions set on the service provision.

Pursuant to Article 39 of the Law, the Competition Commission organized hearings with the parties under investigation. The Report was sent to the parties under investigation, which submitted their written and oral comments during the hearings. At the end of the procedure, based on the investigation report and parties’ submissions, the Competition Commission concluded that the structural changes in the market of loading-and-unloading and storing of liquefied gas via sea routes had caused bottlenecks and had, therefore, led to an increased degree of concentration in the LPG import market. The parties—both in the provision of their services in the maritime terminals and in the meeting of the demand—had not cooperated to reach sustainable development at reasonable economic costs.

The Commission concluded that the undertakings under investigation had not abused with their dominant position, and decided to close the investigation on undertakings ‘La Petrolifera Italo – Albanese’ sh.a, ‘Romano Port’ sh.a and ‘Intergaz’ sh.a, in its Decision no. 162 of 14 December 2010.

- **Investigation into the treasury bills market**

At the end of 2009 the Secretariat completed an investigation in relation to a potential abuse of its dominant position by Raiffeisen Bank in the treasury bills market. In March 2010, after it organized a hearing with the subject under investigation, the Competition Commission approved Decision no. 142 of 15 March 2010 whereby it decided to close

its investigation of “Raiffeisen Bank” Sh.a with regard to an abuse of dominant position in the T-bill primary and secondary markets, and set conditions and obligations for “Raiffeisen Bank” Sh.a”.

In the decision the Competition Commission set conditions and obligations for Raiffeisen Bank SHA on the basis of the commitments the bank undertook in the hearing. Raiffeisen Bank was instructed by the Decision to lower the commissions it charged to individuals in relation to their participation in the primary market. The commissions were to be lowered by 50% over a period of three years, in order to encourage and increase the participation of individuals in the primary market.

According to the Commission Decision Raiffeisen had to make corrections in order to improve information disclosure on T-bills to the public by preparing ad hoc marketing material that would be posted and/or distributed in each of its branches and which should appropriately show the T-bill yield trends updated in a timely manner; information on T-bills would also be published on RB website through an identifiable link.

It should be noted that in 2010 T-bill interest rate fell by about 2%, while the number of individuals participating in T-bill auctions increased.

In 2010 the Secretariat requested information from Raiffeisen Bank with regard to the implementation of Competition Commission Decision no. 142. The information indicated that Raiffeisen Bank had approved the reduction of commissions from 1.2% to 0.6%, and it had prepared an informational booklet on T-bills which it had posted at all its points. In addition, RB has published all the necessary information on treasury bills on its website.

The above shows that Raiffeisen Bank has met all the conditions and obligations set by the Competition Authority.

- **Inquiry of ‘Digitalb’ sh.a with regard to the provision of paid television ‘Premium’ package**

In September 2010 a complaint was filed with the Competition Authority regarding a potential abuse of a dominant position by undertaking Digitalb sh.a. After a review of the complaint the Secretary General issued Decision no. 11 of 28 December 2010 to start an inquiry into Digitalb sh.a with regard to the provision of the paid television ‘Premium’ package. The inquiry found that Digitalb sh.a. had a dominant position in the market of the paid television ‘Premium’ package, but it did not find a violation of Article 9 regarding an abuse of a dominant position.

For those reasons, the Competition Commission approved Decision no. 163 of 14 October 2010 to close its inquiry into Digitalb sh.a with regard to the provision of the paid television ‘Premium’ package.

- **Inquiry into the internet market**

Based on the conclusions in the Report on the Wholesale Market of Access to Broadband and Access to Physical Infrastructure (LLU) prepared by the Electronic and Postal Communications Authority, the Competition Authority initiated an inquiry into

Albtelekom sh.a. on the internet market. The inquiry into the internet market is still in progress.

• **Judicial Review of Decisions on Abuse of a Dominant Position**

In 2010 the civil case “AMC SHA v. Competition Authority” was adjudicated in Tirana Court of Appeals, reviewing an application for declaring Competition Commission Decision no. 59 of 9 September 2007 as invalid. Tirana District Court had decided to dismiss the lawsuit application in 2009; Tirana Court of Appeals decided in 2010 to “Affirm the decision of Tirana District Court”. Therefore, the courts’ final decision was to affirm Competition Commission Decision no. 59 of 9 November 2007 “On imposing a fine against AMC SHA and Vodafone Albania SHA”, only for the portion of the decision regarding AMC. The Competition Authority followed the relevant procedures for issuing the enforcement order which was then sent to Tirana Judicial Enforcement Office for execution. The case is still under execution by Tirana Judicial Enforcement Office. With regard to the portion regarding Vodafone Albania SHA the Competition Authority is waiting for the review date in Tirana Court Appeals.

<i>Change of control as a result of:</i>	<i>Number of authorized concentrations</i>
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1.3 Control of Concentrations

Under the competition policy, in terms of market efficiency and consumer benefits, mergers of undertakings are generally accepted as desirable because of their efficiency in reducing costs. The assessment should not, however, neglect any negative consequences they might bring because of the establishment or strengthening of the concentrated undertaking’s dominant position. The change in the market structure resulting from a merger should be assessed in two aspects:

- a) when the change after the concentration results from external growth, i.e. benefits from controlling an undertaking outside the domestic market, and
- b) when the growth results from benefits from control or merger of undertakings operating in the internal market, or when undertakings already had such a position (such as the case of a natural monopoly).

In 2010 the Competition Commission authorized six concentrations and gave clarifications on allowing several transactions that did not change the control of the undertakings in concentration or did not meet the minimum turnover condition provided for in the Law for the concentration to be subject to an authorization by the Competition Commission.

of two or more undertakings or parts thereof independent from each other	0
acquisition of (direct or indirect) control of one or more undertakings or parts thereof	5
establishment of a joint venture performing all the functions of an independent entity	1
	6

Table no. 1: Change of Control Quality

- **Energy Industry**

The Competition Commission authorized the concentration between Energji Ashta Sh.p.k, VERBUND International GbmH and EVN AG, by means of Decision no. 152 of 21 July 2010 “On authorizing the concentration achieved through the purchase of 50% of shares in Energji Ashta Sh.p.k, from VERBUND International GbmH by EVN AG”, because the transaction did not establish a dominant position of the company after the concentration.

- **Air Freshener Market**

Decision no. 139 of 24 February 2010 “On authorizing the concentration through acquisition of complete control by Procter & Gamble Group, in Sara Lee Group, through the purchase of 100% of Sara Lee Air Care assets”. The transaction consisted of complete acquisition through the purchase of 100% of Sara Lee Air Care business of the national production and distribution of Ambi Pur air fresheners. An assessment of the transaction showed that there was no causality between the achievement of this concentration and the establishment or strengthening of a dominant position in the domestic market for the undertakings under concentration.

- **Information and Communication Technology Service and Product Market**

In this market two mergers have occurred, both of them by the same acquiring undertaking: Harris Corporation Inc. Both were authorized by the Competition Commission by virtue of Decision no. 151 of 21 July 2010 “On authorizing the concentration achieved through the purchase of 100% of the shares in CapRock Holdings, Inc. by Harris Corporation” and Decision no. 166 of 21 December 2010 “On authorizing the concentration achieved through the purchase of Global Connectivity Services business by Harris Corporation”.

The analysis showed that neither transaction established or strengthened the dominant position of Harris Corporation products in the domestic market.

- **Gaming Market**

Decision no. 153 of 21 July 2010 “On authorizing the concentration achieved through the purchase of 100% of the shares in Astra Albania Sh.a by Eagle Investment Sh.a”. The evaluation of the transaction found that, under the concentration, Eagle Investment Sh.a had acquired the control of Astra Albania Sh.a., and now owned in the market both Adriatik Game Sha and Astra Albania Sha.

Both Adriatik Game Sha and Astra Albania Sha operate at the same market level and have a horizontal relationship. The merger of those two companies increased the undertaking’s power at a combined market share of nearly 10.4%. A big number of relatively small companies dispersed across the Republic of Albania operate in this market, while following the concentration there are five major competitors in this market, with none of them having a dominant position. The concentration in question did not establish a dominant position in the relevant market or a part thereof.

- **Insurance Market**

A concentration occurred in the insurance industry which was authorized by Competition Commission Decision no. 160 of 23 November 2010 “On authorizing the concentration achieved through the purchase of 75%+1 shares in Inter Albanian Sh.a by Vienna Insurance Group AG”

The concentration led to the acquisition of single control, and as long as the control acquirer, Vienna Insurance Group, was present in the market through an undertaking (Sigma Sh.a) competing with Inter Albanian Sh.a, the concentration was assessed with regard to the potential dominance of the undertakings after the concentration, because the combined market shares of the control acquiring undertaking after the reaches over 25% of the relevant market.

An analysis of the affected markets shows that Vienna Insurance Group is going to have a control in two companies competing at a horizontal level in the market, Inter Albanian sh.a. and Sigma sh.a., but found no signs of significant restriction in the competition in the market or a part thereof.

- **Various Cases not Considered as Subject to Authorization by the Competition Commission**

- **Insurance Market**

In this market, the Authority reviewed the case of takeover between Sigal Uniq Group Austria Sh.a and Sigal Holding Sh.a which caused a change in the structure of Sigal Uniq Group (*takeover of a subsidiary within the group*), without changing, however, the quality of control of the acquired undertaking. This case, which did not change the form and quality of control of the acquired undertaking under Article 10 (2) (a) of the Law, was not considered a concentration. The parties were notified through a comfort letter of the fact that the case was not considered a concentration and, as a result, did not need an authorization by the Competition Commission.

- **Steel Production and Trading Market**

There was a case of acquisition of control of undertakings IISW and CJSC by Metinvest B.V, which was closed with a comfort letter because it was not considered as a concentration under the Law (subject of the transaction is the acquisition of control of undertakings outside Albania) and was not subject to Competition Commission authorization.

- **Telecommunication Market**

In the case of CETEL CE/ Telemed Telekom there was a restructuring within CETEL Group, a member of which is the Albanian undertaking Albetelekom. In this case the transaction did not cause any effects in the telecommunication market structure or in the quality of control of Albetelekom sh.a., and was not considered as a concentration in accordance with the Law, and was not, therefore, subject to the Competition Commission authorization.

- **Banking Market**

In the banking market there was an announcement of a transaction of the purchase of 7.78% of the shares in Intesa SanPaolo Bank Albania Sh.a that were owned by the European Bank for Reconstruction and Development (EBRD) by Intesa SanPaolo S.p.A. The transaction was not considered as a concentration because it did not change the structure of control within Intesa SanPaolo Bank Albania Sh.a (Intesa SanPaolo S.p.A. had controlled that undertaking from 2007). The Competition Commission stated in a clarification letter on the transaction that the transfer was not considered as case of concentration under Article 10 of the Law.

- **Electricity Market**

In the context of the concentration between Energji Ashta Sh.p.k, VERBUND International GbmH and EVN AG, authorized by Competition Commission Decision no. 152 of 21 July 2010, it was announced that 50% of the shares in Ashta Sh.p.k. would be transferred by Verbund International GmbH to Verbund –Austrian Hydro Power AG. A legal assessment showed that the transaction was a restructuring within Verbund Group, which did not change the structure of control of the Albanian company Energji Ashta Sh.p.k. and was not a concentration under the Law. The parties were sent a clarification letter stating that the transaction was not subject of the Competition Commission authority.

1.4 Market Study and Monitoring

One of the objectives of the Competition Authority in 2010 was to monitor the conditions in the market for free and effective competition, which was carried out mainly by the Market Research and Analysis Unit. The continuous monitoring carried out by the Competition Authority focused on the analysis of the main industries and the most exposed markets to anti-competitive practices due to a small number of competitors and/or strong demand.

- **Banking Market Study**

The monitoring of the banking market started in autumn 2009 and was completed in the first quarter of 2010. The purpose of the monitoring was to assess commercial banks' behavior with regard to their transparency and level of bank service fees.

To achieve the objective the working group relied on banking market studies carried out by the European Commission and OECD. The banking market monitoring focused on two directions: looking at bank transparency in the area of publications and customer information, and looking at the level of service and product fees. At the end of the monitoring, the Working Group found that commercial banks applied different fees for the same services. An assessment of the transparency indicators showed that not all the commercial banks had a website and, therefore, they had not published their terms of business. Banks did not inform their clients when they changed their terms of business for their services, which shows a low level of bank transparency. A comparison of banking service fees within the same bank group in the Region showed that all banks operating in Albania apply higher banking service fees than their sister banks in the Region, especially with regard to fixed commissions.

The Report was discussed with the stakeholders, the Bank of Albania and the Consumer Protection Commission at METE, with which a consultation session was organized with the Competition Commission. In January 2011 the Competition Commission took a decision whereby it gave recommendations to the Bank of Albania and the Consumer Protection Commission.

- **Pharmaceutical Market Study**

The pharmaceutical market has been assessed by the Competition Authority in a piecemeal approach several times. In order to have a better oriented evaluation, inquiries and studies carried out by EC DG Competition were taken into account. The purpose of the monitoring of this market was to assess the importing of medicines and the open network of pharmacies. In this market, which is regulated by primary and secondary legislation and supervised by several institutions, the monitoring had two objectives: (i) evaluating the legislation under which the market of medicines with/without reimbursement operated, and (ii) evaluating the structure of the market of importing medicines and carrying out an analysis of the competition.

Following the consultation sessions held by the Competition Commission with representatives from the Ministry of Health and the Health Insurance Institute (HII), the Working Group reviewed the suggestions in the monitoring report and determined that it was not necessary to recommend amending Article 20 (2) (b) of Law no. 9323 of 25 November 2004 "On Medicines and the Pharmaceutical Service".

- **Monitoring of the Foodstuff Market**

The increased price index of some food products in 2010 led to the initiation of a monitoring procedure on the sugar, rice and cooking oil market. The purpose of the monitoring was to identify the market structure and evaluate the import price trend for those products. Due to the specific characteristics of sugar and rice (the demand for which is met only with imported supply) the monitoring focused on the sugar and rice import market, while the monitoring of the oil market would include both imports and domestic manufacturing of cooking oil.

After processing the data and evaluating the competition indicators, it was found that the steep rise in prices in the three foodstuff markets and the high degree of concentration in them gave a reasonable indication of potential restrictions of competition in those markets, therefore the Competition Commission approved the Secretariat's proposal to initiate an inquiry into the sugar and rice imports and wholesale markets and the wholesale market. The inquiry period was from 1 January 2008 till 31 October 2010. The inquiry is still in progress and is expected to be completed in the first quarter of 2011.

- **Monitoring of Potential Restrictions of Competition in the Liberal Professions**

As already reported in the 2009 Report, the Secretariat monitored and assessed the market conditions with regard to the restriction on competition in the relevant areas of such liberal professions as notaries public, lawyers, pharmacists, dentists, chartered accountants and statutory auditors.

The monitoring included a review of restrictions in the liberal professions which could have resulted from the laws and regulations in power, because those professions are generally highly regulated by laws and regulations. There are five categories of restrictions that are considered important by the European Commission in the liberal professions: fixed prices, recommended prices, advertising restrictions, entry restrictions & reserved tasks, and business structure regulations, which could eliminate/restrict competition between service providers.

Following a review of the Secretariat's report in February, the Competition Commission noted that the collected information, the legal framework and an assessment of similar cases from liberal professions show that the method of operation and the legal framework had been harmonized with EU Member States.

- **Monitoring of the Electricity Market**

The electricity market was continuously monitored by the Market Supervision Department in 2010. The purpose of the monitoring was to supervise the Distribution System Operator behavior after its privatization. During the monitoring two reports were submitted on the regulated and unregulated portions of the energy market. At the end of the monitoring, the Competition Commission, acting by a majority of votes, adopted Decision no. 159 of 19 November 2010 "Recommendations on increasing competition in the electricity market", whereby it recommended the Ministry of Economy, Trade and Energy and the Electricity Regulator Entity to ensure functional and financial segregation of the "Public Wholesale Supplier" from KESH-Gen, which would establish the conditions for competition at this market level for all interested parties (PPE, PVE, Qualified Producers) that would enable competitive transactions, and financial

segregation of the “Distribution System Operator” and the “Public Retail Supplier” so that they operate as financially separate entities. Those market segments have been liberalized and the recommended measures would lead to increased competition. In addition, the Competition Commission recommended an expedition of the tariff-customer agreement revision process, setting obligations for the Public Retail Supplier in order to protect consumers through observance of service quality indicators (supply vs. interruption of electricity, and accurate billing).

- **Monitoring of the Fiscal Cash Register Market**

After receiving indications from media reports on issues in the process of fiscal cash register trading, and following a filing of an anonymous letter to the Competition Authority (archived with no. Prot. 337 of 20 August 2010) and a complaint from the Albanian Consumer Office, the Competition Authority carried out a monitoring in the fiscal cash register market in order to see if there were any restrictions on competition.

The Competition Authority monitored the potential restrictions on competition in the market after the issuance of the Finance Minister’s Instruction no. 16 of 3 May 2010 “On managing and documenting fiscal cash register procedures”.

Because of legislation amendments and the time it would take undertakings to adjust fiscal cash registers in line with the new requirements, for a four-month period there were only two undertakings operating as participants in this market. In September 2010 a third undertaking met the criteria for selling its fiscal cash registers. The data in the report show that there is a high concentration in this market, which has mainly resulted from the small number of operators (currently only three licensees), which operate under the Finance Minister’s Instruction no. 16 of 3 May 2010.

The fiscal cash register selling price data collected from the undertakings show that the prices of cash registers of the same class are different. The undertakings apply differentiated prices, which are mainly based on the costs and quality of the products they sell.

After reviewing the report the Competition Commission found that there were no violations of Law no. 9121 of 23 July 2003 “On Competition Protection” in this market.

- **Continuous monitoring of several markets under investigation.**

In addition to studies, the Assessment Unit has continuously monitored the markets that have been subject to investigation:

- ***Wheat imports***

The monitoring was carried out until August 2010. It was carried out in the context of an inquiry into the bread market in the Region of Korca. Further monitoring of this market is foreseen in the Unit’s action plan.

- ***Fuel imports***

The monitoring in the fuel import market assessed the trend in January-August 2010. The assessment of the data did not show any clear indications of competition restrictions resulting from the behavior of undertakings in the market. This market is under ongoing monitoring.

○ **Liquefied gas imports**

The monitoring in the liquefied gas market began in the context of an investigation in the gas loading-unloading market. The purpose of the monitoring was to identify the import market structure, since both unloading companies also operated in the gas importing market. The assessment and reports were made available to the investigation working groups. Even after the completion of the investigation, the Assessment Unit continues to monitor the gas importing market in order to assess the behavior of gas import and wholesale undertakings. The available data cover the period until November 2010. The monitoring will continue in 2011.

○ **Dairy market**

In August 2010 several dairy sellers increased the prices of milk and yogurt, mainly for milk in 1.5-liter plastic bottles and yogurt in 400-gram plastic cups. The Assessment and Study Unit carried out a monitoring of both products. The monitoring showed that the price rise for both milk and yogurt by several suppliers had resulted from the introduction of an excise tax on plastic packaging (ALL 100 per kg) and that there were no indications of potential infringements of Law no. 9121 of 28 July 2003 “On Competition Protection”.

• **Development of the industry database**

One of the priorities in 2010 was the development of a database with data on the economic sectors. The purpose of the project was to collect sufficient data to identify the market structure by industry.

The project was preceded by the preparation of the methodology, which laid down the specific steps to be followed, including the identification of industries, priority sectors, competitors by industry, sources of information, information processing method and competition assessment basic indicators. The database has not completed yet due to lack of information and failure of DGT to reply to a request for information. The Assessment Unit, however, uses all the methods to collect data and fill the database.

II. Competition Advocacy

Competition advocacy continued to be in the focus of the Competition Authority efforts in 2010. It focused on disclosing the grounds for the decisions taken and informing the general public and undertakings on competition rules and the benefits for the end users. Last year, the Competition Authority carried out a number of activities for increasing competition advocacy through the use of a series of such tools as provision of recommendations on laws and regulations affecting competition in the market; organization of consultations with institutions and regulators; complaint handling and responses, etc.

An indicator of enhanced competition advocacy is the increased number of requests from various institutions to the Competition Authority for its opinion on draft legislation affecting competition in the market. However, in many cases regulators and other central and local institutions do not comply with Articles 69 and 70 of the Competition Protection Law.

Such activities lead to better knowledge of competition rules and clarification of several competition aspects for businesses.

II.1. Evaluation of draft legal acts of other institutions

The fourth pillar of the implementation of the Law—and one of the legal tools for Competition Advocacy—is the submission of Competition Commission assessments and opinions on draft legislation proposed by other regulators and/or public institutions. It is worth listing here the evaluations of the following documents:

- Draft Administrative Contraventions Law. The Competition Authority underlined the solution to the issue of collecting administrative penalties through legal instruments, and proposed some changes to the Bill with regard to the court appeal procedure which should not stay the execution of the Competition Commission acts.
- Concessionary Agreement for Rinas Airport. The Ministry of Transport sent a request to the Competition Authority to evaluate whether the Concessionary Agreement for Rinas Airport caused any restrictions on the free and effective competition in the market. The Authority stated that the granting of the exclusive right to operate as a sole international airport in the Republic of Albania was a barrier to market entry, thus preventing the entry of new competitors in the market of international cargo and passenger flights. The Competition Commission proposed a revision of the Agreement on the basis of the relevant geographic market (limiting the exclusive territory scope to a radius of no more than 100 km from Rinas Airport) which is also the practice in the cases reviewed by the Competition Commission.
- Draft Law Amending Law no. 8530 of 23 September 1999 “On Postal Services in the Republic of Albania”, as amended. The legal assessment carried out by the

Competition Authority showed that the Bill was not in conflict with the Competition Protection Law.

- Draft Investment Protection and Promotion Agreement with Canada. The legal assessment carried out by the Competition Authority showed that the Draft Agreement was not in conflict with the Competition Protection Law.
- Draft Decision on Specifying the Contracting Authority for Awarding the Concession on the National Broadband Network in the Republic of Albania. The legal assessment carried out by the Competition Authority showed that the Draft Decision was not in conflict with the Competition Protection Law.

II.2. Recommendations from market monitoring and investigation

Another important instrument—which is also an added value of market monitoring and investigation—are the recommendations the Competition Authority provides to regulators or central government bodies on a case-by-case basis.

Annex 3 “Matrix of Competition Authority’s Assessments and Recommendations” shows a comparison of Competition Commission’s recommendations and the extent to which they have been taken into account by the relevant institutions. The Decisions include:

1. Decision no. 143 of 15 March 2010 “Several recommendations on increasing competition in the T-bill primary and secondary market”. The Competition Commission gave recommendations to the Bank of Albania, Ministry of Finance and the Financial Supervisory Authority on how to increase competition in the T-bill primary and secondary market.
2. Decision no. 144 of 23 March 2010 “A recommendation to the Electricity Regulatory Entity on the licensing of Cable System sh.p.k. and 400KV sh.p.k.”. The Competition Commission recommended the Electricity Regulatory Entity to grant electricity selling licenses to Cable System sh.p.k. and 400KV sh.p.k.
3. Decision no. 158 of 12 November 2010 “Several recommendations on preventing bid rigging in public procurement”. The Competition Commission recommended the Public Procurement Agency, Council of Ministers and Parliament to amend the Public Procurement Law and enrich the legal framework on procurement with implementation regulations in order to prevent bid rigging in public procurement.
4. Decision no. 159 of 19 November 2010 “Several recommendations on increasing competition in the electricity market”. The Competition Commission gave several recommendations to the Ministry of Economy, Trade and Energy and the Electricity Regulatory Entity on how to increase competition in the electricity market.
5. Decision no. 161 of 2 December 2010 “Several recommendations on increasing competition in the 3G electronic communications market”. The Competition Commission recommended the Ministry of Innovation and Information and Communication

Technology to liberalize the 3G market. It also recommended the Electronic and Postal Communications Authority to regulate the broadband technology market using a transparent methodology and regulate service fees based on costs.

The decisions aim not only compliance with the Authority functional tasks stemming from Article 69 of the Law but also improvement of competition in the markets the recommendations covered, so that end consumers would feel the impact of market competition.

Competition Advocacy Regarding Bid Rigging

Competition authorities in OECD countries and other countries have agreed that while cartels are the most anti-competitive forms of market behavior, concerted practices are the most frequent cartel practices which are found in almost all countries, be them OECD countries or not.

In the case of the prohibited agreement in the public procurement of new vehicles, after reviewing the practices of OECD countries, the Competition Commission decided to cooperate with the institutions responsible for public procurement in order to discover and prevent any prohibited agreements in public procurement.

The Competition Commission took Decision no. 158 of 12 November 2010 “Several recommendations on the prevention of public procurement bid rigging”, whereby it recommended the Public Procurement Agency, the Council of Ministers and the Parliament to amend Law no. 9643 of 20 November 2006 “On Public Procurement”, more specifically its Article 13 (3) which states that the Public Procurement Agency bans an economic operator from participation in procurement procedures for a period of one to three years in the cases provided for in points (a), (b), (c) and (ç) in that same Paragraph. The recommendation proposed to add to the list a point (d) with the following content: “(d) Where a Competition Commission Decision finds that there has been bid rigging among economic operators participating in procurement procedures.”

The legal framework on public procurement should include procedures addressing those cases where contracting authorities have the responsibility for informing the Competition Authority if they have identified indications of prohibited agreements in public procurement during the development and/or execution of procurement procedures. In cooperation with the Competition Authority a special chapter should be drafted in Council of Ministers’ Decree no. 1 “On public procurement rules” (or in any other law or regulation that is deemed appropriate) whereby the abovementioned cases are provided for.

*The Commission recommended the **Public Procurement Agency** to include a Certificate of Independent Tender in the standard procurement documents. It offered its cooperation in training procurement officers in the importance of detecting and preventing bid-rigging, the methods and tools for fighting bid rigging, which has serious consequences for competition, taxpayers and the State budget.*

After the signing of a memorandum of understanding between the Competition Authority and the Public Procurement Agency, an action plan has been envisaged, with the goal to increase competition and efficiency in public procurement; prevent bid rigging in public procurement; raise business and public awareness of fighting bid rigging; raise tender participants' awareness of bid rigging consequences; and detect and report potential cases of infringements of procurement procedures.

In the framework of the EU-funded Twinning Project, EU experts are going to train the Competition Authority in EU Member States' practices related to the investigation of anti-competitive practices in public procurement.

In addition, all public procurement officers will be trained in identifying potential indications of bid rigging in public procurement and informing the Competition Authority on any suspected cases.

A set of publications on the identification of prohibited agreements in public procurement and methods of cooperation with the Competition Authority has been prepared and will be published by the EU Technical Assistance Project.

The cooperation expected outcome is the increased number of complaints from bidders or other businesses in relation to bid rigging and initiation of inquiries; detection and reporting of potential cases of infringements of procurement procedures in relation to potential bid rigging; increased competition and efficiency in public procurement; information submitted to the Competition Authority in real time with regard to suspected cases of bid rigging, and raising business and public awareness of the fight against bid rigging.

II.3 Regulatory Reform (RIA)

In January 2008 the Competition Authority developed a Legislation Assessment Instruction, related to the assessment of legislative acts from a competition law perspective. The goal was to increase enforcement of Article 69, which obliges all public institutions to solicit the Competition Authority's comments before submitting legislation proposals. Systematic efforts have been carried out to increase awareness among those institutions.

In 2010 the Authority was informed as a stakeholder about the Regulatory Impact Assessment (RIA) in which it also participated. The purpose of RIA is to help policymakers and other government officials in developing draft laws by providing practical guidelines. It will accompany every act to be reviewed by the Council of Ministers.

The Competition Authority proposed a special appendix on the impact of regulations on competition, which implies that regulation drafters would need to answer a questionnaire on the regulation impact on the market mainly in relation to a restriction on the number of suppliers, granting of special or exclusive rights, market impact or any

other restrictions that the regulation in question might impose on the free and effective competition in the market.

II.4 Cooperation with Other Regulators and Institutions

The Competition Authority has closely cooperated with regulators and institutions that are related to the regulation and/or functioning of specific markets. The Competition Authority, on its own initiative, has carried out legal and regulatory framework assessments and has given relevant recommendations where it has identified restrictions on the free and effective competition in the market.

In the performance of its activities the Competition Authority cooperates with various public institutions in relation to issues of free and effective competition in the market. Under Law no. 9121 of 28 July 2003 “On Competition Protection”, central administration bodies and regulators have the obligation to share information and data that are related to their intended use.

Special attention has been paid to the cooperation with the competent regulators in the so-called regulated sectors. The Competition Authority gave its contribution to various industries and sectors such as energy, telecommunications, postal services, financial services, etc.

Given how important the cooperation with central and local institutions and business associations is, the Competition Authority signed memoranda of understanding with various players, such as the Public Oversight Board. In the framework of further consolidating its relationships with regulators the Competition Authority is expected to sign soon a memorandum with the Water Regulatory Authority.

II.5 Execution of Competition Commission’s Decisions

With the adoption of Law no. 10317 of 16 September 2010 “Amendments to Law no. 9121 of 28 July 2003 “On Competition Protection” the problem related to the execution of Competition Commission decisions was given a solution. Pursuant to Article 80 of the Amended Law, “Penalties imposed by the Competition Authority shall be enforceable orders and executed in accordance with the provisions of the Civil Procedure Code.” Upon the entry into force of the Law, the Competition Authority initiated court procedures for issuing execution orders with regard to penalties imposed by the Competition Commission by means of final decisions.

The Civil Procedure Code provides that the Judicial Enforcement Service is responsible for collecting such penalties. Until January 2011, Tirana District Court had taken a decision to issue an enforcement order for six Competition Commission final decisions, which had been submitted to the Judicial Enforcement Office for further appropriate proceedings. The enforcement orders have already been issued and the Judicial Enforcement Office has initiated its proceedings for 20% of the total amount of imposed penalties—three of the Competition Commission decisions. Another 23% of the total amount of penalties is under enforcement procedure.

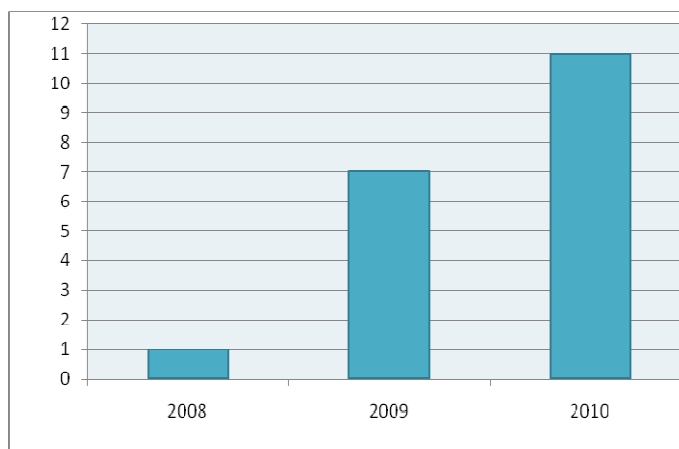
III. Complaints and Competition Culture

III.1 Complaints: an important tool

The Competition Authority considers complaints on issues related to competition level and market functioning a very important tool for strengthening law enforcement and competition policy advocacy. An increased number of complaints indicates an increased competition culture.

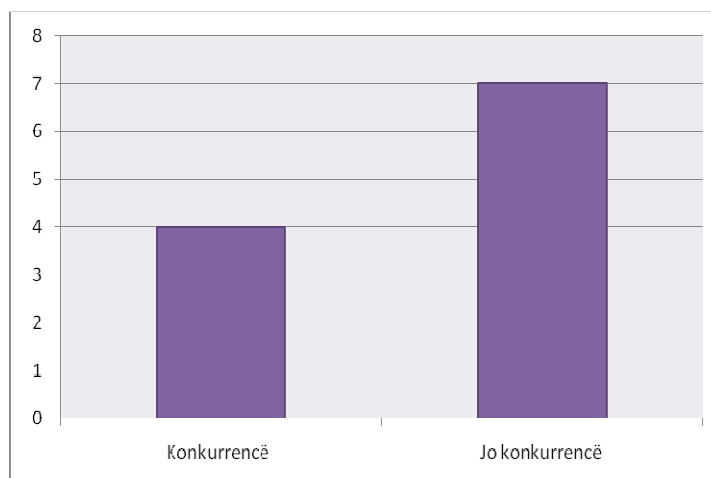
In 2010, the Competition Authority reviewed several complaints from undertakings operating in various markets. The amendments to the Competition Authority Rules of Procedure have provided for a shorter period of handling complaints—the Secretariat reports to the Commission on the subject-matter and solution proposals within five days, and the complainant is informed within 15 days from the submission of a complaint. This procedure has increased the administration efficiency in handling cases and has led to the initiation of a number of monitoring and/or inquiry proceedings where complaints have been linked with the Competition Protection Law.

The first graph below shows the significant rise in the number of complaints submitted to the Competition Authority over the past few years (1 in 2008, 7 in 2009, and 11 in 2010).



Graph no. 1: Number of complaints, by year

Out of the complaints that were submitted last year, four were related to the scope of the Law, while seven were not related to the Competition Protection Law. Even in those cases, the Competition Authority referred the complaints to the relevant institutions, following up on them.



Graph no. 2: Complaints related and unrelated to the scope of the Law

The complaints mainly came from the electronic communication sector where operators classified as alternative ones complained on the potential abuse of the dominant position of the big landline and mobile telephony companies. One novelty in 2010, however, was that operators enjoying significant market power complained against their competitors also enjoying significant market power. The Competition Authority closely cooperates with the Electronic and Postal Communications Authority in addressing such complaints that mainly fall under the scope of the Electronic Communication Law.

- **Handling complaints and monitoring the green card market**

An electronic complaint was submitted to the Competition Authority, on how the International Motor Insurance Certificate (Green Card) was being sold. The complainant claimed that the market for that service (International Motor Insurance Certificate) had been “monopolized” by a single broker and the insurance was being sold at unfair prices, thus restricting the competition in that market and harming consumers. So, pursuant to Article 28 (a) of Law no. 9121 of 28 July 2003 “On Competition Protection”, the Competition Authority monitored the Green Card prices and how it was sold. It also met with the Financial Supervisory Authority, and carried out a series of interviews with representatives from companies selling the Green Card.

At the end of the monitoring it found that Law no. 10076 of 12 February 2009 “On Compulsory Insurance in the Transport Sector” and the Regulation “On Premiums of Compulsory Insurance in the Transport Sector”, adopted by Board Decision No. 75, which regulated the relevant market, laid down broad parameters for competition, and, therefore, did not violate Law 9121 of 28 July 2003 “On Competition Protection”.

Green Card insurance is sold through the online sales register by authorized representatives of insurance companies. The product may not be sold by other unlicensed agents, as the system is monitored online by the Financial Supervision Authority.

The fixed price of the product—EUR 40—derived from Finance Minister Instruction no. 1 of 3 January 1996 “On approving mandatory motor third-party liability insurance premiums”, as amended.

- **Review of a complaint from private security companies**

Two complaints were submitted to the Competition Authority by private security companies on the development of general and specific qualifying criteria that were not based on the Laws of Albania by contracting authorities. They also included a request for the Competition Authority to intervene with the Public Procurement Agency to enable fair, legal and nondiscriminatory competition in public procurement procedures.

The Authority made a legal assessment of the complaints, at the end of which it concluded that the Public Procurement Agency was the competent body for an administrative review of the complaints to identify any infringements of the Procurement Law and the relevant implementation regulations, and take any appropriate measures under the Law.

Given that Competition Commission Decision no. 114 of 26 May 2009 “Several recommendations on increasing competition in the public procurement of security services” provided recommendations on increasing competition in the said market to the relevant Contracting Authorities and the Public Procurement Agency, we think that the administrative resolution of any submitted complaints should be done by the competent authorities in accordance with the Public Procurement Law.

- **Complaint from Klar against Conad**

Klar Shpk claimed a failure to observe an exclusivity agreement and sale under the exclusive price of 2x250gr. Segafredo coffee product by Conad Shqipëri shpk.

After monitoring the market for this product and assessing the documentation submitted by undertakings Klar shpk and Conad Shqipëri shpk, the Working Group concluded that Conad Shqipëri shpk had not violated the exclusive rights granted to Klar by Segafredo Zanetti, as Conad Shqipëri shpk imported and sold the product only in its own chain. The review of the complaint was concluded with the finding that Conad Shqipëri shpk had not sold any products under their cost.

- **Complaint from Mozzarella Italia**

In July Mozzarella Italia submitted a complaint to the Competition Authority about the behavior of “FERLAT” Sh.p.k which operated in the market of dairy production and trading market. After reviewing the complaint, the Secretariat did not find any elements of competition restriction or distortion in the market.

- **Complaint from Bell-air**

Bell-air submitted a complaint to the Competition Authority against Star Airways on false advertising grounds. After reviewing the complaint, the Secretariat concluded that it did not fall into the scope of the Competition Protection Law, but rather of the Consumer Protection Law, which deals with unfair business practices, including false advertising and misleading publicity.

- **Complaints in the electronic communication market**

Several complaints were submitted to the Competition Authority from electronic communication market operators in 2010. In June Albanian Carrier Telekommunikations sh.p.k submitted a complaint against operators with significant market power. According to Albanian Carrier Telekommunikations sh.p.k those operators had not complied with the interconnection agreement. After reviewing the complaint the Secretariat concluded that the complaint did not fall in the scope of the Competition Protection Law.

In September Albtelekom submitted a complaint against AMC which did the blocking of international interconnection circuits and the blocking of a series of tricks for alternative operator traffic. After reviewing the complaint the Secretariat concluded that the complaint was related to noncompliance with the interconnection agreement by one of the parties: as a result it did not fall in the area of competence of the Competition Authority, but in the area of competence of the Electronic and Postal Communications Authority, which is the responsible institution for addressing such issues.

- **Complaint from “Justiniani” University against unfair practices of Tirana European University**

“Justiniani” University submitted a complaint to the Competition Authority claiming that “the European University of Tirana has been broadcasting a TV ad for several days, in which it is stated that the European University of Tirana offers Doctoral Degrees in several branches, which is not true. The TV ad does not reflect the truth and misleads consumers and the public opinion.” The review of the complaint found that the “Justiniani” University complaint consisted of a claim that the European University of Tirana was carrying out unfair and misleading business practices (advertising), which, as prohibited practices, are covered by Law no. 9902 of 17 April 2008 “On Consumer Protection”.

The complaint did not, therefore, fall in the scope of the Competition Authority, in accordance with the Competition Protection Law.

- **Complaint from Vlora “Pavaresia” University**

Vlora “Pavaresia” University submitted a complaint to the Competition Authority claiming that “For about a month the self-called “Reald” University in Vlora has been disinforming the public through its TV ads broadcast on local and regional television networks in South Albania and brochures it has been distributing, in which it claims that it is a higher education institution operating legally in Vlora providing studies in both cycles of university studies including the professional and science master’s degrees.”

The case review found that Vlora “Pavaresia” University complaint consisted of a claim that “Reald” University in Vlora was carrying out unfair and misleading business practices (advertising), which, as prohibited practices, are covered by Law no. 9902 of 17 April 2008 “On Consumer Protection”, and did not, therefore, fall in the scope of the Competition Authority, in accordance with Law no. 9121 of 28 July 2003 “On Competition Protection”.

- **Complaint from “Agjencia 100% Shqip”**

“Agjencia 100% Shqip” submitted a complaint to the Competition Authority regarding “Noncompliance with legal requirements in the treatment of Vitrina driving school students by Tirana Regional Transport Department.” In its complaint, the abovementioned undertaking claimed that Tirana Regional Transport Department had caused obstacles and problems consisting of: endless procrastination in the processing of its students’ documentation, tarnishing its reputation; pressure on its clients, exercised only on the basis of them being its students; favoritism towards other driving schools; suspending its work in April-June 2009 with no legal grounds; claims that its teaching approach was not line with western standards; failure to issue driving licenses; etc.

From the Competition Protection Law perspective the complaint was not in the review scope of the Competition Authority; however, the Authority monitored the claims contained in the complaint. An analysis of the competition showed that the driving school market operates under Law no. 8378 of 22 July 1998 “The Road Code of the Republic of Albania,” as amended, and Law no. 8308 of 18 March 1998 “On Road Transport,” and implementing regulations.

The market is completely liberalized and regulated. The analysis showed that there were no entry barriers to the profession. 83 driving schools operated in Tirana. Regarding tariffs there were no maximum or minimum set prices, as such prices are freely negotiated between clients and managers. At the end of this case review, too, no competition violations or behaviors in conflict with Law no 9121 of 28 July 2003 “On Competition Protection” were found.

III.2 Increased Competition Culture

In 2010 the Authority made efforts for implementing an active policy for increased competition culture, which continued to be low despite the significant improvements. Increased competition culture remains one of the most significant challenges for the Competition Authority.

- **Raising business and public administration awareness**

The increased awareness of the Competition Policy importance and role among businesses, consumers, public institutions, the judiciary and the public was achieved through broad public communication, in general, and hearings and consultations with various business and public administration representatives, in particular. The hearing and consultation sessions went beyond their specific subject-matter to discuss competition promotion and protection issues and the importance of the implementation of the Competition Law for businesses and various public institutions.

In addition to increased competition culture, communications with market players and the general public has increased the transparency of the Competition Authority activity. In the context of achieving complete transparency, the Authority organized hearings and consultations with parties under investigations and various public institutions in order to go beyond the inquiries at hand and ensure the overall well-functioning of the market. Regarding concentrations of undertakings the Authority invited all the stakeholders to provide their opinion.

Competition Authority decisions have been published on its website in real time, providing the public with more control and increasing the Competition Authority accountability for its activities. Cooperation with the public, businesses and other public institutions is of special importance in the complete implementation of Competition Policy in Albania.

In this context, it is of special importance to elicit business comments on the Competition Policy in Albania and the specific activities of the Competition Authority. To that end, the Authority prepared a questionnaire, which is going to be distributed to various undertakings through business associations and chambers of commerce, in order to have their direct feedback on the Authority activities and on potential further improvements.

- **Public and media communication**

The Competition Authority has paid special importance to its efforts for increased competition culture and awareness among the general public, be it directly or through the media. The Authority has continuously promoted free and effective competition through its various publications and website (www.caa.gov.al). Its website has become one of the most important direct public communication tools; the public can find general information on free and effective competition issues, organization and legislation, in addition to up-to-date information on the specific activities of the Authority, its inquiries and its decisions.

The Competition Authority has continued to distribute its informational publications on Competition Policy—"The Competition Policy", "Competition Law and Consumer Protection", annual reports, decision journals—to various stakeholders. The Competition Authority has also cooperated with higher education institutions to enable students do their practicum.

Continuous communication with the public on printed and audiovisual media has been especially important; the media have shown great interest in covering the Competition Authority activities. Communication with the media was done through press releases, interviews, press conferences, participation in various television programs, etc.

IV. European Integration in the Area of Competition

The Stabilization and Association Agreement (SAA), which entered into force on 1 April 2009 following its ratification by 25 EU Member States, is the instrument that will enable Albania's integration into the European Union. The Stabilisation and Association Agreement envisages the adoption of the *acquis communautaire* in the domestic legal system of Albania. The goal of legislation approximation is to establish a legal and institutional framework that will allow the Albanian market to be integrated into the European market.

In order to ensure the implementation of SAA the Albanian Council of Ministers adopted a National SAA Implementation Plan. The Competition Authority obligations deriving from SAA are related to the approximation of the Albanian legislation with the competition *acquis*, and the protection of free and effective competition in the market by prohibiting and penalizing those anticompetitive practices that distort or restrict the market.

Under the SAA, Albania is committed to protecting the principles of free and effective competition in the market through the prohibition of those agreements that affect competition or abusive behaviors in the market by one or more undertakings, and through control of concentrations.

The National SAA Implementation Plan addresses Albania's short-term, medium-term and long-term priorities in the area of European Integration, including actions to be taken by the Competition Authority. In 2010 the Competition Authority maintained regular contacts with the Ministry of European Integration, and submitted to it regular reports on its activities and the progress made in the area of legislative initiatives regarding primary and secondary legislation on competition, and implementation activities, within the timeframes laid down in the National SAA Implementation Plan.

More specifically, the Competition Authority (i) continuously reported on the markets and sectors the Competition Authority had inquired and the undertakings under inquiry against which it had imposed penalties or to which it had given recommendations, and on legal initiatives, implementation activities and institutional capacities in the reporting period; (ii) revised legal initiatives and short-term, medium-term and long-term activities within the timeframes set in the National SAA Implementation Plan; (iii) replied to various questions and requests from the European Commission within the specified timeframes and in compliance with the relevant laws and regulations; (iv) reported in the Stabilization and Association Committee meeting and EU-Albania Subcommittee on internal market and competition (April 2010) on its annual activity; (v) revised the Albanian Competition Law and brought it up-to-date with the latest competition *acquis*.

IV.1 Legislation Updating

Following a review of draft amendments to the Competition Protection Law the Parliament of Albania adopted Law no. 10317 of 16 September 2010 "Amendments to Law no. 9121 of 28 July 2003 "On Competition Protection", which entered into force

on 23 October 2010 as promulgated by Decree no. 6696 of 4 October 2010 of the President of the Republic of Albania.

The legal amendments aim at:

(i) ensuring a higher degree of implementation of free and effective competition in the market, in order to increase the standards for a functioning market economy in compliance with the *acquis*;

(ii) increasing competition advocacy and public awareness of the advantages of free and effective competition in the market as a public right and good which no one may restrict, distort or impede;

(iii) strengthening and increasing market supervision tools, and establishing more effective measures for restoring competition and imposing penalties against entities that distort competition;

(iv) enhancing legal and administrative procedures so that the institutional cooperation can be more efficient and expedient in the context of achieving the goals of the Law;

(v) improving and changing the extent of penalties provided for in the Competition Protection Law, by harmonizing them with the European legislation.

The amendments were based on regulations issued under the European Competition Law; more specifically: Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation) (32004R0139); European Commission Regulation No 802/2004 implementing Council Regulation (EC) No. 139/2004 on the control of concentrations (32004R0802); Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (32003R0001), Regulation (EC) No. 773 of April 2004.

Pursuant to the amendments of Law no. 9121 of 28 July 2003 “On Competition Protection” a list of Competition Authority secondary legislation has been prepared which is being amended and will be amended in the future in order to bring it up-to-date with the recent Competition Protection Law amendments. Some of the legislation that has been amended so far is explained later in this section.

The approach to the legal amendments was twofold: approximation with the *acquis* and reflection of practical challenges in the application of the Law to the Albanian economy.

- **Exclusive and special rights**

The main revision in the Competition Law was the inclusion of undertakings which have been granted a right to operate in the area of services of general economic interest or profit-oriented undertakings which have a **monopolistic** nature in the scope of the Law, as long as their activities are not prohibited *de jure* or *de facto*.

Prohibition of agreements restricting competition.

Amendments to Articles 4, 5 and 6 of the Law completely approximate them with the corresponding Articles in the Treaties establishing the European Union—Treaty of Rome, Treaty of Maastricht and Treaty of Lisbon. In its proposed form Article 4

of the Law is completely approximated with Article 81 (1) and (2) of the Treaty of Maastricht. After the revision, the Law provides for the first time for a block exemption of agreements, and specifies the cases of de minimis agreements. Under the new Law Article 4(1) does not apply to those agreements that do not restrict competition in the market significantly, if the combined market share of the undertakings participating in the agreement does not exceed 10% of the relevant market, if the participants are current competitors, or 15% of the relevant market, if the participants are not current or potential competitors.

- **Dominant position**

Another change is the revision of the provisions on the abuse of a dominant position in order to approximate them completely with the *acquis*. Paragraph 3 of Article 9, which did not consider as abusive practices the case where undertakings provided evidence that they had carried out such practices for objective reasons, such as technical or other legitimate business reasons, was removed from the Law. This change was indispensable not only for the approximation but also because it could be interpreted by any undertaking abusing with its dominant positions that it legitimized such a behavior due to technical or business legitimate reasons, such as maximization of income, which is the objective of every monopoly.

- **Concentrations between undertakings**

The decreed changes provide for concepts related to Article 3 of Regulation 139/2004 on the control of concentrations between undertakings. More specifically:

- a) a concentration shall be deemed to arise only where a considerable change of control has occurred;
- b) where a natural person controlling an undertaking acquires control of another undertaking.

Regarding the amendments of Article 12 it should be noted that they are related to the significant reduction of the thresholds above which an obligation arises for undertakings participating in concentrations to notify the Authority. The Law specifies three amounts related to the requirements of Article 12: ALL 7 billion of turnover in the foreign market; ALL 400 million of turnover in the domestic market of all the undertakings; ALL 200 million of turnover of only one undertaking in both cases.

In addition, the notification deadline was extended from one week to 30 days. Article 13 of the Law introduced a novelty. The adopted amendment approximates the existing (dominance) test with the test provided for in Regulation 139/2004 which looks at the test from the perspective of significant restriction of competition, too.

- **Fines**

A complete approximation of the legislation also required the abolition of the minimum limit of heavy fines (in the older Law it was 2%), providing that the fines should depend on the violation and the turnover on the relevant market where the abuse has occurred

(abuse of a dominant position, participation in a prohibited agreement, unauthorized concentration) and may not exceed 10% of the total turnover.

- **Investigative proceedings**

The relevant provisions are in Part III in the Law. They aim at complete approximation with EU Regulation 1/2003. To that end, Articles 33-35 were approximated with Articles 18-21 or Regulation 1/2003. A provision on complaint handling and complainant's identity confidentiality was also inserted. This provision establishes the prerequisites for more complete guarantees for those persons who might be in direct contact with specific violations of competition.

- **Complaints**

The Competition Authority has always paid attention to business and consumer awareness of the possibility to complain to the Authority regarding potential anti-competitive practices. In the amended Law, however, a special article on complaints was inserted providing for the anonymity of complainants where the latter wish to remain so.

- **IV.1.1 Adoption of secondary legislation**

The Competition Authority continued to give importance to the completion of the secondary legislation with the necessary regulations, which have been adapted from, and approximated with, the competition *acquis*. In this way, the Authority also complied with its obligations and timeframes under the National SAA Implementation Plan (NSAAIP). The secondary legislation adopted by the Competition Commission was also discussed with various international competition experts, and was based on suggestions and comments from domestic stakeholders, including law firms. In 2010 the Competition Commission adopted the following acts:

- Competition Commission Decision no. 137 of 5 February 2010, approving the Guidelines for the Assessment of Horizontal Agreements. These guidelines set out the principles for the assessment of horizontal cooperation agreements. In most of the cases, horizontal agreements refer to the cooperation between competitors. These Guidelines cover agreements of concerted practices between two or more undertakings operating at the same market level, for instance at the same level of production or distribution. They also specify the criteria for the assessment of research and development, production, purchase, trade, standardization and environmental agreements. The Guidelines are in conformity with the Communication from the Commission — Guidelines on the applicability of Article 81 of the EC Treaty to horizontal co-operation agreements (OJ C3, 6.1.2001; P. 2 – 30)(32001 Y 0106 (01);
- Competition Commission Decision no. 145 of 15 April 2010, approving the Guidelines for the Assessment of Vertical Agreements. These Guidelines set out the principles for the assessment of vertical agreements, making a distinction between pro-

competitive and anti-competitive effects of those agreements that are prohibited under the Law. The Guidelines are in conformity with the European Commission notice (2000/C 291/01) - Guidelines on Vertical Restraints (32000Y1013(01)).

The Regulation on inquiry procedures was drafted and adopted under Law no. 9121 of 28 July 2003 "On Competition Protection" last year. The Regulation aims full approximation with the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L1, 04.01.2003, p 1-25) (32003R0001). It was drafted by the experts of the Project assisting the Authority staff, and was discussed with the Working Group that was established for the drafting of the regulation. It complies with the legal provisions on competition in power, and lays down the inquiry procedures to be followed by the Competition Authority.

Several other regulations are in the process of being drafted. They will complete the legal framework of the Competition Authority and implement Article 6 of Law no. 9121 of 28 July 2003 "On Competition Protection", which provides for the obligation of the Competition Authority to draft a regulation on the block exemption of agreement classes. It is worth noting (i) Draft Regulation on categories of specialization agreements (in conformity with Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements); (ii) Draft Regulation on categories of technology transfer agreements (in conformity with Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements); (iii) Draft Regulation on categories of research and development agreements (in conformity with Commission Regulation (EC) No 2659/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements).

- **Amended secondary legislation regulations**

Following the amendments to Law no. 9121 of 28 July 2003 "On Competition Protection," as amended, the Competition Authority took the initiative to revise the secondary legal framework in power in order to adapt it to the amended Law. The revised acts include:

- Regulation on agreements of minor significance, adopted by CA Decision no. 164 of 14 December 2010 "Amending the Regulation on agreements of minor significance";
- Regulation on the implementation of undertaking concentration procedures, adopted by CA Decision no. 165 of 14 December 2010 "Amending the Regulation on the implementation of undertaking concentration procedures";
- Regulation on the setting of expenses and application of procedures with the Competition Authority, adopted by CA Decision no. 167 of 21 December 2010 "Amending the Regulation on the setting of expenses and application of procedures with the Competition Authority";

- Regulation on the operation of the Competition Authority, adopted by CA Decision no. 168 of 21 December 2010 “Amending the Regulation on the operation of the Competition Authority”.

The adoption of the amendments to Law no. 9121 of 28 July 2003 “On Competition Protection”, which were passed by the Parliament as Law no. 10317 of 16 September 2010 “Amendments to Law no. 9121 of 28 July 2003 “On Competition Protection”” required the Authority staff to accompany the amendments with amendments to the secondary legislation that had been adopted previously. The amended provisions necessitated their reflection in detailed rules and interpretation in the form of amended and even new regulations which could have not been issued previously due to the lack of legal basis.

Thus, in a brief period of several weeks, without neglecting its day to day obligations the Authority amended all the existing regulations bringing them in full conformity with the legal amendments, and drafted new regulations required by the recent developments and the amended Law.

IV.2 European Commission Questionnaire - Competition Policy

After submitting its application for EU membership (28 April 2009) the Government of Albania received the EC questionnaire. The process of preparing its answers to the Questionnaire was one of the significant challenges facing the Competition Authority, since it covered a separate chapter (Chapter 8 Competition Policy), consisting of three parts: Competition (antitrust), State Aid, and Liberalization. The Competition Authority was the leading institution which coordinated the preparation of the answers to this Chapter.

The Competition Authority started working for the coordination of the Questionnaire answer preparation by establishing its working group by Order No. 368/2 of 10 December 2009 “On establishing the inter-institutional working groups and the list of persons, regarding the EU Questionnaire”, following Prime Minister’s Ordinance no. 183 of 11 December 2009 “On establishing the inter-institutional working groups”. Authority experts were involved in the process, preparing the answers, which were discussed and approved by the governing structures of the institution. Numerous inter-institutional meetings were held in the process, with various regulators and institutions who participated in the inter-institutional working group for preparing answers to integrated questions.

The Authority worked for the coordination and progress of this process with other public institutions that had been involved in the preparation of answers, in order to avoid any delays or inaccurate information. Contributing institutions for Chapter 9 were: the Competition Authority, the Ministry of Economy, Trade and Energy, the Ministry of Public Works and Transport, the Ministry of Innovation and Information and Communication Technology, the Albanian Copyright Office, the Electronic and Postal Communications Authority, etc.

Chapter 8 contained 49 questions, of which 31 questions were related to the area of competition. The realistic answers to the questionnaire facilitated the

comparison between the Albanian competition law and practice with the European one, which helped identify any gaps and issues in the legal framework. The information was used to further enhance the proposed legal amendments. Another aspect to be underlined is the preparation of the answers to the Liberalization questions, which was made possible under very close cooperation among the members of the inter-institutional working group, which will continue to operate as a standing working group.

In June 2010, the Competition Authority answered eight additional questions, observing, in the process, the deadlines set by the Ministry of Integration.

IV.3 European Commission Technical Assistance

The Support for the Competition Authority and the State Aid Department Project has started to be implemented at the Competition Authority. The Project is funded by EU under IPA 2008, for an amount of EUR 1.5 million, and will be implemented for a period of 24 months. The Project has a component of Technical Assistance (EUR 500,000) and a twinning component (EUR 1 million), and its competition component will be implemented by experts from counterpart authorities in Italy and Hungary. It is expected that the Project will assist the Competition Authority in combining the Albanian practice with the best European standards, adopting those standards that are more feasible with the aim to promote a competitive environment in Albania.

The goal of the Project is to ensure a competitive environment in Albania through assistance for the legal framework, publications, competition awareness and advocacy, translations, provision of expertise, organization of various events, etc., in the context of expediting and improving procedures and increasing administrative capacities, with the aim to achieve gradual compatibility with EU competition law, which will help expedite the process of Albania's integration into the EU.

It will provide technical assistance in amending and enhancing the Albanian competition law, revising procedures and implementing the legal framework, in order to ensure complete harmonization of the Albanian legislation with the *acquis*. It will also provide and suggest the necessary tools for enabling an increased compliance with decisions taken in the area of competition.

The Project aims at increasing and strengthening the efficiency and effectiveness of administrative capacities in the area of competition. It will, inter alia, focus on:

experience exchange regarding competition case reviews;
institutional capacity building, increased professionalism, experience exchange with Italian and Hungarian counterparts;

Technical Assistance in amending and improving the Albanian competition law in conformity with the EU law, and in translating European Commission regulations and other interpreting documents, under NSAAIP; increasing competition culture and public awareness through the organization of a series of national and international events (joint training seminars, conferences, workshops, etc.) which are necessary to increase the understanding of the legal framework on competition, and organization of round tables on various competition issues;

publication of Albanian legislation and other informative brochures;

a series of other activities including training of judges, media, law firms and business community on various competition aspects, assistance in intensifying and consolidating the implementation of the law, etc.

IV.4. Cooperation with international institutions

The Competition Authority has consolidated its relations with homologue authorities, and has been in continuous communication with them through contacts and experience exchange. It is indispensable to take increasingly active part in events organised by international bodies, in order to be familiar with the latest trends in the area of competition, and the implementation of best practices and principles.

Since the Competition Authority is a member of the International Competition Network (ICN) it has been invited to various events organized by ICN in the area of competition, and has filled in its questionnaires and responded to its requests.

V. Main Goals for 2011

The Competition Authority experience so far has helped it identify issues from the past and challenges for the future. As it has been underlined, administrative capacities and staff expertise are key to an increased impact on the market in behalf of the overseer of the operators' behavior. Competition advocacy and further market liberalization are essential tools for promoting and consolidating competition and identifying market players' behavior.

V. 1. Market Supervision

Market supervision is a major legal obligation, which comprises a significant share of the Competition Authority work plan. Thus, market monitoring and inquiry will remain one of the priorities for the Competition Authority in 2011 in order to ensure free and effective competition in the market.

Main industries and markets on which supervision is going to focus are those where firm concentration and power is greater or the number of competitors is limited due to market structure (natural monopolies) or where a dominant position arises in relation to one or several market operators.

Regarding anti-competition practices, prohibited agreements or concerted practices, experience has shown that agreements between undertakings are becoming more and more sophisticated, making their detection by the Competition Authority through direct evidence increasingly difficult. Because of this, one of the Competition Authority priorities for the next year will be the enhancement of methods for detecting anti-competitive practices, especially agreements, by increasing the use of alternative detection techniques and economic analysis.

With regard to control of concentrations, the legal amendment, which significantly reduced the turnover threshold for the purpose of notification of concentrations, is expected to increase the number of cases requiring an approval by the Competition Commission. The Competition Authority has already proposed to increase its structure by two inspectors in order to ensure the necessary administrative capacities to carry out the procedures related to the control of concentrations.

Next year the Competition Authority will finish the monitoring cases and inquiries in progress, and address responsibly and professionally any complaints or signals submitted to it directly or indirectly.

V.2 Liberalization and Exclusive rights

The major amendment to the Competition Protection Law was the inclusion in the scope of the Law of the public undertakings and the undertakings to which governments grant exclusive or special rights. Following entry into force of the Law, the Competition Authority asked all central institutions and regulators to solicit the Competition Authority assessment before granting any exclusive or special rights.

A challenge for the Competition Authority will be the ex-ante evaluation of all laws and regulations which might grant exclusive rights to specific public or private undertakings; such rights might be granted by central or local authorities, but they might restrict competition for certain goods or services on the market. In this way, the prevention power against competition distortion deriving from laws and regulations would increase.

The Competition Authority has collected information on the correct status of markets and industries with limited numbers of operators, and is working closely with central institutions, especially with the Ministry of Economy and the Ministry of Transport, in order to take measures for the liberalization of markets.

In cooperation with the experts, the Competition Authority is drafting an assessment of the liberalization of those markets which were found to have operators to which legislation had granted exclusive rights. The material is going to be discussed with the relevant institutions in order to identify the next steps. The Authority work plan for 2011 includes the monitoring of a number of undertakings in the sectors of transport, public services, postal services and energy to which special and exclusive rights have been granted. In line with the European Commission recommendations, the Competition Authority will carry out further assessments, in cooperation with central institutions and/or regulators, on the compatibility of exclusive rights practices with the *acquis*.

V.3 Increased Competition Advocacy and Culture

In addition to being one of the pillars of the Law, competition advocacy and culture strengthening is also a vital necessity in order to achieve a real impact of the Competition Authority activities for a functioning market.

In compliance of the Competition Policy and Law, the effective activities of the Competition Authority are influenced by the perception and response of all market players that are affected by the Policy. Because of this, the technical assistance

enabled the drafting of an Advocacy Strengthening Strategy, which is a detailed action plan the implementation of which will be one of the top priorities of the Authority.

The description of activities for 2010 present the efforts for being an integral part of the RIA legal package—a Government of Albania initiative—which is in the consultation phase. The package will enable the implementation of the legal obligation for central and local institutions to solicit the Competition Authority assessment of every draft law or regulation which is especially related to (a) quantitative restrictions on market entry and trade; (b) granting of exclusive or special rights in specific areas to specific undertakings or for specific products; and (c) imposing of consistent sale price and condition practices.

In order to increase the competition culture, the Competition Authority is going to use several such tools as the solicitation of business community opinion on its work through a questionnaire, which is expected to be responded by businesses at national and local level. In addition, the Authority will continue to work for building and strengthening a real partnership with businesses through their representative associations, and increasing its cooperation with chambers of commerce gathering foreign and domestic businesses, such as the American Chamber of Commerce, the German-Albanian Chamber of Commerce and Industry, the Albanian British Chamber of Commerce and Industry, etc.

Another Competition Protection Law advocacy tool is the organization of seminars and training events with international experts funded by TAIEX, the EU Twinning Programme and Technical Assistance Programme. Participants in the events will include representatives from businesses, the judiciary and various public institutions. Thus, they will contribute to increasing their knowledge of the Competition Policy, and will serve as fora for building future bridges of cooperation.

The consultation process with market players will continue in 2011, including public institutions and regulators, law firms and representatives from the judiciary, business community and central and local governments, in order to disseminate the information on the amendments to the basic Law and the improved legal framework on competition. The media are an important partner for the Competition Authority, in the context in increasing its transparency, on one hand, and increasing the competition culture among the public, on the other—with regard to both general issues and specific cases. To that end, the Competition Authority will continue its extensive and comprehensive cooperation with the printed and audiovisual media.

The Competition Authority will continue to cooperate with higher education institutions in order to promote competition studies relative to law and business degrees, and to involve students in its work through various internships and/or practicum periods, which can be used to carry out market surveys.

V.4 Administrative Capacity Strengthening

Administrative capacity strengthening is an ongoing challenge for public institutions involved in the process of European integration. For the Competition Authority staff, however, this challenge is multiple, given the fact that they need to increase their performance in an environment where the signs and factors revealing the market

operators' behavior become more and more sophisticated. The Authority has to deal with powerful and resourceful market operators. More specifically, a main objective for investing in administrative capacities will be to increase the degree of expertise in the area of investigative techniques and technical assessments.

Having regard to the European Commission recommendations on capacity building, in response to the legal amendments a nonessential change to the Authority structure is going to take place, extending the Control of Concentrations Unit from three inspectors to five ones, in order to cope with the expected rise in the number of concentrations to be notified to the Competition Authority.

In 2011 the Competition Authority has planned a matrix of training events funded by OECD and the Albanian State Budget, covering all the area of responsibility such as the Competition Policy, prohibited agreements, abuse of a dominant position, and control of concentrations, with most of the Authority technical staff being trained.

In cooperation with the EU Project on twinning the Albanian Competition Authority with its homologue Italian and Hungarian authorities, two internships have been planned for 2011, so that the Albanian Authority can learn from the experience of those two EU Member States with regard to the implementation of the Competition Policy and Law.

In addition, there will be intensive training programmes funded by the European union through GTZ TAIEX, the International Competition Network, the Regional Competition Network, etc.

V.5 Consolidation of Institutional Cooperation and International Relations

International and regional cooperation is one of the best tools for increasing the efficiency and development of the Authority human resources. In this framework, our institution is going to participate actively in various international events organized by ICN, OECD, the European Commission, etc. The events will help present the Competition Authority activity at an international level, learn from best international and regional experiences, and cooperate for joint investigations and information sharing.

The Authority will cooperate with homologue institutions from such countries as Greece, Hungary, Macedonia, Kosova, Bulgaria, etc., with which bilateral memoranda of understanding have been signed. Similar agreements with other countries—mainly in the region—will be signed in order to facilitate information sharing, joint inquiries, etc.

Annex 1 – Statistical Data on Competition Commission Decisions

Year	Decisions Total	Concentrations	Abuse of dominant position	Prohibited agreements	Exempted agreements	Regulation and guidelines	Recommendations to public institutions	Decisions imposing fines	Other decisions
2004	13	2				6	1	-	4
2005	17	-				2	3	1	11
2006	14	4				-	1	1	8
2007	25	9	1	3		4	2	5	2
2008	29	11	1		1	4	5	-	7
2009	36	8	1	2	1	2	10	2	10
2010	34	6	3	2	-	7	5	2	9
Total	168	40	6	7	2	25	26	11	51

Annex 2 - Administrative decisions (fines) issued by the Competition Commission

no.	Date	Undertaking	Percent of turnover	Amount (ALL)	Affirmed/quashed	Instance of judicial review	Execution stage at the Judicial Enforcement Service
27	12.12.2005	AMC	1	160,000,000	affirmed in I-Instance Court, sent for re-adjudication by the Court of Appeal	Supreme Court	In judicial review
38	16.05.2006	ÇALIK HOLD(BKT)		6,549,476	affirmed in I-Instance Court, affirmed in II-Instance Court	Supreme Court	In execution process
50	21.03.2007	SIGMA	2	15,170,870	affirmed in I-Instance Court, quashed in II-Instance Court	Supreme Court	In judicial review
		SIGAL	2	21,768,394	affirmed in I-Instance Court, quashed in II-Instance Court	Supreme Court	In judicial review
		INSIG	2	28,151,049	affirmed in I-Instance Court, quashed in II-Instance Court	Supreme Court	In judicial review
		EUROSIG	2	1,654,026	affirmed in I-Instance Court, quashed in II-Instance Court	Supreme Court	In judicial review
		ATLANTIK	2	8,207,318	affirmed in I-Instance Court, quashed in II-Instance Court	Supreme Court	In judicial review
		INTERSIG	2	6,969,233	affirmed in I-Instance Court, quashed in II-Instance Court	Supreme Court	In judicial review
		INTERALBANIAN	2	5,008,708	affirmed in I-Instance Court, quashed in II-Instance Court	Supreme Court	In judicial review
		ALBSIG	2	3,900,773	affirmed in I-Instance Court, quashed in II-Instance Court	Supreme Court	In judicial review
59	09.11.2007	AMC	2	211,552,000	affirmed in first- and second-instance judicial review	Supreme Court	In execution process
		VODAFONE	2	242,633,000	affirmed in first-instance judicial review	Court of Appeal	In judicial review
63	3.12.2007	PROCREDIT		7,237,464	affirmed in first- and second-instance judicial review	Final decision	In execution process
66	18.12.2007	ALBAN,TIRANA		447,915	affirmed in first- and second-instance judicial review	Final decision	In execution process
		BEST,CONSTRUCT		235,367	dismissed by the Court	Final decision	In execution process
		BETON,EXPRESS		178,534	no appeal	Final decision	In execution process
		FERRO,BETON		436,959	no appeal	Final decision	In execution process
		HALILI,		172,519	no appeal	Final decision	In execution

		ITAL-BETON		201,086	no appeal	Final decision	In execution process
		KIRCHBEGER		508,279	no appeal	Final decision	In execution process
		QARRI-02		169,652	no appeal	Final decision	In execution process
		SHKODRA,BETON		396,974	affirmed in first- and second-instance judicial review	Final decision	In execution process
67	24.12.2007	KAJO,HALLKA		30,000	no appeal	Final decision	In execution process
123	18.09.2009	ALBANIAN AIRLINES MAK,shpk		2,600,000	no appeal	Final decision	In execution process
125	08.10.2009	BLOJA SHA		38,548,251	Lost in first-instance judicial review	Tirana Court of Appeal	In judicial review
		ATLAS SHA		27,848,563	Appealed	First-instance court	In judicial review
150	20.07.2010	ARMO SH.A		271,880,720	Appealed	First-instance court	In judicial review
154	01.10.2010	CLASICC SHPK		25,712,000	Appealed	First-instance court	In judicial review
		ULTRAMOTORS		1,517,000	Appealed	First-instance court	In judicial review
		NOTI SHPK		2,994,000	Appealed	First-instance court	In judicial review
		HYNDAY		5,383,000	Appealed	First-instance court	In judicial review
		Total fines		1,093,263,130			

Annex 3: Matrix of Competition Authority's Assessments and Recommendations, 2010

no.	Decision	Competition Authority Recommendation	Response to the Recommendation
1	Competition Commission Decision no. 142 of 15 March 2010 "On closing the investigation of "Raiffeisen Bank" Sh.a with regard to an abuse of dominant position in the T-bill primary and secondary markets,	Competition Commission Decision no. 142 of 15 March 2010 "On closing the investigation of "Raiffeisen Bank" Sh.a with regard to an abuse of dominant position in the T-bill primary and secondary markets, and setting of conditions and obligations for "Raiffeisen Bank" Sh.a": 1. Close the investigation of <u>Raiffeisen Bank SHA</u> with regard to an abuse of its dominant position in the primary and secondary T-bill markets; 2. <i>Impose conditions and obligations on Raiffeisen Bank SHA on the basis of the commitments submitted by the Bank during the</i>	Taken into consideration.

	<p>and setting of conditions and obligations for "Raiffeisen Bank" Sh.a."</p>	<p><i>hearing:</i></p> <p><i>I. Reduce commissions for individual customers applied to their participation in the primary market. The commissions should be lowered by 50% over a period of three years, in order to encourage and increase the participation of individuals in the primary market.</i></p> <p><i>II. Take remedial actions to improve information on T-bills to the public, as per the following:</i></p> <p><i>a. RB is to prepare ad hoc marketing material to be posted and/or distributed in every branch office.</i></p> <p><i>b. Every branch office is to post in a visible place the up-to-date T-bill yield trends.</i></p> <p><i>c. Information on T-bills is to be published on RB website through an identifiable link.</i></p>	<p>Raiffeisen Bank has approved a commission reduction from 1.2% to 0.6%.</p> <p>The Bank has prepared an informational booklet on T-bills, which it has posted in all its branch offices.</p> <p>In addition, RB has published all the necessary information on treasury bills on its website.</p>
<p><u>2</u></p>	<p>Competition Commission Decision no. 143 of 15 March 2010 "Recommendations on increasing competition in the primary and secondary T-bill market"</p>	<p>Competition Commission Decision no. 143 of 15 March 2010 "Recommendations on increasing competition in the primary and secondary T-bill market":</p> <p><i>1. Propose the <u>Bank of Albania</u> to refund the cash deposits effected in its windows in Tirana and five main districts where it has branch offices related to participation in the primary T-bill market, as an efficient way of reducing transaction costs with regard to the money invested in T-bills by commercial banks.</i></p> <p><i>2. Propose the <u>Ministry of Finance</u> to upgrade its marketing of T-bills in order to increase the range of participants in the primary market auctions, including businesses, financial institutions and individuals, mainly through:</i></p> <ul style="list-style-type: none"> <i>• Public announcements of future auctions (not only on the Public Television and Public News Agency, but also on all the printed and electronic media). Preparation of informational brochures and booklets targeted at businesses, bank customers, consumers' associations, etc.</i> <i>• Interactive marketing on the internet and other public media.</i> <i>• International marketing of T-bills in order to increase participation in the primary T-bill market.</i> <p><i>3. Recommend the <u>Bank of Albania</u>, which is the central monetary authority, to take measures for reducing the asymmetry of information that commercial banks provide to their customers.</i></p> <p><i>Through a bylaw (regulation/order that is binding for commercial banks) the Bank of Albania should fix the issue of information asymmetry through the following actions:</i></p> <p><i>a) Commercial banks should provide complete, accurate and clear</i></p>	<p>Not taken into consideration. The money for participating in T-bill auctions continues to be deposited only with commercial banks.</p> <p>Taken into consideration. 2010 saw an improvement in the marketing of T-bill products both in the domestic market and in the international one (Eurobond Issue)</p> <p>No information from the Bank of Albania The Bank of Albania has published an informational booklet on T-bills.</p>

		<p>information to their customers, with regard to their products, costs and interest rates (including T-bills) explaining mainly benefits for the customers and comparing various investment opportunities (deposits vis-à-vis T-bills);</p> <p>b) Commercial banks should display in real time on their websites the data on the following T-bill auction and the updated trends of T-bill yields;</p> <p>c) Commercial banks should inform their customers via the preset tools (email, telephone, facsimile) on future T-bill auctions, requested amounts, timeframes for depositing participation money and other required data;</p> <p>d) Commercial banks should have a special section to handle any customer complaints, especially with regard to the asymmetry of information provided by bank clerks;</p> <p>e) Those customers who have been misinformed should be entitled to damages for lost profits due to information asymmetry and/or misleading by bank clerks, with regard to participation in the primary T-bill market.</p> <p>4. Recommend the <u>Financial Supervisory Authority</u> to increase supervision of the retail market and its transparency.</p> <p>In the context of fulfilling its legal obligations to supervise the Government securities retail market, the Financial Supervisory Authority (FSA) should periodically supervise the T-bill market and prepare supervision reports on that market (like it does with regard to the insurance market and voluntary pension market), and inform the Authority on any problems in the functioning of that market due to any potential restriction on competition.</p> <p>It should develop the required instruments for protecting consumers in the segment of Government securities, like it does with regard to the insurance market by establishing a unit to handle any complaints from individuals participating in the securities market and facilitating compensation for consumer damage caused by commercial banks. ”</p>	
<p>3</p>	<p>Competition Commission Decision no. 144 of 23 March 2010 “Recommendation for the Energy Regulatory Entity on the licensing of two companies</p>	<p>Competition Commission Decision no. 144 of 23 March 2010 “Recommendation for the Energy Regulatory Entity on the licensing of two companies “Cable System” sh.p.k and “400KV” sh.p.k”:</p> <p>1. Recommend the <u>Electricity Regulatory Entity</u> to grant a license to trade in electricity to companies “Cable System” sh.p.k and “400KV” sh.p.k.</p>	<p>Taken into consideration by the following decisions: VKERE No.36 of 27.04.2010; VKERE No.37 of 27.04.2010.</p>

	“Cable System” sh.p.k and “400KV” sh.p.k”.		
<u>4</u>	Competition Commission Decision no. 158 of 12 November 2010 “Several recommendations on preventing bid rigging in public procurement”	<p>Competition Commission Decision no. 158 of 12 November 2010 “Several recommendations on preventing bid rigging in public procurement”:</p> <p><i>I. Recommend the Public Procurement Agency, the Council of Ministers and the Parliament of Albania to:</i></p> <p><i>1. Amend Law No. 9643 of 20 November 2006 “On Public Procurement”, more specifically its Article 13 (3) which states that the Public Procurement Agency bans an economic operator from participation in procurement procedures for a period of one to three years in the cases provided for in points (a), (b), (c) and (ç) in that same Paragraph. The recommendation proposed to add to the list a point (d) with the following content:</i></p> <p>“(d) Where a Competition Commission Decision finds that there has been bid rigging among economic operators participating in procurement procedures”.</p> <p><i>2. The legal framework on public procurement should include procedures addressing those cases where contracting authorities have the responsibility for informing the Competition Authority if they have identified indications of prohibited agreements in public procurement during the development and/or execution of procurement procedures. In cooperation with the Competition Authority a special chapter should be drafted in Council of Ministers’ Decree no. 1 “On public procurement rules” (or in any other law or regulation that is deemed appropriate) whereby the abovementioned cases are provided for.</i></p> <p><i>II. Recommend the Public Procurement Agency to:</i></p> <p><i>3. Include a certificate of independent bid in the standard tender documents.</i></p> <p><i>4. Prepare a joint Instruction on combating bid rigging in public procurement</i></p> <p><i>5. Prepare a Guide on the detection and reduction of bid rigging in public procurement, and a Brochure on the signals of bid rigging in public procurement.</i></p> <p><i>6. Cooperate in the area of training procurement officers in the importance of detecting and preventing bid rigging and the methods of</i></p>	Agreement with the relevant institutions reached, and the relevant acts are under review.

		<i>fighting this phenomenon that has quite serious effects on competition, taxpayers and the State Budget.</i>	
<u>5</u>	Competition Commission Decision no. 159 of 19 November 2010 "Recommendations on increasing competition in the electricity market."	Competition Commission Decision no. 159 of 19 November 2010 "Recommendations on increasing competition in the electricity market." 1. <i>Recommend the Ministry of Economy, Trade and Energy and the Electricity Regulatory Entity to:</i> 1.1 <i>Ensure functional and financial segregation of the "Public Wholesale Supplier" from KESH-Gen, which would establish the conditions for competition at this market level for all interested parties (PPE, PVE, and Qualified Producers) that would enable competitive transactions;</i> 1.2 <i>Ensure real financial segregation of the "Distribution System Operator" and the "Public Retail Supplier" so that they operate as financially separate entities. Those market segments have been liberalized and the recommended measures would lead to increased competition;</i> 1.3 <i>Expedite the tariff-customer agreement revision process, setting obligations for the Public Retail Supplier in order to protect consumers through observance of service quality indicators (supply vs. interruption of electricity, and accurate billing).</i>	No information has been received whether these recommendations have been taken into consideration.
<u>6</u>	Competition Commission Decision no. 161 of 2 December 2010 "Several recommendations on increasing competition in the sector of electronic communications on the 3G broadband technology market"	Competition Commission Decision no. 161 of 2 December 2010 "Several recommendations on increasing competition in the sector of electronic communications on the 3G broadband technology market": 1. Recommended the Ministry of Innovation and Technology to liberalize the 3G service, by granting other licenses as soon as possible. The licenses should be given simultaneously in order to increase free and effective competition in the 3G market. The conditions of such licenses should be the same as in the first license granted. 2. Recommend the Electronic and Postal Communications Authority to regulate the broadband technology market based on a transparent methodology, and regulate the tariffs so that they are cost-oriented.	No information has been received whether these recommendations have been taken into consideration.

Annex 4: European Commission Progress Report on Albania, 2010 (Competition)

Chapter 8: Competition

The competition *acquis* covers anti-trust, merger and State aid control policies. It includes rules and procedures to fight anti-competitive behaviour by companies (restrictive agreements between undertakings and abuse of dominant positions), to scrutinise mergers and to prevent governments from granting State aid that distorts competition on the internal market.

Competition rules are directly applicable throughout the Union and Member States must cooperate fully with the Commission on enforcing them. The Stabilisation and Association Agreement (SAA) includes provisions closely aligned with a large part of the competition *acquis*. These cover anti-competitive agreements between undertakings, abuse of dominant positions and State aid distorting competition. The SAA includes rules applying to public undertakings and to undertakings which have been granted special and exclusive rights and prohibits quantitative restrictions on imports from the EU into Albania. The SAA provides for operationally independent public authorities to supervise application of the competition rules. It also includes a protocol laying down rules on State aid in the iron and steel sectors.

As regards anti-trust and mergers, the current Competition Law applies to all sectors of the economy and is modelled on the EU rules. The law was amended in September 2010 and is now in line with the essential elements of the *acquis*. The amended law significantly lowers threshold values for prior notification of mergers to the Albanian Competition Authority (ACA). This could lead to an increase in notifications making it important to ensure that the ACA has adequate administrative capacity to deal with the increased caseload. As regards administrative capacity, the ACA is a public body and a separate legal entity which performs its tasks independently and reports to parliament. The chairman and four members of the authority's decision-making body - the Competition Commission – are appointed by parliament for a five-year term. The ACA has adequate investigative powers including requesting information and searching companies' premises. It may impose fines on undertakings and public bodies. The thresholds for fines are being revised to bring them closer into line with EU policy. The ACA's decisions are subject to judicial review. The ACA may also intervene in regulated sectors by issuing policy recommendations. The ACA staff of 35 appears insufficient, considering the numerous tasks given to the authority and the lowering of the merger notification thresholds.

Concerning liberalisation, the Competition Law incorporates the principles of the *acquis* regarding services of general economic interest. A number of undertakings in the transport, public utilities, postal services and energy sectors enjoy special or exclusive rights. Certain reserved sectors are supervised by sectoral regulatory authorities. Further analysis of the compatibility of these practices with the *acquis* will be needed.

Conclusion: Albania's legal framework for competition is largely based on EU rules and the necessary legal and administrative structures are in place. However, sufficient safeguards need to be put in place to guarantee the operational independence and administrative capacity of the Competition and State aid authorities so that they can enforce the legislation efficiently. The actual independence of sectoral regulators needs to be demonstrated. Further monitoring and analysis of Albania's progress towards market liberalisation in reserved sectors in line with the *acquis* will be required.

Overall, Albania will have to undertake additional efforts to align with the *acquis* and implement it effectively in the medium term.

Shtojce 5: Struktura e Autoritetit të Konkurrencës

